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EVALUATION OF PERFORMANCE OF
THE LEGISLATURE OF THE EASTERN
CAPE

PRESENTED BY: GUGILE NKWINTI

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INTRODUCTION

1. The evaluation of the performance of any legislative body can be approached from a number of angles, amongst them, the political, the administrative, the financial, the legislative, the cultural, the structural, the social and so on.

2. The political and the legislative functions are commonly referred to as line - functions, and the administrative, which encompasses the finances, organisation, personnel, procedures, policies and control, is commonly referred to as support services.

3. In terms of its line-function, the legislature must M and M W; to account for all its actions and, or, non-actions. This is the responsibility of members of the house, and they do this in committees and in plenary.

3.1 Section 126 (2) of the Interim Constitution, Act 200 of 1993, provides the authority to pass laws.

3.2 Section 153 (1) provides the authority to call members of the executive, and the executive, to account.

3.3 The legislative competencies of provincial legislatures are set out in Schedule 6 of the Interim Constitution. These are demarcated areas in which provincial legislatures have the powers to make laws, subject to the limitations imposed by Section 126 (3) & (4).

For the line-functions to be performed effectively there needs to be sufficient support services. These are provided by the administration, with the Secretary to the Legislature being the Chief Executive and Accounting Officer. The legislative personnel is a professional, rather than a political corp. In terms of Section 143 (2) of the Interim Constitution the Secretary and other members of the legiser personnel are appointees of the legislature. A clear procedure has been defined by members of the legislature to effect the provisions of this section. By direct implication, members of the legislature have the authority to dismiss the personnel members of the legislature.

Structurally and socially the legislature has six sections, namely, finance, personnel, communications, hansard, proceedings, and committees. By way of classification, the first two sections constitute the core of the support services, whilst the last four constitute line-function services. Personnel members of the legislature have been recruited from the five former Bantustan parliaments, Cape Town, and from the general public. The following are the recruitment principles which guided the selection of applicants - gender sensitivity, geographic spread, sensitive balance between experience and potential, racial sensitivity, preference to people from this province (limitation being hard-skill requirements), and, where the latter is the case, the potential appointee ,s preparedness to train others. These criteria were approved of by the Rules Committee of the legislature.

Further to the appointment of the professional staff members of the legislature, and the provision of materials and equipment to support the members of the house, two other forms of support services were provided to members, namely (a) parliament made available R3 500 per month per member of the legislature for constituents service, and, (b) the legislature employed a typist/receptionist for every three members of the house.

Culturally, meaning the manner in which the legislature, as an organisation, expresses itself in itself and for itself, we would have to look at the main feature(s) of the organogram, and administrative practices and procedures. For example, (a) whether the organogram is top-heavy and too hierarchical or flat and tubular and, (b) management styles in terms of inclusivity or exclusivity in decision-making processes. The culture of the organisation can be generalised from these two main features.

PERFORMANCE OF THE LEGISLATURE

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In the paragraph above (introduction) I have set out the tools for the evaluation of the performance of the legislature. I will not deal with the support services, except to say that equipment, materials and space are the three key requirements creating the necessary enabling environment for the legislators. If these requirements are not met, even though the service will be efficiently provided, the human price will be quite high and effectiveness very low.

With regard to the line-functions, meaning the legislator and the political performances, three measures can be used:

9.1 whether the provisions of Section 4 (1) of the Interim Constitution have been complied with or not;

9.2 how many laws have been passed by the House since its first session in 1994;

9.3 to what extent did the legislature perform its oversight function in relation to the executive.

With regard to paragraph 9 above, (a) no law passed by the House was declared null and void; (b) five (5) laws were passed in 1994, and twelve (12) in 1995; and, (c) I have annexed hereto a document which sets out all the legislative and political activities of the House, in its function and constitutional responsibility to call the

executive to account. I can only say that the legislative sat and debated for 66 actual days and 151 hours and 25 minutes during the past two sessions. During 1995 alone, no less than 105 public hearings and committee meetings were held in consideration of legislative business. This includes visiting no less than 25 hospitals across the length and breath of the province.

11 . Because of the difficulty to evaluate its performance, members of the legislature held 'a'two-days conference towards the end of last year, to develop a vision and mission for the legislature, by which its performance can be judged in the future. The following are the vision and mission of the legislature, although public views continue to be taken into account in refining the vision:

11.1 VISION - The Legislature of the Province of the Eastern Cape is established to be a people's assembly where the voices, languages, cultures and heritage of the province are represented by committed members of the assembly for good governance in a unified province, and to promote respect for, and the application of, the constitution of the Republic of South Africa.

11.2 MISSION - The Legislature of the Province of the Eastern Cape is committed to its vision and pledges effective, efficient and honest service from the members and staff of the Legislature who will promote:

5' DEMOCRACY AND TRANSPARENCY

"' PUBLIC PARTICIPATION THROUGH A PRO-ACT'IVE

CONSULTATION AND EFFECTIVE COMMUNICATION

PROCESS

"' ETHICAL GOVERNANCE IN ACCORDANCE WITH CONDUCT

APPROPRIATE TO THE INTEGRITY OF THE LEGISLATURE

"' SOUND FINANCIAL MANAGEMENT

h OPEN AND ACCOUNTABLE GOVERNMENT

4. THE SCRUTINY AND IMPROVEMENT OF THE LEGISLATION
BROUGHT BEFORE THE LEGISLATURE

h ACHIEVEMENT OF EQUAL OPPORTUNITIES THROUGH
AFFIRMATIVE ACTION, REDRESSING THE LEGACIES OF
HISTORICALLY DISADVANTAGED CATEGORIES OF SOCIETY,
INCLUDING THE DISABLED AND THE AGED

" IMPROVEMENT OF THE QUALITY OF PEOPLE'S LIVES, IN
PARTICULAR THE EMPOWERMENT OF WOMEN AND
PROMOTION OF GENDER EQUALITY AND YOUTH AFFAIRS

5" UNITY, PEACE AND NATION BUILDING

11.3 Hopefully, both the vision and mission will provide a much better basis for
critical evaluation in the future.

EVALUATION

12. It is not possible to accurately evaluate the performance of the legislature, (a)
without a working vision and mission, and, (b) without touching on the executive
council. I do not have to repeat anything about (a). With regard to the executive
council, I must stress that the main source of legislative work is government
business, whether it be bills, statutory and non-statutory reports, or questions on
specific issues.

13. To the extent that business will come from the government, the legislature will be
busy at any particular time during a session. This very important inter-institutional
relationship received the attention of the Rules Committee and the Executive
Council on the 8th of December last year, when the two met to evaluate the last
session and chart the programme for 1996.

14. With regard to legislation, the major problem is the amendment of laws from the former Bantustans. This is a major political problem in that these Bantustans were never legally recognized, even though they existed as a fact. Yet, in the absence of clear policies from the governing party, on which repealing legislation could be based, the executive has no alternative but to amend some of these laws. The members of the House, notwithstanding their principal objection to such amendments, cannot hold the executive to ransom.

15. The legislature has not yet succeeded in getting members of the public to fill up the gallery when the House is sitting. Even for public hearings, very few people attend meetings though these are held in the communities. In both cases, the political parties represented in the House, and members and staff of the legislature have not been doing their best in raising the interest of the people out there.

16. The responsibility of the legislature to call the executive to account continues to pose serious problems. There is an inherent and essential tension here. The challenge is how to manage this tension without being misconstrued for undermining the executive.

17. The separation of powers between the executive and the legislature is a constitutional requirement, whereas the management of this inherent and essential tension between these institutions of the state is a political strategic and tactical issue. The challenge is two-fold here:

17.1 the need to accept the constitutional provision of the separation of powers between the executive and the legislature

17.2 being able to develop the required strategic and tactical relationships to make government work effectively, within and despite that context.

17.3 Failure to resolve these two questions will lead to continued misunderstandings and ill-informed personal conflicts amongst members of the executive and those of the legislature.

18. We still have to master balancing parliamentary responsibilities with executive responsibilities. This is a critical problem because failure to honour our legislative responsibilities reflects negatively on perceptions about our understanding of what parliament is, and what it is all about.

19. Regular and timely attendance to legislative business is very important. Firstly, it reflects on our seriousness about the task at hand. Secondly, it reflects respect for the tax-paying members of the public in general, and those who voted as into parliament in particular. This aspect needs improvement.

20. In spite of the challenges cited above, the members of the legislature, including those

who held executive positions, performed admirably. The investigative work, as well as the quality of debates in the House, were of a very high standard. The two-days conference, which drafted the legislative vision and mission, and the one-day conference between members of the Rules Committee and the Executive Council, which sought to evaluate the past year and chart a co-operative path forward, can only facilitate a better understanding of motivations for actions and processes of the two estates of governance.

21. We must, however, appreciate that the state, as a legal-constitutional entity, operates

in an essentially bureaucratic manner. Failure to understand this quality of state operations often leads to chaos and charges of incompetence and inefficiency. We must, thus, improve drastically in our understanding of the constitution, the laws, and rules of procedure which govern our daily conduct as public office-bearers.

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The major challenge for political organisations represented in any legislative body is how best or effectively they could utilise their caucuses. This challenge is greater for the majority party in the House, because it carries the burden not only of delivery on social services, but as well that of managing the inherent and essential tension between the executive and legislative groups of the party or organisation. Two things are of fundamental importance here - (a) party policies must be clear and well understood by party representatives in both capacities, and, (b) internal party discipline must be firmly and evenly exercised.

Unless the two points immediately above are strictly observed, there can be no transforming legislation (policies need to underpin legislation), and there can be no basis on which to call the government to account or members of the legislature to account to either the party or the electorate. Members need to know that transgression of organisational discipline will be met with firm, but fair disciplinary action.

PROGRAMME FOR 1996.

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The 16th of February will be the official opening of the third session of the first legislature of the Province. On this day the Premier is going to open the legislature with a speech on the government's overview of plans for this year. This speech will be debated by the House. The number of days for the debate will be determined by the whips and the House Leader.

At the close of the last session a number of resolutions were taken, some of which were referred to committees of the House. Some of these committees have already started with the work. Committee work is very difficult to predetermine because matters keep coming up for consideration, and that government business can be known once such has been referred to the House or to the Speaker.

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In March the Provincial Budget will come before the legislature, after which a considerable amount of time will be spent examining it in all its forms. The debate on the Budget will be followed by departmental and other reports from the government.

Bills tabled to the House will be dealt with throughout the year. The handling of bills involves, as a rule, the holding of public hearings. In this regard, there are two exceptions, (a) when the bill is technical, and, (b) when views of members of the public are unlikely to be taken into account in the final product.

Finally, the programme of the legislature depends on the majority party. If the party has no business, especially through its executive cause, there could be little or no programme. It is the duty of the party whips to make business, thus, the ingredients of a legislative programme. Once the ingredients are there, the House Leader and the whips draw up a programme for the House.

CONCLUSION

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Let me conclude by a reference to the Interim Constitution, Act 200 of 1993; on the supremacy of the Constitution:

4 (1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.

4 (2) This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.

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30. This is the overall environment within which the state operates, and we must come to grips with it, otherwise sooner or later it will catch up with us. South Africa is, irrevocably, a constitutional state and the legality of actions and non-actions of legislative organs in particular will always be closely scrutinized.