CHAPTER 6

LAW-MAKING

Parliament is the custodian of democratic values and the legitimacy of Parliament is based on the will of the people. Parliament’s right to legislate is delegated by the people. Our vision is to see the frontiers of democracy expanding to include and encompass all our communities as full citizens of our new democracy.


Making law is often considered to be the major task of a legislature - after all, the term ‘legislature’ itself suggests a body that makes law. However, in modern parliamentary systems, legislatures have limited responsibility for making laws. Instead, laws are prepared and drafted by the executive and presented to the legislature for approval. This inevitably means that relatively few laws will emanate from the legislature itself.

The fact that the legislatures are unlikely to initiate much legislation does not mean that they have an insignificant role to play in the passage of legislation. The legislature bears responsibility for ensuring that laws that are passed are appropriate and effective and reflect policy choices acceptable to the majority. Most significantly, while laws are considered in the legislatures, there is an opportunity for public debate about them and the public can participate in the process.

THE WORKLOAD OF LEGISLATURES: HOW MUCH LEGISLATION IS PASSED?

The national Parliament has had an extraordinary legislative load since it was established in 1994. The number of bills it has passed is high but this does not reflect the workload adequately. Many of the bills were substantial, introducing Constitution section 44: National legislative authority

(1) The national legislative authority as vested in Parliament - (a) confers on the National Assembly the power - (i) to amend the Constitution; (ii) to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5; and (iii) to assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government; and (b) confers on the National Council of Provinces the power - (i) to participate in amending the Constitution in accordance with section 74; (ii) to pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76; and (ii) →
major changes in policy. As one commentator put it, ‘the first Parliament processed the amount of legislation introducing new policy that one would seldom expect of a Parliament in an established democracy over a 15-year period’. Equally noteworthy was the approach that many parliamentary committees took to their law-making role. Legislation was scrutinised, public submissions requested and many amendments proposed and accepted. The practice has not been uniform across committees but in some cases the contribution of parliamentary committees led to legislation being changed significantly between its introduction in Parliament and its adoption.

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<thead>
<tr>
<th>LAW-MAKING IN THE NATIONAL PARLIAMENT</th>
<th>2000</th>
<th>2001</th>
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<tr>
<td>Bills passed</td>
<td>70</td>
<td>69</td>
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<tr>
<td>Not amended</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Amended once</td>
<td>41</td>
<td>36</td>
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<tr>
<td>Amended twice</td>
<td>10</td>
<td>15</td>
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<tr>
<td>Amended three times</td>
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*The Tourism Amendment Bill [B 50F-99] was amended by both Houses and was passed only when further amendments proposed by the Mediation Committee were agreed to.
**The Cultural Laws Second Amendment Bill [B46F-2000] was amended by both Houses as well as by the Mediation Committee.

In contrast to the national Parliament, provincial legislatures have passed little legislation in the years since they were established. This has frequently been held up as an indication of their ineffectiveness. The question that is asked is ‘if the provincial legislatures are not fulfilling their main function and passing legislation, should provincial legislative institutions be maintained?’

But, this emphasis on provincial law-making overlooks the role of provinces in national legislation, the size of some of the legislatures and, perhaps, the newness of the system. The Constitution expects provinces to play a substantial role in the national law-making process. National legislation dealing with matters that are a concurrent responsibility of both provinces and the national sphere of government (section 76 bills) must be passed by the NCOP. As we discuss in chapter 4, the NCOP consists of delegations from every province and, when section 76 bills are before the NCOP, each province must instruct its delegation how to vote. To do this the provincial legislature must formulate a ‘mandate’ reflecting the province’s position on the bill. This is a substantial task – and is particularly demanding in the first decade of democracy in South Africa as the national government introduces new policies in every area. It means that small provincial legislatures have to grapple with major bills over which the 400-strong National Assembly deliberates for months.

Initially, the important provincial role in national legislation reduced the time available for provinces to pass provincial legislation. In 1999, 19 of the 60 bills...
passed by the national Parliament fell under section 76 of the Constitution. This inevitably meant that in a well-functioning provincial legislature, a review of national legislation would have occupied a considerable amount of time. However, now that the national policy framework is more or less in place, the number of section 76 bills seems to be declining. In 2000, 20 of the 70 bills passed fell under section 76. And in 2001 the number dropped to 11 of 69 bills passed. This leaves provincial legislatures with more time to legislate for the province, either to tailor national policies to their circumstances, or to respond to provincial needs in their exclusive areas of legislative competence. Thus, the number of bills passed by provincial legislatures might be expected to increase.

In this context, it is important for provinces to resist pressure from the NCOP to pay more attention to section 75 bills. Sometimes even senior politicians in the NCOP encourage this, echoing the claim that is popular in the provinces that ‘after all, national legislation concerns all of us’. This approach confuses the distinct roles that the Constitution allocates to the different legislatures and introduces the danger that institutions will focus on matters that are already adequately covered to the detriment of their own business. It is the National Assembly, with members from all parts of the country, that has main responsibility for section 75 bills. Only in rare instances should provinces be concerned with them. Time that provinces have left once they have dealt with section 76 bills needs to be given to provincial business.

In any event, engagement with national legislation does not fully explain the small number of provincial bills. In some provincial legislatures, there is little evidence that much time is actually spent on national legislation. The size of the legislature may explain why few bills are passed in some cases: ten bills passed by a legislature of 30 members stands up well to 70 bills passed by the 400-strong National Assembly. Nevertheless, many of the people interviewed in the Legislative Landscape Study gave other reasons for their concern about the small number of bills that their province had passed.

### LAW-MAKING IN THE PROVINCIAL LEGISLATURES

<table>
<thead>
<tr>
<th>YEAR</th>
<th>E. CAPE</th>
<th>FREE STATE</th>
<th>GAUTENG</th>
<th>KZ.N</th>
<th>LIMPOPO</th>
<th>MPUMALANGA</th>
<th>NORTH WEST</th>
<th>NORTH CAPE</th>
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<td><strong>8.1</strong></td>
<td><strong>11.1</strong></td>
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Constitution section 114(1):
In exercising its legislative power, a provincial legislature may - (a) consider, pass, amend or reject any Bill before the legislature; and (b) initiate or prepare legislation, except money Bills.
Many interviewees attributed the low number in part to the limited constitutional competencies of provinces. This view has some validity but is usually based on a misunderstanding of the law-making powers of provincial legislatures. The Constitution grants provinces fairly wide law-making powers. Two factors inhibit their use at the moment. First, even provinces that are aware of their powers are waiting for national frameworks and norms and standards to be established before they enter the legislative arena to tune national approaches to specific provincial needs. Second, most provincial governments have very little understanding of what their law-making powers and responsibilities actually are. This situation is understandable, as the system is complex and provinces are fully occupied in establishing the necessary infrastructure to carry out the substantial responsibilities imposed upon them by national legislation. Nevertheless, the system is designed to give provinces the necessary leeway to ensure that national policies work effectively under their different conditions. It would be a problem if provinces viewed law-making on matters that are a concurrent responsibility with the national government as out-of-bounds. Of course, some MPLs recognised the power that provincial governments have and expressed frustration at the attitude that provinces should wait for national frameworks. Some also thought that provinces could influence and improve national policy in important ways by drafting their own laws.

A further, widespread concern of MPLs was that provincial executives had failed to develop necessary legislation. Some interviewees in the Legislative Landscape Study suggested that MECs feared being pro-active in case they were ‘wrong’ and eventually overridden. Other reasons given for the failure of provincial executives to initiate legislation included a lack of political will and vision in departments, a lack of clear policy direction or assessment of provincial needs, a lack of understanding of the constitutional powers of provinces, and a lack of competent drafters. Some MPLs suggest that centralising drafting skills would help. However, conceptualisation and drafting need to be closely linked and if, as many people believe, departments lack vision and the ability to conceptualise their needs, centralising drafting would probably not bring significant benefits.

In some provinces, MPLs linked the number of bills passed to the quality of the legislation introduced in their legislatures. Interviewees said that many bills are debated but few passed. This, they thought, may be due to the poor quality of the bills that were introduced or to the fact that the provincial executive changed its policy during the legislative process.

In addition to considering national bills and enacting provincial legislation, provinces can adopt constitutions. Thus far only two provinces – KwaZulu-Natal and the Western Cape – have used this power and only the Western Cape constitution was approved by the Constitutional Court. In fact, Chapter 6 of the Constitution provides fully for provincial government and they can operate...
adequately without their own constitutions.

THE QUALITY OF LEGISLATION: ARE OUR LAWS WELL DRAFTED?

In the one province on which there is more detailed interview information from the Legislative Landscape Study, views vary on the quality of legislation. Generally respondents were unhappy with the quality although some felt that the standard was high. A concern that is almost certainly shared in other provinces is how soon many new pieces of legislation are amended – perhaps because they were rushed initially or perhaps because the drafting was inadequate.

The Eastern Cape legislature views the problem of poorly drafted bills introduced by the provincial executive in a serious light:

‘Drafting of legislation by Departments is generally not of a high standard and on more than one occasion, the Legal Unit had to advise that bills that were to be introduced were either unconstitutional, invalid, or legally unsound due to bad drafting. The relationship between the Legal Unit and the State Law Advisers as well as the departmental legal officers has improved tremendously, and they regularly seek the advice of the Legal Unit on procedural and legal matters relating to legislation.’

Insufficient research (presumably by the executive before a bill is introduced) as well as inadequate planning by the legislature are acknowledged problems in the Eastern Cape – and probably occur in other legislatures.

A number of the national politicians interviewed in the Legislative Landscape Study share the concern of their provincial counterparts about the quality of drafting of legislation. Sometimes the poor quality was attributed to the fact that departments had been under immense pressure to pass legislation. Politicians felt that the problem was compounded by the fact that there was not adequate expert advice in Parliament to assist them to rectify these problems. Committees generally have to rely on the departmental drafter who drafted the bill in the first place. For some, the poor quality of incoming bills provides an explanation for the active role certain committees play when they scrutinise legislation.

Judges, magistrates and some of the administrators who must implement legislation echo concerns about its quality. These concerns need to be taken very seriously because legislation that is difficult to understand reflects a failure on the part of legislatures to fulfil their constitutional obligation to promote openness and transparency in government. Unclear legislation also adds to the difficulty of implementing policy, further burdening an overloaded bureaucracy and increasing the cost of government.

A couple of politicians raised a concern of a different kind about the legislation passed by Parliament. They pointed to the wide scope much recent legislation grants to departments to make regulations and suggested that in accepting this, Parliament
was delegating too much power to the executive. It appears that few parliamentarians are aware of the constitutional need to control the power of the executive to make regulations. We discuss this issue further in chapter 7.

PRIVATE MEMBER’S BILLS AND BILLS INITIATED BY A COMMITTEE

The Constitution expressly gives both individual MPs and MPLs, and committees the power to initiate legislation (in sections 73 and 119). The right of individual representatives to introduce bills is recognized in most democratic systems but it is not usually enshrined in a country’s constitution.

The fact that it is a power protected by the Constitution in South Africa reflects the importance that the constitution-drafters attached to it. But, it is a power that has seldom been used. In the national Parliament on average fewer than one private member’s legislative proposal has been passed each year since 1994.

As far as we are aware, only one province, Gauteng, had passed a private member’s bill by June 1999 when interviews for the Legislative Landscape Study were conducted. Interviews also suggested that no provincial committee had initiated any legislation. MPLs suggested that the failure of committees to initiate legislation could be attributed to the fact that they had poor research and drafting back-up but we did not encounter any examples of attempts to initiate legislation that were thwarted in this way. Even if research and legislative drafting skills were adequate, it is not clear that our system is conducive to legislative and policy initiatives by committees. Committees have, generally, been reactive, mainly responding to executive or departmental initiatives.

A different explanation, which was offered by some interviewees, seems more credible. It relates to the usual role of private member’s bills in a modern parliamentary system. The role of developing legislation in major policy areas falls to the executive, which bears the main task of implementing the policy of the government. Private member’s bills usually concern very specific matters of interest to specific constituencies.

A bill on the PAN South African Language Board before the national Parliament in 2001 provides an example. Members of opposition parties may also seek to introduce their own bills to highlight their policy position on a specific issue. Of course, these will be successful only if the governing party is convinced of their value.

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Committees might be expected to initiate legislation relating to matters that are of special interest to the legislature (such as legislation dealing with parliamentary privilege and legislation covering public participation in the legislature) but are unlikely to initiate legislation that involves larger policy initiatives. Thus, the right of MPs, MPLs and committees to initiate legislation is an important one but it is not likely to be exercised very frequently.
LAW-MAKING PROCEDURES

As we describe in chapter 5, every South African legislature has a well-developed committee system that undertakes the bulk of the work on bills. Many politicians claim that they are happy with the way in which committees deal with legislation but more detailed investigation reveals substantial concerns, particularly in provincial legislatures. For instance, in KwaZulu-Natal, many bills pass with few changes. Some committees are robust and in certain cases bills are entirely rewritten but other committees do little. Generally, it seems that a small proportion of MPLs contribute to discussion in committees – usually, interviewees suggested, under half the members are active participants. The causes vary and include both a lack of skills and a lack of preparation for a particular bill. In the national Parliament, inadequate management of certain committees by their chairs is cited as contributing to less effective participation in the law-making process. In all legislatures, language difficulties and a lack of understanding of the administrative process sometimes limit participation in committees.

Many problems are shared by the national Parliament and provincial legislatures but the law-making role and capacity of provincial legislatures are different from those of the national Parliament. This means that their problems cannot be solved in the same way as problems at the national level. These issues are discussed more fully in chapter 5. In summary, in some small legislatures, elaborate committee systems overstretch people and the limited resources of the legislature. Even when the committee system has been streamlined, a small number of politicians with very little support must deal with large volumes of complex national legislation.

Although much of the law-making work of Parliament occurs in committees, plenary sessions are important – after all, every law must be passed in a plenary session. In the provinces, little information is available on the effectiveness of legislative procedures outside the committees although, as we discuss in chapter 5, there are concerns that plenary sessions are not used as constructively as they could be. Members of the national Parliament are more explicit about this, commenting that members do not fully use the plenary session in which a bill is voted upon.

Most legislatures find it difficult to deal with crosscutting bills (i.e. bills which do not fall neatly into the subject area of any particular committee but which cover matters with which two or even three committees might deal). In particular, national politicians are concerned that the way in which committees are managed does not ensure that they communicate adequately with one another on matters of mutual interest.

The rules of the legislatures generally contain provisions permitting joint meetings of committees but these are not used as often as they could be. In some
smaller legislatures (such as the Free State) and in the NCOP where committees are ‘clustered’ and single committees cover more than one policy area, the problem is not as great. In the National Assembly, however, the importance of matching committee chairs to ministerial posts, the workload and its size, mean that ‘clustered committees’ are not an answer. Instead, co-ordinating the programmes of committees with related portfolios might be considered. Gauteng has recently embarked on such a process. However, when co-ordinating committee work, legislatures need to ensure that the system does not merely assist legislative staff to deal with transversal issues of management and the supply of information to committees. It needs to be managed politically as well if it is to ensure that the political decisions in each committee are informed by discussion in related committees.

TAGGING BILLS

As we describe in chapter 4, there are distinct procedures for the adoption of different types of national bills. The classification that is required most frequently is whether the bill is a section 75 or a section 76 bill. (A section 76 bill is one that contains matters which, according to the Constitution, affect provinces.) A joint committee of the National Assembly and the NCOP deals with this question. So-called mixed bills contain matters that fall under both section 75 and section 76 of the Constitution. They are split and dealt with as two separate bills. In some cases, one part of the bill is introduced as the main bill and the second part as an amendment so that the final product is a single (amended) Act. This process is not ideal as it complicates procedures and has the effect of disempowering MPs who sometimes have to deal with complex pieces of legislation in a fragmented way. There are two possible solutions to the problem. One is to amend the Constitution to state that ‘mixed bills’ should be passed according to section 76. A second solution is to rely on the decision of the Constitutional Court in Ex Parte President of the Republic of South Africa in re: Constitutionality of the Liquor Bill. In that decision, Acting Justice Cameron comments that the fact that section 76 is headed ‘Ordinary Bills affecting provinces’ provides ‘a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76’.2 If Parliament relied on this provision, most mixed bills could be dealt with under section 76.

THE RELATIONSHIP BETWEEN THE LEGISLATURE AND THE EXECUTIVE

Many concerns with the law-making process relate to the relationship between the legislature and the executive. There are important procedural questions such as what notice the executive should give the legislature before bills are intro-
duced, the effectiveness of programming committees, and how often bills are ‘fast-tracked’. When those remain unanswered or when procedures that are agreed upon are not consistently applied, the law-making function of legislatures is impeded.

In the national sphere, management of the legislative programme and co-ordination of the legislative programme between the executive and Parliament is improving greatly. This reflects a better understanding by both the executive and Parliament of their respective roles. One concrete manifestation of improved co-ordination is the greatly decreased number of ‘fast-tracked’ bills. Fast-tracking is particularly problematic for the NCOP as it effectively excludes provincial participation. Thus, the fact that in 2001, no section 76 bill was fast-tracked (and only one section 75 bill) was an important change.

In provinces, the poor management of the relationship between the executive and the legislature gives rise to serious problems. There is not enough information available to identify the problems adequately but one seems to be that in many provinces the executive does not provide enough information of its plans for legislation for the legislature to establish a reliable legislative timetable. At the level of committees the picture is varied. Some provincial committees have good relationships with the MEC responsible for their portfolio, but in many provinces there seems to be relatively little interaction between provincial executives and legislatures.

Another problem that relates to the relationship between the executive and the legislature concerns the majority party in particular. Majority party politicians in the national Parliament are concerned about the ‘gap’ between policy-making by the executive and the understanding that their colleagues in Parliament have of the new or developing policy. This is clearly a political question, which goes to the heart of the parliamentary system. If governing party MPs in particular do not understand party policy adequately, they cannot fulfil their legislative responsibility properly. The outcome will simply be a Parliament which rubber-stamps proposals but does not have the capacity to assess and discuss them.

The relationship between the legislature and the executive is unlikely ever to be an easy one. Tension between the two institutions is inherent in a system where the executive and legislative powers are not entirely fused. The legislature would simply not be doing its job properly if the two institutions always agreed. For effective government, the arrangements between the two institutions (both in the national Parliament and in the provinces) should allow each institution to fulfil its own role in the system. The executive needs to be able to drive the legislative programme but the legislature needs the time and resources to be able to satisfy itself and the electorate that laws and policies proposed by the executive are in the best interests of the country.
The key to achieving the ideal balance is for the legislature and the executive to understand each other’s roles and responsibilities. However, there are formal arrangements that can facilitate effective relations between the executive and the legislature. Some have already been indicated. For instance, fast-tracking must not only be rare – as the national Parliament has frequently stated – but must be permitted only in specified circumstances; programming committees in legislatures need to establish clear protocols; and the role of the Leader of Government Business should be clearly understood by both the legislature and the executive.

In addition, there are some initiatives that provincial legislatures could take. For instance, they could require new provincial bills to be accompanied by memoranda that explain clearly the relationship between the proposed provincial legislation and any existing provincial or national legislation. And they could follow the national approach and ask for a costing of new bills. It has been suggested that provincial executives may not be able to fulfil these requirements now. Nevertheless, they seem crucial to proper law-making in the provinces. In particular, provincial legislatures would be justified in questioning the executive’s ability to draft legislation if it is not able to provide an explanation of the purpose of the legislation and its likely impact in a memorandum. Moreover, the tight fiscal restraints on provinces mean that some attempt must be made to cost new legislation. Similarly, it seems unlikely that a province would be able to budget adequately if it cannot cost its legislation.

INvolving the public

As chapter 3 states, public participation programmes in legislatures need generally to be better aligned with the political programme. Specific issues that should be considered in relation to public participation and law-making include:

> Informing the public: The public needs to be informed in good time of new bills and the right to comment on them. This can be done by advertisements in the press; through a website; through constituency offices; by targeted information to appropriate civil society organisations and NGOs etc. Generally, this information is difficult to find and committees do not have a uniform way of contacting the public.

> Explaining bills: Bills need to be accompanied by memoranda that place them in context and explain their goals. At present, memoranda tend only to summarise the bill section by section.

> Planning public hearings: As we note in chapter 3, there needs to be a coherent strategy to run public hearings. The appropriate target audience needs to be identified; the best language for the group chosen; the hearing advertised well in advance; public structures (the Chapter 9 institutions, churches, NGOs etc) need to be engaged to assist. These factors
are not considered consistently. Part of the problem lies with inadequate planning on the part of committees. Part lies with public participation units that are not focused on the constitutional imperative of involving the public in the law-making process.

>Responding to public participation: There is an overwhelming public response to some public participation initiatives. The response to a request for submissions on the Firearms Control Bill (now Act 60 of 2000) is just one example. But there is little evidence that these submissions feed into committee discussions. Clearly committee staff cannot be expected to deal with a sudden flood of submissions on a controversial bill in addition to all their regular tasks. Again, better management of the system and more careful planning is necessary to ensure that public participation enriches the legislative process and is not merely a show.

In each of these areas, legislatures need to be sensitive to their wider obligations as representative institutions. They need to solicit a diversity of views and not condone a situation in which only the well-resourced have influence.

CONSTITUTIONAL VALUES IN LAW-MAKING: WHAT ABOUT RIGHTS?

In chapter 1, we identify four clusters of constitutional principles that must inform the way in which institutions carry out their business. One of these, inclusiveness, is discussed in chapters 2 and 5 which deal with the representative nature of our legislatures, the representation of diversity and with the multiparty committee system. Two others, the principles of effectiveness and efficiency and principles relating to openness and accessibility, are dealt with in chapter 3 where we discuss resources and again briefly above when we consider public participation in the law-making processes in South African legislatures. The fourth cluster of principles relates to the promotion of human rights and constitutionalism. These principles are not fully realised in the law-making processes in South Africa’s legislatures.

The principles concerned with constitutionalism and human rights demand that the Constitution should be viewed as an enabling document, pointing the way to a just society. In many countries, legislatures and executives treat their constitutional framework differently. It is viewed as a challenge and the usual question is ‘Can we get away with this?’ rather than ‘Does this further our constitutional goals?’ The approach in South Africa should be much more positive and pro-active and the question that should be asked of every legislative initiative is: ‘Does this further the aims of the Constitution?’

The Constitution places a clear responsibility on legislatures to promote constitutional government and human rights. These obligations do not merely require MPs and MPLs to ensure that legislation does not infringe the Bill of
Rights. Section 7 of the Constitution expects legislators to take active steps to promote rights and to strive towards their fulfilment.

Some major pieces of legislation promoting human rights and constitutional government have been passed by the national Parliament in the past seven years. These include the Promotion of Access to Information Act 2 of 2000, the Domestic Violence Act 116 of 1998, the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, the Employment Equity Act 55 of 1998, the Recognition of Customary Marriages Act 120 of 1998, and the Promotion of Administrative Justice Act 3 of 2000. In addition, major pieces of legislation in important portfolios such as housing, welfare and education are the first steps in implementing the social and economic rights incorporated in Chapter 2 of the Constitution.

Nevertheless, although some MPs and MPLs take account of constitutional rights when they consider bills, generally many politicians do not link lawmaking directly with the realisation of the goals enshrined in the Constitution.

In the national Parliament, parliamentary staff check bills but staff are not expected (or trained) to assess their contribution to enhancing human rights. In the Eastern Cape, bills may be referred to the legal department to be checked for compliance with the legislature’s standing rules and for constitutionality. This process seems to be effective but it is a negative check, ensuring that the legislation does not infringe the Constitution, and does not fulfil the legislature’s positive obligation to promote rights. In any event, the responsibility to promote rights cannot be left to administrative staff alone even if they are adequately trained. The question of whether a bill fulfils the constitutional obligation to promote human rights will usually be a political one.

It is very unlikely that the constitutional requirements will be adequately fulfilled unless legislatures adopt processes that will ensure that rights questions and the promotion of democracy are prominent on the agenda of every committee and plenary in the law-making process. One way of doing this might be to require each committee to include a section on the implications of new legislation for the promotion of the Constitution and rights in every report on new bills. The report would need to go beyond the question ‘Is the proposed legislation constitutional?’ It would need to explore the ways in which the bill actually promoted rights. Here a general question (such as Does this bill protect rights?) would not be enough. Instead, to ensure that committees engage properly with the issues, more specific questions would need to be considered (such as Does this bill have any specific implications for disadvantaged groups such as women, disabled people, people living in rural areas etc? In what ways does the bill promote rights? Are there better ways in which the bill could enhance rights? What does this bill do about poverty?).

A co-ordinated programme to put these issues on the law-making agenda could
help legislatures become a central part of the overall constitutional transformation project and prevent them from being relegated to the sidelines.

CONCLUSION

South Africa’s new national Parliament settled down to law-making extraordinarily fast. Although not all committees engaged equally rigorously with legislative proposals put to them by the executive, many bills have been thoroughly scrutinised by committees. Overall, members are relatively pleased with the progress they have made both in handling bills and in managing the legislative programme – and rightly so. But some problems remain. The most serious one may well be the failure of the national Parliament to prioritise its obligation to promote constitutionalism and human rights. A related concern is the tendency of new legislation to grant wide power to make regulations to the executive. In so doing Parliament washes its hands of the policy decisions that it is meant to consider. The quality of new legislation is another concern. Far from being readable and accessible, it is often badly structured, long-winded and unclear. This is a problem that needs to be resolved jointly by the executive that introduces legislation and the members who change it.

The situation in provinces is less encouraging. As we note, they deal with relatively few provincial bills. This is not necessarily a bad thing although provincial politicians are concerned with the failure of their executives to deal with important provincial policy matters. But many provinces still do not fully understand their role in the NCOP and the importance of dealing with national section 76 legislation. Sometimes inadequate skills in particular policy areas and in coping with complex legal texts are a problem. Often, however, the problem simply lies in the fact that MPLs have not come to grips with their demanding role in the law-making process.

SELECT BIBLIOGRAPHY


FOOTNOTES

1 Annual Report of the Legislature of the Province of the Eastern Cape, April 1999 - 31 March 2000, p 86.
2 2000 (1) BCLR 1 (CC) para 27.