

The constitutional obligation on government to perform public administration efficiently and effectively

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Abstract

Criticism of the deplorable or complete lack of public service is constantly voiced by South African citizens. This article deals with the constitutional directives that prescribe the way in which public administration should be exercised to deliver public service efficiently and effectively to benefit the public. The contention of this article is that, although constitutional directives place an obligation on public officials to perform public administration in a particular way, public officials do not have the knowledge they need to comply with this obligation. The article describes the executive authority and its function vis-à-vis public administration, and explains how the constitutional obligation originated in 1994 that changed the execution of public administration. An attempt is also made to point out the challenge that government has, to reshape the way public administration should be exercised, and how public officials ought to adhere to the relevant constitutional directives. Finally, the article discusses certain findings of an empirical survey which indicate that public officials do not have the necessary knowledge to implement the relevant constitutional directives to actually reshape the way in which public administration is exercised.

Keywords: Bill of Rights, Constitution, government, obligation, public administration, public officials, service delivery

1 INTRODUCTION

South Africans are constantly criticising the serious deficiencies that exist in public service delivery (Ramphele 2008: 300; *The Citizen* 10 July 2008). All government actions directly affect the public and, where peoples' needs are not addressed, people experience inconvenience and even hardship (Van Rooyen 2007: 45). To be publicly acceptable, public officials' activities need to be service-oriented administrative functions aimed at, and available to, all the inhabitants of the country. In practice,

public officials' activities need to evoke a positive response from the inhabitants, based on those inhabitants' values, such as justice, fairness, equality, sensitivity and accountability (Van Heerden 2001: 166; Ramphela 2008: 300).

The credibility of a government depends, to a large extent, on the way public administration is executed in service of the country's inhabitants. Democracy, as reflected in Section 195 of the Constitution of the Republic of South Africa, 1996 (hereafter the 1996 Constitution), demands that government activities should be transparent, responsible and accountable, and performed by honest officials. The question that arises is whether occurrences such as corrupt police officials, a high crime rate, enormous backlogs in production, crumbling roads and an energy crisis, are examples of poor service delivery, and the opposite of what democracy demands (Ramphela 2008: 160–165). Faced with such challenges, governance in South Africa has to comply with the demands, but it also needs to overcome numerous difficulties caused, among others, by the burden of history and the previous political dispensation (Cloete and Auriacombe 2007: 192). According to Minnaar and Bekker (2005: 11), among others, the time has come for this government, as a public bureaucracy, to transform into a dynamic and flexible organisational entity capable of responding quickly to a changing environment.

People need to trust that the governance system will deliver the services they need in order to go about their lives. People's trust and confidence are hard won and difficult to restore once dishonoured. Today, more than ever, South Africa needs an efficient, effective and well-coordinated government: this is why government must respond to the public's call for good services, otherwise governance will increasingly appear to be a quest rather than a reality.

The 1996 Constitution obliges government to perform public administration in an effective and efficient way, in terms of particular constitutional prescriptions and the Bill of Rights. However, the mere existence of a democratic Constitution with a Bill of Rights does not necessarily mean that public officials actually apply the constitutionally entrenched fundamental rights or exercise public administration in the constitutionally prescribed way. Public officials can only apply such rights and exercise public administration in terms of constitutional directives if they are conversant with the relevant provisions of the Constitution and the Bill of Rights. This obviously presents an enormous challenge, because the lack of sufficient knowledge of the constitutional directives, as well as training, could be stumbling blocks that may contribute to a failure, on the part of public officials, to come to grips with their constitutional responsibilities and accountabilities to deliver effective and efficient public services. The consequences of such a failure are poor service delivery and a fragmentation of public services, centralisation, and a failure to attend to outcomes.

In this article I therefore describe, in terms of the 1996 Constitution, the position of the executive authority in the governmental hierarchy and its function vis-à-vis public administration. The article focuses on the origin of this constitutional obligation, which compels public officials to perform public administration efficiently and effectively. I also describe the relationship between the constitutional obligation and entrenched fundamental rights, and the change in the way public administration should be exercised. An explanation is given of the challenge to public officials to implement constitutional directives. I discuss the findings of an empirical investigation, which indicate that public officials lack the necessary knowledge to adhere to these challenges. The article also discusses parts of a report referring to certain deficiencies that currently exist in the way in which public administration is exercised.

The theme of this article necessitates that reference be made to both the Constitution of the Republic of South Africa (Act 200 of 1993) (henceforth the 1993 Constitution), and the 1996 Constitution.

2 THE EXECUTIVE AND PUBLIC ADMINISTRATION

A common characteristic of constitutional systems is the division of a state's authority between legislative, executive and judicial institutions. Almost all constitutions formally distinguish between the three divisions of authority and make provision for institutions in each regard (Rautenbach and Malherbe 1994: 60–61). The 1996 Constitution provides for such a division of authority in Sections 43, 85 and 165. The 1993 Constitution had the same division of authority in Sections 37, 75 and 96. Between 1910 and 1994, a similar characteristic regarding the division of the state's authority existed in the different constitutional systems of South Africa. Table 1 provides an illustration of the division of the state's authority.

Table 1: Illustration of the division of a state's authority between the three institutions

State's authority in terms of the 1996 Constitution		
Section 43	Section 85	Section 165
Legislative authority of the national sphere of government	Executive authority of the Republic	Judicial authority of the Republic
Institution: Parliament	Institution: President Authority exercised with the Cabinet	Institutions: Law courts

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The current three divisions of authority aim to entrench functional independence from one another, and prevent the arbitrary exercise of state authority. The role of each of these divisions of state authority differs:

2.1 Legislative authority

The legislative authority is vested in Parliament, that has the function to enact national legislation in accordance with constitutional principles (1996 Constitution, Section 43(a)). All enactments are subject to the provisions of the entrenched fundamental rights (Bill of Rights). Parliament (the legislature) is thereby precluded from passing legislation that, among others, negates basic fundamental rights.

2.2 Judicial authority

The judicial authority is vested in the courts, functions impartially, and is subject only to the Constitution and to law (1996 Constitution, Section 165(1)). Its task is crucial in that the courts are charged with ensuring that laws are enforced equally towards all people and all matters. Furthermore, courts have to ensure that in all matters before it, the Constitution is observed by public institutions and all the citizens of the country. The Constitutional Court, the Supreme Court of Appeal, and the High Court have the authority to enquire into the constitutional validity of any law or conduct. All three courts are competent to strike down an executive or administrative action or conduct that violates the provisions of the 1996 Constitution (Sections 167 and 172). The courts may order the public institution concerned to refrain from such action or conduct, or to correct it.

2.3 Executive authority

The Executive authority is vested in the President (1996 Constitution, Section 85(1)). The President exercises this Executive authority with other members of the Cabinet. The main task of the contemporary Executive is to make policy decisions, ensure the observance of the Constitution, and to ensure that laws passed by the legislature are implemented and enforced. To facilitate this, public institutions such as government departments are created with a Cabinet minister as the political head of a department. The Executive and public institutions must ensure that all public activities are exercised in line with constitutional requirements, because any conduct that is inconsistent with the 1996 Constitution is invalid (1996 Constitution, Section 2).

The Constitution clearly differentiates the functions of the Executive authority. This authority is burdened with the responsibility, among others, of protecting the lives and property of all South Africans. Executive institutions have, in fact,

become a mechanism for the promotion of the general welfare of inhabitants and the regulation of the lives of inhabitants (Henning 1968: 1; Brynard 1993: 19; Ramphela 2008: 300). In South Africa, the authority of executive institutions to regulate the lives of inhabitants is, at present, granted by Section 85 of the 1996 Constitution.

Public officials are part of the executive division, and are therefore instrumental in exercising executive functions in the form of public administration. The ministerial head of departments are responsible for the proper execution of government policies. If this process fails, public service delivery suffers, since the inhabitants of the country do not receive the promised services, and government's legitimacy suffers (Minnaar and Bekker 2005: 8).

The Constitution therefore grants a particular authority to the Executive which is exercised in the form of public administration. Since 1994, the exercise of public administration is also constitutionally prescribed, which is discussed in the next section.

3 ORIGINS OF THE CONSTITUTIONAL OBLIGATION – THE EXERCISE OF PUBLIC ADMINISTRATION

There is a difference between the way an authority is structured and the way it is applied. The former depends on formal organisational structuring, whereas the latter depends on personal orientation (Minnaar and Bekker 2005: 10). This indicates that a balance is to be maintained between the authority granted to the Executive, and the manner in which such authority is exercised. This is deemed necessary because the possibility exists that such administrative executive institutions and public officials could exceed their prescribed authority when exercising public administration. This possibility exists particularly in the absence of distinct directives concerning the exercise of public administration. The absence of such distinct directives can result in public officials exercising public administration in an arbitrary way (Ross 1957: 2). However, the constitution of a democratic state usually not only grants authority to particular institutions, but limits the manner in which such authority is exercised (Rautenbach and Malherbe 1994: 18).

Prior to 1994, South Africa's constitutional dispensation was characterised by a culture of authority (Mureinik 1994: 31). Parliament was sovereign and commanded law, which meant that it could adopt any law, no matter how unfair or discriminatory. All laws (the constitutions of the time included) were subordinate to a supreme Parliament. Draconian laws that denied people their freedom, equality and human dignity, systematically trampled on the fundamental rights and freedoms of the majority of the inhabitants of the country. The executive

authority, administrative executive institutions and public officials implemented government policies and exercised public administration often in an arbitrary and bureaucratic way. The lives of inhabitants were regulated and dictated in the finest detail. There was little scope for anyone to challenge bureaucratic actions. Pre-1994 constitutions granted no recourse to inhabitants, because these constitutions did not contain limitations that regulated the exercise of executive authority, and subsequently public administration. A so-called balance between authority granted to the Executive and the manner it is exercised, was not maintained (Van Heerden 2001: 3).

On 27 April 1994, the 1993 Constitution, containing a chapter – Chapter 3 – on entrenched fundamental rights, became operational. For the first time in its constitutional history, South Africa had a supreme Constitution that replaced the culture of authority with a new culture of justification,

a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command. (Mureinik 1994: 32)

The 1993 Constitution was an ambitious legislative instrument because when it came into operation, it provided for a constitutional system that differed radically and fundamentally from the South African constitutional system of that time. In terms of this new order, all South Africans were, from 27 April 1994, entitled to share in a social and legal environment in which their fundamental rights and freedoms could be enjoyed, exercised and protected more comprehensively in terms of the 1993 constitutional directives than they were prior to 1994. And as from 27 April 1994 public administration was directly affected by the new constitutional order (Van Heerden 2001: 4).

The supreme 1993 Constitution and its Chapter 3 on entrenched fundamental rights contained an abundance of democratic values and principles. The supremacy of this Constitution meant that it was the supreme law of South Africa, and that all other laws and conduct that were inconsistent with it were, by definition, invalid. In fact, Chapter 3 of the 1993 Constitution applied to all law and bound the Legislature, the Executive, the Judiciary and all public institutions in their functions and activities (1993 Constitution, Sections 4 and 7(1)). Public administration was thus influenced by (and, from 27 April 1994, had to be exercised in consistency with) the provisions of the 1993 Constitution and the principles of the constitutionally entrenched fundamental rights in Chapter 3.

The 1993 Constitution was replaced by the 1996 Constitution (with a Bill of Rights) that came into force on 4 February 1997. The 1996 Constitution contains provisions similar to those of the 1993 Constitution, mentioned above, relating

to constitutional supremacy, supreme law and entrenched fundamental rights (1996 Constitution, Sections 2 and 8(1)). In addition, the 1996 Constitution contains instructions on the exercise of public administration. These instructions include, among others, the stipulation that public administration be governed by transparency, accountability and the democratic values and principles enshrined in the Constitution (1996 Constitution, Section 195(1)). The instructions in Section 195(1) are thus similarly directives about the way in which public administration should be exercised. Although Section 195(1) contains particular directives as mentioned, the fundamental rights as contained in the Bill of Rights play the primary role in realising the purpose of these directives.

By implication, the post-27 April 1994 constitutional dispensation in South Africa impels public officials to exercise public administration, subject to the principles of the constitutionally entrenched fundamental rights. This constitutional rule is obligatory and any conduct that falls short of the set parameters is unconstitutional and, accordingly, invalid. Such a strict constitutional directive for public officials to adhere to did not exist before 27 April 1994.

Public administration, however, has a particular relationship with the fundamental rights contained in the Bill of Rights. This is explained next.

4 THE RELATIONSHIP BETWEEN PUBLIC ADMINISTRATION AND ENTRENCHED FUNDAMENTAL RIGHTS

A comprehensive and non-racial set of entrenched fundamental rights was enshrined in Chapter 3 of the 1993 Constitution. Accordingly, on 27 April 1994, the 1993 Constitution introduced South Africa to a new post-apartheid constitutional dispensation subject to a set of entrenched fundamental rights. These rights are now enshrined in Chapter 2 of the 1996 Constitution.

The 1993 Constitution emphasised the protection of fundamental rights. A set of fundamental rights was manifested as a vital component of South Africa's new constitutional dispensation. This appears to have created a conclusive nexus between public administration and entrenched fundamental rights. This nexus clearly stems from Section 7 of the 1993 Constitution. Section 7(1) and (2) provides that the 1993 Constitution's Chapter 3 on fundamental rights shall bind all public institutions and shall apply to all public administrative functions performed. Section 7 thus confirmed that, when public administration is exercised, such functions should be exercised with adherence to the provisions of, and the principles contained in, the set of entrenched fundamental rights. This situation

prevails under the 1996 Constitution, since corresponding provisions are found in Section 8(1), read in conjunction with Section 195(1) and (2).

A comprehensive and non-racial set of fundamental rights did not enjoy a constitutionally entrenched status during South African constitutional dispensations prior to 27 April 1994. Accordingly, the exercise of public administration prior to 27 April 1994 changed when the 1993 Constitution came into force and prescribed that public administration be subject to entrenched fundamental rights.

The relationship between public administration and fundamental rights has been explained. The actual change that took place in the way in which public administration should be exercised needs to be clarified, and is dealt with next.

5 CHANGES IN THE EXERCISE OF PUBLIC ADMINISTRATION

In an attempt to illustrate this implied change mentioned above, I shall refer to the public administrative environments of South Africa's different constitutional dispensations prior to and after 27 April 1994.

Prior to 27 April 1994, South Africa was entangled in a prolonged fundamental rights impasse. This was predominantly due to political forces with different ideological approaches to, among others, constitutional and social issues. The consequence of these divergent ideological approaches was the development, over the years, of a political and social culture and environment that disregarded fundamental rights. Notions of equality and respect for human rights were thus lacking due to the infusion of racism into South Africa's pre-1994 constitutional systems. The public administrative environment was accordingly based on discriminatory principles and the infringement of fundamental rights (Van Heerden 2001: 109).

By 1994, South Africa's constitutional environment was in the process of transition and transformation. The public administrative environment, which had never been subject to fundamental rights, would also constitutionally transform to one that was subject to such rights. In short, by 1994, South Africa was in the process of moving from an authoritarian to a constitutional form of government. The site of the political power struggle had shifted from the preservation of the structural inviolability of the apartheid state, to the entrenchment of fundamental rights and freedoms of the inhabitants of the country (Du Plessis 1994: 92). This major change to a constitutional governmental system was brought about by the promulgation of the 1993 Constitution.

The 1993 Constitution came into force in a constitutional environment that was characterised by immense imbalances, and had to function and transcend the

political past responsible for these imbalances (Law Commission 1994: 6). The major task of constitutionally bridging the past with the future is reflected in the Preamble to the 1993 Constitution

WHEREAS there is a need to create a *new order* in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic Constitutional state in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms. (Author's emphasis.)

The aim of the 1993 Constitution, which was to serve as a bridge between the past and the future and yet make a complete break with the political past, is similarly reflected in the postscript to the 1993 Constitution (directly after Section 251). The postscript succinctly captures the spirit of this aim. The first paragraph and part of the third paragraph of the postscript read:

This Constitution provides a historic *bridge* between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex. (Author's emphasis.)

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past ...

The quoted text highlights the fact that the 1993 Constitution intended to serve as a 'constitutional bridge' that would enable the inhabitants of the country to move away from a past characterised by strife, conflict, suffering and injustice. The purpose of the 1993 Constitution was, furthermore, to provide a standard for future conduct in pursuance of the aim (Wendland and De Oliveira 1995: 2).

Probably one of the more imminent matters appears in Section 7 of the 1993 Constitution, which provides that its Chapter 3 on fundamental rights would bind all public institutions and would apply to all public administrative functions performed. The protection of a set of fundamental rights that the government could not infringe upon, had at last, after years of strife, been constitutionally entrenched. Similar provisions to Section 7 are now enshrined in Section 8 of the 1996 Constitution.

However, this did not mean that there were no problems when public administration was exercised in terms of the new 1993 constitutional prescriptions. In fact, it was but the beginning of difficulties that would be experienced for many years. I shall now describe what these problems were.

6 IMPLEMENTATION POINT OR STUMBLING BLOCK?

The major change that the 1993 Constitution introduced to South Africa, namely a new post-apartheid and more benevolent constitutional dispensation, accompanied by entrenched fundamental rights, was to be much more difficult to manage than probably contemplated at the time. 27 April 1994 was the actual date of the implementation of the new democratic constitutional principles, but instead the historical environment placed a stumbling block in the path of public officials.

Public officials were obliged to respect these constitutional parameters in order to avoid encroaching on the fundamental rights of any person. A societal perception, or perhaps an expectation, probably existed that there would be less reason for discontent among the inhabitants of South Africa, since their newfound dignity and worth would be unlikely to be infringed on by the arbitrariness of public officials. This perception might have been based on the assumption that the way public officials exercised their administrative functions during the apartheid era changed abruptly on 27 April 1994. The South African public no doubt believed that, after this date, public officials would perform their functions according to the transparent and protective paradigm portrayed in the 1993 Constitution, and now portrayed in the 1996 Constitution (Van Heerden 2001: 161).

This does not mean, though, that after 1994 public administration was in fact exercised in an expert and faultless manner. Public officials are only fallible, human beings and can be inclined to make mistakes and/or serve personal and political interests above the interests of the inhabitants of the country. The constitutional rules, which direct the government in public administration activities, also aim to ensure that a public institution does not encroach upon the preserves of other public institutions. Furthermore, each public institution must refrain from abusing its authority and from functioning unreasonably (Olivier 1994: 62).

In reality, however, after 27 April 1994, the public administration environment still contained the remnants of apartheid legislation. The constitutional protection of fundamental rights could only be applied from 27 April 1994. The callous lack of values that dominated this environment during the apartheid era could only be constitutionally addressed and systematically eradicated *after* 27 April 1994. And, in fact, it appears that public administration entered a very turbulent period after this date, and had to face the critical challenge of reshaping itself and the way it exercised its functions. Of immense importance is the realisation that the constitutionally entrenched fundamental rights, as they appear 'on paper', could not have brought about an abrupt change in practice in this 'manner' on 27 April 1994. Constitutional theory and public administration practice may have to interface with each other in apparent disarray in the public administration environment and,

in time, shape its practice according to the transparent and protective paradigm portrayed in the 1993 Constitution, and now portrayed in the 1996 Constitution. The ‘time’ issue, however, remains a highly controversial point of debate (Van Heerden 2001: 162). Public officials were expected to deliver services with little experience and inadequate training in the new constitutional rules that directed their activities (Ramphela 2008: 117).

Since 27 April 1994, all legislation that discriminates between persons has been declared invalid (1993 Constitution, Section 8(1) read with Section 9; 1996 Constitution, Section 9(1)). The South African law book, however, still contains legislation originating from the apartheid era that can only be removed by means of a prescribed legislative process, which takes time. Accordingly, it is more likely that only after all the legislation of the apartheid era has been amended or repealed to remove discriminative law, and public officials adapt to performing their functions as constitutionally prescribed, there could be a ripple effect that impacts the way public administration is exercised.

Part of the challenge and dilemma facing public officials (in 1993 and subsequently) is possibly that they are constitutionally obliged to apply entrenched fundamental rights when performing their functions. However, said rights cannot be applied universally without regard to specific prescribed rules or reservations. Such rules or reservations are, among others, the method of application, the nature and ambit of each fundamental right, and the statutory limitations placed on each right. Public officials need to have the necessary knowledge and guidance to be able to implement these correctly (Ramphela 2008: 117). Such skills should, therefore, be made available to public officials on a continuous basis by means of methods such as, among others, training and the adoption of relevant guidelines.

In practice, the reality was that public officials continued with their administrative functions as they had always done and, in fact, that there was no abrupt change on 27 April 1994 to new constitutional processes. This situation is discussed next.

7 THE NAKED TRUTH: OFFICIALS ARE NOT SUFFICIENTLY KNOWLEDGEABLE TO IMPLEMENT THE NEW DEMOCRATIC CONSTITUTIONAL PRINCIPLES

27 April 1994 was the actual date on which public officials had to implement the new democratic constitutional principles when exercising public administration. This would only have been possible had officials been appropriately informed and trained before that date on how to go about such a formidable task. Did this cause a dilemma for public officials in their working environment?

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In July 1998 an empirical survey was conducted among public officials in the Department of Home Affairs. The objective of the survey was to establish empirically the extent of public officials' knowledge of the 1996 constitutional directives and the provisions of the Bill of Rights relating to the way public officials should exercise their official functions. Several issues were addressed in the survey. However, given that only part of the larger survey is relevant to this article, I shall concentrate solely on these findings (Van Heerden 2001: 174).

I shall now discuss the specific questions asked in the questionnaire, and the responses. I shall then draw certain conclusions from these responses.

7.1 Do public officials know of Section 195 of the 1996 Constitution, which states that public administration must be governed by the democratic values and principles enshrined in the Constitution?

Of the respondents, 68 per cent indicated that they did not know about Section 195 of the 1996 Constitution. The remaining 32 per cent of respondents noted that they were aware of this section, but only 60 per cent of these indicated that they had sufficient knowledge of the contents to know that they must perform public administration in adherence to the provisions of Section 195.

The conclusions drawn from these responses imply that a very large percentage of all public officials in the Department of Home Affairs were not aware that Section 195 of the 1996 Constitution obliges public officials to exercise public administration in a constitutionally prescribed way. This suggests that these public officials were not aware that Section 195 states that, when public administration is exercised, it is subject to constitutional principles relating to, among others, ethics and other democratic values (Van Heerden 2001: 229).

7.2 Do public officials in the Department of Home Affairs know of the Bill of Rights in Chapter 2 of the 1996 Constitution?

This question had the potential to test whether public officials were conversant with the contents of the Bill of Rights, and whether they exercised public administration in accordance with the principles contained in the Bill of Rights. If public officials do know of the Bill of Rights it does not, in turn, necessarily mean they are conversant with its contents and principles.

Of the respondents, 59 per cent indicated that they did not know of the Bill of Rights. The remaining 41 per cent knew of the Bill of Rights, but only 38 per cent of this group did not know that the Bill of Rights should always influence the way in which public servants exercise their official functions.

The conclusions drawn from these responses imply that a very large portion of public officials in the Department of Home Affairs is unaware of the Bill of Rights, or lacks sufficient knowledge of the contents of the Bill of Rights in so far as performing efficiently in their workplace is concerned (Van Heerden 2001: 225).

7.3 Have public officials in the Department of Home Affairs been officially informed of the significance of the Bill of Rights and its role in connection with the way in which public administration must be exercised?

Barely one tenth of the respondents indicated that they had been adequately informed through official channels of the significance of the Bill of Rights. The larger part of 90 per cent indicated that they had not been officially informed.

The conclusions drawn from these responses imply that a very large percentage of officials in the Department of Home Affairs lacked adequate knowledge about the actual role and influence of the Bill of Rights on the public officials' exercise of their official functions (Van Heerden 2001: 238).

The only conclusion that can be drawn from this empirical survey is a bleak one: after more than four years of public administration subject to new democratic constitutional principles, public officials to a large extent lacked knowledge of the 1996 constitutional directives and the provisions of the Bill of Rights, which relates to the exercise of their official functions. Public officials are instrumental in exercising the functions of the executive authority of government, and it is, therefore, essential that they should be officially, clearly and adequately informed of all issues relating to their activities and of the way in which they are to exercise their functions in terms of current constitutional directives and obligations.

The phenomenon of not being conversant with the 1996 constitutional principles, however, remains prevalent among public officials, and it is a serious cause for concern when this lack of knowledge is evident at the senior level of director-general of a government department (*The Citizen* 10 July 2008: 12). This phenomenon is discussed next.

8 STATUS QUO

Indications are that public officials in the Department of Home Affairs are currently still not conversant with the 1996 constitutional principles.

As mentioned earlier, the quality of service rendered by public officials in South Africa, often leaves much to be desired. Too many officials do not seem to

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understand that they are there to serve the public, who are, in effect, their collective employer. They are obliged to observe the precepts of the 1996 Constitution and exercise public administration with the necessary responsibility and accountability (Ramphela 2008: 300).

To illustrate the performance of public administration in the Department of Home Affairs, extracts from the Department's annual report for the period 1 April 2006 to 31 March 2007 state:

- In July 2006, the Minister of Home Affairs appointed a Support Intervention Task Team to investigate financial controls and management capacity problems. The team made recommendations on a number of ongoing systemic and management deficiencies that needed to be addressed and corrected (page 5);
- The Department has, in recent years, been severely hampered in its quest to deliver world-class services to its entire customer base, owing to the lack of appropriately trained officials who are informed of legislative directives relating to service delivery (page 13);
- Officials are inclined to disregard service delivery standards when exercising public administration, to lack the leadership, decision-making powers and management skills required to render a public service, and to simply not understand the exact nature of what is required for adequate service delivery (page 27);
- Although an organisational model on service delivery has been approved, it has not yet been implemented (page 33);
- Officials in the Department lack a customer focus and tend to not focus on the core business of the department. The inability of the Department to communicate effectively, particularly in terms of internal communication, has impacted negatively on staff morale (page 67).

Given all these deficiencies, a reasonable conclusion can be drawn that the public officials of the Department of Home Affairs still lack the necessary knowledge and understanding of the constitutional directives relating to the way public administration should be exercised, in order to render an effective and efficient service to the South African public.

The challenge to reshape the way public administration is exercised, is discussed next.

9 THE CHALLENGE TO RESHAPE THE WAY PUBLIC ADMINISTRATION IS EXERCISED

The existence of constitutionally entrenched fundamental rights that influence public administration is practically worthless, unless translated into reality. The 1996 Constitution contains such rights, and if public officials implement these rights when exercising public administration, then these rights will indeed be translated into a reality. Should public officials exercise public administration but fail to – or only partly – implement these rights, the rights will remain in abeyance and will be practically worthless as far as public administration is concerned. This entails that public officials should fully implement and adhere to the rights in the Bill of Rights in their everyday exercise of public administration (Van Heerden 2001: 160). If they do, all the inhabitants of South Africa would have access to public services, without experiencing unjustified discrimination. From such a situation a culture of promoting and implementing the current entrenched fundamental rights could develop and exist among all public institutions and officials. Once such a level of utilisation of fundamental rights has been reached in the public sector, and by those who can exercise such rights (the inhabitants), the concretisation of such rights will be a reality (Gila and Van Rensburg 1996: 15). (In this case, ‘concretisation’ refers to the harmonisation of the existence of entrenched fundamental rights, the implementation of the principles of such rights, and the exercising of those rights, in order to bring such rights into a meaningful reality.)

The interim 1993 Constitution (Epilogue after Section 251) referred to the apartheid era as a divided society characterised by injustice, and the post-apartheid era as founded on the recognition of fundamental rights, democracy and no unfair discrimination. The Preamble of the 1996 Constitution envisages a future society based on democratic values, social justice and fundamental human rights. However, there are still many injustices and unfair discriminatory practices in South Africa. Madala (1996: 3) justly remarks that the next step is to experience non-racialism and democracy in practice. Corrupt police officials, a high crime rate, enormous backlogs in production, crumbling roads, and an energy crisis are only a few examples of activities where fundamental rights have not been translated into reality, and public officials have failed to implement these rights when exercising public administration.

Further, public officials should not regard entrenched fundamental rights as ethereal guarantees on statute paper or as swords hanging tenuously and threateningly over their heads, but rather as the fundamental tenets of democracy. The constitutional aims can then be reached in practice. All public institutions have a constitutional obligation to promote fundamental rights, and it is now time

for South Africans to experience these rights including, among others, democracy, general dignity and fair labour practices (Gila and Van Rensburg 1996: 13). Public officials face the challenge of not frustrating the ideals of the 1996 Constitution and its Bill of Rights when exercising public administration within the norms and spirit of the tenets of democracy, but to aim to quickly reach the stage where the concretisation of entrenched fundamental rights can, in fact, occur.

Constant assessment and appraisal of existing and future administrative procedures and policies appear to be more desirable and appropriate. Langa (1996: 10–12) remarks that such an approach could serve as an important pre-emptive measure not only to avoid constitutional challenges, but also to ensure the vital success of the constitutional initiative for a transformed public administration. The task of translating fundamental rights into reality remains a challenge to – and an enormous task for – officials (Matjila 1996: 93–94). The implication is for officials to remain within constitutional parameters when performing any action or making any decision.

The only way forward for public officials is to adhere to the constitutional directives governing the way in which public administration must be exercised. This issue is described next.

10 ADHERING TO CONSTITUTIONAL DIRECTIVES

Current constitutional directives regarding the way public administration should be exercised, attempt to ensure that public administration is exercised subject to constitutionally entrenched fundamental rights. To some, the current constitutional directives may be little more than sonorous words if such directives are not adhered to. If implemented correctly and uniformly by all public officials, constitutionally entrenched fundamental rights can become manifest in public administration in a more visible fashion, and will not merely be words contained in the Bill of Rights.

Public officials should be clearly and adequately informed of constitutional prescriptions and other legislation relating to public administration and the way it should be exercised, in order to apply such prescriptions correctly and thus render an effective and efficient public administrative service. A comprehensive public administration, where all working methods are largely uniform and coordinated, is the preferred option. Priorities can be set, long- and short-term projections drawn up, and cooperation encouraged in order to achieve set goals. The governing authority's functions could thus be transparent and trustworthy.

The implementation of constitutional principles in practice should, obviously, be carried out in order to avoid these principles in effect 'stagnating'. McWhinney (1959: 32–37) writes that the success or failure of implementing constitutional

principles effectively and efficiently depends, to a large extent, on the veneration and ability with which public institutions and officials comply with such constitutional provisions. In other words, when the 1993 Constitution came into operation on 27 April 1994, public officials should have been officially informed of the objectives and contents of the constitutional environment that was installed, how the new environment differs from that of the former apartheid environment, the impact the new constitutional principles would have on public administration, and how the bridging process should be implemented. By doing all this, public officials could have familiarised themselves with the new environment, and been made aware of their role in the implementation of the new constitutional principles. Officials would probably have had a good understanding of what the bridging process entailed, and developed the necessary veneration for it. Implementation could have started on 27 April 1994, as expected.

The success or failure of implementing new constitutional principles depends on the early ‘education’ of public officials. Officials should be made aware of the fact that, in order to be constitutionally and democratically orientated, all officials ought to function in a manner which constantly aims to harmonise the interests of South Africans with the goals of the state authority. This could require that very significant emphasis be placed on a requirement that public officials – especially those serving from the apartheid era – should adapt hastily and more readily to the contemporary constitutional format. Public officials who commenced their service after 27 April 1994 should be made aware of the above-mentioned bridging process, in order to ensure that they adhere to contemporary constitutional requirements (Van Heerden 2001: 159).

To be constitutionally and democratically orientated could, furthermore, require that public officials exercise public administration in such a way that the state’s compliance with constitutional requirements can be seen. This, in turn, could develop into a ‘habit’ that eventually becomes a culture of respect for fundamental rights. De Giorgi (1999: 32) remarks that South Africans are generally unfamiliar with the notion of holding government accountable. Public officials should be made aware of the fact that South Africans are entitled to effective and efficient compliance with constitutional prescriptions, and may hold public officials accountable to ensure such compliance.

In addition, the state authority should strive to develop a culture of being the facilitator and manager of the use of public resources, rather than being a bureaucracy with a stranglehold on the lives and interests of the inhabitants of South Africa (Van Heerden 2001: 160).

11 MAINTAINING CONSTITUTIONALLY SET STANDARDS WHEN EXERCISING PUBLIC ADMINISTRATION

Paramount, however, to this constitutional ideal of a particular style of public administration, is the accompanying acknowledgement that, with the realisation and manifestation of constitutional principles, come the responsibilities of maintaining constitutionally set standards when exercising public administration. Hilliard and Kemp (1999: 55) state that, to maintain public service efficiency, officials should ensure that the general welfare of the inhabitants is served, the governmental machinery remains well lubricated, and that public institutions act in unison to attain their governmental and administrative goals. In other words, good cooperative governance ensures efficiency and effectiveness. With such an aim, public officials could maintain constitutionally set standards and realise constitutional principles in practice (Van Heerden 2001: 160). Corruption and incompetent officials, crime and poor service delivery (Ramphele 2008: 160; *The Citizen* 10 July 2008) are unacceptable and do not develop or benefit any society.

12 CONCLUSION

The consequences of failing or neglecting to perform public administration in an effective and efficient way in terms of constitutional prescriptions and the Bill of Rights, are bad service delivery and shortcomings in specific areas. Corrupt police officials, a high crime rate, enormous backlogs in production, crumbling roads, and an energy crisis are examples of such poor service delivery.

The supreme 1993 Constitution that came into operation on 27 April 1994 contained specific principles and rules according to which South Africa had to be governed. It also contained provisions about the authority and functions allocated to each institution, and the manner in which the authority should be exercised. The supreme 1996 Constitution, with a comprehensive set of fundamental rights contained in Chapter 2, replaced the 1993 Constitution and contains principles and rules which prescribe, among others, how public administration should be exercised to promote the general welfare of the inhabitants of the country. These constitutional principles changed the way in which public administration was exercised prior to 1994.

The government and its officials are compelled to exercise public administration in terms of the constitutional directives and face the challenge of reshaping and adapting public administration activities to fit the relevant constitutional principles. This constitutional obligation is a permanent feature, and public officials should ensure that they are conversant with the relevant provisions of

the Constitution and the Bill of Rights. A lack of knowledge of the constitutional principles was evident among many public officials a few years after the new constitutional principles came into operation. Unfortunately, signs of a similar lack of knowledge are still evident among public officials today.

The government and public administration in South Africa are dynamic and credible – in constitutional theory!

BIBLIOGRAPHY

- Brynard, D.J. 1993. Rise of the administrative state: threat or asset? *Politeia* 2(2): 18–27.
- Cloete, F. and C.J. Auriacombe. 2007. Governance and transparency in South Africa. *Politeia* 26(2): 193–207.
- De Giorgi, B. 1999. The Open Democracy Bill: a preliminary investigation into its provisions and their implications for public administration. *Politeia* 18(2): 23–36.
- Du Plessis, L.M. 1994. Drafting the Chapter on Fundamental Rights. In *Birth of a Constitution*, ed. B. de Villiers, 89–100. Kenwyn: Juta and Company Ltd.
- Gila, B. and A.J. van Rensburg. 1996. Local government and the concretisation of the Bill of Rights. In *A practical guide to human rights in local government*, ed. S. Gutto, 13–16. Pinetown: Kohler Carlton & Print.
- Henning, P.J. van R. 1968. Die administratiewe staat. *Journal of Contemporary Roman-Dutch Law (THRHR)* 31(1): 1–17.
- Hilliard, V.G. and N.D. Kemp. 1999. Citizen participation crucial to good governance and administration in South Africa. *Politeia* 18(3): 40–66.
- Langa, P. 1996. Importance for the Bill of Rights for local government. In *A practical guide to human rights in local government*, ed. S. Gutto, 7–12. Pinetown: Kohler Carlton & Print.
- Madala, T.H. 1996. Human rights, local government and the restoration of human dignity. In *A practical guide to human rights in local government*, ed. S. Gutto, 1–5. Pinetown: Kohler Carlton & Print.
- Matjila, C. 1996. The concretisation of human rights as a challenge for the future. In *A practical guide to human rights in local government*, ed. S. Gutto, 93–94. Pinetown: Kohler Carlton & Print.
- McWhinney, E. 1959. The Supreme Court and the Bill of Rights – the lessons of comparative jurisprudence. *Canadian Bar Review* XXXVII: 16–42.
- Minnaar, F. and J.C.O. Bekker. 2005. *Public Management in the Information Age*. Pretoria: Van Schaik.
- Mureinik, E. 1994. A bridge to where? Introducing the interim bill of rights. *South African Journal for Human Rights* 10(1): 31–48.
- Olivier, P.J.J. 1994. Constitutionalism and the New South African Constitution. In *Birth of a Constitution*, ed. B. de Villiers, 82–85. Kenwyn: Juta and Company Ltd.

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- Rautenbach, I.M. and E.F.J. Malherbe. 1994. *Staatsreg.* Johannesburg: Lex Patria.
- Ross, J.J. 1957. Die uitoefening van kontrole oor die uitvoerende mag van die staat. *Journal of Contemporary Roman-Dutch Law (THRHR)* 20(1): 1–24.
- South Africa, 1993. *Constitution of the Republic of South Africa, 1993 (Act 200 of 1993)*. Pretoria: Government Printer.
- South Africa (Republic), South African Law Commission. Group and Human Rights. Unpublished report, project 58, October 1994.
- South Africa, 1996. *Constitution of the Republic of South Africa, 1996*. Government Printer: Pretoria.
- South Africa, 2006. Report of the Department of Home Affairs for the financial year 1 April 2006 to 31 March 2007. Available online at http://www.home-affairs.gov.za/documents/Annual_Report.pdf/ (accessed 20 September 2008).
- The Citizen*. 2008. This DG must go. 10 July.
- Van Heerden, M. 2001. The Bill of Rights in Public Administration. Unpublished thesis, University of South Africa, Pretoria.
- Van Rooyen, E.J. 2007. Reflections on community participation in the context of good governance. *Africa Journal of Public Affairs* 1(1): 41–48.
- Wendland, W. and J. de Oliveira. 1995. The Constitution of the Republic of South Africa, 1993. *Juta's Business Law* 3(1): 1–4.