



**UNIVERSITY of the
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A Critical Analysis of the Process of Appointing the National Police

Commissioner of South Africa

Mini-dissertation submitted to the Faculty of Law of the University of the Western Cape in partial fulfilment of the requirements for the LLM: Criminal Justice and Procedure Law in Africa.

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DECLARATION

By submitting this thesis, *The Appointment of the National Police Commissioner in South Africa*. I, Siphokazi Gcayiya, do hereby declare that this mini-thesis is the result of my own work and findings except where it is stated otherwise; and that it has not been submitted for any degree or its equivalent in any other university or institution of higher learning. All the sources used, referred to or quoted have been duly acknowledged.

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This dissertation has been submitted for examination with my approval as University supervisor.

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DEDICATION

I dedicate this study to my Mother, uMama, iGriza lam – you are one hell of woman in your quest for wisdom, life and love. Ndibhekisa kuwe Edith Ntombizodwa Gcayiya – ntombi yase maNuneni, Doyi, Xesibe, Mbathane, Khanda'nyawana, Mamzotsho Nondzaba. Your contagious teachings continue to breathe sunshine into my days. Your steadfast heart, head and beauty keeps all faith and hope alive. Your songs and lullabies sprinkle my days with awesomeness. You are Class and Foxy.

May the Gods continue to bless you, My Lady. I celebrate you.

The search continues.

Camagu.



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Table of Contents:

DECLARATION	II
DEDICATION.....	III
ACKNOWLEDGEMENTS.....	IV
I. ABSTRACT	VII
II. ABBREVIATIONS AND ACRONYMS.....	VIII
III. FIGURES	IX
TABLES.....	IX
CHAPTER 1: INTRODUCTION	1
1.1 BACKGROUND TO THE STUDY.....	1
1.2 PROBLEM STATEMENT.....	9
1.3 RESEARCH QUESTION	10
1.4 RESEARCH METHODOLOGY.....	11
1.5 DISSERTATION STRUCTURE	13
CHAPTER 2: THEORY AND CONTEXT	15
2.1 THE ROLE OF LEADERSHIP	15
2.2 LEADERSHIP THEORIES.....	19
2.3 CONTINGENCY THEORY.....	22
2.4 INSTITUTIONAL THEORY	24
2.5 INSTITUTIONAL ENVIRONMENT	26
2.6 POLICY DEVELOPMENT	33
CHAPTER 3: A REVIEW OF PERTINENT STATUTORY AND STRATEGIC DOCUMENTS	38
3.1 CONCEPTUAL FRAMEWORK.....	39
3.2 INSTITUTIONAL MANDATE.....	40
3.3 PROCESS OF APPOINTMENT.....	41
3.4 CRITERIA FOR APPOINTMENT.....	48
3.5 CHECKS AND BALANCES	55
CHAPTER 4: DISCUSSION AND CONCLUSIONS.....	62
4.1 MANDATE	62
4.2 THE PROCESS.....	68
4.3 CRITERIA FOR APPOINTMENT.....	70
4.4 CHECKS AND BALANCES.....	73
4.5 POLICY	78



CHAPTER 5: RECOMMENDATIONS	81
5.1 INSTITUTIONAL MANDATE.....	81
5.2 PROCESS OF APPOINTMENT.....	82
5.3 CRITERIA FOR APPOINTMENT.....	83
5.4 CHECKS AND BALANCES	84
5.5 POLICY	85
BIBLIOGRAPHY	86
APPENDIX A: SUMMARY OF CASE LAW FOR DISCUSSION	100



i. Abstract

The aim of this study is to critically dissect the current mechanism of appointing the NPC, and in return to propose a set of recommendations toward amendment of that mechanism. South Africa is recognized as a country with one of the highest crime rates in the world. Whilst scholars have attributed these prominent levels of crime to several contextual determinants, the country's policing services have been singled out as being largely ineffective in curbing criminality. A key factor highlighted as a determinant of persistently poor performance of the SAPS, is a lack of effective senior leadership to assert managerial control. In particular, the role of national police commissioner (NPC), has been at the receiving end of significant criticism, as successive appointees to the position have been largely ineffectual in their leadership of the institution. As a contributing factor, the lack of an effective mechanism of recruitment and appointment has been cited as being a key reason why the SAPS has seen persistently poor performance from those individuals who have been selected for the role of NPC.

This research was conducted utilizing a desktop study methodology, relying on primary and secondary sources of literature as evidence. Primary sources include the relevant pieces of legislation, the constitution, as well as published journal articles. Secondary sources include relevant books, strategic institutional documents and report, media articles and press statements, and the records of previously concluded court cases. The essential extracts from the evidence were then thematically synthesised, where the outputs of that synthesis were applied as a conceptual framework to structure the narrative. Relevant case law is used to substantiate or criticise those positions presented by the evidence. Finally, the analysis is cast within a contingency theory lens, which draws from the field of organizational management, and is purposed to address the performance of an institution.

The findings support that the primary criticism against the current mechanism for appointing the NPC is that it is fundamentally a political appointment. At present, the law authorising the appointment of the NPC is found in the Constitution, where section 207(1) 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'. However, the findings of this study support that this mechanism of appointment should altered to be a competitive recruitment process, which requires adherence to Department of Public Service Administration (DPSA) recruitment standards, involving a transparent advertising, interviewing and selection process. The findings further promote that a prospective candidate for the NPC role should be thoroughly vetted for appropriate qualifications, sufficient relevant experience, suitable personable and psychometric attributes, and a track record of demonstrated performance in policing and institutional management. From these findings it is recommended that the NPC appointment process be amended to a formally competitive recruitment process, which explicitly incorporates (i) clearly articulated recruitment steps, supported by (ii) clearly defined appointment criteria to be used as a measurement to select the most suitable and competent candidate. Additionally, it is recommended that the process incorporate (iii) checks and balances to ensure transparency and accountability in the process. Lastly it is recommended that the revised appointment process be (iv) captured and articulated in the form of an institutional policy, that supports the implementation of competent appointment processes with high standards.

ii. ABBREVIATIONS AND ACRONYMS

AU	African Union
AUCPCC	The African Union Convention and Preventing and Combating Corruption
BOI	Board of Inquiry
BOR	Bill of Rights
CSP	Civilian Secretariat for Police
COMSN	Commission of Inquiry
CW	Corruption Watch
DPCI	Directorate for Priority Crime Investigation
EMA	European Medicines Agency
FOSAD	Forum of South African Director-Generals
ICCPR	International Covenant on Civil and Political Rights
ISS	Institute for Security Studies
IEC	Independent Electoral System
ISS	Institute for Security Studies
MINMEC:	Minister and Members of Executive Council Meeting
NA	National Assembly
NCPS	National Crime Prevention Strategy
NPB	National Policing Board
NDP	National Development Plan
NPC	National Police Commissioner
NPP	National Policing Policy
PCOP	Portfolio Committee on Police
PSC	Public Service Commission
PSA	Public Service Act
SAP	South African Police
SAPS	South African Police Services
SARPPCO	Southern African Regional Police Chiefs Co-operation Organisation
SMS	Senior Management Service
TBVC	Transkei, Bophuthatswana, Venda and Ciskei (South African states)
UDHR	Universal Declaration of Human Rights
UNCAC	United Nations Convention against Corruption

iii. FIGURES

Figure 1: Conceptual framework for key elements pertaining to the appointment of the NPC 39

Figure 2: Steps in the process to appoint the NPC, own compilation based on Recruitment and Selection Guidelines published by the Public Service Commission (Undated) 42

Figure 3 Interview Rounds and Requirements: Own compilation based on (Etanibi 2011, Schutte 2011, The NDP 2030, Schafer 2010, The PSC Undated and the ISS & CW 2017) 45

Figure 4 NPC Appointment Criteria – Own compilation based on (Schutte 2011) and (Campbell & Kodz, 2011)..... 49

Figure 5 NPC Appointment Checks and Balances - Own compilation base on (SAPS Medium Term Strategic Framework 2019 – 2024), (Schutte 2010), (INTERPOL Standards undated) 56

TABLES

Table 1: Summary of identified themes mapped against the source documents or origin. 38



CHAPTER 1: INTRODUCTION

1.1 Background to the Study

South Africa is party to the United Nations Convention against Corruption (UNCAC) which came into force in 2005. This convention outlines key requirements toward addressing corruption which states parties must fulfil. One key requirement is to take measures to prevent crime and promote cooperation with other countries in the fight against crime.¹ According to *Article 8* of the UNCAC, each state party is required to fight crime, promote honesty and implement appropriate measures in accordance with the fundamental principles of its legal system.² The treaty therefore requires that South African police officials, and the institution of the South African Police Service (SAPS), exercise their duties and agency as best possible in the fight against, and prevention of, crime. Furthermore, South African officials are required to fulfil codes of conduct that promote an honourable and proper performance of public functions by public officials.³ The SAPS is also party to the African Union Convention on Preventing and Combating Corruption (AUCPCC)⁴ and the South African Development Community (SADC) Protocol Against Corruption.⁵ As a signatory to these agreements, South Africa as a sovereign nation, has agreed to promote transparency, cooperation and accountability in the management of public sector (i.e., government) affairs.⁶ Because South Africa is party to these treaties, the countries policing and security agencies are imbued not only to fight crime and maintain the rule of law, but also provide a policing service that is resource efficient and accountable to the rule of law⁷; i.e., accountable to the communities and country within which they operate. In actuality however, the current South African crime rate is excessively high and ordinary citizens are constantly under threat of criminal activities.⁸ As one example, gender-based violence has grown into

¹ Article 2 of the United Nations Convention against Corruption (General Assembly resolution 58/4 of 31 October 2003).

² Article 8(1) of the UNCAC 2003.

³ Article 8(1) - (5) of the UNCAC 2003.

⁴ The AUCPCC was adopted in Maputo on 11 July 2003 to fight rampant corruption on the African continent. It represents regional consensus on what African states should do in the areas of prevention, criminalisation, international cooperation and asset recovery.

⁵ South African Development Community (SADC) Protocol Against Corruption (2001), the Protocol was signed in 2001 to facilitate and regulate cooperation in matters of corruption amongst Member States and foster development and harmonisation of policies and domestic legislation related to corruption.

⁶ The Sixth session of the Conference of the States Parties to the United Nations Convention against Corruption Resolutions held in St Petersburg Russian Federation 2 to 6 November 2015. Resolution 3 states as follows 'Calls upon States parties still under review and their reviewing States parties to continue cooperating towards completing the review of implementation of chapters III and IV of the United Nations Convention against Corruption and requests the Secretariat to continue providing effective and timely assistance to them in this regard.'

⁷ Section 2 of the Constitution of South Africa Act 108 of 1996.

⁸ Crime Statistics Integrity (2022) and Mavuso B 'Crime and the 'horrendous toll' it's taking on South Africans' (2022), states that, crime figures in the second quarter of 2022 were particularly miserable for women, with murder, attempted murder and assault recording double-digit increases. Over 10,000 rape cases were reported in the second quarter of 2022, a 14% increase. The number of children murdered increased by 37%. Our most vulnerable are facing the most serious consequences of the crime wave.

fundamental problem which the police are seemingly unable to manage or counter.⁹ In one respect, the ongoing escalation of crime in many areas of the country has assisted in degrading the relationship of trust between the community and the police, which has further served to undermine the creation of a crime free society.¹⁰ Lack of effective policing and the persistent high levels of crime pose as a serious threat to the South African democracy. Criminality leads to loss of safety and security, as well as the loss of economic activity and community livelihoods. This in turn may result in a denial of basic rights and a loss of dignity for the citizenry impacted by crime.¹¹ Thus, one of the major problems that South Africa needs to resolve very urgently is the establishment of a functional 'policing' system².

In this respect, the broader literature highlights that an essential element in establishing an effective police force lies in the recruitment, development, and retention of competent individuals to staff and lead the organization. As is noted by Murphy et al, the efficacy of modern policing institutions relies significantly on those exceptionally competent individuals, particularly the senior leadership within the organization to guide, and manage the overarching functions of the institution.¹² Addressing the overarching functionality of the SAPS, it is essential that we acknowledge the immense internal organizational challenges such as: incompetence, police corruption, nepotism, maladministration, mismanagement, inequality, which contributes toward institutional underperformance.¹³ However, the literature severally highlights that a lack of effective leadership may serve to exacerbate these deeply ingrained issues. Van der Merwe, van Graan and Ukpere qualify the organizational challenges as significant challenges faced by the SAPS and submit that these challenges in the SAPS may be significantly exacerbated by the absence of effective leadership. They argue that in a hierarchical paramilitary organization such as the SAPS, a lack of organizational direction, accountability, and professional competency, have nurtured a context which promotes factionalism and cronyism. The resulting lack of meritocracy and the associated internal conflict have a significant impact on organizational morale and performance. Hence, it therefore, becomes imperative that senior leadership and broader organizational management within the institution be professionalised, where individuals are selected based on competency and merit, so that the most capable people can be employed in leadership positions. However, Newton, Ewing, & Collier note that human resources

⁹ Diemen E 'Crime crisis continues in first quarter of 2022 with women and children worst affected' (2022). Provides that 6,083 people were murdered in South Africa between January and March 2022. This represents an increase of 22% or 1,107 more people murdered compared to the same period last year. Alarming, increases in reports of children and women being murdered have shot up by 37.2% and 70.5% respectively. Between January and March 2021, there were 4,976 murders reported in South Africa. For the same period this year in 2022, that number increased to 6,083, an increase of 22.2%. reported. Attempted murders also increased from 12,133 to 13,799.

¹⁰ Murphy, Mazerolle & Bennett 'Promoting trust in police: findings from a randomised experimental field trial of procedural justice policing' (2014) 413.

¹¹ NCPS (2020).

¹² Murphy et al (2014) 415.

¹³ Bodasing I (2002). Also see Gen Bheki Cele (MP) (2021) 'Budget Vote speech delivered by the Minister of Police'.

which include organizational leadership is a dynamic domain, which sees a flow of individuals into and out of positions, whether by individual movement or promotion.¹⁴ To this end they highlight that, given the dynamic nature of organizational staffing, effective recruitment and appointment processes are an essential element in maintaining staff competency over time. They argue that the quality of human resources within a given organization is directly related on the quality of the recruitment, development, and retention systems within the organization.¹⁵

Within South Africa the apex legislative document, the South African Constitution, establishes and recognizes the human right to individual freedom and security.¹⁶ In this respect, the Constitution, per section 207(1), makes provision for the formation of the SAPS to maintain rule of law, and in turn for the appointment of a national police commissioner to manage the SAPS organization.¹⁷ However, within the given legislative and statutory texts of South Africa this is the extent of the given mandate. As such, within the given letter of the law, and has been the case in South Africa since democracy was established in 1994, the appointment of the apex leader within the SAPS has been political prerogative. As such, the appointment of the National Police Commissioner has been undertaken as a matter of political appointment, where the presidency has been responsible for those who have been appointed, and no competitive process of selection has been employed.

However, in the almost 30 years of a democratic South Africa, the performance of the SAPS institution, and by implication its leadership, has come under immense scrutiny and criticism. Since the selection of George Fivaz to the role of NPC in 1995, each successive national police commissioner in turn (until current day) has been at the receiving end of substantial criticism of their leadership of the SAPS. The country has seen cases where law enforcement officers and their leaders have been implicated in crimes of the highest level of cruelty and corruption.¹⁸ To illustrate, consider the case of the Marikana Massacre, which highlighted how the incompetence of policing forces and their leadership arguably resulted in the deaths of more than 34 miners in August 2012. An event which scholars argue may have been avoided had the right decisions been made at the appropriate times. In the Marikana incident, which took place on the 16th of August 2012, the SAPS opened fire on a crowd of striking mineworkers at Marikana, in the Northwest Province of South Africa, which resulted in the deaths of 34 mine workers and the serious injury of some 78 others. Subsequent to this open fire assault - 250 of the mineworkers were arrested.¹⁹ A key finding of the Farlam Commission of Inquiry (COMSN),

¹⁴ Newton, Ewing & Collier 'Resolving contradictions in institutional demands through loose coupling' (2014) 748.

¹⁵ Newton et al (2014) 748.

¹⁶ Section 12 of the Constitution.

¹⁷ Section 2 of the Constitution.

¹⁸ Egwu P (2021) 'South African Police Are Undertrained, Uncontrolled and Deadly'.

¹⁹ Truter T (2017) 'Project Loss The Marikana Series'.

which was formed to investigate the incident, highlighted that one of the major problems behind the Marikana killings was the lack of critical leadership capability and competence from police management. This finding led to an investigation into the then police commissioner, Riah Phiyega's fitness to run the office.²⁰

This event which has been labelled as the 'Marikana Massacre' culminated after an intense week-long protest in which the miners were demanding a wage increase at the Lonmin platinum mine in a wildcat strike.²¹ A fatal breakdown in communication between the miners and their union aggravated a volatile situation, in which the miners and their families were desperately trying to have their voices heard and their needs met. The miners were unable to attain a meeting with their union or with the representatives of the Lonmin mine. Events became increasingly militaristic following the death of two miners that were also part of the protest. From the 12th to the 14th of August 2012 four miners, two police officers and two security officers died in violence.²² The ongoing failure to establish talks with the union and the mine led to escalation of the protest activities of the miners, but these were met with unrelenting hostility by security, the police, and union personnel and management. This led to the eventual conflict between the miners and police, when on the 16th of August a full-frontal engagement was launched by the SAPS against the striking miners, to clear them out of the area. When the miners, instead of retreating, decided to aggressively engage the police, this led to the encounter where the 34 mine workers were shot at and killed. Despite statements that the police were acting in self-defence, it is considered by many that they were not in any real danger. About a dozen miners were caught on camera being shot at directly, and this footage has received global attention and outrage. However, most of the miners who were killed and injured were not caught on camera, with some of the miners' bodies discovered behind boulders and in retreat. Many of the slain and injured had gunshots in their backs and there were miners who were found with injuries of being ridden over by nyalas. Not a single police officer was killed or severely injured on the 16th of August 2012.²³

The commission of enquiry which followed, headed by retired Judge Ian Farlam and two senior advocates, found that in the days prior to the massacre, NPC Riah Phiyega had engaged in discussions that considered inappropriate political factors in relation to policing at Marikana. The evidence before

²⁰ Nicolson (2015).

²¹ Gilbride BP 'Chapter 26 - Strikes, Lockouts, and Labour Relations' *The Professional Protection Officer* 2 Ed (2020) 295 – 303. Wildcat strike or illegal walkout: This is an unauthorized work stoppage in violation of law and/or an existing bargaining agreement. The most common reason for a wildcat strike is the result of the union considering some action to be unjust. A wildcat strike, or 'unofficial industrial action', is strike action undertaken by unionised workers without the union-leadership's authorisation, support, or approval

²² South African History Online (SAHO) 'Marikana Massacre 16 August 2012' (2022).

²³ SAHO (2022).

the commission showed that top SAPS commanders, senior operational commanders and the NPC Phiyega had reconciled themselves with a decision of a bloody confrontation, which it was argued led to overly aggressive actions by the SAPS which led to the eventual and tragic deaths of the mine workers. The commission found that the decision by Phiyega and SAPS senior operational commanders to use lethal force was unnecessary and illegal. Thereby breaching the McCann Principle of the South African law 'which requires the planners of policing operations to minimise the risk of using lethal force when planning and commanding police operations.'²⁴ The commission noted that it was evident from the findings that Phiyega's conduct and inability to affect decisions in accordance with policing rules and procedures, were key factors which contributed to this tragic occurrence.

Beyond this single event, the record of NPC performance within democratic South Africa has been dismal. Over this period, Phiyega was not the only NPC that was declared unfit to hold the office of the NPC. It is of utmost importance to identify the historical background and the impact of appointed police commissioners and their ability to provide safety and security services to the people of South Africa. In 1994 when South Africa was declared a sovereign State, the country adopted the Constitution.²⁵ The Constitution's main aim is to create a police agent that is mandated by the Constitution and led by a NPC that is capable of managing and controlling the SAPS. The Constitution further provides authority for the NPC to be appointed by the Head of the State/ the President.²⁶ According to the Constitution the NPC's role is to establish and lead a united police service that serves the public under her/his command as envisaged in the Constitution.²⁷ In 1995, former President Nelson Mandela appointed the first NPC under a democratic country and police services, General George Fivaz. Fivaz was assigned the duty of transforming and leading the SAPS in alignment with the Constitution and Bill of Rights (BOR). Furthermore, Fivaz was responsible for: unifying the different police agencies under one policing authority; introducing new structures and ranks on a national scale; promoting a police service that respects the Constitution and BOR; and teaching a certain degree of police professionalism and conduct.²⁸

In January 2000 Fivaz's position in office expired and Jackie Selebi was appointed as the second NPC of the SAPS.²⁹ Selebi had served in senior positions in government before he was appointed as NPC. After the 1994 elections he was elected as a Member of Parliament (MP). In 1995 he served as the South African permanent representative at the United Nations in Geneva. He was appointed as the

²⁴ Newham G (2015) 'Avoiding another Marikana massacre: Why police leadership matters' SA Crime Quarterly 53 42.

²⁵ The Constitution of the Republic of South Africa Act 200 of 1993.

²⁶ Section 207(1) of the Constitution.

²⁷ Section 205(3) of the Constitution.

²⁸ Rauch (2000).

²⁹ Matuma & Rossouw (2010).

Director-General of the Foreign Affairs Ministry in 1999, and then in 2000 he was appointed by the former President Thabo Mbeki to be the NPC of the SAPS.³⁰ Despite his experience in government and therefore assumed leadership ability, Selebi was suspended from office in 2007 due to his alleged involvement in corruption.³¹ In 2011 he was prosecuted then sentenced for corruption in contravention of the Prevention and Combating of Corrupt Activities Act³² and was sentenced to fifteen years imprisonment.³³ After that Bheki Cele was appointed as NPC in June 2009. His leadership (style) was seen to be leaning towards militarising the police.³⁴ It is important to note that, Cele, does not have a background in the police service. He was in the teaching profession and holds a Teacher's Diploma. Before his appointment as the NPC, he had served as the Chairperson of the Portfolio Committee on Safety and Security. Cele was also a member of the Executive Committee for Transport in KwaZulu-Natal. However, Cele was suspended from office in 2011 upon a recommendation by the Moloi Board of Inquiry (BOI), which questioned his fitness to hold office in terms of the Act.³⁵ Cele was implicated in an alleged unlawful property deal and was suspended from the NPC role in 2011. Despite this history, Cele was re-appointed as the new Minister of Police by the President Cyril Ramaphosa in February 2018 and currently, at the time of writing, still holds that position.³⁶

In June 2012, Riah Phiyega took office as the new NPC after Cele's suspension.³⁷ She did not get to enjoy her new high-ranking position for exceedingly long; she was suspended in October 2015 by the President following recommendations from the Farlam Commission of Inquiry finding her incapable to hold office. As mentioned above, this was due her role into the deaths of 34 protesting mine workers at Marikana in August 2012.³⁸ After Phiyega, came Lieutenant-General Johannes Khomotso Phahlane appointed as the 'Acting' NPC from October 2015 to 2017. Prior his appointment as the NPC he was employed in the SAPS as head of the Forensic Service. However, the top police officer was also involved in some murky dealings stemming from his taking office as the NPC. He faced six counts of corruption for allegedly receiving or accepting benefits from a car dealer meant for use by the Police Department.³⁹ In June of 2017 former President Zuma employed Lieutenant-General Lesetja Mothiba as Acting NPC Police Commissioner of the SAPS pending Phahlane's charges.⁴⁰ Then-President Zuma,

³⁰ SAPA (2015).

³¹ Matuma & Rossouw (2010).

³² Section 4(1) of the Prevention and Combating of Corrupt Activities Act 12 of 2004.

³³ *Selebi v State* (240/11) [2011] ZASCA 249.

³⁴ Burger J (2015).

³⁵ Section 8(6) (b) (v) of the Act 68 of 1995.

³⁶ Grootes S (2019).

³⁷ Newham (2016).

³⁸ Bruce (2015).

³⁹ Gous N (2019).

⁴⁰ Dentlinger & White (2017).

using his Constitutional power as envisaged in section 207 (1) of the Constitution⁴¹, removed Mothiba and officially appointed General Khehla John Sithole as the new NPC for SAPS.⁴² Comparing the appointments prior Sithole one could argue that Sithole was a career cop, he joined policing services in 1986 and steadily worked his way through the ranks.⁴³ On the contrary, police leaders like Riah Phiyega and Jackie Selebi had no background or work experience on matters of policing, and it is arguable this affected their ability to lead the police services towards the professional principles and goals it seeks to achieve.⁴⁴

Section 205 (3) of the Constitution provides for the SAPS to fulfil its obligation to prevent and fight against crime, creating a secure environment by maintaining public law and order.⁴⁵ This obligation is bestowed upon the members of the SAPS. In addition to this obligation, the Constitution in section 207(1) recognises the need for a leader in the SAPS to be provided with powers to control and manage the police services in harmony with the national policing policy.⁴⁶ To exercise the authority to control and manage the SAPS, the NPC must first be appointed by the President as provided by the Constitution⁴⁷ and confirmed by the SAPS Act.⁴⁸ Given the historical record of incompetence, it may be argued that this mechanism of appointing Fivaz, Selebi, Bheki, Phiyega and other NPCs to date did not envision or require the appointment of persons with effective policing leadership skills and competence. These questionable NPC appointments show that the NPC has to be capable of making decisions to solve the complex nuances of the SAPS. Newham argues that since the early 2000's NPC's have been selected based on their loyalty to the President, not their ability to do the job of leading the SAPS⁴⁹, leading to less than suitable, and incompetent leadership of the SAPS. This is not so much a criticism of the individuals presented in these cases but rather a criticism of the Head of State, for making such ineffectual appointments.

Based on the performance of those individuals who have been selected, an argument may be made that a better process for appointing the NPC is required; a process able to effectively and reliably select an individual who is both suited and qualified to do the job. Effective leadership can have a significant impact on the functioning of an institution and thus the selection of an appropriate NPC could potentially have a significant impact on the performance of the SAPS. Considering the prominent levels

⁴¹ Section 207 (1) of the Constitution states that the President as the head of state 'must appoint a man or woman as the National Commissioner of the police service, to control and manage the police service.'

⁴² Wolhuter B & Magubane T (2017).

⁴³ Times Live (2017).

⁴⁴ Saunderson-Meyer W (2017).

⁴⁵ The Constitution of South Africa (1996).

⁴⁶ Section 207 (2) of the Constitution.

⁴⁷ Section 207 (1) of the Constitution.

⁴⁸ Section 6 (1) of the Act 65 of 1995.

⁴⁹ Newham (2015).

of crime prevailing in South Africa, there is an urgent need to correct these matters, and put in place a mechanism to govern and optimize the appointment of the NPC. Newham further argues that this discretionary authority by the current presidential appointment mechanism threatens the independence and integrity of the police services.⁵⁰ As such this paper contends that the introduction and application of a developed appointment process for the NPC role based on criteria and competence will assist the SAPS and the President in making effectual appointments.

Finally, we must also ask ourselves if the Constitution fulfils its role in promoting 'constitutional' democracy and the independence of the different institutions of administration put in place for governance in South Africa? South Africa is a constitutional democracy that guarantees every adult over eighteen the right to actively appoint their representative through an electoral party system (i.e., national elections administered by the Independent Electoral Commission (IEC)).⁵¹ When the question of appointing a leader comes to mind, the democracy promised by the Constitution plays a crucial role. Democracy allows for the public at large to play an active role in selecting, assessing, and appointing a leader. The leader appointed by the public is expected and required to direct and implement policies that protect individual rights and community safety.⁵² Currently the process of appointing the NPC has no accountability and transparency measures.

Having said this, it is the lack of internal proactive measures from SAPS in conjunction with the absolute power of appointment afforded to the president that leaves the situation desperately wanting for measures that regulate the appointment process that is based on competence. The idea of democracy is about balancing the protection of individual rights and acknowledging individual responsibility on part of the public, the President and the responsible institutions.⁵³ For example, South African citizens expect their President and government to protect and promote human rights through effective appointments and effective policing institutions,⁵⁴ amongst other expectations, and citizens have the duty to follow and obey the law. Democracy is about accomplishing steadiness in society with the aim of preserving and promoting dignity and fundamental human rights to achieve social justice for all - in the long run.⁵⁵ That being the case, the systems used in appointing police leadership in the SAPS must be in promotion of accomplishing steadiness in society as per human rights in the BOR and the Constitution. Effective appointment processes are required as mandate by the

⁵⁰ Newham (2015).

⁵¹ *Parliamentary Paper (2019)*.

⁵² Van Vollenhoven (2015).

⁵³ Van Vollenhoven (2015).

⁵⁴ *Section 12(1)(c)* of the Constitution states that everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources.

⁵⁵ Du Toit *et al* (2010) 211.

Constitution as per section 207(1) through its legislation requirement of a competent NPC that can manage and control the SAPS in the promotion and protection of human rights.

1.2 Problem Statement

The focus of this paper is on the mechanism of selecting and appointing the National Police Commissioner as a significant factor which has contributed to the deficient performance of the SAPS in combatting and reducing crime. Current literature and research show that the only law authorising the appointment of the National Police Commissioners is found in the Constitution, which, under section 207(1) mandates the President to appoint the NPC to manage and control the SAPS. The constitution, however, provides no specific requirements for competence, policing experience, leadership skills or any other relevant capability which a candidate should possess in order to manage and control the SAPS. Apart from the constitutional mandate which provides for the presidential appointment of the NPC, there is no additional legal document which specifies the process by which, or the criteria against which, that selection must occur. Furthermore, the police service has to date not specified any process, policy or set of criteria by which the NPC is to be selected.

This is a problem for the SAPS, as the records indicate that the string of individuals who have occupied the apex post within the SAPS have all, to a greater or lesser degree fallen short in their management and leadership of the institution. Meanwhile, South Africa's national crime statistics, across several categories of violent and no violent crime, have not shown any significant improvement, speaking to the successive failure to improve performance of the institution. Whilst the constitution, in section 207(1) does provide for guidelines on the process of appointing the NPC, section 195(1) however states that the management of public institution should adhere to the principles of (a) a high standard of professional ethics and (b) efficient and effective use of resources. Although the Presidency is acting well within its legal jurisdiction in selecting the NPC, they have likewise come under significant criticism for not implementing any kind of competitive and rigorous appointment process in the selection of the NPC. This is, as the critics have pointed out, simply a political appointment. This lack of a competitive and rigorous appointment process has come under significant criticism from civil society, international policing organizations and the general public. This discretion to appointment the NPC by the Residency is identified as the key reason underlying the underperformance of the previously appointed NPCs.

Given the problem outlined above, this study seeks to interrogate the shortcomings of the current mechanism of appointing the NPC, working towards the overarching objective of proposing a set of measures to amend that process toward one that is competitive, and conducive to the selection of a leader who is competent, qualified and up-to the task of managing and controlling the SAPS. In

undertaking this task, this study systematically assesses the existing legislative, statutory and strategic organizational documentation to critically assess both the criticisms against the current method of appointment, as well as the recommendations made to address the various shortcomings that have been noted. Furthermore, the outcomes of the systematic assessment are evaluated in light of the most recent legal research touching on this subject. This investigation is done using a contingency theory lens, a theory which is fundamentally concerned with the link between organizational practices (in this instance, the practice of appointment) and the outcomes which emerge as a result of those practices. Although a multitude of published documents and research papers have criticised various aspects of the NPC appointment mechanism, currently no single study or published research paper addresses the intricacies of 'NPC appointment process' in any sort of comprehensive manner. By addressing this gap in the existing research, this study aims to make a novel and substantial contribution to the existing body of knowledge.

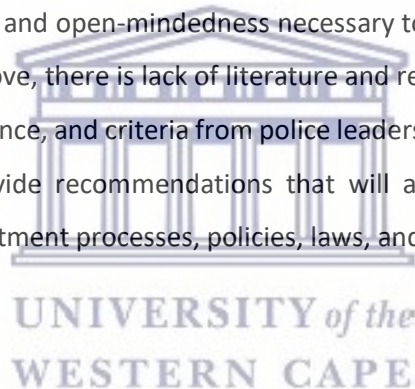
1.3 Research Question

The aim of this study is to provide a detailed discussion investigation on the measures that the SAPS should apply to ensure the selection of competent and capable individuals to manage the SAPS in the role of National Police Commissioner (NPC). As provided in the background that the SAPS has been in the past and still is currently experiencing lacklustre performance from those individuals that have been appointed to the role of NPC. Although several contextual factors have been highlighted in the literature, as having a deleterious effect on the performance of the NPC, this study particularly on the mechanism of appointment as a determinant of good candidate selection for the role. Based on this objective, this study seeks to address the following research question:

1. How may the process of appointing the National Police Commissioner (NPC) be structured so as to maximise the potential of that process to select the most suitable candidate for the role?

Toward addressing this question, this study looks into the already developed schools of thought for management theories, style of leadership, policy, functions and objectives, case law and the mandate that guides and regulates the SAPS objectives and mission as a public institution with the specific purpose of providing quality services in policing, investigation of crimes, protecting and promoting human rights as envisaged by the Constitution. This study is inspired and found to support the pursuit of providing detailed instructions supported by research on the measures that the SAPS must take to address the underperformance of the SAPS and its apex leader, the NPC. In undertaking this task, this study considers the recommendations of the National Development Plan 2030 which extensively highlights the need for establishing competent leadership for the SAPS. Additionally, this work takes as a starting point the recommendations of Corruption Watch (CW) and the Institute for Security

Studies (ISS) and other specific bodies that have dedicated their research into policing leadership. CW and the ISS are two of the organisations that have been at the forefront of advocating for the appointment of a National Police Commissioner with competitive leadership qualities that will instil positive policing attitudes, integrity, and police professionalism.⁵⁶ However, the evidence also establishes that many (if not most) of the recommendations given to the SAPS by these bodies have not been adopted and applied by the SAPS. As a response, the ISS and CW held a march to handover some of their recommendations on improving the measures of appointing a NPC in support of section 207(1) of the Constitution and the implementation of the NDP recommendations for policing.⁵⁷ The call behind the submitted recommendations made by the CW and ISS was on transforming the measures of appointing the NPC, basing it on merit and using a transparent and competitive process in support of the NDP.⁵⁸ Newham advises that, the reason behind the above-mentioned campaign by ISS and CW was to curb the history of appointing an NPC motivated by political reasons. They advise that the NPC should be appointed based on skills, experience, integrity, passing of security clearance, passing of psychological evaluation, and that the process should be open to public scrutiny. Cawthra has acknowledged that retraining and professionalisation at senior level is essential to support a diverse culture, creative thinking, and open-mindedness necessary to raise the institution beyond its current state.⁵⁹ As mentioned above, there is lack of literature and research focusing on the required process of appointment, competence, and criteria from police leaders. Consequently, this study seeks to address this gap and to provide recommendations that will assist the SAPS in shaping the transformation of policing appointment processes, policies, laws, and the performance of institutions in South Africa.



1.4 Research Methodology

This is a desktop-based research study which has made use of and refers to primary and secondary sources of literature. Primary sources include the relevant pieces of legislation and the Constitution. Secondary sources are included in the form of relevant books and journal articles, as well as informal sources such as, newspaper articles and press statements. As a part of this research process the study implemented a detailed literature review of key statutory and strategic documentation, researching schools of thought relating to the topic of this study, the appointment of senior leadership specifically in policing institutions like the SAPS. The study considered publicly available repositories of said sources, which included South African as well as international bodies. The available sources were reviewed using for relevance to the topic of study, where only documents that are substantially

⁵⁶ DefenceWeb (2017).

⁵⁷ Beukman F (2017).

⁵⁸ Newham (2017).

⁵⁹ Cawthra (1993) 191.

related to the topic of either (i) appointing senior leaderships in policing institutions, or specifically (ii) to the appointment of the NPC for the SAPS. An initial set of 28 documents were identified for consideration, which were subsequently reviewed for their relevance to the topic of study, i.e., the appointment process of the NPC. Those sources which did not have substantial relevance to appointment processes specifically were eliminated from consideration. The final collection consisted of a set of 14 pertinent documents were identified, including the constitution, relevant legislation, strategic and policy documents from relevant organizations both locally and internationally. The full list of included documents is outlined in Table 1, located in chapter 3.

From these sources all references relevant to the topic of study were extracted for analysis and dissection. These extractions from the literature and statutory documents were then subjected to thematic synthesis. A total of 12 primary themes were identified from the selected sources, and these were subsequently synthesized into a set of 4 high level themes, which are fully outlined in Table 1 and Figure one, located in section 3.1. Thematic synthesis is an approach that is often used for identifying, analysing, and reporting on patterns or themes within a body of literature or data in qualitative research.⁶⁰ Those patterns or themes are thematised and categorized so that a structured understanding of these themes within the sources may be outlined, and these are used to establish premises for the key arguments underlying the core research question. This is fundamentally a conceptual analysis methodology which involves the systematic coding of data and generating of descriptive and analytical themes. It is an inductive approach which is critical to this study given that one of the key overarching aims of the study is to identify and critically analyse those specific 'themes' or aspects of the NPC appointment process which have relevance to the optimization of that appointment process. Concepts comprise some of the most fundamental entities or phenomena associated with a discipline and with relevance to this study, this would be the discipline of appointing leadership, leadership competence and leading a policing institution such as the SAPS in compliance with its institutional mandate. The outputs of this synthesis are utilized both to identify the key themes within this research area, as well as to provide an overarching structure to the discourse, captured in the form of a conceptual framework for this study (see section 3.1 for expansion on the conceptual framework), which is used to shape the narrative. The elements of this conceptual framework are critically dissected in consideration of the research and the relevant case law which links to the subject of this research. Finally, the outputs of this critical analysis are distilled into a set of key conclusions, from which a set of recommendations are formulated.

⁶⁰ Thomas J, Harden A, Thomas J & Harden A 'Methods for the thematic synthesis of qualitative research in systematic reviews' (2008) 03.

1.5 Dissertation Structure

This study is divided into five chapters, where each chapter is purposed to address a key phase in this research study. Chapter one is the preparatory chapter that outlines the background to the study, identifies the core problem to be addressed, outlines the research question addressed by this work (linked to the problem outline) specifies the methodology applied toward addressing this research question and lastly outline the structure of the dissertation.

Next, the second chapter establishes the theoretical and contextual basis for the study. The role of leadership and a discussion of key leadership theories lays the groundwork for later analysis of the NPC and the associated process to appoint the NPC. Further to this, the chapter provides an outline of contingency theory and institutional theory, which are to act as the theoretical lens through which the narrative is structured in the proceeding chapters. Institutional theory is used to establish the precepts for the function of an institution from a theoretical perspective. The SAPS, or policing services in general, are imbued with the legal right to use “force” to attain their institutional objectives. Institutional theory established that coercive means are a legitimate mechanism of action when associated with the public institution responsible for maintaining law and order. However, contingency theory is the main theory applied in this work, as it is a theory primarily concerned with the relationships between organizational practices and the resulting organizational performance. In this respect, the NPC appointment process if viewed as a set of practices, the outcomes of which have a direct and relevant relationship with the overarching organizational performance of the SAPS. Lastly, chapter 2 provides content into the structure of the SAPS, addressing the regulatory framework and constitutional authority which empower the SAPS as a national policing service, as well as describing the various roles and responsibilities associated with the various branches within the SAPS. Here, consideration is given to the relationship between the Republic of South Africa as a sovereign nation and participative body in the African Union, the United Nations, and the broader international arena.

Chapter Three, as the primary analytical chapter, outlines and subsequently analyses a conceptual framework to define all aspects of the appointment process and the making of policy pertaining to the appointment of the NPC. The elements which comprise this conceptual framework are extensively unpacked, where each elements relevance to the core topic of the consideration is discussed, defined, and contextualised. It should be noted that the conceptual framework introduced and discussed in chapter 3 is used as a framework to structure the discussion and conclusions in chapter 4, as well the resulting recommendations outlined in chapter 5.

Chapter Four discusses and concludes on the formulation of effective appointment criteria and processes for appointing a NPC in South Africa. It explores how the identified appointment criteria and processes can best be applied in harmony with policy revisions stemming from the literature, that could assist in strengthening the SAPS in their function as a policing institution, and to the extent that that function supports and upholds the constitutional democracy of the South African Republic.

Lastly, chapter Five draws together those essential elements presented in the prior chapters, presenting them in a series of recommendations purposed toward improving the NPC appointment process.



CHAPTER 2: THEORY AND CONTEXT

Research provides that integrity should be at the forefront of our decisions when faced with the question of identifying what makes one a good leader. The Cambridge Dictionary defines integrity as the quality of being a truthful person driven by strong principled values and being determined to practice those morals.⁶¹The importance of integrity and other values must be at promoted and at the forefront in a discussion about leadership and its relationship with competence. The practice of appointing incompetent leaders who are not set on promoting principled values in the police department in South Africa is historical in nature and persists to the present day.⁶²

Over time, appointing incompetent leaders cannot sustainably improve the quality of services to the public because incompetent leaders lack a developed capability of conceptualising, formulating and implementing solutions that are in alignment with organizational principles and goals. Hargreaves and Fink argue that 'sustainable improvement on delivering services in communities depends on successful competent leadership'.⁶³ It is submitted that leadership that is committed to success is needed in governmental departments such as the police department.

This chapter defines leadership and discusses leadership qualities that are regarded as the best when it comes to the expected requirements and qualities from a leader responsible for taking the initiative and objective of the SAPS forward. The reference to a leader in this section relates to the leaders found in the different structures of the SAPS but most importantly the NPC. Also, the section focuses on leadership principles and the types of theories that are applicable to police leadership and the institution of the SAPS. Literature, research, relevant examples and case studies are provided in this chapter as evidence that support the core arguments of this paper.

2.1 The Role of Leadership

Leadership is one of the most intensively researched subjects in academia. Research into this area has been done for a wide variety of purposes including to understand variations in approaches to leadership, and to understand their relationship to the resultant function and performance of a given organization. The extensive research has generated various definitions and theories of leadership, some of which we will discuss here. A simple description for the role of leadership is given by Daft and Marcic,⁶⁴who write that leaders build foundational structures, create opportunities and introduce policies that thrive overtime regardless of changes in the leadership position. Another description is

⁶¹ Cambridge Dictionary Online (2019).

⁶² Newham (2015).

⁶³ Hargreaves A & Fink D (2006) 1.

⁶⁴ Daft & Marcic (2007) 7.

given by the writer Norman in his 2019 publication. He states that the role of leading is the ability to inspire others, and if not, then to influence others positively so they can get the sense that their role is one of value no matter the level of contribution.⁶⁵

Daft and Marcic also state that another key aspect in leading is the ability to acknowledge individual contributions with the aim of inspiring the team to be more driven, leaders also create an environment where individuals are capable of achieving both organisational and individual goals without having to feel that they are compromising their individual goals.⁶⁶ Recognising the importance of having and achieving individual goals should be at the centre of every leadership role in an organisation. This view is supported by the Maslow's hierarchy of needs, the hierarchy groups needs in the order of their importance for one to identify as an individual. The first need in the hierarchy is self-actualisation. Maslow describes self-actualisation as people's realisation of their ability to accomplish their potential driven by a motive.⁶⁷ Therefore, a leader ought to realise the importance of this need and plan company structures, goals and policies which benefit both individual accomplishments and the accomplishments of the organisation or department.⁶⁸ The view is that this dual accomplishment can at times be acquired circumstantially through the leader's ability to motivate its subordinates of the bigger picture.

2.1.1 Defining Leadership

Du Toit, Erasmus and Strydom in 2010 define leadership from a management perspective. Their definition supports the dual accomplishment strategy outline in section 2.1 stating that leadership is the ability to convince others to realise their full potential regardless of their weaknesses while accomplishing company objectives.⁶⁹ In addition, management logicians, Stoner and Freedman argue that the actual role of management as a leader is mastering the accomplishment of organisational goals, missions and targets through other individuals.⁷⁰ It does not only involve people management but also the ability to manage resources and to deliver the necessary services or product.⁷¹

Nelly, Gibson and Ivancevich state that leadership is to provide strategic planning for the company and allocating how a company's resources can be productively used for the benefit of the business and its workers (private or governmental).⁷² The planning for the allocation of resources according to the identified needs requires the leader to be open to listen to his/her subordinates and be fully aware

⁶⁵ Norman (2019).

⁶⁶ Daft & Marcic (2007)8.

⁶⁷ Du Toit, Erasmus & Strydom (2010) 210

⁶⁸ Daft & Marcic (2007) 8.

⁶⁹ Du Toit *et al* (2010) 210.

⁷⁰ Stoner & Freedman (1989) 11.

⁷¹ Stoner & Freedman (1989) 11.

⁷² Gibson & Ivancevich (1995) 5.

that they themselves may lack the skills and abilities required to accomplish the dual goals of the organization and the individuals who form part of it.

Du Toit *et al*, state that companies must be able to communicate the organisation's vision, mission, goals, strategies, plans, problems and expectations to workers. Furthermore, in return, the company or its leader must listen to employee's needs and aspirations then try to find ways of balancing such by way of delivery.⁷³ Besides the above, Du Toit *et al* say that there are requirements which one needs to have as a leader and those are:

(a) Authority, (b) Power, (c) Responsibility, (d) Delegation and (e) Accountability.⁷⁴

These requirements can benefit the police department because the definition and the role of leadership is more or less the same regardless of the environment, department or organisation. Research shows that South African policing policy does not consider the importance of these leadership qualities when appointing its leaders. Reports submitted to parliament do not recommend how the National Police Board (NPB) must measure the NPC's competency when screening and selecting for appointment. The appointment of the NPC must be addressed with the level of seriousness it deserves and this can be reflected through developing appointment measures that require specific leadership traits, skills and abilities. Relevant research and literature should be considered to guide the SAPS towards its leadership transformation.

In the next section the study has looked into the history and the development of different leadership theories with the intention of reflecting on the relevance for the subject at hand which is: what are the leadership competencies required by the NPC for the successful implementation of safety and law and order in South Africa.

2.1.2 Importance of leadership for Law and Order

Mumford *et al* argue that the absence of laws that regulate the required skills, abilities and competencies when appointing leaders will impact negatively on the sustainable improvement in leadership when developing a department or an institution.⁷⁵ The persisting problem is that there is no law in South Africa which makes it necessary for police leaders to have the required skills, abilities and competencies which make candidates eligible to be appointed as the leader of police, and the police department does not have requirements that specify these. In support of this identified need, a draft White Paper on Police emphasises the importance of having police leadership based on norms

⁷³ South African Police Service (2002).

⁷⁴ Du Toit *et al* (2010) 210.

⁷⁵ Mumford T, Campion M & Morgeson F (2007) 154 - 166 154.

that are of the highest standard⁷⁶. Given the historical appointments in the police department setting standards or introducing a regulation to inform leadership appointments in SAPS would be one step in the right direction.

Norman states that setting high standards when appointing leaders acknowledges the importance of their role, emphasising that it is a role for individuals with the ability of guiding and influencing others to achieve organisation goals.⁷⁷ In support of this argument Llopis states that the role of a leader is rooted in the ability to have a positive influence on subordinates to inspire and motivate them.⁷⁸ Both authors are of the view that, in this case the National Police Commissioner NPC is embedded with the responsibility of influencing police officials and creating an environment that recognises their professional responsibilities and highlights the important role they play in keeping society safe while supporting the objective of instilling law and order.

The establishment of law and order is in support of recognising and respecting all individual rights with the aim of creating an equal society where there is freedom of movement⁷⁹ and expression.⁸⁰ The National Development Plan (NDP) for 2030 recognises the importance of community involvement in the fight against crime because, it addresses the need to develop community policing for creating safer spaces in society.⁸¹ The NDP further states that police officials create safer communities when they work together with the communities they seek to protect. Normally this is found in cases where society takes responsibility for being involved in community policing and assists police officials in crime investigation.⁸² From the NDP perspective the argument would be: society would assist police officials because it is motivated to create a law-abiding environment and a safe community.

This research seeks to provide guidance in support of the argument that police leadership is the driver for enabling the South African Police Services (SAPS) to create safe spaces in South Africa. The NPC as a leader (with influential responsibility) has the duty to encourage societies to partner with the police department in the fight against crime, while clearly highlighting the importance of both roles in sustaining such partnership.⁸³

Research on leadership has developed over time. This development has led to the introduction of theories of leadership. The police department could benefit from looking at these theories for reference in the mission of improving its department. This chapter will provide a detailed historical

⁷⁶ Newham G (2015) 41.

⁷⁷ Norman L (2019).

⁷⁸ Llopis G (2013).

⁷⁹ Section 21 of the Constitution.

⁸⁰ Section 36(1) of the Constitution.

⁸¹ NDP 2030.

⁸² Kruger T, Lancaster L, Landman K, Liebermann S, Louw A & Robertshaw R (2016) 26.

⁸³ Kruger *et al* (2016) 27.

background on some of the leadership theories that the department should consider. It goes on to provide a detailed explanation on the necessity of these theories with respect to choosing/having to choose a competent leader.

2.1.3 Historical Studies and Research on Leadership Theories

We live in a modern society which still considers some leaders as iconic heroes. This consideration was born in history by the idea that certain individuals are born with heroic capacities that other ordinary individuals do not possess.⁸⁴The history of leadership can be traced back in time before 1840 when leadership theories were introduced by the academics in the research society. In 1840 the Great Man Theory was introduced by Thomas Carlyle who related being a leader with heroism. Writers that came before Carlyle like, Plato and Machiavelli introduced this claim and argued that one can be a good leader only through being born with leadership genes.⁸⁵ Carlyle's argument was later opposed by Herbert Spencer. He argued that heroic leadership is a product of the then existing social conditions of that period, therefore not genetic.⁸⁶Early stated that many followers and leaders still believe in the assumptions made by the Great Man Theory, that a leader is a heroic icon but there has been a societal shift that considers societal and cultural behaviour.⁸⁷

According to Early, the assumption is that the individuals who eventually take up leadership roles would normally have served in lower ranking positions. Taking a senior position requires the leader to think from a 'strategic perspective',⁸⁸ which means that the leader creates a holistic vision detailing the pathways that the organisation will take to achieve its ideal goals and objectives using timeframe for both the long and short term.⁸⁹The vision involves introducing change to improve the current state of the organisation. New leadership should bring a vision in a way that brings positive change to an existing organization and current situation. To implement changes leaders, need to employ their different styles of leadership guided by some of the theories and principles.

What follows is a discussion of different leadership theories.

2.2 Leadership Theories

2.2.1 Great Man Theory

The first theory to be considered by the study is the Great-Man Theory established in 1840 and has been part of the research discussion to date. The Great Man theory claimed that leading was only

⁸⁴ Early G (2013) 61.

⁸⁵ King S (1990) 45.

⁸⁶ Early G (2013) 62.

⁸⁷ Early (2013) 62.

⁸⁸ Davies B & Brundrett M (2010) 11.

⁸⁹ Davies & Brundrett (2010) 11.

natural, one had to be born a leader and could not be made or trained to be one and if one was a leader, they were regarded to be a heroic icon.⁹⁰ The Great Man theory was developed in what we call the Personality Era. In this Era researchers focused on researching great men and women found back in history. Researchers advised individuals to copy the personalities and behaviours of those great men and women, should they wish to become a strong leader.⁹¹ In the Personality Era one of the most important studies conducted was one by Bowden in 1927. His research credited good leadership as a result of a person's personality.⁹² This process was later strongly criticised. Apparently, the different personalities that leaders had for example, Hitler and Ghandi⁹³ were difficult to copy and this did not contribute to developing good leadership skills.⁹⁴ The Great man theory fundamentally supposes that leadership is a matter of "rising to the occasion", and the theory has been criticised for the notion that individuals became leaders even without training and previous experience. The critics have pointed out that if leadership was simply an inborn quality, then all people who possess the necessary traits would eventually find themselves in leadership roles, but this is not the case. Research has instead found that leadership is a surprisingly complex subject that is influenced by numerous factors to determine how successful a particular leader may or may not be. The contemporary view rejects that great man perspective, but rather that greatness in a leader is both the possession of skills and capabilities, as well as a good fit between the individual and the institution in which they work.⁹⁵ As is stated by Earle, leadership requires an individual who has expertise to contribute to a team, within a specifically tailored environment, with the objective of solving the problem.⁹⁶ As such great man theory is deemed as unsuitable for the analysis undertaken in this study, but its brief discussion here does highlight some of the "alternative" views which are still espoused in the world, and this has some relevance to the later discussion.

2.2.2 The Trait Theory

Lewin describes leadership in terms of people- and task orientation, suggesting that different combinations of traits produce different styles of leadership.⁹⁷ This combination can be referred to as the Trait Theory. Trait Theory was developed by the researcher Francis Galton in 1930. His theory realised that the Great Man Theory lacked consistency because there was no relationship between trait and leadership. His study of special traits developed the belief that other abilities (i.e.,

⁹⁰ CISL (2017) 4.

⁹¹ King AS (1990) 44.

⁹² King (1990) 45.

⁹³ Early (2013) 62.

⁹⁴ Early (2013) 62.

⁹⁵ Cherry K (2020) 'The Great Man Theory of Leadership'.

⁹⁶ Early (2013) 62.

⁹⁷ Lewin *et al* (1939) 34.

intelligence) were also genetic.⁹⁸ In support of Galton's research, Lewin stated that, factors like the person's status and or type of family (e.g. liberal family) correlate with the persons' ability to be a leader.⁹⁹ The Trait Theory introduced the idea that leadership was inborn, it described any distinctive physical or psychological features of an individual as the reason for their ability to lead.¹⁰⁰ The theory assumed that born leaders inherited common character traits with 'superhuman powers' like honesty which made leaders much more effective to their followers¹⁰¹. The Trait Theory fell into disfavour later in the 1940's as research developed and proved that certain character traits are not genetic but that they can be acquired through discipline and mentoring.¹⁰² The Trait theory is also not favourable and as a form of leadership for the SAPS in that it does not support the fusion of effective leadership expertise, personality, training, and assertive managerial control. The application of trait theory is thus disregarded for use in this study.

2.2.3 Charismatic Leadership

According to Latif, the concept of charismatic leadership is taken from the word charisma which means that a person is seen to portray exceptional powers and qualities which set her/him apart from ordinary people. She/ he is regarded as of 'divine origin or as exemplary'.¹⁰³ Conger and Kanungo (cited in Latif, 2016, 208) argue that a charismatic leader is an individual of distinctive standards whose motive, potential and extraordinary will power separate her/ him from others.¹⁰⁴ Nikoloski supports this definition by identifying the relationship between the leader and followers. He wrote that a charismatic leader uses her/his power to influence the followers and this influence is reciprocated because the relationship is reciprocal and interactive in nature.¹⁰⁵ Nikoloski used a study looking into more than 100 companies over the course of seven years to examine the effects of change in leadership in company performance. They found in their study that leaders who had high moral standards, ethical orientation and high self-control when it comes to power received a high return on assets and were more socially and environmentally responsible.¹⁰⁶ Nikoloski added that, charismatic leaders are essential in times of economic instability to lead weary followers by instilling assurance, hope, competitiveness, efficiency and guidance in the right direction while building commitment for the organization's goals and objectives or commitment to a cause.¹⁰⁷ An institutions such as the SAPS

⁹⁸ Khan *et al* (2017) 253.

⁹⁹ Lewin (1939) 34.

¹⁰⁰ Khan *et al* (2017) 253.

¹⁰¹ Uzohue CE, Yaya JA & Akintayo OA (2016) 19.

¹⁰² Khan *et al* (2016) 2.

¹⁰³ Latif M (2016) 208.

¹⁰⁴ Latif (2016) 208.

¹⁰⁵ Nikoloski K (2015) 18.

¹⁰⁶ Nikoloski (2015) 18.

¹⁰⁷ Nikoloski (2015) 19.

is developed to deliver specific services, objectives and goals, in delivering these services, objectives and goals the SAPS must comply with the supremacy of law as per Constitution, the SAPS Act and other international, continental and local policing instruments that guide the institution. The long-term successful management of such a high-level institution requires a broad set of skills and capabilities, and this does not align with the precepts of charismatic leadership theory. This is not done to downplay the relevance of charismatic leadership theory, because it certainly is relevant within certain contexts, and where charisma is added to other characteristics of great leadership it certainly does bring with a wide range of potential benefits. However, the verdict on charismatic leadership theory is that it emphasizes of specific attribute of a leader, which while potentially beneficial to an individual in a position of leadership, does not wholly qualify or describe the full set of attributes and capabilities which one might expect for senior institutional management and leadership.

2.3 Contingency Theory

Contingency theory is a modern contemporary theory of management suitable for application in the context of this study. According to contingency theory, high performance results from a fit between the institution and its environmental contingencies.¹⁰⁸ The important principle underlying the notion of “fit” is that high performance can be achieved by an institution when the strategies and practices which it employs are a suitable fit for the environment in which it operates. Contingency theory is one of the dominant theories in the field of management, and it is primarily used to investigate the relationship between organizational performance, and the extent to which those performance outcomes are shaped by organizational practices and the operating context.¹⁰⁹ The broader management literature notes that the that application of contingency theory in research should address (i) a set of practices employed by the organization, (ii) the performance outcomes achieved from those practices, and (iii) the contextual / environmental factors which influence or moderate the relationship between practices and performance outcomes. Following from this, this study considers how the adaptation of practices, particularly the recruitment practices linked to the appointment of the NPC, could potentially improve the operational performance of the SAPS. Within the context of this study, it is assumed that the context in which the SAPS operates is relatively fixed for the short to medium term, placing a focus on the adaptation of practices to achieve improvement in performance outcomes.

Contingency theory is a useful lens through which to understand the organizational performance of the SAPS where the desired performance outcome is to maximise law abiding behaviour in South

¹⁰⁸ Volberda *et al* (2012) 1040.

¹⁰⁹ Sousa and Voss (2008).

Africa. Contingency theory therefore emphasises fit between the characteristics of the organisation and the context in which it operates, where the underlying assumption is that fit is directly related to performance. The characteristics of the SAPS must be a good fit for the context of SA to achieve desired performance. Therefore, the characteristics of the SAPS must be a good fit for the mandate of fighting crime. As leadership is a key structure within any given organization, the contingency theory perspective extends into the area of leadership, where the leadership of an organization is a key component which determines fit between an organization and its context of operation. However, in this respect the theory is written broadly, where good fit may be a function of a broad set of leadership attributes and qualities, including intelligence, behaviour, personality, qualifications, personal influence, and circumstances.¹¹⁰ For the application of contingency theory within this study, the proposition is that a NPC who is a good fit with the needs of the institution will result in an institution that is a better fit with its mandate. Whilst the previously discussed theories, including (i) Great Man Theory, (ii) Trait Theory, and (iii) Charismatic Leadership Theory all emphasize one aspect of one set of leadership attributes, contingency theory on the contrary emphasizes that a broad set of factors may and should be considered when working to attain good “fit” between the organization and the context in which it operates. Below, we further discuss contingency theory as it pertains to organizational leadership.

2.3.1 Contingency Theory as Applied to Organizational Leadership

Fiedler examined this theory in two studies. The first study, the Contingency Theory of Leader Effectiveness’ conducted in 1972, sought to establish an empirical link between leadership characteristics and organizational performance. The study found that if the leader’s style matches the circumstances, performance is maximised.¹¹¹ The second study looked at a two-step process which examines the individual’s intelligence and experience, and the leader’s working conditions and effectiveness.¹¹² Fiedler, demonstrated the relevance of situational variables, their effect on specific traits and the behaviours of effective leaders, where contingency leadership theory assumes that leadership attributes are significantly dependent on contextual factors. In expanding the Contingency Theory, Robert Tannenbaum and Warren Schmidt developed a study in 1973 that focused on the individual making decisions. Their study suggested that a leader must consider three factors before choosing the leadership style they will use when faced with a task.¹¹³ These are: supervisor, subordinates, and situation. Their study showed that, a supervisory role requires the consideration of the person’s personality and preferred behavioural style, between autocratic and participative

¹¹⁰ Oelofse (2006) 64.

¹¹¹ Madsen (2001) 13.

¹¹² Madsen (2001) 13.

¹¹³ Oelofse (2006) 64.

leadership style. In participative leadership subordinates choose and appoint the leader they want based on her or his personality and behaviour. The other style of leadership they introduced was the situational leadership. Situational leadership considers many factors such as: environmental, technological change, climate change, the size of the organization or department, and its goals and objectives when making strategic decisions. According to this a leader considers all factors continuously for each situation to select the kind of leadership that they must employ for the task at hand.¹¹⁴ This idea of situational leadership is supported by other researchers like, Hersey and Blanchard's theory on situational leadership developed in 1969.¹¹⁵ These studies laid the foundation for the contingency theory view of leadership. Just as contingency theory emphasizes fit between an organization and its context. The contingency view of leadership emphasized fit between the leader and the needs and requirements of the organisation which he/she is leading.

2.4 Institutional Theory

Institutional Theory provides a theoretical lens through which researchers can identify and examine the why and how of how institutions act.¹¹⁶ To this extent, this study accepts the academic definition of an institution as given DiMaggio & Powell that an institution is essentially an organization that exists for and is dedicated toward promoting a specific cause that can be economic, educational, professional, social, or otherwise. Consequently, and within the context of this study, Institutional Theory is used to establish the "why" and the "how" behind the existence of the SAPS and is used to provide an underlying rationale' for the strategies and practices which the SAPS should employ.¹¹⁷ Within the topic study, the SAPS is taken as to be a public sector institution whose formation is premised upon a need to maintain law and order. Policing services are unique in that they are founded with the legal permission to use force and forced detention to enforce particular aspect of a given countries legislation; maintain law and order. In terms of the "how", Institutional theory addresses the method by which an institution can influence and address demands within the environment in which it operates. According to Lewis et al institutional theory specifies that institutions achieve their objective through either (i) normative, (ii) coercive, or (iii) mimetic mechanisms.¹¹⁸ For example, Universities are effectively institutions which exist to promote the furtherance of knowledge. They

¹¹⁴ Oelofse (2006) 65.

¹¹⁵ Madsen (2001) 14.

¹¹⁶ Lewis AC, Cardy RI & Huang LSR (2019) 317.

¹¹⁷ DiMaggio PJ & Powell WW 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983)153.

¹¹⁸ Lewis *et al* (2019) provides that Coercive Power isomorphism occurs as a result of formal expectations (e.g., laws and regulations) and informal expectations (e.g., large companies engaging in CSR) and the formal and informal sanctions (e.g., fines, loss of legitimacy, etc) that occur when those expectations are not met. 'Normative isomorphism describes the rules, routines, norms, and values which get codified and diffused as work becomes professionalized. the degree of isomorphism occurring as a result of normative pressures is dependent on the influence of those normative organizations on the industry or profession. Mimetic isomorphism occurs as organizations seek to reduce search costs in the face of uncertainty' 317.

primarily achieve their aims to normative mechanisms. In essence, universities are in the business of establishing “norms” within the knowledge domain. An idea, established through research may be developed into a norm. In contrast, one might take the example of a high fashion brand, that exists not only to sell clothes, but to establish fashion trends. However, such an institution relies primarily on the memetic mechanism, which is the mechanism of copying the other, hence “mimetic”. Policing services are an example of a type of institution which achieve their objectives through coercive measures. If you break a law, then the police service has the legal right to use force to hold you accountable for that transgression. Regardless of the mechanism by which an institution achieves its objectives, the success of an institution may be measured in the extent to which individuals and society conform and comply with the mechanism being used. This resulting compliance is termed isomorphism, and the mechanisms by which institutions function are termed isomorphic pressures.¹¹⁹

With the confines of this study, institutional theory holds that isomorphic forces provide for individuals to conform to regulated social norms (not to commit crime) and organizations exist to put conformity into effect (prevent and combat crime). Isomorphic forces produce increased isomorphism which benefits the institution’s functional performance. In this study, isomorphism may be viewed as adherence to the rule of law. Consequently, the SAPS under institutional theory is identified as an institution because it is established in promotion of a particular cause which is to combat, prevent and reduce crime. Further to this, as a legalized policing institution, the SAPS exercises its institutional authority primarily through coercive institutional pressures. From this it may be taken that the performance objective of the SAPS, is to maximise the number of people who obey the law all, promote and protect human rights as mandated by the Constitution and the legislation of South Africa. The study holds, that the current mechanism of appointing the NPC does not support the institution in its ability to induce isomorphism toward the rule of law, in the population of South Africa, which in turn is evident from the high increase in crime survey data.¹²⁰ It is argued that process for appointing an NPC is currently dependant on whom the President is acquainted with and it’s not subjected to an accountable appointment process that prevents nepotism and appointing ineffective leaders. A mechanism of appointment should support the selection of a leader that will bring the institution closer to achieving its goals, not further away.

¹¹⁹ Glover J, Champion D, Daniels K & Dainty A ‘An institutional theory perspective on sustainable practices across the dairy supply chain’ (2014) 102-106.

¹²⁰ Palm K ‘Survey: 90% of South Africans do not trust the SAPS’ (2022) provides that ‘Action Society’s first SAPS Trust Indicator survey shows nine in 10 people do not trust police to respond in an emergency. The research specifically deals with the functionality and effectiveness of the police’s 10111 emergency line and so far, it suggests corruption and a lack of ethical and competent leadership are among contributing factors to why people do not trust the police.’

Section 207(1) of the Constitution states that an NPC is to be appointed by the president and that his/her functions are to “manage and control” the police service. The Constitution does not clarify what is intended by the phrase “manage and control.” Here, the SAPS Act¹²¹ provides additional us with additional insight, stipulating the ultimate objectives of the SAPS which this study identifies as those key outcomes that are supposed to be delivered by the SAPS and its leadership. The SAPS Act¹²² in section 205(3) states that the objective of the SAPS is to: (a) prevent, combat, and investigate crime, maintain public order, protect the inhabitants of the Republic of South Africa, and uphold and enforce the law. Provided that the constitution highlights that the significant role of the NPC is to “manage and control” and taking into consideration these contributions from the SAPS Act, it may be arguing that the instruction of the constitution, with regard to the function of the NPC, is to maximise the performance outcome of the SAPS institution, toward preventing and combatting crime, and upholding and enforcing the law. This research submits that the theories discussed above raise key issues that should be considered when formulating remedies toward amending the existing mechanism of appointing the NPC.

2.5 Institutional Environment

The institutional environment is defined as that set of rules and requirements to which individual organizations must conform, if they are to operate with legitimacy, and also with legality, within their given context. In that respect an unpacking of an organizations institutional environment emphasizes consideration for the externally defined requirements or regulations, rather than the internal processes and practices of the organization (or in this case institution). Within the context of this study, the institutional environment for SAPS may be defined by seven key structures as outlined in this chapter. Please note that these structures have been selected to support an analysis of the NPC appointment process, rather than the SAPS as a whole (the latter would require a far more extensive breakdown). The first three aspects of the institutional environment include the (i) The SAPS regulatory framework which is comprised of 8 key sets of legislation, (ii) the Constitution of South Africa (which for the purposes of practicality is set apart from the broader legislation for this study) , and (iii) a description of the key roles and responsibilities related to the NPC (described based on the legislation, the constitution, and relevant public sector structures). The remaining four components of the institutional environment are externally focused, as each of these structures holds the SAPS (and hence the NPC) accountable to international bodies. The Southern African Regional Police Chiefs Co-operation Organisation (SARPPCO), the African Union, the United Nations, and the World Justice Project, are all international groups of which South Africa stands as an active member. South Africa,

¹²¹ Act 68 of 1995.

¹²² Section 205(3) of the SAPS Act 68 OF 1995.

and the SAPS, are party to several international agreements with these bodies, which have a relevance to this research.

The above listed elements are linked to the application of both contingency theory and institutional theory in this study. In terms of the linkages to institutional theory, this description of the institutional environment provides an overview of the institutional pressures to which the SAPS must conform. In the previous section 2.4, it is highlighted that the SAPS is an institution which functions through the use of coercive force. However, the SAPS itself is not a standalone organization. Instead, the SAPS is a public sector structure which itself must conform to the institutional environment it is in, be accountable to government and the citizenry, where a failure to do so risks the institution losing legitimacy in the eyes of the constituency that it serves, the citizens of the Republic of South Africa. In short, the SAPS is an institution, which is further accountable to other institutions (i.e., branches of government and international bodies to which the SAPS is party). In terms of the linkages between the institutional environment and the application of contingency theory in this study, the institutional pressures (i.e., laws, regulation, and agreements) to which the SAPS must conform may be considered as the performance requirements which the SAPS is expected to meet. As is outlined in section 2.3, contingency theory is primarily concerned with the relationship organizational context and organizational practices, and the impact of that relationship on organizational performance. Sousa and Voss note that the application of contingency theory in research should address (i) a set of practices employed by the organization, (ii) the performance outcomes achieved from those practices, and (iii) the contextual / environmental factors which influence or moderate the relationship between practices and performance outcomes.¹²³ The constitution outlines that it is the political responsibility of the governments security services to ensure the effectiveness and efficiency of policing, establishing that the efficacy and efficiency of policing is enshrined in constitutional law. Consequently, these various elements of the institutional environment which are outlined in this chapter are taken as the required “performance outcomes” as outlined in contingency theory.

2.5.1 The SAPS Regulatory Framework

The SAPS as an official department responsible for policing in the country is required to ensure that all its activities are confined within the regulations of the law and the following acts:

- The Constitution of the Republic of South Africa Act 108 of 1996
- South African Police Service Act 68 of 1995
- Labour Relations Act 66 of 1995

¹²³ Sousa R & Voss C 'Contingency Research in Operations Management Practices' (2008) 705.

- Equity Act 2010
- Criminal Procedure Act 51 of 1977
- Child Justice Act 75 of 2008
- National Strategic Intelligence Act
- Independent Police Investigative Directorate Act 01 of 2011
- Civil Secretariat for Police Service Act 02 of 2011

2.5.2 Constitutional Authority

The SAPS is mandated by section 205 of the Constitution to prevent, combat and investigate crimes; maintain public order, protect and secure the inhabitants of the Republic and their property, uphold and enforce the law, and ensure that criminals are brought to justice.¹²⁴ Constitutionally, the SAPS offers a public service; it is not a defence force institution.

The SAPS is one of the providers of policing activities in South Africa as entrenched in the Constitution and therefore retains the responsibility of guaranteeing all the rights and protection thereof by having plans and strategies that expose these avenues as reflected on the vision and the mission of SAPS. The second provider of policing services is the Municipal/Metro Police which is established in terms of Section 206 (7) of the South African Constitution¹²⁵ and section 64(E) of the South African Police Services Act.¹²⁶ Section 206 (7) of the Constitution states that national legislation must provide a framework for the establishment, powers, functions, and control of police services. According to Section 64E of the SAPS Act, the functions of a municipal police service are traffic policing, subject to any legislation relating to road traffic; the policing of municipal by-laws and regulations which are the responsibility of the municipality in question; and the prevention of crime.¹²⁷

In addition to the above, Magadlela notes that to comply with the constitutional authority on policing, it is important for the SAPS and other policing providers to introduce policies that support the development of modern policing that prioritises effective leadership for all forms of policing especially the SAPS.¹²⁸ Modern policing involves applying a number of methods, such as continuous training of old and newly recruited police members from top down positions in the SAPS about legislative laws, and or orientation of police in dealing with community related issues- understanding demographics and the scope of diversity in South Africa etc.¹²⁹

¹²⁴ Section 205 of the Constitution.

¹²⁵ Section 206 (7) of the Constitution.

¹²⁶ Section 64(E) of the SAPS Act 68 of 1995.

¹²⁷ Section 64E and section 64A of the SAPS Act 68 of 1995.

¹²⁸ Magadlela (2017) 17.

¹²⁹ Magadlela (2017) 21.

2.5.3 Roles and Responsibilities

Section 207(1) of the Constitution regulates for the appointment of the national and provincial commissioners, the provision also gives mandate to the Minister of Police to direct commissioners.¹³⁰ The NPC has the responsibility to enforce all the laws of the country and laws that regulate for the running of the SAPS.¹³¹ The NPC has the responsibility to introduce and implement strategies and plans that consider what is entrenched in the Constitution through issuing orders and directives in the form of the following: standing orders, national instructions, regulations, policies, delegations, consolidation notices etc. The orders and directives are channelled through the different structures and members of the SAPS. The NPC roles and responsibilities stated above set out the competence expectations that the police department (or the President in the current appointment process) must evaluate when assessing the suitability of a candidate for the NPC role. The roles and responsibilities are regulated as a form of competence measurement to achieve fit between the SAPS institution and its environmental contingencies.¹³² It can be concluded that the role of the NPC is primarily concerned with the organization's relationship with the environment. The roles and responsibilities of the NPC are a consequence of legitimacy and support from external factors regulated to achieve fit between the SAPS and its environmental contingencies. The roles and responsibilities of the NPC are regulated in the Constitution and the SAPS Act as a form of coercive force that the NPC must conform to in order to promote the cause of the SAPS and deliver its objective.¹³³ Institutional theory qualifies the application of coercive force in an institution there the coercive force will achieve increased performance which benefits the institution's functional performance.

It is evident that the task of being the SAPS NPC is not easy, it needs a leader that applies effective leadership skills and his mind. The application of effective leadership and skill is supported by research as per the contingency fit theory. The contingency theory maintains that good fit between the leader and the organization in terms of possessing the necessary skill, competitiveness, identifying and solving problems is highly correlated to the individual's ability to attain maximum performance for the institution. As an example of the skills-requirements fit, the NPC's responsibility to provide high-level reporting on institutional strategies to the bodies of the SAPS (internal or external) requires the NPC to possess a level of training in managerial skills (as discussed in chapter 3 and 4) and effective leadership skills in context with policing in South Africa so as to advise the ministries and bodies of the SAPS accordingly.

¹³⁰ Section 207(1) of the Constitution; The SAPS Act 68 of 1995, Criminal Law Amendment Acts and others.

¹³¹ Criminal Procedure Act 51 of 1977.

¹³² Volberda *et al* (2012) 1040.

¹³³ Lewis *et al* (2019) 317.

The SAPS retains the responsibility of guaranteeing basic human rights and their protection thereof. Regulation assigns roles and responsibilities across the levels and spheres found in the SAPS. According to the National Crime Prevention Strategy (NCPS) the Ministry for Safety and Security is tasked with ensuring the success of the NCPS. Several legislative mechanisms assign roles and responsibilities to the Directors General of national departments, appropriate Ministers, as well as support structures established to review departmental plans in order to ensure that the necessary planning, budgeting, and the redirection of resources takes place.¹³⁴

Provincial Roles

According to Faull, the national government is of the view that provincial government has a key role to play, both in the development of provincial crime prevention strategies, as well as in the mobilising of multi-agency and citizen resources in assistance of crime prevention efforts. Provincial police summits are to be organised in each province to provide both awareness and feedback on the NCPS, and the development of integrated provincial plans based on the National Strategy.¹³⁵ The NCPS acknowledges that, co-ordination and joint planning is necessary between the national and the provinces mechanisms for example the NPC and provincial police commissioners co-ordinate and table through the inter-governmental forum as well as through various Minister and Members of Executive Council Meeting (MINMEC).¹³⁶

Local Government Roles

The NCPS recognises that local authorities, especially those in urban areas, have a central role to play in crime prevention from a national and local perspective. Local governments are encouraged both to review and refine the NCPS, and to implement local crime prevention programmes in accordance with the NPC directives and orders etc. The exact strategies and mechanisms that local governments adopt should be based on local crime prevention priorities. The NCPS acknowledges that it is vital for local government structures to acquire the necessary skills to be able to engage with crime prevention issues and develop the required capacity to drive crime prevention projects.¹³⁷

2.5.4 SARPCO

The Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) is a standalone from the public security sector agency primarily concerned with the prevention and fighting of cross-border crime.¹³⁸ SARPCCO was established in 1995 in Zimbabwe and has firmly established itself as a

¹³⁴ NCPS (2020).

¹³⁵ Faull A (2017) 04.

¹³⁶ Magadlela (2017) 23.

¹³⁷ NCPS (2020).

¹³⁸ SARPCCO (2016).

benchmark for international police cooperation. This regional organisation is supported by the Sub-Regional Bureau of INTERPOL in Harare which coordinates its activities and programmes. SARPCO has issued a code of conduct for policing specifically written to emphasize human rights. The Code is aimed at strengthening and integrating human rights into police training, the application of the best practices in policing. The Code is based on the following principles:¹³⁹ (a) respect for all human life, (b) reverence for the law, (c) integrity service excellence, (d) respect for property rights and (e) priority crime areas.

In 2016 SARPCO issued a report which unpacks ways of incorporating the four principles from the World Justice Project and the Code into policing operations in Southern Africa.¹⁴⁰ The SARPCO report outlines the state of policing for countries like, Botswana, DR Congo, South Africa, and others. In support for the development of the Code it is important to outline the status of crime from the different countries. Outlining the status of crime pinpoints the need for a Code and the increase in crime rate symbolizes the outcomes of not having a Code, not having a Code leads to a deep distrust and animosity between police leadership, the police and its citizens. According to the SARPCO report the principles function for all levels within police departments; it shapes and reforms police agendas within the different African states. Secondly, it guides police management in making day-to-day policing decisions. This view was supported by a report produced by the National Institute of Justice in 2006.¹⁴¹ The report confirms the negative outcomes experienced by police organisations that do not integrate the Code into local policing systems. Therefore, the SAPS must also follow suit to prioritise the importance training on human rights across all levels of police organisations. The report provides that the Code affirms what it means to be police officer entrusted with the great responsibility of equally enforcing and protecting human rights for all.

2.5.5 The African Union

The African Union's (AU) 2014 *Guidance Note on the Development of Codes of Conduct for African Security Institutions* offers direction for developing codes of conduct for police organisations. It provides examples of phrasing and indicators and provides guidance on how the SAPS can apply the Code in its daily work.¹⁴² The guidance note is composed to support the AU's Security Sector Reform (SSR) Policy Framework which came into effect in 2013. The guidance note was developed as a standard framework based on the political and legal commitments of AU member states through ratification of international and regional treaties and national laws (e.g., South Africa's Constitution,

¹³⁹ SARPCO (2016).

¹⁴⁰ SARPCO (2016).

¹⁴¹ Alpert GP, Dunham RG, Strohshine M, Bennett K & MacDonald J (2006).

¹⁴² African Union Commission, *Policy Framework on Security Sector Reform* (2013).

and the United Nations' Convention against Torture). Therefore, these commitments compel African states to foster police organisations and officials that:

- a) support democratic governance and the rule of law
- b) uphold, protect and respect human rights, and
- c) promote equitable and fair access to justice

According to Faull, the act of summarizing complex standards and legal frameworks into understandable and measurable codes of conduct offers a link between the regulated and hands-on leadership aspects of policing.¹⁴³ The AU suggests that the development of the Code should state who will be responsible for the Code's implementation, monitoring and evaluation in the police organisation. The *Guidance Note* highlights the importance of consulting with external stakeholders like civil society, political parties and judiciary. Consulting will guarantee relevant and implementable codes that meet community expectations when the SAPS is policing. The AU's mission is to promote African possession of Codes, including ownership by the SAPS and the communities they serve.¹⁴⁴

2.5.6 The United Nations

The UN General Assembly adopted a resolution called the UN code of conduct for law enforcement officials (the Code) for member states in December 1979. The resolution is a set of guidelines that the General Assembly encourages and recommends that member States must incorporate into their national law.¹⁴⁵ Article 2(3) of the ICCPR states that law enforcement officials are obliged by mandate to know and to apply the law in protecting individual human rights and dignity as per article 1 of the UDHR.¹⁴⁶ The human rights in question are identified and protected by national and international law.¹⁴⁷

According to Articles 1 and Article 8 of the Code of 1979 law enforcement officials like the SAPS leadership and SAPS member shall at all times respect and obey the law. Law enforcement officials shall always fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their

¹⁴³ Faull (2017) 16.

¹⁴⁴ Lee-Jones (2018) 7.

¹⁴⁵ The UN Code of Conduct For Law Enforcement Officials (1979).

¹⁴⁶ Universal Declaration of Human Rights, *preamble* and *article 1*.

¹⁴⁷ Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

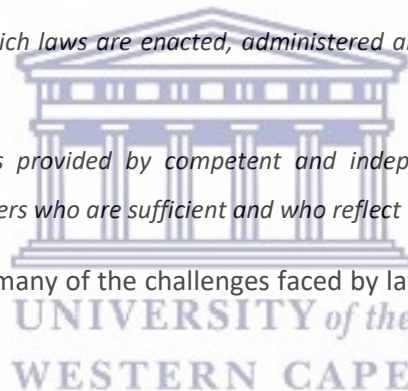
profession.¹⁴⁸ The law must be enforced fully with respect to all levels of law enforcement officials.¹⁴⁹ According to article 8 of the Code law enforcement officials shall also, to the best of their ability, prevent and rigorously oppose any violations of the Code.

2.5.7 The World Justice Project

The World Justice Project¹⁵⁰ has projects around the world that focus on research to strengthen the rule of law globally. Strengthening the rule of law requires various attempts and strategies to address the challenges faced by a specific state. The World Justice Project has developed the following principles as key to understand attempts to promote the rule of law:¹⁵¹

- *Principle 1: the government and its officials are accountable under the law. Government powers are defined by law and there is clear separation of powers among the executive legislature and judiciary. Checks and balances are in place and include institutions such as auditors general, ombudsmen, public protectors and human rights commissions.*
- *Principle 2: the laws are clear, accessible, fair, protect fundamental rights, including the security of persons and property.*
- *Principle 3: the processes by which laws are enacted, administered and enforced are accessible, fair and efficient.*
- *Principle 4: access to justice is provided by competent and independent adjudicators, attorneys, or representatives and judicial officers who are sufficient and who reflect the communities they serve.*

These principles seek to address many of the challenges faced by law enforcement officers from the 128 member countries.



2.6 Policy Development

Policy is viewed and used as an instrument that 'seeks to respond to the specific problems of the given society'.¹⁵² Therefore, using policy as an instrument for social harmony requires coordination between social, cultural and institutional groups. The legislatures, courts and appliers of the policy must cooperate when making decisions and be informed by legitimate complimentary sources of

¹⁴⁸ Code of Conduct, *article 1* and *article 8*.

¹⁴⁹ Code of Conduct, *article 7*.

¹⁵⁰ The World Justice Project (2020), The World Justice Project Rule of Law Index® is the world's leading source for original, independent data on the rule of law. Covering 128 countries and jurisdictions, the Index relies on national surveys of more than 130,000 households and 4,000 legal practitioners and experts to measure how the rule of law is experienced and perceived worldwide.

¹⁵¹ The World Justice Project (2020).

¹⁵² Gavison R (2013)1114.

information and practice.¹⁵³ According to Gavison, the belief is, this practice will strengthen and improve the role of the Constitution and the departments that are dedicated to promoting the rule of law.¹⁵⁴ Leadership and the rest of the civil society also play a special role in policy development, this is because they all advocate for the improvement of police institutions and prevention of crime. Because of the different roles played by the above mentioned, South African law makes provision for policy makers to include every affected party's input when making policy decisions concerning the development of the country.

Policy has a role to fulfil in the society. It seeks to provide solutions to challenges faced by the society in particular for this study, challenges faced by the SAPS. Policy provides guidance in grey areas, repairs broken systems or whichever way one chooses to slice it. Cosens *et al* stated that the role of policy involves pronouncing structures, boundaries, rules, and processes that instruct governmental action-meaning if policy does not change, it becomes the focal point for analysis of barriers to adaptation as the effects of lack of transformation are felt by the society.¹⁵⁵ They write add that policy itself must change to allow adaptation that foresees challenges which might arise in the long run.¹⁵⁶ Policy is taken to be the reflection of the many values, knowledge systems, viewpoints, information types and the power struggles that take place in its making and is used as a remedy to respond to new challenges facing the society.¹⁵⁷

The argument is if policy presents barriers to the adaptation necessary, then policy must be changed to 'allow adaptation within the longer-term goal of stability'.¹⁵⁸ Research supports the study's view which suggests that the organizational policies of the SAPS (and possibly the South African government) should be amended / upgraded to allow for the appointment of the NPC through a competitive and rigorous process. This adaptation must consider the suggested criteria by this study in order to find a candidate that can suitably lead the SAPS institution. It is arguable that the recruitment and development of more suitable senior leadership within the SAPS will provide support to the institutions effort to curb and prevent crime. The implementation of the adaptation can be implemented by the SAPS through the introduction of policy which provides for criteria and the level of competence required from candidates that want to be appointed for the NPC role of the SAPS. The legislatures, courts, appliers of the policy and affected parties must be informed by legitimate sources of information and practice when developing the policy for the appointment process of the NPC.¹⁵⁹

¹⁵³ Gavison (2013) 1114.

¹⁵⁴ Gavison (2013)1117.

¹⁵⁵ Cosens B A, *et al* (2017).

¹⁵⁶ Cosens *et al* (2017).

¹⁵⁷ Cosens *et al* (2017).

¹⁵⁸ Baruch (2017) 2.

¹⁵⁹ Gavison (2013) 1114.

2.6.1 Developing Policy

Policy development is the procedure taken to decide on what goals to be achieved, what needs to be done, how it should be done efficiently and economically and who will be responsible and accountable?¹⁶⁰ For example the SAPS has to follow a departmental decision to undertake measures to improve institutional performance across its officials from its leader to the lowest rank position in the SAPS. In developing a policy for the appointment process of the NPC the department would have to consider a number of options, the first step would be to identify and analyse the possible causes of institutional underperformance and ineffective leadership, the rules and policy in place on the appointment of its leaders and the experience of law enforcement officers within the SAPS. The next step to follow is to assess the costs and the benefits of each of the option and steps to be considered for each option. Thereafter, the SAPS would make recommendations and supporting analysis justifying the reasoning behind the decision to improve institutional performance through improving the appointment process of the NPC.¹⁶¹ Once the concerned parties have decided on the best solution from the ones provided, the legal drafting on the policy for the appointment process of the NPC begins. The policy is drafted in line with the constitution, the Bill of Rights (BOR) and other relevant regulations.¹⁶² It is important for the SAPS to ensure that appropriate ministries and other administrative bodies are organised to enable the development of its policies.¹⁶³

The policy must be made adaptive to oversee and even bring into force the emergence of adaptive governance and a fit SAPS institution through its fit NPC that achieves high performance. Cosens found that a state is considered adaptive when it is able to respond to the identified needs and values and principles in the society. Policy in this case provides the scope of work and projects that must be introduced by the SAPS to address the change or need of effective leadership.

2.6.2 The Process for Introducing Policy

Policies and acts of the ministries must be aligned with government's policing strategic priorities. This is to ensure that important initiatives are delivered to the society in accordance with the police department's goals, mission and objectives. Ministers and other interested state bodies must assess the best solutions that will produce the greatest effect and results for the SAPS. When deciding which policy to implement, ministries and involved bodies are advised to also identify problems derived from previous initiatives and projects within the SAPS.¹⁶⁴

¹⁶⁰ Policy Development Handbook of the Republic of Macedonia (2007) 09.

¹⁶¹ Macedonia (2007) 9.

¹⁶² Macedonia (2007) 9.

¹⁶³ Chapter 4 of the Constitution of South Africa.

¹⁶⁴ Macedonia (2007) 11.

Policy must provide for allocation of resources, the development of the SAPS institution and mechanism that support achieving its mandate. The following are the key elements that should be considered in the development of policy: identifying the need for the policy on appointment of the NPC, identifying the parties that are responsible for developing the policy, stakeholders to be consulted, the procedure to be followed in the development of the appointment policy and the plan for implementation. In the process of developing the appointment policy for the NPC role the ministry in charge of developing the policy must conduct transparent consultations with competent and interested bodies of society or affected units in government, interested associations, experts and researchers of the policing industry to be affected by the policy development and any other parties. The ministries or appointed panel must formulate plans on how the police department will implement the appointment policy of the NPC, these will include: financial costs, list of related or affected by-laws, identify required organisational capacity, infrastructure and human resources, procedure, monitoring and evaluation.¹⁶⁵

The process of making or developing policy in SAPS begins with a discussion document called the Green Paper, the paper is drafted by the ministry or department dealing with the identified issue, the paper will demonstrate a view into what the department is thinking on the identified policy or gap thereof. The Green paper is then published to the public for comments, suggestions and ideas. The Green Paper process is followed by a refined discussion paper called the White Paper which is a broad statement of government policy with the White Paper, comments, additions and ideas from the public and interested parties is invited.¹⁶⁶ When the White Paper process is done and comments or additions have been received from the public the parliamentary committee can propose amendments or other proposals and then send the policy paper back to the ministry of police for further discussion and final decisions. Once the White Paper is approved by the Law Commission and the cabinet, it is sent to the state law advisers, they assess the legal and technical implications of the draft law. Once that process is done the White Paper is introduced in parliament as a bill.¹⁶⁷

2.6.3 Policy and Institutional Reform

Gumede advises that the starting point in policy development is institutional reform, side by side with the necessary legislative foundations. This process focuses more on building effective governance and effective service delivering institutions. After institutional reforms, the second step is creating an integrated government and this involves ensuring that government functions as one, that there is sufficient capacity in government. This, therefore, means policy guides decisions to be made, services

¹⁶⁵ Macedonia (2007) 12.

¹⁶⁶ Section 68(1) of the Constitution.

¹⁶⁷ Parliamentary Monitoring Group (2020).

to be delivered, actions to be taken, projects to be implemented and the conduct of the staff. To deliver on its role, the SAPS needs leaders that are capable of identifying innovative ways of achieving departmental objectives and goals. It is important to highlight that the police department has the responsibility of bringing justice to the community considerate of crime challenges each unique society presents. Fremier and Cosens state that innovation must be required when it is clear that existing policy and law is inadequate to handle new challenges.¹⁶⁸

As outlined in 2.6.2 above, the role of policy in an organisation is to provide general guidance about the organisation's mission, provide specific guidance toward implementing strategies to achieve the SAPS's mission, and also outline mechanisms to control the management of the police department. Therefore, it is imperative that the appointment mechanism must have a policy to guide its implementation. This is because the policy will provide for selection / appointment of the eventual administrative head of the SAPS, which in turn will have cascading impacts on the function and operations of the organization. Chapter 3 and 4 highlight the necessary components of the policy into the appointment process for the NPC of the SAPS, including the specific steps in the process, the candidate criteria for appointment, as well as the checks and balances that need to be incorporated. The policy for the appointment of the NPC will also have to incorporate and specify the performance standards expected of the NPC and compact it to a written policy that will specify the institutional mechanism of appointing the NPC.

In *Glenister v President of the Republic of South Africa and Others*,¹⁶⁹ the court held that institutions of safety and security like the SAPS enjoy 'an adequate level of structural and operational autonomy' which is secured through the application of institutional and legal mechanisms.¹⁷⁰ The introduction and implementation of policy that supports the appointment process mechanism proposed in this study is necessary to assist the SAPS in discharging its mandate effectively by appointing the NPC that can manage and control the SAPS.

¹⁶⁸ Chaffin (2014) 13.(Cosens et al., 2017)

¹⁶⁹ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC).

¹⁷⁰ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) para 157.

CHAPTER 3: A REVIEW OF PERTINENT STATUTORY AND STRATEGIC DOCUMENTS

This chapter implemented a review of key statutory and strategic documents and thematic synthesis. The review and synthesis sources literature on a specific topic. A thematic synthesis commonly reviews or combines scholarly sources. In this instance, the synthesis involved the review of a selection of key statutory and strategic documentation, including the Constitution, the NDP Plan 2030, the SAPS Act, the Public Service Act and other statutes, case law, international legal instruments like the INTERPOL standards and or United Nations General Assembly resolutions and scholarly sources related to the topic of this study. From these sources all content relevant to the appointment of the NPC or police leadership, the criteria for the NPC and measures to be instituted like checks and balances were extracted for analysis and dissection. These extractions from the literature and statutory documents were then subjected to thematic synthesis. Where patterns or themes are thematised and categorized so that a structured thematic understanding of these themes within the sources may be outlined. In this report a set of 14 key documents were identified and analysed, these are explicitly outlined in the summary analysis presented in Table 1 below. These documents and literature addressed in the chapter were identified by searching through the repositories of key government departments and publicly available databases. These include literature and statutory documents addressing the topics directly or peripherally connected to several key topics including (i) the institutional function of the SAPS, (ii) leadership within the SAPS, and (iii) the mechanisms of appointment of the NPC.

Table 1: Summary of identified themes mapped against the source documents or origin(own analysis)

IDENTIFIED THEMES	STRATEGIC AND STATUTORY SOURCE DOCUMENTS:													
	Constitution	South African Police Services Act 65 (1995)	The National Development Plan 2030	South African Police Services Amendment Bill 10 of (2012)	SARPCO Code of Conduct	UNODC Police Accountability, Oversight and Integrity (2011)	The World Justice Project Rule of law Index (2020) Code of Conduct	INTERPOL standards	UN CAC General Assembly Resolution 58/4 (2003)	SAPS Strategic Plan 2020	Civilian Secretariat for Police Services Act No 2 (2011)	White Paper on Safety and Security 2016	The AU Agenda 2063 Aspirations	Medium Term Strategic Framework 2019 - 2024
1. Institutional Mandate	X	X	X	X	X					X	X	X		X
2. Manage and Control	X	X	X							X	X			
3. Competitive Appointment Process			X						X				X	
4. Clear and Objective Criteria			X		X	X			X		X	X		
5. Set Standards of Appointment			X					X			X			X

6. Competency			X							X		X		
7. Appropriately Skilled Professionals			X											
8. Transparency	X				X	X		X	X					X
9. Accountability	X				X		X				X	X		
10. Separation of Powers	X					X								
11. Performance							X	X			X	X	X	
12. Integrity					X	X	X							

The 14 key strategic and statutory documents have similar topics that give directives for and regulate the responsibilities and functions of the SAPS institution and its members. Therefore, the SAPS institution and the SAPS members are responsible for overseeing the implementation of the directives provisioned by these documents. Table 1 above summarises topics and directives relevant to this study that are extracted from the documents stated above. The themes are categorized according to similarity forming a model that represents 12 thematic groups to be addressed and included in the appointment process of police leadership and the NPC for the SAPS. This study synthesizes the themes and groups them into 4 thematic categories, which include (a) institutional mandate, (b) the process of appointment, (c) the criteria or standards of appointment, and (d) checks and balances required to govern the appointment process. These 4 thematic categories subsequently form a conceptual framework, which serves to guide and frame the critical discussion of this study and topic.

3.1 Conceptual Framework

This conceptual framework provides the outline for the results obtained from the literature. It captures the key elements that are important to the appointment of the NPC. These key elements, as noted in the conceptual framework, are the legislative mandate, the role of the NPC, the process by which the NPC is appointed, the criteria under debate which the NPC is to be appointed, and the checks and balances required to ensure that the appointment process is efficient and effective. This framework has been compiled based on the thematic synthesis of the literature pertaining to the function of the SAPS and the role of the NPC within the SAPS institution.

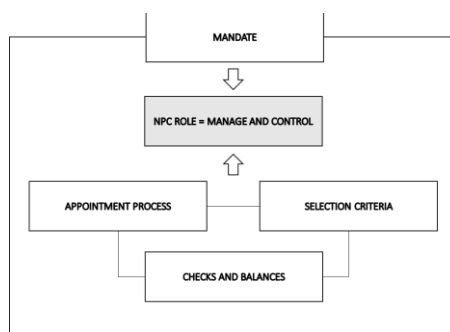


Figure 1: Conceptual framework for key elements pertaining to the appointment of the NPC (own analysis)

This framework best reflects the important areas of consideration on the appointment process of the NPC. It is thus designed to structure the presentation of results and the following discussion around these key aspects of consideration for the appointment process of the NPC. In this framework the mandate represents the legal mandate governing the appointment of the NPC as well as the role that the NPC is required to fulfil.¹⁷¹ In South Africa, the functions and roles of the NPC and of the SAPS are stipulated by these constitutional and legislative precepts.¹⁷² The appointment process refers to the specific steps that need to be taken in order to ensure a competitive and effective appointment process.¹⁷³ The selection criteria refer to the specific qualifications, experience and personal attributes which a potential candidate should possess, to be eligible to be appointed as the NPC.¹⁷⁴ Lastly, the checks and balances refer to specific institutional controls that should be put into place to ensure that the process of appointing the is followed correctly; to reduce mistakes, to prevent improper behaviour and decrease the risk of centralization of power.¹⁷⁵

3.2 Institutional Mandate

We first consider the legislative mandate which provides for the existence of the SAPS, and additionally for the NPC to manage and oversee the institution. Constitution and the SAPS Act include provisions for the appointment of the NPC with a function to control and manage the police service. Neither of the two pieces of legislation state the process by which the NPC should be appointed or the specific criteria under which the NPC should be appointed. However, the SAPS Act¹⁷⁶ outlines the functional purpose of the SAPS, which may be taken as the desired outcome of the institution, and then as the desired outcome to be sought from the leadership. The SAPS Act states in section 205(3) that the ultimate SAPS policing objective is to (a) prevent, combat, and investigate crime, maintain public order, protect the inhabitants of the Republic of South Africa, and uphold and enforce the law.¹⁷⁷

Followingly it is taken for this study that the role of the NPC is to manage and control the SAPS policing service toward the objective of preventing, combating and investigating crime, maintaining public order, upholding the law, and protecting the citizens of South Africa. Given that the Constitution highlights that the central role of the NPC is to manage and control, and given the inputs from supporting legislative texts, it may be assumed that the directive of the Constitution, with regard to the function of the NPC, is to maximise the performance outcome of the SAPS institution in light of

¹⁷¹ Section 2017(1) of the Constitution.

¹⁷² The SAPS Act 68 of 1995 and the Constitution.

¹⁷³ The Public Services Commission Recruitment and Selection Guidelines (undated).

¹⁷⁴ The National Development Plan (NDP 2030) SAPS Recommendations (2012).

¹⁷⁵ Chapter 12 of the Constitution provides for the doctrine of Separation of Powers.

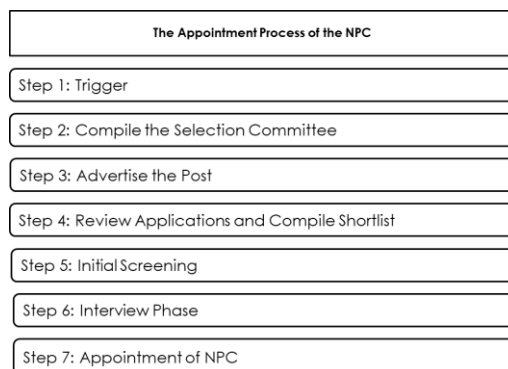
¹⁷⁶ Act 68 of 1995.

¹⁷⁷ Act 68 of 1995.

the specific institutional mandate of the SAPS as outlined in the Constitution, the South African Police Service Act of 1995 and South African Police Services Amendment Act 10 of 2012.¹⁷⁸ It should further be noted that the Civilian Secretariat for Police Services Act¹⁷⁹ states that the civilian Secretariat must identify the best practices, detect failures, and recommend corrective actions to ensure the SAPS leaders and members are delivering quality public services. It has this been outlined in legislation that the SAPS is to be receptive to external recommendations on how best to improve policing and the law enforcement services they provide.

3.3 Process of Appointment

In the table below we have outlined the steps required for the appointment of the NPC. These steps have been compiled based on the recommendations of the Public Service Commission (Undated), supporting literature and studies, which stipulate guidelines for the recruitment process within the public sector. The process consists of the following seven steps: (i) trigger, (ii) compile the selection committee, (iii) advertise the post, (iv) review applications and (v) compile a shortlist, (vi) initial screening and (vii) the interviews and appointment. The first step is a trigger which begins the process. The NPC is appointed for a fixed term so the trigger to begin the appointment process must take place at a point in time which allows sufficient time for the process to be completed before the term of the current NPC ends. The trigger could be placed at a fixed time e.g., eighteen months before the conclusion of the current NPC term, which compels SAPS to initiate the appointment process. The second step is the compilation of a selection committee.¹⁸⁰ The selection committee is a committee made up of experts of policing and public safety, members of the SAPS, members from other government agencies, civil bodies, oversight bodies and members of the public whose purpose is to oversee the appointment process and to assess the candidate for suitability against clear and objective criteria in order to make candidate appointment recommendations.¹⁸¹



¹⁷⁸ Section 84(2)(e) of the Constitution.

¹⁷⁹ Act 2 of 2011.

¹⁸⁰ The PSC Recruitment and Selection Guidelines (undated).

¹⁸¹ The PSC (undated)

Figure 2: Steps in the process to appoint the NPC, own compilation based on Recruitment and Selection Guidelines published by the Public Service Commission (Undated)

The third step is the advertising of the post of NPC. This advertisement should follow the standard HR procedures for the appointment of a senior SAPS staff member.¹⁸² The fourth step is the review of the applications and a compilation of a shortlist. This step takes place after the closing date of the job advert once all applications have been received. The process of shortlisting should identify the top candidates who would be most suitable for the job as per the criteria for appointment. All shortlisted candidates must be checked for compliance in the application process, i.e., are all the documents valid and genuine.¹⁸³ These shortlisted candidates are then put through to step five which is the initial screening of potential applicants. The screening of the applicants checks the criminal record and performance of the shortlisted candidates through other government agencies.¹⁸⁴ The screening assesses the candidate's competency through writing psychological tests, problem solving and decision-making skills. The screening also involves conducting the candidate's security clearance. Through this screening phase suitable candidates are to be identified, shortlisted, and invited for the next round of the process, the interviews.¹⁸⁵

The interview phase will be the final screening process where the selection committee assesses the candidate's competency in front of the panel. The selection committee should hypothetically consist of eight individuals to a maximum of 12 individuals will conduct the interview as per the NDP recommendations. Each individual will be assessing the candidate's competence and ask questions that seek to provide clarity on the candidate's competence on the highlighted areas as required by the established criteria. The interview process will assess the candidate's interpersonal and leadership skills. After the interview phase the selection committee will review and assess all the material submitted by interviewed candidates and select the three most competent individuals to be recommended for appointment to the President. The committee will compile reports on all the assessments and results for the three candidates and submit them to the president. The final stage in the appointment process is the appointment of the NPC. The appointment of the one NPC will be made from the three (or five as recommended by the ISS and CW) selected names by the President. Based on the reports submitted by the selection committee the President will appoint the most suitable candidate to be the NPC.¹⁸⁶

¹⁸² The Senior Management Service (SMS) Handbook (2003).

¹⁸³ The PSC (undated).

¹⁸⁴ Schutte SA (2011) 361.

¹⁸⁵ The PSC (undated).

¹⁸⁶ The PSC (undated).

3.3.1 The Appointment Process of the NPC for the SAPS

The available academic literature and other secondary sources make recommendation on the process for the appointment of the NPC. The NDP 2030 advises that the National Commissioner of Police should be appointed via a competitive process, where a selection panel established by the President should select and interview candidates who apply for the post.¹⁸⁷ The recommendations of the NDP go toward ensuring that the SAPS develops into a professional service which conforms to high standards of recruitment, selection, appointment, and promotion, as defining of a professional institution. Followingly, the purpose of the selection process goes toward ensuring that the appointed candidate is competent to lead the SAPS. The Civilian Secretariat on Policing White Paper noted that there is a need of leadership that can establish the standard for professionalism within the SAPS.¹⁸⁸

3.3.2 Selection Committee

The selection committee to facilitate the appointment process is recommended by several sources.¹⁸⁹ The selection committee oversees the process to ensure that it is executed correctly and in accordance with criteria laid down. It should ensure that checks and balances are implemented in the appointment mechanism to ensure an accountable and transparent process that avoids individual bias and stereotyping. Guidelines issued by Interpol note that the selection committee should consist of persons of different race, gender, age, culture, well established members of the SAPS, experts on policing, elements of government, professionals (from multisectoral and multidisciplinary backgrounds), public service organizations and civilian oversight bodies.¹⁹⁰ Schutte argues that the advantage of having a committee selection process is that it encourages a diversity of political support and more consensus orientation.¹⁹¹ He notes that this process will allow the candidate to have the support of both the executive, and majority in the legislature, oversight bodies and the public at large. In short, this will add credibility to the process and drive greater public participation.¹⁹² The general function of the selection committee is both to oversee the appointment process and to assess the candidate for suitability against clear and objective criteria and make recommendations on candidates to be considered for appointment.¹⁹³

Further, Etanibi states that the selection committee should be responsible for assessing the candidates throughout the different stages of assessments of the appointment process. Such as assessing the

¹⁸⁷ The NDP SAPS Recommendations (2030).

¹⁸⁸ The Civilian Secretariat for White Paper on Policing (2016).

¹⁸⁹ The NDP (2012), CW & The ISS (2017), Schutte (2011) & Etanibi (2011).

¹⁹⁰ Interpol Standards (undated).

¹⁹¹ Schutte (2011).

¹⁹² Schutte (2011).

¹⁹³ Schutte (2011) & NDP (2012).

candidate's ability to develop organisational vision and mission, allocate resources, plan, mobilise and manage the police force. Etanibi also contends that the selection committee should have the responsibility of and authority to retrieve a candidate's performance and criminal record from relevant government agencies.¹⁹⁴The NDP supports this position and recommends that a selection panel should recommend the competent candidates to the President based on compiled and received reports during the appointment process.¹⁹⁵

3.3.3 Process Timelines

The timelines in the process of appointing the NPC are guided by the PSC recruitment and selection guidelines. The guidelines state that each phase in the appointment process must be finalised before the next phase commences. The selection committee must ensure that the process is undertaken in the shortest time possible. Reasonable time allocations should be allocated in the development of the appointment mechanism taking into account the number of tasks to be executed in respect to each phase.¹⁹⁶ According to PSC the timeframes must be known by all role players involved in the appointment process. Furthermore, the allocated timeframes must be adhered to by all players.¹⁹⁷ Schutte supports the recommendation that there must be a timeline for all the steps in the appointment process broken by an undefined period during which the selection committee must submit a short list of the best candidates to be selected for appointment for the NPC role to the president and public scrutiny and feedback must be sought on the candidates. From the provided information the President will appoint the best candidate to be the NPC.¹⁹⁸

3.3.4 Interview Rounds and Requirements

The appointed NPB together with the Civilian Secretariat for Policing and the President will set the standards and interview requirements for appointing the NPC. The selection committee will conduct the interviews based on the approved criteria and standards for appointment.¹⁹⁹ The ISS and CW recommendations made to parliament state that the interview process would be facilitated the same way appointments of the various heads of Chapter 9 institutions are conducted. Section 193(5)(a) -(i) of the Constitution regulates for the appointment of Chapter 9 institutions heads.²⁰⁰ The Constitution does not provide the specific details of the interview rounds, but it requires that the selected candidates must have sixty percent supporting vote from the National Assembly and selection

¹⁹⁴ Etanibi EOA (2011).

¹⁹⁵ The Institute for Security Studies and Corruption Watch (2017).

¹⁹⁶ The PSC (Undated).

¹⁹⁷ The PSC (Undated).

¹⁹⁸ Schutte (2011) 357 – 359.

¹⁹⁹ The NDP (2012).

²⁰⁰ *Section 193(5)(a)-(i)* of the Constitution.

committee and in this case the selection committee. The rounds of appointment and requirements are collected from selected literature and the Recruitment and Selection Guidelines published the Public Service Commission.²⁰¹

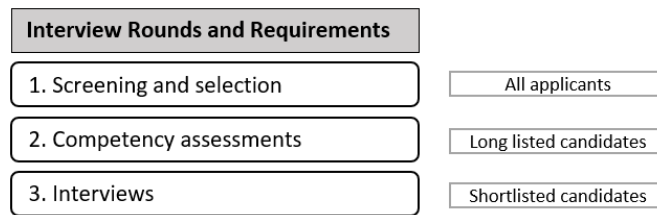


Figure 3 Interview Rounds and Requirements: Own compilation based on (Etanibi 2011, Schutte 2011, The NDP 2030, Schafer 2010, The PSC Undated and the ISS & CW 2017)

From the literature provided it supports that there should be five phases of interviews or assessments rounds and from the submissions of the literature this paper recommends for the process to have three phases of interview assessments. Etanibi advised that the first round of interviews will be the submission of the required essays, motivation and required application documents.²⁰² This round of assessments commences instantly upon the public advertisement of the post until the closing date. Schutte support Etanibi's argument and states that in the first round of assessments all applicants will be required to submit the following as required objectives and criteria for selection: complete application documents, a written paper on the applicant's ant-corruption strategy, a psychological assessment and a reflective essay on leadership.²⁰³ The Recruitment and Selection Guidelines published by the Public Service Commission state that in this part of the first assessment process the selection committee will assess if the candidates meet the minimum requirements in terms of the applied criteria, the assessment will be applied in a consistent manner for all candidates who have submitted applications. The minimum requirements are for example, South African citizenship, completing the application form, attaching a complete CV, minimum qualification requirements and work experience. The committee will screen and select competent candidates in line with the job requirements and criteria. Applications that are therefore incomplete or do not meet the basic appointment criteria are considered unsuccessful applications and will not proceed to the next round/ second round as per the Recruitment and Selection Guidelines from the Public Services Commission. The screening process should be documented and put on record.²⁰⁴

The NDP recommendations provide guidance on the process requirements to be applied on the second process of interviews. The NDP states that the second round of assessment must assess the candidate's proficiency in core areas of functional competencies as demonstrated by the applicant

²⁰¹ The PSC (Undated).

²⁰² Etanibi (2011) 28.

²⁰³ Schutte (2011) 376.

²⁰⁴ The PSC (Undated).

with regard to a specific area of work in the SAPS, and these are: intelligence, investigation and operation, leadership key competencies and decision making-skills, equity and aptitude.²⁰⁵ According to Schafer, this competency assessment process will be conducted by inviting the long-listed candidates for assessment. The number of candidates to be invited for the assessment can be outlined by the established criteria for selection in which the selection committee will apply to the process.²⁰⁶

The final round of interviews and assessment is the interviewing of the shortlisted candidates before the selection committee. Only candidates that were successfully screened should be considered for purposes of short-listing and interviews. For a candidate to be shortlisted, the candidate must at least meet the minimum appointment requirements as advertised in respect of qualifications and competencies. The interview process must be in a consistent manner and line with what is relevant in terms of job content, appointment and advertised requirements so that interviewed candidates are clear on the criteria that apply as per the Public Service Commission recruitment guidelines.²⁰⁷ The ISS and CW maintain that the interview process should be conducted by the selection committee in public to promote trust in the process and public participation. Public scrutiny and feedback must be sought on the candidates and be considered by the selection committee when selecting candidates to be considered for appointment.²⁰⁸

The final selection phase is predominantly dependent on the selection interview because the committee gets to identify the most suitable candidate(s). A declaration of a conflict of interest should be made if a candidate to be interviewed is related or a friend to a member of the selection committee this is done to uphold fairness, equality and objectivity. A member committee will abstain from the interview process if they have personal relations with the candidate to be interviewed which warrant a conflict of interest. Etanibi states that this process aims to assess the shortlisted candidates' competency on the following: courage, personal integrity, ability to develop organisational vision and mission, allocate resources, plan, mobilise and manage the agency, ability to demonstrate leadership skills, provide directive and active leadership when required.²⁰⁹ The committee inquires on the candidate's ethical values and their experienced dilemmas in enforcing an ethical code of conduct in the SAPS as per the World Justice Project requirements in appointing competent leadership. Schutte provides that in completing this process of interviews the committee will evaluate all the material in accordance with previously agreed criteria, the evaluation matrices and the public's feedback.²¹⁰ The

²⁰⁵ The NDP (2012).

²⁰⁶ Schafer (2010) 655.

²⁰⁷ The PSC (Undated).

²⁰⁸ The ISS and CW (2017).

²⁰⁹ Etanibi (2011) 28.

²¹⁰ Schutte (2011).

ISS and CW recommend that after assessing all of the compiled reports the committee will select the 5 most competent candidates and submit them for appointment consideration to the President.²¹¹

3.3.5 Selecting Committee and Presidential Appointing Powers

The purpose of having a selection committee as part of the appointment process is to ensure that the selection process appoints the best competent candidate to be a NPC that leads the SAPS as per NDP recommendations.²¹² In their submissions before the Portfolio Committee for Police, the ISS and CW supported the NDP recommendations in respect of reinforcing, improving and protecting police leadership and the independent functioning of the SAPS.²¹³ They argued that a selection committee in the appointment process should fulfil its selection powers as provided by mandate in section 199(7) of the Constitution. Section 199(7) of the Constitution states that

‘members of the security services, may not in the performance of their functions –(a) Prejudice a political party interest that is legitimate in terms of the Constitution; (b) Further, in any partisan manner, any interest of a political party.’²¹⁴

This clause highlights the important role of the selection committee which is to ensure that the NPC candidates to be considered for appointment should not be partisan and should be non-political. These provisions are required by law to ensure that the SAPS achieve their goal of building a professional police service. Chapter 2 of the Public Service Regulations 2001 prescribes the appointment of a selection committee to a point a competent candidate under the stipulated requirements of selecting a committee.²¹⁵

The ISS and CW claim that the absence of a selection committee as an important step in the process of appointing the NPC could potentially result in an unconstitutional appointment of the NPC and a contravention of section 199(8) of the Constitution. Section 199(8) states that

“To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.”²¹⁶

²¹¹ The ISS & CW (2017).

²¹² The NDP (2012).

²¹³ Beukman F (2015).

²¹⁴ Section 199(7) of the Constitution.

²¹⁵ Chapter 2 of the Public Service Regulations (2001).

²¹⁶ The ISS and CW (2017).

The selection committee's participation in the appointment process will add credibility, transparency and accountability in the final appointment of the NPC which makes the appointment constitutional and in compliance with section 199(8).²¹⁷

The NDP recommendations specifically outline the powers of the selection committee and the President in the appointment process. The selection committee will advertise, shortlist and interview candidates for the position of the NPC. Further the selection committee is responsible for facilitating public participation in the process. The committee is tasked with making recommendations on the suitability of the candidates after having considered all of the available information and it shall record its reasons for recommending the candidates. The selection committee will advise the President to select a competent candidate on these recommendations.²¹⁸

Section 83(a) of the Constitution states that the President is the Head of State and the head of the national executive and must uphold, defend, and respect the supremacy of the law.²¹⁹ The President is afforded appointing powers by section 84(2)(e). The section states that the President is required to make appointments required by the Constitution or legislation which enable him or her to perform necessary functions as the head of state.²²⁰ Hence the President is afforded the constitutional power to appoint the NPC responsible to manage and control the SAPS.²²¹

The NDP states that the President has the power to establish a selection committee together with the Parliamentary Portfolio Committee on Police or NPB.²²² The President will have the power to appoint the best possible candidate recommended by the selection committee.²²³ Atmasasmita argues that 'the president has the right to make changes to the short-list' and or reject the recommended candidates providing sufficient reasons to the committee for review.²²⁴ Given the public attention that the short-listing processes receive and the established criteria the president would need to have convincing reasons to reject a candidate on the list.

3.4 Criteria for Appointment

The Civilian Secretariat for Police advises consideration of the following criteria for appointing a competent NPC: qualifications, experience, personal attributes and demonstrated performance record.²²⁵ Qualifications as a criterion for appointment means that the candidate must have the

²¹⁷ The NDP (2012).

²¹⁸ The NDP (2012).

²¹⁹ *Section 83(a)* of the Constitution.

²²⁰ *Section 84(2)(e)* of the Constitution.

²²¹ *Section 207(1)* of the Constitution.

²²² The NDP (2012).

²²³ The ISS and CW (2017) 6.

²²⁴ Schutte (2011) 359.

²²⁵ The Civilian Secretariat White Paper on Policing (2016).

minimum required qualification in line with the job content and performance. The qualification in this case can be a formal qualification, a bachelor's degree in Law or non-tertiary professional knowledge at a higher level with the minimum qualification requirements or on the job training acquired qualifications. The second criteria and standard required is candidates the acquired experience. Work experience refers to the level of functioning, as demonstrated by the applicant with regard to a specific area of work. For example, 15 years and more working experience in the SAPS can serve as work experience requirement as it demonstrates the applicant's knowledge, skills, exposure, and behaviour in the area of work.²²⁶ Personal attributes refer to the personal traits and skills of the candidate. The candidates to be appointed for the NPC post should be required to have leadership skills, interpersonal skills and organisational skills required to fulfil the role of managing and controlling the SAPS.²²⁷ The last criteria and standards to be required from the candidate is demonstrated performance record or performance ethic. The selected candidates should have a performance record which demonstrates good and consistent performance over the candidates' career. Here, such records may be readily obtained or ascertained from the candidate's employment history. Candidate performance is a relative measure, and the available performance records of the candidates should allow for a hierarchy of preferred candidates to be compiled.

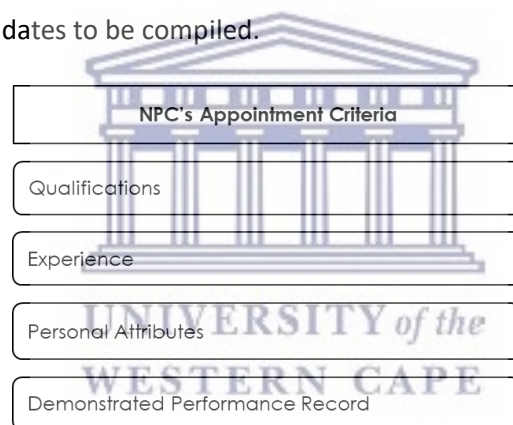


Figure 4 NPC Appointment Criteria – Own compilation based on (Schutte 2011) and (Campbell & Kodz, 2011)

The criteria of promotion were laid down by the Constitutional Court in *South African Police Service v Solidarity obo Barnard* (2014) when it held that promotion in the SAPS should be based on the candidates competence as a requirement, the inherent requirements of the job and the ability of the candidate to do the job, the set criteria of appointment which considers the requirements to be discussed next.²²⁸ This case dealt with promotion as opposed to appointment. You may have to argue that those criteria may also be applicable to appointment.

²²⁶ Schutte (2011) 359.

²²⁷ The PSC (Undated).

²²⁸ *South African Police Service v Solidarity obo Barnard* (2014) ZACC 23.

3.4.1 Qualifications

Etanibi argues that promotions in police agencies should be based on clearly defined criteria that embody education qualifications, professional police training and performance.²²⁹ Schutte provides guidance on where the parliamentary Portfolio Committee and Civilian Secretariat can start to establish the criteria for appointing competent candidates for the post of the NPC.²³⁰ Schutte's advises that the SAPS should take international standards into consideration. For example, for a person to be appointed as a police leader in Indonesia, he/she is required to have qualifications like an undergraduate degree in the field of law, economics, finance or banking (s).²³¹ The ISS and CW also support's Schutte's argument and submits that in Russia, China and India, the police commissioner is mostly required to come from within police service with years of service to the police agency.²³² In Brazil, for a person to join the police at any rank, he/she is required to have a bachelor's degree..²³³

Public Service Coordinating Bargaining Council (PSCBC) Resolution No. 3 of 1999 states that qualification requirements for a position must be interpreted to permit recognition of equivalent competencies.²³⁴ The established criteria should decide if the best person for the job is a candidate that has been with the SAPS their entire career or if it is someone with formal qualifications or informal training in advance police skills, like specialised crime investigation training etc. This consideration is taken in consideration with other specified competence criteria requirements. The main purpose of the qualification as a requirement is to act as a signal that that NPC candidate has the ability to function at a certain verified level of proficiency. The criteria can specifically outline qualifications to be required to establish the desired competence from a candidate as per Schutte's suggestion.²³⁵ The Public Service Commission states that a higher level of qualification and competence than the required minimum may be viewed as a more favourable consideration if that is justifiable by the nature of the job content. Further, Etanibi argues that promotions in the police should be based on clearly defined criteria not compromising on education qualifications, especially for senior police leaders because their role requires application of complex reasoning, application of high-level skill and ability to interact across groups of individuals at a senior institutional level.²³⁶

²²⁹ Etanibi (2011).

²³⁰ Schutte (2011) 361.

²³¹ Schutte (2011) 361.

²³² The ISS & CW (2017)

²³³ Civilian Secretariat for Police & Civil Society (2017).

²³⁴ Public Service Coordinating Bargaining Council (PSCBC) Resolution No 3 of 1999.

²³⁵ Schutte (2011) 361.

²³⁶ Etanibi (2011).

3.4.2 Experience

The candidates' level of experience in a specific area of work should be determined in respect to the job description, duties and responsibilities.²³⁷ The guidelines from the PSC state that the post criteria should specify the required level of experience from a competent candidate and the experience in the field should be broken down into required experience level. The selection committee will probe into the candidates work experience to assess if the candidate has the required level of knowledge and experience required to function independently and provide guidance to subordinates. The selection committee will assess if there is sufficient proof that the candidate has experience in the field. For example, how many investigations or cases the candidate has resolved in their career history, what contributions has the candidate made to the criminal justice system and is there evidence to prove experience.²³⁸

Schutte provides a guideline on where the parliamentary Portfolio Committee and Civilian Secretariat can start to establish the criteria for assessing required work experience from the NPC.²³⁹ The Police leader must at least have 15 years-experience in the field of law, economics, finance or banking, must not hold office in a political party, must have never acted improperly and must enjoy a good reputation among his/her colleagues.²⁴⁰ In comparison to Indonesia, the 15 years' experience into policing is a requirement that candidates must meet to be considered as a police commissioner. The NDP identified that the SAPS has not been able to utilise its resources effectively while compromising public safety because of hiring inexperienced NPC's. The NDP recommends that the SAPS needs highly professional, experienced, and honest top leaders to change the situation.²⁴¹

The ISS and CW made submissions to parliament and emphasised that the NPC should be a highly experienced person in policing. Their statement was made because previous SAPS NPC appointments had little or no experience in policing and authority. Which resulted in more internal challenges in the SAPS institution. The ISS and CW submit that a police leader must have an on the ground experience on policing matters and have practical experience in completing tasks and accomplishing goals for the police organisation.²⁴² Further, the SAPS is a member to the Southern African Regional Police Chiefs Cooperation Organisation (SARPCO) which has a Code of Conduct for police agencies (the Code). The Code specifically states that States must establish professional requirements that demand rigorous standards around the recruitment, selection, training and professional development of police

²³⁷ The PSC (Undated).

²³⁸ The PSC (Undated).

²³⁹ Schutte (2011) 361.

²⁴⁰ Schutte (2011) 361.

²⁴¹ The NDP (2012)

²⁴² The ISS & CW (2017).

members and leaders, develop career advancement opportunities and the adherence to a code of conduct.²⁴³ The requirement of experience from a NPC by the SAPS would be in fulfilment of the SAPS' obligation as required by the SARPCO Code which seeks to develop police agencies that have high selection and recruitment standards in order to achieve fit between the police leader and the institution.

3.4.3 Personal Attributes

Oreg and Berson state that a leaders' personal attributes influence the steps and process he/she employs when making a decision in the organization and these decisions influence subordinate beliefs and attitudes to correspond with the leader's attributes. Personal attributes are usually assessed as part of the hiring process through personality/cognitive/problem-solving assessments to measure the candidate's emotional intelligence or mathematical reasoning.²⁴⁴ These studies identify behavioural predispositions and values as an individual's personal traits. This is because personal traits influence the type of behaviour a leader will engage in to make a decision. For example, leaders that are afraid to take risks or introduce change would not make organizational decisions that can transform the institution.²⁴⁵

Practising high level of integrity and responsibility are personal attributes required from leaders and members in the SAPS. Statute, research, resolutions, recommendations and oversight bodies specify the personal attributes that must be required for police leader. As a point of departure, Article 10 of the SARPCO code of conduct states that police officials (and leaders) should exercise a high-level degree of responsibility and integrity required by the police profession.²⁴⁶ The SAPS is a subscribing member to the SARPCO and is therefore obliged to take under consideration its recommendations. The White Paper on Safety and Security (2016) provides that discipline and integrity are the cornerstones of democratic policing and it is thus incumbent on police leadership, management and oversight organs to ensure that the organisational factors that give rise to persistent problems are addressed through sound governance.²⁴⁷ Etanibi provides that sound governance is possible when a police agency is led by a courageous, trustworthy and honest leader. In support of this argument, Etanibi provides that the following personal attributes are the most important to lead the police: integrity, trustworthiness, honesty, and courage.²⁴⁸ Integrity as a personal attribute in a police leader is identified as a requirement by the World Justice Projects' code of conduct. The Code states that

²⁴³ Dissel A & Frank C (2012) 3.

²⁴⁴ Oreg and Berson (2011) 3.

²⁴⁵ Oreg and Berson (2011) 3.

²⁴⁶ SARPCO Code (2012).

²⁴⁷ The White Paper on Safety and Security (2016).

²⁴⁸ Etanibi (2011).

police agencies should develop efficient measures that ensure integrity and proper performance by police staff.²⁴⁹ A survey study into policing by Schafer found that police respondents that participated in the survey ranked honesty and integrity as the most important characteristic of an effective police leader. The study argues that integrity and honesty create a leader that is effective in the performance of his/her responsibilities and an effective leader that can engage with subordinates and develop relationships.²⁵⁰ Etanibi also argues that promotions for police agencies should be based on clearly defined criteria embodying integrity.²⁵¹ The ISS and CW supports that the police corruption found in the SAPS may be related with lack of integrity from police leadership.²⁵²

Campbell & Kodz state that leadership which serves as a living example on implementing ethical values and employs strategies to address ethical dilemmas within an organisation can influence positive change and integrity on subordinates.²⁵³ They go on to state that practising a high degree of integrity, responsibility and honesty, are personal attributes which would be beneficial to the NPC's ability to make competent decisions for the SAPS. In addition, Campbell and Kodz also support the above view and suggest that organisations must require a leader that has the ability to transform, adapt, be impartial, courageous and organisational planning skills that are a positive influence on subordinates.²⁵⁴ Research and case studies provide an indication that a leader's personal attributes help to address existing ethical dilemmas within an organisation. Therefore, the NPC's personal attributes should be required and assessed as a criterion by the selection committee as part of the hiring process. The selection committee will use hiring tools to measure the candidate's ability to correctly influence positive change on subordinates. Personal attributes as a criterion for appointment in this instance supports the desired goal of achieving fit between the NPC and the SAPS.

3.4.4 Demonstrated Performance Record

Section 11(2)(b) of the Public Service Act stipulates that when public institutions make an appointment or fill a post, they must evaluate the candidates demonstrated performance through inquiring the candidates previous training, knowledge and the ability to address professional imbalances in the past and to achieve specific organizational goals.²⁵⁵ According to the University of Washington a candidates demonstrated work performance must factor in the following elements: the quality of work completed, the candidate's ability to meet deadlines, job knowledge, the ability to work with others and historical work achievements or failures.

²⁴⁹ The World Justice Projects (2020) 'Rule of law Index'.

²⁵⁰ Schafer (2011) 651.

²⁵¹ Etanibi (2011).

²⁵² The ISS (2020).

²⁵³ Campbell & Kodz (2011) 18.

²⁵⁴ Campbell and Kodz (2011) 10.

²⁵⁵ Section 11 (2)(b) of the Public Service Act 103 of 1994.

According to Beckham and Riedford the objective of having a record on the quality of work performance completed is to ascertain whether a candidate is suitably experienced and competent for appointment to lead an organisation that considerably faces a number of organisational challenges. Therefore, they argue that emotional competence has definite relevance in policing as a practice. Accordingly, police leaders should be able to foster individual accountability for demonstration of emotionally competent behaviours.²⁵⁶ According to Beckham and Riedford a leader in a public institution should demonstrate personal motivation for emotional competence development. Personal motivation and introspection were identified as critical factors to initiating the growth process. The NPC must demonstrate personal work competence growth through openness for change, ability to receive constructive criticism and feedback which is essential for development. Each candidate should be accountable for implementing a personal action plan that continuously moves growth toward demonstrated competent performance.²⁵⁷

According to the Centre for Creative Leaders (CCL), leaders must demonstrate the ability to be agile, learners that apply new and learned knowledge to changing work environment and challenges. According to the centre, leaders as a requirement must demonstrate in their work performance the ability to learn new and effective behaviours that will take the organization to higher levels of performance.²⁵⁸ Hence the appointment criteria should require a high level of functional and operational knowledge as demonstrated by the candidate with regards to a specific area of work. Demonstrated performance as a requirement is provisioned for by the World Justice Project's (WJP) governing principles. The WJP governing principles provide that justice institutions must provide access to justice by appointing competent and independent members of the criminal justice system who reflect professional competence and provide solutions for the communities they serve.²⁵⁹

The National Assembly in this appointment framework has the responsibility to establish mechanisms that ensure that the members of the SAPS and the NPC are held accountable in the fulfilment of their responsibilities. Section 55(2) of the Constitution provides for the development of an oversight mechanism like the criteria of appointment to ensure that all executive members of the state demonstrate high standards in the performance of their work.²⁶⁰ Accordingly, this means that the selection committee as a way of measuring demonstrated performance, it must retrieve each candidates' demonstrated work performance track records from previous employers or relevant proof

²⁵⁶ Beckham R & Riedford K (2017) 79.

²⁵⁷ Beckham & Riedford (2017) 82.

²⁵⁸ Center for Creative Leadership (CCL) (2020).

²⁵⁹ The World Justice Project's governing principles (2012).

²⁶⁰ Section 55(2) of the Constitution.

on projects worked on. The candidates demonstrated performance record will assist the selection committee when selecting candidates to be considered for appointment.²⁶¹

The PSC provides that the recommendation of the most suitable candidate must be based on the candidates demonstrated work performance. The committee should select candidates that meet the demonstrated performance record criteria. Selection can be based on a well-structured review of the candidates past accomplishments.²⁶²

The objective of having a record on demonstrated work performance is to ascertain whether a candidate is suitably experienced and, competent for appointment as regulated in section 20 of the Employment Equity Act.²⁶³ The selection committee assesses the candidate's demonstrated work performance by evaluating the candidates historical work performance, previous work evaluations, character reference form supervisors or mentors, level of acquired education and training. According to the PSC, a higher level of relevant experience may be viewed as more favourable. Demonstrated work performance must be in line with and limited to what is relevant in terms of the job content of the NPC.

3.5 Checks and Balances

The table below outlines the checks and balances required for the appointment of the NPC. These checks and balances have been compiled based on recommendations from literature, legislation, resolutions/recommendations and guidelines for recruitment and selection process within the public sector compiled by the PSC.²⁶⁴ The checks and balances are based on the outlined regulation that gives mandate to the SAPS as a public service organisation, and consists of the following requirements: accountability, transparency, and balance of powers. The first requirement accountability is reflected in the employment of the selection committee responsible for selecting competent candidates for appointment by the president and this gives credit in the process of appointment.²⁶⁵ The creation of accountability measures should be evidenced through the employment of selection and oversight procedures that seek to identify the most competent candidate from all the applicants.²⁶⁶ Accountability measures should be implemented from the start of the appointment process till the selection of the competent candidate for appointment by the President.

²⁶¹ Schutte (2011) 376.

²⁶² The PSC (undated).

²⁶³ Section 20 of the Employment Equity Act 55 of 1998.

²⁶⁴ The PSC (Undated).

²⁶⁵ The PSC (Undated).

²⁶⁶ The PSC (Undated).

The second requirement is transparency. Transparency is achieved when the selection committee records how it arrives at its decision and the records can be submitted to the public. The objective of having a transparent appointment process is provide transparent results that legitimise the appointment of the NPC.

The third item is the balance of powers. The balance of powers is there to ensure that there is no prejudice and appointment is not influenced by political interests or other external manoeuvrings. All parties involved in the appointment process are allocated specific powers and responsibilities that do not overlap or conflict. These powers are allocated to all parties involved in the appointment process from the establishment of the competence criteria to the selection of the committee and the appointment of the NPC by the president.

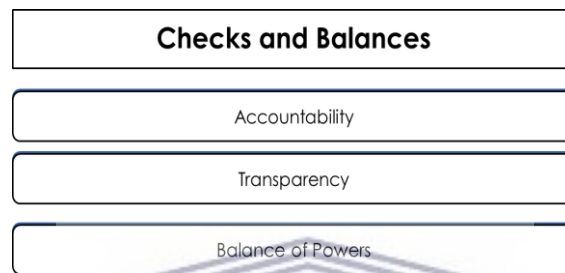


Figure 5 NPC Appointment Checks and Balances – Own compilation base on (SAPS Medium Term Strategic Framework 2019 – 2024), (Schutte 2010), (INTERPOL Standards undated)

3.5.1 Accountability

According to Munzhedzi accountability refers to an organisation’s obligation to justify, explain and expose the actions of the parties concerned, it is detailed steps and a procedure used to arrive at a decision.²⁶⁷The Constitution of South Africa requires accountability and oversight in all three spheres of government (national, provincial and local) and they all have independent executive, legislative and judiciary authority.²⁶⁸It is a constitutional mandate for all spheres of government to provide quality public services. Munzhedzi also argues that accountability demands for the publication of the actions of public institutions to encourage public debate and criticism.²⁶⁹In other circumstances, Moeti argues that accountability is ‘an obligation to answer for the fulfilment of assigned and accepted duties within the framework of authority and resources provided’.²⁷⁰Which means that accountability has to do with ensuring that the parties that are entrusted with public mandate to control and operate public offices are required by law to answer and justify their actions and conducts through a forum.²⁷¹

²⁶⁷ Munzhedzi PH (2016) 2.

²⁶⁸ The RSA Constitution (1996).

²⁶⁹ Munzhedzi (2016) 2.

²⁷⁰ Moeti (2014) in Munzhedzi (2016) ‘Fostering public accountability in South Africa: A reflection on challenges and successes’ 2.

²⁷¹ Ijeoma EOC & Sambumbu AM (2013) 284.

Accountability ensures that officials make decisions on important public policy issues, public servants have major influence and authority on decisions that affect the individual and collective rights of the public.²⁷²In this case the selection committee will be vested with the power to search and find competent candidates to be considered for appointment by the President. The public will have the right to access and bring into question the decision of the committee and the President. Both, the President, and the selection committee are required by law to explain inquiries from the public on how they took actions to arrive a decision. Munzhedzi is of the opinion that the authority vested with governance and oversight in government should ensure that accountability is enforced, and appropriate outcomes are implemented when officials do not comply with the requirements of an applicable action and authority.²⁷³

The selection committee should ensure institutional autonomy from undemocratic political control and influence.²⁷⁴The SARPCO Code of Conduct provides that 'states must implement accountability mechanisms to ensure that appointed police leaders and members adhere to SARPCO standards when fulfilling their duties and must be held to account.'²⁷⁵

The guidelines on recruitment and selection published by the PSC provide that the following measures must be in place to ensure an effective and accountable appointment process by the selection committee: the advertisements must be clear, the screening process must identify competent candidates, implement an accountable short-listing process, ensure an accountable final selection of candidates, use adequate selection instruments, record appointment and the parliament together with the public must monitor the process to ensure it meets the standards of appointment.²⁷⁶

For an advertisement to be clear the content on the advert must ultimately represent the selection criteria applicable to the post to be filled. The advert must set out the requirements from applicants so they can ascertain if they meet the requirements for the job. The screening identifies the candidates that meet the required minimum requirements of the post. The selection committee will ensure that they screen candidates in line with the job criteria and content as per advertisement. The order for the screening process must be fair and objective with a fixed set of criteria to be applied consistently to all applicants. The selection committee must ensure that it keeps a list that captures important information of all applicants that are considered for the short-listing. The short-listing process must also identify a fair-listing criteria in line with advertised requirements and the job content. The selection committee must document the short-listing process and how they arrived at their decision

²⁷² Munzhedzi (2016) 6.

²⁷³ Munzhedzi (2016) 6.

²⁷⁴ Etanibi (2011).

²⁷⁵ SARPCO code of conduct.

²⁷⁶ The PSC (Undated).

so when the competency of the candidates selected is questioned, they may provide evidence for selection. To have an accountable final selection of candidates, the committee must keep a record of important information on the candidates considered for final selection.²⁷⁷

The committee must employ instruments of evaluating the candidates, such as a scoring matrix used during the interview process. The selection model/instrument ensures that the committee evaluates all the candidates in a consistent manner against the job description and criteria. These are submitted together with the decision of the selected candidates by the committee and the full motivation for selection. The committee must capture and record the approval or appointment of the successful candidates to render the whole process of appointment accountable.²⁷⁸ Last, the management and recruitment process should be monitored by the Civilian Secretariat for policing or and the Portfolio Committee on Police to ensure that the criteria objectives are met, and the appointment is fair, reliable and in line with Public Services Act (1994) and the Public Services Regulations (2001).²⁷⁹

3.5.2 Transparency

According to the Public Service Commission (PSC) & Public Affairs Research Institute (PARI), transparency comprises of providing information to the public on request and information not only requested by the public, but which will be to the benefit of the public.²⁸⁰ Which means providing information upfront on the public body such as who is in charge, and the specific services provided.²⁸¹

The inclusion of the government and selection committee in the appointment processes intends to fulfil the role of transparency in the appointment process of the NPC.²⁸² Faull provides that transparency can be achieved by involving service commissions or civilian oversight bodies that enhance checks and balances as governing authorities that confirm transparent selection results.²⁸³

The ISS and CW are calling for a transparent process that elicits public participation. According to the ISS and CW the organisation's transparency in the appointment process is reflected when the SAPS does the following: publicly advertises the vacant post for the NPC and the criteria is clearly outlined in the advert, the appointment of the selection committee representative of the community, shortlisted candidates should be released to the public for comments, feedback and objections and

²⁷⁷ The PSC (Undated).

²⁷⁸ The PSC (Undated).

²⁷⁹ Public Services Act (1994) and the Public Services Regulations (2001).

²⁸⁰ Public Service Commission (PSC) and Public Affairs Research Institute (PARI) (2018) 2.

²⁸¹ PSC & PARI (2018) 2.

²⁸² Schutte (2011).

²⁸³ Faull (2017).

the interviews for the shortlisted candidates should be held in public to assess the candidates against a clearly outlined merit-based criteria.²⁸⁴

The process of publicly advertising the post aims to reach a broad pool of candidates within the specifically targeted area of work.²⁸⁵ The advertisement must clearly set out the requirements to be met by applicants and this will allow applicants to self-reflect on whether they meet the requirements of the job. This means that the advert will assist to reduce the number of non-qualifying candidates from applying. The advertisements also represent the criteria applicable for a candidate to be selected for the post. According to Schutte the selection committee should consist of professionals from multisectoral and multidisciplinary background responsible for overseeing the appointment process and selecting competent candidates for appointment by the president.²⁸⁶ Etanibi provides that the selection of members to the committee should be based on the individual's knowledge of the police agency thru educational qualification, professional police experer, experience, competence, seniority, conduct and group representation. And the representation of the committee member must be diverse in its representation.²⁸⁷ The ISS and CW call for the public release of the candidate's CVs and interviews by the selection committee for public comments and objections.²⁸⁸ The creation of the selection committee, public interviews and advertisement of the post is to promote widespread consultation and transparency across the population sectors.²⁸⁹ This process will prevent an appointment influenced by things such as nepotism, political patronage and regime interest.²⁹⁰ According to Schutte this process encourages greater diversity, ensures credibility and political support, ensures consensus orientation and public support in the appointment of leaders entrusted with the responsibility to manage and control the SAPS department of the justice system.²⁹¹

The UN Convention against Corruption General Assembly resolution 58/4 of 31 October 2003 provides that police agencies should establish and maintain systems that promote transparency.²⁹² Schutte argues that the creation of a transparent process is a reaction to society's cry for better public services and government responsiveness.²⁹³ The Medium-Term Strategic Framework (2019-2024) for the SAPS

²⁸⁴ The ISS and CW (2017).

²⁸⁵ PSC (Undated).

²⁸⁶ Schutte (2011).

²⁸⁷ Etanibi (2011).

²⁸⁸ The ISS & CW (2017).

²⁸⁹ Etanibi (2011).

²⁹⁰ Etanibi (2011).

²⁹¹ Schutte (2011).

²⁹² The UN General Assembly resolution 58/4 (2003).

²⁹³ Schutte (2011).

provides that the department is committed to ensure that it develops and implement quality recruitment systems that enable transparency and an equal opportunity to all qualifying candidates.²⁹⁴

3.5.3 Balance of Powers

Separation of powers as a foundational concept in constitutional law is introduced in structural theory and is therefore mainly involves the design of ideal structural and institutional arrangements.²⁹⁵ According to Ugwuanyi *et al*, balance of powers follows the doctrine of separation of powers which makes it a requirement for the powers and functions of government to be separated and carried out by different institutions and personnel.²⁹⁶ Balance of powers refers to the distinct division of powers and tasks.²⁹⁷ The purpose of balancing the different powers derived by the institutions concerned is to prevent the abuse of power held by one government and provide checks and balances. Checks and balances ensure that state institutions or officials have the ability and willingness to execute their assigned tasks while exercising their respective powers.²⁹⁸ Checks in this context refer to the responsibility and ability of each party in monitoring the activities of other parties. Balances refers to the responsibility and ability each party has to use its powers to limit the powers of other parties.²⁹⁹ Amoda in Ugwuanyi *et al* argues that the practise of balance of powers should ensure that each arm acts as checks for each other to maintain the balance of powers between the different parties.³⁰⁰

Ugwuanyi *et al* link balance of powers to 'liberty and the rule of law' as outlined by Baron de Montesquieu in his paper where he outlines the fundamentals of the doctrine of balance of powers.³⁰¹ Ugwuanyi *et al* state that the doctrine of balance of powers requires for the functions and powers of government to be carried out by different institutions and personnel. Montesquieu in this respect, notes

*Constant experience shows us that every man invested with power is likely to abuse it and carry his authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should be a check on another. When the legislative and executive powers are united in the same person or body, there can be no liberty...*³⁰²

²⁹⁴ The Medium-Term Strategic Framework (2019-2024).

²⁹⁵ Seedorf S & Sibanda S (2008)01.

²⁹⁶ Ugwuanyi BI, Nworji LO & Oruebuor A (2015)12.

²⁹⁷ Ugwuanyi *et al* (2015) 12.

²⁹⁸ Dibia (2008).

²⁹⁹ Ugwuanyi *et al* (2015) 15.

³⁰⁰ Amoda in Ugwuanyi *et al* (2015) 15 'The Impact of Recruitment and Selection Criteria on Organizational Performance'.

³⁰¹ Ugwuanyi *et al* (2015) 15.

³⁰² Ugwuanyi *et al* (2015) 12.

According to Walden University, balance of power is best understood with reference to a state of universal order where power is balanced in such a way that nations, institutions, and actors within institutions avoid aggression by providing solutions.³⁰³ Walden university states that, just as there is no single, agreed-upon definition of the theory on the definition of the balance of power, there is no one agreed-upon method for balancing power.³⁰⁴ Hence states and institutions can employ a collection of strategies to ensure they don't become vulnerable.³⁰⁵ The Walden university notes that transparency is an important factor when states and institutions want to introduce mechanisms that ensure a balance of powers. This is because the public has an influence on tasks to be performed by institutions and states. Therefore, the balance of power must remain as transparent as possible articulating the actions and objectives of all parties concerned.

The World Justice Project governing principles provide that government and its appointed members are all accountable under law and there is clear separation of powers among the executive, legislature and judiciary.³⁰⁶ The SAPS Strategic Plan states that the department seeks to establish a participative management program, identify high-fliers and establish a succession plan and these will feature as a key element in the progression of the organisation's managerial capability at all levels. The SAPS plans to achieve this by establishing procedures for the selection and training of individuals for positions that are considered managerial or leading. The position of the NPC which has historically had individuals that have been poorly appointed with no transparent procedures followed. Hence the SAPS noted how previous NPC's have been entangled in mismanagement and corruption charges e.g., former NPC's Riah Phiyega, Jackie Selebi etc.³⁰⁷



UNIVERSITY of the
WESTERN CAPE

³⁰³ Walden University (2021).

³⁰⁴ Walden University (2021).

³⁰⁵ Debie (2008).

³⁰⁶ The World Justice Project governing principles (2012).

³⁰⁷ SAPS Strategic Plan (2020).

CHAPTER 4: DISCUSSION AND CONCLUSIONS

This chapter provides a critical discussion of the key themes identified in the thematic synthesis in chapter 3. These key themes are discussed in relation to relevant case law and contemporary theory as outlined in chapter 2. Here the end objective is to articulate a mechanism best able to select a candidate for the SAPS NPC role, and to highlight the legal consideration in relation thereto. The key themes identified in the literature synthesis are the mandate to perform, the process to appoint, criteria for the candidate, checks and balances and policy. The purpose of this synthesis is to identify key considerations that should be included in the mechanism of appointment to obtain the best fit NPC candidate for the SAPS. This critical analysis of the appointment mechanism will be of valuable use by legislators, institutional planning on operations and system plans, recruitment and selection departments and the PSC which works to constantly improve recruitment and selection for leaders in public institutions. This discussion also includes connections to the leadership theories, institutional management, legal statutes, literature research, synthesis, case law and concludes with this paper's recommendations. As outlined in chapter 1, the main question this chapter seeks to address is:

1. How may the process of appointing the National Police Commissioner (NPC) be structured so as to maximise the potential of that process to select the most suitable candidate for the role?

The discussion and conclusions that follows is based on the following five themes discussed in the previous chapter: (a) mandate, (b) process, (c) criteria, (d) checks and balances and (e) policy. All of these elements contribute to the structure of an appointment mechanism.

4.1 Mandate

For this discussion, this text seeks to discuss mandate in terms of (1) the overarching institutional mandate of the SAPS, (2) the specific performance mandate of the SAPS, and the performance mandate of the NPC in terms of his/her role in managing and controlling the SAPS toward it achieving its mandate, and (3) the power of the presidency to appoint the NPC, and the associated legislation which outlines the manner in which the appointment should be undertaken.

What is the functional mandate of the SAPS? Broadly speaking, the overarching institutional mandate of the SAPS is given by the Constitution of South Africa, the SAPS Act, and the Criminal Procedures Act(CPA).³⁰⁸ In terms of the institutional mandate, section 205(3) of the Constitution provides for the

³⁰⁸ SAPS Act 68 of 1995 and the Criminal Procedure Act 51 of 1977 (As amended).

overarching mandate of the SAPS, stating that the institutional function of the SAPS is specifically to 'prevent, combat, and investigate crime, maintain public order, protect the inhabitants of the Republic of South Africa, and uphold and enforce the law'. This overarching mandate is reflected in the SAPS Act which states in its preamble that the SAPS institution is purposed to prevent, investigate, and combat crime.³⁰⁹ To this end, the SAPS Act in chapter 5 outlines the specific powers, duties, and functions of the SAPS institution which allow it to fulfil its core mandate. Broadly speaking, the specific powers, duties, and functions of the SAPS are outlined for its National Commissioner, its Provincial Commissioners, and also for the members who together with the commissioners collectively comprise the SAPS 'force'. Here, the word 'force' is utilized instead of the word 'workforce or servicers' because the authority of the SAPS is primarily built around the legal right to use 'force' to achieve its mandated function (i.e., the SAPS is an institution which primarily functions around the use of 'coercive pressures'). The legal mandate to use 'force' also referred to as 'coercive institutional pressure', or simply 'coercive pressure' is given by section 49 of the CPA of 1977, which provides for the use of 'force' in affecting arrest.

As discussed in chapter 2.4, institutional theory is a point of reference in this discussion because it identifies the SAPS as an institution established to promote a particular cause, which is for the citizen and organizations within South Africa to obey the rule of law. Institutional isomorphism is a concept at the core of institutional theory to explain the homogeneity of behaviour among a group of people or organizations.³¹⁰ In sociology, isomorphism is a similarity of behaviour among the members of groups, which is relevant in this study, as adherence to rule of law among a population may be defined as isomorphism. In this instance, SAPS is defined as an institution which achieves its objectives primarily through coercive means (i.e., the use of force) to achieve isomorphism. In this case, the SAPS is permitted by law to use coercive pressures (i.e., legalized violence in the form of arrest, incarceration, and also deadly force) to encourage and coerce obedience to the law from all individuals and organizations in South Africa.³¹¹

What is the SAPS performance mandate? The mandate given to the SAPS speaks not only to the overarching function of the institution (to prevent, investigate, and combat crime) but also to the

³⁰⁹ SAPS Act 68 of 1995 Preamble: *Section 214* of the Constitution requires legislation to provide for the establishment and regulation of a South African Police Service which shall be structured at both national and provincial levels and shall function under the direction of the national government as well as the various provincial governments; and whereas there is a need to provide a police service throughout the national territory to-

- (a) ensure the safety and security of all persons and property in the national territory;
- (b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
- (c) ensure co-operation between the Service and the communities it serves in the combating of crime;
- (d) reflect respect for victims of crime and an understanding of their needs; and
- (e) ensure effective civilian supervision over the Service.

³¹⁰ Aguilera *et al* (2008) 476.

³¹¹ Lewis *et al* (2019) 317.

quality and standard of that function which it must seek to attain. In other words, the SAPS and additionally the NPC, are constitutionally and legislatively mandated to achieve a certain level of performance in undertaking its function. First of all, section 195(1) of the Constitution outlines that the management of public institution should adhere to the principles of (a) a high standard of professional ethics and (b) efficient and effective use of resources. The Constitutional court in *National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another*³¹² confirmed that the SAPS and the NPC have a duty to perform their discharged functions effectively. The court stated that ‘the NPC is responsible for the promotion of a high standard of professional ethics... in accordance with section 195 of the constitution.’³¹³

Also, the Constitutional court in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal*³¹⁴ held that Section 195(1)(i) stresses the importance of ensuring that appointment processes in the public sector are based on ability, objectivity, and fairness.³¹⁵ This case confirms that having a competitive appointment process for the SAPS and the NPC (based on ability, objectivity, and fairness) is a critical contributor to hiring the best candidates in the SAPS. The Constitutional court in the cases above provides guidance as to how the SAPS can achieve its performance mandate as per section 195 of the Constitution. Therefore, the SAPS is required by law to implement performance practices and tools that are in accordance with section 195 when performing duties in accordance with 205(3) of the Constitution.

Parallel to the SAPS mandate, section 207(2) of the constitution states that the function of the NPC is to manage and control the SAPS. The role of the NPC is again provided for in sections 6(1) and 11 of the SAPS Act. These provisions are to the effect that it is the ‘president’s responsibility’ to appoint the NPC and the role of the NPC is to manage and control the SAPS as per section 207(1) and (2) of the Constitution. Taken together, these provisions mean, inter alia, that it is the function of the NPC, to

³¹² *National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) 2014.

³¹³ *National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) 2014 para 50-52.

³¹⁴ *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) at para 62, *Institute for Democracy in South Africa and Others v African National Congress and Others* (IDASA) 2005 (5) SA 39 (C); 2005 (10) BCLR 995 (C) at para 64, and *Chirwa v Transnet Limited and Others* (CCT 78/06) [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC) ; [2008] 2 BLLR 97 (CC) ; (2008) 29 ILJ 73 (CC) at para 146.

³¹⁵ In *Khumalo* the Constitutional court further emphasised that *section 195* provides for a number of important values to guide decision-makers in the context of public-sector employment. When, as in this case, a responsible functionary is enlightened of a potential irregularity, *section 195* lays a compelling basis for the founding of a duty on the functionary to investigate and, if need be, to correct any unlawfulness through the appropriate avenues. This duty is founded, inter alia, in the emphasis on accountability and transparency in *section 195(1)(f)* and *(g)* and the requirement of a high standard of professional ethics in *section 195(1)(a)*. Read in the light of the founding value of the rule of law in *section 1(c)* of the Constitution, these provisions found not only standing in a public functionary who seeks to review through a court process a decision of its own department, but indeed they found an obligation to act to correct the unlawfulness, within the boundaries of the law and the interests of justice, at para 35.

manage and control the SAPS, with the specific goal of making effective and efficient use of resources to achieve the institutional mandate of the SAPS, and to do so in a manner which is fundamentally ethical.

However, as outlined in chapter 1.4, the SAPS NPC's have received significant criticism for the mismanagement of the SAPS, where the criticisms have pointed to both the lack of efficiency and efficacy of the institution, as well as to a number of breaches in ethics in management and personal behaviour of the NPCs. Given that the constitution highlights the central role of the SAPS and the NPC's role to manage and control, and given the inputs from supporting legislative texts, it may be assumed that the directive of the Constitution, with regard to the function of the NPC, is to maximise the performance outcome of the SAPS institution, relative to the specific constitutional and legislative mandate of the SAPS, as well as to make the best use of the available resources to manage the institution. This conclusion is reflected in the relevant case law. Here we refer to two judgements which serve to support this position.

Firstly, in the case of *South African Policing Union and Others v Minister of Police and Others*³¹⁶ the high court clarified the performance mandate and role of the NPC and held that 'the NPC is specifically made responsible for the maintenance of an impartial, accountable, transparent and efficient police service, as well as the recruitment, appointment, promotion, and transfer of all the members of SAPS.'³¹⁷ The court further held that the NPC is responsible for the promotion and maintenance of a high standard of professional ethics in accordance with section 195(2) of the Constitution.

Secondly, in support of clarifying the performance mandate for the SAPS and the NPC in the case of the *National Commissioner of The SAPS v Southern African Human Rights Litigation Centre and Another*,³¹⁸ the court held that the national police service, amongst other security services, shoulders the duty to prevent, combat and investigate crime and national legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively.³¹⁹

As discussed in chapter 2.4, contingency theory is an important point of reference for discussion in this study. The essential principle of contingency theory is that high performance is a consequence of alignment between the practices of an organization/institution and the goal (and context) toward

³¹⁶ *South African Policing Union and Others v Minister of Police and Others* (66522/2020) [2021] ZAGPPHC.

³¹⁷ *South African Policing Union and Others* 2021 para 37.

³¹⁸ *National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) 2014.

³¹⁹ *National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another* (CCT 02/14) 2014 para 50 – 52.

which the organization/institution is working to obtain.³²⁰ The literature provides that the contingency theory is premised on the notion of fit, which may be defined as the suitability of composition or quality for a required purpose. Contingency theory holds that suitability of fit is directly proportional to performance, and that organizations should adapt to achieve 'fit' between the characteristics of the organisation and the context in which it operates.³²¹ Fundamentally, contingency theory is designed around how an organization attains desired performance, which makes it very suitable for this discussion.

The characteristics of the SAPS must be a good fit for the context of SA to achieve desired performance. The desired performance for the SAPS is to combat and prevent crime.³²² Therefore, the characteristics of the SAPS must be a good fit for the mandate of fighting crime. A better fit between the SAPS and its context and environmental factors results in better crime fighting ability for the SAPS.³²³ Contingency theory is a useful lens through which to understand the organizational performance of the SAPS where the required performance is to maximise law abiding behaviour (as established by institutional theory) as an outcome for the SAPS in South Africa.

Having established the performance mandate of the SAPS, the NPC and how they link with the principles of institutional theory and contingency theory, it is important to establish the performance mandate of the President. Also, it is important to establish the challenges presented by the President's power to appoint the NPC and its effect on the SAPS and the NPCs' ability to achieve mandated performance standards. 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'. This regulation presents challenges in the legal field in that it contravenes the constitution, the principle of separation of powers, institutional independence and the requirements for executive decisions to be checked and balanced. In the *Helen Suzman Foundation v President of the Republic of South Africa and Others; In Re: Glenister v President of the Republic of South Africa and Others*³²⁴ case Mr Glenister (the applicant in this matter) deposed an affidavit that claimed that the last three National Police Commissioners are all 'loyal deployees' of the ruling party, which is 'illegal and unconstitutional'.³²⁵ The Constitutional court sought to find a solution to Mr Glenister's claims and made the following submission, the process of providing powers to one member of the executive

³²⁰ Zakeer *et al* (2016) 2.

³²¹ Zakeer *et al* (2016) 2.

³²² Section 205(1) of the Constitution.

³²³ Aguilera *et al* (2008) 476.

³²⁴ *Helen Suzman Foundation v President of the Republic of South Africa and Others; In Re: Glenister v President of the Republic of South Africa and Others* (2013) ZAWCHC 189; 2014 (4) BCLR 481 (WCC) (High Court judgment) para 9.

³²⁵ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) page 17.

exclusively aggravates the risk of being unconstitutional when the power to appoint is consolidated in a single, politically prominent office-bearer, or in a close-knit group of government executives who may have a shared interest in finding a compliant appointees independence.³²⁶

The Constitutional court in *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*³²⁷ has authoritatively noted that there should be a body that 'provides a check and balance to the power of the Executive' to make appointments if appointments are 'at the discretion' of members of the Executive.³²⁸ The Organisation for Economic Co-operation and Development (EOCD) report submits similar arguments in support of the findings made by the courts stated above, it provides that 'the selection process for the head must be transparent and should facilitate the appointment of a person with integrity on the basis of high-level consensus among different power-holders (e.g., the President and the Parliament; appointment through a designated multidisciplinary selection committee on the proposal of the Government, or the President, etc.). Appointments by a single political figure (e.g., a Minister or the President) are not considered good practice.'³²⁹

Section 207(1) of the Constitution does not conform to the principles stated above. It does not require consensus among different power holders in the SAPS or oversight bodies. It does not involve the Parliament or a selection committee. Instead, it provides for appointment 'by a single political figure' namely the President.³³⁰ The court in *Glenister II* stated that there can simply be no independence within the SAPS unless section 207 of the Constitution is amended.³³¹ This study supports the findings made by the Constitutional court and submits that the current process of appointment of the NPC is unconstitutional in that it contravenes section 195(1) of the constitution. The proposed appointment process of the NPC by this study supports the requirements set out in section 195 of the Constitution and the findings made by the Constitutional court in the *Glenister II* case in that it proposes steps in mitigating the risk of the President making unconstitutional NPC appointments. The Constitutional court in *Glenister II* proposes a balanced appointment process that diffuses the power of selection and appointment among various stakeholders.

³²⁶ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) para 157.

³²⁷ *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa* (1996) ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (First Certification).

³²⁸ *Ex parte Chairperson of the Constitutional Assembly* (1996) at para 124 (discussing the appointment of judges).

³²⁹ Organisation for Economic Co-operation and Development Report (2008) *Specialised Anti-Corruption Institutions: Review of Models* 26.

³³⁰ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) para 161.

³³¹ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) para

This thesis addresses the process to appoint the NPC by asking what kind of appointment process would attain the best fit between the appointed NPC and the institution of SAPS? The analysis outlined in chapter 3 identifies four key elements that must be addressed to optimise the NPC appointment mechanism.³³²The four key elements to be considered into the appointment process are: appointment process, criteria for appointment, the necessary checks and balances of the process, and the appointment policy of the SAPS institution. Therefore, to maximise the efficacy of the appointment process, the SAPS must ensure a good fit between these four key elements, and the overarching goal of selecting an NPC that is the best possible fit with the needs (and functions) of the SAPS institution.

4.2 The Process

An appointment process must support set standards and appointment tools required in selecting and appointing an NPC that is a good fit (as established by contingency theory) for SAPS. The process is a key element in a mechanism of appointment. Where a process is defined as a clearly defined sequence of steps or actions. The function of the process is to ensure that the appointment follows the right steps correctly to reduce mistakes and allocates power for each party involved in the process.³³³ The process seeks to help streamline activities, ensuring that resources are put to optimal use and helps to ensure that the desired outcome is achieved.

The mechanism of appointing the NPC should select the best suitable candidate. Using the words of the contingency theory, selecting a candidate that is a best fit for the institution. Therefore, the process should be the sequence of steps that maximise fit while ensuring that resources are put to optimal use – and without making mistakes.³³⁴ Emphasising the duty of government, in *MEC for Health, Eastern Cape and Another v Kirkland Investments (Pty) Ltd*³³⁵ the Constitutional court held that there is a higher duty on the state to respect the law and to fulfil procedural requirements, stating that ‘government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution’s primary agent. It must do right, and it must do it properly.’³³⁶

The literature synthesis in chapter 3.3 identifies a sequence of several steps in the desired process, these include the following: appointing a selection committee, advertising the post, review, screening, interviews, and appointment of the NPC. It is essential that the process adhere to the highest standard

³³² Lewis *et al* (2019) 317.

³³³ The PSC (Undated).

³³⁴ Aguilera *et al* (2008) 476.

³³⁵ *MEC for Health, Eastern Cape and Another v Kirkland Investments (Pty) Ltd* (CCT 77/13) [2014] ZACC 6; 2014 (5) BCLR 547 (CC); 2014 (3) SA 481 (CC).

³³⁶ *MEC for Health, Eastern Cape and Another v Kirkland Investments (Pty) Ltd* (CCT 77/13) [2014] ZACC 6; 2014 (5) BCLR 547 (CC); 2014 (3) SA 481 (CC) para 82.

of these steps in order to ensure that the best candidate is selected and promoted into the NPC position. The case of *KwaZulu-Natal Department of Transport v Hoosen and Others*³³⁷ Judge Whitcher in the labour court supports the importance of adhering to a process which meets the objectives of obtaining the best possible candidate. Here the judgement holds that 'processing which led to a promotion of a candidate who did not meet the requirements of the post amounted to an unfair labour practice.'³³⁸ Therefore, any process to appoint the NPC must be written to meet requirements to select the best possible candidate for the role. In terms of the steps in the appointment process the literature provides the following comments:

Appointing the Selection Committee: As outlined in chapter 3.3.5 the purpose of having the selection committee in the appointment mechanism is to ensure that the fixed set of selection criteria is applied for each and every candidate that is screened successfully. The literature highlights that the selection committee ensures that checks and balances are implemented in the appointment mechanism to guarantee an accountable and transparent process that avoids individual bias and stereotyping.³³⁹ Studies by organisations like the ISS and CW, and the PSC provide guidance that there should be a selection committee and who should be in the selection committee.³⁴⁰ Schutte, Etanibi, the ISS and CW provide that the selection committee should consist of persons of different race, gender, age, culture, well established members of the SAPS, experts on policing, elements of government, professionals (from multisectoral and multidisciplinary backgrounds), public service organizations and civilian oversight bodies.³⁴¹ The parties responsible for establishing the appointment criteria must also outline the required criteria of work experience to be required from the members of the selection committee.³⁴² The PSC guidelines provides that the appointment process of the selection committee must consider appointing different professional experts and members of the public.³⁴³ Once the selection committee is appointed by the parties stated above the selection committee will enable the next step that follows into the process, which is advertising the post.³⁴⁴

Advertising the Post: The purpose of advertising the post is to attract qualified candidates to apply. The advertisement must clearly set out the requirements that should be met by applicants reducing the number of nonqualifying candidates from applying.³⁴⁵ It is essential that the statement of criteria

³³⁷ *KwaZulu-Natal Department of Transport v Hoosen and Others* (D 259/11) [2015] ZALCD 56; (2016) 37 ILJ 156 (LC).

³³⁸ *KwaZulu-Natal Department of Transport* 2015 para 14 and *Seile Edwin Letsogo v The Department Of Economy & Enterprise Development and Others* (JR350/16) 2018 para 23-24.

³³⁹ The PSC (Undated).

³⁴⁰ The NDP (2012) & The ISS & CW (2017).

³⁴¹ Schutte (2011), Etanibi (2011) and ISS & CW (2017).

³⁴² The ISS & CW (2017).

³⁴³ SMS Handbook (2003).

³⁴⁴ The PSC (Undated).

³⁴⁵ PSC (Undated).

attached to this advertisement be in line with what is required for the post in question, and that this be strictly adhered to. As in the case of *Adams v General Public Service Sectoral Bargaining Council and Others*³⁴⁶ the court held that ‘the MEC is the only person who has the authority to determine and / or vary and / or change the requirements for a post. It is unlawful for the selection panel or any other party to change or vary the requirements for a post.’³⁴⁷ Followingly, as noted by Schutte, the job advertisement should be fully compatible with the valid post and job specifications and should specify the inherent competencies of the job, the job title and core functions.³⁴⁸

Review, Screening, Interviews and Appointment: The PSC guidelines provide that the purpose of the review, shortlisting and selection process is to ensure that the candidates that meet the minimum requirements in terms of the applied criteria are selected.³⁴⁹ Top performing and the most competent candidates must be selected, shortlisted, and invited for interviews. During the interviews the committee must record the competence of each candidate using scoring tools that measure in accordance with the criteria.³⁵⁰ The selection committee will evaluate all the information and scores provided for each individual in the process and select the three most competent candidates to be recommended to the President. The selection committee will provide motivation with records of information for each recommended candidate. The information will include records on the candidate’s competency, assessments marks and any other relevant information required to inform the selection committee on its decision.³⁵¹ The selection committee shall make its recommendations to the President with reference to the required criteria and competence. According to Etanibi the selection committee must use appointment and selection instruments that are free from any bias or discrimination. The selection should ensure that recommended candidates have the training, skills, competence, and knowledge to function as the NPC of the SAPS.³⁵² The President will consider the recommendations of the selection committee and appoint the candidate that best fits the post.

4.3 Criteria for Appointment

As discussed in chapter 3.4 the criteria of appointment which specify the required competencies for a candidate to be appointed as NPC are necessary to guide selection of the appropriate candidate and are thus a key element in the mechanism of appointment. Toward this end the NDP 2030 has issued recommendations stating that the criteria of appointment should be established by the Civilian Secretariat for Police (CSP) together with the Parliamentary Portfolio Committee for Police (PPCP)

³⁴⁶ *Adams v General Public Service Sectoral Bargaining Council and Others* (C839/2019) [2021] ZALCCT 46.

³⁴⁷ *Adams v General Public Service Sectoral Bargaining Council and Others* (C839/2019) [2021] ZALCCT 46 para 17-19.

³⁴⁸ Schutte (2011).

³⁴⁹ The PSC (Undated).

³⁵⁰ EMA (2011) 3.

³⁵¹ The PSC (Undated).

³⁵² Etanibi (2011).

together with the National Policing Board (NPB). Furthermore, the literature severally notes that the bodies for establishing the criteria should be experts and be experienced in police related matters to know what is required for a candidate to be a good fit for the SAPS.³⁵³The literature furthermore outlined the four key elements of criteria for appointment to include (1) qualifications, (2) experience, (3) personal attributes and, (4) demonstrated performance.

Qualifications: A qualification is a requirement deemed by the employer as essential for the candidate to successfully perform the job. Like any other essential requirements, the qualification criteria help set expectations for both the candidates and the employer so qualifying candidates may apply. In the case of *Public Servants Association obo Thorne v Department of Community Safety (Western Cape) and Others*³⁵⁴ the court held that in 'the setting of appointment criteria in relation to the requirements of a post, a department is allowed to set an educational standard which it believes is reasonable for the requirements of the post.'³⁵⁵Here the core argument is that a department should set its competence standards for recruitment and selection purposes. In this case the court stated that the three spheres of government must be allowed to set reasonable minimum academic qualifications for appointment into certain senior positions.³⁵⁶Read in context, this judgment supports the view that criterion should not be too high, to the exclusion of certain potentially viable candidates, and should not be interpreted to mean lack of sufficient academic qualification is permissible.³⁵⁷

Experience: Authors note that the candidate must have the required level of experience to function independently for the post of the NPC and guide subordinates.³⁵⁸In this instance, experience is taken as a signal of the candidates' exposure over the length of a career which guides the selection committee to identify if the candidates have the necessary functional exposure based on the inherent requirements of the job. In this respect the court in *South African Policing Union and Others v Minister of Police and Others*³⁵⁹ held that the Constitution and the principles espoused in section 217 and 195(2) therein apply to all organs of state and in the administration of every sphere of government.³⁶⁰ It may thus be taken that candidates should possess reasonable experience into policing and also into senior roles of organizational management required within the public sector. The role of being the NPC involves the ability to perform functions, in addition to overseeing the broad set of activities which

³⁵³ Etanibi (2011), Schafer (2010), Schutte (2011), Faull (2017), The NDP (2012 and The ISS & CW (2017).

³⁵⁴ *Public Servants Association O.B.O. El Thorne v Department of Community Safety (Western Cape)* (CA07/2017) [2018] ZALAC 24; [2018] 12 BLLR 1173 (LAC).

³⁵⁵ *Public Servants Association O.B.O. El Thorne v Department of Community Safety (Western Cape)* (CA07/2017) [2018] ZALAC 24; [2018] 12 BLLR 1173 (LAC) para 24.

³⁵⁶ *Public Servants Association O.B.O. El Thorne v Department of Community Safety (Western Cape)* (CA07/2017) [2018] ZALAC 24; [2018] 12 BLLR 1173 (LAC) para 14.

³⁵⁷ Schafer (2010) 652.

³⁵⁸ Schafer (2010) 651.

³⁵⁹ *South African Policing Union and Others v Minister of Police and Others* (66522/2020) [2021] ZAGPPHC 10.

³⁶⁰ *South African Policing Union and Others v Minister of Police and Others* (66522/2020) [2021] ZAGPPHC 10 para 53.

take place under the auspices of the SAPS. However, in this case SAPS as an employer must consider all the aspects of the applicants' work experience without being rigid by requiring applicants to only have experience in policing in exclusion of other professions which could be of value to the SAPS and the candidate's ability to perform the functions of the NPC role. This recognizes that other sources of experience, outside of the policing domain, should be considered where relevant. This however must be taken into consideration in addition to the extent of focused policing experience and public sector institutional management experience, and not in the absence thereof.

Personal Attributes: The next set of criteria that should be considered in the appointment mechanism are the candidates personal attributes. The research and case studies have outlined that a leader's personal attributes significantly influence and shape decision-making significantly within an organisation. Personal qualities are soft and intangible qualities or traits that enhance a candidates' interactions. Thus, these are the following personal attributes that employers should look for: critical thinking, problem-solving, independence, interpersonal skills, intrinsically motivated, assertiveness, high degree of integrity and honesty. As is supported in the case of *POPCRU obo Thokwane*,³⁶¹ the judgement supported that there is a need for the NPC to have personal attributes that contribute to the improvement of the SAPS performance. This supports the position that the NPC appointment process should employ tools and strategies which may be used to measure the personal attributes of potential NPC candidates.³⁶²

Demonstrated Performance: The last criterion to be required for the assessment of candidates is demonstrated performance. Demonstrated performance is essential as criteria because it informs the selection committee about the candidate's ability to serve the organisation and their peers.³⁶³ Demonstrated performance means, for purposes of the substantive evaluation criteria, the record of past legal, financial, commercial, technical, workforce, safety, community, or other positive or negative performance of the candidate which have been documented in accordance with an institution's performance requirements. The objective of having a record on demonstrated work performance is to ascertain whether a candidate is suitably experienced and competent for appointment.³⁶⁴ In other words, have they shown that they are capable of undertaking such a role.

³⁶¹ *POPCRU obo Thokwane v Pretorius NO and Others* (JR1484/18) [2020] ZALCJHB 214.

³⁶² *POPCRU obo Thokwane v Pretorius NO and Others* (JR1484/18) [2020] ZALCJHB 214 para 17. This court dealt with looking at the requirements that the selection panel had to consider for applicants that applied for a post in the SAPS. The majority of the panel members must have knowledge of the competence required for the vacant post in accordance with the following evaluation of applications: (1) the members of the selection panel must consider all applications on the basis of (a) the inherent requirements and core functions of the vacant post; (b) the ability and the potential of the Applicant to function in the post.

³⁶³ Odumeru and Ifeanyi as cited in Kabeyi (2018) 192, 'Transformational vs Transactional Leadership with Examples'.

³⁶⁴ The PSC (Undated).

4.4 Checks and balances

Checks and balances are necessary to legitimise the appointment mechanism of the NPC in the SAPS in compliance with the requirements of the constitution, institutional independence and the objective of separation of powers. Checks and balances should be introduced in the appointment mechanism to ensure that individual bias and stereotyping are avoided.³⁶⁵This can, for example, be achieved by means of having a selection committee that consists of persons of different race, gender, age, and culture. The literature highlights 3 key types of checks and balances that the SAPS police institution should have in place for the recommended appointment mechanism of the NPC, including (1) accountability, (2) transparency, and (3) separation of powers between the different parties involved in the appointment mechanism.³⁶⁶In *Joseph v City of Johannesburg*³⁶⁷ the court took a view that one of the key functions of government is to provide services that seek to meet the core needs of its citizens. Government must provide necessary services using tools that assist government in fulfilling this function. To that end government checks and balances are necessary to establish good governance, and to deliver quality public services in an objective and unbiased fashion.³⁶⁸The Constitutional court in the *Joseph v City of Johannesburg*³⁶⁹ case provided guidance on how to achieve good governance and held that PAJA³⁷⁰ as a tool to manage good governance in public institutions must be interpreted in a manner that achieves the objectives of open, unbiased and respectful government which gives effect to the spirit of the Constitution, the Constitution as a legal instrument is enacted to create and promote an accountable government.³⁷¹

The PAJA is a legislation enacted to support and promote the objective of section 33(1) to (3) of the Constitution which requires South African government to be accountable to its citizens. The Preamble in PAJA states that section 33(3) of the Constitution requires national legislation to be enacted to give effect to the rights provided in section 33(1) and (2) of the Constitution.³⁷²The Preamble states that the national legislation envisaged in section 33(3) must be enacted to create a culture of accountability, openness and transparency in the public administration or in the public exercise of

³⁶⁵ SARPCO (2012).

³⁶⁶ The PSC (Undated).

³⁶⁷ *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC) ; 2010 (4) SA 55 (CC).

³⁶⁸ *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC) ; 2010 (4) SA 55 (CC) para 43-46.

³⁶⁹ *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC) ; 2010 (4) SA 55 (CC).

³⁷⁰ Promotion of Administrative Justice Act 3 of 2000.

³⁷¹ *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC) ; 2010 (4) SA 55 (CC) para 43.

³⁷² Section 33(1) and (2) of the Constitution provides that 'everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.'

public power or the performance of a public function, by giving effect to the right to just administrative action in order to promote an efficient administration and good governance. The sections provided above are sentiments which are rooted on the foundations provided in section 1 of the Constitution³⁷³ which refers to the need to create a culture of accountability, openness and transparency.³⁷⁴

Accountability: Accountability is about maintaining a clear chain of command through reporting procedures. According to a proposed thesis from the university of Pretoria public sector accountability reflects a universally accepted standard for public administration in theory and practice.³⁷⁵ Traditionally, the notion of accountability involves individual responsibility for performance of specified duties and the top-down control within an official hierarchy.³⁷⁶ Record keeping is such an example of such an accountability measure which ensures the decision of parties to the NPC appointment process may be scrutinized at a later stage. This creates an interest within the stakeholders of the process to behave in a positive and professional manner, as the members will know that their decision will be open to scrutiny at any later stage. The function of recording the process, the Presidents' approval and the appointment letter of the successful candidate renders the process accountable as required by the PSA 103 of 1994.³⁷⁷ This Act regulates for the establishment of accountability measures in public institutions in South Africa. The process should ensure that monitoring bodies and measures are clearly outlined for purposes of ensuring that the criteria objectives are met, and the appointment is fair, reliable and will appoint the best suitable candidate for the NPC role.³⁷⁸ Lastly and importantly, the SAPS Act highlights the needs for accountability of the institution, specifically in terms of financial accountability, democratic accountability of service rendered, accountability of services to the community, and lastly makes provision that accountability should be promoted and promulgated by the institution.

Transparency: Transparency is founded on the universal human right to information in *article 19(2)* of the Universal Declaration of Human Rights (UDHR). This principle is reflected in the constitution, with specific reference to administration of public institutions, under section 195(1)(g) which states that 'transparency must be fostered by providing the public with timely, accessible and accurate

³⁷³ Section 1 of the Constitution provides that 'the Republic of South Africa is one, sovereign, democratic state founded on the following values: 'human dignity, the achievement of equality and the advancement of human rights and freedoms; supremacy of the constitution and the rule of law; and universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.'

³⁷⁴ *Joseph and Others v City of Johannesburg and Others* (CCT 43/09) [2009] ZACC 30; 2010 (3) BCLR 212 (CC) ; 2010 (4) SA 55 (CC) para 43.

³⁷⁵ University of Pretoria (UP) (2021) 34.

³⁷⁶ UP (2021) 34.

³⁷⁷ Act 103 of 1994.

³⁷⁸ SMS Handbook (2003) & The PSC (Undated).

information'. In international law the right to information and transparency flows from the right to public information globally. This right to information is in favour of accessing information held by public bodies, regardless of the form in which the information is stored, its source and date of production.³⁷⁹ International law recognises the right of access to information. In *Claude Reyes and Others v Chile*³⁸⁰ the Inter-American Court of Human Rights held that:

Information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.³⁸¹

Another case worth noting is that of *Társaság a Szabadságjogokért v Hungary*³⁸² the European Court of Human Rights dealt with a matter concerning public interest³⁸³ held that arbitrary denial through refusal of access to constitutional complaints and censorship through information monopoly is a violation of the right to access information as per *article 10* of the European Convention of Human Rights.³⁸⁴ Further section 32(1) of the Constitution guarantees everyone the right of access to information held by the state.³⁸⁵ Klaaren states that this case represents a 'significant development' in recognising the right to access information in international law guaranteed to all humans by *article 19(2)* of the UDHR.³⁸⁶ Also it is important to note that the increase in access to internet for the 21st century has increased the potential for transparency with more individuals desiring to access information and this, according to Klaaren helps to facilitate 'active citizenry participation in building a democratic society.'³⁸⁷ Moreover, in *Mphahlele v First National Bank of South Africa Ltd*,³⁸⁸ the



³⁷⁹ Klaaren J (2013) 229.

³⁸⁰ *Claude-Reyes and Others v. Chile* Judgment of 19 September 2006 (Merits, Reparations and Costs) Series C No 151

³⁸¹ *Claude-Reyes and Others v. Chile* Judgment of 19 September 2006 (Merits, Reparations and Costs) Series C No 151 para 77.

³⁸² The European Court of Human Rights *Társaság a Szabadságjogokért v Hungary* Judgment of 14 April 2009 Application No 37374/05.

³⁸³ The European Court of Human Rights delivered an important judgment in which it recognised the right of access to official documents. The Court made it clear that, when public bodies hold information that is needed for public debate, the refusal to provide documents in this matter to those who are requesting access, is a violation of the right to freedom of expression and information guaranteed under Article 10 of the Convention. The case concerns a request by the *Társaság a Szabadságjogokért* (Hungarian Civil Liberties Union - TASZ) to Hungary's Constitutional Court to disclose a parliamentarian's complaint questioning the legality of new criminal legislation concerning drug-related offences. The Constitutional Court refused to release the information. As the Court found that the applicant was involved in the legitimate gathering of information on a matter of public importance and that the Constitutional Court's monopoly of information amounted to a form of censorship, it concluded that the interference with the applicant's rights was a violation of *Article 10* of the Convention.

³⁸⁴ The European Court of Human Rights *Társaság a Szabadságjogokért v Hungary* Judgment of 14 April 2009 Application No 37374/05 para 55-59.

³⁸⁵ *Section 32(1)* of the Constitution provides that 'everyone has the right of access to records or/and information held by the state and any information held by another person and that is required for the exercise or protection of any rights. This section affirms the fundamental right of access to information and seeks to promote a culture of transparency and accountability in the private and public sector.'

³⁸⁶ Klaaren (2013) 231.

³⁸⁷ Klaaren (2013) 232.

³⁸⁸ *Mphahlele v First National Bank of South Africa Ltd* (CCT23/98) [1999] ZACC 1; 1999 (2) SA 667; 1999 (3) BCLR 253.

constitutional court held that there is a direct link between the right to information and the constitutional value of openness.³⁸⁹

Transparency as a requirement in the appointment mechanism of the NPC prevents the President and every other party involved in the appointment process from moving away from the specified and required process. Fundamentally linked to accountability, transparency is an accountability mechanism to ensure the various actors involved in the process adhere to the regulations and requirements.³⁹⁰ Transparency is necessary to prevent improper behaviour or decrease the risk of centralization of power. In *Glenister II* the Constitutional court held that the selection process for the head of a specialised institution (like the SAPS) should be transparent.³⁹¹ The power to appoint the NPC needs to be decentralised between the different bodies internal and external to the SAPS. Transparency further enables each body in the appointment mechanism to practice their assigned responsibilities independently, impartially, without bias, influence and stereotyping and the public has the right to access the information about SAPS practice in fulfilling its responsibility and how it has centralised its power with compliance to its constitutional mandate. In this respect Faull provides that transparency ensures the achievement of a valid process.³⁹² The appointment process must include public participation through the following options publicly advertising the post, establishing the appointment criteria, the appointment of the selection committee, holding public interviews and record keeping throughout the appointment process as outlined on chapter 3. Furthermore, civilian oversight bodies and the public must have access to the details of the selection process of the NPC.³⁹³ To this end, transparency in the appointment mechanism empowers credibility, public participation and confirms transparent selection results.³⁹⁴

Separation of Powers: Balance of powers as an accountability measurement in the appointment process of the NPC ensures the prevention of concentration of power to one party. It allows for the various parties in the process to hold each other accountable, should one of the parties overreach in the exercising of their role. Balance of power provides for all spheres of government and organs to exercise their powers and perform their functions equally and in a cooperative manner that supports the functional and institutional integrity of government.³⁹⁵ According to Maoni balance of powers is:

A jurisprudential doctrine or principle that requires a division and delimitation of powers and functions of the branches of government classified as executive, legislative and judicial in a

³⁸⁹ *Mphahlele v First National Bank of South Africa Ltd* (CCT23/98) [1999] ZACC 1; 1999 (2) SA 667; 1999 (3) BCLR 253 para 9.

³⁹⁰ The United Nations Office on Drugs and Crime (2021) 'What is good governance?'.
³⁹¹ *Glenister II* (2015) para 160.

³⁹² Faull (2017).

³⁹³ Faull (2017).

³⁹⁴ Faull (2017).

³⁹⁵ Act 103 of 1994.

sense that each of the three branches of government is responsible for a single function. The application of the doctrine ensures independence of the branches of government, facilitates an expedient division of labour, creates more avenues of power, and develops areas of expertise in the respective branches.³⁹⁶

Therefore, the appointment mechanism must specifically outline the powers of the selection committee, the president and all parties involved in the appointment of the NPC. The powers given to the selection committee by virtue of handling the appointment process, would prevent overconcentration of power in the presidency, in selecting the best suitable candidate to fulfil the role of administering the SAPS institution effectively.³⁹⁷ According to Maoni the principle of balancing powers is important to create efficiency and ensures that there are proper checks and balances in the exercise of power as well as better oversight relationships.³⁹⁸ The appointment mechanism must support the balance of powers in compliance with the Constitution's regulation requiring appointments that enable the President's ability to perform necessary functions as the head of the state.³⁹⁹ Further the Constitutional court held that the selection process for the head (of a specialised anti-corruption institution, like the SAPS - for purposes of this research) should be transparent and should facilitate the appointment of a person of integrity on the basis of high-level consensus among different powerholders (e.g., the President and the Parliament; appointment through a designated multidisciplinary selection committee on the proposal of the Government, or the President, etc.). Appointments by a single political figure (e.g., a Minister or the President) are not considered good practice.⁴⁰⁰ Therefore, the balance of powers in the appointment mechanism supports the Constitutional court's findings, the purpose and function of the SAPS institution and the President which is to attain the best fit between the NPC and the SAPS by appointing through an appointment process that checks and balances the appointment of a competent NPC that can effectively combat and prevent crime.

The case of *President of the Republic of South Africa and Another v Hugo* provides useful information in understanding the powers and limitations of the President as head of state.⁴⁰¹

³⁹⁶ Di Visser & Akintan (2008) in Maoni (2013) 7.

³⁹⁷ Section 83 of the Constitution.

³⁹⁸ Maoni (2013) 8.

³⁹⁹ Section 84(2)(a) of the Constitution.

⁴⁰⁰ *Glenister II* (2015) para 160.

⁴⁰¹ *President of the Republic of South Africa and Another v Hugo* (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708; 1997 (4) SA 1). The respondent in this matter is a prisoner who, on 6 December 1991, commenced serving an effective sentence of fifteen and a half years John Phillip Peter Hugo - the respondent in an amended notice of motion sought an order declaring the Presidential Act unconstitutional and directing the first appellant the President to correct it in accordance with the provisions of the interim Constitution. The respondent alleged that the Presidential Act was in violation of the provisions of section 8(1) and (2) of the interim Constitution in as much as it unfairly discriminated against him on the ground of sex or gender and

The principle of legality provides that the President and his state functionaries may not exercise and may not perform functions beyond the ones granted by law. Failure to act rationally, make a rational decision, perform the required functions or make a decision that meets the specified requirements in terms of the law may be set aside in court on the grounds of legality. Overreaching or under performance by the president is a violation of the threshold requirements for separation of powers. Therefore, overreaching or under performance by the judiciary, legislator and executives like the President is therefore a misconduct. The misconduct is admissible for grounds of review or impeachment or removal from the office as President due to inability to perform the required functions of the office.⁴⁰²

Mackenzie acknowledges that a president might misjudge the character of a person whom she/he nominates, or she/he might allow political considerations to prevail over merit.⁴⁰³ The appointment process provided in this study argues for the use of the selection committee, criteria for appointment, checks and balances, and policy to enable an appointment of a competent NPC. The process allows for the appointment to be based on merit and competence not political manoeuvring. The selection committee's participation in the appointment process will therefore add credibility, transparency, and accountability in the final appointment of the NPC by president which makes the appointment compliant with section 199(8) of the Constitution.

4.5 Policy

As outlined in chapter 2.6, the role of policy in an organisation is to provide general guidance about the organisation's mission, provide specific guidance toward implementing strategies to achieve the organisation's mission, and also outline mechanisms to control the general management of the organisation. Therefore, it is imperative that the appointment mechanism must have a policy to guide its implementation. This is because the policy will provide for selection / appointment of the eventual administrative head of the SAPS, which in turn will have cascading impacts on the function and operations of the organization. The earlier chapters have highlighted the necessary components of the appointment process, including the specific steps in the process, the various candidate criteria for appointment, as well as the checks and balances that need to be incorporated. A policy written to specify the institutional mechanism of appointing the NPC, must necessarily incorporate all of these elements.

indirectly against his son in terms of section 8(2) because his incarcerated parent was not a female. The court held that the exercise by the President of his powers under section 82(1) may be subject to review by courts of appropriate jurisdiction in the same way as the exercise by him of other constitutional powers would be subject to review.

⁴⁰² *Justice Alliance of SA v President of the RSA and Others and Two Similar Applications 2011 (5) SA 388 (CC)*.

⁴⁰³ Mackenzie (2011).

From a constitutional perspective such a policy should account for 3 key points. Firstly, section 195(1) of the constitution states that ‘people’s needs must be responded to, and the public must be encouraged to participate in policy-making’. It is thus important that the participation of the public, and of parties external to the SAPS be engaged in the development of a policy to appoint the NPC. Secondly, section 206(1) states that ‘a member of the cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and considering the policing needs and priorities of the provinces as determined by the provincial executives.’ There is thus a need for the highest of level of cabinet consideration in the articulation of the policy to meet the needs of the provinces. Lastly, section 207(2) outlines that the NPC is to exercise control and manage the police service in accordance with the national policy. Therefore, policy should guide and regulate both the process to appoint a new police commissioner, as well as stipulate the performance standards expected of the NPC in undertaking that duty.

An additional and important consideration must be considered from the Bill of Rights (BOR). As the SAPS is an institution legally mandated to use force (coercive means) to undertake its institutional function, it is thus of the utmost importance that any policy developed to support the function of the SAPS must necessarily adhere, strictly to the principles of the BOR. Sections 39(2) of the Constitution provides that when developing law, every court must promote the spirit, purport, and objects of the BOR.

From a theoretical perspective, the objective of the policy is to ensure that the steps of the appointment mechanism maximise fit between the NPC and the SAPS. As this study is articulate to outline the key elements of the ideal appointment process, ‘fit’ by broad definition, implies development of policy which prioritises adherence to the principles set out in this study.

In *Glenister v President of the Republic of South Africa and Others*⁴⁰⁴ case the court held that institutions of safety and security like the SAPS enjoy ‘an adequate level of structural and operational autonomy which is secured through institutional and legal mechanisms aimed at preventing undue political interference.’⁴⁰⁵ This autonomy is afforded to the SAPS by section 205(2) of the Constitution which requires national legislation to enable the police service to discharge its responsibilities effectively. The introduction and implementation of policy that supports the appointment process mechanism proposed in this study is necessary to assist the SAPS in discharging its mandate effectively through appointing the best person to manage and control the SAPS.

⁴⁰⁴ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC).

⁴⁰⁵ *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC) para 157.

Lastly, the Public Service Act regulates for the development of policy that supports the functions of public institutions, in this case the SAPS. Drawing from this document, it is possible to specify the key elements of developing policy: These include identifying the need and for the policy, identifying the parties that are responsible for developing the policy, stakeholders to be consulted, the procedure to be followed in the development of the policy and the plan for implementation. These are outlined here as follows:

Parties involved in the development of the policy: There are specific parties involved in the process of appointment as recommended by literature and civilian oversight reports. The following bodies should be involved in the development of the policy into the mechanism of appointment. The Civilian Secretariat for Police (CSP) has the responsibility to identify who will be responsible for establishing the criteria for appointment and standards of appointment. The Parliamentary Portfolio Committee for Police (PPCP) working together with the CSP should establish the criteria and standards of appointment. Under our constitutional scheme it is the responsibility of the executive to develop and implement policy.⁴⁰⁶

Roles and responsibilities: As highlighted on the key elements for developing policy above, policy should provide clear guidance on who has the responsibility of selecting the committee members. It must ensure that all role players know and execute their responsibility within specified timeframes. A policy must specifically outline who should be responsible to manage advertising the post, reviewing, screening, shortlisting, interviewing and the selecting process of the mechanism of appointment. The policy for the appointment mechanism must be in compliance with section 85(2)(b) of the Constitution which states that it is the responsibility of the President and the members of the cabinet to develop and to implement policy.

Processes and procedures: A policy should also provide guidelines on the process and procedures of the appointment mechanism. First, the appointment process should outline the specific steps that need to be taken to ensure a competitive and effective appointment process. The purpose of outlining the process and procedure is to ensure that the NPC should be appointed via a competitive process to ensure that the SAPS develops into a professional service which conforms to high standards of recruitment, selection, appointment, and promotion, as defining of a quality professional institution.

Criteria: The policy must also specify the selection criteria for appointment required from candidates to be considered competent for the post. This is because the selection criteria outline the specific

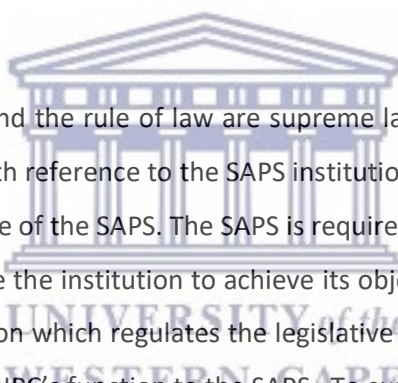
⁴⁰⁶ Section 85(2)(b) of the Constitution.

qualifications, experience, and personal attributes which candidates should possess to be eligible to be appointed as the NPC.

Checks and balances: The last element in developing a policy is specifying the required steps to implement the appointment mechanism. Implementation is identified as the necessary actions to ensure that the process complies with the required checks and balances from public institutions. Checks and balances serve the purpose of specifying institutional controls that should be put into place to ensure that the steps in the process of appointment are followed correctly; to reduce mistakes, to prevent improper behaviour and increase balance in powers. The Minister for Police and Ministerial Committee must determine policy guidelines for the SAPS and it must do so in a manner that ensures that the SAPS have the necessary independence to perform their functions, coupled with Parliamentary oversight as a counterbalance.⁴⁰⁷

CHAPTER 5: RECOMMENDATIONS

5.1 Institutional Mandate



In South Africa the Constitution and the rule of law are supreme law. No individual or institution is above the law. This is also true with reference to the SAPS institution. The Constitution and the SAPS Act guide the mission and objective of the SAPS. The SAPS is required by the Act and the Constitution to introduce measures that enable the institution to achieve its objective and goals. This is reflected in section 207(1) of the Constitution which regulates the legislative mandate for the appointment of the NPC by the President and the NPC's function to the SAPS. To support the role of the NPC and the President, the SAPS Amendment Act 10 of 2012 and the Civilian Secretariate for Police Services Act give directives to the SAPS and its bodies to do the following: Identify best practices, detect failures and recommend corrective measures to ensure that SAPS leaders and members are delivering quality public services and improve their performance and the performance of the institution. Research into institutional theory and contingency theory provides guidance on how high or improved institutional performance can be achieved by the SAPS. The SAPS must align its institutional appointment measures in accordance with its institutional function. This way the SAPS will recruit and select the best candidate for the NPC role and achieve maximum performance while guaranteeing public safety and protection as promised by the Constitution. From the findings submitted in Chapter Three and Four the following recommendations are made:

⁴⁰⁷ Section 17D(1)(a) of the SAPS Act.

Recommendation (5.1)(i): the SAPS must develop an appointment mechanism that supports institutional efficiency and efficacy, institutional functions, and competent appointment processes.

Recommendation (5.1)(ii): the institution must promote and maintain a criteria with high standards of professional ethics in accordance with the Constitution, the BOR and institutional mandate.

Recommendation (5.1)(iii): institutional policy should specify an efficient and effective allocation of resources in the appointment mechanism, parties roles and responsibilities, the specific appointment steps, the criteria for selection and the necessary checks and balances.

5.2 Process of Appointment

Appointment processes for public entities are governed and regulated by the Public Service Act and the Department of Public Service and Administration (DPSA) provides guidance on measures and mechanisms to be used when recruiting for management positions in the public sector as it has been discussed in this study. The process of appointing the NPC and any other senior manager in public institutions involves the allocation of responsibilities and roles to different parties involved in the appointment process. The PSC guidelines provide for allocation of power, expertise and responsibility in the process as per Constitution. As an example, the Portfolio Committee on Police together with other identified bodies like the President, the Minister have the responsibility of selecting the selection committee and developing the criteria and other responsibilities. The process of appointment should be a systemised process that accommodates the constant change of NPC for the different appointment periods. This will ensure that the NPC is appointed before the term of the current NPC ends and this will allow for a smooth transition and handing over process from one NPC to another. This process allows for a transparent process where the selection committee will have the chance to assess the candidate's eligibility against the job requirements and make recommendations accordingly. The President will have the power to select and appoint a candidate that has been vetted and assessed to be competent for the post.

The SAPS must establish an appointment process that clearly outlines the sequence of steps to be executed in the process to create certainty and clear allocation of powers for all parties involved and what the SAPS needs to do to kick start the process - avoiding delays at all costs. The discussion in Chapter Four and Five provide guidelines on the process and steps to be used in the appointment mechanism of the NPC and based on the above discussion the following key recommendations are made for the appointment process of the NPC:

Recommendation (5.2)(i): the appointment mechanism should endorse the mandate of the SAPS by ensuring suitability of fit between the NPC and the SAPS to improve performance.

Recommendation (5.2)(ii): the appointment mechanism should have a clearly outlined and defined process – a sequence of steps to follow for the appointment of the NPC.

Recommendation (5.2)(iii): the appointment process should specify the responsibilities and powers of the selection committee and the president, the minister, the committee, the criteria for selection for all steps in the process and the necessary checks and balances.

5.3 Criteria for Appointment

The findings in Chapter Four suggest that training and experience as a requirement from the policing profession equips an individual with the ability to make decisions, manage and solve problems at a higher level of thinking compared to a person with no experience, no familiarity, no association and no training on policing work. Therefore, the SAPS should establish the criteria for appointment that will be used as a measurement to select the best suitable and competent candidate for the NPC post (or fit candidate in accordance with the contingency theory). This will guide the selection committee on what qualities to look for when assessing candidates during the appointment process. Research into the criteria for selecting leadership in policing provides for the characteristics that need to be measured and assessed as discussed in Chapter 2, 3 and 4, ways of assessing the candidates and identifying the most suitable and competent candidate. Research in Indonesia and Nigeria shows that police institutions have developed the criteria for appointing police leadership and South Africa can follow suit and improve its criteria for the appointment of the NPC. Schutte advises that the SAPS should take international standards into consideration. For example, for a person to be appointed as a police leader in Indonesia, he/she is required to have qualifications like an undergraduate degree in the field of law, economics, finance or banking (s). The ISS and CW also support's Schutte's argument and submits that in Russia, China and India, the police commissioner is mostly required to come from within police service with years of service to the police agency. Based on the factors, functions and findings made above on the criteria for the NPC we submit the following recommendations:

Recommendation (5.3)(i): the criteria of appointment should be established by experienced and knowledgeable bodies and experts on policing like the PSC dedicated to providing leadership for public service, including the performance and integrity of the system. The SAPS can look for guidance also to other knowledgeable bodies like INTERPOL, the UNODC, the National Policing Institute, RTI Center for

Policing Research and Investigative Science, CW and the ISS and many other bodies that specialise in policing research and data, experts and members of the SAPS.

Recommendation (5.3)(ii): the bodies must develop the criteria of appointment that supports appointing the most competent candidate to lead the SAPS.

Recommendation (5.3)(iii): the criteria of appointment should specify the required qualifications, experience, personal attributes and demonstrated performance.

5.4 Checks and Balances

Policing institutions like, the Civilian Secretariat for Police, Private Security Industry Regulatory Authority, Intelligence services and others should be required to take reasonable measures to determine whether the appointment process of appointing its management and leaders complies with the required checks and balances in accordance with the principle of legality and balance of powers. The SAPS should ensure that all parties entrusted with the mandate to find, select and appoint the best fit NPC for the SAPS are required by law to answer and justify their recommendations and how they arrived at the recommendation. This requirement will ensure that all parties in the appointment process are held accountable for their actions and decisions in compliance with the required checks and balances. The checks and balances must provide information on who will be in charge for the specific roles identified in the process. Hence this research makes the following recommendations to be considered in the development and implementation of checks and balances:

Recommendation (5.4)(i): checks and balances into the appointment process of the NPC should ensure that they support institutional mandate.

Recommendation (5.4)(ii): the appointment mechanism is necessary to ensure that there are proper checks and balances that outline the exercise of power and oversight.

Recommendation (5.4)(iii): checks and balances in the appointment mechanism should be reciprocal to enable oversight bodies the power to exercise their role without impeding on functioning of the institution and the powers of the selection committee and the President.

Recommendation (5.4)(iv): checks and balances in the appointment mechanism must aim at maximising fit and efficiency between the NPC and the SAPS.

5.5 Policy

Public state institutions should identify, assess, and understand the risks of having incompetent leaders, and should employ policy as a mechanism to address the institutional gaps which result in less-than-optimal outcomes in this area. Policy in this regard should specifically seek to establish reasonable measures to determine the competence of a candidates through developing a policy that specifically allocates authority, resources and coordinate mechanisms that support the appointment mechanism and mitigate the risk of appointing incompetent management and leaders in the SAPS. Based on the submissions from literature, and in the line with the contingency theory perspective, the SAPS should develop and implement policy that ensures that the appointment mechanism selects the best fit between the NPC and the needs of the SAPS. This policy should be the essential foundation to the appointment mechanism, outlining the processes, procedures, criteria and requirements to be followed in the appointment process. Where parties fail to fulfil their obligation or follow the processes and procedure the SAPS should ensure that it can adequately address such challenges. From the evidence provided above the research makes the following key recommendations to be considered in the development of policy:

- Recommendation (5.5)(i): the SAPS should develop policy that supports the implementation of competent appointment processes with high standards.
- Recommendation (5.5)(ii): bodies to be engaged in the development of the policy should include SAPS, PSA, civil society and the general public.
- Recommendation (5.5)(iii): policy should specify resource allocation, responsible parties, roles and responsibilities, the specific appointment steps, the criteria for selection and the necessary checks and balances.

To create a crime free society requires different sectors and individuals to join forces. It is not just the responsibility of the officially trained police force but rather, it is a communal⁴⁰⁸ responsibility.

⁴⁰⁸ Murphy, Mazerolle & Bennett (2014) 421.

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APPENDIX A: SUMMARY OF CASE LAW FOR DISCUSSION

#.	RELEVANCE:	CASE:	LAW / COURT:	SUMMARY OF JUDGEMENT:
1.	Mandate for Appointment of SAPS NPC and Duties	(1.1) <i>National Commissioner of The South African Police Service v Southern African Human Rights Litigation Centre and Another</i> CCT 02/14) 2014	(1.1) Constitutional Court: <ul style="list-style-type: none"> Section 205(1) of the Constitution Section 205(3) of the Constitution 	(1.1) Summary Judgement: <ul style="list-style-type: none"> 'It is equally clear that the national police service, amongst other security services, shoulders the duty to prevent, combat and investigate crime.' 'National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, considering the requirements of the provinces.'
2.	Mandate for Appointment of SAPS NPC and Duties	(2.1) <i>South African Policing Union v Minister of Police</i> (66522/2020) HC 2021	(2.1) Constitutional Court: <ul style="list-style-type: none"> Section 207 (1) of the Constitution Section 207 (2) of the Constitution Sections 6(1) and 11 of the SAPS Act Section 195 (1) of the Constitution 	(2.1) Summary Judgement: <ul style="list-style-type: none"> 'The National Commissioner is specifically made responsible for the maintenance of an impartial, accountable, transparent and efficient police service, as well as the recruitment, appointment, promotion, and transfer of all the members of SAPS.' The promotion and maintenance of a high standard of professional ethics" in accordance with section 195(1) of the Constitution.'
3.	Advertising of Post	(3.1) <i>Seile Edwin Letsogo v The Department of Economy & Enterprise Development</i> (JR350/16) 2018 (3.2) <i>Gavin Adams V The General Public Service Sectoral Bargaining Council and Others</i> (C839/2019) 2021	(3.1) Labour Court (3.2) Labour Court	(3.1) Summary Judgement: <ul style="list-style-type: none"> 'In the case of <i>KwaZulu Department of Transport v Hoosen and Others</i>, where the facts were very similar to the present case, Judge Whitcher found that the promotion of a candidate who did not meet the requirements of the advertised post amounted to an unfair labour practice.' (3.2) Summary Judgement: <ul style="list-style-type: none"> 'In short this means that the MEC is the only person who has the authority to determine and / or vary and / or change the requirements for a post. It is unlawful for the selection panel to change or vary the requirements for a post.'
4.	Qualifications	(4.1) <i>Public Servants Association O.B.O. El Thorne v Department of Community Safety (Western Cape)</i> (CA07/2017) [2018] ZALAC 24; [2018] 12 BLLR 1173 (LAC) (8 June 2018)	(4.1) Labour Court: <ul style="list-style-type: none"> Employee's appointment for the advertised post based on qualification requirements. 	(4.1) Summary Judgement: <ul style="list-style-type: none"> 'Para [24] In the setting of appointment criteria in relation to the requirements of a post, the Department is allowed to set an educational standard which it believes is reasonable for the requirements of the post.' 'The goal of professional merit in the public service confers a managerial prerogative to require a three-year or 360 credits qualification at NQF Level 6 for the post of a Deputy Director.' Para [18] 'The volume of learning required for a qualification is specified in terms of the total number of credits required, and in terms of the minimum number of credits required at its specified exit level on the qualifications framework.'

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				<ul style="list-style-type: none"> • Para [11] 'The three spheres of government, which include Provincial Government, must be allowed to set reasonable minimum academic qualifications for appointment into certain senior positions.' • Para [11] 'I do not believe that I can intervene when an employer has set reasonable minimum academic requirements for appointment.'
5.	Experience	<p>(5.1) <i>Gibb (Pty) Ltd v Passenger Rail Agency of South Africa</i> 2021 (35870/2021) [2021] ZAGPJHC 146</p> <p>(5.2) <i>South African Policing Union and Others v Minister of Police and Others</i> 2021 (66522/2020) [2021] ZAGPPHC 10</p> <p>(5.3) <i>George Municipality v Randal Van Staden</i> 2021 (12734/2020) [2021] ZAWCHC 195; (2021) 42 ILJ 2714 (WCC)</p>	<p>(5.1) High Court</p> <p>(5.2) Section 195(2) of the Constitution:</p> <ul style="list-style-type: none"> ▪ The promotion and maintenance of a high standard of professional ethics <p>(5.3) Western Cape High Court</p>	<p>(5.1) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [14] 'The reference letters were intended to assist PRASA to score Gibb on its functionality, one aspect of which was its organisational experience. It seems to me that PRASA might have unduly fettered itself when making its assessment. What it was required to do was assess Gibb's organisational experience, not Gibb's capacity to follow the invitation to bid to the letter.' • Para [29] 'the court held that whereas s 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay it elevates the need for expeditious and diligent compliance by organs of state with their constitutional duties, to an obligation which forms a central part of the principle of legality <p>(5.2) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [39] 'In terms of Section 195(2) of the Constitution, the above principles apply to all organs of state and in the administration of every sphere of government.' • Para [46] 'The Discipline Regulations, in section 1(d), define "employer" as the National Commissioner or any person delegated by the National Commissioner to perform any function in terms of the Regulations.' <p>(5.3) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [54] 'The real shortfall, if any, in the requirements which were listed in the advertisement is that pertaining to the experience which was required i.e., 3 years, whereas the job description required 10 years' experience. But in this respect the 'lower' standard would hardly have served to disqualify potential candidates and would have widened the pool rather than to narrow it.'
6.	Personal Attributes	(6.1) <i>George Municipality v Randal Van Staden</i> 2021 (12734/2020) [2021] ZAWCHC 195; (2021) 42 ILJ 2714 (WCC)	(6.1) High Court	<p>(6.1) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [36] 'There is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly.'
7.	Demonstrated Performance	(7.1) <i>Kirland Investment (Pty) Ltd t/a Eye & Lazer Institute v MEC for Health, Province of Eastern Cape NO and Others</i> 2014 (3) SA 481 (CC)	(7.1) Constitutional Court:	<p>(7.1) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [82] 'There is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly.'

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8.	Transparency	<p>(8.1) <i>Claude-Reyes and Others v. Chile</i> Judgment of 19 September 2006 (Merits, Reparations and Costs) Series C No 151</p> <p>(8.2) <i>The European Court of Human Rights Társaság a Szabadságjogokért v Hungary</i> Judgment of 14 April 2009 Application No 37374/05</p> <p>(8.3) <i>Mphahlele v First National Bank of South Africa Ltd</i> 1999 (3) BCLR 253 (CC)</p>	<p>(8.1) The European Court for Human Rights</p> <p>(8.2) The European Court for Human Rights</p> <p>(8.3) Constitutional Court of South Africa (SA)</p>	<p>(8.1) Summary Judgement:</p> <ul style="list-style-type: none"> • 'Information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.' <p>(8.2) Summary Judgement:</p> <ul style="list-style-type: none"> • The court held that 'arbitrary denial through refusal of access to constitutional complaints and censorship through information monopoly is a violation of the right to access information as per article 19(2) of the UDHR.' <p>(8.3) Summary Judgement:</p> <ul style="list-style-type: none"> • 'There was a direct link between the right to information and the constitutional value of openness. The Constitutional Court (CC) 'agreed that reasoned decisions ensured openness and transparency.'
9.	Balance of Powers	<p>(9.1) <i>Joseph v City of Johannesburg</i> 2010 3 BCLR 212 (CC)</p> <p>(9.2) <i>Democratic Alliance v President RSA</i> 2012 1 SA 417 (SCA)</p>	<p>(9.1) Constitutional Court of SA:</p> <ul style="list-style-type: none"> ▪ Section 73 of the Municipal Systems Act 32 of 2000 ▪ Section 152(1)(b) of the Constitution <p>(9.2) Supreme Court of Appeal:</p> <ul style="list-style-type: none"> ▪ Section 33 of the Constitution 	<p>(9.1) Summary Judgement:</p> <ul style="list-style-type: none"> • 'The Court took a broader view of the relationship that exists between a public service provider and members of a community. One of the key functions of local government is to meet the core needs of its inhabitants and to provide the necessary services.' • 'The Court concluded that there was a constitutional and statutory obligation to provide basic services.' • Para [42] 'The Court held that the notion of 'rights' includes not only vested private law rights, but also legal entitlements that have their basis in the constitutional and statutory obligations of government.' <p>(9.2) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [42] 'The tenor of the judgment is unequivocal: PAJA must be interpreted in a manner that achieves the broader objectives of open, respectful and good governance and gives effect to the spirit and purport of section 33 of the Constitution.' • 'The Court specifically noted that the Preamble to PAJA refers to the need to create a culture of accountability, openness and transparency, sentiments which are rooted in section 1 of the Constitution.'
10.	Policy Development	<p>(10.1) <i>Carmichele v Minister of Safety and Security</i> 2001 CCT 48/00 [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC)</p>	<p>(10.1) Constitutional Court of SA:</p> <ul style="list-style-type: none"> ▪ Section 7 of the Constitution ▪ Section 9 – Life ▪ Section 10 - Human dignity ▪ Section 11 - Freedom and security of the person ▪ Section 8(1) of the Constitution ▪ Section 39(2) of the Constitution 	<p>(10.1) Summary Judgement:</p> <ul style="list-style-type: none"> • Para [33] 'In section 7 of the Constitution, the Bill of Rights enshrines the rights of all people in South Africa, and obliges the state to respect, promote and fulfil these rights.' • Para [29] 'Every person shall have the right to life.' • Para [29] 'Every person shall have the right to respect for and protection of his or her dignity.' • Para [29] 'Every person shall have the right to freedom and security of the person, which shall include the right not to be detained without trial.' • Para [33] 'Section 8(1) of the Constitution makes the Bill of Rights binding on the judiciary as well as on the legislature and executive.'

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		(10.2) <i>Osman v United Kingdom</i> 29 EHHR 245 at 305	(10.2) European Court EHHR	<ul style="list-style-type: none"> Section 39(2) of the Constitution provides that when developing the common law, every court must promote the spirit, purport, and objects of the Bill of Rights Para [56] The Constitutional Court highlighted the constitutional values of dignity, freedom and equality and the role that the Constitution plays in promoting the achievement of substantive equality by providing for legislative measures to protect and advance persons disadvantaged by unfair discrimination and to redress inequalities in respect of access to resources of the country. Para [30] 'It was submitted further that the police and prosecution services are among the primary agencies of the state responsible for the discharge of its constitutional duty to protect the public in general and women in particular against violent crime. <p>(10.2) Summary Judgement:</p> <ul style="list-style-type: none"> Para [115] 'It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions.'
11.	Role of Minister in Policy Development	(11.1) <i>Independent Institute of Education (Pty) Ltd v Kwa-Zulu Natal Law Society and Others</i> 2020 (2) SA 325 (CC) (11.2) <i>South African Policing Union and Others v Minister of Police and Others</i> 2021	(11.1) Constitutional Court of SA (11.2) High Court	<p>(11.1) Summary Judgement:</p> <ul style="list-style-type: none"> Para [38] 'It is a well-established canon of statutory construction that "every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature". Statutes dealing with the same subject matter, or which are in pari materia, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law Para [38] 'Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.' <p>(11.2) Summary Judgement:</p> <ul style="list-style-type: none"> Para [18] The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'
12.	Equality and Protection by the Law and Rule of Law	(12.1) <i>Harksen v Lane NO and Others</i> (CCT9/97) [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300	(12.1) Constitutional Court: ▪ Section 9(1) of the Bill of Rights	<p>(12.1) Summary Judgement:</p> <ul style="list-style-type: none"> 'The purpose of this aspect of equality is, therefore, to ensure that the State is bound to function in a rational manner. This has been said to promote the need for governmental action to relate to a defensible vision of the public good, as well as to enhance the coherence and integrity of legislation'
	Mandate and principles for appointment of	(1.1) <i>Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal</i> (CCT 10/13) [2013] ZACC	(1.1) Constitutional Court: Section 195(1) of the Constitution	<p>(1.1) Summary Judgement:</p> <ul style="list-style-type: none"> Para 62: 'The Constitutional court held that 'Section 195(1)(i) stresses the importance of ensuring that appointment processes in the public sector are based on ability, objectivity and fairness. Fairness in employment practices and labour relations requires the state to be even-

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	government officials in public institutions	<p>49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) at para 62.</p> <p>(1.2) <i>Institute for Democracy in South Africa and Others v African National Congress and Others</i> (IDASA) 2005 (5) SA 39 (C); 2005 (10) BCLR 995 (C) at para 64.</p> <p>(1.3) <i>Chirwa v Transnet Limited and Others</i> (CCT 78/06) [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC); [2008] 2 BLLR 97 (CC); (2008) 29 ILJ 73 (CC) at para 146.#:</p>	<p>(1.2) Constitutional Court (Section 195(1) considered for relevance to this discussion)</p> <p>(1.3) Constitutional Court Section</p>	<p>handed and transparent not only to those whom it employs, but to those who may wish to apply for employment at a state institution.'</p> <p>(1.2) Summary Judgement</p> <ul style="list-style-type: none"> Para 64: 'These sections all have reference to government and the duties of government, inter alia to be accountable and transparent. The duties created by the sections in question are imposed on the government and public service, not on private bodies, including political parties as such.' <p>(1.3) Summary Judgement</p> <p>Para 146: 'Held that section 195 of the Constitution which sets out the basic values and principles governing public administration, includes as part of those values and principles, "employment and personnel management practices based on . . . fairness". These provisions contemplate fair employment practices. In addition, one of the powers and functions of the Public Service Commission is "to give directions aimed at ensuring that personnel procedures relating to . . . dismissals comply with [fair employment practices]". This flows from the requirement that dismissals in the public service must comply with the values set out in section 195(1). These provisions echo the right to fair labour practices in section 23(1). And finally, section 197(2) provides that the terms and conditions of employment in the Public Service must be regulated by national legislation.</p>
	Mandate for appointment of SAPS NPC and the law	<p>(2.1) <i>Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others</i> (CCT 07/14, CCT 09/14) [2014] ZACC 32; 2015 (1) BCLR 1 (CC); 2015 (2) SA 1 (CC).</p> <p>(2.2) <i>New National Party v Government of the Republic of South Africa and Others</i> (1999) ZACC 5; 1999 (3) SA 191 (CC); 1999 (5) BCLR 489 (CC).</p> <p>(2.3) <i>Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa</i> (1996) ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (<i>First Certification</i>).</p>	<p>(2.1) Constitutional Court:</p> <ul style="list-style-type: none"> Section 207 (1) of the Constitution <p>(2.2) Constitutional Court: Section 207(1) of the Constitution</p> <p>(2.3) Constitutional Court Section 207(1) of the Constitution</p>	<p>(2.1) Summary Judgement:</p> <ul style="list-style-type: none"> Para 157: The Constitutional court held that this Court has long recognised these salutary principles in relation to other institutions whose independence is constitutionally required. It has authoritatively noted that there should be a body that "provides a check and balance to the power of the Executive" to make appointments; 128 that if appointments are "at the discretion" of members of the Executive "there would be concern" about the appointees' independence. <p>(2.2) Summary Judgement</p> <ul style="list-style-type: none"> Para 99: The court held that 'it is at odds with an institution's independence if the Executive can tell [it] . . . whom to employ'. <p>(2.3.) Summary Judgement</p> <ul style="list-style-type: none"> Para 124: has authoritatively noted that there should be a body that 'provides a check and balance to the power of the Executive' to make appointments if appointments are 'at the discretion' of members of the Executive.

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		(discussing the appointment of judges)		

