

Negotiation News

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Sulky civil servants shaken Populist MPs want more say

South Africa's new parliamentarians are not wasting time sweeping out old practices from the hallowed chambers of Parliament, and fundamental changes are in the offing in the law-making processes.

Emphasis now is on transparency, public scrutiny and informality, as energetic parliamentarians move swiftly to review the old and entrench the new.

National Assembly Speaker Frene Ginwala took the lead when she relaxed the dress code of parliamentarians, shed the imposing black Speaker's gown and started teaching parliamentary staff about their democratic rights.

ANC parliamentarians, who make up the vast majority, also got to work immediately to put their own stamp on parliamentary procedures. Members from the ANC caucus are the main shakers and movers in the rules committees appointed to review regulations and procedures of Parliament.

One of the most important areas currently under scrutiny and bound to undergo far-reaching changes is the role and function of the Parliamentary select committees. These committees are linked to Cabinet portfolios and is the lifeline between Parliament and the ministers and their departments. It is this relationship that is being redefined.

One of those in the forefront of promoting change is the chairperson of the National Assembly Select Committee on Justice, ANC MP Johnny de Lange. He believes the interim Constitution intended a strong role for the legislature.

The main aim of the proposed changes is to give parliamentarians greater insight and say in the drafting of legislation – a process which had hitherto been almost the sole prerogative of the ministers, their departments and state law advisers.

In the past, parliamentarians did not have an opportunity to peruse legislation

before it had actually been tabled. This is about to be changed.

Contrary to current practice, the new objective is to invite the select committees' point of view before Bills are tabled. De Lange would even like to see select committees taking the initiative to initiate legislation.

In broadening the consensus on legislation parliamentarians also envisage a greater consultation process with civil society. This means opening up public debate on both policy matters and legislation.

There is a strong feeling that the
departments in particular should be more
accountable to parliament and more open
to scrutiny.

Introducing all these changes does produce a new set of obstacles, especially for members from smaller parties who lack the numbers and resources to participate in all the select committees, let alone assuming a more pro-active role.

But ANC parliamentarians say the outcome of an interactive approach would enhance the whole legislative process.

National Party members have been less enthusiastic about this new populist approach. It is speculated that they fear this would increase the power of the ANC majority which could undermine the power-sharing arrangement in the government of national unity.

However, even ANC MPs could find their ambitious changes challenging once the legislative process picks up speed.

There are hardly any administrative or research resources or backup available to parliamentarians or select committees. Eager reformers might well find them-

selves suffering from burn-out if they embrace a too idealistic approach.

A second area in which parliamentarians wish to extend their influence is in Parliament's relationship with the ministries and in government departments. Parliamentarians wish to take the work of the select committees beyond legislation and into the realm of departmental operations, policy-making processes and departmental activities.

There is a strong feeling that the departments in particular should be more accountable to parliament and more open to scrutiny. Various directors-general and departmental officials have already been summonsed to appear before select committees.

The restructuring of the civil service and the expected overhauling of programmes within departments have left civil servants feeling tetchy. Many view the new approach of the select committees as a watchdog approach.

There is great pressure on departments to abandon out of date programmes in favour of programmes oriented towards the government's Reconstruction and Development Programme (RDP).

National Assembly Justice select committee chairperson Praveen Gordhan offers a pragmatic view: "These are early days. We must just hold each others hands to survive this period."

The third area in which members of select committees wish to hold sway is in the area of departmental policy.

Departmental policy directives have traditionally been the prerogative of ministers and top ranking officials.

In this area parliamentarians would be walking the thin line between providing the necessary cheques and balances while refraining from transgressing on executive territory. □

SENATORS are unhappy ...
As they form

Senators in the wilderness

the importance of the Senate as a crucial legislative chamber consti-

the smaller of the two Houses of Parliament and are far less visible in terms of media coverage, senators are seriously rethinking the role of the Senate in the legislative process.

Their unhappiness transcends party political lines. There are deep feelings of dissatisfaction that the Senate is regarded as second fiddle to the National Assembly (NA) and that pressure could mount on senators to merely act as a rubber stamp to legislation thrashed out in the assembly and its countless committees.

In simple numerical terms the 90-member Senate lacks the capacity and resources of the 400-member NA. However, its smaller composition does have the advantage of allowing for far more constructive debates and creative interaction. Debates in the Senate generally contain less party political posturing and open hostility, characteristics which dominate debates in the assembly.

Faced with a Bill that had been significantly revised by its counterparts in the NA a group of senators recently expressed dissatisfaction with the process of merely endorsing the work of the NA.

One important difference between the NA and the Senate, is that members of the National Assembly are elected directly, whereas senators are appointed by their party structures in the nine provinces. This process does, however, point towards a much stronger relationship between senators and their provincial base.

Many argue that senators should be directly responsible to their provincial legislatures and bolster their role as custodians of provincial interests in the national legislatures. Indeed, senators should recognise provincial affairs as their main responsibility and should therefore be actively cultivating links between Parliament and the provincial legislatures and their administrations.

However, neither the provincial legislatures nor the senators seem to have come to grips with this unique new role. There is a feeling that up to now the Senate has merely duplicated the style and procedures of the National Assembly.

Provincial legislatures seem to be out of touch with what is happening on a national level. To bring effective changes would require a rethink of the parliamentary system as a whole, in particular the role of the select committees and their function in both Houses of Parliament.

A case in point is that legislation is being debated by select committees from both the National Assembly and the Senate. Because all parliamentarians belong to the same party political caucuses there is no difference in the policies expressed by party representatives in the different Houses.

One ANC senator dismissed the process as a waste of manpower and suggested that senators should rather be occupied by critical issues pertaining to provinces.

President Nelson Mandela elaborated on the uncertainty in the Senate when he addressed the house on 14 September. He emphasised

tuted in accordance with South Africa's unique realities.

Reflecting on the place and role of the Senate, Mandela said that it was an issue that would require constant refinement in the course of the country's democratic constitutional evolution.

"The powers, functions and composition of this House are clearly provided for in the Constitution, but the exact role of the Senate is emerging through the establishment of convention in the course of its work, a process which will naturally inform the content of the final constitution. As the first generation of senators in a democratic South Africa, the honourable senators will have an important contribution to make in the determining of the future role of this body.

"Let me hasten to say that, personally, I do not for a single moment doubt the need for a Senate, with the two broad objectives as currently defined. Firstly, the Senate is meant to represent the inter-

ests of the provinces in the central Parliament. Secondly, it embodies the unity of South Africa and its people.

Firstly, the Senate is meant to represent the interests of the provinces in the central Parliament. Secondly, it embodies the unity of South Africa and its people.

"The very existence of the Senate expresses the interdependence of the provinces. Related to this is the role of the Senate in the constitution-making process, its right, and indeed obligation, to initiate national legislation and to play a crucial role in the composition of judicial bodies in general and the Constitutional Court in particular.

"The Senate, therefore, symbolises the fact that South Africa is more than just a mere collection of provinces. Members of this House have the responsibility to provinces other than their own and indeed to the nation as a whole.

"It is therefore heartening to note that the Senate has adopted crucial decisions regarding the need for all senators to familiarise themselves with the situation in all provinces. Through these visits we shall be better able to ensure that all the provinces benefit in a balanced and equitable manner from the resources the country commands.

"Yet, it is also crucial and necessary that senators should continually account to the forums from which they received their mandate. In this process, we should avoid two extreme notions: on the one hand, that senators should be mere conduits of decisions of their provincial legislatures and on the other, that they should refer each and every issue to their provincial party caucuses.

"Both these approaches run the risk of rendering debate in the Senate and its committees sterile. They would also render the interaction between the Senate and the National Assembly meaningless. This matter requires more discussion within the Senate as well as in the provincial legislatures.

"The Minister and the Deputy Minister of Constitutional Development and Provincial Affairs have informed me that they intend submitting a position paper to the Senate and the provinces on this matter. This will serve as a basis for discussion. The ultimate decision, however, rests with the Senate and the provincial legislatures themselves," Mandela concluded. □

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Cornerstones of a human rights culture

The foundation stones of a human rights culture are being laid in South Africa's first democratic parliament, with parliamentary committees playing a particularly energetic role.

In an early commitment to transparency, parliamentarians are facilitating public participation in the crafting of legislation to establish the human rights protection mechanisms provided for in the interim Constitution – the Public Protector, Human Rights Commission, Commission for Gender Equality and Commission for the Restitution of Land Rights.

Three of the four structures have taken shape or will take shape under the guidance of the justice department, the National Assembly's Select Committee on Justice and the Senate's Select Committee on Justice.

The National Assembly's select committee devoted a record 28 hours to debate on the Public Protector Bill. Major changes were proposed to the bill which has now been referred back to the Senate select committee for reconsideration.

Chairperson of the National Assembly Select Committee on Justice Johnny de Lange has pulled out all stops to promote the pro-active involvement of his committee in the law-writing process. He has also played a leading role in ensuring participation in the process by key stake-holders from civil society.

While the interim Constitution does provide the broad framework for these various human rights protection mechanisms, the legislative process is necessary to add flesh to the bone.

In shaping the Human Rights Commission Bill, De Lange's committee invited early inputs from concerned bodies but also allowed for a session of oral evidence in which individuals and organisations were given an opportunity to address the committee and respond to questions.

The Public Protector will be the main watchdog structure for monitoring and investigating government to eliminate maladministration, abuse of powers and improper conduct.

The Public Protector is a beefed-up version of the present Ombudsman, introduced in 1979. However, the Bill as first drafted by the justice department and presented to the committee was found to be lacking in teeth and inadequacy.

Many committee members believed that the first draft showed the taint of apartheid-style thinking. Indeed, members of various other select committees share the perception that draft bills and documentation emanating from government departments still display the mindset of the apartheid era.

For example, justice committee members believe that the old Ombudsman was linked too closely to the executive (president and cabinet) and that the first draft of the Public Protector Bill followed suit. The committee insisted on making the Public Protector accountable to parliament, rather than the executive, with the result that the Public Protector will pre-

Members of various other select committees share the perception that draft bills and documentation emanating from government departments still display the mindset of the apartheid era.

sent quarterly reports to parliament on all serious issues investigated.

Committee members also had to stretch the provisions of the interim Constitution to accommodate a need for political compromise. The interim Constitution does not explicitly provide for a deputy public protector but committee members felt that the selection process for the Public Protector would necessitate political compromises, and that the addition of a deputy would facilitate the bargaining.

All political parties get an equal bite at the nomination process, even the two-member African Christian Democratic Party. The Public Protector will be nominated by a joint committee of both houses of parliament composed of one member of each party represented in parliament. The nominee then has to be approved by a 75 percent majority of both the National Assembly and the Senate.

The Public Protector will hold office for a period of seven years. The appointment has been postponed to allow for the revisions required by the standing committee. The services of the Public Protector will be available free of charge, to enable any and all persons to bring complaints against erring public service employees.

The bill envisages the following as among the areas of complaint that will be investigated by the Public Protector:

- ◆ maladministration in connection with the affairs of government;
- ◆ improper conduct by a person performing a public function;
- ◆ improper acts with respect to public money;
- ◆ improper or unlawful enrichment of a person performing a public function;
- ◆ an act of omission by a person performing a public function resulting in improper prejudice to another person.

The Public Protector's reach has been extended to include scrutiny of parastatals and any institution in which the state is the majority or controlling shareholder. Extensive investigative powers will be part of the post.

■ The Public Protector may at any time prior to or during an investigation request any person at any level of government or performing a public function to assist him or her in conducting an investigation.

■ The Public Protector may designate any person to conduct an investigation or any part thereof on his or her behalf, and such a person shall have the same powers as the Public Protector.

■ During an investigation, the Public Protector may direct any person to submit an affidavit, make a declaration, or appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which could have a bearing on the particular investigation. In other words, the Public Protector will have the right of subpoena in relation to both persons and information. All such subpoenas must be signed by the Public Protector.

■ The Public Protector may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter under investigation.

■ The Public Protector may require any person appearing as a witness before him or her to give evidence under oath or after having made an affirmation. Any person appearing before the Public Protector may be assisted by an advocate or an attorney and shall be entitled to peruse evidence. The Public Protector will also afford a person under scrutiny the right to be heard by giving evidence and the right to cross-examine witnesses. □

JOHNNY DE LANGE

Passionately transparent

Turning parliament into a transparent and people-friendly institution has been Johnny de Lange's mission during his months as an MP. His energetic role in a range of key parliamentary committees places him in the forefront of a new breed of parliamentary activists intent on overhauling the rules.

TRAINED as a lawyer and seasoned as an activist, Johnny de Lange is well-equipped for the task of parliamentary reform. As chairperson of the National Assembly's Select Committee on Justice, he has played a leading role in setting both the pace and the direction of change, rapidly extending the boundaries of the traditional parliamentary committee system.

When the Public Protector Bill came before his committee, for instance, De Lange successfully argued for consideration of inputs from a range of legal groups and organs of civil society. The committee went further in relation to the Human Rights Commission Bill, inviting the submission of views from interested parties on a day set aside for a public hearing.

The committee intends to follow a similarly open and inclusive process in its consideration and formulation of the fine print of draft legislation relating to the Truth and Reconciliation Commission.

De Lange is passionate about the need for transparency in the legislative process and also in the Constitutional Assembly, where he has consistently argued for the broad participation of all parliamentarians in the writing of the final constitution. Many parliamentarians share his belief that the exclusiveness which characterised negotiations at the World Trade Centre should be ruled out of a fully participatory process.

De Lange is a very busy MP. In addition to his leadership role on the justice committee, he also serves as a member of the rules committee of the National Assembly and on a sub-committee whose task is to propose amendments to those rules. He is a member of the Select Committee on Constitutional Affairs and also of the Ad Hoc Committee on Statements by the Minister for Safety and Security. In addition he is chairperson of the ANC's parliamentary study group on justice and chairperson of the ANC caucus of the rules committee.

He is almost as busy in the Constitutional Assembly (CA) as he is in the National Assembly, serving on the CA's rules committee and on its judiciary and legal systems theme committee. He is also a member of the CA's constitutional committee, a multi-party body whose task is to facilitate the work of the larger CA.

Born in Eshowe, Natal, on 15 January 1958, Johannes Hendrik de Lange was the eldest of four children of working-class Afrikaans parents. He matriculated from Hoërskool Port Natal in 1975, subsequently enrolling at Stellenbosch University for a BA in law, which he completed in 1978.

A lack of funds forced him to abandon his studies and, after six months in the office of the Master of the Cape Town Supreme Court, he embarked on two years of national service in the South African Defence

Force. He gained an LLB from the University of Cape Town in 1983 and was admitted to the Cape Bar in January 1985. He practised as an advocate until March 1993, when he turned to politics full time.

While at university, De Lange had become increasingly critical of the apartheid policies of the Afrikaner establishment. After he launched his own legal practice, the nature of his work compelled him to become politically active.

His years at the Cape Bar exposed him to the oppression suffered by rural communities under the state of emergency, and to the thinking and experience of ANC cadres for whom he acted as defence counsel. Among his high-profile cases was the trial of the Umkhonto we Sizwe group led by Ashley Forbes and the so-called Yengeni trial, in which current MPs Tony Yengeni and Jennifer Schreiner were among those accused of terrorism.

De Lange participated in his professional capacity in the formation of the Democratic Lawyer's Organisation, based in Cape Town, and was also actively involved in the establishment of the National Association of Democratic Lawyers (Nadel). He served Nadel in various capacities from 1987, including a stint as director from July 1993 until March 1994.

De Lange acted as counsel in the Goldstone Commission of Inquiry into violence at Crossroads in Cape Town.

These experiences led to a

growing interest in the field of public law, particularly the area of human rights and civil liberties, and in constitutional and administrative law.

De Lange's party political involvement was formalised in 1987 when he was elected to the executive committee of the Cape Democrats, an affiliate of the United Democratic Front in the Western Cape. In the same year he attended the ANC's Consultative Conference in Arusha, Tanzania.

IN December 1988 he was elected treasurer of the UDF's Western Cape regional executive committee. After the unbanning of the ANC in 1990, he served on the executive committee of the ANC's Observatory/Mowbray branch.

In 1991 he was elected to the ANC's Western Cape regional executive committee, taking responsibility for the negotiations portfolio. He was re-elected to the position in November 1993 and participated in the closing months of the Multi-Party Negotiating Process as a member of the ANC negotiating team at the World Trade Centre.

In the run-up to the April general election, De Lange was a member of the command centre which ran the ANC's regional election campaign. He also headed the ANC's Western Cape provincial list for the National Assembly.

De Lange lists his extra-parliamentary interests as reading, debating, music, movies, television, sport, fishing, bridge and other card games. □

Picture YUNUS MOHAMED



Watchdog threatens to turn wolf

A Human Rights Commission with teeth is what the parliamentary Select Committee on Justice wants to see established. However, human rights bodies have been critical of some of the committee's interventions in draft legislation aimed at establishing the commission. Sweeping investigative powers have caused particular alarm.

The stated aim of the Human Rights Commission (HRC) is the protection, promotion and implementation of fundamental rights. Unlike the Public Protector, whose brief is restricted to securing good and clean government, the HRC will not be limited to any sphere of society.

As a major custodian of human rights, second only to the Constitutional Court, the HRC's activities are envisaged as encompassing the active promotion of a human rights culture through education programmes; comment on bills that could impact on human rights; investigation of alleged human rights transgressions; and assisting aggrieved persons to seek remedies.

The bill which will establish the HRC, drafted by the justice department, is in the process of being scrutinised and amended by the parliamentary select committees for justice. As part of this process, the committees have given non-governmental human rights bodies an opportunity to state their views on the draft legislation.

Ironically, it is the parts of the bill re-drafted on the instructions of the select committees that have drawn the most criticism from civil society. The offending section is clause 3, which affords sweeping powers to the HRC in the interests of enabling it to achieve its aim of rights protection.

Provisions of the clause include the following:

- ◆ Commissioners are empowered to request from any person information deemed necessary to an investigation.
- ◆ The HRC may subpoena persons to appear before it or to produce documents or objects deemed necessary to an investigation.

- ◆ Persons appearing before the HRC may be questioned under oath.
- ◆ The HRC may bring proceedings in a competent court or tribunal in its own name or on behalf of a person or persons.
- ◆ The HRC may appoint committees and assign any of its powers and functions to such committees.
- ◆ Persons appearing before the HRC will be compelled to answer all questions put to them in relation to any matter connected with the HRC investigation, regardless of whether such answers may be incriminating. (This provision does not mean that an incriminating answer will be admissible as evidence against

pointing out that such practices would infringe rights guaranteed by the interim Constitution.

Members of the select committee maintained that the HRC had to be more effective than the conventional anti-discrimination committees set up in other countries. However, there was recognition that the HRC could not be judge and prosecutor at the same time.

Part of the problem in relation to defining the powers of the HRC is the fact that the Constitutional Court is not yet operational and law makers have to use their own judgement to decide whether the legislation they are writing complies with the interim Constitution. Clause 33 of the interim Constitution does allow for the limitation of certain rights, but stringent conditions apply to such limitation.

Another potential area of conflict is the extent to which the HRC may be empowered to seek remedies for human rights abuses in the private sphere. The fundamental rights listed in chapter 3 of the interim Constitution appear to be binding only on the state, and it remains to be seen whether the HRC will be able to impact on the private sphere.

A non-controversial aspect of the draft bill is a provision guaranteeing all citizens equal access to the HRC and to legal recourse. The HRC will have the power to arrange for or to provide financial assistance to a person alleging a violation of his or her fundamental rights, so as to ensure that the complainant can bring his or her case before a competent court. This provision effectively removes financial barriers to justice in cases of human rights abuse.

Non-controversial also are the draft bill's structural provisions, which envisage a maximum seven-year term for an HRC chairperson and 10 commissioners. All may be reappointed, however. Commissioners may be removed from office if such removal is supported by a 75 per cent vote of a joint sitting of both houses of parliament. Salaries for commissioners will be determined by the president in consultation with the minister of justice. □

... Human rights organisations have expressed concern about the vast powers of investigation afforded the HRC, including the power to investigate and litigate on behalf of an alleged victim.

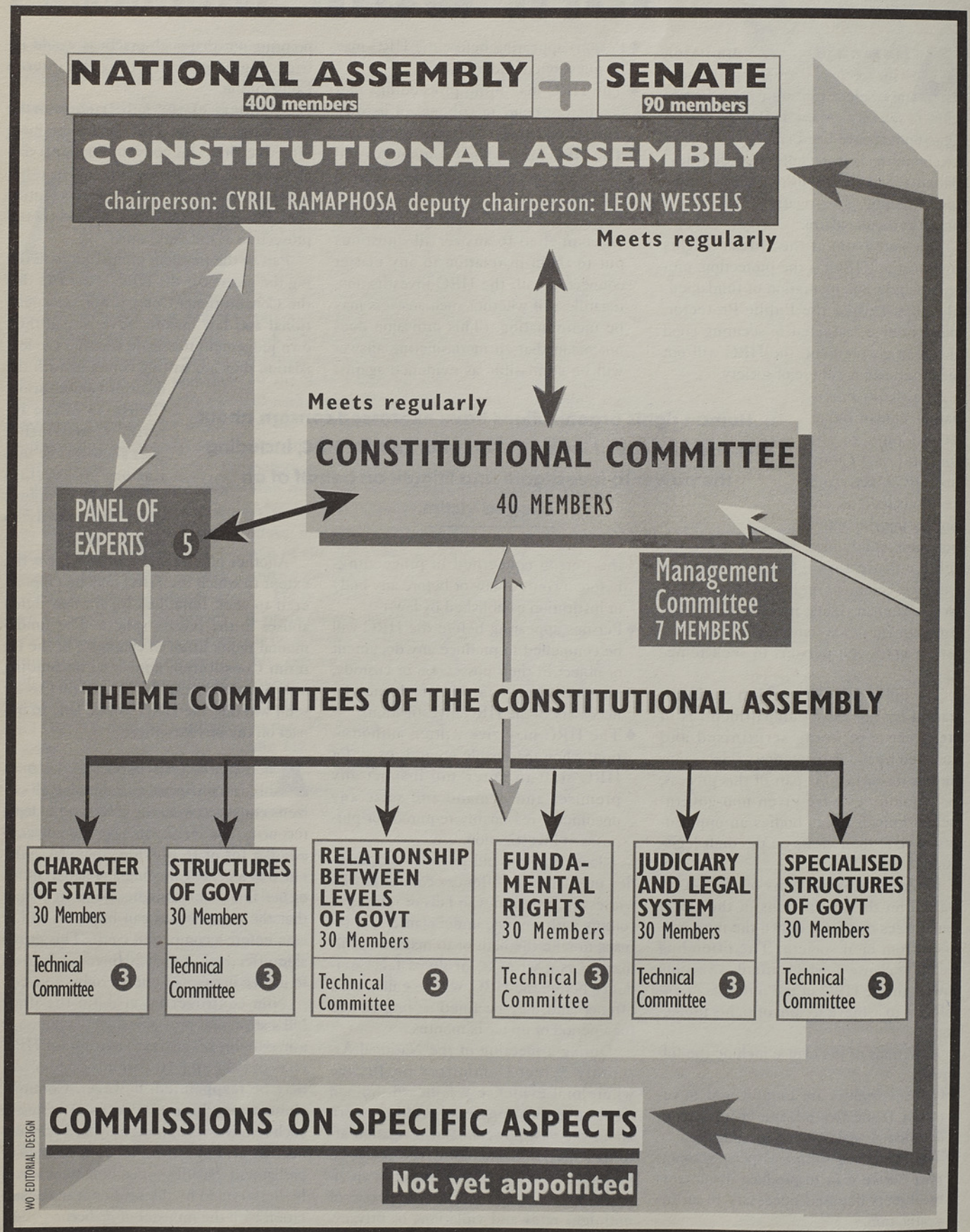
the person concerned in proceedings before a court of law or before any body or institution established by law.)

- ◆ Persons appearing before the HRC will be compelled to produce any document or object in their possession or custody, or under their control, which may be necessary to the HRC investigation.
- ◆ The HRC may give written authorisation, when reasonable grounds exist, for HRC staff to enter and inspect any premises and demand and seize any document reasonably required for purposes of investigation.

Clause 9 of the bill provides for penalties in relation to offences committed by witnesses. A person who fails or refuses to comply with a notice under clause 3, or refuses to take the oath or to make an affirmation as a witness, or gives false evidence before the HRC, will be guilty of an offence and may be fined or imprisoned for a period of up to six months.

During a meeting of the National Assembly Select Committee on Justice where oral evidence was heard, human rights organisations expressed concern about the vast powers of investigation afforded the HRC, including the power to investigate and litigate on behalf of an alleged victim. Some raised the spectre of midnight raids and violations of privacy,

PROPOSED STRUCTURE FOR CONSTITUTION MAKING



CA systems crystallise

An **interlocking** system of small committees, backed by a data base of experts and a secretariat, will accomplish a large part of the work of the 490-member Constitutional Assembly (CA), whose task it is to deliver the final constitution by April 1996.

Work on the constitution itself has yet to begin. The business that has occupied the CA so far has been preparatory in nature and largely confined to the smaller constitutional committee and even smaller management committee. CA structures and process have been the main items on the agenda.

In the CA itself, which is comprised of the National Assembly and the Senate sitting together, debates have focused on general issues while members wait for a structured agenda to emerge from the smaller committees.

However, the CA's decision-making mechanism – a two-thirds majority vote – will soon be tested. A five-member independent panel of constitutional experts must be appointed and each appointment will require the support of two-thirds of the members of the CA.

Provided for in the interim Constitution, the five experts will play an important role in advising the chairperson of the CA, the constitutional committee, and the CA itself.

A public appeal for nominations to the panel was published in newspapers in August. Nominees must be recognised constitutional experts, may not be members of national or provincial parliaments, and may not hold office in any political party. The CA is scheduled to approve the nominations during the next session of parliament starting on 19 October.

In the not unlikely event of a stalemate over appointments resulting from the two-thirds requirement, the CA might have to approve an alternative route mapped out in the interim Constitution. This allows each party with at least 40 seats in the CA to authorise an appointment in the absence of a two-thirds majority.

However, political party leaders are under pressure from their own caucuses to keep the constitution-writing process as transparent and participatory as possible. This is particularly so on the ANC side, where MPs are insisting that all issues should be discussed fully by the whole CA, rather than being settled by small committees. The reality of a time con-

straint is imposing serious limits on these high hopes, however.

After weeks of deliberation, the various political parties in the CA finally agreed in the middle of September to the establishment of six theme committees, each responsible for a key constitutional area. The theme committees met for the first time on 19 September and the most interesting development was the failure of one committee to agree on the language in which to conduct its business. A tower of Babel situation ensued, without a translation service in sight.

The titles under which the theme committees are working are:

- ◆ the character of the democratic state;
- ◆ the structure of government;
- ◆ the relationship between the levels of government;
- ◆ fundamental rights;
- ◆ the judiciary and legal systems; and
- ◆ specialised structures of government.

There is clearly a degree of overlap between theme areas and it is envisaged that the work of the committees will be conducted in an integrated manner. A number of broad guidelines have been laid down to minimise confusion and redundancy.

The theme committee dealing with the character of the state will concern itself with the preamble to the constitution, the nature of the state, the separation of powers, the electoral process, citizenship and the franchise.

The structure of government theme committee will focus on legislative organs and procedures, the role of minority parties, procedures for constitutional amendment, structuring of government at national, provincial and local levels, and the role of traditional leaders.

The theme committee concerned with the relationship between levels of government will deal with the relationship between the three tiers of government, the establishment of provincial and local government structures, and the legislative competences of these levels.

The fundamental rights theme committee will focus on entrenched constitutional rights, the supremacy of the constitution, the recognition of language and culture, and the question of self-determination.

The theme committee on the judiciary and the legal system will concern itself with the judicial process, judicial functions and judicial appointment procedures; and

the institution, status and role of traditional leadership and indigenous law.

The specialised government structures theme committee will focus on the independence and impartiality of statutory bodies and parastatals, including the Public Service Commission, Reserve Bank, Auditor-General, Financial and Fiscal Commission, and the Public Protector; on the status and role of the public service; and on the functions and performance of the police, military and intelligence service, particularly in relation to the national interest.

The degree of political clout the theme committees will wield had not been settled by the time parliamentarians went into a three-week recess on 23 September. The present understanding seems to be that the theme committees will examine constitutional matters within their briefs and compile reports and constitutional drafts for consideration by the constitutional committee. This committee will refer the drafts and reports to the whole CA.

However, several ANC MPs are opposed to the referral of finalised theme committee documents to the CA. They feel that theme committee reports and recommendations should facilitate, rather than pre-empt, discussion in the CA.

Theme committees will interact with the public, inviting submissions from organisations and individuals on various issues.

Each theme committee consists of 30 CA members. Each will appoint a core group composed of seven members which will be responsible for managing the work programme of the theme committee. All parties in parliament will be represented on each core group and three core group members will take it in turn to chair their theme committee.

Each theme committee has been allocated a managing secretary and the core group will liaise with the managing secretary in relation to the preparation of agendas for theme committee meetings and other administrative functions.

Further back-up to theme committees will exist in the form of technical committees. The CA administration is developing a data base of experts in various fields in an effort to ensure provision of a wide range of expertise to the theme committees. Technical committees will be harvested from this data base when there is a need for expert input. □

New broom sweeps out rubber stamp

Redefining the role of the Constitutional Affairs Select Committee has been one of the chief concerns of seasoned negotiator Praveen Gordhan, who is chairperson of the committee. The task of the committee is the crucial one of monitoring implementation of the interim Constitution.

THE difference between the old rubber-stamp approach and the new pro-active style of parliamentary committees was demonstrated by a question asked in a Constitutional Affairs Select Committee meeting on 21 September. The question came from the Democratic Party's Colin Eglin, who had many years of experience in the apartheid parliament. Why, Eglin wanted to know, was the committee involving itself in the legislative consultation process preceding the tabling of a bill?

In the past, the progress of a bill before it was tabled in parliament was regarded as the business of the relevant ministry. However, Gordhan and other members of the ANC parliamentary caucus are deliberately moving parliamentary select committees beyond a rubber-stamping role, to one of active monitoring of the work of the departments with which they are concerned. The Constitutional Affairs Select Committee, for example, is taking an interest in policy processes and the implementation of programmes by the ministry of constitutional affairs.

The new approach requires the walking of a fine line between building up a system of checks and balances, and recognising the prerogative of the executive. However, Gordhan believes that the new parliamentary standing rules currently under consideration will begin to give the committees the power they want.

He also believes that the select committee's monitoring capacity will prove crucial to the writing of the new constitution. The successes and failures of the mechanisms mapped out in the interim Constitution need to be taken into consideration in the writing of the final constitutional text. Sufficient time should be allowed for this process of proving.

Implementation of the interim Constitution is regarded as one of the crucial elements of the transition, and Gordhan's committee is keeping close track of the

multi-faceted process. A major focus is the establishment of provincial systems, including the consolidation of provincial governments, the restructuring of their administrations, and the assigning of powers to the provinces.

The transition at local government level is another major area of concern for the committee and another area where Gordhan sees his committee's monitoring capacity as crucial.

The committee has already expressed concern about the lack of progress made, especially in rural areas, where the process of change required by the Local Government Transition Act are still not taking place. The committee has taken the step of calling for reports from the national ministry and the nine provincial premiers, and is examining the possibility of amendments to the Act to increase its efficacy.

The relationship between the select committee and the department of constitutional affairs is also feeling the vigour of new brooms. Pressure is being put on the ministry and department officials to keep the committee informed and abreast of developments within the department.

Gordhan has made it quite clear that the committee expects to be involved in the early stages of legislation and policy formulation. Also clear is the committee's expectation that the department will be restructured in line with the policies of the government of national unity.

LEGISLATION relating to constitutional affairs has so far focused on amendments to the interim Constitution, the most recent being the so-called Liebenberg amendment, which allowed for the appointment of a cabinet minister from outside parliament. Several other amendments are likely soon, to accommodate unforeseen delays in the establishment of such institutions as the office of the Public Protector, the Human Rights Commission and the Commission on Gender Equality. In the pipeline are amendments to the Local Government Transition Act and legislation relating to the Volkstaat Council.

Another matter to which the committee is turning its attention is a draft bill dealing with the Council of Traditional Leaders, drawn up by the ministry of provincial affairs and constitutional development. Gordhan's committee, with the support of the Senate Select Committees on Constitutional and Provincial Affairs, and Public Service and Administration, has assumed

responsibility for a process of consultation with traditional authorities by calling for comments on the draft legislation from traditional authorities resident in South Africa. A report on the findings of the committees will be tabled in both houses of parliament by 20 October.

The draft bill, which is being circulated to all known traditional authorities, embodies the provisions in the interim Constitution relating to the composition, election of members and the powers and functions of the Council of Traditional Leaders. The interim Constitution requires such draft legislation to be introduced in parliament not later than six months after the commencement of the Constitution (which makes 27 October the deadline).

A QUESTION raised by several committee members in debate on the bill was why it could not be circulated in the mother tongues of traditional leaders. Some asked whether the consultation process could be regarded as satisfactory, given that the draft was being circulated only in English and Afrikaans.

Gordhan predicts that the committee will embark on a second phase of consultation once the first has been completed. Provision could be made at that stage for verbal submissions and oral evidence, in mother tongues if necessary.

The bill provides that the council will consist of an elected chairperson and 19 elected representatives, some serving full-time and some part-time. The chairperson and members will be elected by an electoral college constituted by the members of the Houses of Traditional Leaders attached to the legislative assemblies of some of the provinces.

The main role of the council, as set out in the interim Constitution, is to make recommendations to the national government on any matter relating to traditional authorities, indigenous law, and the traditions and customs of traditional communities. In other words, the council's role will be largely advisory.

It is not a role that pleases many chiefs, who voiced their opposition to what they see as diminished powers during the Multi-Party Negotiating Process. However, negotiators had to balance the interests of traditional leaders against the interests articulated by other key players, particularly the rural women's lobby. It is a balancing act that the parliamentary committees will have to emulate, in all probability. □

Task group takes the gap

Two local government specialists and a task group have been given the duty of co-ordinating South Africa's first non-racial local government elections. The people on whose shoulders the major burden will fall are Institute for Democracy in South Africa (Idasa) director Van Zyl Slabbert and Centre for Policy Studies researcher Khehla Shubane.

Slabbert and Shubane will be the co-chairpersons of the Task Group on Local Government Elections charged with overseeing preparations for the elections and driving a national co-ordinating mechanism for the election itself. It is estimated that this will involve about 700 local government polls.

The date for the elections has not been set but October 1995 is being mentioned as a target. Provincial governments in particular are pressing for confirmation of a date, believing that a deadline will lend urgency to the process of local government transformation. An October 1995 election date could see all transitional local government councils proclaimed by November this year.

Provinces would not necessarily hold local government polls on the same day. It has been suggested that a cut-off date should be set and that provincial premiers should be given the latitude to determine a specific date. This would require an amendment to the Local Government Transition Act during the coming session of parliament.

Part of what is driving provincial premiers in their agitation for a date is the complexity of the election process, which will necessitate thorough preparation. This will include the promulgation of regulations, the finalisation of the outer boundaries of local government jurisdictions, the registration of voters and preparation of voters' rolls, voter education programmes and such logistical arrangements as staffing, accommodation, equipment and financing.

The appointment of the election task group has brought to an end months of uncertainty about the organisation of the local government ballot. Speculation that the Independent Electoral Commission (IEC), which managed the general election earlier this year, might be revived to conduct the local government polls had caused considerable concern.

The possibility that the Department of Home Affairs might assume responsibility

evoked equal concern. Cabinet sources say Home Affairs Minister and Inkatha Freedom Party leader Mangosuthu Buthelezi had proposed assuming responsibility for the election but accepted the consensus decision of the cabinet.

Although the task group will be the main driving force behind the planning and preparation of the country-wide poll, it is in fact the provincial governments, in cooperation with their respective local governments, who will regulate and run the actual election. The provincial executive councils will have the major management responsibility.

This is not a great deviation from the past. Local governments have always organised and administered their own elections and it is believed that much know-

The task group includes representatives from all the provinces and from the national departments of Constitutional Development, Home Affairs and Finance. It has 12 months in which to deliver democracy to the grassroots ...

ledge and experience in the field is readily available. It will be a question of sharing resources with those areas and communities who have never had elected local government, specially in the rural areas.

The task group includes representatives from all the provinces and from the national departments of Constitutional Development, Home Affairs and Finance. It began its work in the first week of October, which gives it a projected 12 months in which to deliver democracy to the grassroots.

Approved at a meeting on 30 August attended by the Minister of Provincial Affairs and Constitutional Development and the members of the nine provincial executive councils responsible for local government, the task group will be responsible for the following functions:

- ◆ managing the standardisation and co-ordination of preparations for and the conduct of the elections, from the moment of appointment up until the finalisation of the elections;
- ◆ ensuring that election regulations are uniform as far as possible;
- ◆ assisting where problems arise;

- ◆ ensuring adherence to the time-frames set;
- ◆ mobilising resources of whatever nature, whenever necessary;
- ◆ managing the standardisation of voters' rolls, with regard to future provincial and national needs;
- ◆ organising and overseeing voter education;
- ◆ overseeing and managing the training of an effective electoral staff; and
- ◆ performing any other functions that may be assigned.

The task group has a massive job but it is Slabbert and Shubane who will be in the limelight, occupying the unenviable position not long vacated by IEC chairperson Justice Johan Kriegler, of having to address concerns and explain the process.

Slabbert, who has been closely involved in South African politics since becoming leader of the Progressive Party in 1979, has a long list of political credits to his name. He resigned from parliament in February 1986 and formed Idasa a few months later, with the aim of actively promoting the idea of a negotiated settlement for South Africa.

He led the first group of Afrikaners to meet the exiled ANC in Dakar soon after Idasa was established and a variety of similar contacts followed under his leadership.

He has brokered a range of negotiated settlements and, as chairperson of the Central Witwatersrand Metropolitan Chamber, was instrumental in bringing volatile local government representatives in the PWV to an historic agreement earlier this year. Few South African politicians match the skill and experience of Slabbert.

Shubane brings with him a vastly different experience. Born and schooled in White City, Soweto, Shubane cut his political teeth in the 1976 school protests.

He was detained and sentenced to prison one year later for recruiting people to undergo military training for the ANC. He served a five year sentence on Robben Island. He was released in 1982.

Shubane worked for the Soweto Civic Association in 1984 and in 1985 enrolled at Wits for a degree in political studies.

He joined the Centre for Policy Studies as a research officer in the same year. He is also the Vice-Chairperson of the Coordinating Committee of the National Housing Forum. □

Key components of the RDP

The process of transforming the Reconstruction and Development Programme from a wish list into a blueprint began last month with the publication of the first White Paper in a planned RDP series.

THE GOVERNMENT of national unity's eagerly awaited White Paper on the RDP deals mainly with proposals for planning and co-ordinating the implementation of the RDP. A second White Paper is scheduled for publication in March 1995 and will set out specific policies in more detail and evaluate progress. Published as a 60-page booklet, the White Paper highlights the guiding principles of the RDP and maps out the broad framework within which it is intended to unfold.

The RDP sets out to integrate growth, development, reconstruction, redistribution and reconciliation into a unified programme. "The key to this link is an infrastructural programme that will provide access to modern and effective services, such as electricity, water, telecommunications, transport, health, education and training for all our people," the White Paper says.

The five key areas for action envisaged are:

- ◆ meeting basic needs;
- ◆ developing human resources;
- ◆ building the economy;
- ◆ democratising the state and society; and
- ◆ implementing the RDP.

Each level of government has a role in the planning and implementation of the RDP, according to the White Paper. The national government will set the broad objectives of the RDP and, together with provincial and local governments, will provide a policy and regulatory framework to facilitate their implementation. Provincial and local level structures will play the major role in RDP delivery.

The key components of RDP management are set out below.

PRESIDENT AND MINISTERS

The president is responsible for the overall co-ordination of the RDP. Cabinet ministers from the departments responsible for policy formulation and implementation of the RDP sit on a special cabinet RDP committee co-ordinated by the minister without portfolio. Tasks of the committee include:

- ◆ assisting in the formulation of RDP policies and strategies;
- ◆ ensuring inter-departmental and governmental co-operation;
- ◆ setting goals, targets and priorities;
- ◆ developing an institutional framework and management strategy, including performance monitoring;
- ◆ ensuring adequate funding of programmes;
- ◆ monitoring and evaluating progress made with implementation;
- ◆ co-ordinating the preparation of RDP-related legislation;
- ◆ linking RDP planning to the Budget process; and
- ◆ establishing a poverty monitoring and information management system.

COMMITTEES

A core committee, comprising ministers, deputy ministers and the director-generals of finance and state expenditure, public administration, constitutional development, public works and the office of the president will support the work of the special cabinet committee.

A committee of ministers on economic issues charged with developing a growth strategy is also being established by the cabinet. It will comprise the ministers of trade and industry, finance, public works, labour, science and technology, energy affairs and the minister without portfolio. The committee will work closely with the National Economic, Development and Labour Council (NEDLC), a new tripartite body on which business, labour and government representatives sit.

PARLIAMENT

Within parliament, the Standing Committee on the RDP will:

- ◆ provide input on RDP policy and strategy;
- ◆ receive and review reports and plans;
- ◆ provide direct links, through the constituency work of MPs, between the government of national unity and people on the ground in relation to RDP implementation;
- ◆ conduct public hearings on key aspects of the RDP;
- ◆ evaluate progress with implementation in consultation with standing committees responsible for other departments.

The minister without portfolio responsible for the RDP will submit to the RDP Standing Committee an annual budget review and an annual RDP report. The report will set out the RDP programmes and projects, noting their successes and failures, to facilitate critical scrutiny by parliament and the public.

Parliamentarians have a vital role in RDP implementation and monitoring. Their ability to fuse the concerns of local constituencies with the process of governance will become increasingly important as the RDP is tested on the ground.

TASK TEAMS

RDP task teams have been convened by the minister without portfolio to build inter-departmental and inter-governmental co-operation around the implementation of the RDP. These task teams comprise representatives of relevant national departments, provincial administrations and parastatals, and technical experts and representatives from non-governmental organisations.

The briefs of the task teams are:

- ◆ to facilitate co-operation and integration of planning and implementation between government departments and between all levels of government;
- ◆ to develop methodologies to facilitate policy formulation;
- ◆ to advise on the implementation of programmes;
- ◆ to monitor the implementation and impact of integrated strategies and advise the special cabinet RDP committee on strategic priorities.

Inter-departmental task teams have been established in human resource and capacity development, urban development, and rural development.

POLICY AND PLANNING

Several existing planning and information bodies will be restructured, under the minister without portfolio's development planning branch, into a core policy and planning capacity. These include the Central Economic Advisory Services (CEAS) and the Central Statistical Services.

The development planning branch is responsible for drafting urban development policy and rural development policy in consultation with inter-departmental RDP task teams, provincial and local governments, the civic movement and organised business. The development planning branch will aim to complete an initial draft for submission to the special cabinet RDP committee, the parliamentary Standing Committee on the RDP and the NEDLC by March 1995.

FORUMS AND TECHNICAL COMMITTEE

An inter-governmental forum has been established to provide for consultation and joint decision making between central government ministers and provincial premiers on any matter of mutual interest, including matters pertaining to the RDP. The permanent members of the forum, which is meeting on a bi-monthly basis, are the provincial premiers, the minister without portfolio, and the ministers and director-generals of constitutional development, finance and the public service.

The inter-governmental forum will be supported by the inter-governmental technical committee, which comprises the director-generals of the departments of constitutional development, state expenditure, finance, justice, office of the minister without portfolio and office of the Public Service Commission, as well as those from the nine provinces.

A number of ministerial forums consisting of national ministers and their provincial counterparts have also been established to facilitate co-operation on:

- ◆ policy and strategy formulation and implementation;
- ◆ the co-ordination of legislation;
- ◆ the efficient and effective deployment of resources;
- ◆ the transfer of information; and
- ◆ national norms and standards governing the performance of these functions.

FINANCES

The Financial and Fiscal Commission, which advises on fiscal transfers and financial arrangements, and the Commission on Provincial Government, will interact to ensure that all levels of government are working in harmony to implement the RDP. Both commissions will interact with the Public Service Commission and the RDP core committee.

The RDP fund, administered by the ministry of finance but with allocation of funds controlled by the minister without portfolio, has the following goals:

- ◆ to start the key programmes of the RDP;
- ◆ to reorientate the Budget to the new priorities enshrined in the RDP;
- ◆ to encourage institutional reform and to facilitate the restructuring of the public sector.

The RDP fund is not intended to provide money for a selection of isolated projects. Projects will be funded only if they hold long-term benefits for communities. The main goal is to direct expenditure away from consumption and towards capital investment.

Provinces and local governments will be required to review and transform all spending priorities and reorientate the allocation of resources. Development projects which are solely funded from external sources – whether from the RDP fund or development aid – will be the exception. Most RDP-related projects will have to be funded either from existing funds of local or provincial

governments or from the line function departments of central government.

Sources for the RDP fund are:

- Funds appropriated by parliament for the fund through savings by government departments. In the 1994/95 Budget, R2,5 billion was allocated to the RDP fund from this source. This will increase to R5 billion in 1995/96, to R10 billion in 1997/98 and R12,5 billion thereafter. In effect, therefore, these are funds removed from departmental allocations which could be re-assigned to them, subject to compliance with RDP priorities.
- Domestic and international grant aid received by the government. An interdepartmental committee has been established, comprised of representatives of the departments of finance, state expenditure, trade and industry, foreign affairs and the office of the minister without portfolio, as well as the CEAS, to

consider aid offers from donor nations and agencies.

The committee will negotiate with donors on the utilisation of aid for the

funding of RDP programmes, with a view to optimising the use of grant aid. The committee is charged with ensuring either that grants are used on a one-off basis, without "carrying-through" costs that must be accommodated in departmental budgets in ensuing years, or that such carry-through costs are included in forward planning.

- Interest earned from the investment of money standing to the credit of the fund.
- Proceeds from the sale of state assets. The government of national unity has recognised that the location and composition of state assets may not be optimal and has begun an audit to dispose of those assets not relevant to the RDP.
- Other sources, including revenue from lotteries and gambling, which are potentially huge.
- Redirection of local government funds. To access money for RDP programmes, local governments will be required to reform their spending priorities; to reallocate resources, including staff; to improve service quality; and to upgrade consultation, transparency and accountability.

The White Paper contends that RDP expenditure will not require major financing from new funds. Rather, the bulk of the necessary resources will be unlocked by a process of improved organisation and rationalisation of existing structures.

PROVINCIAL GOVERNMENTS

Provincial governments have a key role in the implementation of the RDP. Each province is required to develop a strategy for implementing the RDP in the context of its particular circumstances and provincial governments have been encouraged to establish co-ordinating structures similar to those at national level.

So far all of the provinces have established responsibility for the RDP either in the office of the premier or in the office of the provincial cabinet minister responsible for economic affairs. To ensure consistent and coherent national and provincial policy formulation, the merging of non-statutory regional economic development forums and the statutory Regional Development Advisory Committees is being encouraged. It is envisaged that such merged bodies will interact with the new statutory National Economic, Development and Labour Council.

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Provincial governments will carry out RDP activities in accordance with their current responsibilities under the Constitution and will introduce the necessary reforms to meet the conditions for the implementation and devolution of the RDP programmes.

The provincial government will be responsible for:

- ◆ restructuring provincial budgets to reflect the priorities of the RDP;
- ◆ restructuring the public service at provincial level;
- ◆ development of institutional capacity to implement the RDP;
- ◆ engaging civil society (labour, community organisations and business) in a meaningful process for implementing the RDP;
- ◆ unlocking and harnessing the political and creative energies of communities to ensure a truly people-driven process.

Provincial RDP co-ordinating mechanisms will be geared towards developmental planning and delivery. Although individual national line function departments and the provinces will have autonomous relationships, overall integrating mechanisms will be established.

Provincial governments will take over responsibility for RDP-related functions when the central government is satisfied that adequate capacity exists for the task. The central government, in consultation with the provincial governments, will draw up a checklist to facilitate the devolution of RDP programmes to the provinces. Negotiations on such devolution will take explicit account of several factors, including:

- ◆ the province's capacity to implement people-centred development;
- ◆ major development roles for community-based organisations and other non-governmental organisations (NGOs);
- ◆ the increasing capacity of people to work in groups and institutions; and
- ◆ the identification and mobilisation of local resources.

LOCAL GOVERNMENT

Local government will be a pivotal focus of the RDP but major challenges lie in the way of the realisation of this critical RDP function. The most crucial is the actual establishment of credible and effective local government structures in both urban and rural areas. The development of new financing strategies, which will have to be the joint task of all three levels of government, is another major challenge.

The central government, together with the Commission on Provincial Affairs and the provincial governments, will ensure proper co-ordination of the development process, the maintenance of standards and coherent management strategies. But local authorities, as the key institutions for delivery of basic services, will be required to work with community-based organisations and other NGOs to establish minimum conditions of good governance and to implement effective development projects.

Because the RDP depends on democracy and social stability in local communities, the management of institutional change and the delivery of municipal services must occur simultaneously. Restoring and upgrading services where they have collapsed, and extending services to new areas are vital preconditions for the legitimacy of the new local authorities.

Local authorities will have to ensure that sufficient resources are made available for the extension and upgrading of municipal services, and for capacity building to permit community-based structures to assist in local planning and RDP implementation.

Local government will need additional sources of revenue for operating, maintenance and subsidy expenses, as well as staff retraining and some new capital expenditure.

However, such funding will be conditional upon a set of criteria which demonstrate local authorities' good faith in moving to democracy as rapidly as possible.

RDP funding will be made available only if amalgamation of different jurisdictions proceeds effectively, if single budgets are adopted for single municipal areas, and if the process of preparing for local government elections is under way.

The transitional local authority will gain access to increased resources only if it becomes developmental in its orientation, proactive in winning the trust of all local residents, sensitive to issues of affordability, creative about financing and more efficient in delivery of services.

Local authorities will have to demonstrate that they are already in the transitional phase, shifting resources, switching their spending priorities, freezing clearly inappropriate projects and engaging in consultation with community groups.

In most rural areas, where the third tier of government does not exist, provincial government will be encouraged to initiate a process of building local government. This process should be driven by local communities themselves.

Where there are interminable delays in implementing the Local Government Transition Act, where interim councils are not being appointed, where boundary disputes are debilitating and where preparations for the 1995 local government elections are not proceeding effectively, provincial governments will be empowered to impose solutions.

The principle of payment for services is fundamental to the implementation of the RDP. The first step in encouraging regular payment will be making all aspects of local government finances completely open and transparent. The issue of affordable tariffs, targeted subsidies and targeted welfare delivery is also on the agenda as a matter for urgent resolution.

CIVIL SERVICE

The civil service will obviously play a major role in RDP management. Many components of this role have been mentioned already. However, restructuring of the civil service is a fundamental aim of the RDP. All government departments will be required to undertake reviews in order to discontinue policies, programmes or projects that act against the spirit of the RDP and the Constitution.

In addition, all levels of government will be required to implement a policy aimed at ensuring that the public service is representative of all the people of South Africa, including such parameters as race, gender and language.

CIVIL SOCIETIES

The RDP White Paper acknowledges an important role in the RDP for organisations of civil society. Their involvement is envisaged in both planning and delivery, through a variety of boards, commissions and forums, including bodies orientated towards the gaining of experience and acquisition of skills.

The role of NGOs, in particular, is under review. It is suggested that the government, especially at local and provincial levels, should take responsibility for many of the functions which fell to NGOs during the apartheid years. Implicit in this suggestion is the idea that the funding relationship previously existing between foreign funders and NGOs should be restructured on a government-to-government basis.

Also being mooted is the notion that NGOs could receive some form of government accreditation, based on their role in taking forward the RDP. Such accreditation would entitle NGOs to some government funding. □