
Checking Political Discretion in Recruitment to South Africa's Public Administration

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ABSTRACT

As civil service reform comes onto the agenda in South Africa, this paper analyses the contemporary situation and suggests an approach to moving forward. Key to success will be the creation of independent checks on excessive political discretion in recruitment into the public administration. The government's existing across-the-board approach, which threatens to do so simultaneously across whole sectors of the public administration, amplifies political risks and, therefore, explains the hesitancy of the current process. Drawing on comparative experience this paper suggests an alternative, strategic incremental approach. Legal mechanisms must target specific state organisations and bias the institutional terrain of politics toward a gradual expansion of reform.

Introduction

In recent years, South Africa has laid the foundations of a civil service reform movement. Excessive political discretion over public administration personnel decisions has been identified as a problem. The current statutory framework gives politicians practically unfettered power over appointments into administrative positions, creating tension with administrative capability and non-partisanship provisions of the Constitution. The elevation of political criteria in human resourcing downgrades consideration of competence. Political cliques and parties often use these powers to circumvent checks and balances, engaging in patronage politics and corruption. In the transition from apartheid, politicisation of personnel processes may have been necessary to move the country in a new direction, but the state is now geared to a post-apartheid order, and South Africans have seen politicisation descend into criminality and state breakdown. These propositions are now widely aired by academics, activists and commentators.¹ They were supported by South Africa's Judicial Commission of Inquiry into Allegations of State Capture (Zondo, 2022) and are expressed in the National Development Plan (NPC, 2012), its implementing Professionalisation Framework (NSG, 2022), and related statutory amendments and proposed bills (RSA, 2023a; 2023b; 2024a). These investigations, policies and legislative initiatives make encouraging but hesitant reform proposals. We start from the question of how to take them further.

¹ I have outlined these arguments more fully in Brunette (2021; 2023). Related arguments, with different emphases, have been made by a wide range of academic authorities, including Maseremule (2007), Cameron (2010; 2022), Qobo and Ngcaweni (2021), Ndletyana (2024) and Leite and Chipkin (2024). An older and distinct tradition, arising from South Africa's neoliberal tradition and focused on the ANC's practice of 'cadre deployment', finds its fullest expression in Myburgh (2020).

South Africa has approached a reform threshold. To cross it, a change in approach is now necessary. In his first presidency, Cyril Ramaphosa moved to rehabilitate and restructure state organisations plundered under his predecessor. These strategic interventions into specific state organisations have been accompanied by attempts to improve qualifications standards, examination and training, and political-administrative relations across the public administration. But these efforts stop short of institutionalising independent checks on political discretion in recruitment decisions. In part, this is due to a legislative strategy that insists on addressing whole sectors of the administration simultaneously. Such an 'across-the-board' approach maximises the risk of political backlash, amplifies expected costs and thereby forecloses the targeted, incremental progress which international experience shows is essential to civil service reform progress. The threshold to a professional civil service in South Africa will remain blocked unless reformers adopt a more surgical, 'strategic incremental' approach. After surveying the recent background and existing reform efforts, I analyse the current situation and consider options for moving forward.

The Background to Recruitment Reform in South Africa

The state capture scandal sets the background to recruitment reform in contemporary South Africa. After 1994, the African National Congress (ANC) achieved electoral dominance, expanded political powers of appointment into the public administration, promoted racial and gender turnover of staff composition, and drove through a programme of progressive social transformation. Many valuable outcomes followed. The public administration is now demographically representative of the South African people. It is imbued with an anti-racist and egalitarian ethos. The effects on administrative performance have been complex and debatable (Fernandez, 2020), but politicised coordination of administrative change clearly undermined institutional checks and balances, and accelerated attrition of experienced employees meant widespread loss of critical organisational knowledge. A consequence of the erosion of state capacity and discipline became apparent when the arms deal scandal, in which then Deputy President Jacob Zuma was implicated, erupted in 1999. In the early 2000s, with the consolidation of democratic subnational administrations, mass-based patronage machines loomed into prominence across local and provincial governments. These early machines, however, were more constrained by the national centre. They were often ably managed by a liberation struggle elite of professionals and unionists and were relatively well-organised and developmental.

A grassroots revolt by ANC branches launched Jacob Zuma into the ANC presidency in 2007. He became President of the country in 2009. Zuma's interest in avoiding prosecution for complicity in the arms deal promised an era of impunity. The rise of his supporters in local, provincial and national party structures precipitated a second wave of turnover in the state. In these years, local and provincial patronage networks quickly factionalised in competition for the spoils of office (Ndletyana, 2020; Gibbs, 2023). The resulting political uncertainty infused politicians' calculations with short time horizons. Competitive mobilisation stretched patronage commitments beyond sustainability. These dynamics were aggravated by a post-apartheid growth model that combined expanded labour protections, social welfare and black economic advancement with neoclassical macroeconomic orthodoxies. This model entrenched investment uncertainty around the pace and extent of racial redistribution of economic assets. It augmented regulatory risks, rigidities and costs at the same time as it facilitated capital flight and opened industry to global competition. The results were deindustrialisation, persistent and rising unemployment and inequality, and sluggish growth. When the Great Recession struck and the commodity supercycle of the 2000s receded, South Africa entered a decade of political decay, erratic public service provision and economic decline (Nattrass, 2014; Von Holdt, 2023; Brunette, 2023). Between 2008 and 2022, the country's World Governance Indicators percentile ranking for political stability, government effectiveness and control of corruption fell, respectively, from 46 to 20 per cent, 66 to 48 per cent, and 62 to 49 per cent. In these years, per capita gross domestic product stagnated.

Out of this morass, in 2016, the state capture scandal broke the surface. It implicated Zuma in delegating executive powers to an émigré business family, the Guptas, and then in systematic corruption of the state's revenue, infrastructural, investigative and prosecutorial functions (Holden, 2023). The sustained outcry that arose in opposition consolidated behind Zuma's then Deputy President Cyril Ramaphosa's 2017 bid for the ANC presidency. Ramaphosa campaigned on the promise of reform and a 'new dawn', but he won by a small margin, with the ANC's highest decision-making structures accommodating a strong minority of Zuma loyalists. Zuma was replaced by Ramaphosa as President of the country in 2018, but power in the party was still bound up in its patronage structures, state capabilities were withered and progress has been slow.

The Pattern of Contemporary Recruitment Reform

Ramaphosa settled into a perch above the fray and preferred to act at a distance. His favoured methods were commissions of inquiry, independent disciplinary and prosecutorial processes, and strategic interventions into critical state organisations. The government proposed hesitant across-the-board recruitment reforms, setting a pattern only broken by the tentative emergence of a more strategic and incremental approach to the state-owned enterprises.

Strategic Interventions and Across-the-Board Reforms

Jacob Zuma had proclaimed a Judicial Commission of Inquiry into Allegations of State Capture after a court decision compelled him to do so. Ramaphosa supported this inquiry and launched supplementary commissions and special investigations. These laid the groundwork for dismissal and prosecution of participants in the state capture project and other corrupt schemes. A newly empowered ANC disciplinary committee followed through with suspension and expulsion of several high-ranking Zuma loyalists. In the public administration, through careful placement of new political and administrative leaders, Ramaphosa orchestrated a slow turnaround of the South African Revenue Service, the National Prosecuting Authority, the state-owned electricity enterprise, Eskom, and other key institutions.

These interventions in individual state organisations were strategic under the circumstances. Ramaphosa has been widely criticised by advocates of good government for not proceeding more boldly (Russell, 2024). Public support for his 'new dawn' has atrophied and this, together with animosity within parts of the state against civil society 'co-governance', has constrained construction of supportive policy communities and social constituencies. These constituencies are arguably vital to fostering organisational interventions into enduring pockets of excellence (Carpenter, 2001; Evans et al., 2017; Hickey and Sen, 2024), so government inattention to the dynamics of building them has been unfortunate. But although the government's approach has had its limits, it is also true that the tide of political backlash from within the ANC's own patronage system has so far been held at bay. And progress has become visible in healthy revenue collection, increased corruption investigation and prosecution, and more reliable provision of electricity to homes and workplaces. In some cases, the government has followed up with legislation reforming specific state organisations. The Public Audit Amendment Act (RSA, 2018) and the National Prosecuting Authority Amendment Act (RSA, 2024b) introduced new powers and structures into the Auditor General and the Prosecuting Authority. South Africa's electricity sector has been fundamentally restructured by the Electricity Regulation Amendment Act (RSA, 2024c).

In contrast to these strategic organisational interventions, the government has persisted with an across-the-board approach to recruitment reform. South Africa's public administration comprises a single national and provincial public service, an assortment of state-owned enterprises and non-commercial public entities, and local municipal administrations. In each of these sectors, the government has mostly insisted on applying recruitment reforms simultaneously across all organisations. The approach can be

understood, for present purposes, as proceeding along two tracks. These have emerged through loose and intermittent coordination between the Presidency, the National Planning Commission, the Public Service Commission, the National School of Government, the Department of Public Service and Administration, the Department of Cooperative Governance and Traditional Affairs, the Department of Public Enterprises and a growing circle of independent experts in the academy and civil society. Their efforts were spurred by the National Development Plan (NPC, 2012), drafted by the National Planning Commission when Ramaphosa was its deputy chair. In Ramaphosa's presidency, the National School of Government developed the Framework towards the Professionalisation of the Public Sector (NSG, 2022; hereafter, the Professionalisation Framework), which has been adopted by Cabinet.

Establishing pre-entry requirements and independent selection committees

On the first track, South Africa has been patiently expanding national core qualification and experience requirements since the 2000s. These requirements differ across the various sectors of the public administration. Implementation has been bedevilled by widespread qualifications fraud, weaknesses in training provision across tertiary institutions and some non-compliance by appointing authorities. The qualification floor of administrative appointments, nevertheless, is rising (Ngema, 2024). Parallel to this initiative, and succeeding a line of predecessor organisations in 2013, the National School of Government has grown to offer various optional courses for public servants. It began running a compulsory pre-entry programme and examination for senior managers in the public service, the Nyukela course, in 2019. It then launched a compulsory ethics course for all public servants in 2020. The Professionalisation Framework argued that these pre-entry requirements be expanded and appropriately differentiated across the public administration (NSG, 2022: 69).

The Nyukela course had 7450 enrolments and 5523 completions in 2023. In the same year, the ethics course had 16753 enrolments and 13765 completions. The high completion rates of 74 and 82 per cent, respectively, indicate that these programmes do not currently act as a robust filter on the pool of applicants for public administration jobs (NSG, 2023: 10). The programmes are also only a requirement for appointment, involving no competition for placements. Importantly, South Africa's broader public administration personnel system also constrains the extent to which pre-entry programmes can be made more rigorous. Driven by concerns about political control, demographic representativity and attraction of scarce expertise, the country operates an open career system. Recruitment processes for most administrative positions are advertised nationally. Personnel circulate readily and often between the public and private sectors. Politicisation of senior management truncates the career paths of politically unconnected professional public servants (Mokgolo et al., 2017; Kelengeshe, 2022). It is by now well-publicised that honest state officials often face abuse, threats of violence and even assassinations (Radulovic, 2024). In these conditions, more rigorous and time-consuming pre-entry programmes and examinations raise the costs of embarking on a public service career and so further deter talent with better prospects in the private sector. Progress in strengthening pre-entry examinations is, therefore, intimately bound up with broader political and administrative reform.

In any case, selection committees will likely continue to play a preponderant role in filtering and placing applicants, which emphasises the importance of the second recruitment reform track. This second track consists of efforts to place a check on political discretion in recruitment processes, by changing the composition of these committees. The South African Constitution asserts that 'employment and personnel management practices' in the public administration should be 'based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation' (RSA, 1996). In relation specifically to the public service, section 197 continues that 'No employee ... may be favoured or prejudiced

only because that person supports a particular political party or cause' (ibid). There is an exception under section 195(4), which requires legislation to regulate appointments made in terms of policy considerations. These appointments, however, are confined by statute to posts within the supporting offices of elected politicians. There are no other legal provisions empowering politicians to assert political criteria in appointment processes and South African courts have held, in specific cases, that doing so is illegitimate (ZAECHC, 2008). This legal framework seems to draw a sharp line between political and administrative appointments, but the current composition of selection committees eliminates this line in practice.

The precise situation varies across sectors of the public administration. The general standard for higher offices is that selection committees are composed predominantly of politicians, politicians appoint according to committee recommendations, and the contracts of administrative heads are aligned with elections. So pervasive is this standard that even senior managers in the constitutionally independent Office of the Public Service Commission go through selection committees composed of cabinet ministers, which make recommendations for appointment to the President. In many state organisations, by operation of laws or by delegation, administrative heads are given powers to appoint their subordinates, but politicians still appoint the heads and so, can ensure that they are loyal and amenable to political preferences in appointments cascading down the hierarchy (Brunette, 2021).

A widespread view in South Africa is that the extent and character of public administrative politicisation in the country is typical (Naidoo, 2023). China and the United States, given their relatively extensive politicisation, are often taken as examples. However, South Africa lacks China's ferociously competitive examinations, where less than 2 per cent of participants achieve placement, with these new officials ordinarily expected to enter at the lowest level and work their way slowly up the ranks of a closed career system. The United States draws a clear distinction between political appointees and civil servants. It limits the President to around 7000 of the former, and protects the remaining 2 million civil service posts by strong legal prohibitions on political interference enforced by an independent Merit Systems Protection Board. South Africa blurs the line between political and administrative appointments. It politicises more pervasively and with greater damage to state capabilities. The government's own National Development Plan (NPC, 2012: 411–16), surveying comparable experience abroad, recognised the country's shortcomings in this respect. It proposed that the Public Service Commission and a new Head of the Public Service become independent checks on political discretion in recruitment into the national and provincial public service. These proposals were then detailed and expanded into other sectors of the public administration by the Professionalisation Framework of 2022 (NSG, 2022: 69–73). The Framework's recommendations have been picked up, but also attenuated, in legislation currently before Parliament.

The Professionalisation Framework is weakest in its provisions for appointments to senior positions in the Office of the Public Service Commission. It argues for the commissioners and a Head of the Public Administration to establish relevant selection committees, but allows for cabinet ministers to continue to sit on these committees and for the President to make final appointments. This is arguably inconsistent with the Constitution's construction of the Commission as an independent body. The Public Service Commission Bill (RSA, 2023a) does not clarify the issue, presenting no process or allocation of powers for appointments to the Office.

The National Development Plan envisaged a new Head of the Public Service. The Professionalisation Framework argues for the designation of the Director-General in the Presidency to this position and for directors-general in the offices of provincial premiers to play a similar role in the provinces. The Framework continues that the Public Service Commission should establish independent selection committees to recommend appointments to this position and for the President and premiers to retain their final powers of appointment. These heads of the public service would then take positions in selection committees for appointing heads of department in national and provincial government. The Public

Service Amendment Bill (RSA, 2023b) merely legalises the existing role of the heads of the Presidency and premiers' offices in intergovernmental coordination. It therefore only takes the first of the steps proposed by the Professionalisation Framework.

In relation to other national and provincial heads of department and their deputies, the Professionalisation Framework argues that the Public Service Commission should recommend two technical experts for inclusion in selection committees. This implies that political executives would still be in the majority in these committees. The President and provincial premiers would retain the prerogative to make final appointments. In the case of deputies and those below them, however, the Framework advocates that powers of appointment be removed from national ministers and provincial members of executive councils and be granted instead to administrative heads of department. It then says that the contracts of heads of department should be delinked from elections and extended from five to ten years. The subsequent Public Service Amendment Bill picks up just one of these proposals. It gives heads of department the power to appoint below their level, but retains political appointment of the heads themselves. The question of whether political discretion in appointment of these heads will be sufficiently checked to prevent politicians from cascading political preferences down the hierarchy is apparently deferred to subordinate regulations.

In municipal administration, amendments to the Municipal Systems Act in 2008, 2011 and 2022 sought to limit the political activities of senior managers. These amendments also empower provincial members of executive councils responsible for local government to overrule appointments of municipal managers, and managers reporting directly to them, where these appointments violate legislated standards and procedures. The Professionalisation Framework advocates instead that the Public Service Commission should recommend two technical experts to sit on selection committees and that provincial treasuries should send a third. It leaves open whether this would constitute a majority of these selection committees, and only one of these proposals finds partial expression in proposed legislative amendments. The Public Service Commission Bill expands the existing regulatory powers of the Commission from the public service into municipal administrations. It does not, however, specify that these powers will include nomination of members of selection committees.

These inconclusive proposals reveal a government that has recognised politicisation of the public administration as a problem, but that has not yet mustered the will to resolve this problem convincingly in law. The Professionalisation Framework itself stops short of declaring a robust independent check on political appointments. Its proposed pre-entry examinations are not likely to play a significant role in filtering the pool of applicants. The independent technical experts recommended by the Public Service Commission would likely only be a minority in otherwise politicised selection committees. The legislative bills that have followed weaken these proposals, although implementing regulations have not yet been published, and it is possible that more elements of the Framework will be incorporated there.

Breaking the pattern in state-owned enterprises

But the government's expressed plans for the national state-owned enterprises break this pattern. South Africa maintains state-ownership of a series of strategic industries. These include such behemoths as Eskom (electricity generation and transmission), Transnet (railways and harbours), SANRAL (national highways), ACSA (national airports), SENTECH (national broadcasting) and Denel (aerospace and military technology). These enterprises have huge procurement budgets and were significant targets for Jacob Zuma's state capture project. It was here that this project registered its most devastating consequences for the economy (Hausmann et al., 2023) and reforming these enterprises – although some have conspicuously escaped Ramaphosa's dragnet – has been a focus of political energies.

A number of features of the sector have facilitated the tentative elaboration of a strategic incremental

approach to reform. The longstanding principle that state-owned enterprises should be run along business lines is prominent internationally and has traction in South Africa. It follows from this principle that these enterprises should operate independently of political interference. They should also be more flexibly regulated, and should have more latitude – than traditional public administrations – to determine their own systems. These factors have come together to produce a more nuanced and ambitious de-politicisation strategy. In contrast to the hesitancy of recruitment reform legislation in other sectors, the National State Enterprises Bill (RSA, 2024a) advances boldly beyond the proposals of the National Development Plan and the Professionalisation Framework.

The Bill proposes the establishment of a holding company, the State Asset Management SOC (SAMSOC) Limited. The President will determine the number of directors of its first Board. Appointments to this Board will be through an independent selection panel composed of a retired judge and two members of the National Executive appointed by the President, a person appointed by organised business represented in the National Economic Development and Labour Council (NEDLAC), a person appointed by organised labour represented in NEDLAC, and three persons appointed by the President who have been or are chief executive officers of public companies. This selection panel will then recommend appropriate appointees to the President who must appoint from those recommendations. The Board, thus constituted, is to be self-perpetuating to the extent that future appointments to it would be by recommendation of the Board and appointment by the President.

This model is not perfect. The President retains extensive powers to appoint the initial Board. The Board thereafter becomes an important check, but the self-perpetuating character of this check carries the risk that it might become unaccountable. If maladministration and corruption creep in, it could become difficult to correct. But the government has here envisaged a relatively robust framework for political independence. It also, crucially, does not attempt to apply this framework across state-owned enterprises all at once. Instead, the Board will gradually recommend state-owned enterprises to be transferred into SAMSOC and the President will have the power to approve this transfer by proclamation. This creates a precedent for independently checked recruitment to South Africa's public administration, and for a process of strategic incrementalism in rolling out this new system.

Motivating a Strategic Incremental Approach

The South African government has raised the issue of politicisation of recruitment decisions in a series of policy statements and legislative commitments. The Judicial Commission of Inquiry into State Capture affirmed that unfettered political discretion in public administrative appointments was “the essential mechanism” of state capture (Brunette in Zondo, 2022: 245). South Africa's reform process, however, stops short of establishing an independent check on these appointments. It approaches the threshold, but stands suspended, prevaricating at entry. I argue that this hesitancy arises from the combination of an inappropriate, across-the-board approach to reform with stubborn political realities. Continuing with this approach will ensure that reform remains stuck. A more targeted, strategic incremental approach is necessary.

The potential of the current reform moment

It is trite that reform designs must be aligned with political possibilities. South Africa's current moment is auspicious, but it is also constrained, and understanding these constraints is essential for making progress. Public opinion continues to express urgent concern about service delivery and corruption (HSRC, 2021). Civil society is increasingly organised to address these issues, having cut its teeth in response to the state capture crisis (Klaaren, 2023; Spiropoulos, 2023). It is still gathering in collectives such as Defend Our Democracy and the Anti-Corruption Coalition. Calls for recruitment reform in the

public administration are today widespread and the country has produced a growing expert community committed to informing such a process.

During Ramaphosa's first presidency, some key state organisations have been nursed back to health and, hesitantly, groundwork for across-the-board recruitment reforms has been laid. The ANC's 2022 elective conference routed Zuma loyalists and they are moving into opposition as the uMkhonto weSizwe Party (MKP). The MKP contested its first national elections in 2024 and, with the older breakaway Economic Freedom Fighters (EFF), brought the ANC below a majority for the first time. This has precipitated a realignment of South Africa's party system into moderate-constitutional and radical-nationalist blocs, with the former coalescing under the leadership of the ANC into a Government of National Unity (GNU), and the latter embroiled in the intense internecine warfare of an MKP-EFF Progressive Caucus.

The GNU's policy predilections and political dominance create space for a reform movement. Its members have signed a Statement of Intent committing them to 'a professional, merit-based, non-partisan, developmental public service' (GNU, 2024). The ANC's track-record in this regard has been described above and the party still holds 40 per cent of seats in the National Assembly. The Democratic Alliance (DA) has in the recent past proposed legislation and launched court action to 'end' the ANC's practice of 'cadre deployment' (Schreiber, 2021; see ZAGPPHC, 2024 and Brunette, 2024). The DA brings a further 22 per cent of seats into the GNU, which has also marshalled into its ranks a further eight parties, mustering a commanding 72 per cent of the National Assembly. South Africa's legislature exhibits a comparatively high level of party discipline. A partisan tradition of democratic centralism, a parliamentary system that ties executive and legislative power together, and electoral laws that continue to draw candidates overwhelmingly from closed party lists combine to strengthen party whips considerably. It may be, as critics have argued, that under Zuma this framework gave free rein to corruption (see Mbete and Reddy, 2021), but it yields considerable strategic advantages for a dominant, reformist coalition.

However, the opening is narrow. Commentators have suggested that intensifying electoral competition will drive reform momentum (Chipkin, 2024), but electoral threats to the ANC are still limited, and as they grow, they are more likely to slow reform down. The ANC holds twice the National Assembly seats of its nearest competitor. The second-placed DA – neoliberal, technocratic and minoritarian – has largely failed to penetrate the black electorate and so has long been at an electoral ceiling. Its primary objective of keeping the MKP and EFF out of government keeps it captive in the GNU. The greatest threat to the ANC, therefore, comes from the MKP, the EFF and their Progressive Caucus. The MKP holds 15 per cent of the National Assembly. The EFF holds 10 per cent. Two more small parties bring the total of the Progressive Caucus to just 25 per cent of the National Assembly, which pales in comparison to the GNU super-majority.

While this super-majority opens space for reform, intensifying electoral competition will tend to close it. The reason is that access to patronage can be an important organisational and electoral advantage. Politicians can offer public jobs, contracts and other patronage resources directly to specific individuals, flexibly according to circumstances, and more or less immediately in time. The ANC therefore uses such resources widely to incentivise cadres to perform party-building tasks, to purchase the support of powerful people, and to sow divisions among enemies. The party has ruled South Africa without interruption for thirty years, its cadres have penetrated every crevice of the state, and so it enjoys far greater access to patronage resources than any other party. The ANC cannot easily replace the organisational advantages that this access to patronage entails with the benefits of effective government, such as economic development, public security and universal social welfare. These goods tend to be distributed non-exclusively, impersonally and over the longer term, which makes their advantages to specific individuals uncertain, and thus their substitution for the incentivising functions of patronage highly imperfect (Geddes, 1994; Driscoll, 2017).

It follows that the ANC can be a sclerotic reformer. It must always carefully weigh the effects of reform on its patronage operations. Recruitment reform is expected to constrain access to patronage resources, so if the ANC moves too quickly it will disrupt distributive expectations and provoke disgruntled ANC structures to default to the Progressive Caucus. The GNU's super-majority means that the ANC can bear some of this defection. It can also hope to be in office for long enough to reap the partisan and personal windfalls of a reform process that unleashes longer-term economic development and welfare. But this space will narrow as competition from the Progressive Caucus heats up and when it does, the ANC may be compelled to lean more heavily on its patronage advantages to fend the Progressive Caucus off.

Progress under across-the-board reform

Since an across-the-board approach takes on large swathes of South Africa's patronage system simultaneously, it amplifies the risks of recruitment reform for the ANC. It is, therefore, no surprise when a government committed to such an approach moves forward hesitantly. If the GNU continues on these lines, we can expect more strategic interventions into specific state organisations. Some progress will be made with qualifications standards, training requirements, and pre-entry programmes and examinations. This is important for raising the competence of state officials, but it is unlikely to amount to an effective check on political discretion in appointments. The government may move to assign the Public Service Commission a more active role in policing inappropriate political interference in appointment processes. This was suggested in the DA's proposed reform legislation (Schreiber, 2021), but it is not presently on the table, and the problem's pervasiveness will make post hoc policing impossible. Across-the-board recruitment reform will, more broadly, remain halting. While the government is committed to introducing technical experts onto selection committees, they will be in a minority. Ultimately all the powers that were essential to orchestrating Zuma's state capture project will continue to be wielded. The main avenues of corruption and state breakdown in South Africa will remain intact.

Moving forward more ambitiously with an across-the-board approach may be seriously ill-advised. Grindle (2012) describes how, in 2003, the Mexican government opted for a rapid, complicated, across-the-board recruitment reform process. It created a new public service ministry, covered around 43,000 management positions under its authority, and set about establishing job descriptions, qualification requirements, competitive recruitment processes and career paths based on performance reviews. The resulting system, rolled out ahead of schedule in two years, elicited widespread complaints about undue complexity, inordinate delays in filling vacancies and inappropriate appointments. In this climate, scepticism about the value of the new system grew, providing fertile ground for counter-attack by its opponents. Surveying the Latin American scene, Grindle shows how enemies of recruitment reform have exploited such opportunities to ignore legal directives, create delays and exceptions to implementation, expand employment in categories not covered by recruitment reforms, starve implementing authorities of necessary resources, informally recapture recruitment prerogatives and roll back reform laws.

Countries with arguably greater reform prospects have suffered similar fates. During transitions from communism in the 1990s, Eastern Europe experienced pervasive de-legitimation of existing practices of party control (Nunberg et al., 1999). Accession to the European Union was conditional on adopting civil service reforms that would insulate recruitment processes from inappropriate political interference (Nunberg, 2000). This background created unparalleled opportunities and incentives to pursue an extensive, across-the-board approach, but the European Union never established effective mechanisms to prevent backsliding after accession. Except for the relatively small, homogeneous and wealthy Baltic states, the domestic political coalitions necessary for maintaining reforms proved too weak to prevent politicisation in the 2000s (Meyer-Sahling, 2011).

Chinese experience parallels that of Eastern Europe. The Chinese Communist Party (CCP) has considerable capacity to drive top-down reforms through Chinese society. At its 1987 National Congress, the CCP unveiled sweeping civil service reforms. Political and administrative positions would be clearly distinguished. The former would be confined to just 1 per cent of government positions and the remaining 4.2 million civil service posts would be subject to politically independent, open, competitive examinations (Burns, 1989). The proposed system threatened to curtail severely the patronage prerogatives of party committees across the state and the resulting backlash led the country to double down on its highly politicised public administration, which continues to be associated with serious corruption problems (Shih et al., 2012; Pei, 2016).

China's otherwise often spectacular governmental successes may lead some South Africans to believe that this continuing politicisation is not a problem. But these successes have been based on unique advantages that would be prohibitively difficult to replicate in South African conditions. Eased by a broad and rapid expansion of educational attainment across the Chinese population, by the high stature of civil service jobs, and by its closed career personnel system, the CCP has combined extensive politicisation with highly competitive examinations (Chan and Suizhou, 2007; Xu, 2011). The constraints on South Africa in this respect have been considered above. China further boosted administrative performance with a complex system of incentivisation that ties career progression and assorted fringe benefits, which make up most official earnings, to the collective promotion of economic growth by government agencies (Ang, 2020). A cost of this approach has been vast fluctuations and inequalities in officials' earnings, an outcome anathema to the South African public administration's strong, union-enforced commitment to secure conditions of service and equal pay for equal work. The Chinese approach has also relied heavily on forceful top-down authority and sophisticated policing of excesses (Ang, 2020), but this is unavailable in South Africa's increasingly fragmented political landscape, at least without the recruitment reforms essential to guaranteeing administrative checks and balances across the system.

There is, finally, the fact that the still politicised professionalisation of the Chinese state has been driven, in no small part, by the country's spectacular economic growth (Ang, 2016) and that this growth is due to a wide range of conditions that South Africa cannot emulate. South Africa does not have China's massive population. It cannot offer investors the prospect of such a large domestic market. It will not act systematically to suppress the wages and consumption of its much smaller and less productive workforce. South Africa also does not have the geoeconomic weight to so freely shape how it integrates into the global economy. Its relatively tepid growth, stretching back more than half a century, shows conclusively that South Africa can learn from China, but it cannot rest on its laurels. It must seize every opportunity to construct a state capable of driving the development of its economy.

The strategic incremental approach

In the absence of more thoroughgoing recruitment reform, the government's strategic interventions into specific state organisations will remain vulnerable to the changing policy priorities and coalitional commitments of future governments. Politicians can no doubt use their current extensive powers of appointment to install competent officials in state organisations. These officials might, with appropriate political backing, construct high-performing institutions. I have suggested above that such efforts would benefit from giving greater attention to constructing supportive policy communities and social constituencies. However, these initiatives could be relatively easily disrupted by future governments wielding over-broad recruitment powers with determination. The keystone for reform in South Africa consists in entrenching legislated checks and balances to prevent this.

Locating independent authority

In framing this reform, it is necessary to identify the independent body or bodies that will operate the necessary checks. This can raise complicated issues of organisational resourcing and design, but South Africa is fortunate to have a ready solution. The existing Public Service Commission is best placed to take up this role.

The Commission is composed of fourteen commissioners. Five national commissioners are recommended by the National Assembly and appointed by the President. The remaining nine provincial commissioners are each recommended by the relevant provincial legislature, nominated by the relevant premier and appointed by the President. The commissioners are required to act without fear or favour. They are protected by constitutional and statutory prohibitions on interference with their work. They may only be removed on grounds of misconduct, incapacity or incompetence, after a resolution of the nominating legislature and concurrence by the President (RSA, 1996). These procedures for appointment and removal are reasonably transparent, justiciable, and checked and balanced by national and provincial legislatures and executives. With due regard to the democratic necessity of maintaining channels of accountability to the people, the Commission has strong foundations for an independent check on recruitment processes. These foundations must be strengthened by amending the constitutionally questionable legislation, mentioned above, that gives the political executive a say in selecting the administrative head of the Office of the Public Service Commission, and such amendments are already on the government's agenda.

The Commission is not only constitutionally independent, but empowering it to play a role in recruitment would take it back to its roots. It was established to perform this function under the country's first constitution, the South Africa Act of 1909, and its ability to do so has fluctuated ever since. The Commission was marginalised as waves of Afrikaner nationalist parties asserted control of the state after electoral victories in 1910, 1924 and 1948. When, subsequently, performance again became the priority, political interests realigned behind restoring it to its original purpose. The Commission was again sidelined when the ANC came to power in 1994 (Cameron, 2022). In the wake of precedent set by the United States Civil Service Reform Act of 1978, the government now separated the Commission's regulatory and administrative functions. The Public Service Commission would henceforth be confined to investigating the operation of, advising on changes to, and adjudicating grievances arising from the country's public service. Responsibility for administering the public service's legal and institutional framework would be moved to the Cabinet minister presiding over a new Department of Public Service and Administration. The effect was to remove an independent check within recruitment processes, creating considerable potential for politicisation. In the United States, this potential was moderated by clear distinctions between political and civil service appointments, continuing bipartisan support for appointment by merit across the latter, and robust legal institutions and social constituencies forged across a century-long struggle against patronage politics in the world's wealthiest society. In South Africa these moderating conditions never held, politicisation ran more deeply, and comparatively shallow reserves of politically-connected administrative expertise meant the results have been far more debilitating.

Proposals for returning administrative powers of recruitment to the Public Service Commission may raise concerns that it would be compelled to be both regulatory referee and player. It is important not to overplay such formal concerns, because what we are considering is a carefully limited reversion to an organisational form long practiced in South Africa and prevalent across the world. Inter-functional conflicts are pervasive in complex, multi-functional state organisations. Ordinarily, they can be adequately addressed by rigorous process design, by separating responsibilities between firewalled offices and divisions of the same organisation, and by utilising channels for correction in the courts, other quasi-judicial bodies and the representatives of the people in Parliament. Indeed, the proposals for empowering the Public Service Commission contained in government documents and in this paper are light-touch. They maintain the

commissioners as an arms-length procedural safeguard within a small number of recruitment processes. Concerns about the potential for functional incompatibilities must also be balanced against the fact that independent civil service commissions playing both regulatory and administrative roles have often been an effective vehicle for addressing the more pressing contemporary South African problem of politicisation. And constructing another such institution to do this work would create considerable additional expense for an already strained fiscus, while foregoing the unique constitutional and administrative resources already contained within the Commission.

The Commission can plausibly perform this role for the entire public administration. As its name suggests, it currently only regulates the national and provincial public service. However, the Constitution arguably contemplates expanding its regulatory domain across the public administration (RSA, 1996),² and the Public Service Commission Bill proposes to do so (RSA, 2023a). The Commission could act as a check on recruitment processes run by the board of SAMSOC to be established under the National State Enterprises Bill. It could do so in the broader national and provincial public entities. The constitutional autonomy of local government raises trickier legal questions, but these might be overcome by assigning to the Commission powers over local recruitment already exercised – often in illegitimately partisan ways – by provincial ministers of cooperative governance.

The scope of independent authority in the recruitment process

What role should the Commission play in recruitment processes? We can understand a generic process as divided into stages. Process planning involves drawing up job specifications, qualification and experience requirements, selection tests and scoring matrixes, and recruitment advertisements and procedures. Plan administration involves conducting written tests, shortlisting based on compliance and minimum thresholds, and constituting selection committees. The selection committee is responsible for interviewing, scoring and consolidating recommendations for final appointment by the relevant executive authority.

Reforms already on the table would empower the Commission to send technical experts into selection committees, but they would be a minority in the committees and this falls short of constituting a robust independent check on recruitment. Early stages of recruitment could still be manipulated in favour of politically preferred candidates, which is currently often achieved through political appointees within the human-resources divisions of state organisations. Inappropriate recommendations could still be steamrolled through selection committees by politically motivated majorities (Kelengeshe, 2022). The scope of the Commission's authority in recruitment processes should, therefore, be expanded.

The Commission should take the lead in authorising process plans, in plan administration and in appointing politically independent selection committees. The commissioners themselves can be confined to an arms-length role, with the Office of the Public Service Commission and technical experts on selection committees responsible for administering each stage. Establishing these independent checks within recruitment processes need not mean unresponsiveness to legitimate political priorities and technical requirements. The Commission should finalise recruitment plans after close consultation with political authorities and the relevant state organisations. Selection committees can include the proposed head of the public service and other administrative officials. Executive politicians should also retain the power to make final appointments from committee recommendations, and they should continue to enjoy wide discretion in appointing political staffs with the loyalty and expertise needed to support the political direction of public bureaucracies.

2 Section 196 asserts that the Commission must 'exercise its powers ... in the interest of ... effective and efficient public administration' and that it can 'perform the additional powers or functions prescribed by an Act of Parliament' (emphasis added to RSA, 1996).

The ultimate mechanism for political control is bureaucratic discipline. Where administrative officials do not comply with legitimate political direction, policy and law, then sanctions should be available. Political prerogatives in this regard have been extensively abused in contemporary South Africa (PSC, 2016) and court processes are often too time-consuming to prevent this. This justifies capacitating disciplinary and appeal mechanisms, and devising appropriate checks and balances within them.

Casting independent recruitment procedures across administrative positions

The central assertion of a strategic incremental approach is that these reforms should not be rolled out everywhere all at once. Powerful political constraints on recruitment reform call for careful, incremental progress. The capacity of the Commission to act as a check on personnel decisions should be built up progressively, to mitigate teething problems and consequent discontent. This raises the question of how independent checks will gradually unfurl across administrative posts, and the government's existing reform proposals already suggest an answer.

The Professionalisation Framework proposes that the Public Service Commission should become involved in recruitment of administrative heads and their deputies. These administrative heads and deputies should then take charge of appointment processes below them, creating conditions for de-politicisation down the hierarchy. Focusing the Commission on the most senior managers would constrain the growth of administrative caseload and thereby mitigate the risk of the Commission becoming a bottleneck on human resourcing. It would also preserve the flexibility of state organisations in adapting recruitment processes of lower staff to their own specific circumstances, and reduce the potential for conflicts with the Commission's regulatory functions. These virtues avoid some of the pitfalls of the Mexican reforms discussed above and indeed of the United States Pendleton Act of 1883, which centralised recruitment processes more thoroughly for a much wider range of posts, and so generated human resourcing rigidities and tensions that aggravated mobilisation for re-politicisation (Ink, 2000; Lewis, 2008).

Focusing independent checks on the recruitment of administrative heads and deputies has these advantages, but incrementally rolling out this new system then becomes a question of which state organisations will be covered in and when. Here the South African Constitution acts as a guide and sets a framework. It affords wide jurisdiction to the Constitutional Court and so the Court casts an often-decisive shadow across policy processes. Policy processes are continuously shaped by competing constitutional interpretations that purport to forestall future constitutional litigation. In this context, the text of Chapter 10 of the Constitution entrenches an elaborate array of values and principles governing public administration. It demands, inter alia, that this administration must be professional and developmental, economical and effective, impartial and equitable, responsive and participatory, accountable and transparent, and must incorporate personnel management practices based on ability, objectivity, fairness and demographic representivity. These values and principles must be promoted by national legislation, with any politically motivated appointments – what the Constitution describes as induced by 'policy considerations' – specifically provided for there (RSA, 1996).

The guidance is gentle. This is a loose framework. The national legislature has ample room to interpret and balance the Constitution's requirements. The legislature may also – and this is significant for our purposes, because these provisions have not been sufficiently utilised – 'differentiate between different sectors, administrations or institutions' according to their distinctive 'nature and functions' (RSA, 1996). It follows from these provisions that South Africa's recruitment reform process can marshal plausible constitutional justifications for why some state organisations necessitate more robust protections from politicisation than others. The special burden of impartiality discharged by the Department of Justice arguably calls for greater insulation from political interference. The Department of Water and Sanitation, especially given the immense crisis now brewing in a water-scarce country, might require more protection

for professionalism and effectiveness. The Office of the President plausibly demands tighter policy direction and political accountability. These sorts of arguments should be understood in the light of South Africa's admirably pragmatic and context-sensitive constitutional jurisprudence (Roux, 2013). Although decisions about which state organisations should be covered by a new system are framed by the Constitution, there is also scope for the exercise of practical, political wisdom.

An example of how this might be worked out in practice comes from Chile. Grindle (2012) argues that, compared to those of Mexico, the Chilean civil service reforms of the 2000s were relatively successful. In response to a wide-ranging corruption scandal, these reforms were framed by prior agreement between political parties. The country lacked an independent civil service commission, so it established a new Council for the Senior Executive Service. The Council was to be chaired by the head of, and administratively supported by, a Directorate for the Civil Service. The Council's membership would also include four experts appointed by the President, approved by the Senate and representing the spectrum of partisan opinion in the legislature. Appointment of administrative heads of Chilean national agencies would start with the Council hiring private recruitment companies to shortlist candidates. The shortlisted candidates would then be interviewed by the Council, which would recommend three or four names to the Chilean President for appointment. A similar procedure was established for appointments to the second level of the administrative hierarchy (RdC, 2003).

The Chilean reform is notable for its similarities to those proposed by South Africa's Professionalisation Framework. It established a check on political discretion in appointment, albeit with provisions for cross-partisan representation in the Council. It focused on recruitment processes for senior managers, otherwise retaining a decentralised personnel system in the agencies. The Chilean reform went further, however, by creating provisions for incremental application. A reform statute explicitly excluded from its ambit a series of state organisations, including the presidency, the budget directorate, the gendarmerie, the intelligence service and a range of other institutions largely concerned with economic policy, security and culture. The Chilean president was empowered to incorporate the remaining public agencies into the new system according to statutory timeframes. They would be required to cover at least 48 agencies into the new system in its first year of operation and at least ten annually over the next five years, to a total of at least 98 of Chile's then 141 agencies.

The Chilean statute also anticipated future demands for re-politicisation. It allowed every president, within three months of the start of a presidential term, to exempt twelve positions already covered by the new system. These exemptions would open these posts up to a single political appointment (RdC, 2003). This mechanism simplified similar provisions in the United States Civil Service Reform Act of 1978 and would be an important mechanism for South Africa to consider.

Legal mechanisms for reform

Lawmaking mobilises reform ambitions. It provides fora for negotiating political settlements. It sets legal direction, coordinates implementation, and brings broader social constituencies and institutions into the defence of reform positions. Anyone concerned with advancing reform must be attentive to how legal entrenchment can shift the political terrain in its favour. Law establishes routine avenues for correction in cases of violation. It would draw South Africa's powerful judiciary further onto the ramparts of South African state-building.

Much can be done to improve recruitment processes at the level of organisational procedures. Existing law often contains a discretionary space that can be used to construct more independent and open processes. President Ramaphosa entered this realm when he established an independent selection committee made up of eminent persons to recommend candidates from among whom he would appoint the National Director of Public Prosecutions (The Presidency, 2018). South Africa has not fully exploited opportunities

available within existing law, but such innovations would remain legally unentrenched, and there are aspects of South Africa's legal framework that prevent them.

Take the public service as an illustration: ministerial regulations under the Public Service Act positively require selection committees for national and provincial heads of department and their deputies to be composed largely of politicians (DPSA, 2016). What this means is that the creation of an independent check on recruitment processes in the public service would necessitate, at minimum, amendment of those regulations. The least ambitious approach would be to create the legal possibility of independent selection committees for specific recruitment processes. This would clear the way for the piloting initiative suggested by Leite and Chipkin (2024: 23), which amounts to an expansion into the public service of the precedent already set for the appointment of the National Director of Public Prosecutions.

This would be progress. A more determined reform movement, concerned with mobilising the strategic potential of law to ratchet up reform gains, would go further. The Public Service Regulations could be used to create a new and independent recruitment process, empowering the Minister of Public Service and Administration to integrate specific state organisations into the process by adding them to a schedule in the Regulations. This is a relatively weak legal mechanism. It could be reversed at the discretion of the Minister and Cabinet. An even more robust and therefore preferable mechanism would elevate independent recruitment procedures into statute, by amending the Public Service Act itself. A strategic incremental approach at this level would empower the President to proclaim state organisations gradually into the new system.

A strength of this last mechanism is that it creates an institutional bias toward reform. The President holds primary legitimate authority over the Executive and is best placed to judge reform possibilities. Assigning to the President proclamatory power to cover state organisations into the new system enables them to seize the initiative quickly. In other jurisdictions, presidents committed to civil service reform have used such powers to seize momentary opportunities, but also to blanket in existing political deployments, to insulate treasured programmes from future governments, and to keep patronage resources from opponents who are about to enter office (Van Riper, 1962; Moe, 1989; Brunette, 2019). It is in the nature of such proclamations, however, to be irreversible except through amendment of the principal statute. The great merit of this mechanism is that it creates incentives and opportunities for expression of diverse motivations in a process of ratcheting up reform.

Conclusion

The precise shape of a strategic incremental process of reform must be carefully calibrated to circumstances. It is hazardous to make specific proposals – which would require much closer reading of concrete political conditions – but my ideal can be reiterated in conclusion.

South Africa is fortunate to have a ready-made home for independent checks on recruitment processes in its Public Service Commission. The Commission should engage in recruitment planning, in process administration and in choosing independent subject matter experts to constitute majorities on selection committees. Recruitment plans should be formulated in close consultation with the political and administrative leaders of state organisations, and the political executive must retain the power to make final appointments from the recommendations of selection committees. This new procedure should only be applied to filling posts for heads of administration and their deputies, and those heads and deputies must assume powers of appointment below them. These reforms cannot happen all at once. The President should be empowered to proclaim state organisations gradually into the new system. Those proclamations would be irreversible except through an amending act of Parliament, but presidents could also be empowered, at the beginning of their term, to exempt a limited number of appointments. This would provide a mechanism, a sort of pressure valve, for channelling concerns about political responsiveness into regulated and transparent, but limited, re-politicisation.

The initial and arguably greater struggle, however, will be to move from an across-the-board to a strategic incremental reform process. South African governmental institutions were first forged under British influence. The country's post-apartheid administrative tradition emphasises an egalitarian streak that hews more strongly to regulatory simplicity, uniformity, and fairness. These influences can tend towards more conservative and undifferentiated legal frameworks. The Ramaphosa presidency's preference for limited strategic interventions speaks to a concern with maintaining policy and organisational unity within the ANC. What all this means is that a strategic incremental approach to recruitment reform will not come naturally to South Africa, but my argument suggests that it is nevertheless a pressing constitutional and policy imperative, necessary to building a state that can deliver on the post-apartheid ideal.

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