

9. TRANSITION IN SOUTH AFRICA

The platform:

- Dr Zola Skweyiya, Minister for the Public Service and Administration, South Africa
- Dr Sibuyi Vil-Nkomo, Commissioner, Public Service Commission, South Africa
- Sir Kenneth Stowe, Chairperson, CAPAM Steering Committee (Chairperson)

The presentations on the transition in the Public Service of South Africa illuminated a daunting task. Apartheid has left separate public service organisational structures in its wake which must be unified. The principled and remarkably transparent steps which have been taken towards unification and rationalisation, while moving towards a more representative service and while protecting the rights of existing public servants, are impressive reminders of what can be achieved with vision and determination.

These moves highlight a particular paradox. In confronting the legacy of apartheid, the Public Service in South Africa must focus on consistency in systems and structures to achieve a unified service. As this Conference indicated, Governments across the Commonwealth are reforming the public service in response to a renewed emphasis on the responsibility of government to be both efficient and accountable, and to the rising expectations of citizens concerning quality. These pressures are forcing governments to adopt innovative and diverse organisational forms and management practices within the public service. The Public Service of South Africa has a need to achieve unification of the Public Service at a time when organisational uniformity is seen to be a limitation to efficiency.

Unity must be distinguished from uniformity - of structures and of conditions of service - if excellence is to be recognised and encouraged at individual and organisational levels.

A regional CAPAM seminar planned for June 1995 to be hosted by the Government of South Africa will draw lessons from the experiences of countries in the region and elsewhere concerning the impact of recent human resource management reforms within the public service. In particular, the seminar will assess the implications of managed diversity in public service terms and conditions, in recruitment and retention practices, and in organisational structure, for a representative workforce functioning within a transparent and accountable framework.

Government in transition: a South African perspective

Edited extracts from a presentation by Dr Zola Skweyiya, Minister for the Public Service and Administration, South Africa

The theme of this Conference is highly relevant to our situation as the South African Government, unlike many other governments, may be regarded as experiencing a dual transition.

First, we are experiencing a constitutional and political transition. South Africa only a few months ago adopted an interim Constitution after three years of difficult negotiations. In terms of this Constitution, we held our first democratic elections and established Governments of national unity at both national and provincial levels. Our new constitutional and political arrangements reflect the spirit of reconciliation which so dramatically changed South Africa's course. Our transition at this level is, however, far from complete. We still have to draft and reach agreement on a final constitution.

Second, we are also experiencing a transition at the institutional level of Government. I intend to focus my address on the issues confronting us here, as I believe our situation is special in the sense that we are required to change the actual nature of the South African State. To understand the challenges we have to contend with, one has to understand the present state of the South African society.

The current situation

The legacy of apartheid has left us with a country characterised by huge imbalances and tremendous inconsistencies. To some, South Africa is a country of affluence and luxury, to others it is a country of dismal poverty and deprivation.

Poverty afflicts fewer than two per cent of whites, but more than fifty per cent of the black population. Ten per cent of black children compared to one per cent of white children die in infancy. Per capita, whites earn 9.5 times the income of blacks and live on average 11.5 years longer. These are just some of the statistics which indicate the anomalies prevalent in our society. I can quote many more. There is in fact not a single sphere in our society which has not been affected by the consequences of apartheid.

The challenges of reconstruction and development of our country and the community as a whole are consequently enormous, and obviously we need a comprehensive approach and coherent plan if we are to restore law and order, improve people's lives and bring about a more just society. For this purpose, we have drafted a Programme for Reconstruction and Development which articulates our commitment to these goals.

The challenge for the Public Service

Although we recognise that non-governmental and community-based organisations as well as the private sector will play their part, there is no doubt that it is up to the Public Service, as the Government's most important instrument, to normalise our society. However, the Public Service needs to be reoriented to attain the objectives of our Programme for Reconstruction and Development.

As an organisation, the Public Service of the old South Africa was fragmented since it was created along racial lines. It consisted of 30 central departments, four provincial administrations and three own affairs administrations. The four so-called ethnic homelands and six self-governing territories also had their own Public Services with their own departments. Our Constitution now provides for only one Public Service to serve the national Government and nine provincial administrations. We consequently had to unify the old structures into a single Public Service, and deploy them in new national departments and provincial administrations. This could only be done once the functions of Government were properly evaluated and detailed plans for implementation drawn up.

An important shortcoming of the present Public Service is the fact that in terms of its composition, it shows serious imbalances as regards representation of our different population groups. The problem is compounded by a gross underrepresentation of women, particularly black women. Our Constitution requires us to promote an efficient public administration broadly representative of the South African community. We have therefore initiated short- and long-term plans to correct the imbalances that exist.

The short-term plan includes the advertising of more than 11,000 existing vacancies and also providing for the creation of a limited number of additional posts, should suitable candidates be attracted. The long-term initiatives include the granting of bursaries to under-represented groups and the training and development of new recruits.

We have made this process completely transparent by discussing it with our trade unions and communicating our intentions to public servants and to the general public. We have also initiated a process for the drafting of a comprehensive policy framework in this regard in consultation with the trade unions forming part of our central collective bargaining structure.

All this will obviously take some time. We will, however, not be satisfied until we have achieved our goals in this regard. A broadly representative Public Service will not only be more legitimate from a constitutional point of view, but will also be more effective as it will be more in touch with society's needs and more responsive to both the elected politicians and the public.

Another problem we face in the Public Service and which militates against efficient service delivery, is the existence of discrepancies in the terms and conditions of service of public servants. These discrepancies are one of the consequences of having had different public services in South Africa.

To provide the necessary legal basis to address this problem, we have enacted a new Public Service Act, which means that all public servants are covered by the same Employment Act. This enables us to proceed with the process of unifying the public services and applying the same measures to all public servants. We have also issued a consolidated set of regulations and codes which will apply to all South African public servants.

We are now engaged in the task of rationalising salaries, salary-scales and allowances. Although this is obviously a very sensitive process, since vested interests are involved, we are confident that we will soon find a solution which will be acceptable to our trade unions.

We have also made considerable progress in rationalising the pension benefits of public servants. Considering that this action involves eight pension funds and 1.2 million public servants, you will appreciate the enormity of the task. We intend rationalising the pension funds and benefits of the former public services into a single pension fund and ensuring that no employee is prejudiced in the process.

I also wish to refer to the labour rights of public servants as a factor which until very recently had a detrimental effect on service delivery in terms of unnecessary labour unrest and low motivation and morale. In the past, many public servants were denied fundamental rights such as the right to bargain collectively and to be protected against unfair labour practices. We have made an important start in redressing this situation by extending existing public service labour legislation to all public servants. All public servants now have the right to form and join trade unions, to bargain collectively, and to use dispute resolution mechanisms. Public servants also have access to the industrial court.

Our labour legislation still needs to be refined further in view of developments in the labour field. We will do this in consultation with the trade unions who form part of our central collective-bargaining structure.

Training for the future

Consistent with the Government's aim of paying special attention to human resource development, we have identified the training and development of serving and prospective public servants as one of our highest priorities. We are urgently focusing on this area since the inferior system of apartheid education and

discriminatory legislation have marginalised the majority of South Africans. We intend to redress this and enlarge the pool of skilled public servants.

The Training Institute of the Public Service Commission has been called on to transform both its structure and policy direction to meet the new challenges . The Institute will establish partnerships with other tertiary educational institutions, such as universities and technikons, which will be involved in training serving personnel and new entrants. Mechanisms have also been established to allow it to obtain external support, including funding, in order to reach its objectives.

We would like to call on the Commonwealth to assist us through these mechanisms to produce a well-trained Public Service corps. We will do all we can to encourage public servants to become more development and community-oriented. Through training we hope to inculcate a professional ethos in public servants so that it is possible to restore the public's trust in the Public Service and to enhance efficiency. We expect the code of conduct which we are presently developing to strengthen our initiatives in this regard.

The organisational restructuring of the South African Public Service

Edited extracts from a presentation by Dr Sibuyi Vil-Nkomo, Commissioner, Public Service Commission, South Africa

Transition in South Africa has required a major overhaul of our Public Service organisational arrangements. I wish to focus specifically on this area as I believe that a task of these proportions is rare in most countries. Despite our country's highly publicised constitutional and political transformation, this is a facet of our transition which is not widely known. The importance of this task can, however, not be overemphasised as it entails the rebuilding whole levels of Government, and the restructuring and redeployment of the Public Service. You will also appreciate that the successful and expedient finalisation of this task is regarded as crucial in ensuring a smooth transition and a stable Public Service.

Rationalisation and reallocation of functions

Our Constitution enables us to make the necessary changes by providing for the rationalisation of all existing institutions performing governmental functions with a view to establishing an effective administration at national and provincial levels. This entails the reallocation of functions to the national and provincial levels of Government, according to their legislative competencies.

Although our Constitution contains a list of the legislative powers to be executed by the provincial governments, the national Government may also adopt legislation in regard to these functions in certain circumstances. Such legislation includes laws dealing with minimum standards and uniform norms. As a whole our Constitution can be said to provide for a very delicate balance between the power of the national Government and that of the provincial governments. This obviously complicates the allocation of national and provincial governmental functions. The problem is compounded by the previous governmental structures which were created along racial lines.

Despite all the complications, the Public Service Commission set itself the task to comprehensively review first and second tier governmental functions, in order to advise Government on their proper location. The two principles utilised as the primary points of departure were subsidiarity and empowerment.

The subsidiarity principle postulates that a Government programme or function must not be assigned to a higher level of Government, if it can be dealt with satisfactorily at a lower one. The Commission views this as the organising

principle that, above all, must be applied if communities are to be successfully involved in the processes of governance and administration.

The empowerment principle postulates that where the power to decide or act on a certain matter has been assigned to a government authority at a lower level, any government authority at a higher level must, as far as possible, be excluded from interfering with that power.

Arising from a function analysis made by the Commission, a data-base was compiled which provided a valuable basis for the determination of the functions of the various new departments and administrations and the development of their organisational structures.

Blueprints were then developed for each of the main functions of Government, showing their rational deployment over the levels of Government. Each of these blueprints was cleared with the key actors involved in the execution of the function.

Thereafter, new departmental models were developed. This involved defining the main units of administration at the national and provincial levels of Government, and determining their functional content. After these models were cleared with the newly-elected Government of National Unity, the restructuring process could formally commence.

The principles of restructuring

In restructuring the Public Service, the following principles guided our actions:

- there had to be orderly continuation of services;
- no legal uncertainty should exist as regards the transition measures and actions;
- the transition had to be brought about as fast as possible without undermining order and stability;
- the cost of the transition process had to be kept as low as possible; and
- measures and programmes for transition had to be cleared with the appropriate elected authorities.

An interesting feature of our Constitution is its transitional provisions which had the effect that, from the time of assumption of office by the President, all Government powers, including provincial powers, were initially vested in the

national Government, to allow time for the orderly establishment of provincial governments. This was confirmed by a proclamation of the President which assigned the administration of all regional laws to national Ministers.

Phased change

A phased approach was then embarked upon to rationalise the organisational structures of the 11 former public services of the Republic of South Africa (RSA).

In the first phase, with the proclamation of the Unified Public Service Act, 42 new departments, including nine provincial administrations, were created. This Act replaced all other laws on public services and legally created a single new Public Service for all of South Africa.

In the second phase, the administration of the laws of the former so-called Transkei Bophuthatswana Venda Ciskei (TBVC) states and self-governing territories, as well as the ordinances of the old RSA provinces, were transferred to the new provincial governments. Almost 800 regional laws were involved. The assignment of the administration of RSA laws is now receiving priority attention. This is a task of considerable complexity as the laws in question were originally written for application in the whole of the country as a unitary entity. A great deal of analytical work is required regarding legislation and in many instances substantial amendments to legislation will be necessary in order to ensure effective application in the provinces.

In a third phase, the new departments and provincial administrations were effectively put into operation through the transfer of functions, posts, personnel and other resources from existing institutions to the new ones.

In a fourth phase, the Office of the Public Service Commission and the relevant role-players are at present busy developing and refining these reconstructed departments and provincial administrations by means of an internal rationalisation process.

Although we have made good progress in restructuring the Public Service, the process is far from complete. In many instances the practical division of functions between the national and provincial governments are still being discussed by the respective Ministers. One can expect that this will be an ongoing process and that it will be necessary to continue evaluating the allocation of government functions at the two levels.

The rights of public servants

The organisational restructuring of the Public Service obviously has a profound effect on public servants. Measures have consequently been included in our Constitution to ensure that services are not disrupted and that changes are brought about in an orderly manner. I wish to refer to the most important of these.

First, the Constitution provides for all public servants to continue in their employment subject to, and in accordance with, the provisions of the Constitution and other applicable laws regulating their employment.

Second, terms and conditions of employment applicable to a public servant shall continue to apply to him or her after the commencement of the Constitution, until amended by or under any law. Such a law could include a law enacted in order to establish uniformity in terms and conditions of employment, arising from the necessity to amalgamate the existing public services into a single national public service.

Third, the Constitution guarantees that the pensionable salary or salary scale of a public servant shall not be reduced below that applicable to him or her immediately prior to the commencement of the Constitution, except in the case of unfitness or incapacity of a person to carry out his or her duties efficiently.

Fourth, the Constitution contains a "review clause" providing for the correction of any improper or unjustifiable action favouring a public servant which may have occurred, or may still occur, in the period leading up to the commencement of the Constitution and in the months immediately thereafter.

Fifth, the Constitution anticipates the likelihood of claims and disputes of right arising from the implementation of the provisions of the Constitution dealing with transitional arrangements and the rationalisation of public administration. Any such claim or dispute shall be dealt with by the labour appeal court sitting as a special tribunal.

From my explanation, it should be clear that the Constitution contains elaborate provisions on the rights of public servants and that these cannot be prejudiced during the rationalisation process.

Taking into account the constitutional provisions on the rights of serving public servants, the proposed detailed measures with regard to the absorption of serving public servants in the newly-created departments, have recently been submitted to the trade unions forming part of our central collective bargaining structure. These measures are aimed at reducing situations of personnel redundancy and providing for a just and fair procedure in transferring personnel to the new organisational structures.