

Policy Brief

SOUTH AFRICA: AN AGENDA FOR REFORM

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EXECUTIVE SUMMARY

An agenda for public administration reform should start with:

1. The repeal or amendment of section 3(7) of the Public Service Act, to limit the discretion and role of Ministers and the President in both operational matters of government entities and regarding the recruitment of staff.
2. Giving the power of recruitment to Heads of Departments as envisaged in the design of the SMS.
3. Developing an Administrative Processes Act that sets out justiciable values and principles for all public administrations in respect of recruitment, promotion, merit, work-appropriate skills, ethics and performance, and creates mechanisms to enforce them.
4. Strengthening the Criminal Justice System to deal with the reaction that public administration reform will trigger.

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Government departments and entities are weak across all three spheres of government. The weakness of government today is not the result of dynamics in particular departments, agencies or companies alone: the crisis of government today is a systemic problem. This policy brief suggests a way of moving from crisis to opportunity.

There four clusters of issues that make up this systemic crisis.

a) The politicisation of public administration

The ANC government inherited a civil service that it did not trust to implement its policies. It included white civil servants from the Apartheid administration as well as tens of thousands of homeland officials, teachers, nurses, police officers and soldiers.

In response to this situation, policy makers designed the post-apartheid public service to give the political executive wide discretion and influence in matters of public administration. The President and national and provincial ministers were given wide powers to recruit public servants and to intervene in operational decisions.

In local government, the blurring of the lines between politicians and administrators went so far that elected politicians are also council administrators.

Cadre deployment policies are so effective – but also so debilitating – because once the deployment committee instructs a minister to appoint a particular person, they have the legal authority to do so.

b) Skills and Ethics

After 1994, recruitment opened to candidates from outside of government itself, to draw into the ranks of the civil service those with experience in the private sector, civil society, or academia. This allowed former activists and politicians to be absorbed into the ranks of government administrations, usually without experience of running an organisation or operating in a regulated environment. Compounding the lack of experience of many senior officials, a culture of ambivalence to skill was widely tolerated.

In the Apartheid period, it was difficult for Africans to acquire formal skills, other than through relatively narrow channels of religious organisations, trade unions, and Bantustan administrations. The language of 'skill', moreover, was often racially loaded, producing in the post-apartheid period a culture in many organisations that is suspicious of skills, hostile to efforts to measure them, and unable to enforce minimum standards of skill for key positions. Public sector unions, for example those in education, have been resistant to moves to evaluate the classroom practices of teachers, while other departments and state companies have been cavalier in who they appoint to senior technical roles.

Meanwhile, the Public Service Commission that had long been responsible for vetting and shortlisting candidates for civil service jobs lost this function altogether.

c) Managerialism

South Africa became a democracy when the global fashion had turned against bureaucracy as a model of organising government administrations, in favour of managerialism. Bureaucrats were deemed to be slow, wasteful and stuck in their ways. Managers, in contrast, were thought to be innovative and responsive to their environments.

The Public Service Act of 1994 and much of the post-Apartheid legislation related to the civil service (public service and local governments) privileged managerial models of government over traditional bureaucratic ones. Many of the regulations that defined departmental processes and set norms and standards for everything from dress codes to salaries, were largely scrapped. Instead, a new cohort of senior managers was created with responsibility for writing their own departmental rules and for defining their own operational systems.

All too often, this did not happen so that departments and government agencies had staff and resources but lacked effective processes for translating policies into tangible practices. Government departments struggle to implement on their mandates because their administrative systems are poor or chaotic and because they have poorly engineered processes.

d) Outsourcing

The fashion for managerialism was accompanied by a purported “reinvention” of government, which saw the work of government opened up to private companies or developers. In the 1990s, this was done in the name of efficiency. After 1994, it was regarded as an important route to Black Economic Empowerment. It still could be, though service providers to government today are too often selected on political criteria rather than on their technical ability to add value at the best price.

South Africa has thus developed a civil service with several key characteristics: It is highly politicised, strangely unregulated, and managerialist, and much of government's work is done by private or proto private companies. State capture was made possible in this situation. It has also created an environment conducive to rent seeking and corruption, also in those areas of service delivery that are critical for poor households.

Nearly 30 years later, choices made during the early days of South Africa's political transition have caught up with the governing party and with the country at large. Failures of government have brought the economy to a near halt, further impoverished South Africa's citizens, public and private spaces are chronically unsafe, and inequality has widened. Moreover, these failures in government have started to undermine the reputation and electoral performance of the ANC. In this context, there is an openness to reforming the system of government.

In 2021, the National School of Government, with a mandate from the Department of Public Service and Administration published a framework document for 'professionalising' the public service. In September 2022, the cabinet approved the framework document, though widened its scope to the whole 'public sector', including state-owned enterprises.

The framework document moots two critical principles:

1. Public servants should be selected on the basis of merit.
2. Public Servants should be insulated better from inappropriate political interference.

What is missing are clear pathways to implementation. The Framework document sees professionalisation happening through two key institutional developments or redevelopments. In the first case it looks to the National School of Government to prepare and train cohorts of eligible officials as professionals. In the second place it looks to a reformed Public Service Commission to reclaim its historical role, vetting candidates. In this sense, the professionalisation framework proposes a return to bureaucratic rationalisation.

Where it falls down, however, is in its inadequate grounding of reform in the legal and political context in which it must make a difference. In the first, place, the South African constitution gives officials at Provincial and local government level guaranteed autonomy from the national sphere of government. In other words, they are under no legal obligation to recruit from amongst NSG graduates. Moreover, the highly decentralised form of government today, means that local and regional entities have little incentive to defer to the professionalisation framework and many reasons not to.

There is another route to professionalisation.

The South African constitution distinguishes between public administration and the public service and defines the public service as 'within' public administration. Chapter 10 (S195) sets out the 'basic values and principles governing public administration', including that public administration must be governed by 'democratic values' and must respect the following principles:

- promote and maintain a high standard of ethics,
- use resources efficiently, effectively and economically,
- provide services impartially,
- work transparently and be accountable,
- practice good human resource management,
- be broadly representative of the South African people
- employ people with 'ability' and through practices that are objective and fair.

In S195(2) the Constitution says that these principles apply to:

- administration in every sphere of government
- organs of state
- public enterprises

In other words, these constitutional values and principles must apply to all administrations, including the public service, but also to those in municipalities,

in the judiciary, in state-owned enterprises and so on.

Furthermore, the Constitution requires that 'national legislation' be passed to 'ensure the promotion of the values and principles discussed above. In 2008 the Department of Public Service and Administration interpreted these clauses to provide the basis for a 'single public service', by which it meant administrations in all departments in the national and provincial spheres of government, municipalities and government components in all three spheres. By defining, moreover, the values and principles that must inform how such administrations are organised, managed, functioned and staffed, the department proposed regulating these matters without interfering with the powers of provincial and local governments to recruit, appoint, promote, and transfer their own staff. The Public Administration Management Bill was never passed, except in a truncated form. Without such national legislation, however, neither the DPSSA nor the Office of the Public Service Commission can monitor and enforce compliance with such norms and standards.

What is clear, however, is that the Supreme law regards the appointment of unsuitably qualified persons to government positions as unconstitutional and provides, moreover, the legal framework for more robust interventions to improve the quality of government from top to bottom and from side to side.

In 2003 the South African government created the Senior Management Service with a view to promoting strong leadership and management in departments. In the same year the Department of Public Service and Administration issued a 'handbook' to assist departments recruit senior managers. The handbook proposes several 'selection principles' for such appointments, including merit (skills, experience, abilities, personal attributes, competencies, representation, diversity) and job-related criteria (competencies acquitted through past experiences, training, learning potential), insisting that 'educational qualifications should not be the sole determinant of suitability' (S8(2)(B)).

Curiously, the document also suggests that the "[Head of Department] who is responsible for the administration and management of his/her department, is also responsible for the recruitment programmes of the department" (S6.3)(1)(a-e). The vagueness of the wording here is deliberate, because HODs may be responsible for 'recruitment programmes', whatever this means, but they are not responsible for recruitment, and especially not for senior managers. This is, in fact, a responsibility of the executive authority, that is, of the President and/or the relevant minister. The Public Service Act is unambiguous in this regard:

An executive authority has all those powers and duties necessary for –

- The internal organisation of the department concerned, including its organisational structure and establishment, the transfer of functions

within that department, human resources planning, the creation and abolition of posts and provision for the employment of persons additional to the fixed establishment; and

- The recruitment, appointment, performance management, transfer dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities' (PSA S3(7)).

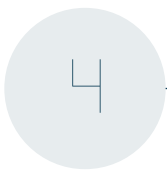
Therein lies a major source of the systemic crisis in government. The Public Service Act encourages political meddling in operational matters. Furthermore, by making a Minister and/or the President responsible for recruitment and wider HR practices, the law makes of every public servant a potential political appointee.

An agenda for reform should start with:

1. The repeal or amendment of section 3(7) of the Public Service Act, to limit the discretion and role of Ministers and the President both in a department's operational matters and the recruitment of administrative and professional staff.
2. Giving the power of recruitment to Heads of Departments as envisaged in the design of the SMS.
3. Setting and applying norms and principles for the recruitment and promotion of senior managers in respect of remuneration, merit, work-appropriate skills, ethics, performance and so on in new legislation - an Administrative Processes Act.

There is no place for naivete when it comes to implementing changes. Politicised administrations, the hollowing out of skills, especially technical skills, managerialism and outsourcing have given rise to a political economy of government based on primitive accumulation. Public institutions are repurposed as vehicles for rent-seeking, for personal enrichment and also to finance multiple, diverse and recurring political campaigns at all levels of the ruling party and of government.

The professionalisation of public administration in South Africa, if carried out with conviction is likely to hit resistance precisely because reform initiatives will restrict or even close down opportunities for state capture. Under these conditions, civil service reform will need to be accompanied by robust and effective policing of the government system.



ELECTORAL COALITIONS AND THE URGENCY OF REFORM

Public administration reform is more important than ever. As the ANC's electoral dominance declines and party-political competition intensifies, South Africa has entered an era of coalition governments. As the 2024 election approaches there is widespread anticipation that the ANC's support will fall below 50% and that it will have to govern in a coalition. The opposition, Democratic Alliance, has formally committed to governing through an alliance should the ANC be unable to form a government. The experience of coalition governments in the municipalities and in the metros, however, has been inauspicious. Governments have tended to be unstable and short-lived. In municipalities where politicians are also administrators, political instability has brought further turbulence to already struggling local administrations. With so much administrative power vested in the executive authority, turbulent national coalitions could bring more volatility to departments already suffering from the problems discussed above.

The upside of the current situation, however, is that in South Africa today a party's performance in government matters more than ever before. Governance, that is, has become an election factor.

This is why public administration reform is so important. It will make several valuable contributions:

1. It will better insulate administrators from political turbulence.
2. It will lay the basis for the recruitment and promotion of civil servants on the basis of ability, as well as the appointment of service providers based on value-for-money.
3. It will help foster professional and impartial public administrations.

To the extent that governance matters for the stability of coalitions or for the reelection prospects of political parties, reform has the potential to generate within the structure of government a productive tension: politicians will seek to hold officials to account who will, in turn, be under pressure to deliver services. Moreover, as the ANC sees power slipping away it may be loath to see other parties or coalitions of parties exercise the kind of influence over public administration that it has these last 30 years. Herein lies South Africa's opportunity to convert a systemic crisis into a systemic virtue.

TECHNICAL DATA

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