

# A fresh look at our watchdogs

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How far can Parliament go in recommending changes in the structure and functioning of Chapter 9 and related institutions? At most it could suggest constitutional amendments to change appointment procedures and areas of responsibility, and perhaps even the continued existence of some bodies.

Kader Asmal, who chairs the ad hoc parliamentary committee that is reviewing the institutions, won't go that far yet. He says constitutional amendments should only be contemplated when there is "urgency and absolute necessity, not for convenience". But he is adamant that the minimum recommendation his committee will make will be for drastic improvements to the way Parliament deals with the institutions, from appointments to oversight of their performance.

"Parliament needs a much more systematic approach. Perhaps a specific directorate at a high level within the Speaker's office to deal with these issues. Why did it take six months to appoint the new gender commissioners, why is an ad hoc committee considering the salary for the new Auditor General? Why are we pushed in extremis to get deadlines extended? It is erratic," he told the *Mail & Guardian*.

Asmal has asked all the institutions to respond by December 15 to a questionnaire interrogating their *raison d'être* and day-to-day functioning. The questionnaire essentially prods the institutions to undergo a detailed self-assessment, explaining how they see their basic mandate, whether they have the cash and the legislative tools to fulfil it, whether their functions overlap with those of other bodies and whether they run themselves coherently and effectively.

He has also asked 150 non-governmental and civil society organisations to make submissions to the committee. And since his phone number was published alongside a call for public participation,

he has been assailed by comments. Judging by the calls he took while the *M&G* was in his office, some callers had only the vaguest idea of what Chapter 9 institutions do.

The committee must report to the National Assembly by June 30 next year and Asmal says he wants its recommendations to be put into motion by January 2008. "In my experience, if things take longer than six months, they start gathering dust. Momentum is important," he said.

Asmal says the committee will not "put people in the stocks" by making detailed findings about specific problems, such as the prolonged suspension of communications authority Icasa's CEO, Jackie Manche, or the turmoil at the Public Protector's office, where Lawrence Mushwana and his deputy, Mamiki Shai, have been at war over sexual harassment allegations. But he said the committee may hold some closed sessions with the institutions in order to facilitate conversations about tough issues.

"We have to look at governance, at how these bodies run themselves. In some cases there are clearly problems," he said. Asmal also wants much tighter performance management and better tracking of what happens after the bodies make their findings. He also makes no bones about the absurdity of treating the hugely complex managerial and technical task that faces a body such as the Auditor General's office in the same way as institutions with a much simpler remit. "It is irrational that the Auditor General gets almost exactly the same salary as a commission chair," he told the *M&G*. --  
*Nic Dawes*

## **Auditor General**

**Self-assessment 7/10**

**Our assessment: 7/10**

The Auditor General (AG) came down hard last month on the department of defence, which managed to lose supplies, vehicles, guns and ammunition worth R27million in Burundi.

The department is one of the 826 entities for which the AG's office creates about 1 000 reports annually, says Africa Boso, the spokesperson for the AG. Boso says major achievements include "improving the timeliness of our audit reports and meeting Public Finance Management Act and Municipal Finance Management Act deadlines, as well as improving the quality of audits.

Results of a 2005 survey conducted by Markinor showed that attitudes of members of Parliament's finance committee, Scopa, to the AG's office were largely positive: 100% of respondents were satisfied with the quality of work; 90% felt that the office leads to better financial management and accountability; and 80% praised the general usefulness of information generated by the AG's office compared to 57% in 2003.

The 2006 annual report does not mention the AG's findings on moonlighting and private work by government officials, but Boso says this is because the public service commission is focusing on this "and we tend to avoid duplication on the same subject matter".

People across the political divide have come out in support of the AG. Themba Godi of the Pan Africanist Congress and chair of Scopa praised the office for its "high level of professionalism, integrity and efficiency". He said "as a committee we are satisfied that it is fulfilling its mandate".

Gavin Woods of the IFP concurred and noted in an article in Focus magazine that the office has "been transformed from a typical dark and dingy routine-driven government organisation into a fairly energetic organisation".

But the AG's office has been criticised for failing to keep its teeth sunk into the arms-deal investigation. Woods says that although former AG Shauket Fakie was initially enthusiastic about unravelling the Byzantine workings of the deal, he toned the investigation down

"after the state president and a number of Cabinet ministers criticised him for suggesting there was reason to conduct such an investigation". -- *Percy Zvomuya*

## **Commission on Gender Equality**

**Self-assessment: 8/10**

**Our assessment: 4/10**

"Conspicuous for its absence rather than its presence" is what one gender activist had to say about the Commission on Gender Equality (CGE). The CGE's mandate includes monitoring, investigation, research and education on gender equality, as well as lobbying, reporting and advising government and the public on gender related issues. While the body has great scope to effect change on gender inequality, it is in dire need of a shake up.

The CGE has been running without commissioners for seven months, retaining only chair Joyce Piliso-Seroke and CEO Chana Majake to steer the rudderless ship. The CGE appears to be viewed as a poor relation of the Chapter 9 institutions: the terms of the last batch of commissioners expired in April, but the National Assembly has consistently postponed any decision on the recommendation of new commissioners to be appointed by the president.

The CGE, however, says that "no void has been created" and that the appointment process is "at an advanced stage within the national assembly". It predicts that new commissioners will be announced soon.

The discrepancies in state funding across the Chapter 9 institutions have also proved to be a bone of contention. The Auditor General and Independent Electoral Commission receive the biggest slice of the R3,8billion budget allocated to these institutions, sharing R1,3billion between them. The remaining R2,5billion is spread among other institutions such as the Human Rights Commission, Public Protector and communications authority Icasa. The CGE's treasury allocation increased from R8million in 1999 to R24million in 2005, and it

received R2million from donors. Nevertheless, it operated on a shortfall of R18million last year.

Gender activists say they are bewildered as to what is being done with this R26million. Insiders claim that 25% of the budget is spent on the salaries of the CEO and the chairperson. The CGE could not confirm or deny this at time of going to press.

The Commission has not utilised its position to lead debate on certain controversial issues. Its silence, for instance, on the ongoing battles between civil society and the government on HIV/Aids policy has irked gender activists. The CGE has, however, made appropriate interventions as an amicus curiae -- in cases such as the Jordan sex work trial -- and came out in defence of the complainant in Jacob Zuma's rape trial.

Despite observers arguing that public awareness of the body is low, the CGE maintains that this has improved. The opening of provincial offices and ongoing public education programmes has increased its reach into communities across the country. But high staff turnover and in-fighting have plagued the CGE since its inception.

"There are some very good individuals on the staff who try really hard and have stuck it out, but they are defeated by institutional obstacles at every turn," said an expert in the field. According to one insider, a mid-year survey revealed that 80% of staff indicated they would leave immediately if offered a new job or that they were actively job-hunting. -- *Lynley Donnelly*

### **The CRL Commission**

**Self-assessment: 4/10**

**Our assessment: 2/10**

After two years of existence, which were mostly spent setting up shop, this "barely there" commission still has a lot of ground to cover. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is mandated to

promote respect, tolerance, harmony, friendship and national unity in the fraught arenas of culture, religion and language in South Africa. But Dr Mongezi Guma, the commission's chair, does not seem daunted by the mammoth task of performing the role of mediator on such issues.

He says it is still "engaging with its Act", as the CRL is the first commission of its kind in the world. The commission appears unfazed that the public barely knows it exists, and seems to believe that "word of mouth" will suffice to let the public know about its role.

Guma says the CRL commission's "limited budget" of R13million does not allow it to embark on public awareness campaigns. Unlike the Human Rights Commission, which has litigating authority, the CRL is confined to the role of facilitator in disputes over issues such as the dominance of the Christian religion in South Africa.

The commission hears complaints from the various communities trying to gain recognition for their cultures. It can, however, refer controversial cases to litigating bodies.

To date, the CRL has conducted effective public talks in the San community to resolve tensions originating in a feud that occurred during the 1800s, which divided the community into two groups.

It also hosted a national consultative conference, as required by the establishing Act. The commission says that while its caseload is small (26 since its inception) it is slowly increasing.

Its most significant intervention has been public hearings in conjunction with the National House of Traditional Leaders and the Human Rights Commission in response to the rising death tolls at circumcision schools. -- *Vuyo Sokupa*

**Financial and Fiscal Commission**

**Self-assessment: none**

### **Our assessment: 6/10**

We may have to put down this watchdog because the system of intergovernmental transfer is working. There is general satisfaction with the quality of the Financial and Fiscal Commission's work, but we may not need it and it has no way of implementing its own recommendations.

The commission makes recommendations to Parliament and the provincial legislatures on the equitable division of national revenue between the national, provincial and local spheres of government.

The Constitution also requires the commission to make submissions on other intergovernmental matters, such as provincial taxation.

The commission has churned out several submissions a year to the national treasury that were generally positively received. One person viewed its recommendations as sufficiently benign to be uncontroversial. The submissions ranged from the expected recommendations on the general division of revenue to more specific inquiries into matters such as the conditional grant system.

The lack of heated debate between provincial structures over revenue division testifies to the commission's competency and stakeholders are satisfied with the research that supports its recommendations. It may be time to subsume the commission into the national treasury.

Stakeholders are concerned that the commission has been pushed to the margins of the revenue division process and has no teeth to enforce its decisions.

Some stakeholders attribute the stability of intergovernmental relations in part to the passage of time and question whether the commission still has a critical role to play.

One of the commission's major challenges has been staff retention, which some say constrains its capacity and explains its dependence

on consultants to do portions of its technical work.

In the past financial year, the commission comprised nine commissioners and was supported by a 31-person secretariat. -- *Tumi Makgetla*

## **Independent Electoral Commission**

**Self-assessment: 9/10**

**Our assessment: 9/10**

It is a measure of the confidence regional stakeholders have in the Independent Electoral Commission (IEC) that it has gone beyond its constitutional mandate to oversee local and national elections. It has also provided logistical and technical support during elections in countries such as the Democratic Republic of the Congo, Lesotho, Zambia, Namibia and the Comores. So confident is its chair, Dr Brigalia Bam, that when we asked her to rate her organisation she gave it 9/10 -- and then warned me that if the *M&G* gave it a lower mark she would require an explanation in writing!

She justifies this by pointing out that all the elections the commission has presided over have been declared free and fair, and "no election conducted by the IEC has been declared invalid by a court of law". Bam says "the IEC has also won international and national awards for its use of information technology in elections and conducted massive voter education campaigns.

Khabele Matlosa, research director at the Electoral Institute of Southern Africa, agrees, calling the IEC "one of the most effective, efficient and professionally run institutions".

Democratic Alliance MP and justice spokesperson Sheila Camerer also agrees, saying the commission has grown in stature over the years.

Ivor Jenkins, director of the Institute for Democracy in South Africa, praised the institution for its independence and competence. He

commended it for keeping the voters' roll up to date, but said less time and resources should be spent assisting neighbouring countries.

-- *Percy Zvomuya*

### **National Youth Commission**

**Self-assessment: none**

**Our assessment: 0/10**

The overall mandate of the National Youth Commission (NYC) is to ensure that policymaking includes the needs of the youth, defined as anyone between the ages of 14 and 35. The only problem is that young people and activists working in the field seem to have no idea what it does.

"I work in the field of children and I don't have the faintest idea what they do," said a child rights expert. "I network a lot and I have never seen them in forums in which children's issues are being debated," she continued. Critics say that while issues such as school violence and child perpetrators of crime are huge, the NYC has remained silent.

"We don't know what it does, and whether the resources spent on it are justified," says Fatima Hassan, activist and author of a paper titled *Are Chapter 9 Institutions Helping to Deliver Justice?*

One wonders how easy it is for young people to get support or make inputs to the commission: recently two journalists spent two days trying to get information about its projects and accomplishments. The website has links to pages and "partner organisations" that are not available, and requests for information from the office of chairperson Monde Mkalipi and the commission's communication department went unanswered. -- *Lynley Donnelly and Vuyo Sokupa*

### **Pan South African Languages Board**

**Self-assessment: none**

**Our assessment: 5/10**

The steward and protector of multi-lingualism, the Pan South African

Languages Board (Pansalb) is less effective than it used to be.

In 2003, Pansalb worked with the department of arts and culture to draw up the South African Languages Bill and develop national policy.

Pansalb started a campaign to raise awareness of the individual's right to be served in the language of his or her choice at government institutions, but it has subsequently fizzled out.

Despite efforts such as the lexicography units -- which have, among other things, translated specialist knowledge books into various languages and are publishing dictionaries in nine indigenous languages multilingualism is only marginally more visible in the public service, public discourse and the mass media.

Internal structural and capacity problems have also hampered the board's efficiency. One look at the organisation's website, which is currently malfunctioning, reveals that Pansalb has way too many focus areas -- language in education, lexicography and terminology development, research and development, translation and interpreting, linguistic human rights and mediation -- many of which could be outsourced to organisations with the capacity to carry them out. The unanimous view of members of the various language bodies is that the R39million that Pansalb has been allocated for the 2006/07 financial year is simply spread too thin for the board to institute meaningful change.

Recruitment and the retention of skilled staff has also been a problem.

Language experts abound in the country but the board does not reflect this.

Stakeholders, while acknowledging the board to be bloated and increasingly bureaucratic, concede that it operates within a difficult

environment, where role players such as business and the media are often unwilling to interact.

This leaves the language policy, which basically states that students have a right to choose their language of instruction. This is idealistic at best as English still maintains a hegemony over interaction in the job market.

Through more vigorous interaction with other sectors, a system can be created to foster a greater demand for indigenous African languages in the fields of medicine, social work, teaching and the military as the jobs entail communicating with people who speak African languages. -- *Kwanele Sosibo*

### **Public Protector's Office**

**Self-assessment: none**

**Our assessment: 3/10**

Controversy has plagued the Public Protector's office in the four years since Lawrence Mushwana took the reins. Mushwana has been found inadequate in exercising his mandate 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". Critics say he has often put the interests of members of the ruling party before those of the public.

Adrienne Carlisle of the Public Service Accountability Monitor says the Public Protector's office has been "generally weak, particularly with regard to conducting oversight over the executive. She says the office of the Public Protector has an "extremely poor record in this regard" and Mushwana has interpreted his mandate very narrowly. Using the Oilgate investigation as an example, Carlisle says Mushwana's office delivered "the most superficial possible investigation and a report that raised more questions than it answered".

Most recently, Mushwana found no link between Social Development

Minister Zola Skweyiya awarding a large government contract to a company partly owned by Imvume -- an oil company implicated in the Oilgate scandal -- and that company's interest-free loan to Skweyiya's wife. Instead he found Skweyiya guilty only of non-disclosure of the loan to Parliament and imposed a sanction requiring the minister to apologise to Parliament.

"As with his earlier report on the Oilgate scandal, the Public Protector's findings are undermined by common sense", says DA energy spokesperson Hendrik Schmidt. Similarly, the Public Protector is perceived to have gone easy on Deputy President Phumzile Mlambo-Ngcuka in his investigation into her Christmas joyride to the United Arab Emirates, which costs the taxpayers thousands.

Mushwana found that the deputy president was not only entitled but "obliged" to act as she did for her own safety. His report added that there was nothing unethical or improper in a deputy president having his or her travel bill funded from the public purse.

It's not all criticism however: advocate Jacob van Garderen of Lawyers for Human Rights was impressed with the report produced by the public protector's office detailing the poor treatment of asylum seekers at a home affairs reception office in Braamfontein. On the downside, it took four years for the report to be released. Despite numerous requests for comment, the Public Protector's office failed to honour its promises to respond by the time of going to press. --  
*Haydee Bangerezako*

## **Public Service Commission**

**Self-assessment: none**

**Our assessment: 6/10**

This is a trusty and reliable watchdog. The Public Service Commission (PSC) has a big patch. Its ambit is the 1,1million-strong public service; it is watchdog over civil servants in the national and provincial government departments.

The PSC keeps an eye on labour relations, corruption and service levels among civil servants. If it is measured by its ability to enforce efficiency and honesty in the civil service, the PSC would be a lapdog. But it has no such powers. It has the powers of persuasion, inspection and lobbying and it uses these comparatively well.

The PSC runs an anti-corruption hotline and ensures follow-up; it inspects departments to check on the accession to the system of Batho Pele (people first); it checks up on conflicts of interest among civil servants and ensures accession to the performance management system.

It produces regular reports on each of these areas and this year led a team which is attempting to overhaul the management of the home affairs department.

The PSC would do better to publicise its work so that the public can use its reporting systems; it could publish regular reports on whether Batho Pele is being achieved (and tell us about its inspections) and an Auditor General's report earlier this year revealing large-scale moonlighting among senior civil servants suggests the PSC needs to ensure that departments clamp down on this scourge.

On the whole, this is one of our better watchdogs. -- *Ferial Haffajee*

### **South African Human Rights Commission**

**Self-assessment: 6/10**

**Our assessment: 6/10**

This is one of the better, more visible rights watchdogs. Despite calls for more bite, CEO Tseliso Thipanyane says the Human Rights Commission (HRC) has adequate powers for now.

Its mandate requires it to protect, promote and develop human rights, and investigate and secure appropriate redress where human rights have been violated. Many of its cases are referred to the

Equality Court.

Some NGOs, such as the Aids Law Project and Idasa, however, have found that the HRC, for the most part, has chosen the easy amicus route and has in only a few cases acted as a litigant in its own name. Particularly worrying is that the HRC has not done enough to address problems in government departments, even though it has the power to issue subpoenas if departments choose to resist investigation.

The commission's critics have asked why it has not taken on the department of health about HIV/Aids and antiretrovirals. And despite uncovering human rights abuses at the Lindela Repatriation Centre, critics say the commission has not ensured that home affairs implements its recommendations.

Jody Kollapen, chair of the HRC, has complained that getting a response from government to the commission's investigations is difficult and hinders the commission's progress, and that the feedback received from government is not always of good quality.

He told a parliamentary committee in October that although that it was difficult for Chapter 9 commission recommendations to be made binding, it could be made obligatory for government departments to respond to these recommendations.

Thipanyane himself highlighted crime and HIV/Aids as areas in which the commission is still weak on, even though it has now appointed a dedicated HIV/Aids officer.

He was worried about the support Parliament offered to the commission. At the same October meeting he said the HRC would not make further recommendations to Parliament because their recommendations were not responded to.

But the commission also has to deal with limited resources.

"The number of complaints presents a big challenge to us," said Thipanyane.

Even though the commission has opened more provincial offices, these are normally manned by up to 10 people at most.

According to the commission, of a total of 3 903 accepted complaints, 2 107 have been dealt with in the March 2005 to March 2006 period.

Once a complaint is received it has to be screened and verified. In the following 48 hours it is either sent to legal practitioners or to other relevant bodies. Thipanyane acknowledged that with limited personnel it might take some time to address complaints, but that the commission itself enforces a timeframe on itself of three months to deal with enquiries.

"I want the commission to litigate more," he said. "We are not litigating enough." He was worried that the majority of complaints came from middle-class people and that rural South Africans were left out in the cold. -- *Yolandi Groenewald and Haydee Bangerezako*

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