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Limiting Political Influence on Appointments in the South African Public Administration

POLICY BRIEF

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ABSTRACT

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 interventions to achieve integrity, democratic control and effectiveness in the public administration.

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Introduction

In recent years, South Africa has laid the foundations of a civil service reform movement. Political interference in public administrative appointments has been identified as a problem. In the early stages of non-racial democracy this was intended to make the administration representative of the whole population and responsive to the new government's programme. However, with insufficient limitations on the role of politicians in appointments, what started as a means of redress has become a way for politicians to reward their backers and strengthen their own positions. Political involvement in public administrative appointments is legitimate. However, if not carefully regulated, it can descend into criminality and state breakdown, as the Zondo Commission documented (Zondo, 2022).

The Judicial Commission of Inquiry into State Capture asserted that uncontrolled political discretion in appointments was 'the essential mechanism' of state capture (Brunette in Zondo, 2022: 245). The South African government has approached the issue of politicisation of recruitment decisions in a series of policy statements, and there have been some encouraging initial reform attempts: 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 initiatives stop short of the required reform: independent, institutionalised checks on political control of recruitment.

Partly, this is because of a legislative strategy that tries to deal with entire administrative sectors at the same time. This approach risks exposing incapacities in implementation and provoking political backlash. An approach that recognises political realities would consolidate limited but strategic areas of reform, gradually extending them without excessive confrontation.

This policy brief suggests how such a programme can be implemented.

What is the problem?

Under the Zuma Presidency, the state was looted for the benefit of a small clique around the president and his broader faction. This was enabled by the already established patronage system, with cadres deployed within a loose national legislative framework.

When it came into power, the Ramaphosa administration began strategic interventions into various state organisations such as the South African Revenue Service, the National Prosecuting Authority and Eskom. There has been some progress in turning these institutions around, including through legislation that has granted some of them new powers and restructured others (RSA, 2024a; RSA, 2024b). The focus on targeting specific state organisations has been sensible in the circumstances, given stretched state capacity and the potential for disruption by corrupt interests. Public enthusiasm for the Ramaphosa administration's 'new dawn' has arguably waned, but backlash from the ANC's patronage system has so far been held at bay, and there has been visible improvement of service delivery, most notably in electricity.

In contrast to these strategic interventions, the government has persisted with an across-the-board approach to recruitment reform. That is, the strategy has been to introduce legislation and implement recruitment policy in the same way across whole sectors of the public administration, be it the national and provincial public service, local government or public entities. These efforts were spurred by the 2012 National Development Plan (NDP), drafted by the National Planning Commission. The latest iteration, adopted by Cabinet, has been the National School of Government's (NSG's) Framework Towards the Professionalisation of the Public Sector (NSG, 2022).

The first recruitment reform track is to improve pre-entry and qualification requirements for public officials.

Despite fraudulent credentials, training weaknesses and some non-compliance by appointing authorities, qualifications for administrative appointments are rising (Ngema, 2024). In addition, the NSG has expanded its course offerings, both for compulsory and optional courses. It runs a pre-entry programme, an examination for senior managers in the public service and an ethics course for all public servants. However, high completion rates indicate that these programmes are not a robust filter on who gets into the public administration. Also, they are only a requirement for appointment and do not involve competition for placements. Importantly, South Africa's public administration runs an open career system, favouring lateral appointments across the hierarchy, and in circumstances where administrative instability and corruption discourage talent from pursuing public sector careers. These factors limit how far pre-entry programmes can be made more rigorous, because more arduous training and examination would further dissuade people from jobs that are already devalued (see Brunette, 2024: 4 for more details).

The second recruitment reform track is the attempt to check political involvement in recruiting by changing the composition of selection 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'. It continues, 'no employee … may be favoured or prejudiced only because that person supports a particular political party or cause' (RSA, 1996). It provides for exceptions, currently confined to posts within the offices of elected politicians.

The 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. Though the Constitution constrains politically oriented appointments, selection committees appointing candidates to higher posts are composed mainly of politicians, or their representatives. Contracts of administrative heads are aligned with elections. Even senior managers in the constitutionally independent Public Service Commission (PSC) go through selection committees composed of cabinet ministers, who recommend potential appointees to the President. Administrative heads are often delegated powers to appoint subordinates, but since these heads are political appointees factional loyalty cascades down the hierarchy (Brunette, 2021). The NDP recognised the problem, and its

proposals were expanded into other public administration areas in the 2022 Professionalisation Framework (NSG, 2022: 69–73). These recommendations are also reflected in legislation currently before Parliament though, importantly, the original NDP proposals have been weakened.

For example, the NDP proposed that the PSC and a new Head of the Public Service become independent checks on political discretion in recruitment to the national and provincial public service. The Professionalisation Framework, however, argues that the PSC should simply recommend that two technical experts be included in selection committees for heads of departments, leaving political executives still in the majority.

The government, seemingly, has recognised the problem of politicisation of the public administration, but has not yet determined to resolve it convincingly in law. The Professionalisation Framework does not insist on a robust independent check on political appointments; the independent technical experts recommended by the PSC would likely be a minority in otherwise politicised selection committees.

Appointments in state-owned enterprises: a model for further progress?

The government's expressed plans for the national state-owned enterprises (SOEs) break this pattern of an across-the-board approach. A number of features of the sector have facilitated the tentative elaboration of a strategic incremental approach. It is widely believed that SOEs should be run along business lines, independent of political interference. They should be more flexibly regulated, with more freedom to govern themselves than the public service. Thus, in contrast to hesitant reform legislation in other sectors, the National State Enterprises Bill (RSA, 2024a) advances boldly beyond the NDP proposals and the Professionalisation Framework.

The Bill proposes a holding company for state enterprises, the State Asset Management SOC (SAMSOC) Limited. Board appointments will be by an independent selection panel composed of a retired judge and two National Executive members appointed by the President, two people appointed respectively by organised business and organised labour represented in NEDLAC, and three presidential appointees who have been or are CEOs of public companies. This selection panel will then recommend those from amongst whom the President must appoint.

This model is not perfect. The President retains extensive powers to appoint the initial Board. The Board then becomes self-perpetuating, constituting an important check on political appointment, but one that has more risk of becoming democratically unaccountable than most other independent agencies. But crucially, there is no attempt to apply the new framework across state-owned enterprises all at once. Instead, the Board will recommend that SOEs be transferred gradually into SAMSOC, with the President having the power to approve these transfers by proclamation.

This is a precedent for independently checked recruitment to South Africa's public administration, and for strategically but gradually rolling out this new system.

A moment of opportunity

Reform must be aligned with political possibility. This is a moment of opportunity for recruitment reform, but there are constraints. Calls for reform are widespread and the country has the expertise to advise realistically on such a process. Hesitant though it may be, the formation of the Government of National Unity (GNU) represents an electorally dominant moderate-constitutional bloc which has laid the groundwork for far-reaching recruitment reforms. Its members have signed a Statement of Intent committing them to 'a professional, merit-based, non-partisan, developmental public service' (GNU, 2024). The two largest parties, the ANC and the DA, now both have a track-record of advancing recruitment reform in this direction.

However, the opportunity for reform is narrow and probably limited in time. Electoral threats to the ANC will inevitably grow.

Intensifying electoral competition will tend to slow down reform, because incumbents will want to maintain control over patronage. The reason is that this control can give important organisational and electoral advantages. Politicians can offer public jobs, contracts and other patronage directly and immediately to incentivise party cadres, buy the support of powerbrokers, and sow divisions among enemies. Having ruled South Africa for thirty years, the ANC has far greater access to, and is more reliant on, patronage than any other party. It cannot easily replace the organisational advantages of this access by 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 (Geddes, 1994; Driscoll, 2017).

Therefore, if the ANC dismantles patronage networks too quickly it will disrupt expectations and provoke disgruntled structures and individuals to desert the party for its rivals. The ANC can bear some of this. Through the GNU it can also hope to be in office long enough to reap the electoral rewards of more effective government, including through the economic development and welfare that it is likely to produce. But it is a perilous balancing act and, as electoral competition increases, the electoral advantages of reform may start to seem distant, and the ANC may then be compelled to rely more heavily on its patronage advantages to fend off opponents.

The problems of across-the-board reform

Since an across-the-board approach takes on large swathes of South Africa's patronage system simultaneously, it increases 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. 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 it will continue to wield all the powers that were essential to orchestrating Zuma's state capture project. The main motivations for 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. There are many examples across the modern world - Mexico and other Latin American countries; Eastern Europe after the transition from communism; the People's Republic of China - of the failure of comprehensive reform in this area (Grindle, 2012; Meyer-Sahling, 2011; Shih et al., 2012; Pei, 2016): ambitious large-scale reform projects invite broad political push back.

Continuing with an across-the-board approach will ensure that recruitment reform remains stuck. Reforms aimed at institutionalising independent checks on political discretion in recruitment should proceed with care: a more targeted, strategic incremental approach is necessary.

The strategic incremental approach: the role of the Public Service Commission

The Ramaphosa administration's strategic interventions into specific state organisations are exceedingly vulnerable to changing policy priorities and coalition arrangements of future governments. They should be entrenched by legislating independent checks on future political appointments. Fortunately, in the PSC, South Africa has an institution well placed to become an independent body capable of operating the necessary controls.

The Commission is composed of fourteen commissioners. Five are recommended by the National Assembly and appointed by the President. The remaining nine are recommended by the provincial legislatures, nominated by their premiers and appointed by the President. They must act without fear

or favour. They are protected from interference by constitutional and statutory prohibitions. They may only be removed for misconduct, incapacity or incompetence (RSA, 1996). These procedures are reasonably transparent, subject to law and to scrutiny by national and provincial legislatures and executives. The Commission thus has strong foundations for independently checking 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 PSC. Such amendments are already on the government's agenda.

Proposals for giving powers of recruitment to the PSC may raise concerns that it would be both referee and player. Such concern is overstated. The proposed role is played by many public service commissions around the world. Inter-functional conflicts are pervasive in governmental organisations and can generally be dealt with by rigorous process design, by separating responsibilities between offices and divisions of the same organisation, and by enabling correction of issues in the courts, other quasi-judicial bodies and by the people's representatives in Parliament.

Currently, the Commission only regulates the national and provincial public service. However, arguably the Constitution contemplates expanding its reach across the public administration (RSA, 1996).[1] The Public Service Commission Bill proposes to do just this (RSA, 2023). The Commission can plausibly perform the role outlined above for the entire public administration. In the case of public entities, for example, it could check recruitment processes run by the board of SAMSOC to be established under the National State Enterprises Bill and by all national and provincial public entities. The constitutional autonomy of local government raises trickier legal questions, but these might be overcome by giving provincial commissioners powers over local recruitment already exercised by provincial ministers of cooperative governance.

Reforms already proposed would empower the Commission to assign technical experts to selection committees where, however, as noted, they would be a minority. This falls short of a robust independent check on recruitment. Early stages could still be manipulated in favour of politically preferred candidates. Inappropriate recommendations could still be steamrolled through committees by politically motivated majorities (Kelengeshe, 2022). The scope of the Commission's authority should, therefore, be expanded.

The Commission should lead in authorising process plans (drawing up job specifications, qualification and experience requirements, selection tests and scoring matrixes, and recruitment advertisements and procedures), in plan administration (conducting written tests, shortlisting based on compliance and minimum thresholds, and nominating selection committees) and in appointing politically independent selection committees (responsible for interviewing, scoring and consolidating recommendations for final appointment by the relevant executive authority). The commissioners themselves can be at arms-length, with the Office of the PSC and technical experts responsible for administering each stage.

Establishing these independent checks on recruitment need not mean lack of responsiveness to legitimate political priorities and technical requirements. The Commission should finalise recruitment plans after close consultation with political authorities and 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. They should also continue to be able to appoint political staffs with the loyalty and expertise needed to support political direction of public bureaucracies.

The ultimate mechanism for political control, however, is bureaucratic discipline. Where administrative officials do not comply with legitimate political direction, policy and law, there should be sanctions.

1 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).

Deliberate and incremental recruitment reform

These reforms should not be rolled out everywhere all at once. Political constraints are a reality and recruitment reform must be careful and incremental. The PSC's capacity to scrutinise personnel decisions should be built up progressively, to minimise teething problems and consequent discontent. The government's existing reform proposals already suggest how this might be done.

The Professionalisation Framework proposes that the PSC should become involved in recruitment of administrative heads and deputies. These heads 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 limit the administrative burden and reduce the risk of the Commission becoming a human resource bottleneck. It would enable state organisations to adapt recruitment of lower staff to their own circumstances, and reduce the potential for conflicts between the Commission's various functions.

Rolling out this new system then becomes a question of which state organisations will be incorporated and when. The South African Constitution acts as a guide and sets a framework. Chapter 10 of the Constitution entrenches values and principles governing public administration. It demands, amongst other things, that it 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 politically motivated appointments specifically provided for (RSA, 1996).

This is a loose framework. The national legislature has ample room to interpret constitutional requirements. The legislature may also, significantly in this context, 'differentiate between different sectors, administrations or institutions' according to their distinctive 'nature and functions' (RSA, 1996). There are thus credible constitutional justifications for some state organisations needing more robust protection from politicisation than others. 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.

The Presidency and legal mechanisms for reform

Those concerned with advancing reform must pay attention to how legal entrenchment can shift the political landscape in its favour. Much can be done to improve recruitment processes through organisational procedures. Existing law often provides the opportunity to construct more independent and transparent processes. President Ramaphosa used such an opportunity to establish an independent selection committee of eminent persons to recommend candidates from among whom he would appoint the National Director of Public Prosecutions (The Presidency, 2018). There are other opportunities within existing law, though such innovations would remain legally unentrenched.

Significant barriers would remain to the approach recommended in this policy brief: the ministerial regulations under the Public Service Act, for example, positively require selection committees for national and provincial heads of department and their deputies to be composed largely of politicians (DPSA, 2016). Creation of an independent check on public service recruitment processes would necessitate, at minimum, amendment of these regulations. The least ambitious approach to legal reform would be to amend the regulations to create the possibility of independent selection committees for specific recruitment processes. This would clear the way for expansion into the public service of the existing precedent for the appointment of the National Director of Public Prosecutions.

This would be progress. A more determined reform movement, concerned with mobilising law to build on 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, however, is a relatively weak legal mechanism, subject to reversal simply by again amending the regulations. A more robust and therefore preferable mechanism would be to elevate independent recruitment procedures into statute, by amending the Public Service Act itself, along with laws regulating other sectors of the public administration. To ensure that such legislation is implemented incrementally, it could empower the President to proclaim state organisations gradually into the new system.

This last mechanism would create an institutional bias toward reform. The President is best placed to judge reform possibilities. Assigning him or her power to proclaim state organisations into the new system would enable them to rapidly seize the initiative when opportunities arise. Such proclamations would be irreversible except through amendment of the principal statute, which would have the effect of ratcheting up reforms.

There are likely to be continuing pressures for politicisation once state organisations are reformed. To ensure that these pressures are appropriately managed, provision can be made for politically-oriented appointments limited in number and scope at the beginning of a term of incumbency. Such a mechanism has been created in other jurisdictions, such as the United States and Chile, and it would help to ensure that efforts at re-politicisation are reasonably constrained and transparent.

Conclusion

The incremental reform recommended here must be carefully matched to circumstances. Specific proposals require close attention to the political context. However, let us conclude by reiterating our proposals.

South Africa is fortunate to have in the PSC a ready-made home for independent checks on recruitment processes. The Commission should engage in recruitment planning, process administration and choice of independent experts to constitute majorities on selection committees. Recruitment plans should be formulated in close consultation with the political and administrative leaders of state organisations, with the political executive empowered to make final appointments from selection committee recommendations. This procedure should only be applied to heads of administration and their deputies, who must have 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. These proclamations would be irreversible except through an amending act of Parliament, but presidents could also be empowered to exempt a limited number of appointments at the beginning of their terms, to address concerns about political responsiveness in a carefully managed and transparent way.

Arguably the greater struggle will be to move from across-the-board to strategic incremental reforms. South Africa's post-apartheid administrative tradition emphasises regulatory simplicity, uniformity, and fairness. This can encourage conservative, undifferentiated legal frameworks. The Ramaphosa presidency's preference for limited strategic interventions indicates concern with maintaining ANC policy and organisational unity. What all this means is that, though efforts have begun to be made to limit political influence on appointments to public sector appointments, a strategic incremental approach to recruitment reform will not come naturally to South Africa. This policy brief argues 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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