



Executive accountability

Under what circumstances should a Minister of State resign?

CDE held its 11th debate on 24 March 1999. The speakers were Baroness Lynda Chalker, independent adviser on Africa and development to business and to the World Bank, Firoz Cachalia, Leader of the House, Gauteng Legislature, and Peter Bruce, editor of the Financial Mail. Jabu Mabuza, CEO of Tsogo Sun and a CDE Board Member, chaired the debate.

WHAT ARE THE CDE DEBATES?

In 1996 CDE initiated a series of debates on topics of crucial importance to current national policy issues. These constitute a continuous programme. The intention is to air issues underlying the topic and to raise the challenges that must be met by the players and the policy makers. CDE views these debates as a contribution to the formation of an informed public opinion. In this sense they are an educational activity and a service to the community. Following each debate, CDE publishes a pamphlet summarising the event. These are widely distributed and publicised as CDE's contribution to keeping the debate alive.

Introducing the debate, Jabu Mabuza said the issues of indiscretion and corruption were not confined to political office. They presented themselves in eminent structures such as the International Olympic Committee, the European Union and in business.

What the speakers had to say...

Lynda Chalker said the subject concerned voters' trust in politicians – a universal issue. The real reason behind this debate was that voters should be able to trust an elected politician. Most democratic countries were united on this issue.

Nowadays there is widespread cynicism. Many voters think politicians, particularly ministers, take office to further their own interests. In the light of this cynicism we need to restate the need for the highest standards in public life. This applies beyond politicians, beyond ministers of state, to civil servants at all levels in public office. Above all, these high standards in public life must not only apply, but must be seen to apply in the most transparent fashion possible.

Where the standards are not met, then resignation is

one response which helps to restore public trust. But a series of resignations one after the other in government says there is something wrong with the management of that government as a whole.

Ministerial resignation should also be seen as a measure of a minister's accountability to parliament, the first spotlight on a minister's actions.

There has been much debate in the UK about the application or misapplication of standards in public life. What we want as the voting public is the transparency of ministers' actions in whatever level of government they serve – nationally, provincially or locally.

The first reason for a minister to resign is lack of integrity. There can never be an excuse for a minister or a public official enriching themselves at public expense. This is corruption. It is a denial of democracy if corruption is allowed to continue. It includes giving jobs, which are not openly or properly competed for, unfairly to friends or family members. This lies behind many of the problems presently

faced by the European Commission which recently resigned en masse. The abuse or misapplication of public funds is corruption as much as personal enrichment at the public expense.

The second reason undermines democracy where it occurs. Civil servants and ministers cannot afford to be at odds with one another. This is the beginning of the breakdown of trust within government which then leads to all sorts of other problems. Every government – at each level – needs clearly written and understood lines of responsibility. These must be agreed by a minister and his senior civil servant and made known publicly. There must be an understanding and recognition of the division of responsibility for policy making (the politician's role) and policy implementation (the civil servant's role). Ministers with sustained differences with government policy should consider resignation. A minister may deny these differences but, if they crop up in a whole series of areas of government policy, then that is certainly a reason for a minister to resign.

Ministers must also take responsibility for serious mismanagement of the work within a department. In 1982 Lord Carrington resigned for not foreseeing the potential of a Falklands invasion by Argentina despite the information his department was given. One might say that the civil servants should have been more explicit, but a politician of experience should be able to anticipate events and should be in sufficiently

open debate with his senior civil servants not just to look at the obvious but to the different scenarios which could put government in a difficult position.

The third area of resignation is when a minister speaks publicly or writes repeatedly in the press or expresses himself through spin doctors on an issue against government policy.

The fourth area is that of severe political misjudgement where a minister makes a political statement on an issue well outside the area of ministerial responsibility and has had no permission from the prime minister to do so.

The fifth area is sexual or financial impropriety. There is disagreement about the political relevance of sexual behaviour. But it is the dishonesty about the sexual impropriety or its repetition which makes a minister liable to resign. If it is financial impropriety then there is no debate. The media have an important role in this. Investigation is no danger for a minister if he is open, transparent and accountable.

If governments have stipulated codes of ethics for the governments of the country – national, provincial and local – and if elected and public officials are prepared to be accountable for all their actions, then they may never have to resign. That way they will earn the voters' and their colleagues' trust and be able to deliver the policies enunciated in their election manifesto.

These five reasons are real reasons for resignation. No minister should go into office without knowing and understanding them or without having worked out how he or she will prove his or her transparency and accountability.

Firoz Cachalia said the debate provided the opportunity to discuss the establishment of a culture of responsibility in government and in our society. He outlined the classic academic doctrine of ministerial responsibility and then pointed out why in some respects it is anachronistic.

The classic doctrine consists of a bundle of conventions about parliamentary government. In terms of this doctrine, ministers alone exercise powers of governance and can be called to account both for their own acts and those done on their behalf.

Civil servants, on the other hand, have no direct responsibility to parliament and cannot be called to account by parliament since they act not on their own but on behalf of their minister. In days gone by a minister's liability to loss of office was considered the essential kernel of this doctrine. Ministerial responsibility extended to all official acts and protected civil servants from public blame for their errors.

Two aspects of this doctrine are worth isolating: first, the requirement that ministers rather than officials should shoulder

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constitutional and public responsibility for errors in their departments; and second, the belief that responsibility carries with it a requirement for ministerial resignation for departmental faults. The Moseley rules governing the responsibility of civil servants when giving evidence to select committees are part of this doctrine. Under these rules, civil servants in the UK, including accounting officers, appear before select committees always subject to ministerial direction.

It is not difficult to understand why the traditional doctrine retains its attractions. It clearly locates responsibility in the political process and is consistent with widely accepted notions of democratic government, and with the concept of public service neutrality. And yet the doctrine has become increasingly ambiguous and uncertain; some academic commentators have come to doubt its efficacy in ensuring accountable, transparent and effective government. It has been suggested that these conventions accord neither with actual political practice, nor with the needs of modern governments, and therefore fail to provide a framework necessary to hold government to account. Some of these qualifications require further examination.

Firstly, this is a doctrine enforced politically, not legally. The question of resignation cannot be reduced to a matter of abstract principle. There is always an element of political partisanship. The applications are therefore variable and inconsistent and, in practice, are generally incapable of enforcement because of the realities of parliamentary government and party politics.

Secondly, it does not reflect the realities of modern government. Government has vastly expanded in size and function so that it has become impossible to maintain – and this is the nub – that ministers are personally responsible for all activities of their departments. The classic

position on ministerial responsibility was based on the assumption that ministers would be closely involved with all departmental matters and that they would be acquainted with all the details of departmental work. Nowadays much of a department's work is done without any reference to the minister. Moreover, incumbent politicians have responded to these doctrinal anomalies by

attempting to curtail the scope of ministerial responsibility by making necessary but controversial distinctions like accountability versus responsibility, and policy formulation versus policy implementation. These distinctions are necessary, but they also enable ministers to evade responsibility.

The content of the doctrine has become increasingly contentious both among academics and politically.

The requirement that ministers should resign for the errors of their officials would seem to be unsupported by precedent. The point has also been made that 'vicarious responsibility' encourages secrecy rather than openness and is therefore an obstacle to government accountability. Also, new ideas about public sector reforms in the structures of governance aimed at improving managerial efficiency create a tension with the traditional notion of ministerial responsibility which evolved in an historically different period, culture and institutional context.

South Africa's constitutional framework is also relevant to this debate. In one sense we have constitutionalised the conventions associated with this tradition. Our constitution creates a parliamentary executive and provides that ministers are individually and collectively accountable to parliament. Their survival depends constitutionally on their retaining the confidence of parliament.

On the other hand, South Africa is crucially different from the UK because it is a constitutional state. Our constitution empowers legislative committees to summon anyone at all without qualification.

It also sanctions the right of access to information held by the state. There is also an important difference in wording between the interim and the final constitutions – the final constitution refers to a minister's *accountability* for the exercising of his powers in the performance of his/her functions. This suggests that new thinking in the area of public administration influenced the drafters of our constitution.

In South Africa we are not bound in all respects to the traditional doctrines of ministerial responsibility and are free to develop notions of accountability in accordance with our constitutional framework, the needs of our transitional democracy and contemporary notions of efficient and transparent government. Emphasis needs to be placed on disclosure and on the ministerial duty of candour as well as on the freedom of information legislation, and the role of institutions such as the public protector which have been set up to protect constitutional democracy.

It would be wrong to abandon completely the element of resignation in the traditional doctrine of ministerial responsibility. Reasons already cited by the previous speaker are clear examples that call for resignation. Ministers should never be able to

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evade responsibility for their decisions and their consequences, and the consequences of their failure to act when they should have. This includes decisions which result in the failure of, say, a mismatch of resources and objectives, and failure to correct patterns of maladministration.

In addition to responsibility to the department, a minister must never forget his/her responsibility to parliament and all this entails. In extreme cases a minister should resign even for the conduct of others. There must be a limited form of vicarious responsibility. The prospect of ministerial resignation remains an important element in enforcing political accountability.

Peter Bruce referred to a recent article by former British minister Douglas Hurd concerning the prospect of change in the workings of the British parliament. Mr Hurd raised the question: 'Who becomes an MP?' In the past, a person who wanted to go into politics followed another career or line of work for some 15 years before he or she could be seriously considered by their party to become an MP. This has changed and today the number of MPs in the British parliament with outside experience who can provide the counterweight to the more professional politicians has greatly diminished. This narrowing of experience also threatens to affect the relationship between ministers and civil servants. A minister's experience and judgement should complement the analytical skills of permanent officials.

What is happening in South Africa? The average South African MP has very little experience of the outside world. He or she is a professional politician or protester and brings little to parliament besides his or her 'feelings'. These highly professional politicians are particularly vulnerable to single issues and pressure groups; they have not learnt in practical workaday careers how to balance conflicting interests before reaching a decision.

The parliamentary conventions and rules in South Africa are still uncertain. In international politics it is quite evident that what is morally correct for one nation is not necessarily so for another. Sexual indiscretions on the part of ministers are taboo in the UK, for instance, but quite acceptable in some European countries.

Perhaps South Africa is special. Was there any institution – civil, commercial or political – which enjoyed universal legitimacy at the turn of the political tide in 1994? Our civic institutions lack value. We don't teach civics in our schools or universities.

Also, South Africans do not talk to each

other. The less people talk to each other, the less civic engagement there is. This leads to a less demanding civil society; South Africans do not demand their rights. People in power have done some pretty amazing things since the ANC became the government in 1994. There is evidence of corruption, misuse of privilege and abuse of power. We read reports daily in our media. But South Africans do not give such incidents sufficient thought. One instance where a minister stood accused of misappropriating R14-million hardly played a big part in our public life. This would have been a huge incident in countries more settled socially than we are. A few weeks ago a Sunday newspaper uncovered a fake identity document scam being run by officials in the central Johannesburg office of the Department of Home Affairs. The following week the newspaper was attacked by the Director General of the department. The newspaper

retaliated by disclosing that the DG in question was operating a basketball team from his government office in Pretoria. Will anything happen to this official; not because the structures are not there to deal with this situation, but because we – the public – don't care? Will there be sufficient outcry or follow up to remove him from office?

Who then, when the time comes, will sit in judgement on a cabinet minister? Who has the legitimacy to complain? South Africa is a society of low trust. It is in this area that South Africa has to build consensus. Trust comes before morality. When South Africans come to trust each other, there will be a seed of consensus.

Trust spawns legitimacy. For instance, should the government have been able to appoint a seemingly totally unqualified person as governor of the Reserve Bank? Absolutely, because Tito Mboweni will bring legitimacy to the post. As a white man Chris Stals was never able to make policy decisions which would be supported by the majority of South Africans. Tito Mboweni will be able to do so, even though Reserve Bank policies are unlikely to change.

When should a cabinet minister resign? The answer has to depend on a social consensus about trust that prevails at the time the question arises. You might argue that resignation has to do with performance or some moral value that we recognise but, in our current circumstances in

South Africa, without trust having been built first, there is no reason why a cabinet minister should resign.

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Points raised during open discussion...

- Is there a role for civil action against politicians who do not meet the promises they make? The election of an MP is possibly the biggest contractual arrangement made in our society. In the commercial sector those that do not perform are hastily got rid of in accordance with longstanding business practices.
- Looking beyond executive responsibility to the broader accountability of politicians and political parties to the electorate, why have convicted criminals continued to be included in the ANC election lists for the upcoming general election?
- What happens if the public itself elects a corrupt official to power because it believes he can deliver?
- How can we resurrect a civil society in a torn nation like ours in South Africa?

Lady Chalker said it was difficult and expensive in the UK for a person or a group to take civil action against a politician. This process does not build trust. A contested case would not do anything to resolve the actual situation. Nation building and developing trust requires an active media, but society will not benefit from actions against politicians unless the officials have broken the law of the land. What South Africa needs urgently is voter and civic society education, but this has never been a popular issue because it hinges on voter responsibility.

Establishing of a code of ethics is one way of dealing with the situation of a corrupt official being voted in to power. Far better is the proper selection of candidates before the election. If politicians allow politics to become devalued, we will never have an adequate number of competent people coming forward to stand for parliament.

Rebuilding civil society will take several generations. It requires nation building and strong leadership.

Mr Cachalia said perhaps a better title for the discussion produced by the debate would have been 'Democracy and its discontents'. He said South Africans were going through a stressful time because of the political transition.

The negative aspects of public life described by Peter Bruce such as the lack of trust are not unique to South Africa. But in South Africa they reflect the process of enfranchising an entire nation and the associated experience of a loss of status and power, and of alienation by white South Africans. Although the 'white' community is not a homogenous group, their experience (and that of all minorities) of the transition has been difficult.

The assumption that our politicians are generally corrupt and inexperienced and act only on the basis of their 'feelings' cannot go unchallenged. All democratic societies restructure the way politicians are recruited. It is important for democracy that the political process reflect society as a whole.

There is ongoing, vigorous debate within the ANC on issues of public morality. This country is experiencing tremendous growth and evolution through the new political process. The solution to the loss of trust lies through political participation.

This, together with public debate, should in time create a minimum consensus on what I have called 'public morality'.

One remedy for dealing with unaccountable politicians is through the ballot box. Democratic politics is about the aggregation and expression of political preferences, even through this means that open political processes will sometimes be used by demagogues and populists to further their own aims.

Mr Cachalia said his understanding is that the ANC has adopted the principle that convicted criminals should be removed from the list. However the art of politics in a democratic society does not always produce perfect solutions. One test for our evolving public values is the electorate. For example, Winnie Madikizela Mandela is a contradictory figure, but she has been embraced by the poor majority. The consequences of excluding her from the ANC list had to be taken into account.

The suggestion that the ANC is not concerned about issues of public morality is not correct. ANC leaders have repeatedly expressed their concerns although they have not always acted expeditiously. In the Gauteng legislature, where the ANC has a clear majority, an MPL and MEC, both ANC members, were recently publicly sanctioned by the Privileges Committee.

Peter Bruce welcomed the idea of civil action against politicians. Civil society needed to be tested in the constitutional court. In the US the constitutional court was used regularly to test issues of civil rights. This taught people about their country and how the constitutional court worked. In South Africa we do not know how to use the constitutional court, and this was largely the media's fault; the court was not written about sufficiently. It would be worth testing a case in court where a politician had not delivered on promises; GEAR was a case in point. The public had a right to hold politicians to account and to test the validity of South Africa's institutions.

Mr Bruce said the inclusion of criminals on election lists was a disgrace; they had no right to be there. Besides the name of Mrs Mandela, the ANC list also included a man convicted of trying to shoot a policeman. The ANC was likely to win the next election 'by a mile' and the party should have the courage to drop such dangerous people.

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- Are there clear rules of conduct in the ANC, what are they and how do they apply at senior levels in the party if exceptions are continuously made?

Peter Bruce said it was not possible for a political party to define a code of conduct on its own because the rules depended on what was acceptable socially in a society generally. The rules are not yet defined in a society which is still trying to find where its consensus and trust lies. South Africa is not able to do this yet. For these reasons the upcoming second democratic election is all important – it will help South African political parties make this definition.

Firoz Cachalia said because the ANC is the majority party it has a particular responsibility to set standards in public life but had frequently not done so nor had it adhered to them. However, Mr Cachalia said he shared the deep concerns expressed about setting standards in public life and conflicts of interest.

Lady Chalker said there are seven key principles to which politicians should adhere:

- selflessness. Their decisions should be taken in the public interest, not their own
- integrity. They should not take up conflicting interests, even if unpaid
- objectivity. Policy choice should be made on merit
- accountability and transparency. Politicians should submit to appropriate scrutiny for their office
- openness of information. Politicians should only restrict information from the public where the public interest itself demands that restriction, such as in cases involving children
- honesty. Politicians should declare their private interests relating to public duties
- leadership. Leaders have to promote and support the six principles above by example, by leadership, and by their encouragement that they should be followed.

Concluding remarks by CDE executive director Ann Bernstein

If one is serious about rebuilding South Africa and trust in institutions and in leadership, one has to listen to what Lynda Chalker has said – the formulation of key criteria and codes of ethics. South Africa has not had any removal of ministers at national level, only at provincial level where perhaps the issues are more clear cut. The ANC and other political parties should have clear rules of conduct published about conflicts of interest and how these affect public life as well as clear codes of conduct about ethics in public life which include rules setting out when ministers

and other top officials must resign. We don't have a chance of building the kind of society we all want and which the ANC is committed to unless the ANC, the most popular party in the country, takes the lead – at least with respect to its own domain. This commitment is missing. At present the public is being sent mixed messages by the ANC. The Boesak case and the Winnie Mandela issue illustrate this contradiction. The ANC needs to establish what the rules of public life are within the party and through their leadership in society. Tough action is needed.



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