A PROPOSED MODEL FOR THE APPOINTMENT AND DISMISSAL OF THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE: A COMPARATIVE STUDY

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Abstract

When South Africa's first democratically elected president was inaugurated on 10 May 1994, South Africans were anxious to see who would be leading the police service. Nelson Mandela followed his heart without bowing to political pressure and appointed seasoned police official Commissioner George Fivaz. Although the Interim Constitution Act 200 of 1993 was silent on the powers of the President to appoint the national commissioners, this appointment was made in terms of section 214(1) of that Act. At the time George Fivaz's term expired, Mandela was also bowing out of the political limelight. When Thabo Mbeki assumed the presidency in 1999, he appointed Jackie Selebi, a former Umkhonto we Sizwe (MK) cadre, who came from the Department of Foreign Affairs without any policing experience. This appointment was made in terms of section 207 of the Constitution of the Republic of South Africa, read with section 7(1)(a) of the South African Police Service Act 68 of 1995. Section 8(1) of the South African Police Service Act stipulates that 'if the National Commissioner has lost the confidence of the Cabinet, the President may establish a board of inquiry to inquire into the circumstances that led to the loss of confidence, compile a report and make recommendations.'

After serving his first term, reports of Selebi's involvement in the criminal underworld began to emerge. As a result of these reports, the then Directorate of Special Operations (the Scorpions) investigated Selebi's involvement in corrupt activities. In 2007, Selebi was charged inter alia with two counts of corruption; in 2010, he was found guilty of corruption and sentenced to 15 years' imprisonment. Surprisingly, on 2 August 2009, President Jacob Zuma appointed General Bheki Cele, who also came from an MK background without any policing experience, as the third National Police Commissioner.

Within a year, reports of Cele's involvement in illegal lease deals began to emerge and the office of the Public Protector was called in to investigate the allegations. As a result of its findings of improper conduct and maladministration, he was suspended in 2011 and a commission of inquiry was established in terms of section 8(1) of the South African Police Service Act 68 of 1995 to find out whether the Commissioner was fit to hold office. General Cele was fired for maladministration and corruption and was replaced by General Riah Phiyega, who also did not have any policing experience. A few months after her taking office, the Marikana incident occurred and all the blame for it has been directed at the National Commissioner, although the commission has not yet finalised its mandate. In view of the above-mentioned incidents, it is clear that there is a problem

UNISA university of south africa PRESS

Journal of Law, Society and Development 68
Vol 1(1) 2014 pp 68–89
ISSN 2313-8289

with the way in which the National Commissioner is appointed. This article seeks to unravel the powers of the president in appointing the National Police Commissioner and discuss the cases of the two former incumbents who bowed out of office in disgrace without completing their terms of office. It also includes a comparative study with countries such as Kenya, Northern Ireland, Uganda, Canada and selected countries from the Caribbean islands. As a way forward, a new model for appointing and dismissing the National Commissioner for South Africa is proposed.

Key words: National Police Commissioner, appointment, dismissal, security of tenure, South African Police Service Act 68 of 1995, specialist skills, Public Protector

INTRODUCTION

Ever since the appointment of Jackie Selebi and Bheki Cele as South African Police Commissioners, questions have been raised as to whether their lack of policing experience could have helped the police to move forward. These questions seem to have proved right in the sense that the two gentlemen bowed out of office in disgrace without completing their terms of office. This paper therefore seeks to discuss the powers of the president to appoint and dismiss the National Police Commissioner as outlined in section 207 of the Constitution as well as sections 7 and 8 of the South African Police Service Act 68 of 1995. The reason for this scrutiny is that presidents throughout the world dominate their police by virtue of the nature of their regimes and the force of their personalities. In theory and in practice presidents have complete authority over their police. Legislative provisions usually mean they can direct police operations, for example. They also control the appointment and tenure of their commissioners. This has a negative impact on the security of tenure of such commissioners. It follows that the public perception on the independence of police commissioners is also influenced negatively. This has proved disastrous for South Africa. This article seeks to address these problems and to propose a new model for the appointment and dismissal of police commissioners in South Africa.

THE SITUATION IN SOUTH AFRICA

The role of the president

The role of the president in policing matters differs from country to country, but in South Africa, section 207(1) of the Constitution states that 'the President as head of the national executive must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service'. Furthermore, section 207(2) states that the National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and the directions of the cabinet member responsible for policing. Subsection 3 of section 207 of the Constitution further states that the National Commissioner, with the concurrence of the provincial executive, must

appoint a woman or a man as the provincial commissioner for that province; however, if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties. The provincial commissioners are responsible for policing in their respective provinces as prescribed by national legislation and subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2). These roles are carried out in conjunction with the provision of sections 6 and 7 of the South African Police Service Ac 68 of 1995. If the National Commissioner has lost the confidence of the cabinet, the president may establish a board of inquiry consisting of a judge of the Supreme Court as chairperson, and two other suitable persons, to inquire into the circumstances that led to the loss of confidence, compile a report and make recommendations. This is done in terms of section 8(1) of the South African Police Service Act.

The role of the National Police Commissioner

Little is known about the role, background and political or administrative functions of police commissioners. There are no systematic comparisons of their social origins, career paths, rewards, or philosophies of policing. However, in South Africa, section 11(1) of the South African Police Service Act stipulates that:

> 'the National Commissioner may exercise the powers and shall perform the duties and functions necessary to give effect to section 205(1) of the Constitution. (2) Without derogating from the generality of subsection (1), the powers, duties and functions referred to in that subsection shall include the power, duty and function to:
>
> - develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year;
> - determine the fixed establishment of the Service and the number and grading of posts;
> - determine the distribution of the numerical strength of the Service after consultation with the board;
> - organise or reorganise the Service at national level into various components, units or groups;
> - establish and maintain training institutions or centres for the training of students and other members;
> - establish and maintain bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, which may be expedient for the general management, control and maintenance of the Service, and
> - perform any legal act or act in any legal capacity on behalf of the Service.'

The problems associated with the current model

According to Van Heerden (1994, 57), policing is a specialised field. However, the last three National Police Commissioners either did not or do have any policing experience. There are two schools of thought about whether a National Police Commissioner should be a civilian or a career police official. Bowman (2013, 1) is of the opinion that policing is a specialised profession and not just a job – it must therefore be led by career police officials. The label 'profession' is often applied to a set of specialised skills that are transferable through training and experience. Profession also implies the development of objective work standards articulated through policies and procedures that define tasks and desired outcomes. While applying skills and standards is critical in defining a traditional model of professionalism, more essential is an emphasis on autonomous expertise, independent judgement and the service ideal.

On the other hand, the second school of thought is of the view that there is no need for an imcumbent to have had policing experience in order to manage a police agency. According to Schulte (1996, 3), in view of the increasing complexity and the broader range of police operational situations, a high standard of interpersonal and communication skills is being expected of the head of the police service, combined with the capability of using problem-solving techniques that are in line with the Constitution.

The police manager is facing more demanding expectations regarding both the quality and the rapidness of his or her performance as a manager and is constantly exposed to more intricate and comprehensive policing situations (Schulte 1996, 3). This includes information technology such as data recording and evaluation and research work on the basic legal fundamentals before the decision-making process is embarked upon. In view of the deeper European and international cooperation nowadays, there is a particular need to have legal and political or institutional know-how and interpersonal skills. The primary factor in each leadership or management activity is a sound professional leadership or management competence. The police manager must have acquired the professional know-how appropriate to his or her career level and must be able to professionally solve problems typically arising at that particular level (Schulte 1996, 3). He or she needs no in-depth or specialist skills such as those the workforce at an intermediate organisational level normally have. Instead, the police manager should be able to activate the know-how of the members of his or her organisation. One further element of leadership skills is to be familiar with various techniques, such as problem-solving and leadership techniques.

Therefore the handling of methodology is included in the leadership or management function. Police managers should have a managerial qualification to organise the force or the district they are responsible for (Schulte 1996, 3). Somebody being partly in charge of a police organisation must also be able to manage him- or herself. Efficient time management, for instance, is an essential key element. Representative skills require the capability to act convincingly both in the internal organisation and externally. Besides these more general requirements, one further key element of the successful leadership

or management function is pro-active visionary planning. Our society is indeed faced with an explosion of knowledge. In modern times, the half-life period of knowledge is not more than between four and six years. Schulte (1996, 3) believes that it is important that the police take these circumstances into consideration and be prepared for any possible outcomes.

It is in the light of the above requirements that we now discuss the tenures of Commissioners Fivaz, Selebi and Cele.

THE APPOINTMENT OF GEORGE FIVAZ

John George Fivaz joined the former South African Police in 1964 and underwent his basic police training at the Pretoria Police College. During his career, he served in many positions doing normal police duties in various fields such as patrolling, charge office duties, attending to complaints, crime detection, management, work study and police administration.

He also commanded various units, such as the Detective Branch and Efficiency Services at head office, Pretoria. He holds a BAdmin degree and he is also fully qualified as a work study officer and police administrator. Fivaz also visited and studied police management styles and structures in Canada, the United States, Europe and Southern America (South African Police Service 2013). President Nelson Mandela appointed him National Commissioner of the South African Police Service on 29 January 1995. After his appointment, he faced the challenge of amalgamating the 11 police agencies of the past into one South African Police Service. At the same time, he had to manage the adoption of a new style of policing for South Africa, namely community policing. He was also responsible for transforming the police service into an effective and acceptable policing agency for South Africa (South African Police Service 2013). George Fivaz retired in January 2000 and was succeeded by Commissioner Jackie Selebi. Commissioner Fivaz will be remembered for his work in amalgamating the 11 policing agencies of the past into one united South African Police Service and for laying the foundation for a new democratic policing service for South Africa. He has also played a constructive role in the formation of the Southern African Regional Police Chiefs Coordinating Organisation (SARPCCO) in order to enhance cooperation between policing agencies in the southern region of Africa (South African Police Service 2013).

THE RISE AND FALL OF JACKIE SELEBI

Jacob (Jackie) Sello Selebi (born 7 March 1950 in Johannesburg) is the former President of the African National Congress Youth League (ANCYL) (1987–1991), and a former president of Interpol. Selebi was a representative of the Soviet Union's World Federation of Democratic Youth in Budapest, Hungary, from 1983 to 1987. In 1987 he was elected

head of the ANCYL while in exile in Zambia. In the same year, he was appointed to the National Executive Committee of the ANC. In 1991 he was made responsible for the repatriation of ANC exiles back into South Africa, and was appointed head of the Department of Welfare of the ANC in 1993. In 1994 he was elected as an ANC Member of Parliament. From 1995 to 1998, Selebi served as the South African ambassador and permanent representative to the United Nations. In 1998, he was appointed Director-General of the Department of Foreign Affairs, Pretoria, a post he held until 1999.

In 1998, Selebi received a Human Rights Award from the International Service for Human Rights. In 2000, he was appointed National Commissioner of the South African Police Service (SAPS), a post he held until 2009. During that time, Selebi was elected vice-president of Interpol (African region) in 2002, a post he held until 2004, when he was elected its president (until 2008). During his time with Interpol, Selebi also served as Chair of the Anti-Landmine Conference, Oslo, Norway; Chair of the Justice, Crime Prevention and Security Cluster; and Chair – Human Rights Commission, United Nations, 54th Session. He resigned both as National Police Commissioner and President of Interpol in 2008, when corruption charges were laid against him.

The corruption charges

The accused was charged with two charges in the alternative to the counts with two sub-counts. He was also charged in the alternative to the first count (as separate count) with two sub-counts. The reference to the counts that follows is set out in the indictment as originally formulated by the state. The first count was that the accused was guilty of the crime of corruption in contravention of section 4(1)(*a*) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PCCA). The first alternative count was that the accused was guilty of the crime of corruption in contravention of section 1(1)(*b*) read with section 3 of the Corruption Act 94 of 1992 (CA). This alternative count was in respect of the period 1 January 2000 to 26 April 2004. The second alternative count was that the accused was guilty of the crime of corruption in terms of sections 3(*a*) and/or 4(1)(*a*) of the PCCA. This count is in respect of the period 27 April 2004 to 16 November 2005.

The reason for the two alternative counts was to be found in the repeal of the CA by the PCCA. The PCCA came into effect on 27 April 2004. The second count was that the accused was guilty of the crime of defeating or obstructing the administration of justice. The factual basis as set out in the indictment for all the counts can be summarised in broad outline as follows: the accused was a public officer in terms of the PCCA. A relationship developed between a Mr Glen Norbert Agliotti and the accused. This relationship became a generally corrupt relationship. The accused received sums of money and clothing for himself and, on one occasion, for his sons from Agliotti.

The accused received the aforementioned gratification in order to act in a manner proscribed in section 4(1)(*a*)(i) to (iv) of the PCCA and the accused did so act. The accused so acted by sharing with Agliotti secret information about an investigation against

Agliotti conducted by the United Kingdom law-enforcement authorities; protecting Agliotti from criminal investigation; sharing information about SAPS investigations with Agliotti; sharing secret and or confidential information with Agliotti; agreeing to and/or attempting to influence the investigative and/or prosecutorial process against one Rautenbach; sharing with one Sanders and/or one Nassif and others tender information relating to impending contractual work to be performed in Sudan; assisting Agliotti and/or Agliotti's associates to receive preferential or special SAPS services.

The guilty verdict and conviction

On 5 July 2010, Judge J Joffe found the accused guilty of corruption in contravening section 4(1)(*a*) of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and acquitted the accused on count two. The accused was subsequently sentenced to 15 years' imprisonment. In *Selebi v State* (240/2011) [2011] ZASCA 249 (2 December 2011), Selebi appealed the judgment of the South Gauteng High Court, Johannesburg (Joffe J). A unanimous bench (consisting of Mthiyane DP; Bosielo, P and Theron JJA) upheld the conviction handed down by the South Gauteng High Court. On appeal, the appellant was found to have received payments and provided *quid pro quo* for such payments in contravention of section 4(1)(*a*) of Act 12 of 2004.

THE APPOINTMENT OF BHEKI CELE

Bheki Hamilton Cele was born on 22 April 1952 and is a founding member of the National Education Union of South Africa. He served as a member of the KwaZulu-Natal Provincial Legislature and subsequently as the National Commissioner of the SAPS until he was suspended from the position, pending investigation, in October 2011. In June 2012 he was officially fired from the position. Cele also formerly served as MEC for Transport, Community Safety and Liaison in KwaZulu-Natal (South African Police Service 2013). He was a member of the National Executive Committee of the ANC.

The controversial lease agreements (Pretoria and Durban)

In this case, the Public Protector received complaints on 2 August 2010 in connection with the alleged improper procurement of the lease of office accommodation for the SAPS in the Sanlam Middestad building in the Pretoria Central Business District. These complaints originated from a newspaper article published on 1 August 2010 alleging improper conduct and maladministration by the National Commissioner of the SAPS and the Department of Public Works (DPW). The complaints primarily related to the alleged non-compliance with the requirements of section 217 of the Constitution by the SAPS and the DPW, and the alleged improper involvement of the National Commissioner of the SAPS in the

procurement of two buildings in Pretoria and Durban for office accommodation for the SAPS. The need for a second building to accommodate the SAPS head office in Pretoria was also questioned. Questions were raised regarding the SAPS's relationship with the preferred service provider and the cost-effectiveness of the transaction.

Findings

The lease agreements were signed between Roux Property Fund (RPF) and the DPW and not by the National Commissioner of the SAPS, as was alleged. However, the National Commissioner signed a memorandum, dated 10 May 2010, authorising funding for the Sanlam Middestad building lease. He also signed the final SAPS needs analysis, dated 19 July 2010 for the additional 25 301.54 m^2 office space. Although the SAPS did not sign the lease agreement, its involvement in the procurement process was improper, as it proceeded beyond the demand management phase and it further failed to implement proper controls, as required by the Public Finance Management Act 1 of 1999 (PFMA) and relevant procurement prescripts. The SAPS failed to comply with section 217 of the Constitution, the relevant provisions of the PFMA, Treasury Regulations and supply chain management rules and policies. This failure amounted to improper conduct and maladministration. The conduct of the accounting officer of the SAPS (*ex officio* the National Commissioner) was in breach of those duties and obligations incumbent upon him in terms of section 217 of the Constitution, section 38 of the PFMA and the relevant Treasury regulations. These provisions require an accounting officer to ensure that goods and services are procured in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

This conduct was improper, unlawful and amounted to maladministration. After the first report was issued by the office of the Public Protector, a new Minister responsible for the Department of Public Works was appointed. But, allegations of maladministration against the police kept coming. As a result, a follow-up investigation was undertaken by the Public Protector, whose report was completed on 14 July 2011. The report revealed that the fact that the procurement was not cost effective had resulted in a significant potential monetary loss to the state that was also prejudicial to South African taxpayers.

Recommendations

The Public Protector then recommended that the Minister of Police should, with the assistance of the National Treasury, take urgent steps to ensure that the appropriate action was instituted against the appropriate SAPS officials who had acted in contravention of the law, policy and other prescripts in respect of the procurement processes referred to in this report. The Public Protector also recommended that the SAPS had to ensure that appropriate measures were implemented to prevent a recurrence of contraventions of the relevant procurement legislation and prescripts.

The Moloi Commission of Inquiry

On 4 November 2011, the President of South Africa, Jacob Zuma, appointed a Board of Inquiry in terms of section 9(1) of the South African Police Service Act 68 of 1995 as per Presidential Minute 314 of October 2011. The Board was chaired by Judge Jake Moloi. Its mandate was to inquire into alleged misconduct by the National Commissioner of Police General Bheki Cele, and to pronounce on his fitness for office or his capacity to execute his official duties efficiently. The inquiry was based on the adverse finding by the Public Protector relating to the conduct of the National Commissioner and/or the SAPS with regard to the procurement of office accommodation at the Sanlam Middestad building in Pretoria and the Transnet building in Durban. The Public Protector had found that the conduct of the National Commissioner with regard to procurement was unlawful and constituted maladministration. The proceedings of the inquiry were *quasi*-judicial in nature. The parties submitted sworn statements of witnesses and were subjected to cross-examination.

The evidence overwhelmingly proved that the National Commissioner, in his capacity as the accounting officer of the SAPS, had failed to observe and uphold the provisions of the Constitution, the Public Finance Management Act, the Treasury regulations and all the other relevant procurement prescripts in acquiring the two leases. The evidence also proved that the conduct of the National Commissioner had the consequence of favouring one supplier, namely Roux Shabangu, above all others, in contravention of section 217 of the Constitution and section 38 of the PFMA, in that he did not allow a transparent, competitive, cost-effective and open tender process to take place. The Board of Inquiry consequently made the following recommendations:

- That the president order the removal of the National Commissioner, General Bheki Cele, as the National Commissioner of the SAPS in terms of section 8(6)(*b*)(v) of the South African Police Service Act 68 of 1995.
- That the relationship between the National Commissioner and Roux Shabangu, on the one hand, and the relationship between Roux Shabangu and some officials within the Department of Public Works, on the other hand, be referred to competent authorities for investigation.

Technically, the commission made two findings: that the commissioner was guilty of misconduct and corruption. It is a pity that the commission did not have the power to pronounce on corruption per se, but the referral of the allegations to competent authorities is sufficient to deduce that corruption did in fact take place.

In view of these findings, it is clear that both Jackie Selebi and Bheki Cele have been found guilty of corruption.

THE APPOINTMENT OF RIAH PHIYEGA

In June 2012, President Jacob Zuma appointed Riah Phiyega as the new National Commissioner of the SAPS. General Phiyega was born in Polokwane and received her primary and secondary education in various schools in Limpopo. She holds a BA (Social Work) degree from the University of the North, a BA Hons (Social Science) from Unisa, an MA (Social Science) degree from the University of Johannesburg and a post-graduate Diploma in Business Administration from Wales University, Cardiff (South African Police Service 2013). Shortly after her appointment, Phiyega reportedly also came under fire after it emerged that she had links with a company supplying the SAPS with IT equipment. Apparently, the CV that was submitted to the Parliamentary Standing Committee on Police did not indicate any declaration of a conflict of interest as required by law. Evidence showed that she was a director of and shareholder in Kapela Capital, which owns a 40 per cent stake in XON, which has IT contracts with the SAPS. Over and above these allegations, almost three months after she was appointed as the National Commissioner, the Marikana massacre took place in which 47 striking miners were shot dead by the police.The shooting incident is the single most lethal use of force by South African security forces against civilians since 1960 (News24.com). It is the author's view that, although at the time of writing of this article the Marikana Commission of Inquiry had not completed its work, questions have been raised about General Phiyega's ability to lead the police, especially her lack of experience in policing.

IS THIS SITUATION UNIQUE TO SOUTH AFRICA?

According to Hills (2007, 3), the tendency of presidents to appoint National Police Commissioners without police experience is a worldwide practice. Hill further states that in Ghana, for example, section 202(1) of the Ghanaian Constitution of 1992 states that 'the Inspector-General of Police shall be appointed by the President acting in consultation with the Council of State'. Although neither the Ghanaian Constitution nor the Ghanaian Police Act prescribes the level of experience of the Inspector General of Police, it is clear that the president has unlimited powers to appoint anyone he or she so wishes to appoint as the national police commissioner. Countries such as Sierra Leone, Zimbabwe, Nigeria, Namibia and Uganda are some of the countries in Africa where the president has the power to appoint and dismiss the national police commissioner (Herbst 2000, 39). The danger of adopting this approach is that it enables situations in which presidents who do not want an effective or efficient head of police answerable to parliamentary committees or judicial enquiries are able to appoint compliant individuals, while valuing the police as a tool for enforcing political decisions, maintaining order, regulating activities and regime representation (Hills 2007, 4). National police commissioners are a president's point of access to the police institution, and presidential agents of political domination. In South Africa, for example, Jackie Selebi was a close ally to former president Thabo Mbeki,

hence it was difficult for Mbeki to suspend him even after allegations of corruption could no longer be ignored. In his book, *Finish and Klaar*, Adrian Basson (2012, 1–2) quotes a conversation between Jackie Selebi and former president Thabo Mbeki as follows:

> 'the problem is George Fivaz going. We do not have a commissioner of police. So I asked people to give me a list; they gave me a list of a hundred names to choose from. From these hundred names one person can be a commissioner of police. I looked at this list, and the only name that I found that I can think of is you.'

This is a clear indication that the two individuals were very close allies.

According to Daloz (2003, 48), the reason why various presidents use this model to appoint and fire a national police commissioner is to keep them in check. Appointing someone close to the president ensures that the president's interests are protected. In Kenya, for example, before the disastrous 2007 elections, former president Kibaki had a separate secretive police agency, the Administration Police, which was accountable to him by way of presidentially appointed district commissioners. Under the previous Kenyan Constitution, the president had unlimited authority to appoint and remove commissioners. Furthermore, the Kenyan law did not even provide criteria for presidents to follow, and also the parliament had no legal role in a national police commissioner's appointment or removal (Hills 2008, 67). Constitutionally, Kenya's police were accountable to the president, whose intent was channelled through his commissioner. Fortunately this is no longer the case in Kenya. From the above analysis, it is clear that problems associated with the appointment and removal of a national police commissioner are not unique to South Africa only but are a global challenge. In a democratic society such as South Africa, where the founding values of government are based on 'freedom, equality and human dignity', including 'openness', it is important that we shy away from undemocratic ways of appointing commissioners of police. I shall suggest that we should adopt a democratic method when a public figure as important as a national commissioner of police is appointed. However, it is apposite first to consider this issue from a comparative law perspective.

INTERNATIONAL COMPARISON

Northern Ireland (Northern Ireland Policing Board)

The Policing Board is an independent public body whose job it is to oversee policing in Northern Ireland and to secure for all the people of Northern Ireland an effective, efficient and impartial police service that will secure the confidence of the whole community. There are 19 members of the Policing Board. During the negotiations that resulted in the Belfast Agreement of 1998, the participants recognised that policing was an important and central issue for any society. The agreement led to the creation of the Independent Commission on Policing, also known as the Patten commission after its chairman,

Chris Patten. The Independent Commission was tasked with making recommendations on future policing arrangements, which included encouraging widespread community support. The commission's proposal for a new structure of accountability was designed to ensure effective and democratically based oversight of policing and the creation of a close partnership between the police and local communities. In November 2000 Parliament passed the Police (Northern Ireland) Act 2000, which was based on the commission's recommendations (the government's second revised implementation plan, amending legislation – the Police (Northern Ireland) Act 2003, which was passed in April of 2003. Central to the creation of a new structure of accountability and democratically based oversight was the establishment of the Northern Ireland Policing Board, which would have a clear primary statutory function of holding the Chief Constable and the police service to account publicly. The Policing Board came into being on 4 November 2001, the same day as the Police Service of Northern Ireland (PSNI). The Policing Board was reconstituted on April 1 2006.

Political representatives were nominated by their parties and seats were allocated according to the results of the November 2003 Assembly Election. This resulted in eight seats being allocated to Political Members and 11 to Independents. As the Northern Ireland Assembly was suspended, all Policing Board members were appointed by the Secretary of State, Peter Hain MP. This was a change from the previous Board, which had been made up of 10 Political Members appointed by the Assembly and 9 Independent Members appointed by the Secretary of State. The Board elects its own Chairman and Vice-Chairman. It is the Policing Board's duty to ensure that there is an effective and efficient police service for Northern Ireland and to make sure that the Chief Constable and PSNI are accountable in carrying out their responsibilities and serving the community (Northern Ireland Policing Board undated: 2). The Policing Board sets the strategic direction for policing in Northern Ireland and holds the Chief Constable to account for all his or her actions and those of his or her staff for the policing service delivered. This means that the Chief Constable is accountable to the Board on any aspect of policing in Northern Ireland. However, the Board cannot, and does not, direct or control the Chief Constable.

The delivery of local policing services is the job of the Chief Constable and the police service. He or she still has the right to take independent decisions based only on the need to uphold law and order. The Board exercises its mandate in terms of section 3 of the Act of 2000, which outlines the following statutory duties and responsibilities, namely, to:

- secure an effective and efficient local police service;
- appoint (and dismiss, if necessary) the Chief Constable and senior police officers (Assistant Chief Constable and above);
- consult widely with local people about the policing of their area;
- set local policing priorities and targets for police performance;

- monitor everything the police do and how well they perform against the targets set by the Policing Board;
- publish a three-year and annual policing plan which tells local people what they can expect from their police service and report on police performance every year;
- make sure local people get best value from their local police;
- oversee complaints against senior officers;
- discipline senior officers.

Canada (Ottawa Police Service Board)

Unlike South Africa, where governing powers are centralised, Canada is a federal state where governing power permeates to provincial government level. Policing is decentralised to the provincial governments. In the province of Ontario, for instance, the Ottawa Police Board has been used as a case study. The legislated mandate and responsibilities of police services boards in the Province of Ontario are established by the province and set out in the Ontario Police Services Act, the Adequacy and Effectiveness of Police Services Regulation (O Reg 3/1999), and the corresponding Ministry Policing Standards (City of Ottawa Police Services Board Policy Manual, 2011, 66). The Ottawa Police Services Board is legally responsible for the provision of adequate and effective police services in the City of Ottawa.

The Board represents the public interest in determining the appropriate organisational performance of the Ottawa Police Service, and in providing civilian oversight and governance of the activities of the Police Service. In terms of section 31(1) of the Ontario Police Service Act, a board is responsible for the provision of adequate and effective police services in the municipality (akin to the South African Metro Police Services). The Board also has the powers to:

- appoint the members of the municipal police force;
- recruit and appoint the Chief of Police and any Deputy Chief of Police, and annually determine their remuneration and working conditions, taking their submissions into account;
- direct the Chief of Police and monitor his or her performance;
- generally determine, after consultation with the Chief of Police, objectives and priorities with respect to police services in the municipality;
- establish policies for the effective management of the police force;
- establish policies respecting the disclosure by Chiefs of Police of personal information about individuals;

- receive regular reports from the Chief of Police on disclosures and decisions made for secondary activities;
- establish guidelines with respect to the indemnification of members of the police force for legal costs under the law;
- establish guidelines for dealing with complaints made by the members of the public against the police;
- review the Chief of Police's administration of the complaints system and receive regular reports from the chief of police on his or her administration of the complaints system.

Uganda

Section 8 of Chapter 303 of the Ugandan Police Act of 1994 makes provision for the establishment, composition and meetings of the Police Authority. The Police Authority consists of the following members:

- the Minister responsible for internal affairs as its chairperson;
- the following members;
- the Attorney General;
- the Inspector General of Police;
- the Deputy Inspector General of Police;
- a senior officer in charge of administration at the headquarters of the force;
- three other persons appointed by the president.

The Permanent Secretary of the ministry responsible for internal affairs is the secretary to the police authority. The quorum of the police authority is five and the police authority may regulate its own procedures. In terms of section 9(1) and, subject to the Constitution, the functions of the police authority are:

- to advise the government on policy matters relating to the management, development and administration of the force;
- to advise the President on the appointment of the Inspector General of Police and the Deputy Inspector General of Police;
- to recommend to the President appointments and promotions of police officers above the rank of assistant superintendent of police;
- to determine the terms and conditions of service in the force;
- to hear and determine appeals from decisions of the police council;

- to determine, by statutory order, the ranks, precedence, command and seniority of the force and to empower the force to perform the services of a military force.

The Police Authority may appoint a committee from among its members to assist it in the performance of any of its functions and may assign to it such functions, subject to such conditions and restrictions, as the authority may think fit.

Kenya

The Constitution of Kenya, made law in 2010, established a new National Police Service and a National Police Service Commission (NPSC). New laws were required to reflect the changes to the police system made under the new Constitution. The changes made to the police system were prompted by many factors, including the Police Reform Taskforce Report (also called the Ransley Report) that reviewed the police structures and systems after the 2007–2008 post-election violence and recommended wide-ranging reforms to the police service. The goal of the police reforms was to transform the police into a professional, efficient and accountable service that is trusted by the public. The Ransley Report recommended the restructuring of the police services to include new organisations, including the Police Service Commission and the Independent Policing Oversight Authority. In terms of section 10 of the National Police Service Commission Act of 2011, the following guidelines must be followed when appointing an Inspector General (IGP) (the equivalent of the South African National Commissioner) or Deputy Inspector General (DIGP) (equivalent to the South African Deputy National Commissioner) of the Kenyan Police:

- The NPS Commission advertises the position in the *Gazette* and two other national newspapers.
- The Commission considers the applicants, conducts interviews and short-lists at least three people, whose names are published in the *Gazette*. Only people who fit the selection criteria will be shortlisted.
- The Commission will also appoint a panel made up of representatives from the office of the President, the office of the Prime Minister, the Judicial Service Commission, the Ethics and Anti-Corruption Commission, the Kenya National Commission on Human Rights and the Kenya National Gender and Equality Commission. This panel will interview the candidates shortlisted by the NPS Commission and then give the president a list of candidates in order of preference.
- Within seven days of receiving the list, the President must nominate one person from the list to parliament.
- Within 14 days of receiving the nomination, parliament must approve or reject the person nominated.

- Once parliament approves a person, a notice will be published in the *Gazette*. If parliament does not agree to the person nominated by the President, then the President must submit a different nominee to parliament from the people put forward in the list given to the president.
- If parliament does not agree to any of the names put forward, then the process will need to start again – and the position will have to be re-advertised.

In terms of the Kenyan Constitution read with the Kenyan National Police Service Act and National Police Service Commission Act, a person can be the IGP for only one term of four years. Once the four-year term has been completed, a new Inspector-General must be appointed. The previous Inspector-General cannot be reappointed. Furthermore, the law stipulates that the Kenyan Inspector-General can be removed from office, but only in accordance with the following process: a petition is handed to the NPS Commission which says that the Inspector-General should not continue to be the Inspector-General for one of the following reasons:

- a serious violation of the Constitution (including Chapter 6) or any other law;
- gross misconduct;
- an inability to perform the job due to physical or mental problems;
- incompetence;
- bankruptcy; or
- any other just cause.

Evidence to support the petition must be included.

If two-thirds of the Commission believes that the petition shows that the IGP should not continue to be the IGP for one of the above reasons, then the Commission will recommend that parliament remove the Inspector-General. Parliament will then consider the petition and, if satisfied that it shows a valid reason to dismiss the IGP, will inform the president of this. The President must then appoint a tribunal to investigate the matter and make a binding recommendation to the President. The President can decide whether to suspend the IGP while the investigation by the tribunal is underway. The tribunal must investigate and provide a recommendation as quickly as possible. Once the tribunal makes a recommendation, the President has to implement it within seven days. In order to qualify to apply for the position of Inspector-General, in terms of the National Police Service Commission Act of 2011, the candidate must:

- be a citizen of Kenya, and must not hold citizenship of another country;
- have a degree from a university recognised in Kenya;
- have had a distinguished police career;
- have been employed in a senior management position for at least 15 years;
- have previous experience in either: criminal justice, policy development and

implementation, finance and public administration, strategic management, security, law, sociology or government;

- not be a Member of Parliament or of a county assembly, or be a Governor or Deputy Governor or hold office in a political party;
- not have, in the past five years, served as a Member of Parliament, county assembly or trade union, or held an office in a political party;
- not have been convicted of a criminal offence;
- not have violated the Constitution, and must meet the requirements of Chapter 6 of the Constitution;
- not be employed elsewhere;
- not be an undischarged bankrupt;
- be a serving police officer of the rank of Superintendent or above, and have worked as a police officer for at least 15 years.

In terms of Part II of the National Police Service Commission Act of 2011, the National Police Service Commission is made up of nine members consisting of a chairperson, who is a senior lawyer qualified to be appointed as a High Court judge, the Inspector-General of Police, two Deputy Inspectors-General, each being the head of regular police and administration police, two retired police officers who held the rank of senior superintendent or above. One of these officers must be a woman. One must be retired from the Kenya Police Service, one from the Administration Police Service. Three other people of integrity who have served the public with distinction and have at least 10 years' experience in either:

- finance and administration;
- economics;
- human resources development and management;
- public administration;
- labour laws, or
- law and human rights

must also be appointed to the Commission.

The Caribbean islands

Guyana

The Guyana Police Force (GPF) is headed by the Commissioner of Police and overseen by the Minister of Home Affairs.

A Police Services Commission (PSC), nominated by the President, is responsible for recommending to the President who should be appointed as Commissioner and Deputy Commissioners of Police, but the final appointment is that of the president (Gomes 2007, 7). The PSC has control over appointments and the disciplining of members of the force above the rank of inspector and the Police Commissioner has control over other ranks.

Jamaica

The Police Services Commission (PSC) in Jamaica is appointed by the Governor-General on the advice of the Prime Minister and is responsible for nominating the Police Commissioner for appointment by the Governor-General (Gomes 2007, 6). The PSC approves promotions and dismissals for members of the force above the rank of inspector and the Police Commissioner has this responsibility for the lower ranks. In practice, only the Governor-General has the power to remove the head of the police and other high-ranking officials. Any such decision would also involve input from the PSC.

Trinidad and Tobago

The Police Force of Trinidad and Tobago has approximately 7 000 members in nine countrywide divisions and 16 specialised branches (Gomes 2007, 6). The Police Services Commission (PSC) is appointed by the President after consultation with the Prime Minister and the leader of the opposition. The PSC in turn appoints a Commissioner of Police and Deputy Commissioners to oversee the Police Force but must first consult the prime minister about the appointment. The Constitution of Trinidad and Tobago states that a person shall not be appointed to such an office if the Prime Minister signifies to the PSC his objection to the appointment of that person to such an office. The restrictions on the PSC include a limitation of its ability to dismiss police officers.

CONCLUSIONS AND THE WAY FORWARD

From the above discussion it is clear that South Africa is not the only country where the power to appoint a National Police Commissioner is vested in the President. On the other hand, it has been shown that South Africa needs to move away from this position.

The conviction of former Police Commissioner Jackie Selebi of corruption and the subsequent dismissal of Bheki Cele by the President as a result maladministration and breach of policies is a clear indication that it is time to adopt a system which allows a process by which a career police official leads the SAPS. The author proposes a model almost similar to the one used by the Kenyan government, with minor adjustments. These recommendations entail the following:

- Section 207(1) of the Constitution and sections 6 and 7 of the South African

Police Service Act 68 of 1995 should be amended to pave the way for the establishment of a National Police Service (NPS) Commission or Board.

- Such a Commission or Board shall have the powers to advertise the posts of National Police Commissioner and Deputy National Police Commissioner. After the positions have been advertised, the Commission shall interview the candidates for the position of a National Commissioner and those for Deputy National Commissioners.
- The Commission will also appoint a panel made up of representatives from the office of the President, the office of the Minister of Police, the Judicial Service Commission, the Public Service Commission, the South African Human Rights Commission, the Public Protector, the Commission for Gender Equality, the Commission for the Promotion and Protection of the rights of Cultural, Religious and Linguistic Communities, the Auditor General, the Department of Public Service and Administration and the Law Society of South Africa. This panel will interview the candidates shortlisted by the NPS Commission or Board and then submit a list of 15 candidates to parliament in order of preference.

Within seven days of receiving the list, parliament must vote for the successful candidate from the list provided. In order to be appointed as the National Commissioner, the candidate shall be required to obtain 75 per cent of the votes. Once parliament approves the successful candidate, a notice will be published in the *Gazette*. If parliament does not agree on any of the names put forward, then the process will have to start again – and the position will be re-advertised. The same process shall be followed when Deputy National Police Commissioners are appointed, except that the list of preferred candidates shall be eight. In order to qualify to apply for the position of a National Police Commissioner or Deputy National Police Commissioner, a candidate must:

- be a citizen of South Africa, and must not hold citizenship of another country;
- have a degree from a university recognised in South Africa;
- have had a distinguished police career;
- have been employed in a senior management position for at least 15 years;
- have previous experience in either: criminal justice, policy development and implementation, finance and public administration, strategic management, security, law, sociology or government;
- not be a Member of Parliament or of a provincial legislature, or be a premier/mayor or deputy mayor or hold office in a political party;
- not have, in the past five years, served as a Member of Parliament, provincial legislature or trade union member, or held office in a political party;
- not have been convicted of a criminal offence;

- not have violated the Constitution, and must meet the requirements of the Constitution;
- not be employed elsewhere;
- not be an un-discharged bankrupt;
- be a serving police officer of the rank of Superintendent or above, and have worked as a police officer for at least 15 years.

In cases of misconduct, the National Police Commissioner can be removed from office, but only in accordance with the following process: a petition shall be submitted to the NPS Commission or Board outlining why the National Commissioner should not continue to be the National Commissioner for one of the following reasons:

- a serious violation of the Constitution or any other law;
- gross misconduct;
- an inability to perform the job due to physical or mental problems;
- incompetence;
- bankruptcy; or
- any other just cause.

Evidence to support the petition must be included.

If two-thirds of the Commission members believe that the petition shows that the National Commissioner should not continue in the position for one of the above reasons, then the Commission shall recommend that parliament remove the National Police Commissioner.

Parliament will then consider the petition and, if satisfied that it provides a valid reason to dismiss the National Commissioner, parliament will inform the President of this. The president must then appoint a tribunal to investigate the matter and make a recommendation to the president. The President will then submit the findings to parliament to vote on the dismissal of the National Commissioner. Once the tribunal makes a recommendation, the President has to inform parliament of this within seven days. All these requirements shall be applicable to both the National Police Commissioner and Deputy National Police Commissioners.

These recommendations are more in line with the Kenyan model but are also suited to South Africa since they promote the independence of the Police Commissioner; their appointment mechanism is open and fair; representatives of the public at large (Members of Parliament) decide on his or her appointment and removal, which makes him or her accountable to the people. All of which enhance the basic principles of a modern constitutional democracy such as South Africa.

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