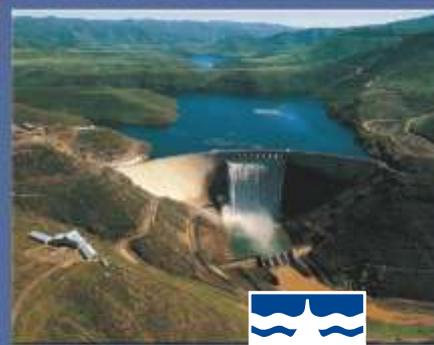
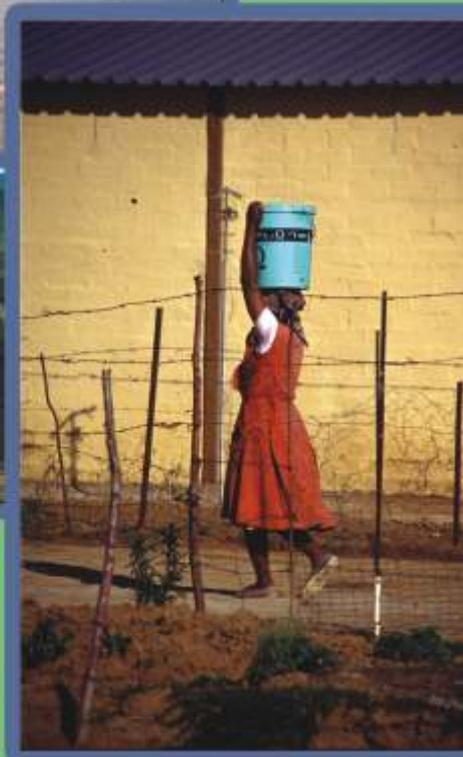
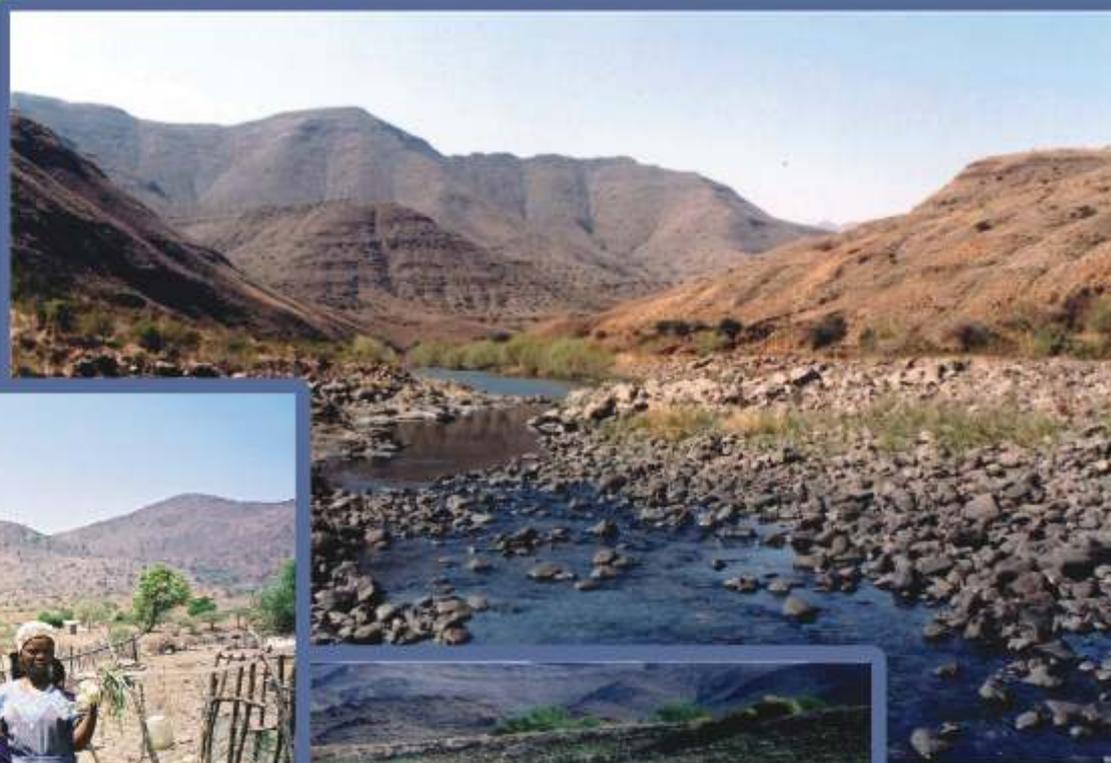
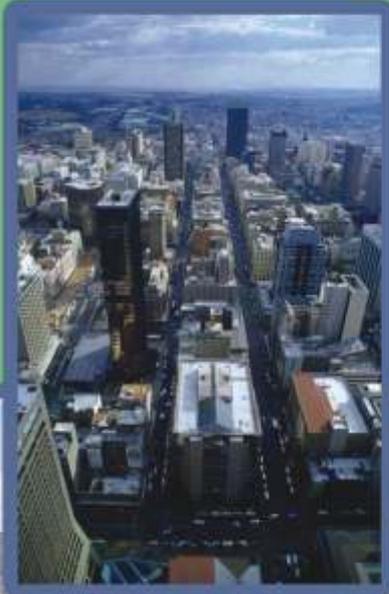


# AN ASSESSMENT OF THE WATER POLICY PROCESS IN SOUTH AFRICA (1994 TO 2003)

CHRISTO DE CONING & TAMSYN SHERWILL



TT 232/04



Water Research  
Commission



**AN ASSESSMENT OF THE WATER POLICY PROCESS IN  
SOUTH AFRICA (1994 TO 2003).**

**Report to the Water Research Commission**

**by**

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## **LIST OF ACRONYMS/ABBREVIATIONS**

<b>ARC:</b>	Agricultural Research Council
<b>CMAs:</b>	Catchment Management Agencies
<b>COSAB:</b>	Council of South African Banks
<b>COSATU:</b>	Congress of South African Trade Unions
<b>CSIR:</b>	Council for Scientific and Industrial Research
<b>DBSA:</b>	The Development Bank of Southern Africa
<b>DEAT:</b>	The Department of Environmental Affairs and Tourism
<b>DWAF:</b>	The Department of Water Affairs and Forestry
<b>DG:</b>	Director General
<b>GCIS:</b>	Government Communication and Information Services
<b>ICOMM:</b>	Implementation Coordinating Committee
<b>MTEF:</b>	Medium Term Expenditure Framework
<b>NGDS:</b>	National Growth and Development Strategy
<b>NWP:</b>	National Water Policy
<b>NWRS:</b>	National Water Resource Strategy
<b>P&amp;DM:</b>	Graduate School for Public and Development Management, University of the Witwatersrand
<b>PICG:</b>	Policy Implementation Core Group
<b>PITTs:</b>	Policy Implementation Task Teams
<b>PFMA:</b>	Public Finance Management Act
<b>RDP:</b>	The Reconstruction and Development Programme
<b>SALGA:</b>	South African Local Government Association
<b>TINWA:</b>	Team for the Implementation of the National Water Act
<b>WARMS:</b>	Water Use Authorisation Management System
<b>WB:</b>	World Bank
<b>WRC:</b>	Water Research Commission

# **AN ASSESSMENT OF THE WATER POLICY PROCESS IN SOUTH AFRICA (1994 TO 2003)<sup>1</sup>.**

## **EXECUTIVE SUMMARY**

This research report provides a recording and interpretation of the policy process followed by government in developing the White Paper on a National Water Policy for South Africa between 1994 and 2003. An attempt is made to solicit lessons of experience from the last ten years and to suggest findings regarding future options. It was found that valuable experiences exist which are relevant to present and future policy and strategy initiatives of the Ministry and Department of Water Affairs and Forestry, comparative experiences of other departments and sectors and which are relevant to policy process development in a regional and global context. This review of the water policy process is a deliberate attempt to record case material of the water policy process and to apply a selected policy process model to this initiative in order to attempt a systematic analysis of the water policy process. This is done by providing a short overview of available theoretical models, by developing a recorded case and by selecting specific tools such as the generic process model in the area of policy processes. In applying these frameworks to the water policy process in South Africa some specific findings were made regarding policy and strategy processes, institutional capacity and policy research in the water sector. The findings of the study included a confirmation of the technical quality of the policy and identified several opportunities and priorities in the implementation of water policy.

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## 1. PURPOSE OF THE RESEARCH

This research was funded by the Water Research Commission as part of the ongoing prioritisation and planning of the WRC Research Programme related to policy and institutional development for integrated water resources management. The topic has been under discussion for some time and the need for a more systematic analysis and assessment of the water policy process had been agreed upon as a priority for the 2003 and 2004 period. Following preliminary discussions between the responsible WRC research manager, senior officials from DWAF and the CSIR, it was decided to explore the use of the body of knowledge in public and development management concerning public policy.

A workshop<sup>2</sup> was arranged to test the applicability of these models with practitioners and was followed by the development of an agreed work programme that included field research as well as training courses and seminars.

The purpose of this research is to develop and present findings and lessons of experience regarding the South African water policy process for the period 1994 to 2003. The specific research objectives included:

- To provide an overview of available theoretical frameworks in the field of public policy process models;
- To record a case study<sup>3</sup> of the water policy process in South Africa for the period 1994 to 2003;
- To apply the generic process model to the water case and to draw out specific findings; and
- To provide recommendations on lessons of experience and future options for policy development and implementation processes.

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<sup>2</sup> The respective research programmes of the WRC managed by Dr Heather MacKay and the CSIR (managed by Dr Dirk Roux) have played an important role in supporting this research project inter alia by arranging training seminars with DWAF officials, workshops with specialists and access to research networks.

<sup>3</sup> The fieldwork consisted of a literature review, collection and recording of primary and secondary research material, focus group discussions through workshops (in early 2003) and interviews with selected participants during September 2003.

The purpose of this research report is to provide perspectives on the water policy process for the South African water community and to stimulate debate and to solicit comments in support of research among local practitioners and researchers. It is also envisaged that the report may be further developed and presented at a later stage as an international research article so as to have the additional advantage of soliciting international dialogue on water policy processes. Newly adopted water policies and legal frameworks in South Africa have been widely recognised internationally as state of the art in many respects. Remarks are often made in terms of substantive changes to riparian rights, protection of the environment, the nature and high level of consultation and decentralisation and devolution of powers, functions and decision making through specific institutional arrangements at the local level.

A meaningful evaluation of the performance of the White Paper will in all likelihood only be possible after a ten-year period, as implementation is only now unfolding through for example the establishment of the CMAs. However, relatively little is known about the actual process followed in the development of the Act or the White Paper. This paper is a deliberate attempt to record these initiatives and to solicit lessons of experience for future use. The focus is on the process<sup>4</sup> of policy development for water resource management and therefore on the development of the White Paper on a National Water Policy for South Africa.

This research article consists of a perspective on available theoretical policy process models (Section 2), a case recording of the water policy process (Section 3) and an application of a selected policy process framework (the generic model) to the case (Section 4). In applying these frameworks to the water policy process in South Africa some specific findings are discussed and a set of recommendations are made (Sections 4 and 5 respectively).

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<sup>4</sup> This case focuses on the process elements and institutional arrangements of the policy process rather than the content of the policy itself, and does not attempt to analyse the case in terms of either an evaluation or an impact assessment of the White Paper (in content terms) nor does it attempt to provide a perspective on the political economy of water in South Africa

## 2. THEORETICAL PERSPECTIVES ON POLICY PROCESSES

### 2.1 Introduction

For the purposes of a working definition, “policy” is defined as a statement of intent. Policy articulates basic principles to be pursued to attain specific goals and actions. As such, policy interprets the values of society and is usually followed by pertinent project and programme management actions related to implementation. Policy analysis can be defined as specific actions to develop policy options or alternatively, a systematic analysis of policy options. Policy is usually presented as a formal policy statement such as a white paper, although the interpretation and emphasis of policy is often communicated verbally e.g. a press statement.

Policy management is regarded as a comprehensive umbrella term which concerns a specific effort to improve the capacity to manage policy, to perform good quality policy analysis and to facilitate participative policy processes (see De Coning in Cloete and Wissink: 2000). The South African experience has shown that in young democracies such as our own the capacity dimension, otherwise known as the institutional arrangements<sup>5</sup>, and the ability to plan and facilitate policy processes have become critically important.

Following an emphasis on policy analysis in the 1980s and 1990s, attention increasingly focused on policy making in process terms (see Anderson (1994), Cloete (1995), Dror (1990), Hanekom (1987), Hogwood and Gunn (1984), and de Coning (1995).

In process context, an emphasis has also been placed on specific phases and elements such as evaluation<sup>6</sup>, including a focus on techniques<sup>7</sup>. South African policy making exercises of the mid-1990s required participation and public choice in which direct representation, empowerment and active decision making was required. If development is defined as the capacity to make rational choices, the

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<sup>5</sup> Institutional capacity building in policy exercises forms a pivotal part in development and policy management (see Mutahaba and Balogun (1992), Koster (1993 and 1994), Balogun (1991), Mutahaba et.al. (1993:43), Fitzgerald (1993), African Capacity Building Foundation (1992), Blase (1986), Cernea (1989).

<sup>6</sup> See DBSA (1992), Hanekom (1987), Patton and Sawicki (1986), Paul (1990) and the World Bank (1993).

participatory nature of policy processes is clearly of primary importance as such opportunities to exercise choices and explore rational options should be accommodated by policy making processes. In the search for theoretical frameworks to improve policy development with regard to participation, various models have been used<sup>8</sup>. In policy management generally, but specifically with regard to public policy analysis, the models historically utilised for such analysis were divided<sup>9</sup> into two broad categories: models appropriate for analysing the process of policy making, and models appropriate for analysing the content, results, impacts and likely consequences of policy.

Models for analysing policy content<sup>10</sup> focus on the analysis of policy itself and are intended to establish whether a particular policy has had the desired results and what the potential results and consequences will be (Dye, 1987:31). Examples include the rational-comprehensive model<sup>11</sup>, the incremental model, and the mixed-scanning model (for further information see De Coning in Cloete and Wissink, 2000). So-called classic models for policy making<sup>12</sup> include the functional process model, the elite/mass model, the group model, the systems model and the institutional model. However, the remaining theoretical perspective in this report will focus largely on policy process models.

## **2.2 Policy Process Models.**

Various authors have found it useful to analyse the policy process in terms of a number of stages through which a policy issue may pass, for example:

- deciding to decide (issue search or agenda-setting),
- deciding how to decide, or issue filtration;
- issue definition;
- forecasting;

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<sup>7</sup> See Anderson (1994) and Hoppe, van de Graaf and van Dijk (1987).

<sup>8</sup> For further reading also consult Almond, Flanagan and Mundt (1973), Apter (1971) and Weiner and Huntington (1987).

<sup>9</sup> Hogwood and Gunn also make this distinction. For trends in Britain in 1960s and 1970s, see Hogwood and Gunn (1984:3).

<sup>10</sup> For a discussion of prescriptive models of policy making in their historical context with special reference to the development of the mixed scanning models, see Hogwood and Gunn, (1984:53-62).

<sup>11</sup> For comparative perspectives on the origins of rational policy making in this context, also see Hogwood and Gunn, (1984:44-47). For a discussion of a critique of rationality models, see Hogwood and Gunn (1984:47-49) as well as Grindle and Thomas (1991:27-30).

- setting objectives and priorities;
- options analysis;
- policy implementation,
- monitoring and control; evaluation and review, and finally,
- policy maintenance, succession or termination.

Dror (1990:89-90) makes a clear distinction between the content of policy and the dynamics of process. He remarks that policy development<sup>13</sup> can be improved in two ways: “one, upgrading policy making processes, which in turn involves improved policy process management and redesigning organisations.

And two, establishing improved grand-policies, which guide the substance of discrete policies, which in turn involves application of policy analysis to grand-policies as well as process and organisation upgrading which serves policy development as a whole.”

A process model which is generally regarded as representative of the international experience of policy making, namely that provided by Dunn (1994:15-18), shows that the phases of agenda setting, policy formulation, policy adoption, policy implementation and policy assessment are fairly common. Mutahaba, Baguma and Halfani (1993;49) put forward a most useful model. These African authors follow a macro approach and place a significant emphasis on institutional factors. Although they acknowledge the complexities of policy processes, they successfully simplify the stages of the policy process to three dimensions; that of policy formulation, policy implementation and monitoring and evaluation.

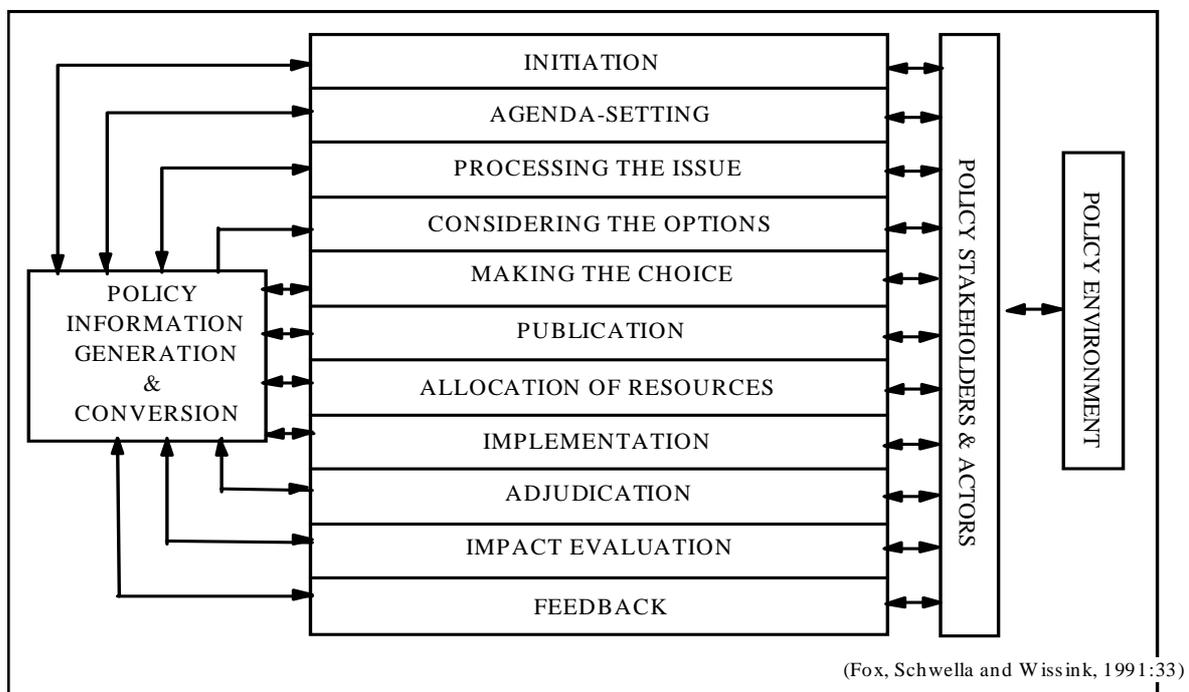
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<sup>12</sup> For a discussion of descriptive models of policy making with specific reference to psychological limitations, organisational, cost and situational limitations, see Hogwood and Gunn (1984:49-52).

<sup>13</sup> Dror (1990(c):89) notes that (the fields of) policy analysis and policy development overlap and that while policy analysis focuses on improvement of single decisions, policy development focuses on improvement of overall policies and policy nets.

A South African contribution to process models worth noting is the stage model of policy making by Henry Wissink (Fox, Schwella and Wissink, 1991:32). The authors note that an alternative approach to developing a policy making model is to break down the policy process into descriptive stages that correlate with the real dynamics and activities that result in policy outputs. They note that the problem encountered with most models is that the process is viewed as being sequential in nature, where, in fact, policy is often initiated at different stages and bypasses many activities (see Figure 1).

**FIGURE 1: WISSINK'S STAGE MODEL**



Specific circumstances in the South African experience prompted particular process requirements, as depicted in the generic process model:

- Most international policy process models provide for the policy analysis phases in great detail but do not provide guidance regarding the events leading up to the analysis phase.
- The South African context of simultaneously introducing large scale public sector transformation and mega policy-making endeavours, required that special attention be given to institutional arrangements.

- In South Africa, macro institutional considerations dominated and organisational change, more specifically the institutionalisation of policy capacities at the organisational level, was effected in a short space of time.
- Last, specific South African considerations, which prompted the development of the generic process model, were to single out the process facilitation elements from the policy analysis actions on content, so as to be able to focus on the management arrangements of the actual facilitation of a policy process as a distinct project.

In essence, the generic process model provides for both a comprehensive set of phases as well as proposing specific requirements and key issues to be addressed during each of the phases. With regard to the first, the phases consist of policy initiation, policy process design, policy analysis, policy formulation, decision-making, policy dialogue, implementation as well as monitoring and evaluation<sup>14</sup>. Following the application of this model to several sectors in South Africa, P&DM scholars have, over time, made a number of adjustments. These include a redefinition of the initiation phase as initiation or review, given present demands where existing policies often need to be reviewed. The second change to the model as has been affected to the illustration (see Figure 2) was the inclusion of the statutory stage to allow for law-making. The third and final change to the generic model has been the monitoring and evaluation component where monitoring should occur throughout the process<sup>15</sup>.

## 2.3 Conclusion

Although many different application possibilities exist, also with models that were not discussed in this section, the generic model has been selected as a process model suited for the purpose of this research article. Various South African and international approaches have been included in the design. The generic model has the added advantage that it has been brainstormed with DWAF officials several

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<sup>14</sup> Also compare Hughes (1994:152), Dye (1987:27), Henry (1992:307), Fox, Schwella and Wissink (1991:31), and Wissink (1990:32).

<sup>15</sup> Other than the above, a range of decision making models have also emerged that are particularly useful in problem-solving processes (see Dubnick and Bardes, 1983:197). These include models for negotiation, mediation and conflict resolution, Symbolic models, the Optimal Model<sup>15</sup> and for example, the Policy Flow Model (For further information see De Coning in Cloete and Wissink, 2000).

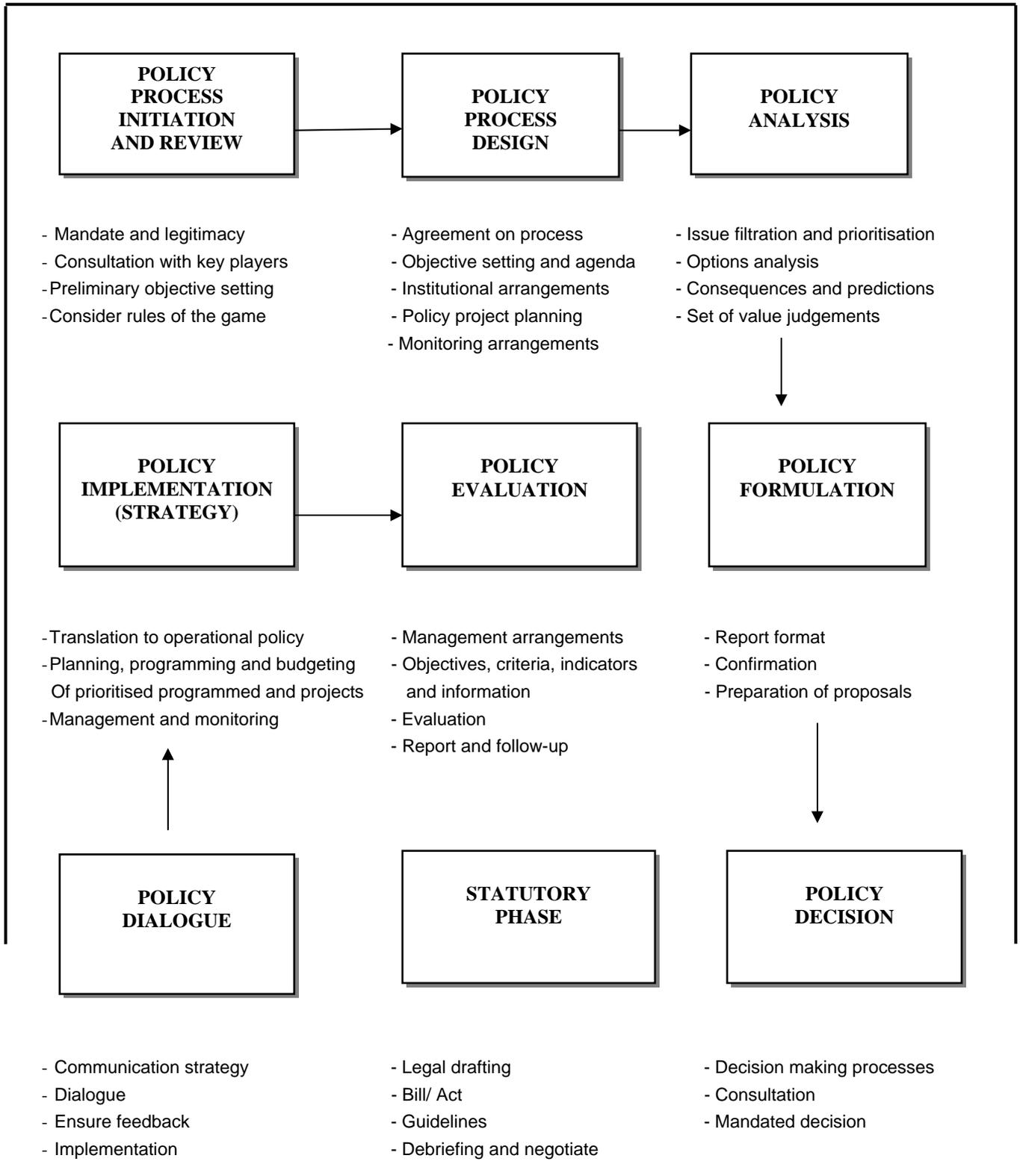
times and its applicability has been confirmed with practitioners in the field<sup>16</sup>. It was therefore concluded that the generic model will be used in analysing the water policy process by systematically applying the phases and key considerations (see Figure 2) to the case<sup>17</sup>.

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<sup>16</sup> The choice of the selected model from the above discussion have been discussed and debated with DWAF senior managers at a numbers of workshops arranged by the WRC for this purpose. General agreement exists with the choice of the above model for the purposes of this particular research project. These consultative sessions included a meeting with Dr Heather MacKay and Dirk Roux in December 2002, a workshop with Bill Rowlston and Johan van Rooyen on 7 February 2003, a training seminar with 30 selected DWAF officials on 21 and 22 May 2003 at the CSIR in Pretoria and a workshop discussion at the Farm Inn outside Pretoria on 3 and 4 September 2003.

<sup>17</sup> Even though not within the scope of the study, it is clear that other models such as negotiations models, governance frameworks, strategy and leadership concepts and power models may also be fruitfully employed to the case. It is hoped that future researchers may explore these issues further.

**FIGURE 2: KEY CONSIDERATIONS FOR PHASES OF THE GENERIC PROCESS MODEL**



*(As adopted from De Coning, 1995)*

### **3. THE CASE OF THE WATER POLICY PROCESS IN SOUTH AFRICA (1993-2003)**

#### **3.1 Policy and constitutional context.**

The political objectives for water resource management and service delivery in the new political dispensation have a long history in South Africa. The importance of access to water on an equitable basis has formed part of the political debate since the development of the Freedom Charter and the establishment of the new Constitution. The Bill of Rights, Constitution of South Africa, in Section 27 (1) (b) states that “Everyone has the right to have access to sufficient water”. The motivations for such a fundamental review of the South African water policy are explained by Minister Kader Asmal in the introduction to the White Paper (DWAF, 1997:2): “South Africa’s water law comes out of a history of conquest and expansion. The colonial law-makers tried to use the rules of the well-watered colonising countries of Europe in the dry and variable climate of Southern Africa. They harnessed the law, and the water, in the interests of a dominant class and group which had privileged access to land and economic power. It is for this reason that the new Government has been confronted with a situation in which not only have the majority of South Africa’s people been excluded from the land, but they have been denied either direct access to water for productive use or access to the benefits from the use of the nation’s water. The victory of our democracy now demands that national water use policy and the water law be reviewed. Our Constitution demands this review, on the basis of fairness and equity, values which are enshrined as cornerstones of our new society”.

The major (macro) stages of water policy development in South Africa included constitutional development, the development of the Water Law Principles (see DWAF, 1996), the White Paper on a National Water Policy for South Africa (see DWAF, 1997), the National Water Act (1998) and implementation initiatives such as the establishment of the National Water Resource Strategy (see DWAF, 2002c). In a meta-policy context the development of the White Paper should be viewed in the context of several other major policy developments such as the RDP (see the South African Government, 1994) and GEAR, Batho Pele (people first), the White Paper on Local Government and many others. Several policy initiatives are also apparent in the water related area, especially the DWAF Strategic Framework on Water Services (2003) as well as the White Paper on Water Supply

and Sanitation (DWAF, 1994), and at a later stage the White Paper on Basic Household Sanitation (DWAF, 2001b): see Figure 3. Dr. Kader Asmal<sup>18</sup> perceived the core objective of the water law review process to be the development of a framework which ensured that the right to use water could easily be transferred from one user to another, in pursuit of the broader national interest and in support of the broad transformation goals of government.

At the time, a core issue was whether existing users could be deprived of their individual water allocations in the public interest i.e. to promote national development through the beneficial use of resources in the public interest. The system up to 1994 supported the water use of existing users in perpetuity. In this respect therefore the one major political objective was to remove riparian rights and the distinction between public and private water so that all water was viewed as a public good<sup>19</sup>.

The provision of water to meet environmental requirements and international obligations was also considered a priority for the policy, although the mechanisms to achieve this were not in place prior to 1994. Important policy objectives on protection and conservation issues, such as the Reserve were also firmly placed on the agenda during 1995 and 1996. In a recent publication by MacKay (2003) she remarks that: "In 1994, ... provision of basic water supply and sanitation to the majority of South Africa's population who were without these, and the need for equity in the allocation of water and the benefits of water use, were suddenly placed at the top of the agenda.... The 1997 White Paper on a National Water Policy represented a key milestone in the process of reform of the water sector as a whole, and it will have far-reaching effects on social, economic and environmental issues in South Africa as it is implemented over the next 20 years". The strategic objective of the law review process (from which the White Paper was also developed) was to put in place an equitable and sustainable system of water allocation and use. This system needed to guide the use of water to beneficial use in the public interest without prejudicing the allocation to basic human needs,

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<sup>18</sup> Interview with Mike Muller on 11 September 2003.

<sup>19</sup> According to Dr Heather MacKay, Research Manager at the Water Research Commission, Dr. Asmal's position which became the South African position within G77, is that water is both a social and an economic good. This represented a substantial shift from previous developing countries' positions. The abolition of riparian rights was one of the necessary steps in achieving this dual vision of water as both a social and an economic resource.

environmental requirements and international obligations or unfairly prejudicing existing users and user communities<sup>20</sup>.

As can be seen from Figure 4, it may be useful for the reader to consider the water policy process as having undergone the following stages:

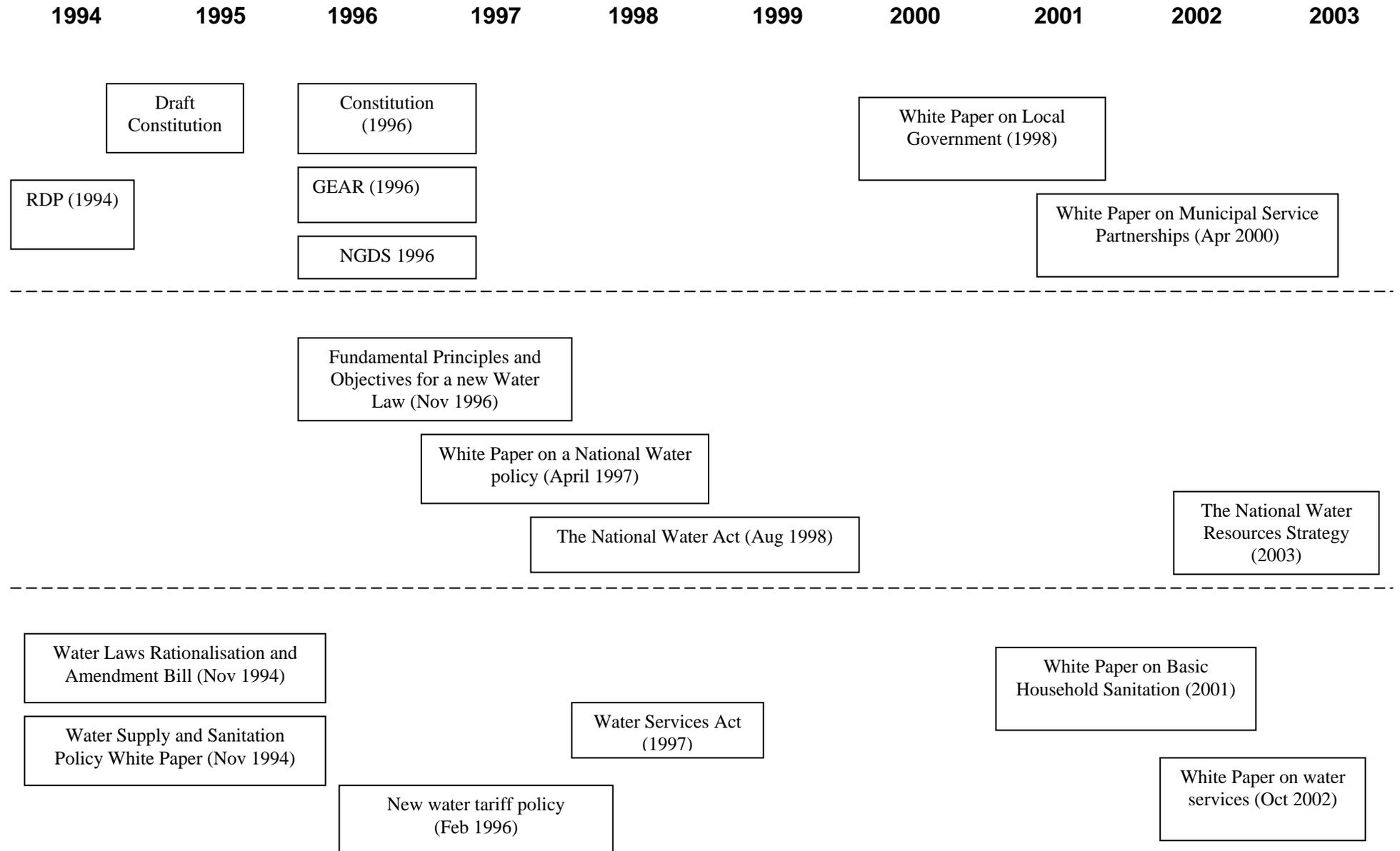
- Policy initiation: Water policy development and the political context;
- Policy design and preliminary objective setting: The development of water law principles and objectives (1996);
- Policy analysis, formulation and approval: The development of the White Paper on a National Water Policy (1997);
- The statutory Phase: Water law drafting initiatives and the new National Water Act (1998);
- Policy Implementation: Water resource strategies and operational practices.

These stages are also illustrated graphically in Figure 4 and the above headings have also been used in presenting the case (see below).

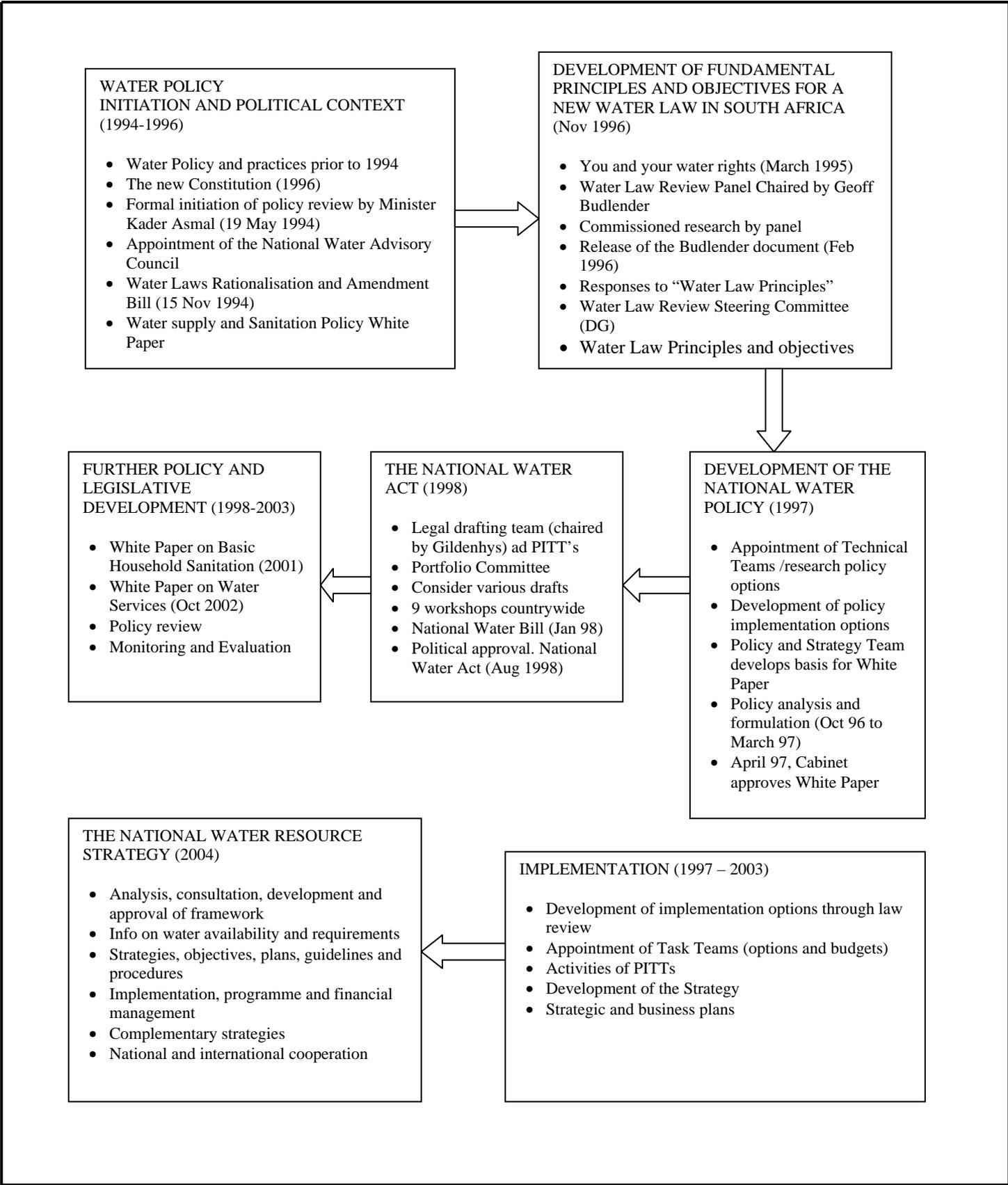
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<sup>20</sup> Interview with Mike Muller on the views of Dr. Kader Asmal, Discussion on internal memoranda, 11 September 2003.

**FIGURE 3: MACRO POLICY DEVELOPMENTS: WATER AND RELATED AREAS IN SOUTH AFRICA (1994-2003)**



**FIGURE 4: WATER POLICY PROCESS: MAJOR PHASES AND ACTIVITIES**



### **3.2 Policy initiation: Water policy development and the political context (1994 to 1996).**

Minister Kader Asmal formally announced the intention to review water related policy on 19 May 1994, following elections and the constitution of Parliament, Cabinet and related Departments<sup>21</sup>. During this announcement he also made clear his intention to establish a National Water Advisory Council and to increase public involvement in water policy formulation. In the introduction to the White Paper, the Minister states that: "South Africa has shown the world that peace can be created out of conflict. This new water policy for South Africa is yet another demonstration of this unique ability. The new water policy embodies our national values of reconciliation, reconstruction and development so that water is shared on an equitable basis, so that the needs of those without access to water in their daily lives are met, so that the productive use of water in our economy is encouraged and so that the environment which provides us with water and which sustains our life and the economy is protected" (DWAF: 1997:2). During these early years, the Minister appointed two policy advisers, namely Len Abrams and Barbara Schreiner (from September 1995) who, with a range of other individuals, played an important role in a number of developments and events which laid the foundations for the water law review as well as the White Paper process.

On 15 November 1994 the National Water Advisory Council was established and a call was made for nominations from the public for suitable persons to serve on the Council. On the same date the Water Laws Rationalisation and Amendment Bill was presented to rationalise variations of the Water Act in former homeland areas. The Bill also provided for the establishment of statutory local water supply and sanitation committees. During November of the same year a public presentation was made on the Water Supply and Sanitation Policy White Paper. Although not a focus of this report, the transformation of the Department has been a continual development that unfolded parallel to law review and policy processes. Minister Asmal addressed the DWAF Management Committee on 9 September 1994 and announced a Strategic Management Team to address change processes within the Department. It is of interest to note that in interviews with officials it became evident that although the political imperatives for a major review of water policy were clear, strong technical motivations also existed for policy change and in this

sense the political will provided a gap for a necessary technical review<sup>22</sup>. Various interviews showed that at the technical level, some officials had personal knowledge and expertise in water resources management that could not be absorbed or utilised in the old system. A critical mass of sound technical expertise therefore existed that was ready to participate in a progressive fashion.

The distinction between water resource management and water services and why they are dealt with separately in the law, in policy and in implementation, is not always clear to the outsider. The debate at the time (1995/1996), can be illustrated by reflecting on the arguments of Mike Muller with the Review Panel in a memorandum entitled “Omission of the principle which recognises the difference between a pipe and a river”. He speaks of the distinction between the natural water cycle (or water resource management) and water services (potable water supply and related sanitation, or waste water disposal) services. One of the most compelling reasons cited by the author for making a clear distinction between water services and the natural water cycle (other than institutional arrangements), is their treatment in terms of the Interim Constitution, which clearly distinguishes between water resource management (the national competence) and “services”, including water supply and sanitation (a local government competence).

### **3.3 Policy design and preliminary objective setting: The development of water law principles and objectives (1996).**

During March 1995 two important developments took place. The first was the release by Dr. Kader Asmal, on 22 March 1995 of the publication entitled “You and Your Water Rights”<sup>23</sup> on which public comment was invited, and the second was the intention to establish a Water Law Review Panel. Three phases were identified to guide the water law review process. The first phase was to include public consultation and consisted of the distribution of the above publication, the soliciting of comment and the facilitation of countrywide workshops, particularly in rural and poor communities. The second phase was to be the setting up of a monitoring

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<sup>21</sup> This article does not provide any detail on the history of water policy in South Africa prior to 1994 although some references are made to appropriate literature. For a summarised exposition of policies prior to 1994, such as the 1956 Water Act, see Mackay (2003).

<sup>22</sup> Interviews with Dr Heather Mackay and Bill Rowston, respectively on 7 February 2003 and on 10 September 2003.

committee (the Panel) to consider responses and to recommend principles. The third phase was to consist of the drafting of new legislation by a second monitoring committee that also included legal experts. The publication of “You and your water rights” can be seen as the start of the water law review phase with the call for submissions and comment on what a new water law should address and include.

The appointment of the Water Law Review Panel<sup>24</sup> in April 1995 began a process that fundamentally changed the water laws and policies of the country. The Minister appointed Geoff Budlender as Chairperson; Carolyn Palmer (alternate Chair) and Francois Junod were respectively given the responsibility for the science research and legal research portfolios. The Water Law Review Panel met for the first time on 7 September 1995 and thereafter on 13 occasions for full day meetings. The Budlender document states that “the panel was chosen by the Minister and invited by him to undertake the task on the basis of the contribution that each member could make to the formulation of new principles for South African water law. The members were drawn from a wide range of backgrounds, including representatives from different water user sectors, legal experts, rural communities, departmental officials and environmentalists. Over the course of the three month period during which the panel met, a number of specialists were invited to attend meetings either to provide specific advice or to make specialist presentations”. During December 1995 various road shows were held to mobilise public comment and 173 written submissions were received in response to “You and Your Water Rights”. On 13 September 1995 the Water Amendment Bill was tabled to establish the National Water Advisory Council. During September 1995, the formal launch of the National Water Conservation Campaign took place and a national water conference was announced. This Conference took place on 2 and 3 October at the World Trade Centre and representatives of many sectors and stakeholders participated in the establishment of new guidelines for water management and usage. This debate also started the tariff review and launched a consultative process on tariff increases.

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<sup>23</sup> This publication is viewed by everybody that we interviewed as a milestone achievement in the development of the policy process and was drafted by Len Abrams.

<sup>24</sup> The Water Law Review Panel consisted of the Chairperson, Geoff Budlender, Vice-chairpersons Carolyn Palmer (administered science research budget) and Francois Junod (administered legal research budget). Other members included Len Abrams, Chris Audie (DWAF, DDG), Linda Garlipp (DWAF

During January 1996 the Water Law Review Panel released the document "Fundamental Principles and Objectives for a new Water Law in South Africa" (Ministry of Water Affairs and Forestry, 1996). On 6 February 1996 this document (referred to in this Report as the 'Budlender' document) was publicly launched and an outline of a plan for further policy developments was presented. This plan included further inputs on the document by DWAF officials and it was foreseen that these principles could form the basis for a new Bill to be tabled in Parliament in early 1997.

A parallel process was initiated to explore the application of principles in practice. It was announced that the process was now to come under the management of a Water Law Steering Committee which was to be chaired by the DG and consist of 6 other members, three (3) from the Department (DWAF) and three (3) members from the Law Review Panel<sup>25</sup>. This Team rewrote the "Budlender document" (February to April 1996, see DWAF 1996) and released a discussion document called the "Water Law Principles" (see DWAF 1996) for public comment on 17 April 1996. An important Strategy Workshop took place on the Water Law Review process on 26 April 1996 where focus areas and technical task teams were established.

It is clear from interviews that whilst some mainstream policy objectives were on the agenda from the beginning (see discussion above), other policy areas had to struggle their way onto the agenda but later made a significant contribution to the development of the quality and comprehensiveness of the White Paper and Act. An example in this regard is the protection of aquatic ecosystems and these viewpoints were later strongly represented on the Panel.<sup>26</sup> Principle and policy debates highlighted a distinct lack of policy in the resource protection area and uncertainty as to whether the environment was to be considered as a user of water, or the aquatic environment was the resource base supporting all other uses

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Directorate: Legal Services), Grace Nkambule, Peter Lazarus, Hubert Thompson and occasional attendance by Mike Hawke (AECI) and regional representatives.

<sup>25</sup> The Water Law Review Steering Committee which operated during 1996 was chaired by the then DG of DWAF, Tinus Erasmus, Mike Muller (DDG), Leonard Ramagwedi (Chief Director), Linda Garlipp (Deputy Director), Grace Nkambule (North West Water Board), Advocate HF Junod (Pretoria Bar) and Carolyn Palmer (Rhodes University).

<sup>26</sup> Carolyn Palmer played a strong role in influencing SASAQS (the Southern African Society of Aquatic Scientists) to make a strong submission to the panel. Panel members later acknowledged this in interviews with us and admitted that it required a complete re-orientation of their understanding of water law.

of water. Provisions such as the Reserve and the concept of catchment management were then introduced, motivated largely by the international and local debates around sustainable development and management of natural resources.

The Technical Task Teams<sup>27</sup> were chaired by a DWAF official and consisted of both DWAF staff and external consultants. A series of formal consultative meetings were held across South Africa, with the specific intent of reaching the rural poor and other marginalised groups. Sectoral interest groups participated in these meetings, but were also encouraged to arrange their own meetings with the Minister in addition to being involved in bilateral meetings with Asmal and the DWAF. This series of provincial workshops culminated in a National Consultative Conference in East London on 17<sup>th</sup> and 18<sup>th</sup> October 1996. It is clear that the East London Conference is viewed as a milestone event in the development of water policy. During the proceedings Task Teams made presentations and international guests such as Heinz Klug and Ronald Roberts made presentations on the international experience<sup>28</sup>. Although the original intention was to discuss research by the Task Teams, research results on policy options were not yet available and the emphasis was instead placed on the Water Law Principles document. This document was finally approved by Cabinet on 20 November 1996.

The Water Law Principles (DWAF, 1996) contained in the view of MacKay (2003) the following most significant principles:

- Principles 3 and 4, which led to the abolition of riparian water rights and private ownership of water;
- Principle 7, which establishes “environmentally sustainable social and economic benefit” as key criteria for water resources management and allocation decisions;

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<sup>27</sup> The Technical Task Teams played an important role during this period and captured a critical body of knowledge, garnered from experienced officials as much as from newly appointed managers of the new political system. The Teams as well as the respective coordinators included the following functional areas of water resource management: Resource and demand monitoring and assessment (Alison Howman), Water resource planning and development (Peter van Niekerk), Water allocation: Johan Wessels (technical); Lappies (WA) Labuschagne (legal), Control and enforcement (Hennie Smit), Provision of water supply and sanitation services (Mike Muller). The Cross-cutting issues common to all aspects of water resource management Team consisted of Legal issues (WA Labuschagne), Water resource management institutions, (J van der Westhuizen), The economics of water resource management (Claus Triebel). The Policy Development Teams included Water quality (Henk van Vliet), Ground water (Eberhard Braune) and Integrated planning (Fred van Zyl).

- Principle 16, which provides for the use of economic instruments in the management and control of pollution; and
- Principle 24, which states that “beneficiaries of the water management system should contribute to the cost of its establishment and maintenance”.

### **3.4 Policy analysis, formulation and approval: The development of the White Paper on National Water Policy (1997).**

The drafting of the White Paper commenced in October 1996 with the work of the Technical Task Teams and from December 1996, the Policy and Strategy Team<sup>29</sup> in various areas. Whereas these teams originally started working on implementation options on the basis of the water law principles, their focus changed to the development of policy options during this period.

Interviews with participating members show that they were initially under the impression that the policy advisors to the Minister, Barbara Schreiner and Len Abrams, would draft the policy. Subsequently, drafts of various sections of the policy were developed by the responsible Teams and collated by Carolyn Palmer (October/November 1996). Carolyn Palmer compiled and edited a first draft based on contributions of the various Task Teams and specialists and organised the work programme for policy research purposes<sup>30</sup>. Following inputs by these teams, Mike Muller drafted a concept document in December 1996. After the document was rewritten by Mike Muller and submitted to the Minister for comments, various sections of the document were reviewed and language edited (by Barbara Schreiner) to develop a final draft by March 1997. In actual fact, each draft went through the Palmer, Muller, Schreiner sequence.

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<sup>28</sup> Some of our interviewees indicated that the nature of the conference was very legal whilst South African practitioners such as those from the Task Teams were seeking operational mechanisms and options. Allocation issues were given a lot of attention in political context.

<sup>29</sup> Although membership changed throughout the extended life term of the team, the core members of the Policy and Strategy Team included Minister Kader Asmal, Mike Muller, Barbara Schreiner, Robyn Stein, Tami Sokutu, Len Abrams, Ronald Roberts, Paul Roberts, Antonie Gildenhuys, and Mandi Mantlana. Administrative support by Deliwe Radebe and Bill Rowlston. Technical support was provided by Guy Preston, Carolyn Palmer, Anna Mkwena and Joanne Ferreira.

<sup>30</sup> Interview with Bill Rowlston on 10 September 2003. A separate water law budget existed which was partially funded by the Finnish Embassy and the Finnish Environmental Institute assisted with a review of international law and policy.

A number of interviewees remarked on the fact that there seemed to be a sudden realisation of the need for a White Paper. Interviews with Mike Muller show that Dr Kader Asmal had been aware of the need for such a policy for some time and planned the writing of the White Paper at least since the beginning of 1996<sup>31</sup>. Be that as it may, at the departmental level the drafting of the policy followed the Water Law Principles stage and was experienced as a sudden and rushed exercise and occurred in parallel with the Law Review Process (from October 1996 to April 1997)<sup>32</sup>. Technical Task Teams were working on implementation options (derived from the principles) at the time, and were requested to provide policy options for a draft White Paper at short notice during September and October 1996<sup>33</sup>. This approach was perhaps best summarised in the words of a senior manager when reflecting on this period: “The White Paper was written quite quickly, and few people outside DWAF were involved. The White Paper was also perceived by interviewees to have been ‘rushed’ through Cabinet as a final White Paper. Yet, the White Paper showed remarkable consonance with the Act. A large reason for this was the input from the technical teams” (Interview Bill Rowlston and Heather Mackay, see interview list for details).

Interviews with members of these teams, either as officials or as consultants showed that the various teams were focussing on how to operationalise the principles and to develop a basis for operational policy. A particular reference document of note in this regard is the “Towards a framework for sustainable water resources” discussion document developed at the time (MacKay, 1996). Interviews show that the original 11 task teams had been rearranged to form five teams after a few months. It is also of note that the various teams had different levels of capacity. Whilst some teams had full-time consultants to provide support, others

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<sup>31</sup> By 02 October, researchers were not yet able to secure an interview with Minister Asmal and this issue cannot be verified at this stage.

<sup>32</sup> Discussions with Mike Muller show that the Minister, up to mid 1996 regarded the law review effectively as a policy formulation process. Policy options emerged and were developed and recorded also as part of the Law Review efforts. The need for a White Paper that arose during mid 1996 was therefore seen as a requirement that had to be responded to quickly. This initiative was based on the law review, not only in terms of the principles but also in terms of consultation already done. In the case of the water sector, unlike other sectors where the white papers were viewed as the major policy exercise that took up to three years, the law review process was undoubtedly the major thrust from which policies emanated.

<sup>33</sup> In an interview with Heather MacKay On 10 September 2003 she indicated that the protection team by way of example, did do limited analysis of options and was at an advanced level of understanding of policy issues but did not use any deliberate policy analysis techniques. She is of the opinion that if time allowed, it would have been beneficial to have done scenario development and assessed operational requirements (capacity, cost, human resources) of policy options. In her view Task Teams

such as officials, had to perform such duties on top of their normal workload<sup>34</sup>. Some respondents were of the view that certain policy areas were covered in greater detail and depth than others<sup>35</sup> (see for example the considerable capacity of the Task Team that worked on protection issues and the level of detail contained in Chapters 3 and 4 of the Act).

An assessment of the various activities during 1996 shows that many stakeholders viewed the law review process as an important initiative and that the development of the water law principles became the basis for the new water law. The development of water legislation was therefore started as early as May 1996<sup>36</sup> whilst the principles were drafted, continued through the policy process, and culminated in the National Water Bill which was only released on 27 January 1998 and which was approved as an Act by Parliament on 20 August 1998. Some senior managers in the Department were of the opinion that the legal drafting having taken place from as early as 1996 confused the process and that the drafting of the actual White Paper between October 1996 and March 1997 was done merely to satisfy the formal requirement for a White Paper with too little time made available for this period.

The Minister and Department received some strong criticisms for not serving any written drafts<sup>37</sup> to Parliament prior to the serving of the final White Paper on a National Water Policy for South Africa for approval. Immediate concerns at the time included financial implications and a lack of consultation on the implications of the policy for other departments or sectors<sup>38</sup>. The White Paper on a National Water Policy for South Africa was finally approved by Cabinet on 30 April 1997. A

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underestimated operational requirements and were talking about quantum changes in water management, but this was not generally appreciated at the time.

<sup>34</sup> Interview with Dr Heather MacKay, Pretoria, on 10 September 2003.

<sup>35</sup> In an interview with Heather MacKay (10 September 2003) she indicated that the formulation stage of the White Paper was done at a fast pace and involved only a small group of people with the result that the majority of people in the water sector had difficulty in keeping up and although some effort was made to send out notes and newsletters to communicate with all staff in the Department. The series of DWAF newsletters entitled "Water Act News" represented the most sustained and organised effort to improve internal communications.

<sup>36</sup> By way of example, the Steering Committee Meeting of 27 May 1996 agreed that Antonie Gildenhuys would start drafting the Bill and would lead the drafting process. The formal appointment of the Water Law Drafting Team actually took place in early 1997.

<sup>37</sup> In an interview with Barbara Schreiner she noted that the final appearance of the White Paper was due to inexperience and the fact that participants had severe time limitations for the completion of the policy.

<sup>38</sup> For further information on policy development in relation to water and environmental policy see Environmentek, CSIR (2002).

summary or reflection of the White Paper is not given here. Interested readers are referred to the original document (DWAF, 1997)<sup>39</sup>.

### **3.5 The statutory phase: Water law drafting initiatives and the new National Water Act (1998).**

Following the approval and publication of the Water Principles and concurrent with the development of the White Paper, the Water Law Drafting Team was appointed in February of 1997<sup>40</sup>. Advocate Francois Junod observed in this respect that a core team of five people<sup>41</sup> acted as the drafting team and described the operating style of the Drafting Team as collective learning by working as a team. Some members were very practical and the principles were tested against practice. He noted that the Drafting Team functioned very well under often difficult times<sup>42</sup> over the three year period and that the Chairperson facilitated the process well with a sense for the big picture. The involvement in the Drafting Team of DWAF officials with expertise in the technical aspects of water resources management undoubtedly added to the quality of the Water Act's provisions related to protection and management of water resources.

Dr. Kader Asmal announced to the Parliamentary Portfolio Committee on Water Affairs and Forestry (chaired by Janet Love) on 11 February 1997 the intention to present the National Water Bill in Parliament by 31 August 1997. It was decided that the Minister, together with the Policy and Strategy Team would consider the legal framework for the Bill to ensure that it was concurrent with the National and Provincial powers as set out in the Constitution. The question as to whether the water resource management Bill would be prepared separately from the Water Services Bill was also discussed (see discussion on the integration or separation of water resource management and water services earlier in this Report).

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<sup>39</sup> For an assessment of the White Paper also see van Wyk (2000).

<sup>40</sup> From minutes, the Water Law Drafting Team consisted of the Chairperson, Antonie Gildenhuys, Robyn Stein, Francois Junod, Hadley Kavin, Chris Audie, Hubert Thompson, Rayleen Keightley, Jo-Ann Ferreira, and K Mphosho. Attendance records also show attendance by Heinz Klug and Ronald Roberts.

<sup>41</sup> Advocate Francois Junod served the full three years in developing the Act and has some strong convictions on the internal motivation of members to participate or lack of motivation to do so. He remarked that "the lack of dedication of some of our members struck me deeply. Many that could contribute were selfish and demanded unreasonable fees".

<sup>42</sup> In the interview with Francois Junod a number of perspectives were provided on the complexities of the negotiations with farmer groups and trade unions. For the purpose of this article these issues are not dealt with in any detail.

During April and May 1997 the technical Task Teams were involved with the Drafting team in commenting on drafts of either the whole or parts of the Bill<sup>43</sup>. Members of the drafting team have noted the high quality of inputs received<sup>44</sup>. Draft two of the Bill was released to the Policy and Strategy Team for comment on 2 June 1997. On 3 June a Conference in Pretoria mobilised expert consultation on selected issues of water law reform and involved specialists such as Prof Joseph Sax from the USA, and others from Australia, Chile, Mexico and Spain. According to Barbara Schreiner, the conference allowed international and local experts<sup>45</sup> and practitioners to exchange lessons of experience and to learn from each other's mistakes.

On 17 June Minister Asmal announced a six-month extension for passage of the new Water Act through Parliament, in order to extend the process of consultation, and due to requests by stakeholders for an extension. During this period valuable work continued to be done by the Task Teams. From our interviews it is clear that some teams tested the feasibility of the developing Bill with experienced practitioners in the field. For example, the resource protection team under Henk van Vliet's leadership held workshops with regional (provincial) DWAF Deputy Directors on a monthly basis over a two year period until the Act was published. Good technical inputs were therefore made based on sound knowledge and experiences on the ground and were submitted to the drafting team. Interviewees were also of the view that it had the added advantage of keeping the regional players 'up to speed'<sup>46</sup> with the developing legislation, which should have had the benefit of supporting the implementation phase.

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<sup>43</sup> Barbara Schreiner noted in an interview on 10 September that the President's Council Report on Water (pre-1994) already contained a number of components that were included in the Act such as the ways of dealing with water quality and resources management. She also noted that officials of the previous system had valuable ideas that they could now bring into the policy and law-making process and that a core group already existed with a vision for managing water resources.

<sup>44</sup> In an interview with Advocate Francois Junod at his residence in Pretoria on 10 September 2003, and facilitated by Bill Rowlston, he remarked on the quality of colleagues on the drafting team but also from DWAF. He noted that he was amazed by South African experts and that they were often world authorities.

<sup>45</sup> During fieldwork research it was found that Dr Carolyn Palmer has a valuable collection of international articles, reports and policies on comparative experiences. An assessment or overview of this material does not form part of the scope of this project.

<sup>46</sup> Interview with Heather MacKay, 10 September 2003.

During August and September of 1997 drafts 3 and 4 of the Bill were prepared and distributed within DWAF for comment. On 4 September<sup>47</sup> draft 4 of the Bill was released for public comment (good coverage of opinions in the daily press is evident but is not discussed here). On 17 November 1997 draft 5 of the Bill was released and Minister Asmal<sup>48</sup> conducted meetings with a number of stakeholders<sup>49</sup> from the 24<sup>th</sup> to the 28<sup>th</sup> of November. Following the development of Draft 6, the National Water Bill was released for public comment on 27 January 1998. On 9 February 1998 the new Water Bill (7<sup>th</sup> draft) was presented to the Portfolio Committee for Agriculture, Water Affairs and Forestry<sup>50</sup> chaired by Janet Love<sup>51</sup>. Nine workshops were held countrywide on the National Water Bill as well as a national workshop which concentrated on issues specifically concerning farmers.

Public hearings were held and a variety of stakeholders made written submissions<sup>52</sup> during March 1998. Important responses were received from various stakeholders and key organisations including the South African Agricultural Union, the media, the Council of South African Banks (COSAB), Water Boards, the Chamber of Mines, the National Forestry Advisory Council, CBOs and political parties. The South African Agricultural Union raised issues such as limited duration of water authorisations, inadequate compensation provisions, imposition of any type of water charges and inadequate provisions of the tradeability of water licences (Van Wyk, 2000:148-161). The second reading of the National Water Bill served on the 9<sup>th</sup> of June, the final reading on 6 August and the Act was finally approved by Cabinet on 20 August 1998.

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<sup>47</sup> As a minor development, during the same period, namely on 10 September 1997, the Water Amendment Bill was approved and the new act allowed for interim adjustments to be made (riparian rights to water diverted by the Lesotho Highlands Water Scheme)

<sup>48</sup> It is worth noting that a number of participants have remarked about the intellectual abilities of the Minister and his sense for detail. His direct personal involvement in all previous stages is apparent. In an interview with Barbara Schreiner on 10 September 2003 for example she noted that during the drafting of the Bill (1997/1998) the Minister would go through the draft line by line in a two day workshop.

<sup>49</sup> Including the Department of Finance, Agriculture, Justice, Health, Constitutional Development, DEAT, Land Affairs, Minerals and Energy, Trade and Industry, ARC, SALGA, SAAU, COSATU, SASA, the Chamber of Mines, SATGA and NATU.

<sup>50</sup> Initiatives with other departments were also evident such as with the signing of an agreement between DEAT and DWAF to draft a memorandum of understanding to unpack the operational aspects of the Bill.

<sup>51</sup> Linda Garlipp and Hadley Kavin of the DWAF Legal Services Team guided the document through the hearings and the Portfolio Committee made changes in the Act concerning jurisdictional issues, with regard to the near shore marine environment and the responsibilities of CMAs.

<sup>52</sup> Van Wyk (2000: 143-146) provides an overview of these submissions, a perspective on players that did not make any submissions as well as a summary of articles by the daily press.

The National Water Act does not differentiate between surface water and groundwater with respect to allocation, protection and conservation. The Act aims to control the use of all water resources, to protect them from being abused and polluted, and ensure that every person has equitable access to water resources (South African Government Communication and Information Services (GCIS), 2002). A closely related Act is the Water Services Act (Act 108 of 1997) that aims, among other things to ensure and define the rights of access to basic water supply and sanitation services, to set out the rights and duties of consumers and those who are responsible for providing services and allow the Minister to set national standards (including norms and standards for tariffs) to ensure efficient, continuous, affordable and fair water services. The Water Services Act also promotes the effective and sustainable use of financial and natural resources, and creates viable statutory institutions to assist local government to fulfil its obligations under the Act (South African Government Communication and Information Services/ GCIS, 2002). The Water Services Act regulates contracts for the provision of services.

### **3.6 Policy implementation: Water resource strategies and operational practices.**

It was decided that not all the provisions of the Act would come into force from the day of enactment, but that it would be implemented in a phased and progressive manner, in separate components over time and according to geographical need and as soon as was deemed reasonable and practical. Interviewees noted that this was necessary because of the short period of time in which the policy was developed and because of the large scale of change that it prescribed to administrative and operational procedures, and the limited resources available to implement this change. According to Barbara Schreiner, areas that needed priority attention as a result of new legislation included a new approach to licensing, the Reserve determination that has to be done before a licence can be issued, pricing strategies and policies and procedures for catchment management. An interview with Heather MacKay from the WRC confirmed this view and the example was cited of the procedures for the Reserve determination required by Chapter 3 in the Act - these were released in the Department as an internal policy document in October 1999, a year after the publication of the Act. The implementation of

Chapter 4 was also put on hold as operational procedures for licensing of water uses were still to be developed. Legal requirements also prompted the development of new units in the Department namely the Water Conservation and Demand Management Directorate and the Directorate of Catchment Management.

The implementation of policy in water resource management as well as in water services has been ongoing since 1994. Changes in operational practices have been gradually introduced as evolving legislation and policy have allowed. In this respect the various policy frameworks and acts of an enabling nature that preceded the White Paper on a National Water Policy have played an important role in realising implementation<sup>53</sup>. The formation of the Policy Implementation Task Teams (PITTs) and subsequently, the establishment of the Policy Implementation Core Group (PICG) took place before October 1997 so that these teams provided comments on the principles, participated in the White Paper and participated in the development of implementation options at various stages.

The original framework for the National Water Resource Strategy was developed based on the requirements of the Act. During 1999 the NWRS pulled together inputs for strategy from the work of the PITTs<sup>54</sup> (Policy Implementation Task Teams). PITTs had to prepare "Implementation Action Plans" which identified<sup>55</sup> constraints to policy implementation and give an indication of resources (people and finance) needed to overcome them. In the development of the White Paper process, DWAF developed internal institutional arrangements that overlapped policy phases and therefore ensured continuity (a problem often experienced in other departments).

The PITTs focussed on internal policies, priorities and funding and were making limited use of consultants. After October 1998 (once the Act appeared in the Gazette) and during 1999, PITTs dealt with issues such as allocations, pricing,

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<sup>53</sup> This article does not provide an assessment of implementation initiatives during the last ten years. The South Africa Yearbook 2002/2003 reports on a range of key achievements in the implementation of the water policy and Act over the past few years (GCIS, 2002: 590). For an overview of implementation initiatives see the various Annual Reports of DWAF.

<sup>54</sup> Although membership of the PITTs varied, a core group of team members consisted of Piet Pretorius, James Perkins, Willie Enright, Henk van Vliet, Heather MacKay and Alison Howman.

<sup>55</sup> Minutes of a PICG meeting 13 October 1997.

water systems and administration and the registration system<sup>56</sup>. PITTs also dealt with the interfaces between issues. During December of 1998 a group of PITT leaders determined the need to improve coordination and, in consultation with the Minister, initiated an Implementation Coordinating Committee (ICOMM) that operated actively during 1999 until it was agreed that ICOMM had served its purpose. This was probably a premature decision. There was actually a period after the dissolution of the ICOMM and the establishment of the TINWA where there was no co-ordinating mechanism in place and where oversight of implementation of the Act became very difficult. It was to address this need that TINWA was established.

Some time after the closure of the ICOMM, the Team for the Implementation of the National Water Act (TINWA) came into being. The TINWA was established in August of 2000, addressed various functional areas and developed a process by which the Act can be implemented. TINWA developed as a response to the need for coordination<sup>57</sup> that derived from PITTs activity. The TINWA plan was developed in mid December 2000 and a second draft was made available in the Department during March of 2001<sup>58</sup>. The planning framework was made to be compatible with the implementation plan of the Department and taken up by the Strategy document. Subsequently, this formed the basis for Departmental planning in terms of the requirements of the PFMA (Public Finance Management Act) and MTEF (Medium Term Expenditure Framework) requirements for business planning and multi-year budgeting<sup>59</sup>. Important planning and implementation initiatives were attended to by way of strategic and business planning within DWAF. The annual strategic and business plan of the Department followed the MTEF (Medium Term Expenditure Framework) format since 1999 and the National Water Resource Strategy was taken up in the strategic plan during 2000. Development of the National Water Resource Strategy began in 1999 when the requirements of the Act were analysed and during 2000 and 2001 the inputs of various teams were collated to form the basis of the strategy. Towards the end of 2001, the National

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<sup>56</sup> The system developed and now in use is known as WARMS (Water Use Authorisation Management System).

<sup>57</sup> In interviews such as with Dr Heather MacKay it is clear that the PITTs worked in relative isolation from each other and to varying levels of detail.

<sup>58</sup> Interview with Mr Piet Pretorius, Director, Water Abstraction and Instream use, DWAF, 10 September 2003.

<sup>59</sup> The PFMA requires the linking of functional activity to strategic objectives in terms of achievements and outcomes. Interview with Bill Rowston, 10 September 2003.

Water Resource Strategy (NWRS) as a concept document was submitted to the Steering Committee who made amendments before submitting it to the DG.

Following consultation during 2002 (with the Steering Committee, the Department at large, the DG of DWAF and the DGs Cluster (meeting of all DGs), the Minister, Cabinet Committee and Cabinet, various consultation workshops were held during 2002. In essence the NWRS makes links to all other strategies and provides a basis for the institutional arrangements that need to be put in place<sup>60</sup>.

The proposed NWRS Summary was published in August 2002 and the full document was made available. During 2002 the draft was further developed and was submitted to the Minister, the Portfolio Committee and Cabinet for comment. Following restructuring initiatives where the new DWAF structure was announced on 14 April 2003, the business planning process also includes Departmental Key Focus Areas against which performance is measured. The specific purpose of TINWA was to analyse the Act and determine what was required, to identify priorities and to develop an implementation plan. This plan was taken up into the Strategic Plan and the departmental restructuring process.

During the time of the writing of this article (September 2003) the NWRS was finally approved and a published summary was made available on the internet for public comment (following some 30 consultation workshops held around the country from September 2002 to March 2003). The editing against public comments was almost completed by February 2004. It is anticipated that the NWRS will be published in April/ May of 2004. The strategy contains an introductory chapter on water policy, water law and water resources management, South Africa's water situation and strategies to balance supply and demand, strategies for water resources management<sup>61</sup>, complementary strategies, national planning and co-ordination and international co-operation in water management.

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<sup>60</sup> The required institutional arrangements are substantial and will take time to establish. By way of example, some catchment areas cover four provinces and in time the particular CMA will have to integrate institutional entities to manage collectively.

<sup>61</sup> Consisting of protection of water resources, water use, water conservation and water demand management, water pricing and financial assistance, water management institutions, monitoring and evaluation systems, public safety, anticipated programme of implementation activities and financial implications.

MacKay (2003) concluded that: “The long-term success of the national water policy will depend on strong, sustained and consistent leadership from people who have the breadth of vision and strategic thinking ability to guide the implementation process through the difficult first stages, and through the inevitably uncomfortable workings out of the policy within the water sector and in other related sectors such as agriculture, industry and environment ...unless the capacity building issue is addressed as a critical national priority in the water sector, chances of success in long term implementation will be very limited. ... this will require radical rethinking of relationships and ways of doing business between government and the private sector in relation to water. Fully functional CMAs can serve as vehicles for such partnerships, so it is also critical that the CMA establishment process is successful”.

#### **4. FINDINGS AND LESSONS OF EXPERIENCE REGARDING THE POLICY PROCESS**

##### **4.1 General observations**

In applying the generic process model discussed in Section 2 with the policy stages described in the case (Section 3) it is clear that the processes are remarkably similar. In the case of the water policy, the formulation of the White Paper on a National Water Policy for South Africa was very much embedded in the law review process. During the last year, in various workshops with DWAF managers and officials, the remark has often been made that despite having and using almost no theoretical knowledge of policy process models, the water community in South Africa followed a logical, participative, legitimate and otherwise sound process. However, the unplanned nature of the policy process as well as the dominance of the legal drafting process, did impact negatively on the water policy process, notably on the limited time and effort spent on the policy analysis and formulation phase. In some areas, such as preliminary objective setting prior to the White Paper or the legal review, the NWP shows some remarkable experiences in soliciting public comment and consultation prior to formal processes. It is also remarkable that legal teams were, in contrast to other South African processes, involved at an early stage and used throughout the process (see Figure 5). This greatly assisted in drafting of legal text which was informed by practical realities on the ground, and also in generating increased

understanding amongst technical staff of DWAF regarding the legal aspects of water management.

In response to questions regarding the future review of the White Paper, respondents noted that the big challenges lay in implementation during the next ten years with limited adjustments to law and policy being envisaged. Much depends on the ability of structures other than DWAF to assume the appropriate powers and functions to allow the Department to play a regulatory and policy-coordinating role. In an interview with Barbara Schreiner<sup>62</sup> she indicated that some minor adjustments to the legislation may be necessary to deal with matters such as licensing of marine outfalls.

The major developments in water management since 1994 have been aptly summarised in a recent paper presented to the World Bank (Muller 2003) by Mike Muller when he distinguishes between:

- “the 1990 to 1994 transitional period of policy engagement and familiarisation;
- the 1994 to 1998 period during which formal policy formulation processes were completed, legislative force given to policies and the institutions of democratic governance established. This was also a period during which the maintenance of operational services was critical, for obvious reasons.
- Finally, from perhaps 1995, we began to make good on promises of delivery as well as to start the transformation of organisations to achieve some of the longer term goals we have set for ourselves”.

Mike Muller described<sup>63</sup> the period from 1994 to 2000 as a good period for policy-making and a window of opportunity to bring about fundamental change. He refers to an initial lack of coherence and a focus on other issues (away from water related policy) in the period immediately after elections (1994). Policy was needed to be able to move forward in the water sector and the development of the principles was also necessary for this purpose.

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<sup>62</sup> Interview on 10 September 2003. In the May 2003 workshop participants including Barbara Schreiner placed an emphasis on the importance of implementation and the development of sustained institutional capacity at the CMA and water services levels. During this workshop the need for the operationalisation of the NWRS and other guidelines was emphasised.

<sup>63</sup> Interview with Mike Muller, DG of DWAF in Pretoria on 11 September 2003.

## 4.2 Findings on policy initiation and review

The initiation of the law review process and especially the development of the water law principles, although not necessarily planned this way, also served as the initiation and preparation phase for the drafting of the White Paper. Policy process initiation was clearly legitimate, mandated and appropriate within the political context of what was happening in South Africa, where huge opportunities existed to effect fundamental changes to water policy and law.

Both Advocate Francois Junod and the present DG of DWAF, Mike Muller, have remarked on the significance of the new policy and Act in terms of the opportunity to make momentous choices on fundamental issues in our history. Clearly the new political dispensation provided the opportunity to effect substantial changes and in retrospect, it is clear that the water sector has taken full advantage of this<sup>64</sup>. It became clear during the early part of this investigation that leadership, management and organisational culture all played a key role in the water policy process. Although not the focus of this article, it is the opinion of the authors and several interviewees that it needs to be observed that leadership qualities and the personal abilities of Minister Kader Asmal<sup>65</sup> and sustained management vision in the person of the present DG have proven to be vital factors in the success of the policy thus far. Various interviews have highlighted different dimensions of the nature and style of leadership and management as is evident throughout this article. Advocate Francois Junod, in reflecting on the policy process, observed that having served under eight different Ministers of Water Affairs, he regarded some as reasonable and some as disastrous. He describes Dr. Kader Asmal as “a brilliant Minister with a holistic view, sound approach to water law and with a brilliant mind and legal background that can be very stubborn at times. He is a powerful visionary with a strong political will, is absolutely ruthless and that says ‘we will do this’ ”. Mike Muller, in a recent paper to the World Bank, noted that “It has been a huge advantage having someone like Dr. Kader Asmal as Minister. This is not to say that other sectors have not made equally impressive strides over

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<sup>64</sup> The window of opportunity that existed in the water sector was also applicable to most other sectors. During Trade Centre negotiations international scholars referred to this phenomenon as hour zero (with respect to provincial demarcation (see De Coning, 1994c). Dror, in this context refers to momentous choices in policy change (see Dror, 1984).

<sup>65</sup> Interested researchers are referred to the full set of well documented speeches by Minister Asmal. It is not within the scope of this article to report on these.

the same period (for example health, transport, public service). The combination which he has brought of human rights law and personal energy together with a keen sense of communication and practical politics has obviously made a crucial contribution to water sector reform” (see Muller, 2003).

#### **4.3 Findings on policy design, planning and preliminary objective setting.**

Preliminary objective setting through consultation on, and development of, the water principles was in fact far more elaborate and thorough than any other similar policy initiative in South Africa to date. An interviewee and participant in the law review and policy process described the overall process as having been “largely informal and intuitive and to have unfolded as it went along, the government did not call into the process any formal policy expertise. A formal design for the overall process was also never articulated, though it is possible that the DG may have had such a design in mind as he had been exposed to such processes at DBSA (the Development Bank of Southern Africa) but this was never made explicit” (Interview with Bill Rowlston). When considering findings elsewhere in this report, such as that economic and financial analysis could have been improved during the policy process, it is clear that more systematic planning may have improved the quality of the policy process.

In an interview with Barbara Schreiner<sup>66</sup> on the same issue, she noted that it was “... a pretty good process with some personality conflicts<sup>67</sup>, spread out over four years that gave us enough time to find out what was really required. The White Paper is a robust and good policy. Minister Asmal had a strong hand in planning and was, as a lawyer, well organised with the legal unit providing support.” There can be little doubt that the Water Law Principles stage, even if it took a long time, played a major role in providing a framework for both the water law review processes as well as the drafting of the White Paper. It also provided a sound

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<sup>66</sup> Interview with Barbara Schreiner on 10 September 2003 at the Sedibeng building, Pretoria.

<sup>67</sup> This note to personality conflicts are of interest as various participants to our interviews remarked on personal styles, strained interpersonal relationships and emotional stress at the time. When probed on this issue they noted that personalities came into play with debates on content and that these were handled immaturely which resulted in high levels of anxiety. In an interview with Bill Rowlston on 7 February 2003 he noted that the same period was characterised by emotional stress and that people can be better prepared for this in advance by having a basic knowledge of what to expect (see notes on case development and story-telling in this article).

consultative basis as extended dialogue was entered into at this early stage at the specialist and civil society level.

#### **4.4 Findings on policy analysis and formulation**

The water policy largely met the requirements of the policy analysis phase of the generic process model with very high standards of technical expertise and option generation. However, perhaps due to the short period during which the policy was developed, it can be said that inadequate time was spent on thorough policy analysis. Due to the nature of water policy the content was often very technical and legal in character with the result that policy analysis in technical areas had often already received attention in research programmes outside the Department such as those managed and funded by the Water Research Commission. The White Paper may have benefited more from performing systematic policy analysis in prioritised areas during the policy analysis and formulation stage (such as financial cost projections). Interviewees were also of the opinion that the process of developing principles and preparing for the drafting of the legislation had all contributed to substantial thinking on policy issues, so what was done speedily was the capturing of these ideas into a policy document, not the conceptualisation of the policy issues.

Mike Muller<sup>68</sup> indicated that although no formal policy analysis was conducted, technical teams were implicitly using analytical instruments in various areas. Some specific planning scenarios were developed and teams had strong technical knowledge but, according to Muller, fell short in economic and policy analysis areas. In developing policy options, Muller regards it as a lesson of experience that one should follow a pragmatic approach and attempt structured analysis. He also regards key debates with parties as an important part of policy development and refers to negotiations with the Banking Council and other players as important developments in building relationships with partners to realise policy objectives.

The policy formulation stage was typical of other South African experiences with technical teams compiling drafts and a coordinator collating such inputs with editing assistance, and with a good draftsman developing the first draft for

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<sup>68</sup> Interview with the DG, Mike Muller on 11 September 2003.

comment over a short period of time on the basis of these inputs. The report format of the White Paper may have benefited from the inclusion of a perspective on financial and human resources implications as well as a perspective on the responsibilities of other departments.

Members serving in the Technical Task Teams and in the Policy and Strategy Team were of the opinion that more time could have been invested in developing implementation options at the time. The Cabinet Memorandum that accompanied the policy did not address financial and personnel implications for the Department in any detail. Officials believe that this “legacy” remains to limit the resources available to implement the policy. By way of example, it is stated in the NWRS that it is intended to implement the strategy “without significant increases in treasury allocation”. The assumption was that after 1998 it would no longer be necessary for DWAF staff to be involved in implementing the old Act in addition to the new Act, and that the energy and resources expended on administering the 1956 Act would simply be transferred to implementing the 1998 Act. It is not only that more people will be required to implement and administer the 1998 Act: people with vastly different skills and competencies will be needed, and many of these needs were either not sufficiently foreseen, or were not responded to timeously by the tertiary education sector.

#### **4.5 Findings on policy decision making**

Although leadership was strong in terms of the vision for a new water law it is clear that the legal process dominated the White Paper stage and that the policy process could have been improved. As discussed, the decision making process on the approval of the White Paper itself was rushed and did not undergo a consultative stage (such as a green or blue paper stage) at Cabinet level. In retrospect, improved planning may have significantly improved this phase and the incorporation of comments by Cabinet and Portfolio Committees may have further improved the quality of the policy as well as buy-in from other departments, especially where responsibilities are shared in the implementation of the NWP.

When considering all policy and legislative developments in the water sector in the last ten years, it seems that a meta-policy (or “policy on policy”) could have

benefited the water community. Such planning may also have triggered the early development of a monitoring and evaluation system. The development of a meta-policy and meta-strategy perspective for the next ten years may assist DWAF in giving effect to the policy and regulation function of the Department.

Sound decision making concerning the institutional and planning aspects of the water law review process and the development of the White Paper could have been much improved in terms of planning and programming over the full period. It is clear that the various stages of the law review process unfolded logically (though at the cost of unnecessary time delays) and that the anticipated outcomes were met which included adequate consultation, the water law principles, the White Paper, the Bill and finally, the Act. As a result of this approach it was found that the White paper stage was performed over too short a period (7 months) which limited the depth of analysis and option generation of the technical teams. Perhaps because of elaborate consultation in the law review process, consultation during the White Paper stage was very limited and a final draft was rushed through Cabinet with very little coordination with other government departments. As a result of this process, limited cost projections on the implications of the White Paper were performed and this may hinder implementation for years to come.

#### **4.6 Findings on policy implementation**

Both the process of embarking on implementation and the law review after the approval of the White Paper took a far greater amount of time than was anticipated. The release of several drafts of the Bill, however, gave the sector time to consider the practical implications of the principles and policies to some extent (a process that could have been done more thoroughly during the policy analysis phase) as this had not been done previously. Also in the case of implementation, such actions had to be gradually introduced and provided the opportunity for all stakeholders to orientate themselves with regard to the rather fundamental changes that were introduced. It was found that a specific communication strategy in conjunction with further strategy generation may have benefited the implementation of the White Paper.

Although the development of the National Water Resource Strategy also took a long time to materialise, this initiative together with the development of sound strategic and business planning has laid a firm foundation for the Department to move towards its new role of policy coordinator and regulator. Much depends on the realisation of institutional structures at other levels and the policy will only come to full fruition with the efficient functioning of the CMAs and other bodies, the protection of water resources through classification and implementation of the reserve, compulsory licensing and the realisation of catchment management strategies.

Other than extensive consultation with local groups, international specialists have made important contributions throughout this process. In a recent paper (Muller, 2003), the DG recognised the important role that international institutions and individuals played in the policy and law review process. In particular support by institutions such as the FAO and the Finnish Government are recognised. Muller summarises “ Considerable input came from World Bank staff while from the USA we got 51 models of different approaches to water legislation as well as the concept of the public trust which caused much debate. From Australia and France came different nuances on catchment management while from Mexico we took valuable advice on how not to go about establishing a new allocation system on the basis that history should be learnt from rather than repeated. From Britain we learnt some of the subtleties of enforcing restrictive allocations in a climate of entrenched property rights. Finally, from places as far a field as India, Malaysia and the USA and as close to home as Zimbabwe we drew constitutional jurisprudence on property rights and their regulation”.

As an important part of the implementation of the National Water Act, the creation of new institutions is particularly challenging. With regard to CMAs, 19 such agencies need to be established, one for each of the Water Management Areas. At the present time no CMAs have been established though one such body is almost in place. In the view of those involved in this process, it may take up to 12 years before all CMAs have been established and are fully functional. In the absence of CMAs, Internal Strategic Perspectives for each WMA, seen as forerunners to catchment management strategies, are being developed by DWAF. Significant powers and functions need to be devolved or assigned to CMAs in line

with DWAF's current restructuring to become more orientated towards policy and regulation than services and infrastructure. The process of compulsory licensing – the basis of the transition to a new allocation system and the means to the redistribution of access to resources - has not yet begun and will in all likelihood be run as pilot projects in a few catchment areas first.

Since the Act was passed the development of the National Water Resource Strategy and the strategic and business plans have formed the basis for implementation. The development of the above strategy was characterised by high levels of consultation and the recently released Annual Report (September 2003) notes that the NWRS involved a large number of meetings and generated more than 2300 written comments. Various guidelines for implementation need to be developed further or refined e.g. the determination and implementation of the Ecological Reserve. The implementation process is currently under pressure due to a lack of human resources related to a shortage of skilled staff in the Department.

The communication of the National Water Resource Strategy in the department but especially at the regional level requires high levels of ownership, support and clear communication. A specific communication strategy may be necessary. Communication, technical assistance and advice (such as the existing operational guidelines for CMAs) and appropriate systems also for knowledge transfer may be particularly relevant to the DWAF Head Office and regions.

Another view by a senior manager worth noting states that: "The whole ethos of water resource management in SA has 'grown up' over many years. The last Act was in 1956, before that 1912, the concept of riparian rights was introduced in around 1814. In that time the sector has gathered a sort of inertia, to change this ethos is a very long-term task. If one wants short-term gains in the 4-5 year term of political tenure then one won't achieve anything that is meaningful or lasting. Our message to Kasrils and colleagues should be that these things *must* take time, if the good changes are to be sustained".

Officials were of the view that there are a number of other policies and laws that influence, or are influenced by, the National Water Act. In the development of the

water policy, law and strategy a comprehensive and structured analysis of the related policies of other government departments needed to be undertaken. Such a process is presently underway and officials in DWAF are also of the opinion that other departments have also failed to do this comprehensively (by way of example, officials are of the view that the consultation with DWAF about the National Environmental Management Act was not extensive enough).

#### **4.7 Findings on policy monitoring and evaluation**

Compared to other sectors, monitoring and evaluation arrangements related to new policies can still be much improved in the water sector and existing plans have not yet been adequately implemented. Monitoring and Evaluation (M&E) arrangements have been emphasized in the restructuring process and the NWA refers specifically to the need for a National Information and Monitoring System. Although monitoring systems are evident in technical areas such as water quality (see for example the NWRS), a coherent set of criteria and indicators for all objectives of the White Paper (including the establishment and operation of CMAs, the establishment of the Reserve and the efficiency of the licensing process) have not yet been developed. Municipalities will be responsible for reporting on the delivery of water services within their area of jurisdiction, including coverage, levels of service, attainment of norms and standards etc. In order to ensure good quality M&E systems in future these areas will require significant capacity building support. Issues of water availability with regard to raw water availability will be the function of DWAF and CMAs. Water quality as it relates to raw water will also be the function of DWAF and CMAs, as will the use of raw water, compliance with license conditions, effluent discharge onto water resources, the protection of aquatic ecosystems, water use efficiency<sup>69</sup> etc.

The capacity of Catchment Management Agencies will be vital in realising the objectives of the White Paper. There is a need for institutional monitoring, particularly of CMAs as they will be almost autonomous bodies, and DWAF will need to keep an 'arm's length' relationship with them. A rigorous M&E system will need to be put in place to measure CMA delivery and performance.

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<sup>69</sup> The authors wish to acknowledge the valuable insights of Barbara Schreiner in the above discussion.

In the words of Bill Rowston, implementation is, and must be, a long-term process. Patience and endurance are required and it needs to be recognised that the water policy is currently within a 20-year implementation phase. Rewriting policy to something that is achievable in the short-term is not an appropriate response to the problems experienced in long-term implementation. Having said that, some review of parts of the water policy may be shown to be necessary as implementation proceeds. There is a need for ongoing monitoring of policy and its implementation. In this sense ongoing policy review becomes part of adjustments in implementation. It is important that policy development is not regarded as a once off event and the review of policy and strategy therefore needs to be a conscious event.

In so doing, the institutionalisation of research, policy, legal and evaluation capacity in the sectoral context but also in DWAF will become an important priority, especially given the new role and responsibilities of DWAF in policy and regulation. Given the various options that exist for the institutionalisation of policy support, research, legal and evaluation functions in organisations, and given the present situation where these capacities are largely located on a decentralised basis throughout DWAF, it may become necessary to also strengthen more central capacities in these areas. Present restructuring recommendations in the Department are addressing this issue and the role of the WRC will become increasingly important in this respect.

In the context of the above a new set of challenges also emerges for information management,<sup>70</sup> as specific information will have to be collected on this basis. As discussed above, it was found that the policy support, research, legal and evaluation functions as well as the information management function are closely related and interdependent. The coordination of the various responsibilities and functions of these units and how they support a management information system will become key.

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<sup>70</sup> Although not as high a priority as the above, researchers in this research investigation found that the record keeping and archives function as well as other forms of information storage is of concern with regard to the sector as a whole. Important documents emanating from the policy and law review process are often not available and formal information systems that need to capture essential information is not in place. For purposes of future research it is essential that information be managed in an efficient manner to ensure future access.

Compared to other sectors, and with regard to the wellbeing of research and policy work, the water sector is particularly fortunate to have access to a rich knowledge base to be found at Universities, technikons and research institutes. Although those in the sector may have become used to the presence of the WRC in particular, the authors should not neglect to state the obvious, which is that the water sector is at a huge advantage (compared to other sectors) in having such a Commission with a dedicated research programme. The WRC also has a particularly challenging time ahead in ensuring that research relevant to policy, implementation and evaluation initiatives is supported with meaningful options and practical alternatives.

A large number of participants in our interviews emphasized the importance of a learning culture in the sector and the importance of sharing lessons of experience. In similar terms the use of pilot studies was often discussed in workshops as useful tools in exploring and testing new ways of implementation and delivery. In this context it is recommended that the sector, and DWAF in particular, consider the development of a portfolio of case studies and story telling experiences that can be used for learning purposes. Various practitioners in the water sector have made us aware that such teaching and learning methodology may be valuable in applying best practices in various settings (such as with the establishment of CMAs).

## **5. CONCLUSIONS AND RECOMMENDATIONS**

It is concluded that the water sector in South Africa has, on the basis of outcome-based objectives envisaged for water policy and law 10 years ago, met its objectives in establishing the White Paper and the Act and in developing incremental implementation strategies, programmes and institutional arrangements. Respected internationally, very few such fundamental and far-reaching policies have been developed anywhere in the world in a democratic context. The findings of this study show that generally speaking a sound process was followed and that in many respects, the White Paper experiences may serve as an example to others in developing similar frameworks. In this process several lessons were also learnt about what should be avoided and emphasized in future. Although South Africa will in all likelihood not experience such a drastic policy

change again for many years to come, various policy, implementation and evaluation arrangements still need to be put in place to ensure the sustainability of the policy.

Present legislative and executive arrangements in the water sector may be improved by considering some of the following recommendations:

- A specific strategy on policy development and implementation over the next ten-year period may improve planning. As a result of the White Papers as well as the appropriate Acts some specific areas have been identified that could be prioritised and programmed. In conjunction with such a meta-policy perspective and largely as a result of the National Water Resource Strategy an agenda for further strategy generation over the medium to long term may also aid policy-makers, planners and researchers.
- As envisaged in the White Paper on a National Water Policy for South Africa, the National Water Act, and as described in the proposed National Water Resource Strategy in Part 5 on Water Management Institutions (DWA, 2002c:78-88), implementation requires significant institution building. As a matter of fact, the new institutional arrangements that need to be put in place to realise the policy are, compared to all other white papers, by far the most significant. The difficulty of setting up new structures should therefore not be underestimated and specific support will have to be provided to sustain these efforts. The Department has been establishing specific units to address this issue and a process of planning for institutional development, support and oversight has been put in place.
- A continued emphasis on ongoing policy analysis and review of policies will be necessary. Specific attention needs to be given to the development and management of policy analysis, co-ordination, evaluation and information management capacities in the Department and the institutionalisation of such capacities in the country as a whole as well as support for such capacities at the SADC level.

- As the Department moves towards its new role of policy coordination and regulation, it is expected that a special effort will have to be made to address policy coordination in the water sector as well as policy coherence between South African policies as well as policy coherence at the southern African and international levels. Policy coherence is emerging as a key issue locally and is also receiving prominent attention elsewhere in the world. Integrated service delivery and the co-ordination of implementation as well as joint planning between sectors and departments will remain to be a high priority through for example the cluster system as the present vehicle (at the Cabinet, provincial and technical levels).
- The new role of the Department implies a continued emphasis on the integration of planning and coordination of service delivery with other departments. Other than the intergovernmental dimensions a specific effort will have to be made to improve support for the cluster system, both at the Cabinet level as well as at the level of the technical coordinating committees. Present bilateral arrangements on environmental issues, housing, agriculture and land affairs also need to be strengthened. Although the constitutional approach and the present executive arrangements do not allow for the water services and water management issues to be dealt with in one White Paper and Act, this division may be artificial and a closer integration of how these issues are dealt with at the implementation level is already developing.

Research priorities in the area of policy related water developments in South Africa for the next period may include:

- An assessment of the need for and nature of further policy developments required in the water sector over the next decade;
- A practical perspective on priorities in the planning and implementation of the National Water Resource Strategy;

- Development of a monitoring and evaluation system for the water sector as a whole, beyond DWAF. This may include a sector wide performance management system as well as a prioritised evaluation portfolio.
- It is clear that institutional strengthening of various organisations will be necessary to ensure implementation. A number of areas for research exist such as co-operative government and governance in water, roles and responsibilities of CMAs (important research is already in progress in this area), establishment conditions, the future financial viability of CMAs and other entities, intergovernmental relations and coordination and human resource development.
- It is recommended that a case study and story-telling programme be developed to serve as a teaching and learning vehicle as well as research cases of lessons of experience in the water sector. This may be particularly valuable where new developments (such as the establishment of the CMAs) could be recorded and shared with others that need to go through a similar process. The development and recording of cases for research purposes may also have the added advantage of advanced comparative assessment.

In conclusion, and in reflecting on the policy process that was followed in the water sector in South Africa, the following words of Mike Muller seem particularly appropriate: "There is a huge amount left to do. But on reflection, we have not done badly, in water, over the past four years. I do not know what you make of it but I am grateful for the opportunity to look back and reflect on how far we have come rather than compulsively looking forward to that new frontier." (Muller 2003).

## **6. LIST OF INTERVIEWS**

Advocate Francois Junod, previously a member of the Law Review Panel, now retired, on 10 September 2003 at his residence in Pretoria.

Dr Heather MacKay, Research Manager at the Water Research Commission, on 7 February and 10 September 2003 at the CSIR and in Pretoria respectively.

Mr Mike Muller, Director General of the Department of Water Affairs and Forestry on 11 September 2003 at the DWAF Head Office in Pretoria.

Prof. Carolyn Palmer, Associate Professor, Institute for Water Research, Rhodes University on 06 October 2003 in Pretoria.

Mr Piet Pretorius, Director of Water Abstraction and instream use, 10 September 2003 at the DWAF Head Office in Pretoria.

Mr Bill Rowston, Director of Strategic Planning (Water Resource Management) on 7 February and 10 September 2003 at CSIR and Brooklyn Circle, Pretoria, respectively.

Ms Barbara Schreiner, Deputy Director General, Department of Water Affairs, 10 September 2003 at the DWAF Head Office in Pretoria.

Mr Johan van Rooyen, Director of Water Resources Planning, 7 February 2003 at CSIR.

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