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TECHNICAL COMMITTEE REPORTS

SUBTHEME COMMITTEE 6.1
THEME COMMITTEE 6

PUBLIC ADMINISTRATION

29 March 1995

**SUBMISSIONS TO THEME COMMITTEE 6
SUBTHEME COMMITTEE 6.1
VOLUME 6**

INDEX

PUBLIC ADMINISTRATION		
1. Public Hearings/Workshop Submissions		
1.1 Office of the Provincial Service Commission: Western Cape	Response to the Subtheme Committee's First Report: Provincial Service Commission	1
2. Technical Committee Report on Submissions		
2.1 Seventh Report of the Technical Committee (16 March 1995)		2
4.2 Seventh Report of the Technical Committee (20 March 1995)		3
4.3 Eighth Report of the Technical Committee (Central Bargaining Chamber)		4
4.4 Eighth Report of the Technical Committee (Provincial Representatives)		5
4.5 Second Draft Report of the Technical Committee		6

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DATE
DATUM

1995-03-28

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Commission: Western Cape

Kantoor van die Provinsiale
Dienskommissie: Wes-Kaap

The Chairman
Theme Committee 6
Constitutional Assembly
P O Box 15
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Dear Ms Zardad

As indicated at the hearing held on 16th March 1995 a memorandum will be submitted by the following Provincial Service Commissions on those issues that we have consensus on:

Orange Free State
Western Cape
Eastern Cape

Confirmation from the following Service Commissions could not be obtained before 27 March 1995:

Eastern Transvaal
Kwa Zulu/Natal
North-West

The said memorandum is attached.

May I once again take this opportunity to express my appreciation for the consultation with the Provincial Service Commission.

Yours sincerely



D W AURET
PROVINCIAL SERVICE COMMISSION: WESTERN CAPE

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PUBLIC HEARING: PUBLIC ADMINISTRATION AND THE CONSTITUTION

1. INTRODUCTION

1.1 Question

Should the Public Service be regulated by way of a constitutional provision? If so, what should the content and form of the constitutional provisions be?

Answer

Yes.

The important role that the Public Service has to play necessitates that it should be mentioned in the Constitution in order to give it relevance in terms of structure and/process.

Possible principal characteristics that could be incorporated:

- professional
- career-orientated
- non-partisan
- efficient, effective, responsive to service needs
- loyal in service to public and elected government of the day
- accountable to Public and Parliament.

The regulation of the Public Service should however be done in separate legislation.

2. THE ROLE OF THE PUBLIC SERVICE

2.1 Question

How is the Public Service to be defined and which institution of government should be incorporated in the definition? For example the army, police, health, education, local government and parastatals, as well as administrative personnel in the judiciary, be covered in this definition?

Answer

The Public Service should be defined clearly reflecting the incorporation of the National Defence Force, Police Service and Education and National and Provincial level of government.

Recognition should be given that certain functions of the Public Service requires special regulation eg. Defence Force, Police Service, Education.

The great number of parastatals (preferred/alternative terminology 'public enterprises') requires serious review in order to rationalise/streamline and to increase their accountability (eg. submission of annual reports and budgets to Parliament).

Local Governments have separate and independent legislative and financial powerbase and could/should not be included as part of the Public Service.

2.2 Question

What should be the guiding values and principles for the Public Service?

Answer

The stipulation of section 212 of the Constitution should be retained with the additional inclusion of a Code of Conduct. It is recognised that the development of values/norms is a dynamic process arising from the complex interplay of forces within social relations in society and include inter alia the following:-

Basic rights of freedom of religion, integrity, justness, fairness, consistency and rule of law.

Supremacy of the Constitution.

Public accountability.

Efficient and effective service rendering to the community.

Democracy.

Freedom of speech, association and movement.

Transparency.

Consultativeness.

Community driven processes of needs determination.

2.3 Question

What would be appropriate, speedy and effective mechanisms for ensuring accountability of public servants for their actions or inactions?

Answer

A variety of mechanism could be used through legislatively and management channels:

Code of Conduct

Delayed hierarchical structures

Devolution of power with accompanying delegation of authorities together with appropriate financing and responsibility for actions

Efficient auditing

Inspections (Public Service Inspectorate)

Annual departmental reports to Parliament (compulsory)

Continuous evaluation of budgetary spending

Judicial committees of inquiry

Standing committees on Public Accounts

Debates in the National Assembly and Provincial Legislature

Powers of Public Protector (Ombudsman)

2.4 Question

How should the concept of a representative Public Service be defined and what affirmative (action) mechanisms and procedures will assist in achieving such representivity?

Answer

Representativeness should be defined according to section 212(2)(b) of the Constitution Act 1993 (no 200 of 1993).

Mechanisms and procedures for the implementation of a representative Public Service should entail inter alia the following:

- realistic time frames within the constraints of the budget and legislation.
- a system for members of disadvantaged communities which would enable them to receive goal-orientated training and development programmes for capacities building and accelerated promotional opportunities.
- incentives and relevant special and development programmes.
- a report back system from state departments to reflect progress made at regular intervals. Such a report back system to provide for evaluation and new timetables for programmes.

2.5 Question

Does representiveness entail both deracialisation, as well as transformation of state institutions?

Answer

Yes

The personnel of public service should reflect the composition of the broader community whilst establishing standards within the public service.

It is also recognised that new structures and people alone will not transform State institutions.

The management style (participatory) should be addressed to achieve open, transparent and user-friendly institutions.

2.6 Question

Should the public and public employees be entitled to participate in formulating policy on public services and should public service managers be responsible for creating the mechanisms for such participation?

Put differently, should there be a duty on public service managers to consult employees and the public in relation to the provision of public services?

Answer

- Public Administration takes place in a political milieu and therefore public managers are obliged to assist political office bearers w.r.t. public policy formulation especially in respect of executive, administrative and operational policy matters.
- Mechanisms should be established whereby the public and public employees can make inputs/contributions in order to formulate public policy.
- Community should become involved in certain line function inputs (eg. roads, welfare centres etc.) - see RDP White Paper.
- Participation by public in staff functions (supporting services) - not advisable as these matters are considered to be employer prerogatives.

2.7 Question

Should there be an obligation on public managers to monitor and evaluate the implementation of public policy and what would be the appropriate mechanism?

Answer

Public managers have the responsibility to evaluate the implementation of public policy through for instance cost benefit analysis, the budget, feedback from the community through RDP structures, auditing reports and project management.

2.8 Question

What forms of review and redress should the public/public employees have in relation to dissatisfaction with service delivery?

Answer

Existing legislation is considered satisfactory, (eg. Section 110-114 of the Constitution that refer to the public protector/ombudsman, Public Service Act and regulations, the role of personnel unions, courts).

3. POLITICAL AND ADMINISTRATION

3.1 Question

Should there be a separation of powers between policy-making and administration?

Answer

A professional public service requires proficient public servants who are capable of executing the policy of the government of the day without getting involved in party political matters. The public officials are dealing with the actual needs of the community. Through involvement of the community in the process of determining of needs as well as the execution of the administrative policy, they are in a better position to evaluate the appropriateness of the policy, to determine the pitfalls and to advise the political office bearers on alternative policy guidelines.

A clear distinction should be made between policy making on the political level and the formulation and execution of executive/operational/administrative policy.

3.2 Question

Should provision be made for limited political appointments in the South African Public Service? If so, what should be the procedure and criteria for such appointments?

Answer

No.

The Constitution must make provision for a career orientated, professional, non-partisan public service. This implies a corps of professional public servants that serve the government of the day. Therefore it further implies that political appointments in the Public Service are not justified.

It is however recognised that political appointments may deem to be necessary in which case a limited number (eg. 2 persons per department) could be appointed to the Ministry (not to the Department) and subject to the rules/guidelines regarding their appointment, remuneration and utilization

- * take role and functions of Director General into account to avoid possible conflict;
- * political appointee must have specific knowledge and expertise not available within department/public service;
- * contract appointments - parallel to period of office of political office bearer, role and functions of Director General and management not subordinate to that of political appointees (prevent conflict), and
- * political appointees must have no executive or decision making powers in the Department.

4. THE PUBLIC SERVICE COMMISSION

4.1 Question

Should an institution such as the Public Protector be embodied in the final text of the Constitution? Is there a need for another body, such as the Public Service Commission, that deals exclusively with ombuds aspects relating to the Public Service? If so, what should be its role, particularly in relation to appointments, promotions, human resource development and performance evaluation of departments and employees? How should it be composed? By whom should it be appointed and what are the appropriate mechanisms for public accountability? Should any provisions for the above be made in the Constitution?

Answer

In order to promote efficient public administration and protection of rights of both the provider of the service and the receiver of the service, it is imperative that 2 separate independent structures/institutions be established. Due to accessibility to and methodology in executing these functions one institution cannot deal with such a system/function/service.

- (a) Public Protector (in essence to look after the interest of the receiver of the Public Service ie. public).

In order to promote efficient public administration and protection of rights and to ensure the execution of public administration within the parameters of legislation it is essential that provision is made in the new constitution for the protection of the public. (Section 110-114 of Constitution relating to the Public Protector should be retained).

- (b) The Public and Provincial Service Commissions (in essence to deal with the provider of the public service).

No there is not a need for another body, over and above the Public and Provincial Service Commissions that deals exclusively with ombuds aspects relating to the Public Service. The Public and respective Provincial Service Commissions are considered competent to perform these functions effectively. It must be emphasised that the Public Service Commission/Provincial Service Commission is (are) a statutory body(ies)/commission(s) of Parliament/Provincial Legislation with wide ranging powers, which should be utilized as such. There is therefore no need for other bodies as duplication of functions and unnecessary expenditure could result.

Above institutions are jointly responsible to ensure an efficient, effective, corruption free society and fair and transparent administration and one included to being government closer to the people.

4.2 Question

What should be the respective roles and responsibilities of the Ministry for the Public Service and the Commission? What, if any, should be the relationship between the Ministry and the Commission?

Answer

The Public Service Commission is -

- (i) an agent of Parliament;
- (ii) an adviser to the government of the day on public administration matters, and
- (iii) is the guardian of the merit and efficiency principles pertaining to the Public Service.

As such the Public Service Commission performs the functions of an independent review body and is dealt with as similar such bodies (eg Auditor-General).

Members of Commissions and the officials of its office should therefore not be appointed in terms of the Public Service Act in order to ensure complete independence and objectivity. The appointment/removal process applicable to Commission members should be fair and in line with other review bodies (inter alia receive the attention of the full Parliament and not only Cabinet). The Commission must be able to operate independently and objectively.

The Public Service Commission is accountable to a Select Committee of Parliament (and not to the Minister). The Select Committee is to review the Commissioner's Reports and have a similar relationship to Commission as to that of the Auditor-General and other independent review bodies.

For this reason it is important that the role of the Public Service Commission be entrenched in the new Constitution.

In the light of the above and bearing in mind that the Public Service is considered to be a career orientated service, the Minister should not play a role with regard to the powers of the Public Service Commission as it could result in political interference in the career incidents of officials - and also influence efficiency.

The role of the Ministry for the Public Service and Administration needs further investigation. It is however clear that the administrative support to the Minister should be separated from the Office of the Public Service Commission so as to enhance the independent role of the Commission.

4.3 Question

What role should Parliamentary Select Committees play in relation to the Public Service and the oversight of policy formulation and implementation? Should the Public Service Commission be accountable to a Select Committee on the Public Service?

Answer

The area of jurisdiction of a Parliamentary Select Committee could be similar to that of the Public Service Commission. It should also deal with reports of committees/commissions of enquiry into departments as well as annual reports of public service institutions.

The Parliamentary Select Committee/Provincial Select Committee should be in conjunction with par 4.2 above and inter alia be responsible for the appointment of members of the Public Service Commission in conjunction with Parliament and with the Provincial Legislature in the case of Provincial Service Commission.

Yes, the Public Service Commission should be held accountable to a Select Committee in the Parliament (Provincial Service Commission accountable to Select Committee of Provincial Legislature).

4.4 Question

Should the Public Service Commission act as a body of appeal for public servants or should this role be entrusted to an independent agency?

Answer

The Public/Provincial Service Commission is an independent institution (see Constitution). An additional independent body of appeal for public servants is not necessary. The Public/Provincial Service Commissions can perform this role satisfactory.

The respective roles of the Public Protector, Public Service Commission and Provincial Service Commission should be clearly specified in the new Constitution (see stipulations in the respective acts such as the current Constitution and Public Service Act in this regard).

4.5 Question

Who should represent the State as employer in the bargaining process and who mandates these representatives of the State as employer?

Answer

The Public Service Commission as an impartial and independent body regulating the career incidents of public servants should not be regarded as the employer and therefore part of the official side.

The representatives of the Government as employer in the bargaining process would require careful consideration. The Public Service Commission could provide advice to the employer representatives for collective bargaining purposes (ie. provide accurate data, cost implications, strategic considerations relevant to the process).

4.6 Question

Should there be Provincial/Public Service Commissions? If so, what should their role be? What should be the relationship between the national and provincial Commissions? Should the Constitution contain any provisions on the above?

Answer

A Provincial Government necessitates a Provincial Service Commission to ensure that matters of provincial interest are addressed promptly and effectively. Provision must therefore be made in the Constitution.

It is recognised that national guidelines has relevancy with the proviso that the Provincial Service Commission can partake in the development and the unique Provincial needs could be addressed adequately within the framework of national guidelines.

This implies that Provincial Service Commission should formulate their own provincial guidelines within that of the national guidelines in order to ensure relevancy.

Duplication and overlapping of functions between the Public and Provincial Service Commission should be addressed to promote cost effectiveness.

4.7 Question

How should norms and standards of public administration and management be developed and what, if any, should be the instruments of delegation from national to provincial governments?

Answer

In order to ensure clarity in role and functions of the Public and relevant Provincial Service Commissions there is a need to clarify norms and standards.

The development of standards should incorporate a method whereby the relevant roleplayers and in particular the Provincial Service Commission could make the necessary contribution. In this regard it must also be stated that the development process be dynamic so that it can be responsive to the changes in service needs of the Public Service.

Legislation (ie. policy frameworks) should be an instrument of delegation from national to provincial level.

5. THE PUBLIC SERVICE AS AN AGENT OF CHANGE

5.1 Question

Should the Public Service act as agent for development? If so, how can the Constitution create an enabling framework for such action or should this matter be dealt with elsewhere?

Answer

The managers at different levels in the departments should be entrusted with the powers and delegations to implement participative community structures to ensure people-centred policy making and service rendering. Appropriate structures for consultation should be negotiated between officials and the representatives of the community where interest groups are non-existent.

The Public Service should be a major role player in the development process. Provisions should be made under a section of the new Constitution eg. 212(2)(g) 'shall create mechanisms for open and interactive policy making between citizens, communities and government and promote social partnership for service rendering and development.

Further details in this regard can be entrenched in subordinate legislation.

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SEVENTH REPORT TO SUB-THEME COMMITTEE 6.1

PROVINCIAL PUBLIC SERVICE COMMISSIONS 16 MARCH 1995

Question 1

Should the Public Service be regulated by way of a constitutional provision?

The Public Service is of such importance that provision should be made in broad terms but not in detail.

Reference was made to the Principles in Schedule 4 of the Constitution, which dictated that there shall be a Public Service, that there shall be fundamental values and principles and that there shall be a Public Service Commission.

Question 2

The Role of the Public Service

- 2.1 It was proposed that there should be one unified Public Service as presently defined in the Public Service Act, and that the security services and education be regulated by separate statutes. Local government should not be incorporated in the definition. The position of parastatals was a difficult one - there are too many and their accountability needs to be reviewed.
- 2.2 Reference was made to section 212 of the Constitution and the proposed code of conduct which spell out the value system.
- 2.3 There are a variety of mechanisms aimed at ensuring accountability such as the Auditor General, Public Protector, Parliament and its Select Committees etc. Procedures should, however, be shortened. Inspectorates should be established as part of the Public Service Commission and part of Provincial Service Commissions, to inspect individual departments.

- 2.4-2.8 There is a need for deracialisation and transformation/ re-organisation, to ensure that structures are brought nearer to the people and are acceptable to the people. The management style/approach within government structures must change, and there must be a break with the status quo. Participatory and open management must become watch words.

Question 3

Politics and Administration

There cannot be a separation of powers between policy-making and administration. Policy-making occurs at different levels, and public servants must be involved in policy-making.

Political appointments in the sense of career public servants in line function capacities, are not supported. There is, however room for such appointments on a contract basis and linked to output.

Question 4

The Public Service Commission

- 4.1 There is a need for a Public Service Commission. It is not a luxury, but an essential pillar of a democratic Constitution.

Matters regarding the Public Service Commission should be dealt with along the lines of the Auditor-General in the Constitution. The independence of the Public Service Commission should be further addressed in separate legislation.

Members should be appointed by the President subject to Parliamentary (Select Committee) confirmation. The Public Service Commission should issue broad policy frameworks in consultation with Provincial Service Commissions and should lay down clearly defined norms and standards.

- 4.2 The Ministry for Public Service and Administration is in a difficult position, by not having a bureaucracy. This could be overcome by attaching the Ministry to the Office of the President.
- 4.3 The Parliamentary Select Committees should play a role in regard to the appointment of members of the Public Service Commissions, and the Public Service Commission should be accountable to the Committee.
- 4.4 The Public Service Commission should not act as a body of appeal, if public servants are to be covered by the Labour Relations Act administered by the Department of Labour.
- 4.5 Senior officials who have been properly mandated and who have the necessary negotiating skills should represent the State in the bargaining process. The Public Service Commission should not be regarded as part of the employers side and should stay out of industrial relations.
- 4.6 Provincial Service Commissions are necessary and should operate within broad frameworks laid down by the Public Service Commission.

The position of Provincial Public Service Commissions should be enshrined in the Constitution.

SEVENTH TECHNICAL COMMITTEE REPORT

TO SUB-THEME COMMITTEE I

THEME COMMITTEE VI

Public Administration

SUBMISSIONS : LOCAL GOVERNMENT REPRESENTATIVES

20 March 1995

Part I General discussion and clarification of issues

The discussion did not follow the format of the first report, as the participants argued that there was insufficient clarity in the constitutional debate about the status of local government as a third tier of government. The chairperson asked the parties to consider whether local government should be included in a broader definition of the Public Service or Public Sector, thereby establishing a set of values and principles common to all levels of government, while allowing for flexibility in regulation and management. An input summarising the earlier submissions on local government, public administration and the constitution was given.

The following views were expressed:

- 1 Local government's role in relation to reconstruction and development should be provided for in the Constitution. As local government is the implementer of public policy at local level, regulatory instruments should have constitutional direction. The constitution should provide a broad policy framework, but allow flexibility re structure and management of local government institutions.
- 2 While a common set of values and principles should apply, administration at local government level should be organised separately from administration at central and provincial levels of government.
- 3 The view was expressed that the governance arrangements at local government level would be distinct from those at central and provincial level and that oversight mechanisms should also be distinct. There was no finality on what particular oversight mechanisms would be appropriate, though the options raised in previous submissions were cited.

- 4 The discussion also focussed on existing imbalances between revenues and standards of service delivery between rural and urban local governments and the need for promoting equity in services. The debates about autonomy or relative autonomy from central government were raised, but the discussion was inconclusive.
- 5 In terms of this discussion, it was apparent that an urgent meeting between Sub-theme Committee 1 and Theme Committee 3 be held to clarify key issues relating to local government and the Constitution.
- 6 In relation to the questions posed about the role of the Public Service Commission in the first report of the Sub-theme Committee, the participants expressed the view that the Commission should play an advisory and oversight role, rather than a regulatory role, but expressed the view that the PSC should have no jurisdiction in relation to local government.

Part II Focussed discussion: constitutional issues

- 1 There was a consensus view that local government should be defined as part of the broader Public Service, governed by a common set of values and principles. However, the relative autonomy of local government must be recognised and local government must be regulated by separate acts from the civil service.
- 2 It appeared that a number of parties saw the need for a mechanism to monitor that constitutional and organisational principles are upheld, as well as mechanisms for addressing imbalances in capacity between rural and urban local governments. No proposals on possible mechanisms were forthcoming.
- 3 The view was expressed that the principles distilled in the Constitution should be applicable across all levels of government.

For example, the principle non-partisan was open to interpretation and the essence of the principle should be stated more clearly.

The principle of accountability was also subjected to analysis - the nature of accountability to policy-making bodies, the nature of accountability to the public. Constitutional principles IX (open government and freedom of information) and XX (effective administration at all levels of government) were cited. Other mechanisms for public accountability, such as the Public Protector would also apply to local government administrations. It was pointed out that local government should consider proactive

mechanisms for accountability, not only accounting once money has been spent.

The view was expressed that the constitution should enunciate the principle of representivity, but that mechanisms to attain representivity such as affirmative action should be a matter of policy and law.

Other guiding principles proposed include:

professional; efficient and effective; development oriented; output oriented; non-racial & non-sexist; interacting with civil society.

- 4 It was stated that, while it was not necessary to replicate models of administration at central and provincial level at the local government level, some consideration should be given to whether or not a system of limited political appointments should apply at the local government level? For example, should an incoming Council be authorised to appoint a new Town Clerk or should the present system of "tenure" continue?

It was stated that "political appointments" take place unofficially, while senior officials are often paid to leave should their services no longer be desired. Another view stated that an incoming Council may want an injection of new ideas and a commitment to new policies. Should there be greater transparency in appointments at the most senior levels of local government administration? For example, should town clerks or CEO's be appointed on a renewable contract?

- 5 The idea of a central agency or Commission to act as an advisory or oversight mechanism for local government was mooted. It was argued that it would first have to be determined what such a body would monitor or oversee, before views on the establishment of such a body could be expressed. This debate was inconclusive.

One of the written submissions expresses the view that the respective roles of the Ministry for the Public Service, the Public Service Commission and the Parliamentary Select Committee should be as follows:

- | | | |
|----------|---|---|
| Ministry | - | implement and monitor the application of public service policy |
| | - | lead negotiations on conditions of service on the employer side |
| PSC | - | transformation and restructuring of the public service |
| | - | formulation of policy with respect to conditions of service |

- Select Committee
- perform an oversight role IRO the implementation of public service policies
 - the PSC should be accountable to the Select Committee

6. Responses to the remaining points were received in written submissions from the North-West province and the Richards Bay TLC:

- * The Ministry of Public Service and Ministry of Finance should represent the state as employer. Mandates for bargaining should be given at both national and provincial levels.
- * Public participation in formulating policy on public services should take place, but decisions on policy should be taken by the political office-bearers.
- * Employee organisations should influence policy-making at the central bargaining chamber and implement and oversee the application of policy at the provincial level.
- * Norms and standards should be debated at both provincial and national level and be concluded at national level.
- * The Constitution should include a developmental ethos, and this should underpin all provisions in the chapter on the Public Service.

Luci Nyembe & Piet van der Merwe
21 March 1995

EIGHTH TECHNICAL COMMITTEE REPORT

TO SUB-THEME COMMITTEE 6.I

PUBLIC ADMINISTRATION

SUBMISSIONS / EVIDENCE : CENTRAL BARGAINING CHAMBER

27 MARCH 1995

Question 1

There is a need for a provision in the Constitution in terms of broad principles/values along the lines of provisions in the present Constitution.

The principles should outline and protect the rights and responsibilities of public servants, whilst the issue of affirmative action and gender equality should also be addressed.

Question 2

Two views were expressed. One was that local authorities and parastatals be excluded and that certain departments (eg. defence, police, prisons and justice) be regulated by separate statutes.

The second view was that all institutions controlled and funded - partially or wholly - by the State should be included. This implies that all departments, local authorities and parastatals be included in the definition.

Question 3

There should be no separation of powers.

Appointment of public servants at all levels, should be on the basis of competency and professionalism.

There is a need for ministerial advisors, but there should be clear guidelines for such appointments. Their relationship with heads of departments and other departmental officials should be known to all.

Question 4.1 - 4.7

There is a need for a Public Service Commission or similar institution as a body of Parliament. Members must be appointed by the President subject to Parliamentary confirmation.

The Commission should advise the Government and should have the powers to investigate departments and report to Parliament.

A department of Personnel Administration headed by a Minister was needed. It should be responsible for policy implementation by departments, training etc.

Question 4.5

The employer should be represented by a delegation from the Minister's department, including the Minister's advisor.

The delegation should be fully and clearly mandated.

EIGHTH REPORT TO SUB-THEME

COMMITTEE 1

THEME COMMITTEE VI

EVIDENCE/SUBMISSIONS : PROVINCIAL REPRESENTATIVES

27 MARCH 1995

QUESTION 1.

The principles in the Constitution relating to the Public Service are binding, and therefore the Constitution should provide for broad principles and guidelines.

QUESTION 2.1

There are differences between individual departments and between departments on the one hand, and local authorities and parastatals on the other. There are, however, overarching principles / common values which are applicable to all departments, local government and parastatals and these should be provided for the Constitution.

The individual differences can be catered for in separate statutes, and the Constitution should provide for such flexibility.

QUESTION 2.2

In addition to the principles provided for in the present Constitution, the Public Service should be development orientated, and linked to civil society.

QUESTION 2.3 - 2.8

A distinction was drawn between formal linear accountability and horizontal accountability. Linear accountability entailed the accountability of public servants to their seniors right up to the level of their political principals and to Parliament. Horizontal accountability has to do with accountability to civil society and entailed responsiveness to the needs and voices of civil society.

Only the principle of accountability should be enshrined in the Constitution, whilst the How should be regulated in separate statute(s).

QUESTION 3.1

Public servants have a role to play in policy-making and must give feed-back on policy implementation and responses received from communities. The ultimate responsibility for policy-making lie with politicians.

QUESTION 3.2

Mention was made of the fact that only Ministers have the right to appoint at all levels. Ministers delegate these powers, and appointments must be made in accordance with policy frameworks laid down by the Public Service Commission.

Three models were identified in regard to political appointments.

One, no political appointments

Two, a limited number of Ministerial advisors appointed on a contract basis

Three, a number of Ministerial advisors on a contract basis, as well as the appointment of officials in the management echelons on contract. Such appointments should be on the basis of expertise and management capabilities and not necessarily on the basis of party political affiliation.

The third model was generally supported, although a warning note was sounded against too much reliance on advisors with no formal accountability.

QUESTION 4.1

There was general agreement that there should be a Public Service Commission and that there should be a separation of the roles, responsibilities and functions of the Ministry for the Public Service and the Public Service Commission.

The model which was favoured, entailed the following:

One, the appointment of an independent Public Service Commission as a body of Parliament along the lines of the Auditor-General. Appointments should be made

by the President subject to confirmation by Parliament.

The Public Service Commission should:

- advise the Government on policy issues
- report to and be accountable to Parliament through a Select Committee on the Public Service
- inspect departments and bring out reports to Parliament

Two, a National Department for the Public Service, headed by a Minister should be established.

The Department should be responsible for policy implementation by individual departments, for training and for the efficient management and smooth running of the public service at both national and provincial level.

QUESTION 4.6

Different views was expressed in regard to Provincial Public Service Commissions. One view was that such Commissions would be a waste of money if they did not have real power.

The other view was that they could lead to greater efficiency by shortening the channels of communication and decision-making.

Agreement was reached on the following model.

One, a National Public Service Commission with provincial representation and involvement which will advise on national norms and standards etc.

Two, a National Department for the Public Service responsible for ensuring policy implementation and the smooth and efficient running of the public service at national and provincial level.

Three, structures at provincial level (not necessarily Provincial Public Service Commissions) to assume responsibility, under delegated authority, for policy implementation and the smooth and efficient running of the public service at provincial level. The structures could also be vested with powers of inspection and should report and be accountable to Provincial Legislatures.

Lucy Nyembe and Piet van der Merwe

28 March 1995

SECOND DRAFT REPORT OF SUB-THEME COMMITTEE 1

THEME COMMITTEE VI

CONSTITUTIONAL ASSEMBLY

Public Administration

Note

This report is not yet in the final format required in terms of the guidelines for Theme Committee reports. It is a synthesis of the reports and discussions based on oral and written submissions received thus far. Once the sub-theme committee has debated the issues and perspectives raised in the hearings and workshops thus far, and has expressed its views on the questions outlined in the first report and any other pertinent issues, the report will be drafted in the required format.

As parties have participated in the debates and hearings, this report is not exhaustive but lists the major points and perspectives debated thus far. Should there be any serious omissions, kindly point this out to the authors soonest.

Question 1

One view is that the existing provisions on public administration are too detailed. It is proposed that the constitution provide a minimalist, flexible framework for a developmental public service and that the public service be regulated by statute(s). The constitution should provide a governing framework outlining the democratic assumptions on which the public service is based and establish a common set of basic values and principles applicable to all public service institutions.

Another view is that the existing provisions should remain with some minor amendments.

Question 2.1

One view is that the Public Service should be broadly defined as inclusive of institutions of all levels and sectors of government including local government, parastatals and security services with a common set of fundamental values and principles, while at the same time recognising the distinction between, on the one hand, national and provincial departments of the public service, and on the other hand, local government, parastatals and the security services.

It has been suggested that the constitution could define the "Public Service/Broader Public Service/Public Sector", while

allowing for regulation of different types/groups of institutions by separate statute, and allowing for separate oversight arrangements.

Another view is that the public service be narrowly defined and should exclude, in particular, local government and parastatals. Note: In terms of the Interim Constitution, requests may be made to the Public Service Commission to give advice in relation to institutions either partially or wholly funded by government.

Question 2.2

The following is a list of the key values and principles proposed thus far. The exact nature of the formulation of each must be considered. It must also be considered whether all the listed principles apply to the agreed definition of the Public Service (broadly defined) or public service (less broadly defined), as the case may be.

- * impartiality and equity in relation to the provision of services;
- * efficiency and effectiveness in relation to developmental and constitutional objectives;
- * professional and ethical conduct of public servants;
- * a broadly representative public service linked to deracialisation, flatter hierarchies and best management practice;
- * accessibility of services and information to the public;
- * responsiveness to the needs of citizens and communities;
- * transparency and openness in government and administration;
- * objectivity and equity in relation to employment practices;
- * a developmental orientation;
- * democratic, structured public participation in public policy-making and management;
- * non-hierarchical, democratic and transparent in relation to the role of public employees in public management;
- * accountability to the structures of government and to the public.

Principles which were debated included the notion of career-orientation.

Question 2.3

The discussion suggests that existing constitutional mechanisms for accountability are acceptable as far as they go, but that they are largely complaints based mechanisms which deal with accountability for past actions. Views were expressed that real concerns about proactive measures (before the fact/act) have not been sufficiently attended to.

Question 2.4

The view appears to be that the concept of a broadly representative public service is acceptable and that mechanisms for attaining such representivity should not be referred to in the constitution, but left to policy and statute.

Question 2.5

It is the general view that representivity should be linked to the deracialisation and transformation of state institutions to ensure employment equity and effective service provision.

Question 2.6

It is the general view that structured public participation in public policy-making is highly desirable and that appropriate, workable consultative mechanisms should be designed and established.

Question 2.7

It is the general view that monitoring and evaluation of public policy implementation should be an essential feature of public administration and that mechanisms should include internal arrangements in the public service, as well as appropriate oversight bodies/arrangements.

Question 2.8

The view has been expressed that the existing mechanisms for redress for the public and public employees, including the courts, independent oversight agencies and other statutory remedies are the appropriate institutions and procedures. It was acknowledged however, that the institutions and procedures may require review to strengthen the right to redress.

Question 3

It is the general view that a strict separation of policy-making from administration was theoretical rather than practical, and that in reality the policy-making process was complex with senior administrators playing a significant role in policy formulation, if not direct decision-making. The debates tended to favour a transparent system of limited political appointments at the various tiers of government, although there was no unanimity on whether this should be "inside" or "outside" the public service ie. ministerial advisory teams only and/or including appointments of Heads of Departments. The general view suggests that limited political appointments should be distinct from the "career public service" and there was a strong view that Heads of Departments should be limited political appointments on a contract basis.

The question for the sub-theme committee to debate is - if the notion of limited political appointments is desirable, how should the concept be formulated in the constitution?

Question 4.1

(a) The view was expressed that, if the Public Service Commission acts as an independent advisory agency to government on overseeing and promoting merit and equity in appointments and promotions and as an agent for administrative

transformation, then it should have the power to investigate complaints in relation to practices in the public service.

If, however, it continues to function as a central personnel agency, it may not be competent to investigate practices in relation to which it has issued guidelines for operational management.

(b) No firm views were expressed on the composition of the PSC. This suggests that composition is not a contentious issue.

(c) The general view is that the Public Service Commission should be institutionalised in the constitution. One view is that the role of the PSC be defined in the constitution, but that its functions and powers be regulated by statute. Another view is that the constitution should define its functions and powers.

(d) Various views have been expressed on the procedure for appointment including appointment by the President on the recommendation of the relevant Parliamentary Select Committee and/or the relevant Minister.

(e) Views expressed suggest that the Commission be accountable to Parliament through the President and the relevant Parliamentary Select Committee.

Question 4.2

One view is that the Commission should be an independent advisory body tasked to ensure merit, equity and representivity in appointments, promotions and other relevant personnel practices, to act as an agent for transformation of the public service and to promote a development orientation for the public service. It was suggested that this would require the Commission to play a significant role in promoting a human resource policy framework aimed at meeting the above objectives.

This view proposes that the Commission's role should not be that of a central personnel authority or manager of the macro-organisation of government. Instead the Ministry for the public service should manage the administrative policy decision-making

24 Mar. 20 1980

and implementation process and be responsible for co-ordinating effective public management on a day to day basis.

The Commission should play an advisory role to the Ministry for the Public Service and other ministries.

Another view is that the Commission should continue to exercise the powers and functions enshrined in the Interim Constitution.

Question 4.3

The general view is that the relevant Parliamentary Select Committee should play a crucial oversight role in relation to the Public Service Commission and in relation to the formulation and implementation of administrative policy and procedures and that the role of the Parliamentary Select Committee in relation to the Public Service be provided for in the constitution.

Question 4.4

The general view is that the courts are the most appropriate body of appeal at the present time.

Question 4.5

The general view is that the Ministry for the Public Service and representatives of other relevant ministries, mandated by Cabinet, should represent the state as employer.

Question 4.6

One view is that Provincial Service Commissions should be retained, particularly if the role of Commissions is to be defined as agents to promote merit, equity and transformation towards a developmental ethos and orientation in the public service. Those submissions which argued for the continued role of the Commission as a central personnel/management authority also argued in favour of retaining Provincial Service Commissions.

A number of submissions argued that they did not see that value of Provincial Service Commissions, particularly if they were to be defined as equivalent to a central personnel/management authority at provincial level.

Question 4.7

The general view was that norms and standards should be developed as the outcome of a process of consultation with major stakeholders interested in the particular issue under consideration.

Question 5

The general view was that the public service should be an agent for development. One view was that this should be provided for in a minimalist, flexible provision in the constitution, possibly as a constitutional principle. Another view was that this was a policy not a constitutional issue.