

New Development of Public Administration

Developing a public sector ethos in South Africa

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The election of the post-apartheid Government in April 1994 made it imperative to start immediately with the transforming of the state as well as political governance and public administration from an autocratic, authoritative and regulatory paradigm to a paradigm based on constitutionalism, human development, a rights culture, democratic accountability and a professional ethos in the public sector. The formal development of codes of ethics and codes of conduct is considered by the South African Government as a significant strategy to transform the attitudes of parliamentarians, political executives and public servants towards a more professional democratic ethos. The Constitution of the Republic of South Africa, 1996 which is the supreme law of the land acknowledges public administration as a facet of the national life of South Africans. An entire chapter of the Constitution is devoted to public administration. It stipulates certain basic values and principles which must govern public administration. The promotion and maintenance of a high level of ethical behaviour in public life is one of the stipulations.

In February 1997 a code of conduct for parliamentarians, which was approved by the Parliament, came into effect. The main stipulations relate to preventing parliamentarians from taking any improper profit or advantage from being elected representatives. A further stipulation is that parliamentarians disclose all financial interests in a Register of Members' Interests. An accountability and control mechanism is also built into the code. A Committee on Members' Interests is empowered to supervise the Register and report to Parliament and recommend sanctions for breaches of the code. The fundamental principle underlying the code is that public representatives must make decisions solely in the people's interest and that the disclosure of private financial interests reinforces the principle that there is nothing effectively private in the public life of a public representative. While there is an increase in the number of members making disclosures there is concern about inadequate disclosure. Civil society and constituents have also been urged to study the Register and report doubts about the truthfulness of the contents to the Registrar.

The political executive at the national sphere of government comprises the

President, Deputy President, Ministers and Deputy Ministers. In order to promote a culture of ethical behaviour among Cabinet Ministers and Deputy Ministers, a code of conduct was adopted by Cabinet on 18 October 1995. The principal stipulation requires Ministers, at all times, to observe practices that are free from all forms of corruption. Specifically, government office, position or privileged information shall not be used to distribute favours or patronage nor to seek or obtain personal fortune or favour. Ministers are further prohibited from being active in professional associations and profit-making institutions. It is further required that Ministers or immediate dependent members may not serve on the board of public companies or own shares in companies directly connected to the Minister's official duties. In regard to gifts only small gifts on official occasions may be accepted provided that Ministers have satisfied themselves that the gifts are not being presented to them in an improper manner. Gifts which are considered to exceed a certain value have to be registered. A regular feature in the debates of Parliament is that Ministers are required to give detailed explanations on matters relating to gifts. The nature of the questions normally take the following format:

- Did the Minister or his wife/her husband receive any gifts?
- If so, in each case:
 1. Who provided the gifts?
 2. What was the nature and value of the gifts?
 3. Why were the gifts given?

In addition to this code of conduct which was approved by a Cabinet resolution, section 91(I) of the Constitution requires that Ministers and Deputy Ministers act in accordance with a code of ethics prescribed by national legislation. The Executive Members' Ethics Act, 1998, was assented to by the President on 28 October 1998. Section 2(1) of the Act stipulates that the President must, after consultation with Parliament, by proclamation in the Gazette, publish a code of ethics, prescribing standards and rules aimed at promoting democratic and accountable government and with which Ministers and Deputy Members must comply in performing their official responsibilities. An important contribution of this legislation is that it expressly extends the application of the code of conduct on financial interests applicable to parliamentarians directly onto the President and Deputy President. Another distinctive feature of this legislation is that complaints of violation of the code of ethics will be investigated by the Public Protector. This office is referred to in the Constitution as a state institution supporting constitutional democracy. The Public Protector is required to submit a report on the alleged breach of the code of ethics within 30 days of receipt of complaint to the President. Within 14 days of receiving the report the President must submit a copy of the report and comments thereon, together with a report on any action taken or to be taken in regard thereto, to Parliament. The role of the Public Protector in terms of this Act is an additional function which does not detract from the normal functions of monitoring unethical conduct in public life as set out in Section 182 of the Constitution. The Executive Members' Ethics Act

introduces a consultation and debate mechanism for monitoring its observance. It guarantees through its provisions, parliamentary scrutiny and debate when provisions of the code of ethics are found to have been violated.

The South African Public Service consists of persons employed by national departments and the provincial administrations. It accounts for approximately 60 percent of public sector employment. Various government white papers have indicated that lack of representivity, lack of legitimacy, lack of transparency and inappropriate staff resources were shortcomings that served to inhibit the development of a professional work ethic and commitment among public servants. These government white papers also regard the promotion of a professional service ethos as one of the fundamental requirements for transforming service delivery.

After a series of consultations initiated in 1994 the Public Service Commission drew up a document called the Code of Conduct for Public Servants which was promulgated on 10 June 1997 by the President as part of the Public Service Regulations and was launched in Parliament by the Minister of Public Service and Administration.

The first three themes of the code focus on relationships. Professionalism on the part of public servants in their relationship with the legislative and executive authorities is the first theme. Values such as loyalty and accountability are emphasized in order to preserve and strengthen the integrity of the public service. In the second theme the values of impartiality, fairness and justice in service delivery and relationships with the public are stressed. Relationships in the workplace are emphasized in the third theme. Values such as cooperation, effectiveness and efficiency are prescribed. In the fourth theme values associated with the performance of duties are emphasized. These values include transparency and openness as well as fighting corruption, maladministration and conflict of interest among public servants. A guideline is provided to which public servants may refer when in doubt as to the propriety of their actions or the actions of others. The fifth theme stresses values and principles relating to personal conduct and private interests.

It is emphasized that the code on its own cannot transform the behaviour and attitudes of public servants. It is essential therefore that the community at large and all public servants be made aware of the contents and existence of the code. The Public Service Commission through the Ethics Division has been involved in intensive publicity campaigns. Explanatory manuals have been distributed to national departments and provincial administrations to enhance their training efforts. Workshops with employee organizations have been held because of the important role employee organizations can play in instilling the values and principles contained in the code.

The codes of ethics and codes of conduct for parliamentarians, political executives and public servants are not the only mechanisms for establishing and promoting ethical behaviour, nor do they supercede or substitute the laws of the country. The provisions of criminal law, especially those related to corruption

and bribery in terms of the Corruption Act, 1992, will continue to govern the conduct of these public functionaries. Furthermore public functionaries will still continue to be subject to the Constitution.

The effectiveness of the codes of ethics and codes of conduct has not yet been subject to evaluation. Monitoring the effectiveness should not only be the responsibility of legislative, judicial and executive authorities but also of civil society, citizens' associations, professional associations and academic institutions. In fact, it is the duty of all who strive for values and principles that sustain a democratic state.