



Overview

- Welcomes efforts to make the Independent Directorate permanent.
- But we also need to:
 1. Spread out appointment and removal power for NPA top leadership.
 2. Entrench the Independent Directorate.



Appointments at the NPA

The President appoints the NDPP on his own – DNDPPs and DPPs after consulting with the Minister but he may choose candidates even if the Minister opposes them



Appointments at the NPA



Centralising appointment power in the office of the President to such an extent has long been criticised as disposing the NPA to undue political influence.



Appointments at the NPA



The Independent
Directorate's Head will be a
DPP



HSF's Proposal: Appointments

NDPP, DNDPPs and DPPs should be appointed by the Portfolio Committee on Justice and Correctional Services (“Committee”) in consultation with the Minister and the President, after a panel of suitably qualified persons that is convened in consultation with all the aforementioned stakeholders, suggests a candidate(s)



HSF's Proposal: Appointments

Benefits:

- Reduces the risk that one center of political power holds sway over the NPA's top leadership – without exempting the appointment process from political oversight altogether.
- Gives the public confidence that appointees are drawn from pools of qualified candidates.



HSF's Proposal: Appointments

While Parliament will need to amend section 179(1)(a) of the Constitution to formally change the process for appointing the NDPP, **section 179(7) of the Constitution** allows ordinary legislation to govern the process for appointing DNDPPs and DPPs.



HSF's Proposal: Removals



Since it is not governed by the Constitution, the current process for suspending and removing the NDPP, DNDPPs and DPPs can be changed by amending the NPA Act.



HSF's Proposal: Removals

Section 12(6)(a) of the NPA Act allows the President to unilaterally suspend the NDPP, DNDPPs and DPPs – and then unilaterally remove them if an investigation reveals misconduct, ill-health, incapacity or that they are no longer fit and proper persons.



HSF's Proposal: Removals



While section 12(6)(c) and (d) of the NPA Act allow Parliament to reverse the decision to remove the NDPP, DNDPPs and DPPs, the specter of unilateral suspension and removal lying first with the President leaves the NPA open to undue influence from the executive.



HSF's Proposal: Removals



While section 12(6)(c) and (d) of the NPA Act allow Parliament to reverse the decision to remove the NDPP, DNDPPs and DPPs, the specter of unilateral suspension and removal lying first with the President leaves the NPA open to undue influence from the executive.



Legal Context

The Constitutional Court has expressly left open whether such unilateral suspension powers are constitutional in respect of the NDPP.

- *Corruption Watch NPC and Others v President of the Republic of South Africa and Others* at para 48



Legal Context

Constitutional Court declared unconstitutional powers of suspension exercised unilaterally by the Minister of Police in respect of the IPID ED.

- *McBride v Minister of Police* at para 43



Legal Context

Section 179(4) of the Constitution

“national legislation must ensure that the prosecuting authority exercises its functions *without fear, favour or prejudice*”



Legal Context

Section 206(6) of the Constitution

“On receipt of a complaint lodged by a provincial executive, an **independent** police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.”



Legal Context

**Section 206(6) of the
Constitution**

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**Section 179(4) of the
Constitution**



HSF's Proposal



- The NPA Act should be amended to mirror section 6A of the Independent Police Investigative Directorate Act No. 1 of 2011.
- Gives Parliament the leading role in holding accountable IPID's Executive Director



Entrenchment

Protect the Directorate from a bare Parliamentary majority by requiring that its dissolution should garner a two-thirds majority.



Thank you