

# ‘Stabilising’ the political-administrative interface in local government: where to from here?

## POLICY BRIEF

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### ABOUT THIS BRIEF

This policy brief is one of a series developed by the Public Affairs Research Institute (PARI), intended to contribute to a strategy for state reform. The series focuses on specific interventions to achieve integrity, democratic control and effectiveness in the public administration. It is designed to provide reform-minded politicians, public servants and civil society actors with a programme for constructive change upon which they can agree and act.

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## Introduction

This policy brief focuses on delineating and stabilising the political-administrative interface in local government in South Africa. Often framed in policy discussions as part of a process to ‘professionalise’ the public administration – government has mooted a number of proposals in this regard, most prominently with the publication of the National Development Plan in 2013.<sup>1</sup> The impetus to ‘professionalise’ the public administration in South Africa has emerged, over the last decade or so, out of significant concerns with the functioning of the public sector in relation to the pressing developmental needs of the country. This fundamentally includes, though is not limited to, concerns about the impacts of private ‘capture’ of the state on its capabilities.

Recent legislative amendments to the Municipal Systems Act draw a stronger line between the political and the administrative in municipal government by making certain categories of officials permanent employees (versus being employed on contract linked to political term) and by placing prohibitions on administrators holding political office. These reform efforts are paralleled, to some extent, for the national and provincial spheres of government in proposed amendments to the Public Service Act.<sup>2</sup>

We begin this policy brief by making the case for more strongly differentiating the political-administrative interface in South Africa, and for reform to appointment processes for senior officials in particular. We outline relevant policy proposals and analyse recent amendments to legislation. Drawing from PARI’s research on the public administration, and from our [policy proposals](#) for reforming the appointment processes for municipal officials, we then explore the challenges the state will encounter in implementing reforms and explore future areas of support and focus.<sup>3</sup>

1 National Planning Commission (2013) ‘National Development Plan: Vision for 2030’. Pretoria: South African Presidency.

2 The Public Service Amendment Bill is currently before Parliament – i.e., introduced in May 2023.

3 See Brunette, R. (2021) ‘Reforming Appointment and Removal in the Public Service and Municipalities’. State Reform Policy Brief. Johannesburg: Public Affairs Research Institute; and Brunette, R. (2021) ‘Appointment and Removal in the Public Service and in Municipalities’, in J. Klaaren (ed.) *Reforming Public Administration in South Africa: A Path to Professionalisation*. Cape Town: Siber Ink; and Pearson, J. and T. Ndlovu (2018) ‘I am no longer applying straight’ – Human Resource Practices in State Institutions: Perspectives of public servants’. Johannesburg: Public Affairs Research Institute; and Brunette, R., P. Nqaba and M. Rampedi (2018) ‘3 Cities. The Formation of Metropolitan Local Government in South Africa: Programme, Politicisation and Patronage in Ethekwini, Nelson Mandela Bay and Buffalo City, c. 1977–2016’. Johannesburg: Public Affairs Research Institute.

## The case for reform

Tensions in the political-administrative interface in South Africa are a persistent challenge to organisational stability and functioning in South Africa's public administration. Sometimes these observations relate simply to strained personal relations between a political principal and a senior administrator around how to interpret policy or manage a department or unit. Though more often tensions and instability in the political-administrative relations refers, in somewhat more politically palatable terms, to the inappropriate interference of politicians in operational matters, especially concerning public procurement. Abuse of political prerogative in appointment and dismissal processes has been the primary mechanism of state capture – as shown by the Zondo Commission in the case of state-owned entities and the public service. As we outline below, it has been central to a loss of democratic control at the local government level.

A growing body of work has examined how control over appointment processes is used to build patronage networks via dispensing of state jobs, contracts, and public goods (housing, for example).<sup>4</sup> In addition, in many municipalities across the country, local government has been the site of intense and sometimes violent contestations over political office. These conflicts have often taken the form of intra-party factionalism. The churn and tensions these have created within administrations as new factions layer their appointees into the administration has impacted on routine service delivery and the state's wider capacities.

In South Africa, the assertion of strong political control over appointment processes gave, in the late 1990s and early 2000s, the new democratically elected government the ability to transform the composition and orientation of the apartheid-era civil service.

While the Constitution envisions a public administration that is professional, effective, impartial and developmentally directed (Section 195), broad legal executive powers of appointment and removal have created enormous space for patronage considerations to pervade public administrative personnel practices, blurring lines in the political-administrative interface. As Ryan Brunette notes, 'A vacancy in the post of municipal manager is often a pretext for some of the most vicious and debilitating factional conflicts in councils. Political appointment and control of a municipal manager enables politicisation of personnel practices right down to the lowest grade.'<sup>5</sup> Once in place, managers who are part of a patronage network can undermine the attempts by incoming council members to exercise appropriate oversight over the operations of the municipality.

Since the 2016 local government elections, hung councils and coalitions have also become a prominent feature of local politics – and as research by the Mapungubwe Institute shows, these coalitions have tended to be unstable.<sup>6</sup>

Efforts to insulate the public administration from inappropriate political interference and instability at the executive level will remain an important reform imperative for building a more effective local state.

4 See previous citations in footnote 3, as well as Ndletyana, M. (2020) *Anatomy of the ANC in Power: Insights from Port Elizabeth, 1990–2019*. Pretoria: HSRC Press; and Olver, C. (2017) *How to Steal a City: The Battle for Nelson Mandela Bay*. Cape Town: Jonathan Ball Publishers; Langa, M. and K. Von Holdt (2012) 'Insurgent Citizenship, Class Formation and the Dual Nature of a Community Protest: A Case Study of Kungcatsha', in M.C. Dawson and L. Sinwell (eds) *Contesting Transformation: Popular Resistance in Twenty-First Century South Africa*. London: Pluto Press; and others.

5 Brunette, R. (2021) 'Appointment and Removal in the Public Service and in Municipalities', in J. Klaaren (ed.) *Reforming Public Administration in South Africa: A Path to Professionalisation*. Cape Town: Siber Ink, p. 20.

6 Booyesen, S., Z. Moyo and J. Beukes (2023) 'MISTRA Coalitions Barometer 2021-2023: High Level Summary'. Johannesburg: Mapungubwe Institute for Strategic Reflection (MISTRA).

## The need for better safeguards in appointment processes

'In *Mlokoti v Amathole District Municipality*... the Eastern Cape Division of the High Court found that in a competition for the position of municipal manager, the municipality was obliged to appoint the best candidate, even though there was an expressed political preference for another candidate. The legislation, however, also introduces a discrepancy. Although political criteria are formally precluded from consideration, politicians are given all the powers and functions needed to include them in fact. The legislated procedures lack rigorous and independent checks and balances. They proceed without the regular safeguards necessary to guarantee that constitutional principle is made into practical reality. The resulting inconsistency, between principle and reality, sits at the heart of South Africa's governmental problems.'

**Source:** Brunette, R. (2021) 'Reforming Appointment and Removal in the Public Service and Municipalities'. State Reform Policy Brief. Johannesburg: Public Affairs Research Institute.

## Building a steerable ship: a public administration responsive to democratic mandate

The model regarding the respective role of the executive versus administrators in modern democratic contexts is that political principals define policy, exercise oversight over implementation and discipline senior administrators for non-compliance. Officials reporting to them implement policy (and provide advice on policy formulation) within the framework of the law and democratic mandate provided through elections and participatory processes. This is the model found in the South African Constitution. In practice, the lines between policy and implementation, goal setting and operational interpretation are often not so clear cut. Democracies face a perennial tension between the conditions for democratic responsiveness on the one hand, and the conditions for ensuring an impartial bureaucracy that treats citizens and other residents fairly. This notion of an impartial bureaucracy is also important for supporting continuity in the state's provision of public goods. Countries have settled on different conventions and frameworks for addressing this tension.<sup>7</sup>

Importantly, the task then is not to 'depoliticise' the administration per se – public bureaucracies are inherently political. As Pearson and Ndlovu note in their exploration of appointment practices in the public sector, 'the daily work of state officials involves choices over the distribution of value – an exercise of power and politics.'<sup>8</sup> Nor is the ideal a neutral state vis-à-vis social groups in South Africa – the Constitution, for example, clearly envisions a state and state leadership that picks sides in favour of those subject to the historical injustice of apartheid and colonialism, and other groups.<sup>9</sup>

7 See for example, Matheson, M., B. Weber, N. Manning and E. Arnould (2007) 'Study on the Political Involvement in Senior Staffing and on the Delineation of Responsibilities Between Ministers and Senior Civil Servants.' OECD Working Papers on Public Governance 2007/6.

8 Pearson, J. and T. Ndlovu (2018) "'I am no longer applying straight'" – Human Resource Practices in State Institutions: Perspectives of public servants'. Johannesburg: Public Affairs Research Institute.

9 Brunette, R. (2021) 'Appointment and Removal in the Public Service and in Municipalities', in J. Klaaren (ed.) *Reforming Public Administration in South Africa: A Path to Professionalisation*. Cape Town: Siber Ink, p. 28.

Rather, achieving the vision of an impartial public administration is about insulating it from *inappropriate* levels of interference, while ensuring it is *more* and not less responsive to democratic mandate.

The long-term aim is to differentiate a class of permanent bureaucrats with a civil service orientation. Severe constraints are placed on this institutional differentiation in the context of our political economy – one defined by high unemployment, inequality and poverty. Nevertheless, in the current South African context, the work of bureaucrats in implementing policy and the work of political leaders in providing oversight over implementation would be aided by a clearer delineation in law around these roles and by initiatives to better check and balance them. In particular, an important reform imperative is to ensure checks and balances in the appointment, discipline and removal process for senior civil servants.

In order for any process to be effectively checked and balanced, it is imperative that no single person or group should be able to decide the outcome across all stages. What this means is that these stages need to be separated out, placed under the authority of different people and as far as possible, these people must themselves not be directly or ultimately appointed by the same person or group. An independent body or persons should assume a role in the process. A detailed rationale for this approach is outlined in the book, [Reforming Public Administration in South Africa](#).<sup>10</sup>

## Government policy proposals?

In 2013, the [National Development Plan](#) (NDP) explicitly recognised the problem of inappropriate political interference in public administration, and it made a number of proposals for stabilising the political-administrative interface and better insulating the administration from patronage pressures. In the case of the public service (national and provincial government) it argued for the Public Service Commission to take a direct role in appointment processes for senior officials, working with a proposed 'head of the public service', to create a check and balance in this process, while retaining the political leadership's prerogative to make the decision regarding final appointment.<sup>11</sup>

The NDP also argued for long-term contracts for heads of department to introduce greater stability

in the administrative leadership i.e. delinking the appointment of senior administrators from political term of office. Last, it proposed moving responsibility for human-resource management in departments from political executives to heads of departments – this last proposal has recently been adopted in the [Public Service Amendment Bill](#) – now before Parliament. Under the law currently, heads of department are responsible for accounting on finances and procurement in the department, while political office bearers have wide powers over appointment and other organisational matters. This lack of alignment has been a cause of some tension in the political-administrative interface.<sup>12</sup> In local government there is slightly better alignment here: municipal managers are assigned powers of appointment below senior manager level.

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<sup>10</sup> Brunette, R. (2021) 'Appointment and Removal in the Public Service and in Municipalities', in J. Klaaren (ed.) *Reforming Public Administration in South Africa: A Path to Professionalisation*. Cape Town: Siber Ink.

<sup>11</sup> National Planning Commission (2013) 'National Development Plan: Vision for 2030'. Pretoria: South African Presidency, pp. 412–15.

<sup>12</sup> As noted in the NDP, Chapter 13.

Regarding appointments in municipalities, the NDP notes that, 'the involvement of mayors and members of mayoral committees in recruiting senior managers who report to the municipal manager often complicates the line of accountability between senior managers and the municipal manager. It also raises problems when regional party structures seek to influence appointments, as senior managers are then effectively accountable to neither the municipal manager nor the mayor.'<sup>13</sup> The NDP provides no policy proposals for addressing this. The [2013 Professionalisation Framework for Local Government](#), developed by the South African Local Government Association also makes no proposals directly addressing the political-administrative interface.<sup>14</sup> It focuses on issues related to the qualifications and training of public servants, among other technocratic interventions to improve 'professionalism'.

Cabinet has recently adopted the [National Implementation Framework Towards the Professionalisation of the Public Sector](#) (2022): the document dedicates substantial attention to the theme of delineating the political-administrative interface, and it further elaborates the NDP's broad proposals for the introduction of checks and balances in the appointment process for senior civil servants in the public service. The Framework moots the idea of making the position of Municipal Manager permanent, rather than linking their employment contract to political term.<sup>15</sup> Other than that, it makes no specific recommendations on the political-administrative interface in local government.

These very scant policy pronouncements on local government lagged behind local government legislative amendments aimed at addressing the thorny issue of the political-administrative interface. The 2011 amendments to the Municipal Systems Act introduced a new clause to prohibit senior municipal officials from holding office in political parties, among other changes. The 2011 amendments were in force for a few years before being struck down by the Constitutional Court [in a case brought by the South African Municipal Workers Union](#) (SAMWU) in 2017: the court found that Parliament had followed the incorrect procedure in passing the Bill.<sup>16</sup> Slightly reformulated [amendments to the Municipal Systems Act have finally been passed](#), which we now turn to examining.

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<sup>13</sup> National Planning Commission (2013) 'National Development Plan: Vision for 2030'. Pretoria: South African Presidency, pp. 415–16.

<sup>14</sup> SALGA (2013) 'Professionalisation Framework for Local Government'. Developed in partnership with the Department of Cooperative Government and the Local Government Sector Education and Training Authority, Pretoria: South African Local Government Association.

<sup>15</sup> NSG (2022) 'National Implementation Framework Towards the Professionalisation of the Public Sector'. Pretoria: National School of Government, p. 47.

<sup>16</sup> South African Municipal Workers' Union v Minister of Co-Operative Governance and Traditional Affairs, 2017.

## Recent legal amendments for local government, their implications, and gaps

The 2022 Municipal Systems Amendment Act introduces a number of changes relevant to the discussion of the political-administrative interface (though some of these were in force for a few years before the court challenge to the 2011 amendments). First, as mentioned, the Act prohibits *all* municipal employees from holding positions in political parties.<sup>17</sup> Municipal employees who hold these political party positions have a year from the promulgation of the Act to resign as municipal employees or to give up their appointment to political office.

We welcome this kind of change in principle, though it may have been too broadly drafted. Some, including labour, have argued that the Act should have restricted the applicability of this clause to senior managers in municipalities – as the current Public Service Amendment Bill does for public service employees. Here the argument is around an appropriate balancing of the protection of political rights (to partake in political activity) and the importance of regulating the public administration in a manner conducive to its proper functioning. SAMWU plans to [challenge](#) the constitutionality of the Act.

As Chigwata and de Visser note in an article in the Dullah Omar Institute's [Local Government Bulletin](#), ensuring municipalities comply with this provision will be a massive undertaking, given its applicability to about a quarter of a million employees.<sup>18</sup> Arguably, enforcement challenges might be particularly pronounced in rural municipalities i.e., with small economies and very limited employment opportunities: there may be continued incentives for officials to want to hold political office, but also have a stable source of income in the form of state employment. The Act does not detail whether the provincial or national government – the Minister or Members of the Executive Council (MECs) for Cooperative Government – will have a role in oversight here. There is no mechanism for reporting to them, as for example the Act has done for municipalities obligations regarding the handling of misconduct cases for municipal officials.

Second, the Amendment Act gives greater direction to local municipalities regarding the process for appointing municipal managers and appointing those reporting to them (i.e., 'Section 56 managers').<sup>19</sup> However, it does not introduce an independent check and balance in the process for these appointments, and thus politicians still have wide discretion here. Currently, the legal process stipulated for appointing a municipal manager is that the municipal council constitutes a selection committee, which is chaired by the mayor and includes other municipal councillors. That selection committee makes the final appointment after basic compliance checks and interviews are undertaken. Different municipalities have elaborated different practices for how these committees function – including how compliance checks are undertaken, how candidates are scored, whether and how much there is group deliberation on scoring, how much of a role administrators have in supporting this appointment process, and so forth. The municipal council must ensure a report of the process and outcome is sent to the MEC for local /cooperative government in the province once an appointment is made, and if the appoint is made in contravention of the Act, the MEC (or failing that the Minister) must take 'appropriate steps to enforce compliance by the municipal council.'<sup>20</sup>

<sup>17</sup> The Act defines political office as, "(a) the position of chairperson, deputy chairperson, secretary, deputy secretary, treasurer or an elected or appointed decision-making position of a political party nationally or in any province, region or other area in which the party operates, or (b) any position in the party equivalent to a position referred to in paragraph (a), irrespective of the title designated to the position." See section 71B of the Municipal Systems Act as now amended.

<sup>18</sup> Chigwata, T. and J. de Visser (2022) 'Municipal Systems Amendment of 2022: Will it depoliticise municipal administration?' *Local Government Bulletin* 17(2).

<sup>19</sup> Here it retains the wording of the 2011 Amendment Act (for sections 54A and 56 of the Municipal Systems Act).

<sup>20</sup> Section 54A(8).

Significantly, the Amendment Act stipulates that Section 56 managers will now be made permanent employees: while the original Act did not prohibit this, many of these managers were appointed on contracts linked to political term.<sup>21</sup> This is a new change – i.e., not contained in the 2011 amendments. We see this as a positive development in so far as it potentially allows for greater stability in senior management<sup>22</sup> – though, as we explore below, there will be a number of new challenges created by this provision for the state to address.

## Where to from here?

As we have noted, recent legislative amendments do not tackle the issue of appointment reform; nor has government mooted policy proposals for local government in this regard. This may in part relate to the particularly difficult challenge of settling on a model workable for the local government context. As we saw in the second section of this policy brief, a greater role for the PSC in the appointment of senior administrators has been mooted for the case of the public service (working with a head of the public service). No constitutionally independent regulatory authority equivalent to the PSC exists for local government.

PARI has proposed a number of options to address this challenge. One is to open municipalities to regulation from the PSC – under a possible wider move to some form of ‘single public service’ (a [Public Service Commission Bill](#) tabled in parliament in October 2023 signals government’s intention for the PSC to play a larger role in the oversight of local government administration). Another is to give a role to recognised professional associations with an interest in local government, such as those engaged in planning, architecture, law, engineering and accounting. These associations are independent and regulated by statute and have considerable experience with local government and appropriate expertise. There may well be other options to explore. Some kind of independent body or committee would, then, play a role in the selection process. To preserve democratic control the municipal council should retain the prerogative to make the final choice of candidate.<sup>23</sup>

Whatever model South Africa might choose to adopt, we suggest, **first**, that reform should proceed incrementally. Reforms to better delineate the political-administrative interface will inevitably face significant resistance in implementation. We have noted, for example, that amendments to the Municipal Systems Act that have, in one fell swoop, made it illegal for some 250 000 employees to hold office in political parties will face opposition, and will be hard to enforce. Could the Act have prohibited senior management from holding political office, and then allowed for the Minister to include further levels of employees in regulations once the state has experimented with the implementation of the Act? Another example – in the case of future possible appointment reform, we have suggested that government uses a ‘covering-in’ mechanism: an Act of Parliament would provide for a new system, but its legal commencement in specific organs of state would be determined by presidential proclamation. The Act would give the President the power to cover in particular departments and municipalities incrementally.<sup>24</sup>

<sup>21</sup> See section 57 of the Municipal Systems Act as now amended.

<sup>22</sup> The Amendment Act makes a number of other changes to the principal legislation that we do not detail in this brief given our focus on the political-administrative interface. Relevant to addressing issues of fraud and misconduct in municipalities, for example, the Amendment Act stipulates prescribed periods during which those dismissed for misconduct may not be re-employed in local government and it places a duty on municipalities to report to the MEC (and the MEC in turn to the Minister) “regarding the disciplinary proceedings of staff members dismissed for misconduct and who resigned prior to finalisation of the disciplinary proceedings” (Section 57A of the Municipal Systems Act as now amended).

<sup>23</sup> Brunette, R. (2021) ‘Appointment and Removal in the Public Service and in Municipalities’, in J. Klaaren (ed.) *Reforming Public Administration in South Africa: A Path to Professionalisation*. Cape Town: Siber Ink.

<sup>24</sup> Ibid.

**Second**, as government begins to implement a reform agenda regarding the political-administrative interface, and adjustments to the regulation of personnel practices in the bureaucracy, thought will need to be given to the new challenges created by the reforms themselves. For example, where political allies linked to local fiefdoms or wider patronage networks have been placed in positions of senior management, the new clause to make Section 56 managers permanent employees might potentially lock these managers in. Developing a permanent layer of senior bureaucrats will require that the public administration is able to effectively administer a more robust performance management system and handle disciplinary matters. This is an important area for more detailed research and interventions may be needed to strengthen these processes.

**Third**, we suggest that reform proposals should be undertaken within a wider conversation on a 'single public service'. Aside from recent amendments to the Municipal Systems Act and the Public Service Amendment Bill, [amendments to the Public Administration Management Act \(PAMA\)](#) have also come before Parliament (in 2023). The original intention of PAMA was to provide for a 'single public service' in South Africa i.e., incorporating local government administrations. As the memo to the PAMA Bill explains, this vision of a single public service was not fully realised in PAMA, and the ambitions of the Act were scaled back. Current amendments do not meaningfully operationalise this concept either. The 2022 Professionalisation Framework also calls for a single public service.<sup>25</sup> This would include setting common norms and standards for all three spheres of government, though the Framework does not specify in detail what these might cover. And as mentioned above, the Public Service Commission Bill potentially extends the scope of the PSC's role in local government administration – though the future role of the PSC in appointment processes remains unclear.

The Constitution defines local government as an autonomous sphere of government, and states that, 'a municipality has the right to govern, on its own initiative, the local government affairs of its community' – though the relevant section continues, 'subject to national and provincial legislation'.<sup>26</sup> There is room for varied interpretations of the limits and opportunities for a common set of regulations and institutions for public administration within the Constitutional Framework. We suggest that a national conversation on this theme would be valuable – in which this concept is debated, refined, and proposals made for how this might be operationalised. This conversation should ideally be respectful of the Constitutional vision for local government and attuned to the political sensitivity of potential change.

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25 NSG (2022) 'National Implementation Framework Towards the Professionalisation of the Public Sector'. Pretoria: National School of Government, p. 47.

26 Section 151 of the Constitution of South Africa.