

Enhancement of Accountability within the South African Public Sector: Knowledge Gained from the Case of a National Commissioner of the South African Police Service

Yasmin Nanabhay

Abstract—The paper scrutinizes the literature on accountability and non-accountability, and then presents an analysis of a South African case which demonstrated consequences of a lack of accountability. Ethical conduct displayed by members of the public sector is integral to creating a sustainable democratic government, which upholds the constitutional tenets of accountability, transparency and professional ethicality. Furthermore, a true constitutional democracy emphasises and advocates the notion of service leadership that nurtures public participation and engages with citizens in a positive manner. Ethical conduct and accountability in the public sector earns public trust; hence these are key principles in good governance. Yet, in the years since the advent of democracy in South Africa, the government has been plagued by rampant corruption and mal-administration by public officials and politicians in leadership positions. The control measures passed by government in an attempt to ensure ethicality and accountability within the public sector include codes of ethics, rules of conduct and the enactment of legislation. These are intended to shape the mindset of members of the public sector, with the ultimate aim of an efficient, effective, ethical, responsive and accountable public service. The purpose of the paper is to analyse control systems and accountability within the public sector and to present reasons for non-accountability by means of a selected case study. The selected case study is the corruption trial of Jackie Selebi, who served as National Commissioner of the South African Police Service but was dismissed from the post. The reasons for non-accountability in the public sector as well as recommendations based on the findings to enhance accountability will be undertaken. The case study demonstrates the experience and impact of corruption and/or mal-administration, as a result of a lack of accountability, which has contributed to the increasing loss of confidence in political leadership in the country as elsewhere in the world. The literature is applied to the erstwhile National Commissioner of the South African Police Service and President of Interpol, as a case study of non-accountability.

Keywords—Public sector, public accountability, internal control, oversight mechanisms, non-compliance, corruption, mal-administration.

I. INTRODUCTION

THE Jackie Selebi corruption case depicts the impact of high level corruption and malpractice, and according to [17] and [18], this contributed to the increasing loss of confidence in political leadership in South Africa and across the globe [17], [18]. A critical analysis of this case study through an inductive approach to research is informational in

helping to gain knowledge from such cases of corruption and maladministration, and to identify possible causal theories in such cases as recommendations for a remedial course of action [17].

Ethics plays an intrinsic and indispensable role in the everyday life of both public service managers, as they ‘assist to set the climate, develop the vision, and shape the behaviour of public officials’ [12], [17], [18]. Added to this, public managers by ‘conducting themselves in an ethical manner serves as an example for the behaviour of lower ranking public officials and the public in general’ [12], [17], [18]. Government therefore passed control measures to mould and guide the conduct of public officials, including codes of ethics and conduct, the enactment of legislation, with an expectation of an accountable and transparent public service striving towards the principles of good governance and the highest service standards [17]. Despite these efforts, the most recent data reveal that 64% of South Africans perceive corruption as increasing, 70% believe the government is doing badly in tackling corruption, and among key public institutions, 47% of people in Africa think that corruption mostly occurs in the police service [1]. This state of perceived corruption in the police service in 2019 is consistent with the last round of findings by the Afrobarometer in 2015 [36].

It is apparent from [3] that South Africa appears to be in a situation where public trust in the police service is rapidly fading, while apprehension and suspicion of the police is on the increase. At this juncture it is worthy of noting a recent arrest following charges of fraud and corruption against the current high profile Deputy National Police Commissioner of South Africa [31]. In addition, then Acting National Commissioner of the South African Police in 2017 was also allegedly dismissed following misconduct [29]. These rampant occurrences of misconduct on the part of high profile public officials undoubtedly create a negative and degrading impression of the police service. These perceptions of abuse of authority are likely to have a detrimental impact on the legitimacy of the police, according to [3]. The implications for the police, of such negative perceptions according to [3] were highlighted by the Mollen Commission. Burger [3] adds that this commission was set up to investigate corruption in the New York Police Department (NYPD), and this is what was stated in their report in 1994 [3]: ‘Regardless of the truth of this perception, it is the perception that often matters. And this perception poisons relations between the community and the

Yasmin Nanabhay is with the Cape Peninsula University of Technology, South Africa (e-mail: yazz1903@gmail.com).

police, compromising the credibility of the vast majority of honest and dedicated cops who need the community's cooperation to carry out their difficult jobs effectively.' [3]. Unfortunately, this unfavourable perception of the police service as a result of the increasing arrests and charges against high profile police officials in SA causes many citizens to lose faith and confidence in the South African Police Service (SAPS). One may make reference in this regard to the Public Service Commission's National Anti-Corruption Hotline (NACH) Toolkit, South Africa [25], which maintains that 'public confidence is important to the smooth running of government', and its effective functioning is compromised if the public holds a negative perception of the government of the day [25]. The research also suggests that intensifying the emphasis on ethical conduct and coaching in public sector ethics is key to peak performance and optimal operation of the public sector. Compliance with laws and rules, as well as optimally operational oversight mechanisms would ultimately lead to openness, transparency, accountability, honesty and integrity- the key principles of good governance [12], [23], [17], [18].

The paper will firstly discuss, key concepts of good governance, accountability and non-accountability, control systems directing compliance, namely legislation, codes of ethics and conduct. An inductive theory building research technique is adopted, including the legal injunctions contravened, and the subsequent themes which transpired. The paper concludes by making recommendations to reinforce compliance with control measures to enhance accountability and ultimately an ethical public service. The paper concludes by making recommendations to reinforce compliance with control measures to create an accountable public service.

II. GOOD GOVERNANCE, ACCOUNTABILITY AND CONTROL SYSTEMS

Over the two last decades, according to [15], development agencies for example, the World Bank, placed great emphasis on supporting accountability institutions as part of their efforts to strengthen governance institutions in numerous developing countries, like South Africa. Proponents of good governance see it as a valuable goal not only in and of itself, but also as a means through which to impact a variety of other outcomes, notably economic growth and development. In poorly governed countries, it is argued by [8] that corrupt politicians undermine development efforts by stealing government funds or misdirecting them into unproductive activities. Furthermore, [8] purports that governments that fail to be accountable to their citizens and with inefficient bureaucracies and weak institutions are unable to formulate and implement pro-growth and pro-poor policies. In this regard, former United Nations Secretary-General Kofi Annan aptly noted that, 'good governance is perhaps the single most important factor in eradicating poverty and promoting development'. [32]. Hence, good governance stands as a universally promoted concept and applicable to all governments globally. The concept 'good governance' will now be explored having regard to a number of working definitions developed by global agencies.

According to [34] 'the key question for assessing good governance is: Are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, justice and personal security? ... essential elements of good governance include transparency, integrity, lawfulness, sound policy, participation, accountability, responsiveness, and the absence of corruption and wrongdoing.'

The World Bank maintains that good governance indicates a public administration which functions effectively, having strong skills and competence; and a public management that is transparent and accountable [8]. Added to this, the African Development Bank (ADB) [8] defines good governance as incorporating accountability, participation, predictability, and transparency; while the European Commission (EC) [8] also defines it as openness, participation, accountability, effectiveness, and the OECD as accountability, transparency, efficiency and effectiveness, responsiveness, forward vision, and rule of law [8]. The EC and the IMF add that good governance further emphasizes a sound public administration and 'management of government in a manner that is essentially free of abuse and corruption' respectively [8]. It is evident from these definitions that accountability remains a constant in all of them, and leads one to conclude that accountability stands as a cornerstone of good governance. It may also be stated that accountability has been clearly earmarked as part of governance and development imperatives. Although there is vast literature on the topic of accountability, there is no specific or exact meaning of the concept.

A few authors, according to [15], define accountability as an obligation or responsibility (for example Jones and Stewart, 2009 in [15]). Other authors, Migliorosi & Wescott maintain, view accountability as a procedure (for example OECD, 2005, Ackerman, 2005, Schedler et al., 1999 in [15]), while others see it as an interconnected relation or an association [15]. Vertical accountability, according to [15], refers for most authors to the relationship between the government and its people. On the other hand the authors maintain that horizontal accountability refers to the capacity of government institutions to scrutinize abuses by other public institutions or divisions of government [15].

Accountability has also been clearly defined by making use of an analogy in the following terms, according to [10]: "A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct" (Schedler, 1999:17 in [10]). To help interpret this definition as an analogy, [10] suggests that one considers the role of elections in promoting political accountability. He claims that an election gives a chance for the electoral candidate to run for campaigns in order to broadcast their purposes and goals should they be elected. Kyriacou [10] further states that, on the other hand, it is also a punishment for those who engaged in misconduct during their term of office – by giving the vote to another electoral candidate. The concept of accountability implies that the actors being held to account are obliged to conform to accepted standards of conduct and that they will be

sanctioned for failures to comply (Grant and Keohane, 2005:29 in [10]).

For this paper, the author agrees with and adopts the definition of accountability as espoused by [15]. Accountability is thus a process of holding to account, monitoring and scrutinizing those parties who are entrusted with public duties in the fulfilment of their roles or obligations (see Schedler et al., 1999 in Migliorisi & Wescott [15]) eloquently explain that, the concept of accountability comprises two stages. First there is a calling to account: "...that is being required to provide an explanation of what has been done, or not done, and why." [15] Then there is: "...holding to account, or being sanctioned and required to put into effect remedial measures if something has gone wrong." The authors add that, accountability may result in the allocation of praise or blame (Jones and Stewart, 2009 in [15]).

Accountability in the public sector constitutes the axis of good governance and public administration (Muthien, 2000:69 in [11]), as it is one of the most effective safeguards against the misuse of power, resources and mismanagement of public authority.

In South Africa, the Constitution of the Republic of South Africa Act [1996] [23] obliges public officials to carry out their duties while upholding the democratic values and principles enshrined in S195 Constitution [1996] [24]. Having regard to, amongst others, entrenching and maintaining, a high standard of ethics, an accountable public administration, which is open, transparent and unbiased, public officials should be cognizant of the Chapter 9 institutions. These Chapter 9 institutions were created by the Constitution [1996] [24] as oversight mechanisms to ensure a sustainable democracy.

The Constitution [1996] [24] (S195)(1) emphasizes, according to [17] and [18] the obligatory values of transparency, accountability and the maintenance of a high standard of professional ethics in government transactions, furthered by various Acts passed by Parliament, as well as in guidelines and codes of conduct and of ethics developed for the public sector. These 'control measures seek to guide and oversee state transactions' [17], [18]. The Constitution [1996] [24] is 'the supreme law of the Republic; and legislation or conduct inconsistent with it is declared invalid'. It is one of the founding provisions of the Constitution [1996] [24], that the Republic of South Africa is a democratic state founded on the values of the 'supremacy of the Constitution [1996] [24], and a democratic government, ensuring accountability and responsiveness. The Constitution [1996] [24] further impresses upon citizens, including public officials, to act in strict accordance with its values and principles as the notion of accountability is highlighted throughout its chapters. It may be summarized that 'good governance principles are entrenched through the Constitution as well as legislation and codes of ethics and conduct' [17], [18].

Traditionally, the notion of accountability became inescapable, with the realization that governments if left unchecked would have dire consequences. Schwella [as cited in [16]] duly points out '... In framing a government, which is

administered by men over men, the great difficulty lies in this: you must first enable government to control the governed; and in the next place oblige it to control itself.' Control, purports [11], serves as an administrative undertaking to ensure the prevention of wasteful expenditure in organisations, and the protection of human capital and the overhaul wellbeing of organisations. Hence, the control function duly feeds the requirements for accountability in public management.

In the Constitution [1996] [24], Chapter 9 Institutions fulfil this control function, as these entities are mandated with the duty to reinforce accountability and peak performance within the public sector. The Public Service Commission (PSC), an independent body that monitors and evaluates functions of the public sector, came into existence for this reason via Section 196 of the Constitution [1996] [24]. The Commission's functions are not only to promote 'prescribed values governing public administration in the public service'... but to monitor and evaluate compliance within the public service.

Gildenhuys [7] maintains that strict public control is imperative in order to establish an accountable public service. The argument is that power should be proportionate to the function and role of a public official. In other words, the greater the responsibility, the greater the duty to account for his/her action/inaction [7]. Control and accountability mechanisms according to [35] have thus become tools for public sector institutions to reinforce their focus on improving productivity, monitoring and scrutinizing performance, since striving for advancement and exceptional competence is the expectation of both the government and its citizens.

A crucial statute passed to strengthen measures to prevent and combat corruption and bribery, enable rigorous investigation connected therewith, and to compel the reporting of corrupt transactions by office bearers is the Prevention and Combating of Corrupt Activities Act (PCCA) [23] [18], [19]. Compliance with the PCCA [23] is imperative for all office bearers, since noncompliance therewith brings considerable risks. The King Report on Corporate Governance for South Africa [23] additionally lays out intelligible guidelines for the public sector, with developed codes of ethics and of conduct in different government departments majorly guided by it [17], [18]. A myriad of controls therefore exist to ensure accountability, transparency and legitimacy running through all state institutions, non-compliance with which amounts to corruption and malfeasance.

III. BACKGROUND TO THE NATIONAL COMMISSIONER

Former National Commissioner of SAPS and President of Interpol Chief, Jacob (Jackie) Sello Selebi was also the President of African National Congress Youth League from 1987 to 1991 [4], [17], [18]. Selebi was appointed National Commissioner of SAPS in 2000 when the organisation was in a process of metamorphosis moving from a militarised South African Police under an apartheid state to a more noncombatant policing compatible with a democracy [17], [18], [2]. However, in January 2008, Selebi was put on leave as National Police Commissioner and resigned from his post as President of Interpol following charges of corruption in South Africa; he was found guilty of corruption and sentenced

to 15 years imprisonment in August 2010, against which he appealed and lost then court application in 2011 [4], [17], [18].

He was released on parole due to his ill health in July 2012 by the Department of Correctional Services and died in January 2015 [21]. Adriaan Basson [2], in his book *Finish and Klaar: Selebi's Fall from Interpol to the Underworld*, refers to Selebi as the most noteworthy public official being tried for corruption in a democratic South Africa [17], [18].

According to [20], Selebi held prestigious positions in South Africa and abroad during and post the apartheid era [20], [17], [18]. He served in the following positions: 'Head of the ANC Youth League in 1987, and Member of the Executive National Committee of the ANC; Official responsible for the repatriation of ANC exiles back into South Africa (1991); Head of the Department of Welfare of the ANC (1993); Member of Parliament (1994); South African Ambassador to the United Nations (UN) (1995-1998); and Director-General of the Ministry of Home Affairs (1998-1999)' [20], [17], [18].

Internationally, Selebi served as: 'permanent member of the UN (1995-1998); President of Interpol (2004-2008) (from which he resigned in 2008 after being charged locally), Chair of the Anti-Landmine Conference in Oslo, Chair of the Justice, Crime Prevention and Security Cluster for the UN (2004-2008), and Chair of the Human Rights Commission of the United Nations, 54th Session (2004-2008)' [5], [17], [18]. The paper will next look at the constitutional obligations, statutes and codes of conduct and ethics contravened by Selebi which the court focused on in arriving at its finding of corruption and obstructing the course of justice [9], [30].

IV. CONSTITUTIONAL OBLIGATIONS, LEGISLATION AND CODES OF ETHICS AND OF CONDUCT CONTRAVENED BY THE NATIONAL COMMISSIONER

Selebi was officially charged with two main counts by the state in a court of law [30], [17], [18]. The first count was the crime of corruption in contravention of Section 4(1)(a) of the PCCA [22], [34], [17], [18]. The second count was the crime of defeating or obstructing the administration of justice [30], [17], [18]. The main legislation contravened in the corruption count was the PCCA Act [22], specifically Section 4(1)(a)(i) to (iv), which prohibits gratifications received by any public official and which does not 'require the existence of an agreement between parties, aligning it with the common law crime of bribery' [9, para.316], [17], [18]. Thus, Selebi, by 'accepting gifts and payments from Glen Agliotti¹, created an obligation on his part to reciprocate a 'favour', that is, his meetings with Agliotti (and the latter's business associates) occurred not out of friendship but obligation resulting from Agliotti's payments to him, indicating a symbiotic relationship evolved over time' [9, para.404], [17], [18]. The court's classification of Selebi's relationship with Agliotti and his associates as symbiotic echoes the message that sternly condemns public sector officials from the acceptance of any

form of gratification [17], [18].

The court judgment [2010] emphasized the importance of the notions of trust and confidence placed by the public in government officials, more so in high ranking police officials [17], [18]. In this regard, Selebi was found not to have set an example to be followed within the SAPS but to have negated the SAPS Code of Conduct [2]; South Africa, SAPS, 1997; [17], [18] and the Constitution [1996] [24], thereby generating scepticism in his leadership role in the SAPS [17], [18]. Selebi's conduct cast a shadow over his prior sterling career, and he was now referred to as a bad example of public authority.

Control measures compel the SAPS to adhere to the principles of ethicality and integrity in the performance of its responsibilities. The first in this regard is Chapter 11, Section 205(3) of the Constitution [1996] [24], [17], [18] which states the SAPS objectives as 'to prevent, combat and investigate crime, to maintain public order, to protect the inhabitants of the country and to uphold the law', all which the National Commissioner disregarded thus negating his actions as National Police Commissioner [17], [18]. S205(2) of the Constitution [1996] [24] adds that the SAPS should discharge its obligations effectively, with which Selebi clearly did not comply. Chapter 11 highlights the Security Services of South Africa, emphasizing the significance of the SAPS in upholding the safety of the democracy. Section 207(1) refers to the duty of the National Commissioner to 'control and manage' the SAPS 'in accordance with national policing policy and directives from the Cabinet member responsible for policing' [24]. This section guides the ethicality of the conduct of the SAPS, which Selebi distinctly negated [17], [18]. This section further implies a tacit understanding that such an individual appointed in a leadership position, as a National Commissioner, tasked to control the SAPS, will be compliant and adherent to the rules and laws.

The SAPS Code of Ethics, South Africa [31], [17], [18] demands 'ethical policing of all its members', that is, to undertake their duties according to five principles, including integrity and obedience of the law. Integrity is stated as encouraging the SAPS to 'continually strive to uphold... ethical principles and ethical standards, ... to behave in a manner that is consistent with these values...to act honestly and responsibly in all situations and ... to regard the truth as being of utmost importance' [31]. Obedience of the law is stated as 'upholding the law, enforcing the law and most importantly staying within the law' [27]. It was, in fact, Selebi's dire transgressions that led to the introduction of the above Code with a strong emphasis on integrity and obedience to the law. It is a distinct improvement on the earlier SAPS Code [28]; [17], [18], which emphasizes its members' commitment to providing a safe and secure environment for all South Africans by upholding the laws of the country and 'working actively towards preventing any form of corruption and to bring the perpetrators to justice' [28], [17], [18].

Based on the analysis above, the following inductions were made regarding non-compliance by Selebi in his position as chief police commissioner of the SAPS.

Selebi's disregard for constitutional supremacy shows the

¹ In 2000/2001, Selebi had been approached by and had facilitated for Glen Agliotti, an international drug dealer, a relationship with the SAPS via a charity project for mutual collaboration involving mentally ill children, and in 2002, he had appointed Agliotti as a SAPS informant [3]. Selebi had received clothing items, paid holidays and dinners for himself and his family from Agliotti [10].

need for remedial measures that stringently compel high ranking officials to remain accountable to the constitution without question [17], [18].

The fact that a high profile public official like the National Commissioner of Police could yield to corrupt activities involving bribery suggests that strong remedial measures are established that clearly define the limitations and scope of the duties and functions of such high profile positions [17], [18]. This will prevent any misjudgement and doubt by high ranking officials. Over and above, this will strengthen the process of ensuring that high ranking public officials take responsibility for their decisions and subsequent actions. This will denounce the notion that rank and leadership positions do not absolve officials from being rule bound. According to [33], the key players in optimizing police accountability are 'police officers themselves as the prime bearers of responsibility for the integrity of the police force.' Furthermore, the United Nations [33] maintains that for police to 'carry out their jobs effectively...necessary guidelines and codes of conduct need to be in place.' This is also embodied in the Seoul Declaration of INTERPOL [33]. Since Selebi was once the president of INTERPOL, it further emphasises that he ought to have had knowledge of the fundamental role of codes and the importance of compliance therewith. Furthermore, 'despite the fact that the Public Service Commission is obliged, in terms of Section 196 [14] to 'investigate, monitor and evaluate the public administration', which by implication includes the SAPS', it was evident that the PSC failed to probe and scrutinize the SAPS in terms of Selebi's conduct which was in clear violation of rules of conduct [17], [18]. Further reference can be made to the PSC's NACH Toolkit [25] where specific mention is made that 'government is obliged to put mechanisms in place that would promote an understanding that it is functioning with integrity' [25]. The NACH Toolkit [25] also states that it is a 'visual and physical manifestation to the public of Government's commitment to combat corruption'. One may induce that oversight bodies are not as proficient as expected in compelling adherence to laws and ultimately enhancing compliance with [17]. One may add that the existence of the NACH Toolkit [25] with its explicit statements on combatting corruption, demonstrates the PSC's nonfulfillment of its oversight function. This calls for urgent remedial action. Oversight bodies are required to robustly carry out their watchdog role as envisaged in chapter 9 of the Constitution [1996] [24]. 'It is also claimed that independent police oversight bodies are integral to enhancing police accountability.' [33]. Hence, it remains the crucial role of the PSC to ensure accountability within the police service.

The conviction of the National Commissioner was met with a welcomed sigh of relief in SA and internationally. Despite his political stature, he was left crestfallen and guilty of one of the most heinous crimes-corruption. Selebi's trial and verdict were widely seen 'as a fall from grace, born of hubris and greed, of one of SA's leading lights' [6].

V. EMERGING THEMES AND FINDINGS

The above inductions suggest the following three themes

relating to non-compliance and non-accountability in the public sector, and are theorized in relation to analysis and findings in the Selebi case [17], [18]. These themes commission new theories regarding issues of redress related to non-compliance and more specifically non-accountability, *inter alia*.

- Inadequate control and non-accountability.
- Inadequate emphasis on compliance with legislation and codes of conduct.
- Absence of incentives and resultant unethically within the public service.

A. Inadequate Control and Non-Accountability

In studies involving the SAPS, [13], [17], and [18] found that substandard control measures could lead to a 'negative work ethic' among police officials. In the Selebi case study, it was seen that inadequate and substandard control measures and lack of accountability no doubt led to utter malfeasance in the case of Selebi. This view is echoed by [19] which argues that 'deficient control and accountability within organisations is likely to experience dishonesty among its employees by exploiting the situation for personal gain.' By implication, inadequate control and non-accountability have the potential to exacerbate noncompliance with ethical principles [13]. Moreover, such non-compliance amounts to non-accountability and unprofessional conduct and may therefore be classified as bad governance [17], [18]. Furthermore, in terms of the Constitution [1996] [24], Section 207 states that the 'President shall appoint the National Commissioner of Police to control and manage the police service'. Section 207 further indicates that the National Provincial Commissioner of that province in that regard' (Section 207(3)) [25]. In terms of S207(4), provincial commissioners are directed towards responsible policing with adherence to legislation; however, they are subject to the authority of the National Commissioner [17], [18]. It is added in subsection 5 that the Provincial Commissioner has a duty to 'report on policing to the Provincial Legislature annually' and to send a copy of the report to the National Commissioner [24], [17] Subsection 6 purports that, should the Provincial Commissioner lose the confidence of the Provincial Executive, disciplinary action, may be instituted against that Commissioner [17], [18]. Furthermore, Section 206(6) of the Constitution [1996] [24], provides for an independent police complaints body to investigate any alleged misconduct committed by a member of the police service in the province. This, by implication includes the Provincial Commissioner of Police and places a tremendous degree of control and accountability over the Provincial Police Commissioner [17], [18]. However, the National Police Commissioner is not mentioned at all in terms of his/her accountability and reporting duties [17], [18]. Mere mention is made only with regard to the National Police Commissioner exercising control and managing the police service in accordance with the national policing policy and directions of the Minister of Police [25]. A mere assumption cannot be drawn, obliging the National Commissioner to report and to account to the Cabinet Minister [17], [18]. Detailed and specific mention of reporting lines for the National Commissioner is imperative, which will discourage

non-compliant behaviour [17], [18]. Explicit details of how the National Commissioner should 'exercise control' and 'manage' the police service should be clearly outlined. This will discard any uncertainty or ambiguity as to his/her responsibilities and obligations and ultimately lead to better accountability and transparency by the office of the National Commissioner. The words 'exercise control and manage', may be interpreted as a wider discretion being granted to the National Commissioner, and he/she may interpret this as the freedom to 'manage' this office without having due regard to checks and balances.

One may deduce that the absence of stringent oversight procedures over the head of the national police service 'opens the way for persons in such positions to take advantage of opportunities when they present themselves for personal gain', as displayed by the national commissioner in the case study [17], [18]. Should there have been directives as to the how the national commissioner should 'manage' and 'control' his office, it would have left no room for ambiguity, and hence he would have erred on the side of caution.

Ever-Better Policing

Fig. 1 provided by the United Nations [33] depicts the cyclical process of 'ever-improving effective policing'.

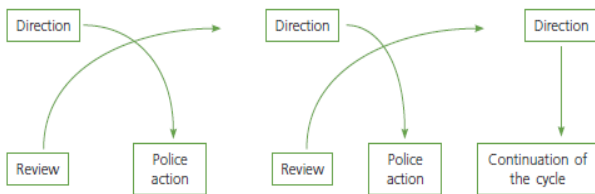


Fig. 1 Ever-better Policing, adapted from [33]

Having regard to the above illustration, effective police accountability is an ongoing process. All actors within the police service require distinct 'guidelines on their objectives that also specify their distinct positions and lines of accountability; ultimately preventing illegitimate cross-interference and the avoidance of responsibility' [33].

B. Inadequate Emphasis on Compliance with Legislation and Codes of Conduct

In terms of the Constitution [1996] [24], Chapter 10, Section 195 (1) (a), 'a high standard of professional ethics must be promoted and maintained' [17], [18]. In addition, Section 196(4) (a) clearly states that, the PSC is tasked with the function 'to promote the values set out in Section 195 throughout the public service' [24], [17], [18]. This implies that it is tasked with ensuring compliance and ethicality throughout the public service (including the police) [17], [18]. Furthermore, the PSC is compelled, in terms of Section 196 to investigate, monitor and evaluate the public administration; by implication, this includes the SAPS. In this case, it was seen that the PSC failed to investigate the SAPS in terms of the National Commissioner's non-compliance with codes of ethics and conduct [17], [18]. Added to this, Section 196, places a duty upon the PSC to 'ensure effective and efficient' performance within the public service' [24]. Such a duty was

not carried out in the Selebi's case, since there was a lack of monitoring of the performance of the National Commissioner [17], [18]. The drafters of the Constitution [1996] [24] had envisaged the difficulties encountered by the South African government, like many governments, in carrying out its functions in an efficient, competent and ethical manner and therefore established the PSC, as an independent and unbiased entity to monitor and evaluate the public administration. This function should be carried out without fear, favour or prejudice [24], Section 196 [17], [18].

The ultimate objective of the Public Service Code of Conduct is to give effect to the Constitutional provisions and to promote impeccable conduct within the public service [26], [17], [18]. It is stated in the Code that 'civil servants will serve the public in an unbiased and impartial manner in order to instil public trust in the public service' [26], [17], [18]. Glaring transgression of the Code is evident, as the national police commissioner violated the fundamental philosophy of the Code: to promote ethical conduct within the public service. This notion of non-compliance with following procedure amounts to non-accountability which encapsulates the notion of inefficiency; hence, the prevalence of bad governance [17], [18]. Furthermore, the SAPS Code of Conduct [28] further maintains that its members shall at all times 'uphold the Constitution and the law...and act in a manner that is impartial transparent and accountable.' Obvious contravention of the SAPS code is also evident by Selebi and calls for a robust oversight procedure. A strong oversight mechanism is intended to uphold integrity, in this case, police integrity. This will impede wrongdoing and enhance accountability. Hence, the oversight mechanism envisaged by the Constitution in the creation of the PSC, should adopt a more robust approach when exercising its watchdog role. The PSC, in carrying out its function of maintaining an efficient and effective public service, should, in the light of increased cases of high profile police misconduct, pay deeper attention to compliance and adherence to the rule of law by national commissioners. This is imperative, since the PSC (S196) [24] is the only oversight mechanism, by inference, in the Constitution [1996] [24] which has specific powers and a greater degree of control over the office of the national commissioner.

C. Absence of Incentives and resultant Unethicality within the Public Service

Since the advent of our Constitutional democracy in 1994, government institutions have been focusing on attaining service excellence and the entrenchment of good governance practices. The principles of openness and transparency, responsiveness and accountability are the features expected from a democracy [17]. Increasing concerns of public officials regarding remuneration remain of great concern. In studies conducted by [13] and [17], the authors observe that low-paying salaries and the absence of reward/financial incentive policies could lead to a negative work ethic among police officers. By implication, the absence of reward/incentive policies could be extended to all public officials, luring them towards corrupt activities. Such corrupt activities include fraud, as in the case of Selebi, 'bribery, kickbacks, circumventing laws and regulations to aggrandise personal

advantage by using government funds and time for private gain' [13], [17]. Masiapata [13] and Nanabhay [17] further state that uncompetitive salaries for members of the SAPS have the potential to lead them to supplementing their income using unwonted and at times improper means in order to bear living costs. Masiapata [13] and Nanabhay [17] correctly point out that members of the police service, and in the context of this paper, high ranking members such as the national police commissioner, enjoy high level status which is not equivalent with their salaries. Further, the financial incentive structure plays a definitive role in determining the police officials' openness to taking bribes, hence deviating from expected ethical norms [13], [17].

In the context of this paper, the national police commissioner transgressed the SAPS Code of Conduct [28] by obtaining undue benefits and accepting gifts and money for personal gain from Glen Agliotti. Mehen [14] and Nanabhay [17] reflect Masiapata's view to an extent in a study 'revealing a positive correlation between income inequality and corruption'. It may be added that an incentivized system be adopted where public officials are rewarded for competence and professionalism in fulfilling their role. Non-compliance should not be the only aspect highlighted but also acknowledgement of public officials who display high levels of probity in the exercise of their civil duties [17].

VI. CONCLUSIONS AND RECOMMENDATIONS

Good control systems do not guarantee good governance; instead, it is the compliance with these control systems, which enforces accountability, and ultimately leads to good governance. In other words, there may be good control systems in place, but non-compliance therewith will undermine accountability and ultimately lead to bad governance.

The findings in the paper echo the views of [15] that holding government to account is a process that emerges slowly and unevenly. Governments urgently require a long-term, strategic view of state building through public participation [15].

Corruption, misuse of power and numerous malpractices still exist, suggesting significant managerial and capacity handicaps in the control institutions of the Constitution. Finally, it is submitted that further research should be conducted, in order to develop a framework to amplify and intensify compliance with control measures, inevitably leading to increased accountability within the police service.

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Yasmin Nanabhay is in the Department of Public Administration and Governance at the Cape Peninsula University of Technology (CPUT), Cape Town, South Africa and Advocate of the High Court of South Africa (e-mail: yazz1903@gmail.com or nanabhay@cput.ac.za).

She holds an Ethics and Public Administration Masters Degree (CPUT, 2014), an Honours degree (LLB) in Law (Witwatersrand University, 2000), among other qualifications. She was subsequently admitted as an Advocate of the High Court of South Africa (2006). She is currently a PhD Candidate at the Faculty of Social Sciences, University of Lapland, Finland.

She is currently (2004 – current) a Lecturer and Community Development Coordinator for the Department of Public Administration and Governance at CPUT. She is responsible for initiating, managing and coordinating all community development activities related to the Department of Public Administration and Governance which include but not limited to (i) Establishing and managing partnership agreements with government partners, Non-governmental/Community Organisations, i.e., the Department of Social Development (Western Cape), Human Rights Non-Government Organization's (Institute for Justice & Reconciliation) (IJR) (The Children's Movement) (CRC) (ii) Coordination of community development project activities like youth, civil society and business (iii) Coordination and manage all community development activities amongst the various partners and ensure greater intersectoral as well as extra-sectoral collaboration.

Advocate Nanabhay also holds professional memberships in the South African Association of Public Administration and Management (SAAPAM), Association of Southern African Schools and Departments of Public Administration and Management (ASSADPAM) and African Association for Public Administration and Management (AAPAM).