

An Afrocentric perspective on the Efficacy of the Chapter 9 Institutions: Resurrecting South Africa Public Administration from its Ethical Death"

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Abstract

The key purpose of this paper is to explore the efficacy of Chapter nine (9) institutions as enshrined in the Constitution of the Republic of South Africa, 1996. The paper argues that the state of affairs of these Chapter 9 institutions are primarily affected by the politics-administration dichotomy. Political interference is perceived to be underlying factor that affect the operation and administration of these independent institutions. Thus, these autonomous institutions are failing to efficaciously implement their constitutional mandates as prescribed. For instance, these autonomous institutions are also seen as toothless institutions because they are inadequate in holding public officials and political office-bearers accountable. Although, South Africa has great legislative frameworks that make clear provisions on the functions and administration of the Chapter 9 institutions, politicians and the governing political leaders are still feared. The paper is grounded by the Afrocentricity Theory better explained by Asante in his book titled "*Afrocentricity: the theory of social change*" published in 1980 and 2003. The Afrocentric theory "provides educational thought on power, dominance, racism and the need to escape victimization". Thus, some of the Chapter 9 institutions/individuals are still colonized (captured), held by racist and Africans are the victims of the system. Indeed, there is a need to escape from colonization, racism and the victimization system. This paper adopted a qualitative research design in a form of a systematic literature review. The paper concludes that the power and functions of Chapter 9 institutions need to be revised and reformed for a better-transformed South Africa.

Keywords: *Afrocentricity theory, Chapter 9, Constitution, Efficacy, Ethics, and South Africa.*

Introduction

In terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 makes the provision for six (6) autonomous institutions. The Chapter 9 institutions include; the Public Protector (PP), South African Human Rights Commission (SAHRC), Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL), Commission for Gender Equality (CGE), the Auditor-General (AG) and Electoral Commission (EC) (Republic of South Africa, 1996). According to Murray (2006:26), the role of the Chapter 9 institutions

is to make the government accountable and exercising cooperative control. These institutions are projected to investigate the implementation of rights and engage with the government. It is also argued that these state institutions aim at supporting constitutional democracy. Thus, the Constitution hill (2017) and Murray (2006) also asserts that these Chapter 9 institutions are supposed to be fair, autonomous and be subjected to the Constitution of the Republic of South Africa only as the supreme law of the country. These autonomous institutions need to exercise their powers and functions “without any fear, favour or prejudice” as prescribed by the constitution. However, this paper aims at exploring the efficacy of chapter nine (9) institutions as enshrined in the Constitution of the Republic of South Africa, 1996. The paper argues that the state of affairs of these institutions are primarily affected by the politics-administration dichotomy. Political interference is perceived to be underlying factors that affect the operation and administration of these institutions. Thus, these institutions are failing to efficaciously implement their constitutional mandates. To comprehend the efficacy of these institutions, the chapter starts by understanding ethics, analyze the Chapter 9 institutions in terms of their powers and functions and look at issues that contribute to the death of ethics.

Research Design and Methodology

MacMillan and Schumacher (2001:166) and Bryman (2012), indicate that a research design “is a plan for selecting subjects, research sites, and data collection procedures to answer the research questions. They further indicate that the goal of a sound research design is to provide results that are judged to be credible”. Research design can be constituted into two approaches to which are both aiming at addressing research problems namely; qualitative and quantitative. However, in this study, the author(s) adopted a qualitative research design to collect and analyze data. Berg (2009) indicates that qualitative research design is primarily exploratory research. It is used to gain an understanding of underlying reasons, opinions, and motivations. It provides insight into the problem or helps to develop ideas or hypotheses for potential research. Given the nature of this paper, the author(s) reviewed the existing literature relevant to the Chapter 9 institutions, ethics, and public administration.

Theoretical Framework: Afrocentricity Theory Perspective

This paper is underpinning by the “Afrocentricity Theory” as the relevant theoretical framework in analyzing the powers and functions of the Chapter 9 institutions. The argument is based on the South African context as one of the Africa countries that experiences challenges of unethical conducts by public officials and political office-bearers. The ethical death in South Africa public administration has escalated to Africa as a whole. Most of the African countries are led by unethical elites. Therefore, the Afrocentricity theory also referred to as “the theory of social change” is a relevant theoretical framework that standpoint a good chance of analyzing African issues including ethical behaviours of the Chapter 9 institutions. Similarly, the paper is grounded by the Afrocentricity Theory better explained by Asante in his book

titled "Afrocentricity: the theory of social change" published in 1980 and 2003. The Afrocentric theory "provides educational thought on power, dominance, racism and the need to escape victimization". Thus, it can be argued based on the Afrocentricity theory that some of these Chapter 9 institutions are still colonized or captured by individuals, held by racist and Africans are still the victims of the apartheid system yet they are holding the governing and independent public offices. From the Afrocentricity perspective, indeed, there is a need to escape from colonization, racism, dominance in strategic positions of the Chapter 9 institutions and victimization. Escaping from colonization and victimization will reduce unethical conducts of government officials and political office-bearers. Therefore, good governance can be promoted and ultimately public service delivery will be rendered effectively.

Literature Review

Understanding Ethics

The notion of 'ethics' is derived from the Greek word 'ethics' meaning the spirit of culture, inward disposition, or moral attributes (Lategan and Le Roux, 2010). The moral philosophy of a school of thought can be understood as ethics. It is about applying the morals and values of the conduct of the people (Matsiliza, 2013). Despite that, Manyaka and Sebola (2013) argue that the term 'ethics' remains widely disputed because many scholars have defined it differently. In addition to the above clarifications, Edwards (2007); Zitha and Mathebula (2015); and Mathebula and Munzhedzi (2017), asserts that ethics are "the collection of values, obligations, moral principles, attitudes, and standards, which act as conduct and behaviour rules for public representatives and officials who are involved in maintaining good governance and public administration practice". Similarly, Mashilo and Selelo (2020) indicate that ethics, despite their social and economic norms, are not concerned with themselves, but essentially with treating individuals with dignity. The notion of ethics has gained significant attention among practitioners, researchers, politicians, society and the public in general in the field of (P)public (A)administration of South Africa. The rise in attention can be attributed to the immoral behaviour of most government employees, which undermines good governance of the Chapter 9 institutions and other state institutions. In that respect, Chapter 9 leadership and employees of the state institutions must also abide by the Code of Conducts (Ababio and Vyas-Doorgapersad, 2010). Therefore, this chapter encourages public officials to apply good ethical-moral standards, taking into consideration of public service values, responsiveness, and dedication when executing public mandates. It is crucial to understand that in South African Chapter 9 institutions, a code of ethics is a need for good governance (Ababio et al, 2010). Ababio et al, (2010) and Mashilo and Selelo, (2020) believe that ethics is about the human in nature.

The Functions of the South African Chapter 9 Institutions

Auditor-General of South Africa

In terms of section 48 of the Constitution of the Republic of South Africa, 1996, stipulate that the Office of the Auditor-General of South Africa shall review and report the financial statements and accounts of all government ministries in all

government areas (Dassah, 2018). In this position, the office of the Auditor-General has a supervisory responsibility in the management of public finances and in promoting public sector openness and accountability. Its primary function thus is to prevent corruption occurrence rather than to investigate or detect misconduct. The function of the Auditor-General has recently, however, encountered criticism of the fact that it is responsible only for preventing and reporting on corruption and not for making arrests (Mashiloand Selelo, 2020). In accordance with the Amendment of section 5 paragraph (b)(1b) of Act No. 5 of 2018 of the Public Audit Amendment Act (2018), the Auditor General has the power to take any appropriate remedial action; and (b) issue a certificate of debt, as prescribed, where an accounting officer has failed to comply with remedial action. The current amendment of the public audit strengthened the potency of the office of the Auditor-General in enforcing and fighting unethical conduct in the public finance's usage (Masenya and Kgobe, 2019:78). The office of the auditor general is efficacious and relevant in curbing any financial transgression that may occur in the usage of public funds.

South African Human Rights Commission (SAHRC)

The SAHRC focuses primarily on human rights as earth-faced human beings and such rights are guaranteed in Chapter 2 of the Constitution of the Republic of South Africa, as the bill of rights. In accordance with the Constitution of the Republic of South Africa, 1996, "foster respect for human rights and the human rights culture; promote human rights protection, development and achievement; monitoring and evaluating respect for human rights in South Africa" and that is the function of the Commission as outlined. The Human Rights Commission Act (Act 54 of 1994) regulates the functions of the Human Rights Commission by examining and reporting respect for human rights; acting, to ensure adequate remedies in cases of violation of human rights; carrying out research and education. The Human Rights Commission must require relevant government institutions every year to provide the Commission with information on actions taken to promote the rights to housing, sanitary, food, water, social security, education, and the environment in the Bill of Rights; develop an awareness of the South African people's human rights; make a recommendation (Murray, 2006). Up to this far, the South African Human Rights Commission is ineffectual as people's rights have been abused and children and women continue to be at the centre of gender-based violence. The only time the country gets to hear of the existence of the South African Human Rights Commission is when the country declares the national 16 days against children and women abuse.

Public Protector of South Africa

The Public Protector, another key institution of Chapter 9, has a constitutional mandate "to examine all behaviour in the state affairs alleged or suspected to be incorrect or result in any misconduct or prejudice," to report the findings and to take "appropriate remediation measures," where the public has been misused (Masenya & Kgobe, 2019). The Constitution of the Republic of South Africa makes the provision for the Public Protector under Section 181(1)(a) to perform its functions independently. Its principal function is to ensure accountability by the government

and to be able to remedy the misuse of authorities when maladministration is found. The Public Protector Act (Act 23 of 1994) states that the Public Protector's mandate includes enhancing constitutional democracy by investigating and rectification of misconduct and harm, mismanagement, and governmental power abuse. According to the Public Protector Act of 1994, it is necessary that the Public Protector resolves administrative disputes through mediation, conciliation, or negotiations, rectifies any act or omission in administrative activity. However, though the powers and functions of the Public Protector are clear, there are still discrepancies in the office of the Public Protector. Public Protector is in the middle of political battles. The Public Protector ought to focus on its functions to examine matters and to safeguard the communities against matters such as maladministration in connection with the affairs of government, improper conduct by a person performing a civic function. By doing so, the office of the Public Protector will have respect and dignity due.

The Independent Electoral Commission (IEC)

In terms of section 190(1) of the Constitution of the Republic of South Africa, 1996, the functions of the IEC are defined. It is a constitutional body for the promotion and protection of democracy in South Africa. It supports and protects democracy by guaranteeing the possibility of free and fair elections. The committee is responsible to the National Assembly and is politically independent of the government (Struwig, Roberts, Vivier, 2011). The IEC report to National Assembly on important issues, for example, preparations for elections, allowing the National Assembly to act in areas affecting the governance of the country and to call the government to account whenever appropriate (Chauke and Mudua, 2019). For instance, lack of financing for free and fair elections for the treasury or the home affairs department which does not provide identity papers. Local government elections at times are no longer won fairly but through by-elections due to a belief in vote-rigging by the ruling party. Having elections results being declared authentic by the courts of law over local government elections is signaling that the Independent Electoral Commission is ineffective in conducting elections.

The Commission for Gender Equality

The CGE's mandate is derived from the provisions of section 187 (1-3) of the constitution of the Republic of South Africa. The main business of the CGE is to ensure gender equality and the fundamental right to dignity. This is confirmed by Cetywayo (2014:2) when she indicates that the "CGE's complementary oversight mandate in the context of this democracy is focused on gender equality". In focusing on how education, sanity, rural development, access to work, and crime affect the rights and problems of women and men, the Commission (Strategic and Annual Performance Plans) fulfils the role that the Commission for gender equality plays to assist National Assembly in meeting its constitutional oversight obligations under the Executive and other state implementing agencies. The constitutional expectations are that it will provide advice and input, including recommendations to the Parliament, in particular to the appropriate committees which examine all legislative issues that may affect gender equality. The role of this Commission is determined by the Gender

Equality Act (39 of 1996). The people belonging to the LGBT community continues to be abused against their sexual preferences. Too much focus was centralized around the promotion of equality between men and women while sidelining the needs of the LGBT community. Author (s) argues that women empowerment needs to be looked at with careful consideration that in the future we do not end up having initiatives for men empowerment. The ideal is to push equal empowerment opportunities and not seeing the other gender on top of the other.

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

CRL has been set up by the Cultural, Religions, and Linguistic Communities Act (Act 19 of 2002) as the Commission for the Promotion and Protection of Rights. The Commission is meant to create peace, tolerance, friendship, and national unity, based on equality, non-discrimination, and free association, amongst and among cultural, religious, and linguistic communities (Woolman, 2007). The reason for the Commission's setting up is that if one sees the historic differences in South Africa, those divisions of the past must be cured so that the country may go ahead (Banda, 2019). The Commission's duty is to advise National Assembly Portfolio Committees on topics and laws that might have an influence on the achievement and creation of a non-racial and non-sexist society, based on democratic ideals which promote fundamental human rights and unity in our diversity (Dube, 2019). Based on the Afrocentric theory "it provides educational thought on power, dominance, racism and the need to escape victimization". Thus, it can be argued based on the Afrocentricity theory that some of these Chapter 9 institutions including the CRL are still colonized, held by racist and Africans are still the victims of the apartheid system, yet they are holding the governing offices. From the Afrocentricity perspective, indeed, there is a need to escape from colonization, racism, dominance in strategic positions of the Chapter 9 institutions, and victimization (Asante, 1998 and 2003). It can be argued Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is failing to protect people's rights as we see faith believers being tormented by their pastors. The regulation of the formation of churches is not in order as rapists and con artist are masquerading as messiah. The commission should cease being a reactionary but play a crucial proactive role because the only time one gets to hear about the commission is when something has occurred publicly.

Ineffectual Chapter 9 institutions and Factors Contributing to the Death of Ethics in the South African (p)Public (a)Administration

The Chapter 9 institutions are tasked with upholding and furthering South Africa's democracy and they have, however, been accused of being largely ineffectual and toothless (Nasirumbi, 2020). Another major challenge that these institutions have faced in the first decade, and continue to face in the second decade, is the undermining of their independence by the state and the ruling party (Thipanyane, 2016). This challenge is seen in the appointment of members that are too close or closely aligned with the ruling party and who generally fail to carry out their mandate impartially,

as required by the Constitution of the Republic of the South Africa, 1996, which is the supreme law of the country. The two independent institutions of Chapter 9 are criticized and sometimes subject to excessively political pressure, intimidation or even insults by some party representatives and followers (Mashilo et al, 2020). The Ch9s institutions are regularly attacked for the lack of accessibility for regular people, particularly when they have a constitutional obligation to safeguard and promote their own rights. The SAHRC has no binding decision-making authority but power, either in the name of itself or in the name of an aggressive party, to sue (Musuva, 2009). It should be noted that it has no capacity to implement its recommendations but the question of whether the Ch9s are efficient and effective is cannot be answered in simple yes or no.

Factors Contributing to the Death of Ethics in the South African (p)Public (a) Administration

In this section the chapter focuses on factors that contribute to the death of ethics is but not limited to the following;

Ineffective Enforcement of legal & Policy Framework

In South Africa, efforts have been taken post-apartheid regime in 1994 to deal with the unethical activities. However, according to Masenya and Kgobe (2019), South Africa is still failing to apply good governance as there are many unethical activities across all the state institutions. In Chapter 9 institutions, the first obstacle to improving ethics is the poor application of the legislative and policy framework. While there are legal and political structures in certain nations that support national integrity strategy, broad ethics, or anti-corruption policy, few seem to have coordinated plan (Hussein, 2019). The necessary implementation of the measures for directing and controlling public officials' conduct tends to be effective since there is no means of imposing minimum standards or punishing infractions that might prevent others who consider similar measures. The necessary implementation of measures to guide and manage public officials' behaviours tends to be efficient because there is no way to apply minimum standards or penalize breaches as disruptive for others contemplating similar steps. Kgobe (2020) states that a fundamental contradiction between the ruling party is the lack of compliance with the laws. The senior managers cannot supervise the behaviour of public officials or employees because they cannot monitor their behaviour and uncover systematic weaknesses that enable large levels of wrongdoing, which demand immediate redress (Hussein, 2019). In that regards, Kgobe (2020) clearly argue that in South Africa, there is a huge gap between policymaking and execution and that is seen as a major contribution to the dearth of ethics.

The politicization of State Institutions

The monitoring bodies are governed mostly by politicians who have considerable power in the end. Kainja (2016) claims that most high-profile public officials are political nominees and that "political links and networks based on party affiliation, sex and ethnicity, religion and family ties are affected, rather than merit". Thereby, owing to neo-patrimonialism, the public bureaucratic atmosphere is not enough conducive to

enhancing ethical behaviour (Masenya, 2017). For example, with the President as the designating authority, the Hawks are restricted by political influence to act effectively in high-level cases since they lack complete independence. The National Assembly recommends candidates to the Chairman or the Minister concerned. The President selects the Protective Authority, the Auditor General and the Commission for Gender Equality, the South African Commission on Human Rights, and the Committee of Electoral Officers. The African National Congress (ANC) is the major party, which allows for the recommendation and appointment of political nominees.

Weak Institutional Capacity

A significant barrier to improving public ethics is the limited institutional capability owing to limited human and financial resources. According to Ssanko (2010), poor human, technical and financial resources characterize most governmental organizations in Africa. They are also under-funded and under-employed, among other reasons, and suffer from insufficient institutional and human capacity to exercise their mandates effectively (Hussein, 2019).

Unsystematic Public Ethics Education & Training

As Balogun (1998) pointed out, African training institutes have no input, little complementarity and little significance. In 2001, research was conducted in 10 African nations under UNDESA found that following basic training courses on public officials, ethical norms and standards were not well transmitted and that counselling and advice were not used to avoid corruption and violate fundamental ethics (Ndou and Sebola, 2017). It is argued from Ssanko (2010) that induction training, mostly utilized to transmit public service ideals and standards, is often misrepresented.

Weak Performance Rate Contract System and the Reward System

While this is expensive, the high rate of pay is two-fold. In the first place, it promotes the Directors' continuous high performance, in that they feel valued for the work they do (Bussin, and Modau, 2015). Secondly, most critically, because they are financially safe, the Directors will not take bribes of any member outside the Unit (Makamu and Mello, 2014). Directors' compensation is statutory so that another State institution may not lower pay, which may lead to greater discontent in work or the perceived loss of employment safety (Güngör, 2011). The system of performance rates is being undermined by the political elites. Hussein (2019) contends that public officials not favourable to the prevailing political party agenda are punished with this latter approach. Another epidemic in the promotion of ethical conduct is poor public workers' compensation (Mokoele, Masenya, and Makalela, 2017).

Poor Parliamentary oversight

Parliament is concerned that it does not, in large part, evaluate Chapter 9 of the institutions and that its suggestions are not sufficiently considered in the reports presented to Parliament (Bundi, 2018). The institutions should be able to help and not just disregard Parliament in its supervisory function as the executive (Fagbadebo, 2019). But the performance of the institutions and the reports they provide to

Parliament are apparently an issue. It is consequently recommended that the service criteria for the new autonomous unit include performance criteria (Ile and Makiva, 2017).

Protection of the whistle-blowers

It is sometimes exceedingly hard to gather the required proof (papers and testimony) to initiate criminal proceedings in cases of white-collar crime, fraud, and corruption (Nwoke, 2019). Full immunity for a cartel party encourages that party to cooperate in providing the testimony and documentation evidence essential for the successful prosecution of persons accused of corrupt activity (Ugowe, and Adebayo, 2018). The person who reports the alleged corrupt action or activities receives immunity only if he or she is the first person to tell the Anti-Corruption Unit (Nwoke, 2019). The immunity provided to an informant has demonstrated its success in its operation, as shown by the operation (Ugowe and Adebayo, 2018).

Politics-Administration Dichotomy

Despite numerous statements in the public administration literature to dismiss the distinction between policy and government, administrators remain hidden behind a neutral canopy (Cox and Haruna, 2018). Practitioners in public administration have sought to overlook the moral dimensions of their work by using the neutrality ethic, which means that managers should execute whatever values are expressed in the orders and the policies they apply (Thompson 1985; Cox and Haruna, 2018). The public administration discipline has a long-term fight about how much public leaders in the political realm may participate (Chohan, 2018). The association's climate and administrators' proper participation in the political process was the subject of considerable discussion (Svara, 2001). Administrators must thus be isolated from political politics (Overeem, 2005). Sebola (2014), who states that bad managers are incubating the bad politicians, has damaged the government's power to provide fair services. Interdependency, extensive interaction, diverse political dominance, and administrative subordination coexisting under a mutual control system are shown as complementary to politics and administration (Alford, Hartley, Yates and Hughes, 2017). According to Mafunisa (2003) and Sebola (2014), the line between the two is blurred yet it is vital for the elected authorities as well as the officials to recognize the separation of powers in the actual world. Sebola (2014) strongly suggested that the separation of politics and government remains difficult.

Resurrecting South Africa Public Administration from the Ethical Death

To resurrect South Africa public administration from the ethical death, the author(s) recommends the following;

- Ethical Standards for Chapter 9 institutions should be clear. The head of the independent institution needs to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and

principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community. Thus, author(s) strongly urges public officials to apply ethical conduct at all the time when carrying out their functions.

- The decision-making process ought to transparent and open to the public Scrutiny.
- Ethical seminars and pedagogies ought to be held to decolonize individuals' ethical behaviours and strengthen ethical values and norms.
- To ensure efficacy in the administration of the Chapter 9 institution, there should be a clear and policy review on the separation of power. Separation of powers should be covered in the legislation that will limit interferences.
- The appointment of the head of the Chapter 9 institutions should be done in the national assembly through voting and the decision to appoint should not only be vested in the state president as it opens the floor for political infiltration as there may be a time where the president is implicated and he/she will not implement remedial action against himself or herself.
- Ethical reforms would be necessary to serve as a panacea to the gradual death of ethics.
- Before one assumes public offices, it is deemed fit to undergo personality checks and he/she should disclose any conflict of interests and pleasure.
- The recommendation of the AG should be legally binding in a form of conviction rather than mere accountability.
- Accountability should also have consequences (Consequentialism).
- There is increasing unethical conducts in the Chapter 9 institutions and individuals are afraid to report their senior. Therefore, the act that protects people to report unethical conduct should be strengthened. The Protected Disclosures Act (Act 26 of 2000), also known as 'the Whistle-blower's Act' ought to be strengthened. This act ensures that whistle-blowers cannot be victimised or dismissed for reporting corruption, especially if their seniors are involved.
- Chapter 9 institutions should apply the King IV principles to resurrect their ethical death.
- To resurrect the Chapter 9 institutions, the authors, recommends that there should be a regular review of policies, procedures, practices and institutions influencing ethical conduct in the public service.
- Promoting government action to maintain high standards of conduct and counter corruption in the public sector.
- Incorporating the ethical dimension into management frameworks to ensure that management practices are consistent with the values and principles of public service.
- By adopting Afrocentricity, theory public sectors will be in safe hands, away from colonization, racism and victimization of the whistle-blower's.
- Lastly, the author(s) recommends that the powers and functions of Chapter 9 institutions need to be revised and reformed for a better transformed South Africa.

Conclusion

In conclusion, this paper explored the efficacy of Chapter nine (9) institutions as enshrined in the Constitution of the Republic of South Africa, 1996. The paper argues that the state of affairs of these institutions are primarily affected by the politics-administration dichotomy. Political interference is perceived to be underlying factors that affect the operation and administration of these institutions. Thus, these institutions are failing to efficaciously implement their constitutional mandates. The paper offered recommendations to resurrect the institutions from ethical death.

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