

# Chapter 6

## The Gauteng Legislature: The First Five Years

*Eddy Maloka*

The establishment of the nine unicameral provincial legislatures is one of the achievements of South Africa's new democracy. Aimed at bringing government closer to the people, it is unlike the provincial administrator and executive council of the previous unitary system. Indeed, post-apartheid provincial legislatures represent a constitutionally protected sphere of government with powers to pass laws in certain spheres and influence the national legislative process through the National Council of Provinces (NCOP).

In his discussion of parliamentary scrutiny as well as prospects and problems facing the Australian Parliament in the 1980s, Ian Sinclair (1982, p. 70) summed up the work of the provincial legislature as follows:

... the main opportunities or procedures for the Parliament to scrutinise and criticise the government are through the debate on the address in reply; the budget process; debates on particular bills ... private members' notices of motion and private members' bills; debates on matters of public importance and censure of a minister, member or government. Along with these procedures are the debates on government statements, petitions, and, of course, Question Time.

Clearly, the emphasis here is on holding government and the executive accountable.

The Gauteng legislature (1997/98, p. 4), for its part, has a vision of "a society including its government, arriving at a consensus on the passage, and implementation of its laws as contained in the spirit of the Constitu-

tion” of the country. Its mission, therefore, is “the effective and efficient development of policies, enactment of legislation and ensuring that those policies are implemented with the participation of the public and its elected representative”. Emphasis here is on the law-making function of the legislature through consensus amid the process of the repeal of apartheid laws and the transformation of apartheid institutions over the last five years. However, entailed in Gauteng’s vision and mission are issues of democracy, transparency, accountability, sustainability, efficiency and effectiveness.

The Gauteng legislature as an institution had to be created from scratch and, indeed, at the time of writing, had managed to develop structures and systems to tackle the tasks identified by Ian Sinclair above. During the first three years of its existence as a legislature, focus had to be on the following:

- the organisational development of the legislature, including the development of its vision and mission, as well as the determination of its spending priorities;
- the development of the infrastructure and human resources to support members in carrying out their work; and
- the development of systems to enable the legislature to accomplish its mission (The Speaker’s Budget Vote, 1997/98, p. 2).

By 1997, the physical and the organisational structure of the institution were in place, and so were the systems and procedures essential to the work of a legislature. The first annual report of the legislature was even published in that year. The remainder of this chapter will focus on these structures, systems and procedures.

## **Procedures and Practice**

In terms of the Constitution, a provincial legislature can make laws for, amongst others, agriculture, abattoirs, housing, health services, casinos, cultural affairs, the environment, education (excluding technikons and universities), airports (excluding international and national airports),

public transport, regional planning and development, tourism and welfare services. The activities of a provincial legislature are, therefore, centred on passing laws for the province, exercising oversight over the executive and the administration and electing a premier for the province.

The Gauteng legislature had 86 MPLs (members of the provincial legislature) in 1994. The African National Congress (ANC) was the majority party with 50 MPLs (59% of the total) and the New National Party (NNP) was the official opposition with 21 MPLs. The Democratic Party (DP) and the Freedom Front (FF) came second after the NNP with five MPLs each, with the Inkatha Freedom Party (IFP) with three MPLs. The African Christian Democratic Party (ACDP) and the Pan-Africanist Congress of Azania (PAC) were the smallest parties with one MPL each.

The Gauteng legislature has its own office bearers who are responsible for the day-to-day work of the institution. The speaker is the presiding officer who, while being a member of the majority party, is expected to be impartial when conducting the proceedings. The Speaker has a deputy speaker (a position currently held by a female MPL). Other office bearers are: the chairperson of committees, who co-ordinates the work of the committees and acts as the presiding officer in the absence of both the speaker and the deputy speaker; the leader of the house, who acts as a link between the legislature and the executive; party whips, who are responsible for the discipline of their members and the organisation of their party caucuses; the chief whip, a member of the majority party, who is the most senior whip; the leader of the official opposition; and the secretary to the legislature, who is the head of the legislature's administration.

The sittings of the Gauteng legislature are usually on Tuesday and Thursday afternoons (14:15), with Wednesdays occupied by cabinet and cabinet sub-committee meetings that are usually followed, in the case of the ANC at least, by a party caucus in the afternoon.

Each Parliament has rules that govern procedures and practices around the work of members. The British parliamentary rules, for example, are made up of four elements: the common law which evolved in the House of Commons for centuries; standing orders which followed the

codification of certain practices; parliamentary case law which was the result of the interpretations of and rulings on traditional practices and standing orders by successive speakers; and customs and conventions which are mere agreements and arrangements that facilitate the business of the house (Laundy, 1989).

Within a period of less than five years, the Gauteng legislature had managed to develop its own standing rules. Each member has a copy of *Gauteng Legislature: Guide for Members* which acts as a reference book in addition to the standing rules. These rules evolved from the speaker's house rules and the provisional standing rules, both of which were adopted on 17 May 1994, as well as the standing rules adopted on 5 December 1994. These were then refined and revised over time. Today, the ten chapters of the standing rules deal with aspects ranging from "Order in Meetings and Rules of Debate" and "Interpellations and Questions" to "Committees" and "Public Participation".

In addition to the standing rules, the legislature has a Rules Committee consisting of ten members (including the speaker as the chairperson and the deputy speaker), appointed by the speaker. Each party with at least 5% of the seats in the house is allocated at least one seat in the committee.

The Gauteng legislature has been able to build administrative machinery aimed at supporting members and the parties in doing their work. Important in this regard was the review of the administrative system which began late in 1996 and culminated in the creation of four directorates the following year. This development was accompanied by the increase of the administrative staff component to 116, which increased the staff member: MPL ratio from 1:1 to 1.4:1.

The Directorate: Parliamentary Operations is responsible for the plenary of the house as well as standing committees. In addition to ensuring the security of the legislature and taking charge of international exchanges and other protocol matters, this directorate is also responsible for the public participation and petitions office discussed later in this chapter. The Directorate: Operational Support is responsible for the logistical and technical support to the plenary of the house. It is this directorate that ensures that the four-language (Sotho, Zulu, Afrikaans, English) trans-

lation is available to the members, and that the proceedings are captured verbatim in the Hansard and later archived. The public relations work of the legislature is done by the Directorate: Information and Liaison Services. Research support to committees and office bearers is provided by this directorate. The Directorate: Institutional Support is in charge of all administrative, financial and human resource matters.

Thanks to these support systems and structures, parties and members are able to carry out their work. Documents are distributed daily to members, and those that are needed for a particular sitting are put on tables in the chamber before the sitting commences. Members receive order papers with details on orders, questions submitted, legislation before the house and the schedule of committee meetings.

Arranging of the business of the house, however, is the work of the Proceedings Committee that is chaired by the leader of the house. The speaker and his/her deputy are *ex officio* members of this committee, with parties represented by their leaders. The leader of the house, in consultation with the Proceedings Committee, ensures that the business of the house is placed on the order paper which is then distributed to members.

A member can introduce a private bill or a motion in the house. Such a motion may be a subject for discussion, a draft resolution or a substantive motion for approval as a resolution of the house with respect to, amongst others, censuring a person or body. As in many other Parliaments, “Question Time” is an important part of the work of the legislature, especially with regard to holding the executive accountable. Members can ask four types of questions: interpellations, that is, questions intended for debate; questions for oral reply in the house; questions to the executive requiring a written reply; and oral questions to the premier without notice.

Despite restrictions on when, how and how many questions can be posed in respect of standing rules by a member per given time, these questions are an important tool for keeping the executive accountable. However, “question time” has been utilised more by the opposition than by members of the majority party, the latter being disinclined to subject their party colleagues to embarrassing questions. (Indeed, replies to these questions are often used by the opposition to issue press statements or call

for enquiries.) In addition to being “monopolised” by the opposition, “question time” generates little public interest when compared to the British and Australian Parliaments, for example.

## **Standing Committees**

Committees are the backbone or the “engine room” of any parliamentary system. It is in committees that members become thorough and develop specialisation in scrutinising bills or calling the executive to account. The core functions of committees are to develop and scrutinise legislation; exercise oversight over the executive and administration; and develop policy. These include the power to introduce a bill; deal with or consider a bill or any matter referred to them by the speaker; monitor, investigate and even make recommendations regarding any matter they consider relevant; summon any person to appear before them; and request any information they consider necessary for its work.

The Gauteng legislature has 15 standing committees and one ad hoc committee, all of which meet fortnightly, or weekly if necessary. Ten of the 15 standing committees are portfolio committees that correspond to the ten executive portfolios. That is: Housing and Land Affairs; Education; Finance and Economic Affairs; Social Welfare and Population Development; Public Safety and Security; Sports, Recreation, Arts and Culture; Public Transport, Roads and Works; Health; Agriculture, Conservation and Environment; and Development Planning and Local Government. The other committees are the Rules Committee, Petitions and Public Participation Committee, Internal Arrangements, Public Accounts Committee and the Privileges Committee. All the committees have ten members except the Finance and Economic Affairs Committee which has 13 members.

There is a fair representation of minority parties on all committees, especially with regard to their speaking and voting rights. All the committees are chaired by the ANC as the majority party except the Public Accounts Committee which is chaired by the official opposition (NNP) because of the crucial role it plays in terms of keeping the executive and administration accountable with regard to financial and administrative matters. At least five of the 16 committees are chaired by women. In fact,

the deputy speaker, a female MPL, deputises the speaker as the chairperson of the Rules Committee, and is also the chairperson of the Privileges Committee in terms of the standing rules. Two of the five female chairpersons were white ANC members in the period 1994-1999. This fair representation of the opposition and women in the committees was in line with the ANC's commitment to democracy, transparency as well as gender and racial representativity in the structures of government.

This fairness notwithstanding, the speaker allocates votes to each committee member in proportion to the number of seats his/her party has in the house and the size of the committee itself. The ANC, inevitably, has a majority in all committees. However, according to "Guide for Members", emphasis is on deciding the business of committees through consensus, voting only being used as a last resort.

Committees have two key support pillars in the form of committee co-ordinators and researchers. Each committee is allocated a committee co-ordinator who supports the chairperson of the committee, co-ordinates the work of the committee and ensures that rules are adhered to in the committee. This work by committee co-ordinators involves, amongst others: sending out notices of meetings; drawing up the committee meeting agenda with the help of the committee chairperson; actioning committee meeting minutes; handling submissions from individuals and/or groups; liaising with provincial departments; attending public hearings convened by the committee; filing and keeping a record of committee documents and meetings; and helping with the drafting of committee reports.

The Research Services Unit provides research support to the committees and this includes the following services:

- Conduct empirical research
- Co-ordinate, facilitate and monitor commissioned research
- Provide advice and information on policy matters
- Provide reports and summaries on national bills
- Provide speech-writing services to office bearers

- Analyse and process public comments on bills and other matters of public interest.

Committees dealing with budget-related matters are crucial to any parliamentary system. It is for this reason that Gauteng's Finance and Economic Affairs Committee has three more members than any other committee. Every beginning of the year each member of the executive, including the premier and the speaker, present his/her proposed budget to the house. These are then referred to relevant committees for thorough scrutiny. The purpose of this exercise is to ensure that the legislature oversees the spending of provincial money. The speaker and chairperson of the Finance and Economic Affairs Committee, for that matter, attend the budget *lekgotla* convened by treasury as part of an inclusive budget process.

Whereas the Finance and Economic Affairs Committee is involved proactively in the policy-making process and holding the executive accountable, the Public Accounts Committee acts as a watchdog to ensure financial control and detect any irregularity. Indeed, in some provinces, there is no distinction between this committee and the Finance and Economic Affairs Committee because of the complementary role the two committees play. In Gauteng these committees operate separately to ensure efficiency and effectiveness.

All in all, the work of committees has increased significantly both in terms of the number of meetings and the quality of input into the legislative process. Between January 1997 and March 1998, for example, 538 committee meetings were held and 44 days were spent in public hearings of the committees.

## **National Council of Provinces (NCOP)**

Provinces participate in the national legislative process through the NCOP. Gauteng is represented at the NCOP by six permanent delegates—three from the ANC, with the NNP, FF and the DP each allocated one delegate. Four special delegates (three from the ANC, and one from the NNP) are designated by the premier, with three temporary delegates sent in addition to represent the legislature on a particular bill.



Bills before the NCOP are classified as “Section 75” and “Section 76” bills. The former are bills that do not affect the provinces and are voted on at the NCOP on party basis. Section 76 bills affect the provinces and voting on them is by province. Therefore, for provinces to vote, provincial mandates must be formulated and given to the provincial delegation.

The mandating process is one of the complex aspects of the NCOP and the Gauteng legislature in particular. The NCOP follows a four-week legislative process that begins when a bill reaches the NCOP from the National Assembly. After a week of processing this bill at the NCOP, it is referred to the provinces. The second week, known as “provincial work week”, is occupied by the work of delegates in their provinces, together with the relevant provincial committees. In fact, in addition to the speaker and the leader of the house, chairpersons of committees also play an important role during these two weeks in ensuring that the committee deliberate on the bill as well as maintain contact with the NCOP.

When the NCOP bill arrives at the Gauteng legislature, the Proceedings Committee sits to decide whether to classify it as “important”, “ordinary” or “technical”. If it is considered “important”, a simple majority in the house can confer the mandate after a relevant committee has completed its work. If a bill is considered “ordinary” and the house is not sitting, the report of a relevant committee is distributed by the speaker to all members, and unless four written objections are received by midday of the next day, the decision of the said committee is taken as a mandate.

The whole mandating process and the selection of special delegates are monitored by the chairperson of committees. The provincial delegates then head for Cape Town in the third week to participate in the NCOP committees and engage other provinces on their mandate. The NCOP plenary sits on the fourth week.

For the mandating process to succeed the programme of the provincial legislature must be synchronised with that of the NCOP. In addition to that, Gauteng has an office in Cape Town which, amongst others, coordinates the flow of information and documents between the province and

the NCOP; provides administrative support to delegates; and liaises with the NCOP administration for the province.

## **Public Participation**

Ensuring active and effective public participation in the work of the legislature has been one of the objectives identified from the beginning. The Petitions and Public Participation (PPP) Office was created in the Directorate: Parliamentary Operations to facilitate public participation and provide administrative support to the petitions process (such as public hearings) initiated by the legislature itself.

“Petition” refers to a request or complaint from a member/s of the public, while “submission” refers to a written/oral suggestion from a member/s of the public. When a petition is received, it is forwarded to the Petitions and Public Participation Committee; a submission is referred to a relevant standing committee.

Besides petitions and submissions the public can participate in the work of the legislature by attending public hearings on legislation, a sitting of the house or a meeting of a standing committee. In fact, the legislative process itself is structured in such a way that no law is passed without public input. After a bill has been introduced by either the provincial cabinet, an MPL or a standing committee and published in the provincial gazette, notices are put in the newspapers calling for public response within 14 days. When a standing committee sits to deliberate on a bill, it can invite organs of civil society or even convene a public hearing.

The PPP Office has been proactive in empowering and encouraging the public to take part in the work of the legislature. Between July 1997 and May 1998, for example, 38 workshops were organised in a number of communities. Plans are in place to incorporate public participation matters in the school curriculum, thanks to the collaboration of the legislature with the Gauteng Department of Education. Brochures and other forms of educational material on public participation are available to members of the public.

Additionally, the interior of the legislative chambers has been designed in such a way that they welcome members of the public. They also have anti-apartheid art displays on the walls.

## **Conclusion**

The establishment of the Gauteng legislature as an institution with structures and systems to enable it to carry out its law making and oversight functions is one of the biggest achievements of South Africa's new democracy.

This achievement notwithstanding, the Gauteng legislature is still faced with a number of challenges. For example, the formulation of policy is still dominated by the executive as opposed to the legislature, especially the committees. The oversight role of the legislature is, for that matter, constrained by the imperatives of party politics, as ANC members are likely to protect their fellow members of the executive when under attack from the opposition.

## **References**

- Gauteng Legislature (1997/98), *Annual Report*.
- Laundy, P. (1989), *Parliaments in the Modern World*, Dartmouth, London.
- Sinclair, I. (1982), "Government, Parliament and the Administration", in Nethercote, J.R. (ed.), *Parliament and Bureaucracy: Parliamentary Scrutiny of Administration—Prospects and Problems in the 1980s*, Hale and Iremonger, New South Wales.
- The Speaker's Budget Vote (1997/98).

