

# **An agenda setting analysis: the application of Kingdon's framework to the Road Accident Fund (RAF).**

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## **Abstract**

This study aimed at exploring the agenda setting process of the Road Accident Fund (RAF), a road accident compensation system operating in South Africa using Kingdon's model of Agenda Setting. This study focused on the period between 1996 when the RAF was introduced to 2005 when the focus in the Fund was put mainly on how to deal with fraud and corruption issues. When the RAF was put into place, the main aim was to establish a compensation system that will be able to deal with the effects of road accidents that the people suffer. These are mostly the vulnerable road users and public transport passengers who account for most of the road casualties. However there has been a shift in the focus of the Road Accident Fund Act of 1996, hence the majority of the people who were meant to be beneficiaries ended up not benefiting from the Fund due to corruption. A theoretical framework based on the work of John Kingdon (1995) is used to explore the developments in the RAF that led to the Road Accident Benefit Scheme (RABS) as a proposed system.

Qualitative research method was used in order to trace the unfolding of the events and action of participants in the RAF in order to see whether the developments in the Fund can be explained using Kingdon's framework of agenda setting. Historical documents were used to collect data and to trace the chronology of events. These include formal records, including Annual Reports on the RAF and media articles, including newspapers. Content analysis method was done on material such as: Annual Reports on the Road Accident Fund, Meeting Minutes, Parliamentary Proceedings, Newspaper Articles and Speeches, primarily from the Department of Transport in order to analyse data.

The findings of this study revealed that using Kingdon's theory of agenda setting, it is possible to come to a better understanding of the agenda setting process that led to a current state of the RAF. In the RAF case study, the three policy

streams proposed by Kingdon namely: problem stream, policy stream and political stream, were identified. In the problem stream, the financial 'crisis' together with feedback from the formal as well as the media reports that indicated that the financial condition of the RAF was getting worse served as an indication that there was a problem in the Fund. Several ideas were generated in the policy stream of the Fund. Amongst other things, studies, discussions, hearings, meetings and conferences conducted by the RAF Commission for the purpose of investigating the Fund and come up with alternative solutions, created pressure for policy change. While RABS which incorporated in it a "no fault" system of compensation was proposed as a solution by the RAF Commission, liquidation of the Fund was also a concern. In the political stream, the national mood, change of administration and interest group pressure were evident and contributed to the agenda setting of the RAF. Media reports also contributed to the whole agenda setting process of the Fund.

The implications of the analysis for future processes are drawn.

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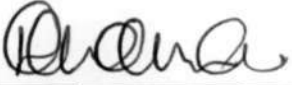
Lastly I would like to thank my family, especially my Mother, Ntombazana Ngubo, for all the sacrifice she has made for me to get an education.

God Bless You All



## Declaration

I declare that this thesis, is my own original work, and it has been independently researched.

Signed: 

Name: LINDOKUHLE NOLOVU

## **List of Acronyms**

|                     |  |
|---------------------|--|
| <b>ACDP:</b>        | <b>African Christian Democratic Party</b>                |
| <b>ANC:</b>         | <b>African National Congress</b>                         |
| <b>BOARD:</b>       | <b>Road Accident Fund Board</b>                          |
| <b>CEO:</b>         | <b>Chief Executive Officer</b>                           |
| <b>Commission:</b>  | <b>RAF Commission led by Judge Satchwell</b>             |
| <b>COSATU:</b>      | <b>Congress of South Africa Trade Union</b>              |
| <b>DA:</b>          | <b>Democratic Alliance</b>                               |
| <b>DOT:</b>         | <b>Department of Transport</b>                           |
| <b>EAP:</b>         | <b>Employment Assistance Programme</b>                   |
| <b>Fund:</b>        | <b>Road Accident Fund</b>                                |
| <b>LSSA:</b>        | <b>Law Society of South Africa</b>                       |
| <b>MVA:</b>         | <b>Motor Vehicle Accident Fund</b>                       |
| <b>NPA:</b>         | <b>National Prosecuting Authority</b>                    |
| <b>PAC:</b>         | <b>Policy Advocacy Coalition</b>                         |
| <b>QASA:</b>        | <b>Quadriplegic Society of South Africa</b>              |
| <b>RAF:</b>         | <b>Road Accident Fund</b>                                |
| <b>RABS:</b>        | <b>Road Accident Benefit Scheme</b>                      |
| <b>Report:</b>      | <b>Road Accident Fund Commission Report</b>              |
| <b>SABC:</b>        | <b>South African Broadcasting Corporation</b>            |
| <b>SAIA:</b>        | <b>South African Insurance Association</b>               |
| <b>SAPS:</b>        | <b>South African Police Services</b>                     |
| <b>SARS:</b>        | <b>South African Revenue Services</b>                    |
| <b>SRP:</b>         | <b>Strategic Recovery Plan</b>                           |
| <b>TVBC States:</b> | <b>Transkei, Venda, Bophuthatswana and Ciskei States</b> |
| <b>UIF:</b>         | <b>Unemployment Insurance Fund</b>                       |

## CHAPTER 1: INTRODUCTION

In 1997 the Road Accident Fund (RAF) was put into place as a compensation alternative for people who had been involved in road accidents. Section 6 of the Road Accident Fund Act 56 of 1996 (Road Accident Fund: nd) states that “the object of the Fund shall be the payment of compensation in accordance with this Act for the loss or damage wrongfully caused by the driving of motor vehicles” in South Africa. Since 1997 there have been numerous significant changes made to the Act, for example, from compensation to the victims of road accidents in a ‘fault’ based system to a ‘no fault’ based system, illustrating the shifting emphasis of the Act. Despite these changes, media reports, academic studies and discussions published on various government websites all suggest that the RAF has not been successful in compensating the road accident victims on time and managing the deficit problem.

According to Broughton (2004), widening deficits were projected over the next few years for the RAF, as stated by Finance Minister Trevor Manuel in his Medium Term Budget Policy Statement. According to Broughton (2004) the *Medium Term Budget Policy Statement 2004* claimed that “although the RAF fuel levy was increased by 3c a litre from April 1, 2003, raising it to 21.5c a litre, the RAF’s deficit widened in 2004 to a projected R713 000 000 (seven hundred and thirteen million rands) from R51 000 000 (fifty one million rands) in 2002/03”. This projection of the widening deficit highlighted the pressing need for action to reform the Fund’s operation and reduce its claims liability (ibid).

According to Pretorius (2004) the deficits in the RAF are anticipated to be R750 000 000 (seven hundred and fifty million rands) in 2004/05, R662 000 000 (six hundred and sixty two million rands) in 2005/06 and R582 000 000 (five hundred and eighty two million rands) in 2006/07. Thus, it appeared the RAF was battling to achieve its goal of compensation for road accident victims. This study focuses

on the significant agenda setting processes which the policy underwent between 1997 and 2005, which resulted in considerable changes to the main focus of the Act.

The aim of this study is therefore to explore the agenda setting process of the compensation system for the road accident, Road Accident Fund, within the Department of Transport using John Kingdon's (1995) framework of agenda setting. Kingdon offers a useful agenda setting framework, which investigates how issues come to be on governments' agenda at a particular time.

## **CHAPTER 2: POLICY CONTEXT**

### **2.1 BACKGROUND**

The road accident compensation system, of which the Road Accident Fund (RAF) is part of, has a long history spanning more than sixty years. The main purpose for the introduction of the road accident compensation system was to provide compensation for certain types of loss and injury due to road accidents. Such loss includes damage to vehicles, injury and death of vehicle occupants and third parties, collateral damage to property and the costs by the health services and the police. Initially, in most countries, those responsible for death and injury had to compensate the victim or the victims' family (Global Road Safety Partnership: nd). This system of compensation became a problem in the developing countries, including South Africa where few people could afford to pay the insurance companies from their own resources (Global Road Safety Partnership: nd). Although in developing countries vulnerable road users and public transport passengers accounted for most casualties and therefore should be able to benefit from the insurance, the opposite was true. Insurance compliance was therefore diagnosed as a major problem in low income countries, varying from 5 to 80% (Global Road Safety Partnership: nd). This means that many road accidents were not insured and the victims and their families rarely received compensation for injury and loss.

The road accident compensation system introduced the compulsory motor vehicle insurance in 1942. The Motor Vehicle Assurance (MVA) Act 29 of 1942 was the first statute in South Africa which provided for compulsory insurance to ensure that victims could recover damages, which were caused unlawfully by motor vehicles (Road Accident Fund: nd). The most important dimension of the Act was the introduction of a compulsory insurance, which would ensure that victims of motor vehicle accidents would recover the damages the wrongdoer had caused them. Importantly the legislation only afforded protection to persons

not in or on a particular vehicle, i.e. pedestrians (ibid). In 1946 statutory and compulsory motor vehicle insurance was instituted (Road Accident Fund: nd). This insurance required that the owners of motor vehicles take out what was known as compulsory third party Motor Vehicle Accident Insurance. According to the RAF, the purpose of such legislation was to indemnify the wrongdoer against a possible large claim from the victim whilst ensuring that the victim will get satisfaction against a wrongdoer, who might otherwise be uninsured and have insufficient means to satisfy a claim for damages. In this sense road accident compensation was generally funded by compulsory third party insurance premiums paid by the owners of motor vehicles to private insurance companies. *The Second Draft White Paper on RAF* (Department of Transport: 1997) states that during the 1960s, it became apparent that certain insurance companies had insufficient income to cover claims. Several companies were liquidated and this led to the establishment, in 1965, of the Motor Vehicle Accident Fund to act as re-insurer of companies which undertook compulsory MVA insurance (Department of Transport: 1997).

From 1942 to 1986 the legal basis and funding of the MVA system essentially remained unchanged. However with the introduction of the Motor Vehicle Accidents Act 84 of 1986, the method of funding and the payment of claims were radically changed (Road Accident Fund: nd). The compulsory insurance system with its statutory annual premiums was abandoned in favour of a levy on fuel sold. Under this Act the compensation was to pay for bodily injury (not only of pedestrians) but also of the victims of road accidents and for suffering following accidents. The 1986 Act also introduced the agency system in terms of which certain insurance companies acted as agents for the Motor Vehicle Accident Fund to handle and settle claims. This agency system and funding method through fuel levies was retained in the Multilateral Motor Vehicle Accidents Fund Act 93 of 1989 (Road Accident Fund: nd). The purpose of this latter Act was to introduce a uniform system of compensation for road accident victims in South Africa, as opposed to the MVA Act 84 of 1986 which was based on the Transkei,

Bophuthatswana, Venda, and Ciskei (TBVC) States (ibid). The legal basis for compensation payable for bodily injuries sustained and personal losses suffered following road accidents, remained unchanged. According to the Road Accident Fund (Road Accident Fund: nd), the agency system was undesirable and ineffective – illustrated by its total deficit of R60 million in April 1996. The system was, therefore, phased out from 1993 to 1997. Between these periods there was no compensatory system for road accident victims. In 1996 the RAF Act was passed. The Act recognised the re-incorporation of the Transkei, Bophuthatswana, Venda, and Ciskei (TBVC) States into the Republic of South Africa, and, accordingly, changed the name of the Multilateral Motor Vehicle Accident Fund (which was 'states' based) to the Road Accident Fund.

In 1997 the Road Accident Fund was instituted. The primary objective of the Road Accident Fund Act 56 of 1996 was the payment of compensation in accordance with the Act for damage wrongfully caused by drivers of motor vehicles (Road Accident Fund: nd). According to the RAF Act 1996 the RAF indemnified the driver or the owner from compensating for losses suffered due to bodily injuries sustained or the death of a person, but not for liabilities which the driver or owner may incur for damage to property (e.g., damage to motor vehicles, personal effects, buildings, luggage or goods conveyed in a vehicle) (ibid). The mission of the RAF, according to the Road Accident Fund, was to provide a visible accessible service to accident victims. The RAF mission statement claimed that the Fund's compensation covered financial support for those families where the victim was a 'breadwinner'. The RAF also provided for the medical expenses ,including psychological support, from the date of the accident into the future, as long as the future medical expenses related to the accident (Road Accident Fund: nd).

The RAF involved a number of stakeholders. The different stakeholders included claimants (victims), negligent drivers, employees, strategic partners and service providers (legal, for example, attorneys and medical, for example

physiotherapists, orthopaedic surgeons, optometrists, pharmacists, and so on). (Road Accident Fund: 2004). The RAF believed that the stakeholders were an extended part of the RAF and it could achieve its legislative mandate only in cooperation with them. The fact that the stakeholders were part of the RAF meant that their expectations and needs were to be built into the Fund's service delivery. According to the Road Accident Fund (Road Accident Fund: 2004) the importance of the relationship between the RAF and its strategic partners was based on the Fund's need for different services such as data, medical, legal, actuarial and revenue services.

The RAF existed to satisfy its legislative mandate as specified in the Road Accident Fund Act 56 of 1996 (Road Accident Fund: 2004). The mandate placed service to the victims or claimants at the centre of the Fund's rationale for existence. The Fund existed to serve the interests of the public, this being claimants, service providers, employees, negligent drivers and strategic partners (Road Accident Fund: 2004).

The Road Accident Fund is a public entity which had been set up to pay compensation to people injured in road accidents or to the dependants of people killed in road accidents, arising from the negligent driving of a motor vehicle in South Africa (Road Accident Fund: 2004). This meant that the person who became a victim through negligent driving was the one who received the compensation and not the negligent driver. Because many victims of road accidents were poor South Africans who needed financial support to recover from the effects of the road accident the RAF compensation system was aligned to the broader system of social security in South Africa, which aimed to redress income poverty in the country. (Road Accident Fund: 2004).

The Fund draws its revenue from the public and, reinvests its services back to the public (Road Accident Fund: 2004). The sole source of income for the Fund is the government regulated levy on petrol and diesel. Approximately 2% of the



Fund's income has been invested in road safety measures since 1 May 1997 (ibid).

Although issues related to the RAF date back to 1942, this study investigates the period between 1997 and March 2005. The reason for this is that between the period of 1942 and 1989 there is an absence of published material regarding the operation of the MVA as a road accident compensation system in South Africa. According to the *Second Draft White Paper on RAF (1997)* (Department of Transport: nd) there had been a number of amendments to the governing Acts of the MVA Fund from the period 1942 to 1989. However, this information was kept by the individual insurance companies and was not available for public use (ibid). Since information regarding the development of the MVA Fund is not publicised, tracking its development has proven problematic.

## **2.2 THE ROAD ACCIDENT FUND SINCE 1996**

### **2.2.1 *The White Paper Process***

In this study, the *First Draft White Paper on RAF (1996)* is taken as the starting point of the Fund because this is where the Department of Transport and the RAF took a stand to deal with the problems facing the road accident compensation system. Because the financial condition of the system was progressively deteriorating at this time, the *First Draft White Paper on RAF (1996)* sought to identify and analyse the causes of such deterioration and to suggest effective and lasting solutions to the problems facing the compensation system (Department of Transport: nd). A substantial portion of the *First Draft White Paper on RAF (1996)* was devoted to a financial analysis of the RAF. The causes of the RAF's financial problems that were identified included:

- high settlement costs;
- settlement delays of between two years eight months and three year eight months on average;

- general damages' claims that accounted for 28 percent of expenditure for non-financial losses;
- benefits to dependents that were not apportioned according to 'fault';
- high road accident rate in South Africa where almost 10,000 people were killed and 50,000 seriously injured in approximately 500,000 accidents every year (*First Draft White Paper on RAF (1998)* (Department of Transport: nd).

These issues also appear in the *Department of Transport Annual Report (1997/8)* (Department of Transport: 1998). The *First Draft White Paper on RAF (1996)* concluded that the income allocated to the RAF was completely inadequate to meet its obligations (Department of Transport: 1996). This draft also regarded it as quite impossible for the RAF to continue on its course and to accumulate a growing deficit of this magnitude. According to the then Minister of Transport, Mr Maharaj, in *Press Release View of the White Paper (1998)* (Ministry of Transport: 1998), drastic measures had to be taken to include either increasing the income or limiting the expenditure. Alternatively, a meaningful combination of the two remedies was to be employed in order to redress the gross imbalance between income and expenditure. The Minister of Transport for that time, Mr Maharaj (by describing these issues in his *Press Release View of the White Paper on RAF (1998)*) confirmed indeed that these were the major problems facing the RAF. He stated that decisive action was required. According to this press release, the divergent stakeholders' interests had to be taken into account during this time of restructuring the RAF (Ministry of Transport: 1998). It was believed that the consultation process was going to have an influence on the restructuring process of the RAF.

The *Second Draft White Paper on RAF (1997)* (Department of Transport: 1997) states that the period between March 1996 and December 1997 was spent on the consultation processes for restructuring the new compensation system for road accident victims. According to the *Press Release View of the White Paper*

on *RAF (1998)* (Ministry of Transport: 1998), the process began with public hearings in March 1996. Additional public hearings were then held in Parliament in July 1996 (*ibid*). Meetings with stakeholders took place in September 1996, followed by a two day conference with stakeholders in November 1996 and a Portfolio Committee Conference in January 1997 (*ibid*).

After this extensive consultation process with different stakeholders (including researchers, consultants, civil society, non-governmental organisations and the public), the *Second Draft White Paper on RAF* was released in April 1997.<sup>1</sup> Because the main concern of this Draft was to look at ways to reduce expenditures of the Fund, the *Second Draft White Paper on RAF (1997)* (Department of Transport: 1997) proposed, amongst other issues, a two phase claim system of compensating the road accident victims. According to this system, Phase One was going to provide emergency medical care for a period of 18 months to the victim until the victim attained 'medical stability' on a 'no fault' basis, while Phase Two was going to permit death and impairment benefits to be provided on the basis of 'fault'. In addition, the *Second Draft White Paper on RAF (1997)* (Department of Transport: 1997), discussed the need to devise a plan to withdraw the right to sue the guilty party who is found to be at 'fault' for additional amounts that may be claimed by victims of the road accident who are found not to be at 'fault'.

The proposals in the *Second Draft White Paper on RAF (1997)* were challenged by some of the concerned parties who claimed that the *Second Draft White*

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<sup>1</sup> This Draft was published in the light of criticisms of the 'no fault' system from many of the stakeholders consulted. The argument put forward by the advocates of the "fault based system was that, although the 'no fault' based system was highly desirable in the context of South Africa where the majority of the victims of the accidents are poor, it was not affordable for the operating Fund. In this draft the concern was to make a system that was more efficient, with high costs reduced in terms of time, effort and expense incurred in the process of delivering the benefits. Whether the health care benefits to all the victims of road accidents must be provided on a 'no fault' basis or not is one of the major proposals that have been frequently discussed since 1996. (The term 'no fault' meant that payment was guaranteed and treatment assured to everyone who was involved in a road accident. Under the 'no fault' system unlimited medical care was to be given for eighteen months to all the road accident victims, only at a certain rate. However, in this system, the third party retains the ability to sue the "at-fault" third party for certain damages in excess of 'no fault' entitlements, provided the injury meets or exceeds a certain threshold.)

*Paper on RAF (1997)* failed to give consideration to the recommendations from some of the concerned stakeholders. For example, Mr Lyons, a personal injury lawyer who represented disability organizations and the Drive Alive Campaign, stated that the *Second Draft White Paper on RAF (1997)* failed to consider recommendations made by some of the prominent stakeholders, and doubted whether the proposed changes would bring about sustainability that the Fund was concerned about (Robertson: 1997). Mr Lyons' primary concern was that the major recommendations made by the stakeholders had been ignored in the development of the *Second Draft White Paper on RAF (1997)*, particularly the plan to withdraw the right to sue the guilty party for additional amounts.

Amongst other things that were considered in order to come up with viable solutions in the final White Paper, <sup>2</sup>meetings with task teams from stakeholders took place in August 1997, consultations over a revised Draft White Paper took place in October 1997, and consultations on the Final Draft White Paper took place in December 1997.

In February the *White Paper on RAF (1998)* was published. The main aim was to provide reasonable benefits to road accident victims within the financial constraints of its economic context (Department of Transport: 1998). It soon became apparent, however, that a number of issues were going to contribute to the stress felt by the Fund to deliver on its implementation promises. These included:

- growing deficits as taken from the Annual Reports over the past five financial years;
- high settlement costs;
- settlement delays which on average were settled three to four years later which was regarded as unsatisfactory;

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<sup>2</sup> Special advisor Mr Joel Joffe was appointed in July 1997 in order to consider the viability of proposals contained in the Final Draft White Paper.

- general damages and claims that accounted for 28% of expenditure of non-financial losses; and
- high road accident rate (Department of Transport: 1998).

In order to find a long-term solution to the problems surrounding the RAF a Commission on RAF was established to reconsider the whole system of compensation and benefits. The *White Paper on RAF (1998)*, states that the members of the Commission were to be appointed by the Minister of Transport in consultation with the Ministers of Health, Finance and Justice (Department of Transport: 1998). The *White Paper on RAF (1998)* proposed to implement interim solutions henceforth, which included:

- The levy on petrol and diesel was to be increased by 2.0 cents per litre each, effective from November 1997. Thereafter, the Minister of Transport, in consultation with the Ministers of Finance and Mineral and Energy Affairs, would carry out an annual review of the levy and make necessary adjustments;
- Settlement costs were to be reduced with the objective of maximising the amount of the RAF's resources available to victims. It was proposed that legal, medical and actuarial costs be reduced;
- The payment towards future medical treatment was to be made directly to the service providers in order to facilitate effective management of the RAF's liability for future health care;
- All accidents arising from non-motorist transport and organised sport were not to be compensated (Department of Transport: 1998).

As stated in the *White Paper on RAF (1998)*, other issues that were believed to affect the financial status of the RAF compensation system included the fact that a significant proportion, approximately 23%, of the Fund was consumed by transaction costs. These included:

- the establishment and maintenance of the infrastructure of the RAF organisation;

- legal services; and
- administration costs (Department of Transport: 1998).

The *White Paper on RAF (1998)* also stated that 30% of the fuel levy did not go to the victims of road accidents as compensation but was exhausted on remuneration for professionals and on RAF employees (Department of Transport: 1998).

Shortly after publication of the final *White Paper on RAF (1998)*, the *Annual Report on RAF (1997/8)* was published in March 1998. It stated that the undiscounted deficit of the RAF was R7 233 000 000 (seven billion two hundred and thirty three million rand) (Department of Transport: 1998). Although this was shocking, the news was not wholly unexpected. On the basis of certain assumptions pertaining to the fuel levy, claims settled, claims inflation, investment returns and administration costs, the *White Paper on RAF (1998)* anticipated that the discounted value of the projected deficit would amount to R39 300 000 000 (thirty nine billion three hundred million rand) by 30 April 2008 if nothing was done to rectify the deficit problem (Department of Transport: 1998).

### ***2.2.2 The Appointment of the RAF Commission of Inquiry***

On the 21<sup>st</sup> of May 1999, the names of the Commissioners who were going to investigate a long term and sustainable system of road compensation for the victims of road accidents were announced by the then Minister of Transport, Mr Maharaj. These were Judge Satchwell, who was going to head the Commission, Ms Phiyega and Mr Sithole. In June 1999, the Road Accident Fund Commission was formally appointed (Moyle: 1999). This article further indicates that these candidates were chosen because of their expertise<sup>3</sup>.

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<sup>3</sup> According to the *Press Release on Presidential Commission of Enquiry on RAF: by the Minister of Transport (Moyle: 1999)* this expertise included Judge Satchwell's 18 years of practising law before being appointed as the only woman attorney to the Transvaal Bench. She also chaired Commissions of Inquiry into the Sefalana Benefits Organisation, the Management of the Bophuthatswana Pension Fund, the Durban

Shortly after the names were announced on the 21<sup>st</sup> of May 1999, the Minister of Transport, Mr Maharaj, stated that the establishment of the Commission of Enquiry was the shortest route to a credible system that would be accepted by all stakeholders (Ministry of Transport: 1999). In this speech the Minister assured the public that the establishment of the Commission was the most efficient and effective way of dealing not only with the current financial crisis in the Road Accident Fund, where the deficit was growing by almost R1 billion a year, but also of achieving an equitable and affordable system of compensating road accident victims.

### **2.2.3 Consultation Process and Public Participation**

According to the *Road Accident Fund Commission Report (2002)* the RAF Commission commenced its work by issuing personal invitations to approximately 185 individuals and organisations to attend public hearings of the Commission (Satchwell: 2002). The invitees had been identified as individuals or organisations that had previously shown an interest in the debate surrounding the White Papers, including *the White Paper on RAF (1998)* (ibid). Over the period August to November 1999 the Commission held public hearings and invited submissions on aspects of road accident compensation that might have been omitted.

Numerous meetings were held with the Johannesburg Attorneys' Association, the South African Association of Personal Injury Lawyers and the Gauteng Law

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Rooderpoort Deep and Vaal Reef South Mine Inquiries into hostel violence and the Eskom Pension Fund Inquiry into management appointments. She was also the chairperson of the Human Rights Commission Trust established to support the work of the Human Rights Commission. At the time of the appointment Mr Sithole was a Commissioner of the Public Investment Commission and the chairperson of its Audit Committee. He was also Chairperson of the Audit Committee of the South African Bureau of Standards and the Greater Johannesburg Metropolitan Council. Ms Phiyega was a Director of the National Council of Child Welfare; Chairperson of the Board of Transmed; a Trustee of the Gauteng Education Development Trust and Vusisiwe Community Development Trust, and a Board member of the Disaster Relief Fund of the National Department of Welfare and Family and the Marriage Council of South Africa.

Council (Satchwell: 2002). As stated in the *Road Accident Fund Commission Report (2002)* Judge Satchwell, and Commissioners Mr Sithole and Ms Phiyega engaged the Law Society Committee in debates on various aspects of the RAF system including:

- the RAF budget;
- the scrapping of limitations for the passengers;
- the problems experienced by attorneys and by their clients with regard to the undertakings by the RAF, particularly where apportionment was involved; and
- the rejection of a 'no fault' system of compensation (Satchwell: 2002).

On the 20<sup>th</sup> of October 1999, a Law Society of South Africa delegation, led by Law Society Association Executive Committee member Dr Seriti and the chairman of the Law Society's MVA Standing Committee, Mr Maluleke, made its submission to the Satchwell Commission of Inquiry into the Road Accident Fund at the Commission's offices in Pretoria (Whittle: 1999). In its submission, the Law Society delegation opposed the 'no fault' system.<sup>4</sup> As one of the delegates, Mr Levetan a Cape Town Attorney, put it, "the guilty are taking at the expense of the not guilty, and that cannot be equitable" (Whittle: 1999).

The issue concerning payment in terms of 'fault' or 'no fault' was debated by the Commission and the Law Society of South Africa after the submission. However, consensus was not reached between the two parties. For Judge Satchwell, the

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<sup>4</sup> Those who were in favour of a 'no fault' based approach adopted it on the grounds of equity, arguing that deserving persons who have suffered misfortune are excluded from the system of compensation and benefits, with resultant hardship to them and the creation of a burden on the state and society. They also adopted the 'no fault' system on the basis that the system allowed the whole system of compensation and road accidents to be in line with the broader system of social security and its objectives in South Africa. However, it was also challenged by the supporters of the 'fault' based approach and was considered unfair to the road accident victim who may feel that the acknowledgement of wrong-doing provided some satisfaction in the quest for justice.



reason for this lack of consensus was that the Law Society of South Africa saw the system of compensation as an insurance, in which case fault played a part, whereas the Commission saw it as a 'piece of social engineering' based on the fact that it was a tax levied on fuel (Whittle: 1999).

Meetings were also held with the Health Care Funders of South Africa, the South African Federal Council on Disability, the Psychological Society of South Africa and the Public/Private Health Forum in the Western Cape.

Seminars in Bloemfontein, East London, and Port Elizabeth in August 2000 and Johannesburg, Durban, Cape Town and Nelspruit during October 2000 were convened by the Commission (Satchwell: 2002). Here the chairperson of the Commission reported on the work which had been done and the issues with which the Commission was grappling including possible recommendations which might be made by the Commission. Participants were asked to offer comment on and criticism of such proposals. Disabled people, healthcare professionals, magistrates, attorneys, advocates and paralegals attended these seminars.

In February 2000 and June 2001 the Commission visited Australia and studied the different systems of road accident compensation found in Australia (Satchwell: 2002). The Commission met with officials and employees of regulating authorities, groupings representing disabled people, medical personnel and district court judges and various Law Commissions (Satchwell: 2002).

Below is the table explaining the categories of participants engaged in the discussions with the RAF Commission.

**Table1: Participants engaged in the discussion with the RAF Commission.**

| <b>Sector</b>                          | <b>Organisation</b>   |
|--|---|
| Government                             | Organisations of the Ministry of Transport, and the National Treasury.  |
| Researchers and Consultants            | Medical Research Council, Human Science Research Council, Strategic and Tactics Development Consultants, Research Survey (Pty) Limited, Centre for Actuarial Research and NMG-Levy Consultants & Actuaries. |
| Civil Society                          | Legal Professionals, Health Care Professionals, Disability Organisations, the Board of Healthcare Funders, the National Urban Reconstruction and Housing Agency.  |
| Non-Governmental Organisations (NGO's) | The Public/Private Health Forum, the Psychological Society of South Africa.   |
| Public                                 | 68 sample claimants, 2 402 representatives of South African population.   |
| Commissioners                          | National Commissioner, South African Human Rights Commissioners, Public Investment Commissioners.   |

#### ***2.2.4 The Appointment of the Heath Commission***

During this same period the President, Mr Mbeki, appointed a short term Heath Special Investigation into the defrauding of road accident victims by members of the legal profession. This investigation consisted of members of the Law Society Committee who were appointed to deal with past allegations of theft of client payouts by the RAF and to devise interim measures that could be implemented until a new compensation system for road accident victims was put in place. This investigation was established after numerous complaints concerning the poor

practices of lawyers during payments and settlements of claims that were made. The objective of this investigation, headed by Judge Heath, was to investigate the abuse of the Fund by the attorneys. The allegations referred to by the Heath Commission concerned:

- the deduction of money in respect of client-attorney costs;
- unlawful expenditure of the money for the road accident victims; and
- improper conduct by any person, which had caused or may have caused serious harm to the interests of the public and the road accident victims.

A number of newspaper articles made reference to these allegations. For example, it appeared that a small number of lawyers had been acting improperly in relation to RAF payouts (I-net Bridge: 1999). Although the Commission to investigate the allegations was appointed by the President, the investigation was considered invalid by the South African Association of Personal Injury Lawyers together with the Vice President of the Provincial Law Society of that time, Monique Woods. One of the arguments was that Judge Heath's appointment to Head the special investigation was unconstitutional and should be declared invalid (I-net Bridge: 1999). Ms Woods, claimed that the investigation was a campaign against the legal profession, as the accused were few (ibid). In her opinion a Fraud Committee, within the Law Society to deal with the fraud and corruption allegations, would have been more appropriate.

### **2.2.5 The Deficit Problem**

According to *Road Accident Fund Annual Report (2001/2)*, when the Social Services Parliamentary Committee sat during the financial year-end 2001/2 the deficit problem, which had existed since the Fund started, was highlighted as a major problem with a deficit problem that had risen to R16.6 billion from 1997 (Road Accident Fund: 2002). The finance manager of the Fund, Mr Rabie, suggested in the Annual Report that the only way to save the Fund was through

legislative changes to limit the compensation paid to the accident victims and to increase the fuel levy, which financed the Fund.

### ***2.2.6 Conflict amongst Primary Role Players***

In May 2002 as one of the interim solutions to the problems facing the RAF, a conference was organised by the RAF with the theme "The State of the South African Motor Vehicle Accidents' Environment". However the Law Society of South Africa refused to participate, viewing the conference as an attack on their profession and their role in the RAF. The RAF stated in the conference that 50% of the money in the RAF was spent on legal costs (Mkwena: 2002). According to the Law Society of South Africa this was not based on true facts as the costs paid to the claimants' attorneys was actually low and estimated at 12,3% (ibid). The Law Society of South Africa was of the view that the RAF has used the conference to gain public support by inventing some contentious stories concerning the state of the RAF (Mkwena: 2002). Thus, the conference, as a means to deal with the problems facing the RAF, was not very fruitful. It seemed that while the Law Society of South Africa used the conference as an opportunity to defend the jobs of the attorneys working for the Fund by stating that less money was spent on the attorneys, the other parties representing the RAF felt that more money was being spent on legal costs. Thus, in-fighting amongst the role players impeded the Funds ability to make much needed improvements.

### ***2.2.7 The Results of the Investigation by the RAF Commission***

Shortly after the Conference in 2002, the results were released of the road accident compensation scheme evaluation by the RAF Commission of Enquiry headed by Judge Satchwell. The results of the evaluation, as stated in the *Road Accident Fund Commission Report (2002)* were that:

1. The then existing system of road accident compensation was regarded as irrelevant to the social security system of South Africa in that:

- the people who are injured as a result of crime were excluded.
- many victims of road accidents who are unable to negotiate legal technicalities were excluded.
- where the road accident victim was unable to establish negligence on the part of the driver (e.g. in the event of accident caused by the child running in front of the motor vehicle) the victim was not entitled to compensation.
- the victims of the road accident by reason of their own negligence were also entirely excluded (Department of Transport: 2002).

2. The *Road Accident Fund Commission Report (2002)* also stated that the system of road accident compensation was inadequate since it focused on the 'degree of fault' (there must be negligence on the part of the owner or driver or employee of the owner of the motor vehicle to establish liability of RAF to an injured road user or his or her dependants) rather than focusing on prevention of the consequences of road accidents for all road users (Department of Transport: 2002). "Skills, time, energy, and money are expended in attributing or denying blame instead of being dedicated to road safety, emergency medical services, trauma care and early and effective medical and rehabilitative intervention" (ibid).

According to the *Road Accident Fund Commission Report (2002)*, this means that the cause of accident takes priority over the need for health care, which implies that the interventions are unavailable until the patient's entitlement to rehabilitative assistance is established (Department of Transport: 2002). This kind of exclusion "continues to perpetuate disparities between urban and rural, employed and unemployed and the rich and the poor," which is not conducive to the concept of a social security system that the road accident compensation system was trying to embrace (ibid).

3. In looking at the issue of lump-sum compensation, *The Road Accident Fund Commission Report (2002)* stated that lump-sum awards of compensation were often mismanaged by both the victims and the families who gained access to significant resources with little understanding of the life time expenses of the victim (Department of Transport: 2002). This also meant that the system was not only inequitable; it was also inefficient, unsustainable and unreasonable (ibid). This Report, therefore, suggested compensation in instalments.

4. Drawing from the past Annual Reports on RAF, the *Road Accident Fund Commission Report (2002)* found that the 'fault' based system was inefficient for the majority of needy, often poor people (Department of Transport: 2002). The investigation by the RAF Commission established that during the financial years 1997/1998 and 1998/1999 more than 60% of the claims that were not successful involved an issue of 'fault'. It states: "The dependents of the deceased driver were then denied to claim on the grounds that the deceased was a negligent driver of the insured vehicle" (Department of Transport: 2002).

It thus appeared that significant time was spent attempting to prove 'fault' rather than actually compensating the victims of road accidents. The Report referred to an article in *The Star*, (15/07/2002), entitled "17 Die in Crash after Bus Hits Stray Cow", as an illustration of the point. In this instance, a bus lost control and overturned before bursting into flames after hitting a cow that was lying in the road. 17 people were burnt to death (Department of Transport: 2002). The question was, "who was negligent: the bus driver for failing to take reasonable steps to avoid such an accident, or the cow in straying onto the road"? (ibid) In this instance, the question was who should be liable: the driver or the cow lying on the road? If the cow should be liable, this therefore meant that the victim was not to be compensated because the driver was not at 'fault'.

According to *Road Accident Fund Commission Report (2002)* spending time trying to establish 'fault' therefore meant that the mission of the RAF, which

according to the Road Accident Fund Act 56 of 1996 was “to provide a visible accessible service to accident victims” and which according to the first statute, MVA Act 29 of 1942 was “to ensure that victims of road accidents could recover damages which were caused unlawfully by motor vehicles in South Africa,” was highly disputed (Department of Transport: 2002).

As result of the *Road Accident Fund Commission Report (2002)*, a new authority called the Road Accident Benefits Scheme (RABS) was proposed. While the primary source of funding would remain the same, secondary sources of funding (in the form of a surcharge on the registration fees of light delivery vans, trucks, buses and mini taxis, as well and surcharges on traffic fines) would be instituted. In order to bring the new system in line with the social security scheme of South Africa, the Commission recommended that:

- the new system implement a 'no fault' based system and limit the amount of compensation that the injured person should receive for any particular injury;
- benefits be provided in the form of instalments and no longer be paid in lump-sums, like before, for sustainability;
- the new system, should stop paying for minor injuries and general damages (research suggested this was where a large amount of money was spent);
- the fuel levy be adjusted in order to ensure sufficient funding for the scheme (Department of Transport: 2002).

According to the results of its investigations these proposed changes could bring about improvement in the revenue of the Fund, as insufficient funds were making the system inefficient, unsustainable, unreasonable and inequitable.

### **2.2.8 Opposition to the Proposed Changes to the Legislation.**

After the *Road Accident Fund Commission Report (2002)* came out, there was much opposition to the proposed changes to the law governing the RAF. Amongst others, this included the South African Insurance Association (SAIA) and the Gauteng Law Council, which refuted a 'no fault' based system of compensation and limited benefits, arguing that it would not be enough for road accident victims to deal with the effects of road accidents.

The SAIA, in the article "RAF plans could increase insurance costs" warned the RAF that the proposed changes could lead to an increase in private accident insurance and more claims to the RAF than before because of the proposition that all road accident victims be compensated on a 'no fault' based system with limited benefits (Loxton: 2003). Because every road accident victim was going to claim from the Fund, SAIA simply concluded that the compensation was going to be insufficient for many motorists and many motorists would end up buying private insurance to add to the insufficient compensation in order to protect themselves more fully (Loxton: 2003).

Stating in the Newspaper, *Dispatch Online*, The Gauteng Law Council claimed that the 'no fault' system, which limits the amount of compensation that an injured person should receive, is not good enough since the injured person would retain the common law's right to sue for the balance of the damage suffered (Sapa: 2002). The Commission's proposals, according to chairman of the Gauteng Law Council, Mr Bobroff, were modelled on the law in the Australia state of Victoria, whose traffic law enforcement was among the best in the world (ibid). Judge Flemming also refuted the 'no fault' based system of compensation with limited benefits arguing business and the public's lack of knowledge of what that meant (Sapa: 2002).



Other opposition come from the political party, Democratic Alliance, which said that it would be more cost effective to fix what is not working rather than to abandon the existing system in favour of the untested system of dubious value (Farrow: 2005)

### **2.2.9 RAF Amendment Bill (2003)**

Subsequently, the *RAF Amendment Bill (2003)* was presented to Parliament's Portfolio Committee on Transport in October 2003. According to Mr Kgomongwe, the CEO of the Fund at that time, this Bill made provision for the payment of benefits to claimants in instalments and 'no fault', instead of payment through lump-sums and 'fault' based system like before (Kgomongwe: 2003). As Mr Kgomongwe argued "this system of payment was going to help the victims of road accidents not to over-spend the money as they tend to when they are paid in lump-sums" (ibid). He also stated "paying compensation to road accident victims in instalments will have a positive impact on the cash flow of the Fund" (Kgomongwe: 2003).

### **2.2.10 Opposition to the RAF Amendment Bill (2003)**

After *The RAF Amendment Bill (2003)* was presented to Parliament's Portfolio Committee on Transport many organisations had different views on the issue including the Quadriplegic Society of South Africa (QASA), the Law Society of South Africa (LSSA), the Congress of South African Trade Unions (COSATU) and the South African Society of Psychiatrists together with the South African Depression and Anxiety Group. After the debate in Parliament, the SABC in October 2003 published an article entitled "Instalment payments for road accident victims rejected" (Moisa: 2003). There were many different views on the proposed changes. The QASA, COSATU, LSSA and others rejected the proposed changes by the *RAF Amendment Bill (2003)*. In fact, the South

African Association of Personal Injury Lawyers, COSATU, the Hospital Association of South Africa, QASA, the Afrox Hospital Group, and Public Health Care Providers, such as the Groote Schuur Hospital formed a coalition group against the proposed changes in the *RAF Amendment Bill (2003)*.

The QASA put forth their argument against the proposed instalments based form of compensation on the basis that:

- this would deny a seriously injured person enough finances to make essential life style changes (that they could make when given lump sums);
- it would effectively deny the victims health care of choice and legal representation;
- the costs of delivery would be high and the potential for fraud from service providers would increase (Moisa: 2003).

In opposing the instalments, Ari Seirliz, the National director of QASA, speaking for QASA, described the undertakings by RAF as obstructive and unhelpful and said that the suggestions would make people's lives a misery (Moisa: 2003).

In addition, Judge Flemming, representing LSSA, opposed compensation of road accident victims according to the new suggestions, including compensation in instalments and 'no fault', claiming that business and the general public do not fully realize what these suggestions mean (Moisa: 2003).

According to LSSA the acceptance of a 'no fault' based system implies that:

- people who are at 'fault' will get money undeservedly, while those who are not at fault will get less, compared to what they suffered and may end up suing the culprit;
- claims will be made against a financially wiped-out Fund, because an instalment-based system will mean more administration costs;

- The public will soon discover the impact of the new dispensation and demand compulsory insurance (Moisa: 2003).

LSSA, instead, proposed a social legislation that is directed towards bringing hospital services to a level where every person involved in an accident, irrespective of the cause of that accident is helped to quickly return to a normal working life. LSSA proposed a uniform system of compensating for all the victims of different circumstances, including road accident victims. According to LSSA, in the case where victims of crime have been harmed financially, physically and emotionally, someone is to blame by common law and morality and, therefore, needs to be compensated (Moisa: 2003). The LSSA therefore proposed a social legislation that is not focused on a particular social issue, e.g., road accident based legislation but a more general one that aims at protecting all the victims of different circumstances (ibid).

COSATU, one of the Unions that have been in the forefront of the struggle for workers' rights in South Africa also commented on the *RAF Amendment Bill (2003)*. In their view the *RAF Amendment Bill (2003)* should have advocated the recommendations by the *Road Accident Fund Commission (2002)*, which put forth an integrated and comprehensive Social Security System in which the Road Accident Benefit Scheme would be an integral part (COSATU: [B64-2003]). COSATU did not see any value in payment of loss of earning capacity because these benefits, according to its calculations, favoured the people who could afford paying for damages as a result of road accident (Ibid). The COSATU interest was informed by the fact that:

- in the existing system of road accident compensation, disparities were perpetuated between urban and rural areas, the rich and the poor, the employed and the unemployed;
- the claimants in formal employment more easily prove loss of income, funeral expenses and health care;

- Road accident victims who are socio-economically privileged, in good employment and professional vocations will always be in a position to prove greater financial loss than the unemployed, the poor and the less advantaged (COSATU: [B64-2003]).

According to Mr Cronin, the Chairman of the Transport Committee at that time, the Transport Committee sent back the Bill for redrafting, because it had much opposition (Loxton: 2004). In 2004 the Portfolio Committee on Transport scheduled three days to discuss the *RAF Amendment Bill (2003)*, however, the meeting was postponed and according to Mr Swart, the Member of the Parliament for ACDP, one of the reasons could be that the government was preoccupied with voters' registration and electioneering (Loxton: 2004).

#### **2.2.11 Change of Administration: Refocusing the Fund**

The RAF Board that was ruling at that time ended its term in May 2003. In August 2003 a new RAF Board was appointed. From this period onwards, the main issue was that of corruption within the Fund. This is evident in many articles, including newspaper articles, the *RAF Annual Report (2003-2004)* and the *Auditor General Report (2004)*.

The new Board led by the Chief Executive Officer (CEO), Mr Kgomongwe, refocused energy towards the administration side of the Fund rather than the legal side of the RAF (I-net Bridge: 2004). As stated in the *Road Accident Fund Annual Report (2003/4)* the RAF system under the new Board provided continuous educational improvement to its staff so as to ensure competency levels (Department of Transport: 2004). This was another way to identify personal or work-related matters which affected the delivery of services to the victims of road accidents (ibid). The new Board also:

- established the Employee Assistance Programme (EAP) to provide support to employees;
- introduced the RAF fraud reduction strategy that included partnerships with the South African Police Services (SAPS), the National Prosecuting Authority (NPA) and the Special Commercial Crimes Unit as part of fraud reduction strategies;
- established Tips-off Anonymous, another initiative in which members of the public were encouraged to report fraudulent and unethical behaviour to an independent organisation through a 24 hour hotline (Department of Transport: 2004).

After the introduction of these new programmes the following resulted:

- 134 cases of fraud and corruption were reported;
- 450 prosecutions for fraud against the RAF were undertaken (Department of Transport: 2004).

Many strategies that were introduced by the new Board aimed at limiting fraud and corruption that were believed to be the cause of the backlog that existed in the RAF (I-net Bridge: 2004). Because corruption by lawyers was rife within the Fund, lodging claims directly with the RAF was suggested, in order to reduce legal costs (ibid).

There were many allegations that led to arrests in the RAF during the year 2003. Examples of incidences of fraud and corruption started to be publicised in the media. Examples included the arrests of seven people for lodging fraudulent claims to the value of R200 000 (Terreblanche: 2003). As stated in the *Road Accident Fund Annual Report (2004/2005)* 500 arrests were made by the Fund during this period and the convictions have been successful (Road Accident Fund: 2005). Mr Kgomongwe, the former RAF CEO, stated in this Report "arrests of fraudsters against the Fund have saved the Fund at least R100 million in the past year" (Road Accident Fund: 2005).

Other incidences include the arrest of what was referred to as a 'high profile' Johannesburg lawyer (Smith: 2004), Mr Pillay, who defrauded claimants of an amount of more than 1.2 million (Hartley: 2003). In addition, the arrest of Mr Guzana, who was working for the Fund, was alleged to have accepted a bribe of R7000 from an attorney in return for his overlooking certain items (Langanparsad: 2003); and suspension of the CEO for the Fund, Mr Kgomongwe, in May 2005 (Shirley: 2005) which later led to his dismissal.

During this period, spokesman for the Fund, Mr Mhambi, said the government was considering scrapping the Fund and setting up a new dispensation (Khan: 2003). The plan was therefore to allow the Fund to settle up the claims which have already been lodged and this meant that the Fund would operate for at least another five years in order to complete its work (ibid).

By 2004 the Fund incurred an operational loss of R3 127 million as stated in the *Report of the Auditor General (2004)* (Road Accident Fund: 2004). The Report states that the total liabilities exceeded its total assets by R18 557 million, whereas the Fund had budgeted for a deficit of R400 million for the 2003/4 financial year (Road Accident Fund: 2004). In addition, the Fund owed the South African Revenue Services (SARS) an amount of R719 million in respect of diesel rebates (Road Accident Fund: 2004). Should the Fund start paying the outstanding R719 million and other amounts accumulated subsequent to 31 March 2004, this would have an additional negative influence on its monthly cash flow (ibid).

There was an amount of R2.2 million which was disclosed as fruitless and wasteful expenditure pertaining to salaries paid to employees who were on suspension (Road Accident Fund: 2004). During this period there were a number of delays in finalising disciplinary hearings related to the suspensions. In addition, salaries for the acting employees, who acted in the positions of suspended

employees, amounted to R297 000 (ibid). Other issues that arose included that fact that fuel levy income was poorly managed (Road Accident Fund: 2004). For example with regard to collection of fuel levy income, due to a lack of adequate follow up levies amounting to R2.5 million from one oil company were outstanding from November 2002 (ibid). The recovery of this amount was considered doubtful as the company was in the process of being liquidated. Because of the facts contained in the *Auditor General Report (2004)* that stated that the Fund has been rocked by corruption which was estimated at R500 million a year, the Minister of Transport of that time, Mr Radebe, publicised that he was going to accept the challenge to shape the Fund (Adams: 2005).

On the 28 May 2004, there were a number of dismissals of the employees of the RAF. These dismissals included CEO, Mr Kgomongwe. During the same period, staff members in the finance section in the RAF responsible for payments of claims were suspended on charges of bribery (Shirley: 2005). All the dismissals were the result of the ultimatum given by the then Minister of Transport, Mr Radebe, to improve the performance of the Fund after the Auditor General's findings (Shirley: 2005).

There was a wide spread belief that corruption adversely affected the Fund. This is evident by the acting chairperson, Dr Cooper' s claim on July 18, 2004, that corruption needed to be tackled in order to keep the RAF of South Africa (Terreblanche: 2004). According to Dr Cooper, fraud which was previously estimated at R500 million, was actually closer to a billion rand. He said that there would be no cash flow problems if fraud could be taken out of the Fund as he believed that the amount the Fund was defrauded was almost the same as the shortfall experienced by the Fund (ibid). He therefore suggested that due to the high level of fraud the petrol levy should not be further increased.

After the Chief Executive Officer (CEO), Mr Kgomongwe, was released from his duties, Mr Magwaza was appointed as an Acting CEO of the RAF (BBC News:

2005). The new CEO initiated a Strategic Recovery Plan (SRP) that aimed to streamline the claims' processing system of the RAF (ibid). The new Board was optimistic that the situation would be addressed at the appropriate level. Therefore, the new RAF Board adopted a new mission, vision and strategic objective that, according to its Acting Chairperson, Dr. Cooper, would direct the RAF towards better delivery and the elimination of fraud (BBC News: 2005).



## **CHAPTER 3: THEORETICAL FRAMEWORK**

### **3.1 PUBLIC POLICY**

It is apparent that there is no comprehensive definition of public policy. According to Smith (1976: 13) (cited in Hill, 1997: 7), policy is a deliberate choice of action or inaction rather than effects of interrelating forces. Helco (1972:85) (cited in Hill, 1997: 7) expands this definition by saying, policy is a course of action or inaction rather than decisions or actions; policy is not only about making decisions but also about indecision by the government, party or a ruler.

Some scholars offer a definition of public policy that characterises a collection of activities and a web of decisions and actions by the decision makers. For example, Peters (1998, cited in Gerston, 2004: 7) defines public policy as the sum of government activities whether acting directly or through agents as it has an influence on the lives of citizens. Gerston (2004: 7) seeks to extend this linkage by defining public policy as the combination of basic decisions, commitments and actions made by those who hold or affect government positions of authority.

While the above definitions agree that public policies are government initiatives, Hanekom (1987) tends to differ. According to Hanekom (1987: 8) public policies originate either from the government or from the interested parties outside government, for instance, the media, pressure groups, political parties, the cabinet (political office bearers), public managers (Directors and Heads of Departments) or officials at the operational level of government. Wissink (1990: i) contributes by saying that the public is also a concerned stakeholder and plays a role in the public policy process, however, ..."the public is better educated, better informed and more insistent in participating in the formulation and administration of policies" (Wissink, 1990: i-ii).

Dye (1972: 29) offers a different perspective of public policy and disagrees with those who assert that public policies reflect the demands of 'the people' regarding that more as "the myth rather than the reality". Dye (1972: 30) adopts the elite theory which suggests that 'the people' are less interested and ill-informed about public policy. He maintains that the elite actually shape mass opinion on policy questions more than masses shape elite opinion. This theory therefore suggests that public policies do not reflect demands of 'the people' as much as it does the interests and the values of the elite.

Kingdon (1995: 196) in attempts to define public policy describes a number of available theories including the rational choice theory and incremental model. Rationality theory in public policy becomes evident when the policy is intended to achieve maximum social gain. Rationally, the policy that maximises benefits while minimising costs is the best policy. On the other side, policy may be the continuation of the previous government's activity, with minimal changes made to the previous policy.

### **3.2 AGENDA SETTING**

The policy related analytical technique used in this study is that of policy agenda setting. According to Kingdon (1995:3), an 'agenda' is a list of subjects or problems to which government officials, and people outside government closely associated with those officials, are paying serious attention at any given time. Out of the set of all conceivable problems to which officials could be paying attention, they seriously attend to some rather than others (ibid). Meyer and Cloete (2000: 98) describe policy agenda settings in a wider sense as a deliberate process of planning and acting that defines and prioritises policy issues and problems, mobilizes support and lobbies decision makers to take appropriate action. According to Howlett and Ramesh (1995:105), (cited in Hogwood and Gunn 1984:15) some of the definitions of agenda setting are

regarded as deeply imbued with the pluralist<sup>5</sup> view prevalent in mainstream American political science of earlier years. For example, Cobb, Ross and Ross (1976:127) defined agenda setting as the process by which the demands of various groups in the population are translated into items contesting for the serious attention of public officials. According to Howlett and Ramesh (1995), such definitions are closely linked to the idea that public policy-making is driven by the actions of social groups and they regard this as a hallmark of pluralism (cited in Hogwood and Gunn 1984:15). An agenda setting analysis is regarded as important because of the flood of policy related issues and problems that government is normally facing with insufficient resources to address these problems effectively (Hogwood and Gunn 1984:15).

A more descriptive, and according to Howell and Ramesh (1995:105), less theoretically biased definition of agenda setting is provided by Kingdon. For Kingdon (1995:3), agenda setting is the process of narrowing sets of subjects to the set that actually becomes the focus of attention. According to Tiernan and Burke (2002) Kingdon's theory of agenda setting is useful because it rejects models which envisage policy development processes as rational and underpinned by the logic of problem-solving. It also rejects models which posit a loose relationship between problems and the policy solutions offered by the decision-makers (ibid). Kingdon's theory provides a good example of a policy theory that explains how the policy process, the problem, policy and politics are all working together to achieve a plan. According to this model a problem is perceived because of a change in an indicator, such as a statistical record. A second influence is the process of gradual accumulation of knowledge among the specialists in a given policy area (Kingdon, 1995:17). The third influence is the political process, including a change in government, which opens opportunities for new perspectives (ibid).

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<sup>5</sup> Pluralism is a theory that a multitude of groups, not the people as a whole rule (Reynolds: 2002). In pluralist view, the organizations including the formal and informal coalitions of like minded citizens influence the direction of the policy making or the agenda setting process (ibid). For example, when the political party win the office with the 'plurality of votes' (that is, they receive more votes than their opponents), they influence or determine which ideas or agendas are taken seriously.

Numerous approaches to agenda setting exist. There are, however three dominant approaches to agenda setting. The Policy Advocacy Coalition (PAC) Framework, the Punctuated Equilibrium Model and Evolutionary Theory are three contemporary models that explain the agenda setting process in a coherent way.

### ***3.2.1 Sabatier's Policy Advocacy Coalition (PAC) Framework***

John (1998: 169) cites Sabatier (1988) as offering a framework that stresses the importance of relationships within the policy sectors as the key to understanding how the agenda setting process works. This approach to agenda setting states that the ideas and preferences of the policy makers are largely influenced by ideas, values and interests of the 'coalition groups' (John, 1998:169). In Sabatier's framework, a 'coalition' is an alliance of bodies holding the same ideas and interests for the purpose of arguing against other coalitions within the same policy sector (ibid). These can include journalists, policy analysts and researchers, as well as bureaucrats, politicians and interest groups' representatives. Their primary role is the dissemination of ideas, with each coalition reflecting the ideas and interests of the group about a set of policy issues.

The outcome of the discussion of ideas from different coalition groups, according to this framework, is what is used to explain change in the policy issue agenda. Amongst many coalition groups, two to four competing policy advocacy coalitions, each with its own ideas about policy content, compete for dominance in the subsystem. Knowledge plays a crucial role in the process because the coalition is a reflection of the ideas about and interests in a set of policy issues. In this approach, the coalition group that supports a particular idea in one context can change to support another idea in another context because the participants within a coalition group learn over time. According to Sabatier, the ideas within a particular coalition group remain stable until they are disrupted by a major crisis.

During the period of crisis this model states that the 'shocks' to the policy makers due to the disrupted patterns can change the meaning of ideas and therefore, disrupt the patterns of interests that cement the policy advocacy coalition together and can create a new relationship between the coalitions.

Sabatier (1988) also sees the importance of change in the society and in the economy as one of the 'shocks' that has a role in accounting for the agenda setting process. He utilises the 'funnel model' of policy innovation advocated by Hofferbert, which states that changes in the economy or society feed into public opinion which, in turn, affects the policy position of political parties and interest groups and, hence, the ideas and preferences of the policy makers. To summarise the process; ideas of coalition groups set the agenda, crises are what account for changes in the meaning of ideas, whereby new solutions to the problems disrupt the stable pattern of interests that cement the coalitions together and therefore, new relationships are created. The long-term outcome is a totally new set of coalitions with a particular approach to solving policy problems.

In short, the model states that stability in the environment is what keeps particular policies working for a long time. However, external changes lead to change of coalition partners, their relationships and ideas about a particular policy. Thus, new sets of ideas that will contribute to the new policy making process emerge.

### ***3.2.2 Punctuated Equilibrium Model***

This model of agenda setting is advocated by Baumgartner and Jones (1993). The argument put forward by this model is that both change and stability are what accounts for the agenda setting process. Baumgartner and Jones are particularly interested in the rapidity of change between periods of partial equilibrium and of issue expansion. According to this model, the forces that

create stability in the agenda setting process are the same processes that combine during critical periods to force dramatic and long lasting changes during other periods. However, it is the shift in the rate of change in policy-making subsystems that is the essence of how policy changes and varies. Baumgartner and Jones (1993:176) state that, "in the policy sector there are long periods of stability followed by periods of public interest, media scrutiny and public action".

The way in which the process takes place is that, debates in the media and public opinion influence the actions of politicians and therefore, agenda setting. Likewise, institutions and the influence of the powerful elite, supported by the beliefs of the elite in politics, favourable reports in the media and a supportive public opinion ensure that a particular policy remains in place and, according to this theory; this is what accounts for some ideas that remain stable over time.

According to Baumgartner and Jones (1993:177), coalition groups also have a powerful influence on the agenda setting process: as he states in his book "as more groups and coalitions come together, the more agendas change". This happens because various participants in policy-making systems interact with and respond to each other to produce forms of political action and inaction. Interests and networks associate and formulate agendas, which help define the policy problem. Baumgartner and Jones (1993) are particularly interested in the rapidity of change between the periods of partial equilibrium and of issue expansion, hence the idea that stable periods of agenda setting are 'punctuated' by policy activism.

Although it claims to be an integrated account of agenda setting because it synthesises the various elements that cause policy change, the Punctuated Equilibrium Model is a single level approach, because it focuses on one principle as the foundation for the agenda setting process. For instance, the model claims that participants at various levels respond to each other to produce forms of action and inaction. This therefore, means that this theory overlooks the way all

these elements such as institutions, ideas, and economic power, interact and evolve in a direction that accounts for the agenda setting. Although Baumgartner and Jones (1993) seem to be measuring characteristics of the agenda setting process they do not explain the causal relationship between public opinion, the media, political forums and policy outputs. For instance, advocates of this theory do not tell us what it is that the public is doing and how it influences policy outputs. Also, the theory assumes that all the stakeholders have equal power to influence decision making, while public opinion, the media and political forums all have levels of influence which may differ one way or the other. In addition, the Punctuated Equilibrium Model suggests that the agenda setting process often takes a 'bottom up' approach rather than a 'top down' approach<sup>6</sup>. If this is the case, it means that the agenda setting process often takes reform from below, thus, this model neglects the way in which political decision-makers can shape preferences from above.

In seeking to explain agenda setting Baumgartner and Jones have to actually reach outside their model, given that, Kingdon (1995:65), states that the agenda setting process "is a result of changes occurring elsewhere and due to the importance of political events rather than the increase and decrease in the influence of coalitions". He calls this a 'window of opportunity' which according to him "encourages politicians and public to think in a particular way in terms of resolving social problems" (ibid).

### **3.2.3 Evolutionary Theory**

This theory advocates that every agenda setting process is automatically produced by an evolutionary mechanism. As described in Peter John's book

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<sup>6</sup> According to Colebatch (2002) "Top down" approach advocates that an effective policy making process requires a capacity to coordinate and control. "Top down" approach assumes that policy making is always followed by policy implementation. "Bottom up" approach on the other side argues that the implementation process itself involves policy making from those who are involved in putting it into effect. The "Bottom up" approach comes about because of the fact that implementation involves higher levels of discretion (ibid).

*Analysing Public Policy* (1998:12), what drives agenda setting is the continual interaction between several elements that interact over time. These are: institutions, actors, interest groups, economic power, individual interests and ideas. The integration of elements over time into a particular direction is what constitutes the policy agenda. Evolution is the direction in which integrative accounts of public policy are heading. This model of agenda setting states that the ideas 'float' around naturally, with some ideas being taken seriously according to the natural selection process, while others are not. Institutions, groups, economies and ideas evolve together through the changing preferences of individuals that shape and are shaped by their external environment. In the whole process, individuals learn and modify their behaviour and structures as they adjust their policy strategies to new situations.

Thus, according to this model, the emergence of a policy agenda is due to the evolution of ideas and interests within institutions, patterns of group politics and socio-economic constraints over time.

The weakness of the model is that the evolution of human actors can be different to the natural selection explanation to the above in that human actors are capable of adapting consciously to the environment rather than adapting naturally. Like the Punctuated Equilibrium Model, the Evolutionary Theory does not provide a critical explanation of power relations between the stakeholders of the agenda setting process and, by overlooking this aspect; this theory suggests that the agenda setting process is a self-regulating one. This theory causes conflict, in that in the actual agenda setting process there is no automatic procedure whereby some ideas and interests are favoured, and others are not.

#### ***3.2.4 John Kingdon's Policy Stream Approach***

The underlying theme presented by the three policy theories above is that policy change and variation emerge from the interaction of various processes. For



example, individual choice interacts with institutions, and ideas become important when they interplay with individual interests. Also, the general argument for the three policy theories is that the institutions, patterns of interest groups and networked relationships and socio-economic structures are limits to human action although sometimes they change autonomously.

According to Kingdon (1995:3), an agenda is a list of subjects or problems that are being paid serious attention by governmental officials and those outside of the government but are affected by the agenda. Out of the set of all policy issues or problems to which officials could be paying serious attention, they attend to some more earnestly than others. The purpose of the agenda setting process, as Kingdon claims, is to narrow down the range of issues to those that are focused upon. The issue can either be on the governmental agenda or on the decision agenda:

- Governmental agenda - a list of subjects that are receiving attention from government officials and those around them;
- Decision agenda - a list of subjects within the government that are considered to be activated.

Kingdon argues that there are categories of factors, which might affect agenda setting, and the specification of alternatives. These are:

- participants who are active;
- the processes by which agenda items takes place; and
- alternatives that come into prominence.

These categories are detailed below.

For the issue to move onto either a governmental or decision agenda, Kingdon states that the participants play a major role. Although participants are inseparable from the process, people in and around government attend at any given time to some subjects and not to others (Kingdon 1995: 21). Kingdon distinguishes between the actors inside of government and actors outside of government (ibid).

### **3.2.4.1 Participants**

It is important, according to Kingdon (1995:75), to determine the importance of the actors in the process before discussing the process itself, in order to understand the influence that their involvement in the agenda setting process has. Participants include all the people who could be the source of agenda issues. The President, political appointees, and the various forces outside of government including the media, interest groups, and the general public are examples of such participants. In these categories of participants issues may reach the agenda in two ways. People outside the government transfer items from the non-governmental agenda to the governmental formal agenda through mobilization of the relevant public by leaders. Issues may also reach the agenda through diffusion of ideas in professional circles and among policy elite, particularly bureaucrats. According to Kingdon, change in the agenda may result from a change in party control or a change in the ideologies brought about by elections. In other words, parties and elected officials are the ones who are the source of the initiative.

#### ***3.2.4.1.1 Participants Inside of government***

Kingdon (1995) states that the people who are most prominent in the agenda setting process are those who are often preoccupied with the 'administration'. For the issue to rise to the top of the agenda the people in the administration must consider a given issue a top-priority item and, therefore, other participants get influenced and do so too.

The first component of the administration is the President. Firstly, when the people know the principles of the dominant government they will act accordingly. Also, if the President is seen as a popular figure he becomes much more able to use that advantage than when he is seen as not.

The other component of administration is the set of officials in departments, for example, political appointees. According to Kingdon (1995: 29), political appointees do not originate ideas, but they play an important role in placing them on the agenda of important people, both within and outside of their agency. The process is that these political appointees take the Presidential proposals or ideas that have already been there in the agency for some time without being taken seriously and move them decisively, even though the President may not have ordered such action. The political appointees are characteristically impermanent, which means that they do not last very long, yet they want to bring about change while they are still in the office.

Elections may produce officials who make many important decisions in government and, therefore, elections may affect the policy agenda setting process. Because politicians make promises during campaigns and parties take particular positions, their commitments form an agenda for them once they are in office. Therefore, people in and around government may interpret election results as the mandate for another policy direction. In Kingdon's terms, "change of administration would change agendas, alternatives and approaches to policy problems and the new administration would advocate some programmes and not advocate others" (1995:21).

Kingdon (1995:30) also argues that civil servants, or bureaucrats, are also the source of the agenda setting process. However, rather than determining the subjects to which subordinates will pay attention, that is identifying an agenda item, bureaucrats are crucial in the implementation and the specification of alternatives. They are also crucial in providing feedback about the operation of the programme. Rather than generating ideas Kingdon (1995:32) states "bureaucrats provide professional advice and consultation in pursuing approaches that have already been generated". The major preoccupation of bureaucrats is implementation because of their work, which is mainly administration (Kingdon 1995:41). The source of their influence amongst others

involves the expertise that they possess and their staying power in the job that they do (ibid). This, therefore, means that higher-level appointees define the agenda and then ask the advice of bureaucrats in drafting the proposals.

Another source of influence from civil servants is their longevity, "political appointees come and go, but the bureaucrats endure" Kingdon (1995:33). This, therefore, means that civil servants are obliged to convince those appointees to highlight the subjects they prefer. If they fail to convince them, the best bet is to wait until a more interested set of appointees comes along.

Legislators hold hearings, introduce bills, and make speeches which are publicized in the press and communicated to other participants. This category therefore, has got more influence in the setting of the agenda, than in the specification of alternatives.

#### ***3.2.4.1.2 Participants Outside of government***

The participants outside of government, who affect the agenda setting process as part of the grouping include, among others, professionals, organized labour and public interest groups (Kingdon 1995:47). Interest groups affect the agenda setting in two ways: by promoting new courses of governments' action, for example, a group that writes letters sends delegations and attempts to get government officials to pay attention to its issues by seeking to block changes in the agenda (ibid). Interest groups have got varied degrees of influence on the agenda setting process. According to Kingdon (1995:50), particular actors can sometimes get an issue on the agenda but cannot dominate the alternatives considered or the outcomes. This means that although they may have serious objections, they may also have clashing alternatives. Interest groups are important in a number of ways, not simply as agenda setters. For example resources that the group has or lacks give it an initial advantage or disadvantage in the agenda setting process. This includes political resources and their ability

to mobilize their members and sympathizers. Their number, status and wealth can also affect agenda setting outcomes.

The collection of academics, researchers and consultants is the next most important set of non-governmental actors. In the agenda setting process they have more impact in the long run than in the short run. Kingdon states that, they are more influential in coming up with alternatives. According to Kingdon, although academics are not responsible for the prominence of some issues on the agenda, they advance ideas to the people who turn to academics for advice on how to cope with the agenda (1995:80). These people are also regarded therefore as important in the development of ideas.

The media is also portrayed as a powerful agenda setter which affects the public opinion agenda. In Kingdon's terms "the mass public's attention to governmental issues tracks rather closely on media coverage of those issues" (1995:58). This helps in that people inside and outside government dealing with the same problem can get to communicate in an indirect way. However the media is anticipated to have less effect on the policy agenda because of its tendency to cover stories for a shorter period of time and turn to the next story (for example daily newspapers and the television news do not focus on one issue). Because the media only reports on what is going on in the government, and does not have an input into what is going on, it tends to have less impact on the agenda setting process. Also the media has less effect because, according to the results of Kingdon's research (1995: 59), "media has got a tendency to cover dramatic stories because such stories tend to come towards the end of the agenda setting process, rather than at the beginning".

Lastly, public opinion has an influence on the ideas that politicians embrace during elections. Public opinion has a very big influence on the agenda setting process. According to Kingdon, public opinion can have either positive or negative effects on the agenda setting process. Public opinion can force some

ideas onto the governmental agenda because when more people are interested in an idea, they will make it popular for vote-seeking politicians. Mass public opinion mostly affects the agenda more than the alternatives as government officials may pay attention to a set of subjects partly because these subjects are on the mind of a fairly large number of ordinary citizens.

Below is a table provides a summary of the influence that the different categories of participants have in the agenda setting process.

**Table 2: Degree of Influence over the Agenda Setting Process**

| <b>Participants</b>                            | <b>Agenda</b> | <b>Alternatives</b> |
|--|---------------|---------------------|
| <b>Interest groups</b>                         | High          | Low                 |
| <b>Media</b>                                   | High          | Low                 |
| <b>Public Opinion</b>                          | High          | Low                 |
| <b>Change in Administration</b>                | High          | High                |
| <b>Civil Servants</b>                          | Low           | High                |
| <b>Academics, Researchers and Consultants.</b> | Low           | High                |

**3.2.4.2 Processes of agenda setting**

**3.2.4.2.1 The Problem Stream**

In the problem stream, various problems may capture the attention of people in and around government. These come to their attention through different indicators. The first of such indicators is **crisis**. “An issue becomes an issue when it reaches crisis proportions” (Kingdon, 1995:95). One such example is a dramatic accident that captures attention and is widely reported and discussed. Such an indicator comes to the attention of the public because both

governmental and non-governmental agencies monitor various activities and events (Kingdon, 1995:90).

The second indicator for change in the agenda is the **cost of the programme** (Kingdon, 1995: 102). Sometimes programmes come to be so costly that agenda setters rethink their future initiatives. A rapid rise in the cost makes agenda setters adopt a series of regulatory programmes. Kingdon (1995:103) states that inexpensive programmes in this regard come to the fore because they are the ones that hold some promise for controlling rising costs.

**Monitoring** involves conducting studies often run by government agencies or by non-governmental researchers and academics (Kingdon, 1995:91) who also produce results which indicate that something has to be done. Important people in and around government look for changes reported as a result of studies conducted and often act when results of the studies indicate that there is change in numbers compared to the previous condition. More often, when these indicators of a problem are calculable an increase in numbers indicates that the problem has increased. The problem receives more attention, for example, by an increase in death rates of people with a particular disease in a study that measures the severity of a particular disease.

Another way that a problem might reach the attention of the agenda setters is through **feedback** (Kingdon, 1995: 100). Kingdon states that feedback about the implementation of a particular programme which indicates that the programme does not work as planned brings the problem to the attention of the government (ibid). He further states that government officials receive feedback about the existing programmes through the experience of administrators, evaluation from those who over-see the implementation of the programmes and complaints from people, including businessmen, citizens, individuals and officials.

#### **3.2.4.2.2 The Policy Stream**

A second contributor to the generation of ideas and alternatives can also be the generation of policy proposals by such specialists. The policy stream is characterised by Kingdon as a 'primeval soup' in which ideas float around looking for opportunities to recombine as solutions to problems. This stream is best described as a range of alternatives, proposals and possible solutions that are generated in communities of specialists. Kingdon argues that in this stream ideas are provided that are often important in the generation of proposals by policy specialists.

In this stream various participants, including the general public, discuss agendas. The role players include policy communities and communities of specialists. According to Kingdon (1995:140), "accumulation of knowledge amongst the policy community contributes to the generation of ideas". Kingdon acknowledges that specialists do not share the same values amongst each other. However in some respects, the bulk of specialists sees the world in similar ways and, therefore, approves or disapproves of similar approaches to the problem (Kingdon, 1995:140).

Kingdon further highlights some examples of things that might create considerable pressure for policy change. Amongst others are academic arguments and studies. Also, through a process of constant discussion, speeches, hearings and bill introductions, ideas may be built gradually, and each of these communication processes plays some role in agenda setting and alternative specification.

The ideas also survive because of the anticipation of future constraints, including budget constraints. Kingdon (1995:70), further states that those ideas that are judged unfeasible by the community of specialists are less likely to survive.



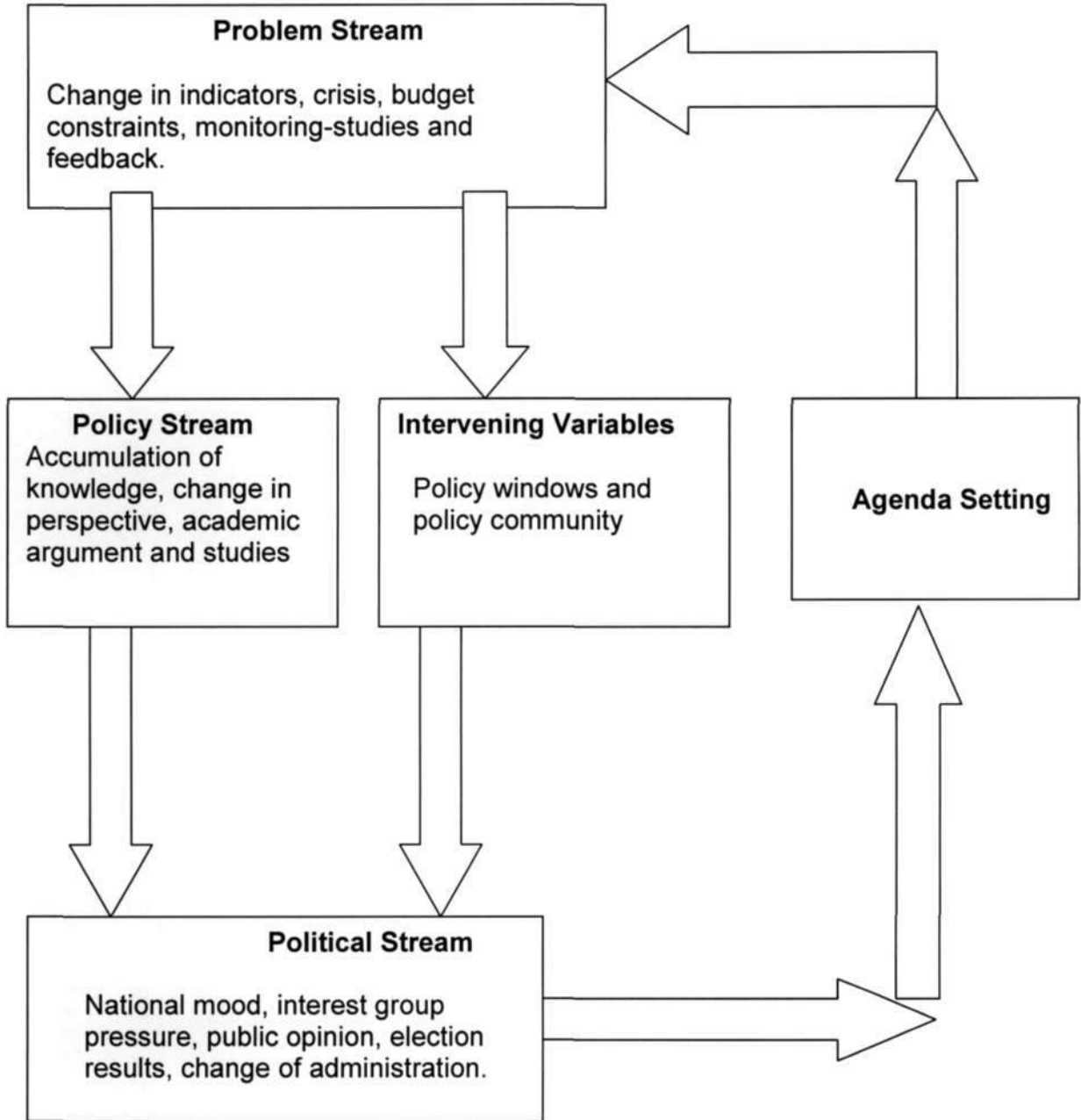
### **3.2.4.2.3 The Political Stream**

A third contributor that affects agenda setting is the political stream. The political stream is influenced by the swings of national mood, which refers to the number of people in the country thinking along similar lines, public opinion, election results, and change of administration. Kingdon states that when election imperatives happen to take place and when the national mood is favourable, the items on the agenda are more likely to be promoted.

In Kingdon's terms each of these three processes - problem recognition, generation of policy proposals and political events - can serve on the agenda setting as either an impetus to promote items to a higher prominence or as a constraint preventing items from rising on the agenda. For example, as an impetus, items are promoted to higher agenda prominence, as when a new administration makes possible the emergence of a new set of proposals. On the other hand as a constraint, items are prevented from rising on the agenda because they are too costly and the budget is insufficient to cover them.

Figure 1 in the diagram below explains the process by which agenda items and alternatives come into prominence to account for the agenda setting process.

**Figure 1: Diagram showing Kingdon's Agenda Setting Process**



### 3.2.4.3 Policy Windows and Coupling Process

Kingdon describes the policy window as the opportunity for action on given initiatives (Kingdon, 1995:166). This process opens those items that are on the decision agenda rather than those that are on the governmental agenda. There are two things that contribute to the opening of the window. A window opens because of a change in political stream, for example a change of administration or shift in the national mood. (Kingdon, 1995:168). Sometimes the window is opened by a problem regarded as pressing by government (Kingdon, 1995:174).

Once the window opens, the policy specialists invite participants to advance their own ideas. Once problems and solutions are dumped into the 'garbage can' presented by this opportunity, the advocates of the proposals will use what Kingdon terms 'the open window' to push their own ideas to the front. In this way if the elements in three streams are coupled correctly, these elements reach more active status and the chances for them to be implemented are high.

There is limited time to push the ideas to the fore (Kingdon, 1995:169). Apart from the 'window' not being open for long, the following reasons exist for having to be hasty.

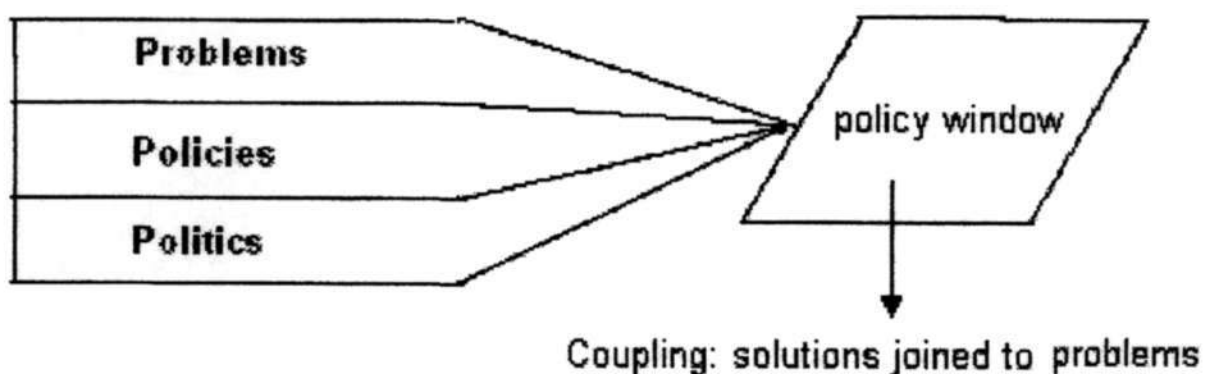
- The participants feel that they have addressed the problem; or else
- If a change in personnel opened the window, for example administration, the personnel may change again and close the window.

According to Kingdon (1995:165), an open window is used at critical times when the separate streams come together. This process is called 'coupling', whereby the problem is recognized, a solution is developed and available in the policy community and a political change makes it the right time for policy change. Although each stream alone may structure the governmental agenda, to reach the decision agenda all streams need to be joined (ibid). During this period the

participants bring their problems to the deliberations hoping that the decision makers will solve them. They also bring their proposals hoping that they will be adopted. If an alternative is coupled to a problem as a solution and that combination finds support in the political stream the proposal is, therefore, more likely to survive. Kingdon therefore, states that the outcome of the agenda setting process depends on how these elements mix with each other (1995:170).

Figure 2 illustrates the coupling process, the three streams namely; problem, policy and political become joined when the policy windows are open.

**Figure 2: Diagram showing the coupling process**



Kingdon (1995) thus offers a useful account of the agenda setting process, which this study will use to analyse the RAF. Kingdon differs from the other ideas presented in that events do not precede neatly in stages, steps or phases. Instead, what accounts for the agenda setting process is the flow of independent streams through the system all at once, each with a life of its own (as shown in Figure 2). When windows are open these streams become coupled with one another to provide for change in agenda setting.

## **CHAPTER 4: RESEARCH METHODOLOGY**

This study has been conducted using qualitative research methods, with content analysis of secondary data. The qualitative research method differs from the quantitative research method in that the qualitative method focuses on the processes rather than the outcomes (Babbie and Mouton, 2004:270). The qualitative method was appropriate for this study because this method displays, analyses, summarises and interprets words and images based on the information (Neuman 2000: 87). Because the aim of this study is to trace the unfolding of the events and actions of participants in the RAF and to explain the development using Kingdon's framework of agenda setting, a qualitative study was more appropriate.

### **4.1 DATA COLLECTION METHOD**

In this study secondary data was analysed. The documents that were used to collect information include formal records from the Department of Transport and the RAF including Annual Reports on the Road Accident Fund, Meeting Minutes, Parliamentary Proceedings, and Speeches primarily from the Department of Transport.

Media articles were also used to trace the chronology of events, particularly to see which of the events in the Fund caught the attention of the media. This aided in determining the role of the media in the agenda setting of the RAF. Media articles that were used include newspapers articles, SABC News articles and other internet sources. These documents were used to trace the chronology of events that form the agenda setting process of the RAF.

The media articles used revealed the views of the participants, especially those outside the governing body of the RAF, to the proposed resolutions to the problems that the agenda setters tried to address. The stories from these articles led to an identification and understanding of opposing views against the proposals from the formal records. These included the views of certain organisations and individuals against the RAF Commission's Report 2002, the White Paper on the RAF 1998 and the RAF Amendment Bill 2003.

#### **4.2 DATA ANALYSIS METHOD**

This is an explanatory study and the analysis, using content analysis, was based on the aforementioned primary and secondary data. According to Neuman (2000:292) content analysis is a technique for examining specific information content in written material. The term 'content' refers to words, meanings, and themes that emerged from the literature used. In this study the content analysis was used to establish the presence of certain words, concepts, themes, phrases, sentences within text and to quantify this presence in an objective manner. According to Neuman (2000:292) these texts take different forms, for example, books, research papers, discussions, newspaper articles, historical documents, speeches or any type of communication on the subject researched. According to Neuman (2002:293) it is possible to study beliefs, attitudes and human relations using content analysis because it enables the researcher to interpret the content in any source of communication. This research therefore used content analysis to look at:

- the *problems* that emerged from the RAF such as **financial crisis, high rate of road accidents** and **negative feedback** about the operation of the Fund;
- the things that influenced the ideas that were developed in the RAF, i.e. **discussions, studies and budget constraints**. The ideas or *policies* that were developed included RABS which incorporated a based

compensation system, the 'fault' based system and the liquidation of the Fund;

- the *political* environment with which these ideas and the problems emerged such as the **national mood and change of government administration**;
- the role played by the RAF Policy Community including the **civil society groups**;
- the role of the **media** in advancing certain stories about the Fund.

The themes that emerged from the data were based on the above categories, which guided me in the coding process. The text was broken down into manageable categories, for example phrases, sentences or themes. Direct quotes from the literature were used to illustrate themes that were important for this study. The cases that confirm the theory were recorded and used as incidences of agenda setting. The answers that emerged helped develop themes with which to explore the applicability of Kingdon's framework. This technique allowed features in the content of large amounts of material to be discovered which might otherwise have gone unnoticed.

## **CHAPTER 5: ANALYSIS AND FINDINGS**

This analysis is based on the activities related to the development of the RAF in South Africa from 1996 to 2005. It determines whether the process of the development of the agenda for the RAF reflects the process of agenda setting advocated by John Kingdon. This analysis critically explores the features of the agenda setting process envisaged by Kingdon that were evident in the agenda setting process of the RAF. The role played by the stakeholders of the RAF will be featured in the discussion, as they could be regarded as a RAF policy community. The role played by the RAF policy community in identifying problems and seeking solutions will be explored in detail in the analysis below. Interestingly, Kingdon's three process streams, namely; problems, policies and politics were evident in the agenda setting process of the RAF, this is imperative as this is the main concern of the study. How the problems emerged and how ideas were generated will be explored in detail. In South Africa the 1994 democratic elections characterised change in the laws of the country in numerable areas. This research therefore, also explores how this political change contributed to the agenda setting of the RAF. In addition the study looks at whether the joining of the three process streams occurred and whether a 'policy window' emerged at any point in the agenda setting of the RAF from 1996 to 2005.

### **5.1 THE PROBLEM STREAM IN THE RAF**

This section traces ways with which the issues that were regarded as problems in the RAF came to the attention of the decision makers. There were several indicators that highlighted that there was a deficit problem in the RAF. According to Kingdon (1995), a problem comes to the attention of governmental officials in several ways, including indicators and feedback. The RAF found its way onto the governmental agenda in South Africa between 1996 and 2005 through a combination of these two factors. These factors are discussed below.



### **5.1.1 Indicators**

Between 1996 and 2005, there were certain issues in the RAF that caught the attention of the decision makers and therefore the people who were affected by the issues. These issues served as indicators that indeed there was a problem in the RAF. All of the issues identified related to the financial crisis that was ever increasing, resulting in failure to meet the demands of the ever growing number of the victims of road accidents. The *First Draft White Paper on RAF* (1996) which involved an extensive consultation process with all the stakeholders served as the first response to the crisis. This process, together with the legal and media reports circulated the issue to all the interested and affected parties, assisting in the ultimate identification of a policy solution. Thus a decision was made in order to save the Fund. These indicators are explained below:

#### **5.1.1.1 The Financial Crisis- Budgets**

Since 1996 a series of financial problems arose in the RAF. The financial deficit of R60 000 000 (sixty million rands) in 1996 with an indication that this was getting worse identified what could be labelled as a crisis by Kingdon (1995). Because the problem was calculable and the statistics publicised, the intensity of the problem was apparent. Diverse observers and analysts chronicled the same economic problems, as explained below.

From 1996 to 2005 the series of financial problems identified indicated that the economic state of the RAF was getting worse. The financial problems included high settlement costs and the increasingly high rate of road accidents (Department of Transport: 1996). Indeed the *Road Accident Fund Annual Report* (1997/1998) stated that the undiscounted deficit was estimated at R7233 000 000 (seven billion two hundred and thirty three million rand) with no hope of recovering this amount (Road Accident Fund: 1998). The economic state of the RAF was reported as 'worsened' in 2001 as the deficit in the RAF rose to

R16600 000 000 (sixteen billion six hundred million rands) from 1997 as the *Road Accident Fund Annual Report (2001/2002)* states (Road Accident Fund: 2002). Compounding this, many allegations of fraudulent claims by lawyers, including fraudulent claims of R200 000 (two hundred thousand rands) in 2004, exacerbated the deficit problem in the RAF. Indeed, as the *Auditor General's Report on RAF (2004)* states that the Fund incurred an operational loss of R3 127 000 000 (three billion one hundred and twenty seven million rands) for the year ended 31 March 2004 (Road Accident Fund: 2004). The *Auditor General's Report on RAF (2004)* states that total liabilities exceeded its total assets by R18 557 000 000 (eighteen billion five hundred and fifty seven million rands), whereas the Fund had budgeted for a deficit of R400 000 000 (four hundred million rands) for the 2003/4 financial year (ibid).

In respect of the indication that the problems identified in the *First Draft White Paper on RAF (1996)* were affecting the financial state of the Fund, the Minister of Transport, Mr Maharaj responded. He therefore, suggested that drastic measures be taken, as it was impossible for the RAF to continue to accumulate a growing deficit of this magnitude (Ministry of Transport: 1998). He, therefore, suggested that divergent stakeholders be consulted in the restructuring process of the RAF, as he believed this was going to help shape the Fund in a positive way (ibid). More events in the White Paper process, including the consultation process which took place in 1997, the *Second Draft on RAF (1997)*, further consultation possesses, and finally, the *White Paper on RAF (1998)* attracted the attention of the stakeholders and the recognition that the deficit problem was far-reaching.

As a result, other organisations found an opportunity to take a stand against the proposed changes to the law governing the Fund. Examples include challenges against the *Second Draft White Paper on RAF (1997)* on the proposed changes to the policy governing the Fund by stakeholders. This includes a challenge by a personal injury lawyer, Malcolm Lyons (representing disability organisations and

Drive Alive Campaign) who doubted that the proposed changes on the *Second Draft White Paper on RAF* (1997) would bring about the sustainability that the Fund required (Robertson: 1997).

All parties therefore viewed the situation as a crisis:

- The authorities were pressured to come up with a solution to the deficit problem in the RAF;
- Attorneys were running the risk of losing their jobs following the suspicion that the inflated legal costs contributed to the deficit problems facing the RAF;
- Claimants were experiencing delays of up to three years eight months with regard to the settlement of their claims;
- Civil society, including communities and Non-Governmental Organisations that represented them, were concerned about their involvement in the restructuring of the Fund and viewed the operating system as unfair and unsustainable;

#### **5.1.1.2 The High Rate of Road Accidents**

In 1996 road accidents of South Africa were statistically produced and countable, validating a condition postulated by Kingdon (1995:118) that the growing number of people who were getting involved in road accidents was statistically showing an increase. The fact that the Fund failed to meet the needs of the people who were victims of road accidents, due to a growing imbalance between income and expenditure, further emphasised the seriousness of the problem, which indicated to the decision makers that there was indeed a problem.

Particularly over the Christmas 1996 and Easter 1997 periods there was an increase in accidents compared to the previous years ( Department of Transport: nd). According to the *Department of Transport Annual Report (1997/8)* almost 10 000 people were killed and 50 000 seriously injured (Department of Transport:

nd). In 1996, research done by the Central Statistical Services revealed that South Africa had an exceptionally high road accident rate compared with international norms (Centre for Actuarial Research: 2002). The Central Statistical Services in 1996 also revealed that almost half a million accidents, of which 60 000 were described as serious, caused almost 10 000 deaths (Centre for Actuarial Research: 2002). A comparison of the statistics from 1942 to 1990 showed an increase in road accidents resulting in injury or death from 673 to 11 157 deaths per year (ibid). This showed the seriousness of the problem of road accidents in South Africa.

Because of the increase in the road accident rate, leading to the increase in the number of people needing to be compensated by an already insolvent Fund the Minister of Transport, Mr Maharaj, in consultation with the stakeholders from both the RAF and the DOT, initiated the Arrive Alive Campaign in 1997<sup>7</sup> (Department of Transport: nd). This campaign, which was going to be coordinated by the DOT therefore served as a solution to the issue of the high rate of road accidents.

### **5.1.2 Feedback about the Operation of the RAF**

Information about the fact that the financial condition of the RAF was getting worse provided a feedback that says 'something has to be done' by the decision makers. This feedback which revealed that the income in the RAF was not matching the expenditures, showed that the RAF programme had to be improved, a condition postulated by Kingdon (1995). The Minister, as a result of this feedback, treated the cost issue as urgent and decided to consult with the stakeholders in the RAF. The results were that:

- a number of short term solutions were considered in the *White Paper on RAF* (1998); and

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<sup>7</sup> Arrive Alive Campaign is part of Government's plan to decrease road deaths and injuries in South Africa. This involves educating drivers and pedestrians about drinking and driving, seatbelts, vehicle roadworthiness and drivers fitness. It also aims at insuring that vital messages with regard to traffic safety are conveyed to the communities. It is the largest co-ordinated action ever taken against offenders of roads (Department of Transport: nd).

- the appointment of the RAF Commission to investigate and make recommendations regarding the Fund was considered as a long term solution in the *White Paper on RAF* (1998).

The legal documents including the *White Paper on RAF* (1998), *Road Accident Fund Annual Reports* and *Auditor General's Report* (2004) served as monitoring tools and provided feedback that revealed significant amounts of apparent unnecessary expenditure. All of these documents reflected a constant increase in the deficit problems in the RAF every year. Also, the results of the investigation by the Commission, which regarded insufficient funds in the RAF contributing factors in making the system insufficient, unsustainable, unreasonable and inequitable, (Satchwell: 2002) provided feedback saying that something had to be done to improve the Fund.

As a result of this feedback, the stakeholders doubted that the RAF as an operating compensation system was still a suitable compensation system for road accident victims because of its financial state. This was evident in many publications. For example, Shirley (2005) stated that liquidity of the Fund in 2003 became a concern to many stakeholders as the Fund had net current liability of R4.2 billion by the end of 2003/2004 financial year. The government also considered scrapping the Fund and setting up a new dispensation (Khan: 2003). Dr Cooper, the acting chairperson in the RAF at that time, said it would be unfair to let people pay anymore money for fraud, saying that the failure to act could result in Fund's liquidation, scrapping or replacement by the newly proposed RABS (Tereblanche: 2004).

Different strategies to deal with the deficit problem in the Fund by the new RAF Board were explored in 2003 (Smith: 2004). While this was so, corruption problems surfaced urging the decision makers to pay attention. This included the fact that corruption by the RAF employees was discovered to be rife in the RAF. The number of reports about corrupt lawyers and doctors in the RAF increased.

For example, serving as a tout for doctors and lawyers, the former Phoenix Police Officer, Mr Arumgga was involved in 602 claims for accidents which did not occur (Langanparsad: 2003). A Johannesburg lawyer connected to fraud worth more than R4 000 000 (four million rands) was reported (Smith: 2004), and many more. The involvement of the CEO of the Fund in corruption charges also provided unexpected feedback. Because of these cases and the like, the decision makers in the DOT and the RAF had to think of the ways to deal with the corrupt staff members, shifting the focus from other issues within the RAF. The results were that a new CEO was appointed, resulting in a new mission, vision and strategic objective being adopted in the Fund.

The feedback about the operation of the Fund, as explained above, captured the attention of many people in and around government. Nonetheless, individuals and organisations doubted that many proposals contained in the *RAF Commission Report (2002)* and *RAF Amendment Bill (2003)* were going to bring about solutions to the problem. Some of the stakeholders, including the DOT, proposed liquidation of the Fund as a solution.

This therefore reflects that liquidation of the Fund became a solution with little opposition; however the decision to act on this suggestion remained pending.

## **5.2 THE POLICY STREAM IN THE RAF**

According to Kingdon, the policy stream is where ideas are generated (1995: 200). Several ideas were developed in the policy stream of the RAF. While some ideas gained momentum and survived, others faded away due to the lack of attention they generated. Amongst others, studies, discussions, speeches, hearings, Bill introductions, meetings and conferences created pressure for policy change in the RAF, as Kingdon (1995) confirms. 'Accumulation of knowledge' (Kingdon, 1995: 17) about the problems facing the Fund amongst the

RAF policy community made them to realise that the RAF was no longer desirable.

### **5.2.1 Research Studies**

In the policy stream of the RAF, studies were one of the things that created pressure for policy change. Legal documents including the annual reports of the RAF could be regarded as studies because of the research involved in doing them. The studies done for the DOT and the RAF which revealed that the Fund was failing to meet its demands for compensating the road accident victims created considerable pressure for policy change. Because of these studies the DOT turned to the Commission<sup>8</sup> led by Judge Satchwell for ideas on how to cope with the problems that affected the financial state of the Fund. As a result of the investigation by the RAF Commission, some organisations started to build some of their ideas on the proposals by the RAF Commission. For example, criticising the *RAF Amendment Bill (2003)* COSATU strongly felt that an integrated and comprehensive social security system, contained in the *RAF Commission Report (2002)*, in which RABS would be an integral part, should have been considered (COSATU's submission, [B64-2003]) because it lessened disparity between the rich and the poor. Therefore, the *RAF Commission Report (2002)* which could be regarded as a study itself created pressure for policy change in the light of its proposals.

### **5.2.2 Discussions**

Discussions, hearings, meetings and conferences conducted by the RAF Commission for the purpose of investigating the Fund also created pressure for RAF policy change, a condition postulated by Kingdon (1995). In these discussions the RAF policy community (as shown in Table 1) presented issues

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<sup>8</sup> The Commission is likely to be referred by Kingdon (1995: 80) as 'consultants' that the agenda setters turn to for ideas on how to cope with the agenda.

that they felt were important and had to be incorporated in the investigation by the RAF Commission. The issues that emerged in these discussions further emphasised that the Fund was inefficient for the majority of the needy, often poor people (*RAF Commission Report, 2002:612*). The new dispensation which was therefore suggested by this Commission was influenced by the ideas from the RAF policy community.

The discussion of the RAF Amendment Bill also created pressure for RAF policy change. Amongst others, the *RAF Amendment Bill (2003)* provoked an extensive argument amongst the RAF policy community against its proposed idea of compensating the road accident victims using the 'no fault' system. Several prominent stakeholders<sup>9</sup> created pressure for the *RAF Amendment Bill (2003)* to be sent back for redrafting, claiming that the financially exhausted Fund would simply not be able to afford to put the system into operation as contained in the *RAF Amendment Bill (2003)*.

The abovementioned discussions including the discussion of the RAF Amendment Bill therefore circulated information regarding the current problems and the potential solutions surrounding the Fund. This therefore generated what Kingdon (1995) referred to as an 'accumulation of knowledge', making the RAF community realise that while:

- a 'fault' based system of compensating the road accident victims was not suitable in the context where the majority of the road accident victims are poor [*RAF Commission Report (2002)*];
- the 'no fault' system of compensating the road accident victims (which according to COSATU's submission on the Road Accident Fund Amendment Bill, [B64-2003], was more oriented towards the needs of the poor) which limits the amount of compensation the road accident victim should receive, was not good enough since it would mean more claims

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<sup>9</sup> Including COSATU, QASA, LSSA, South African Association of Personal Injury Lawyers, Hospital Association of South Africa, The Afrox Hospital Group and the Public Health Care Providers e.g. Groote Schuur Hospital .



would be lodged resulting in insufficient payment to the poor victims of road accidents.

Therefore, amongst other things, accumulation of knowledge about these two options, especially the financial constraints associated with compensation system as an ideal system, delayed the decision making process.

While RABS was seen as an ideal solution for compensating road accident victims, there was a lack of opportunity to attach the idea as a solution to the RAF problems. Budget constraints, is one of the things that limited opportunities to attach ideas from RABS as solutions to the problems surrounding the Fund. This is evident in those who thought that the RABS which incorporated in it the 'no fault' system would make the system more indebted because everyone, irrespective of 'fault', will claim from the Fund.

### ***5.2.3 Lack of Feasibility and Budget Constraints***

The doubts about the feasibility of the RABS also limited its opportunities. The fact that the RABS was a new idea which had never been tried elsewhere limited its potential to be considered as a practical solution. This coupled with the costs associated with the new system limited its potential to be attached to the problem as a solution. For example, the DA in criticising the proposed system said that it would be more cost effective to fix what is not working rather than to abandon the existing system in favour of the untested system of dubious value (Farrow: 2005). Therefore, amongst others, costs associated with the new system together with the lack of experience about the programme served to hinder its adoption.

### ***5.2.4 Corruption Issue on the Decision Agenda***

Regarding the corruption issue, the idea of investigating the corrupt lawyers which reached the governmental agenda in 1999, was explored in a different way

in 2004. The idea of fraud reduction was put on a decision agenda during this period because corruption was regarded as being at a 'crisis' level. Amongst other things that might have contributed to the recognition of this problem includes:

- accumulation of knowledge in the RAF community<sup>10</sup>;
- results of investigation by the RAF Commission, which revealed that the long procedures which involves establishing fault, opens possibility for corruption in the Fund;
- newspaper reports which revealed that corruption was far reaching;
- changes to the RAF Board in 2004;

While many issues remained pending in the RAF, the idea of dealing with corrupt staff surfaced in what Kingdon (1995) terms the 'policy primeval soup'. Therefore, as a result the new Board adopted corruption reduction strategy. This resulted in new ideas being incorporated including 24-hour hotline services being adopted in order to report fraud and corruption. This idea was coupled with other ideas, including an Employment Assistant Programme that was meant to deal with problems affecting the delivery of services by RAF employees. Therefore many corrupt lawyers were arrested during this period.

### **5.3 THE POLITICAL STREAM IN THE RAF**

National mood, the government, interest group pressure and a change of administration were evident in and contributed to the agenda setting of the RAF. Kingdon (1995) acknowledges their role in the agenda setting process.

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<sup>10</sup> The accumulation of knowledge in the RAF community resulted amongst other things from discussions, meeting, conferences, during the investigation by the RAF Commission where the RAF policy community shared problems and ideas. This made interested and affected parties aware of the problems affecting the financial state of the Fund including corruption.

### **5.3.1 National Mood: Election of the Democratic Government**

The election of the democratic government in South Africa created 'fertile ground' for the RAF agenda setting to take its direction. As Triegaardt states, "since the two democratic elections in South Africa, one in 1994 and the other in 1999, Government has been faced with an enormous challenge to improve socio-economic conditions of the electorate" (2003:325). While these two elections illustrated a need to provide basic services to address poverty issues caused by the past, coverage of social insurances needed to be adequately addressed in order to reduce the need for future social assistance (Triegaardt, 2003:333). The RAF is one of those social insurance programmes aimed at dealing with the future effects of road accidents in South Africa that needed to be adequately addressed. Act 108 of the Constitution (1996) made provision for those social insurance/security and welfare services.

### **5.3.2 National Mood: Lack of Consensus**

Although in 2004 the crisis was such that the agenda setters had to take a stand, as the *Auditor General's Report on RAF (2004)* estimated the total liabilities of the Fund at R18 557m (eighteen billion five hundred and fifty seven million rands). There was also a lack of openness to experimentation and risk taking in adopting the available options. For example, the options of either adopting the RABS or liquidating the Fund were not adopted. As these were the only available alternatives, it then ended up that there were no other options to be tried.

Action on other issues was postponed for a significant period. For example, the discussion on the *RAF Amendment Bill (2003)* was postponed from 2003 until 2005. Initially, according to Mr Swart, a member of parliament for the ACDP, the *RAF Amendment Bill (2003)* was postponed because of government's preoccupation with voters' registration and electioneering in 2003 (Loxton: 2004). Although interests differed on the propositions contained in the *RAF Amendment*

*Bill* (2003), there appeared to be a lack of willingness or motivation to negotiate to reach common ground, resulting in indecision.

### **5.3.3 Change of Government Administration**

The first democratic President of South Africa at that time was a very popular figure for the majority of South Africans because of his contribution to the creation of the new South Africa (Roosa: nd). The President played a significant role in coming up with ideas that were directed towards recovering the imbalances that were caused by the apartheid government and, therefore, influencing the agenda of government and related programmes (ibid). Although there is no evidence of the direct involvement of the President in setting the agenda in this case, the RAF compensation system is one programme which aimed to align with the principles of the South African democratic government and its objectives.

Also, the Minister of Transport, Mr Maharaj, had a major influence on what issues were identified as problems to be dealt with in the Fund during 1996. For instance, during the drafting process of the *White Paper on RAF* the Minister suggested that the stakeholders of the Fund be consulted in the restructuring process. The whole restructuring process which included public hearings, meetings with the stakeholders and conferences were deliberations by the Minister of Transport including the agenda of those meetings which according to the Minister was to look at the ways to reduce expenditure and increase the income in the Fund. Therefore the resolutions taken to those meetings and conferences were influenced by what was identified as a problem by the Minister of Transport. The meetings and conferences conducted contributed to the draft of the *Second Draft White Paper on RAF* (1999).

As stated in the *White Paper on RAF* (1998) the Minister of Transport in consultation with the Minister of Finance and the Minister of Mineral and Energy

Affairs made adjustments in terms of increasing and decreasing the petrol levy. This therefore means that the three Cabinet Ministers, namely the Minister of Transport, Minister of Finance and the Minister of Mineral and Energy Affairs had a major influence in addressing the issues of shortfall in the Fund between 1998 when the White Paper was released and 2004 when fraud was regarded as the main cause of the shortfall experienced by the Fund. Generally, an increase or decrease in the fuel levy had implications for the financial state of the Fund. The suggestion not to increase fuel levy in case of fraud was taken when Dr Cooper, an acting chairperson of the RAF at that time, discovered that if fraud could be taken out of the Fund there would be less financial deficit. Thus the Fund, according to him, was not under funded (Sunday Independent, 18/07/2004). He therefore suggested that the fuel levy should not be increased anymore to compensate for fraud related deficits (ibid). Henceforth, instead of increasing fuel levy in order to curb deficit problems, the approach to explore was to fight corruption during this period.

#### **5.4 RAF Policy Community**

##### ***5.4.1 Interest Group Pressure***

There were many civil society groups who had specific interests in different aspects of the RAF agenda setting process. This included legal professionals, health care professionals and disability organisations. These, amongst others were, The Board of Healthcare Funders, The National Urban Reconstruction and Housing Agency, The Public/Private Health Forum, and The Psychological Society of South Africa. Their involvement impacted largely on the agenda and decisions as to which issues became more or less important in the RAF.

In the investigation by the RAF Commission that resulted in the proposed RABS as an alternative solution to the problems facing the RAF, civil society organisations were invited for public hearings and made submissions.

The Commission also invited disabled people, healthcare professionals, magistrates, attorneys, advocates and paralegals for seminars during the investigation. A total number of 68 sample claimants and 2 402 representatives of the South African population made representation during the investigation by the RAF Commission.

This therefore means that the developments that resulted in the RABS as a proposed idea were to some degree the result of inputs from the above mentioned organisations that were invited to join the consultation process.

Kingdon (1995: 47) states that seeking to block changes on the agenda is another way that the interest groups affect the agenda setting. In South Africa COSATU is an example of organised labour that often selects a representative from one of their member unions to represent organised labour. The participation of the union groups in the management of the development process of the RAF was minimal. However, where the workers rights were threatened directly, COSATU made a stand. For example, COSATU refuted the payment of loss of earnings by the *RAF Amendment Bill (2003)* claiming that its calculation favoured the people who can afford it. In doing so, COSATU was able to form a coalition with other groupings bargaining against the proposals contained in the *RAF Amendment Bill (2003)*.

The result was that the *RAF Amendment Bill (2003)* was sent back for redrafting because it faced much opposition. According to Mr Cronin, the Chairman of the Transport Portfolio Committee at that time, the *RAF Amendment Bill (2003)* had to be sent back until such time that the parliamentary hearings on the Bill were held (Loxton: 2004). The DOT indicated later on, that it was not ready to discuss the *RAF Amendment Bill* (Loxton: 2004). Changes in the law ruling the Fund were therefore delayed.

## **5.5 MEDIA REPORTS**

According to the resolutions adopted by the United Nations General Assembly on HIV/AIDS, (United Nations: 2001) “strong leadership involves personal commitment...and constant improvement of the capacity for the managers to deal with the problems of the organisation”. The media reports on the RAF illustrate that there was a lack of critical capacity within the workers of the Fund. Coupled with that was a demonstration that there was a lack of commitment amongst the managers, lawyers and health care workers of the Fund. Fraud and corruption were dominating the reports, highlighting that fraud and corruption was widespread. The major suspects were lawyers, healthcare workers and the management, including the CEOs of the Fund. In less than two years the media coverage shows that three CEOs ruled the Fund, illustrating a lack of improvement in terms of the capacity of the managers to deal with other problems facing the RAF. Thus, more corruption and fraud related issues were covered by the media and more attention put on the issues relating to corruption by those who relied on media coverage for information.

Therefore local media reports appeared to focus on ‘wrongdoing’ rather than relaying constructive solutions offered by the Fund. The stakeholders, who depended on media coverage of the RAF stories for information, thus gained a biased view of the issues. This might have influenced the developments made in the Fund. For example the inputs to the discussions with the RAF Commission which suggested that the claims be lodged directly to the Fund rather than to the Lawyers representing the claimants may have been influenced by reports of allegations by them advancing an agenda saying that they were not effective.

## **5.6 POLICY WINDOWS AND COUPLING IN THE RAF**

Kingdon states that the three separate streams, (problem, policy and politics), at times are joined. The windows of opportunity, in which the agenda setting community takes advantage to get the policy out of the 'primeval soup' of ideas, is linked to the political stream, for example national mood at that time, and placed actively on the agenda.

In the RAF case study the deficit problems which rose to a crisis level opened an opportunity for the policy makers in the RAF to attend to the problem. The seriousness of the deficit problem presented an opportunity for all the stakeholders to bargain their positions, discuss and express their opinions and come up with proposals. This opportunity also presented a further opportunity for the Minister to appoint the RAF Commission to investigate the Fund.

While the proposed RABS was regarded as "needed in the South African context where the majority of the victims of road accident are often poor people" (COSATU's submission, [B64-2003]) financial constraints certainly put a strain on this idea being adopted. This means therefore that although the 'no fault' system of compensation was politically correct, the idea was certainly not the right solution to be coupled to a deficit problem. The three problem, policy and political streams were certainly not joined together. While a 'no fault' system of compensating the road accident victims was required in the context of South Africa and therefore a motivator for changing the RAF policy and adoption of RABS which incorporates compensating all the road accident victims irrespective of fault, the RABS was not a solution to the deficit problem. In this case Kingdon (1995:103) is likely to support the claim that, if an inexpensive programme, holding the promise of controlling the rising costs, were available in the RAF 'policy primeval soup', the three problem, policy and politics streams will join.



## **6. Conclusion**

This study has attempted to trace the agenda setting of the Road Accident Fund, as a policy, showing the development that led to its current state. The three stream approach developed by Kingdon (1995) was indeed evident in the development of the RAF in South Africa.

The administration in a form of government officials from the DOT became aware of the problem through the formal documents of the Department that monitored and evaluated the Fund. The 'crisis' reported in both the media reports and the legal documents also brought the problem to the attention of the RAF policy community. However, the deficit problem as an issue remained in the government's general agenda and it took a 'crisis', including the increasing number of people who needed to be compensated and the increasing shortfall in terms of income, to bring the matter to a decision agenda. This seems to indicate that Kingdon's contention that "it takes an indicator such as crisis for a problem to capture the attention of the people..." (1995:95) is correct in this case.

Various options were explored in order to improve the Fund. While the Road Accident Benefit Scheme, an alternative proposed by the RAF Commission, became very popular and was highly debated, there was also a concern for liquidating the Fund as well as the concern for keeping a 'fault' based system of compensation which did not gain much support. The process of making a decision as to which proposal would be a suitable solution to the RAF contributed to the delay in terms of the decision making process.

Although the RABS was regarded as a required alternative, in the context of South Africa because it incorporated the 'no fault' system of compensation (COSATU's submission,[B64-2003]), costs associated with the new RABS as an "untested system of dubious value" was regarded as the stumbling block by

Democratic Alliance (Farrow: 2005). Therefore doubts regarding whether it would be feasible to implement this option arose, requiring a critical consideration.

On the other hand, the policy community in the RAF (including officials from the DOT and the RAF) had to choose from the available options<sup>11</sup>. Because the consultation of the stakeholders delayed the decision making process, it seems that the decision makers in the Fund were willing to consider any option that would gain enough support from the stakeholders. While a 'no fault' system of compensation had become a popular idea since 2002 it certainly did not address the financial problems of the Fund. It therefore seems that an RABS could have gained enough support if it contained a good strategy of how to deal with the costs associated with it.

The political stream in the RAF was influenced by a number of factors including the national mood, and the democratic government of South Africa. The President of South Africa and the Ministers of Transport, Finance and Minerals and Energy had an indirect influence in the agenda setting of the RAF.

Inputs from civil society organisations impacted largely on the agenda setting of the RAF, COSATU, QASA and LSSA to make an example of organisations who took a stand when the rights of the people they represented were directly threatened.

While the principles of democratic government of South Africa did indeed serve as a 'window of opportunity' for the RAF to reconsider its policies, the fact that the deficit problem was extensive opened an additional 'window of opportunity' for the stakeholders to communicate their concerns. A further 'window of opportunity' was open in the RAF as a result of change in RAF administration. This led to the corruption issue being taken more seriously.

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<sup>11</sup> This included an RABS which incorporated a 'no fault' based system of compensation, liquidation of the Fund and a 'fault' based system of compensation.

From the analysis presented, participants played a crucial role in the agenda setting process of the RAF and also influenced the shape of the agenda setting process. This was evident especially in the consultation process for the development of the *RAF White Paper* (1998), the *RAF Commission Report* (2002) and the *RAF Amendment Bill* (2003). The views of many participants, including civil society, government and the general public as a result of consultation in the development of *RAF White Paper* (1998), the *RAF Commission Report* (2002) and the *RAF Amendment Bill* (2003) seemingly have shaped the direction of the discussion and therefore impacted on the agendas that were advanced. In the process of development of the law ruling the Fund discussions led to an accumulation of knowledge regarding the problems facing the Fund and their possible solutions. Although the high level of participation contributed to the delays in terms of the decision making process, it certainly encouraged the RAF Community to be involved in its agenda setting process. This reflected a policy making process that was consultative.

Kingdon's theory served as an important tool for analysing the process that led to the current state of the Fund. It frames the past events of the RAF clearly. However, one cannot predict the future of the RAF as a policy using this theory exclusively. Indeed, Kingdon's theory of agenda setting was very useful in specifying the role that different groups of participants play in the agenda setting process; however, this theory does not specify an extent to which the inputs from different participants could impact on the agenda setting process. This is important in order to understand whether all ideas presented in the development process of the RAF were carefully considered and whether consideration or a lack of consideration for certain ideas impacted on the agenda setting process.

While Kingdon's theory assumes that civil servants, in general, play an important role as advisers in drafting proposals, one can not use this theory to explain how advice from the lawyers associations including Law Council and the South

African Insurance Association during the consultation process by the RAF Commission impacted on the process, as advice from these associations was largely rejected by the RAF Commission as inappropriate. This rejection could serve as an indication that the ideas from these lawyers' associations were less represented in the *RAF Commission Report (2002)*. Colebatch (2002) is more likely to view this rejection as "the absence of real involvement of the lawyers (civil servants) in their own jobs" which according to him "alienates<sup>12</sup> them and reduces their commitment to the organisation". Therefore corruption that was evident in the RAF would be more likely to be viewed by Colebatch (2002) as the sign of less commitment of the lawyers from the RAF which may have resulted in the feeling of alienation from the decision making processes of their job. Furthermore, although there was consultation in the draft of the *RAF Amendment Bill (2003)*, many organisations felt that their views were not critically considered, this included a coalition group against the *RAF Amendment Bill (2003)* of which the Association of Personal Injury lawyers (which is a lawyers' association) was part of. Therefore, Colebatch (2002) would view this as alienation of the civil servants in the decision making process.

While Kingdon would contend that the advice that the lawyers gave fed into the proposals by the RAF Commission and therefore impacted on the agenda setting process, there might be a link between the solutions proposed and the problems that later emerge as a result of those solutions. For example, the fact that lawyers felt left out in the decisions made, may have contributed to the way they later performed in their jobs. Henceforth, such actions might have impacted on the agenda setting process.

Other issues that arose in the RAF might have been caused by the fact that the lawyers were operating under unpleasant working conditions for example inadequate resources such as insufficient funds, discouraging circumstances

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<sup>12</sup> In this context, alienation means the feeling of being less represented in the decision made about your job resulting in lack of commitment to the job.

such as the huge number of claimants and insufficient time to decide on the eligibility of the claimant. Lipsky (1980:83) notes that the conditions that the civil servants<sup>13</sup> work under, including the above mentioned, could contribute to the poor quality of service that they deliver. Therefore, amongst others, settlement delays which lasted for about three years and eight months on average (*First Draft White Paper on RAF (1996)*) must have resulted from the working conditions that the civil servants were exposed to. Using Kingdon's theory it becomes difficult to understand why the 'fault' based system of compensation was still advocated by lawyers. Using Lipsky's (1980) explanation however it becomes possible to understand that the lawyers advocated the 'fault' based system of compensation in order to try and manage their work loads in order to resolve their work related problems, including the financial 'crisis' that the Fund experienced. Therefore, although the liquidation of the Fund recommended within the RAF and the 'no fault' system of compensation suggested by the *RAF Commission (2002)* surfaced on the decision agenda, the 'fault' based system of compensation is one of the options advocated by the lawyers which did not reach the decision agenda. It would have been more useful, therefore, for Kingdon's theory to note the realities of the conditions under which the civil servants work and how facing the realities of these conditions would enable some proposals (in this case 'fault' based system of compensation) to be taken seriously.

While Kingdon's theory of agenda setting could be used to explain what problems emerged in the RAF, and also how and when they emerged, Colebatch's (2002) and Lipsky's (1980) theories could be useful in explaining why certain problems emerged. These two theories can also be very useful in explaining the extent to which the role of the civil servants within the RAF could impact in the whole agenda setting process. Therefore, for future research it would be more useful to look at how these three theories could be collaborated to account for the agenda setting process of the RAF.

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<sup>13</sup> Lipsky (1980) refer to civil servants, in this case lawyers, as 'street level bureaucrats'.

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