

Security Services and Security Service Commissions

Under the Present Constitution

The disciplined services – the Defence Forces (consisting of the Army and the Air Force), the Police Force and the Prison Service – are the subject of separate parts of the present Constitution.

The Police Force

Part IX deals with the Police Force, the function of which is stated to be to preserve the internal security of and to maintain law and order in Zimbabwe. The Police Force is under the command of a Commissioner-General, who is appointed by the President. The details of “the organization, administration and discipline of the Police Force, including the appointment of persons to offices or ranks in the Police Force, their removal from office or reduction in rank, their punishment for breaches of discipline and the fixing of their conditions of service” are provided in the Police Act.

(1) Command of the Police Force

The Commissioner-General’s term of office is meant to be four years, after which he must retire, irrespective of his age or length of service. However, “if the President considers that it is desirable in the public interest and the Commissioner is medically fit”, the President may extend the period of his service for periods of not more than twelve months at a time. The Commissioner-General’s other terms and conditions of service are as fixed by the President from time to time.

(2) Police Service Commission

A Police Service Commission is established by s 94 of the Constitution. It consists of –

- a chairman, who is the chairman of the Public Service Commission, appointed by the President in terms of the Constitution; and
- not less than two and not more than seven other members, also appointed by the President.

The members must be “be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment, and at least 1 such member shall be a person who has held senior rank in the Police Force for periods which in the aggregate amount to at least 5 years”.

The functions of the Commission are “to tender such advice and do such other things in relation to the Police Force as are provided for by this Constitution or by or under an Act of Parliament”. The Constitution does not define the functions of the Commission any more precisely than that, but the Police Act states the functions are:

- after consultation with the Commissioner, to make recommendations to the Minister [of Home Affairs] regarding salaries and the general conditions of service of members of the Police Force;
- to inquire into and deal with complaints, other than complaints relating to disciplinary action by any member;
- to exercise any other functions that may be imposed or conferred upon the Police Service Commission in terms of this Act or any other enactment.

The Police Service Commission, like all other Commissions established under the Constitution, is supposed to be independent, that is, not subject to the direction or control of anyone; and must exercise its functions without fear, favour or prejudice.

As can be seen, its remit is very limited. It has no say over the appointment or promotion of police officers. It can make no decisions or recommendations about how the police force should conduct itself. It has no disciplinary powers.

The Defence Forces

The Defence Forces consist of the Army, the Air Force “and such other branches, if any, of the Defence Forces as may be provided for by or under an Act of Parliament”. No other branches are, in fact, provided for by the relevant Act, the Defence Act.

(1) Command of the Defence Forces

The President is *ex officio* the Commander in Chief of the Defence Forces. In the exercise of his functions as such, the President has power to determine the operational use of the Defence Forces.

There is a Commander of the Defence Forces, appointed by the President. In appointing the Commander, the President must consult the Minister of Defence. In tendering any advice or making any recommendation about the appointment of the Commander, the Minister must consult with a board which consists of the Chairman of the Defence Forces Service Commission, the Secretary for Defence, the retiring Commander and one other person appointed by the President. The Commander’s term of office is four years and there is no provision for re-appointment. On the other hand, re-appointment is not precluded, nor is the Commander required to retire at the end of his term of office.

In terms of the Defence Act, there are Commanders of the Army and of the Air Force, who are also appointed by the President in essentially the same way as the Commander of the Defence Forces. The composition of the Board which the Minister must consult is slightly different: it consists of the Chairman of the Defence Forces Service Commission, the Secretary for Defence, the Commander of the Defence Forces and one other person appointed by the President.

The terms of office of the Commanders of the Army and Air Force are also four years and again there is no provision for re-appointment or requirement for the Commanders to retire at the end of their terms of office.

(2) Defence Forces Service Commission

A Defence Forces Service Commission is established by the Constitution. with:

- a chairman, who is the chairman of the Public Service Commission appointed by the President; and
- not less than two and not more than seven other members, appointed by the President.

The members must be “be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment, and at least 1 such member shall be a person who has held senior rank in the Defence Forces for periods which in the aggregate amount to at least 5 years”.

The functions of the Commission are to tender such advice and do such other things in relation to the Defence Forces as are provided for by the Constitution or by or under an Act of Parliament. The Defence Act specifies functions that are very similar to those of the Police Service Commission, being to:

- make recommendations to the Minister regarding salaries and the general conditions of service of members of the Defence Forces;

- inquire into and deal with complaints, other than complaints relating to disciplinary action, by any member of the Defence Forces;
- exercise any other functions that may be imposed or conferred upon the Commission in terms of [the] Act or any other enactment.

The same comments can be made about the Defence Forces Service Commission's terms of reference as were made above about the Police Service Commission.

The Prison Service

The Prison Service is established "for the administration of prisons in Zimbabwe and for the protection of society from criminals through the incarceration and rehabilitation of offenders and their re-integration into society".

(1) Command of the Prison Service

The Prison Service is under the command of the Commissioner-General of Prisons who is appointed by the President after consultation with the Minister of Justice who, before tendering advice, must consult the Prison Service Commission.

The Commissioner's term of office is four years, after which he should retire, irrespective of his age or length of service. As with the Commissioner-General of Police, the President can re-appoint the Commissioner for periods of not more than 12 months at a time.

(2) Prison Service Commission

A Prison Service Commission is established by s 100 of the Constitution, with:

- a chairman, who is the chairman of the Public Service Commission, and appointed by the President in terms of s 74(1) of the Constitution; and
- not less than 1 and not more than 7 other members, appointed by the President.

The members again must be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment, and at least 1 member shall be a person who has held the rank of Superintendent or higher rank in the Prison Service for periods aggregating to at least 5 years.

The functions of the Commission are described in the Constitution in the same vague terms as are those of the other service commissions, but the Prisons Act lists the following:

- to make recommendations to the Minister and the Commissioner in regard to the recruitment of persons to the Service and the qualifications for appointment and promotion to the various ranks in the Service;
- to approve the appointment, promotion, removal from office or reduction in rank of non-commissioned officers in terms of section nine;
- to inquire into and deal with complaints, other than complaints relating to disciplinary action, made by prison officers;
- to make recommendations to the Minister regarding remuneration and the general conditions of service of prison officers;
- to exercise any other functions that may be conferred or imposed upon it in terms of this Act or any other enactment."

The Prison Service Commission's remit is thus wider than those of the Police Service Commission and the Defence Forces Service Commission.

Intelligence service

The intelligence service – the Central Intelligence Organization (CIO) – does not feature in the present Constitution at all. It is not set up by statute. Indeed, the only reference in the statute law of Zimbabwe to this organization is in the Provincial Councils and Administration Act, which provides that the local senior CIO officer must be a member of the provincial development committee.

Executive's Powers

It can be seen that the Executive, in the form of the President, has considerable direct and indirect power over the security services. We will now consider the extent to which the Executive should have such powers, then look at the constitutions of other countries and see whether such powers are given to the Executive in those countries. It should, however, be obvious that different considerations apply to the Prison Service, the Police Force, the Intelligence Service and the Defence Forces.

Some general principles

The security services and the intelligence service are not employed to protect the interests of any particular political party; they are employed to serve the people of Zimbabwe as a whole. This much is stated in the present Constitution. The Defence Forces exist to defend Zimbabwe [they should not be used on foreign adventures which have nothing to do with the security of Zimbabwe and which are not a consequence of any treaty or other international obligations]. The function of the Police Force has already been mentioned.

The Constitutions of Kenya and South Africa put the matter beyond any argument. Both Constitutions impose general constraints over all the security services of their countries. The requirement to act within the law, including international law, is stressed. The Kenyan Constitution requires that national security “shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms”.

The Kenyan and South African Constitutions make it quite clear that the service services must be non-partisan, and should not prejudice a legitimate political party, nor further the interests of any political party.

Prison Service

Prisons are part of the justice system and are established for no other purpose. Arguably the prison service need not be in the Constitution at all as it is not part of the security services. That the prison service is part of the justice system is shown by the fact that the responsible minister is the Minister of Justice, not the Minister of Defence. It could also be argued that, to some extent, the Prison Service is a part of the civil service, albeit in uniform and subject to separate discipline.

In view of the specialist nature of the Prison Service's tasks, it is appropriate that there should be a Prison Service Commission separate from the Public Service Commission, composed of suitably qualified persons. These could include relevant public servants, former prison officers, and representatives of such bodies as prisoners' aid societies and prison reform societies. The functions of the Commission should be wider than they are at present; they should be similar to the functions of the Public Service Commission.

Thought may also be given to the desirability of allowing prisons to be run by organizations other than the prison service. This has happened in Australia, where some prisons are run by private companies on behalf of the state. If the prison service is not dealt with in the Constitution, this question would have to be decided by the legislature.

Intelligence services

As mentioned, the CIO is not established by statute. It is not part of the public service and legally has a fairly nebulous status, being simply vaguely described as “an organization established in the President’s Office for the protection of national security”. There otherwise appear to be no legal controls over the CIO. Clearly, this is not desirable. While there is certainly a need for the country to have an intelligence organization, the lack of any legal constraints means that such an organization could be misused. If popular opinion is correct, the CIO is indeed misused, in that it is believed to devote a great deal of its time investigating the activities of political parties other than the President’s party. It is widely seen as being a law unto itself, with no accountability to anyone other than the President. CIO operatives are, it is said, to be found in numerous government and quasi-government agencies. There can be no justification for this.

Members of the CIO are, in the end, public servants, in the sense that they are paid for by the public and thus ultimately should be accountable to the public, and there should be legal constraints on them and their organization. The South African Constitution specifically establishes an intelligence service and requires that:

“National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for –

(a) the co-ordination of all intelligence services; and

(b) civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.”

If the CIO is to be formally established as part of the security services, it needs to be decided whether, administratively, at least, it should be controlled by a commission. There certainly should be a formal command and rank structure and a formal system of discipline. At present there is a *lacuna* in the law.

The Law Society’s model constitution would require that any intelligence service should be established by an Act of Parliament. Controls over the appointment of a commander of the intelligence service are also proposed.

Police Force

The Police Force in this country is presently widely perceived to be partisan, as well as corrupt and inefficient. This perception should not be allowed to continue.

The functions of the Police Force should also be re-stated to include “the prevention and detection of crime”; the phrase “maintain law and order” may be too narrow.

By the very nature of the police force and its functions, there must necessarily be a degree of executive control. For example, the executive could require police

reinforcements to be sent to a place where there is a natural disaster. However, the executive should not be able to use the police force to harass its (the executive's) political opponents, nor should the executive be able to direct that particular persons be arrested.

The Commissioner of Police should be appointed for his professional ability and experience. He should, like all public servants, refrain from commenting on political issues and should not take sides. If he finds himself unable to serve a particular government because of its political views, the only course he should take is to resign. The requirement for the Commissioner to retire after his period of service, if adhered to, would do a great deal to ensure that the Commissioner is not beholden to the executive and that there is a reasonable turnover of commissioners.

If there is to be a *separate* Police Service Commission, it should be more obviously independent of the executive than the present Commission and have greater powers. The provisions regarding the National Police Service Commission in Kenya may be suitable as a model. They provide:

“(1) There is established the National Police Service Commission.

(2) The Commission consists of —

(a) the following persons, each appointed by the President —

(i) a person who is qualified to be appointed as a High Court Judge;

(ii) two retired senior police officers; and

(iii) three persons of integrity who have served the public with distinction;

(b) the Inspector-General of the National Police Service; and

(c) both Deputy Inspectors-General of the National Police Service.

(3) The Commission shall —

(a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;

(b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and

(c) perform any other functions prescribed by national legislation.”

Defence Forces

The defence forces should be professional bodies, not a group of politicians in uniform. Nonetheless, the executive should, subject to limitations, be able to deploy the defence forces in times of necessity. The South African Constitution allows the President to deploy the defence forces in co-operation with the police service, in defence of the Republic in fulfilment of an international obligation, and obliges the President to inform Parliament promptly if the defence forces are so deployed.

The Law Society's model constitution is somewhat more restrictive, proposing that —

“(1) With the authority of the President, acting on the advice of the Prime Minister and with the prior approval of the National Assembly, the Defence Forces may be deployed in Zimbabwe —

(a) in defence of Zimbabwe;

(b) in support of the Police Service in the maintenance of public order; or

(c) in support of the Police Service and civilian authorities in the event of an emergency or disaster.

(2) The President, on the advice of the Prime Minister and with the approval of the National Assembly, may order the deployment of the Defence Forces outside Zimbabwe in fulfilment of an international commitment or in defence of Zimbabwe's national security or national interests."

One point needs to be mentioned: the executive, when it legitimately deploys the defence forces, needs to have confidence in the commanders of the forces – not from the political point of view, but from the point of view of the competence of the commanders to fulfil their mandate. Incompetent commanders should not remain in command if that would be detrimental to the war effort. Thought would need to be given to how to achieve this end without allowing the power to remove a commander to be abused for other purposes.

A Single Security Services Commission for all Security Services?

The Law Society's model constitution proposes a Security Services Commission, to be responsible for the Defence Forces, the Police Force and the Prison Service, rather than a separate commission for each service, each headed by the same individual. The model also provides for a more transparent method of appointing commission members, with public participation possible and executive control much reduced.

Summary and Conclusions

- The present allows the executive, in the form of the President, both direct and indirect control over the appointment of the commanders of the security services, who can in effect remain in office as long as the President pleases.
- The intelligence services should be subject to statutory control as part of the security services.
- The security services should be professional and apolitical.
- The security services should be controlled, for the most part, by a security services commission which itself should be professional and apolitical.
- While the executive should be able to deploy the security services, such deployment should only be for purposes which are clearly set out in the Constitution.
- Provision should be made for the removal and replacement of security service commanders on the grounds of incompetence or unfitness for office.
- The prison service could justifiably be treated as not part of the security services, as their function has nothing to do with national security.