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## GENERAL NOTICE

### NOTICE 130 OF 1996

Education White Paper 2

## THE ORGANISATION, GOVERNANCE AND FUNDING OF SCHOOLS

Department of Education

Pretoria  
February 1996

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GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

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## MESSAGE FROM THE MINISTER OF EDUCATION

### Introduction

Cabinet has agreed that South Africa's pattern of school organisation, governance and funding, which is a legacy of the apartheid system, must be transformed in accordance with democratic values and practice, and the requirements of the Constitution.

The white paper *Education and Training in a Democratic South Africa: First Steps to Develop a New System*, approved by Cabinet in February 1995, devoted a chapter to this issue. It described the process of investigation and consultation that would be followed by the Ministry of Education in order to bring a new pattern of school organisation into existence. My intention to appoint a representative Review Committee was announced, and its terms of reference were specified, including a statement of principles on which wide public agreement had been reached during the white paper consultation process.

The Review Committee's brief was to recommend to the Minister of Education

a proposed national framework of school organisation and ownership, and norms and standards on school governance and funding which, in the view of the committee, are likely to command the widest possible public support, accord with the requirements of the Constitution, improve the quality and effectiveness of schools, and be financially sustainable from public funds.

### The committee

I appointed the members of the Review Committee in March 1995. At their first meeting I emphasised that their task was one of the most important to be entrusted to any group of South Africans in our new democracy. I requested them to work together to find the highest common level of principled consensus, and to be creative in interpreting their terms of reference.

The integrity of the committee won wide recognition. The process of appointment ensured its acceptability across the broadest possible political and educational spectrum. It included persons of stature with first-hand knowledge of every existing category of school, and a balanced combination of experienced school managers, researchers, policy analysts, and stakeholder representatives. Professor Peter Hunter led his team with authority and tact.

The committee travelled to every province, visited 102 schools of all varieties, talked to stakeholders from across the spectrum, paid special attention to schools in rural areas, commissioned studies, received specialised legal and financial briefing, participated in four conferences on relevant aspects of its brief, investigated the international experience and current trends, and studied nearly two hundred written submissions. They completed their work in only five months.

### The report

The report is a highly competent piece of work by a representative group of South African education practitioners and specialists, who were committed to finding solutions to the problems of school organisation consistent with the letter and spirit of our new democratic order, and who availed themselves of the widest possible range of information, advice, and expertise.

I am satisfied that no comparable committee working to the same brief in the same time period could have done a better job or produced a better-argued set of recommendations.

After extensive briefing by the Review Committee, formal consultations with stakeholders, and careful consideration of the public response to the committee's analysis and proposals, I concluded that their report provided the basis on which new policy could be built, and I advised Cabinet accordingly.

### The draft white paper

A draft white paper was prepared and published on 24 November 1995, in order to indicate my Ministry's response to those findings and recommendations of the Review Committee Report on which it was possible at that date to indicate a position. The public were invited to comment before 10 January 1996 (later extended to 20 January). I wish to thank all organisations, bodies and members of the public who responded.

### Legal, legislative and financial matters

Meanwhile, a legal panel has advised me on the intricate legal and legislative implications of undoing the legacy of separate and unequal schooling. The present document has taken full advantage of their opinion. A draft South African Schools Bill is in preparation and will shortly be published for public consideration.

The Review Committee's proposals on the reform of school finance policy have attracted considerable public comment, as well as advice from the Department of Finance and some reflections on the issue of user charges and related matters in the *Third Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure in South Africa* (November 1995). The Department of Education has engaged the services of international consultants to advise on this extremely complex matter. The present document summarises some of the main considerations with which we are grappling. Since consultations have not been concluded with the Department of Finance, the Financial and Fiscal Commission, the provincial education authorities and other interested stakeholders, I intend to make my proposals to Cabinet on school finance in a separate document after the customary process of public consultation.

The Constitution provides at section 247 that the government must undertake *bona fide* negotiations with the governing bodies of schools in the public sector before alterations may be made to their rights, powers and functions. The Ministry of Education's legal panel have advised me on the implications of this provision, including the manner in which such negotiations could be carried out by the government. The draft South African Schools Bill, the proposed school finance policy, and the government's opening negotiating position will all be available to the public before the

negotiation process begins. At the conclusion of negotiations, the South African Schools Bill will be revised and submitted for Cabinet approval. It is my intention to have the revised Bill tabled in Parliament before the end of June 1996.

### **Labour relations matters**

The achievement of a national framework of school organisation, governance and funding necessarily affects the interests of all teachers in the public school sector. The implementation of the government's policy will also affect the conditions of employment of certain categories of teachers. These matters have been the subject of consultation between myself and the two national organisations of the teaching profession. Questions which are subject to the collective bargaining process will be negotiated in the Education Labour Relations Council.

### **Language and culture**

While this document has been in preparation, the Ministry and Department of Education have received visits from a number of delegations representing organs of the Afrikaans-speaking population. Without exception they have expressed their commitment to our democratic and non-racial Constitution, and have spoken strongly in favour of the constitutional requirements for equitable funding of education, the prohibition of unfair discrimination, the abolition of racial admissions criteria in educational institutions, and redress measures to overcome past inequalities in educational provision. At the same time, they have warned of a rising tide of grassroots disenchantment and anxiety among their communities, based on the perception that the government is not protecting linguistic and cultural diversity in the education system, contrary to the guarantees afforded by the Constitution and the Ministry's policy commitments in Education White Paper 1. The delegations have advised that actions of one or more education authorities have given their constituents the impression that a campaign is being waged to eliminate schools which teach only through the medium of the Afrikaans language. The same points have been made with emphasis in many written comments on the Review Committee Report and the draft version of this document. I wish to state in writing, as I have done verbally, that I accept without hesitation the sincerity of the representations which have been made to me on this matter. I wish also to make clear my recognition that the community of Afrikaans-speakers is spread throughout the land and across all population groups.

It is because of our nation's bitter experience of political oppression and cultural domination by successive minority regimes, that this government is committed to creating sufficient legal, political, linguistic and cultural space for all our varied peoples to live in peace together. Non-racialism, democracy, the protection of fundamental rights, and redress, do not mean that the idea of cultural identity is denied, or that all cultural distinctiveness is to be obliterated, or that the cultural and linguistic heritage of any of our communities can be disparaged. Our Constitution forbids cultural exploitation and provides for the protection and advancement of all our cultures, and the development of all our languages.

My Ministry does not support language imperialism. We will not promote, under any circumstances, the use of only one of the official languages as the language of learning (medium of instruction) in all public schools. Language policy in education cannot thrive in an atmosphere of coercion. No language community should have reason to fear that the education system will be used to suppress its mother tongue.



My Ministry is also vehemently opposed to the misuse of cultural and linguistic distinctiveness as a pretext or camouflage for the perpetuation of racial privilege in public school education. Any such attempt would be repugnant to our democracy and false to our nation's history. No single community has the moral right to claim that the schools erected with public funds in the past belong exclusively to them and to no one else. Those funds were raised out of the taxation and the labour and enterprise of all South Africans.

The Ministry of Education's first white paper contains these words:

"New education and training policies to address the legacies of under-development and inequitable development and provide equal opportunities for all will be based principally on the constitutional guarantees of equal educational rights for all persons and non-discrimination, and their formulation and implementation must also scrupulously observe all other constitutional guarantees and protections which apply to education....

"It should be a goal of education and training policy to enable a democratic, free, equal, just and peaceful society to take root and prosper in our land, on the basis that all South Africans without exception share the same inalienable rights, equal citizenship, and common national destiny and that all forms of bias (especially racial, ethnic, and gender) are dehumanising.

"This requires the active encouragement of *mutual respect for our people's diverse religious, cultural and language traditions*, their right to enjoy and practice these in peace and without hindrance, and the recognition that these are a source of strength for their own communities and the unity of the nation." (Education White Paper 1, pp. 19, 22)

I re-affirm these statements. Education policy-makers and administrators have the responsibility to ensure that these principles are upheld in our laws, regulations and executive practices, on behalf of all citizens.

Language policy for education is under active development. The Department of Education published a discussion document in November 1995 entitled *Towards a Language Policy in Education*, with the approval of the Heads of Education Departments Committee. In announcing it, I referred to the commitment of the Department of Education "to promote multilingualism in the education system and to remove all forms of linguistic discrimination". I also made the following statements:

"A key feature of a new multilingual policy will be that it promotes the use and development of two or more languages throughout schooling in such a way that no language should be introduced at the expense of another. Learners' home languages, as well as the additional languages they wish to acquire, will all form part of a dual process of self-affirmation and cognitive development....

"Where it is appropriate and immediately feasible, schools should be strongly encouraged to offer at least two languages of learning and instruction from Grade One, at least one of which should be a home language among significant numbers of learners in the schools."

The department's proposals on language policy in education are being widely and vigorously debated. The department will consult with the Pan-South African Language Board before it brings the debate to a conclusion. This is not the place for an extended discussion of these matters. I wish to state the view, however, that language policy in any particular public school ought to be determined in consultation between the governing body of the school and the provincial education authorities, in terms of the circumstances and language requirements of that school community, the language policy and laws of the province, the relevant national norms, and the requirements of the Constitution.

Policies are stated in general terms and cannot provide for all situations. Our legacy of injustice and mistrust continuously throws up problems which need the wisdom of Solomon to settle. In this protracted transitional period, in which new policies for a democratic society are being developed and implemented, the chances are that we shall collectively make many mistakes, either in conception or execution. They must be recognised and corrected. The possibility of damage will be reduced if new policies are based on knowledge of our charter of fundamental rights and on sufficient consultation with those who are affected by them, if conflicts are negotiated, and if principled compromises are sought.

### **Conclusion**

Parliament and the provincial legislatures both have legislative competence in matters affecting schools, and provincial governments have executive responsibility for the administration of schools. I have therefore worked with my colleagues, the provincial Ministers of Education, to reach as much agreement as possible on the way forward, even though we have not always achieved unanimity. I am grateful for their advice, which is based on intimate grassroots knowledge of schools in their provinces and the views of their constituents. I also highly appreciate the advice of the Parliamentary parties.

This document has limited but very significant objectives. It sets out the policy of the Government of National Unity on the organisation and governance of schools, and the development of capacity for school leadership and governance throughout the country. It also describes how the Ministry of Education intends to meet its obligations to negotiate with public school governing bodies whose rights, powers and functions are to be altered. It gives notice of the Ministry's intention to publish a draft South African Schools Bill for public comment, to publish its proposed policy for school finance and to make its negotiating position publicly known prior to engaging in the negotiation process.

I appeal to all who will be involved in these public processes to show their faith in the democratisation of the public school system of our democratic nation.

I believe that this document will go a long way towards providing an acceptable framework for the achievement of truly democratic school governance in a diverse society. In general it can be said that the country now has the main elements of a solution in its grasp. I trust that the opportunity and the challenge will be accepted with goodwill, and a determination on the part of all concerned to make the new policy succeed for the sake of all our children.

**Professor SME Bengu MP**

**MINISTER OF EDUCATION**



## 1 PRINCIPLES UNDERLYING A NEW FRAMEWORK

### Summary

1.1 The new structure of school organisation should create the conditions for developing a coherent, integrated, flexible national system which advances redress, the equitable use of public resources, an improvement in educational quality across the system, democratic governance, and school-based decision-making within provincial guidelines. The new structure must be brought about through a well-managed process of negotiated change, based on the understanding that each public school should embody a partnership between the provincial education authorities and a local community.

### Dealing with the inheritance of inequality

1.2 The new structure of the school system must deal squarely with the inheritance of inequality and ensure an equitable, efficient, qualitatively sound and financially sustainable system for all its learners. A coherent national pattern of school organisation, governance and funding is therefore absolutely necessary in order to overcome the divisions and injustices which have disfigured school provision throughout South Africa's history.

1.3 The distribution of resources for education provision must address the fact that almost half of South African families live in poverty, mainly in rural areas. A primary objective of the new strategy for schools must be to achieve an equitable distribution of education provision throughout the nation, in such a way that the quality of provision in under-resourced areas is raised, and reductions in public funding to better-resourced schools are responsibly phased in.

1.4 The school system must therefore be unified through a managed process of change based on respect for constitutional rights and freedoms, redress, equity and an improvement in the quality of learning.

### Structure and process

1.5 This document comprises two kinds of policy positions. The first includes decisions on a new structure for school organisation, including a framework of school categories, proposals concerning school ownership and governance, and observations on school funding. The second comprises decisions on processes of negotiation to bring the new structure into existence, and processes of capacity-building which must occur if the full scope of the Ministry's proposals on governance is to be realised.

1.6 The huge disparities among South African schools require a new structure of school organisation and system of governance which will be workable as well as transformative. Both organisational structure and governance must be adequately uniform and coherent, but flexible enough to take into account the wide range of school contexts, the significant contrasts in the material conditions of South African schools, the availability or absence of management skills, parents' experience or inexperience in school governance, and the physical distance of many parents from their children's schools. The South African population has a right to expect that a re-designed school system for a democratic South Africa will be manifestly new, more

equitable, and empowering to all who have a direct stake in the success of schooling.

1.7 As a guide to negotiated change in the school system, the Ministry of Education therefore proposes that the new structure of school organisation, governance and funding must aim to:

- (1) ensure both national coherence and the promotion of a sense of national common purpose in the public school system, while retaining flexibility and protecting diversity;
- (2) enable a disciplined and purposeful school environment to be established, dedicated to a visible and measurable improvement in the quality of the learning process and learning outcomes throughout the system;
- (3) enable representatives of the main stakeholders of the school to take responsibility for school governance, within a framework of regulation and support by the provincial education authorities;
- (4) ensure that the involvement of government authorities in school governance is at the minimum required for legal accountability, and is based on participative management;
- (5) enable school governing bodies to determine the mission and character or ethos of their schools, within the framework of Constitutional provisions affecting schools, and national and provincial school law;
- (6) ensure that the decision-making authority assigned to school governing bodies is coupled with the allocation of an equitable share of public (budgetary) resources, and the right to raise additional resources, for them to manage;
- (7) recognise that a governing body's right of decision-making is not linked to the ability of its community to raise resources;
- (8) ensure both equity and redress in funding from public (budgetary) resources, in order to achieve a fair distribution of public funds and the elimination of backlogs caused by past unequal treatment;
- (9) improve efficiency in school education through the optimum use of public financial (budgetary) allocations, and publicly-funded staff resources.

1.8 The application of the principles underlying the Ministry's approach to school organisation, governance and funding will be a very complex matter. That is because any solution to the inheritance of injustice in the schools will be difficult to apply and will take time to work through the system. It is all the more important, therefore, that policy goals are clearly stated on the basis of defensible principles, so that they may properly guide the practical decisions which will be required in the course of drawing up legislation, in the process of negotiation with school governing bodies and teachers' organisations, and in the development of administrative arrangements to implement the new system.

1.9 The Ministry of Education will not disguise the difficulties, but commits itself to working out a balanced and principled approach to dealing with them. The expectations and fears of South Africans who are looking for a clear statement of national policy must be taken seriously. The Ministry endorses the Review Committee's observation that:

"South Africans must be given grounds for confidence that the new system of education which is being developed will be professionally planned and carried out, democratically governed, and effectively managed; that the structures and strategies developed will be such as to enhance quality; and that the resources will be equitably distributed over the population as a whole. It must be clear that the national system is being effectively integrated." (Review Committee Report, p. 39)

### Parental rights

1.10 The Ministry of Education has strongly endorsed parental rights in their children's education:

"Parents or guardians have the primary responsibility for the education of their children, and have the right to be consulted by the state authorities with respect to the form that education should take and to take part in its governance. Parents have the inalienable right to choose the form of education which is best for their children, particularly in the early years of schooling, whether provided by the state or not, subject to reasonable safeguards which may be required by law. The parents' right to choose includes choice of the language, cultural or religious basis of the child's education, with due regard to the rights of others and the rights of choice of the growing child." (Education White Paper 1, p. 21).

Thus parental rights, though inalienable, are not absolute or unlimited, but must be exercised within the full context of fundamental rights which all government organs have the obligation to protect and advance.

1.11 The Ministry's proposals include a major role for parents in school governance, to be exercised in the spirit of a partnership between the provincial education department and a local community.



## 2 THE ORGANISATION OF SCHOOLS

### Summary

2.1 The policy of the Ministry of Education is that there shall be just two broad categories of schools in future: public schools and independent schools.

2.2 The public schools category will comprise all schools which are currently known as community schools, farm schools, state schools, and state-aided schools (including church schools, Model C schools, mine schools, and others). Collectively, these comprise just over 98 per cent of the country's primary and secondary schools, and almost 99 per cent of school enrolments. The category is broad, but there is room for variety within it.

2.3 The independent schools category will comprise all schools currently known as private or independent schools. Together, these account for not quite two per cent of primary and secondary schools, and about 1,2 per cent of enrolments.

### The public schools category

2.4 The Ministry of Education has an irrevocable obligation to ensure that the new pattern of school organisation breaks with the past and lays a foundation on which a democratically-governed and equitable system of high quality can be built. This requires firm, sustained and co-operative action by the national and provincial education authorities, within their respective spheres of legislative and executive competence, in keeping with the constitutional guarantees of fundamental rights and due process of law.

2.5 Decisive action by the national and provincial governments to introduce a new pattern of school organisation and ensure that it takes root, must go hand in hand with the empowerment of school governing bodies to assume responsibility for their schools within national and provincial policy frameworks.

2.6 Once the necessary negotiations in terms of section 247 of the Constitution have taken place, the Ministry of Education intends to table a South African Schools Act during the 1996 session of Parliament, which will bring all the inherited varieties of state and state-aided schools within a single category of public schools based on explicit principles and characteristics, in keeping with the principles stated in paragraph 1.7 above.

2.7 Each public school will represent a partnership between the provincial education department and the local community. This concept is of fundamental value in reconciling the respective responsibilities of the government and the community. It is the basis for reconstructing the system of public education. Once the concept has been given legislative form, the terms of the partnership between state and community will be negotiable between the provincial education departments and the schools. In this way, the offensive disparities in the inherited pattern will diminish, and public schools serving South Africans will progressively enjoy common characteristics based on an evolutionary model of local school governance. This is not to say that all public schools will be the same.

2.8 The decision to bring all present varieties of public sector schools into a single broad category of public schools therefore marks the start of a process of orderly change which is intended to maintain the positive characteristics of all existing models, and enable a spirit of partnership between provincial education authorities and local communities to thrive. This will ensure that

"the characteristics which defined schools as 'farm', 'state', 'state-aided' or 'community' schools will have less and less relevance, and the schools will take their place in the public schooling sector with the combination of powers and functions which best reflects the capacity and will of the community, and the policy priorities and accountability of the provincial authorities." (Review Committee Report, p. 49)

2.9 It is envisaged that public schools will have at least the following features in common:

- (1) Each public school will represent a partnership between the provincial education department and the local community;
- (2) Public schools will be funded totally or largely from public resources, that is, from provincial education department budgets, and with few exceptions their property will be owned by the state;
- (3) The admission policies of public schools will be determined by governing bodies in consultation with provincial education departments, in terms of national norms and provincial regulations, and will uphold constitutionally guaranteed rights and freedoms;
- (4) The mission, policy, and character or ethos of each public school will be determined within national and provincial frameworks by a governing body comprising elected representatives of the main stakeholders of the school;
- (5) The salaries of teachers in each public school will be paid by the provincial education department according to a staff provisioning scale, and such teachers will be appointed in each public school by the provincial education department on the recommendation of and in consultation with the school's governing body.

2.10 The public school category is very broad, and there is room for variety within it:

- (1) All public schools will have representative governing bodies with significant responsibilities, but some will take on wider responsibilities from the province than others, especially financial responsibilities, depending upon their capacities and inclinations;
- (2) Schools presently known as farm schools, community schools on communal land, schools for learners with special education needs (LSEN), and technical schools, will be governed in essentially the same way as other public schools, but the distinctive needs and contexts of such schools will be accommodated;



- (3) All state and state-aided schools for learners with special education needs will become public special schools;
- (4) Some not-for-profit schools which serve the general public, and which are owned and may continue to be owned, by religious organisations, or industries (like mines or plantations), or educational associations, could be taken into the public school system, subject to certain conditions, on the basis of partnership agreements negotiated between the owners and the provincial education department concerned. The Department of Education is open to discussion on the principle and terms of such partnerships.

2.11 The act of designating all schools in the public sector as public schools will make a fundamental point of policy: All public schools embody the broad public interest in education and need to be organised, governed and resourced in a manner which is faithful to the Constitution, and which enables the government to discharge its obligations under the Constitution. Foremost among these obligations is the need to base the public provision of schooling for all South African children on the principles of equity and redress of past inequality and discrimination.

#### **The independent schools category**

2.12 The Ministry of Education's policy is that schools presently known as private schools will henceforth be known as independent schools. This designation will be legislated in the South African Schools Act. The independent schools sector is very small, but it is important and appears to be growing. Independent schools are privately owned schools which appoint their own teachers.

2.13 All independent schools should be required by law to register with the provincial education department and to comply with the conditions of registration laid down by the province. Such regulation of independent schools through a registration process under provincial government law is consistent with international practice. It would be resisted only by unscrupulous operators whose exploitation of the public must be curbed and eliminated.

2.14 Several representative councils and associations in the independent school sector have informed the Ministry of Education of their wish to be associated with the government's programme of reconstruction and development, and their willingness to make available the professional resources of their schools in suitable forms of partnership with the government and with schools in the public sector. The sentiments and the offers of collaboration are appreciated. As with similar suggestions made by school organisations operating in the public sector, the Department of Education is open to discussion on how such partnerships may be implemented.

2.15 Home schools are evidently a specific case of independent schools. There is a variety of circumstances in which home schooling might be a reasonable option for a child or a family. The Ministry of Education is aware that the education laws of many countries recognise home schooling as a valid option for parents under certain circumstances. The Department of Education is examining the relevant laws of other countries in order to determine the most suitable framework for the recognition of home schooling in this country. Again, the Department of Education has indicated that it is open to discussion with representatives of the home schooling movement in order to clarify the legal and educational grounds on which home schooling should be regulated.

### 3 GOVERNANCE IN SCHOOLS

#### Summary

3.1 Governance policy for public schools is based on the core values of democracy. It is envisaged that representative governing bodies will be established in all public schools following negotiations prescribed in section 247 of the Constitution, and the enactment of the South African Schools Act. Governing bodies will have substantial decision-making powers, selected from a menu of powers according to their capacity. Teachers in public schools will be employed by the provincial education departments on the recommendation of and in consultation with governing bodies. The intention is that all public schools will be granted a legal personality in recognition of the responsibilities of their governing bodies.

3.2 Governing bodies in all schools need to make suitable arrangements to meet their responsibilities to learners with special education needs.

3.3 The constitutions of independent schools should include appropriate provision for governance.

#### Governance policy for public schools

3.4 The Ministry of Education bases its approach to school governance policy on the Constitution and on Education White Paper 1.

3.5 The Constitution establishes a democratic national, provincial and local government order, and binds all governments and public schools to observe fundamental rights and protect fundamental freedoms, many of which have direct implications for decisions made by school governors and management's. The Constitution also obliges governments to negotiate with school governing bodies before changing their rights, powers and functions, and to fund all public schools on an equitable basis in order to achieve an acceptable level of education.

3.6 In Education White Paper 1, the Ministry of Education announced that the decision-making authority of schools in the public sector would be shared among parents, teachers, the community (government and civil society) and the learners, in ways that would support the core values of democracy. A school governance structure should involve all stakeholder groups in active and responsible roles, encourage tolerance, rational discussion and collective decision-making. National and provincial policy should allow for the fact that such capacities may be under-developed in many communities and therefore need to be built.

3.7 Working definitions of the concepts of "governance" and "management" assist in clarifying the role of governing bodies. The sphere of governing bodies is governance, by which is meant policy determination, in which the democratic participation of the schools' stakeholders is essential. The primary sphere of the school leadership is management, by which is meant the day-to-day organisation of teaching and learning, and the activities which support teaching and learning, for which teachers and the school principal are responsible. These spheres overlap, and the distinctions in roles between principals and their staff, district education authorities, and school governing bodies, need to be agreed with the provincial education departments. This would permit considerable diversity in governance and

management roles, depending on the circumstances of each school, within national and provincial policies.

### Structure of public school governing bodies

3.8 The term "governing body" will be used uniformly to describe the body that is entrusted with the responsibility and authority to formulate and adopt policy for each public school in terms of national policy and provincial education regulations.

3.9 The government is required by section 247 of the Constitution to undertake *bona fide* negotiations with existing public school governing bodies before making alterations to their rights, powers and functions. Thereafter, but before January 1997, each public school should have a governing body, either new or adapted from an existing structure, which conforms to the norms and standards laid down in the envisaged South African Schools Act and provincial education legislation. During the transition to the new system, schools without governing bodies will continue to be governed by the provincial department of education until local capacity has been developed and formally empowered.

3.10 Other representative and deliberative structures within schools, such as student representative councils (SRCs), parents' associations, and staff meetings, are important for successful democratic practice and school management. They should support, but not substitute for, the governing body. An SRC in each school should be mandatory.

3.11 The Ministry of Education will propose, as a basis of negotiation, that public school governing bodies should comprise at least the following members:

elected representatives of

- (i) parents or guardians of learners currently enrolled at school;
- (ii) teachers;
- (iii) learners (in secondary schools only);
- (iv) non-teaching staff;
- (v) the principal (*ex officio*);
- (vi) members of the community, elected by the governing body.

3.12 The implementation of these proposals will mark a major advance in the decentralisation of educational control, and the fulfilment of a goal for tens of thousands of parents, teachers, students, former students and community workers who have campaigned to secure the achievement of democracy in schools. At the same time, the new policy marks a decisive shift toward a national, democratic and non-racial system of schools.

3.13 Good public school governance requires a flourishing partnership, based on mutual interest and mutual confidence, among the many constituencies which make up and support the school. The appropriate balance of different constituency rights and interests in the composition and operations of each school governing body is therefore a matter of importance.

3.14 Some of the anxieties which have been expressed about multi-constituency representation on governing bodies would be allayed if the roles of each constituency were specified. For instance, it would not be appropriate for learner and



teacher representatives to participate in discussions concerning the contracts or performance of currently employed staff members, but they should be encouraged to participate in discussions on policy matters affecting the teaching staff and learners respectively, and relations between staff and the body of learners.

3.15 The Ministry of Education requested advice from the public on the balance of constituency membership on school governing bodies. On the question of the representation of parents, the Ministry of Education stated in Education White Paper 1 that "Parents have most at stake in the education of their children, and this should be reflected in the composition of the governing body, where this is practically possible." (p. 70) The Review Committee was of the same opinion. (Review Committee Report, p. 44) The parent body has a vested interest in the welfare of the school, and provincial departments should be able to count on parents and guardians to make every effort to improve the school's effectiveness as a place of learning and development for their children, and to act decisively to balance the interests as well as encourage the mutual co-operation of all other school constituencies. The Review Committee proposed that parents and guardians should have the strongest numerical representation on governing bodies. Having carefully weighed the advice it has received, the Ministry has concluded that, because of the legal and financial decisions for which governing bodies would be responsible, elected representatives of parents and guardians should be in the majority on public school governing bodies. However, a school which prefers a different pattern of representation should be permitted to apply to the provincial education department for an alternative pattern of representation to suit its requirements.

3.16 The Ministry of Education is of the view that community representatives on governing bodies should be acceptable to all the school-based constituencies. This could be achieved by inviting nominations of community representatives from all the school-based constituencies, and requiring that the election of such representatives should be by consensus or by two-thirds majority.

### **Roles and responsibilities of public school governing bodies**

3.17 Public school governance is part of the country's new structure of democratic governance. It must be a genuine partnership between a local community and the provincial education department, with the education department's role being restricted to the minimum required for legal accountability. Because communities have such varied experience of school governance, it is inevitable that the department's role in ensuring accountability will differ considerably from one school to another. The balance of decision-making would rest with the school governing body in accordance with its capacity.

3.18 The model of public school governance supported by the Ministry of Education is therefore evolutionary. Each public school governing body will be responsible for a set of basic functions ("basic powers") which will be agreed between the province and the governing body in accordance with the governing body's experience and capacity. Any governing body will be entitled to negotiate with its provincial education department to take responsibility for additional functions ("negotiated powers") as and when it is willing and believes it is able to do so.

3.19 All public school governing bodies need not apply for and receive an identical set of basic powers. Schools differ vastly in their material conditions and the

managerial experience of their school communities. Not all governing bodies would be likely to choose the same level of responsibility from the outset. In fact, there is every reason to believe that schools which have never experienced representative governance structures with real decision-making power should start more modestly than schools with a successful tradition of responsible governance, whatever previous department they belonged to in the old racial and ethnic organisation of schools.

3.20 The provincial departments of education, which are accountable for the funding and the performance of schools, will wish to be assured that governing bodies have the necessary capacity to take on important functions and run them well. The delegation of such powers would need to be conditional, and subject to regulation. The governing body would be required to satisfy the provincial education department that it had the capacity to manage its functions according to the standards of provision specified by the province, and that the school community had the will to sustain this responsibility. If schools wished to exceed the province's standards of provision (for example, with respect to school maintenance standards), they would have to do so from their own funds. The province would need to reserve the right to intervene to ensure that law and policy were being upheld, and in particular that funds were properly administered and accounted for. There would need to be provision for the provincial authority to withdraw certain responsibilities from a governing body at its own request, or in the event of seriously unsatisfactory performance.

3.21 The menu or list of powers which the Ministry of Education will propose to public school governing bodies in the section 247 negotiations, will be compiled after detailed discussion with the provincial education departments, in the light of advice which has been received from stakeholder bodies. The following list, derived from the Review Committee's proposals, provides a starting point, but is bound to be amended before being adopted in the Ministry's negotiating position. The vital matter of school finance policy, which will be decided separately, has a major bearing on the responsibilities which will be on offer to governing bodies.

#### ***Proposed menu of responsibilities of public school governing bodies***

##### ***Broad policy***

- (1) the school's mission, goals and objectives
- (2) development, implementation and review of governing body policies
- (3) promoting the best interests of the school community

##### ***Personnel***

- (4) recommending and negotiating teachers' temporary or permanent appointments (in consultation with provincial department)
- (5) recommending the appointment of administrative staff (in consultation with provincial department)

##### ***Admissions***

- (6) admission policy (in consultation with provincial department)

##### ***Curriculum***

- (7) school times and timetable (following provincial guidelines)
- (8) language policy (within the appropriate framework, provided that no form of racial discrimination may be practised in exercising its policy)
- (9) school-level curriculum choices (within national and provincial frameworks)
- (10) extra-mural curricula
- (11) codes of behaviour for staff and learners (following provincial guidelines)



*Financial*

- (12) raising and controlling funds
- (13) school budget priorities
- (14) purchase of textbooks, materials and equipment
- (15) payment of light and water accounts

*Maintenance*

- (16) maintaining buildings

*Communication*

- (17) reporting to the parents
- (18) school-community communication

*Community services*

- (19) local services for children and youth
- (20) community social, health, recreational and nutritional programmes

3.22 The capacity-building programme described in the next chapter will be designed to enable governing bodies progressively to increase their load should they wish to do so. However, public schools from across the system whose governing bodies already have a successful record of significant decision-making responsibility should experience as little disturbance of their powers and functions as possible, consistent with the observance of national norms and provincial regulations. It must be borne in mind, however, that all public school governing bodies are likely to be re-structured once the new South African Schools Act comes into effect.

3.23 The idea that all public school governing bodies must have responsibility for a basic list of functions is deceptively simple. Once implemented, the vast majority of South Africans will recognise that this decision constitutes by far the most significant devolution of responsibility to school governing bodies in the history of South African education.

Employment of teachers in public schools

3.24 The Ministry of Education's position is that all teachers in public schools who are paid by the provincial education departments should be appointed and employed by the departments on the recommendation of and in consultation with school governing bodies. This proposal has two parts, which must be considered separately.

3.25 Firstly, public school teachers will be employed by the provincial education authorities. This will not change the status of the overwhelming majority of teachers in the public sector who are employed by government departments, nor will it materially affect the position of teachers in state-aided schools. At present, the Minister of Education, acting after due process in the Education Labour Relations Council, determines the conditions of service of all educators whose salaries are paid or whose posts are subsidised out of public funds. The latter include teachers in state-aided schools, such as Model C schools and special schools for LSEN, who are currently employed by their respective governing bodies, and teachers in state-aided farm schools, who are employed by the farmer.

3.26 The new policy will overcome a legal anomaly which has come to light in the Rademan and George cases in Gauteng and Western Cape respectively, where by

implication the Minister of Education has been held to be co-responsible for the actions of governing bodies of Model C schools, even though he is not specifically defined as the employer in the Educators Employment Act, 1994 (Proclamation No. 138, 1994).

3.27 A unitary teaching service is vital for the health of the new system of public schools. Provincial education departments and the organised teaching profession are at present negotiating new staff provision scales, in terms of guidelines agreed between employers and employees in the Education Labour Relations Council in September 1995. This historic exercise to achieve a rational, equitable and non-racial distribution of teachers will mean that some teachers will be asked to transfer to other schools, while by far the majority of teachers will remain in their present posts. Given that our inherited school system has been modelled on racial differentiation and the perpetuation of privilege, it is essential that the responsible education department should be enabled to negotiate the deployment of teachers in an equitable and educationally sensible manner. In order to make fair and professionally sound decisions, provincial authorities need maximum flexibility in staff deployment, which means that teachers in presently state-aided schools should be an integral part of the pool. A change in the employment status of teachers in these schools will only occur once all constitutional and legal stipulations have been complied with, including negotiations with teachers' organisations.

3.28 Secondly, appointments will be made by departments of education on the recommendation of and in consultation with school governing bodies. This balances the prerogatives of governing bodies with the necessity for government decisions, while providing strong safeguards against arbitrary administrative action. The Ministry of Education appreciates that the responsibility of making teaching staff appointments would be the clearest indication of the extent to which real devolution of decision-making power to the school level has taken place. The Ministry's position is that this matter is a shared interest of the governing body and the provincial education authority, with the initiative rightfully belonging at the school level. The appointment would be made by the provincial department in consultation with the governing body, in a true display of partnership. All public school governing bodies would have the authority to recommend the appointment of teachers to their respective provincial education department. The department would have the discretion to decline a recommendation on grounds of professional incompetence, inappropriate qualifications, misconduct, or *prima facie* evidence of improper influence. The department would be required to state its reasons if it declined a recommendation, and to negotiate the matter if the governing body so wished. For most governing bodies, this represents an extraordinary gain in authority and influence. For many personnel practitioners in provincial education departments, it means a significant change in relations with schools. Both parties have much to learn.

3.29 As with the change in employment status referred to in paragraph 3.27, the employing departments are obliged to refer these proposed alterations in employment practice in public schools to the Education Labour Relations Council. The constitutional and statutory rights of teachers must be upheld. The new Labour Relations Act, 1995, which has been passed by Parliament and is scheduled to come into effect in 1996, gives applicants for posts the same access to unfair labour practice procedures as serving employees. Any applicant, including a teacher, now has a new and easily accessible avenue to challenge decisions by an employer, for

instance on grounds of unfair discrimination in terms of section 8 of the Constitution. The maintenance of a school's ethos cannot be at the expense of an employee's or would-be employee's constitutional rights.

3.30 The Ministry of Education has considered the merits of enabling governing bodies, should they have the desire and the means, to employ additional teachers on contract and pay them from their own funds. The issue is particularly pressing for large numbers of schools in view of the relatively austere staff provisioning scales which are currently under negotiation between provincial education departments and the organised teaching profession.

3.31 The Ministry recognises that it will be the duty of public school governing bodies to enhance the quality of educational provision in their schools by all means within their power. The Ministry of Education is committed to local initiative in school governance as a means to enhance the effectiveness of schools, and must in principle support and encourage governing bodies who wish to improve the teaching conditions or enrich the curriculum in their schools. The Ministry of Education has the responsibility to provide an enabling legislative or regulatory environment within which this can happen. On the face of it, this should permit, even if it does not encourage, governing bodies to engage additional teachers outside the provision from public sources.

3.32 The Ministry of Education regrets that it is not yet in a position to decide this point of policy, since several other considerations must still be taken into account and resolved. Firstly: the question is linked to the larger issue of school finance policy which is still under consultation, namely, the manner in which school governing bodies will be entitled to raise and use additional (extra-budgetary) revenues for their schools. This involves broader questions of fiscal policy. It is undeniable that the ability of schools to raise the funds to pay for additional teachers would be related to the relative wealth or poverty of their parent communities. The government is both obliged and committed to deploy public funds equitably for the provision of a public service such as education which is a fundamental right guaranteed by the Constitution. However, is it either desirable or possible, from the perspective of public policy, to attempt to regulate the revenue raising capacity of school communities outside the budget process?

3.33 Secondly: in law, as has been pointed out in paragraph 3.26 above, the Minister is regarded as co-responsible with governing bodies for the actions of teachers employed by school governing bodies. Is it desirable to reproduce this anomaly in the South African Schools Bill? Thirdly: the provisions of the soon-to-be-implemented Labour Relations Act may have the effect of compelling teachers employed by governing bodies (rather than provincial authorities) to seek membership in labour organisations other than recognised teachers' organisations, outside the purview of the Education Labour Relations Council. If this were to occur, the labour relations environment of public schools could become exceptionally complicated. These questions must be taken up and clarified with the organised teaching profession.

3.34 A clear position on the question will be provided by the Ministry of Education in its proposals on finance policy, and suitable provision will be made in the draft South African Schools Bill, as well as in the Ministry's negotiating position for the section 247 negotiations. These documents are scheduled for publication by March 1996 at the latest.



### Legal personality of schools

3.35 The Ministry of Education has sought legal advice on the question of the legal personality of schools. The Ministry has been advised that our courts have defined a legal person as any entity which by law is allowed to acquire its own rights and to incur its own duties and obligations, not on behalf of the individual members but for the body as a whole. By this definition, public schools with representative governing bodies, exercising responsibilities and taking decisions affecting the conduct and well-being of their schools, are likely in law to be regarded as legal persons.

3.36 In the light of the advice it has received, the Ministry of Education intends to provide for this matter in the proposed South African Schools Bill. This enabling legislation will prescribe the conditions for the assumption of prescribed powers and responsibilities by public school governing bodies, and will state clearly and unequivocally that legal personality attaches to such schools. This intention will be explained in the negotiating position document published by the Ministry of Education prior to the commencement of negotiations in terms of section 247 of the Constitution.

### **Governance of schools and ELSEN**

3.37 The Minister of Education will shortly appoint a National Commission on Education for Learners with Special Education Needs. The Ministry of Education's policy, stated in Education White Paper 1, is that the education of learners with special education needs (ELSEN) should be provided within a continuum of integrated services in both ordinary and public special schools.

3.38 The general principles of school governance should apply in public special schools, but the membership of governing bodies should be adapted to their circumstances. In general, the governing bodies of specialised schools for LSEN tend to have strong representation of the sponsoring bodies and relatively small representation of parents and other stakeholders. Their membership should in future include representatives of the appropriate stakeholders, which would result in a governing body comprised somewhat as follows:

- (1) elected representatives of
  - (i) parents or guardians of learners currently enrolled at school;
  - (ii) learners, where appropriate (in secondary schools);
  - (iii) teachers;
  - (iv) non-teaching staff;
- (2) the principal (*ex officio*);
- (3) a member of the education support services team such as psychologist, school social worker, guidance counsellor ;
- (4) a member of the sponsoring body, where applicable;
- (5) members of the community, elected by the governing body, who would include representatives of:
  - (i) parents' organisations representing LSEN;
  - (ii) disabled people's organisations;

- (iii) the disabled community.

3.39 In ordinary schools, it would be appropriate for a sub-committee of the governing body to be established with similar representation, in order to care for the interests of learners with special education needs.

3.40 In both special and ordinary schools, the governing body would serve as the participatory mechanism for planning and monitoring educational provision, to secure the most enabling environment for learners with special education needs. Responsibilities suitable to each environment are suggested in the Review Committee Report. (pp. 55, 60, 91)

3.41 The National Commission on ELSEN will be examining and reporting on the governance issue, but in the interim the Department of Education will arrange for the matter of governance to be examined and advice given by the National Co-ordinating Committee for ELSEN which has been established by the Heads of Education Departments Committee (HEDCOM).

#### Governance in independent schools

3.42 Schools in the independent sector have been established as educational trusts, Section 21 companies not for gain, close corporations, or under proprietary ownership. They must comply with educational laws and regulations and register with provincial education departments. Conditions of registration should include approval of the school constitution, which should include provisions for governance. The Ministry will support provincial legislation or other measures to encourage private school owners, directors or trustees to introduce representative governing body or consultative arrangements in their own schools, where they have not already done so.



## 4 BUILDING CAPACITY FOR MANAGEMENT AND GOVERNANCE

### Summary

4.1 The re-organisation of the school system, and the establishment of democratic school governing bodies throughout the country, require a comprehensive programme to build capacity for management and governance, especially at school and district levels. This would include an inter-school programme for sharing expertise, the development of provincial capacity-building units, an Education Management Information System, and a National Education Management Training Institute. The Department of Education is establishing a task team to prepare a plan for the institute within one year, and facilitate within three months the development a programme of leadership training and capacity building for education field staff and school governing bodies, in co-operation with provincial education departments.

### Capacities for management and governance

4.2 The new organisation and governance system, to say nothing of new funding arrangements, involve a radical decentralisation of management and governance responsibilities to local schools and communities. It is no exaggeration to say that decentralisation and democratisation will not succeed--that is, they will be incapable of stimulating and supporting the regeneration of the culture of teaching and learning, and enhancing the quality of educational delivery and performance--unless managers and governing bodies are able to understand and perform their tasks competently and in co-operation with each other.

4.3 A completely new outlook on management development and preparation for governance will be required by both the political and the executive leadership of education throughout the system, at national and provincial levels. We need a national sense of urgency in these matters. The Ministry of Education undertakes to give them the necessary priority in our consultations in the Council of Education Ministers (CEM), and ensure that appropriate action is co-ordinated through the Heads of Education Departments Committee (HEDCOM).

4.4 Using the Review Committee's terminology, "capacity" may be defined as the power to act, and "capacity-building" as empowerment. School management's, school governing bodies and district education offices must be empowered to implement effectively the new system of democratic management and governance.

4.5 The provision of basic physical plant, equipment, materials, and administrative and professional support is an essential pre-condition for many school communities, especially in rural areas, to provide learning opportunities of quality and to undertake efficient administration and governance.

4.6 Democratic institutional management makes considerable demands on school principals and their teachers. Already, many skilfully manage the contributions of assertive constituencies of teachers, students and parents in a balanced exercise of leadership and authority. Systematic programmes are needed to develop such skills more widely. In addition, the new departments of education must ensure that effective in-service programmes on essential administrative processes like record-keeping, budgeting, financial control, reporting, staff selection and the running of

meetings are provided, and that they embody the spirit of the new democratic education policy.

4.7 New governing bodies, and the constituencies from which they are elected, will need clear information on their basic powers and functions, the negotiable powers for which they might be eligible, and the implications of exercising their governance responsibilities. These include defining and implementing a new school ethos and policy, including sensitivity to race, gender and LSEN issues, as well as essential procedural and administrative matters.

4.8 Capacity-building programmes for governing bodies are needed since large numbers of members will be performing their roles for the first time. However, such programmes will be able to draw on extensive decision-making and consultative experience from other contexts which many members will bring to their new tasks, and on the accumulated knowledge, skills, administrative expertise and resources for effective governance which many school communities already exhibit. District-level programmes should enable well-resourced and successful schools, both public and independent, to share their experience with under-resourced schools whose management and governance capacities need to be built.

4.9 The Ministry of Education places high value on the role of district education offices and their officials. They will be in the closest contact with schools. They will provide professional leadership and support to school principals, teachers and governing bodies and monitor their development, and identify local priorities for resourcing. They will facilitate co-operation among schools, co-ordinate the use of specialist personnel, advisory services, teachers' resource centres, and community learning centres, and provide an administrative service to district-level consultative bodies. To perform these diverse roles effectively, district education officials will themselves need professional knowledge and skills of school management and governance.

4.10 Provincial education departments will need capacity-building units to identify the priorities and develop and implement the programmes for district and school management and governance, in close collaboration with stakeholder bodies, including teachers' and parents' organisations. The Review Committee recognised the inter-dependence of management development for school principals and district education officials, and capacity-building for school governing body members. The proposal for provincial capacity-building units provides the germ of an idea which some provinces are already developing in different ways. The experience of provincialisation thus far demonstrates the importance of co-ordination across provinces, in which the national department can play a facilitating role.

4.11 The management of the new system will require an Education Management Information System (EMIS) which links all schools to the provincial education departments, and the provinces to the national department, and generates the information, including an index of need, on which the norms and allocation decisions on resources can be based. The necessity of a national EMIS, built collectively by the national and provincial education departments, was recognised in Education White Paper 1. The EMIS is being designed as a new information system appropriate to the democratic era, and for use as an active management tool for performance monitoring and quality enhancement. The conceptualisation and planning of the new system are being spearheaded by an EMIS steering committee,

whose members are drawn from the national and provincial departments and several research institutions, with significant international financial and technical support. The steering committee is also designing the instrument and procedures to secure data on every school for a national Index of Need. These matters are considered further in the next chapter.

4.12 The preparatory work for the establishment of a National Education Management Training Institute is under way. The Council of Education Ministers has endorsed the project, to service national, provincial and sub-provincial management and governance needs. The new institute is intended to become the centrepiece in a national strategy to raise the quality of leadership in public schools and in the support services provided to schools by provincial education departments, especially at district level. It would be a mistake, however, to allow the institute project to deflect attention from the immediate need for capacity-building for school management's and governing bodies. Planning for the institute should go hand-in-hand with organising a national programme of capacity-building in schools. It is conceivable that the institute could grow out of practical action, rather than the reverse.

4.13 Having sought the advice of the Heads of Education Departments Committee, the Department of Education is in the process of establishing a task team and reference group, the former to undertake the planning study for such an institute on the basis of wide consultation, and the latter to provide guidance and act as a sounding board for the team.

4.14 The objectives of the task team are:

- (1) To develop a detailed plan and budget for the establishment of a national institution responsible for education management development (EMD) including education planning.
- (2) To simultaneously facilitate, in co-operation with provincial education departments, the planning and delivery of a series of programmatic activities aimed at improving and delivering the capacity of education managers at national, provincial, district and school levels and of school governing bodies.

4.15 The terms of reference of the task team are:

- (1) To develop a one-year workplan and budget to cover all the tasks that arise from the objectives set out above.
- (2) To consult with and actively involve the national and provincial departments, client groups, providers, stake-holders and the international community in the process of fulfilling the brief.
- (3) On the basis of an audit of management development needs at national, provincial, district and school levels, to develop a set of priorities in terms of the needs to be addressed.
- (4) To conduct, or cause to be conducted, an audit of current and potential capacity for the delivery of EMD activities in departments of education, tertiary institutions, NGOs and the private sector.



- (5) On the basis of a set of priorities referred to above, and in co-operation with provincial departments of education, to facilitate the development and delivery of a programme of management development activities.
- (6) To examine the international experience, particularly the experiences of such institutions elsewhere, as well as the latest trends in the delivery of management development.
- (7) To develop a detailed plan for the establishment of a national institution, including its mandate, financing, staffing structure, governance, location etc.
- (8) To prepare workplans, recruiting strategies, budgets, draft statutes or any such documentation that will be required in order to operationalise the institution.
- (9) To disseminate information, seek co-operation, and lobby support, including financial support, for the creation of such an institution.
- (10) To present regular reports to, and seek the advice and guidance of the Reference Group which will be established for that purpose.
- (11) In fulfilling the above, to conduct or commission research, engage consultants, contract out work and utilise outside expertise as may be deemed necessary and affordable.

4.16 The institute will thus be designed to support the capacity-building programmes of the national and provincial education departments, focusing particularly on the district and school levels, and thus appropriately the Task Team's report to the Director-General of Education will be tabled in the Heads of Education Departments Committee (HEDCOM). The team's final report on the first objective (paragraph 4.13) will be made no later than the end of 1996. Its proposals on the second objective will be required within three months, so that the facilitation, with provincial education departments, of a programme of capacity building for school governing bodies and education managers at field and head office levels can be begun without delay.

4.17 UNESCO's International Institute for Educational Planning (IIEP) in Paris has pledged to partner the Department of Education in this endeavour, making available its renowned professional resources and international network. The department is also in consultation with several bilateral development co-operation agencies which have also expressed strong interest in supporting this project and the capacity-building programme. The task team will be working with the IIEP and these agencies to ensure that the maximum benefit can be derived from the international experience in this field.

## 5 THE FINANCING OF SCHOOLS

### Summary

5.1 The Review Committee proposed a new financial system for public schools based on a partnership between the government and communities, on the basis that nothing else is affordable under present conditions. In terms of these proposals, provincial budgets would be restructured to secure fundamental constitutional requirements and policy objectives. School operating costs would be funded partly by subsidy, and partly by income-related school fees which would be obligatory for all parents who could afford them. Poor parents would not pay fees, and no child would be refused admission to school. The same system would apply in the compulsory and post-compulsory phases, with a reduced per capita subsidy in the post-compulsory phase. The system should be reviewed after five years.

5.2 The committee recommended that public special schools should be financed on essentially the same principles as ordinary schools. However, priority in funding should be given to reaching the majority of out-of-school learners with disabilities, and the distinctive costs of education for learners with special education needs should be recognised in capital, staffing and operating budgets.

5.3 The committee proposed that the practice of providing subsidies to independent schools should continue, subject to a number of conditions.

5.4 The Ministry of Education has sought advice from international consultants on the merits of the options presented by the Review Committee. At the time this document was prepared, their reports were still being studied. The implications in terms of fiscal and budget policy, as well as for the powers and functions of governing bodies, are extremely far-reaching. A separate school finance policy document will thereafter be prepared by the Ministry after public discussion and consultation with the relevant state departments. The South African Schools Bill and the Ministry's proposed negotiating position for the Section 247 negotiations, will make provision for the new school finance policy.

### Previous trends and present realities

5.5 The approach to school financing and budget reform presented in Education White Paper 1 was confirmed by the Review Committee's own analysis.

5.6 The former racially and ethnically organised departments of education embodied substantial inequalities in per capita spending, the largest disparities being accounted for by "the skewed distribution of teacher qualifications, inappropriate linking of salary levels to qualifications, and disparities in learner:teacher ratios". Taken together with the inequitable distribution of education facilities and learning resources, these disparities have resulted in both unequal access to education and unequal learning outcomes. Spending disparities reflect the racial hierarchy of the old dispensation. (Review Committee Report, pp. 63-64)

5.7 The committee identified four dimensions of reform as the cornerstones of government's education budget policy and the basis of its own proposals for transforming school financing: measures to address "the central question of equity", to reduce unit costs and raise productivity levels, to redesign the inherited

unsystematic pattern of user charges while meeting the commitment to free and compulsory education, and to establish new funding partnerships for educational development. (pp. 64-65)

5.8 After analysing budget allocations for education from 1988/89 to 1995/96, the committee concluded that the public funds allocated in recent years were inadequate to meet the government's development goals. While South Africa's budgetary allocation for education is relatively high by international standards, the historic concentration of resources on a minority of the population has left the country "without the depth of human resource availability which would otherwise be expected". Even if efficiency savings are significant, without a substantial real increase in budgetary provision, estimated by the committee at five per cent per annum over the next five years, the requirements of restructuring, qualitative improvement, reducing construction backlogs, enrolling out-of-school learners, and absorbing net growth in the school-age population, will not be met. (pp. 65-67)

5.9 The committee concluded that even if the economy were able to support substantial real growth in the education budget, the "optimum affordable level" of per capita expenditure would be somewhere between the current levels in the former Department of Education and Training schools and those in the former House of Representatives schools. This would represent serious reductions in the better resourced parts of the system, and "modest to substantial increases for the vast majority of learners in schools". Arguably, a shift of this kind is required by the constitutional imperatives of equity and redress. (p. 67)

5.10 Since the current budgetary trend represents virtually no real year-on-year growth in education spending, the committee's conclusion emphasises the extremely difficult funding choices which the national and provincial departments of education must continue to confront. Given the imperative necessity to redress past educational neglect, to make provision for the annually increasing growth of student numbers, especially in urban and peri-urban areas, to make appropriate investments in educational productivity, through the upgrading of teachers, the supply of teaching and learning resources, and the diversification of educational programmes (to attend to early childhood learning needs, special education needs, adult basic education and training, and community colleges, to name only a few), the Ministry of Education regards the current trend in budgetary allocations with dismay.

#### **The Review Committee's three options for reforming school financing**

5.11 The committee presented three broad approaches to reforming school financing, all of which assume the new structure of school organisation and governance. The committee emphasised that the elements of the three options could be recombined in various ways.

5.12 Option One: the minimalist-gradualist approach. In terms of this option, most of the present varieties of school types would continue, under the broad title of public schools. A school model closely resembling the current Model C would be retained, with some governance powers reduced. Schools from other ex-departments would be encouraged to adopt the same features as this type of school, including a juristic personality and the authority to levy and enforce compulsory fees. Nevertheless, a commitment to equity would require the equalisation of staff provision scales across all school types, possibly over a five year period, and the redistribution of all non-



personnel expenditure, either on an equal or an affirmative action basis. All schools would be entitled to raise additional school development funds. (pp. 68-69)

5.13 The Review Committee's appraisal of Option One was that this approach would not redistribute resources sufficiently to make a tangible difference to the majority of under-resourced schools, which would be "further ghetto-ised" in an unequal, bi-polar system. Access to free and compulsory schooling would be available only in the poorest, low quality schools. The committee is therefore convinced that this approach "will not deliver enough change, rapidly enough, to meet the government's policy objectives". (pp. 77-78, 82)

5.14 Option Two: the equitable school-based formula approach. This approach lays heavy emphasis on equity and redress, and is directed to raising quality and efficiency in the poorest schools. The fundamental objective is per capita equity in the allocation of resources, in order to enable the government to meet its constitutional obligation to ensure a minimum quality, basic education for all learners. The starting point is to develop a formula to determine funding for each school, based on a calculation of what gross per capita budgetary allocation can be afforded in the compulsory school phase. The formula would be based on the school enrolment, weighted for redress and affirmative action factors (such as school location, LSEN, and parental income), as well as policy incentives (for instance, to increase the number of girls in science streams). The formula would need to be phased in over four to five years, so as to avoid severe disruption in well-resourced schools. If the education budget remains relatively constant in real terms, the per capita allocation per school would stabilise somewhere between current levels in former DET schools, and those in former House of Representatives schools. This is the "optimum affordable level" referred to in paragraph 5.9 above. All schools would be encouraged to raise voluntary school development funds. No compulsory fees would be permitted. (pp. 69-71)

5.15 The Review Committee's appraisal of Option Two was that it is equitable and transparent, permits adjustments to local circumstances and to variations in budgetary allocations, and fulfils the constitutional requirements on school financing. The main disadvantages are that it requires an effective management information system, a school index of need based on agreed indicators, and the skills of financial planning and management to apply them. In the committee's view, this is therefore a long-term option, but it should remain the objective of budgetary reform. The rapid phasing in of equal staff provision scales and non-personnel costs, and "resolute steps" toward reducing the disparity in average personnel costs, could be undertaken while the information system, index of need and capacity-building programmes were being prepared and implemented. These steps would also be required by Option Three. (pp. 78, 83-83)

5.16 Option Three: the partnership funding approach. This approach seeks to balance the principles of equity, redress, quality and efficiency within a framework for partnership funding between government and communities. It is based on a recognition that the provision of quality education for all at no direct cost to parents and communities is not affordable in terms of current or anticipated budgetary allocations to education. The problem is particularly acute during the transition from the old apartheid system, when the phasing in of equitable allocations and the additional costs of the redress agenda must be addressed simultaneously.

5.17 Provincial budgets for schools would be re-structured to secure the following components:

- (1) *Capital*: an allocation to each province on the basis of an index of need;
- (2) *Redress*: an allocation to each province for an Education Redress Fund, which would channel resources for reconstruction and quality improvement to disadvantaged schools, and leverage additional funds from other sources;
- (3) *Core*: funds for core services such as administration, quality assurance and monitoring, teacher support, and planning;
- (4) *Salaries*: for support staff, and for teachers (based on the provincially-negotiated standard staff provision scale, within national norms);
- (5) *Operating costs*: funds to pay for enrolment-driven operating costs (like textbooks, stationery and teaching materials), and costs which can be calculated on an enrolment-linked formula (like maintenance, electricity and water costs).

5.18 The committee recognised the need to mobilise additional resources for item (5), operating costs, to supplement the budgetary allocation, which is assumed to be relatively static in real terms. Assuming that the government would not agree to levy an additional tax earmarked for education, the committee favours legally obligatory fees payable by all parents who can afford them. Parents would be required to disclose the income bracket within which their income fell. Fees would be payable on an income-related sliding scale, with those at the lower end paying nothing. The provincial department's contribution to operating costs would be in inverse relation to the assessed fee income from parents. The fee scale would be set by the governing body of each school in relation to the assessed income of the parents, subject to an upper limit fixed by the department. Schools with special circumstances could apply for a higher fee limit. All schools would have the right to raise additional funds through voluntary contributions or other means.

5.19 The Review Committee's appraisal of Option Three was that it seemed to offer the most advantages as a strategy for financing schools during the transition from the past to the future system of organisation and governance. The committee examined the criticism that this approach would compromise the commitment to free and compulsory schooling. On the basis that the fundamental objective of free and compulsory education is to ensure that no child is denied access to a minimum quality basic education, simply because of an inability to pay, the committee concluded that "this option will in fact ensure that free and compulsory education is available to all who require it", and that children of poorer families would have access to education in a range of public schools, not only lower quality, fee-free schools.

5.20 In the committee's view, the main disadvantages of this approach would be administrative, because of the complexity of assessing family incomes, determining fee structures, and managing a more flexible and creative provincial planning and budgeting system. The committee believes these would not prove to be insurmountable obstacles.

5.21 The committee therefore recommended that:

- (1) the partnership funding approach be adopted and implemented;
- (2) the developmental work on information systems, the school index of need, and capacity-building initiatives be commenced simultaneously;
- (3) the entire system be reviewed after five years, to gauge the feasibility of introducing an equitable funding formula; and
- (4) regardless of which option is adopted, serious consideration be given to providing subsidies for transport and accommodation of rural learners, especially farm workers' children, to enable them to exercise their right to basic education. (pp. 71-79, 83)

#### **Comment and a fourth option**

5.22 The Ministry of Education has high appreciation for the committee's work on the development of the options, within the framework of an envisaged new, unitary system of school organisation and funding, which has lifted the policy debate on school financing to a new level. A drawback of the presentation is that the committee did not have the time to undertake detailed cost analyses of the implications of each option, for the budget, individual schools, or parents. The committee makes it clear, for instance, that realistic estimates of possible fee levels can only be made on the basis of known national funding norms, estimates of provincial resources, school costs and personal income. Such information is not yet available.

5.23 The committee's options assume, for purposes of analysis, a relatively complex level of policy influence and allocative control, by the national level of government, of the budgetary allocations for education in the provinces. It is far from certain that such assumptions will turn out to be justified. Future inter-governmental budgetary relationships and the advisory role of the Financial and Fiscal Commission (FFC) are still far from clear, more especially relationships between national line departments and their provincial counterparts in planning a budgetary strategy which is directed to the transformation of a strategically important national sector such as education. The Review Committee had completed its report before the FFC published its framework document.

5.24 The Department of Education's economic consultants (Professors Christopher Colclough of the Institute of Development Studies, University of Sussex, and Luis Crouch, of the Research Triangle Institute, North Carolina) have meanwhile examined the Review Committee's options and proposed a fourth option for consideration. Their analysis favours a variation on Option Two from among the Review Committee's proposals. The committee's version of Option Two would, in their view, have a fatal consequence. In the consultants' view, over the five year period during which budgetary allocations to schools are re-organised in favour of equity and redress, the decline in public funding for the previously privileged schools would propel middle-class parents out of the public school sector and into the independent school sector. Among those departing would be many opinion-formers and decision-makers whose influence in favour of sustained or enhanced public funding for public education would consequently tend to diminish. This inference is based on observation of international trends in other transitional economies.



5.25 The consultants argue that it is bad politics for the public education system to permit a situation to arise where the independent sector grows in attraction and through the adherence of the middle class parents. This tendency would result in depriving the public school sector of the financial, managerial and persuasive capacities of an increasing proportion of the better-educated and better-off segment of the population, regardless of race. The remedy, according to the consultants, would be to find an acceptable means of enabling school communities to raise sufficient resources to maintain school quality at levels acceptable to the parents who would otherwise drift away. This argument does not centre on the desire to do favours to the better off, but on a recognition that the commitment of the middle class to public school education is a pre-requisite for maintaining adequate levels of both public and private investment in public education for the benefit of all the population, especially the poor who have neither financial means nor influence to improve the condition of their children's schools.

5.26 The consultants propose a fourth option. This begins with allowing governing bodies to decide on targets for raising revenue, to finance expenditure beyond what would be afforded from the provincial education department's allocation. They would be empowered to raise fees and/or voluntary contributions from parents at levels determined by themselves in the light of their collective income resources, the needs of their school and their expenditure targets. Once determined by the governing body through a collective process, the fees would be compulsory, and defaulting parents could be sued for payment. However, a national income threshold should be established below which no parent could be compelled to pay. A governing body could decide to devise a progressive scale of fees beyond the threshold income. No child would be excluded from school on grounds of a parents' default. Governing bodies would not be compelled to charge fees. The level of fees would not be prescribed. These matters would be determined by the governing body in relation to the quality of education they wished the school to provide (and their own collective financial capacity).

5.27 This brief summary does not do justice to the consultants' proposal, nor to their awareness of some of its problems. The Ministry of Education recognises it as a serious option based on a thought-provoking analysis, which must be interrogated and discussed as widely as possible.

#### **The Ministry of Education's position**

5.28 The constitutional, legal, financial, political and administrative implications of new policy options for school finance are still being analysed and will need to be extensively discussed before a clear proposal can be put to Cabinet. The Department of Education has engaged specialist advisors to assist it in the process of clarifying the financing options. Detailed technical discussions on all aspects of education finance policy are being undertaken with the Department of Finance and other state departments and agencies.

5.29 The 1996/97 budget estimates for education continue the progressive shift toward equitable allocations, take into account the newly-negotiated learner-educator ratio guidelines, and include an element of earmarked funding for redress. However, there is no possibility of incorporating the full implications of a new government policy on school finance into the budget which will be presented to Parliament in April 1996.

The 1997/98 budget is therefore the earliest in which the new policy could be fully incorporated. Special arrangements will need to be considered in order to implement the new funding policy from the beginning of the school year in January 1997.

5.30 A new policy for school finance which alters the powers, rights and functions of school governing bodies must be negotiated with them in terms of section 247 of the Constitution, and reasonable notice of such alterations must be given. The new finance policy, or relevant parts thereof, must be part of the government's negotiating position. The negotiations themselves will occur between April and June 1996.

5.31 Thereafter, the South African Schools Bill and such provincial legislation to bring about the new system of school organisation and governance as may be required, must precede the full implementation of a new school finance system. The South African Schools Bill will reach Parliament in mid-1996. Provincial legislation is expected to follow in the second part of 1996. The earliest date for implementing a new national school finance policy, in terms of norms and standards set by the Minister of Education, would be January 1997.

5.32 Meanwhile, progress has been made on three important measures relating to school finance which were announced in Education White Paper 1 and endorsed by the Review Committee.

5.33 A single learner-educator ratio. A single ratio on which provincial staff provision scales can be based must underlie an equitable school financing system. On 29 September 1995, the Education Labour Relations Council (ELRC) signed an agreement on guideline learner-educator ratios of 40:1 in ordinary primary schools and 35:1 in ordinary secondary schools. These ratios do not stipulate exact class sizes, but provide parameters within which each provincial bargaining chamber will negotiate staff provisioning scales for its schools. This is a major step towards equity in the provision of educators to all schools. Separate agreements will be negotiated for other institutions including special schools and technical schools.

5.34 An Education Management Information System (EMIS). In June 1995 a steering committee was established by the Department of Education to oversee the development of an EMIS. The committee comprises representatives of the national and provincial departments of education, the organised teaching profession, and a number of NGO and academic research units. The committee has undertaken an international investigation and is consulting international specialists in EMIS. A fully integrated and effective system will take two to three years to become fully operational, but the first phase will be implemented in 1996. By providing information to all ten departments of education, the new EMIS will support budgetary and personnel planning for 1996/97.

5.35 A School Index of Needs. The index is required as a planning tool for departments of education. It will be compiled on the basis of a census of all 29,000 schools in the country, and will supplement the data gathered for the EMIS. The fieldwork task is immense. A tender to undertake the investigation was awarded in January 1996 to a consortium comprising the Human Sciences Research Council (HSRC), the Education Foundation, and the Research Institute for Educational Planning (RIEP) at the University of the Orange Free State. The construction of the national data base and provisional analysis of needs is targeted for late June 1996. The index will enable provincial departments, their regional and district offices, and

school communities, to make more informed and equitable decisions about financial allocations to schools, for expenditure on redress and quality improvement.

### **Financing the post-compulsory school sector**

5.36 The Review Committee's proposals for the senior secondary sector are based on the government's policy as outlined in Education White Paper 1, and are not intended to pre-empt the work of the proposed enquiry into Further Education. The proposals strongly support government subsidies to post-compulsory education, especially for learners from disadvantaged backgrounds, so that a significant proportion of the age group is able to proceed to the matriculation level and above. The fact that the majority of secondary schools (and secondary school teachers) cover both the compulsory and post-compulsory phases argues for a common funding mechanism for both phases.

5.37 The committee therefore recommends their Option Three (described in paragraphs 5.16-5.20 above) for the post-compulsory phase as well. The government subsidy to fund the basic requirements of all learners in post-compulsory education in each school, would cover the following items:

- (1) personnel costs based on equal provision scales;
- (2) capital expenditure;
- (3) a redress and development fund;
- (4) departmental core costs;
- (5) some operating costs in inverse ratio to the income raised from obligatory fees.

The overall per capita subsidy to the post-compulsory phase would be "substantially less" than the corresponding subsidy in the compulsory phase.

5.38 Schools would charge compulsory fees on a sliding scale based on family income, in order to fund operating costs "as well as other items of expenditure". Any additional costs would need to be funded through voluntary contributions, fund-raising activities or business sponsorships. (pp. 79-80)

5.39 The Ministry of Education's response is deferred for the reasons given in paragraph 5.28 above.

### **Financing schools for the education of learners with special education needs (ELSEN)**

5.40 The Review Committee proposed that all schools for LSEN, except private schools, should become public special schools. The committee acknowledged that new policy for ELSEN would be recommended by the forthcoming national commission, but two principles should guide financing decisions in the mean time. Firstly, priority should be given to redress funding for the majority of LSEN who are not in school. Secondly, since special education needs cover a wide spectrum of need ranging from low to high, there must be a continuum of placement options for LSEN related to available resources and infrastructure. Financing decisions must therefore support a continuum of provision, including infrastructure, from mainstream schools to separate schools for LSEN.



5.41 The committee recommended that the distinctive costs of ELSEN should be recognised in capital, staffing and operating budgets, and it made several specific proposals:

*Capital*

- (1) Within any cluster of mainstream schools, one school should be targeted for the placement of learners with specific disabilities, and in such schools the physical structure would have to be modified and upgraded to improve accessibility and safety for LSEN.
- (2) Separate schools for LSEN should be comprehensive and equipped for students with a wide diversity of need.

*Staffing*

- (3) A single staff provision scale should be phased in over five years.
- (4) The inherited differences in levels of qualification of educators serving different parts of the ELSEN system must be addressed.

*Operating*

- (5) The system of obligatory fees on an income-related sliding scale (summarised at paragraph 5.17 above), with zero-rating for the poor, should apply to parents of LSEN as to all other parents.
- (6) Schools should be encouraged to raise funds from sponsoring bodies, business sources, and their own efforts, in order to supplement the government provision and fee revenue.
- (7) Transport provision, which is one of the costliest items for schools serving LSEN, should be rationalised at the district and local level.
- (8) Inter-departmental collaboration between Education, Health, Welfare and Transport should be promoted as an aid to achieve efficient provision of services. (pp. 80-81)

5.42 The National Commission on Education and Training for Learners with Special Education Needs will be enquiring more systematically into the matters reported here. Meanwhile, the Ministry recognises that the committee investigated the ELSEN sector in accordance with its terms of reference, and received specialist advice from among its own number and from the ELSEN constituency. The Ministry welcomes the emphasis given to these matters in the report, and endorses the objectives of redress and equity which are served by its recommendations, as well as the principles summarised at paragraph 5.41 above.

5.43 The committee's recommendations relating to capital costs involve significant policy decisions. These are deferred pending further advice.

5.44 The recommendations on staffing costs are in line with the government's policy and agreements have since been reached in the Education Labour Relations Council.

5.45 The recommendations on operating costs are supported, with the proviso that no decision has yet been taken on the question of obligatory fees.

5.46 The Department of Education will refer the committee's recommendations to HEDCOM's National Co-ordinating Committee on ELSEN, to advise on which recommendations ought to be endorsed and taken up for implementation by the departments of education in advance of the national commission's report.

### Financing education in independent schools

5.47 It is beyond question that many independent schools make an important contribution to the education of their clienteles and undertake significant development work in curriculum and outreach, that independent school clienteles vary from very poor to very rich, that many independent schools embraced a non-racial enrolment policy well before it was officially approved, and have made imaginative adaptations to the new non-racial and democratic order.

5.48 It is also beyond question that many current private school operators are unscrupulous and exploitative, and that the field needs to be rigorously regulated.

5.49 The right of persons to establish independent schools is internationally recognised and is no doubt constitutionally protected, subject to generally applicable limitations which are imposed by law and which are consistent with the spirit of a democratic society. There is no constitutional obligation on the government to support independent schools from public funds. A decision to do so (or to continue to do so) is a matter of policy.

5.50 Approximately one per cent of total education expenditure from public funds is spent on subsidies to independent schools, which enrol less than two per cent of all school students. Since independent school provision may represent savings to the government, and since the total independent school subsidy is so small, the Ministry of Education is of the view that:

- (1) the practice of providing subsidies to registered independent schools should continue;
- (2) the per capita subsidy should not exceed per capita spending on public school students;
- (3) serious consideration be given to a single level of subsidy, based on a clear and transparent formula (for example: enrolments divided by learner-teacher ratios of 1:40 and 1:35 for primary and secondary schools respectively, multiplied by an average educator's remuneration package, or part thereof);
- (4) only private schools maintaining satisfactory scholastic standards be subsidised;
- (5) the conditions of subsidy should enable provincial education departments to ensure minimum standards of professional competence, health and safety, and proper pedagogical practice, and should specify grounds which would disqualify a school from receiving a subsidy, such as unfair discrimination in admissions or staffing, or teaching which opposed the fundamental rights upheld by the Constitution.

5.51 These views will be examined in relation to the broader analysis of school finance policy which is currently under way, and further reflections on subsidy policy for the independent school sector may be included in the resulting policy document.

## 6 IMPLEMENTING THE NEW SYSTEM OF SCHOOL ORGANISATION AND GOVERNANCE

### Summary

6.1 The implementation of the new school organisation and governance system will require legislation at national and provincial levels. The Ministry of Education is preparing a South African Schools Act for this purpose, for tabling during the 1996 parliamentary session. The new Bill, together with the Ministry's policy document on school finance, and a document setting out the Ministry's negotiating position, will be published in advance of the negotiations required in terms of section 247 of the Constitution. These negotiations will comprise the issuing of a proposal by the Ministry to public school governing bodies, the opportunity for governing bodies to reply, and a series of meetings which will be conducted on behalf of the Ministry in order to afford governing bodies an opportunity to state their views orally.

### The context

6.2 The transformation of the South African public school system, in which the work of the Review Committee has played a leading part, is taking place within the context of the transition era in South African politics. The emergence throughout the society of practices of negotiation and stakeholder participation, in order to democratise the institutions of governance and the provision of public services, is one of the most remarkable trends of this era. The 1993 Constitution has been a symbol of the politics of negotiation. It both entrenches rights and prescribes practices which ensure that South Africans will continue to negotiate the construction of the new pattern of public life. In Education White Paper 1, the Ministry of Education emphasises repeatedly its commitment to achieving transformation in education through processes of public inquiry and principled consensus-building.

6.3 The task of implementing the new school organisational structure and governance system is therefore embedded within the national and provincial governments' constitutional and legal obligations, as well as the country's new political culture and national education policy. It is indisputable that the change to the future system of school governance must be negotiated. But its new direction and moral basis are already decided, both in the Constitution and in the government's policy. Even in the context of a Government of National Unity and the new culture of negotiation, some matters are non-negotiable. It has been well said, for instance, that between apartheid and democracy there can be no compromise. This Ministry will not negotiate to protect a historical legacy of unjust privilege in the schools.

6.4 It is appropriate to cite the chapter on "School Ownership, Governance and Finance" in Education White Paper 1:

"In creating a Constitution based on democracy, equal citizenship and the protection of fundamental human rights and freedoms, South Africans have created a completely new basis for state policy towards the provision of schooling in the future. Unavoidably, because inequality is so deep-rooted in our educational history, a new policy for school provision must be a policy for increasing access and retention of Black students, achieving equity in public funding, eliminating illegal discrimination, creating democratic governance, rehabilitating schools and raising the quality of performance....



"The issue is not whether the organisation, governance and funding of the education system will change. Change is inevitable and cannot be delayed. The issue is whether a new and just dispensation in the schools will be brought about in the new South African way, by negotiating peacefully, according to the spirit and letter of the Constitution, in the service of both national unity and cultural diversity.

"For its part, the Ministry of Education is convinced that peace in the schools is a prerequisite for democratic transformation in education. All the educational goals and programmes of the government depend upon achieving and maintaining a disciplined and purposeful school environment, dedicated to the improvement of quality throughout the system. The Ministry of Education is therefore committed to an inclusive process of negotiated change toward the full democratisation of school organisation and governance...." (Education White Paper 1, pp. 67, 69)

6.5 Taking into account all the processes of consultation and participation on the issue of schools organisation which have occurred since May 1994, associated with the development of Education White Paper 1, the work of the Review Committee, the publication of its report, and the preparation of Education White Paper 2, it is time to announce closure on the main conceptual and structural issues. Cabinet's approval of this document is a milestone in the transformation of the organisation and governance of schools, with many more to come.

#### **National and provincial legislative responsibilities**

6.6 Detailed macro-planning work to assess the financial, legislative, logistical and other implications, has been under way for some months. Frequent workshops and consultations between the political and administrative heads of education in the national and provincial governments are helping to improve mutual understanding between the national and provincial ministries and departments of education on the respective roles of each level of government in legislating for and implementing change.

6.7 Because education (except for universities and technikons) is a concurrent function of both the national and provincial legislatures and governments, it cannot be expected that decisions will be taken in perfect harmony and with perfect synchronisation between the national and provincial levels, or among the respective provinces. The Council of Education Ministers and the Heads of Education Departments Committee are the two invaluable formal structures within which mutual interests are continuously reviewed and, as far as possible, actions are co-ordinated. Provincial ministries also maintain active channels of communication among themselves. No doubt it would have been desirable if the provinces had been able to address their responsibilities from the outset within an agreed national legislative framework for school transformation and at more or less the same time, but given the complexities of the transition process and the different circumstances among provinces, and between the national and provincial spheres, it is hardly surprising that this has not happened.

6.8 In the event, the timing of the enactment of the provinces' first round of educational legislation has varied considerably. Several provinces have enacted

schools legislation in order to provide an appropriate and legitimate working basis for their completely new non-racial and democratic administrative and professional environments. Meanwhile, the national Ministry of Education, which has the responsibility to direct the educational agenda of the country as a whole, has moved as rapidly as possible through the processes of investigation, consultation and policy formulation, and is now preparing the draft South African Schools Bill.

6.9 The different legislative rhythms of the national and provincial levels, and possible or actual differences among national and provincial laws, are not in themselves problematic. They are the inevitable outcome of our constitutional arrangements and in particular the concurrent legislative powers of Parliament and the provincial legislatures. The authors of the Constitution anticipated that both Parliament and provincial legislatures would be enacting legislation on a matter, such as education, in which each had competence. The Constitution provides that such laws should co-exist and be regarded as compatible with one another, unless and only to the extent that, they are definitely inconsistent. It is only if there is an "express" or definite inconsistency between a provincial law and an Act of Parliament that the question would arise as to which law (or part of a law) should prevail in the province in question. The provincial law would prevail unless the Parliamentary Act met one or more of the criteria provided by the Constitution in section 126(3). Irrespective of the "override" criteria in the Constitution, a provincial government might decide quite voluntarily, in the interest of education in its province, to bring a provincial education law in line with the national law.

6.10 The Ministry of Education has been advised that the implementation of the new school organisation, governance and funding system will require an Act of Parliament. It is the intention of the Ministry to publish the draft South African Schools Bill for public comment, and to undertake the consultations envisaged in section 6 of the National Education Policy Bill, 1995, with the Council of Education Ministers and the organised teaching profession. The Ministry will work for the highest possible level of agreement on the Bill between itself and the provincial Ministers, since the Bill will be designed to establish the pattern for the progressive re-organisation of the school system and the democratisation of school governance throughout the country, in line with this white paper.

6.11 The constitutionality of disputed provisions of the Gauteng School Education Bill, 1995 (now enacted, with the exception of the disputed sections) and the National Education Policy Bill, 1995, will be decided by the Constitutional Court in cases set down for 29 February and 7 March 1996, respectively. The court's findings will clarify important aspects of constitutional interpretation which are bound to have a bearing on the national and provincial legislation which will be needed to bring the new system of school organisation into effect.

6.12 It is highly desirable for the Ministry of Education and the provincial MECs for Education to achieve a common mind on the nature of the legislative responsibility of each level of government, the objectives and contents of the South African Schools Act, and the sequence and timing of activities which must ensue in order to bring the common system of school organisation and governance into effect starting in January 1997. This issue has the highest priority for the Ministry.

### Schedule of events

6.13 With the adoption of this white paper by Cabinet, three linked processes will be accelerated. They are, the completion of the Ministry's school finance policy document, the draft South African Schools Bill, and the Ministry's negotiating position, which will set out the alterations it proposes to make in the rights, powers and functions of public school governing bodies. All three processes will be subjected to public scrutiny and consultation before final adoption.

6.14 The Ministry of Education intends to table the South African Schools Bill in Parliament during the 1996 session, preferably by the end of June. This goal sets the pace for all three processes, since they are linked to one another. The Ministry intends to seek Cabinet's approval for all three documents before the end of March 1996, or as soon thereafter as possible.

6.15 The publication of the three documents in early April 1996 will enable the process of formal negotiations on school governance to commence, as contemplated in section 247 of the Constitution. The negotiations are scheduled to conclude by late June 1996. Thereafter, the South African Schools Bill will be tabled in Parliament, together with whatever amendments are required as a result of the negotiations.

6.16 The Ministry of Education will encourage provincial ministers to prepare whatever legislation may be required for passage in their provincial legislatures before the end of 1996, in order to implement the new framework of school organisation, governance and funding starting in 1997.

### Section 247 negotiations

6.17 On the advice of its legal panel, the Ministry of Education intends to undertake the process of negotiating its proposals for school governance in the following manner, ensuring at all times that its intentions and its processes are open, fully disclosed to all school governing bodies, and in every other respect *bona fide*.

- (1) A formulation of the new policy and its effect upon the rights, powers and functions of the existing public school governing bodies referred to in section 247 of the Constitution, accompanied by a copy of the draft South African Schools Bill, will be made available to all such bodies by the Department of Education in early April 1996. The department will take all reasonable steps to ensure that the governing bodies are informed about the contents of the policy and the draft Bill in a manner which enables those which wish to enter into negotiations to do so meaningfully.
- (2) The provision of these documents will be accompanied by an invitation to submit written comments, should they so wish, by a stipulated date. In making their submissions, governing bodies will be asked to indicate whether they wish to be given an opportunity to make further oral representations to the Minister or his representatives.
- (3) Meetings will be held at previously-announced venues around the country, so that governing bodies which made submissions and requested an oral hearing will have the opportunity to expand upon their submissions and engage in debate with representatives of the Minister. This step in the process is expected to be concluded by late June 1996 at the latest.



6.18 Thereafter, the South African Schools Bill will be revised, taking into account all relevant matters raised by the respondents, and normal legislative procedure will be followed.

### **School ownership**

6.19 The issue of school ownership is among the most complex of the legacies of the previous system of school organisation. It has also generated and continues to generate high emotions. Clear policy decisions are now required in order to bring closure to the issue as far as the government's intentions and line of action are concerned.

6.20 The committee advised as follows:

"The [committee's] new governance proposals provide for public ownership of school land, fixed assets and state-provided movable assets in case of former Model C schools and former farm schools. Where this requires transfer of these assets to the state, this can best be achieved through a process of negotiation which will provide for agreement on practical arrangements regarding timing and compensation (where applicable).

"Any movable assets which were acquired using school funds or private donations would remain the property of the school.

"In the case of privately-owned former state-aided schools or former community schools [but see paragraph 6.31 below], this ownership of private assets may remain with the community or church or mine, but arrangements will be made to secure the state's interests with regard to the land and premises.

"The process of transferring assets to public ownership will vary significantly from one context to another. The argument for public ownership of assets in public schools is premised on the position that if the state is to meet its constitutional obligations with regard to educational provision, and its legal obligation of protecting the public interest with regard to public assets, it must ensure that there is some guarantee of continuity in educational provision, and that expenditure of state resources on land, buildings and infrastructure is a secure investment in the public interest." (Review Committee Report, p. 87)

6.21 The Ministry of Education agrees with the committee's argument and the main lines of its proposals. The Minister's legal panel has now made a thorough study of the matter and has delivered clear advice, on which the following positions are based.

### **Model C schools**

6.22 The system of schools known as Model C schools was introduced under the "own affairs" dispensation of the previous government, in terms of the Education Affairs Act (House of Assembly) (No. 70 of 1988). Part of the Model C arrangements

included the recognition of the schools as legal *personae* and the transfer of ownership from the state to the schools concerned, subject to certain conditions. The schools were converted from state to state-aided, with the education department concerned being responsible for the salaries of teachers (but not their employment, since governing bodies became the employers), and the governing bodies being responsible for the raising of all other recurrent costs, through mandatory fee charges or other means. It is common cause that the former House of Assembly schools had been favoured for decades with by far the largest per capita budgetary allocations of any of the country's racially and ethnically-divided school systems, and that by and large their school plant and facilities had been generously endowed out of public funds.

6.23 The precise reasons for the introduction of this variety of school in the early 1990s (after the country had begun its decisive transition to democracy and equal rights), by the education authorities of the former House of Assembly, do not concern us now and may safely be left for future historians to elucidate. However, the practical effect of the adoption of this model by the overwhelming majority of state schools falling under that body is a crucial matter of public concern. The practical effect is that the introduction of the Model C system ensured a perpetuation of substantial advantages and privileges to the community whose children were served by these schools. The provision of state aid to a semi-privatised school system served to entrench existing privileges and retain the best schools, the best facilities and the most highly qualified teaching staff in the interest of those who had historically been most advantaged by the policy and practise of racial preference in this country. This is notwithstanding the fact that the colour bar had been officially lifted from the rules of admission under which the schools operated, and that many Model C schools have since successfully implemented non-racial admissions policies.

6.24 The Constitution forbids unfair discrimination and guarantees equality. The Ministry of Education is progressively eliminating the structural inequalities in the budget process and staff provisioning scales, the latter by agreement in the Education Labour Relations Council. In terms of this document, and the further steps it outlines, the categories of state and state-aided school inherited from the past will be eliminated, in order to convey the powerful message that schools in the public sector are the joint inheritance of all the people of this democratic society, and must be managed wisely and justly in their interests, within the guarantees and protections of the Constitution and according to the laws of our democratically-elected legislatures. All public schools will be governed by representative governing bodies with substantial powers and responsibilities for the good conduct of their schools. Under such circumstances, in the Ministry's considered view, it is impossible to eliminate the other discriminatory features of the former Model C system while retaining its distinct system of property ownership.

6.25 It is therefore the Ministry of Education's policy to ensure that the property which was transferred in the past from the state to the legal *personae* of these schools is re-transferred to the state. The Ministry is advised that, in law, this step will amount to expropriation and will need to be undertaken in terms of the law governing expropriation. However, the Ministry is further advised that the government would not be required to pay compensation, considering the history of its initial transfer from the state and the interests of those affected by the re-transfer to the state. Section 28(3) of the Constitution states:

"Where any rights in property are expropriated pursuant to a law...such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interests of those affected."

The land which was granted to these schools with the specific purpose of conducting a school thereupon, will be retransferred to the state subject to the same condition.

6.26 The question of property which may have been donated or bequeathed to former Model C schools or received in trust by them subject to specific conditions will need to be considered on a case by case basis.

6.27 These matters will be provided for in the South African Schools Bill.

#### Farm schools

6.28 On the matter of farm schools, the Review Committee advised as follows:

"The situation of public schools on private farms represents a special case. All submissions to the Committee indicated that the farm school system, which had been part of the Verwoerdian ideal of 'a school on every farm', has outlived its usefulness even for those parties who had benefited from it in the past. If South Africa is to develop an internationally competitive agricultural production capacity, it must create a supportive education system to ensure that learners who wish to follow an agricultural career have the requisite education and skills to meet these demands. The current system, with its high drop-out rate, the critically limited provision at secondary level and the lack of resources to implement an appropriate curriculum cannot meet such demands. Farmers and workers alike recognise this imperative.

"The under-provision of education facilities in rural areas, and the fragmentation of facilities resulting from the different policies followed by former departments, indicate that education provision must be integrated and rationalised at district level in order to optimise resources. In addition, it is particularly important in rural areas for the development of the education system to be integrated into the development strategy in the region. Moreover, administering thousands of schools with very small enrolments and multi-level classes presents a logistical nightmare for the state which now has a constitutional responsibility to provide for the education needs of all children.

"On the basis of these factors, the Committee took the view that it would be preferable for arrangements to be made to effect the transfer of the land and assets of farm schools to the state." (Review Committee Report, pp. 88-89)



6.29 The Ministry of Education is in agreement. The legal panel has studied this matter. The Ministry is advised that whatever contracts are in force between the previous departments of education and the owners of the land upon which farm schools have been erected, should remain in force for the time being. It is essential for the continuity of education services at farm schools not be interrupted while the reform of this sector of the school system is under way. Contracts also affect the value of the land and the premises which have been devoted by the farmer for the purposes of the farm school.

6.30 In order to guarantee the control, access to and use of farm schools for educational purposes, for the benefit of the community at large, the Ministry has been advised that it will be essential to expropriate the land upon which the farm school has been erected, and servitudes of right of way to grant access to these schools, wherever such servitudes may be necessary. The acquisition of the farm school must be the subject of negotiation, in cases where the consent to control over and access to a farm school cannot be obtained from the relevant land owner and the education department concerned wishes to continue with the provision of education at the school.

6.31 Provision will be made for these matters in the South African Schools Bill. Since the owner of the land will be entitled to compensation in the event of expropriation, the Bill will make provision for a suitable arbitration procedure to determine the value of expropriated land in accordance with section 28 of the Constitution, in all cases where the parties cannot reach agreement, with provision for review by the Supreme Court on common law grounds. An arbitration procedure will enable the government to deal with all claims quickly and cost-effectively.

#### Community schools

6.32 More than a third of all school students are enrolled in community schools. The Review Committee remarked that:

"The case of public schools on community-owned land is very complex. The ownership of the land and assets is already in public hands as property of the community [but see paragraph 6.33 below]. However, this form of ownership does not provide a role for the state authority, and it is necessary for the new dispensation to ensure that the provincial department is able to ensure continuity of service, open access, and a secure environment for the investment of public funds in buildings and infrastructure." (Review Committee Report, p. 91)

6.33 The legal panel has studied these matters and advises that community schools are situated on land which in virtually all cases is held by the President, or the Zulu King in terms of the Ingonyama Trust Act, in trust for future generations. In theory, community schools are managed by the community subject to the control of various education departments. Prior to 27 April 1994, these were the departments of the former self-governing territories and so-called independent states. In most instances, *de facto* control is now in the hands of the present provincial education departments, and it appears that the structures in terms of which the community was, or should have been, in management control have largely broken down. As with farm schools and former Model C schools, teachers are generally supplied and paid by the education department.

6.34 The Ministry is advised that, under the circumstances, it is unnecessary to expropriate the land upon which community schools are conducted. The South African Schools Bill will, however, provide that control over community schools will vest, subject to the powers of the relevant governing body, in the relevant provincial education department, and that access to the school by interested parties may not unreasonably be denied, and that no such school may be closed without the approval of the relevant department.

6.35 This process would also form part of the negotiation procedure.

#### **Legal, legislative, administrative and negotiating processes**

6.36 The legal and administrative processes which are required to put the new school framework into effect are reported here only in outline and not exhaustively. Some processes overlap with others, and the sequence may well vary from what is indicated here.

- (1) Section 247 negotiations on proposed alterations to governing body rights, powers and functions.
- (2) South African Schools Bill enacted by Parliament.
- (3) Provincial schools bills or amendment bills enacted.
- (4) Re-designation of all schools falling within the "public school" category.
- (5) Establishment of new, representative governing bodies in all public schools.
- (6) Formal assumption of initial powers by all public school governing bodies under the new regulatory framework.
- (7) Request to negotiate additional powers by governing bodies which seek to demonstrate their capacity and commitment to manage them.
- (8) Negotiation of assumption of additional powers with governing bodies.
- (9) Transaction of ownership and related issues in respect of Model C, farm and community schools.
- (10) Negotiation of district school development plans for farm schools in order to integrate them into regional education provision.
- (11) Negotiations in the Education Labour Relations Council of the change of status of educators in public schools who are currently employed by a school and not by an education department.
- (12) Negotiations with independent schools seeking to become public schools, or vice versa.

6.37 Merely to list these items gives an indication of their complexity. The Department of Education will continue to work with the Minister's legal panel and the provincial education departments on these matters. They are matters of exceptional importance and touch the rights and interests of very large numbers of people and communities. The department therefore expects to make available the legal advice it receives in an appropriate form to all interested parties, as an aid to clarifying the questions of legal responsibility, and administrative and negotiation processes, which will need to be settled before the implementation of the new framework can proceed.

## 7 CONCLUSION

7.1 The Review Committee concluded its report on a note which the Ministry of Education can only endorse:

"In a spirit consistent with the perspective of the White Paper [Education White Paper 1], the Review Committee has proposed a framework of school organisation, and norms and standards for school governance and funding. We have been concerned to suggest a foundation upon which a policy could be built that would promote the development of long-lasting quality and equity in education. The Committee has also set out the processes entailed in those changes which require negotiation, and has indicated a very substantial programme of capacity-building required in many contexts if school governance and management are to be effective in the democratic structures being developed.

"We trust that the Report will contribute effectively to the work of the educational policy-makers, planners and education managers in implementing a reformed education system which is truly democratic in the sense that it provides quality education to each and every South African child." (p. 101)

7.2 The Ministry of Education launches Education White Paper 2 in the same spirit of hope and determination.

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