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Op-ed

THE WATCHDOGS OF DEMOCRACY: THE VITAL ROLE OF SOUTH AFRICA'S STATE INSTITUTIONS

By Nicola Bergsteedt

In the global sweep of constitutional democracies, South Africa stands apart. Not only because of our painful past or our extraordinary democratic transition, but because of the bold institutional imagination embedded into the very structure of our Constitution.

Few understand this better than distinguished former Constitutional Court judge, Justice Albie Sachs, who not only helped shape our legal framework but also carries lived experience of how fragile democracy can be and how dependent it is on the strength of its institutions.

In his reflections, Sachs draws attention to an essential, but often underappreciated truth, namely that without independent, resilient and properly empowered state institutions, the lofty ideals of constitutional democracy remain little more than words on a page.

Sachs's own journey sharpened his insights: after surviving a car bomb in exile that cost him an arm and an eye, he emerged not bitter but determined, driven by one question—how could South Africa build a constitution strong enough to resist the abuse of power yet open enough to protect dignity, freedom and justice for all?

His search for constitutional models led him to Europe where he found that in monarchies, constitutions played a minor daily role, while in republics like France and the US, they became essential tools to channel new, people-centred sovereignty.

What Sachs took from this was not a romantic fascination with documents, but a practical appreciation for the “technology” of democracy: the institutions that give a constitution life.

The birth of Chapter Nine

The brilliance of South Africa's Constitution, Sachs argues, lies not in its articulation of values - dignity, equality and freedom - but in its creation of mechanisms to guard them.

Enter Chapter Nine institutions, or as Sachs calls them, the “watchdogs of democracy.”

Unlike many countries, South Africa did not stop at defining the three classic arms of state: the legislature, the executive and the judiciary. The drafters went further, carving out an entire constitutional chapter for a set of independent bodies whose role is to protect democracy itself.

These include the Public Protector, the Independent Electoral Commission (IEC), the Human Rights Commission, the Commission for Gender Equality, the Auditor-General and several others.

Why are these bodies critical? Because they serve as circuit breakers when traditional political channels fail. They are there to ensure that the abuse of power, misuse of funds or erosion of human rights does not go unchecked, even when those in power might prefer silence

The power of the Public Protector

The Public Protector's journey, as Sachs recounts, is a telling example. Once seen as a non-binding investigator, it evolved into a powerful accountability tool after constitutional refinements and key Constitutional Court rulings make its recommendations binding.

But here, Sachs offers a cautionary insight: institutions matter, but so do the people who lead them.

Under Thuli Madonsela, the Public Protector became a symbol of fearless oversight, standing up to the highest offices in the land. Yet under other leaders, the same institution, with the same legal powers, has sometimes faltered, becoming mired in litigation and political controversy.

This is not a defect of the constitutional design but a reminder that constitutional democracy depends not only on rules but on integrity, leadership and public vigilance.

The IEC and the culture of credible elections

Another institution Sachs highlights is the Independent Electoral Commission (IEC), where South Africa, guided by Indian experts, learned to navigate the complex task of running inclusive, credible elections.

Sachs recounts how, even in the turbulent first elections of 1994, where irregularities were acknowledged, the major parties chose to prioritise the democratic breakthrough over narrow electoral disputes. That spirit, combined with the IEC's institutional strength, helped lay the tracks for the democratic train to move forward.

Judicial independence and the Judicial Service Commission

Perhaps the most critical piece of the institutional puzzle is the judiciary. Sachs recalls the fierce debates in Kempton Park, where negotiators grappled with how to appoint judges in a way that balanced independence with public legitimacy.

The compromise was a Judicial Service Commission (JSC) made up of legal professionals, political representatives, and presidential appointees. It ensured that the judiciary would not become an isolated elite, appointing itself without accountability, but neither would it be captured by the ruling party.

This design gave South Africa one of the most powerful Constitutional Courts in the world, with the authority to strike down laws, hold Parliament and the executive to account, and even, famously, to declare aspects of the Constitution itself unconstitutional when they failed to meet the negotiated principles.

The unsung hero

If there is one institution Sachs singles out as an unsung hero, it is the Auditor-General (AG).

Next to the courts, Sachs suggests, no body has done more to safeguard South Africa's democratic health. Why? Without rigorous oversight of public finances, democracy withers.

The AG's work ensures that taxpayers' money is properly accounted for, that secret funds are subject to control, and that corruption can be exposed. Remarkably, South Africa has had a strong track record here, with successive AG's maintaining independence and credibility.

The limits

It would be naïve to suggest that state institutions alone can solve South Africa's challenges. Sachs is the first to acknowledge that the country remains deeply unequal, unsafe and haunted by social injustice.

But, crucially, he argues, we are also an open society - one with noisy, vibrant and contested democratic spaces. And much of that openness is safeguarded by the institutional architecture envisioned in Chapter Nine.

These bodies are not flawless. They rely on leadership, public awareness and political will. But they offer a structural safeguard against the concentration and abuse of power and they embody a key insight: democracy is not a once-off achievement; it is a living, breathing practice that must be nurtured, protected and constantly renewed.

Hats off to the drafters

As Sachs puts it, hats off to the drafters of our Constitution. In a world where many democracies are backsliding, South Africa's institutional framework remains a remarkable experiment in how to design for resilience.

Yes, institutions can falter, and leaders can fail, but the genius of the constitutional arrangement is that it anticipates human fallibility and provides mechanisms to correct course.

In the end, as Sachs reminds us, it is not just about watching; it is about creating. These institutions are not passive observers; they actively shape the democratic landscape, holding power to account and keeping the promises of our Constitution alive.

That is the true role of state institutions in supporting constitutional democracy: they are the quiet architects of freedom, the steady hands that hold the democracy project together, even when the political winds blow hard.

As South Africans, it is our job not just to defend them, but to demand they live up to their mandate. After all, as Sachs's own life has shown, the good that can come out of bad depends on what we choose to build and the institutions we choose to uphold.

Nicola Bergsteedt is a Research Associate of the Inclusive Society Institute. The Inclusive Society Institute is an independent Non-Profit institution which has as its objective the promotion of a more inclusive, just and equitable South African society. This article draws on the Institute's Constitutional Insights: A Series of Talks with Judge Albie Sachs. The series is being promoted in collaboration with the Daily Maverick.