



# THE FIVE CS OF THE CONTEMPORARY CRISIS OF GOVERNMENT

AND HOW TO OVERCOME THEM

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**n** **s** new south  
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# Summary

This policy brief identifies five fundamental problems plaguing public administrations in South Africa – the five Cs of the contemporary crisis of government.

1. A **contradiction** between political control and management autonomy;
2. **Confusion** regarding the respective roles of the Office of the Public Service Commission, the Department of Public Service and Administration, the Department of Planning, Monitoring and Evaluation and the Presidency, collectively the 'centre of government';
3. Weak **capability** in departments;
4. A model of **centralising** political power and decentralising government based on the centrality of the ANC as ruling party, and;
5. **Corruption**.

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The paper argues in favour of reforms that resolve the contradiction between political control and management autonomy decisively on the side of management autonomy in public administrations. Here the Public Service Amendment Bill is a useful starting point.

Management autonomy, however, will only improve government performance in South Africa if 1) public servants and officials are suitably capable and 2) if they are accountable to elected politicians and democratic institutions. Hence, we argue:

1. In favour of returning to the Public Service Commission its role as a central human resources institution, vetting candidates and recommending appointments and promotions;
2. Implementing the proposals of the Professionalisation Framework regarding the introduction of a pre-entry examination for candidates to the public service, as well as an induction programme for new appointments and tightening conditions for promotion;
3. Moving the Office of Standards and Compliance from the DPSA to a reformed Public Service Commission, adequately resourced and staffed to monitor government entities compliance with the constitutional norms and principles of public administration and with the powers to enforce its decisions;
4. Over time, establishing the Office of Standards and Compliance as an Administrative Court of Standards and Compliance, with offices in all provinces and with the rights to hear and adjudicate on matters of public administration.

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## Glossary

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### **Bureaucracy –**

A model of public administration based on a hierarchical structure with clear rules, regulations and lines of authority.

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### **Civil Servant –**

Officials who work in any public administration, including national and provincial departments and/or entities, as well as those in municipalities, in the courts and in public enterprises.

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### **Institutions –**

Institutions are repetitive patterns of human behaviour structured by rules, norms, and shared strategies.

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### **Management Autonomy –**

The discretion accorded to senior officials in government and in public enterprises to make HR and operational decisions without inappropriate interference with their work from politicians and in accordance with the norms of public administration.

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### **Politicise/Depoliticise –**

The extent to which politicians are granted powers and functions in public administrations. In this regard, depoliticization actually refers to what Weber called rationalisation, or the instantiation of the autonomy of political and administrative office. It does not refer to a situation where officials are devoid of political values and preferences. Indeed, in a constitutional democracy, civil servants must be 1) partisan to constitutional values and 2) to the elected government of the day.

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### **Professionalisation –**

A situation that arises when government officials conduct themselves according to the norms of S195 of the constitution, (and are sanctioned when they do not) in pursuit of official government policy as determined by the law and the policies of the elected government.

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### **Public Administration –**

Those institutions in government responsible for planning, organising and implementing government policies and programmes.

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### **Public Servant –**

Officials who work in national and provincial governments.

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# Introduction

*South Africa is in the grip of a profound and long-term crisis of government. Over the last two years and especially in 2023 there have been several important developments that hold out the prospect of tackling the causes of these institutional problems. In particular, a number of Bills are or have been before parliament dealing with the professionalisation of the public service and with improvements in public administration more generally.*

*In this working paper, we will consider the Public Service Amendment Bill (RSA, 2023), the Public Administration Management Amendment Bill (RSA, 2022), the Public Service Commission Amendment Act 10 (RSA, 2019) and the Public Administration Laws General Amendment Bill (RSA, 2021). Do they go some way to resolve the fundamental problems of public administration in South Africa, which we argue is a problem of institutionalising public administrations by dealing with contradiction, confusion, capability, centralisation and corruption – the five Cs of the crisis in government?*

# 1

## On Contradiction

There is a contradiction at the heart of public administrations in South Africa that has to be resolved, between political control and management autonomy.

One of the ANC's first and most consequential legislative actions was the introduction of the Public Service Act of 1994 (RSA, 1994). In Section 3 the Act made the President and relevant national and provincial ministers responsible for human resource and operational decisions in government.

At the time the ANC was worried that Apartheid-era officials would obstruct the implementation of the new government's policies and it wanted to be able to bring in persons that would be sympathetic, loyal even, to the party.

An executive authority, the Public Service Act declared, has all those powers and duties necessary for -

1. (a) 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

2. (b) 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).

In effect, the Public Service Act makes each and every public servant in South Africa a political appointment, potentially. The situation in municipalities is even more acute. Not only are all administrative appointments made by elected politicians (councillors) but councillors themselves perform these administrative tasks. In this way the post-Apartheid system of government failed to instantiate a separation between political and administrative office.

After 1997 the potential of the legislative environment was given kinetic force. With growing worries that senior public servants were resisting Ministerial instructions, the ANC introduced a Cadre Policy and Development Strategy, which provided for the "deployment of ANC cadres to strategic positions in the organs of government" (Maserumule, 2007: p.155, see too Butler and Southall, 2015). Appointing party activists in government administrations was possible because recruitment was already a power of the Executive Authority.

## 1.1

# Management Autonomy

The political transition coincided with an international shift to managerialism in public administration. The idea was seemingly simple: government officials should be less bureaucratic, they should have more discretion to make decisions and they should be freed-up from 'red tape'. In 1997, many public service regulations were repealed as well as the staff code (see the Public Service Laws Amendment Act 47 of 1997).

The Public Finance Management Act passed in 1999 was the culmination of this process, giving wide financial discretion to managers in their departments. As Mashupye Maserumule has noted, the "Public Finance Management Act [...], on the one hand, empowers managers yet, on the other hand, the Public Service Regulations seek to empower ministers in the management of government departments" (Maserumule, 2007: p. 161).

In effect new managers' hands are held behind their backs by politicians. This largely explains why after 1996 there have been so many conflicts between Ministers and senior officials. The problem is that senior officials, irrespective of race, could not do their jobs unless their political superiors allowed them to. The likelihood of conflict was built into the very structure of government.

This contradiction between management autonomy in the public service and tight political control has created an enduring antagonism in the structure of government in South Africa. Getting the government to work better means resolving this contradiction on the side of public administration **professionalism**.

## 1.2

# Professionalisation

There is near consensus today that effective governments, that is, those able to implement public policies, are underpinned by autonomous, meritocratic public bureaucracies. (Evans, 1995; Weiss, 1998; Evans and Rauch, 1999; Kattel and Mazzucato, 2018; Mazzucato, Qobo and Kattel 2021).

The organisation of the civil service in democratic countries faces a dilemma

regarding the limits of administrative autonomy, however. On the one hand, public administrations are professionalised when there is meritocratic selection and when career development is not dependent on political loyalty. However, the need to implement public policies that address government agendas requires alignment between the performance management of public servants and respect for democratically defined priorities.

The challenge in reforming government in South Africa can be stated as follows: how to resolve the contradiction between political control and management autonomy in such a way as to strengthen the autonomy and professionalism of the public service, while still

making sure that the bureaucracy is responsible and accountable to its political leaders.

In the next section we will consider the legislative changes that are currently proposed to see how far they go in answering the question above.

## 1.3

# Amending the Public Service Act

There is an unmistakable double movement in the Public Service Amendment Bill (RSA, 2023). In the first place, the powers of the President and of ministers are rolled back. In the second place, management responsibility is granted to director generals and heads of department. This marks a fundamental rebalancing of power relations in government entities in favour of public servants. Or more correctly, the amendments go some way to establish the autonomy of public administration from political office.

Consider some of the key proposed changes:

We have discussed elsewhere how in Section 3(7) of the Public Service Act, Ministers are given responsibility for recruitment and operational decisions in departments, leaving director generals and heads of departments unable to do their jobs unless the politicians choose to delegate their powers to them.

The amendment proposes changing subsection 3(7) to the following:

1. An executive authority—
  1. (a) is accountable for the department in his or her functional area;
  2. (b) is responsible for approving the strategic plan of the department,

including, but not limited to, the department's core objectives, (35) based on its legislative mandate;

3. (c) shall ensure that the head of department's role and responsibilities are aligned to the strategic plan of the department;

4. (d) shall establish clear relationships and facilitate cooperation, coordination and communication with the head of department and (40) other employees of the department;

5. (e) shall hold the head of department accountable for the administration of the department; and

6. (f) may exercise other powers and must perform other duties conferred or imposed on the executive authority by this Act.”; (45)

If the Bill passes, Ministers would no longer have operational control over the departments for which they are responsible. This would pass to senior officials, the Director General and Heads of Department. The amendment proposes, for example, that heads of department be responsible for interdepartmental coordination, implementing the department's strategic plan, managing the department's administration, and in a decisive move away from the spirit and the letter of the

Public Service Act, be responsible for human resources management and “the recruitment, appointment, performance management, transfer, dismissal, remuneration and other career incidents of employees of that department”.

Politicians would be responsible for making sure that such 1) officials acted in accordance with the legal mandate of the department and 2) that their party’s policies were reflected in departmental operational plans . The amendment, that is, introduces a public administration distinction between the ‘what’ of government and the ‘how’, where the President and ministers are responsible for the former and director generals and public officials are responsible for the latter. The Bill’s explanatory memorandum notes that:

“Section 3(7) of the principal Act was redrafted to provide strategic powers to the executive authority and to remove administrative powers from the executive authority to enable the executive authority to focus on providing strategic and policy direction” (p.13)

What is more, consistent with the move to separate political and administrative roles, the amendment bill proposes prohibiting a head of

department or an employee directly reporting to a head of department from holding “political office” (p.10). The bill’s authors explain that the term “political office” refers to those in the “decision making echelon of political parties”. In other words, the amendment proposes making it illegal for office-bearers in political parties to hold positions of authority in the public service. The purpose of such a prohibition is to “ensure that there is a clear delineation between the political and administrative roles and responsibilities” (p.15).

It does raise, however, a thorny issue. How does one prevent the administration from developing its own interests, distinct from the politicians? This was Weber’s great concern and it was Marx’s too.

The amendment does deal with this question by proposing that “If a head of department refuses or fails to fulfil a power or duty [...]” the relevant minister “may report such failure to the President or the Premier”. The Bill thus proposes a political solution in the event of a conflict between the political and administrative sides of government. We will see shortly, however, that another solution is implicit in the proposed amendment to the Public Service Commission Act and in the Democratic Alliance’s proposals.

# 2

## On Confusion

The Public Service Commission (PSC) in South Africa was established shortly after the Union in 1910 as a “central, coordinating personnel advisory institution” (Marais cited in Bain and Nealer, 2012: p. 107). It had powers to make recommendations on appointments, promotions, discipline and other human resource matters in the Union public service (Union of South Africa Act, cited in Bain and Nealer, 2012: p. 107). Each of the provinces had a Provincial Service Commission with similar powers. During the 1970s, however, the PSC’s authority was extended by making its recommendations binding on departments.

Its higher status was associated with a new name, the Commission for Administration. By the 1980s it had become a “vast, powerful and formidable statutory body” (cited in Bain and Nealer, 2012: p. 109) with powers to determine appointments in departments and to shape the latter’s internal organisation. It was also exercising powers far beyond its formal mandate, especially with regards to the homeland governments. In effect, before the end of Apartheid, the Commission for Administration was beginning to rewire Bantustan administrations back into a unitary, South African framework.

This task became urgent after 1994 as newly elected governments needed unified provincial administrations and a unified national public service to get on with their work. They had at their disposal the instruments created by the Interim Constitution of 1993, which

had introduced a national Public Service Commission and nine Provincial Service Commissions. Like the Commission for Administration, the revived PSC had binding powers on a wide range of human resources matters, as well as powers to instruct departments on their internal organisational. In other words, new ANC governments had at their disposal bureaucratic instruments to both build integrated public services and to govern. As we have seen, however, the political transition coincided with a period when bureaucracy was out of fashion in South Africa and internationally and when managerial models of administration had come to the fore.

Between 1994 and 1995 there was what some authors call a ‘silent revolution’ in the history of the Public Service Commission (Bain and Nealer, 2012: p. 116). The Public Service Laws Amendment Act (1997) and the abolition of the Public Service Commission Act (1994) came into effect in 1999. In line with the new managerial ethos in government, these statutes transferred many of the executive functions of the PSC (responsibility for appointments, for example) to line departments themselves. At the same time many of its policy functions were transferred to a newly created Department of Public Service and Administration (DPSA). The PSC and the Provincial Service Commissions were effectively abolished. A problem remained, however. The Public Service Commission is an organ of the Constitution itself. It cannot simply be closed down.

With policy now the responsibility of the Department of Public Service and Administration and recruitment and appointments a responsibility, as we have seen, of Ministers and the President, what was left for the Office of the Public Service Commission to do? Bain and Nealer propose that the commission had become an investigating, monitoring and advisory body, whereas before it had been a policy-making and implementing institution (my emphasis) (Bain and Nealer, 2012: p. 118). In fact, the situation was much more

confusing. In the early 2000s both the PSC and the DPSA issued departments various guidelines; the PSC for HR, the DPSA for organisational design and both the PSC and the DPSA for appointments (Muthien, 8). The situation was made worse with the creation of the Department of Performance Monitoring and Evaluation in 2010 (today the Department of Planning, Monitoring and Evaluation), whose mandate clashed explicitly with that of the Office of the Public Service Commission viz monitoring and evaluation.

## 2.1

# The Constitutionality of the Current Situation

It is far from clear that the current situation is constitutional, however. Reading the sections of Chapter 10 of the constitution together, rather than as discrete and independent clauses, a certain logic is apparent. It has three sections, 195 setting out the 'basic values governing public administration, 196 on the Public Service Commission and 197 on the Public Service. The public service commission is the link between the values that govern public administration and the public service.

In Section 195 the South African constitution sets out values and principles governing public administration, namely that:

1. (a) A high standard of professional ethics must be promoted and maintained.
2. (b) Efficient, economic and effective use of resources must be promoted.
3. (c) Public administration must be development-oriented.
4. (d) Services must be provided impartially, fairly, equitably and without bias.
5. (e) People's needs must be responded to, and the public must be encouraged

to participate in policy-making.

6. (f) Public administration must be accountable.
7. (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
8. (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
9. (i) Public administration must be broadly representative of the South Africa people... (Constitution, Section 195).

The Public Service Commission is constitutionally mandated to "promote" these values and principles. It must also:

1. investigate, monitor and evaluate the organisation, administration, and personnel practices, of the public service;
2. promote measures to ensure effective and efficient performance within the public service;
3. give directions aimed at ensuring that

personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles of section 195;

4. report in respect of its activities..."; and
5. "either of its own accord or on receipt of any complaint:

1. (i) investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
2. (ii) investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies;
3. (iii) monitor and investigate adherence to applicable procedures in the public service; and
4. (iv) advise national and provincial

organs of state regarding personnel practices in the public service..." (Constitution, Section 194(4)).

Surely, merely monitoring, advising and investigating the conduct of the public service does not meet the constitutional standards set out above. "Promoting" the values of public administration or "ensuring" that recruitment and other HR practices are compliant suggests that the PSC also has an enforcement capability?

In this context, does the proposed amendment to the public service commission act go some way to resolve the confusion of roles at the centre of government, that is, between the PSC, the DPSA, the DPME and also the Presidency. Does it establish public administration as an autonomous area of government, granting the commission powers and functions to oversee appointments and to monitor and enforce the constitutional values and norms re public administration?

## 2.2

# The Public Service Commission Amendment Bill (2019)

In its current form the Office of the Public Service Commission does not have its own secretariat and it receives its budget from the Department of Public Service and Administration. This situation compromises the constitutional requirement that the PSC is independent and impartial. The Bill before parliament proposes changing that, by establishing a Secretariat and by requiring that the commission be funded from monies appropriated directly by parliament (S18(1)(a)). In its current form, moreover, the PSC has no authority over local governments. Yet the constitution is explicit that it should have responsibility for all public administrations, including municipalities and

public entities. The Public Service Commission Bill addresses this situation, effectively making the entity a public *administration* commission.

Where the current Bill falls short, however, is in respect of the PSC's role to uphold public administration norms. We saw above, for example, that the constitution requires the commission to "give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles of section 195" (emphasis added) (Constitution, Section 194). The amendment bill interprets 'giving directions' very lightly. That is, it

is not clear whether such 'directions' are binding on departments. The Bill only proposes that departments must report to Parliament within 60 days "on the manner in which any such decision was implemented or otherwise dealt with" (Section 13(e)). The addition in the last sentence of the clause 'or otherwise dealt with' gives departments or municipalities or public enterprises much leeway to interpret a PSC direction in their own way. Does this meet the Constitution's standard that a direction should aim at ensuring certain kinds of HR practices (Constitution 196(4)(d))?

The problem lies in the fact that the drafters of South Africa's constitution had in mind, at least with respect to HR practices, a more rather than less bureaucratic model of public administration. Even if by 1996 they had watered down the powers of the PSC the Constitution still conceived of an independent, impartial centralised secretariat with oversight and influence over who is employed in the public service, in local government, in the court administrations, and in state-owned enterprises and under what conditions. Furthermore, the Constitution wants such a commission to monitor the ongoing behaviour of officials and intervene if it departs from the standards of conduct laid out in Section 195.

Irrespective of whether the PSC amendment bill goes far enough or not, the current organisation of government is almost certainly unconstitutional. There are no extant state departments or offices with the authority to ensure that government entities conduct themselves ethically, efficiently, fairly, equitably, impartially, without bias, accountability and so on. The transfer in 1997 of the PSC's executive responsibilities to line departments and, as we have seen, to the President and Ministers only makes matters worse. Politicians, by definition partisan and self-interested, are expected to be the guardians of the Constitution's values. This is an untenable situation, as it has resulted in the systemic and widespread failure and corruption of public entities over the last two decades. It was also the mechanism that made state capture possible.

The Public Administration Management Bill of 2008 (RSA, 2008) recognised this deficiency and addressed it by creating an office of Standards and Compliance charged with monitoring government practices and enforcing their compliance. The office was created by the 2014 Public Administration Management Act, not in the PSC, however, but in the DPSA, and without the powers or the resources to perform its role. The office continues to languish in the department, a fossil of a short-lived past. We will return to this.

In August 2023, Dr. Leon Schreiber, on behalf of the Democratic Alliance, tabled the Public Administration Laws General Amendment Bill (RSA, 2021) before parliament. It was rejected by an ANC majority in the portfolio committee on public service and administration. While ostensibly an instrument to end 'cadre deployment', the Bill actually achieves something else as well. We saw earlier that the power of ANC politicians to appoint cadres in government administrations arises from Section 3 of the Public Service Act of 1994. Strangely, Schreiber's bill does not propose amending or retracting that Section. It also does not go as far as some of the changes proposed by the DPSA in its amendment to the Public Service Act.

It does go some way, however, in resolving the current confusion about the PSC's role by, in effect, re-establishing it as a 'central, coordinating personnel institution' with statutory powers to enforce its decisions - a modern day Commission for Administration. It proposes, for example, that the PSC be given strong powers to enforce that recruitment, transfers and promotions in public administrations are consistent with the values and standards of S195 of the Constitution, as well that they are based on ability, demonstrated proficiency and made on the basis of merit (RSA, 2021: Section 9). In this regard, the Public Service Commission would effectively have powers similar to what are called **administrative courts** in some other countries, notably France. We will return to this in the conclusion.

# 3

## On Capability

Let us return to the challenge of reforming government in South Africa. We have defined it as how to resolve the contradiction between political control and management autonomy so as to strengthen the autonomy and professionalism of public administrations, while still making sure that the bureaucracy is responsible and accountable to its political leaders?

We have discussed how the proposed amendments to the Public Service Act will go some way to reduce the discretion of politicians in HR matters and in operational decisions in national and provincial departments. This is not sufficient to reduce inappropriate political interference in local governments, agencies or state-owned companies. Even if public administrations are successfully 'depoliticised', however, and the management autonomy of government officials is instantiated, this will not necessarily improve government performance. Rationalising government administrations is a necessary but not sufficient condition of better government. What matters is the character and the capability of civil servants themselves.

The Professionalisation Framework as elaborated by the National School of Government (2022) deals with this aspect of reform and if accompanied by the changes discussed above could go some way to improve the capabilities of public administrations. In particular, the framework document proposes a "professionalisation value chain" based on five pillars: recruitment and selection, induction and onboarding, planning and performance management, continuing learning and professional development and

career progression, succession planning and management of career incidence of Heads of Department (NSG, 2022: p. 67 – 95).

It anticipates "tightening pre-entry requirements" for middle and senior managers (NSG, 2022: p.10) so that, for example, no manager has less than a National Qualifications Framework level 8 qualification (equivalent to a university Honours degree) and those at the highest level of the Senior Management Service have a level 9 qualification (equivalent to a Master's degree). It also moots conducting "integrity assessments" and "competency assessments" on candidates whilst also considering "pre-service entry exams" for appointment into the public sector (NSG, 2022: p. 10). The National School of Government envisages all new civil servants participating in "induction programmes" before they assume office. For those already in service, the framework moots "reorientation programmes".

In principle, all these proposals are a good idea. The proof is in the eating, though, for government-created schools of public service training have a poor record. The South African Management Development Institute (SAMDI), founded in 1993 and originally attached to the Public Service Commission was found to be inadequate and its training activities were suspended (Franks, 2014: p. 53). Later, in line with the unbundling of the PSC's roles and their dispersion across other government entities, the institute was moved to the Department of Public Service and Administration. In 2006, it was reconstituted as the Public Administration Leadership and Management Academy (PALAMA).

A survey of government departments in 2011 found that 90% of them chose not to use PALAMA for training (cited in Franks, 2014: p. 53) and the ANC's Polokwane national conference in 2007 and the National Development Plan worried about 'deeply rooted systemic' problems in performance of public servants. In 2014 PALAMA was remade again, this time as the National School of Government (NSG). The Public Administration Management Act (PAMA) of 2014

envisaged, however, that the NSG would not be a unit within DPSA but a higher educational institution in terms of the Higher Education Act (1997). Presumably, this was done to give it status as more than a training entity, especially in relation to the various schools of government at multiple South African universities. The proposed amendment to the PAMA reverses this decision and suggests, instead, that the NSG become a government department in its own right.

## 4 — On Centralisation

Underpinning the contradiction between political control of departments and granting senior officials management autonomy is a tension between centralisation and decentralisation.

The move to management autonomy effectively shifted a wide range of decision-making from central government institutions to sometimes thousands of entities spread over a wide geography. Public procurement, for example, which, historically, was conducted through a State Tender Board (and Provincial Tender Boards) was decentralised to Supply Chain Management units in departments and entities at every level of the state (Brunette, Klaaren and Nqaba, 2019). We have seen above how human resource functions too were shifted away from the Public Service Commission to government departments.

At the same time, the African National Congress has long wanted centralised control over the state. The task of the ANC was to "extend the power of the National Liberation Movement (NLM) over all levers of power: the army, the police, the bureaucracy, intelligence structures,

the judiciary, parastatals, and agencies such as regulatory bodies, the public broadcaster, the Central Bank and so on' (ANC, 1998).

How was the circle to be squared? In other words, how was political control over the levers of power to be reconciled with management autonomy and decentralisation? Writing in the ANC's internal journal, *Umrabulo*, in 1996, Joel Netshitenzhe mooted the policy of cadre deployment to extend ANC control over all 'centres of power' (Netshitenzhe, 1996). In other words, central control of administrations would be achieved by disciplining officials through party channels, while allowing decentralisation in the configuration of the State.

In other words, the ANC as a political party would function as the pivot point in a state system with numerous elements. This is why it was so important for Ministers and the President, politicians, that is, to have a decisive role in decisions regarding appointments and operations in government departments and municipalities. This is the mechanism that has fallen profoundly into crisis as the ANC

became more and more divided, especially after the 2009 Polokwane elective conference (see Chipkin, 2022 and Chipkin, Vidojevic, Rau and Saksenberg, 2022). The ANC itself lost the ability to play a coordinating and disciplining role at the centre of the state.

Fortunately, there is another way of squaring the circle; one implicit in the 1996 constitution and a model of 'joined-up' government developed in the original Public Administration Bill of 2008.

We have already seen that in Chapter 10 of the South African constitution, Section 195 sets out a list of basic values and principles that must govern administration in "every sphere of government, organs of state and public enterprises" (1996 Constitution S195(2)(a-c)). We have seen too that the Public Service Commission is established as a constitutional body to promote these values and principles. The constitution also requires the government to pass "national legislation" in this regard (S195(3)).

This was what the Public Administration Management Bill was supposed to be, a national law 1) setting out the norms and standards for all public administrations in every department and entity across the whole of government, and 2) establishing institutions to monitor and enforce

that they were being observed. In this regard it proposed an Office of Standards and Compliance. At the time the Department of Public Service and Administration called the bill the basis of a 'single public service', though what it more accurately envisaged was a unified public administration.

It is not hard to see that this model of joined-up government challenged the preference of the ANC for central power through the party itself. This explains why when the legislation was passed in 2014 the Office of Standards and Compliance was reduced to a nominal unit in the Department of Public Service and Administration. The model does, however, reconcile a highly decentralised public administration where senior officials have wide management autonomy with centralised, normative oversight and control over appointment and promotion processes, over remuneration and over the general conduct of officials. Departments, public companies and municipalities are free to appoint whoever they wish to perform roles they deem fit, provided that such appointments conform to constitutional norms as monitored and enforced by the PSC. As Henry Ford is supposed to have said about his model T motorcar, "they can have any colour provided its black", public administrations can have any candidate provided that they are 'fit and proper'.

# 5

## The Way Forward

This policy brief has identified five fundamental problems plaguing public administrations in South Africa.

1. A contradiction between political control and management autonomy;
2. Confusion regarding the respective roles of the Office of the Public Service Commission, the Department of Public Service and Administration, the Department of Planning, Monitoring and Evaluation and the Presidency, collectively the 'centre of government';
3. Weak capability in departments, and;
4. A model of reconciling centralised political power and decentralised government based on the centrality of the ANC as ruling party.

We support reforms that resolve the contradiction between political control and management autonomy decisively on the side of management autonomy in public administrations. Here the Public Service Amendment Bill is a useful starting point.

Management autonomy, however, will only improve government performance in South Africa if 1) public servants and officials are suitably capable and 2) if they are accountable to elected politicians and democratic institutions. Hence,

1. Return to the Public Service Commission its role as a central human resources institution, vetting candidates and recommending appointments and promotions;
2. Implement the proposals of the Professionalisation Framework regarding the introduction of a pre-entry examination for candidates to the public service, as well as an induction programme for new appointments and tightening conditions for promotion;
3. Move the Office of Standards and Compliance from the DPSA to a reformed Public Service Commission, adequately resourced and staffed to monitor government entities compliance with the constitutional norms and principles of public administration and with the powers to enforce its decisions;
4. Over time, the Office of Standards and Compliance should become an Administrative Court of Standards and Compliance, with offices in all provinces and with the rights to hear and adjudicate on matters of public administration.

# Conclusion: On Corruption and Criminalisation

Public Service reform cannot be achieved through legislative fiat, however. This is what the ANC understood intuitively at the time of the transition from Apartheid. It embedded its officials in public administrations as a way of transforming their cultures and aligning their norms with the party's policies. Implicitly, then, the ANC recognised that public administrations are not reified institutions that exist apart from the "shared understandings and resulting behaviour of participants" (Crawford and Ostrom, 1995: p. 583).

Public administrations are institutions in the sense that they are "enduring regularities of human action in situations structured by rules, norms, and shared strategies, as well as by the physical world" (Crawford and Ostrom, 1995: p. 582). Norms refer to the shared perceptions of individuals in a group about what constitutes acceptable and unacceptable behaviour in a situation. Rules are required because actions or behaviours that are inconsistent with such norms must be sanctioned and trigger punishments by an authority. Shared strategies refers to the fact that institutions are purposive in nature, emerging in pursuit of a specific goal.

With this conception in mind, we can say that the problem with the public service in South Africa is that public administrations have not been effectively institutionalised. In the first place, they have suffered from goal confusion. Do they pursue their formal legislative mandates, the policies of the elected, ruling party, the dictates of powerful

political figures pursuing their own agendas? Secondly, there are seldom consequences for poor performance or the consequences do not necessarily signal what virtuous conduct is supposed to be. In other words, behaviour in administrations is not adequately structured by rules. Finally, despite the Constitution being clear on what public administration values should be, there are no shared norms framing what constitutes admissible conduct in departments and agencies and municipalities.

Corruption in government, like in private companies, is a symptom of such deinstitutionalised administrations. The general definition of corruption as the abuse of public office for private gain can better be understood in relations to norms, rules and goals. In the first place, the official substitutes their own goals or those of their family, friends, or political party for those of the organisation. In the second place, corruption involves unacceptable behaviour in the workplace, that is, the violation

of workplace norms. In the South African context the violation of norms and the substitution of goals, while formally impermissible, hardly attracts sanctions. Corruption in government departments, municipalities and companies is evidence, that is, of 1) an absence of substantial rules and/or 2) rules that do not sanction violations of workplace norms.

Therein lies the problem of trying to control and discipline a public administration via a political party. Even if the goals of the party and the particular public administration broadly align, the kind of behaviour that is deemed acceptable in a party – personal loyalty, getting rich, living large, for example - might not accord with the norms required for a bureaucracy to function properly –

commitment to public service, ethical standards, setting aside personal desires. Moreover, the party's rules invariably do not sanction behaviour that is inappropriate in the office. This is the case in South Africa. In contexts where there is little or inadequate enforcement of norms through rules, corruption has morphed from a case of a few 'bad apples', that is, exceptional violations of the norms of the office, to the wholesale substitution of public administration norms by self-interested organisations, political networks and criminal organisations. None of these problems can be addressed simply through legislative changes, though the changes discussed above are a good start. They will go some way to defining norms for public administration across the country and setting rules for enforcing them.

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