

Historical evaluation of the roles of Public Service Commissions in South Africa, 1912–2008

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ABSTRACT

The historical development of public service commissions in South Africa had been a process that formed part of the administration of the country since Unification in 1910. Although public service commissions existed in the former colonies prior to 1910, it was only after the establishment of the Union of South Africa that a central public service commission was established in 1912 for the first time. This central public service commission not only played an important advisory role to the Governor-General, but also in the management of the public service at the time. Its creation in terms of the South Africa Act, 1910 (the Constitution) also formed the basis for the development of successive central and provincial public service commissions in the country and the development of the public service ever since.

The article commences with a historical analysis of the pre-democratic public service commissions and continues with such an analysis during the transitional and post-democratic stages. It further explores the nature of the powers and functions of these personnel management institutions as well as the legal prescriptions relevant to such powers and functions.

The article concludes with a summary of the salient features of the powers and functions of public service commissions, their roles in the development of the public service during the indicated stages, and (in the case of the post-democratic stage) the Public Service Commission's

contribution to upholding the basic values and principles governing public administration in terms of the 1996 Constitution.

INTRODUCTION

Public service commissions had been part of the administrative landscape of South Africa since Unification in 1910. Although public service commissions existed in the Cape Colony, the Transvaal and Natal prior to unification, it was only after the establishment of the Union of South Africa that a central public service commission was established in 1912 for the first time. This central personnel institution formed the basis for the development of successive central and provincial public service commissions in the country where their influence on the management of the public service has been felt ever since. It is therefore important to reflect on the roles that these institutions have played in South Africa since the establishment of a union.

Reference is made to the three designations of public service commissions, namely, the three institutions, severally, and jointly, of the pre-, transitional, and post-democratic stages in the central government and provincial government spheres of South Africa. These public service commissions were designated through the years as Public Service Commission (PSC), Commission for Administration (CFA), and Provincial Service Commissions (Prov.SCs).

The article commences with a historical analysis of the pre-democratic public service commissions (PSCs and the CFA) (1912–1993), of the PSC and Prov.SCs during the transitional stage (1993–1998), and of the restructured PSC during the post-democratic stage (1998–2008). It further explores the legal prescriptions relevant to the powers and functions of these institutions that shaped the practices that resulted from these prescriptions.

The article concludes with a summary of the salient features of the powers and functions of the public service commissions during the indicated time-frames. For purposes of clarity, the methodology employed in this article is discussed next.

METHODOLOGY

In historical research, sources are located and evaluated and then synthesised and interpreted with a view to suggesting causal explanations for events and practices (Welman, Kruger and Mitchell 2005:24). For the purposes of this article the sources consist of the roles of public service commissions as detailed in

Acts and reports that emerge from these Acts, namely annual reports and other official documentation – hence the historical nature of this article. Observing and attempting to interpret what one observes as conscious and deliberate human activities, lead to scientific knowledge (Babbie and Mouton 2009:xxiii).

The subsequent rubrics describe the establishment and powers and functions of public service commissions during the successive stages.

PUBLIC SERVICE COMMISSIONS DURING THE PRE-DEMOCRATIC STAGE (1912–1993)

Prior to South Africa becoming a Union in 1910, public service commissions (also known as central personnel institutions) already existed in the Cape Colony, the Transvaal and Natal. During this time, the creation of such an institution was also envisaged for the Orange River Colony. However, with the enactment of the *Public Service and Pensions Act* 29 of 1912, a central PSC was established on 1 August 1912 to serve the public service of the Union of South Africa (Marais 1985:42; CFA 1987:7). This establishment was done in accordance with the *South Africa Act*, 1909

(Constitution of the Union). In terms of section 142 of the *South Africa Act*, 1909, the “...Governor-General-in-Council shall appoint a permanent public service commission with such powers and duties relating to the appointment, discipline, retirement, and superannuation of public officers as Parliament shall decide” (Union of South Africa 1909:section 142).

Section 2(1) of the *Public Service and Pensions Act*, 29 of 1912, stipulated as follows:

“In conformity with the provisions of section one hundred and forty two of the *South Africa Act*, 1909, the Governor-General shall appoint, as from the commencement of this Act, a Public Service Commission, consisting of not more than three members, one of whom shall be appointed as chairman. Each such member shall hold office for a period of five years and may be re-appointed.”

Government Notice No. 1014 of 1912 reflected the appointment of the three members. With the appointment of the three members (commissioners) by the Governor-General in 1912 and the subsequent appointment by them of a staff complement of fifteen officials to the Office of the PSC, this small institution, fashioned on the British Civil Service Commission, performed functions mainly related to personnel administration matters. It was a central, coordinating, personnel advisory body to the Governor-General as head of the executive government (Marais 1985:42).

Section 142 of the *South Africa Act*, 1909, therefore established the constitutional *locus* (place of abode) for the establishment of such a PSC.

POWERS AND FUNCTIONS OF THE PSC DURING THE PRE-DEMOCRATIC STAGE

The activities of the Union of South Africa's PSC were mostly limited to the Administrative and Clerical Division and the General Division of the Union's Public Service as well as officials in these divisions who had been assigned to any of the four provinces (Cape of Good Hope, Transvaal, Orange Free State and Natal) (sections 2, 3 and 5 of the *Public Service and Pensions Act*, 1912). Its powers and functions broadly related to "... the appointment, promotion, discipline, retirement and superannuation of persons employed in the Public Service..." and the "...reorganisation of departments in the Public Service" (Union of South Africa 1912: section 2(2)). In terms of section 2(3) (a-g) of this Act, the PSC was, more specifically, vested with the following powers and functions:

- keep a register of applicants who qualify for appointments;
- make recommendations on appointments;
- keep a record of persons employed in the Administrative and Clerical Division;
- make recommendations as to the control, reorganisation, or readjustment of any departments or offices in the Public Service;
- enquire into cases of misconduct and make recommendations as to the action to be taken in respect of such misconduct;
- make recommendations as to the terms of the regulations which it is expedient to frame in terms of Chapter IV of the Act;
- frame an annual report and submit it to the Minister of the Interior which shall be laid before Parliament within seven days if the Parliament be then in session;
- inspect all public offices and have access to all official documents; and
- exercise powers or any duties in relation to officers serving under provincial administrations.

The primary mandate of the PSC was therefore to make recommendations on appointments (employment) and matters incidental thereto, and to make recommendations on the reorganisation of the Public Service to the Governor-General as head of the executive government. The PSC was, therefore, a central, coordinating personnel advisory institution (Marais 1985:42) with recommending powers.

Also central to the function of the appointment of the Union's public officials, was the prevention of favouritism in the public service (PSC 2007:11). As a historical curiosity: favouritism would remain an important issue in the Union's

Public Service. The South African Party, in its election manifesto of 1929 stated in this regard:

“The spoils system which has been the curse of other countries, is being adopted in South Africa. Jobs for pals are publicly preached by the Pact as a desirable policy. We condemn this as a pernicious policy which will cost this country very dear”. “...No wonder many of our best men are leaving the Service, and that the Service has been impoverished and its morale lowered” (Kleynhans 1987:225).

In its early years, the PSC's right of existence as a central personnel institution was often questioned and met with suspicion (CFA 1987). “The Government, the permanent heads of Departments and the Treasury, all alike, regarded it with suspicion” (Brooks in Marais 1985:42). This suspicion led to an extensive number of recommendations from the Commission (112 cases in 1912 and 98 in 1913) having been ignored by government (Marais 1985:42). Moreover, the Government interfered in the administrative activities of the PSC, and as a result of the discord between the two, resulted in an investigation into the powers and functions of the PSC by a Select Committee of the House of Assembly. Following the recommendations of the Select Committee, the *Public Service and Pensions Amendment Act*, 1914, was adopted which stripped the PSC of its most important powers of recommendation (Gildenhuys 1988:50).

However, the PSC gradually gained in stature and became an accepted and highly regarded institution in the Union. The Graham Commission of Inquiry into the Civil Service (1918) and, later on, the Centlivres Commission (1944), helped to establish the PSC as a viable institution (Marais 1985:42-43).

The issue of the PSC's right of existence and the resultant suspicion during the early years of its existence was, however, not the only time that the PSC's powers and functions were distrusted and came under governmental scrutiny. Eleven years after the establishment of the Republic of South Africa in 1961, with the PSC's 60th anniversary in 1972, its right of existence again became a contentious issue. However, after consulting with heads of department, the Government decided that the PSC should be retained and that its status within the system of government would be enhanced and its authority would be extended (CFA 1987:7).

This enhanced status and extended authority during the 1970s are underscored by the fact that the PSC was enabled to communicate with the Government directly through the Prime Minister and the commissioners were appointed from the ranks of serving heads of departments. Also, its authority was further extended in 1976 through a new provision in the *Public Service Act*, 1957 (as amended), whereby departments were, for the first time, compelled to carry out the PSC's recommendations, thus propelling the PSC into a powerful

position where its recommendations – which had to be complied with – became vested with executive authority.

This extended role of the PSC which, in terms of the *Public Service Amendment Act* 71 of 1980, became known as the Commission for Administration (CFA), has been aptly captured as follows:

“As a body which was established by law, the Commission is supposed to undertake only what the law entrusts to it. However, the Commission gradually became more involved in functions that were not specifically laid down by law. The Commission’s *de facto* responsibilities thus began to extend beyond its *de jure* responsibilities. In reality, it is therefore a commission for more than just the Public Service” (CFA 1987:7). This enhanced nature, stature and sphere of influence of the PSC grew rapidly until, by the 1980s, “...it had burgeoned into a vast, powerful and formidable statutory body. Ostensibly, it was apolitical. In reality it played a key role in facilitating and bolstering the untenable operations of public administration under the apartheid regime” (PSC 2007:11).

Examples of the ever-increasing *de facto* responsibilities mentioned above were as follows:

- Advice on the abolition of the thirteen development boards and the accommodation of their personnel and functions for an interim period.
- Multi-lateral cooperation with Transkei, Bophuthatswana, Venda, and Ciskei (the TBVC-states) with regard to personnel matters (e.g. improvements of conditions of service, productivity, and personnel mobility).
- Coordination of the dispensations of municipal managers and the boards of directors of state corporations.
- Development of a system for the greater managerial autonomy of scientific councils.
- Advice on privatisation and deregulation in terms of the *White Paper on Privatisation and Deregulation*, 1987 (CFA 1987:13–35).

This extended role of the PSC was continued until, through the constitutional developments in the country, an interim Constitution (*Constitution of the Republic of South Africa*, 1993) was adopted.

SETTING THE CONSTITUTIONAL SCENE FOR THE CREATION OF PUBLIC SERVICE COMMISSIONS IN THE TRANSITIONAL STAGE

The *South-Africa Act*, 1909 (which created the Union of South Africa in 1910), and the *Republic of South Africa Constitution Act*, 1961 (Act 32 of 1961) (creating

the Republic of South Africa in 1961) were basically similar in that the latter constitution largely embodied the 1909 constitution, with the exception that the position of the Governor-General became that of the State President (Marais 1985:33) and that the institution of the PSC was not mentioned in it.

Not only the 1961 Constitution, but also the interim Constitution, 1993, and the final Constitution, 1996, of the new democratic state, were said to be created on the foundations of state structures of the *South Africa Act*, 1909, and consequently, the structures of the 1961 Constitution: “Although the interim Constitution brought about a legal revolution, it did so on the foundation of the state structures created by an Act of the British Parliament in 1909. It was this state that survived the guerrilla warfare of the 1960s to 1980s, the mounting external pressure and the massive internal insurrection of the 1980s. It is this state which is preserved, though substantially modified, by the interim and 1996 Constitutions” (Curry and De Waal 2001:41).

After the establishment of the first Republic of South Africa (1961), the gradual establishment of “independent” states and “self-governing” territories (Marais 1985:33; PSC 1997:33) occurred up to the passing of the *Republic of South Africa Constitution Act*, 1983 and was continued until the adoption of the interim Constitution in 1993. Up to the 1983 Constitution, the government-of-the-day established ten such “independent” states and “self-governing” territories. In total, the combined number of states, together with the four provinces that existed from 1910, were fifteen in number: the Republic of South Africa, the four provincial administrations (Transvaal, Natal, Orange Free State and Cape Province), the administrations of four states regarded as independent (Transkei, Bophuthatswana, Venda, and Ciskei – the TBVC states), and the administrations of the six self-governing territories (Gazankulu, Kangwane, KwaNdebele, KwaZulu, Lebowa, and Qwa-Qwa) (UNDP 2000:111; Marais 1985:51–52; PSC 1997:33).

Although the above “independent” states and “self-governing territories” were separate entities with their own public service Acts and public service commissions or other forms of central personnel authority, the “family relationship” with the “mother” South African public service, in terms of their regulatory personnel prescripts and, in general, the formal model of administration, was clearly discernible (PSC 1997:4).

As will be shown later on, these regulatory prescripts and the model of administration all had to be amalgamated into a single public service deployed between a central administration and nine provincial administrations following the further constitutional developments.

With the adoption of the Harare Declaration in 1989, the African National Congress’s (ANC’s) *Constitutional Guidelines for a Democratic South Africa*, 1988, was used as a basis for outlining the minimum principles for a post-

apartheid South Africa. This declaration and the South African Government's own initiatives in the direction of constitutionalism during 1986, with a request to the South African Law Commission to investigate and make recommendations regarding the definition and protection of group rights, and the possible extension of the existing protection of individual rights, laid the basis for a negotiated settlement. State President P.W. Botha's forced resignation in 1989 and the cautiously reformist platform of Mr F.W. De Klerk, who became State President, led to the opportunity for meaningful negotiations between the government and its principal opponents (Curry and De Waal 2001:58–59).

Following the release of Mr Nelson Mandela from prison and the unbanning of the ANC in 1990, a system of representative government was negotiated by the Convention for a Democratic South Africa (CODESA) which convened for the first time on 20 December 1991 and was, later on, formally supported by a whites-only referendum on 17 March 1992. "The major parties – the ANC and the De Klerk government – agreed on a number of fundamental details about the constitutional structure of a post-apartheid state. These included the establishment of a multi-party democracy in a unitary South Africa (entailing the reincorporation of the TBVC 'states'), and a supreme constitution with an entrenched bill of rights to be adjudicated by a constitutional court." (Curry and De Waal 2001:59). These fundamental details were ultimately captured in the interim Constitution, 1993.

These efforts led, *inter alia*, to the establishment, in 1994, of Provincial Service Commissions (Prov.SCs) and the continuation of the work of the Public Service Commission (PSC) that was in existence at the time.

In May 1994, the Government of National Unity was sworn in, followed soon after by the election of provincial Premiers and the appointment of the provincial executive councils. A new, unified public service, replacing the separate public services of the former dispensation, had to be available to the newly appointed political executives at both national and provincial spheres of government as a matter of urgency and the PSC and Prov.SCs, severally and jointly, had to perform this daunting task in terms of the interim Constitution, 1993.

Chapter 13 of the interim *Constitution of the Republic of South Africa* 200 of 1993, introduced the concept of a national PSC, responsible for the public service of the central government sphere, and Prov.SCs, responsible for the public services of the newly created nine provinces. After the *South Africa Act* 1909, this was the second time in the history of South Africa that public service commissions were taken up in a constitution of South Africa (no such provisions existed in the 1961 and 1983 constitutions). This trend would later on be continued in the new *Constitution of the Republic of South Africa*, 1996.

POWERS AND FUNCTIONS OF THE PSC IN TERMS OF THE INTERIM CONSTITUTION

Section 209 of the interim Constitution, 1993, determined that:

- “(1) There shall be a Public Service Commission for the Republic which shall have the powers and functions entrusted to it by this Constitution or by a law of a competent authority” and shall be accountable to Parliament. Its powers and functions (section 210) were, among others “...to make recommendations, give directions and conduct enquiries with regard to-
- (i) the organisation and administration of departments and the public service;
 - (ii) the conditions of service of members of the public service and matters related thereto;
 - (iii) personnel practices in the public service, appointments, promotions, transfers, discharge and other career incidents of members of the public service and matters in connection with the employment of personnel;
 - (iv) the promotion of efficiency and effectiveness of departments and the public service; and
 - (v) a code of conduct applicable to members of the public service.”

Section 210 (3(a) and (b)) of the *Constitution of the Republic of South Africa* 200 of 1993 made the implementation of the PSC's recommendations and directions compulsory in that they had to be implemented by the appropriate person or institution within six months unless:

- “(a) such recommendation or direction involves expenditure from public funds and the approval of the treasury for such expenditure is not obtained; or
- (b) the President rejects it and refers it back to the Commission before its implementation.”

The PSC's powers and functions also included, “...when so requested, to advise the President, a Minister or a member of the Executive Council of a province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by any institution or body which receives funds who are partly appropriated by Parliament or a provincial legislature” (RSA 1993: section 210 (1)(b)).

Section 211 of the 1993 Constitution determined that the PSC shall consist of not fewer than three and not more than five members appointed by the President. The

role of the PSC in terms of the Interim Constitution was that of "...a fully-fledged central personnel institution with executive functions and concomitant wide-ranging powers" (Muthien 1997:11). The terrain of the PSC in terms of legislation that existed at the time, covered policy-making, regulating the execution of functions pertaining to personnel practices, including public administration, training, governmental organising and information technology. The functions of the PSC had become so diverse that its impartiality and independence from the political executive (as guaranteed by the interim Constitution, 1993) were questioned. The PSC assumed three contradictory roles in this regard (Muthien 1997:11):

Firstly, the PSC "...was expected to protect officials from undue political pressure in, for example, appointments, promotion and discipline..." but at the same time, "...was expected to represent the State as employer in negotiations with trade unions on remuneration and conditions of service. This dual role of the Commission brought the independence and impartial status of the Commission into question.

Secondly, there was also a general perception that the powers and functions of the Commission were so wide that they actually infringed on political policy responsibilities and prerogatives of the Government.

The third major problem area concerned the extensive involvement of the Public Service Commission in executive functions/decision-making..." and "...this state of affairs became untenable, as it was administratively inefficient and curtailed the managerial autonomy of departments, as well as allowed departments to escape full accountability."

The issue of the impartiality and independence of the PSC also spilled over to Prov.SCs in the provincial spheres of government which was further strengthened by the fact that the powers and functions of Prov.SCs largely corresponded with those of the national PSC.

POWERS AND FUNCTIONS OF PROVINCIAL SERVICE COMMISSIONS IN TERMS OF THE INTERIM CONSTITUTION

In terms of section 213 of the interim Constitution 200 of 1993, a provincial legislature could by law (Provincial Service Commission Acts) provide for a Prov.SC. For example, the North West Province established its Prov.SC in terms of the North West Provincial Service Commission Act 2 of 1994.

Once the Prov.SCs were established, commissioners were appointed to them. There existed no uniformity in the processes that were followed in appointments and the number of commissioners who were appointed to Prov.

SCs in the nine provinces, with membership ranging from three to seven for individual provinces. For example, in the North West Province three members were initially appointed to the newly established Prov.SC, two of whom were full-time and the other one part-time. Later on, another two full-time members were appointed to the North West Prov.SC (own experience).

Prov.SCs had to perform their powers and functions *subject to norms and standards applying nationally* (own emphasis). Such commissions shall, "...in respect of public servants employed by the province, be competent-

- to make recommendations, give directions and conduct inquiries with regard to-
 - the establishment and organisation of departments of the province;
 - appointments, promotions, transfers, discharge and other career incidents of such public servants; and
 - the promotion of efficiency and effectiveness in departments of the province" (section 213(a)).

The Prov.SCs' powers also included, "...when so requested, to advise the Premier or a member of the Executive Council of a province in regard to any matter relating to the public service or the employment, remuneration or other conditions of service of functionaries employed by any institution which receives funds wholly or partly appropriated by a provincial legislature (section 213 (b))." The determination of conditions of service and personnel practices were, however, excluded from the Prov.SCs' competencies (Muthien 1997:10) and fell within the ambit of the central PSC's powers.

In terms of section 213 of the interim *Constitution of the Republic of South Africa* 200 of 1993, the legal obligation to implement the PSC's recommendations and directions was made *mutatis mutandis* applicable to Prov.SCs except that any reference to an Act of Parliament, Parliament or the President should be deemed to be a reference to a provincial law, a provincial legislator or a premier of a province, respectively.

This legal obligation to implement the Prov.SCs' recommendations and directions led the Members of the Executive Council (MECs) to inquire into the Prov.SCs' wide-ranging powers of appointment, promotions, transfers and discharge. The feeling was that they, as elected political office-bearers were hamstrung by the Prov.SCs' powers (own experience).

The interim Constitution thus made provision for more or less similar functions that had to be performed by the PSC and the Prov.SCs, each within the ambit of its own authority, and provided for the establishment of national norms and standards by the central PSC that had to be adhered to in the central as well as the provincial spheres of government. As a result of these provisions, the PSC and the Prov.SCs also had to grapple with the exigencies of performing their powers and functions properly.

Against the background of the creation of a single public service for the Republic (that is, the merging of fifteen South African civil services into one single entity by the re-integration of the South Africa national public service, the four public services of the four provinces, the public services of the four “independent” TBVC states, and the public services of the six “self-governing territories”), it became necessary to deal with the administration of the rationalised single public service on a coordinated basis.

The rationalisation process, described as a “...metamorphosis of epic proportions”, had to take place with minimal disruption to the delivery of services to all the people of South Africa (UNDP 2000:112). “To convert ...(the) public services, with varying degrees of similarity and dissimilarity, and numbering approximately 1.2 million people, into a single service, implied a massive exercise” (PSC 1997:5). Given the enormity of such an exercise, more than two years were to pass before it could be said that rationalisation had substantially been finalised (PSC 1997:9).

The rationalisation process was accompanied by an array of disparities and other difficulties that had to be addressed by, amongst others, the PSC and the Prov.SCs (see Annexure A for an example). The *Report on the Rationalisation of Public Administration in the Republic of South Africa, 1994–1996* is an authoritative report that fully deals with this difficult task and it is not considered necessary to recapitulate its contents for the purposes of this article save to name the major considerations and interventions, namely, setting a new legal framework in place, organisational rationalisation, rationalisation of terms and conditions of service, staffing the rationalised structures, and managing the rationalisation process.

The above considerations and interventions therefore attempted to deal with the multiplicity of public service systems and prescripts. For example, the integration of structures and personnel in some provinces proved cumbersome, particularly where it involved the integration of staff from the former “independent” states and “self-governing territories” referred to earlier. Infrastructure backlogs in these states and territories added to the difficulties of provinces such as the Eastern Cape, KwaZulu-Natal and Limpopo, causing them to lag in the implementation of subsequent management reforms and national policy (UNDP 2000:112).

The need for the PSC and Prov.SCs to work in a harmonised fashion can therefore not be gainsaid. This need led to the establishment of the Forum for Service Commissions.

Forum for Service Commissions

The Forum for Service Commissions was established in December 1994 on the initiative of the PSC and in conjunction with the Prov.SCs to obtain clarity of purpose and to enhance the implementation of the national norms and standards.

Although not a statutory body, and not vested with decision-making powers but rather an agreed-upon arrangement with voluntary participation by its members, the Forum was nevertheless an important structure during the time of rationalisation. The PSC, acting on behalf of the Forum for Service Commissions, also utilised the Intergovernmental Forum (consisting of Ministers of the Government of National Unity and the Premiers of the provinces) to clear, at the highest political level, issues such as the rationalisation process and appointments of the permissible number of managerial posts at provincial level (PSC 1997:90).

The first meeting of the Forum took place on 1 December 1994 and by the end of May 1996, there had been seven ordinary meetings, three special meetings and three workshop retreats. An analysis of the agendas (agendas were crafted by the chairpersons of the PSC and Prov.SCs) of the Forum's meetings and retreats suggests that the matters dealt with can be categorised under three main headings, namely:

- rationalisation;
- matters bearing on the on-going conduct and improvement of public service administration; and
- matters focusing on the restructuring and the transformation of the public service (PSC 1997:90).

This Forum continued its work to enhance the commissions' powers and functions until the Prov.SCs were abolished early in 1998 and a new single PSC (responsible for both the national and provincial spheres of government) was established in terms of Chapter 10 of the *Constitution of South Africa*, 1996, having due regard to the Constitutional Principles of the interim Constitution, 1993.

The “silent revolution”

The PSC re-assessed its powers and function during 1994 and 1995, and fundamentally reviewed its statutory unprecedented move, the PSC devised a new system of state administration and governance for the public service, beginning with a dramatic unbundling of its powers and functions, transferring its policy functions to the newly created Department for Public Service and Administration, and delegating its executive functions to line departments, thereby vesting them with considerable management authority. This new system was adopted by Cabinet during February 1996 and pre-empted and paved the way for the implementation of the new Constitution...” (Muthien 1997:11) and, in so doing, laid the foundation for the creation of a new PSC that was appointed in 1999.

The PSC was therefore instrumental in re-shaping its own powers and functions from a fully-fledged central personnel institution with executive functions and

concomitant wide-ranging powers in terms of the interim Constitution, 1993, to an institution with advisory and recommending powers in terms of the new Constitution, 1996 (Muthien 1997:11). “With a fundamentally new constitutional mandate, a support structure of no more than 200 officials, and very few global or national examples on which to draw to translate its new mandate into reality, the PSC has managed “...to establish itself as a formidable anchor of our democratic state” (PSC 2007:5).

The legislative processes following the adoption of the 1996 Constitution can be summarised as follows:

On 1 July 1999, the *Public Service Laws Amendment Act*, 1997, section 15(1) of the *Public Service Commission Act*, 1997, and the abolition of the *Public Service Commission Act*, 1994, came into effect. The PSC and the Prov.SCs established under the interim Constitution (1993) were thus abolished. Staff employed in the offices of the PSC and the Prov.SCs was absorbed into the one office of the newly established PSC (PSC 1999:2).

Although the fourteen new commissioners (one each for the nine provinces, and five for the national office), were appointed by the President as from 1 January 1999, the commencement of formal operations by the new PSC was delayed until 1 July 1999 in view of amended legislation in 1998 (PSC 1999:3).

POWERS AND FUNCTIONS OF THE PSC IN THE POST DEMOCRATIC STAGE (1996–2008)

In terms of sections 196 (1) and (2) of Chapter 10 of the *Constitution of the Republic of South Africa*, 1996, there is a single PSC for the Republic of South Africa which is “...independent and must be impartial, and must exercise its powers and functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service” (section 196 (i), (ii)).

The PSC derives its mandate from sections 195 and 196 of the *Constitution of the Republic of South Africa*, 1996. Section 195 sets out the values and principles governing public administration that must be promoted by the PSC, namely:

- “(a) A high standard of professional ethics must be promoted and maintained.
- (b) Efficient, economic and effective use of resources must be promoted.
- (c) Public administration must be development-oriented.
- (d) Services must be provided impartially, fairly, equitably and without bias.
- (e) People’s needs must be responded to, and the public must be encouraged to participate in policy-making.
- (f) Public administration must be accountable.

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

In terms of section 196 (4) of the *Constitution of the Republic of South Africa, 1996*, the main powers and functions of the new PSC are:

- “(a) to promote the values and principles of section 195 throughout the public service;
- (b) to investigate, monitor and evaluate the organisation, administration, and personnel practices, of the public service;
- (c) to promote measures to ensure effective and efficient performance within the public service;
- (d) to give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the values and principles of section 195;
- (e) to report in respect of its activities..." ; and
- (f) “either of its own accord or on receipt of any complaint:
 - (i) investigate and evaluate the application of personnel and public administration practices, and to report to the relevant executive authority and legislature;
 - (ii) investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies;
 - (iii) monitor and investigate adherence to applicable procedures in the public service; and
 - (iv) advise national and provincial organs of state regarding personnel practices in the public service..."

As can be derived from the above values, principles, powers and functions, the new PSC that was established in 1999, is an investigating, monitoring and advisory body, and not a policy-making or implementing institution as its predecessors were during the transitional stage. A discussion of its role must therefore be seen against this background.

An evaluation of whether the new PSC's role contributed to the values and principles governing public administration and the powers and functions accorded to it in terms of the new Constitution, can be answered by referring to the Annual Reports, the annual State of the Public Service reports (SOPS reports),

and function-specific reports issued by the PSC and presented to Parliament and other stakeholders.

From the first Annual Report in 1999 up to 2008, the new PSC reflected how consistently it pursued the values and principles and its powers and functions in terms of the *Constitution of the Republic of South Africa*, 1996, in the interest of public administration. In these reports the PSC gave an overview as well as details, in a prescribed format, of the programmes and sub-programmes of its work in terms of the provisions of section 196 of the *Constitution of the Republic of South Africa*, 1996, and sections 40 and 65 of the *Public Finance Management Act* (PFMA), 1999. These programmes and sub-programmes are directly related to the values and principles and the powers and functions detailed in the *Constitution of the Republic of South Africa*, 1996. In reporting in this fashion, the PSC thus promoted these values and principles.

In the SOPS reports, the PSC used the values and principles enshrined in section 195 of the Constitution, 1996, as yardsticks by which to measure public service performance and provided a high-level overview of the progress, or otherwise, in giving effect to the Constitutional values and principles of public administration (Media release 25 May 2006; PSC 2006:6). In doing so, it contributed to the very values and principles that the Public Service needs to uphold in public administration.

The function-specific reports with recommendations and advice also bear testimony to its independence and impartiality in the performance of its powers and functions. When the titles of these reports (1999-2008) are reflected against the values and principles and the powers and functions, a glimpse can be had of the positive contribution of the PSC towards public administration (PSC 2003:Online).

Deputy President Kgalema Motlanthe, expressed himself as follows on the critical role that the reports of the new PSC played since its inception:

“Established in terms of Chapter 10 of the Constitution, the PSC has the mandate to monitor and evaluate the performance of our public service and advice (*sic*) Parliament and the Executive on progress and areas that require intervention... Indeed you have ensured that the PSC is able to guide the transformation of the public service effectively and entrench the 9 Constitutional Values and Principles which define good governance for our public administration. As a result ... the PSC has evolved into a formidable Constitutional body which not only generates insightful oversight information for Parliament, but also provides the Executive with credible advice on good practice in public administration... Through the PSC's reports and advice, we have increasingly come to appreciate the importance of being proactive in identifying challenges before they become chronic and affect service delivery... (S)ome of the PSC's findings may not always be flattering to the

Executive, but these have, regardless, been brought to our attention and the attention of Parliament.” (Motlanthe 2009: On-line).

Having regard to the above, the value judgement can be made that the new PSC did contribute to the values and principles of public administration in the sense that its advice, through its official reports to Parliament (as a superior political oversight body), is public knowledge.

SUMMARY OF THE SALIENT FEATURES OF PSCS, THE CFA AND PROV.SCs SINCE UNIFICATION

The PSCs, during most of the pre-democratic stage (1912–1972), were institutions with recommending powers and functions only. During the latter part of the pre-democratic stage (1972–1993), the PSC and the CFA became vested with recommending and executive (policy-making) powers. These policy-making powers and functions reached their zenith during the 1980s when their *de facto* activities exceeded their *de jure* responsibilities.

This powerful position of the PSCs during the latter part of the pre-democratic stage was perpetuated by the PSC and the Prov.SCs during the transitional stage (1994–1998), when they were legally vested with both recommending and executive (policy-making) powers with regard to appointments and matters incidental thereto as well as the reorganisation of the Public Service. The PSC had now developed into a fully-fledged central personnel institution with executive functions and accompanying powers.

During the transitional stage, Prov.SCs essentially became extensions of the central PSC in the sense that the interim Constitution of the Republic of South Africa, 200 of 1993, made provision for similar powers and functions in the central and provincial spheres of government – with the exception of the determination of national norms and standards reserved for the central PSC. However, these national norms and standards also had to be implemented by the Prov.SCs in the provincial sphere of government – thus extending the reach of the central PSC’s policy, through the Prov.SCs, to the provinces. Even the legal obligations in terms of which appropriate persons or institutions had to implement the PSC’s and Prov.SCs’ recommendations and directions were identical in the interim Constitution 200 of 1993, for implementation in the central and provincial spheres of government.

The transitional stage also saw the PSC’s amalgamation and transformation of the public services of the various “independent” states and “self-governing” territories into one public service for the newly created central government and nine provincial spheres of government. This stage also saw the PSC transforming itself from a central personnel institution with policy-making and executive powers into a recommending

and advisory institution in tandem with the emerging system of government. During this time it also had to grapple with its untenable role of being both an “employer” (representing the state as employer in negotiations with trade unions) and “protector” of public officials in terms of their appointments, promotion and discipline.

Following the transitional stage, during which the PSC reorganised itself mindful of the emerging governmental system, the Prov.SC’s were abolished during 1998.

January 1999 saw the appointment of commissioners to the new PSC created in terms of the Constitution of the Republic of South Africa, 1996. In the place of the executive powers of its immediate predecessors that reached their peak during the 1980s, and were continued during the transitional stage, the salient feature of the new PSC is an institution with no policy-making or executive powers; only with recommending authority. It therefore reverted to the principle of only recommending powers and functions of the PSC during the Union of South Africa, devoid of any executive and policy-making powers. Notwithstanding this, the work of the PSC, and its recommendations thereon, stood the test of time measured against the values and principles of the *Constitution of the Republic of South Africa*, 1996, in terms of which it had been created. The PSC also became recognised as a formidable institution giving advice to Parliament within the ambit of its constitutional recommending powers and functions.

CONCLUSION

This article provided a historical description and analysis of the roles of public service commissions during three stages in South Africa, namely the pre-democratic, the transitional and post-democratic stages, and provided an identification of the salient features of these institutions.

It has been shown that from its inception in 1912 in the Union of South Africa, the PSC has gradually grown to become a powerful central personnel institution, reaching its zenith during the latter part of the pre-democratic and transitional stages (1980–1994).

The transitional stage saw the daunting task associated with the amalgamation and rationalisation of the public services of fifteen authority levels (the RSA, its four provinces, the four “independent” TBVC states and six “dependent states”), but also bears testimony to the relatively successful roles of the PSC and Prov. SCs during a period of consolidation.

The post-democratic stage was the stage of further consolidation and, once the new PSC was established in 1999, this institution had to deliver on its mandate in terms of sections 195 and 196 of the *Constitution of the Republic of South Africa*, 1996. In referring to the new PSC’s numerous reports of various kinds and order, it can be concluded that it did make a valuable contribution

to upholding the constitutional values and principles of public administration in the post-democratic stage.

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ANNEXURE A

“TECHNICAL COMPLEXITY OF THE RATIONALISATION OF INSTITUTIONAL STRUCTURES TO COMPLY WITH THE INTERIM CONSTITUTION: ESTABLISHMENT OF THE DEPARTMENT OF HEALTH IN THE NORTHERN PROVINCE”

In the Northern Province the existing health departments of Venda and the self-governing territories of Lebowa and Gazankulu, together with the existing regional organisations of the Transvaal Department of Hospital Services and the national Department of Health, had to be consolidated into a single provincial health department. From the perspective of the new provinces created in terms of the interim Constitution, this was a problem to be solved by the process of amalgamation. However, from the perspective of the former Transvaal Provincial Administration, the problem was fundamentally different. i.e. one of division. The Transvaal province had been broken up by the interim Constitution and apportioned to four new provinces, namely Gauteng, Northern Province, North West Province and Mpumalanga. In consequence, the Transvaal Department of Hospital Services had to be correspondingly dismantled and apportioned to four new health departments. This dismantling and apportioning applied to both line and supporting or staff functions. A great many similar situations had to be addressed in the rationalisation process in South Africa as a result of the interim Constitution.”
(Source: PSC 1997:34–35).

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