



Choosing Our New Police Leadership¹

1. Introduction

One of the hallmarks of a participatory democracy is that it provides avenues for the populace – individually or through their organisations – to take part in political decision-making and the development of public policy continuously; not just by casting a vote every few years.

The South African Constitution recognizes this. For example, section 59(1)(a) provides that the National Assembly must “facilitate public involvement in [its] legislative and other processes”. Similar provisions require the same of the National Council of Provinces, provincial legislatures, and municipal councils. These provisions have given rise to one of the jewels of our democracy – the way in which almost all legislation, and many major policy instruments, are subjected to a process of public comment and input before being finalised.

But democratic participation should not be limited merely to providing opportunities for public comment on laws and policies. One area where participation should also be encouraged is in the appointment of people to key public offices. Once again, the Constitution recognizes this, for example by creating the Judicial Service Commission, which provides a mechanism for the public assessment of nominees for the Bench.

There is also some constitutional encouragement of public participation in the selection of officers of the ‘Chapter 9 Institutions’ or State Institutions Supporting Constitutional Democracy as they are officially known: the Public Protector, the Auditor-General, the Human Rights Commission, among others. Section 193(6) states that “the involvement of civil society in the

recommendation process [for office-holders in these institutions] may be provided for as envisaged in section 59(1)(a).” Last year, in an exemplary application of this section, the National Assembly undertook an open and participatory selection process for the new Public Protector.

There are, however, certain other vital public offices to which people can be appointed with no public input or involvement. Among them are the posts of National Police Commissioner and head of the Directorate for Priority Crime Investigation – better known as the Hawks.

2. The Importance of Police Leadership

The quality and experience of leadership is always of importance, but in some organisations it is particularly significant. The police service is one such.

- The police have special powers that other state agencies lack, specifically the authority to arrest people and to curtail their exercise of a variety of rights – freedom of movement, of speech, of association, etc. They are empowered, under certain circumstances, to use force, to search and seize property, and even to adopt potentially lethal methods in order to combat crime. In other words, the police pose great potential danger to the public, and it is crucial that they are led by capable people, well-versed in human rights, and able to set an example of policing as a public service.
- The SAPS is a huge organisation, with 156 000 armed officers and a further 40 000 administrative and support staff. It has an annual budget of R87 billion. Clearly, the top leadership of

such a vast entity needs to have excellent management skills, and preferably a long experience in different aspects of policing.

- Police forces are strictly hierarchical structures; members occupy defined ranks and are required to obey orders and instructions more or less without question. Given this structure, good leadership at the top will tend to spread its influence all the way down; conversely, if the top echelons are staffed by people who lack integrity or are simply incompetent for whatever reason, this too will have its effects in all the subordinate levels of the force.
- Loyalty tends to play a large part in the make-up of a police service. In the case of SAPS, the vast majority of its members join it at a very early age, often as their first job, and stay for their whole working life. Being in uniform provides a sense of corporate identity, and the fact that policing is a dangerous and risky profession builds mutual dependence among its members. All these factors can work in favour of a strong and effective police service but, if a bad example is set at the top, they can also exacerbate negative tendencies, such as authoritarianism and the loss of an ethos of public service.
- It is trite to say that crime remains a serious problem in South Africa. Although some offences have shown a general long-term decline, it is striking that murder rates have gone up by 20%, and aggravated robbery by 31%, since 2012. Where the Hawks are concerned, their arrest numbers have gone down from 14 793 in 2010 to 5 847 in 2014, while convictions have declined from 7 037 to 1 176. While these trends can certainly not be blamed on poor or unstable leadership alone, it is fair to assume that this is one of the factors behind SAPS' reduced performance.
- Finally, and of particular importance in our country at present, the police service must act impartially and independently and without allowing itself to be influenced by political or commercial interests. If it fails in this regard its legitimacy will soon be lost, and with that its ability to combat crime. It will also very likely become an instrument of oppression, rather than of public service.

The tone of professionalism and impartiality must be set at the top, where there will always be political pressures and commercial temptations.

3. A Poor Track Record

Since 1995, South Africa has had four permanent and four acting National Police Commissioners. General George Fivaz served a five-year term from 1995 to 2000 and was followed by General Jackie Selebi, who was suspended for corruption towards the end his second five-year term, and subsequently sentenced to 15 years in prison. Selebi's acting replacement, Lt-General Tim Williams, resigned after a year in protest against being forced to appoint Richard Mdluli to the post of Head of the SAPS crime division.

In 2009 General Bheki Cele was appointed commissioner, but was dismissed for maladministration only three years later. While Cele was on suspension, the post was filled by an acting commissioner, Lt-General Nhlanhla Mkhwanazi. His appointment lasted only nine months and came to an end when he tried to suspend Richard Mdluli as head of crime intelligence.

The next permanent appointment was General Riah Piyega, who also lasted three years before being suspended when a board of enquiry found her unfit for office following the Marikana shootings and other leadership failures. Lt-General Julius Phalane followed as acting commissioner for 20 months, by the end of which (May 2017) he was being investigated by the Independent Police Investigative Directorate for alleged corruption. The current acting commissioner, Lt-General Lesethja Mothiba, has been in his post for last three months.

The situation at the Hawks is no better. The first Director, General Anwar Dramat, was suspended, and then resigned, in 2014 when he began to investigate criminal allegations against people regarded as being close to President Zuma. His replacement, General Berning Ntlemenza, was suspended in June this year when the High Court set aside his appointment on the grounds that he was not a fit and proper person to hold such office. Since then, Lt-General Yolisa Matakata has been acting head of the Hawks.

Of all the permanent appointments, the only one whose full term came to a natural end, without premature suspension, resignation or dismissal, was the first of them, General Fivaz. Most of the

acting appointments, too, ended prematurely, and none of them (so far) went on to be appointed permanently. In any organisation, such a regular turnover of leadership would be destabilizing, but in the SAPS' case it is all the more so since it is clear that some of the dismissals – Selebi, Piyega, Ntlemeza – followed findings of unfitness for office; while others – Williams, Mkhwanazi, Dramat – were the result of their refusal to bow to political pressure. It does not take much to imagine the effect of all this on the morale and ethos of police officers of all ranks.

4. A New Appointments Process

4.1. The National Development Plan

Section 207(1) of the Constitution provides that the President “must appoint a woman or a man as the National Commissioner of the police service...” There is no requirement for the President to consult anyone about the appointment, and neither is there any requirement for a public nomination or selection process. The head of the Hawks is appointed by the Minister of Police; again, he or she is not required to consult anyone.

The National Development Commission took note of the state of police management and proposed as follows in the National Development Plan (NDP):

“The National Commissioner of Police and Deputies [presumably including the head of the Hawks] should be appointed by the President on a competitive basis. A selection panel, established by the President, should select and interview candidates for these posts against objective criteria. The President should appoint the National Commissioner and Deputies from recommendations and reports received from this selection panel. This would enhance the incumbents’ standing in the eyes of the community and increase the respect accorded to them by the peers and subordinates.”

Despite the NDP having been adopted as government policy, these recommendations have not been acted upon.

4.2. The NGO Proposal

Against this background two prominent NGOs, Corruption Watch (CW) and the Institute for Security Studies (ISS), have launched a public awareness campaign to press for “a transparent selection process that solicits public participation and is set against clear, merit-based criteria, as recommended in the NDP, in the appointment of the SAPS National Commissioner and the head of the Hawks.”

More details of the campaign and its rationale can be found at <https://issafrica.org/media-resources/videos-and-infographics/brochure-unwanted-police-commissioners>

In essence, CW and ISS believe that a transparent selection process would hold two key advantages. Firstly, the public and, equally importantly, the tens of thousands of officers who would have to serve under the new commissioner, would be much better informed of the qualities, experience and characteristics of the candidates. The successful candidate, in turn, would probably receive more public and police support, and would be able to do his or her job more effectively.

Secondly, an open selection process brings with it opportunities for checking on the candidates’ backgrounds. The media, civil society organisations, the various police trade unions, and the public at large would all be able to come forward with relevant information. All of this would reduce the likelihood of allegations of unfitness emerging after the appointment has been made.

To these reasons may be added a third. Citizens are entitled to the assurance that holders of high public office have been chosen carefully and for the appropriate reasons; and that the officials concerned can therefore be relied upon to carry out their duties diligently. After all, when it comes to judges, police commissioners, the Public Protector, human rights commissioners and the like, those duties very often have a direct and far-reaching effect on citizens’ fundamental rights. Such an assurance can ultimately only be provided if the public is able to observe, and preferably participate in, the selection process.

Given that both the SAPS and the Hawks are currently under the command of acting heads, and that Police Minister Fikile Mbalula has promised that permanent appointments will be made before the end of this year, the campaign is an urgent one. Ideally, according to CW and ISS, a ‘police leadership selection panel’ should be established. It would develop selection criteria, and once applications are received (following public advertising of the posts) it would interview shortlisted candidates. Public submissions would be considered, a scoring process would be undertaken, and a list of five names would then be presented to the President (in the case of the national commissioner), or the police minister (in the case of the head of the Hawks), who would make the final appointment.

Both the NDP and the NGO proposals, which are essentially similar, closely mirror the long-established procedures for the selection of judges. It may be argued that the judiciary, as an independent arm of government, requires this kind of transparent appointment process; and that since the heads of the SAPS and the Hawks are civil servants directly responsible to their political principal, the Minister of Police, their appointments can be made directly by the executive. Such an argument, however, risks overlooking the public's deep interest in who occupies these extremely powerful and influential law and order roles. The less than satisfactory track record of recent appointments only substantiates that interest.

5. The National Director of Public Prosecutions (NDPP)

If the general tenor of appointments at the top of the SAPS has been poor, the same applies to the National Prosecuting Authority. It has had seven heads (known as National Directors of Public Prosecutions) since 1998. Bulelani Ngcuka resigned in 2004 and was replaced by Vusi Pikoli. Adv Pikoli was suspended by President Thabo Mbeki when he began to investigate the allegations against National Police Commissioner Selebi that eventually saw Mr Selebi jailed. Despite the Ginwala Commission of Enquiry recommending Pikoli's restoration to office, he was dismissed in 2008 by President Kgalema Motlanthe.

Next was Mokotedi Mpshe, the acting NDPP who famously dropped the corruption charges against Jacob Zuma. Adv Mpshe was followed by Menzi Simelane, who served three years before his appointment was set aside by the Constitutional Court on the basis that he was not a fit and proper person for the job. Nomgcobo Jiba (who has since been struck off the roll of advocates for her part in trying to shield Richard Mdluli from prosecution) then acted as NDPP for a short period before Mxolisi Nxasana was appointed in 2013. Eighteen months later Mr Nxasana resigned after President Zuma had instituted an enquiry into his fitness for office. Mr Nxasana initially fought against

attempts to remove him, but later agreed to go after accepting a payout of R17 million.

The current NDPP, Shaun Abrahams, was appointed in June 2015. Few commentators appear to think that he is either sufficiently independent or sufficiently competent, especially given his embarrassing decision to drop charges against then finance minister Pravin Gordhan a mere three weeks after instituting them, and his failure to date to investigate the reams of evidence that have emerged concerning state capture.

If the public have an interest in who is appointed to head the police, and how the selection and assessment of candidates takes place, then they surely have a similar interest in the way the head of the prosecution service is chosen. Efforts to combat crime and uphold the rule of law depend as much on the proper performance of duties by the NPA as they do on the police. At present the NDPP is directly appointed by the President in terms of section 179(1) of the Constitution. A change to bring this method of appointment more into line with that of judges, or with the proposed new CW/ISS idea for police leadership, seems advisable.

6. Conclusion

When the drafters of the Constitution provided for the appointment of the head of the police service (and the prosecuting authority) to be made directly by the President, it was a reflection of the seriousness with which they viewed these posts. They assumed that the President would properly apply his or her mind, and make these decisions as objectively as possible, and certainly without undue political or personal considerations. That assumption has unfortunately proved to have been naïve. A new, public and transparent appointments process, which circumscribes the available choices while still leaving the final decision to the President, would surely serve the public interest far better.

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¹ Much of the information in this paper is drawn from presentations made at a roundtable discussion on the topic held on 10th August 2017 in Cape Town. The speakers were Mr David Lewis and Ms Kavisha Pillay of Corruption Watch; Mr Gareth Newham of the Institute for Security Studies; and Judge Kate O'Regan, former justice of the Constitutional Court. The roundtable discussion was sponsored by the Hanns Seidel Foundation.