



ILERA AFRICA

10TH REGIONAL CONGRESS

3 – 4 APRIL 2024



HOW COULD THE PROFESSIONALISATION OF THE PUBLIC SERVICE SECTOR AND LABOUR LAW CURB THE PRACTICE OF CADRE DEPLOYMENT AND ITS UNFORTUNATE CONSEQUENCES?

Prof Monray Marsellus Botha
Prof Nicola Smit



INTRODUCTION

- **Public Service Act 103 of 1994** provides for: (a) Appointments/filling of posts within the public service with specific reference to **qualifications and criteria for appointment**:

‘(i) As far as **qualifications** for appointment are concerned, a person has to be a South African citizen or permanent resident, in order to be appointed permanently, whether on probation or not. In addition, the person must be **a fit and proper person**.

(ii) As far as criteria for appointment are concerned, due regard must be had to equality and the other democratic values and principles enshrined in the Constitution; also, all persons **who applied and qualify** for the appointment concerned **must be considered and the evaluation of persons must be based on training, skills, competence, knowledge and the need to redress**, in accordance with the Employment Equity Act, the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.’

- Specific provisions wrt special contract appointments of special advisers to assist executive authorities on grounds of policy considerations (Public Service Regulations, 2016 ch 4 part 4, S 12A and Constitution S 195(4)) and special provisions in relation to heads of departments (S 11).



BACKGROUND

- ‘It has been noted, by the Public Service Commission and in the National Development Plan, that several problems remain and need to be addressed, *inter alia*, the need to stabilise the political administrative interface; to make the public service a career of choice (with an emphasis on career pathing); and to develop technical and specialist professional skills. In addition, selection committees apparently do not apply consistent standards.’

Public lecture by the Minister for the Public Service and Administration, Advocate Ramatlhodi, at the University of South Africa, 23 March 2016

- S 196 (1) & (2) Constitution of South Africa:

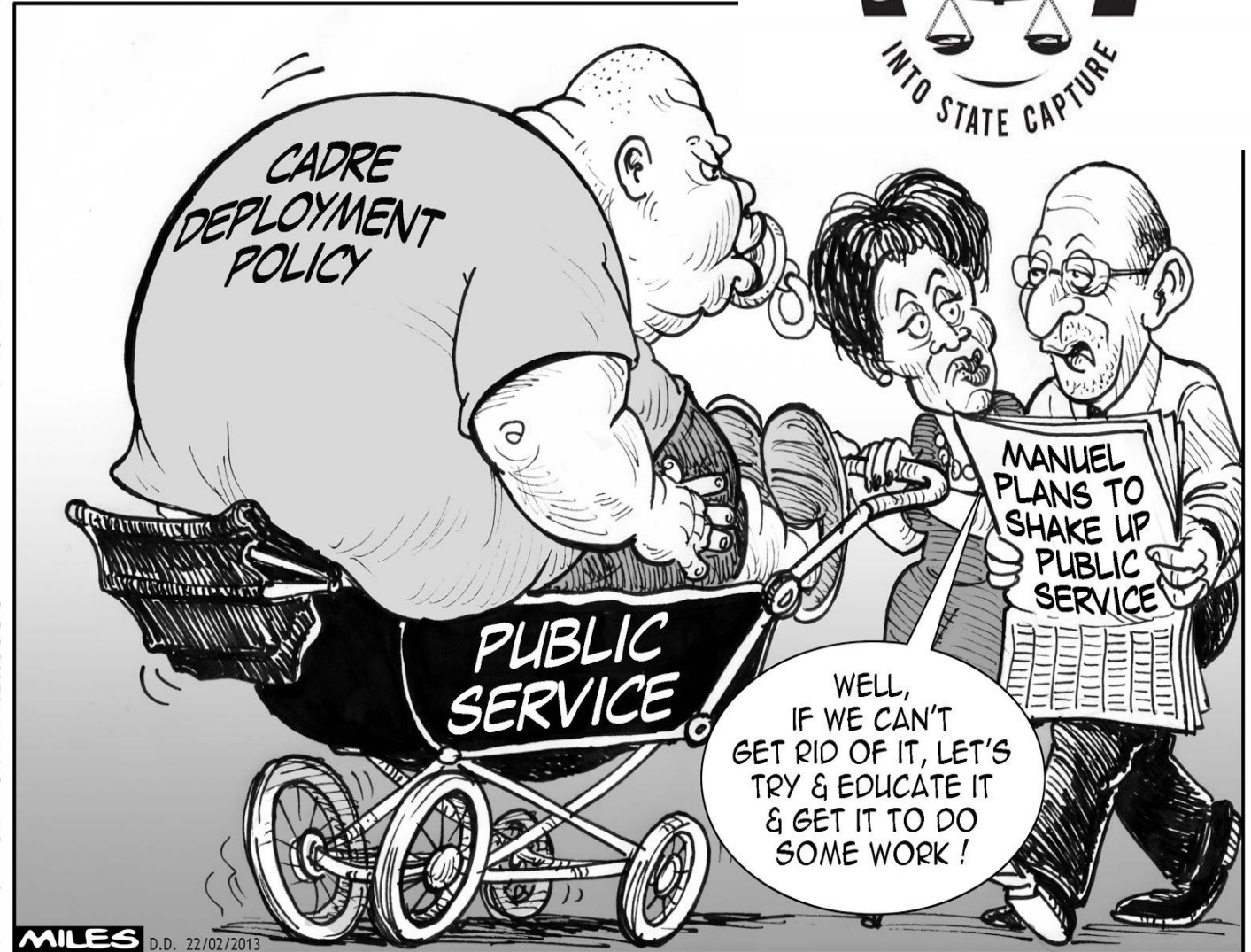
‘There is a single Public Service Commission for the Republic. It is independent and must be impartial, and must exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service.’

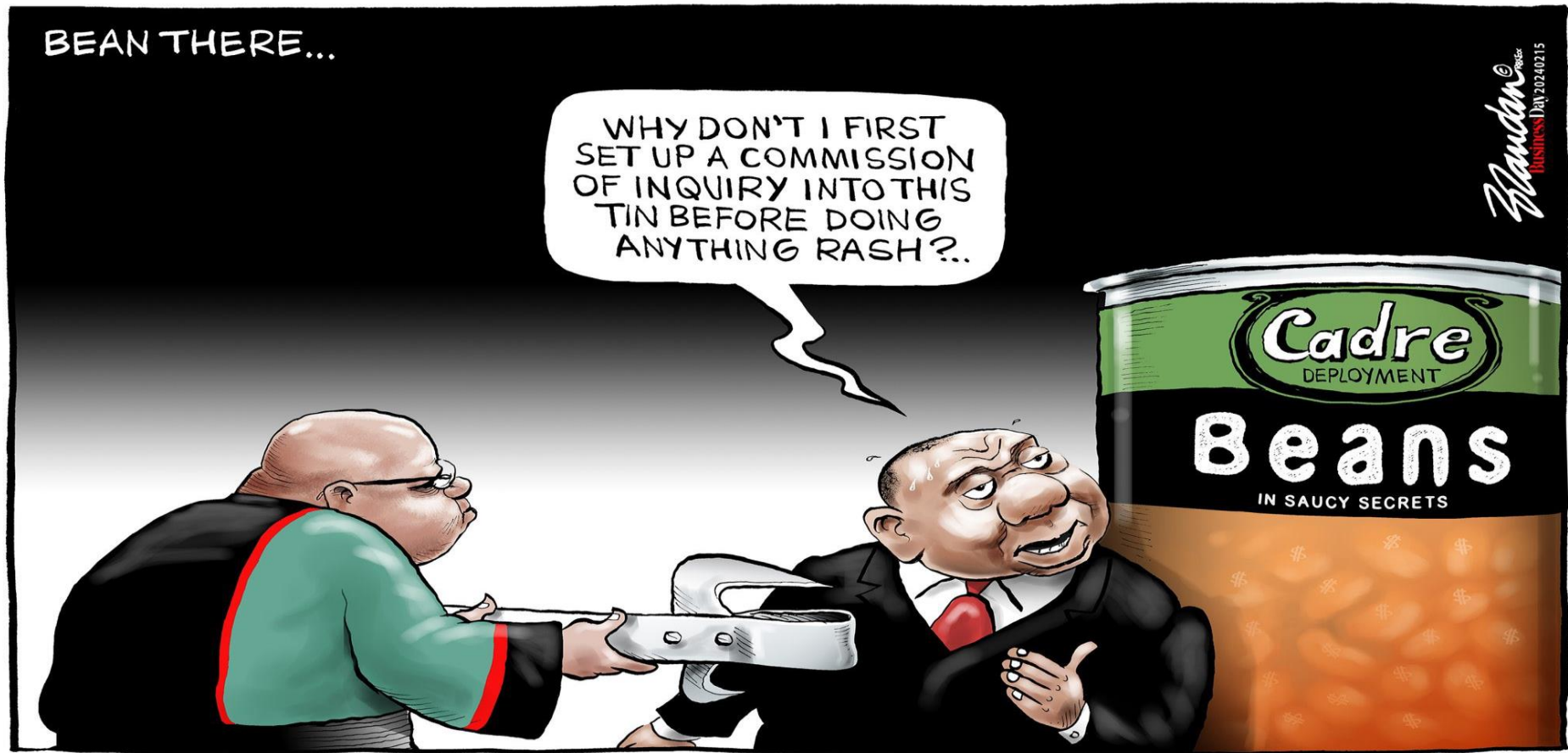
BACKGROUND continue

2017: Pan South African Language Board

‘State Capture’ most prominent phrase of the year = word of the year

Linked to cadre deployment policy





‘a process through which political parties in a democracy give effect to their policies and objectives by preferring functionaries who subscribe to the same values’

associated with “partialism”, “nepotism”, “political meddling”, “favouritism”, “cronyism”, and “partisanship”

create a ‘shadow’ or ‘parallel State’

fraud, corruption, and money laundering = contravention of the Public Finance Management Act (PFMA), Prevention and Combating of Corrupt Activities Act (PRECCA), Prevention of Organised Crime Act (POCA)

government egregiously abandoned its constitutional obligations by failing to tackle manifest corruption in the corporate governance of state-owned enterprises central in its findings.

ZC found that ‘... the Constitution envisages a public administration that maintains a high standard of professional ethics: that is efficient, economic and effective in its use of resources and that is impartial, fair, equitable and without bias’, and that the governing party’s deployment policy was counter to all four values that guided the ‘political-administrative interface’.



Policy has led to poor service delivery and is responsible for breaches of human rights and inhibiting the State's ability to function effectively and promote human rights.

ANC's Cadre Deployment Policy responsible for eviscerating critical state institutions, blurring lines of accountability, and facilitating state capture.



DA it's used as a mechanism by the ANC to control public administration, which has led to state capture and the erosion of independent institutions. DA applied to court to declare ANC's Cadre Deployment Policy is inconsistent with the Constitution and therefore unlawful:

- *that the Deployment Committee is inconsistent with the Constitution and invalid; and*
- *that the policy is inconsistent with Chapter IV, sections 9, 10 and 11 of the Public Service Act 103 of 1994 and invalid.*

There is nothing unconstitutional about a political party influencing the policy direction of a government, including the appointment of senior personnel to public service, **so long as the public service is protected against being misused for partisan purposes**. It is impermissible of a litigant to rely on a generalised disenchantment and broad sweeping conclusions in pleading a constitutional attack such as the DA has done in this case.

It is not common cause that the policy has resulted in corruption, maladministration and state capture.

- DA has failed to heed the words of the Constitutional Court that a constitutional challenge should be explicit.
- DA came to court with a case built on speculation and conjecture.
- Corruption knows no boundaries. It inflicts grave harm to society. For that reason, it ought not to be used by political parties to pursue political objectives. The application did not raise genuine and substantive constitutional issues. The application is dismissed with costs.

Minister Kiviet outlines the goals of professionalisation of the public service

By **Editor** - July 17, 2023 Modified date: July 17, 2023  700  0

 Like 0



Public Service and Administration Minister, Ms Noxolo Kiviet

to develop a shared set of values, culture, and ethos among public servants

which includes a focus on meritocracy, competency, impartiality, accountability

all essential for building a capable, professional, and ethical government



Government Commitment to transformation in the public service?

Section 195 of the Constitution, the basic principles and values governing public administration

“Good human-resource management and career development practices, to maximise human potential must be cultivated”; and

“Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.”

Municipal Systems Act (MSA) and the Municipal Finance Management Act (MFMA)

White Paper on Transforming Public Service Delivery, 1997 (The Batho Pele principles), The White Paper on Affirmative Action, 1998 that lead to EEA 1998, Skills Development, NDP 20230 building competent development state

RDP, The White Paper on the Transformation of the Public Service, 1995

The public service needs to be immersed in the development agenda but insulated from undue political interference.

- Staff at all levels must have the authority, experience and support they need to do their jobs. This will require a more long-term approach to skills development.
- Improving relations between national, provincial and local governments requires a proactive approach to resolving coordination problems.

The governance structures for state-owned enterprises (SOEs) should be simplified to ensure clear lines of accountability and stable leadership.

Efficient, Effective and Professional Public Service Sector:

SDG 17 and others and link to NDP 2030: *South Africa needs to build a state that is capable of playing a developmental and transformative role*

To address the twin challenges of poverty and inequality, the state needs to play a transformative and developmental role.

This requires well-run and effectively coordinated state institutions with skilled public servants committed to the public good and capable of consistently delivering high-quality services while prioritising the nation's developmental objectives. This will enable people from all sections of society to have confidence in the ...

Efficient, Effective and Professional Public Service Sector: Raymond Zondo in the report of the State Capture Commission

Made no mention of it; indeed, cadre deployment was not raised at all by the President despite its centrality to the response to the commission and to the trajectory of the ANC

6.2 Professionalisation of the Public Administration

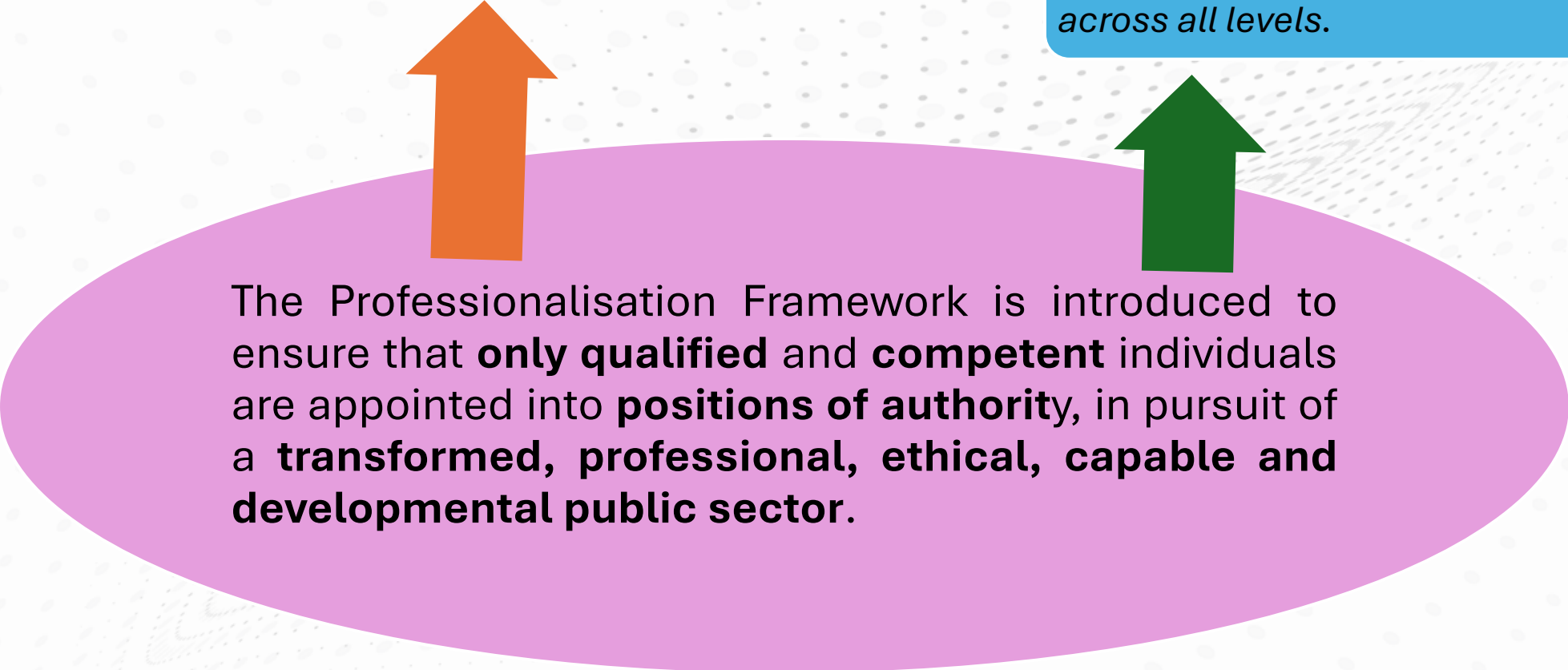
“6.1.1 A key mechanism of state capture was the strategic positioning of individuals in positions of power through the abuse of public sector appointment and dismissal processes. This was in contravention of the Constitution and applicable legislation.”

“6.1.2 An important instrument to address this issue is the National Framework towards the Implementation of Professionalisation of the Public Sector, which was adopted by Cabinet on 19 October 2022. The Framework makes specific proposals to stabilise the political/administrative interface, ensure merit-based recruitment and selection and more effective consequence management. All public sector legislation governing professionalisation will be reviewed and, where necessary, amended to align with this Framework.”

Efficient, Effective and Professional Public Service Sector: National Framework towards Professionalisation of the Public Sector (25 October 2022)

Public officials should have the right qualifications and technical skills and be inducted into Batho Pele principles. They must live the values of chapter 10 of the Constitution.

The tightening of pre-entry requirements as well as effective recruitment and selection processes that inform meritocratic appointments across all levels.



The Professionalisation Framework is introduced to ensure that **only qualified** and **competent** individuals are appointed into **positions of authority**, in pursuit of a **transformed, professional, ethical, capable and developmental public sector**.

Efficient, Effective and Professional Public Service Sector: National Framework towards Professionalisation of the Public Sector (25 October 2022)

Undertaking workplace orientation and induction programmes that are linked to onboarding and mainstreamed as an intervention for organisational development.

Effective HR planning, performance management and appraisal systems, including performance standards and assessment instruments for different categories of employees. Performance management can also be aligned with professional body/association registration.

Public servants returning to the simulator by undertaking continuous learning and professional development. This will include public sector officials being encouraged to register with Professional Councils, starting with specific categories of occupations in the public sector.

Managing the career progression and career incidents of public servants and heads of department respectively.

Electioneering/Principled approach: Efficient, Effective and Professional Public Service Sector: DA Election Manifesto 2024 Elections

Ending cadre deployment = building a professional and accountable public service in South Africa

Rebuilding the Public Service Commission to make it a politically independent institution with enhanced powers to oversee the implementation of merit-based recruitment and selection processes.

Replacing the Public Service Act with a new legal framework that separates the party from the state, removes powers of appointment from politicians, and differentiates between the roles and responsibilities of politicians and officials

Reforming recruitment and selection processes across the public sector to ensure merit-based appointments at all levels by removing politicians from selection processes and requiring the Public Service Commission to create a pool of recognised experts who will serve on all selection panels. The appointing authority for any given position will select members for selection panels from this pool.

Reviewing and restructuring codes of good practice, including the code for dismissal, to ensure they are clear, sustainable, and enforceable, and provide training to human resource managers to enforce disciplinary action consistently and without fear or favour.

Efficient, Effective and Professional Public Service Sector: DA Election Manifesto 2024 Elections (continue)

Conducting regular lifestyle audits for politicians and officials and hold offenders swiftly accountable.



Introducing mandatory pre-entry examinations as a prerequisite for appointment to any position in the public sector while enabling headhunting for the recruitment of exceptionally skilled officials.



Exploring ways of providing high-quality training to prospective public servants



Building a new culture based on excellence, transparency and succession planning throughout the public sector, including through the introduction of a Public Service Scholarship Scheme to produce a cohort of new graduates trained in critical skills who are mandated to work in public service for a set period after completing their taxpayer-funded studies.



**Electioneering/Principled approach:
Efficient, Effective and Professional
Public Service Sector:
ANC Election Manifesto 2024 Elections**

ANC guns for DA's own 'cadre deployment records'



- Give national and provincial governments **greater responsibilities** to support municipalities that struggle to provide services to communities.
- Give national and provincial governments more powers to intervene to provide clean water where municipalities are struggling to properly provide this service, **build maintenance capacity** and complete water infrastructure projects.
- Improve governance and the public service, work with communities to deliver quality and reliable basic services, eradicate corruption, and maintain and build new infrastructure.
- **Tackle corruption, improve public accountability, strengthen investigation and prosecution capabilities** and ensure severe consequences for corrupt activities in the public and private spheres.
- Build a capable and developmental state, **strengthen links between government at all levels and the people, rebuild and improve local government**, build a professional and developmental public service based on Batho Pele principles, and strengthen cooperative governance through the District Development Model.
- **To improve the capability of the state, the ANC will:**
 - *Strengthen planning and project implementation capabilities, improve monitoring and evaluation tools and attract, develop and retain skilled personnel across government.*
 - *Take forward initiatives to build a professional, ethical and developmental public service.*
 - *Advance e-government and digital services to make government services accessible, interoperable and efficient.*



No final word on several legal questions (rather than electioneering assurances/promises):

- For example, informal policies of ‘voluntary organization’ vs. government policy
- For example, role, nature, powers and oversight of the Public Service Commission
- For example, perceived fragmentation and gaps (or possible failures) of current legal framework regulating public service recruitments and appointments
- For example, effective performance management and accountability in public sector (without fear or prejudice and without delay)
- For example, how to effectively implement the National Framework towards Professionalisation of the Public Sector
 - ‘The adoption of the National Framework Towards Professionalisation of the Public Sector (Professionalisation Framework) by Cabinet in October 2022, is but one of the key indicators towards the realisation of a capable, ethical and developmental state. Working with key partners, the PSC is in the process of coordinating the development of an Implementation Plan for the Professionalisation Framework, which will cut across all spheres of government including public entities. The PSC, amongst many other important deliverables of the framework, must ensure that the orientation of the public sector embodies the values and principles governing public administration as enshrined in Chapter 10 of the Constitution. **These requirements and objectives of professionalisation and the creation of a single public service have become over-arching reforms that are at the heart of the PSC.** (PSC Annual Report 2022/23)

THANK YOU!!