Legislatures in South Africa face a common set of challenges as they seek to fulfil their constitutional role of ensuring effective democratic representation. Some of these challenges relate to their status and their relationship to the executive and the courts. Others relate to their infrastructure and resources.

As a distinct branch of government and the centrepieces of our system of representative democracy, legislatures need to enable free debate and to command the respect of the electorate while, at the same time, they are subject to the robust criticism that is characteristic of a flourishing democracy. In this chapter we first touch on an aspect of the legal framework that is essential for effective representative legislatures: parliamentary privilege and the immunity public representatives and legislatures may have from ordinary processes of law.

Two more pragmatic questions form the focus of the remainder of the chapter: Is the existing legislative infrastructure well managed and well used? Do members have the necessary level of support?

POWERS, PRIVILEGE AND IMMUNITY: PROTECTING PARLIAMENTS

When parliamentary democracy was established in Western Europe, it was through a historical process of evolution rather than design. Typically, parliaments emerged in the battle between the absolute monarch on the one hand and representatives of the people on the other. In the course of these battles certain parliamentary rights and privileges central to parliamentary democracy were established. The English Parliament was the first to win rights that slowly ensured that it would be free from interference by the executive. Parliamentarians fought for the right to criticise the King in Parliament and for protection against summary arrest by forces of the King while in Parliament. And to secure freedom of speech in Parliament, the 1689 English ‘Bill of Rights’ prohibits courts from questioning parliamentary proceedings. In short, a body of law protecting parliaments emerged from these struggles. In South Africa, the most important part of it, the right to freedom of speech in legislatures, is protected in the Constitution (sections 58, 71 and 117). Other aspects of the law of parliamentary privilege are found in the Powers and Privileges of Parliament.
Act, 91 of 1963, and in the powers and privileges Acts of the provincial legislatures. In many ways the role of parliamentary privilege may seem very different today from what it was when parliaments were under physical threats from absolute monarchs and their forces. We hardly anticipate armed forces instructed by the executive to march into a legislature to arrest the Speaker. Nor is it likely that a member would be arrested for treason for something said in one of our legislatures. Instead, the law of parliamentary privilege is now more often concerned with protecting members from civil cases brought by individuals claiming that they were harmed by something said in Parliament and with the right of legislatures to control the behaviour of the public in the legislature.

But, however much the use of privilege may have changed, its underlying purpose remains the same. It ensures that legislatures and their members can fulfil their functions. It is especially important in a new democracy like the South African one where a democratic culture still has to be developed and nurtured. This purpose is most obviously served by the protection of freedom of speech. If members feared legal consequences for things that they said in the legislature, a culture of representative democracy would not be allowed to blossom. Furthermore, limits on speech would hamper the ability of members to make decisions with a full understanding of the facts and to conduct oversight properly. Similarly, if a member who was running an enquiry could be pulled away from his or her legislative business to attend court for a trivial matter, the business of the legislature would be impeded.

Like other rights, the rights conferred by the law of parliamentary privilege carry responsibilities. It is the responsibility of each member not to misuse the right. It is also the responsibility of the legislature to maintain its dignity. Thus, the rules of legislatures control the use of unparliamentary language and members can be punished for offensive words spoken in proceedings. Similarly, the Speaker usually controls the immunity that members have from court proceedings.

Certain parliamentary powers are closely linked to parliamentary privilege. The power of legislatures to manage their own affairs (protected in sections 57, 70 and 116 of the Constitution) is the most important of these. It encompasses the power to discipline members for breaches of rules and protects legislative processes from interference by the executive.

At present the law relating to parliamentary privilege in South Africa is unsettled. As we have already mentioned, the Constitution protects the right to freedom of speech in legislatures. It also specifically states that further privileges and immunities in both the national Parliament and provincial legislatures ‘may be prescribed by national legislation’. However, the national Parliament still relies on the 1963 Act that, in turn, incorporates centuries of British parliamentary common law into South African law. This hardly meets the needs of a young parliament in a new democracy. Therefore, the current position is unsatisfactory. This became very clear in Speaker of the National Assembly v De Lille. The case concerned an attempt by the National Assembly to suspend Patricia de Lille, an opposition MP, for allegedly abusing the right to freedom of expression in the Assembly. The Assembly relied on the common law of parliamentary privilege incorporated in South African law by the 1963 Act but the Supreme Court of
Appeal held that this law could not permit the infringement of a right. Judge Mohamed said: ‘[The Constitution] does not contemplate a tortuous process of discovery of some obscure rule in English parliamentary law and custom justifying the suspension of a member of Parliament.’

The case was first heard by the Cape High Court, which, in reaching its decision (in favour of De Lille and against her suspension), considered the purpose of parliamentary law. The judgment follows the approach in other parliamentary systems and indicates the importance of ensuring that sanctions imposed by the legislature do not limit representative democracy unnecessarily: ‘It can never be reasonably justifiable in a democratic society to impose such suspension which will deprive innocent members of the electorate of their representation in Parliament when any such punitive purpose served by the suspension could equally be served by other punishments which do not compromise democratic representation.’ The case is complex but it signals clearly that the current law of privilege and the power of legislatures to manage their internal arrangements need to be revisited.

The position in provinces is even more complicated. Eight of the nine provinces passed legislation dealing with parliamentary privilege between 1994 and 1997. The validity of provisions that establish immunities in these Acts is uncertain in the face of the constitutional stipulation that privileges and immunities must be established by national legislation. However, the Constitution expressly permits provincial legislatures to enact legislation to compel people to comply with a summons to appear before the legislature or to report to the legislature. This means that provisions in the provincial Acts empowering the legislature to enforce a summons are valid.

The Powers and Immunities of Parliament and Provincial Legislatures Bill that is currently before Parliament seeks to settle some of the problems that we have mentioned. It sets out the law of parliamentary privilege clearly as well as the disciplinary powers of legislatures. But the Bill also proposes a new approach to the way in which legislatures deal with offences by non-members. In the past, Parliament had the power to punish offenders, including people who infringed the ‘dignity’ of Parliament or who committed other acts that were considered to be in contempt of Parliament. The Bill would make it an offence to ‘perform any act which is intended to bring a legislature into disrepute or to impede the functioning of a legislature or a committee’. But it would not give legislatures the power to convict and punish non-members for such offences as in the past. Instead, only the ordinary courts would have this power. This change would be a move towards a more modern approach and bring South Africa’s law of parliamentary privilege into line with what is accepted in most other democracies.

RESOURCES: BUILDING PARLIAMENTS

Politicians often express concern about their lack of resources. We start from the assumption that South African legislatures cannot afford as many resources as some of their First-World counterparts but that a certain level of support is essential if legislatures are to fulfil their democratic responsibilities and constitutional mandate effectively. The Legislative Landscape Study found that not all the legislatures have the necessary level of support for their members. But the

Constitution section 71: (1) Delegates to the National Council of Provinces and the persons referred to in sections 66 and 67 –
(a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and
(b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for –
(i) anything that they have said in, produced before or submitted to the Council or any of its committees; or
(ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its committees. (2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in sections 66 and 67 may be prescribed by national legislation.
project also encountered situations in which resources seemed to be badly managed, under-used, and badly distributed.

The resources on which politicians can draw can be put into three categories:
> The capacity of the politicians themselves and the support of their parties
> Resources supplied by the legislature (staff, management systems etc)
> Resources drawn from the public (through constituency work and public hearings for instance) and institutions outside the legislature

These categories obviously overlap to some extent, but the categorisation helps identify those problems that can be solved by better management in the legislature and those that are dependent on political decisions or role-players outside the legislature.

CAPACITY OF MPS AND MPLS AND THEIR PARTIES

The most valuable resource of any legislature is, of course, its members. Therefore, parties have a responsibility to choose their candidates carefully. And, once the representatives are elected, parties need to manage and support their members in a way that enhances their ability to represent the electorate fully. These questions of the choice of political representatives and of the political management of MPs and MPLs fall outside the scope of this book but it should be noted that interviews in the provinces suggested that many MPLs were unprepared for the type of job in which they found themselves. In particular, they had not anticipated the amount of paperwork and detailed analysis of laws that it involved and often found it difficult to adapt to the intense reading culture required of them. In addition, an EU-funded assessment of training programmes in legislatures suggests that parties and legislatures need to understand their different training obligations properly. This study suggests that a clear distinction needs to be made between political training – which may be the responsibility of the party and would include some skills training – and training concerning legislative procedures and the functions of members as public representatives.4

RESOURCES SUPPLIED BY LEGISLATURES

To fulfil their role and responsibilities effectively, legislatures need to provide their members with a range of different resources such as –
> Training programmes to enhance the capacity of members
> Committee clerks to ensure the efficient running of committees
> Researchers
> A library
> Secretarial assistance
> Administration systems that ensure co-ordination of resources and proper distribution of materials
> Information technology support

TRAINING OPPORTUNITIES

We suggest above that legislatures cannot bear the entire responsibility for training members – parties must assume some of the responsibility. Nevertheless, legislatures do have an important role in enhancing the capacity of their members
by organising orientation programmes and through ongoing training and capacity-building. At present, South African legislatures successfully draw members from a wide variety of social backgrounds. This is accompanied by a democratic responsibility for legislatures to build capacity so that the value of the diverse experience members bring to their work is fully realised.

The national Parliament has a programme for inducting new MPs and an ongoing programme of training on more specialised matters. After the 1999 elections, a four-day ‘briefing session’ introduced new members to both administrative matters (salaries and allowances; personal finance management etc) and matters relating to legislative processes (law-making; committee structures; office bearers etc). Sessions on managing racial diversity and gender awareness were included in the programme.

In the provinces, training seems to focus on orientation programmes for new members. The 1999-2000 Annual Report of the Eastern Cape Legislature describes a carefully planned orientation programme funded and assisted by the European Union Parliamentary Support Programme for the new members of the second legislature. Divided into two parts, the programme first saw to practical settling-in needs and prepared new MPLs for the swearing-in ceremony. The second part ran over four days. It briefed MPLs on all sections of the legislature and provided them with readings relevant to their new roles. The 1999 Report on the Western
Cape Provincial Parliament likewise reports on a successful orientation programme which covered a wide range of topics and also sought to introduce new members to the administrative structures in the legislatures. At the outset members were given a comprehensive Guide for Members. The 1999-2000 Annual Report of the Gauteng Legislature mentions the development of a video and other training material for participants and trainers in their 10-day orientation programme. In addition to those materials, the parliamentary staff in Gauteng compiled an extensive Induction and Orientation of Members Manual for reference purposes.

Most participants seemed to rate these orientation programmes highly. However, an evaluation of a Members’ Training and Support Programme suggested that most training programmes in legislatures left a great deal to be desired. Problems raised ranged from the apparent failure to assess needs when designing courses to the ad hoc nature of most training programmes and the absence of any follow-up evaluation to establish whether training has been successful. Some of the findings of the study reflect the newness of the legislatures and the pressing need to pay attention to the roles and responsibilities of members, their parties and staff. For instance, corroborating a finding of the Legislative Landscape Study, the report states that roles are not defined. This makes it impossible to develop focused and useful orientation programmes.

Ongoing training is also important. Although the turnover rate in legislatures seems to have decreased, there is still not a substantial core of highly experienced parliamentarians. Ongoing training could play a role in developing a culture of representative democracy and establishing legislatures as strong and active institutions. A number of specialised workshops have been presented in the national Parliament. For instance, recently an NGO (Afrec) combined with other service providers to provide instruction on the new Public Finance Management Act, which is intended to contribute to Parliament’s ability to conduct oversight. But, there are important gaps. Many MPs are still not computer literate which makes it impossible for them to process information electronically. Also, if members lack confidence in their understanding of the Rules, they will not be able to use them to full effect. Similarly, members should have a basic understanding of the conventions of legal drafting so that they can deal with legislation more efficiently.

As far as we could establish, there are limited initiatives for advanced training for MPLs. The Association of Public Accounts Committees (APAC) provides training on financial oversight for both MPs and MPLs and individual legislatures occasionally hold workshops on specific issues. Other training is infrequent at best. The advantage of the APAC training is that it draws participants from all legislatures. The shared experience allows programmes to be improved over time. With this experience, specially tailored programmes can also be developed for specific legislatures. The APAC programme also demonstrates the usefulness of sharing training experiences. Ad hoc initiatives on a province-by-province basis tend to mean that each programme is developed from scratch and best practices are not shared. Induction programmes could also be greatly improved if best practices were shared – perhaps through a training manual. The different legislatures each have different needs – and adjustments could be made to respond to these –
but a manual would ensure that effective training was promoted.

STAFFING NEEDS AND PROBLEMS

Politicians in the national Parliament and provincial legislatures share the concern that they do not have adequate staff either for reasonable administrative and secretarial support or to fulfil their information needs. Problems lie in the number of staff available to support the political processes of the legislatures, the skills of available staff and the structure of administration.

KwaZulu-Natal’s 80-member legislature has 38 general administrative staff members, while only 27 staff members work in the committee section and 32 make up the proceedings section. It is not uncommon for South Africa’s provincial legislatures to have a relatively small number of staff for political processes in comparison to other staff. Sometimes, of course, the figures will not reflect the focus of staff formally placed in a particular section (research, for instance, may be located outside the committee section but be closely linked to committee work). Nevertheless, the problem of a small staff component clearly dedicated to the core business of the legislature (law-making, oversight and forging links with the public) is often compounded by weak links between staff formally deployed to committees and other staff. The same is true for the relationship between political processes and the staff dedicated to public participation. Although it is difficult to say what the ideal balance of staff components is, the component of staff dedicated to political processes is sometimes small and often committee support is weak. In contrast, when discussing their staffing needs, the focus of members clearly is on their committee work.

The national Parliament is acutely aware of the problems in services offered to committees. Broadly speaking, there are two types of problems. The first is a lack of adequate skills; the second is the management of the services. In response to the first problem, a skills audit is being conducted and appropriate ways of developing skills are being investigated. The goal is for each clerk to have management, accounting and perhaps legal skills and to be trained in a module developed specifically for the committee with which he or she will work. Ideally, committee clerks can advise committee chairs on procedural matters and research any procedural issues that may arise from time to time. The committee clerk thus frees the chair and committee members to focus on policy issues.

The second problem is more difficult to address. Organisational development is needed in the committee section but there are many deeply entrenched practices that are not easy to change. The role of committee staff needs to be clarified and consultations with committee chairs should ensure both that new procedures in the committee section address the needs of committees and that the expectations of committees are reasonable.

FOCUSING ON RESEARCH NEEDS

Concerns about inadequate staffing extend beyond the administrative and technical support provided by committee clerks to research support. MPs both in the NCOP and the National Assembly were unanimous in their concern that they lacked adequate research staff, that available researchers did not have appropriate skills and that the present administrative structure did not allow researchers to
develop the necessary technical skills to service the needs of MPs and committees properly. Furthermore, researchers also complain about a lack of resources. In many provinces the library is either inadequate or there are not enough librarians and access is too limited. In addition, access to the internet is often unreliable and some researchers do not have working computers.

There is evidence that research support has improved considerably over the past four or five years under the European Union Funded Research Support Project. Although there are still provinces in which research support is lacking and most members complain about the quality of research, the expectations of members have changed dramatically. They now recognise that research support is necessary if they are to fulfil their law-making and oversight functions properly and the need for research services is acknowledged in all the provincial legislatures – this was not so in 1994. As the members’ understanding of the importance of research develops, research needs become more focused. Thus, an impact assessment of the EU-funded Research Support Project notes that although most research in the legislatures is still secondary research, drawing on work already done, ‘several provincial legislatures increasingly see researchers playing an important role conducting primary research in the field in order to assist committees to perform their oversight function’. In other words, members are becoming aware of the need to verify information provided in departmental reports and their demands on researchers have increased accordingly, both in quantity and in quality. At the same time, as members have increasing access to the internet, their demands of research staff change from collecting information to providing analytical reports which identify the relevance of material to the concerns of the province or, in the case of the national Parliament, the country.

These shifts in the needs of members and committees are critical to the developing vision of legislatures as active and constructive institutions, and the contribution of the EU-funded Research Support Project has been important in this process. In part, access to research services has led committees and members to develop their understanding of their roles. However, increasing demands for research also reveal shortcomings in the service that legislatures are providing and raise many complicated questions concerning the management of research services. These, together with examples of ‘best practice’ (see the box which follows) were identified in the impact assessment of the EU Research Support Project.

Two of the challenges identified in the impact assessment apply not only to research but also to other services in legislatures. These are the need for ‘client focus’ and the need to resolve ‘structural tensions’. Like the impact assessment of the EU-funded Research Support Project, interviews for the Legislative Landscape Study found that members are often unfamiliar with the services that legislatures provide. The impact assessment comments that ‘in many interviews clients pointed to the fact that they have little direct contact with the research units’. The Legislative Landscape Study found this problem to be particularly severe in relation to public participation programmes (which often take place without attention being paid to the political needs of the legislature) and commented generally that ‘committees in provinces receive ... less institutional support and the necessary links between law-making or oversight on the one
hand and research, access to information (including library services), public inputs and expert inputs on the other, are seldom made’.

The lack of client focus is closely tied to structural tensions. These arise in part from the difficulty of establishing the best location for services. For instance, should research services be linked to other information services like the library or be located in the committee section? Should researchers and committee clerks be dedicated to specific committees or share responsibility? Particularly when lines of accountability are unclear these difficulties undermine the efficiency of services. In some provincial legislatures committees may have dedicated or partially dedicated secretarial and administrative support but other support services are shared. This means that at best a small number of researchers and

### RESEARCH FOR LEGISLATURES: BEST PRACTICE

**SUPPORT OF RESEARCH UNITS BY PRESIDING OFFICERS:** > Vital to ensure that research units enjoy the support of the administration and of members, so that research units have access to adequate resources and a recognition that they are an integral part of the institution.

**ACTIVE MARKETING:** > Creates awareness of research units, leading members to feel that they are clients of the units and entitled to use units’ resources.

**SKILLED MANAGERS OF RESEARCH UNITS:** > Necessary for high staff morale and productivity.

**SKILLED RESEARCHERS WITH GOOD INTERPERSONAL SKILLS:** > Required to enable research units to produce meaningful research. This will lead to the satisfaction of members who use them. > Researchers should have an understanding of how to conduct themselves in the legislative environment.

**COMPETITIVE REMUNERATION AND REWARD SYSTEMS:** > Competitive salaries and an attractive working environment are requirements for the retention of good researchers and for high levels of productivity.

**LINKS WITH LIBRARIES:** > Research units that have good working relationships with libraries have access to a wide range of resources. > Librarians can perform data-gathering, leaving researchers to carry out in-depth research.

**AVAILABILITY AND APPROPRIATE USE OF TECHNOLOGY:** > Researchers must have access to resources such as telephones, e-mail and the internet to be productive.

**NETWORKING:** > Researchers with adequate links to other researchers have better access to information and the benefit of peer review, resulting in better research.

Taken from ODA Impact Assessment of the EU-Funded Research Support Project, September 2001

legal advisors is responsible for all committees in a legislature. Moreover, the lack of specialisation of many researchers in legislatures means that MPLs have limited confidence in them. (The Gauteng legislature, in which specialised researchers provide expert advice to specific committees or a cluster of committees, is exceptional.) Ideally, committees require dedicated and expert support. However, as long as this is not available, careful co-ordination of committee work and support services is required. At present, this does not occur.

### OUTSIDE RESOURCES

In fulfilling their responsibilities, MPs and MPLs should provide a link between government and the public. In turn, the public, both individually and through interest groups, is a powerful resource for politicians. By drawing on the experience and expertise of the public, politicians will be able to engage with legislation more fully, oversee the executive more effectively and make the legislature truly responsive to the needs of the electorate. Thus, legislatures have
two related reasons for drawing on outside resources to support their work. First, they have a constitutional obligation to involve the public in their work. Secondly, legislatures need to draw on expertise that they do not have if they are to fulfil their role properly. For this they need to look to both the institutions that the Constitution has established in Chapter 9 to support constitutional democracy (such as the Auditor-General, the Public Protector, and the Human Rights Commission) and others with specialist skills.

The legislature itself needs to function in an open and transparent manner, and to set up effective mechanisms to hold the executive and other organs of state accountable. In most legislatures, this is done by committees. However, in poorer countries, legislatures rarely have the resources to provide members and committees with the necessary research support or expertise to ensure proper accountability. Financial markets, commercial deals, and international tendering procedures are getting more complicated. Where do public representatives, in developing countries in particular, find the expertise to scrutinise the use of public resources? How can we prevent the issue being submerged by parties trying to score political points off each other?'

Address by Dr. Frene Ginwala, Speaker of the National Assembly and Co-Chairperson, Global Coalition for Africa at the Global Forum on Fighting Corruption and Safeguarding Integrity II, Netherlands, 28 May 2001

Chapter 8 is concerned with the responsibility of legislatures to forge links with the public in building their effectiveness as representative institutions. Here we are primarily concerned with the public as a resource for politicians and the question 'how can legislatures ensure that their members can draw on public expertise and experience in a way that enhances the decision-making process?'

The research for the Legislative Landscape Study suggests that public participation in legislative processes in South Africa needs two focuses. As the sections of the Constitution quoted above indicate, the active participation of the public in legislative proceedings must be facilitated so that legislative proceedings are informed by the views of the electorate. However, public participation programmes also need to engage in public education. An education programme is necessary because the public cannot participate effectively in legislative processes without an understanding of how those processes work. In short, proper public participation depends both on properly planned processes and on a properly informed public.

Although many legislatures have extensive public participation programmes, a number of factors prevent effective public participation. By and large, it appears that politicians do not see the public as a resource and, when they do, legislatures do not provide the necessary backup to allow them to draw on public expertise and experience. Public participation programmes tend to be separate from the political agenda of the legislature and to concentrate on public education programmes. Links between committees in legislatures and public participation structures are poor (or in many provinces non-existent). Thus, it is usually committee clerks who are responsible for setting up public hearings and managing submissions from the public in relation to specific bills and oversight programmes, while public participation programmes are carried out by separate public participation units. This means that public participation programmes are carried out in isolation of political needs.
But the root of the problem of the gap between public participation programmes and the political processes of legislatures does not seem to lie in management decisions. Instead, it is found in the prevalent political conception of the responsibility of legislatures. Legislatures usually claim to have three specific and distinct responsibilities: law-making, oversight and public participation. They see public participation as a separate responsibility, alongside – but not necessarily intimately linked to – oversight and law-making. This is wrong. The constitutional demand that legislatures should be representative institutions and involve the public in all their work does not set up a separate responsibility to facilitate public participation. Public participation must be deeply integrated in all the work of the legislature – an integral part of its programmes. To fulfil this important constitutional obligation, a fundamental shift in thinking is required of both political and administrative managers in the legislatures.

The Gauteng legislature, for example, reports that it has held 139 educational workshops in 1999. In 2000, they held 105 workshops, reaching a total of 4500 people. Although highly appropriate and useful, as the public will not be able to participate meaningfully without a proper understanding of the role and functioning of the legislature, these and similar programmes tend not to be carried through to a point at which they can be said to be fulfilling the legislature’s constitutional mandate. They fall short of ensuring that the public has adequate opportunities to participate in the law-making and other processes of the legislature. Thus, when MPLs are asked how public participation units established in their legislatures facilitate public involvement in their work, most say that there is no communication between them and those units.

In addition, provincial legislatures in particular do not seem to use public hearings and submissions to committees to their full potential. Results of interviews in KwaZulu-Natal and questionnaires filled in by KwaZulu-Natal MPLs reflect the poor state of public participation in most provincial legislatures. A number of reasons for poor public participation were suggested. Many felt that public hearings were insufficiently covered in the press. Problems with organisation, including planning hearings during working hours and last-minute date changes, were believed to contribute to low turnout. MPLs also had complaints about the public relations process in the legislature and felt that it was not working well. Significantly, staff were not seen to encourage public participation. Interviewees thought that more advertising, advance notice, and targeting individuals to make submissions would help. The questionnaires completed by MPLs from the Eastern Cape provide a statistic that corroborates a sense that public participation is inadequate. Only three of thirteen respondents thought public participation was effective.

**ENHANCING PUBLIC PARTICIPATION**

First, proper links need to be made between public participation programmes run by professional staff in legislatures and the political needs of the legislatures – and especially their committees.

Secondly, although it is obvious that engaging the public can take many forms and a uniform approach is unlikely to be useful, there is nevertheless a need for provincial legislatures to at least develop a coherent strategy to run public hearings.

---

Constitution section 118:
(1) A provincial legislature must (a) facilitate public involvement in the legislative and other processes of the legislature and its committees...
The appropriate target audience must be identified
The best language for the group must be chosen
The hearing must be advertised well in advance
Public structures (churches, NGOs etc) must be engaged to assist.

At present, these factors are not considered consistently and careful planning seldom precedes hearings. Part of the problem lies with inadequate planning on the part of provincial committees (they may request a hearing with only a few days’ notice); part lies with public participation units that are not focused on the constitutional imperative of involving the public in the legislature’s responsibilities and activities.

Thirdly, legislatures need to clarify appropriate forms of public participation. There are provinces in which members of the public actually participate in committee meetings. One committee chairperson reported the difficulty she had when a member brought his wife to a committee meeting and expected her to be permitted to participate like the members of the committee. In March 1998, the Mpumalanga portfolio committee on public works had to prevent a journalist from intervening and asking questions during a meeting. The legislature and its committees cannot permit active public participation in all their proceedings – the legislature is not a debating chamber open to all and the purpose of opening meetings to the public is primarily to ensure transparency and accountability. The role and manner of public contributions in different proceedings need to be established.

There are two additional concerns relating to public hearings and submissions that need special attention. First, how can one prevent committees from turning into lobby arenas for the educated and well-resourced to the exclusion of others? Politicians across the board expressed this concern. Chapter 8 considers some ways in which legislatures have responded to this concern. The second concern is how one can prevent public hearings and submissions from being limited to bills only – public hearings on the implementation of policy could be crucial resources for MPs and MPLs but hearings tend to be limited to gathering opinions on bills. Hearings in the course of oversight are much less frequent. Here, better management of the relationship between political processes and resources supplied by legislative staff would help.

INSTITUTIONS OUTSIDE THE LEGISLATURE

The Chapter 9 institutions (such as the Auditor-General, the South African Human Rights Commission, and the Commission on Gender Equality) have been established to strengthen constitutional democracy and they provide an excellent resource for legislatures. The same is true of a number of other institutions like the Financial and Fiscal Commission. Legislatures have not adequately drawn on the resources that these institutions offer.

The Auditor-General’s office works closely with legislatures and has contributed significantly to the growing effectiveness of public accounts committees in their area of responsibility. Other Chapter 9 institutions could play a similar role of providing legislatures with independently verified information about the implementation of projects. People have said that working closely with
legislatures might compromise the independence of the constitutional institutions, but this concern both misunderstands the role of the institutions and the relationship that the legislatures should develop with them. If the institutions intend their work to be effective it is obvious that they should seek the support of legislatures. They can investigate matters and develop proposals but they cannot initiate change. Legislative action is necessary for that. On the other hand, the legislatures will benefit from ongoing research done by the institutions. The information on the implementation of social and economic rights that the Human Rights Commission gathers each year is an example (see Constitution, section 184(3)).

NGOs and other organs of civil society can also offer important support to legislatures. Of course, a committee may not agree with everything that is presented to it and, just as it may seek to verify information presented in a departmental report, it may wish to verify information provided by civil society. Nevertheless, NGOs and other organisations develop substantial expertise in their fields that cannot be ignored if legislatures are to function effectively.

RESOURCING DIVERSITY IN LEGISLATURES

Thus far this chapter has discussed the basic resources that are or should be available to all politicians. But to be truly representative bodies, honouring the principle of inclusivity, legislatures must respond to the special needs of certain groups of MPs and MPLs. For example, disabled people, women and those members whose first language is not English, face particular obstacles in fulfilling their role as public representatives.

Chapter 2 describes the impressive record that South Africa has for the representation of women in its legislatures: 30 per cent of the members of the National Assembly and 31 per cent of the permanent members of the NCOP are women. The representation of women in the provincial legislatures ranges from 23 to 31 per cent. Nevertheless, despite the commitment of political parties, and particularly the majority party, to increase the representation of women in South Africa’s legislatures, women do not always find it easy to fulfil their political roles. For women members to function effectively, legislatures need to look at their infrastructure and organisational culture. Do they hinder or facilitate women in fulfilling their role as public representatives?

Traditionally legislatures, like many other workplaces, have not been sympathetic to the needs of women members. In particular, the attitude that politics is for men has prevailed and made the work of women in legislatures difficult. South Africa’s commitment to gender equality requires the national Parliament as well as provincial legislatures, like other institutions, to ensure that such attitudes do not find a place in them. But there is an additional reason for legislatures to pay special attention to gender equality. As legislative bodies, representing the people, they need to be role models, setting standards for others to follow.

A report entitled ‘Participation of Women in the Legislative Process’ compiled by Debbie Budlender et al was published by the EUPSP in May 1999. Interviews conducted by Budlender and her team with forty women MPs and MPLs across all provinces highlighted some of the real and perceived problems faced by
women members of the South African legislatures:

> Sexist attitudes among male representatives.
> The difficulties of balancing domestic responsibilities with parliamentary duties, particularly where there were young children requiring care. For example, irregular hours and commuting resulted in some women feeling that they could not devote as much time to personal child care as they would like.
> The lack of practical support such as crèche and after-school facilities in some legislatures.
> A lack of sensitivity on the part of male MPs towards women’s domestic responsibilities.
> Sexual harassment and a lack of attention to its prevention.
> Under-representation of women in top jobs in the legislature and the lack of special training for women to enable them to fill top positions.
> Fewer opportunities for women to travel.
> Undermining women in committees.
> Disrespectful treatment of women’s caucuses (women’s caucuses are discussed below).
> Insufficient women’s bathroom facilities.

Issues relating to women in parliament were also addressed at the 1998 International Conference of Women Presiding over National Parliaments, hosted

PARTICIPATION OF WOMEN IN THE LEGISLATIVE PROCESS:
Summary of the recommendations of the EUPSP Report relevant to the management of legislatures’ personal and family issues:
> Programmes need to take account of women’s family commitments
> Legislatures need to consider what practical support women may need (a crèche may be appropriate in some circumstances)
> Women should be equipped with skills to help them deal with their new status and the assumptions that others make as a result of it

INSTITUTIONAL ISSUES
> Administrative staff are more attentive to men – this should be changed
> Women’s caucuses need to be given official status so that time-tabling is less of a problem and so that they have a budget
> A quota system should ensure that women and men are equally represented amongst the office bearers in the legislature
> Women should be encouraged to participate more actively in parliamentary structures

DIVERSITY OF BACKGROUND AND SKILLS
> A careful assessment of the skills that women politicians need should be made and the needs of newcomers should be assessed and fulfilled
> Committee chairs (who are usually men) need to ensure that women are given an opportunity to participate fully in committees
> Fewer women than men politicians may have numerical and budget skills – legislatures should rectify this

TASKS AND FUNCTIONS
> There is gender bias on committees, with women tending to be better represented on health, welfare and education committees and under-represented on finance and economic committees – this should be changed
> The family commitments that women have should be taken into account when preparation time for meetings is planned
> The sexist culture in legislatures (reflected, for instance, in remarks and behaviour) must end.
by the South African Parliament. The conference clearly indicated that problems facing South Africa’s women MPs are far from unique.

The EUPSP Report made a number of recommendations (see box above), some of which have been implemented in some legislatures.

Generally, women are distributed evenly across legislative committees and the representation of women as chairs of key committees seems to have improved. In some provinces this is attributed to the efforts of the Women’s Caucus. But the overall impact of the women’s caucuses that have been established in most provinces is difficult to assess. The practical problems that women politicians experience remain to a large degree. Women still usually bear primary responsibility for child rearing and for care of other family members. This means that irregular sitting times make difficult demands on women. In the national Parliament and some of the provincial legislatures, hours are long. Crèches have improved matters but crèches at the seat of the legislature are not always the best solution to child-care problems and the crèche at the national Parliament has been closed. There is an ongoing concern that legislative schedules need to change so that women are better accommodated. In addition to scheduling demands, MPs and MPLs may have huge distances to cross to reach their constituencies – many MPs need to fly and then drive to reach constituencies; provincial politicians are expected more frequently in constituencies and, again, may need to travel far on poor roads to reach them. This places especially hard demands on women with family responsibilities.

With the support of the EUPSP and the Swedish International Development Agency, a national initiative has been undertaken to respond to the problems that women politicians face. In February 1997, a Women’s Empowerment Unit based in Gauteng was established to address the need to empower women MPs and MPLs. Its function is to assess the skills required by women MPs and MPLs in performing their duties and to implement training programmes. It also monitors the participation of women MPs and MPLs in training courses, study visits and bursary schemes. Although no thorough study has been done on the impact of the WEU’s programme, anecdotal evidence suggests that assertiveness training has improved the participation of women in committees and plenary sessions. The WEU liaises with women’s caucuses in the provinces and provides support.

Overall, progress is slow and women still face scepticism when they raise gender issues. The main issue for legislatures to pay attention to is how they can secure the full participation of women in their processes.

As with women representatives, special resources are also needed if disabled people are to function effectively as public representatives. A number of adjustments have been made to the National Assembly Chamber to accommodate the eight disabled MPs. A deaf member is seated near the Officials’ Bay, where her sign language interpreters are seated. Members in wheelchairs make shorter speeches from their seats. For longer contributions, they are wheeled to the main podium. Ramps have been installed in many parts of the Parliament buildings and the precincts and a recording in all the lifts warns blind people when doors will close and identifies the floor numbers.

Unfortunately, limited information is available on disabled members of

Constitution section 9:
(1) Everyone is equal before the law and has the right to the equal protection and benefit of the law...
(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including ... gender, sex, pregnancy....
At least one legislature acknowledges that its facilities are not up to scratch for disabled people. And one which claims to provide access to the disabled in fact has poor facilities. A study identifying best practices and ineffective strategies, and assessing costs for future budgeting would put legislatures into a better position to ensure that they do not discriminate against disabled members and that their poor facilities do not prevent disabled people from seeking election as public representatives.

Language provides yet another challenge to many MPs and MPLs. Although the Constitution does not prescribe a language policy for legislatures, language is a concern in all South African legislatures. Policies need to address both the choice of language for participation in legislative proceedings and the language of legislative documents (especially bills).

The Legislative Landscape Study generated little evidence of the way in which provincial legislatures deal with the many languages that MPLs and the public speak. MPLs who responded to a questionnaire generally said that they did not find language a problem but some did. For instance, out of thirteen respondents from the Eastern Cape, two said that they found English, the main language of the legislature, difficult. In the Northern Cape, 17 per cent of the MPLs who did not use their mother tongue found following sessions difficult and 22 per cent said that it made the preparation of reports difficult. Only five MPLs from the North West responded to the questionnaire and none found language a problem. The Free State uses English most often. Of thirteen respondents English was the home language of only one. Nevertheless, none found sessions difficult and only one (an Afrikaans speaker) found committees difficult. But these responses do not take into account different language needs in different aspects of legislative work. As we discuss in chapter 5, most legislatures are concerned about the lack of vitality and spontaneity in their plenary sessions. Many attribute this to the fact that members read speeches and that little debate is spontaneous. This, in turn, can often be attributed to the fact that members are less comfortable using a second language.

As far as participation in legislative proceedings in the national Parliament is concerned, at present translation between English and Afrikaans is available in plenary sessions. Should a speaker wish to use another language, the translation unit must be notified in advance. Translation is usually first into English and then, if necessary, into another language. Translation facilities are not available in committees. Hansard is now published in English and the original language of the speaker. Bills are usually submitted to Parliament in just one language. However, the Rules of the national Parliament require them to be translated into at least one other language before they are submitted to the President for signature. This means that enacted legislation is a little more accessible than it would otherwise be. Nevertheless, it does not contribute to full multi-lingualism in Parliament. The predominance of English in Parliament has led one researcher to conclude that ‘the South African government is becoming monolingual, and English is being entrenched as the only official language in Parliament’.

The national Parliament is acutely aware that it does not have an adequate language policy and that the cost of a policy that does full justice to all 11 official languages is prohibitive. The Speaker of the National Assembly has noted that...
the Parliament of the European Union spends more than 30 per cent of its budget on maintaining its language policy. Clearly, South African legislatures cannot afford to do this. At the time of writing, discussions concerning a policy that is affordable and that meets the constitutional obligation to promote the official languages were underway.

CONCLUSION

The framework within which South African legislatures operate is provided by the Constitution. The legislatures must breathe life into it and develop the infrastructure that will make them effective institutions. As this chapter describes, much progress has been made. Legislation relating to power and privileges (or immunities) of legislators is in the pipeline. Staff and other resources have improved. But much remains to be done, particularly in relation to resources.

The problem of inadequate resources is one that South Africa’s legislatures share with many other institutions. Nevertheless, over the past eight years legislatures have developed a much clearer understanding of their needs. They are now in a position to make decisions about resource management and to identify priorities in a way that will enhance their work.

Some issues concerning resources affect all South African legislatures. First, resources need to be improved and better managed. Strong links need to be established between resources such as researchers and public participation officers and political processes. In particular, public participation needs to be recognised as an integral part of the political processes of legislatures and not viewed as a stand-alone function. Secondly, despite improvements, attention needs to be paid to research services. Provinces need more researchers. In the national Parliament the number of researchers has improved but researchers do not always have the necessary skills or focus. Legislatures need to secure properly qualified and experienced staff, paying particular attention to writing, analytical and evaluation skills. In addition, both researchers and politicians need a better understanding of the role of researchers. Thirdly, until skilled and experienced researchers are available, arrangements need to be made to secure research skills and research supervision from outside institutions where this is possible. Legislatures and their committees generally need to become more creative in drawing on outside resources (including constitutional institutions) and sharing resources. Finally, legislatures need to pay special attention to ensuring that the different needs of all members are accommodated whether they are religious or based on gender, disability or language for example.

As we point out in the introduction to this chapter, the members remain the most valuable resource of every legislature. Parties must choose, support and manage them accordingly.

SELECT BIBLIOGRAPHY


FOOTNOTES
1 1999 (11) BCLR 1339 (SCA) para 20.
2 De Lille v Speaker of the National Assembly 1998 (7) BCLR 916 (C) para 38.
3 See M Ameller Parliaments (1966) p 66.
8 See also Susan de Villiers A People’s Government. The People’s Voice (Cape Town, EU Parliamentary Support Programme (2001).
11 The Eastern Cape legislature treats any communication intended to involve the public as communication for purposes of government and therefore subject to section 6(3)(a) of the Constitution.