

**ROOM TO MANOEUVRE:
Understanding The Development Of Provincial Government In South
Africa, 1994-2004**

(Case Studies: Gauteng and Mpumalanga)

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ABSTRACT

Since its inception in 1994, South Africa's federal system of government has been the subject of intensive scholarly debates and wide-ranging academic writing. In particular, the functioning of the country's provincial institutions has engendered heated public debates over the years about whether or not they have played their proper role as institutions of democratic governance. The major challenge that faced the framers of the country's new constitution, and which continues to face policy makers currently, was to create functioning and effective democratic institutions of government at sub-national level. In addition to their role as democratic/political institutions of governance, the provinces are also agents of socio-economic development and the delivery of basic social services to citizens.

In the course of attempting to fulfil their functional responsibilities since 1994, the provinces have encountered enormous political, constitutional, administrative and logistical problems that have led to widespread dissatisfaction about their performance and effectiveness. In fact, this dissatisfaction has also led to fundamental questions being raised about the future of the provinces in South Africa. This thesis seeks to evaluate the performance and effectiveness of the provincial system during the 1994-2004 period, by looking at the question: to what extent has the provincial system of government fulfilled its responsibilities of promoting democratic governance and ensuring effective delivery of social services to citizens at sub-national level? It also provides an in-depth examination and analysis of the development of South Africa's federal system of government between 1994 and 2004.

The study utilised a wide range of research materials gathered through in-depth interviews, an opinion survey, direct observations, official documents, published and unpublished documents, and numerous other sources.

DECLARATION

I hereby declare that this thesis is my own unaided work. It is being submitted for the degree of Doctor of Philosophy at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other university.

Thabo J. Rapoo

Date

DEDICATION

This work is dedicated to my loving family – my wife, Dr. Eeva-Maria Rapoo; my daughters Katja Khumo Rapoo, Erika Dineo Rapoo and Karabo Selma Rapoo; and my mother, Kedibone Rabecca Rapoo. Through them I know the value of a family.

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ABREVIATIONS & ACRONYMS

- ACDP: African Christian Democratic Party
- ANC: African National Congress
- AZAPO: Azanian People's Organisation
- CFO: Chief Financial Officer
- CIU: Coordination and Implementation Unit
- COSATU: Congress of South African Trades Unions
- CPG: Commission on Provincial Government
- DA: Democratic Alliance
- DFID: British Department For International Development
- DP: Democratic Party
- EU: European Union
- EUPSP: European Union Parliamentary Support Programme
- FF: Freedom Front
- FF+: Freedom Front Plus
- FFC: Finance and Fiscal Commission
- FOSAD: Forum of South Africa's Directors-General
- GEAR: Growth, Employment and Redistribution
- GEDA: Gauteng Economic Development Agency
- GGP: Gross Geographic Product
- GTZ: German Technical Cooperation Agency
- HDI: Human Development Index
- HoD: Head of Department
- HSRC: Human Sciences Research Council
- ID: Independent Democrats
- IDASA: Institute For a Democratic Alternative In South Africa
- IDC: Independent Development Corporation
- IFP: Inkatha Freedom Party
- IGF: Intergovernmental Forum
- MDC: Mpumalanga Development Corporation
- MEC: Member of Provincial Executive Council
- MII: Mpumalanga Investment Initiative
- MINMEC/s: Forums of Ministers and MECs
- MPB: Mpumalanga Parks Board
- MPL: Member of Provincial Legislature
- MTA: Mpumalanga Tourism Authority
- MTEF: Medium Term Expenditure Framework
- NCOP: National Council of Provinces
- NEC: National Executive Committee
- NEDLAC: National Economic Development and Labour Council
- NGO: Non-Governmental Organisation
- NHB: National Housing Board
- NNP: New National Party
- NP: National Party
- NSMS: National Security Management System
- PAC: Pan African Congress
- PCC: Presidential Coordinating Council
- PCO: Parliamentary Constituency Office

- PEBA: Programme Evaluation and Budget Analysis
- PEC: Provincial Executive Committee
- PFMA: Public Finance Management Act
- PGDS: Provincial Growth and Development Strategy
- PHB: Provincial Housing Board
- PLP: Presidential Lead Project
- PRC: Presidential Review Commission
- PWV: Pretoria-Witwatersrand-Vereeniging
- RADC: Regional Development Advisory Councils
- RDC: Reconstruction and Development Council
- RDP: Reconstruction and Development Programme
- RSC: Regional Services Council
- SACP: South African Communist Party
- SANCO: South Africa National Civics Organisation
- SCC: Shared Services Centre
- SCOPA: Standing Committee on Public Accounts
- SMME: Small, Medium and Micro Enterprise
- SMT: Strategic Management Team
- SPDU: Strategic Planning And Development Unit
- SPPU: Special Projects and Policy Unit
- UDM: United Democratic Movement

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION	1
1.1. INTRODUCTION AND AIM OF THE STUDY.....	1
1.2. FEDERALISM AND PROVINCIAL GOVERNMENT IN SOUTH AFRICA – LITERATURE REVIEW.....	2
1.2.1. Federalism As A System Of Government.....	2
1.2.2. Brief History Of Provincial Government In South Africa.....	6
1.2.3. The Importance Of Federalism In A Post-Apartheid South Africa.....	11
1.3. INSTITUTIONAL FRAMEWORK FOR PROVINCIAL GOVERNMENT IN SOUTH AFRICA.....	16
1.3.1. Division of Powers and Functions.....	16
1.3.2. South Africa’s Integrated Federal System.....	21
1.4. METHODOLOGY AND APPROACH.....	23
1.4.1. Research Studies On Provincial Government In South Africa.....	27
1.4.2. Analytical Framework.....	28
1.5. STRUCTURE AND OUTLINE OF THE CHAPTERS.....	30
NOTES AND REFERENCES.....	31
CHAPTER 2: SETTING THE SCENE – KEY DEVELOPMENTS IN THE SYSTEM OF PROVINCIAL GOVERNMENT	34
2.1. PROVINCIAL DEMANDS FOR GREATER POWERS AND REFORMS (1994- 1997).....	36
2.1.1. Context Of The First Wave Of Reforms.....	42
2.2. FIRST WAVE OF REFORMS: FROM ‘DUAL-FEDERALISM’ TO ‘COOPERATIVE FEDERALISM’.....	46
2.2.1. Context For Second Wave Of Reforms (1997-1999).....	50
2.2.1.1. Greater attention towards practical challenges at provincial level.....	50
2.2.1.2. Undermining the authority of the provinces?.....	54
2.3. SECOND WAVE OF REFORMS AND OPTIONS ON THE FUTURE OF PROVINCES (1999-2004).....	59

2.3.1. Rethinking The Role Of Provinces: Current Views Among Key Actors.....	64
2.3.2. Three Perspectives On The Future Of The Provinces.....	65
2.3.2.1. Abolishing the provinces?	65
2.3.2.2. Down-scaling or down-grading the provinces.....	69
2.3.2.3. Provinces as vehicles for deepening democracy.....	72
NOTES AND REFERENCES	79

CHAPTER 3: PROVINCIAL GOVERNMENT IN PRACTICE – INSTITUTIONAL PERFORMANCE 82

3.1. INTRODUCTION.....	82
3.2. PROVINCIAL LEGISLATURES – DEMOCRATIC/POLITICAL EFFECTIVENESS	82
3.2.1. Representational Effectiveness.....	83
3.2.1.1. Citizen representation through provincial elections.....	83
3.2.1.2. Citizen participation in provincial legislature activities.....	89
3.2.1.2.1. Public hearings	90
3.2.1.2.2. Legislature petitions processes	92
3.2.1.2.3. Constituency service.....	94
3.2.1.3. General citizen ability to influence provincial decision-making.....	97
3.2.2. Oversight Effectiveness.....	99
3.2.2.1. Organisation of oversight structures	100
3.2.2.1.1 Oversight through committees	104
3.2.2.1.2. Deliberative oversight through the plenary.....	113
3.3. PROVINCIAL LEGISLATURES – LAW-MAKING EFFECTIVENESS	116
3.4. PROVINCIAL GOVERNMENTS – ADMINISTRATIVE EFFECTIVENESS.....	119
3.4.1. Administrative Integration, Restructuring And Transformation	119
3.4.1.1. Institutional problems and second phase of administrative transformation.....	121
3.4.2. Policy Making And Implementation.....	126
3.4.2.1. Policy priorities and implementation (1994-1999)	126
3.4.2.2. Policy priorities and implementation (1999-2004)	131
NOTES AND REFERENCES	136

CASE STUDY I: GAUTENG PROVINCE 139

CHAPTER 4: THE GAUTENG PROVINCIAL LEGISLATURE 140

4.1. BACKGROUND.....	140
4.2. DEMOCRATIC/POLITICAL EFFECTIVENESS.....	143
4.2.1. Representational Effectiveness.....	143
4.2.1.1. Citizen participation through provincial elections.....	143
4.2.1.2. Citizen participation in legislature activities	144
4.2.1.2.1. Public hearings	148
4.2.1.2.2. Submission of petitions	149
4.2.1.2.3. Constituency service.....	150
4.2.1.2.4. Citizen ability to influence provincial decision making.....	152
4.2.2. Oversight Effectiveness.....	153
4.2.2.1. Oversight and ineffective legislature: 1994-1999.....	154
4.2.2.1.1. Practical issues and capacity problems.....	154
4.2.2.1.2. Systemic and functional/political problems.....	155
4.2.2.2. Strengthening the legislature for effective oversight: 1999-2004.....	162
4.2.2.2.1. Practical issues and capacity problems.....	162
4.2.2.2.2. Systemic and functional/political problems.....	165
4.2.2.3. Committees as oversight structures	170
4.2.2.3.1. Budget oversight/scrutiny.....	172
4.2.2.3.2. Monitoring policy implementation and service delivery	176
4.3. DELIBERATIVE AND LAW-MAKING EFFECTIVENESS.....	181
4.3.1. Legislature's Performance As Deliberative Body	181
4.3.1.1. Debates in the chamber.....	182
4.3.1.2. Questions and question time	186
4.3.2. Legislature's Performance As Law-Making Body.....	187
4.3.2.1. Law making during the 1994-1999 period.....	188
4.3.2.2. Law making during the 1999-2004 period.....	190
NOTES AND REFERENCES	193

CHAPTER 5: THE PROVINCIAL EXECUTIVE AND ADMINISTRATION 196

5.1. INTRODUCTION.....196

5.2. ESTABLISHING THE GAUTENG PROVINCIAL GOVERNMENT.....198

5.3. PROVINCIAL EXECUTIVE: STRUCTURE AND ORGANISATION.....202

5.4. THE FUNCTIONING OF THE PROVINCIAL EXECUTIVE (1994-1999)206

 5.4.1. ‘Government of Provincial Unity’ Under Premier Sexwale (1994-1997)206

 5.4.1.1. Brief background206

 5.4.1.2. Leadership, style and impact.....207

 5.4.1.3. Key institutional issues in the functioning of the executive212

 5.4.2. Provincial Government Under Premier Motshekga (1998-1999).....217

 5.4.2.1. Brief background217

 5.4.2.2. Leadership, style and impact.....219

 5.4.2.3. Key institutional issues in the functioning of the executive225

5.5. THE FUNCTION OF THE PROVINCIAL EXECUTIVE (1999-2004)227

 5.5.1. Provincial Government Under Premier Shilowa.....227

 5.5.1.1. Brief background227

 5.5.1.2. Leadership, style and impact.....230

 5.5.1.3. Key institutional issues in the functioning of the executive234

5.6. POLICY PRIORITIES AND IMPLEMENTATION235

 5.6.1. First Term Of Office (1994-1999).....235

 5.6.2. Second Term Of Office (1999-2004)242

NOTES AND REFERENCES249

CASE STUDY II: MPUMALANGA PROVINCE..... 252

CHAPTER 6: THE MPUMALANGA PROVINCIAL LEGISLATURE 253

6.1. BACKGROUND.....253

6.2. DEMOCRATIC/POLITICAL EFFECTIVENESS.....258

 6.2.1. Representational Effectiveness.....258

 6.2.1.1. Citizen participation through provincial elections.....258

 6.2.1.2. Citizen participation in legislature activities260

 6.2.1.2.1. Public hearings269

 6.2.1.2.2. Submission of petitions270

 6.2.1.2.3. Constituency service.....271

 6.2.1.2.4. Citizen ability to influence decision making.....274

 6.2.2. Oversight Effectiveness.....276

6.2.2.1. Oversight in a weak, complacent legislature: 1994-1999	276
6.2.2.1.1. Practical issues and capacity problems	276
6.2.2.1.2. Systemic/political and functional problems	280
6.2.2.2. Reasserting the authority of legislature and political instability: 1999-2004	286
6.2.2.2.1. Practical issues and capacity problems	286
6.2.2.2.2. Systemic/political and functional problems	288
6.2.2.3. Committees as oversight structures	292
6.2.2.3.1. Budget oversight/scrutiny	293
6.2.2.3.2. Monitoring policy implementation and service delivery	295
6.3. DELIBERATIVE AND LAW-MAKING EFFECTIVENESS	298
6.3.1. Legislature's Performance As A Deliberative Body	298
6.3.1.1. Debates in the chamber	299
6.3.1.2. Questions and question time	301
6.3.2. Legislature's Performance As A Law- Making Body	302
6.3.2.1. Law making during the 1994-1999 period	302
6.3.2.2. Law making during the 1999-2004 period	303
NOTES AND REFERENCES	305

CHAPTER 7: THE PROVINCIAL EXECUTIVE AND ADMINISTRATION 308

7.1. INTRODUCTION	308
7.2. ESTABLISHING THE MPUMALANGA PROVINCIAL GOVERNMENT	308
7.3. PROVINCIAL EXECUTIVE: STRUCTURE AND ORGANISATION	313
7.4. THE FUNCTIONING OF THE PROVINCIAL EXECUTIVE (1994-1999)	317
7.4.1. 'Government Of Provincial Unity' Under Premier Matthews Phosa	317
7.4.1.1. Brief background	317
7.4.1.2. Leadership, style and impact	318
7.4.1.3. Key institutional issues in the functioning of the executive	324
7.5. THE FUNCTIONING OF THE PROVINCIAL EXECUTIVE (1999-2004)	327
7.5.1. Provincial Government Under Premier Ndaweni Mahlangu	327
7.5.1.1. Brief background	327
7.5.1.2. Leadership, style and impact	328
7.5.1.3. Key institutional issues in the functioning of the executive	335
7.6. POLICY PRIORITIES AND IMPLEMENTATION	337
7.6.1. First Term Of Office (1994-1999)	337
7.6.2. Second Term Of Office (1999-2004)	345
NOTES AND REFERENCES	352

CHAPTER 8: CONCLUSION – THE PROVINCIAL SYSTEM AND FUTURE PROSPECTS	356
8.1. EVOLUTION AND DEVELOPMENT OF THE SYSTEM.....	356
8.2. INSTITUTIONAL PERFORMANCE	365
8.2.1. Democratic/Political Effectiveness	365
8.2.1.1. Representational effectiveness.....	365
8.2.1.2. Oversight effectiveness.....	368
8.2.2 Deliberative/Law-Making Effectiveness	370
8.2.3. Administrative Effectiveness	372
8.3. FUTURE PROSPECTS.....	374
BIBLIOGRAPHY.....	378

LIST OF TABLES & FIGURES

Tables

Table 1: “Abolish provinces and strengthen capacity of municipalities to deliver services and promote grassroots democracy”	68
Table 2: “We need to rethink the current role of provinces in South Africa”	70
Table 3: “Devolve more powers and functions to provinces and allocate more fiscal resources” (by province)	74
Table 4: “Devolve more powers and functions to provinces and allocate more fiscal resources” (by party affiliation).....	75
Table 5: Number of parties contesting provincial elections	85
Table 6: Proportions of female candidates (combined national & provincial lists)	87
Table 7: Female representation in provincial legislatures	88
Table 8: Female representation in the National Assembly.....	89
Table 9: Perceptions about ability of citizens to influence decision-making.....	98
Table 10: Number of committees & committee assignments per province (2002/03).....	102

Figures

Figure 1: Map of the four pre-1994 provinces	8
Figure 2: Map of the nine post-1994 provinces	12
Figure 3: Map of Gauteng province.....	139
Figure 4: Map of Mpumalanga province	252

CHAPTER 1: INTRODUCTION

1.1. INTRODUCTION AND AIM OF THE STUDY

Since its inception in 1994, questions have been raised about South Africa's federalism, especially the performance and effectiveness of the current system of provincial government. During the ten-year period under study (1994-2004), many scholars and commentators have made judgements as to whether or not South Africa's provincial governments were playing their proper role and fulfilling their constitutional mandate as institutions of governance. In addition, questions have also been raised about the future of the provinces. Many of these questions remain unresolved and are likely to remain so for the foreseeable future. This study seeks to contribute to these debates. The question this study seeks to answer is to what extent has the provincial system of government in South Africa fulfilled its responsibilities of promoting democratic governance and ensuring effective delivery of social services to citizens?

The debates and the questions that have been raised over the years about whether or not the provinces are playing their proper role and fulfilling their political, administrative and service delivery responsibilities effectively, seem to derive from differing perceptions among the major policy actors in South Africa about what the purpose of the provincial system of government in South Africa is. The provinces seemed to attract negative publicity not only in terms of their role as agents of popular democratic representation and participation at sub-national level, but also as agents of public service administration, policy implementation and service delivery. Compelling questions and doubts have been raised for many years about the effectiveness of the provinces in performing these functions. The consequence of these negative debates has been a general lack of confidence in the system, especially among key policy makers, including the leadership of the ruling party. In some cases this had led to political attacks on the system, even from within the ruling party itself.

Dissatisfaction with the institutional performance of the provinces poses potentially serious problems for the country in that the provinces are critical to the country's system of government. They handle and spend huge amounts of the national budget. For instance, a very large proportion (nearly 60%) of the national budget is routinely allocated to the provinces to fulfil a wide range of responsibilities, mainly to deliver critical social services such as education, health care and social welfare. Also, over three-quarters of a million public servants, comprising about

70% of the country's total public service personnel, are located at provincial level to fulfil a wide range of administrative, policy implementation and service delivery functions. A large proportion of the country's budget goes towards maintaining and remunerating these public servants.¹ In addition to the large number of provincial public servants, there are also 430 elected politicians in the nine provinces serving as Members of Provincial Legislatures (MPLs), members of provincial executive councils (MECs) and premiers. Considerable resources are spent on their maintenance and remuneration. Therefore during public debates about the performance and effectiveness of the provincial system, questions are invariably raised about the enormous resources the country spends maintaining these sub-national structures.

South Africa's federal system of government and the provinces have no doubt evolved considerably over the years and continue to do so; in some cases this has been in response to some of the questions raised and debates raged about the performance and effectiveness of the provinces. This study examines and analyses the changes and reforms that the system has undergone over the years in order to provide greater understanding of whether or not the changes have contributed to better performance and effectiveness. Therefore in answering the central question posed earlier, the study will essentially assess and evaluate the performance of provincial institutions of government during the specified period.

1.2. FEDERALISM AND PROVINCIAL GOVERNMENT IN SOUTH AFRICA – LITERATURE REVIEW

1.2.1. *Federalism As A System Of Government*

The inception in 1994 of South Africa's federal system of government was preceded by extensive and engaging theoretical analyses and public debates among scholars both in South Africa and abroad. Given that the system was newly installed, and the interim constitution of 1993 was still untried and untested, there was insufficient practical experience to use in analysing the operation of the system and making informed judgements about future developments. Much of the theoretical discussions were informed by the experiences of advanced and long-established federal democracies, whose political circumstances differed significantly from those obtaining in South Africa. Also, the dominant preoccupation of theoretical debates and analyses of South Africa's federal system at the time had focused on the 'federal' versus 'unitary' debates – whether the interim constitution and the political system implied in it were 'federal' or not. As many participants in these debates, and federalism scholars at the time, attempted to settle the 'federal' or 'unitary'² controversy, an erroneous impression was created that federalism was an end in itself

rather than a mechanism for dealing with the unique political challenges that faced the country at the time.³

The attempt to bring conceptual precision to the model of government adopted in South Africa was understandable, not only because the ‘unitary’ versus ‘federal’ division was one of the key underlying points of disagreement during the 1992-1994 constitutional negotiations. It was also important in terms of determining whether or not South Africa’s new constitution and model of government could be located within the genus of existing and successful federal systems elsewhere in the world. However bringing conceptual clarity to the South African debate was a daunting challenge in that the literature on federalism is replete with conflicting and contradicting perspectives on ‘federalism’ as a mode of political organisation. There are many different definitions of federalism in literature, just as there are different types of federal systems existing empirically in the world today. For instance, Kenneth Wheare, a leading authority on the subject of federalism, sees a federal system of government as that in which “the powers of government are divided between a government for the whole country and governments for parts of the country in such a way that each government is legally independent with its own sphere.”⁴

In one of his earliest books Wheare characterises federalism as a system of government whereby “the functions of government are divided in such a way that the relationship between the legislature which has authority over the whole territory and those legislatures which have authority over part of the territory is not the relationship of superior to subordinates...”⁵ Wheare emphasises what he calls the ‘federal principle’, which he defines as “the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent”.⁶ ‘Co-ordinate’ here clearly means equal. Wheare also believes that one of the abiding features of a federal system is the vesting of residual powers⁷ in the regional governments rather than the centre.⁸

Wheare identifies a number of features that set a federal system apart from other systems, such as devolution or confederation. Among others, a federal system provides a strict division of guaranteed powers and functions between the federal entity and its constituent parts, underpinned by a written constitution that is binding upon both federal and constituent units. Secondly, the power to amend the constitution for the purpose of altering, reducing or increasing the powers and functions allocated to the federal government and constituent subunits “must not be conferred upon the federal government acting alone or upon the state governments acting in cooperation...”⁹ An elaborate system of ‘super-majorities’ involving both levels of government is usually a prerequisite. Thirdly, an independent body such as a Supreme Court or a Constitutional Court is essential in the fair adjudication of disputes between the federal government and its

constituent units. Fourthly and very importantly, it is essential that the federal and constituent authorities have access to sufficient sources of revenue to enable them to fulfil their responsibilities.

Clearly, this conceptualisation of federalism is fairly restrictive and a strict interpretation of it would rule out some of the existing countries that are considered federal. India or Malaysia would be cases in point. Even South Africa's model of federalism may not meet a strict interpretation of some of the key conditions specified by Wheare. One of these conditions is the vesting of residual powers on the constituent units. South Africa's constitution vests residual powers with the centre. The other condition is the question of access to sufficient sources of revenue for the constituent subunits. South Africa's provinces do not have adequate independent local sources of revenue and are therefore dependent on central government for virtually all their funding needs. However section 214 (1) of South Africa's constitution does guarantee the provinces access to equitable fiscal resources raised nationally, thus ameliorating their situation somewhat. It needs to be stated though that Wheare did acknowledge that his definition of federalism was too strict and that countries may adopt a "modified federalism" to suit their circumstances, given that "federalism is not an end in itself".¹⁰

Other less restrictive perspectives on federal systems abound in literature. For instance, Mervyn Frost provides a broad characterisation of federalism as a system that fulfils three conditions: allocation of powers and functions to regional and central governments; representation of regions at the centre; and special majorities for any amendments affecting the division of powers and functions.¹¹ While this definition clearly classifies South Africa as a federal system, it does not sufficiently account for differences that exist between the different species of multi-tier governments, such as decentralised unitary states, devolved systems of government, confederation and consociation. Daniel Elazar characterises federalism as "a mode of political organisation which unites separate polities within an overarching political system so as to allow each to maintain its fundamental political integrity".¹² Elazar adds that this has to be done in a manner that protects the existence and authority of all the governments. Clearly it is implied here that a federal system is composed of separate and historically autonomous polities. The difficulty that arises is the extent to which South Africa's model of federalism could be regarded as a union of originally separate and historically autonomous polities that have been brought together under an overarching political system. In fact Elazar does not categorise South Africa's constitution as fully 'federal', and instead labels it as 'quasi-federal'. As will be discussed below, prior to 1994 South Africa was a single, unitary state that 'federalised' into separate geographical entities during the 1992-1994 constitutional negotiations. This is one of the features of South Africa's model of government that have prompted other scholars, like Elazar, to conclude that it does not fit the

definition of a federal polity. Various other scholars and commentators in South Africa have used concepts such as 'decentralised unitary system' or 'hybrid' to conceptualise the country's model of government, while others simply argue that the country's constitution contains many characteristics of a federal state.¹³

Ronald Watts attempted to bring some clarity to the South African theoretical analyses of the country's model of federalism in the early 1990s after the interim constitution came into existence. Watts warns that in practice there is an enormous variety and range of models of federal systems and that there is no single pure model that is universally applicable.¹⁴ He argues that existing federal systems display varying degrees of decentralisation and differences in the character of their central institutions. This applies even to long-standing and well-established federations such as the United States of America, Switzerland, Germany, Canada and Australia. Watts then provides an outline of what he calls a 'federal political system', making a distinction between 'federalism', 'federal political system' and 'federation'.¹⁵ He defines federalism as a normative concept used to refer to a political system that seeks to achieve both political integration and political freedom by combining shared rule on some matters with regional self-rule on others.

Ronald Watts's definition, to some extent, agrees with that provided by Elazar above. However Watts introduces more conceptual nuances than Elazar. He goes on to define a federal political system as a descriptive concept referring to a type of political organisation that makes provision for combined shared rule and regional self-rule. This concept, he argues, covers a range of political systems including confederations, federacies, unions, associated statehoods and federations. Therefore 'federation', according to Watts, is a subspecies of a 'federal political system'. It is a more specific term applicable to a small group of countries such as the United States of America, Switzerland, Canada, Germany and Australia. In terms of this conceptual framework, Watts carried out an in-depth analysis of South Africa's interim constitution of 1993 and characterised South Africa as a 'hybrid' federal political system. Kay Hailbronner and Christine Kreuzer adopted a similar position to Watts in their analysis of South Africa's interim constitution.¹⁶ In his 1999 book *Comparing Federal Systems*, Ronald Watts provides an analysis of the constitutions and political systems of several countries, including South Africa's current constitution that came into force in 1997. Watts maintains that the country's political system entails a mixture of federal and quasi-unitary features, concluding that South Africa's political system does belong to a group of political systems classified broadly as 'federal'. However, he argues that South Africa could not be included among the classic 'federations'.¹⁷ Therefore for the purposes of this study, South Africa's political system will be referred to as 'federal' in accordance with the conceptual framework put forward by Ronald Watts.

1.2.2. Brief History Of Provincial Government In South Africa

There are conflicting views in literature about the history of 'federalism' in South Africa. Some of the literature indicates that attempts were made as far back as the 1850s to form a federal state in South Africa by bringing together the four territories that then existed in South Africa into a unified and coherent system of government that preserved the institutional integrity and identities of the territories.¹⁸ Bertus de Villiers argues that in the aftermath of the Anglo-Boer war in South Africa, there was a strong political imperative to bring national and territorial unity out of the two British colonies of the Cape and Natal, and the two Boer republics of the Transvaal and Orange Free State.¹⁹ However a historically critical moment occurred in 1908-09 when a National Convention was held to discuss the idea of unifying the four territories into one country.

However, historical accounts in literature appear to differ somewhat regarding whether or not the purpose of the Convention was to establish some form of federal system of government or a unitary state that sufficiently preserved the institutional and political identities of the four territories. For instance Bertus de Villiers argues that this was an attempt to introduce federalism,²⁰ while Chris Tapscott argues that the 1908-09 Convention created a single sovereign state with a provincial system interposed between the national and local government layers.²¹ Nonetheless the goal of achieving national unity while preserving the perceived unique identities, characteristics and interests of the four territorial entities was central to the negotiations. The outcome of the 1908-09 Convention was that the two former British colonies of Natal and the Cape, and the two former Boer republics of the Transvaal and Orange Free State came together into what some commentators in South Africa seem to regard as a federal arrangement comprising four provinces. However the South Africa Constitution Act of 1909 that came into force in 1910, when the Union of South Africa was established, essentially created an independent sovereign unitary state.

The 1910 system was in operation until the new post-apartheid federal system of nine provinces was created in 1994. The period inbetween was characterised by various federal initiatives and proposals by a range of opposition groups and homeland politicians in South Africa. One of these initiatives was the Buthelezi Commission of the 1970s, spearheaded by Chief Mangosuthu Buthelezi. It led to the KwaZulu-Natal Indaba proposals in 1987 for the creation of a federal system of government in South Africa.²² However, all these initiatives came to nothing and were never part of the political mainstream, mainly because the ruling National Party rejected them. Also, the political leaders involved in some of the initiatives, particularly the homeland

politicians, lacked the necessary political support and popular legitimacy to force a negotiated constitutional solution upon the National Party government. This study will not delve at length into the 1992-1994 constitutional negotiations in South Africa and the respective views and positions of the various key political parties with regard to the issue of federalism. The positions and views of the various political parties were covered extensively in the large body of existing South African literature on the 1992-1994 constitutional negotiations processes.²³

On the face of it, the entire process of the 1908-09 constitutional settlement followed the conventional path in terms of which classical federal polities such as the United States of America, Canada, Switzerland and Australia were formed, which perhaps explains why some South African scholars perceived the outcome as a federal arrangement. Alfred Stepan labels this path the 'coming together' path to federalism as it entails a process of political negotiation and bargaining by separate and previously autonomous entities seeking to surrender part of their autonomy in return for collective security and economic welfare.²⁴ Implicit in such an arrangement is the division or sharing of constitutional sovereignty between the central state and its constituent units. However, even if the process involved in the 1908-09 Convention appears to follow Alfred Stepan's 'coming together' method, it is clear that the intended purpose and outcome were qualitatively different.

The four territories involved in the 1908-09 convention did not retain their independence. Instead they were incorporated into a fundamentally unitary polity, thereby surrendering their individual sovereignties to a single, constitutionally sovereign, central state. The four provinces did retain their institutional identities and were assigned important political, administrative and fiscal powers. However, these powers and functions were delegated rather than original and constitutionally entrenched.²⁵ Each of the four provinces had the power to make provincial ordinances on matters assigned to them, such as primary education, agriculture, hospitals, local authorities, direct taxation, provincial roads, nature conservation and aspects of horseracing. However these powers were not constitutionally entrenched, but were derived from ordinary national legislation. This meant that the powers were not constitutionally protected from encroachment by the central government and, as will be shown below, these powers were gradually whittled away in the 1970s and 1980s.

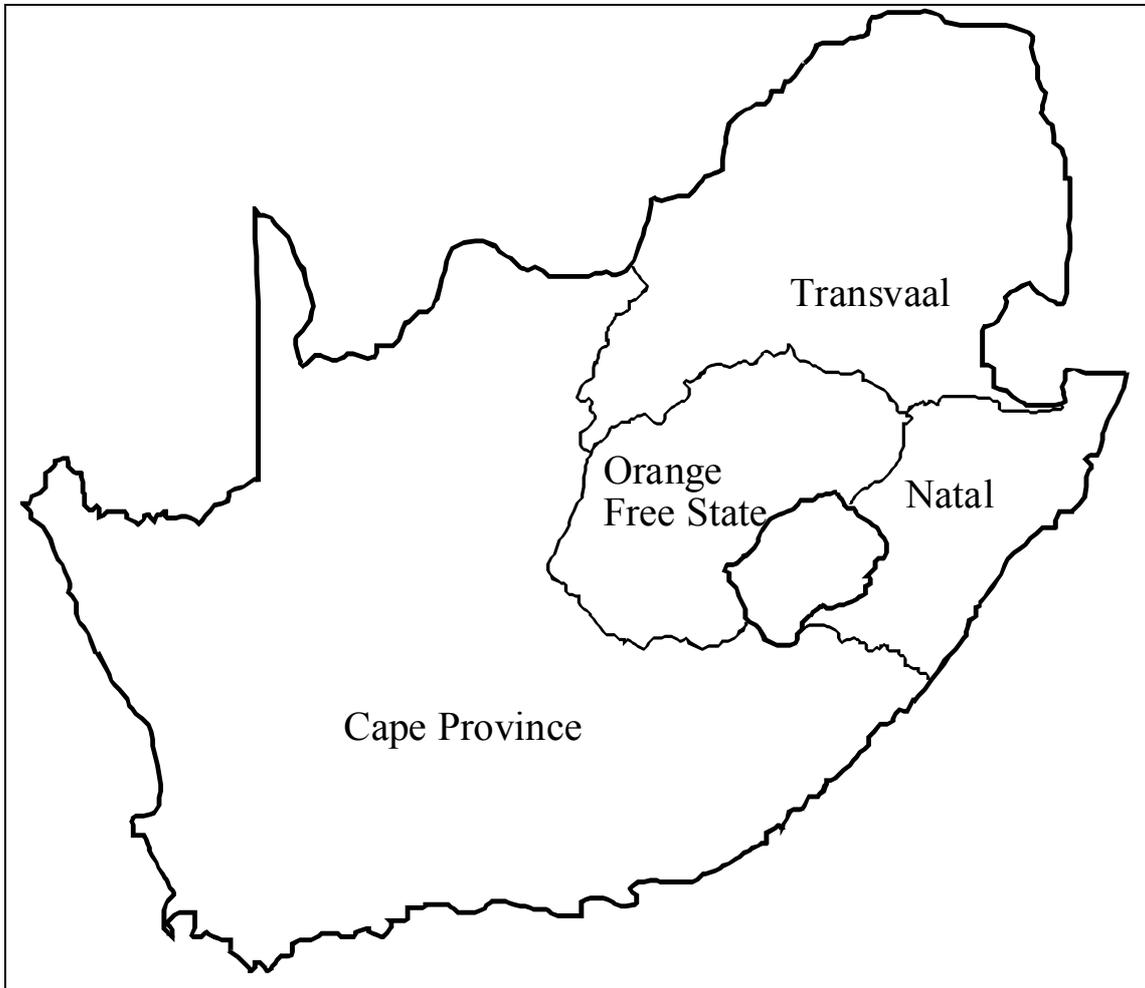


Figure 1: Map of the four pre-1994 provinces

As already indicated, despite the weak constitutional status of the pre-1994 provinces, some of the literature on federalism in South Africa appears to portray the outcome of the 1908-09 settlement as a putative federal arrangement.²⁶ In fact, some of the literature on federalism in South Africa and public debates leading to and during the constitutional negotiations of 1992-1994 held the 1910 settlement as a potential basis for negotiations for a federal system of government, or regional political autonomy with entrenched constitutional powers, in post-apartheid South Africa.²⁷ Also, Andre du Toit argues that the apartheid government's policy of separate development and the subsequent system of ethnically based homelands contained "federative elements".²⁸ Richard Humphries and Khehla Shubane argue that the pre-1994 provinces performed an important political function as they served as geo-political entities for expressing the unique characteristics and distinct political interests that had coalesced in the four provinces.²⁹ Humphries and Shubane also suggest that the retention of the four provinces in terms of the 1908-09 Convention went a long way towards satisfying some of the demands for a federal political system, especially the delegates of the Natal and Cape provincial administrations. This, they argue, served to secure the acquiescence of the pro-federalist lobby from the two former British colonies. However David Welsh acknowledges that from 1908-09 until the 1992-1994 constitutional negotiations, South Africa's system of government was essentially unitary in character, but "contained a few sops to the federal principle in the form of provincial councils and equality of representation in the Senate".³⁰ Welsh also points out that although South Africa does have significant regional identities, such identities did not coincide with the boundaries of the four pre-1994 provinces.

It has been briefly mentioned that the pre-1994 provinces went on to lose many of the important political, administrative and fiscal powers and functions under successive apartheid governments over the years. The reduction in the powers and functions, and the attack on the institutional integrity, of the pre-1994 provinces was carried out historically in two stages that started with the removal of their independent sources of revenue, followed by the removal of their legislative/political powers. As part of the first stage of this process, in 1957 the National Party government removed the right of the provinces to impose company taxes. For instance, the provinces had delegated powers over certain local sources of revenue, including fees from vehicle licensing, taxes levied on horseracing and fees from provincial hospital services. Many of these fiscal powers were revoked, thus rendering the provinces not only fairly dependent on central government, but also politically weak and vulnerable to further attacks from central government in the 1980s. These sources of revenue for the provinces were substituted by a system of national government grants to the provinces. Later in 1971, the provinces also lost their right to impose individual income taxes. This attack on the relative financial autonomy of the provinces served to

render them substantially dependent on central government transfers for a large proportion of their income.

The completion of the first stage set the scene for the second stage of the attack on the provinces. The second stage entailed a process of undermining the political, institutional and functional integrity of the pre-1994 provinces. As the National Party government began to restructure the apartheid state constitutionally and politically, particularly in an attempt to provide for some form of political representation for the Indians and Coloureds in the discredited Tri-cameral parliament of the early 1980s, the pre-1994 provinces were subjected to more changes that affected their powers and political status. The major change was brought about through the Provincial Government Act of 1986, which abolished the legislative powers of provincial executives and turned the provinces essentially into limited administrative institutions responsible for the so-called 'general affairs' matters. The previously elected provincial councils were dissolved and replaced by mere administrative structures whose office bearers were appointed by the national government. Also, the provinces were no longer responsible for a number of key policy functions such as primary and secondary education and some aspects of health and local government, which were placed under the so-called 'own affairs' administrations for coloureds, Indians and whites.

The important point here is that as the pre-1994 provinces had legislatively derived – rather than constitutionally entrenched – powers and functions, their institutional, political and legal integrity was inherently vulnerable to encroachment. This was compounded by their financial dependence on the central government after their fiscal powers were revoked. They could not therefore have been able to serve as mechanisms for promoting the interests of regional interest groups and as guarantors of the democratic rights of regional minorities, especially in the context of apartheid racial segregation policies excluding blacks from political participation in the national and provincial structures. It was this institutional and constitutional vulnerability of the pre-1994 provinces that had brought into sharp focus the importance of entrenching the division of constitutional powers and functions, and guaranteeing the institutional integrity of the provinces, in a future federal system of government in South Africa. As Bertus de Villiers argues, the heated 'federal versus unitary state' debates that characterised the 1908-09 Convention bore a striking resemblance to the 1992-1994 constitutional negotiations. They were both preoccupied with similar concerns about the issue of the distribution of constitutional powers and functions and guaranteeing the institutional integrity of the constituent units.

1.2.3. The Importance Of Federalism In A Post-Apartheid South Africa

Nowhere in its text does the current South African constitution make reference to the concept of 'federal' or 'federalism' to describe the model of government adopted. However, it is generally acknowledged that a federal system of government is implied.³¹ The implied rather than explicit statement about federalism in South Africa's constitution belies the intensive debates in literature, the media and in public on the need for federalism in a post-apartheid South Africa during the 1992-1994 constitutional negotiations. In particular, the extensive South African literature on federalism is replete with conflicting views about the suitability of federalism in a post-apartheid South Africa. Central to these conflicting views at the time of the constitutional negotiations was a fundamental tension between two political imperatives.

Firstly, there was a fundamental desire during the 1992-1994 constitutional negotiations to unify the country in the wake of the historic ethnic, linguistic and racial divisions as well as the socio-economic and political inequalities imposed by the apartheid state. On the one hand, there was a strong belief among some of the key role players, particularly the ANC and its allied organisations, that federalism would perpetuate and exacerbate these existing socio-economic and political divisions in a post-apartheid South Africa.³² On the other hand, the proponents of federalism in South Africa believed that the very same regional, linguistic, religious, ethnic, racial and other diversities in the country were precisely the reasons for the establishment of a federal system of government in South Africa. However as already pointed out above, South Africa was essentially a unitary state and therefore its post-apartheid federal system did not come about as a result of a 'coming together' process where previously sovereign geo-political territories surrender part of their sovereignty to form a federal system of government. Instead, the formation of South Africa's federalism followed a different logic – what Alfred Stepan calls the 'holding-together' path to federalism.³³ In this case a unitary state is essentially demarcated into geo-political entities, with the assignment of powers and functions to the sub-units as a way of holding the system together and preventing political disintegration. As Alfred Stepan points out, the establishment of federalism in India in 1948, Belgium in 1969 and Spain in 1975 followed a similar political logic.³⁴

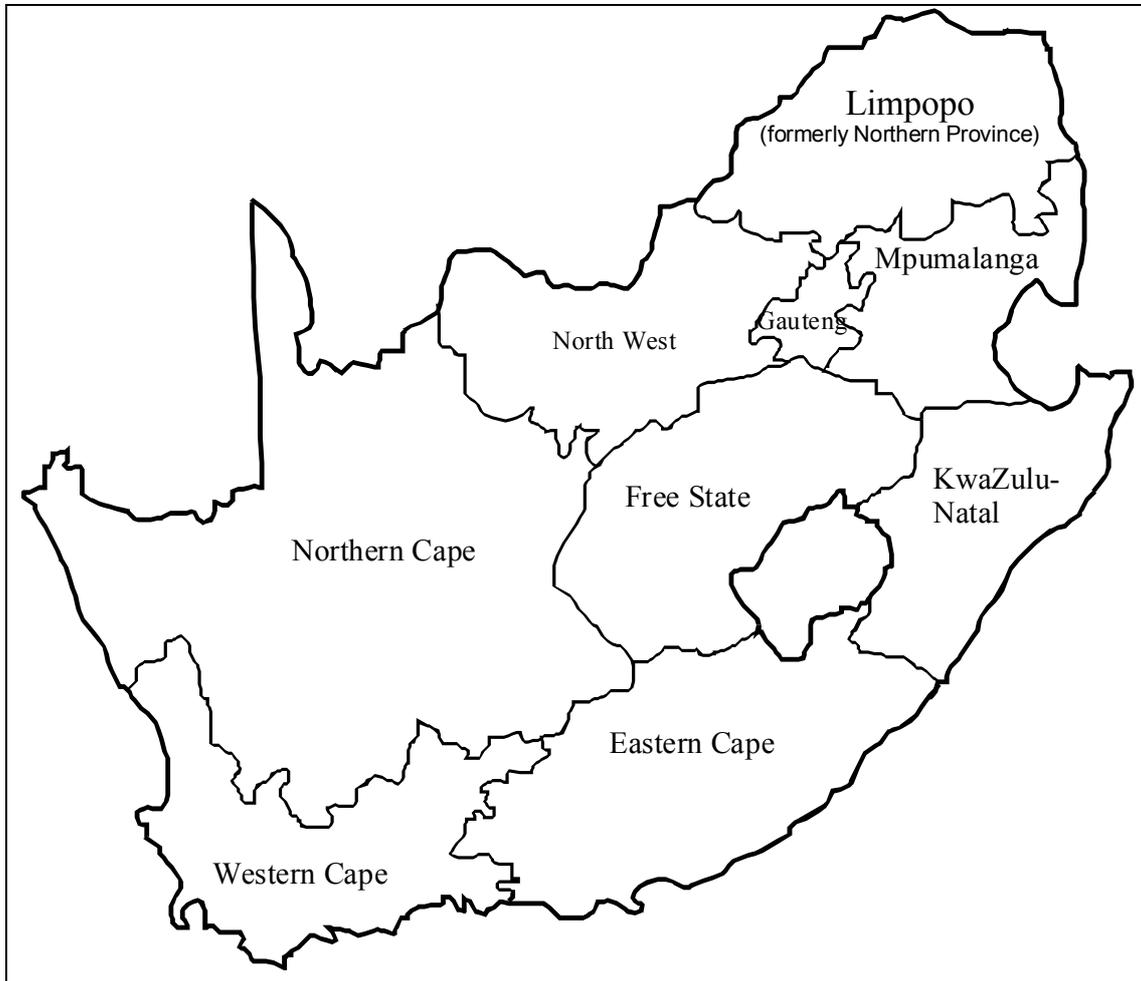


Figure 2: Map of the nine post-1994 provinces

It can be argued that the creation of the nine post-apartheid provinces followed the 'holding together' political logic, even if virtually all the provinces were artificially created and were not based on previously sovereign geo-political communities. Some of the current provinces do have large concentrations of certain ethnic/linguistic groups such as the Zulu in KwaZulu-Natal, Tswana in North West and Northern Cape, Coloured in Western Cape, Southern Sotho in Free State, Northern Sotho in the Northern Province and Xhosa in Eastern Cape. However there are various other ethnic and racial groupings sharing the same provincial boundaries with the major ethnic groupings, while others are spread across the country in different provinces. In other words the diverse ethnic, cultural, linguistic and racial groups in South Africa do not neatly coincide with geographic or territorial entities, and therefore the current provinces were not designed to serve as geo-political expressions of the diverse ethnic, cultural or racial groups in the country. Also, with the exception of the Inkatha Freedom Party (IFP) and its political mobilisation of Zulu nationalism in KwaZulu-Natal, and some small Afrikaner political parties pushing for a racially pure Afrikaner Volkstaat during the 1992-1994 constitutional negotiations, no ethnic and racial groupings in South Africa collectively sought the establishment of their own exclusive political institutions as part of the post-apartheid federal arrangement. Nonetheless some of the literature in South Africa did attempt to identify regional/territorial patterns in the distribution of the country's socio-economic, political and other diversities in arguments in favour of federalism in a post-apartheid South Africa.³⁵

The central challenge for South Africa was the creation of a post-apartheid political and constitutional settlement that acknowledged the country's cultural, linguistic, ethnic, racial, economic and political diversity, and to design appropriate institutions to manage the conflicts that often arise out of such diversity. Therefore the theme of federalism as a device for managing social and political diversity is also prominent in the literature.³⁶ Implicit in the idea of guaranteeing the country's social, political and economic diversity was the idea of protecting minorities within the country's political system and guaranteeing their access to political power, among other things, through regional political institutions. Alain-G. Gagnon argues that federalism serves as a conflict-solving mechanism and "as a shield for minority groups that would otherwise feel threatened".³⁷ However, during the 1992-1994 constitutional negotiations the ANC and allied organisations were clearly suspicious of federalism as a device for protecting minorities, especially given that some of the most vocal proponents of this view were the socio-economically privileged minority groups, especially the whites.³⁸

The ANC was apprehensive of federalism at least on two grounds. Firstly, the party had perceived a potential threat that federalism would be a tool or device for locking in political intransigence and entrenching apartheid-induced socio-economic privileges and inequalities in

the regions.³⁹ Secondly, the ANC saw federalism as the ‘thin end of the wedge’ towards national disunity and perhaps even political disintegration, especially given the history of divisions forged by previous apartheid regimes. These considerations were central to the ANC’s mistrust of federalism. However, literature on federalism argues that this system is the best means of guarding against national political disintegration. Canada, Nigeria and India are examples of countries where the federal principle was crucial in preventing political disintegration.⁴⁰ In fact although the South African literature does not clearly allude to this paradox, the ANC’s fear of political disintegration may have played a significant part in the party’s eventual acceptance of the necessity of some form of federal system of government in a post-apartheid South Africa. The dominant view in South African literature appears to be that the ANC’s acceptance of federalism was motivated merely by an instrumental conception of the usefulness of the provinces – that the country would derive developmental benefits from the creation of the regions or provinces.⁴¹

In terms of the creation of a federal system in a post-apartheid South Africa, it is clear that the lessons drawn from the experiences of the pre-1994 provinces could not be ignored. In fact some scholars argue that these prior experiences in provincial government weighed heavily on the discussions and processes preceding the creation of the post-apartheid provinces. For instance Jenny Robinson points out that the prior existence of the pre-1994 provinces, together with the homelands, and their experiences, played a key role in determining the architecture of the post-apartheid democratic political order.⁴² Richard Humphries and Khehla Shubane point to an important functional aspect of the pre-1994 provinces that may have had a bearing on the design of the post-apartheid provincial system. They point out that the pre-1994 provinces served as important administrative structures undertaking a range of critical functions. These functions included acting as regional agents for some of the ‘own affairs’ administrations for coloureds and Indians, as well as developmental responsibilities in the black residential areas.⁴³ In other words despite the abolition of their legislative and fiscal powers, the pre-1994 provinces were still serving as important instruments in the hands of central government. Humphries and Shubane believe that this was an important consideration that was not lost to some of the key protagonists during the 1992-1994 constitutional negotiations.

Humphries and Shubane also point to the fact that the pre-1994 provincial system was an important nexus point between the civilian welfare departments and the security apparatus of the apartheid state, discharging the government’s propaganda functions.⁴⁴ Jenny Robinson agrees with this, pointing out also that the pre-1994 provinces played a critical political role within the overall framework of the National Security Management System (NSMS) under the National Party government. Their involvement in the provision of infrastructure and local development in African residential areas (especially through the Regional Services Councils (RSCs)) was both a project for delivering developmental services to the disenfranchised as well as being part of a

broader strategic security programme aimed at undermining the growth of anti-apartheid forces in the black residential areas thriving in conditions of socio-economic deprivation and political exclusion.⁴⁵ However, the idea of the sub-national entities serving as instruments of central government is generally viewed with suspicion in the literature, mainly due to the perceived potential risks of loss of their political integrity and autonomy.

However the idea had many adherents, especially among the political parties in favour of a more centralised system of government in South Africa. For instance it appealed to the ANC, which was implicitly contemplating regional government institutions serving as administrative instruments fulfilling a range of functions on behalf of the central government. This was especially the case as the ANC gradually came to realise the potential practical advantages of regional or provincial institutions of government. For instance, Richard Humphries et al point out that the ‘view that regions should be seen more as tools for development’ was an important element that lay behind some of the internal discussions and debates within the ANC about the need for a provincial system of government.⁴⁶ The ANC and its alliance partners, including some of the other former liberation movements, also harboured an essentially instrumentalist view of the role of the provinces or regional institutions of government in a post-apartheid South Africa. This position emphasised the role of the provinces as subordinate agents of central government for the implementation of national policies and the welfare of citizens. The view was formally and publicly articulated by Kader Asmal as early as 1990 during the early stages of the negotiations process, in a conference paper titled ‘Decentralisation of a unitary state’. Asmal argued “administration must be moved to where people lived and worked”, but added that “this will be done by the delegation of the powers of the central authority to subordinate administrative units for the purpose of more efficient administration...”⁴⁷

Even after the new provinces were established under the 1993 interim constitution, with their guaranteed original powers and functions, the ANC still placed a great deal of emphasis on the role of the provinces as administrative agents of government. For instance, in a document released in 1995 titled ‘Building a united nation’, the party argued that the country’s problems were national, and required national solutions. It went on to say that “bringing government closer to the people primarily means bringing administration closer to the people”⁴⁸ This view contrasts fundamentally with the view supported by proponents of federalism in South Africa, including the constitution, that the provinces were essentially fully fledged democratic governments and political entities with full political and constitutional powers. The ANC maintained this basic position in a number of official policy documents and discussion papers which emphasised the need for a strong central government that could undertake any necessary policy initiatives throughout the country, including in the provinces, without much hindrance.⁴⁹

As will be argued later in this thesis, many ANC MPLs interviewed for this study in 2003 and 2004 were still endorsing the view that the provinces are administrative agents of the national government, even though not necessarily disregarding the political importance of the democratic representational role of the provinces. However, as the new provinces increasingly faced demands for effective administration of social policies and efficient delivery of social services in the mid-to-late 1990s, the instrumentalist view increasingly gained political importance and prominence. In fact, as will be argued in Chapter 2, the political salience of federalism as a political theme declined considerably in the mid-to-late 1990s as the provinces increasingly became targets for politicians impatient over administrative ineffectiveness and general lack of efficient service delivery at provincial level.

1.3. INSTITUTIONAL FRAMEWORK FOR PROVINCIAL GOVERNMENT IN SOUTH AFRICA

1.3.1. Division Of Powers And Functions

Unlike the pre-1994 provincial system of government, whose legal and political status depended on central government legislation, the post-1994 provinces are not only provided for in the constitution but were given original legislative and executive powers. Chapter 3 of the current constitution outlines a conceptual framework and defines a set of formal principles to govern the relations between the national, provincial and local spheres of government. For instance, the constitution states that the spheres of government are “distinctive, interdependent and interrelated”.⁵⁰ The use of the term ‘spheres’ in the current constitution is intended to convey a particular meaning of the importance of the individual layers of government, and the relationship between them. Given the country’s political history of dominant central governments and constitutional and legally subordinate provinces prior to 1994, the choice of the term ‘spheres’ seeks to invoke principles of ‘equality’ and ‘equity’ within the realm of intergovernmental relations in the post-apartheid era. After the 1992-1994 constitutional negotiations had decided firmly on the adoption of a provincial system of government with constitutionally entrenched powers, the choice of the term ‘spheres’ was intended to dispel any sense of constitutional hierarchy among the different layers of government in a post-apartheid South Africa. Traditionally the term ‘tiers’ is used to refer to separate layers of government in decentralised unitary systems, especially where sub-national entities are subordinate to the centre owing to lack of entrenched constitutional powers. Therefore the choice of the term ‘spheres’ as opposed to ‘tiers’ was intended to signal a new post-apartheid era of formal equality among the different layers of government.

The allocation of powers and functions between the spheres of government in South Africa became a contentious issue not only at the time of the constitutional negotiations, but also after the inception of the provincial system in 1994. Conflicts over the distribution of constitutional powers continued to affect relations between the provinces and central government well into the mid-to-late 1990s. The central but elusive objective that the policy makers sought to achieve was to ensure that the provinces exercise meaningful power while the central government retains its overall authority. However, for many commentators in South Africa, including the proponents of federalism, the key is for the provinces to exercise greater powers and more meaningful authority if they are to function as legitimate democratic governments. Under the current constitutional framework, the powers and functions of the provinces are enumerated in two schedules: Schedules 4 and 5. Schedule 5 provides a list of subjects over which the provinces have been allocated exclusive constitutional responsibilities and are allowed to legislate over. These are listed as follows:

- Abattoirs
- Ambulance services
- Archives other than national archives
- Libraries other than national libraries
- Liquor licensing
- Museums other than national museums
- Provincial planning
- Provincial cultural matters
- Provincial recreation and sports
- Provincial roads and traffic
- Veterinary services except regulation of the profession

In addition to these functional responsibilities, the provinces have the mandate to supervise and monitor the local authorities within their areas of jurisdiction in terms of Section 139 of the 1996 constitution. However, the constitution provides for the provinces themselves in turn to be supervised by central government through Section 100 of the constitution. The enumeration of the specific powers and functions of the provinces in the constitution was meant to serve as a constitutional 'check and balance' to enhance the security of the provinces with regard to their constitutional powers. However, the number of exclusive provincial responsibilities enumerated in Schedule 5 is fairly small, and these functions are insignificant in terms of their importance. In fact the largest number of functions, and the most important, are enumerated in Schedule 4 but

these are to be shared or exercised concurrently by the provinces and central government. Among the important ones are:⁵¹

- Education (excluding tertiary)
- Health services
- Welfare
- Environment
- Housing
- Industrial promotion
- Language policy
- Policing
- Cultural matters
- Public transport
- Regional planning
- Trade
- Tourism
- Urban and rural development

It is clear that by forcing the two spheres to share many important legislative and executive responsibilities, the current constitution strongly commits the two spheres of government to a cooperative framework of relations in exercising their competencies. The fact that the constitution does not clarify precisely how the sharing of concurrent responsibilities is to be exercised in practice makes intergovernmental cooperation and consensus-building imperative. However the effect of this has been that, because of its institutional and fiscal superiority, the central government has been able to set the parameters within which the division of competencies, especially the exercising of concurrent responsibilities, between the two spheres is implemented in practice. As discussed in Chapter 2, in practice central government has come to focus greater attention on policy formulation and law making at national level, with the understanding that the provinces participate in these national processes, while the provinces are mainly responsible for implementing these policies and for delivery of basic services to citizens. Therefore the tendency has been that in policy areas where no national policy or legislation exists, or the Constitutional Court has not yet provided any clarity through its judgements, the provinces have usually deferred their own actions until the national government takes action.

To underpin the cooperative framework of relations between the various government spheres, Chapter 3 of the constitution embodies the doctrine of 'cooperative governance'. This doctrine essentially mandates the spheres to collaborate in fulfilling their responsibilities.⁵² It states that the spheres of government are to respect each other's constitutional integrity, institutions, powers and status, "act in a manner that does not encroach upon the geographical, functional or institutional integrity of government in another sphere", and "cooperate with each other in mutual trust and good faith" by fostering friendly relations and refraining from taking their disputes to court. As already pointed out, the provinces are also guaranteed equitable access to the fiscal resources collected at national level. The problems arising out of the distribution of fiscal resources constitute the single most critical category of disputes in multi-sphere forms of government around the world.

The issue of the equitable division of fiscal resources between the centre and the province remains vexed in South Africa, where the central government retains a dominant fiscal position over the provinces as it controls virtually all the important sources of revenue. The provinces do have control over a few revenue sources of their own, although these are subject to national legislation. These include taxes on gambling at provincial level, vehicle licensing, liquor licensing, traffic fines and hospital fees. Since their inception in 1994, the provinces have constantly raised concerns over inadequate fiscal resources given that they are responsible for nearly 60% of all government expenditure while collectively raising less than 6.0% of their income from local sources. It can be argued that the framework of 'cooperative relations' elaborated on in Chapter 3 of the constitution underpins the dependence of the provinces on nationally raised revenues, as it obliges them to cooperate with the central government, including the funding of their activities. Therefore in order to enable the country to deal effectively with disputes arising out of the distribution of resources the constitution lays down a set of procedures for the equitable distribution of the fiscal resources. For instance, a set of constitutional provisions contained in Sections 214 to 216 provides a framework that governs the process of distributing these fiscal resources. Also, Section 214(1)(a) of the constitution states "an Act of parliament must provide for the equitable division of revenues raised nationally among the national, provincial and local spheres of government." The Intergovernmental Fiscal Relations Act of 1997 was promulgated for this purpose.

In addition, Section 220 of the constitution provides for the establishment of the Finance and Fiscal Commission (FFC) to make recommendations to the National Assembly and the provincial legislatures on the equitable division of revenues. The FFC therefore serves as a 'check and balance' mechanism for underpinning the financial security of the provinces. This division of revenues among the spheres has to take into account a range of circumstances, including the

central government's obligations, the national debt, the ability of provinces and local governments to provide basic services and perform their functions, the fiscal capacity of the provinces and local authorities, and the economic disparities among the regions.⁵³ In addition to the equitable share guaranteed to the provinces by the constitution, the national government may also provide conditional as well as unconditional grants, which serve as additional sources of revenue for the provinces. It can be argued therefore that the current constitution does go a long way towards providing more guarantees for the political integrity, operational autonomy and financial security of the provinces than was the case in the pre-1994 era.

However, despite these carefully crafted constitutional 'checks and balances', the constitution does contain certain critical features that guarantee the dominance of the central government over the provinces in terms of the current division of constitutional powers and functions. Firstly, the constitution allocates the legislative power to the National Assembly "to pass legislation with regard to any matter, including any matter within a functional area listed in Schedule 4".⁵⁴ This means that despite holding concurrent responsibility with the provinces over matters listed in Schedule 4, the National Assembly has the right to legislate relatively unrestricted on these matters. It is important to note also that the constitution specifies only those powers over which the provinces can exercise exclusive legislative and executive authority or hold concurrently with the national government. This means that the provinces cannot claim or exercise authority over any other matters unless expressly granted the power to do so by the constitution or national legislation.

The national government is not so restricted in the exercise of its powers. Theoretically, it can claim any power or function that it is not expressly forbidden to by the constitution or legislation. This is underpinned by Section 44(1)(ii) of the constitution which reserves the residual powers for the central government rather than the provinces, as is a traditional feature of classic federations. The residual powers are those powers and functions that the constitution does not explicitly allocate to any sphere of government. In theory and in practice this gives the central government potentially wide powers and therefore ample leeway to impinge upon the functional responsibilities of the provinces. In this way the centre could indirectly undermine the spirit, if not the protections built into the constitution to guard against any encroachments into the political and constitutional integrity of the provinces.

Secondly, the central government has the constitutional responsibility to make laws in terms of Section 44(2), amongst others, to maintain national security, economic unity, essential national standards, minimum standards for service delivery, and preventing actions by provinces that are deemed prejudicial to the interests of other provinces. Added to this is the 'necessary and

incidental powers' clause provided for under Section 44(3). This clause states that the national parliament may pass "legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4..." Depending on how it is interpreted, this provision also potentially widens the scope of the powers of the central government, giving it enormous undefined and unspecified legislative and executive powers, not only over those areas that it holds concurrently with the provinces but also, potentially, over those it can claim under its residual constitutional powers.

Thirdly, central government is provided with overriding powers, defined in Sections 146 to 148 of the constitution, over provinces in cases where conflict arises between national and provincial jurisdictions. This is an indication that contrary to notions of equality between the spheres of government, the constitution clearly places national legislative competence above that of the provinces. This is critical in the practical operation of the current system of government, particularly because the proponents of provincial autonomy usually place a premium on the operational independence of provinces on policy matters. Fourthly, as already alluded to, Section 100 of the constitution empowers the national government to supervise the provinces and to "intervene by taking any appropriate steps to ensure fulfilment" when a province "does not fulfil an executive obligation in terms of legislation or the constitution". This means that the national government may intervene and take over, under clearly defined conditions, the administration of an entire functional responsibility if a province fails to fulfil its obligations. On several occasions since 1994 the national government has been called upon to use this power of intervention in the Northern Province, Eastern Cape, KwaZulu-Natal and Mpumalanga.

Based on this discussion, it can be argued that the division of powers and functions between the provinces and the central government is significantly skewed in favour of the latter. This is despite the fact that in terms of current constitutional theory, the two spheres of government are considered equal. In practice there is an implicit hierarchy of authority between the centre and the provinces in South Africa.

1.3.2. South Africa's Integrated Federal System

As already indicated above, South Africa's federalism is not explicitly described or asserted in the constitution. It is assumed on the basis of two important founding principles outlined in the 1993 interim constitution – principles XIX and XXI – which are widely acknowledged to imply a federal system of government. For instance principle XIX states, "the powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions of other levels of government on an agency or delegation basis."⁵⁵ This principle clearly mandates a division of the constitutional powers and functions

between the spheres of government in a way that guarantees the integrity of the sub-national units of government. Importantly though, principle XXI incorporates the idea of subsidiarity, which many proponents of federalism in South Africa regard as absolutely essential in underpinning a federal system of government in a post-apartheid dispensation. It states “the level at which decisions shall be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the constitution to do so”.⁵⁶

However the current constitution which came into force in 1997 places a great deal of emphasis on interdependence and integrated approaches to governmental processes in the mould of the German federal system rather than the independent and competitive federalism as entailed in other models such as the United States of America, Canada or even Brazil. This emphasis on interdependence and cooperation is underpinned by the shared nature of the major competencies enumerated in the constitution and the inevitable overlapping areas of responsibility that this implies. Richard Simeon argues that South Africa’s constitutional framework creates a highly ‘integrated model’ as opposed to a ‘divided model’ of federalism.⁵⁷ A ‘divided model’, often referred to in literature as ‘dual federalism’,⁵⁸ entails “separate, independent sets of political institutions...which interact with each other through bargaining, which often looks more like the relations among independent countries than the interactions among component elements of the same political system”.⁵⁹ Simeon argues that this model of multi-sphere government is generally characterised by political, institutional and fiscal independence that is constitutionally entrenched. He identifies Canada as an example of dual federalism or a ‘divided model’ of a multi-sphere government. The implementation of the interim constitution from 1994 to 1997, and particularly the hostile relations between the provinces and central government at the time, had displayed some of the key characteristics of a divided or ‘dual federalism’ model. As will be discussed in Chapter 2, the relationship between the centre and the province was characterised by constant hostility and acrimonious disputes over the functional division of labour and other constitutional issues.

In contrast to divided or dual federalism, the ‘integrated model’, alternatively referred to in literature as ‘cooperative federalism’,⁶⁰ is characterised to a very large extent by a fusion or sharing of legislative, executive and fiscal responsibilities. This in turn obliges the central government and the constituent units to “integrate and pull together central and provincial politics at all levels”.⁶¹ The institutional expression of an integrated or cooperative model of federalism is the development of intrastate or intergovernmental structures and processes that place a great deal of emphasis on consensus, coordination and cooperation between the spheres of government. Germany is a primary example of this model.⁶² Incidentally, the German model

of federalism played an important role in influencing the design of South Africa's federal system, especially through the ANC, during the constitutional negotiations of 1992-1994.

Some of the aspects of an integrated or cooperative model of federalism derived from the German model were translated into key features of the South African system. One of these features is the National Council of Provinces (NCOP). It is modelled along the lines of the second house of the German federal parliament (the Bundesrat), which represents the interests of sub-national governments (the German Länder or states) in federal/national policy-making institutions. Chapter 3 of the constitution is also influenced largely by lessons drawn from the German model.⁶³ Through this chapter, the current South African constitution strongly mandates an integrated or cooperative framework of relations among the spheres of government, especially through its emphasis on the notions of consensus, interdependence, cooperation and mutual assistance among the spheres. However Richard Simeon points out that there are risks in an integrated model of federalism. For instance, while the overlapping areas of competence of the spheres of government strengthen interdependence and integration, it also poses the problem of lack of clarity on the practical division of responsibilities.

However, as already pointed out, the provinces have responded to this problem largely by avoiding matters of policy where no national policy and legislation exists, or where no Constitutional Court interpretations and rulings have been made to provide greater clarity. Another way of dealing with the practical problems arising out of a constitutionally induced sharing or fusion of functional responsibilities was the division of labour between the central government and provinces, in terms of which the former focuses its attention predominantly on making policy and providing framework legislation, while the latter largely administers these policies.⁶⁴ This type of division of labour does not, however, mean that the legislative powers of the provinces are rendered irrelevant.

1.4. METHODOLOGY AND APPROACH

The methodology of performance assessment of government institutions is complex and often controversial. There is no universally agreed upon set of criteria for carrying out this task. Various scholars and commentators have resorted to using a range of approaches, such as examining and analysing the distribution of powers and functions, proportions of expenditure by different levels of government, as well as revenue allocation in relation to service delivery output as performance indicators. For instance, in his seminal study assessing institutional performance of regional governments in Italy, Robert Putnam argues that institutions of representative government should be assessed in terms of the way they deal with the demands of their constituents regularly (i.e. responsiveness) and the way they act efficaciously upon these

constituency demands (i.e. effectiveness) in conducting the public's business.⁶⁵ In other words, Putnam defines effective institutional performance in terms of institutions of representative government acting efficaciously upon the demands of their constituencies. This is precisely the challenge facing South Africa's provincial governments.

Other scholars have also adopted approaches broadly similar to Putnam's. For instance, in their study of decentralisation and institutional performance in selected countries in South Asia and West Africa, Richard Crook and James Manor used a set of indicators to examine and analyse institutional performance.⁶⁶ These included examining the extent, nature and quality of citizen participation in regional level institutions of representative government, examining and analysing the nature of internal processes of governance (i.e. transparency, consensus-building activities and consultative activities), assessing the responsiveness of regional institutions of representative government to public demands for services, as well as assessing policy outputs and services provided by these institutions.

Carley Michael adopts a slightly different approach to institutional performance assessment in that here the constraints preventing institutions from performing their functions effectively are identified and examined.⁶⁷ These constraints often include lack of adequate fiscal and human resources, lack of political will, ineffective leadership and institutional/administrative infrastructure. This has been the dominant approach adopted in many commentaries and other academic writing on the South African provinces in the recent past. For instance in his book *Politics in South Africa*, Tom Lodge takes a broadly similar approach in a chapter on regional government.⁶⁸ So do other writers and commentators such as David Pottie,⁶⁹ Roger Southall⁷⁰ as well as Chris Tapscott and Robert Cameron.⁷¹ Also, official government studies that have been carried out to assess the performance of the provinces in the past have identified and examined a range of constraints impeding facing these institutions. These official studies include the Public Service Commission provincial review study of 1996-1997⁷², which examined and reviewed administrative structures and performance at provincial level. Another study was carried out, virtually at the same time as the Public Service Commission study, by the Presidential Review Commission set up by former president, Nelson Mandela, to look into institutional performance and matters of effective governance at national and provincial levels.⁷³ This study will draw on all these studies to assess the performance and effectiveness of the provinces.

As Putnam argues, governments are faced with a range of important responsibilities. Firstly governments have political responsibilities in terms of mediating the conflicting political demands from citizens, as well as formulating policies and laws to deal with these demands. Secondly, governments have social and administrative responsibilities. This involves spending

public funds to administer basic social services, implement policy programmes and promote development. South Africa's nine provinces are constitutionally mandated to fulfil all these responsibilities. Therefore an assessment of provincial institutional performance needs to take this into account. The focus of the study will therefore be on the system of provincial government in South Africa in general, examining in depth how the provinces have functioned as they carried out their responsibilities during the 1994-2004 period. In addition, two provinces will be used as in-depth cases to enable a more focused study of specific institutions of provincial government and their performance during the period specified. The Gauteng and Mpumalanga provinces were chosen for this purpose. It is hoped that the experiences of the two provinces will provide valuable lessons and in-depth insights into the challenges of governance that face South Africa's provinces regularly.

The choice of the two provinces was based on a number of considerations. Firstly, commentators, the media and general public debates regularly referred to two provinces during the 1994-2004 period as examples of 'success' and 'failure' in effective governance, with Gauteng widely viewed as a success and Mpumalanga as a failure. Secondly, the two provinces have been ruled by the same party, the ruling African National Congress (ANC) since their inception in 1994. This will help in examining and analysing the impact on provincial governance of the qualitative differences in political leadership and styles of conducting government as found in the different provinces in South Africa, even under the same political party.

Thirdly, the two provinces are vastly different from each other in terms of economic development levels, size of population, demographic profiles, political histories and institutional legacies. Gauteng is one of the two richest provinces in the country (with Western Cape), while Mpumalanga is one of the more impoverished provinces. There is no doubt that such socio-economic differences do play an important part in the differential institutional performances and effectiveness at provincial level. Finally, the choice of the two provinces as case studies was greatly influenced by their close geographic proximity to each other, which has enabled them to borrow from each other and to share common experiences of governance over the years. This proximity to each other was also a benefit to this study, in that the costs of travelling between the two provinces, during the fieldwork phase of the study, were minimal.

The materials for this study were collected through a number of research methods. Firstly, in-depth interviews were conducted with members of the Gauteng and Mpumalanga provincial legislatures, between 2002 and 2004. A small number of additional interviews were also conducted in 2005. During the same period, interviews were also conducted with the support staff in the two legislatures, especially committee coordinators and researchers. Many respondents were keen

to be interviewed and volunteered much information about the functioning and the political dynamics inside the provincial institutions of government in the two provinces. However in some cases, respondents were reluctant to be interviewed for political reasons, or often agreed to be interviewed on condition that statements they made were not directly attributed to them in the thesis. Therefore throughout this thesis, care is taken not to reveal the identity of certain informants, especially in instances where the views expressed are potentially sensitive and may risk unpleasant political consequences for the informants concerned. The in-depth interviews were vital in providing deeper understanding of the experiences and functioning of the provincial institutions of government in the two case studies.

Secondly, two opinion surveys of members of provincial legislatures and senior public servants from all the nine provinces were conducted between 2002 and 2003.⁷⁴ The survey of MPLs was conducted first, and it provided important insights into the opinions and experiences of MPLs on a range of questions relating to, among other things, the capacity and effectiveness of provincial legislatures in fulfilling their responsibilities as oversight structures. A total of 430 closed-ended questionnaires was mailed or faxed to all provincial MPLs in the nine provinces, with 81 completed questionnaires returned – constituting an 18.8% response rate. In the survey of senior public servants, a total of 92 opinion questionnaires was mailed and faxed to heads of department in the nine provinces, with 48 (52.1%) of them completed and returned. The opinion survey of senior public servants was also important in providing insights into their perceptions of public servants regarding the relationship between provincial legislature and provincial executives, including the perceived effectiveness of provincial legislatures as oversight structures. In addition to the opinion survey of senior public servants, attempts were made to conduct in-depth interviews with selected heads of department in Gauteng and Mpumalanga in 2003 and 2004, in order to gain greater insights into the survey material. However many senior public servants in the two provinces were reluctant to be interviewed. Only three heads of department in Gauteng were willing and agreed to be interviewed.

Thirdly, a variety of existing primary and secondary research material was utilised as sources of information for this study. For instance, existing interview notes and transcripts from previous research projects conducted with MPLs, researchers and support staff in the Gauteng and Mpumalanga provincial legislatures were utilised. These materials had been obtained between 1996 and 2000 as part of various research projects undertaken at the Centre for Policy Studies in Johannesburg, where the author worked as a researcher. These materials remain not only relevant but also extremely useful to this study in providing insights into the developments and experiences of the provincial institutions of government in Gauteng and Mpumalanga at the time when such institutions were still relatively new. They also complemented the recent in-depth

interviews conducted as part of this study. A wide range of secondary sources were also used, including books, research reports, journals and periodicals, newspaper articles, government reports, policy documents, memoranda, official recordings of (Mpumalanga and Gauteng) legislature debates and other official documents.

1.4.1. Research Studies On Provincial Government In South Africa

There is an extensive body of literature and academic commentary on South Africa's federalism and, in particular, its system of provincial government. The largest section of this literature provides intensive analysis and commentary on the country's constitution making processes and the negotiations that took place in Kempton Park, Johannesburg, between 1992 and 1994. However there is increasing academic writing and commentary, especially in academic journals and periodicals, focusing on the provinces and how they have carried out their responsibilities over the years. This work is also extremely important and valuable in generating greater knowledge about provincial government in South Africa. However there is still limited, although growing, primary research being conducted on the South African provincial system and its institutions of government. This work provides valuable empirical examination and analysis of the functioning of the provincial system, the problems experienced, successes, failures and future prospects.

For instance, as already indicated, the Public Service Commission undertook a study between 1996 and 1997 to review the performance and effectiveness of all the nine provincial administrations.⁷⁵ This was an empirical study based on a series of in-depth interviews with senior administrative officials across all the nine provinces. The study produced nine individual provincial reports and an overall synthesis report, which were widely publicised and provided extremely important findings about the problems affecting public service administration in the provinces. However the study only looked at the functioning and effectiveness of provincial public service and administrative structures, and not the legislatures. Similarly, the Presidential Review Commission (PRC) set up in 1996 by former president, Nelson Mandela, conducted an empirical study to review the effectiveness of processes of governance in South Africa. In addition to studying national government departments, the Commission also studied five of the nine provinces and produced its report in 1998.⁷⁶ Its findings were widely publicised and were valuable in revealing the deplorable state of public administration in some provinces. The study was confined to public administration issues, and did not examine provincial legislatures.

However a small number of empirical studies, which provided an examination and analysis of legislative institutions, has been produced over the years, providing valuable insights into the performance and effectiveness of provincial legislatures. For instance, Christina Murray and Lia

Nijzink produced a book on legislative institutions in South Africa in 2002, based on empirical research in the provinces.⁷⁷ The study examined the functioning and effectiveness of legislative institutions in South Africa, at national and provincial level, drawing on in-depth interviews conducted with MPLs from several provincial legislatures. Also, the Centre for Policy Studies in Johannesburg has conducted a number of research projects on the provinces in the 1990s and early 2000s, dealing with various aspects of the provincial governments and legislatures.⁷⁸ This research work has also been useful in contributing towards greater knowledge and understanding of South Africa's young provincial system of government. However, more empirically based research work is needed on the provinces, particularly as the system continues to evolve and develop. This study provides an examination and analysis of the performance and effectiveness of provincial institutions of government, both the legislatures and the executives, between 1994 and 2004. It is hoped that the research findings presented in this thesis will also help enrich this small but increasing body of empirical research work on South Africa's provincial system and its institutions of government.

1.4.2. Analytical Framework

Drawing from some of the existing studies and current approaches to evaluating institutional performance, this enquiry utilises a three-dimensional framework⁷⁹ to assess the institutional performance of the provinces between 1994 and 2004. The three dimensions of the framework are 'democratic/political effectiveness', 'legislative/law-making effectiveness' and 'administrative effectiveness'.

Democratic/political effectiveness: The purpose here will be to examine and analyse the activities of provincial legislatures with particular focus on two areas. Firstly an examination and assessment of their representational effectiveness will be carried out. Provincial governments were established to bring government closer to the people. One of their most critical functions therefore is to provide effective representation of citizens at regional level as individuals or as members of organised social and political groupings seeking to engage in the affairs of government. Also, to enhance the quality and effectiveness of political representation, the legislatures are obliged to take active and concrete steps to promote regular interactions between citizens and elected public representatives. Promoting greater public participation in policy making and other processes of government at provincial level is an important element of this process. The functioning of the internal mechanisms and processes of the provincial legislatures intended to promote public participation in policy-making processes, and the effectiveness of these mechanisms, were examined and assessed in depth.

Secondly, as part of their representational functions, provincial legislatures are mandated to monitor and oversee the activities of provincial departments and other agencies to ensure that they meet the needs of citizens for social goods and services. For instance, Section 114(2) of the current constitution provides for provincial legislatures to set up mechanisms “to ensure that all provincial executive organs of state in the province are accountable to it, and to maintain oversight of the exercise of provincial executive authority in the province, including the implementation of legislation; and any provincial organ of state”. The functioning and the effectiveness with which the internal mechanisms of oversight of the provincial legislatures carried out their activities were examined and evaluated in depth during the study.

Legislative/law-making effectiveness: This dimension of the framework looks at the capacity of provincial legislatures to engage effectively in legislative processes, especially the making of provincial laws. This essentially includes examining the extent to which provincial legislatures engage in the actual process of law making, and extent to which they have the necessary institutional capacity to initiate and draft ordinary bills. For instance, Section 104(1) of the constitution states “the legislative authority of a province is vested in its provincial legislature, and confers on the provincial legislature the power...to pass legislation for its province with regard to any matter within a functional area listed in Schedule 4; any matter within a functional area listed in Schedule 5; any matter outside those functional areas and that is expressly assigned to the province by national legislation and any matter for which a provision of the constitution envisages the enactment of provincial legislation”. The ability of the provincial legislatures to participate in law-making activities at national level, through the National Council of Provinces (NCOP), is an important aspect of provincial legislative activity. However, this area will only be dealt with indirectly and to the extent that it has any bearing on the ability and effectiveness of provincial legislatures to engage in the law making activity. The central focus will therefore be on the processes of making provincial legislation, the ability of legislatures to engage effectively in such processes and the type of outputs resulting from these processes.

Administrative effectiveness: Provincial institutions of government are not concerned only with fulfilling democratic/political functions and responsibilities at sub-national level. They are also responsible for managing social policies and programmes and for delivering social services to their citizens. For instance Section 125 (2) of the constitution vests in the premier and the provincial executive council the authority and responsibility to implement provincial and national legislation within the functional areas listed in Schedules 4 and 5 of the constitution. This aspect of the framework therefore looks at and examines the extent to which the provincial public administrations have been able to fulfil their administrative and service delivery responsibilities, thereby responding to and meeting the needs of their citizens efficaciously. In particular, it looks

at the challenges that the provincial administrations faced during the early part of the 1994-1999 period when establishing their new public service structures, and how these structures functioned. Some examples of specific policy programmes are used throughout the thesis for the purpose of an in-depth examination and analysis of some of the key constraints and challenges facing provincial administrations. This aspect of the framework also examines the policy programmes of the two provincial administrations used as case studies to understand how the provinces responded, through policy making processes, to the needs of their citizens.

1.5. STRUCTURE AND OUTLINE OF THE CHAPTERS

This thesis is arranged in eight chapters. The first three chapters focus attention on the broad subjects of federalism and the system of provincial government in South Africa. The next four chapters deal with the two in-depth case studies of Gauteng and Mpumalanga, with the last chapter serving as a conclusion. The current chapter has provided a background discussion on the history and experiences of federalism in South Africa, as well as an examination of the country's model of government using current literature on federalism. Chapter 2 examines and analyses the evolution and development of South Africa's system of provincial government between 1994 and 2004. In particular, it looks at the extensive constitutional, political and technocratic/managerial reforms to the system that were implemented during that period and discusses the significance and implications of these reforms for the future of the provincial system of government in South Africa. Chapter 3 examines and evaluates the functioning and effectiveness of provincial governments in general between 1994 and 2004, using the analytical framework outlined above.

Chapter 4 and Chapter 5 deal with the first of the two case studies – the Gauteng province. Chapter 4 evaluates the functioning and effectiveness of the Gauteng provincial legislature as an elected representative body and an oversight structure. The chapter examines the effectiveness of the Gauteng legislature in terms of its democratic/representational, oversight and law-making responsibilities. Chapter 5 looks at the Gauteng provincial administration and, in particular, discusses the process of establishing of the province's public service and administrative system since its creation in 1994. Chapter 5 also examines the functioning of the provincial administration in terms of fulfilling its policy implementation and service delivery responsibilities between 1994 and 2004. Chapter 6 and Chapter 7 deal with the second case study – the Mpumalanga province. Chapter 6 examines the functioning of the Mpumalanga provincial legislature, while Chapter 7 looks at the Mpumalanga provincial administration, adopting the same approach as in Chapters 4 and 5 respectively. Chapter 8 provides the conclusion to the study and also discusses the future prospects of provincial government in South Africa.

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⁷⁴ Before the questionnaires were sent to all the provinces, a small number of them were pilot-tested among a small number of MPLs in the Free State province. The survey questionnaire for senior public servants was also piloted on a group of fellow colleagues and researchers at the Centre for Policy Studies where the author was working as a senior researcher. Valuable comments were obtained, which were used to modify the questionnaires before being administered on the large samples of respondents

⁷⁵ RSA (1997), The Provincial Review Report, (Report of the Public Service Commission, August)

⁷⁶ RSA (1998), Developing A Culture of Good Governance, (Report of the Presidential Review Commission on the reform and transformation of the public service in South Africa, 27 February), column: 1.6.5

⁷⁷ Christina Murray & Lia Nijzink (2002), *Building Representative Democracy: South Africa's legislatures and the constitution*, (European Union Parliamentary Support Programme)

⁷⁸ See for instance, Thabo Rapoo, Richard Humphries & Jens Meierhenrich (1997), *Democracy In-Action: democratic institutions and policy making capacity in Gauteng*, (Centre for Policy Studies, Research report no. 53, April); Thabo Rapoo (1997), *Kwa Re Tswang Go Gauji (The long road ahead): democratic institutions and policy capacity in the North West province*, (Centre for Policy Studies, Research report no. 58, October); Thabo Rapoo, Caroline Kihato, Zondie Masiza, Malachia Mathoho, Mcebisi Ndletyana & Libhongo Ntlokonkulu (2000), *The Committee System In The Gauteng Provincial Legislature: an assessment and recommendations for improvement* (Centre For Policy Studies, report commissioned by the Gauteng provincial legislature, May); Thabo Rapoo and Louise Stack (1999), *Institutional Needs Assessment: Mpumalanga province*, (Centre for Policy Studies, research report commissioned by the Japanese International Cooperation Agency (JICA))

⁷⁹This framework is based on a modified version of the framework used by Richard Simeon and Christina Murray (2001), 'Multi-sphere Governance in South Africa: an interim assessment', in *Publius (The Journal Of Federalism)*, vol. 31, no. 4, pp. 65-92.

CHAPTER 2: SETTING THE SCENE – KEY DEVELOPMENTS IN THE SYSTEM OF PROVINCIAL GOVERNMENT*

South Africa's current system of government was adopted to serve a number of important purposes. It provides a constitutional framework or a set of constitutional parameters within which to deal with the country's unique socio-economic and political problems created by the previous apartheid system of government. The socio-economic problems included the country's legacy of racial inequality that created the spatial underdevelopment and therefore the historical imbalances among different sections of the population in their access to wealth and social services. The political problems to be addressed by the new constitutional arrangement were varied in nature. One of the key challenges was to bring about political equality and a guarantee of basic human rights for all citizens, at the same time dispersing political power to decentralised constitutional entities of the state in an attempt to deal with political divisions and tensions among various social and political interests over the division of constitutional power in South Africa. Therefore, on the one hand the form of state adopted in South Africa was intended to allay the fears and anxieties about a dominant central government of some social and political groupings that controlled the apartheid state and various entities within it prior to 1994, while on the other hand reassuring the former liberation movements, especially the ANC and its allies, that the dispersal of constitutional power does not weaken the central state and disable it from undoing the socio-economic and political legacies of the past.

These two sets of political imperatives – assuaging the fears and suspicions of former rulers about a strong and overbearing central state, and those of the former liberation movements, that too much dispersal of political power and authority to constituent units of the state would emasculate the authority of the central state and undermine its ability to make effective interventions at regional and local levels to address the historically skewed relations between different social groups and resource allocation in society¹ – are at the centre of the current system of government and how it functions. Therefore the ability and capacity of the new political system to mediate these critical tensions effectively would be one of the key indicators of its success. As already indicated, this study focuses on how the provincial system of government in South Africa has functioned in practice over the last decade and in particular, how it has dealt with some of the socio-economic and political challenges that led to its adoption in 1994.

Whether or not the new constitutional order, and the current system of provincial government is dealing with these socio-economic and political challenges effectively is a central point of contentious public debates. In addition, new challenges and questions have emerged during the

past ten years, mainly regarding the way the political system has operated in practice. One of these challenges is the question of whether or not the provinces have played their proper role in the current political system as fully-fledged, elected political entities and democratic institutions of governance that are accountable to their citizens. There have been public debates over the last number of years about the future of the provinces, stemming mainly from differences regarding this question. For instance, almost a year after the inception of the current provincial system of government in 1994, questions were already being raised about whether or not the provinces were performing their tasks effectively² as well as functioning effectively as democratic political entities in their own right, rather than as adjuncts of the central state. Such debates have become more intensive as the system of provincial government has become more entrenched.

The importance of debating the future of the provincial system of government in South Africa and its proper role in the broader political system cannot be overemphasised, given the fact that a very large proportion of the national budget (nearly 60.0%) is spent at provincial level, mainly in implementing national and provincial social policy programmes, as well as delivering a wide range of critical social services such as housing, education, health care and social welfare. In addition, a large proportion of the country's public servants (about 70%) are located at provincial level, taking up a large chunk of public funds.³ On the face of it therefore the provincial system of government in South Africa appears to be central to the country's political system in that the country currently spends a large proportion of its resources maintaining the provinces while at the same time relying heavily on them to implement some of the most essential social policy goods and services to citizens. Tom Lodge points out that "most government in South Africa today is regional,"⁴ and goes on to add that "when people give judgements about the government's success in making a better life for them, they are evaluating, mainly, the performance of regional administrations."⁵ Therefore in theory, provinces appear to fulfil a strategic and instrumental role of delivering on the country's social policy agenda, while also fulfilling important political imperatives within the country's system of government as argued earlier. However in practice, questions are constantly raised about the operation of the current provincial system of government, suggesting deep dissatisfaction among key role players about its effectiveness. This has fuelled more questions and debates about the future of the provincial system of government and its proper role within the country's political system.

This chapter will focus on developments within the practice of provincial government in South Africa over the past decade (1994-2004) as a way of outlining the context within which provincial governance has occurred, tracing some of the key issues and developments, not only in public debates but also in the way the system has performed or operated in practice. The chapter will classify and discuss these developments in three distinct periods: 1994 -1997 and 1997-1999, the

first period of provincial government, and 1999-2004, the second period of provincial government. It is argued that some of the major developments in the politics and practice of governance, including the key debates about the role and future of the provincial system of government in South Africa, coincided with these three periods. The chapter ends with an in-depth discussion and analysis of the different schools of thought in South Africa about the future of the system of provincial government.

2.1. PROVINCIAL DEMANDS FOR GREATER POWERS AND REFORMS (1994-1997)

One of the key issues that prompted early controversies and debates about the future of the current system of provincial government was the seeming lack of clarity over the proper role and political status of provinces within the broader system of government in South Africa. Much of the earlier public debates on this issue were essentially underpinned and therefore fuelled by general confusion and lack of understanding among many members of provincial legislatures, including the nine provincial premiers, about the proper role of provincial institutions of government. Earlier on, at the beginning of the operation of the system, the preoccupation of many observers and analysts in general public debates with whether or not South Africa was a federal or unitary state, helped focus some of the criticisms levelled against the early performance of the provinces. In addition to commentaries about lack of clarity on the role and political status of the provinces, questions and concerns were also being raised about the ability and capacity of the provinces as political entities to hold their own politically and constitutionally in the face of a clearly dominant central government. In other words, a clear dominant-subordinate relationship was to take shape between central government and the provinces during the first two years of provincial government. The national government was taking full advantage of this general uncertainty over the role of the provinces to strengthen its position within national policy processes, reinforced by its dominant fiscal position over the provinces. This was already prompting many commentators to question not only the essence, but also the future, of the entire experiment in decentralised government in South Africa.

The central issue that the constitutional negotiations of 1992-1994 had attempted to resolve, through the decentralisation of some constitutional powers and authority to the provinces, was the conflicting conceptions held by the various political elites of the ideal locus of power, and what this should seek to achieve. The transition from the previous political era, characterised as it was by centralised conceptions of authority, power and purpose, to a new post-apartheid political system had to lay down constitutional parameters within which to institutionalise the resolution of conflicts between two dominant political value systems: a centralised one emphasising nation-

building, national reconstruction and unity, and an alternative political value system putting more emphasis on local and communal self-expression, self-administration and decentralisation of political and economic power to the local levels.

These two value systems, broadly defined, articulated the contrasting approaches of the former liberation movements led by the ANC on the one hand, and the former ruling National Party and other political formations with similar ideological orientations on the other. These were the contesting approaches during South Africa's constitutional negotiations of 1992-1994. The outcome of this conflict of political value systems was a constitution decentralising significant powers, functions and political authority to the provinces, while reserving constitutional supremacy and authority for the central state. One of the central weaknesses of the system of government during the time that the interim constitution was in force⁶ was that scant attention was paid to the practical operation of this decentralised and multi-sphere system and, more importantly, to the nature of the relationship between central government and the provinces as primary political spheres of government with entrenched legal and constitutional powers. As a result of this flaw in the interim constitution, the operation of the relationship between the provinces and central government generated serious conflicts and controversies mainly because there were inadequate mechanisms and guiding principles to institutionalise and mediate this conflict on an ongoing basis. Therefore, the 1994-1997 period was characterised by frequent tensions between the central government and the provinces, and unsuccessful attempts to make the system work despite this deficiency. The constant conflicts and controversies between the centre and the provinces generated some of the early debates about the appropriate system of provincial government in South Africa. At the same time though, the conflicts and controversies seemed to exceed the desires and expectations of those proponents of federalism who believed that such tensions constituted the essence of a healthy federal or decentralised system of government based on a fairly extensive sharing of power, authority and functional responsibilities.

During this period, the major point of contention was the powers to be vested in the provincial governments by the constitution. As soon as the elected provincial government took office after April 1994, virtually all the premiers wasted no time in demanding that central government speed up the transfer of appropriate powers and functions to their provinces as specified in the constitution. Opposition-led KwaZulu-Natal province was predictably the most concerned with being 'held back' by an ANC-led central government⁷ in terms of the transfer of powers and functions. Its first premier, Frank Mdlalose, constantly blamed the slow progress in getting government processes off the ground at provincial level on central government's delays in transferring the necessary powers and functions to the provinces. However, the remarkable

feature of this tension between central government and the provinces was the outspokenness of the ruling ANC's own provincial premiers, especially in their criticisms of central government on this slow, sometimes perceived as reluctant, transfer of powers and functions to the provinces. In July 1994, Mpumalanga's first premier, Matthews Phosa, delivered a speech considered to be highly out of step with mainstream sentiments, and even controversial, within the ANC. In the speech Phosa adopted a largely confrontational stance against central government on the issue of the transfer of powers to the provinces – a position similar to KwaZulu-Natal's Frank Mdlalose. Phosa called for greater political autonomy for provinces in the exercise of their constitutional powers. He insisted “it is of the utmost importance that as much as possible of the powers that belong, constitutionally, to the provinces be devolved there as quickly as possible.”⁸ His stance was a little more radical than those of other ANC provincial premiers. Nonetheless all premiers, both ANC and opposition, shared similar concerns about a clear lack of constitutional and political authority as soon as they assumed office. At the centre of their demands was a desire to be provided with meaningful powers to exercise their political and constitutional authority right from the beginning, even though some of the provincial governments were still new constitutional entities without the necessary administrative structures and operational systems to be able to exercise such powers and functions.

The haste with which the provincial premiers demanded the speedy transfer of powers and responsibilities was clearly underpinned by their desire to be seen, by the general public and the critical media, as exercising meaningful political authority as elected political heads of fully fledged provincial governments with entrenched constitutional authority and all the other trappings of political power. A strong element of this was evident in Matthews Phosa's speech referred to above, delivered in July 1994, about two months after being installed as premier of the Eastern Transvaal (now Mpumalanga) province. Phosa stated that “we interpret, in our province, our constitution as one which has as its basis a strong central government but also *very strong provinces*⁹ with definite federal characteristics.”¹⁰ In addition, Phosa went on to identify a number of provisions in the interim constitution in an attempt to support his belief that the constitution established ‘very strong provinces’. He drew the attention of his audience to Section 126 of the interim constitution that provided concurrent or shared legislative powers with central government; Section 237 that gave the provinces the power to restructure and establish their own administrative structures within their boundaries; and a constitutional amendment that “gives provinces the opportunity to develop executive mechanisms unique to the different provinces.”¹¹

Clearly the thrust of Phosa's speech was towards overplaying the features of the interim constitution that appeared to grant significant powers to the provinces, exclusively or shared with the national government. In doing so, he overlooked or downplayed some of the many

significant features of the same interim constitution that granted central government supremacy powers. However, the important point here is that Phosa, like many premiers at the time, envisaged provincial governments that were not as weak, politically and constitutionally, as their predecessors during the apartheid era. It may therefore have been an important consideration among the provincial premiers that the immediate possession of all the paraphernalia of political authority and power would serve as a validation of the political and constitutional strength of the newly established provincial entities, given that many of these entities had no credible historical basis to underpin their claims to legitimacy. All the provincial premiers were understandably impatient about the slow pace or even the seeming reluctance of central government to decentralise powers to the provinces.¹² Therefore, the early beginnings of the newly established multi-sphere system of government in South Africa was characterised by severe tensions between the newly established provincial governments and central government.

Soon afterwards the nature of the intergovernmental disputes changed. The premiers gradually became aware that the quality or content of the powers and functions transferred to the provinces was equally, if not more, important. Therefore, the intergovernmental relations conflicts and controversies gradually shifted towards focusing chiefly on matters of substance rather than merely on the quantity of the powers to be transferred to the provinces, as was the case during the first year of provincial government. The IFP in particular focused on the lack of policy-making powers in areas such as policing, housing, health, curriculum development, syllabi and teachers' professional training, trade and industry and economic development.¹³ In addition, provinces were increasingly extending their demands for powers beyond those specified by the interim constitution.

The major powers and responsibilities on which Mpumalanga,¹⁴ North West and Free State were keen were foreign affairs, cross-border migration as well as aspects of foreign trade and commerce with neighbouring countries (i.e. Swaziland and Mozambique in the case of Mpumalanga, Botswana in the case of North West, and Lesotho in the case of Free State). Some of the provinces were also very keen to be able to establish relations with some overseas countries, as well as the power to sign funding agreements with international development agencies. The North West province wanted to claim control over mining rights and energy in its areas of jurisdiction,¹⁵ while KwaZulu-Natal expressed demands for power over labour matters.¹⁶ At this early stage of the system of provincial system government in South Africa, the provinces were already keen to challenge many aspects of central government's constitutional authority, including those over fiscal matters, seeing the subordinate status of the provinces in this area as another deficiency in their relations with central government. Even in areas such as road traffic control, sport and recreation, nature conservation, aspects of education and agriculture already

under provincial jurisdiction, the KwaZulu-Natal provincial government was contending that the responsibilities already transferred were “not...complete.”¹⁷

The Intergovernmental Forum (IGF), a voluntary institution not established on the basis of any constitutional provisions, had become a key institution through which many of the contentious political and constitutional issues affecting the system of provincial government were contested. However, the IGF itself and the authority that central government increasingly came to wield through it also became issues of contention between the provinces, especially the opposition-controlled provinces, and central government. The IGF was an informal intergovernmental structure that increasingly served as a vehicle for mediating relations between the centre and the provinces. It became more important than the other constitutional intergovernmental relations bodies such as the Senate (later replaced by the National Council of Provinces (NCOP)) and the Commission on Provincial Government (CPG). However, the IGF increasingly failed to meet the increasing demands of the new provincial government, and therefore failed to serve as an effective but non-constitutional mechanism for resolving the regular disputes between the provinces and central government. It failed to forge a consensus among the key role players, which was critical for ensuring that the formal prescriptions of the new constitution were implemented in a manner that generated support among the provinces. Instead, it appeared to function as a tool for coordinating policy decisions made at the national level, and therefore a site through which the national government’s position of dominance over the provinces was imposed and legitimised.

The IGF therefore created a semblance of consultative decision-making while in practice serving to secure provincial acquiescence, if not conformance, to important national policy positions. Matthews Phosa’s July 1994 speech appeared to confirm this assessment, arguing that “I am definitely of the opinion that what is currently being called consultation between central and provincial governments is little more than cooption.”¹⁸ Clearly the national government had a strong desire to see to it that the provinces, at least at the beginning, were not allowed to exercise too many constitutional powers and functions, primarily because many of the provinces were still institutionally and administratively weak and therefore not in the position to exercise some of the powers. However, this contestation over the status and authority of the IGF was essentially part of a wider contestation of the authority and dominant position of central government at that stage. The failure to resolve it subsequently led to the withdrawal of the KwaZulu-Natal provincial government from further participation in this body, as the IFP felt hamstrung in its demands for greater provincial autonomy. The withdrawal of KwaZulu-Natal was carried out at the same time as the party questioned the provisions of Section 126(3) of the interim constitution – a further indication of contestation of not just the nature and character of the system of

provincial government, but also of the dominant authority of central government over the provinces since inception. Section 126 (3) for instance allowed central government and provincial government to share competencies concurrently, and therefore served as a constitutional basis for central government's dominance of the system of intergovernmental relations.

It was clear that the prospects for greater provincial autonomy, as some of the premiers demanded at that stage, depended on a number of factors. One of these factors was how the ruling party, especially at central government level, viewed the role of the central government and that of the provinces within the overall political system, and how it envisaged the exercise of shared or concurrent functional responsibilities by the two spheres of government to fulfil its broader national political agenda. But more importantly, the interpretation and implementation of the provisions of Section 126 (3) of the constitution was potentially a key factor in the relationship between the centre and the provinces. This point was not lost even to two of the most prominent ANC premiers at that time – the Gauteng premier Tokyo Sexwale, and Mpumalanga premier Matthews Phosa. Both men had also urged central government to interpret its constitutional power to override the provinces, as conferred by this section, sparingly. This early period of the provincial system of government was therefore a period of activism by provincial political leaders who were willing to confront the centre about what they clearly perceived as a skewed relationship between the two spheres of government, which left the provinces politically and constitutionally weak in relation to central government.

While all the provinces shared the desire to be given more powers, not all of them made this demand as a matter of principle – especially on the principle of constitutional autonomy. In other words, not all the provincial premiers were equally committed to the principle of provincial autonomy. This was illustrated, among others, by their attitudes towards the idea of formulating their own provincial constitutions. Drafting one would, to some extent, have expressed some form of commitment to the principle of autonomy, and was therefore a priority mainly for the opposition-led provinces of KwaZulu-Natal and Western Cape. Only one ANC-led province, North West, had attempted to formulate a constitution of its own while Gauteng had indicated that this was not a priority. In fact, Gauteng's reluctance to draw up its own constitution was, to some extent, against the grain of thought of the provincial government at the time, given that Premier Sexwale was one of two most activist ANC premiers (together with Phosa of Mpumalanga) in their demands for greater powers for the provinces. However, in one of his earlier speeches at the time, criticising central government's prevarication in transferring powers to the provinces, he did argue that “the interim constitution is a good safeguard, so that we do not have rampant federalism”.¹⁹ Mpumalanga had also indicated that it would draft its own provincial constitution once the national constitution had been finalised, but this was never

carried out. Clearly, the activist stances of ANC premiers like Sexwale and Phosa during this early period, especially on the issue of greater powers for provinces, did not necessarily imply a demand for constitutional and political provincial autonomy for the provinces, and may not even have been an attempt to challenge the constitutional and political supremacy of central government.

However, the obvious reluctance of ANC premiers to draft their own provincial constitutions needs to be seen in the context of a resolution that was adopted at the party conference in December 1994. It was decided then that no ANC province would proceed with drafting its own provincial constitution. Therefore it is clear that despite the calls for more powers to the provinces at that time, the fear of a dominant central government was not as serious a matter of principle for ANC-led provinces as it clearly was in the case of the two opposition-led provinces. What was also clear at that time was that in ANC-controlled provinces, the principle of a unitary state was generally accepted and unquestioned. In practice though, these provinces continued to make demands for more powers from central government, suggesting that this was essentially a matter of practical necessity, if not symbolic political significance. For the IFP in KwaZulu-Natal and the New National Party in Western Cape, the demands for greater powers and functions formed part of a commitment to the principle of greater constitutional and political autonomy as an article of faith. The IFP still stands by this principle even today.

2.1.1. Context Of The First Wave Of Reforms

Conflicts between the centre and the provinces during this period were alternating between disputes over the slow pace with which the constitutional powers and functions of the provinces were being decentralised, which focused mainly on the form and quantity of the provincial powers – and the substantive content of those powers and functions that the provinces were demanding. The immediate post-election intergovernmental relations politics was characterised mainly by the first tendency, although issues of substance were periodically emphasised, particularly by the IFP and the KwaZulu-Natal provincial government. Provinces had placed enormous pressure on central government, using the IGF's mechanism of regular quarterly meetings. As indicated briefly earlier, the IGF was created to coordinate informally the relations between the centre and the provinces, especially to facilitate closer consultations on important functional and policy matters across the spheres. However, just as the central government utilised this structure to legitimise its position of dominance, the provinces were increasingly using it to press for greater decentralisation of powers from central government. The powers that some of the provinces demanded included those in areas such as housing, urban development, local

government, nature conservation, water affairs and roads, as well as those aspects of education that were once controlled by the 'Bantustans'.²⁰

Many, if not all, of those powers and functions stipulated by the constitution had already been transferred to the provinces at that stage.²¹ Nonetheless, some of the provinces, especially the two opposition-led Western Cape and KwaZulu-Natal, as well as the ANC-led Mpumalanga, continued to urge central government for more legislative powers and additional administrative responsibilities. It was clear that while the content and focus of the intergovernmental relations disputes during this early period was about the powers and functions of the province, it was essentially motivated by other important considerations, especially political. In other words, the conflicts had a lot to do with the desires of the newly elected political leaderships at regional level for greater constitutional and functional responsibilities and the political power this obviously would have brought to the provincial authorities at the time. The desire among the premiers to be seen to possess, display and utilise the trappings of political power and authority that they had expected would accompany their positions was strong and underlined some of the intergovernmental conflicts that occurred in the 1994-1997 period, before the adoption of the new constitution.

The fact that most of the provinces were still new and struggling to set up their new institutions and administrative systems was a serious obstacle in their negotiations with central government, even though they attempted to play this down. Provinces such as Eastern Cape, North West, Mpumalanga, Northern Province, Free State and KwaZulu-Natal struggled to amalgamate several bloated and ineffective bureaucratic structures inherited from the old Bantustans. All the nine provincial governments were largely inexperienced, which made central government reluctant to allow them to exercise some of the wide-ranging constitutional powers and functional responsibilities that they demanded speedily. As already indicated, many of the provincial premiers appeared to see the slow pace of central government's transfer of constitutional powers and functions to them as both a cause and effect for their own initial inability to get their administrative systems and service delivery processes off the ground. However, central government saw that initial lack of institutional capacity to set up systems at provincial level as a cause for caution, hence its reluctance to transfer these powers rapidly to the provinces.

In fact, the issue of institutional capacity at provincial level had preoccupied the IGF during most of its 1994 meetings, since central government insisted that provinces could only claim these powers if they could show progress in establishing new structures of government – a task that was still difficult since some of the provinces had to incorporate and rationalise fragmented bureaucratic structures from the old Bantustans and the former racially segregated provincial

administrations of the previous government. Nonetheless, KwaZulu-Natal had claimed that its process had proceeded faster and more smoothly than first anticipated and that on that basis, central government should transfer the powers to it. KwaZulu-Natal's view was that central government should examine the state of readiness of each individual province separately, as they had different levels of infrastructure and administrative capacity, and not treat all of them in a similar manner. This was in keeping with the IFP's support for the concept and principle of asymmetry, which the party had repeatedly put forward as a guiding principle for the allocation of constitutional powers. Asymmetry denotes a practice and institutional arrangement whereby sub-national entities are treated differentially by central authorities, based on an assessment of their institutional capacity and resources, with respect to decentralising powers and responsibilities for delivering public services, financing and regulation.²² The idea that some provinces were better equipped than others to exercise some of the constitutional powers and functional responsibilities they urgently demanded at that time seemed to make sense, at least theoretically. However, in practice it would have been extremely unmanageable, given that constitutionally and legally all the provinces were entitled to the same powers. The principle of subsidiarity was not built into the interim constitution. Also, politically it would have caused serious problems for the ANC to grant some provinces, especially opposition-controlled provinces, more constitutional powers and functions than others. It would have caused an internal crisis within the organisation as well as a crisis of governance, as other provinces would have demanded to be treated equally.

The Northern Cape province presented a special problem since it had been created anew and had not inherited any significant administrative structures and personnel beyond a small part of the old Cape provincial administration and related structures. Premier Manne Dipico had therefore repeatedly asked the central authorities to help build capacity, even arguing that the province needed special incentives to promote industry similar to the former regional industrial development programme under the apartheid era governments. But the provinces that had inherited administrative structures from the old era governments and had stronger economic bases also faced severe administrative constraints. The legacy of the former Transkei and Ciskei had presented the Eastern Cape with an absence of functioning local government and widespread corruption, bureaucratic ineptitude²³ and general lack of institutional capacity. The former deputy Director-General of the Department of Constitutional Development, Thozamile Botha, was appointed Eastern Cape's Director-General in what was widely seen at the time as an attempt to address these problems.²⁴ The Northern Province, the poorest province in the country, also faced similar problems, especially problems of inferior infrastructure, severe lack of fiscal resources and woefully inadequate administrative capacity. It also had to face the enormous task of restructuring corrupt and overstaffed bureaucracies inherited from the former Bantustans of Venda, Lebowa and Gazankulu, among others.

The Mpumalanga province fell within the same category of inadequate administrative capacity due to inheriting incompetent and overstaffed bureaucratic structures from the former Bantustans of KaNgwane and KwaNdebele. The North West province had inherited an infrastructure that was relatively intact and a functioning administrative system from the former BophuthaTswana homeland. In fact, perhaps as a rough indicator of this relative administrative capacity, the North West province had managed to pass more bills than any other province during its first year of government in 1994. However, it too had faced serious problems – with many untrained and incompetent former homeland officials known to routinely neglect their responsibilities. Gauteng and Western Cape, the two provinces that were unencumbered by ineffective and bloated homeland bureaucratic structures and personnel, enjoyed access to a pool of skills in their metropolitan centres and possessed fairly good administrative capacity, while the Free State was also seen to enjoy some level of administrative capacity to run its affairs. Even here, the transition to functioning structures equipped to handle the demands of the new order was not easy and, in some crucial policy areas, capacity was often weaker than was first believed to be the case.

The general underlying state of intergovernmental conflict between the centre and provinces over the pace of devolution of powers and functions to the provinces had shaped the nature and character of the multi-sphere system of government in South Africa within the first two years of its existence. As already indicated, some of the most vociferous campaigners for provincial rights against the ANC-controlled central government were ANC provincial premiers from Mpumalanga and Gauteng. These intergovernmental conflicts had therefore resulted in a state of general antagonism between the provinces in general and the ANC-controlled central government. The ANC leadership may have adopted the view that the antagonism between the spheres of government was an inevitable function of the various political parties' differing conceptions of power and the purpose of governance at provincial level. As it turned out, the motives behind the conflicts were more complex than that and not readily explained by reference to a party political contest, although this was an important element. As already argued, early in the development of the provincial system this intergovernmental conflict was precipitated by deep-seated discontent among the provinces over the allocation of constitutional powers and the division of responsibilities between the central government and the provinces, in addition to the slow pace of transferring these powers to the provinces. This is not new to multi-sphere forms of government. What was interesting about this pattern of conflicts was not only their intensity of the disputes, but also their early appearance in the development of the provincial system of government in South Africa. The appearance of these intergovernmental conflicts preceded the emergence of any discernible patterns in the functioning of the provincial system of government.

Clearly, the tensions and conflicts that characterised the relations between the central government and the provinces had unsettled the ANC considerably, especially the unexpectedly vociferous nature of the pressure for the rights of the provinces coming from some of the party's own provincial premiers. This created the necessary political context for constitutional change and therefore the first wave of reforms. However, the reforms appeared to be aimed as much at containing intergovernmental conflicts and therefore forestalling the emergence of a competitive, multi-tier system of decentralised government as at addressing the inadequacies of the constitutional division of powers and functions between the spheres of government. We turn to these reforms in the following subsection.

2.2. FIRST WAVE OF REFORMS: FROM 'DUAL-FEDERALISM' TO 'COOPERATIVE FEDERALISM'

The pattern of intergovernmental conflict referred to above gave South Africa's multi-sphere system of government a clear 'dual federalist'²⁵ character – a system of relations between the centre and the provinces based on a divided conception of authority and power and therefore characterised by distinct and independent approaches to the conduct of government by the national and sub-national spheres of government. Clearly, this tendency served to unsettle the ruling ANC, given its acknowledged disposition towards a more unitary and centralised system of government. This dualist political character of the system prompted the ANC-controlled central government to introduce the relevant constitutional changes to the system, which ultimately enabled the centre to reassume the political high ground that it was beginning to lose to the provinces as a result of the early intergovernmental confrontations over provincial powers and functions.

The relative ease of the task of reforming the system was essentially assisted by conditions that were generally favourable to the central government. Firstly, there was a clear cross-party consensus on the need to reform the system and this stemmed from, among others, the general dissatisfaction over the failure of the former Senate to play the role of articulating the interests of the provinces in national policy making processes. Secondly, no proper and formal mechanisms existed to govern and coordinate the relations between the centre and the provinces effectively. Instead, there was a set of formal and informal engagements that had not yet crystallised into concrete interests capable of resisting the proposed changes. Thirdly, the ANC's traditional (federal) foes at that time – the IFP and the New National Party (NNP) – did not have clear alternative proposals for dealing with the strains and stresses that were being experienced in the daily management of the system. The IFP had rejected the provincial system as it stood then and

demanded more autonomy for the provinces in general, and for KwaZulu-Natal in particular, without suggesting concrete ways of managing the system in practice if such increased powers were granted to the provinces, especially at the time when most provinces were still institutionally weak. The NNP was keen to protect the powers and functions of the provinces, but within the parameters of the interim constitution, which had failed to provide a clear and working framework for institutionalising the relationship between the centre and the provinces. This inability of the two major opposition parties to offer practical alternatives for restructuring the relationship between the centre and the provinces allowed the ANC to seize the initiative with relative ease. The fourth and most important factor favouring the ANC-led central government was the fact that the widespread discontent within the provincial system did not, at least in its critical manifestations, conform to party-political divisions. This enabled central government leaders, with the complete acquiescence of virtually all key role players in the constituent assembly, to drive the reform process with a relative lack of political controversy, and to articulate the process as a largely technocratic rather than a political exercise. Finally, the fact that the reforms were introduced so early in the development of the system meant that no political conventions and practices or discernible patterns had developed and taken hold regarding the role and political status of the provinces within the larger political system. In other words, provinces were still new creations that had not yet had time to develop a distinct role and political identity for themselves with a set of strong political interests around such an identity to resist the changes.

The ANC's proposals for change were contained in a document entitled *Building a United Nation* – the use of the phrase 'united nation' in the title clearly betrayed an underlying disapproval by the party of the dominant tendency at the time towards fragmentation and conflict that characterised the system of national-provincial relations. These proposals were debated at a national constitutional policy conference in Kempton Park in late March and early April 1995. The proposals were strongly contested even within the ANC, prompting highly adversarial debates within the Press and accusations of ANC centralisation of power. Even the Gauteng province was moved to react against the document, prompting significant changes to the first draft, which seemed to satisfy the provincial ANC branches. However, it did not satisfy the party's critics, some of whom claimed that the document revealed a dogmatic belief in 'too much unity.'²⁶ The Democratic Party's (DP) Colin Eglin claimed that the document reflected "the centrist approach typical of a power-hungry big party"²⁷ while the IFP called it "centrist and undemocratic."²⁸ The National Party's (NP) Roelf Meyer argued that the proposals entailed a "diminution of provincial powers."²⁹

However, most of the criticisms tended to miss the point of the document, whose ostensible goal was to reduce the constant conflicts over constitutional powers and functions inherent in what the ANC saw as a narrow and competitive provincial system. The party's vision was inspired by Germany's system of 'cooperative federalism'. The ANC's general secretary, Cyril Ramaphosa, had said at the time that the intention was to shift away from the "sterile and one-dimensional quantification of discrete national and provincial law making competencies"³⁰ which had characterised the demands of the provinces for more powers and functions. The aspect of the proposed reforms that received the greatest attention in public debates was the intention to give provinces a greater role within national policy-making processes. While this did not necessarily diminish the constitutionally guaranteed powers of the provinces, it clearly did attempt to structure the relations between the centre and the provinces in favour of the central government, especially by allowing the centre to coordinate policy making and law making through national institutions. Also, the ultimate effect of this was to create a specific division of labour between the centre and the provinces so that central institutions of government, with the participation of the provinces in the newly established NCOP, would largely be responsible for policy making and setting broader national policy goals, while the provinces would largely be responsible for implementing such policies and delivering social goods and services at regional level.

The reforms that were subsequently introduced came as part of the new constitution of 1996, which replaced the interim constitution of 1993. The most notable and visible feature of this was the abolition of the old Senate and the establishment of the NCOP, which began operating in 1997. The changes were formulated within a framework that largely conformed to the ANC's centralised conception of political power and government structure. Chapter 3 of the new constitution paid systematic attention to the concept of intergovernmental relations, unlike the interim constitution that failed to do this. The new constitution lays down elaborate provisions for highly centralised and coordinated national-provincial relations labelled as 'cooperative governance.'³¹ As already argued, the absence of formal and effective mechanisms for the systematic management of intergovernmental relations under the interim constitution created conditions for fractious relations between the centre and the provinces. Such fractious relations were prone to political instability due to the constant differences and conflicts over constitutional authority and territorial divisions of power. The IFP's traditional position on this issue, emphasising a strict division of powers and responsibilities between the two spheres of government, was actually conforming to the initial 'dual federalist' character of the system. However, this became problematic in the absence of effective mechanisms and formal procedures to pre-empt and resolve disputes over powers, responsibilities and resources.

Therefore, the subsequent reforms were largely intended to reverse the fractious tendency of the relations between the centre and the provinces, which the ANC clearly felt threatened by. In the course of the reform process, the 'dual federalist' character of the system was essentially swapped for 'cooperative governance' – a governing philosophy that ultimately worked to the advantage of the ruling ANC, with its emphasis on resolving internal conflicts and disputes centrally. In particular, the doctrine of 'cooperative governance' attempted to create a new philosophy of resolving intergovernmental conflict by discouraging divisive confrontations and litigation, and elevating consensus seeking and political conflict resolution methods. The theory of 'cooperative federalism', and the doctrine of 'cooperative governance' are therefore central to Chapter 3 of the new constitution. This chapter emphasises that the spheres of government are distinctive but interdependent and interrelated.³² Ultimately the doctrine of cooperative governance served to explain, at the same time as it legitimised, the way in which the system of intergovernmental relations was being restructured between 1994 and 1997. More importantly, the use of this concept arose out of, and served to articulate, the conception of the ideal purpose of governance prevailing within the ANC: to achieve centrally driven national goals and national social policy agenda within a multi-sphere form of government.

One important criticism of the logic of these reforms was that they rested mainly on the premise that a nationally coordinated structure of relations between the centre and the provinces would be less antagonistic than the dispersed and fractious arrangement that characterised the early part of the system. These were based on a mistaken belief that strengthened representation of the provinces within national institutions would reduce the 'narrow' pursuit of provincial interests. Besides this, the underlying text of the ANC proposals was informed by a belief that fundamental differences on constitutional matters between the major protagonists could be formally institutionalised. However, the ANC's detractors also shared this thinking. Their apparent solution of more autonomy for the provinces was based on the view that maximum autonomy would necessarily eliminate the severe problems that were being experienced by the system. Therefore, both sides shared a belief that mere formal constitutional provisions could dissolve deep-seated political conflicts. However, the constitution could not determine whether or not provinces would cooperate with each other and with national government. The outcome would be determined by the way in which the provinces defined their interests, and the manner in which they and the centre interacted politically and over a long period of time – regardless of the machinery created by constitutional text. As will be argued in the following subsections, in reality the new arrangements generated new areas of contestation and frustration for campaigners of provincial rights and yet more debates on the future of the provincial government in South Africa, including in some instances calls for the abolition of provinces.

2.2.1. Context for Second Wave of Reforms (1997-1999)

Despite the reforms outlined above, the central challenge facing South Africa's multi-sphere form of government remained in place, and that was the challenge of achieving a balance between two ends: on the one hand, satisfying the demands of the provinces for sufficient constitutional powers and functional responsibilities, as well as the ability to exercise meaningful executive authority in the face of a dominant central government, and on the other hand, retaining sufficient authority for a strong and authoritative central government to ensure unity of purpose among all three spheres of government to achieve common national policy goals. The continued inability to strike this balance was the dynamic that, to some extent, continued to cause dissatisfaction within the system, and continued to animate views on reforming it to ensure, among others, better national policy coordination and delivery of social services while allowing sufficient flexibility within the system of provincial government.

2.2.1.1. Greater attention towards practical challenges at provincial level

By 1998/99 the heated debates about maximum powers and autonomy for the provinces were being considerably toned down, at least at the level of party political rhetoric. While such debates had not yet been put to rest, pragmatism was creeping into the approaches of political leaders at provincial level, no doubt instilled by the harsh realities of having to tackle intractable policy problems through new and sometimes inefficient provincial administrative structures. In the context of weak institutional capacity and lack of adequate resources, rampant corruption, bureaucratic inefficiency and other difficulties that had been encountered during the first five years, new public debates on the provincial system of government emerged, fuelled not so much by issues of centralisation or decentralisation of power but increasingly by other emerging concerns such as efficient and effective implementation of national policies as well as speedy delivery of social services to meet the needs of impoverished communities. The challenge was therefore to ensure functioning and effective provincial institutions to achieve the goals of effective service delivery and development.

The 1997-1999 period was largely characterised by a set of highly negative circumstances that, to some extent, affected general public confidence as well as the views of key policy makers in the system of provincial government in South Africa. These circumstances created an unfavourable atmosphere towards the provinces, especially among national political leaders from the ruling party and, crucially, among the potential beneficiaries of provincial social policy programmes. For instance, opinion surveys conducted by the Institute for Democracy in South Africa (IDASA) in 1996³³ and 1998³⁴ appeared to show fairly low public approval ratings of provincial institutions of

government and their performance. Reports of official waste, mismanagement, inadequate financial controls and non-compliance with treasury regulations had siphoned off huge amounts of financial resources from the provinces. For instance, in 1997 the Heath Special Investigative Unit was established to investigate about R9 billion worth of corruption in 830 reported cases, mainly in the provinces. In addition, in his 1996/97 annual report on public financial accounts the auditor-general urged the central government to re-evaluate its financial relationship with the provinces. He indicated that the provinces received 54% of the national budget, which was not being well spent.³⁵ Many provinces suffered from insufficient administrative and financial management expertise as well as weak administrative leadership. To some extent these problems have not been completely overcome even today as will be argued in the next few chapters.

The problems affecting the provinces were also catalogued in a controversial provincial review report released in 1997 by the national Public Service Commission³⁶ – the so-called Ncholo Report, named after Paseka Ncholo, the former director-general of the national Department of Public Service and Administration. While some of the findings and conclusions of the report were called into question by some provinces, notably Eastern Cape and North West, in general the reports and its contents were widely accepted as reflecting the reality of provincial government on the ground at the time. The contents of the report will be discussed in detail in relevant chapters of this thesis. The report alluded to a catalogue of administrative and operational difficulties throughout the provinces that prevented effective policy implementation and service delivery. In the wake of the Ncholo report, the 1998 PRC report also added its weight to this scenario of general discontent about the provinces. It revealed that the administrations of many provinces were chaotic, urging President Mandela to consider invoking Section 100 of the constitution that entitles central government to take over certain provincial functions if a province was incapable of fulfilling its executive obligations. In fact, the PRC report appeared to condemn the principle of ‘federalism’ on which the current system of provincial government is modelled, concluding that the deplorable state of governance in the provinces was “a sad but unintended consequence of the federal system of government in South Africa...”³⁷

The report proposed that “serious consideration should be given to the asymmetrical devolution of functions” to the provinces³⁸ – a recommendation that should no doubt have pleased some of ardent proponents of the principle of asymmetry, such as the IFP, who have been pushing for it since the inception of the provincial system of government in South Africa. Surprisingly, the IFP failed to latch on to this PRC recommendation, suggesting clearly that at the time the report came out, immediate ‘bread and butter’ issues had become more pressing for the provincial authorities than long-term issues of political and constitutional principle. The recommendation to

adopt the principle of asymmetry was clearly intended to deal with the issue of differential capacity among the provinces to allow for some provinces to go ahead on their institutional development, while enabling central government to intervene in others such as Eastern Cape and Northern Province that had failed to develop effective institutions and had experienced difficulties administering a variety of social policy programmes. More importantly though, the report appeared to call into question the current constitutional division of powers between the provinces and central government, as it clearly implied that some of the provinces were not able to fulfil their constitutional obligations. Thus the report urged the national government to revisit the current role and powers of provincial governments in South Africa.

Central to the difficulties that the provincial system was experiencing were two important sets of underlying circumstances. Firstly, the weakness of political institutions, particularly provincial legislatures, was an important constraint. Provincial legislatures are potentially critical for the development of effective and accountable government institutions at provincial level by maintaining vigilance and oversight as well as ensuring responsible use of public resources.³⁹ Many commentators have tended to measure the performance of provincial legislatures by their level of legislative output and the number of sittings per annum.⁴⁰ Based on this measure, many provincial legislatures have performed rather dismally, as will be discussed in the following chapters. Several factors accounted for the weakness of provincial legislatures and these will be dealt with in the next chapter. In brief though, some of these were inexperienced legislators with insufficient skills and expertise not only for formulating laws but also for scrutinising the activities of provincial government departments; lack of staff or adequately trained support personnel for legislators and committees; and, crucially, the tendency for provinces to defer to the national government in many areas of competence, including policy making and legislation, for fear of contradicting the priorities set at national government level.

Secondly and more critically, the economic and financial weaknesses of many provinces not only rendered them completely reliant on central government transfers for their budget expenditures, but also enabled central government not only to maintain its dominance, but also to intervene occasionally in the management of provincial finances, thus undermining the strength of calls for more provincial powers and autonomy. One of the reasons provinces have not yet been given increased fiscal powers is that other than Gauteng and Western Cape, the tax bases of the rest of the provinces are extremely small. Also, the lack of sufficient administrative capacity to collect taxes in all the provinces makes it unlikely that they would benefit from increased tax raising powers, at least in the short to medium term.⁴¹

The predicament of the provinces has been compounded by some underlying systemic and structural factors. For instance, the provinces are responsible for a significant proportion of government expenditure in South Africa, with most funds consumed by the three politically important social policy sectors of (primary and secondary) education, primary health care and social welfare, especially social pensions. Furthermore, very high proportions of provincial budgets are spent on recurrent costs, especially staff remuneration, and social security grants.⁴² For instance, during the year ending in April 1998, the number of provincial public servants was 899 948, as against 832 119 in the previous year.⁴³ The greatest increases occurred in KwaZulu-Natal, Northern Province and Eastern Cape – these were the same three provinces that were identified by the Presidential Review Commission report of 1997 as being on the verge of collapse due to financial mismanagement and service delivery crises as well as weak institutional capacity. In the 1995/96 financial year, provinces spent R40 337.3bn – 54.2% of their combined budgets – on the remuneration of employees.⁴⁴ In 1996/97, the figure was R49 952.8bn, or 54.6% of total expenditure. On average, more than half of provincial budgets went to expenditure on salaries, compared with about 35% for the national government. This high expenditure on salaries as well as other recurrent costs usually left very little room for provincial investment on capital expenditure projects such as infrastructure, roads, school buildings and others, as will be discussed further in the next chapter. Moreover, provinces have very little, if any, power to control staffing levels, salaries and social welfare pension costs. Neither do they have control over labour agreements on staffing levels, salaries and conditions of service, which are negotiated at national level.⁴⁵

Another factor compounding the predicament of the provinces is that the constitutional provisions for the national government to prescribe and enforce national norms and standards in the supply of services such as education and health at provincial level creates little room for manoeuvre for the provinces with regard to cost-cutting. In many cases, the provinces are obliged to provide social services consistent with national norms and standards without adequate funding – what is usually referred to as ‘unfunded mandates’ – thus further adding to their budgetary shortfalls.⁴⁶ The third factor is that many of the provinces had to transform their public service structures into service delivery and development-oriented institutions within a very short period of time and under political pressure for speedy service delivery. As already argued, those that had to incorporate bureaucratic institutions inherited from the former Bantustans had an added challenge of integrating numerous units at different levels of technical capacity and efficiency, with large numbers of public servants possessing little or questionable technical skills and levels of training. This meant that many provinces had to address huge social services backlogs relying on bureaucratic structures that were themselves undergoing extensive restructuring and rationalisation at the same time. This affected the rate, quality and quantity of

services delivered. Finally, the national government's macro-economic policy framework – the Growth, Employment And Redistribution strategy (GEAR) – that came into force in 1996 with its deficit targets and limits on expenditure levels, also served as another structural constraint, limiting room for manoeuvre for the provinces to fulfil their obligations, especially their ability to make financial decisions affecting service delivery in their own areas of jurisdiction.

The provincial system of government in South Africa has therefore operated, and still does to some extent, in a context of severe administrative and financial constraints. These circumstances served to focus attention on the need to further rethink the current system of provincial government in South Africa in order to improve their institutional performance. In particular, the lack of capacity in many provinces to deliver basic social services cost-effectively and efficiently during the 1994-1999 period contributed to widespread perceptions – particularly among members of the ruling party – that the ANC government was failing to deliver on its historic 1994 election promises. This perception appeared to unsettle the ANC politically, serving to reinforce a sense of urgency within the party for another round of reforms to ensure that the system is more pliable to the demands of central government for urgent service delivery.

2.2.1.2. Undermining the authority of the provinces?

As the political momentum for more changes to the provincial system of government gathered pace, another important development also appeared to unsettle the ANC party leadership and the national government. A raft of serious criticisms was increasingly being levelled at the dominance of central government over the provinces, especially between 1998 and 1999. Many of the criticisms, mainly from ANC provincial premiers, were clearly a response to the effects of the first wave of reforms that were being felt in relations between the national government and the provinces. At the heart of the first wave of reforms, as discussed earlier, was the goal of centralising the coordination of relations between the centre and the provinces. The reforms also served to centralise general policy making processes in such a way that national government institutions, especially the national assembly and the NCOP, were to play a more central and overarching role. As indicated also, the policy-making and executive powers of the provinces were not withdrawn or substantially diminished as a result of these reforms. Instead, the provinces, including organised local government, were brought much more tightly into national policy-making processes through the NCOP.

Obviously, the underlying intention of this centralised coordination of intergovernmental relations under the new constitution was to reverse the fractious tendencies that had emerged within the system of intergovernmental relations between 1994 and 1997. Also, the national

Department of Provincial Affairs and Constitutional Development (later becoming Provincial Affairs and Local Government) came to play a central role as an important instrument of the national government in coordinating and managing relations with the sub-national spheres of government. One of the effects of this centralised coordination of national-provincial relations after 1997 was to increasingly circumscribe, but not completely eliminate, the room for manoeuvre of provincial executives in policy-making processes on the one hand, and correspondingly extend central government's executive authority and power over general policy processes on the other. Some of the institutional structures that facilitated this were the informal intergovernmental executive bodies, particularly the forums of Ministers and MECs (MINMECs). Through these bodies, national ministers and provincial MECs met regularly, mainly for informal planning and consultative sessions involving specific national departments and their provincial counterparts. In theory, these bodies were intended to be essentially technocratic policy coordination structures involving political heads of departments at national and provincial level. In practice however, these MINMECs came to serve the same purpose as the IGF structure referred above, helping to mediate and extend the authority and dominance of central government over the provinces, thereby severely undermining the executive authority of the provinces even in those areas of policy making where they hold concurrent powers with central government.

This extension of central government's executive authority was also justified and articulated through the doctrine of 'cooperative governance' that had become enshrined in Chapter 3 of the new constitution and as part of the first wave of reforms. 'Cooperative governance' essentially mandates the three spheres of government to "cooperate with one another in mutual trust and good faith", among others by fostering friendly relations; assisting and supporting one another, coordinating their actions and legislation...and avoiding legal proceedings against one another.⁴⁷ Steven Friedman, in a critique of this doctrine, argues

"One obstacle to provinces playing this role [being effective democratic vehicles] is our system of 'cooperative governance', which tries to cut down on differences between provinces by forcing many of the vital decisions which affect them into a national decision-making body, the National Council of Provinces. Among other effects, this reduces further the effectiveness of provincial law-making bodies since most decisions are taken elsewhere and their role is largely reduced to deciding how their province is to vote in the council"⁴⁸

The first provincial premier to openly express criticisms of the provincial executive authority being undermined was Premier Mathole Motshekga of Gauteng. In a confidential document

presented to the provincial cabinet in August 1999, and subsequently leaked to the Press. Motshekga made reference to the “conflict, rivalry and tensions between ministers, premiers and MECs”, calling for a revamp in intergovernmental relations – to be coordinated from the president’s and premiers’ offices “so as to avert clashes.”⁴⁹ Motshekga also lamented the fact that the role of premier had been made much more difficult by the overlapping responsibilities between the provinces and central government as a result of the doctrine of cooperative governance. He added that “the weakness of the cooperative governance system lies in the fact that we have tasked line departments, the Department of Provincial Affairs and Constitutional Development and Departments of Local Government with the responsibility of managing relationships between the different spheres of government...these institutional arrangements have failed to deliver”.⁵⁰ Quite obviously, the logic of the way executive intergovernmental relations structures like the MINMECs functioned was based on line function relationships between national and provincial departments. However, this was inconsistent with the principle of the cabinet at provincial level being the primary decision-making and executive body. In other words, the proceedings of the MINMECs as well as their decisions tended to bypass provincial executive councils, thereby enabling national ministries to relay national government policy decisions directly to provincial departments, without the direct involvement of provincial cabinets. This not only undermined the political and constitutional authority of provincial cabinets, it also caused tensions within provincial cabinets, especially between MECs and their premiers.

Further criticisms were to come later from other premiers at a two-day conference on intergovernmental relations held in Johannesburg in March 1999 – just two months before South Africa’s second democratic elections. Deputy President Thabo Mbeki, provincial premiers and some national ministers, including the minister for provincial affairs, Sidney Mufamadi, and representatives of organised local government attended the conference, which served as a key opportunity for national and provincial government leaders to take stock of the experiences of the first five years. Some ANC premiers openly complained about central government ministers marginalising provincial executives in policy-making processes and making binding decisions through the MINMECS without proper consultation. For instance, Mpumalanga Premier Matthews Phosa raised the issue first, saying

“We need to ensure that we understand correctly what the powers are...of the MINMECs. Can they or can they not override cabinet decisions at provincial level? Are they only consulting mechanisms, or can they formulate binding decisions? Are they... only forums for sharpening up policy issues and deciding informally on routes to take before reporting back to provincial and national cabinets?”⁵¹

Free State's Ivy Matsepe-Casaburi endorsed this view in her speech to the conference, arguing that

“Some of the issues that were raised by premier Matthews Phosa on the role of the MINMECs [are] actually quite sensitive...because the premiers have sometimes agonised about the fact that they have heard their MECs come back from the MINMECs and say ‘my minister says this, my minister says I must implement...’ and where do I come in as premier, and what is the role of the [provincial] executive in this decision that comes from some minister from national [government]?”⁵²

Premier Ramathodi of North Province added

“The original intention with the creation of these MINMECs [was] indeed a laudable one – to ensure maximum consultation and cooperation between the various spheres of government in an effort to achieve national goals. However...MINMECs have developed into decision-making bodies and provincial executives have been pushed to the periphery of the process...I believe it is untenable that administrative structures, created with the intention to coordinate the implementation of policy, can usurp certain powers that are vested in the premier and his executive in terms of the constitution”⁵³

KwaZulu-Natal Premier, Lionel Mtshali, also made this point in a frank speech to the conference. He argued that

“Our system of government provides for consultation at provincial executive level and in legislatures in the formulation of legislation. MINMECs are a feature of this system. We note with concern that the national government tends to adopt a rigid stance in dealing with dissenting views from provinces”⁵⁴

These criticisms of the system of intergovernmental relations set the tone for the start of the Mbeki presidency, and hence the next wave of reforms. When Mbeki took over as president, there was clearly a strong sentiment within the ANC for change to ensure that the provinces were given a meaningful role within the country's system of government rather than as mere ‘conveyor belts’ for national policy decisions. Addressing the same conference, Mbeki clearly acknowledged these sentiments and even alluded to growing debates about the future of the provinces in South Africa. Mbeki went on to indicate clearly that he acknowledged that there was a need to review the system,

“The proximity of our second democratic elections provides an opportunity for us to review the performance of the nine provinces we established in 1994. The future of the provinces has become a topic of public debate, with calls for changes to the structure and powers of the provincial sphere, and even the number of provinces”⁵⁵

He went on to add that

“It is true that the establishment of nine provinces has brought government closer to the people, created more space for regional diversity and provided a mechanism for the implementation of national policies. At the same time serious concerns have been raised about the state of provincial governance, underscored by the instances of financial crises and the failure of delivery institutions, which we have experienced during the last five years.”

He went on to say that a thorough review of the system was needed, and identified two key questions that had to guide the process of reforming the system of provincial government in South Africa

“There are...important questions that we need to pose and seek to answer...how do we cross narrow party mandates as well as provincial, regional and local boundaries to live up to the imperative of cooperative governance? Are we capable of crossing our parochial boundaries and thus agree on the issues that would address the needs of our country and people, on an integrated basis?”

Mbeki's speech was replete with key phrases and concepts that portrayed the previous five years as having been divisive, and outlined a future scenario based on unity and common purpose. For instance he made references to 'narrow party mandates' and 'parochial regional and local boundaries' to describe the character and operation of the system of provincial government during the 1994-1999 period, while using phrases and concepts like 'policy alignment', 'promoting mutual cooperation', 'partnership between the spheres of government', 'bound together as South Africans' and 'nationhood', to articulate a particular vision of the future system of intergovernmental relations.

As already argued, mounting dissatisfaction with the system of provincial government and the relationship between the provinces and the national government formed the backdrop to Thabo Mbeki's ascendance to the presidency. Indeed on his way to the presidency Mbeki identified the theme of improved and speedy service delivery as a key goal of his first term in office and that,

necessarily, placed the provincial sphere at the centre of his plans. Subsequently, during his first term of office, he placed enormous emphasis on service delivery, and thereby virtually succeeded in drawing attention away from issues of constitutional divisions of powers and functions between the spheres of government, towards policy implementation and service delivery. However, this does not mean that principle issues of constitutional division of powers and functions between the levels of government were completely taken off the agenda. As a result of this increased focus on service delivery and policy implementation, considerable political pressure was placed on the provincial institutions of government, which in turn fuelled widespread speculations in the Press and other public forums that the provincial system was either about to be radically changed, if not completely abolished.

2.3. SECOND WAVE OF REFORMS AND OPTIONS ON THE FUTURE OF PROVINCES (1999-2004)

Mbeki's rise to the presidency was accompanied by a clear re-articulation of the ANC's centralised conception of power and purpose of government, underpinned by a clear set of values such as a strong and authoritative central government playing a coordinating role; an integrated and nationally coordinated social policy agenda; and strong, efficient and effective provincial institutions of government predominantly playing an administrative and policy implementation role. This conception of authority at the centre, and its purpose, was given concrete expression in a number of important developments anchored at national level. These developments essentially constituted the second wave of reforms following the 1994-1997 first wave of reforms. Some of the developments occurred during the last year or so of the Mandela presidency, while the others occurred during the first year of Thabo Mbeki's first term of office as president.

Some commentators believed that all these developments derived from Deputy President, and later President, Mbeki's penchant for centralised power.⁵⁶ A number of developments were and are still being cited as evidence of Mbeki's perceived desire to appropriate all power to himself. The first major development was the establishment in 1998, of the Coordination and Implementation Unit (CIU) inside Deputy President Mbeki's office. The CIU was mandated to coordinate national policy-making and to oversee the implementation of national policy programmes. This also meant a closer coordination and supervision of provincial policy implementation and service delivery processes to ensure that national policy goals are met. The second was the controversial decision in August 1998 by the ANC's National Executive Committee (NEC) that its national leaders would have the right to appoint candidates for premierships in ANC controlled provinces.⁵⁷ Clearly, the logic of these two developments was to

strengthen the power of the national government and the ANC party leadership at national level to coordinate, oversee and direct processes of government at national and provincial levels. Also, the choice of provincial premier candidates from national level implied that the ANC national leadership considered themselves be best placed to select sub-national leaders, mainly on the basis of national political and other considerations, even though regional or local considerations would not necessarily be disregarded.

On the surface, the ANC's decision was prompted by a spate of regional power struggles inside ANC branches in several provinces during the 1994-1999 period, motivated mainly by competition to capture the position of party chairperson. Capturing the ANC provincial chair position used to automatically place the incumbent as a front-runner for the position of provincial premier in ANC-controlled provinces. Therefore the central element of this policy decision was essentially to de-link the position of party chair from that of premier, as a way of reducing its importance and therefore minimising competition for that position. Initially, the decision did not appear to have the intended effect because a number of power struggles and contests for the party chairmanship occurred in provinces such as the Northern Province, Mpumalanga and North West, where incumbent premiers who also occupied positions of party chair faced strong challenges from rivals. However, these struggles appear to have subsided.

The other important aspect of the decision, which received less attention from commentators and the Press in general, was the fact that it was also intended to enable the ANC leadership to identify and select candidates for premiership on the basis of other qualities besides political popularity. As the theme of speedy service delivery became central to the Mbeki presidency, considerations such as management skills, team-building skills and the ability to run effective provincial administrations became more important in a provincial premier than was the case during the 1994-1999 period where most premiers were appointed mainly on their basis of their political popularity within the party rank or leadership. In other words, the popularity of candidates among local party activists alone would no longer be adequate as a factor in the selection or appointment of prospective premiers. Greater emphasis was instead placed on technical skills and administrative/managerial abilities to ensure effective and speedy service delivery at provincial level.

The third major development was the establishment in 1999 of the Presidential Coordinating Council (PCC). It was intended to monitor the provinces and assess their institutional performance regularly.⁵⁸ The establishment of the council came amid indications of weak institutional performance at provincial level, signalled among others by the small number of provincial bills passed at provincial level and the generally small number of legislature sittings

during the five months after the 1999 general elections. For instance, during that period some legislatures had convened fewer than six times, and a number of provinces including Gauteng, KwaZulu-Natal, Eastern Cape and Mpumalanga had failed to pass any bills.⁵⁹ All the premiers were to report regularly to the PCC, headed by the president and the minister of provincial affairs and local government. The council was to “monitor the programmes of provincial governments and assess the powers and functions assigned to the different spheres of government”⁶⁰ The latter echoed one of the key recommendations contained in the PRC report of 1998, to review the division of powers between central government and the provinces. In addition, the council was aimed at increasing opportunities for regular interaction between elected public representatives and ordinary citizens, ensuring that “the system of governance functioned in a manner that empowered citizens”.⁶¹ The latter was an important element deriving from the constant criticisms that the provincial legislatures were increasingly facing – that they had become out of touch with ordinary citizens. It also coincided with a rethinking of the role of provincial legislatures that occurred during the 1999-2004 period, as will be discussed in the next chapter.

The fourth important development was the tightening of budgetary and expenditure accountability in the public sector, underpinned by the promulgation of the Public Finance Management Act (PFMA) of 1999. The Act came into force on 1 April 2000. Among others, the objectives of the budgetary reforms and the PFMA were to improve good financial management practices, enhance financial accountability and to clarify the responsibilities of accounting officers in the public service.⁶² The promulgation of the PFMA in particular was a crucial aspect of the technocratic reforms introduced by the government in that it forced the provinces in general to clear up the widespread financial management chaos of the 1990s and has been used successfully to prosecute many government officials found to have engaged in financial corruption, particularly at provincial level, between 2000 and 2004.

Finally, the national government introduced a package of organisational changes in Mbeki’s cabinet not long after he became president in 1999, which had repercussions at provincial level. He introduced a system of clustering of ministries that are functionally related, ostensibly to improve horizontal coordination, functional integration and policy coherence. Therefore social (i.e. departments such as education, health, welfare and housing), economic (i.e. finance, economic affairs, trade and industry), criminal justice (i.e. the courts, policing and defence and intelligence services) and other clusters were created. The aim was not merely to achieve horizontal coordination and integration at national level. The clustering process was also carried out at provincial level, with each provincial cabinet introducing similar clusters not just to improve internal horizontal coordination in each province, but also to improve vertical coordination and policy alignment with national ministries by ensuring that the national cabinet

clusters had their equivalents at provincial level. This was important for the provinces, given that provincial MECs regularly take part in various functionally related MINMECs. However, strategically this was also particularly critical for realising Mbeki's vision of integration, coordination and policy alignment, as well as enabling central government to monitor provincial governments for effective service delivery. The clustering process within provincial cabinets also had organisational repercussions for provincial legislatures because legislative committee systems across all nine provinces were accordingly restructured to incorporate the concept of clustering. The purpose here was to enhance coordination and effectiveness at committee level in the oversight of provincial government service delivery activities. No real intergovernmental benefits were realised with the legislative committee clustering process because provincial legislatures are usually badly coordinated with their national counterparts.

These developments clearly fitted in with a distinct discourse on governance – increasingly identified with Mbeki – that emphasised a dominant role for central government. In this discourse, notions such as 'coordination', 'coherence', 'monitoring' and 'evaluation' became the stock-in-trade of the new policy agenda inspired by desire to improve institutional capacity and performance at national and provincial levels for effective service delivery.⁶³ Unlike the first wave of reforms that occurred during the Mandela era, the second wave of reforms under Mbeki was not fundamentally constitutional in character but largely managerial and technocratic. The reforms therefore reflected a new urgency and concern to shift attention away from the often abstract and legalistic but sterile and unproductive debates about provincial autonomy, federalism, constitutional powers and functions, towards greater focus on practical service delivery problems and policy implementation priorities. However, to a great extent the second wave of reforms also appeared to be informed by a strong belief that effective institutional performance at provincial level could be mandated politically, and that solutions to some of the practical and managerial problems in the system could be engineered technocratically from the centre.

One of the critical systemic factors that formed the background to and therefore made it easy for the national government to adopt these technocratic reforms that attempted to elevate technical service delivery matters above divisive politics was the nature of the administrative system in place in South Africa. For instance, an important legal feature of the largely subordinate status of the provinces during the 1994-1995 period was that Schedule 2 of the Public Service Act of 1994⁶⁴ had constituted the provincial public services as mere administrations rather than as full-scale and autonomous governments. In terms of this, each provincial government was conceived of as equivalent to a single national ministry, headed administratively by a single (provincial) director-general, and politically by the premier who has the same status as a national cabinet minister. In

other words, the administrative model adopted at national level was used in the design and conceptualisation of provincial administrations. Therefore, this had left each provincial administration virtually equivalent to a national government department.

There was therefore an important contradiction within the basic constitutional framework on which the provincial system is based, where the constitution established the provinces as fully-fledged governments with legislative and executive branches, while at the same time constituting their public service structures as part of and subordinate to the broader national public service. The Public Service Act therefore provided a technocratic-rationalist conception of the status of the provincial governments, which appeared to accord with the centralised nature of our 'federal' political system. Also, the technocratic nature of the public service provided fertile ground for Mbeki's technocratic, service delivery oriented reforms, because such reforms appealed to many within the public service management echelons. For instance, from a technocratic-managerial perspective it made sense to emphasise the administrative and executive aspects of the sub-national institutions in order to provide a rationale for the overall objective of elevating 'the politics of service delivery' above divisive party politics. Its appeal to public servants and technocrats at provincial level was fairly inevitable given that public servants also routinely face party political problems on the ground when implementing policies and delivering services.

However, this technocratic/managerial approach to intergovernmental relations rendered the provincial public service structures and therefore the provincial administrations readily open to national administrative policy interventions. The technocratic reforms brought in by the Mbeki presidency during the 1999-2004 period ought to be seen in this light. Although the new constitution of 1996, which came into effect in 1997, went a long way towards enhancing the constitutional status of provincial administrations and created them as 'autonomous' political and administrative entities, in practice the subordinate nature of provincial administrative structures remains largely embedded in the country's political system. The doctrine of 'cooperative government', entailed in the new constitution, appears to provide a constitutional device and rhetorical justification for the continuation of the largely subordinate status of the provincial administrations, thus making it easy for these types of central government interventions.

The changes introduced by Mbeki during his first term of office also raised serious questions about the possible implications for governance at provincial level; it also served to rekindle debates about the role and future of provinces. The following subsection will be devoted to examining these debates, by looking at some of the different ideas and views on the future of the provincial system of government in South Africa.

2.3.1. Rethinking The Role Of Provinces: Current Views Among Key Actors

The set of the reforms introduced during Mbeki's first term of office came within the context of intense public debates about institutional performance and the role of provinces. The intensity of these debates was fuelled mainly, but not solely, by the fact that the Mandela presidency had come to an end, and Mbeki was taking over as the next president. In particular, some of the debates were shaped by perceptions about Mbeki's style of management and perceived penchant for centralised authority. Therefore, rampant speculations emerged about the implications of the Mbeki presidency for the future of the provincial system of government. In addition, a lot of the debates derived from widespread concerns among politicians about the weaknesses of the provinces in general, in terms of institutional performance and effectiveness during the 1994-1999 period. However, the key issue that triggered the new round of extensive debates about the future of the provinces was the extensive local government reforms that culminated in the election of democratic local authorities in 2000.

These reforms were ushered in by three pieces of national legislation – the Municipal Demarcation Act, the Municipal Structures Act and the Municipal Systems Act.⁶⁵ These laws not only created a more equitable, efficient and effective system of local government, they also increased the scope of the powers and functions of local authorities. They prepared the local authorities to assume, through future devolution processes, greater service delivery powers and responsibilities in some of the areas where provinces currently hold concurrent responsibilities with the national government – these include health, public works, transport and housing. Particularly important is the fact that the Systems Act mandates municipalities to interact with citizens and promote public participation. Promoting public participation by 'bringing government closer to the people' was one of the central planks that underpinned arguments in favour of establishing provincial governments in South Africa. However, since 1999 provincial legislatures have begun rethinking their roles, especially by emphasising the importance of promoting public participation in their affairs of government, in the wake of declining legislative workloads. Therefore, if the local authorities are considered better placed to promote public participation in processes of government, it may become unnecessary for provincial legislatures to also pursue this function. In other words, given that there is a long-term goal to enable local authorities to perform some of the functions that are currently performed by provincial institutions of government in the near future, this has given rise to debates about the long-term future of the provinces, including questions about whether or not South Africa still needs the provinces as currently constituted.

Therefore a climate was created in which it was possible to discuss various, and sometimes radical, options about the future of the provinces. Such questions would have been viewed with suspicion by many proponents of the provincial system of government, especially during the 1994-1999 period when provinces were virtually regarded as political sacred cows⁶⁶ and debates about the future of the provincial system of government were dominated by demands for more powers and functions, and greater autonomy for the provinces. Importantly, some of the intense debates that have raged since 1999 have originated from within the ANC itself. We turn to these debates in the rest of this chapter below.

2.3.2. Three Perspectives On The Future Of The Provinces

2.3.2.1. Abolishing the provinces?

The perceived unsatisfactory institutional performance of the provinces in the 1994-1999 period, coupled with widespread reports of administrative corruption and wasteful mismanagement of resources by public servants and political leaders in several provinces, had elicited many loud calls from within the ANC and other quarters for drastic steps to be taken since as early as 1998. Attitudes had begun hardening against the provinces in general especially in 1998 with some ANC national and provincial leaders openly questioning the desirability and affordability of the current provincial system.⁶⁷ For instance, a few weeks before the 1999 general elections, a number of national newspapers reported that the ANC wanted to eliminate provincial governments soon after the elections in favour of stronger municipalities. One national newspaper claimed to quote the ANC Secretary-General Kgalema Motlanthe as saying that “mayors could be of greater importance than the premiers.”⁶⁸ The paper went on to add that there was a feeling within the ANC that “stronger administration at local government level was more critical for delivery”, and that cities such as Cape Town, Johannesburg and Durban were “of greater importance than some provincial governments because they have bigger responsibilities.”⁶⁹

This story and others like it in the Press elicited extremely negative responses from many commentators and some opposition parties to what was perceived as an attempt by the ANC to do away with the provinces. Despite denials from the ANC, a strong sense of impending doom hung over the provincial system of government for some time. Also, as indicated, when the ANC introduced the far-reaching local government reforms, including the ‘megacities’ or ‘unicities’ reform initiative, a number of critical articles continued to appear in several newspapers, fuelling further suggestions and speculation that the ANC was thinking of doing away with the provinces and giving more constitutional powers to the newly created metropolitan councils and their

mayors.⁷⁰ Despite the negative attitudes that had developed against the provinces, many critics still considered them valuable alternative sources of power and authority against central government, hence the critical reactions to the government's perceived threats to the existence of these entities.⁷¹

In fact, amidst the accusations and counter-accusations there was a current of thought, by a small minority within the ANC that actively urged for the provinces to be abolished. For instance, a prominent ANC member in the Mpumalanga government, former MEC for finance Jacques Modipane, advanced this view in 1998. In a budget speech to the Mpumalanga provincial legislature, Modipane proposed that the system of provincial government in South Africa be abolished, arguing that “we could cut out the provincial tier, distribute the money to municipalities and equip them with better qualified people.”⁷² He added that “development would speed up, and a lot of wastage at provincial level would be eliminated.”⁷³ In a recent interview with Modipane,⁷⁴ it became clear that his views have hardly changed since that time. Modipane still argues that provinces are wasteful of resources, among others, due to their large salary bills. He is pessimistic about ongoing attempts and prospects for reducing provincial salary bills and argues that instead, “we need stronger municipalities to carry out the work.” He adds that the provincial staff and the resources should be transferred to the municipalities because that is where expenditure is needed most. Referring to the workings of the provincial system of government in general, he said “everybody knows that this is not working” but he acknowledged that provinces have become part of the reality in South Africa. Modipane, like many other MPLs who were interviewed for this study, acknowledged that over the past ten years strong vested interests have developed among political parties, including the ANC, and that it may be unrealistic to think that the provinces would be abolished soon.

During in-depth interviews with MPLs in Mpumalanga and Gauteng, some of the ANC members indicated their desire to see provinces ultimately abolished. One ANC MPL in Mpumalanga argued “my personal view is that I just think we need a strong central government with regional offices as in the case of [departments of land affairs, home affairs and labour...which must be able to service people.”⁷⁵ The MPL argued further that “...initially, [the provinces] had a role to play but I think now we have a strong central government”, and added that “...what we need is strong local government.” Another ANC MPL in Mpumalanga argued that “provinces served a good purpose of reaching out to people. Once the local governments are capacitated, we need to do away with the provinces, after strengthening local government.”⁷⁶ Another ANC MPL, this time in Gauteng, argued that “provinces arose out of the compromises at the World Trade Centre – the CODESA⁷⁷ talks. The ANC's Freedom Charter calls for a

unitary South Africa and that is what we were up for all the time. And we made compromises, and this for me...I'll characterise it as one of the worst compromises."⁷⁸ The MPL added that

“Provincial legislatures are a huge drain on the country’s resources...there are other costs which are much more difficult to quantify...the cost of tying my resources up, of me as an individual who can add value to this country, tying me up in the piddling things that we do in the legislature...the cost of things that we take our time with in the legislature”.

The abolitionist perspective can hardly be seen as an isolated view within the ANC. The party has traditionally been less enthusiastic about provinces, and even less so about strong provinces, compared with the IFP, NNP and DA. Historically, the party has perceived provinces at best as a necessary evil for purposes of pure administration and implementation of national policy decisions, and at worst an unnecessary additional layer of government. Therefore this view should find fertile ground within some sections of the party, especially those with a centralist bent, keen on ensuring that no potential political or other obstacles are encountered at provincial level to challenge an ANC government’s national policy goals and political agenda.

The ‘abolitionist perspective’ has also had its adherents outside of the ANC, especially in the smaller political parties without any significant presence in the provincial legislatures. Some of these parties have endorsed the idea of abolishing the provincial system of government in South Africa, arguing that the provinces are gradually becoming superfluous in the wake of the newly created and much more streamlined municipal system of government. They argue that the new local government is better geared towards achieving local economic development and promoting democratic citizenship than the provinces. The Pan African Congress (PAC) and the Azanian People’s Organisation (AZAPO) are among the smaller political parties that have supported this view in the past. For instance AZAPO argues that the abolition of the provinces should be accompanied by the strengthening of local authorities. Also in 1998, hardly a year after its establishment, the United Democratic Movement (UDM) had proposed that the provincial system be ‘liquidated’ and replaced with “four commercial enterprises, run by boards of executive directors under the tutelage of a ‘body corporate’.”⁷⁹ The party later distanced itself from the statement, saying that it was a personal opinion of its then chairman of the party’s internal commission dealing with the issue of the future of provinces. Of course the UDM went on to achieve significant electoral success in the Eastern Cape and became the official opposition in the legislature. This appears to have caused the party to tone down its abolitionist stance towards the provinces.

It is entirely understandable that some of the smaller political parties would adopt such an extreme position on the issue. After all, most of them have been unable to gain more than a token representation in any of the nine provincial legislatures, while having a fairly sizeable representation at local government level. This clearly explains their willingness to see provinces give way to strengthened local authorities. However as already indicated, this is still a minority view among many key role players at provincial level, including the MPLs. The opinion survey conducted among MPLs from all nine provinces confirmed this. For instance the MPLs were asked to respond to the statement in Table 1 below:

Table 1: “Abolish provinces and strengthen capacity of municipalities to deliver services and promote grassroots democracy”

Province	Disagree/Disagree strongly	Neutral	Agree/Agree strongly	Total MPLs
E. Cape	*50.0% (5)	10.0% (1)	40.0% (4)	10
F. State	62.5% (5)	12.5% (1)	25.0% (2)	8
Gauteng	85.0% (17)	10.0% (2)	5.0% (1)	20
KZN	75.0% (9)	0.0% (0)	25.0% (3)	12
Mpumalanga	46.0% (6)	15.4% (2)	31.0% (4)	13
N.West	20.0% (1)	40.0% (2)	40.0% (2)	5
N. Cape	75.0% (3)	0.0% (0)	25.0% (1)	4
N. Province	100% (1)	0.0% (0)	0.0% (0)	1
W. Cape	67.0% (6)	0.0% (0)	33.0% (3)	9
Overall totals	65.4% (53)	9.9% (8)	25.0% (20)	81

*Number of respondents in parenthesis

Table 1 shows clearly that a total majority of just over 65% of the MPLs who responded from the nine provinces ‘disagree or disagree strongly’ with the idea of abolishing the provinces and strengthening the capacity of the local authorities to undertake the responsibilities currently residing with the provinces. The survey also found that the majority (63%) of the MPLs who ‘disagreed or disagreed strongly’ came from the opposition parties, and mainly from those who became part of the provincial legislatures for the first time during the 1994-1998 period. This suggests clearly that even if there is some sort of consensus on reviewing the current system of provincial government, many MPLs have developed a stake in the system and would like to see it continue to exist in the future.

2.3.2.2. *Down-scaling or down-grading the provinces*

Despite widespread media reports that the ANC wanted to abolish the provinces, it was clear that the prospects of that happening were very small – at least not in the short to medium term, if at all. There are enormous legal, political and constitutional implications and consequences that would have to be considered carefully. Also, the operational and administrative disruptions to public service delivery would make this option politically risky. As Tom Lodge points out, there is no guarantee that the problems experienced at provincial level would disappear if provinces lose their entrenched constitutional status.⁸⁰ While ‘abolitionist perspective’ does have strong adherents within the ANC, it holds less sway than some critics would indicate – at least for the moment. In fact, when asked about the future of the provinces in South Africa and whether or not they should be abolished, many MPLs in Gauteng and Mpumalanga, including those from the ANC, indicated that the provinces still had an important role.

The majority of the MPLs who were interviewed for this study acknowledged the fact that local authorities would increasingly take over more and more of the service delivery functions and other responsibilities that are currently undertaken by provincial governments. However a dominant view among them was that the provinces would still have an important role to play, among others, in monitoring, coordinating and overseeing the activities of the local authorities in their areas of jurisdiction. For instance, Jack Bloom of the Democratic Alliance (DA) acknowledged that “provinces don’t have to hold on unnecessarily to powers...those that can be devolved should be”, but went on to add “there’s a very important monitoring role [for the provinces].”⁸¹ Bloom also believed that not all the major services currently delivered by the provinces would be devolved to the local authorities, including education, welfare and major provincial hospitals. Julie Killian of the NNP also believed that provinces would remain critical even in the future, arguing that “in this huge remote country of ours, you need to have an arm of government which is looking at service delivery across a bigger area...service delivery coordination on critical portfolios will have to remain at provincial level.”⁸² Killian also revealed that “there’s a greater realisation in the ANC ranks, especially those members who’ve been here since 1994, that it makes good sense to have a provincial focus...” For instance, Firoz Cachalia, speaker of the Gauteng legislature until recently, confirmed this in a recent interview:

“I think that the experience since 1994 has changed the debate within the ANC. I think that there is a much more complex...more diverse debate. I think there are still people who have a more centralised perception of governance in mind, but I think that there are also people like myself whose views have developed and adjusted and through an

evolution of thinking within the ANC, influenced by the practical experience of governance...have also come to see the value of having a provincial system”⁸³

Many of the ANC MPLs interviewed in Gauteng and Mpumalanga indicated that the party had taken a policy decision that South Africa’s provincial system of government will be retained in its current form for the foreseeable future. However this hardly means that there is general satisfaction with the current role and performance of the provinces. In fact, the idea of overhauling the system has been around since 1998 and appears to be still prevalent among a fairly large number of the MPLs in the provinces. Table 2 shows the responses of MPLs to a statement regarding the idea of rethinking the current role of the provinces in South Africa. It shows that a clear majority of 59% of MPLs agree or agree strongly with the idea of rethinking the current role of the provinces while only a quarter (32.1%) disagree or disagree strongly.

Table 2: “We need to rethink the current role of provinces in South Africa”

Province	Disagree strongly	Disagree	Neutral	Agree	Agree strongly	Total MPLs
E. Cape	*22.2% (2)	11.1% (1)	11.1% (1)	33.3% (3)	22.2% (2)	9
F. State	12.5% (1)	37.5% (3)	25.0% (2)	0.0% (0)	25.0% (2)	8
Gauteng	10.0% (2)	20.0% (4)	20.0% (4)	40.0% (8)	10.0% (2)	20
KZN	25.0% (3)	16.7% (2)	8.3% (1)	41.7% (5)	8.3% (1)	12
Mpumalanga	0.0% (0)	38.5% (5)	7.7% (1)	46.2% (6)	7.7% (1)	13
N.West	0.0% (0)	0.0% (0)	0.0% (0)	80.0% (4)	20.0% (1)	5
N. Cape	0.0% (0)	25.0% (1)	0.0% (0)	75.0% (3)	0.0% (0)	4
N. Province	0.0% (0)	0.0% (0)	0.0% (0)	0.0% (0)	100.0% (1)	1
W. Cape	11.1% (1)	11.1% (1)	11.1% (1)	44.4% (4)	22.2% (2)	9
Overall totals	11.1% (9)	21.0% (17)	12.3% (10)	40.7% (33)	14.8% (12)	81

*Number of respondents in parenthesis

It was also found that the majority of the respondents who became MPLs for the first time in the 1999-2004 period were more inclined to agree to a rethinking of the current role of the provinces than those who joined earlier. In this case the ruling party/opposition party affiliation did not make much of a difference.

The perspective that was increasingly being articulated within the ANC is the idea of down-scaling or down-grading the provinces. For instance some national ANC leaders have called for central government to scale down the provinces and assume greater powers to overrule the provinces on urgent national policy priorities such as restructuring the education and health systems and dealing with poverty and the distribution of resources. In 1998, the chairman of the

education portfolio committee in the national assembly, Blade Nzimande, argued that “transformation [of education] in the light of the apartheid legacy cannot be meaningfully undertaken through a fragmented and exclusively driven process.”⁸⁴ This call was made despite the fact that national government already has sweeping powers to overrule and intervene in areas of both concurrent and exclusive provincial competency.

The ANC’s Ben Turok, convenor of the finance committee in the national assembly in 1999, also appeared to endorse the idea of revising or scaling down some of the powers of the provinces. He argued that certain provincial powers, such as financial management, be withdrawn and centralised. Northern Province premier, Ngoako Ramatlhodi, had also been extremely vocal on the need to overhaul the current system, calling for ‘a national indaba’ to re-evaluate the status of the provinces. In a conference speech in 1998, Ramatlhodi had outlined four options for the future of the provinces: decentralising or devolving more powers and functions to the provinces; central government assistance to the provinces through technical resources and secondment of skilled personnel in critical areas of provincial competence; an asymmetrical assignment of powers and responsibilities based on the capacity of individual provinces, and the scaling down of provincial powers and functions.⁸⁵ Ramatlhodi made it clear that he preferred the last option – scaling down provincial powers and functions. He also endorsed the idea of local authorities becoming the primary agencies for service delivery and deepening democratic participation, although he cautioned about the workability of this option in predominantly rural provinces like Northern Province, where local authorities are still institutionally weak and reliant on national and provincial support.⁸⁶

Even within this ‘scaling-down’ or ‘down-grading’ perspective there are conflicting ideas about precisely how to proceed and what the end-state would be. Some within the ANC have expressed desire to see the provinces vested only with a political role of public representation, interest articulation, and positioning provincial legislatures as channels for greater political participation by citizens at regional level. In other words, this version calls for the provinces to be restructured into purely political institutions fulfilling a democratic representational role, while their administrative functions are to be ceded to the local authorities where service delivery functions would have to be located.⁸⁷

In a speech to a conference in May 1998 convened by the Konrad-Adenauer Foundation, Ramatlhodi asserted that provinces should serve “primarily as vehicles for democracy rather than delivery”, adding that “provincial government should allow ordinary citizens easier access to elected leaders and to make their voices heard.”⁸⁸ Former Eastern Cape Premier Makhenkhesi Stofile caused a fair amount of political controversy in March 2001 when, in a newspaper

interview, he put forward this perspective.⁸⁹ His argument was that provinces should be stripped of some of their powers and turned into merely political oversight structures. Stofile also proposed that provincial public servants be deployed to municipalities to boost institutional, administrative and service delivery capacity at that level. Also, Gauteng Speaker Firoz Cachalia had described a relatively similar vision of a future provincial system of government a month before Stofile's controversial views were made public, at the opening of the Gauteng Legislature in 2001. Cachalia argued that a new era in intergovernmental relations was about to dawn where provinces would play an oversight role over municipalities that would be increasingly focusing on delivering public services to citizens.⁹⁰ This vision envisages a much more reduced administrative and service delivery role for provinces, as local authorities are expected to strengthen their administrative and service delivery capacities.

Tom Lodge elaborates on what is essentially a second variant of the scale-down perspective in his book *Politics In South Africa (From Mandela To Mbeki)*. He points out that due to concerns within the ANC about the financial and political costs of running the provinces, some would favour reducing the provinces to mere administrative structures, shorn of their representative and elected components and placing these administrative entities under direct national supervision.⁹¹ The ANC actually produced an internal discussion document on this question in 2002. A view had been put forward in the party that there were too many MPLs whose maintenance was an unaffordable burden for a developing country like South Africa. In August 2002, the party circulated an internal discussion document on this issue, proposing options for the restructuring of provincial legislatures.⁹² Among others, the document put forward the idea of turning legislatures into part-time bodies as one among several possible solutions to the problem of high costs in the running of nine full-time provincial legislatures with a total of 430 MPLs.

2.3.2.3. Provinces as vehicles for deepening democracy

The third perspective rejects any notion of abolishing or scaling down the provinces. It is based on the premise that provinces are vehicles for realising key democratic values and ideals, such as democratic representation of citizens at sub-national level, popular participation and involvement in processes of government, as well as reflecting the diversity of political interests of regional majorities and minorities in the country. This view asserts that social and political groups without prospects of capturing power or institutional representation to express and promote their political, social and cultural interests at national level⁹³ should have access to power through regional government institutions. This is part of a broader argument in literature in favour of federalism because of its perceived ability to provide minorities, unable to win power at national level, with greater opportunities to win political power at regional level. It is argued that this

encourages them to develop a stake in the system. Steven Friedman subscribes to this perspective of the importance of provincial government in South Africa, arguing

“Much of the discussion seems to see [provinces] largely as management tools – they are judged on whether they deliver goods to citizens and run the government machine adequately. If we take that view, we might conclude that they harm more than they help...it may be cheaper and easier to hand over all services to national government. But this is not why elected provincial governments were established: they were meant to be vehicles for democracy, not for management”⁹⁴

The current constitution also embodies a strong element of this perspective on the role of provinces. For instance, Section 118 provides for public access and involvement in the running of provincial governments. It states that provincial legislatures must facilitate public involvement in legislative and other processes, including committees, conduct their business in an open manner, and hold their sittings and those of their committees in public. As Friedman points out, potentially the provinces can allow for diversity of interests, for leaders in the majority party to develop power bases and for opposition parties to develop a stake in the system.⁹⁵ However some commentators believe that, in practice, the provinces have not served as effective vehicles for deepening democracy by adequately allowing for the expression of regional diversity, especially on important national policy issues. For instance, Richard Simeon and Christina Murray argue that the provinces have mainly operated as adjuncts or extensions of national politics, and that provincial leaders are elected on the coattails of national political leaders, which undermines the ability of provincial institutions to function as effective vehicles for sub-national democracy.⁹⁶

Nonetheless, this perspective essentially calls for the retention of the current constitutional status of the provinces but with the assignment of more powers and functions to ensure that they adequately exercise meaningful authority. The IFP is the main proponent of this view. Although both the NNP and the DP/DA have not been as consistent and vocal in their support of this position as the IFP, their MPLs have recently expressed some support of this view. For instance, Jack Bloom of the DA argued that “provinces are [there] to accommodate diversity...the diverse interests need to be expressed.”⁹⁷ Julie Killian of the NNP believed that the provinces ought to have more powers, saying “provinces must be effective...and they must have sole mandate on certain portfolios...unfortunately some of the functions that we believe would have been best served provincially, have now become concurrent functions between national and provincial [governments].”⁹⁸ The opinion survey conducted among MPLs also found a strong level of support for the view that provinces ought to have more powers.

Table 3: “Devolve more powers and functions to provinces and allocate more fiscal resources” (by province)

Province	Disagree/Disagree strongly	Neutral	Agree/Agree strongly	Total MPLs
E. Cape	40.0% (4)	10.0% (1)	50.0% (5)	10
F. State	0.0% (0)	12.5% (1)	87.5% (7)	8
Gauteng	15.0% (3)	10.0% (2)	70.0% (14)	20
KZN	33.3% (4)	25.0% (3)	41.7% (5)	12
Mpumalanga	46.0% (6)	0.0% (0)	54.0% (7)	13
N. West	0.0% (0)	0.0% (0)	100.0% (5)	5
N. Cape	0.0% (0)	0.0% (0)	100.0% (4)	4
N. Province	0.0% (0)	0.0% (0)	100.0% (1)	1
W. Cape	11.1% (1)	11.1% (1)	78.0% (7)	9
Overall totals	22.2% (18)	10.0% (8)	68.0% (55)	81

As Table 3 illustrates, a large majority (68%) of the MPLs of all political parties from the nine provincial legislatures agreed or agreed strongly with the statement. Only 22.2% disagreed or disagreed strongly with the statement. Table 4 provides further analysis of these findings. For instance it shows that the overwhelming majority of 91% of all non-ANC MPLs from all the nine provinces agreed or agreed strongly that the provinces be assigned more powers and fiscal resources. The table also shows that 42% of all ANC MPLs agreed or agreed strongly with the statement, while 37% disagreed or disagreed strongly. A total of 21% of ANC MPLs were neutral. These survey findings show clearly that opposition parties are united in their agreement with the statement, while the ANC remains seriously undecided. Obviously the differing opinions among ANC MPLs, as Table 4 illustrates, make it difficult for the party to resolve the issue of the future of the provinces once and for all. Nonetheless, the 42% of ANC MPLs who agreed or agreed strongly with this statement is fairly significant. Added to this is that out of all the MPLs who agreed or agreed strongly with the statement, 29% were from the ANC. This suggests that there is a sizeable proportion of the ANC’s MPLs who are at odds with the party’s current policy of keeping the status quo at provincial level unchanged for the foreseeable future.

Table 4: “Devolve more powers and functions to provinces and allocate more fiscal resources”
(by party affiliation)

Party Affiliation	Disagree/Disagree strongly	Neutral	Agree/Agree Strongly	Total
Non-ANC MPLs	9.3% (4)	0.0% (0)	91.0% (39)	43
ANC MPLs	37.0% (14)	21.0% (8)	42.0% (16)	38
Overall totals	22.2% (18)	10.0% (8)	68.0% (55)	81

Also, the finding about the significant proportion of ANC MPLs who are in favour of provinces being assigned more powers is an interesting finding in that it appears to suggest that a strong current of opinion and preferences among MPLs at provincial level does not support the national government’s drive towards devolving more powers and functions to the local authorities. If MPLs of all parties were included, it is clear that the majority of provincial MPLs would prefer that the provinces be assigned more responsibilities in the future, with increased fiscal resources.

Clearly, underlying this perspective is a strong belief that greater constitutional powers and political autonomy for the provinces would enable them to make independent policy decisions and thereby represent their voters far more effectively. As a measure of their constitutional and functional weakness within the current system of government, many analysts typically point to the inability of the provinces to make independent decisions on matters such as personnel salary costs, the costs of social pensions, determining who should receive welfare pensions, the control of staffing levels, labour agreements, and conditions of service for provincial public servants.

However, this perspective is not merely about more powers to the provinces for its own sake. It is based on a strong belief that ‘difference’ and ‘diversity’ are fundamental political values to be entrenched and protected through politically autonomous provinces. There is a strong belief that greater powers for the provinces would enable them to realise their different potentials and pursue their different policy preferences far more vigorously. For instance, Steven Friedman argues that “if we feel that difference, within common norms set by a national constitution, is healthy, we need provinces. If we feel it is divisive, we do not.”⁹⁹ He then goes on to argue that as a result of lack of adequate powers and sufficient authority to make independent decisions, provincial legislatures are currently unable to “translate regional needs and desires into law or policy. And while events in the ANC...have shown that difference between the provinces and national leadership is a reality, it has been expressed more in disputes about personalities than in different interests and approaches.”¹⁰⁰

In 1998, an editor of a local regional newspaper in KwaZulu-Natal wrote an article largely endorsing these views and arguing that “the problem...is not with the provinces *per se*. Instead, the problem is that our provinces do not enjoy sufficient powers to rule effectively and to give effect to their citizens’ wishes.”¹⁰¹ The article went on to denounce provincial ministers as “highly paid ministers who are no more than glorified prefects.” IFP President Mangosuthu Buthelezi and other prominent party leaders have vigorously expressed similar sentiments on many occasions in the past. For instance, in February 1999, in a debate on President Mandela’s ‘state of the nation’ address in the national assembly, Buthelezi called for provincial governments to be scrapped or given more powers. He contended

“The cost is too much for the little they produce. Efficiency demands that they are given more powers and encouragement to produce more with what they have. Or I myself, the champion of federalism, will be the first to say that, if they don’t produce, provinces must go...they have passed little or no legislation and developed few or no policies of their own...they have taken charge of an insufficient number of problems and developed few solutions.”¹⁰²

In his speech to the 1999 intergovernmental conference already mentioned above, KwaZulu-Natal premier Lionel Mtshali argues

“We should overcome fear of differentiation of policies and diversity of legislation among provinces. For as long as our system of government fears that laws may vary from region to region and that such diversity is bad, our institutional reality will make a mockery of our written constitutional scheme. Diversity is not an antonym of unity.”¹⁰³

A common thread that runs through all these views about the current state of provincial government is that provinces lack sufficient constitutional powers and therefore suffer from weak authority to make meaningful and independent decisions. However, to what extent is it necessarily true that the scope for independent executive and political action at provincial level is as severely restricted as this perspective on the future of the provinces appears to suggest?

Some analysts have contradicted the view that provinces have no room for independent policy decisions. There is a view that despite the dominance of central government underpinned by its constitutional power to set national norms and standards, as well as to override the provinces, there is reasonable room for policy manoeuvre and fairly good prospects for independent decision making at provincial level. Tom Lodge points out that there is indeed room for limited discretion at provincial level, arguing for instance that “the management of provincial finances

allows plenty of opportunities for controversy and disagreement.”¹⁰⁴ Tom Lodge also draws attention to the very real power often exercised by provincial politicians in the allocation of resources – mentioning as one of a number of examples an instance in Mpumalanga in 1998, when the provincial Department of Transport replaced tarred road surfaces on major trunk routes with a (cheaper to maintain) gravel surface, and decided to tar gravel roads in the former homeland areas where it is widely known that the ruling ANC has considerable political support.¹⁰⁵

Even some of the provincial premiers do acknowledge within the current constitutional constraints, that there is some room for manoeuvre for the provinces. For instance North West premier, Popo Molefe, in his speech to the 1999 conference on intergovernmental relations, argued that “although national government can override sub-national legislation, its powers are limited, highlighting some degree of sub-national autonomy.”¹⁰⁶ Richard Simeon and Christina Murray elaborate further on this, contending that while the national government does have sweeping powers to intervene in matters of provincial competence in terms of criteria set out in Section 146 of the constitution, such interventions have to be justified and linked to national goals.¹⁰⁷ They point out that Sections 44(2) and 146 of the constitution compel central government to show why its legislation has to prevail over provincial legislation in respect of matters of provincial exclusive and concurrent competency.¹⁰⁸ They conclude that

“Sections 44(2) and 146 can be read in a number of ways. One way suggests the criteria are so broad as to make it difficult to imagine any national law being struck down. Another way, however, would subject proposed national legislation trumping provincial legislative initiative to a much stricter test. This suggests that there is considerable potential for provincial legislative initiative, given sufficient will, political independence and capacity. In exclusive and concurrent areas, there is no constitutional requirement for the provinces to simply wait for the national government to legislate, or to defer to national law”¹⁰⁹

What this analysis suggests therefore is that the national government’s supremacy in matters of policy making and legislation is neither absolute nor insurmountable in terms of current constitutional provisions. It is largely a function of other factors, such as sufficient political will at provincial level to take the initiative, and perhaps also the political will at the level of the ruling party to allow provinces to exercise such authority and power relatively unhindered. Also, the issue of institutional and political capacity at provincial level is important in enabling provinces to exercise that independence in practice.

The foregoing discussion of the three perspectives on the future of the provincial system of government in South Africa illustrates an important issue about South Africa's current political system. It is that, ten years on, there is still a lack of fundamental consensus not only among scholars and commentators, but also among the political elites and within the ruling ANC, on the future role of provincial institutions of government. This underlying crisis of confidence in the system, the unresolved questions about the future of the provinces and what needs to be done about them, constituted the context within which the provinces had to perform their functions and fulfil their responsibilities over the past decade.

There does not seem to be any prospect of many fundamental or radical changes being introduced to the system in the immediate future, particularly in respect of greater powers to the provinces, and even less prospect of abolishing them. This is especially so in the light of the ANC's decision taken in 2002 that the system will be retained in its current form for the foreseeable future. However, such a decision does not necessarily preclude the prospects for more debates and questions in the future about the perceived weaknesses in the performance and effectiveness of provincial institutions of government, the underlying causes of such weaknesses and possible long-term solutions.

Despite the ongoing debates about the future of the provincial system of government in South Africa, it can be argued that the centralisation thrust of the reforms introduced by the ANC government helped to stabilise the provinces somewhat, especially in the late 1990s and early 2000s. The most notable achievement has been the stabilisation of the provincial finances. After numerous interventions in the financial affairs of several provinces, the widespread financial mismanagements and the R9.9 billion provincial budget deficit of the mid-1990s have largely been replaced by improved financial management practices, better capacity and skilled personnel in the majority of the province, including a provincial budget surplus of R3.2 billion in the 2001/02 financial year. Therefore while the reforms discussed above have attracted severe criticisms from some quarters for leading to what is generally perceived as over-centralisation of decision making and limiting the province's room to manoeuvre, they have also helped to clean up the administrative, financial and service delivery chaos that had reigned at provincial level in the past, as well as reducing the widespread political conflicts and tensions that used to debilitate effective governance in some ANC-controlled provinces.

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CHAPTER 3: PROVINCIAL GOVERNMENT IN PRACTICE – INSTITUTIONAL PERFORMANCE

3.1. INTRODUCTION

Provincial institutions of government in South Africa have to fulfil two important functions. Firstly, they are fully fledged, elected democratic political institutions with a mandate to provide effective political representation to citizens at political level. As elected institutions, they mediate the varying and conflicting interests of their citizens, and have to process these into concrete policy programmes and legislations to meet the needs of their citizens. Provincial legislatures are critical institutions in this regard. Secondly, provinces have an administrative or managerial and policy implementation or service delivery mandate. Once policy programmes and the necessary legislation have been formulated inside government departments and passed through the legislatures, it becomes the responsibility of the provincial executive councils or cabinets to manage and implement these policy programmes and deliver essential services to their citizens.

This chapter will look at provincial governments in general and how they have functioned and performed their responsibilities in the past ten years. The chapter starts by looking at provincial legislative institutions and their structural organisation, and assesses how they have performed their functions in the past. In the first and second subsections below, the effectiveness of provincial legislatures is examined in terms of two variables: democratic/political effectiveness and legislative effectiveness. In the third subsection, the chapter examines the effectiveness of provincial government in terms of administrative capacity, policy implementation and delivery of services.

3.2. PROVINCIAL LEGISLATURES – DEMOCRATIC/POLITICAL EFFECTIVENESS

Under this subsection, two important elements will be examined to assess the democratic or political effectiveness of provincial institutions of government: the capacity of provincial legislatures to provide effective political representation of their constituents or citizens, as well as institutional capacity to oversee or monitor the activities of provincial governments and their departments.

3.2.1. Representational Effectiveness

One of the key objectives of establishing a provincial system of government in South Africa, with fully-fledged and democratically elected legislatures, was to provide effective representation of citizens in the country's regions. Effective representation presupposes three key elements. Firstly, it presupposes proper mechanisms and procedures to enable regional citizens to voice their concerns and grievances about the affairs of their provinces and to participate in the formal activities of government. Secondly, effective representation implies systems and procedures to enable citizens to hold their elected representatives accountable on a regular basis, and also for elected representatives to account to their constituents regularly. Thirdly, effective representation calls for appropriate mechanisms and procedures for elected representatives to hold provincial governments accountable regularly on behalf of their constituents. This third element will be dealt with under the subsection on oversight capacity below.

3.2.1.1. Citizen representation through provincial elections

Provincial legislatures are meant to enable citizens in the regions to have an effective voice in the affairs of their provinces. One way for citizens to influence government is through regular elections that are provided for every five years for citizens to choose those who will represent them in the nine legislatures. In terms of the Electoral Act of 1998, each member of a provincial legislature represents 100 000 people and the size of each provincial legislature reflects the size of the provincial population. The constitution currently sets the minimum of 30 and maximum of 80 elected members of provincial legislatures. These limitations did not apply when the first democratic elections of 1994 were held under the interim constitution of 1993. Nonetheless, in the period covered in this study (1994-2004), provincial electorates have had three occasions to pass judgement on the performance of their provincial governments through choosing those they wanted to serve as their representatives in provincial legislatures.

The proportional representation electoral system currently in use at provincial level is based on closed party lists. The political parties contesting elections conduct their own internal, and sometimes secretive, candidate nominations processes that culminate in official lists of candidates. One of the key drawbacks of this is that the party lists are 'closed' in that ordinary citizens or voters cannot change them to indicate alternative preferences. The overall effect is that the voters choose the party to which a candidate belongs and not their favourite candidates. This tends to strengthen the position of political party leaders, who usually control the internal

party candidate selection processes, over the positions of individual party candidates. It therefore means that the choice exercised by citizens during elections is fairly limited. To the extent that the political parties decide in advance who will represent citizens, the choice of the voters is therefore limited to merely endorsing the candidates as chosen by their parties. Nonetheless, regional citizens do have regular opportunities to shape the composition of their legislatures every five years.

There are also positive aspects of the current electoral system. For instance, it enables political parties to select their candidates to reflect the diverse interests and characteristics of their respective support bases. In other words, candidates can be selected to reflect the diversity of regional voters in terms of minority group status, geographical location, socio-economic interests as well as political, religious, ethnic, gender and racial differences. This helps broaden the scope of representation and therefore no doubt enhances the quality of citizen representation at provincial level. It is acknowledged that some electoral systems, especially the constituency based, first-past-the-post system that is commonly called for in South Africa as an alternative, may disadvantage and therefore serve to marginalise some of the minority groups in society who may not command adequate electoral support to win seats even at provincial level.

That the establishment of provincial government has increased the opportunities and entry points for citizen participation and representation in formal processes of government has been widely acknowledged. This is mainly because many political parties, including regionally based smaller parties, have greater opportunities at provincial level than at national level to gain seats and provide representation for the interests they seek to promote. As argued above, participation in general elections serves as one of the indicators of citizen engagement in politics and government. Provincial voter turnout during the three last elections has been fairly high, indicating considerable citizen interest in shaping and influencing their provincial governments. This was particularly the case with the first and second provincial elections. For instance, the average provincial voter turnout of 87.3% in 1994 increased slightly to 88.8% before dropping down to 75.4% in the 2004 general elections. Even at 75.4% the provincial voter turnout in 2004 is considered still fairly high.

A closer look at the electoral turnout figures shows that four provinces experienced a steady decline in voter turnout over three consecutive elections, while the other five experienced an increase in the first two elections before a drop off in the third. Those that experienced a decline in voter turnout were Eastern Cape (92.0%, 90.0%, 79.3%), Northern Cape (93.0%, 88.2%, 75.0%), North West (90.2%, 87.0%, 76.0%) and Western Cape (89.3%, 86.0%, 71.3%). Interestingly, these four provinces initially had very high levels of voter turnout in the first all-

inclusive elections of 1994 – around 90% or slightly above – before the decline. The figures for the other provinces that experienced an increase in voter turnout before the decline are the following: Free State (83.4%, 90.4%, 77.8%), Gauteng (86.9%, 89.3%, 74.2%), KwaZulu-Natal (81.0%, 87.4%, 73.0%), Northern Province (84.6%, 91.1%, 75.0%) and Mpumalanga (86.2%, 90.0%, 78.3%). Despite the general drop in levels of provincial voter turnout in the country's third elections, none of the turnout figures fell below 50%, indicating considerable interest among regional citizens in influencing processes of government at this level.

Another important indicator of citizen engagement in government is the number of political parties contesting the elections. Political parties serve as key vehicles through which citizen participation and representation is mediated. Despite the political and electoral dominance of the ANC at national and provincial level, it is clear that a vibrant and diverse political life exists at grassroots level in many provinces. This is indicated by the gradual increase in the number of political parties that have attempted to tap into this well of grassroots political activity at provincial level in the past three general elections.

Table 5: Number of parties contesting provincial elections

Level of government	Election 1994		Election 1999		Election 2004	
	Number contesting	Number winning seats	Number contesting	Number winning seats	Number contesting	Number winning seats
Natl. Assembly	19	7	16	13	21	12
Prov. Legislatures	23	8	25	12	33	11
E. Cape	9	4	10	5	13	4
Free State	9	3	13	4	13	4
Gauteng	14	7	14	8	18	8
KZN	11	7	14	7	18	6
Mpumalanga	9	3	13	5	13	3
North West	8	3	11	5	12	4
N. Cape	8	4	10	4	13	6
N. Province	10	3	13	6	13	4
W. Cape	14	5	15	5	20	6

Table 5 shows the extent to which the three general elections were contested at national and provincial levels. In 1994 a total of 23 political parties contested the provincial elections. This number increased to 25 in 1999, and 33 in 2004. Also, the number of political parties contesting

only the provincial elections increased steadily. For instance in 1994 a total of 9 political parties contested the provincial elections only. This figure increased slightly to 10 in 1999 and to 13 in 2004. It seems that in general, the provinces have experienced a noticeable increase in the number of parties contesting the general elections and in some provinces, the contests were clearly more hotly contested. These include Western Cape, KwaZulu-Natal and Gauteng. Government in two of these three provinces (Western Cape and KwaZulu-Natal) has been dominated by opposition parties in the past but with a strong showing for the ruling ANC, while Gauteng has always provided considerable political support bases for opposition parties amidst the dominance of the ANC. Table 5 shows that these three provinces have had the largest number of political parties contesting the three previous elections, indicating clearly that the societal divisions within these three provisions are serving as bases for vibrant political action, with many political parties attempting to translate them into legislative seats.

The increase in the number of parties contesting provincial elections only could suggest two factors. Firstly, it could mean that the prohibitive financial costs of contesting elections at national level and across all nine provinces are forcing many smaller regional or localised parties to confine their attempts to gain seats to few provinces. Only the major national political parties have enough resources to contest seats at the national assembly and all nine provincial legislatures. Secondly, the increasing number of political parties contesting the elections only at provincial level may suggest that smaller, regional minority groups or communities are increasingly being mobilised into action to press for their demands and actively pursue their interests through formal elective channels. If this is the case, then such local and regional minority groups may be gradually awakening to the potential benefits of participating in organised political activities and the increasing possibilities of securing representation in regional legislatures. Whatever the case may be, this could signal the increasing realisation of the importance of provincial institutions as potentially effective vehicles for participation and representation by local citizens.

An important aspect of the broader issue of citizen engagement in formal politics, which is increasingly receiving attention in public debates, is the issue of female participation and representation.¹ While politics at national and provincial levels remains largely a male-dominated profession, the issue of women participation and representation is slowly but gradually receiving serious attention among the political parties in South Africa.

Table 6: Proportions of female candidates (combined national & provincial lists).²

Political Parties	% Female Candidates: 1999 Party Lists	% Female Candidates: 2004 Party lists
ACDP ³	*	31.8
ANC	35.0	35.4
AZAPO	*	37.0
DP/DA	20.0	31.59
ID ⁴	-	30.33
IFP	22.0	31.82
NNP	15.0	25.21
PAC	*	33.64
UDM	-	24.94
FF+ ⁵	16.0	23.39

Source: Gender Links (www.genderlinks.org.za) *Gender not specified.

This table shows that there was a significant increase in the proportion of female candidates included in party lists for the 1999 and 2004 general elections. The table appears to show a general increase across the board in the percentages of women candidates in the combined provincial and national lists of some of the major political parties that contested the 2004 general elections. This may be an indicator of the increasing level of representation of women in the higher echelons of political parties but it also indicates that provincial legislatures are providing opportunities to address the problem of gender imbalance in positions of power in society.

However, the picture appears to change somewhat when examining the number of elected female members of provincial legislatures after the 1994, 1999 and 2004 elections. The apparent increase in the number of female representation in party lists is not successfully carried through to the level of women representation inside the provincial legislatures. In other words, provincial legislatures are still male-dominated institutions. Nonetheless, Table 7 appears to show that in general, the level of female representation in provincial legislatures has been steadily increasing since 1994 when the total number of female MPLs was 102 (24%). It increased to 119 (27.7%) in 1999 and to 139 (32.3%) in 2004.

Table 7: Female representation in provincial legislatures

Provinces	1994			1999			2004		
	Seats	Female	%	Seats	Female	%	Seats	Female	%
E. Cape	56	14	25.0	63	15	23.8	63	20	31.7
Gauteng	86	25	29.1	73	25	34.2	73	31	42.5
KZN	81	11	13.6	80	21	26.3	80	21	26.3
F. State	30	7	23.3	30	7	23.3	30	8	26.7
N. Province	40	11	27.5	49	15	30.6	49	16	32.7
Mpumalanga	30	6	20.0	30	8	26.7	30	9	30.0
N.West	30	11	36.7	33	10	30.3	33	11	33.3
N.Cape	30	7	23.3	30	8	26.7	30	11	36.7
W.Cape	42	10	23.8	42	10	23.8	42	12	28.6
Total	425	102	24.0	430	119	27.7	430	139	32.3

Source: Electoral Institute of Southern Africa

The slow progress in female representation in provincial legislatures is largely due to the continuing inability of female candidates to gain positions in sufficient numbers at the top of the party lists, especially for the opposition parties. The ANC has a policy of ensuring that in the compilation of provincial party lists, every third candidate is female. As a result of this policy, it appears that the ANC has been the main contributor to the increase in the number of female MPLs at provincial level. Overall, total female representation still amounts to only a third of the total after ten years of democratic practice in representative government at provincial level. However, it is possible to assume that provincial institutions of government have provided increased opportunities for greater female representation in formal processes of government in South Africa. It needs to be noted though that the provincial legislatures have performed fairly well in terms of female representation compared with the National Assembly.

Compared with the National Assembly, the provincial legislatures have performed slightly better in terms of female representation. For instance Table 8 below shows that the 1994 general elections led to the election of 111 (27.7%) female members to the 400-member National Assembly. The figure increased to 120 (30%) in 1999 and 132 (33%) in 2004. This is a slower average rate of increase in female representation of about 2.6%, compared to an average provincial increase of 4.1% in the subsequent elections after 1994. Of course, at the level of individual provinces, the representation of women varies significantly after the 2004 elections, with Gauteng (42%), Northern Cape (37%) and Northern Province (33%) currently performing better than others such as Western Cape (28.5%), KwaZulu-Natal (26.2%) and Free State (26%) (See Table 7).

Table 8: Female representation in the National Assembly

National Assembly	1994			1999			2004		
	Parties	Seats	Female‡	%	Seats	Female‡	%	Seats	Female
ANC	252	90	35.7	266	95	35.7	279	107	38.4
DP/DA	7	1	14.3	38	6	15.8	50	10	20.0
IFP	43	10	23.3	34	9	26.5	28	6	21.4
NP/NNP	82	9	11.0	28	4	14.3	7	1	14.3
UDM				14	1	7.1	9	3	33.3
ACDP	2	0	0.0	6	2	33.3	6	1	16.7
FF+	9	0	0.0	3	0	0.0	4	0	0.0
UCDP				3	1	33.3	3	1	33.3
PAC	5	1	20.0	3	0	0.0	3	0	0.0
Other				5	2	40.0	11	3	27.3
Total	400	111	27.8	400	120	30.0	400	132	33.0

Source: Electoral Institute of Southern Africa (EISA)

‡These figures were obtained from Gender Links (www.genderlinks.org.za) and could not be verified for accuracy

3.2.1.2. Citizen participation in provincial legislature activities

Citizen participation in general elections serves as an important and valuable opportunity for citizens to influence and shape their institutions of government, and also to hold their representatives accountable. However, they are not sufficient. Guillermo O'Donnell argues that "reasonably free and fair elections provide a means of vertical accountability...which permit citizens to voice social demands to public officials (elected or not) and to denounce these same officials for wrongful acts that they may commit".⁶ However, O'Donnell goes on to point out that the general elections are very infrequent in their occurrence, and that their effectiveness as tools for ensuring vertical accountability to citizens is not clear. Added to this is the fact that, especially in developing or newly democratising countries, many political parties are still weak and public representatives largely unable to translate voter electoral choices into effective programmes of action.

Also, national and provincial elections in South Africa are held only once every five years. During these long intervals between elections many important changes can and usually do happen such as 'floor crossings', government policy shifts or introduction of new policy initiatives that may undermine, if not completely invalidate, the choices made by voters at the time of the election. Also, some commentators have pointed out that provincial elections in South Africa are largely contested on the basis of national rather than regional issues, which suggests that during provincial elections the choices of voters are more likely to be shaped by national political issues

than regional issues of concern to them.⁷ What this means therefore is that the five-yearly opportunities that voters get to vote for their public representatives and provincial governments are not effective devices for ensuring popular accountability, especially for the routine activities and other day-to-day decisions of governments. Therefore other ways and means of holding elected public representatives and provincial governments accountable in between the elections are imperative.

Broadly, three distinct and formal mechanisms or processes have evolved at provincial level over the past decade to provide citizens with opportunities to participate in the activities of government and to hold their public representatives and provincial governments accountable on an ongoing basis. These are ‘public hearings’, ‘petitions processes’ and ‘constituency offices’. The first two are formal processes driven through provincial legislatures, while the third is largely an informal mechanism driven through the political parties.

3.2.1.2.1. Public hearings

Public hearings are intended to provide citizens at regional and local community levels with a formal and structured opportunity to make inputs into formal decision-making processes within provincial legislatures. They are also intended to serve as devices through which legislatures can gather information relating to public views and perceptions. In theory they can be utilised during decision making processes on any kind of policy issue. For instance, they have been used on a variety of occasions in the past, such as when legislature committees were conducting investigations into government activities, including administrative corruption, and others such as the desirability of changing the names of places such as towns, cities, public facilities and so on. In Gauteng, public hearings have been conducted on a variety of matters including the Auditor-General’s annual audit reports on government accounts or even the annual provincial budget.

Public hearings have also been used by legislatures during law-making processes. Section 116 (1)(b) of the constitution mandates a provincial legislature to “make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.” Further, Section 118(1) also makes provision for provincial legislatures to “facilitate public involvement in the legislative and other processes of the legislature...” Therefore, as part of the process of dealing with a proposed piece of legislation or government bill (either national or provincial), all provincial legislatures have adopted the idea of holding public hearings, at which citizens, especially those potentially affected by the proposed legislation, are allowed to make formal representations and inputs into the process. A selection of annual reports of seven legislatures was obtained for this study.⁸ There is, however, a general lack

of accurate and comprehensive information about the extent of public hearings at provincial level. This is mainly because many provincial legislatures still suffer from weak administrative support structures or incompetent committee support personnel, which means that vital information about important activities of the legislatures is not regularly captured and systematically recorded. To compound the problem, provincial legislatures also tend to adopt varying formats in their presentation of information on their activities. This makes it difficult to gain an overall picture of the extent and importance of public hearings as a category of legislative activities.

Nonetheless, some of the legislatures have begun to report systematically and consistently on a whole range of activities that they engage in annually. A few of the legislature annual reports do provide some useful information about the number and purpose of public hearings conducted. For instance, the Northern Province legislature provided fairly comprehensive information in a generally consistent format about the hearings. The information provided includes the names of the committees that conducted public hearing, dates, venues and matters under discussion. The reports show that in 1997 the Northern province legislature committees conducted a total of 36 public hearings, 31 in 1998, 25 in 1999 and 26 in 2000.⁹ Most of the hearings were on national bills from the NCOP, and also on the Auditor-General's audit reports. Only a few public hearings were held on provincial bills. For Gauteng and Mpumalanga, while the information provided is not as comprehensive, their annual reports do indicate that these legislatures did also carry out public hearings. This will be dealt with in-depth in the relevant chapters on the two case studies. The annual reports of the other provincial legislatures, such as Northern Cape, Western Cape, KwaZulu-Natal and Free State, did not provide any useful information.

Conducting public hearings is clearly not a major activity of provincial legislatures and this is not surprising because public hearings are problematic for a number of reasons. Firstly, as already indicated, many provincial legislatures in South Africa lack the necessary administrative support staff with the skills and expertise to capture the information in the annual reports of the legislatures. Secondly, there is a severe lack of institutional capacity and other resources to conduct effective and regular public hearings. Thirdly, many legislatures have acknowledged that the success of public hearings depends on sufficient enthusiasm among local citizens to take part in these hearings. In many cases, attendance is severely limited for a variety of reasons including logistical problems and lack of sufficient knowledge or interest among ordinary citizens. Fourthly, even where public hearings are successfully conducted with sufficient attendance, there is no guarantee that public inputs into these hearings will be taken seriously into account. Fifthly, those that do participate in such hearings are usually the well resourced and well organised interest groups¹⁰ with skilled and fairly educated personnel that understand the issues raised by

proposed government bills – which makes their participation meaningful, while leading to a further marginalisation of the poor.

Finally, given that provinces in general have passed very little legislation over the past ten years, most public hearings would have been held on national bills. However, even here it is widely known that the national legislative programme schedules usually do not make adequate provision for provincial legislature involvement. Moreover, many national bills are usually ‘fast tracked’, thus severely limiting the ability of provincial legislatures to conduct public hearings. This means that the effectiveness of public hearings as a tool for public participation and popular accountability is also restricted. There is some survey evidence that appears to indicate that large numbers of citizens are not participating in public hearings organised by provincial legislatures. For instance, a 1999 Human Sciences Research Council (HSRC) survey indicated that over 60% of respondents claimed to have never attended public hearings. Also, over 60% of those who claimed to have attended public hearings did not make any presentations or submissions.¹¹

3.2.1.2.2. Legislature petitions processes

The right to petition the government is enshrined in the constitution under the Bill of Rights¹² and Section 115(d) of the constitution. Petitions provide a formal mechanism through which aggrieved citizens are allowed to submit written complaints or grievances about issues of concern for them to governments or state organs. Such concerns are to be addressed in a satisfactory manner in terms of the provisions of relevant provincial laws, where these exist. Provincial legislatures in South Africa are supposed to have made formal arrangements, either in terms of provincial legislation or internal rules empowering themselves to accept and deal with public petitions from citizens. Petitions processes are meant to be easier, less costly, accessible and quicker alternatives for ordinary citizens to receive administrative justice rather than resort to formal judicial processes.

Very few provincial legislatures appear to have passed the necessary legislation to empower themselves to process petitions submitted by members of the public. Only four provinces so far appear to have passed their petitions legislation. These are Gauteng in 1998, Northern Province in 1999 and KwaZulu-Natal and Mpumalanga in 2000. Gauteng’s 1998 Petitions Act was later repealed when its new Petitions Act of 2000 was passed. In addition to the necessary legislation, appropriate institutional arrangements to handle and process such petitions are required. Here also, it appears that no uniformity of approach exists, with at least two different tendencies discernible among the legislatures in terms of institutional design. The first tendency has been to create specific committees intended to handle petitions. Gauteng, Mpumalanga and KwaZulu-

Natal legislatures have adopted this approach. The three legislatures have established dedicated public participation and petitions units to deal with public petitions to the legislatures.

The second tendency among legislatures has been to avoid establishing any special committees for handling and processing petitions, thus leaving that function to ordinary portfolio committees. At first glance, this approach may seem beneficial in that it allows the petitions process to be integrated into the mainstream activities of the legislatures, thus ensuring it is part of the ordinary daily routine of committee work. However, there is a potential danger in that without dedicated institutional support structures the process of handling petitions is left to compete with other more pressing and demanding functions of provincial legislatures. Within the context of limited resources, it is inevitable that the petitions process would receive scant attention and may not be done effectively.

In terms of performance in dealing with petitions at provincial level, it appears that the Gauteng legislature has been the most active, receiving the highest number of petitions of all legislatures since the inception of its petitions process in 1998. For instance, 99 petitions were received in 1999, 60 in 2000, 68 in 2001, 67 in 2002 and 65 in 2003.¹³ Most of the petitions seem to be in the areas of local government, housing and social welfare. The Gauteng legislature's annual reports indicate that more than 50% of these petitions are successfully dealt with and closed by the end of every year. The other legislature to report on the submission of petitions was Free State legislature, which received only 2 petitions in 2000. One petition was in the area of local government/housing, and the other was on the subject of social welfare pensions.¹⁴ Other provincial legislatures do not provide information relating to petitions. The impression created here is therefore that petitions processes across the provinces are still underdeveloped at best, or non-existent at worst.

Three explanations are possible in this regard. Firstly, as argued earlier the majority of the provincial legislatures do not have sufficient administrative capacity and trained support staff to capture the necessary information and report systematically on the petitions process in these legislatures. Secondly, because of weak institutional capacity many legislatures are unable to set up effective systems and mechanisms to enable citizens to submit petitions. Thirdly, local citizens in many provinces are unaware of and therefore unable to utilise petitions facilities to express their concerns and grievances to those in positions of power. The overall effect therefore is that the petitions processes at provincial level do not appear to offer an effective mechanism for promoting public participation in processes of government. However, this may be as much due to lack of knowledge about the petitions mechanisms among citizens as it is about the lack of effective petitions processes and mechanisms within many legislatures.

3.2.1.2.3. Constituency service

Provinces have become important agents of policy implementation and social service delivery over the past ten years. Given their relative proximity to recipients of social services, it is critical that policy makers maintain close and regular contact with citizens in order to understand the impact of policies on recipients and to respond accordingly. However many citizens, especially in rural provinces, do not have easy access to state institutions and are largely unable to represent themselves effectively to those in positions of power. Therefore the role of maintaining close contact with citizens, articulating their interests and representing their views to state institutions falls on elected public representatives.

As already argued, the problem with the current PR electoral system is that public representatives do not have direct electoral linkages with their constituents. As commentators and some political parties increasingly came to question the effectiveness of provincial legislatures in promoting the interests of their citizens, the idea of establishing some sort of linkages between elected representatives and citizens has come to occupy centre stage in the public rhetoric of legislative leaders at provincial level. To overcome the current lack of formal ties between electors and elected, political parties introduced an informal system of constituency service throughout the nine provinces in 1996. The system is informal in that it is not provided for in the constitution or the current Electoral Act. The running of the system is therefore essentially in hands of the political parties. The parties define and demarcate the geographical constituencies in terms of their own criteria and set up their own constituency offices to serve citizens.¹⁵

While it is informal in the way it was created, large amounts of public funds are still spent annually on the running of the system. It was reported in 1999 that the country spends about R26 million per annum on the running of constituency offices throughout the nine provinces.¹⁶ For this reason a clear attempt was made to introduce some degree of legal regulation on the system, but merely in terms of financial reporting under the Public Funding of Represented Political Parties Act of 1997. The Act mandates the political parties receiving public funds for their activities (including constituency service) to submit audited financial statements annually to the legislatures. The idea of constituency service is laudable given the nature of South Africa's electoral system. The establishment of constituency offices closer to the communities in which people live was intended to increase the accessibility of elected public representatives to ordinary citizens. It needs to be stated, though, that MPLs are not the only ones serving in the constituency offices. In addition, political parties also assign members of the national assembly and local councillors to serve in these offices. The idea is that if some of the problems brought in

by citizens relate to the different spheres of government, the relevant public representatives would be available to address them.

Many political parties have established constituency offices in the nine provinces.¹⁷ Research conducted in Mpumalanga and Gauteng discovered that the two major political parties (ANC and DA) have established functioning constituency offices that appear to provide regular assistance to ordinary citizens with a wide range of problems. Only ANC constituency offices were provided with copies of constituency office manuals for office administrators and MPLs, specifying how to render services to ordinary citizens. However, the operation of the system has been afflicted with serious institutional and political problems, and its efficacy, as a device for promoting closer linkages between citizens and their elected representatives, remains questionable. Regarding institutional problems, the first difficulty is that the political parties, largely for their own narrow political benefits, operate these constituency offices without much intervention from the leadership of provincial legislatures. The informal geographical districts are usually demarcated according to party political considerations rather than clear objective criteria. Secondly, provincial legislatures do not have regulations to govern the rendering of constituency service in terms of their standing rules. Ironically though, all provincial legislatures do make allowance for what is called 'constituency period' in their annual programme schedules. On average, provincial legislatures provide four periods of constituency service during which MPLs are given periods of up to two weeks at a time to serve people living in these geographic constituencies.

That there are no formal legislative rules to govern the conduct of constituency service means that there are no systematic ways of ensuring that MPLs spend a stipulated amount of time in their constituency offices assisting citizens with their problems. In fact, office administrators usually render assistance to ordinary citizens because MPLs usually spend considerable amounts of their 'constituency periods' attending to party political matters. For instance, an ANC MPL interviewed in Gauteng revealed that a great deal of time was spent attending to the demands of the organisation, "having to go down to the branches and sort out rows between conflicting chairpersons...people get elected and other people dispute those elections..."¹⁸ Provincial legislatures do allocate funds from their budgets to political parties for running constituency services. Therefore this failure to make provisions within their standing rules to govern the conduct of MPLs during constituency service is one of the factors undermining effective control over the nature of activities taking place at these offices or the type of services provided to citizens. Even the legislatures themselves appear to draw no obvious direct benefits from the conduct of constituency service. In its provincial strategic plan for 2002/2003, the KwaZulu-

Natal legislature states, “the legislature funds constituency offices for parties and has not had a direct benefit there from”.¹⁹

In theory, constituency offices are meant to be non-partisan outposts of the legislatures in local communities, providing services on behalf of elected public institutions.²⁰ In practice the legislatures have no formal mechanisms for ensuring that citizens are provided with effective and efficient professional services in a politically impartial manner. The legislatures are usually not in the position to impose discipline on MPLs or constituency office personnel failing to render effective services to citizens. It is the political parties that are relied upon to deal with their members in this regard. However, the political parties tend to follow their own individual approaches in terms of ensuring accountability by MPLs, as well as reporting, administrative and governance practices. This has resulted in a serious lack of uniformity in the way services are rendered to citizens.²¹ There is a serious lack of reliable information to determine how many constituency offices each political party has in every province currently. What compounds this problem is that some political parties use their own offices as constituency offices. There are no clear and common reporting procedures. For instance, ANC constituency offices in Mpumalanga and Gauteng were required to submit quarterly reports to party chief whips, while the DA and other political parties had no such clear reporting requirements. Also, there appear to be no official regulations governing the use of constituency offices for party political activities. The research work conducted for this study in Mpumalanga and Gauteng revealed this to be a widespread practice among all political parties.

There are also political problems that affect the operation of the system, thus undermining the effectiveness of constituency service as a vehicle for citizens to engage with elected public representatives. Firstly, the major political parties, especially the ANC and the DA, appear to have more resources to run a larger number of constituency offices compared with the smaller political parties. There are therefore constant accusations by smaller parties such as the UDM and PAC that their supporters are routinely discriminated against and not given proper assistance by ANC or DA constituency office staff. Secondly, given that some political parties use their party offices as constituency offices and employ party activists to serve as administrators, this tends to lead to party political conflicts about the real purpose of these offices. Thirdly, research conducted in Gauteng and Mpumalanga revealed that during elections all political parties use their constituency offices as party political machinery for voter recruitment and election campaigning. These factors have helped fuel suspicions and doubts about the ability of these offices to serve as effective vehicles for citizens to hold elected representatives accountable.

It is difficult to ascertain the extent to which citizens utilise constituency offices as vehicles for accessing elected public representatives. Research in Gauteng and Mpumalanga indicated that some local citizens do regularly utilise these offices for a variety of purposes, such as inquiring about government services, or assistance and advice on problems such as employment disputes, farm evictions and so on.²² There is no clear evidence to suggest that citizens utilise these office to hold their elected public representatives accountable for their activities. ANC constituency MPLs are required to hold regular meetings with local citizens, in the presence of local councillors, to receive 'mandates' regarding local issues of concern, and to report back to these communities on actions taken. However, this is not a widespread practice and there is no clear evidence that the MPLs fulfil this requirement regularly. In fact, the usage of constituency offices by members of the public remains very limited. An HSRC survey shows large numbers of ordinary citizens who never make any contact with constituency offices in all the provinces.²³ The survey shows that in the Free State, 88.3% of respondents fall into this category, 88.7% for Northern Cape, 84.7% for Mpumalanga, 83.3% for Western Cape, 76.6% for North West, 74.1% for Northern province, 71.4% for KwaZulu-Natal, 66.3% for Gauteng and 62.1% for Eastern Cape. It could be concluded therefore that the effectiveness of constituency service as a mechanism for promoting greater linkages between citizens and public representatives, and for ensuring popular accountability of public representatives to citizens, is questionable.

3.2.1.3. General citizen ability to influence provincial decision-making

Available survey evidence on the ability of public participation to exert influence on provincial decision making processes seems to add to the generally gloomy picture that emerged. It suggests that citizens are largely unable to influence decisions at provincial government level, despite efforts in recent years by many provinces to increase formal opportunities in this regard. An HSRC survey report shows the comparative popular perceptions about citizen ability to influence decisions across the three levels of government over a four-year period (1997-2000).²⁴ Table 9 shows that levels of popular perception about citizens' ability to influence provincial government decisions were lower compared with those for national and local government.

Table 9: Perceptions about ability of citizens to influence decision making

Level of government	1997 (% Able to influence)	1998 (% Able to influence)	1999 (% Able to influence)	2000 (% Able to influence)
National	36.4	31.7	45.1	40.9
Provincial	31.6	30.9	38.4	36.1
Local	35.5	36.4	45.0	41.6

Source: HSRC Study (2001)

Clearly, respondents felt they had better chances of influencing decisions at national and local levels than at provincial level. Greg Houston supports the finding of citizen inability to influence decisions at provincial level in a conference article based on the same survey data from the HSRC, arguing that “more respondents believed it was not possible to influence provincial government decisions...than believed it was possible to influence decisions at that level.”²⁵ This appears to suggest that having levels of government closer to the people does not necessarily mean improvement in the ability of citizens to influence decision making. It also appears to undermine a key argument in favour of establishing lower levels of government in South Africa – that bringing government closer to the people necessarily increases citizen ability to influence decision-making.²⁶

A survey conducted for this study among MPLs and senior provincial public servants from all nine provinces also shows that public participation in provincial decision making is still weak in influencing decisions. Based on this 5-point rating scale: ‘poor’, ‘fair’, ‘good’ and ‘very good’, a combined total of 65.2% of senior public servants rated as ‘poor’ to ‘fair’ the level of influence of public participation in decision making processes at provincial level. The highest percentage of senior public servants rating the influence of public participation in decision making processes as ‘poor’ came from Western Cape. Only 34.8% combined total of respondents rated the level of influence of public participation as ‘good’ to ‘very good’.²⁷ The highest percentage of those respondents rating the influence of public participation as ‘very good’ was from Northern Province. Also citizens, through public participation, were not ranked amongst the top five most influential key role players²⁸ at provincial level in South Africa by senior public servants. These were the ruling party, standing committees on public accounts, portfolio committees, all legislature committees combined and the legislative chambers (i.e. plenary), in that order.²⁹ In a survey of MPLs based on this 4-point rating scale: ‘not applicable’, ‘poor’, ‘fair’ and ‘good’, 50.6% of respondents rated the influence of public participation in legislative decision making processes as ‘fair’ while 43.2% rated it as ‘poor’. However citizens (i.e. popular participation) was ranked amongst the top five most influential key role players at provincial level. These were: provincial executive council, political parties inside legislature, legislature committees, legislative chamber and public participation, in that order.

It is clear that the representational effectiveness of provincial legislatures, especially through public hearings, petitions processes and constituency service, depends largely on highly mobilised and politically active citizens with fairly high levels of interest in the affairs of government. Due to the obvious and widespread lack of enthusiasm among citizens to engage in government processes through available mechanisms, many legislatures are resorting to various secondary activities intended to generate popular interest in government processes. These include ‘women’s parliament’, ‘youth parliament’, ‘open days’ for members of the public, promoting visits by schools and local communities to legislature buildings, as well as running ‘public outreach programmes’ or ‘education’ workshops and seminars. However, these activities are mainly of a public relations nature, intended to promote the corporate image of provincial legislatures among local communities. However the occurrence and frequency of these public relations activities varies from one province to another and their impact cannot be determined.

3.2.2. Oversight Effectiveness

Provincial legislatures are constitutionally empowered through Section 114(2) of the constitution to oversee the activities of provincial governments in their exercise of executive authority. This notion necessarily entails legislatures functioning as sites where provincial governments are held accountable for their actions. This involves political and administrative heads of departments and provincial premiers regularly appearing before the legislatures and or committees to account for their policy decisions, implementation and service delivery activities. Provincial governments have become primary policy management, implementation and service delivery agents. It has therefore become imperative that they, especially legislative institutions, develop the necessary institutional capacity, skills and expertise to maintain effective oversight on policy implementation and service delivery activities of government departments and other executive agencies.

However, many provincial legislatures have generally suffered from lack of sufficient skills and expertise among their MPLs to maintain effective oversight of the affairs of government and departments. Also, the notion of oversight has tended to be problematic at provincial level.³⁰ The problem is two-fold. Firstly, while oversight is provided for in the constitution and the standing rules of all provincial legislatures, it remains a vague concept that has to be given effect in practice in the context of different political and institutional dynamics of the different provincial legislatures. The way it has been understood at provincial level appears to have restricted the scope of oversight predominantly to ‘house-based’ processes. In other words, oversight has been confined mainly to those activities occurring inside the premises of legislatures at the expense of ‘field-based’ activities. The institutional skills and capacity of MPLs at provincial level remain

fairly underdeveloped in respect of carrying out effective and proactive oversight work outside of the confines of legislature buildings, and on the field where government programmes impact on households and individuals.

Secondly, there has been a tendency among provincial legislatures to oversee in a reactive manner. In this sense these activities have been characterised by a tendency to react to events and problems, especially when such problems have become unmanageable, thus undermining the potential effectiveness of oversight processes. Many legislatures have also not been able to develop the culture of proactive investigations as an integral part of their oversight responsibilities, mainly to pre-empt some of the problems that they have to deal with regularly. As will be seen later, an impressive ensemble of oversight tools and practices has evolved at provincial level over the past ten years. However, most of the regularly used ones are mainly reactive in nature and are intended to review government programmes, while only a few are aimed at enabling legislatures to preview or provide ongoing and 'hands-on' opportunities to monitor the implementation of government programmes.

3.2.2.1. Organisation of oversight structures

Provincial governments are increasingly expected to carry out a range of functions and deliver services to highly mobilised citizens with increasingly specialised demands. Many of these functions require high levels of structural differentiation and complexity in government organisation. Therefore, provincial governments are increasingly resorting to the use not only of experts and consultants with sophisticated skills, but also to a wide variety of institutions such as parastatals, nongovernmental organisations and private sector agencies to fulfil their responsibilities. This means that not only are provincial governments becoming complex institutions with sophisticated administrative and managerial systems, but the processes of delivering social services are also becoming complex, differentiated and highly dispersed. Moreover, given the increased emphasis on alternative approaches to service delivery in South Africa, non-state actors beyond the immediate oversight and control of legislatures are increasingly involved in the implementation of government policy programmes that are within the scope of legislatures to monitor and oversee.

The legislatures had to develop effective systems to enable them to oversee even those non-state agencies that are regularly contracted to deliver social services on behalf of governments. Also, to monitor and oversee such complex administrative machinery of government and policy implementation processes effectively, legislatures need to develop sophisticated internal structures that allow for the necessary division of labour. The development of complex committee systems within provincial legislatures fulfils this purpose. It is widely acknowledged

that committees offer the greatest potential for members not only to influence policy decisions, but also to oversee the activities of government departments effectively. The committees have become an integral part of the internal organisation and structuring of provincial legislatures and underpin the oversight function of the legislatures. The bulk of the work of provincial legislatures, much of which is oversight work, occurs at committee level and therefore all nine provincial legislatures have established a range of committees to fulfil this function. An important feature of the current legislature committee system is that they combine the functions of law making and policy oversight. This is unlike many advanced parliamentary systems, especially the British Westminster system on which South Africa's legislative institutions are largely based, where separate committees exist for handling the legislation and for monitoring and overseeing the activities of government departments. The combination of the two functions has had both advantages and disadvantages. In terms of the former, the committees are able to develop a thorough knowledge of their policy areas of oversight, especially if they are also involved in the formulation of legislation in the same policy areas. The main potential disadvantage is that the combination of the two functions creates work overload for committees, although this has not really been a major problem because the annual legislative workloads of provincial legislature have been fairly low. A discussion on this follows.

There are two broad types of committees within each provincial legislature – internal or house management committees, and monitoring and oversight committees. Internal or house management committees are concerned with internal matters or the general running of the legislature. They cover a wide range of subjects, such as internal rules of conduct, procedures, members' privileges, disciplinary matters, coordination and management. Some examples include the rules committee that sets internal rules of conduct, and the committee of chairpersons, which brings together all the chairpersons of other committees for purposes of programming and coordination. The monitoring and oversight committees are of two types: the portfolio and non-portfolio based committees.

The portfolio oversight committees are department-specific, designed to parallel the work of each individual ministry. This is a practice that is common among committee systems around the world. Such a specialised group of committees enables elected representatives to concentrate in specific areas of policy, thus developing the necessary specialist skills and expertise relating to a range of departmental policy areas such as education, health, finance, economic affairs, housing, local government and so on. This is important for effectiveness in oversight work. In most provincial legislatures these committees, together with the non-portfolio oversight committees, are the most numerous and critical to the work of legislatures. The non-portfolio oversight committees are equally important and are usually not department-specific. The scope of their

work tends to cut across several policy areas. Included among these are the standing committees on public accounts, public participation and petitions, committee on government assurances and others. In some cases provincial legislatures are able to establish ad hoc committees, which are usually temporary committees established to carry out specific tasks referred to them by the Speakers. They are usually dissolved once they have completed their tasks.

Each provincial legislature also has an extensive and complex set of internal rules and regulations governing every aspect of legislative committees such as the appointment of dismissal of members and chairpersons, discipline, the functioning of committees and dealing with evidence submitted to committees. This level of sophistication and variety in legislative committees at provincial level points to, at least in theory, a fairly high degree of institutional development. However, institutional complexity and differentiation of the committee system is not an indicator of effectiveness, especially where the legislature is small in size. There are considerable variations in the sizes and numbers of legislative committees across the nine provincial legislatures. For instance, Table 10 below shows that in 2002-03 some of the smaller (less than 40 MPLs) and medium size (between 40 and 50 MPLs) legislatures had committee systems virtually as large as, and in some cases larger than, the committee systems of the large size (between 50 and 80 MPLs) legislatures.

Table 10: Number of committees & committee assignments per province (2002/03)

Provincial legislature (size of legislature)	Number of committees³¹	Average size of committees³²	Number of non-executive MPLs	Average committee assignments per MPL
1. N. Cape (30)	20	8	19	8
2. Mpumalanga (30)	14	9	19	7
3. F. State (30)	15	7	19	6
4. N. West (33)	12	10	22	5
5. N. Province (49)	19	8	38	4
6. E. Cape (63)	20	11	53	4
7. KZN (80)	22	13	69	4
8. W. Cape (42)	11	8	31	3
9. Gauteng (73)	18	8	62	2

The Northern Cape is a small legislature, with only 30 members. However, excluding the 11 members of the executive who usually do not serve as committee members, only 19 MPLs serve in committees. Also in 2002/03 the Northern Cape legislature had more committees than any other provincial legislature except Eastern Cape and KwaZulu-Natal. Northern Cape had the same number of committees as the Eastern Cape legislature, even though the latter had nearly three times more MPLs serving on committees. The significance of this is that the number of

MPLs serving in committees is crucial for the effectiveness of the committees. Some of the literature on legislative studies appears to suggest that the size of legislatures has an impact on general effectiveness.³³ In his study to determine the effects of a number of organisational characteristics of legislatures on their performance and effectiveness, Ronald Hedlund found that size had far more impact on the operations and performance of legislatures than any other structural factor. He found that larger legislatures are more likely to be organisationally complex and therefore able to facilitate role differentiation and greater specialisation among the members.³⁴ This role differentiation and specialisation usually occurs at committee level.

Smaller numbers of MPLs serving in a relatively large committee system usually create the likelihood that each MPL would have to serve several committees at a time. Serving in too many committees in turn creates a heavy workload for individual MPLs, thus reducing opportunities for specialisation and ultimately undermining effectiveness at committee level. The last column of Table 10 illustrates this to some extent. MPLs in the three small-size legislatures had the highest rates of committee assignments and by implication the heaviest workloads. In contrast, MPLs from larger legislatures had fairly low committee assignment rates. For instance, the information in Table 10 suggests that MPLs from the Northern Cape legislature had the heaviest workloads with an average of 8 committee assignments each. They were followed by MPLs from Mpumalanga with 7 committee assignments, Free State (6) and North West (5). Northern Province, Eastern Cape and KwaZulu-Natal had fairly low average committee assignments per MPL at 4 each. However MPLs from Gauteng and Western Cape legislatures had the lowest average committee assignments at 3 and 2 respectively. In other words, on average a Western Cape MPL was assigned to serve in only 3 committees at a time, while Gauteng MPLs served on 2. However, in practice the highest rates of committee assignments may not necessarily translate into the heaviest workloads as this usually depends on the extent to which committees are active in a range of activities such as public hearings, the number of national and provincial bills being dealt with, dealing with departmental reports and other oversight activities. Also the small number of committee assignments, as is the case for Gauteng and Western Cape MPLs, may not necessarily mean lighter workloads for individual MPLs.

There is clearly a pattern that suggests a preference for large committees among small-size legislatures. Northern Cape, Mpumalanga, Free State and North West have more committees than is necessary, given that they lack the necessary numbers of MPLs to sustain such elaborate committee systems. The explanation for this is partly structural, partly political and partly pecuniary. Structurally, all provincial legislatures are faced with the same monitoring and oversight workload irrespective of their sizes. They are expected to maintain oversight over the same number of departments (i.e. ten). This means that the demands for legislative oversight are

virtually similar for all legislatures despite the differences in size and resources. Politically, large and elaborate committee systems serve as one of the trappings of political power, helping to conceal the underlying institutional weaknesses and uncertainty about their significance among ordinary citizens. Also large committee systems provide a semblance of institutional sophistication, prestige and power, which is politically valuable given the unequal power relations between provincial executives and legislatures. In other words, large and complex ensembles of committees may be intended to project an image of institutional strength not only among regional politicians for whom the national assembly may not be an achievable goal.

In regard to pecuniary benefits, positions of committee chairs and deputy chairs are fairly senior appointments, coming with better salary packages than that of ordinary MPLs. This means that more committees add to the number of senior posts in the legislatures with related financial benefits. Committees also serve as attractive and politically valuable sources of patronage within the provincial system of government, and ultimately a source of power for political parties in charge. One Gauteng ANC MPL interviewed for this study concurred with this. When asked whether or not provincial legislatures served a patronage function, the MPL responded, “Yes, what else is there? That is why we can’t turn the system around now, because there is too much vested interest in the ruling party.”

3.2.2.1.1. Oversight through committees

The powers of legislative committees are provided for in terms of internal rules for each legislature. On paper, the powers are fairly considerable, enabling them, among others, to conduct independent investigations into the activities of government departments, take evidence from experts, and subpoena any government official or ministers to appear before them when conducting investigations. In practice though, many legislatures and their committees have struggled to function effectively over the past ten years. This was especially the case in the first five years of operation, when all legislatures failed to define a clear and meaningful role for themselves in government processes. Provincial legislatures were largely seen as ‘rubber stamps’ in policy processes compared to the more powerful provincial executives.

A number of factors accounted for the ineffectiveness, including severe resource constraints, lack of knowledge among MPLs of how to carry out effective oversight, and sometimes lack of cooperation from government departments and fairly hostile members of provincial executives who tended to look at legislative oversight as intrusive. Therefore, some of the crucial powers of committees remain either unused, not only owing to lack of necessary institutional capacity and resources across many legislatures, but also, crucially, for to political reasons. For instance, the

tendency of members of the governing party to adopt a deferent attitude towards their superiors in the executive has always characterised the relationship between the legislative and executive branches of provincial government, thus severely undermining the effectiveness of oversight. Firoz Cachalia, until recently the speaker of the Gauteng legislature, argues that

“Since the political majority in parliament also controls the government, the executive and the legislature are fused, reducing the likelihood of conflict between the two branches of government...However, parliamentary systems tend to also produce an imbalance in the relationship between the executive and the legislature, and a subordination of the internal workings of the legislature to the requirements of the executive.”³⁵

A number of methods and procedures are available for committees when conducting oversight over the activities of government departments. The key ones are the annual budget hearings, scrutiny of departmental reports and oversight visits/trips. Independent committee investigations are also a potentially important oversight tool, but provincial committees have failed to utilise it in the course of their work over the years.

Budget oversight/scrutiny

The ability to have a say in the financial affairs of government is an important source of power and a potentially crucial oversight instrument for enforcing accountability by provincial legislatures. Provincial legislatures are empowered to play a role in budget processes in terms of Section 120(2) of the constitution. However the constitution, and therefore the standing rules of all provincial legislatures generally prevent the legislatures and their committees from making any changes to provincial budgets. The national government has yet to pass the necessary legislation enabling legislatures to amend provincial budgets, which means that the involvement of provincial legislatures in annual provincial budget preparation processes remains severely constrained even today. As long as this remains the case, there will always be a serious limitation to the ability of legislatures to ensure effective financial oversight and accountability in the use of public funds at provincial level.

The budget cycle at provincial level comprises a number of stages that provide opportunities for legislative oversight. Each department compiles its own budget about a year in advance. Before tabling in the legislature, these individual budgets are discussed in internal provincial budget committees comprising officials from various government agencies including treasury officials and key finance officials from different departments, where changes and adjustments are made.

Once approved by the provincial executives, the proposed budgets are presented by provincial MECs for finance to the various legislatures between April and May in the form of a draft appropriations bill. Only after first reading in the legislatures do legislature committees begin to play a role. The individual departmental budget drafts are usually referred first to finance committees that conduct hearings with individual departments before the relevant portfolio committees get to scrutinise their departmental draft budgets. Committees are usually given about a month or so to scrutinise and deliberate on the proposed departmental budgets, with departments required to appear before the relevant committees to defend their expenditure proposals.

In most provincial legislatures the finance and economic affairs committee plays a strategic oversight role of examining the provincial budget as a whole and those of individual departments in terms of their overall compliance with the macro-economic policy and strategic developmental imperatives of the entire province. In other words, they look at the bigger strategic picture, while the different portfolio/sectoral committees delve into the details of specific departmental programmes and subprogrammes. Having deliberated on the budgets, each committee compiles a report with recommendations to be tabled for discussion in the legislative chambers. These reports are potentially useful oversight instruments in that the legislatures rely on them to accept or reject proposed departmental budgets. Once funds have been appropriated by the legislatures, the process of oversight enters a new stage where policy implementation and service delivery through the various departments have to be monitored and overseen by the legislatures through their various committees. The different methods and techniques of oversight during this new stage are discussed in the following subsection.

The process of financial oversight inside the different provincial legislatures has always been problematic over the years and therefore fairly ineffective in many legislatures. There are important factors undermining financial oversight capacity within provincial legislatures. As already indicated, the most important obstacle is that the MPLs have largely been unable to participate effectively and meaningfully in budget processes. This was especially the case in the early years of provincial governments. Government departments, especially treasury officials, financial officers and other senior departmental officials, dominated the early stages of the making of provincial and departmental budgets. Legislature committees become involved only late in the process, when budgets are virtually finalised.³⁶ Even here, their involvement is mainly restricted to making suggestions for the next annual budget cycle. The committees are able to undertake detailed scrutiny of budget line items and raise questions, but generally cannot introduce amendments. In general therefore, provincial legislatures can only approve or reject budgets in their entirety and the general trend over the years has been that the passage of

provincial and departmental budgets has encountered few obstacles, with only minor objections, mainly from the opposition. Only in rare cases has a legislature refused to pass a budget and this occurred in Mpumalanga in a well-publicised case in 1997. Mpumalanga became the first legislature to refuse to pass the provincial appropriations bill, as will be discussed in depth in chapter 6.³⁷

Secondly, the majority of provincial MPLs in the past had little knowledge and basic understanding of public finances and budgetary issues, with the consequence that many of them could neither engage government departments effectively on financial and fiscal issues, nor understand government financial reports for purposes of effective oversight. Interviews conducted with MPLs in Gauteng and Mpumalanga revealed that this lack of adequate knowledge of financial matters is still a fairly widespread problem among many MPLs and continues to undermine efforts to ensure effective accountability. In fact, the mass media in South Africa tend to play a far more prominent role in uncovering incidents of venality or serious corruption in provincial administrations than MPLs and legislatures, even though more efforts are being undertaken to improve the situation. The third problem is inadequate time for legislatures to scrutinise and debate departmental budgets at committee level.³⁸ The time allocated every year for committees to consider departmental budgets is usually limited to about a month or so, and committees are usually under pressure to go through the process quickly in order not to delay the passing of these budgets before the new financial year begins. These factors continue to undermine the effectiveness of legislative financial oversight at provincial level.

Politics also tends to play a role in undermining the ability of legislature to ensure financial and budget oversight at provincial level. For instance, in 1996 the media reported widespread corruption within the management of the Mpumalanga Development Corporation. An attempt to conduct an independent investigation by the finance committee of the legislature, headed by Chris MacPherson of the NNP, was clearly obstructed for political reasons when the speaker refused to make the necessary authorisation for the investigation.³⁹ Several other scandals occurred subsequently in Mpumalanga in 1997 and 1998, including the revelation that Steve Mabona, MEC for Safety and Security, misused departmental funds for personal ends and authorised the irregular issuing of a driver's licence to the deputy speaker of the national assembly. Premier Matthews Phosa subsequently appointed the Moldenhauer commission of inquiry to investigate when the scandal came to light. Also, the Mpumalanga government secretly signed the so-called 'Dolphin Deal' in 1997 without the involvement and approval of the legislature, ceding management of prime tourist spots in the province to a multi-national corporation. In 1997 the Northern Province cabinet refused to respond to detailed questions

from an NNP MPL about evidence of tender procedure violations in the awarding of contracts to build the provincial legislature premises and in the procurement of government properties. The legislature failed to investigate mainly due to political obstruction by the ruling party's leadership in the legislature. Some of these problems were uncovered and reported in the 'Ncholo' provincial audit report for the Northern Province and it was only when public outcry and pressure mounted that the premier of the province appointed a commission of inquiry to investigate.⁴⁰

In all cases of this nature even in other provinces where financial mismanagement and corruption was uncovered, the involvement of provincial legislatures is usually severely limited if not totally absent, often becoming visible only after these incidents become public. This is not only owing to the institutional weakness of provincial legislatures, which often leads to their inability either to uncover these problems through their routine oversight and monitoring activities, or to conduct independent investigations once these incidents are uncovered. It is also owing to the lack of sufficient political independence by many legislatures, which leads them to be dependent on or controlled by the ruling party leadership within the executive and the legislature. In many cases of corruption and mismanagement that have been uncovered at provincial level over the years, the provincial auditors-general and the media have usually played an invaluable role. However, they tend to uncover these problems after they have occurred mainly because the systems and procedures intended to provide advance warnings at provincial level, including those in place within provincial legislatures, have largely been ineffective. As already indicated, the dominant model of oversight at provincial legislatures has tended to be reactive rather than proactive, thus allowing much of the inefficiencies in the management of public resources by provincial administrations to go undetected until too late.

There are signs though that the situation may be improving for provincial legislatures. Some concrete steps have been taken over the years by the national government, such as legal mechanisms and strategic policy frameworks, to enable the provinces in general and the legislatures in particular to improve their financial management and budget oversight capacity. Some of the reforms are also intended to enable some legislature committees to play a more meaningful role in budget processes than is currently the case. For instance, the introduction of the Medium Term Expenditure Framework (MTEF) in 1997 was an important improvement.⁴¹ Among others it provides a medium-term budget policy statement in September of every year, with projections over a period of three years regarding available resources, trends in sectoral budget allocations and expected expenditure priorities. The legislatures and their committees therefore are given greater opportunities to know more about budget policies and priorities and to make inputs into the process relatively early, in an attempt to overcome some of the current

constraints to their budgetary powers. Also, the introduction of the Public Finance Management Act (PFMA) of 1999 made available a potent legal instrument for provincial legislatures and their committees. The Act is intended to help strengthen financial accountability controls inside departments by holding chief financial officers criminally liable for financial mismanagement in their departments. Also, provincial legislatures are given legal powers to undertake their budget oversight activities more effectively compared with the past. The importance of the PFMA as a budget oversight tool for the provincial legislatures was that it made it a legal requirement for departments, on annual submissions of their proposed budgets, to present their strategic planning documents containing clear performance indicators and measurable targets for each budget programme and subprogramme for the year.⁴² It therefore made budget oversight extremely precise and systematic. In fact, many provincial committees have been using the PFMA for a while now, and are increasingly learning to invoke its provisions during their budget oversight activities.

Also, after 1998 legislature committees in general, particularly the finance and public accounts committees, began showing their 'teeth' by providing skills training in areas such as public finances, budget analysis and financial oversight for their members. This happened in the wake of provincial governments overspending their budgets in the 1997/98 and 1998/99 financial years. Committees became more proactive, increasingly insisting on carrying out investigations or putting pressure on provincial governments to investigate cases of alleged graft and mismanagement. The North West legislature was a case in point. Late in 1997 irregularities were uncovered in the department of education and the tender board. The legislature pressured the premier to appoint the Gobodo commission of inquiry, which led to the dismissal of the MEC for education and several officials in the tender board for corruption. Another important development has been the attempts by some provinces to involve provincial committees, especially the finance and economic affairs committees, earlier in the budget preparation processes, before the budgets are tabled in the provincial legislatures. This is intended to minimise the effects of the current constitutional restrictions on the financial powers of the provincial legislatures and the extent to which they can get involved in the formulation of provincial budgets. Provinces such as Gauteng, Eastern Cape, Northern Cape, Western Cape and KwaZulu-Natal have already gone this route, even if these committees have only been given 'observer' status in these processes.⁴³ There has therefore been a definite trend towards greater involvement at a much earlier stage of the budget processes by the legislature committees, even if in an informal way. Such processes have hitherto been the exclusive preserve of the provincial executives, their bureaucracies and financial consultants.

These efforts are beginning to bear fruit. There is now greater acknowledgement and acceptance of the role and importance of financial oversight by the provincial legislatures, and many MPLs have begun taking this function seriously. A survey of senior public officials from all nine provinces conducted for this study revealed that the majority of respondents perceived legislature committees as more influential than other key role players such as legislative chambers, the ruling party and opposition parties. Among the various committees the public accounts committees were perceived as the most influential – their role in the provincial oversight processes is discussed below.⁴⁴ However, there is still a long way to go for many provincial legislatures and their committees, despite these apparent improvements. Legislature committees in general are still facing enormous political and institutional obstacles that continue to undermine their performance effectiveness in budget oversight processes.

Monitoring policy implementation and service delivery

If budget oversight is about allowing the provincial legislature to scrutinise government's proposed expenditure priorities before they are formally adopted, the next stage of the oversight process enables the legislatures to monitor and oversee the process of spending public funds by government and its departments to fulfil their mandates of delivering services to citizens. To ensure accountability in the spending of public funds to deliver services to citizens, the constitution demands that provincial governments account to their legislatures by providing "full and regular reports concerning matters under their control."⁴⁵ This is intended to provide the legislatures and their committees with effective and precise mechanisms to monitor progress in policy implementation and service delivery. Such regular monitoring of progress potentially enables legislatures to foresee the likelihood of serious problems before they occur, and allows committees to put pressure on departments to take appropriate measures in advance. For many legislatures this practice dates back to the inception of the provincial system of government in 1994. However, it was not always vigorously enforced especially during the early years of provincial government in South Africa. In cases where such reports were submitted, they were invariably submitted late, inconsistently and not all departments submitted.⁴⁶ Moreover different departments usually adopted different formats on reporting because many legislatures had failed to specify standard formats to be used by departments in compiling their reports. This usually made it difficult for committees to gain insights into government activities across departments. Moreover, before the introduction of the PFMA in 1999 (which came into effect in April, 2000), provincial legislatures had no legal recourse to force government departments to submit their reports, which undermined the effectiveness of this method of oversight considerably. What compounded the problem was that senior public servants and MECs in many provinces did not take committees seriously as oversight structures, particularly in the early years of the inception

of the provincial system of government in South Africa.⁴⁷ For their part, committees in many provinces faced a range of problems, such as inability to define clear programmes of action, cancelled or postponed committee meetings, and inadequate administrative and financial resources to function effectively.

As already indicated, the introduction of the PFMA improved the situation considerably by making the submission of reports a legal requirement.⁴⁸ Committees are required to submit annual reports with audited financial statements to the legislature for regular scrutiny. In addition to annual reports, some provincial legislatures insist on the submission of additional reports during the year, such as quarterly and half-yearly progress reports by departments to enhance routine oversight. As a result of these requirements, departments have become more systematic and consistent in their reporting to their committees in general. Also, the committees have, to some extent, improved the way they handle these reports, particularly the audited annual financial statements. However the public accounts committees of all provincial legislatures have become the central committees in reviewing and scrutinising the audited annual financial statements of government departments. The provincial auditors-general usually release the audited annual financial statements of government departments, as required by the PFMA, and hand them over to the public accounts committees for intense scrutiny. Given the importance of public accounts committees in reviewing government accounts annually, they are usually chaired by opposition MPLs to guarantee a semblance of probity on the part of the governing party. In all provincial legislatures, a close and cooperative relationship has therefore emerged between the public accounts committees and the provincial offices of the auditors-general. This working relationship is particularly important during the annual budget oversight hearings at the end of every year. It has become a routine practice for public accounts committees to invite officials from the offices of the provincial auditors-general to participate in the deliberations of these committees. They usually help committee members with budget oversight techniques and questions to raise regarding aspects of the financial statements of government departments. In this way, they have increased the quality of financial oversight and the insights gained by the public accounts committees, making them the most effective and respected committees in all the nine provincial legislatures in South Africa. Unfortunately, this close cooperation during financial oversight between the offices of the provincial auditors-general and public accounts committees has not been replicated in other committees of the provincial legislatures and therefore the benefits have not been spread widely.

An examination of the annual reports of several provincial legislatures shows that many legislatures do not follow standardised or consistent formats in their reporting and this creates difficulties in making useful comparisons about the performance of committees in dealing with

departmental reports during oversight. In some cases, the same legislature follows different formats in its annual reporting, resulting in inconsistent quality of information. Nonetheless, the information gleaned from these annual legislature reports shows that departmental reporting to committees has improved considerably. Also, the volumes of various kinds of reports and other documents submitted to legislature committees by government departments have increased significantly over the years, although this differs from province to province. Some legislatures, such as Gauteng, require the submission of quarterly, mid-term and annual reports while others insist only on quarterly and annual reports. Despite the proliferation of departmental committees and other types of reports, many legislature committees still lack systematic ways of handling these reports. A small number of legislatures provide full and concrete details of the quantity and types of reports handled annually by their committees. For instance the Northern Province and Gauteng legislatures' annual reports are fairly comprehensive. The number of meetings convened by committees in the Northern Province legislature from 1997 to 2003 ranged from 100 to 233 meetings per annum. During this period, the committees handled between 14 and 37 departmental and other kinds of reports per annum. In Gauteng committees convened between 200 and 528 meetings per annum during the same period to deal with between 17 and 91 departmental and other kinds of reports. The information for Mpumalanga was incomplete but shows that the committees convened 156 meetings in 1999, 176 in 2000 and 118 in 2001. A total of 35 departmental and other reports were dealt with in 1999, 29 in 2000 and 46 in 2001. The fact that such detailed information was missing from the annual reports of many legislatures bears testimony to the continuing administrative and capacity constraints in the majority of these institutions.

This increase in paperwork-based oversight poses some implications for oversight at committee level. Firstly, the fact that oversight is predominantly driven by reports initiated and drafted by government departments is a problem, because the committees have become dependent on government departments for information relevant to oversight. Provincial committees usually lack the capacity and resources to commission independent research and to produce their own reports evaluating the performance of government departments. In other words, departments are allowed to set the parameters that determine the tone, scope and quality of oversight at committee level. Secondly, this increase in the volume of paper-based oversight work means that much of this work is confined to the premises of the legislatures, thus limiting the ability of committees to undertake other field-based oversight work such as public hearings, independent committee investigations and site visits. Site visits are potentially effective tools of oversight, as they enable committee members to visit sites of service delivery and government policy implementation to observe first-hand the impact of these policies on intended recipients rather than relying entirely on information gathered by government departments. An examination of the

annual reports from several provincial legislatures reveals a generally low level of activity in areas such as public hearings and site visits, suggesting that many legislatures are either overwhelmed by paper work or have consciously chosen to concentrate their efforts mainly on scrutinising departmental and other reports at the expense of other types of techniques for monitoring policy implementation and service delivery.

Thirdly, the predominance of paperwork-based oversight calls for analytical abilities and skills from both MPLs and committee support staff. This is necessary because, having scrutinised the departmental reports, the committees are expected to produce comprehensive, analytical reports to be tabled in the plenary of the legislature for debates. These reports essentially inform the plenary of the issues raised and discussed in individual committees and are critical in influencing the resolutions of the house. Many MPLs and committee support staff currently lack such skills, although some legislatures are already devoting considerable time and resources to enable their MPLs and committee support staff to acquire these skills. Finally, another problem with the scrutiny of departmental reports as an oversight method is that once committee reports have been tabled on the floor of the house, many provinces lack proper systems and effective procedures for ensuring that the departments concerned take appropriate action to deal with the problems identified and the recommendations made in committee oversight reports.⁴⁹ Only a few legislatures such as Gauteng have put in place ‘tracking systems’ to monitor the actions taken by departments following plenary resolutions on committee reports. In some of the provinces government departments tend to ignore these reports, thus defeating the purpose of using them as oversight tools for monitoring government service delivery.

3.2.2.1.2. Deliberative oversight through the plenary

Much of the literature and academic analysis of the work of provincial legislatures in South Africa tends to overlook the role of the legislative chambers as important arenas for oversight at provincial level. There is a dominant perception that oversight only occurs at committee level in the legislatures. However, provincial legislative chambers are critical sites where government is routinely held to account by elected public representatives. This is important in that, unlike the committees where oversight tends to be hidden from the public eye and fragmented into separate and discrete groups of MPLs handling different aspects of government policy programmes, in the legislative chamber oversight becomes public and transparent, and all elected public representatives participate at the same time.

The plenary is a site not only for governments to defend their records in public but also where governments make public commitments for which they are held answerable and responsible. It is

therefore more open and visible to the public in its proceedings than the committees. Moreover, certain high profile events such as the premiers' policy speeches, budget days or debates on particular issues of general public interest are usually thoroughly covered by the mass media. In some legislatures, such as Gauteng, proceedings in the plenary are televised. On average, legislatures convene about 23 sittings per annum to fulfil their various activities. However, the number of sittings per annum varies considerably across individual provinces. For instance, between 1997 and 2001 the Northern Province legislature convened on average 40 sittings per annum. For the Gauteng legislature the figure is 38, for Mpumalanga 20 and 23 for Free State. The varying number of sittings across provincial legislatures probably reflects the level of activity of individual legislatures. It is not clear what an ideal and adequate number of sittings would be for a provincial legislature to fulfil its responsibilities on the plenary.

A number of methods are used regularly by provincial legislative chambers for their own oversight work. One of these is 'questions' or 'question time' when members of the executive and the premier face questions from the floor of the house. This is the most prominent traditional method that is frequently used by all the legislatures at least once a week when specific periods of time are allocated for this purpose during ordinary sittings of the legislatures. Also, question times are always well attended by MPLs, including the media in some provinces such as Gauteng and Western Cape. Questions can be submitted as 'interpellations' and these usually lead to fairly lengthy debates in the legislature chambers, or as ordinary written or oral questions for a short reply by MECs. There are also special arrangements for questions to the premier in many, but not all, the provincial legislatures. While questions or question time provides an important opportunity for all MPLs to extract answers and vital information from members of the executive about government activities, this opportunity tends to be utilised mainly by the opposition. It is potentially an effective method of oversight, but is usually blunted by the public nature of the proceedings where politicians tend to exaggerate their disagreements and 'play to the gallery' in their exchanges in the chambers. For this reason, plenary proceedings can at times be superficial and theatrical, with MECs often failing to treat questions posed to them with seriousness. Question times in many provincial legislatures are usually turned into political mudslinging events between the ruling party and the opposition, with the result that the substance of debates suffers severely. Nonetheless, the opposition do appear to find question time a useful opportunity to not only embarrass governments, but also to raise genuine issues about government performance. The fact that in all the legislatures the majority of the questions come from opposition parties, especially the official opposition, bears testimony to the importance of question time as an oversight technique.⁵⁰

Owing to under-reporting, the extent of the usage of question time is not discernible from the annual reports of many legislatures. However, some information was obtained for the Northern Province, Free State and Gauteng. It shows that in the Northern Province, 205 questions were tabled in the chamber between 1997 and 2001. For Free State, 232 questions were posed in 2000 and 2001, whereas for Gauteng, a total of 3111 questions were posed to members of the executive between 1998 and 2003. The official opposition DA poses most of these questions.⁵¹ One of the major problems with question time, one that is reported fairly frequently in the press, is that many questions remain unanswered by provincial government departments. Some legislatures, such as Gauteng and Mpumalanga, place deadlines of 10 working days within which replies are to be provided to written questions. Failure to do this leads to the questions being converted to oral questions for instant oral replies. Despite this, many MECs and their departments continue to fail to respond to questions on time, which considerably reduces the effectiveness of this method of oversight in the legislative chambers.

Besides questions and question time, special motions⁵² are also allowed for debate on the floor of the house. Motions are usually submitted for debate on a variety of subjects and topics and are also potentially important as devices for MPLs to debate issues of concern for the public and to scrutinise government performance. However motions are not utilised as frequently as questions/question time. Although on many occasions motions are placed for debate on issues of a non-partisan nature in an attempt to create cross-party consensus on societal problems or matters of concern, such debates have a tendency to turn into acrimonious and divisive party political point-scoring sessions and, consequently, are not as fully utilised as would be expected. Because of under-reporting, not much information is available for many legislatures. Available information shows that the Northern province legislature debated a total of 106 motions on various subjects between 1997 and 2001, while the Gauteng legislature debated a total of 104 motions between 1999 and 2003.⁵³

One of the problems undermining the effectiveness of legislative chambers as sites for oversight is the fact that political parties, especially the ruling party, in many provincial legislatures tend to approach plenary sessions not as important opportunities for critical debates and resolution of substantive policy or societal issues. On the contrary, plenary sessions are usually occasions for party political grandstanding in defence of pre-determined positions adopted at party caucuses. Party caucuses have become extremely powerful but secretive arenas where important policy issues are debated vigorously and decisions taken before being debated inside the chambers of the provincial legislatures or even at committee level.⁵⁴ This is especially significant in the case of the ruling party. For instance, interviews conducted with MPLs in Gauteng and Mpumalanga confirmed this. Many MPLs from the ANC indicated that key policy issues are usually debated

first within the party caucus. This is where party lines are determined and defended inside the committees and the legislative chambers. In other words, important debates, conflict and disagreement are dealt with at party caucus level, so that what usually happens at committee level and on the floor of the house is the maintenance of party lines. In the current context of weak or absent opposition in many provincial legislatures, the implications of this are ominous in that in practice the ANC party caucuses have become the real sites where key issues of governance are determined and decided at provincial level. This does not mean that intra-party discussions at committee level or on the floor of the house do not take place. However, some of the most important and fundamental issues of governance at provincial level are usually dealt with inside these types of hidden arenas of decision making that are inaccessible for scrutiny by the general body of elected public representatives. This is one of the factors that have contributed to the marginalisation of the legislatures, in particular their chambers, as arenas of public accountability at provincial level.

3.3. PROVINCIAL LEGISLATURES – LAW-MAKING EFFECTIVENESS

During the first term of provincial government in South Africa (1994-1999), the legislative or law making function of provincial legislatures was more pronounced and received more attention than other activities. As a result, many commentators and the media in South Africa usually infer the effectiveness of provincial legislatures from the number of bills passed every year. Using this as an indicator of effectiveness, the general trend over the past ten years has been a considerable decline in the number of bills passed across provincial legislatures. Many legislatures have been unable to pass more than 10 bills a year. Also, much of this legislation was related to appropriation of public funds (budgets) and enabling the creation and operation of new provincial structures such as provincial government departments, provincial service commissions and others to fulfil their responsibilities. Besides this type of legislature, provinces have passed laws in many areas of social policy, such as housing, education, health and welfare, as well as in other sectors, such as infrastructure, economic policy, and development planning, local government and others. However, such provincial legislation has mainly been passed within the parameters of national legislation that had to be passed first, even in policy sectors where provinces have concurrent powers and functions. In other words, provinces have tended to wait for the national government to pass framework legislation, especially in areas such as housing, health, welfare and education, where national norms and standards are necessary.

The efficiency of provincial legislatures has also been questioned in terms of the number of days spent passing bills a year.⁵⁵ For instance, in the 1997 session the Northern Cape and Mpumalanga legislatures sat for 36 and 33 days respectively to pass 3 bills each. Western Cape sat for 55 days

to pass 13 bills. Gauteng sat for 34 days, KwaZulu-Natal and North West 22 days each to pass 11 bills each. The Northern Province legislature sat for 43 days in 1997 to pass 7 bills.⁵⁶ Judging the effectiveness and productivity of provincial legislatures purely on the number of bills passed annually is enlightening but can be problematic and even misleading. Firstly, it overlooks the fact that legislation usually originates from and is proposed by the provincial government and its departments, implying that law-making productivity and effectiveness at provincial level is as much an issue for the executives as it is for the legislatures. Secondly, obviously provincial legislatures do play an important role in the processing, consideration, amending and passing of the bills sent to them by the executive. However, the amount of time legislatures usually spend dealing with bills cannot be calculated from the number of sittings per annum. Thirdly, law making at provincial level includes performing other related activities, such as holding public hearings on proposed bills, which may increase the length of time that legislatures spend dealing with these bills. Fourthly, in addition to processing their own provincial laws, provinces spend valuable time and resources dealing the NCOP bills. This is usually overlooked by analyses of law making productivity within the legislatures. Finally, such criticisms tend to overlook the other activities that the legislatures usually perform during their sittings. As indicated above, legislatures use their sittings to carry out a range of activities, including dealing with various kinds of reports from departments, executive agencies and committees, debates on motions tabled, and questions put to members of the executive.

Nonetheless there has been a noticeable decline in general at provincial level of law making as one of the traditional activities that provincial legislatures are engaged in. Firoz Cachalia, speaker of the Gauteng legislature, attempted to explain this in a journal article in 1999, arguing that provincial legislatures are involved in other democracy-enhancing activities besides law making. He went on to add, “the system of cooperative governance centralises the law-making function in the national government and the national parliament. Provinces participate in process of law-making through the NCOP...”⁵⁷ Cachalia clearly implies that the decrease in law making at provincial level has been compensated for by the involvement of provincial legislatures in national law-making processes. This view was endorsed by many MPLs interviewed in Gauteng and Mpumalanga. Many believe that this centralisation of law making frees up provincial legislatures to concentrate on monitoring and overseeing the implementation of government policies and promoting public participation at provincial level.

Various other explanations for this decline in law-making productivity abound. David Pottie argues that one of the important factors is the limited areas of exclusive provincial legislative competency.⁵⁸ Another explanation is that provincial governments and their legislatures lack the necessary institutional capacity for effective law making. For instance, during 1994-1999, many

laws passed at provincial level had to be withdrawn for being legally unsound or contradicting national legislation.⁵⁹ Interviews conducted with MPLs revealed that fear of contradicting national legislation tends to force all provinces to wait or defer to national law-making processes, thus avoiding using their limited resources on legislation that might be struck down. Some MPLs also suggested that the decline was due to the fact that the provincial legislatures were gradually redefining their roles to focus mainly on the monitoring of policy implementation and service delivery, implying that the task of formulating laws was becoming a national government responsibility.

However, the supposed participation of provincial legislatures through the NCOP in national law-making processes as compensation for the loss of their law-making powers is hardly an adequate substitute for law making at provincial level, and it poses potentially serious implications for democratic governance at provincial level. Firstly, national legislative processes are usually concerned with addressing broad national policy issues rather than specific regional issues. This means therefore that individual provinces may still need to modify and adapt the national legislation to their unique circumstances. Secondly and more importantly, provincial involvement in national legislative processes is not without difficulties. Interviews with MPLs revealed that one of the problems is that legislatures do not always get adequate time to deal with national legislation, especially bills which affect their interests. Sometimes there is not enough time in the legislative cycle to hold public hearings in the provinces or even to formulate voting mandates for provincial NCOP delegates. Thirdly, in specific policy areas where the national legislation does not yet exist, a gap or void is usually created at provincial level in general or in specific provinces, signalling the need for provincial legislation. All this shows that there is still a need to retain legislative competency in the provinces to deal with their unique circumstances. Therefore given the political will, individual provinces should be able to design their own laws without waiting for national legislation and this is what the two provinces of KwaZulu-Natal and Western Cape, whose governments were dominated by opposition parties in the past, have pushed for on many occasions.

Yet the retention of the law-making function at provincial level in itself is hardly adequate. It needs to be accompanied by the necessary skills, institutional capacity, resources and, most importantly, a level of political autonomy from their executives. Generally, provincial legislatures are institutionally weaker and politically subordinate to the executives. Provincial executives are usually very powerful institutions, commanding enormous budgetary resources and controlling vast quantities of information. Executives usually have access to an officer corps of skilled, highly educated and permanent professionals not available to the legislatures. Therefore, even if provincial legislatures retained their law-making competency, the effectiveness of this function

will depend largely on institutional capacity and resources. Also, the dynamics of domination and subordination that tend to characterise the relationship between the legislatures and their executives, and the attitude of the governing party towards strong legislatures, will be important factors.

3.4. PROVINCIAL GOVERNMENTS – ADMINISTRATIVE EFFECTIVENESS

3.4.1. *Administrative Integration, Restructuring And Transformation*

The biggest challenge that the new provincial governments had to face was to create effective public administrations to carry out the enormous social policy agenda contained in the ANC's Reconstruction and Development Programme (RDP). Once provincial government had been established, the process of creating functioning provincial administrations went through two distinct phases. The first phase was mainly a technical or mechanical integration of various administrative components inherited from the previous homelands and the apartheid state. The second phase focused on transforming the public administration structures to improve their operational efficiency and effectiveness. Among others this entailed downsizing, personnel skills training and performance management, and alternative ways of organising and delivering services (i.e. privatisation, public-private partnerships, etc.)

In the first phase, for the majority of the provinces creating new and effective administrative systems meant integrating the old, discredited, inefficient and bloated homeland bureaucracies with the remnants of the former Transvaal, Natal, Cape and Free State provincial bureaucracies. Moreover these old inherited structures brought with them distinct organisational cultures and corporate identities and their own functions, management systems and, in some cases, unskilled and corrupt personnel that had to be restructured and integrated into single administrative systems. For a small number of provinces, such as Gauteng, Northern Cape and Western Cape, the first phase was about creating new provincial government departments out of only a few remnant structures inherited from the old Transvaal and Cape provincial administrations. This essentially meant starting with a clean slate. This was a challenging process, with considerable administrative and political risks. As Tom Lodge points out, for the new Gauteng province, situating its provincial capital in Johannesburg meant uprooting the old civil servants who had established themselves in Pretoria, or forcing them to commute between the two cities.⁶⁰ Many chose not to do either, in many instances leaving the new provincial administration with the task of recruiting new and, in most cases, inexperienced public servants to fill the vacated posts.

For those provinces that had inherited several bureaucratic components, the tasks were even more daunting. The Eastern Cape and Northern Province were cases in point. As Tom Lodge

argues, the new Eastern Cape province was an amalgam of rival political, bureaucratic and traditional elites from the Transkei and Ciskei who jealously guarded their power. The new Eastern Cape administration was also encumbered by weak and inefficient systems, with many poorly skilled and corrupt personnel. The new Eastern Cape province inherited some 140 000 public servants from the two previous homelands and the Cape administration, many of whom had been promoted irregularly and given increased and back-dated payments immediately prior to the installation of the new democratic order in 1994.⁶¹ This made the process of public service integration and restructuring very risky. Similar problems were encountered in other provinces. For instance the Northern Province, considered the poorest province in the country, had inherited inefficient, corrupt and bloated administrative structures from the former homelands of Lebowa, Gazankulu and Venda, which had to be integrated with a segment of the old Transvaal provincial administration to create a single public administration for the new province. Mpumalanga had inherited similarly poorly equipped public service structures and personnel from the former homelands of KwaNdebele and KaNgwane. North West had inherited public service structures from the former BophuthaTswana homeland and segments of the Transvaal and Cape provincial administrations, while KwaZulu-Natal had to integrate structures and personnel from the old KwaZulu homeland with those from the old Natal provincial administration. In addition to these, some public servants were transferred from the national level to the new provincial administrations as certain functions such as education, health, welfare and housing were decentralised.

The first year in office of the provincial governments was taken up mainly by the mechanical integration of the old structures and attempts to create new structures for the new provinces. Alongside these complex structural changes were protracted intergovernmental negotiations over the powers and functions to be assigned to the new provincial governments to enable them to function and deliver services. Therefore, provincial governments struggled to get their administrative systems off the ground, while having to contend with a reluctant central government in their attempts to get the necessary administrative and legislative powers to fulfil their responsibilities. However, because of the constitutional guarantees given to the inherited civil servants, who could not be dismissed, and the mechanical nature of the bureaucratic integration process, the first phase of restructuring of provincial administrations was characterised mainly by the absorption of staff from the various components inherited from the homelands and provincial administration.⁶² Therefore in many provinces the result was bloated provincial administrations. Considerable numbers of untrained, unskilled and inefficient public servants and 'ghost workers' from the old homelands were retained in many provinces. All this led to very inefficient, ineffective and corrupt public services at provincial level. This meant that after the first phase of administrative restructuring was completed, many provinces were not

administratively ready to start addressing the massive socio-economic backlogs of the past as promised in terms of the ANC's RDP programme.

Also, because of these administrative weaknesses and problems in the provinces during the early stages of bureaucratic integration, all provincial governments had created a set of parallel and separate administrative structures to 'fast track' public administration and the implementation of the government's RDP priority projects. The creation of separate and parallel RDP structures in the provinces was rooted in two important sets of circumstances. Firstly, the new political leadership at national and provincial level had harboured considerable mistrust against the 'old guard' public servants inherited from the apartheid era, and feared that their possible lack of political commitment to the new order would hamper the implementation of the new social policy agenda. Secondly, given that the provincial public services were still undergoing various forms of restructuring and rationalisation, there was concern that ordinary line function departments would not have the necessary institutional capacity to plan and implement RDP projects effectively and speedily at provincial level.

Therefore within the first four months of the 1994 elections, all the provinces had established RDP Commissions, in many cases headed by fairly senior politicians. The functions of provincial RDP Commissions were to transform provincial developmental processes in line with RDP priorities in each province, coordinate strategic policy and planning processes, and distribute RDP funds from the national RDP fund to provincial departments in line with RDP priorities. All the provincial RDP Commissions were coordinated from the national level through the National RDP office, also headed by a senior politician and located inside the office of the president. This served to place service delivery at the top of the national agenda. It also served as a guarantee that the institutional and bureaucratic obstacles that were being experienced at the level of implementation would be resolved at the political level. In theory, this institutional design aimed to achieve technocratic efficiency and effectiveness in policy implementation and service delivery by political fiat. In practice, this created complex political and administrative problems for provinces and created political tensions that ultimately undermined the very goals of efficiency and effectiveness that the politicians sought to achieve. This will be dealt with next.

3.4.1.1. Institutional problems and second phase of administrative transformation

The process of establishing new or integrating old administrative structures at provincial level created a number of problems. For a start the process took longer than was anticipated, mainly because many provinces did not have proper plans and strategies to implement these processes

effectively in order not to compromise administrative capacity to deliver services. In many provinces, the process of integrating and rationalising old structures created a number of difficulties. Firstly, fusing the different inherited administrative components was a complex and difficult endeavour, especially taking place as it did amidst political pressures and huge public expectations for quick and visible results in the implementation of the government's RDP election manifesto. Secondly, all the provinces had created Strategic Management Teams (SMTs) that had to create departments anew in provinces such as Gauteng and Northern Cape or to merge components of old departments into new ones in other provinces, in a short period of time and under extreme pressure from politicians. Therefore, the haste with which the process had to be undertaken led to a charge that the whole bureaucratic formation process was cosmetic, especially in provinces such as the North West.

For a period of four to five months after the June 1994 democratic elections, many provinces were administratively weak and therefore unable to undertake meaningful policy implementation and service delivery, as old administrative structures were being abolished or merged with others to create completely new provincial departments. The slow pace of reassigning administrative powers and functions to the new provinces also hampered the process of rationalisation intended to reduce the huge numbers of unwanted public servants inherited from previous administrations. This was one of the key grievances repeatedly articulated by the IFP-controlled province of KwaZulu-Natal. Also, some of the newly created provincial departments were characterised by internal administrative and capacity problems, especially lack of capacity for coordination, policy making, strategic planning and financial management. The process of bureaucratic integration and rationalisation therefore resulted in a fluid and unsettled administrative environment in many provinces.

The creation of parallel RDP structures at provincial level was therefore intended to ensure that some of the problems identified above did not delay service delivery. The strategy was clearly to create temporary but alternative structures to address the urgent need for social services while the new provinces were undertaking extensive administrative restructuring and rationalisation. In terms of institutional design and modelling, different provinces adopted three distinct approaches in the organisation of RDP structures. Some provinces established RDP Commissions with their subunits and located them inside the offices of the premiers, to underscore the fact that a speedy implementation of RDP programmes and projects was an urgent political priority. A political head or even an MEC in the office of the premier headed the Commission. The Northern Province and Mpumalanga were examples of this model, both mirroring that of the national government. The second model was to locate the RDP commission inside the premiers' offices, but placing responsibility for that function with an MEC of another department, such as

economic affairs, as was the case in Eastern Cape, or finance in Gauteng. The third model was to locate the RDP Commission outside of the premiers' offices, but within a particular department, as was the case in KwaZulu-Natal.

However, the provincial RDP structures created their own unique administrative problems. Firstly, as new structures, provision was not made for them in terms of public service legislation. RDP structures therefore could not slot easily into existing provincial administrative structures, thus creating problems such as absence of coordination mechanisms and horizontal linkages to ordinary government departments. The complexity created by the existence of parallel structures alongside ordinary government departments in many provinces caused overlapping responsibilities, duplication of functions and conflicting priorities, thus making RDP prioritisation almost impossible and strategic planning cumbersome.⁶³ For instance, given that RDP structures were also responsible for strategic and development policy making and planning at provincial level, this created severe problems of coordination and conflict with other strategic planning units based in some government departments. Secondly, the RDP structures were able to exercise enormous influence and power over the identification of social policy priorities across many departments, because each department had to align its programmes with those determined by provincial RDP structures. Also, departments were often obliged to apply for RDP funds from the national office through their provincial RDP offices. Through these funds, RDP commissioners could impose their authority on line function departments to align their policy programmes with those identified by RDP structures.⁶⁴ This created a situation where provincial RDP structures virtually usurped the responsibilities of line function departments, resulting in severe political and bureaucratic tensions.

Thirdly, in virtually every province the position of RDP commissioner was appointed at the level of MEC, which meant that in many cases these commissioners took part in cabinet meetings. However, the constitution made provision for only ten MECs and this meant that an extra MEC could not be allocated a separate budget or be allowed to make staff appointments in terms of public service regulations. Also, the uncertain legal and constitutional status of RDP commissioners made them constitutionally weak, even though their political status gave them enormous political clout and power in relation to other MECs. This caused serious political tensions. Fourthly, the RDP White Paper allowed each province "to develop a strategy for implementing the RDP in the context of its particular circumstances."⁶⁵ This prompted different provinces to adopt different models of organising their RDP structures, as well as different job titles and job descriptions for their RDP personnel. However, such a diversity of structures resulted in misalignments and difficulties of communication and coordination with the national RDP office, and led to pressure from the National RDP office for provinces to adopt uniform

structures. Some provinces, especially the opposition-controlled Western Cape and KwaZulu-Natal, objected to this demand for uniformity preferring diversity as a function of the federal system of government in South Africa.

Many of the problems caused by the existence of RDP structures at provincial level were also experienced at national level, which led to the abolition of national – followed by provincial RDP structures – in March 1996.⁶⁶ The different programmes, projects and responsibilities that fell under the RDP structures were thus assigned to the relevant provincial government departments. Clearly, this was intended to make line function departments the primary agencies for policy making, strategic planning and service delivery at provincial level, thus eliminating the severe structural complexities that existed alongside the other problems of administrative integration and restructuring that had affected the provinces since 1994. The abolition of RDP structures coincided with the introduction of the government's GEAR policy framework in June 1996, with its deficit targets and restrictions on state expenditure. This was effectively the start of the second phase of administrative changes at provincial level, focusing this time on systems transformation and rationalisation to promote a number of basic values and policy goals envisaged in the White Paper on Public Service Transformation (1995). These included efficiency, transparency, accountability, equitable racial and gender representation, and people-centred development.

As argued above, the second phase of rationalisation had intended to improve operational efficiency and effectiveness in provincial administrations through skills training, performance management and cost-containment. Individual provinces continue to this day to implement various capacity building and skills training programmes with financial assistance from international donor agencies and foreign governments to ensure effective policy implementation and service delivery. Also, the national government has played a key role in assisting the provinces with capacity building and administrative reforms. Still, problems remain in provincial administrations. For instance, the second phase of rationalisation was characterised by the utilisation of 'voluntary severance packages' as a strategic tool for administrative transformation. In provinces such as the North West and Mpumalanga, this created problems, in some cases leading to the most experienced and skilled civil servants leaving the public service, which meant that most of the unskilled and incompetent public servants inherited from the past remained in provincial administrations. This served to further weaken capacity for policy management and strategic planning in many provinces, while leaving problems such as inefficiency and mismanagement of resources unresolved.⁶⁷

Many of these problems were documented in a controversial provincial review report released in 1997 by the national Public Service Commission (the 'Ncholo' report).⁶⁸ The report identified a

catalogue of administrative and operational difficulties throughout the provinces, including over-centralisation of decision-making processes, which created serious impediments to efficient management; inadequate internal communication and strategic management systems; political interference in public service management; bloated public service structures leading to duplication of functions within and between departments; widespread failure to implement strategic plans; and the prevalence of 'ghost workers'.⁶⁹ The report also revealed that the national government was ultimately responsible for some of the problems. Among others, it identified the tendency of national government to set new policies without due regard for financial and service delivery implications at provincial level, failure to monitor service delivery adequately at provincial level, and the tendency of national ministries to offer conflicting advice and guidelines to provinces.⁷⁰

The 'Ncholo' report also categorised the provinces into three groups (i.e. the best, moderate and worst) based on judgements about available skills and capacity in their administrations. Western Cape and Gauteng were found to be the best-run provinces, with Gauteng considered to be benefiting from access to high levels of skills in the country.⁷¹ These two provinces shared a common background of being unencumbered with inefficient bureaucratic structures inherited from the previous political order. Mpumalanga, Northern Cape, Free State and North West were considered to be "somewhere between the best and the worst". KwaZulu-Natal, Eastern Cape and the Northern Province were judged to be in the third category, characterised by chronic shortages of administrative capacity, poor financial management skills, corruption and considerable levels of resistance to change. All three provinces inherited inefficient administrative structures and a huge number of public servants from the former homeland administrations. The report identified a further debilitating set of problems in financial management, human resource management, chronic staff shortages and widespread fraud. In particular, KwaZulu-Natal was seen as the worst affected and in danger of total collapse unless urgent steps were taken, with politicians routinely interfering in the running of government departments.⁷²

Similar problems were identified in the 1998 Presidential Review Commission (PRC) report including, among others, widespread confusion over the roles of administrative and political leadership, problems in human resource management, highly centralised financial management and decision-making processes and lack of strategic planning. The PRC report declared that the public services in some provinces were in a deplorable condition.⁷³ While these conditions were hardly conducive to effective policy administration and efficient service delivery to citizens, they were severest during the first period of provincial government (1994-1999). Much improvement has been made, especially during the second period of provincial government. Among the changes made were the financial management reforms introduced under the PFMA, the

establishment of internal departmental fraud units by many provincial departments and the creation of internal auditing units by provincial treasuries.

3.4.2. Policy Making And Implementation

3.4.2.1. Policy priorities and implementation (1994-1999)

The conditions and processes discussed in the previous subsections formed the backdrop to policy making and implementation at provincial level over this period. The ANC's election to power in 1994 was based on a strong commitment to a set of policies to address the enormous social service backlogs inherited from the previous apartheid political order. The party's RDP programme aimed to achieve this end and it was clear that the national government intended to set national policy priorities and frameworks, norms and standards, while the provinces would play a central role in implementation. However, owing to the problems outlined above, especially the capacity weaknesses for policy making and planning, prioritisation and the slow assignment of powers and functions to the provincial level, many provinces could not determine their own independent, province-specific priorities.

As the policy priorities were determined at national level, the start of the 1994-1999 term of government saw all the provincial governments adopting largely unmodified the programmes and priorities identified by national government in the RDP White Paper. For the most part this was the measure of the lack of the necessary capacity and policy skills in many provinces to determine fully the scale of the social services backlogs that face each provincial government in order to specify their individual priorities. Combined with this was the fact that the provinces were not only dependent on national government for much of their funding needs, but also that during the first three years in office, their budget allocations were determined through a system of 'function committees' at national level.⁷⁴ These committees involved provincial line function departments approaching their national equivalents for budget allocations, thus ensuring that expenditure priorities were in line with national priorities. Right from the beginning, all the new premiers were dissatisfied, not only with the inadequate funding from central government, but also with the lack of autonomy to set their own funding priorities as it limited their ability to prioritise accordingly to satisfy the specific needs of their citizens. For instance, Western Cape's first premier, NNP's Hernus Kriel, stated in 1995 that "because central government allocates funds to provinces for specific functions, it is determining provincial funding priorities."⁷⁵ Former North West Director-General Job Mokgoro agreed with this sentiment in 1996, arguing that central government officials dominated the budget process, and that central government virtually determined provincial priorities.⁷⁶

In their first major policy speeches in 1994 to set out their governments' key policy priorities and programmes for the five years ahead, the new premiers identified broadly similar policy priorities, which also mirrored those under the national government's RDP programme.⁷⁷ All the premiers stated their governments' commitment to the ANC's pledge for 'a better life for all' and to meeting people's 'basic needs' as stated in RDP White Paper. Notwithstanding the funding and administrative constraints discussed above, provincial governments aligned themselves with the state-centred approach to development and the expenditure-driven thrust of the RDP, which called for massive state spending to address the historical social service backlogs in the country. Only the opposition-controlled provinces of KwaZulu-Natal and Western Cape questioned the practicality not only of specific policy programmes such as free health care for pregnant women and children under six years, but also the affordability of the entire RDP programme in the face of funding constraints for the provinces.⁷⁸

Despite the differences between the ANC and opposition-controlled provinces, all of them faced similar social and economic challenges. Therefore unsurprisingly there were broad similarities of policy priorities among all the provinces during their 1994-1999 terms of office, although with varying degrees of emphasis on some policy areas. All the premiers committed their governments to the RDP goals of providing free and compulsory education for all within ten years, and free health care for pregnant women and children under the age of six. A range of priority areas were identified, mainly in the social spending policy sectors such as education, health and welfare. Inevitably, provinces allocated upwards of 80% of their budgets to the social services.⁷⁹ However, a large proportion of this spending went to personnel at the expense of infrastructure investment and maintenance of existing infrastructure. Also included in the list of priorities for the new provincial administrations were goals such as crime prevention, rural development, clean water and sanitation, job creation, infrastructure investment, and economic growth and development. Therefore most provinces identified the same areas of social policy as national government, further underlining their dependence on the national sphere, not only for funding but also for policy priority setting and legislation. One of the negative consequences of prioritising and therefore allocating large proportions of provincial budgets to the three major social services of education, health and welfare, as well as low cost housing during the 1994-1999 period, was that this served to squeeze expenditure on the vital economic policy sectors such as infrastructure investment, promoting tourism and small and medium enterprises and job creation.⁸⁰ In other words, one of the weaknesses of provincial administrations during the first term of office was the failure to prioritise economic growth and investment as well as infrastructure development in their areas of jurisdiction, mainly owing to funding constraints.

Widespread institutional capacity problems also undermined spending efficiency and the ability of provinces to meet the needs of their citizens effectively during this period. For instance, Northern Province Premier, Ngoako Ramatlhodi of the ANC, pointed out in 1995 that because of lack of expertise in quantifying the needs of citizens in his province, as a necessary aspect of proper budgeting, his province's funding requirements were largely unmet by central government – a situation not too dissimilar to those of other provinces. As a result of these problems all the provinces overspent their budgets for the 1994/5 as well as the 1995/96 financial years, especially in the education and health sectors.⁸¹ These administrative problems also served to undermine effective policy making, strategic planning and prioritisation in many provinces, including the implementation of a range of important RDP projects. Some of these included priority Presidential Lead Projects (PLPs) that were funded by the national government throughout the nine provinces, such as the clinics building programme, primary school nutrition schemes, water and sanitation, school classrooms building and literacy projects.⁸²

In many provinces, including Eastern Cape, Gauteng and Northern Province, many of these projects encountered numerous problems such as widespread fraud and corruption, lack of project management skills at implementation level, political interference, problems with the flow of funds or even inadequate funding, which undermined the effectiveness of implementation. For instance, owing to widespread capacity problems and corruption, the Eastern Cape government was unable to pay the social grants of 632 000 recipients in the 1997/98 financial year, forcing central government to intervene in terms of Section 100 of the constitution. This section mandates central government to intervene at provincial level when necessary to ensure that provinces fulfil their executive obligations. Eastern Cape and KwaZulu-Natal experienced similar administrative capacity and funding constraints in the 1997/98 financial year, which prompted central government to assist both provinces financially to the tune of R1.5bn each.⁸³ The Free State province also received a bail-out of R200m because of cash flow problems. In some provinces lack of adequate administrative capacity led to widespread failure to spend allocated funds, as happened between 1994 and 1997.⁸⁴ Social service delivery at provincial level was therefore hampered significantly by these problems during the 1994-1999 period.

A key example of an RDP priority policy area that typified all the problems during implementation and delivery at provincial level was the area of low-cost housing. This was a sector in which the new government staked its political reputation, and therefore focused serious attention and political pressure for visible delivery in the 1994-1999 period. The backlog for low-cost housing was estimated at between 1.5 million and 3 million units⁸⁵ in 1994. Housing subsidies of up to R16 000.00 were being provided for low-income households earning less than R3 500.00 per month as government attempted to tackle the problems of the housing shortage

through a strategy that prioritised the quantity of housing units delivered per annum as an indicator of service delivery, thereby compromising the quality of the housing units that were being delivered.

While coordinated from national level through the National Housing Board (NHB), delivery of low-cost housing was primarily driven through Provincial Housing Boards (PHBs) and provincial housing departments utilising private sector housing constructors, non-governmental organisations and other service providers. This arrangement clearly underscored the supremacy of the national sphere in policy goal-setting even if delivery occurred at provincial level. The national government had set a delivery target of one million low-cost houses between 1994 and 1999.⁸⁶ However, during this period housing delivery encountered severe problems across the provinces, but mainly in those provinces that had inherited administrative components and personnel from the former homelands. Some of the problems derived from bureaucratic logjams within the PHBs. For instance, tender procedures presented problems because of the slow pace in which the PHBs handled and processed applications and the release of housing subsidies. Also, the operations of many PHBs were shrouded in constant allegations of corruption and mismanagement, and provincial housing MECs were increasingly contesting the powers of PHBs. Other problems related to the lack of capacity within the building construction industry, especially the requirement to employ emerging black contractors who tended to suffer from serious financial management and cash flow problems.⁸⁷

Major capacity problems within provincial administrations also played a critical role. For instance, Eastern Cape, KwaZulu-Natal and Northern Province struggled more than other provinces owing to problems in areas of financial controls, project management and planning skills. By August 1995, KwaZulu-Natal had failed to spend much of its R36.6m allocated for RDP projects due to “bureaucratic delays and lethargic provincial officials.”⁸⁸ This prompted Jay Naidoo, in charge of the national RDP office, to give the province one month to spend the money or lose it. Also, by the end of January 1997 Eastern Cape had spent only 25% of its housing budget, while KwaZulu-Natal had spent only 10%.⁸⁹ In fact, problems of delivery in the housing and other RDP sectors became so severe in the two provinces that central government seconded special task forces to help cut ‘red tape’ and speed up delivery in these two provinces.⁹⁰ However, poorer provinces were not the only ones badly affected. In Gauteng problems relating to tender procedures, non-payment of municipal services, lengthy procedures in releasing land for housing construction, lack of bridging finance and land invasions undermined effective housing delivery between 1995 and 1996.⁹¹ As a result of these problems, the pace of provincial housing delivery across the country was considerably slow, leading to R4 billion of unspent RDP funds for the 1996/97 fiscal year being rolled over to the following year.⁹² Therefore in October 1995, 16

months after the ANC came to power, only 10 613 housing units had been completed as against an overall target of about 17000 units per month or 200 000 units per year.⁹³

The provincial breakdown of low-cost housing delivery showed that by May 1997, 70 599 housing units were completed or under construction in Gauteng, 24 720 in Western Cape, 20 680 in KwaZulu-Natal, 20 340 in North West, 19 072 in Mpumalanga and 15 513 in Free State. Three provinces were lagging behind the others – Northern Province (8 057), Northern Cape (7 626) and Eastern Cape (6 210). However, as institutional capacity and administrative systems gradually improved, and administrative and financial management skills training gained momentum within provincial administrations, so did the pace of low-cost housing delivery, especially from late 1997 to 1999. Therefore by end of 1998 an official total of 515 335⁹⁴ units had been completed or were under construction across all nine provinces.⁹⁵ By December 1999 the official target of one million housing units had not been achieved, although it was exceeded by the end of 2000.⁹⁶ In fact, provincial housing delivery per annum reached a peak in 1998/99, with 263 763 housing units completed or under construction, although this reflected a carry-over of projects from the previous two years.⁹⁷ Some of the improvements in housing delivery from 1997 onwards resulted from structural changes introduced by central government. The Housing Amendment Act of 1996 ensured that PHBs were directly accountable to provincial housing MECs rather than the NHB. This helped to eliminate the constant power struggles between PHBs and provincial MECs for housing. Also the National Housing Act of 1997 abolished the NHB and replaced it with an advisory body. The powers, duties, rights, assets and liabilities of the NHB were devolved to PHBs.⁹⁸

Prior to the start of the Mbeki presidency's first term in 1999, noticeable improvements in capacity within provincial administration were being felt, especially in the area of financial management. Because of central government's strict macro-economic policies that included cutting financial support to provinces that exceeded their budgets, financial management interventions in provinces such as Eastern Cape and KwaZulu-Natal and the introduction of the Medium Term Expenditure Framework (MTEF) after 1997, many provinces managed to stabilise their finances in 1998/99. For instance, the R5.9bn provincial budget deficit of 1997/98 was turned into a R600m⁹⁹ surplus. Officially, this turn-around was attributed not only to improved financial management and budgeting at provincial level but also to emphasis on cooperative governance which laid a sound foundation for these improvements. Most provinces introduced early warning systems to detect imminent over-expenditure and anti-corruption and fraud units. However, many provinces also implemented harsh measures to comply with central government's strict fiscal austerity measures, at a cost to social service delivery. There was significant curtailment of capital spending on non-social services such as programmes to promote

small-to-medium enterprises, tourism, public works, transport and agriculture. Some provinces restricted spending on capital projects, even in the two priority social policy sectors of education and health. For instance, cuts in capital expenditure in some provinces meant that the building of new classrooms and clinics, acquisition of school textbooks and new hospital equipment were delayed or suspended.¹⁰⁰ The Gauteng government, for instance, suspended subsidies to pre-schools and closed some schools and hospitals as ‘temporary measures’.¹⁰¹ Therefore some of the improvements came at a cost to the quality and quantity of service delivery in many provinces.

3.4.2.2. Policy priorities and implementation (1999-2004)

Unlike during the 1994-1999 period when spending efficiency and effective service delivery were undermined by widespread administrative capacity problems, the 1999-2004 term saw many provinces begin to maximise the benefits of improved administrative systems, financial controls, management skills and low debt commitments. These improvements created some room for manoeuvre in terms of reallocating resources towards new priorities, especially towards the areas that were previously neglected, while maintaining high levels of expenditure in the major social policy areas of education, health and welfare. Virtually all the provinces began to emphasise economic growth through investment in capital expenditure and infrastructure development, reflecting the underlying approach of the government’s macro-economic policy framework that was introduced in mid-1996.

GEAR was widely seen as repudiating the hitherto dominant approach underlying the RDP that was effectively sidelined by the abolition of national and provincial RDP structures in March 1996 – the latter had been premised on massive state expenditure in delivering basic social services to citizens. Notwithstanding the capacity problems identified above, and the problems of underperformance, the provincial sphere has become indispensable to central government in terms of social service delivery. This is because most of the national departments do not have the necessary institutional capacity and the personnel to implement policy programmes and deliver services directly to citizens. Because of smaller staff components, among other factors, national ministries are increasingly focusing on formulating policies, setting norms and standards, and disbursing funds for policy programmes implemented at provincial and local levels.

The political and governance context in which the 1999-2004 term of office commenced obviously differed considerably from the 1994-1999 period in that conditions for government at provincial level had become less uncertain. A fairly stable foundation of political and administrative institutions and processes had been put in place. The major policy priorities and challenges were clear to provincial government authorities, even if the inter-provincial disparities remained daunting. The preceding five years had provided valuable experience to policy makers

and insights into the operation of the new system of provincial government, amidst the political and other changes that had occurred. For instance, by the time the 1999 elections were over, only three provinces (North West, Northern Cape and Northern Province) still had the same premiers while the other six had new premiers. Three provinces (Eastern Cape, Mpumalanga and Western Cape) had a second premier each, while three (Free State, Gauteng and KwaZulu-Natal) had a third premier each. However, only two provinces (Gauteng and Mpumalanga) had new and inexperienced premiers, while the rest had incumbent premiers when the 1999-2004 term of office commenced.¹⁰² Change was therefore very much a prominent element at the political leadership level.

The theme of change was also prominent within the provincial executive councils at the dawn of the Mbeki presidency. For instance, extensive provincial cabinet reshuffles were made at the start of the 1999-2004 period, mainly in ANC-ruled provinces. The extensive reshuffling that occurred led to a total of 36 out of 91 provincial MECs losing their cabinet positions. Also, 54 out of the 91 MECs were placed in new and unfamiliar portfolios ¹⁰³ while only 37 MECs remained in the same portfolios. Perceptions have varied over the likely intentions behind the extensive provincial cabinet reshuffles. Richard Humphries argues that the intention might have been to render provincial administrations more pliable to central dictates than before.¹⁰⁴ However, this view ignores the fact that the overwhelming majority of provincial MECs and all premiers in the 1994-1999 period were new to their positions and inexperienced but this hardly rendered provincial governments completely pliable to the whims of central government. Besides, the extensive reshuffles could equally have been intended to remove non-performing MECs or reassign MECs to portfolios that suited their strengths better to underline the theme of accelerated service delivery that was so central to President Mbeki's ascendancy to power in 1999.

The provincial cabinet reshuffles of 1999 affected the key social service portfolios of health and education, where President Mbeki focused attention and demanded accelerated service delivery. For instance, seven of the nine provincial health MECs were completely new. For education, only four MECs remained in their portfolios while the rest were completely new or reassigned from other portfolios. However, as Humphries points out, the theme of change was tempered with a fair amount of continuity especially in the key sector of finance. This sector was virtually unaffected by the extensive reshuffles of 1999, as was the case at national level, perhaps signalling the central importance of continuity and stability in provincial finances. Only one out of the nine finance MECs was new to the portfolio. The importance of continuity in provincial finance portfolios needs to be put in proper perspective. This sector received a great deal of attention and underwent significant reforms following the widespread financial management chaos of 1994-1999, including the widespread budget deficits of 1997/98. As already argued, these

reforms were reinforced by the PFMA of 1999. In terms of this Act the provinces were no longer allowed to budget for deficits.

In contrast to the theme of change in terms of the composition of provincial cabinets and government leadership after the 1999 elections, the policies and expenditure priorities were largely characterised by continuity, with President Mbeki calling for accelerated service delivery rather than radical policy changes at provincial level. This call was echoed by all the premiers in their inaugural policy speeches at the start of their new five-year terms of office in 1999. The provincial governments aligned themselves once again with the major national policy priorities. For instance, all provinces adopted the national directive that at least 85% of provincial budgets be spent on education, health and welfare – not that the provinces had much room for choice in terms of policy priorities. Provinces are heavily dependent on central government for funding and continue to serve as primary service delivery agents for the national government. A marked decrease in total personnel costs at provincial level, from 60% in 1998/99 to 57% in 2000/01, was an important development as provinces began to divert more funds towards infrastructure and maintenance as well as improving the quality of service delivery.¹⁰⁵

Education, health and social welfare sectors continued to dominate spending commitments at provincial level as they did during the 1994-1999 period. Total provincial expenditure on these sectors reached 85.3% of total provincial expenditure in 1999/00.¹⁰⁶ Within these sectors, certain policy challenges were increasingly being prioritised in different provinces, even though there were broad similarities in a wide range of micro-policy programmes. In the health sector, emphasis and resources were increasingly being placed on dealing with the effects of HIV/AIDS. HIV/AIDS expenditure therefore came to account for a higher rate of expenditure growth in the health sector compared with education and welfare between 1997 and 2000.¹⁰⁷ In education, more focus was being placed on the supply of learner support materials, maintenance of classrooms and other infrastructure needs.¹⁰⁸ In welfare, provinces engaged in high-profile drives to increase registrations among the poor for welfare grants, especially children and the elderly, as part of the government's greater emphasis on pro-poor policies and poverty alleviation.¹⁰⁹

Spending capacity and efficiency at provincial level was still an area of concern for policy makers. For instance, within the first six months of 2000 it was found that Eastern Cape and Mpumalanga had spent only a small fraction of their capital budgets owing to insufficient capacity. Eastern Cape could only spend R207 000 of its R429m capital budget for housing, and only R131.5m of its R690m total provincial capital budget for 2000/2001. Mpumalanga had spent only R412 000 of its R235m capital budget for housing, and only R13m of its R272m total provincial capital budget.¹¹⁰ Also in 2001, the auditor-general's report showed that funds totalling

R8.5bn remained unspent because many provinces lacked the necessary capacity to spend these funds.¹¹¹ Despite these problems, provincial governments have been able to put more emphasis on and directed more resources towards capital expenditure than they did in the 1994-1999 period. Provincial spending in general increased from 2001/02 to 2003/04, accompanied by increased allocations to capital expenditure, which appeared to signal increasing spending capacity at provincial level.¹¹² Areas of priority in capital spending have ranged from roads construction, information technology, tourism, rural development and job creation in Western Cape, KwaZulu-Natal and Eastern Cape, to infrastructure investment, manufacturing and high-tech industries in Gauteng. Clearly, in addition to being providers of basic consumption services, the provinces are also critical in the country's economic growth and development prospects.

In the area of low-cost housing delivery the provinces were still committed to the goal of making housing accessible to the poor through the government's national housing subsidy scheme. As part of further streamlining and rationalising the housing delivery systems, the government amended the Housing Act of 1997 in 2000, among others, to abolish PHBs and replace them with advisory boards entirely accountable to provincial housing MECs.¹¹³ In fact, the national treasury's intergovernmental fiscal review of 2003 shows that spending on housing subsidies at provincial level increased at an annual average rate of 13.2% between 1999/00 and 2002/03, and was budgeted to increase by 13.8% from R3.7bn in 2002/03 to R4.2bn in 2003/04. In 2000 the rate of delivery of low-cost housing per annum reached the 200 000 target before dropping substantially below that target in the following years due to a number of problems including poor planning, insufficient project management and administrative capacity in some provincial housing departments and insufficient access to finance by low-income households.¹¹⁴ As indicated above, the government's housing delivery target of one million houses was exceeded in 2000 and by 2002 a total of 1.2m houses had been built or were under construction across the nine provinces.¹¹⁵ Of this total, 29.8% were in Gauteng, 17.7% in KwaZulu-Natal and 12.7% in Western Cape. In other words, these three provinces accounted for 60% of all the entire housing delivery in South Africa between 1994 and 2002.¹¹⁶ Also by 2000, all the provinces except Eastern Cape and Northern Province had achieved their individual housing delivery targets.¹¹⁷

However, widespread administrative and operational problems remained, and heavy criticism about the quality of houses being delivered subsequently forced the national government, followed by many provinces, to gradually abandon a predominantly quantity-driven mode of housing delivery to one of concern for issues of quality such as the size, structure and quality of materials used, and minimum standards to be adhered to by service providers.¹¹⁸ Also, new concerns emerged about effective monitoring of housing delivery at provincial level, including policy shifts towards alternative forms of tenure such as group-based or social housing and

collective (and high density) forms of ownership. The latter foreshadowed a gradual shift away from the predominant 'individual tenure' (single dwelling) format that had characterised the government's low-cost housing policy since 1994. Many of these developments have involved a clear strategic shift from free and government-subsidised housing towards non-state provision through NGOs, private sector, cooperatives and individual household savings. The provinces, taking the lead from the national housing ministry, have increasingly sought to emphasise the role of private sector funding and community self-help, extolling the virtues of public-private partnerships in housing delivery. Some analysts saw this as a new era in housing policy under President Mbeki, driven by the dictates of GEAR, with "government shifting the burden of low cost housing onto others."¹⁹ This perhaps also signalled a possible shift in the role of provinces as primary providers of low-cost housing, towards a non-interventionist and less costly strategy focusing mainly on monitoring and oversight, while leaving actual housing delivery to non-state actors.

Despite the widespread administrative and capacity problems that undermined efficient policy implementation and service delivery in the provinces over the past decade, provinces continued to play a critical role in the national government's social policy mandate. Clearly many of these problems are surmountable, and with the necessary political will, resources and support through skills training, the efficiency and effectiveness of the provinces will improve to strengthen their position as primary agents of policy implementation and service delivery in South Africa.

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- ⁹² *RDP Monitor*, February 1996; See also M. Tomlinson, (1995), *Problems On The Ground? developers' perspectives on the government's housing subsidy scheme*, (CPS Research report no. 46), p.9; M. Tomlinson, (1995), *From Principle To Practice: implementers' views on the new housing subsidy scheme*, (CPS Research report no 44), pp. 21-24
- ⁹³ See *RDP Monitor*, October 1995
- ⁹⁴ Some of these official figures were highly contested by non-governmental organisations such as the Institute of Race Relations, claiming that the official figures from the Housing ministry were inflated (See *RDP Monitor*, December 1997/January 1998)
- ⁹⁵ RSA (2003), Intergovernmental Fiscal Review 2003, p. 169
- ⁹⁶ J. du Toit (2001) *Provincial Characteristics Of South Africa*, (SA Financial Sector Forum), p. 12

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- ⁹⁷ RSA (2003), Intergovernmental Fiscal Review 2003, p. 169
- ⁹⁸ SAIRR (1997), *South Africa Survey 1996/1997*, p. 743; SAIRR (1998), *South Africa Survey 1997/1998*, pp. 314-315; *RDP Monitor*, December 1997/January 1998
- ⁹⁹ SAIRR (1998), *South Africa Survey 1997/98*, p. 444; SAIRR (2000), *South Africa Survey 1999/2000*, p. 455
- ¹⁰⁰ SAIRR (2000), *South Africa Survey 1999/2000*, p. 458; *RDP Monitor*: September 1999
- ¹⁰¹ *RDP Monitor*, February 1999.
- ¹⁰² Thabo Rapoo (2000), Op. cit. p. 14
- ¹⁰³ Richard Humphries, 'Little Continuity in Provincial Posts', *Business Day*, 7/7/99
- ¹⁰⁴ Ibid
- ¹⁰⁵ *RDP Monitor*, March & November 2001
- ¹⁰⁶ J. du Toit (2001), Op. cit. p.22
- ¹⁰⁷ Ibid
- ¹⁰⁸ J. du Toit (2001), Op. cit. pp. 10 & 22
- ¹⁰⁹ RSA (2003), Intergovernmental Fiscal Review 2003, p. 13
- ¹¹⁰ *Business Day*, 07/11/00
- ¹¹¹ *RDP Monitor*, November 2001
- ¹¹² *Business Day*, 29/07/02; *RDP Monitor*: March 2001; *RDP Monitor*: July 2002
- ¹¹³ *RDP Monitor*, November 2000
- ¹¹⁴ RSA (2003), Intergovernmental Fiscal Review 2003, pp. 169-170
- ¹¹⁵ RSA (2003), Intergovernmental Fiscal Review 2003, p. 77
- ¹¹⁶ Ibid
- ¹¹⁷ J. du Toit (2001), Op. cit. p. 12
- ¹¹⁸ SAIRR (2002), *South Africa Survey 2001/2002*, p. 45; *RDP Monitor*: June 2000, May & October 2001
- ¹¹⁹ *RDP Monitor*, November 2000

CASE STUDY I: GAUTENG PROVINCE

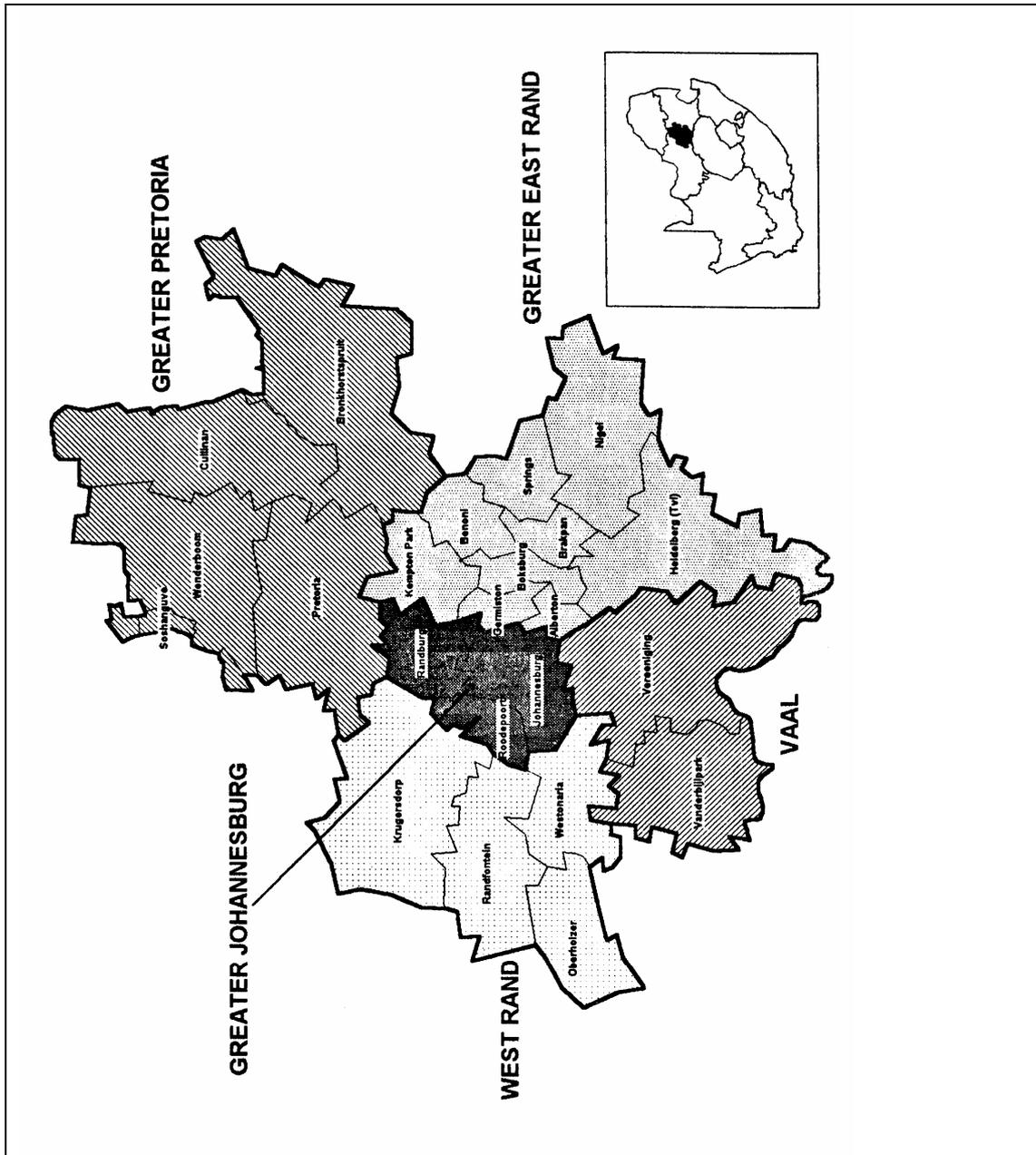


Figure 3: Map of Gauteng province

CHAPTER 4: THE GAUTENG PROVINCIAL LEGISLATURE

4.1. BACKGROUND

Originally known as Pretoria-Witwatersrand-Vereeniging (PWV), Gauteng is geographically the smallest province in South Africa. However it is home to the second largest population in the country of 8.2m (second to KwaZulu-Natal's 9m)¹, with the highest population density of any province at 520.1/km² compared to the national average of 38/km².² The province's comparative economic indicators underline its status as the economic heart of the country, with the highest gross geographic product (GGP) of R221.94bn. It contributed approximately 39.1% to the national gross domestic product (GDP) in 2003.³ In 1999 Gauteng had the highest human development index (HDI) of all the provinces at 0.69, which was higher than the national average of 0.58. Only Western Cape is equally developed, with an HDI of 0.68.⁴ Gauteng is also the most highly urbanised province in the country with 97.1% of its population living in urban areas compared with the national average of 58.0%.⁵

Even in terms of income indicators, human capacity and resources, Gauteng is relatively well off compared with the other provinces. In 1995 it was home to the largest proportion (just over 40%) of the richest 20% of all households in the country, followed by Western Cape with just over 30%.⁶ The 1999 *Intergovernmental Fiscal Review* reported that in 1995, 43.2% of the country's total income accrued to employees in the Gauteng province, with a mere 18.1% share of the country's total population. This was more than the combined total income share of only 17% accruing to employees in the four most rural provinces of Eastern Cape, Northern Province, Mpumalanga and North West. These four had a combined total share of 43% of the country's population.⁷ Gauteng and Western Cape are home to a large number of tertiary educational institutions such as universities, and almost half of all adults with high tertiary educational qualifications resided in the two provinces in 1996.⁸ Many of these figures are averages and therefore do not reveal some of the internal socio-economic disparities within Gauteng. However, they do suggest that the province is well endowed with both economic and human/social resources and the capacity to face the challenges of governance far better than others.

Like the majority of the provinces in South Africa, Gauteng has been governed by the ANC since the inception. It had the largest number of MPLs (86) during the 1994-1999 period, representing 7 political parties. Together with KwaZulu-Natal the Gauteng province had the largest number of political parties and opposition parties represented in the legislature during the 1994-1999 period. During the 1999-2004 period the province had the largest number of political parties (8) and the largest number of opposition parties (7) compared to any other province. This reflected

the existence of fairly diverse social formations and interests in the province, creating a basis for vibrant political interaction in the legislature during the period covered in this study.

An analysis of existing data on the age, professional backgrounds and formal educational qualifications⁹ of Gauteng MPLs revealed that during the 1994-1999 period, the legislature had a higher number of middle-aged¹⁰ and older MPLs of 40 years or over compared with those under the age of 40. Also, most of the MPLs were fairly well educated, with various professional training backgrounds when they entered the legislature, which augured well for governing the province during that formative period of provincial government in South Africa. Starting with the age profile of the legislature, 37 (43%) of the legislature's 86 MPLs during the 1994-1999 period were younger than 40. However, 49 (57%) of the 86 MPLs were either middle-aged or old-aged, being 40 years of age or over. After the introduction of the new constitution in 1997, a new formula was introduced for calculating the total number of provincial MPLs to reflect the size of the provincial population. Accordingly, after the 1999 elections the number of MPLs in Gauteng was reduced from 86 to 73. However this did not affect the age profile of the legislature significantly. If anything, the profile became even more skewed in favour of the middle-aged and older MPLs. For instance, the number of MPLs under the age of 40 dropped from 38 to 20, while those in the '40 years or over' category increased slightly from 49 to 53. Many of the MPLs who served in the 1994-1999 period continued after 1999, hence the relatively older age profile after 1999. It could be argued that the larger proportion of older and experienced MPLs is beneficial to the legislature in that the accumulated years of experience and expertise are put at the service of the provincial legislature during law making, committee work, plenary debates and general oversight work.

In terms of professional training and career backgrounds, a wide variety of professions and careers were represented in the first legislature in the 1994-1999 period. However certain professions and careers tended to dominate. These were public service and government (i.e. members of parliament, politicians and local councillors), political activism, trade unionism, education/teaching, and community development. Other professions were also represented but to a lesser extent. These included business, the legal profession, journalism, public service administration, finance, the technical professions (e.g. mechanical and civil engineering), farming, religion and medicine. A very small proportion of MPLs were unskilled manual labourers. It was noted that during the early years of the Gauteng provincial government many MPLs, especially from the predominantly white opposition parties, continued to hold full-time jobs in the private sector as lawyers, bankers and consultants, in addition to being MPLs. This effectively turned them into part-time MPLs. However as the work of the legislature became more demanding, the number of MPLs with part-time jobs declined considerably. The extensive variety of

professional/career backgrounds did not change significantly in the second term of office (1999-2004), ensuring that the legislature had a wealth of professional experiences and expertise to draw on for its oversight work.

With respect to the educational qualifications of Gauteng MPLs during the 1994-1999 period, information was available for 74 of the 86 MPLs. For instance, 55 (74%) of the MPLs had qualifications higher than matriculation. Twenty (21.6%) of them had post-matric but non-degree qualifications; 23 (31%) had undergraduate (i.e. Bachelor of Arts) degrees and 15 (20.3%) had postgraduate (BA honours, MA and PhD) degrees. Only 16 (21%) of the MPLs had high school matriculation qualifications or lower. Therefore, the majority of the Gauteng MPLs were fairly well educated. For the 1999-2004 period, information was available for 71 of the 73 MPLs. The picture did not change significantly for this period. For instance only 14 (19.7%) MPLs had high school matriculation or lower. The number of MPLs with educational qualifications exceeding high school matriculation increased from 55 (74%) in the 1994-1999 period, to 57 (80.3%) during the 1999-2004 period. Of these, 20 (28%) had post-matric but non-university qualifications; 13 (18.3%) had undergraduate degrees, while 24 (33.8%) had post-graduate degrees. Therefore, with a reduced number of MPLs in the 1999-2004 period, the Gauteng legislature has a slightly higher number of people with post high school matriculation qualifications than in the 1994-1999 period. This suggests that higher levels of education are increasingly becoming critical to being an effective MPL. As will be discussed below, some of the MPLs who were interviewed for this study did indicate that certain types of skills and expertise, which usually go hand in hand with higher levels of education, are critical for the oversight work of the legislature.

Potentially, a group of politicians with impressive levels of education, professional career backgrounds and years of working experience constituted a formidable basis for a vigorous process of government at provincial level. However, this served both as a positive and negative factor. On the one hand, it provided a firm base of human capacity and skills on which governance in Gauteng relied. Also, the fact that almost half of the MPLs who served in the first legislature (1994-1999) were returned to the legislature after the 1999 elections meant that a great deal of the accumulated expertise and experience was not lost. On the other hand, this turned the legislature into a largely elitist institution, especially during the first period of government, which struggled to sustain linkages with its social base. In terms of its socio-economic composition, the legislature was significantly far removed from the ordinary masses it was meant to represent. This was an important factor during the early period when it struggled to maintain greater linkages with civil society by encouraging participation in its activities.

Nonetheless the Gauteng province has gained a reputation over the years as a relatively well-governed province that functioned well and had effective institutions. The provincial legislature has evolved into an effective and active institution, with stable and well functioning internal systems and structures.¹¹ The province has also had relatively stable governments and administrations over the years, with only one mid-term change of premier in 1998 when Mathole Motshekga replaced Tokyo Sexwale as premier.

4.2. DEMOCRATIC/POLITICAL EFFECTIVENESS

4.2.1. Representational Effectiveness

In its second annual report released in 1999, the Gauteng legislature expresses a vision of a society where decision-making, the passage of provincial laws and their implementation is characterised by widespread public consensus.¹² The legislature also aspired to a vision of effectiveness and efficiency in developing and implementing policies and promoting public participation in these activities. As will be argued in this chapter, references to ‘consensus’ and ‘public participation’ were important, and the legislature has attempted to realise these goals in the way it was structured internally and conducted its activities. Various processes and programmes have been in place over the years in attempts to improve representational effectiveness.

4.2.1.1. Citizen participation through provincial elections

As already indicated, the 1994-1999 Gauteng legislature had 86 MPLs, with the ANC taking the largest proportion of 50 (59%) seats, followed by the NNP as official opposition with 21 (24%) seats. The remaining 17% of seats were spread among other smaller parties such as DP and Freedom Front with 5 seats each, IFP with three seats, African Christian Democratic Party and Pan Africanist Congress with a seat each. In the 1999-2004 period the number of seats was reduced to 73 under the new 1996 constitution and the Electoral Act of 1998 to be in proportion with the size of the provincial population. After the 1999 elections the ANC remained dominant in the legislature, retaining its previous 50 seats, followed by the DP with 13 seats and NNP and IFP with 3 seats each. Four smaller parties (Freedom Front, ACDP, Federal Alliance and United Democratic Front) obtained a seat each. As already argued elsewhere, Gauteng is one of the most contested provinces in South Africa, together with Western Cape and KwaZulu-Natal, with highly politicised and mobilised citizenry. This was reflected in a total of 7 political parties represented during 1994-1999 and 8 during 1999-2004, constituting a fairly significant spread and diversity of political views and social interest representation in the legislature. This was therefore

a firm basis on which to create linkages between the legislature and elected public representatives on the one hand, and the broader population of the province on the other.

One of the important indicators of this linkage between legislature and the citizens is the level of popular participation in provincial elections during the past three elections. For instance, as indicated in Chapter 3, Gauteng was one of the provinces that experienced an increase in voter turn-out from the 1994 to the 1999 election before a drop in 2004. Voter turnout in 1994 was high at 84.6%, even if slightly below the provincial average of 87.3%. In 1999 voter turnout increased to 89.3%, a little higher than the provincial average at 88.8%. It subsequently dropped considerably to 74.2% in 2004. However, this was still fairly good, and the difference from the provincial average of 75.4% was negligible. Therefore the level of public participation in the process of government in Gauteng, as gauged through participation in elections, is still fairly enthusiastic. As argued in Chapter 2, female participation in formal politics and representation in provincial institutions of government is increasingly receiving attention. For instance, since 1994 the Gauteng provincial legislature has had more female MPLs than any other legislature. There were 25 (29%) female MPLs elected in 1994, 25 (34.2%) in 1999 and 31 (42%) in 2004. Even in the provincial executive, Gauteng has had the highest the number of women MECs since 1999. For instance, after the 1999 elections, premier Mbhazima Shilowa's first cabinet had 4 female MECs while other provinces had 3 or less. After the 2004 elections, Shilowa appointed 5 female MECs – the highest number of female MECs ever appointed to serve in a provincial cabinet – while other provinces currently have 3 or fewer female MECs.

It is not immediately clear what accounts for the generally high representation of women in formal politics and political institutions in Gauteng, although the high rate of urbanisation and literacy, and easier access to the mass media may be responsible for mobilising citizens in general, but women in particular, to take part in formal politics through political parties. Obviously the policy of the ANC to allocate a third of the positions in its candidates' list at national and provincial levels to women is an important element in the increasing representation of women in formal politics.

4.2.1.2. Citizen participation in legislature activities

The Gauteng legislature was the first to attempt to involve citizens in its activities at a very early stage of its development and this continued throughout the ten-year period covered in this study. The speakers of the legislature have always been instrumental in attempts to involve citizens in its activities. Trevor Fowler was the first speaker during the 1994-1999 period. A civil engineer by profession and member of the South African Communist Party, Fowler believed it was critical to

develop the legislature “into an institution of the people” where, through public participation, “the people of Gauteng, especially those marginalized in the past, have a voice in the development of the laws of our country and province”.¹³ However, Fowler was at the helm during the early years of uncertainty when provinces in general, but legislatures in particular, struggled to understand their roles within the country’s political system. Between 1994 and 1995 the new legislature under Fowler initiated the most open and transparent process ever carried out by a provincial legislature to engage citizens and civic organisations in a lengthy process of defining a proper role for the legislature as well as developing its internal rules and regulations. Also, the Gauteng legislature has produced a series of draft revisions of its standing rules – no less than fourteen revised drafts over an eight-year period – in an attempt to turn the institution into an effective institution that reflects the interests of its citizens and promotes democratic values. As part of this process, two public workshops were held in August 1994 and October 1998 to engage citizens and the public on the most appropriate role of the legislature, covering themes such as law-making, representation and public participation, oversight and accountability.¹⁴ Ordinary citizens, experts and the media were invited to take part in these workshops and give inputs. Therefore the desire to establish and sharpen the legislature’s linkages with citizens has always been one of the primary goals. In fact, the Gauteng legislature was the first in South Africa to establish a Petitions and Public Participation Unit in April 1997, providing administrative support to the petitions process in the province. Firoz Cachalia, then leader of the house, and later the speaker, played a central role in this process. The legislature also passed the first-ever provincial Petitions Act in 1998 to facilitate public participation in the activities of the legislature.

The legislature’s high profile rhetoric to promote public involvement in its activities, especially during the early days of its establishment, may have reflected more than just the individual efforts of the speaker. A number of important imperatives were at work here. Firstly, there was a clear attempt to enhance the popular legitimacy of the new provincial institutions at a time of widespread criticisms about the precise role of these new institutions, with frequent media references to ‘highly paid’ MPLs with nothing to do. This was at the time when central government was seen as dragging its feet in devolving appropriate powers to the provinces. Secondly, with its numerous and vocal civil society and mass media organisations, Gauteng was always under public scrutiny to consult and involve citizens in processes of government. Also its stated goal of consensus-seeking decision-making processes made it imperative to seek popular involvement. The need for greater public participation at that time was probably both a genuine attempt to understand the expectations of citizens about their new legislature, but also the impulse derived from the earlier era of widespread civic and political engagement that was mainly based in the large urban centres such as Johannesburg and was so integral to the 1992-1994

constitutional negotiations. Thirdly, the dominance of ANC activists in the Gauteng legislature such as chief whip and former general secretary of the Alexander Civic Organisation, Richard Mdakane, was instrumental. This, combined with the strength of ANC-aligned and highly mobilised mass organisations throughout the province, had an impact in inclining the political rhetoric of the leadership in the legislature towards enhancing the popular legitimacy of the legislature.

However, the rhetoric of public participation was not pursued as vigorously in practice, especially beyond the formal processes of developing the rules and regulations of the legislature. As soon as all the necessary systems, procedures and internal structures were put in place, the legislature remained largely aloof and removed from ordinary citizens during the 1994 to 1999 period. As the legislature and its MPLs increasingly turned attention inwards, especially to get to grips with learning their new institution, its new internal rules and procedures and how to carry out the formal responsibilities and functions of law-making, any romantic notions of enhancing the quality of representation through promoting greater public participation in the affairs of the legislature receded to the background. Perhaps because of its largely elitist social composition, the legislature struggled to achieve greater public involvement and therefore the popular legitimacy it sought to achieve through such processes. In addition, it struggled to define a clear role for itself in practice, especially in relation to the executive. Interviews conducted with MPLs of several political parties in the legislature revealed that other more urgent considerations superseded visions of greater public participation in the legislature. One ANC MPL argued “in the beginning...we looked a lot at policies and we drew up...good laws...”¹⁵ The same MPL went on to argue that a great deal of time was spent attending to internal party matters within and outside the legislature, a view endorsed by a DA MPL who argued that too much time was spent on “internal party politics, the slog of elections”, and “having to raise funds for elections”.¹⁶ Therefore for many MPLs, the 1994-1999 period was more about getting to grips not only with the new legislative politics, but also with learning to negotiate and reconcile their new status as elected public representatives with the patronage and internal power politics of their political parties. As already indicated, some MPLs held on to their old jobs, perhaps signalling the difficulty of transition towards representative and popular politics.

Paradoxically, attempts to promote greater public participation during this period occurred at the time when bureaucratic and organisational imperatives achieved supremacy over populist representational politics inside the legislature. The party line inside the legislature essentially prevailed over the politics of public participation, and the MPLs’ initial inexperience in legislative politics facilitated this trend toward the dominance of party and executive. In an interview with Firoz Chacalia, this point was implied, “we were a little bit inexperienced and grappling with the

question, what is the role of the legislature? ANC members were puzzled because we were members of a governing party which controlled the executive, so we were faced with particular challenges about what is our role?"¹⁷ Cachalia went on to add that after the ANC's electoral victory of 1994, "with lack of experience...and lack of clarity about the role of the representative branch of government,...the members initially concentrated simply on fending off attacks". Clearly, the imperative of maintaining the governing party in power took precedence in the face of the adversarial party politics within the country in general but also the legislature in particular. In other words, the 1994-1999 period was dominated by inter-party struggles and contestations of power and politics. The ideal of promoting general public participation in the affairs of the legislature took a back seat, notwithstanding the contradictions presented by the rhetoric of public participation.

The arrival of Firoz Cachalia as new speaker after the 1999 elections brought with it renewed vigour in the rhetoric, politics and practice of public participation. Even Jack Bloom of the DA labelled the public participation programme in the legislature "the speaker's special baby".¹⁸ With a legal, academic and political activist background, Cachalia's reign was also characterised by a strong desire to strengthen the legislature institutionally, procedurally and legally to enhance its capacity to hold the executive accountable and to enhance its ability to promote the interests of the citizens of the province. In many of his annual budget policy speeches as speaker, Cachalia constantly addressed the themes of public participation, effective legislative oversight over the provincial government and political accountability to citizens. During his tenure the legislature's institutional capacity to promote public participation was reviewed thoroughly, accompanied by the strengthening of the legislature's legal powers to deal with citizen grievances regarding the actions and decisions of the provincial administration.

Cachalia's attempts to revive interest in the politics of public participation took place at the time when the power of the bureaucracy and party organisation had become fairly entrenched and the executive had become very powerful and dominant over the legislature. Therefore promoting effective public participation in the affairs of the legislature to enhance its popular accountability was a fairly difficult goal to achieve. The weakness of the legislature, combined with a dominant ruling party and provincial executive, as well as strict enforcement of party discipline, created an environment where the rhetoric of public participation remained largely just that. As a result efforts to promote public participation in the activities of the legislature increasingly assumed a 'public relations' flavour, which was not necessarily without its benefits as it addressed some of Cachalia's other concerns. For instance, Cachalia was also concerned with what he perceived to be a low public profile for the legislature among citizens in the province. Therefore public participation efforts were also aimed at promoting the corporate image and profile of the

institution in the province. Nonetheless, public participation to enable citizens to influence policy decisions through the legislature remained an important ideal goal for the legislature and attempts, as discussed below, were made in practice to promote this.

4.2.1.2.1. Public hearings

There is no evidence to suggest that during the 1994-1999 period the legislature conducted public hearings in a systematic manner on some of its activities and processes such as the budget, draft national and provincial bills. This is in line with the discussion above, that the legislature was mainly attempting to understand and define its role properly during this period. Many of the public participation activities and programmes of the legislature appear to have started in earnest during the era of Firoz Cachalia as speaker. In particular, during the early years of the 1999-2004 period, the legislature was concerned with running ‘public education workshops’, intended to inform the public about the legislature as an institution and its functions and responsibilities. Its annual reports show that between 1999 and 2003, approximately 472 public education workshops were conducted, including a number of ‘road-shows’ or ‘public outreach activities’, also intended to raise the profile of the legislature while informing citizens about its activities.

A number of public hearings were also conducted during this period, with 4 in 2001, 44 in 2002 and 35 in 2003.¹⁹ After an initial increase the number of public hearings appear to be declining. They are now mainly confined to budget hearings by some of the legislature committees. Despite this, results of an HSRC survey on public participation published in 1999 showed that Gauteng had the third highest (17.4%) number of people who often or continuously participated in public hearings by the legislature. Eastern Cape (35.8%) had the highest, followed by Northern province with 22.1%.²⁰ It should be noted also that the impact of these ‘public participation’ activities (i.e. public education workshops, road-shows/public outreach programmes and public hearings) on citizens is hard to gauge and there have not been any studies to determine the effect on enhancing public participation in the activities of the legislature. Also, it should be noted that the provincial executive itself regularly runs its own separate ‘road-shows’, ‘listening campaigns’ and so-called ‘imbizos’ in various parts of the province. However such activities are usually not coordinated with those of the legislature.²¹ Nonetheless, officials from the legislature’s PPP unit of the Gauteng legislature were adamant that their activities have contributed significantly towards greater public interest and involvement in the activities of the legislature, including the increase in petitions submitted to the legislature. For instance, one of the officials stated, “there is a correlation between the work that is done within the unit...if there were concerted efforts by our public education programme in a particular area over a certain period of time, you see a corresponding increase in the numbers of petitions coming from that area”.²² The implication is clear therefore that such efforts do have an impact in improving linkages between citizens and the legislature.

4.2.1.2.2. Submission of petitions

The Gauteng legislature pioneered the first provincial petitions process in 1996 under Trevor Fowler, and created the Public Participation and Petitions in 1997. The legislature promulgated its first Petitions Act in 1998. This demonstrated remarkable willingness, formally, to promote public involvement in governance through the legislature. The Act not only formalised the process of petitions, but also underpinned the broader process of public participation in the activities of the legislature. It prescribed steps to be taken to handle public petitions, and empowered the legislature to put in place appropriate procedures, administrative support structures and resources to handle public petitions. However, the less obvious but potentially and politically the most ominous aspect of the 1998 Petitions Act was the fact that for the first time in the new political dispensation a provincial legislature gave its speaker the power to sign into law and promulgate a piece of legislation – a prerogative hitherto enjoyed only by provincial premiers.

This was an important development in Gauteng legislative politics in that it attempted to position the legislature as a political champion of the people in relation to the provincial administration, especially at the time when provincial legislatures in South Africa were searching for a meaningful role. It attempted to place citizen interests at the heart of governance in the province, and situate the legislature as the primary institution for mediating public participation in government processes. The Act also empowered the legislature to impose either a fine, prison sentence not exceeding twelve months, or both, on anyone who refused to cooperate with the relevant committees dealing with public grievances expressed in the form of petitions.²³ Also the speaker of the legislature had acquired real legal power and authority that, in the hands of a politically more ambitious individual, could potentially be used to challenge the authority of the executive, especially the premier. Fowler never used this power to mount implicit or even explicit attacks against the executive or premier. Perhaps this was because the ANC in the legislature was not shot through with internal divisions and rival factionalism to the same extent as was the case in other ANC-ruled provinces such as Mpumalanga and Free State where such power in the hands of the speaker was a recipe for problems. Also crucially, the power to make the necessary regulations and declarations for the implementation of the Petitions Act vested with the premier rather than the speaker, thus undercutting this potential problem while also reinforcing the power and authority of the premier even on a piece of legislation concerning a functional matter of the legislature.²⁴

However, in his first year as speaker, Cachalia immediately ensured that the 1998 Petitions Act was amended in terms of the Gauteng Petitions Amendment Act of 1999. The most important aspect of the amendment was that it removed the power to make the necessary regulations and

declarations on the implementation of the Act from the premier and vested it in the speaker. Therefore, the legal powers were complete in terms of signing a bill into law and making the necessary regulations and declarations concerning its implementation. This was potentially threatening to the authority of the executive and premier because, had the speaker had any open ambitions towards high office in the province, this would have been one of the tools available to serve that end. This could have created serious internal problems and instability within the legislature. As will be discussed in the relevant chapter, this is exactly what happened in Mpumalanga. The Mpumalanga legislature passed a Petitions Act of its own in 2000, giving the speaker similar powers as those of the Gauteng speaker to sign bills into law and to issue necessary regulations. This resulted in an internal political controversy within the ANC in the provincial legislature, culminating in a bizarre situation where the premier took the speaker to the Constitutional Court to resolve the matter. The fact that such controversy and conflict over the legal powers of the speaker never erupted in Gauteng may suggest two things. Firstly, it could point to a more complete subordination of the legislature to the executive. Secondly and more plausibly, it probably suggested a more cohesive and integrated party leadership within the legislature, and better cooperative practices between the executive and legislature than was the case in Mpumalanga. In fact, Cachalia hinted as much in an interview for this study. He argued that “if you want to build strong legislatures, you need consensus within the governing party...and the tension has to be managed in a politically effective and mature way”.²⁵

The 1998 Petitions Act (as amended) was subsequently repealed when a new and more comprehensive Gauteng Petitions Act of 2002 was passed. The two Acts were substantially similar, although some changes were introduced in the new Act including a tidying-up of the language used in the new Act, rewriting of several sections and revisions of some of the clauses for simplicity and clarity. An official from the PPP unit added that the intention was to “write it from the perspective of the petitioner”.²⁶ In terms of the actual petitions dealt with by the legislature, 70 were received in 1999, 60 in 2000, 68 in 2001, 67 in 2002 and 65 in 2003, showing that some citizens were utilising this facility to secure resolutions of their grievances. Most of the petitions were concerned with matters of local government, housing and social welfare.²⁷ It appears also that the legislature was relatively efficient in processing the petitions, with well over two-thirds of them closed in the same year they were lodged.

4.2.1.2.3. Constituency service

Like other provincial legislatures, Gauteng provides allowances for MPLs to conduct constituency work in the various districts demarcated by the political parties for this purpose. Also, in its annual programme schedules, the legislature provides at least four occasions on which MPLs are allowed to spend time in their constituencies attending to the needs of citizens. However only the DA and particularly the ANC appeared to be running coherent and

meaningful constituency services throughout the province. At the time when the research was being undertaken, the ANC in Gauteng had approximately 42 constituency offices while the DA had about 19.²⁸ However, both parties ran their constituency offices as an integral part of party machinery despite these offices being formally declared public offices, separated from party structures.²⁹ An ANC constituency office manual confirms this, stating “constituency offices are paid for by parliament....MPLs must use the office to reach people in the area, to report and inform them on the work of parliament and government and to help them with their problems”.³⁰ However, the booklet immediately adds “the office must be a resource for building the ANC in the area”.³¹

Curiously, the legislature does not make provision in its standing rules for the regulation of the nature and quality of constituency services rendered by MPLs, or require them to submit regular reports to the office of the speaker on their constituency activities. In other words, there was no systematic way of ensuring that MPLs spent sufficient proportions of the time provided to them rendering assistance to citizens rather than engaging in party political activities. This may have provided valuable insights into the success or failure of MPLs in generating public enthusiasm in the affairs of the legislature or government. While ANC constituency offices were required to submit quarterly reports, these were to be submitted to provincial party structures and party Chief Whip in the legislature.³² There was no evidence to suggest that DA MPLs were expected to report on their constituency activities. ANC MPLs are also required to hold regular meetings with local communities to report on their work, engage in community outreach activities and encourage citizens to voice their grievances about government service delivery.³³ However, no formal procedures exist to ensure that these requirements are fulfilled. In instances where these requirements were fulfilled, it would appear that they were mainly geared towards recruiting support for the party. For instance, the ANC constituency office booklet referred to earlier states that “people should be at the centre of our constituency work...all activities must aim to get to them, hear their concerns, assist with their problems, report and consult on government programmes and persuade them to vote for us on election day”.³⁴

Copies of quarterly reports obtained from a few ANC constituency offices in Gauteng contained only brief details about what kind of services were being rendered to citizens – mostly labour related matters, applications for social grants and assistance on other services provided by government.³⁵ The reports crucially lacked adequate information on the amount of time MPLs spent in their constituency offices, attending to the grievances of local communities. In fact, the contents of the reports seemed to suggest that the work of rendering assistance to community members was being carried out by ordinary constituency office staff much of the time rather than by the MPLs. This perhaps suggests that these offices were not being utilised to their full

potential to enhance the representational effectiveness of elected public representatives in accordance with the stated objective of the current system of constituency service. Nonetheless, while the results of an HSRC survey published in 1999 showed a generally low level of interaction between citizens and constituency offices across all nine provinces, it also showed that Gauteng had the third highest (7.9%) number of citizens who often or continuously interacted with constituency offices to make enquiries. Eastern Cape had the highest number (19.6%), followed by Northern province (11.7%). The findings place the provincial average at 8.8%,³⁶ suggesting that general levels of citizen interaction with constituency offices at provincial level, including Gauteng, are still considerably low.

The voluntary nature of the system of constituency service appears to undermine its ability to enhance the representational effectiveness of MPLs and improve accountability to citizens. This is mainly because there is no compulsion or incentive for MPLs to be effective in fulfilling this responsibility. The political parties do appear to derive some political benefits from the existence and current operation of the system.³⁷ Potentially there is an opportunity for the system to serve the interests of citizens by forging a political culture of service to local communities by public representatives as a formal part of their responsibilities as elected public representatives. Also, this could serve as a precursor to the possible introduction in the future of a full or partial formal system of constituency service, given ongoing debates about reforming the current electoral system.

4.2.1.2.4. Citizen ability to influence provincial decision making

As already indicated briefly, public participation is not only confined to the activities of the legislature. The provincial executive also engages fairly regularly in activities intended to improve citizen ability to influence provincial decision-making processes. A senior official in the Department of Housing in Gauteng revealed that the department “conducts workshops with stakeholders such as the construction industry, NGOs, the youth, women and the disabled when we carry out our annual review of our strategic plans...especially between September and February just before the end of the financial year”³⁸ Also, the Premier’s office is fairly active in conducting so-called roving executives and ‘imbizos’³⁹ in various regions of the province to enable citizens to voice their grievances about the quality of administration and government services.⁴⁰ While the impact of these and legislature-driven public participation activities is difficult to gauge precisely, a survey of Gauteng senior public servants and MPLs conducted for this study gives a mixed picture. Among others, the survey questionnaire sought to determine whether or not respondents believed that citizens, through public participation processes, are able to exert any influence on provincial decision-making processes.

Using a 4-point scale ('poor', 'fair', 'good' and 'very good') to rate the level of influence of public participation, Gauteng senior public servants were split equally, with three of the six senior public servants who responded rating it 'fair', and the other three rating it 'good'. For the entire sample of 48 respondents from the nine provinces, the findings reflected a moderately higher level of satisfaction among respondents regarding the ability of citizens to influence provincial decision-making. The majority of 52.2% rated the level of influence of public participation as 'fair', while 23.9% said 'good'. Only 13% of respondents rated it as 'poor'. However the picture of moderate satisfaction among senior public servants is not replicated among MPLs. A total of 20 (27.4%) out of 73 Gauteng MPLs responded to the questionnaire. Using a modified 4-point rating scale ('not applicable', 'poor', 'fair' and 'good'), the MPLs were split with nine (45.0%) of them rating the level of influence of public participation as 'poor' and 11 (55.0%) rating it as 'fair'. Notably, no MPL said "good", clearly pointing to the fact that provincial executives and the legislatures are experiencing public participation differently, hence the contrasting perceptions of the efficacy of citizen participation in decision-making processes. These findings appear consistent with those from the larger sample of 81 MPLs from the nine legislatures. Here, 43.2% of MPLs from all the nine legislatures rated the level of influence of public participation as 'poor' and 50.6% rated it as 'fair'. A very negligible number rated it as 'good'. These survey findings therefore suggest that the majority of respondents believed that public participation had only a moderate influence in decision-making processes in Gauteng.

4.2.2. Oversight Effectiveness

This is the aspect of the work of legislature where the greatest amount of progress and improvement has been realised over the years. More than others, the Gauteng legislature has always emphasised the need to strengthen its institutional capacity and effectiveness in overseeing and monitoring the work of the executive. Despite this, various impediments continue to affect the functioning and effectiveness of the legislature and its committees in this regard. Two categories of problems or factors that tended to undermine the functioning and effectiveness of the legislature can be identified. The first was micro-level in nature, relating to the internal management, resources and skills of MPLs and the support staff. The second and very important category was systemic or macro-level, relating to the nature of the parliamentary system of government adopted at provincial level in South Africa. These factors help explain some of the difficulties that the Gauteng legislature had experienced in realising the vision of an effective and strong institution with the capacity to monitor and oversee the activities of the executive and hold it regularly accountable.

4.2.2.1. Oversight and ineffective legislature: 1994-1999

4.2.2.1.1. Practical issues and capacity problems

The first category of problems that tended to affect and undermine the effective functioning of the Gauteng legislature during this period relates to practical difficulties, especially internal institutional matters such management, resources, expertise and the skills for MPLs and the support staff. These have usually received the greatest exposure and coverage over the years especially from the country's mass media, journals and political commentators. To varying degrees these problems were typical across all nine legislatures since the inception of the provincial legislatures in 1994. Even today, many provincial legislatures continue to experience operational problems of various kinds, but these problems were severe at the beginning.

One of the underlying problems for the Gauteng legislature was administrative weakness, especially management. The running of the legislature at the beginning was amateurish and internal procedures and the business of the house often conducted in a chaotic manner, leaving some MPLs frustrated. Complaints about order papers being lost or going missing at crucial moments and house sittings ill-managed were all too common. Also, committee meetings were often characterised by constantly changing schedules as well as high levels of absenteeism among MPLs. However, the biggest problem was shortage of financial and other resources such as administrative/secretarial assistants and research support staff for committees. It needs to be noted though that these problems were widespread in other provinces also.

Interviews with several Gauteng MPLs and senior public servants in 1996 revealed that these problems served as significant obstacles undermining the effectiveness of oversight.⁴¹ In some cases, as many as six MPLs shared one administrative secretary. Daryl Swanepoel of the NNP stated in 1996 that the legislature suffered from "shortage of skills, capacity and lack of access to adequate resources", adding that "this had left the house vulnerable and serving merely as a rubber stamp for the executive".⁴² Swanepoel argued further that "committees were ineffective due to lack of capacity in the form of skilled research staff", and that "when legislation arrives from the executive, there is no ability to do proper research on it...the committees can only cursorily look into legislation from the executive and hope that the executive had done adequate research on the legislation". A senior DP MPL Brian Goodall also identified some of the debilitating capacity constraints, "lack of adequate facilities, skills and access to information to monitor the work of departments, lack of adequate research capacity to generate information necessary for the work of these committees."⁴³

The widespread lack of skills, knowledge and expertise among the MPLs was a particularly critical constraint. Despite the higher educational and professional profiles of Gauteng MPLs, many of them lacked the necessary knowledge and technical expertise in the policy areas of their committees. In particular there was widespread lack of familiarity with budgetary and financial matters. Public finances and budgeting constitute a large proportion of government programmes and familiarity with these matters is therefore central to effective oversight of government departments. Some of the MPLs acknowledged these shortcomings at the time. Brian Goodall of the DP revealed in 1996, “committee members tend to have inadequate knowledge of the work performed by departments.”⁴⁴ Goodall added that “committees can formulate policies and do have the right to draw up bills...if they wanted to but the constraint on them is the lack of technical capacity and expertise to do this.” A senior official in the Department of Finance believed that “only a handful of MPLs were skilled...the best MPLs were in the cabinet, which depletes the legislature.”⁴⁵ Julie Killian of the NNP, and chairperson of the education portfolio committee confirmed this, bitterly lamenting the apparent deference of ANC MPLs to their superiors, compounded by “lack of knowledge and expertise in the policy area of education...the committee was staffed with few people with relevant expertise and knowledge.”⁴⁶ Clearly all this had a serious impact on the effectiveness of oversight and the ability of MPLs to scrutinise the work of government departments and other agencies during this period. Debilitating as these practical and capacity problems were to the functioning of the Gauteng legislature, there were other even more important systemic and functional/political issues that compounded the relative weakness of the Gauteng legislature during the 1994-1999 period.

4.2.2.1.2. Systemic and functional/political problems

The second category of problems was systemic in nature and has tended to be hidden from the public eye and media scrutiny. Understanding these problems is crucial to understanding some of the major impediments to the work of legislatures as oversight bodies. An important and overarching problem here is the dominant Westminster-type system of parliamentary government currently in operation in South Africa. Two features of this system tend to lead to the subordination of the legislature to the executive. Firstly, the executive branch of government is usually extremely dominant in terms of its powers and access to both fiscal and other resources. It is usual for more skilled and politically high-profile politicians to be appointed to the executive, which in turn gives the executive branch a great deal of political clout over the legislature. Members of the executive also have regular access to huge amounts of information and a corps of highly skilled and educated senior officials permanently employed to advise the executive in policy formulation, drafting of legislation and managing public resources necessary for implementing government policies. In addition, members of the executive and their departments are allowed to employ advisers and consultants regularly to assist in their work.

Therefore the Gauteng legislature could not match the institutional capacity and strength of the executive branch during the 1994-1999 period. Several MPLs and senior public service officials interviewed in 1996 agreed that the dominant position of the executive was one of the key factors that rendered the legislature subordinate. Firoz Cachalia, then leader of the house, indicated in 1996 that in the powerful party caucus in the legislature MECs usually dominate proceedings even though the policy in caucus meetings is that everybody is equal.⁴⁷ Another ANC MPL, Andrew Feinstein, then chairman of the finance committee and adviser to premier Tokyo Sexwale, argued that “most initiatives with respect to legislation and policy programmes came from the executive rather than the legislature...”⁴⁸ and that “the legislature was inclined merely to reacting or responding to executive overtures.” Opposition MPLs obviously endorsed this view, with NNP MPL Julie Killian arguing “the distribution of capacity between the different parts of the provincial government was unequal”, and that “the executive tended to have access to resources.”⁴⁹ She added that this tended to “shift power to the executive committee and away from the legislature and committees which are supposed to play a monitoring and scrutinising role over the work of the provincial government”. Another NNP MPL, Daryl Swanepoel, added “the executive was very powerful due to its access to better resources compared to the legislature and the standing committees”.⁵⁰ In fact finance MEC Jabu Moleketi agreed with this assessment at the time, saying “it is possible to overwhelm the legislature with the capacity at the disposal of the executive...the legislature can only critique...and not [develop] legislation independently”.⁵¹

The second feature of the current system of parliamentary government, discussed briefly before, is that party members, both ruling party and opposition, are subject to stringent party discipline especially on critical policy matters.⁵² MPLs in the Gauteng legislature tended to fulfil their functions in line with the dictates of their parties. This was compounded by differences and conflicting normative views among the major political parties about the nature of oversight and the appropriate role of the legislature during the 1994-1999 period. For instance, many ANC MPLs believed that the role of the legislature in general was to create consensus and provide support to the government of the day. Because of this, ANC members took it as their duty to protect their government and MECs against attacks from opposition parties. For instance Firoz Cachalia made this statement in 1996 on the working relationship between the legislature and the executive, “we do not want to set up a dynamic between the executive and the legislature which sets up unnecessary conflicts...”⁵³ Cachalia went on to reiterate this idea in a journal article in 2001, “the dominant, ‘traditional’ model of parliamentary oversight emphasises the ‘separation of powers’ and ‘checks and balances’...oversight could also be thought of as a way of promoting cooperation between the executive and parliament...contributing to accelerated service delivery.”⁵⁴ Jabu Moleketi made the same point, emphasising the importance of consensus

between the legislature and the executive. Moleketi added that “one cannot draw rigid lines...between the executive and the legislature...oversight is not enough to ensure the mandate for a better life for all in South Africa...”⁵⁵ There was therefore a common thread running through the views of some ANC MPLs, suggesting that the legislature was expected to be at the service, if not as an extension, of the executive.

This conception of the role of legislature as a resource for the executive significantly shaped the way many ANC members approached their oversight responsibilities during the 1994-1999 period. There was a strong belief in the role of legislature in generating consensus support for government policies by somehow subverting if not overcoming the usual party political adversarial relations to give the provincial government the necessary political space to implement its policy agenda. As will be shown later in this chapter, the ANC was therefore at times very sensitive to some of the virulent criticisms of its policies mounted by the opposition in the legislature during the 1994-1999 period. Given the relatively high educational and professional profiles of its members as outlined earlier, the legislature had the necessary intellectual resources to become a fairly independent institution with a corps of relatively well-informed MPLs. This should have enabled the emergence of a cross-party consensus underpinning a set of basic principles about the role of the legislature at an early stage. However, many ruling party MPLs were largely deferent in their relations to party leadership. The belief that the party had a historic mission to eradicate the legacy of apartheid in South Africa convinced many of them to see their role as that of supporting their party to govern unhindered. In a recent interview, Firoz Cachalia attempted to capture this sense of historic mission, “you’ve got to remember here that we are sitting here as parliamentarians immediately after 1994, the first opportunity for people like us to be in government, very sensitive, very aware of that enormous achievement, but the achievement was still fragile...there was a lot of tension between political parties”.⁵⁶

An important but unintended consequence of this was that it led to some MPLs to believe that they were part of ‘the government’ in the narrow sense of the executive arm of government, and therefore believed that they were entitled to be formally involved in the exercise of executive authority. This explains the common practice of several ANC MPLs serving as part of the executive, either as political advisers to MECs or consultants to government departments during the 1994-1999 period. In terms of accepted conventions and common practice, the role of legislature is to watch over the executive, hold it accountable and serve as a channel of popular legitimation through which executive decisions are formally approved and authorised. Therefore the effect of ordinary MPLs serving as paid consultants and political advisers to members of the executive and government departments was that, to some extent, it not only blurred the constitutional division and functional distinction between the executive and the legislature. It also

compromised the legislature as an effective arena of oversight and accountability, worsening its compliant attitude to the executive.

Another important factor relating to the systemic problems of the legislature, which undermined its ability to function effectively during the 1994-1999 period, was the lack of clarity or widespread uncertainty about the precise role of provinces in general, and legislatures in particular. As already discussed in Chapter 2, uncertainty about the role and status of provinces was widespread during this period, especially in relation to the role of central government on matters such as policy making and law making. Interviews with many Gauteng MPLs in 1996 reflected their frustrations with this lack of clarity on the role of provinces. For instance, a senior DP MPL stated at the time that “provinces do not have adequate powers as levels of government with a constitutional basis”,⁵⁷ adding that provinces at times “functioned like administrative units rather than levels of government with law-making powers”. This view was common among members of all political parties, including some in the ruling party, ironically.

Added to this was the fact that provincial legislatures also faced similar problems of lack of clarity on their roles.⁵⁸ The interviews that were conducted in 1996 revealed clearly that the Gauteng legislature was struggling to create a meaningful role for itself. This was compounded by widespread lack of knowledge among MPLs of their precise roles and also unfamiliarity with the practices and conventions of the newly created system of parliamentary democracy. In other words, many MPLs were uncertain of how to fulfil their roles and responsibilities as elected public representatives in the context of an elected institution whose functions were still unclear and evolving. One ANC MPL acknowledged in 1996 that “the legislature has had difficulty in carving a role for itself over the past two years of the existence of provincial government in Gauteng.”⁵⁹ Another ANC MPL said there was “widespread lack of knowledge of how they [MPLs] were supposed to do their work as well as how the legislature was supposed to function.”⁶⁰ Yet another added “lack of familiarity with institutional processes amongst MPLs was a clear obstacle to the legislative process and the work of the legislature as a whole.”⁶¹ Opposition members also expressed similar views. A DP MPL argued in 1996 “the Gauteng legislature has not functioned as a conventional legislature is expected to function”, adding that “...this is caused by the fact that there has not been adequate clarity on the role of provincial legislatures.”⁶² Even some public service officials interviewed in 1996 made some disparaging remarks about the legislature. For instance, one official said “the executive did not think much about the legislature...no one takes it seriously.”⁶³ Under such circumstances, the ability of the legislature to act as an effective guardian of the interests of citizens was considerably weakened. In contrast to the obvious lack of clarity on the role of the legislature and MPLs during this period, the role of the executive was clear and universally understood. Members of the executive

tended to act with more cohesion and unity of purpose in their relations with the legislature, which contributed significantly to the executive branch emerging as dominant over the legislature.

However, the cross-party agreement on the general weakness of the Gauteng legislature during the 1994-1999 period belied the deep-seated normative differences between the ruling party and the opposition on the way the legislature was supposed to carry out its oversight functions. These differences also undermined the effectiveness of the legislature during this period, preventing the emergence of some level of unity of purpose and consensus on the best way to oversee the provincial government. For instance, in contrast to the apparent attitudes of deference and the largely quiescent conduct of many ruling party MPLs in the legislature, opposition MPLs preferred a more active and politically independent legislature within the context of strict separation of powers and functions between the legislature and the executive. Therefore opposition members, especially from the NNP and DP, routinely complained of the failure to enforce the principle of 'separation of powers' as enshrined in the constitution, indicating that they preferred a stricter separation and a more confrontational relationship with the executive. These normative differences on how the legislature related to the executive during oversight work served to divide the legislature internally, preventing it from acting with more unity of purpose, and therefore helped further to undermine its effectiveness during this period.

It needs to be stated, though, that a weak and compliant legislature might not have been universally accepted within the ruling party. Not all members of the ruling party acquiesced in the apparent subordination of the legislature to the executive during this period. Some ANC MPLs decried this. For instance Andrew Feinstein, one of the brightest and most effective ANC MPLs in the Gauteng legislature at the time, expressed disapproval of "consensus agreements without criticisms" as much as he disapproved of "disagreements and conflicts leading to no consensus..."⁶⁴ clearly referring to the common refrain among many ANC MPLs at the time about 'consensus' and 'cooperation' between legislature and executive. Firoz Cachalia, leader of the house at the time, argued that while he was not in favour of a model of an independent legislature, he preferred a model based on 'shared responsibility', in which the legislature's influence would be "trimmed down [but] not to the extent that [it] would just [be a] rubber stamp..."⁶⁵ Clearly, there were internal differences even within the ANC about the way the legislature could best approach its responsibilities. Some MPLs were clearly uncomfortable with the over-emphasis on 'consensus', especially when this was perceived to render the legislature generally quiescent in relation to the executive.

Some ANC MPLs noted at the time that attempts to push for a more vigorous oversight through the legislature and its committees often created tensions between the executive and the legislature. Firoz Cachalia acknowledged such “tensions between the executive and the legislature in the policy process”, adding however that the tensions had to be managed effectively. Finance MEC Jabu Moleketi, considered at the time to be keen to see a more active legislature especially in the budget process,⁶⁶ argued that “tension is welcome and needs to be acknowledged”.⁶⁷ He went on to add “if there was no tension, it would be particularly worrying if the [MPLs] were simply a rubber stamp for the executive.” The critical challenge for the ruling party was to strike a balance between sufficient autonomy for the legislature to scrutinise and hold the executive accountable, while at the same time ensuring that it can rely on the support of the legislature for the provincial government to implement its policies without hindrance. It would appear that striking such a delicate balance at the time when the ANC’s victory was still considered ‘fragile’ was not easy, resulting in the party erring on the side of caution and placing more emphasis on ‘consensus’ and ‘cooperation’. Importantly though, the clear lack of a common view not only among the parties but also within the ruling party regarding the appropriate role for the legislature and its approach to oversight, played a key role in undermining the effectiveness of the legislature.

The foregoing discussion about the weakness of the provincial legislature should not be construed to mean that no oversight or any form of meaningful scrutiny was undertaken on the activities of the provincial government and its departments. Oversight work did take place regularly, especially at committee level. However, the ANC party caucus also assumed an important status and also became a critical arena for exercising oversight and monitoring the performance of the government during this period, thus filling the clear accountability deficit. This development also occurred in other legislatures.⁶⁸ For instance Gareth Newham points out aptly that “posing challenging or...embarrassing questions to an MEC in a committee meetings was seen as an attempt to undermine fellow party members.”⁶⁹ Newham goes on to add “in some cases, committee members appeared to deliberately ignore shortcomings in departments or defend an MEC being challenged by an opposition party member in an effort to display party loyalty and unity”. This deferent submissiveness of rank and file ANC MPLs to their MECs at committee level appeared to result in unwillingness to hold their government and MECs accountable. An NNP MPL, Julie Killian, who chaired the portfolio committee on education until 1996, attested to this. She complained that “the members of the majority party in the provincial legislature and the committees were not prepared to face their superiors...to challenge them on policy issues and performance.”⁷⁰ Killian adds “the committee is often restrained in terms of how much it can do to call the minister to account....ANC members...are always disinclined to face their party MEC and call her to order...”

It would appear therefore that the cohesion and party unity displayed by ANC members in committees and the legislature was a clear strategy intended to deal with the opposition. This was acknowledged by a senior DP MPL Brian Goodall who said “the ANC is a relatively cohesive party in terms of approaches to policy making, which tends to minimise differences of approaches to the handling of policy matters.”⁷¹ It appears that at party caucus level ANC MPLs do regularly engage in vigorous activities aimed at ensuring accountability by the MECs, and do pose serious questions to government departments. Interviews with MPLs in 1996 as well as recently appear to confirm this. For instance, one ANC MPL said in 1996 “we believe that there are no MECs in the caucus, hence MECs should be and are accountable to the caucus”, adding that “the caucus is meant to be the highest decision-making power.”⁷² Another ANC MPL indicated there are caucus ‘sub-committees’ or ‘study groups’ that regularly undertook the role of monitoring and overseeing each government portfolio, usually chaired by the same MPLs who chaired standing committees in the legislature. These ‘study groups’ ran parallel to the legislatures’ own portfolio committees and operated on the same principles, specialising in specific policy sectors of the different departments and serving as oversight structures.

Interviews suggest therefore that ANC MECs, not only in Gauteng, but also in other provinces, are expected to regularly face their colleagues inside these caucus subcommittees and also in the broader party caucus, to account for the performance of their departments. In a recent interview, Hope Papo, former deputy chief whip, revealed that “if there [is] an intention of coming with a particular policy”, an MEC usually “comes there [to the study group] where that issue must be raised... to explain...what the intentions are and how it will enhance delivery...”⁷³ Papo added that “members of the study groups have a right to interrogate [policy proposals]...once that has been washed in the study group, it goes to the standing committee.” These caucus study groups are also intended to deal with and resolve any areas of disagreement among members over policy proposals prior to such policies reaching the committee level, so that the party is able to present a unified stance and defend government policies against opposition parties in the legislature. What this suggests clearly is that individual MECs and the executive did account to the various caucus study groups and the broader party caucus itself for their performance, even at the time when the Gauteng legislature was fairly weak as an oversight structure. However, this meant that effective oversight and accountability took place off the floor of the house and away from standing committees where it is formally supposed to take place. It occurred instead in a hidden and exclusive arena where members of the public or other elected members of opposition parties in the legislature played no role at all. This probably played a major role also in undermining the role of legislature.

All these problems played a key role in undermining the effectiveness of the Gauteng legislature during the 1994-1999 period. Overcoming the capacity and resource constraints discussed in the previous subsection would not have made a significant difference if the second category of problems had not also been addressed. The next subsection discusses the attempts that were made to overcome some of these problems.

4.2.2.2. Strengthening the legislature for effective oversight: 1999-2004

4.2.2.2.1. Practical issues and capacity problems

Many of the burdensome operational and capacity problems, especially the administrative and managerial capacity issues that affected the effectiveness of the legislature during the first term of office, were already being attended to as early as 1998. However, when Firoz Cachalia became speaker in 1999, he inspired the desire for an active provincial legislature with strong institutional capacity to hold government accountable and develop extensive linkages to the public. Therefore, the process of addressing its capacity constraints and other operational problems was started through a number of initiatives. One of these was the internal restructuring and reorganisation of the legislature and the establishment of various internal directorates. Also, more administrative support staff and researchers were employed, with preference given to university graduates.⁷⁴ This internal restructuring helped improve the day-to-day functioning of the legislature. Skilled managers were employed and the scheduling of legislature activities improved significantly. Legislature committees introduced attendance registers with penalties, to stem the tide of absenteeism among MPLs. Significantly more funds were made available for committees to undertake their oversight activities and most members became fulltime MPLs, relinquishing their second jobs outside the legislature. Obviously, the first five years of practice provided some valuable experience and expertise for many MPLs in their areas of committee responsibility, which helped improve oversight to some extent.

An important initiative was a research study commissioned by the speaker in 2000, to evaluate the legislature's committee system in order to improve its effectiveness.⁷⁵ Based on the recommendations of the study, the legislature developed an oversight framework called Programme Evaluation and Budget Analysis (PEBA).⁷⁶ This is the only initiative of its kind at provincial level in South Africa. It was developed to enable committees to improve oversight techniques, allowing them to undertake methodical and detailed analysis of departmental programmes and plans based on their underlying policies and budget expenditure plans. This programme has only been implemented as a pilot project in three portfolio committees since 2003 and the benefits are still to be realised. Potentially, the programme would enable portfolio

committees to improve the quality and effectiveness of committee oversight over departmental activities.

However the effective implementation of this programme would depend on a number of factors. Firstly, it would depend on the skills and expertise of committee researchers and their ability to undertake such complex analyses of departmental strategic plans and expenditure trends – many MPLs in the Gauteng province continue to decry the lack of such skills among current researchers. Secondly, the implementation and success of the framework requires each committee to engage in meticulous record-keeping to create a database necessary for this level of analysis. Finally, committee members have to have the necessary technical skills to use the analysis provided by the research support staff to scrutinise the work of departments and raise relevant questions. Many MPLs and committee support staff acknowledge that such skills and expertise are still lacking. Nonetheless the PEBA oversight framework provides an important basis on which to develop such expertise and skills among MPLs and committee support staff.

Notwithstanding continuing efforts to strengthen the legislature's capacity, especially in the early years of Cachalia's tenure as speaker, many capacity and skills-related problems continued to affect the performance of the legislature and its committees. The first set of problems, as was the case during the 1994-1999 period, related to lack of necessary skills and expertise among many MPLs in the areas of committee oversight. Cachalia acknowledged this in an interview in 2000, saying "our committees still need capacity and the development of expertise among members. The members also lack basic skills in the areas of policy making that are allocated to their committees."⁷⁷ Cachalia added that "currently many of the committees are struggling to undertake some of their basic functions, including oversight visits." An opinion survey of MPLs conducted for this study also identified inadequate committee support staff and resources as some of the factors undermining effectiveness. Regarding the skills and expertise of MPLs, there appeared to be some division among MPLs about precisely what sort of skills MPLs needed for effective committee work. Some MPLs argued that the possession of technical skills and expertise was not necessary. For instance Angie Motshekga of the ANC argued "MPLs do not really need technical skills on the issues under the jurisdiction of their committees. They merely need to understand the budget in broad terms. The knowledge of economics or accounting is not absolutely necessary for an MPL."⁷⁸ Johan Killian of the NNP and chairman of the public accounts committee endorsed this view, saying "there is no need...to have technical knowledge or specialisation on the policy areas involved."⁷⁹

However the majority of MPLs across political parties believed that such technical skills, knowledge and expertise were necessary for effective oversight work. For instance, Butch Steyn

of the DP argued “specialist knowledge is critical for effectiveness in committee work.”⁸⁰ He added that “currently many MPLs do lack the necessary skills and the knowledge to be effective in the work of their committees...this is necessary as it improves effectiveness and the quality of questions being raised by MPLs.” Sibongile Nkomo of the IFP argued that “all committees are technical...”⁸¹ Citing the portfolio committee on health in which she served as an example, Nkomo added “it would be better if committee members had the same background.” Much of the literature on committee systems clearly indicates that the development of specialist expertise and knowledge among committee members is critical for enhancing effectiveness.⁸² The problem in the Gauteng legislature was partly the result of the committee membership selection practices that had existed before Cachalia became speaker. For instance, Sicelo Shiceka of the ANC revealed in 2000 that “selection of members to specific committees is not entirely dependent on their prior skills, knowledge of the subject matter and expertise in a particular policy area. They may indicate their preferences of portfolio committee based on their individual skills, expertise, knowledge and interest. However the leadership has to also take into account various considerations such as balance, representation and fair distribution of party members across the various committees.”⁸³ This suggests that some members may have been assigned to inappropriate committees based on their skills and expertise. The apparent disagreement among Gauteng MPLs about the necessity of specialist skills was critical in that suggests that this important issue had not been resolved as part of enhancing the capacity and effectiveness of the legislature and its committees.

The second set of problems related to the lack of appropriate skills and expertise among committee support staff, especially researchers. Virtually all the MPLs interviewed were dissatisfied with the quality of researchers and committee support staff employed by the legislature. Many MPLs complained about committee coordinators with inadequate administrative, organisational and report writing skills. A severe shortage of researchers created a situation where few researchers served many committees between 1999 and 2001. It was not uncommon to find one researcher serving in two or more committees dealing with completely different policy areas, thus leading to serious work overload, and the inability of researchers to accumulate specialist expertise in particular policy sectors of committee oversight. Johan Killian of the NNP mentioned the inability of committees to scrutinise bills due to “shortage of capacity to gather background information on bills being considered.”⁸⁴ This lack of capacity at committee level to generate background information from independent sources is a critical limitation that continues to undermine the effectiveness of oversight.

Committees in general continue to rely on information and analysis generated by government departments to do their oversight. Firoz Cachalia alluded to this problem in his annual budget

speech to the legislature in 2002. He said “information asymmetry between the legislature and the executive undermines the capacity for effective oversight...it is necessary for legislatures to seek access to the best possible information from nongovernmental organisations, tertiary institutions, and even private sector consultants.”⁸⁵ Also, further corroboration of this came from an opinion survey of senior provincial public servants conducted for this study. Respondents were asked to indicate their level of agreement or disagreement with this statement: “For oversight and monitoring, committees depend mainly on information supplied by departments”, using the scale ‘disagree strongly’, ‘disagree’, ‘neutral’, ‘agree’ and ‘agree strongly’. Of the 48 respondents from all nine provinces, 58.7% agreed and 21.7% agreed strongly with the statement. For Gauteng, three of the five senior public officials who responded to the questionnaire agreed or agreed strongly with the statement. Over-reliance on the information and analysis generated by government and its departments compounds the reliance of subordination of the legislature on the executive branch, thus undermining the effectiveness of oversight. This has been a problem that many provincial legislatures, including Gauteng, have had to deal with over the years.

Efforts are still continuing to overcome some of these operational and capacity-related problems to strengthen the legislature in its oversight work. Cachalia’s tenure as speaker helped focus and coordinate these efforts significantly.

4.2.2.2.2. Systemic and functional/political problems

The major systemic characteristics of the current political system described in the previous subsection were still affecting the legislature’s functioning during this period. Provincial legislatures are still based on a modified Westminster parliamentary model. Also a key feature of this system – the adversarial nature of parliamentary politics that leads to a strict enforcement of party discipline – is still in operation, and MPLs are still expected to abide by the decisions of their party whips in the legislature. However, even at the time, during the 1994-1999 period, when the provincial legislature was seen as subordinate to the executive due to these systemic factors, there were voices within the ruling party that sought to see the provincial legislature overcome this and become institutionally and politically stronger to fulfil its role of effective oversight and capable of holding the executive accountable. Among these voices was that of Firoz Cachalia. When he took over as speaker, Cachalia presided over an increasingly active legislature that began to reassert itself as a force to be reckoned with.

This activist-orientation of the legislature during the 1999-2004 period was facilitated by the emergence of some sort of tentative consensus within the ruling party, which saw some MPLs beginning to state in public the importance of effective oversight through a strong legislature with adequate institutional capacity. In his first year in office as speaker, Firoz Cachalia made

reference to “a revolution in governance sweeping the world”, and the need “to enhance effectiveness and to promote good governance, accountability and transparency.”⁸⁶ Importantly, Cachalia referred to the need to reform the legislature, arguing that “as deliberative bodies, parliaments are at the centre of democratic processes...reform should focus on improving the quality of decision-making and on expanding accountability conceived broadly as...the accountability of the executive to parliament.”⁸⁷ It is necessary to quote Cachalia at length here, to capture fully his thinking about the envisaged new direction for the legislature during his term of office:

“...our current emphasis is on measures to improve the accountability of the executive to the legislature (this is a matter requiring specific attention at this early stage in the development of our democracy); oversight through portfolio committees (to improve accountability...and to enhance the overall performance of government); improving the nexus between the legislature and constituencies (since this is an area of weakness in a system based on proportional representation); enhancing public participation (a particular need in a newly established democracy and developing society); and ethics (since democratic institutions in rapidly changing societies are notoriously vulnerable to ‘capture’)”⁸⁸

Cachalia was to repeat many of these themes in speeches throughout his tenure.⁸⁹ Unlike Fowler before him, Cachalia was willing to raise uncomfortable issues such as good governance, accountability, transparency and effective oversight repeatedly in public, suggesting a greater willingness by the ruling party to allow such issues to be raised publicly by its members in contrast to previously when only opposition parties raised them. However, this was more than just the ruling party merely opening up the space for open debate on these issues. Cachalia was also a central figure in attempts to rid the legislature of its weak, ‘rubber stamp’ image. For instance, the changes he introduced to the petitions process and legislation in 1999 and 2000, including the PEBA oversight framework discussed earlier, should be seen within this broader context. They were intended to strengthen the legislature’s civil society linkages and therefore improve the quality of representation and accountability to the broader public, at the time when all provincial legislatures in South Africa were increasingly focusing their efforts on greater technical capacity for effective oversight and monitoring of policy implementation and service delivery.

Cachalia also began positioning the legislature as a key player in major public policy debates in the province. He was instrumental in efforts to define a distinct social policy agenda for the legislature, which saw the legislature subsequently adopting a high-profile stance on major social

policy issues such as youth development, gender equity and poverty alleviation.⁹⁰ For instance in 2000 the legislature commissioned a research study on youth development policy⁹¹ in an attempt to adopt a public position on this issue. In October 2002 the legislature also staged an international conference on poverty alleviation as part of attempts to turn the institution into a key player in provincial public policy debates.⁹² It is not clear what impact the conference was intended to have, given that the Gauteng provincial government had already identified poverty as one of its top priority issues as early as 2000.⁹³ Also, these attempts to position the legislature as a key player in public policy debates since 2001 did not appear to have a discernible impact in the direction or emphasis of the Gauteng government's public policy agenda or subsequent policy pronouncements. The idea of defining and promoting a distinct social policy agenda for the legislature was always going to be a difficult goal to achieve, given that the essence of a legislative institution is that it serves as an arena for different political parties with conflicting normative values, socio-economic interests and political agendas to contest power. Inevitably, the normal play of internal party political divisions in the legislature made this ideal unattainable. Moreover, the political and strategic wisdom of an ANC controlled legislature defining its own public policy agenda and pushing for its implementation by government was highly obscure at best. Nonetheless, this effort should be seen within the broader context of attempts to make the legislature more relevant to the every day lives of citizens by immersing it in the normal societal policy challenges, thus sharpening its ability and effectiveness to represent the interests of its citizens.

There were other important contextual elements that contributed significantly to this greater willingness of ANC members to demand greater accountability to the legislature by the provincial government. Firstly, ANC MPLs had learned important lessons during the first five years of provincial government. One of these lessons was the experience of relative powerlessness, as ordinary MPLs witnessed the real power and authority wielded by MECs through a dominant executive. The enormous power wielded by members of the executive in the context of a weak legislature served as an important negative incentive that prompted many ANC MPLs, including the speaker, to seek to strengthen the legislature to exercise meaningful power in relation to the executive, as provided for in the constitution. Secondly, the few members of the executive who lost their portfolios as MECs after the 1999 election, and became ordinary MPLs, also experienced the powerlessness of being in the legislature. One of them, Sicelo Shiceka, former MEC for development planning, was vocal about the powerlessness of the legislature. In an interview in 2000, Shiceka, then chairman of the portfolio committee on safety and security, said "the capacity of the legislature to monitor the executive needs to be augmented through research at committee level."⁹⁴ Shiceka added that committee chairpersons should be "invited to departmental programming activities...where programmes are developed for the year...also the

development of departmental budgets has to involve committees...” This showed a much greater willingness among some ANC MPLs to see the legislature and its committees become stronger and more involved in some of the key decision-making processes of government than before. Thirdly, widespread negative public opinion and media coverage of the perceived lack of a meaningful role of provincial legislatures began to affect their public standing and prompted the leadership of provincial legislatures, including Gauteng, to seek to enhance the political and institutional integrity, as well as public profile of these institutions.

However the key catalyst in efforts to enhance the role of legislatures as oversight structures was the ascendance of Thabo Mbeki to the presidency, with his emphasis on speedy service delivery and effective accountability, especially at provincial level, where much of the service delivery work takes place. Notions of good governance, accountability and effective oversight became commonplace among the provincial and local ranks of the ANC. It became less politically awkward for ANC members of the legislature to raise the issue of greater accountability by those in positions of authority in government. Also, the Mbeki presidency brought with it much greater clarity on the role of the provincial institutions of government, especially provincial legislatures. His emphasis on speedy service delivery called for the strengthening of service delivery structures, which essentially meant provincial and local levels. Inevitably, strengthening the efficiency and effectiveness of service delivery necessitated effective oversight and monitoring, functions that fell naturally within the scope of activities of legislatures. Interviews conducted with Gauteng MPLs in 2000 and recently revealed an overwhelming consensus across all political parties that the legislature was best suited for the role of oversight and monitoring of policy implementation and service delivery, and to ensure accountability by the executive.

Many MPLs across parties have become more certain about the role of the legislature than before. For instance, Sicelo Shiceka remarked in 2000 that “members are aware and clear of what is expected of them...” DP MPL, Butch Steyn said also at the time that “there is better clarity than before...this is even more so for those members who were there in the previous parliament.”⁹⁵ Johan Killian of the NNP and chair of the public accounts committee, added “it is very clear to everyone what committees are expected to do...both the ANC and other parties know that the committees are supposed to oversee, not uphold, the government...”⁹⁶ More recently, David Quail of the DA, one of the long-serving MPLs in the legislature, also stated that “provinces deliver social services in terms of the constitution and this is a good idea...they are particularly critical in such areas as education, health and social welfare...it would not be easy to deliver services directly from Cape Town.”⁹⁷ Quail added that “provinces are playing an important service delivery role...and this is important in the light of the president’s expressed concern regarding lack of service delivery.”

On the role of the legislature, David Quail argued “we do oversight and we engage the departments at committee level...we can raise issues...questions and challenge departments. Departments are asked to come and explain their policies and programme implementation.” Brian Goodall, another long-time veteran DA MPL in the legislature, also argued “we are not really a law-making body...our prime function is the question of oversight...and I measure this provincial government by how good we are at oversight.”⁹⁸ Goodall added “I think the [province] in fact is better at providing oversight than the national government.” The MPLs of other political parties interviewed recently also endorsed this view of the role of provinces and legislatures. Only the IFP was unhappy with the role of provinces in South Africa that predominantly focused on service delivery. IFP MPL Gertrude Mzizi expressed this sentiment succinctly when she said that the provinces “have become useless now, they are just delivery agencies.”⁹⁹

Nonetheless, this greater clarity on the role of the province and provincial legislature, and the greater willingness among MPLs of all parties to see the legislature become more effective in conducting oversight, did not imply that the legislature would achieve this goal easily. The adversarial nature of party politics inside the legislature continues to make it virtually impossible for political parties work together in a non-partisan manner most of the time. Parties continue to enforce discipline among members. Also the executive continues to enjoy a relatively dominant position over the legislature. For instance ANC MPL Sicelo Shiceka noted in 2000, “the executive tends to show lack of respect for the parliamentary committees...MECs tend to treat the committees and the members of these committees in a manner that suggests that the executive is superior.”¹⁰⁰ Shiceka further observed “MECs and [committee] chairs from the same party present a dilemma in that it prevents constructive criticism.” He added that party members “tend to be limited in the extent to which they can criticise their own MECs...the role of party discipline also tends to restrict the sharpness of members in their oversight and scrutiny of the work of the MECs and the executive.”¹⁰¹ Gertrude Mzizi of the IFP endorsed this view more recently, arguing “there are some ministers who really don’t regard committees as important, even the legislature...sometimes we request the minister to come and answer questions and he sends the head of department.”¹⁰² However it would appear that some sort of common interest emerged among political parties in the legislature during the 1999-2004 period, especially around basic principles relating to what the provincial legislature is best suited to do. The key challenge has therefore been to define, develop and further enhance this role.

4.2.2.3. *Committees as oversight structures*

Compared with other legislatures, Gauteng has had a fairly sophisticated, highly organised and well-run committee system over the years, especially after Firoz Cachalia became speaker in 1999. Like other legislatures, Gauteng had two broad types of committees – internal or house management committees, and portfolio/sectoral oversight committees. The latter are the primary oversight structures and will therefore be the primary focus for analysis in this subsection. The size of committees in the legislature is restricted to between 5 and 13 members and the total number of committees has varied between 14 and 19 since 1994. The committee system in Gauteng also has some unique features that were later introduced in other provincial legislatures. For instance, the idea of designating ‘alternate’ members for permanent committee members was pioneered in the Gauteng legislature to ensure that any member who could not attend a committee meeting would have a colleague as a temporary replacement. The other feature was that, unlike in other legislatures, the composition of committees was ‘votes-driven’ and not ‘membership-driven’. This means that instead of political parties being allocated committee seats in proportion to their numerical strength in the legislature, they were allocated votes in proportion to their numerical strength. This meant that even if the ruling party had the same number of seats as opposition parties in a particular committee, it could not be outvoted because proportionally, it would be allocated the number of votes in proportion to its numerical strength in the legislature.

A votes-driven system had advantages, especially for smaller parties, in that it allowed them to get representation in more committees than would have been possible under a ‘membership-driven’ system. This meant that more political parties could be represented in each portfolio committee, thus increasing the vibrancy and quality of debates due to the diversity of social and political interests represented during committee work. As pointed out in Chapter 3, another important factor about the Gauteng legislature is the favourable committee assignment figures per MPL. The average number of committee assignments per MPL is below three, usually two compared with the majority of other legislatures where average committee assignments per MPL range from four to eight (see Table 5, Chapter 3). Obviously political parties with larger numbers of MPLs benefit the most from lower committee assignments as the workload is shared and spread widely. For Gauteng this was critical for effective oversight because it meant that on average each Gauteng MPL served on two committees at a time, providing ample time to devote attention to their committee work and to develop vital specialist expertise and knowledge of their areas of oversight. Surprisingly though, many Gauteng MPLs struggled to develop such technical and specialist expertise in their areas of committee oversight.

As the 'engine rooms' of legislatures, committees are the sites where much of the vital oversight and monitoring work takes place. They are usually hidden from the glare of media publicity and the gaze of the general public. To a very large extent then, MPLs of different political parties are able to conduct their oversight work with less pressure to engage in adversarial party political confrontations, as tends to be the case on the floor of the house. Some committees, especially the finance and economic affairs, and public accounts committees, are generally known to have developed non-partisan approaches to their work, which is often essential for effective oversight of departmental activities. Many of the legislature's committees have experienced a fair amount of instability at leadership level and this has coincided with the ebbs and flows of the relationship between the ruling party and the opposition parties. For instance, during the brief government of provincial unity during the first two years of the 1994-1999 period, the NNP as the official opposition had been allocated the chairs of some portfolio committees, including education and public accounts. When the party pulled out of this arrangement in 1996, it lost its committee chair positions. After the 1999 elections when the NNP lost its status as official opposition to the DP, the ANC leadership in the legislature, perhaps calculating that the NNP was then a 'friendlier' opposition party than the DP, allocated the NNP some committee chair positions, including the crucial public accounts committee. Once again, when the NNP merged with the DP to form the DA in 2000, it lost all committee chair positions. All these episodes therefore created a certain level of turmoil through the frequent reshuffling of the committee chair positions.

As already indicated the provision of more resources and the employment of more administrative and research support staff under Firoz Cachalia helped significantly in the functioning of the committees. At the beginning of each session, each committee formulates an annual programme of action and submits this to the committee of chairpersons for approval. The committee of chairpersons acts as a coordinating mechanism that oversees other committees and ensures their proper functioning. Even if such committee programmes of action have not always been followed strictly to the letter, they have served as vital frameworks of reference and planning tools for each committee, helping to structure committee agendas for the year. This is important in helping avoid rudderless committees that are wasteful in terms of time and limited resources in conducting oversight work. At the end of each session, each committee usually submits an annual report to the legislature for review of their activities. A sample of these reports from several committees was obtained for substantive content analysis. Typically, they contain a list of activities they engaged in, including the number of meetings held, oversight visits undertaken, departmental and other presentations made and reports received from departments. Usually the reports fail to provide an analysis and assessment of the perceived impact and consequences of the oversight work of the committees on the activities of the executive and government

departments. It is not clear what eventually happens to these annual committee reports after tabling in the legislature. Nonetheless, these processes appear to have created a sense of direction, purpose and professionalism within the committee system in general, especially during the 1999-2004 period. This has also enabled the leadership within the legislature to manage and oversee the operations of the committees fairly easily.

Like in other legislatures, Gauteng committees engage in a broad range of oversight activities and processes of oversight annually, and the rest of this subsection will discuss the functioning of the Gauteng committees and their performance of these activities over the years under these two broad headings: budget oversight/scrutiny and the monitoring of policy implementation and service delivery.

4.2.2.3.1. Budget oversight/scrutiny

As an elected representative institution, the legislature is best placed to ensure that the provincial government matches available resources to the needs of its citizens as closely as possible, and the ability to have a say and the power to approve government's proposed expenditure priorities is usually one of the most potent instruments for this purpose. Therefore not surprisingly the function of scrutinising proposed departmental budgets is one of the key mechanisms through which the legislature can hold the provincial government accountable, thus ensuring proper use of public funds. All the portfolio committees have always played a role in scrutinising the proposed budgets of their respective departments. In particular, committees have always had the opportunity to examine in depth and analyse the proposed allocations of their particular departments in relation to stated policy priorities contained in departmental strategic plans. This means that portfolio committees make their detailed examinations and comments, and usually approve, departmental budgets before the legislature takes the final votes on these budgets. The idea is that this would ensure that public funds are allocated and spent in accordance with stated government policy priorities. However, as in other provinces, the involvement of portfolio committees in the formulation of the budget has always come virtually at the end of the process when all the vital decisions have already been made inside government bureaucracies and the cabinet. What the committees are left to do is merely deliberate and raise questions on items of the budget, as well as draft reports for the legislature, containing recommendations to be taken on board in the next budget cycle. Therefore the choices for portfolio committees are limited to merely rejecting or adopting the budgets in their entirety. Over the years the majority of the provinces, including Gauteng, have never rejected or failed to approve government or departmental budgets. Nonetheless this late involvement in the process by committees continues to be one of the key weaknesses of the budget oversight process in Gauteng as it has rendered

the legislature fairly weak compared with the executive in terms of control of public finances and the formulation of the provincial budget.

Many opposition Gauteng MPLs lament the weakness of the legislature in general and committees in particular during budget processes. For instance, Lulama Mshumpela of the UDM argued that “when the budget comes here, it is a stage where you cannot change anything...once the appropriation bill is tabled, no matter what, there is no way that you can change the budget.”¹⁰³ This weakness is reinforced by a provision in the current constitution that prohibits legislatures from amending appropriation bills. The national government has been mandated by the constitution to pass legislation empowering legislatures to amend appropriation bills but such legislation has yet to be formulated. Also, as has already been discussed in this chapter, many Gauteng MPLs, especially from the ruling party, have tended to lack the necessary expertise and technical skills in public finances and budgetary matters. For instance, ANC MPL, Andrew Feinstein, concurred in an interview in 1996, arguing that “MPLs have a limited understanding of how important the budget is, as a result work put into the process tended to be shoddy...”¹⁰⁴ Feinstein added “ANC MPLs tend to have no knowledge and inadequate grasp of the budget. As a result they are put off by the budget.” This problem was particularly acute during the first few years of provincial government and it served to undermine the ability of elected public representatives to participate effectively, thus alienating many from budget oversight processes. However after the 1997/98 financial year, when virtually all the provinces, including Gauteng, overran their budgets, some committees began investing resources in skills training for MPLs to sharpen their budget oversight skills.

Despite the current constitutional restriction on the financial powers of provincial legislatures, some initiatives have been put in place to enable one committee in particular to get involved in the preparation of the provincial budget much earlier.¹⁰⁵ The finance and economic affairs committee is regarded as strategic for this purpose, as it already plays a vital role in the legislature’s overall budget oversight process. The committee has been fairly stable over the years in terms of its leadership and operation. Joan Fubbs, a highly respected veteran trade unionist and member of the South African Communist Party (SACP), has chaired it for seven years. During that period she has turned the committee into a fairly effective oversight instrument. For instance, she was instrumental in ensuring that committee members and support staff, especially committee researchers, attend courses in public finances and undergo regular training to acquire skills such as budgeting, financial and budget analysis as well as fiscal oversight.¹⁰⁶ Also, every year before other portfolio committees get the chance to scrutinise the draft budgets of their respective departments, these departments are obliged to present their budgets to the finance and economic affairs committee. The role of the committee in this process is to examine the logic

and underlying principles behind each departmental budget to ensure allocative efficiency and proper alignment between the policy priorities of the various departments, and the province's overall macro-economic and developmental policy goals. This role of the finance and economic affairs committee therefore places it in a highly strategic position to oversee the overall working of the provincial economic, and the implementation of the provincial budget. The committee also ensures efficiency in the management of the province's resources.

Therefore two members of this committee, including the chairperson, were given 'observer status' and allowed to attend the 'budget lekgotla' – meetings that are held regularly during the annual budget preparation process and are attended by the provincial cabinet, heads of department, the finance department and treasury officials – where crucial financial decisions are made to determine departmental allocations. Despite the 'observer status' of the committee's participation, the Gauteng committee was the first provincial committee to be allowed to make actual inputs into the process, unlike in other provinces where this was not allowed. Joan Fubbs believed that this involvement of the committee in the budget preparation process was strategically important in that it helped the committee "...influence the budget at its source."¹⁰⁷ She believed this involvement leads to greater understanding among committee members of the complexities of the budget process, adding "as a committee we now know why shifts in expenditure have occurred." However, this type of involvement also harbours potential risks such as cooption and blurring the dividing line between the executive and legislature, which could compromise the rigour of the budget oversight process within the committee. Also, such arenas of policy making tend to be hidden and are therefore fairly inaccessible to the large body of the legislature for direct oversight. Therefore unavoidably, the extent and quality of accountability over such hidden processes has tended to be severely limited.

The finance and economic affairs committee is acknowledged to have been one of the most effective. It was the first provincial committee to insist on government departments observing the provisions of the PFMA passed in 1999, before it came into force in April, 2000. The PFMA was critical for the budget oversight work of legislature in that it made it a legal requirement for departments, on annual submissions of their proposed budgets, to present well-thought-out strategic plans and clear performance indicators and measurable targets for each budget programme and sub-programme for the year.¹⁰⁸ Budget scrutiny was therefore radically transformed and made into a systematic and therefore effective process in that the committee has been able to examine proposed budgets in terms of stated priorities, key objectives and measurable targets for the year. The PFMA came in the wake of the introduction in 1997 of the MTEF. As discussed in Chapter 3, the MTEF serves to provide information about budget policy and expenditure projections over a three-year period in advance. This has also enhanced the

quality and effectiveness of budget oversight in Gauteng. Joan Fubbs believes that the MTEF has “improved financial management as it makes clear where the funds are and where they should be in three years.”¹⁰⁹

Before the introduction of the PFMA, the committee had already introduced innovative ideas about departmental budget presentations as early as 1998. For instance, it was instrumental in the designing uniform formats for departmental submissions of progress reports and convinced departments to adopt them.¹¹⁰ The formats ensured that all departmental submissions contained standard categories of information such as policy objectives, ‘cost-drivers’, outputs and key performance indicators together with information on the utilisation of human and financial resources. The formats also obliged departments to compile information on previous years’ expenditures, expected shortfalls for the current year and contingency plans to deal with expected shortfalls. This contributed significantly towards enhancing the efficiency and effectiveness of budget oversight and considerably shortened the time it took the committee to deliberate on proposed budgets. Another key innovation was the introduction in 2001 of public hearings, specifically on the budget, to allow the general public and interested social groups to make comments and inputs into the budget processes.¹¹¹ The impact of this practice is not yet clear but its populist thrust was clear.

In addition to the finance and economic affairs committee, the portfolio committees also play an important role in deliberating on and conducting detailed examinations of proposed departmental budgets. Some of the key portfolio committees are education, welfare and health mainly due to their large share of provincial budget. All political parties consider these to be politically strategic and annual allocations to these departments always provoke intense political debates and battles among the different political parties in the legislature. Therefore all the political parties tend to assign some of their ‘best’ and most skilled MPLs to these committees to ensure effective representation of their interests and those of their constituents. The portfolio committee on housing was also important and politically high profile, especially during the 1994-1999 period when housing was an important issue at the top of the new government’s public policy agenda. These committees are also critical during budget oversight processes because they scrutinise the proposed budgets of their respective departments in terms of the details of the specific programmes and sub-programmes, examining the relationship between their department’s proposed allocations on the one hand, and overall sectoral policies, key performance indicators, stated targets and organisational capacity on the other. Here also, senior departmental officials and their MECs usually appear before the relevant portfolio committees to present their budgets and answer questions from committee members. Just as in the case of the finance and economic affairs committee, once the deliberations have been completed individual portfolio committees

usually draft reports to be tabled and discussed in the legislature. These reports are critical as they inform the legislature of the findings and conclusions of the committees regarding the soundness of the proposed departmental budgets and therefore form the basis on which the legislature makes decisions on whether or not to accept and authorise the proposed appropriations of public funds.

In theory therefore, this is clearly a comprehensive and systematic process of budget oversight. The process allows for the provincial government's overall budget to be disaggregated into individual departmental 'votes' for close and detailed scrutiny by the various legislature committees, ensuring that citizens' needs are likely to be met in terms of the proposed expenditure plans. At the same time, it allows the finance and economic affairs committee to take a strategic and macro-economic perspective on the soundness of the budgets. In practice however, the operation of the budget oversight process has usually experienced constraints such as inadequate resources, skills and time, which undermine its effectiveness. For instance, the finance and economic affairs committee usually gets about seven days, while the different portfolio committees get only three days each to examine the proposed budgets of the various departments. Also, some of the MPLs who were interviewed lamented the hurried nature of the entire provincial budget process. Many indicated that about a month is made available for the whole process to be completed, which often involves detailed examinations of complex departmental budget documents, to allow time for the legislature to pass the overall appropriations bill before the start of the new financial year. Obviously, such a limitation in the time available to committees to conduct their budget oversight work also serves to undermine their effectiveness.

4.2.2.3.2. Monitoring policy implementation and service delivery

Unlike the budget oversight process discussed above, which takes place prior to the approval and authorisation of expenditure proposed by the legislature, this aspect of oversight occurs during and after expenditure has taken place. Essentially therefore, this is a policy implementation review process aimed at determining whether or not expenditure took place in accordance with stated objectives and that the targets contained in departmental strategic plans were achieved. It entails an ongoing monitoring and oversight throughout the year of the processes of policy implementation and the spending of allocated funds by departments to deliver services to citizens. Therefore all the sector portfolio committees of the legislature are critical as they play a watchdog role in their respective sectors to ensure effective implementation and service delivery. A number of oversight tools are utilised regularly by the various sector committees to keep an eye on the activities of government departments, and key amongst these are the oversight visits and the scrutinising of departmental reports.

Regarding oversight visits, the committees in the Gauteng legislature, like in other legislatures since inception, have developed the practice of undertaking visits to sites of policy implementation and service delivery in the province. The conduct of oversight visits is currently not provided for in the standing rules, nor are there written procedures or guidelines on the conduct of such visits as part of the oversight work of committees. Nonetheless, based on interviews conducted with MPLs and committee support staff, the objective is to enable committee members to observe and gain first-hand knowledge of the impact of government policies on the intended recipients against stated departmental goals. Rarely do the visits uncover problems at implementation sites that may lead committees initiating independent investigations. Sites that are routinely visited are varied and may include schools, police stations, clinics and community health centres, infrastructure projects, roads and housing construction sites, payout points for social welfare grants and government departments. Committee findings are usually compiled into oversight reports with recommendations to be tabled in the legislature for debate or submitted directly to the departments concerned.

The little information available on this suggests that committees undertook few oversight visits during the 1994-1999 period. Those that were undertaken were largely ad hoc and uncoordinated, and usually without clear and well defined goals.¹¹² Interviews conducted with support staff in 2000 confirmed this. One respondent argued “sometimes there is no apparent purpose to oversight visits...oversight trips are increasingly being conducted for their own sake.”¹¹³ The respondent continued, “there is no systematic way either in the legislature or committees to handle and process committee reports emanating from oversight visits.” Another respondent added “committees do not initiate oversight visits, they get invited by the MEC or the department...oversight trips are like public relations exercises...they are informal.”¹¹⁴ Another critical problem was that the lack of guidelines and well-defined procedures meant that usually committee findings could not be utilised effectively to bring pressure upon the departments concerned. For instance, Gengezi Mgidlana, secretary of the Gauteng legislature, revealed that there were “no procedures to ensure that when oversight trips had been undertaken, the findings and recommendations...are implemented and monitored on a systematic basis...there is no mechanism at the moment for ensuring that departments account in respect of these findings...”¹¹⁵ These problems were partly due to lack of experience and partly due to the fact that the Gauteng legislature, like others, struggled during this period to define a proper role for itself, as already discussed. It was only in the 2001-2002 session that the legislature developed formal guidelines to assist committees to plan for and conduct oversight visits effectively. No systematic information is available on the actual number of oversight visits undertaken every year, although some of the legislature’s annual reports do make general references to oversight

trips undertaken by various committees. A sample of annual reports from several committees submitted at the end of the 1999-2000 session shows that many committees undertook less than four oversight visits per annual session of the legislature.

Regarding the scrutinising of departmental reports, the PFMA makes it a legal obligation for departments and other executive agencies to submit regular progress and annual reports accompanied by audited financial statements to the legislature and its committees. These reports serve as another critical tool of oversight, enabling committees to ensure that public resources are utilised efficiently during implementation of government policies and delivery of social services to citizens. As part of this, committees also have the power to demand any additional information or summons any official or politician to appear before them if this is material to their oversight work. After scrutinising the reports, committees submit reports of their deliberations and findings to the legislature or directly to the departments concerned. The reports are intended to serve as tools through which the committees can bring pressure to bear on government and its departments to take the necessary steps to improve policy implementation and service delivery. Departments in Gauteng are required to submit quarterly and half yearly reports in addition to annual reports. The quarterly and half-yearly reports are important in providing vital opportunities every three or six months for the committees to monitor expenditure and service delivery trends and to raise alarm if and when necessary. The annual reports provide an opportunity to review expenditures and service delivery for the whole year.

Committees are also handling increasing volumes of other paperwork in addition to the regular departmental reports. These include occasional reports, papers and presentations by government departments, executive agencies, independent organisations and consultants, especially if these are necessary for oversight work. However the annual reports are the most critical in this process and inevitably receive the closest scrutiny by the committees at the end of every year. During the 1994-1999 period, many departments failed to submit reports on time, while others often failed completely to submit any reports. However, since the promulgation of the PFMA, this has become a legal requirement, and many departments are complying, thus making oversight more regular and systematic. It was indicated in Chapter 3 that Gauteng legislature committees were extremely busy, with fairly heavy workloads and schedules of regular meetings. For instance, between 1997 and 2003, all the committees in the legislature convened meetings ranging from 200 to 528 per annum to conduct their oversight activities. Scrutinising departmental reports constitutes the biggest proportion of these oversight activities.

The public accounts committee has come to play a particularly important role in this process. It receives and scrutinises the audited annual financial statements accompanying the annual reports.

The financial statements are critical in that the departments are required by the PFMA to provide details of their programme expenditures, including material losses, unauthorised expenditure, irregular payments and any other criminal or disciplinary actions undertaken in this regard.¹¹⁶ As already indicated, the chairperson of the public accounts committee is usually but not always, held by a member of the official opposition. This position is one of the most prestigious and respected at provincial level. In the Gauteng legislature the position changed hands in 1996 from Johan Killian of the official opposition NNP to Abu Khan of the DP after the NNP pulled out of the government of provincial unity. Killian regained the position from the DP after the latter became official opposition, and also thanks to its confrontational and usually bitter relationship with the ruling ANC.¹¹⁷ However Killian lost the position again in 2000, this time to the IFP's Sibongile Nkomo, due to the NNP's merger with the DP. Nonetheless, the legislature has not deviated from this practice as it is considered vital to demonstrate a sense of probity on the part of the ruling party.

As in the case of the finance and economic affairs committee, the public accounts committee is extremely strategic, not only for the legislature in general but also for the opposition parties in particular. It is crucial for overseeing and holding government accountable to ensure prudent spending of public resources. Consequently all the political parties in the legislature have also assigned some of their 'best' MPLs to serve in it. The committee works closely with and regularly receives audit reports from the provincial Auditor-General. These Auditor-General's reports are important as an effective tool that the public accounts committee uses to examine departmental financial statements. Regarded as the most non-partisan committee in the legislature, it is known for being largely balanced and penetrative in its approach to oversight work. Armed with the power to summons officials to produce documentation or appear before it to answer questions and explain expenditure irregularities where these are uncovered, the committee seems to evoke an awesome mixture of fear and respect among some senior public officials in the province. For instance, a senior public official from the provincial Department of Housing said "we appear only about twice a year before SCOPA,¹¹⁸ towards the end of the year after the annual audit reports have been completed...if they call you to appear more than that, then there is trouble."¹¹⁹ This official added "they grill you, there's no mercy there...they make you feel guilty even when you are not guilty...they also verify anything reported to them by departments...they have a way of finding out because they have their own people, and the press is always accompanying them on site visits..." Another senior official from the Department of Health said "SCOPA is very organised in its approach to the work of oversight, even in the questions they ask...they interrogate the contents of the annual reports intensively and political parties work very well together..."¹²⁰ This interviewee also revealed "I have also...[taken] some of the senior

departmental staff to SCOPA hearings in order for them to experience the grilling that takes place there...SCOPA can become quite vicious.”

While the Gauteng provincial government is generally acknowledged to have run a relatively clean administration with comparatively few incidents of corruption over the years, the public accounts committee, with the assistance of the provincial auditor-general and other investigative bodies such as the Heath Special Investigations Unit, has had to deal with cases of expenditure irregularities in the past. In some instances it has been fairly brazen in its approach and confrontations with some departments. For instance, it played a key role leading to the investigations into allegations of corruption against former housing MEC, Dan Mofokeng, especially in the face of serious legal threats by Premier Mathole Motshekga to prevent the tabling in the legislature of confidential departmental documents leaked to NNP leader and member of the public accounts committee, Johan Killian, in 1998.¹²¹ The premier eventually backed off from the threats. In 1999 again the committee, through its NNP chairman Johan Killian, mounted a series of public attacks on a number of government departments for contravening tender procedures. It subsequently initiated public investigations and hearings into various cases of unauthorised expenditure, theft and fraud totalling just over R431 million uncovered by the auditor-general. Several departments such as health, education, development planning and local government, public transport and agriculture, and the public service commission were implicated.¹²² During these investigations, the committee served a number of summonses on various departmental officials to appear before it to account for these activities. It remains one of the few committees in the legislature to issue summonses demanding officials to appear before it. It needs to be noted, though, that in Gauteng it is usually the members of the opposition that tend to be bold in public and regularly criticise the activities of government departments. As indicated already, ANC MPLs tend to express their concerns privately and directly to their MECs inside party caucus structures where they are likely to be more effective in inducing changes to departmental activities.

Youash argues that the rigorous scrutiny by the committee of departmental annual financial statements and the auditor-general's annual audit reports has been responsible for improvements in the financial management practices of many departments. He notes for instance that “every department of the Gauteng provincial government...received an ‘unqualified opinion’ from the auditor-general for the 2002/03 financial year.”¹²³ Youash believes that the committee played a key role in this outcome. Scrutinising committee reports is potentially a very effective technique of oversight, but it has faced some constraints, some of which have already been alluded to. These include inadequate resources for committees, insufficient research staff, time constraints, lack of independent sources of information and inadequate skills, expertise and knowledge of the

areas of committee oversight among many MPLs. However, there are other important constraints that are usually overlooked in discussions and analyses of the work of committees. One of these is the often unclear and uncoordinated relationship between the work of the public accounts committee and that of the various portfolio committees, including the finance and economic affairs committee. It is usually not clear as to how far the public accounts committee can avoid going beyond issues of pure public accounts and financial expenditures, and into the substantive policy issues arising out of the use of public funds – essentially the preserve of the various portfolio committees – especially if there is no guarantee that the portfolio committees would raise and debate such issues with the same rigour. Youash contends that this division of labour between the public accounts and portfolio committees provides an optimum working relationship as it draws on their different but complementary strengths. However the lack of coordination between them, and failure to sequence their activities properly, undermines the potential effectiveness of this oversight process. Secondly, the entire process of oversight tends to be fragmented. The different portfolio committees as well as the public accounts and economic affairs committees do not have formal mechanisms to coordinate and integrate their various activities. A process of clustering committees in terms of broad sectoral commonalities was introduced after 1999 as an attempt to address the problem.

4.3. DELIBERATIVE AND LAW-MAKING EFFECTIVENESS

This section examines the functioning of the Gauteng legislature and its performance as a deliberative and law-making institution. As a deliberative body, like other legislatures, the Gauteng legislature uses an array of oversight mechanisms to perform its oversight functions in its chamber or plenary. However, two broad mechanisms have become important in the performance of the legislature's deliberative function over the years. These are chamber debates and questions submitted by MPLs and these will be examined below. This will be followed by an examination and analysis of the legislature's role as a law-making institution.

4.3.1. Legislature's Performance As Deliberative Body

During the 1994-1999 period the deliberative or debating function of the legislature, especially as it occurs in the plenary of the legislature, was fairly understated or unwittingly played down compared with the law-making function in terms of official statements from the legislature. For instance the 1998-1999 annual report of the Gauteng legislature defines the role of the legislature in a hierarchy of functions where law-making tasks such as considering, passing and amending bills and initiating or preparing legislation took precedence over maintaining oversight over the executive.¹²⁴ Commentators on provincial government in South Africa have also tended to

overlook or put less emphasis on the deliberative function of the legislature. However the decline of the law-making function of provincial legislatures in South Africa has led to a clear rethinking of the role of the legislature, increasingly taking account of its deliberative function. This became evident during the 1999-2004 period.

A clear shift in thinking occurred with the change of leadership in the legislature, elevating the deliberative function of the legislature to a level of prominence. For instance Cachalia wrote in the 1999-2000 annual report of the legislature that “as deliberative bodies, parliaments are at the centre of democratic processes.” In 2001 Cachalia again argued in a journal article that the legislature as a representative institution “helps to contain conflict by encouraging an expression of societal differences within rather than against institutions.”¹²⁵ He went on to expand on this theme in subsequent writings and public utterances during his period as speaker, linking the deliberative function of the legislature to other themes such as ‘good governance’ and ‘public participation’. As will become clear in this section, there is no doubt that the deliberative function of the legislature has also become valuable to opposition parties.

An important aspect of the evolution of the Gauteng legislature’s deliberative function has been the development of the rules, especially those governing plenary debates. The rules have changed significantly since inception in 1994 from being clumsy and vague, unduly emphasising the dispensing of dominant power and authority from the speaker’s chair, to being more precise and facilitative of interaction and an open exchange of views among members. The rules have also changed from being inward-looking and exclusive, where citizens were labelled as ‘strangers’ whose access to the legislature had to be ‘controlled’, to being inclusive and outward-looking, enabling citizen involvement in the activities of the legislature. While most of the dramatic rule developments occurred under Trevor Fowler as speaker and chairman of the legislature’s Rules Committee, under Firoz Cachalia the rules have become more sophisticated due to continuous refinement and adaptation to evolving legislative developments and practices. In fact, by the time the 1999-2004 period came to an end, the Gauteng legislature was awaiting the latest revised version of its current standing rules.

4.3.1.1. Debates in the chamber

It was shown in Chapter 3 that since inception the Gauteng legislature convenes an average of 38 sittings per annum to conduct its business on the floor of the house. This is more than the provincial average of about 23 sittings per annum. One type of business conducted on the floor of the house is debates of any kind. The standing rules of the legislature lay down fairly complex provisions governing debates on the floor of the house, within specified times frames during its

sittings. Firstly, debates are conducted on a variety of subjects on different occasions. One of the major occasions for intense debate is the premier's annual policy speech at the beginning of the year. This is an occasion when the provincial government puts forward a major policy and legislative agenda, and makes various commitments regarding delivery of social services to the citizens of the province. The debate allows the house, particularly the opposition, to raise questions about the soundness of the government's policy agenda. Sometimes the official opposition uses the occasion to put forward its alternative policy agenda. The opposition in Gauteng has generally been extremely vocal and effective in its criticisms of the government since 1994. This has often elicited some irritation from the government. For instance, this statement by former premier, Tokyo Sexwale, in a policy speech to the Gauteng legislature in 1997 betrays some of that irritation, even appearing to question the 'loyalty' of the opposition, "effective opposition on critical issues will ensure that we engage in debate which furthers the work of this house as well as good governance...but do not look for non-existent scandals behind every consultant or bribe behind every meeting...this is the essence of the loyal opposition..."¹²⁶

Secondly, debates are held regularly on motions or themes put forward by the governing party or the opposition. On adoption, motions essentially become official resolutions of the legislature and are implemented accordingly. There are fairly complex rules and regulations governing the submission of motions, with or without notice. Motions are regularly submitted for debate on a variety of subjects, from local to national and even international issues. It was indicated in Chapter 3 that between 1999 and 2003, a total of 104 motions were debated in the Gauteng legislature. Many motions are generally intended to be non-partisan in nature, to forge cross-party consensus and enable the legislature to 'speak with one voice' on matters of societal significance. The subjects of motions are usually varied, ranging from national sports events, commemorative days and public celebratory events, to natural disasters, violence, tragedies, accidents and so on. On occasions though, such debates have degenerated into party political mud-slinging between the ruling party and the opposition. For example on 12 March 2002, a government-sponsored motion on 'campaign for public safety and security' was debated.¹²⁷ This motion was clearly intended to secure support across party lines for a high-profile campaign against crime across the province by the Department of Safety and Security. Instead, the debate slipped into the usual pattern of accusations and counter-accusations between the ANC and the opposition, especially the DA.

Many other motions in the legislature have clearly been intended for party political points scoring, either by the ruling party or the opposition. With its numerical superiority, obviously the ruling party is always vigilant as to the kinds of motions that are allowed to become resolutions of

the house. Nonetheless, the opposition routinely submits motions that are clearly unlikely to get adopted by the house. This is because the underlying intention of such motions is usually tactical – not intended for adoption, but to force the ruling party to face serious and embarrassing questions and debates about aspects of its policies, performance or conduct of its members. The DA's David Quail underscored this point, “in the house we have no hope of defeating the ANC. But some of them do listen to our speeches and arguments even if we lose the vote.”¹²⁸ In fact, many of the motions submitted by opposition parties are usually withdrawn after vigorous and acrimonious exchanges with the ruling party, obviously when the opposition party concerned feels it has made its point. One such motion, submitted by the NNP on 24 March 1997, was about the refusal of former housing MEC Dan Mofokeng to resign his post in the wake of criminal charges against him. This followed the discovery of an AK47 assault rifle and other weapons in his house in 1996. Clearly, this motion was embarrassing, not only for the MEC personally, but also for the ANC, and led to angry exchanges between the ANC, NNP and IFP about who was behind the political violence and murders in the province at the time. The NNP withdrew the motion after the debate. Therefore debates on motions do provide another important avenue, especially for the opposition to pick subjects for debate on which to score points against the government and therefore promote their own agendas, given that much of the time the business and agenda of the house are dominated by the ruling party.

Other occasions for debate arise when the house receives reports following committee deliberations on various matters such as proposed legislation, departmental annual reports, draft departmental budgets, oversight trips, the auditor-general's audit reports and others. These debates also provide further opportunities for oversight by the whole house in the legislature chamber. Debates on the floor of the house are therefore crucial in that the government can be held accountable for its activities by all elected public representatives collectively. This is in comparison with oversight processes at committee level where the sense of collective accountability is lost because MPLs are fragmented into discrete small groups of separate committees, handling separate aspects of the government's overall policy programmes. Also, unlike inside the committees where deliberations are largely hidden from the public eye, plenary debates are more open to the public and the media. The transparency of the debates and the public spectacle of the government being made to defend its policies and account to elected public representatives are what constitute the essence of a deliberative institution. The Gauteng legislature has therefore been effective in using its plenary as a site for oversight and accountability. However, there are drawbacks. For instance, the public and transparent nature of plenary debates often leads to frequent ‘play-acting’, especially between the DA and ANC, on the floor of the house. The mere awareness by MPLs that the public and the media are watching them creates a gladiatorial atmosphere where exaggerated epic confrontations on ‘stage’ tend to

overshadow the issues being discussed, thus making it difficult for some issues to be resolved or for consensus to emerge.

The DA's Jack Bloom agreed with this assessment, saying "debates are a waste of time. Nobody is going to persuade the other...it's political theatre...we have a caucus line, the caucus decides..."¹²⁹ Lulama Mshumpela of the UDM concurred "people like to play to the galleries...a sort of theatre performance."¹³⁰ It was also revealed during interviews that some parties have adapted their tactics appropriately to this divide between the private and hidden realm of the committees and the open and public realm of the plenary. Lulama Mshumpela made reference to this tactic, saying "in the committee they say this and then in the house they say differently. So conflict and division and disagreements become important for public opinion, whereas in the committees there's nobody watching, so there's no point to fight." This tactic was repeatedly attributed to the DP/DA by MPLs of other parties who were interviewed for this study. Apparently, the party's MPLs in committees would usually support a position and resolution adopted at committee level, and then oppose it when the matter reached the plenary for debate. Clearly, debates at committee level may often be able to produce cross-party agreements on important issues and therefore political parties can afford to strike compromises without losing face at committee level. However, on the floor of the house, with the knowledge that the media and the public are likely to be watching, it becomes less likely to achieve cross-party consensus on issues during debates. This is understandable given that all parties in the legislature utilise such public debates as opportunities to define their positions on major policy issues and therefore set themselves apart from rivals to gain electoral advantage.

Because of these tactics, plenary debates often create an impression that they are not meant to resolve conflict over policy issues but to elevate it. Perhaps herein lies the value of also having elected representative institutions at provincial level – to contain and institutionalise intractable societal conflict within formal institutions of government. This not only helps to remove the resolution of conflict from the hidden and unmanageable realms of extra-parliamentary political activity to the formal political institutions, but also serves to generate a semblance of legitimacy for provincial institutions of government, particularly the legislature. Also, an analysis of the transcripts of some of the debates on motions shows that the presiding officers such as the speaker or deputy speaker have usually been extremely professional and balanced in their handling of plenary debates and their interpretation and enforcement of rules governing debates, sometimes even in the face of clear attempts by some ruling party MPLs to put pressure on presiding officers to limit the speaking privileges of members of the opposition during debates. This has also clearly served to create a sense of fair play and diffuse support for Gauteng provincial institutions of government, especially the legislature, among opposition parties.

4.3.1.2. *Questions and question time*

The legislature also provides regular opportunities during the year, on Tuesdays of every week, for public representatives to pose questions to members of the executive. Questions may be submitted for instant oral responses on the floor of the house or for written responses at a later stage. Also, questions may be submitted either in the form of ‘interpellations’, which are intended to lead to short 30-minute debates on the floor of the house or as ordinary questions demanding short responses. Advance notice is usually required for interpellations whereas ordinary questions can be submitted without notice. There are also opportunities for ‘Questions To The Premier’, sometimes without notice, on alternate Tuesdays of the month. Obviously, there are some restrictions governing the submission of questions as well as the time allocated. However, these are all valuable opportunities for extracting answers from the members of the executive, including the premier, and therefore for holding the government accountable to the legislature.

Questions submitted without notice are particularly important for the opposition in that those government ministers and their officials who are not well prepared would be caught out and therefore embarrassed if they are unable to provide immediate responses to questions. Such questions are therefore demanding in terms of the abilities of government ministers to think ‘on their feet’ and demonstrate their capabilities to answer difficult questions on the spot without prior notice. The opposition parties are quite fond of utilising such opportunities to probe for weaknesses in government ministers. In fact, the opposition DA asks by far the largest number of questions in the Gauteng legislature – well over half of all questions for oral and written reply. Written questions are also demanding, especially on the time and resources of government departments, while the departments do get more time to respond at a later stage, it does mean that departmental officials are tied up, using the time at their disposal to seek information and answers to the questions rather than attend to departmental business.

During an interview a senior departmental official made reference, with a slight hint of irritation, to the DA’s prolific rate of submitting questions, saying “the DA floods us with questions intended mainly to create more work for the department...the department...faces the highest number of questions per annum, mainly from the DA.”¹³¹ For instance, as indicated in Chapter 3, just over 3000 questions, both for oral and written reply, were submitted to the Gauteng legislature between 1998 and 2003. This is an average of 600 questions per annum, many of which came from the DA. This was far more than any other legislature for which information

was available. Over half of all the questions were directed to the Departments of Education, Health, Safety and Security, Development Planning and Local Government, Transport and Public Works, as well as the Premier's Office. Clearly, questions have become an effective and valuable tool of oversight in the Gauteng legislature and a useful method for extracting information that is useful for holding the provincial government accountable to the legislature and its citizens. However, many of the departments have in the past failed to respond to all the questions on time, thus creating backlogs of unanswered questions in the legislature. The Press has also been reporting regularly since 1998 on the failure of various departments in Gauteng, including the premier's office, to respond to all the questions posed to them on the floor of the legislature.¹³²

4.3.2. Legislature's Performance As Law-Making Body

As already argued above, during the first period of provincial government the traditional, law-making function of the Gauteng legislature was more pronounced and received more attention. Perhaps this was inevitable given that during the country's constitutional negotiations between 1992 and 1994, the powers of the new provinces to make their own laws was one of the key areas of acrimonious contestation between the major protagonists in the federal/unitary state political divide. In essence therefore, the acquisition of the formal legal and constitutional right to make laws was one of the valued trappings of power for the new sub-national entities. It should be noted though that despite the interim and current constitutions empowering the new provincial legislatures, among others, to initiate, prepare and promulgate laws, in practice these institutions have largely lacked the necessary capacity and resources to undertake and sustain this task on a regular basis. As noted before, the Gauteng legislature did initiate a piece of legislation on its own in the past – the Gauteng Petitions Act of 1998 – which was replaced by another Act with a similar name in 2000. In general though, the legislature has not been much of an exception to the trend, despite the vast resources and wealth of the province. However, even if provincial legislatures had the requisite institutional capacity and resources to initiate and prepare legislation on their own, it is unlikely that this practice would have been allowed to flourish given the nature of South Africa's political system dominated by strong and largely centralised political parties.

The function of initiating and preparing draft provincial legislation has therefore virtually been an exclusive prerogative of the provincial cabinet since inception in 1994. The legislature has largely been involved in regular detailed scrutiny of proposed legislation through its committees, and adopting such legislation through voting in the plenary. This suggests therefore that assessing the performance of the legislature as a law-making body essentially entails looking at the way it has conducted its examinations and scrutiny of the details of government bills, its ability to effect

changes and amendments, or even reject such bills. These are the practices in terms of which elected public representatives in the Gauteng legislature can articulate the interests of their constituents and shape the content of legislation. In other words, even if provincial law-making has become an exclusive preserve of government bureaucracies and the cabinet, the legislature and elected public representatives have a critical role to play in ensuring that such legislation is responsive to the needs of citizens. It needs to be noted also that all nine legislatures routinely handle and process large volumes of national bills every year. Although this is an important function of provincial legislatures as it also draws on their resources and time, it will not be dealt with in this section. Only the handling of provincial legislation will be discussed.

4.3.2.1. Law making during the 1994-1999 period

The start of the era of provincial government was imbued with a strong sense of mission to transform society and its institutions to reflect the new values of a post-apartheid political order. Even at provincial level, this sense of mission was strong. Once the necessary powers and functions were assigned to the provinces, provincial law-making started in earnest. However, the pace and scope of law making in Gauteng, as was the case in all the provinces, were limited, with only a few bills passed by the legislature in the first two years. Law making at that stage was mainly concerned with provincial appropriations (budgets) and setting up and enabling administrative and other systems of government to function. Therefore only three bills were passed in 1994, rising to six in 1995. After that the pace of law making picked up considerably, with 11 bills passed in both 1996 and 1997. The number of bills passed by legislature reached its peak in the 1998/99 year, with a total of 18 bills passed by the legislature. As already indicated, the legislature conducted an average of 38 sittings per annum to conduct its varied business, including law making. Many provincial laws throughout this period continued to be about appropriating public funds for government expenditure, setting up new structures and enabling them to function, or creating new legal and administrative procedures and processes for the new provincial institutions to fulfil their responsibilities.

However, bills were also processed by the legislature concerned with realising some of the social, political and economic rights for citizens as entailed in the interim and new constitutions. Therefore a small number of bills were processed by the legislature between 1994 to 1995 in the social policy and economic policy sectors. From 1996 onwards, as provincial institutions began to operate actively and policy administration and service delivery gathered pace, the scope and variety of legislation also increased considerably. The legislature processed bills covering many subjects within areas of provincial legislative competency, including local government and land administration, housing, arts and culture, liquor trading, tourism and the environment,

development planning, consumer affairs, infrastructure, gambling and education. However, the Gauteng law-making process, like in other provinces, tended to defer to national law-making processes, waiting for the national government first to pass the framework national legislation in many areas of concurrent competency within which the province would formulate its own laws. Also, due to the inexperience of the new provincial institutions, many mistakes and errors occurred in law making and loopholes were discovered in many of the laws enacted from 1997 to 1999. Therefore a number of amendment bills had to be passed during the same period, correcting or supplementing some of the earlier legislation.

Despite the institutional and capacity weaknesses to initiate and prepare legislation on its own, the legislature did participate actively and regularly in the processing and scrutinising of provincial bills during the 1994-1999 period. Some of the MPLs argued that the legislature has always been able to make changes to government bills, contradicting suggestions that the executive always gets its bills passed in the legislature without amendments. In fact many government bills usually do undergo serious scrutiny at committee level in the Gauteng legislature, and amendments are introduced fairly frequently. As an example, the Gauteng Housing Bill of 1997 underwent an intensive process of scrutiny as it went through the housing portfolio committee. The transcripts of committee deliberations show that two categories of detailed changes were made to the original bill. These can be categorised as 'non-critical' and 'critical' changes.¹³³ The non-critical changes constituted the biggest proportion of the changes made, mainly entailing simple corrections to the grammar and language of the bill. These did not raise much political controversy among committee members.

The critical changes to the bill were few in comparison but led to fairly heated debates among committee members, especially along the government/opposition divide. For instance, new clauses and sub-clauses were introduced to the original bill. Some of these required greater gender representation in the composition of the proposed housing advisory board; the requirement for the MEC to consult the housing portfolio committee when appointing members of the advisory board; the outlining of a strict process and selection criteria in the appointment of members of the advisory board; and a substantial extension of an original sub-clause dealing with the pecuniary interests of members of the advisory board. The transcripts of committee deliberations also show inefficient use of time by the committee. For instance, too much time was spent on repetitive ruling party/opposition disagreements and petty squabbles over details of the bill, leading to too many committee meetings. Nonetheless the provincial legislature did utilise the law-making function to ensure government accountability. Also, the Gauteng legislature has been able to make sufficient time available for committees to give intensive consideration and detailed scrutiny to provincial bills, unlike when dealing with national bills.

Many MPLs complained that national bills are always rushed through the legislature, and that there is hardly sufficient time to give adequate consideration and scrutiny to them.

Some of the ANC MPLs also argued that there were instances during this period when the legislature exercised its right to reject an entire bill. One MPL revealed “I have been party to pieces of legislation coming from the executive looking like a dog’s breakfast...”¹³⁴ The MPL mentioned the Consumer Affairs Bill of 1996 as an example of a bill that was poorly prepared by government, adding that “we...as a legislature employed an advocate from the Legal Resources Centre and we rewrote it...virtually from scratch...” However, based on interviews with the support staff and researchers in the Gauteng legislature, the usual pattern has been that most government bills went through the legislature with minimal or insignificant changes on most occasions. Most of the changes are usually introduced by members of opposition parties. However, this does not suggest that ruling party MPLs do not make or propose changes to government bills. As already indicated, all the ANC MPLs who were interviewed revealed that before bills are presented to the legislature and referred to committees, they are usually discussed within the relevant subcommittees of the party caucus in the legislature where they undergo intensive deliberations.

The ruling party caucus is therefore a crucial but hidden arena of oversight and law making in which the legislature at large plays no role at all. This is where ruling party MPLs get their chance to scrutinise government proposals and make the necessary changes in the absence of the opposition. Once consensus has been reached over the proposed bill, it is forwarded to the legislature and the relevant committee, where the task of ruling party MPLs is largely to defend it from the opposition. This does not always result in predictable and sterile government/opposition confrontations though. For instance one ANC MPL revealed, “I have been guilty in my time of sitting outside of the caucus discipline. The opposition comes with a good idea which we don’t have...we sit with a very limited perspective and they’ll come with something which appeals to me, I will support it because I am not prepared to go with an inferior party line.”¹³⁵

4.3.2.2. Law making during the 1999-2004 period

The second period of provincial government was characterised by a much clearer understanding among regional politicians of the role of provincial government within South Africa’s system of government, especially as the division of labour between the national and provincial spheres also became clearer. A pattern had developed over the first period of government where the national government and its legislative institutions were largely formulating national policies and

framework legislation that then had to be adapted to and implemented in individual provinces. Gauteng, like other provinces, found itself producing less legislation on fundamental social and economic policy areas, and having to defer to the national sphere. This was also the period when the Gauteng provincial legislature increasingly redefined its role, emphasising other aspects of its responsibilities such as promoting public participation, constituency service and routine oversight and monitoring of policy implementation and service delivery by government departments.

However, contrary to accepted wisdom, this period did not really see a significant decline in provincial law-making activity within Gauteng. There was a noticeable decline in 1999 because it was an election year, when only 7 bills were passed, but this increased to 8 in 2000, 10 in 2001 and reached a peak for this period of 13 bills in 2002 before dropping to 9 the following year. As in the 1994-1999 period, various substantive policy issues falling within the scope of concurrent or exclusive provincial competency powers were covered, including appropriation of public funds, internal administrative and public service matters, local government, health, public transport, tourism and provincial economic planning. A number of previous laws were amended, while a few were repealed. There is also evidence to suggest that the committees were fairly strong in their scrutiny of government bills, especially in amending bills and in some cases forcing the government to withdraw or delay bills. For instance, the Unauthorised Expenditure Bill of 2002 was withdrawn in October. An ANC MPL commented on the withdrawal of this bill, saying the bill “dealt with about four or five years of unauthorised expenditure and the department brought the legislation with wrong numbers, the figures were all wrong and when we started looking at the public accounts reports and their bill, they had to withdraw it three times.”¹³⁶ Also towards the end of 2002, the MEC for finance attempted to rush the Gauteng Liquor Bill through the legislature, allowing little time for the finance and economic affairs committee to consider the bill and hold public hearings. This caused an uproar even among ruling party MPLs, leading to the bill being delayed for the following session. Many of the MPLs, including those from the ANC, were concerned that the bill in its current form was likely to have detrimental effects on small businesses and other liquor trading activities. They wanted sufficient time for public inputs and consultations.

Despite this fairly active period of provincial law making in the Gauteng legislature, many MPLs and other officials within the legislature were adamant that the era of provincial law making had come to an end. Many argued that policy implementation and service delivery had become the primary function of provinces, and in particular the provincial legislature had become a central institution for monitoring policy implementation and service delivery, as well as holding the provincial government accountable. For instance David Quail of the DA argued, “we do not produce any legislation at provincial level...the only legislation we deal with is national legislation

from Cape Town and even that, we are lucky if we get time to comment on it. We implement policies and legislation from Cape Town.”¹³⁷ Gertrude Mzizi of the IFP added, “the weakest point of the provinces is that they do not have powers to enact legislation that can help them function. Most of the legislation is dependent upon negotiations in MINMECs in different portfolios.”¹³⁸ To some extent much of this was overstating the point but it was clear that many MPLs felt that provincial law making had become meaningless, despite the number of provincial laws produced during this period.

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CHAPTER 5: THE PROVINCIAL EXECUTIVE AND ADMINISTRATION

5.1. INTRODUCTION

Provincial executives in general and their cabinets in particular play a key role in processes of government because they not only make important policy decisions, but also implement and coordinate a large number of policies and policy programmes formulated at national and provincial levels. As coordinators of national and provincial policy programmes, provincial executives take part regularly in national/provincial policy coordinating structures such as the MINMECs, as discussed in Chapter 2. Through the ten MECs from each province, the national government is also able to coordinate national policy programme management and implementation throughout the country. However, provinces have also developed institutions and processes to exercise political power as well as administrative authority through managing and implementing policy programmes. Therefore provincial executives occupy a very important position within South Africa's system of government, not only as implementers of policy, but also as fully fledged political entities and complex governments with their own policy agendas. This chapter seeks to examine and analyse in depth the development of institutions, processes and practices of government that have emerged in the Gauteng province over the past decade. It is hoped that this will provide valuable insights into the complexity of provincial government in South Africa and the complex dynamics and challenges that influence and shape the way provincial governments function to fulfil their responsibilities.

Chapter 6 of the current constitution provides for the establishment of provincial executive councils, with fairly extensive executive powers vested in the premier and other members of the executive. Broadly defined, the executive arm of the provincial government includes the cabinet, government departments and any other agencies established by the executive to fulfil executive functions. In terms of this definition, the provincial executive council or the cabinet is just one entity of the executive, and it is constitutionally the most powerful entity in the province. It possesses the ultimate authority to make decisions and execute them within the areas of responsibility allocated to the province, either through the constitution or national legislation. The provincial cabinet is therefore the primary decision-making unit within the broader executive arm of the provincial government. This makes the premier and other provincial executive council members potentially very powerful actors within the province. The provincial cabinet is constitutionally restricted in size to between five and ten members, excluding the premier. The constitution also vests enormous executive powers and policy-making responsibilities in the premier as head of the provincial government and the cabinet. The provincial executive has the legal and constitutional power and authority, among others, to develop policies and legislation as

well as to appropriate public funds to implement its legislative and policy programmes. Therefore, the premier and other executive members are extremely crucial actors in ensuring that the province functions properly and effectively as a government.

The office of the premier and the individual occupying it constitute an important centre of political power and constitutional authority in the province. For instance, the premier has the authority to create ministerial posts, appoint, dismiss and assign functional responsibilities to members of the executive (MECs).¹ For practical purposes, this renders the MECs answerable to the premier. The premier also has a range of other powers, including the authority to sign provincial bills into law or reject them as well as to dissolve the provincial legislature and call for an election, subject to constitutional provisions.² These are formal constitutional powers at the disposal of the premier who is fully entitled to exercise them, in theory at least. In practice the ability to exercise such powers is usually subject to a range of considerations and political constraints, including the interests, preferences and internal practices of the party to which the premier belongs, as well as the interests and preferences of central government. Therefore internal party dynamics and relations between the provincial government and central government become some of the crucial factors impinging on the exercise of constitutional power and authority at provincial level.

In particular, the role of the party to which the premier belongs is especially crucial. This was illustrated quite clearly on several occasions during the 1994-1999 period in provinces such as Free State, Northern Province and Mpumalanga, where MECs who had been dismissed from their posts by their premiers were subsequently reinstated after such decisions were overturned by the ANC party leadership. Such incidents and practices have shaped the nature and essence of provincial government in South Africa, raising important questions regarding the importance of provinces as fully fledged democratic political entities. Also, such incidents and practices have served to reinforce the unitary nature of the country's political system and, to a very large extent, presuppose the ultimate supremacy of politics over formal and constitutional processes that mandate some level of provincial autonomy in respect of their internal affairs. Despite this apparently subordinate position of the provincial sphere, in some instances political processes and dynamics at provincial level do provide room for regional leaders to manoeuvre, allowing them to pursue courses of action and make decisions that appear to contradict or go against the interests of central government or the ruling party. These instances, although few and far between, are critical in that they illustrate the fact that provincial governments can often create space for themselves to pursue their own interests notwithstanding the current constitutional, political and fiscal constraints, as will be argued throughout this chapter.

5.2. ESTABLISHING THE GAUTENG PROVINCIAL GOVERNMENT

The process of creating the new provincial public service in Gauteng was fairly lengthy and cumbersome. For instance, the process of mechanically establishing departments and putting them in place lasted for two years, from 1994 to 1996. However, before the departments were created, the seat of power for the new province had to be determined soon after the 1994 elections, which also played a part in lengthening the process. The provincial legislature set up the Khoisan X³ Commission to conduct the public hearings that eventually indicated that Johannesburg was preferred as the provincial capital. The subsequent relocation process also considerably delayed the task of creating the new provincial administration, which meant that effective basic service delivery in the province was virtually impossible. Once the provincial capital was decided, the task of establishing the new government and its bureaucratic structures began, and despite the subordinate status of the provinces as constitutional entities, as has been argued in earlier chapters, the process and the resulting public administration structures that were eventually created were largely driven and determined by local political leaders and other civil society actors inside the province. It was therefore a fairly autonomous process which provided considerable scope, within the provisions of the constitution and the Public Service Act of 1994, for the new province to shape its own provincial administration and build its own bureaucratic capacity based in accordance with local preferences. The national government was represented in these processes, but did not lead them.

As in other provinces, the process of creating the new formal structures and processes of government in Gauteng also had to contend with political pressure from newly elected regional politicians to start delivering immediately on the ANC's electoral promises. In other words, the challenge for the new provincial government was to put administrative and other essential structures in place at the same time as pressure was mounting to start delivering basic services to citizens. To some extent though, the process was less complex compared with other provinces because Gauteng was one of only a few provinces, including Northern Cape and Western Cape, that did not inherit many administrative structures and public servants from the previous apartheid government and its homelands. The province did inherit some administrative structures, functions, assets, personnel and liabilities from the old Transvaal province, as well as the administrations of the former houses of representatives, delegates and assembly. The provincial government administration was therefore established fairly anew with largely new government departments and other executive structures and systems. This meant that the province did not inherit some of the unpleasant organisational cultures of corruption, inefficiency and lack of skills that characterised many of the homeland administrations.

The Public Service Act of 1994 obliged the Gauteng provincial government, like other provincial administrations, to develop and implement the organisational structures necessary for providing services to people in the province; to standardise conditions of employment as inherited from the previous government in terms of national norms and standards; and to amalgamate the various component administrative structures inherited from the previous administrations to create a single administration for the new provincial government.⁴ The fact that the new province did not inherit significant administrative/political structures and personnel from the old homelands meant that there were no significant pre-existing and ossified local political and bureaucratic elites attached to these structures that had to be managed and integrated into the new administration as was the case in a province like Eastern Cape. To some extent therefore, the process was largely technocratic in nature in that those in charge of establishing the new provincial administration were spared many of the problems of managing the political divisions and rivalries that tended to characterise similar processes in Eastern Cape, Northern Province and Mpumalanga.

Despite the comparatively straightforward nature of the process of establishing the new Gauteng administration, the few administrative components inherited from apartheid-era entities were not entirely free of institutional problems. For instance, certain organisational characteristics and unique corporate cultural traits were considered unsuitable for the new political dispensation. The Gauteng Public Service Commission, which was in charge of the process of establishing the new provincial administration, described the administrative components inherited from the old TPA and the old houses of delegates, representatives and assembly as “bureaucratic, authoritarian and rule-driven rather than results-oriented”.⁵ The Public Service Commission saw it as its mission to change this, stating that its mandate was to create a ‘developmental’ and ‘customer-oriented’ provincial administration.⁶ Strategic Management Teams (SMTs) were given the tasks of actually creating the new provincial departments and were therefore at the forefront of these processes. Each SMT was led by the MEC for the department concerned, who appointed between four and seven people to assist and run the process, while the SMT under the premier’s office had the responsibility of defining the overall strategic plan and vision for the province as well as overlooking and coordinating the entire process of creating the provincial administration. Just as the process of institutionalising the provincial legislature was fairly open to inputs from civil society organisations and other activists in the province (see Chapter 4), the SMTs also allowed the process to be fairly open to inputs from experts in the field of public administration and institutional development. This allowed the Gauteng process to tap into the existing wealth of organisational development expertise available in the province. It needs to be noted though that besides the technical experts who played a significant role in these processes, there were also political and civic activists, mainly from the ANC and its alliance partners, who played a significant role, indicating clearly that the process was never entirely technocratic in character.

As argued previously, the provincial government enjoyed, and still does, relatively easy access to an abundance of a variety of civic organisations, independent research institutions, nongovernmental organisations and institutions of higher learning, whose skills and expertise were utilised extensively in the process of building the province's administration. However, despite the abundance of such resources and expertise, the process was not necessarily as easy as it may appear. It was just as protracted and cumbersome as in other provinces that enjoyed less access to resources and expertise. The complexity and protracted nature of the process derived mainly from the fact that the SMTs had to ensure a participatory bureaucratic institution-building process where all the key actors were involved. This was essential to forge common positions and consensus regarding the organisational and structural models deemed appropriate for the new province.⁷ A set of new values and a common strategic direction for the province had to be defined through such participatory processes involving not only technocrats but also political leaders and activists from the ruling party. The advantage for Gauteng was that many of the experts from the independent organisations whose skills and knowledge were utilised in the bureaucratic building process subsequently went into government to fill some of the vacant public service posts, and therefore continued to assist the institutionalisation of the new provincial administration in its early stages.

The process of creating the new provincial administration went through distinct phases. These included the establishment of new government departments, the rationalisation/integration of inherited administrative components and the creation and classification of new as well as old administrative posts.⁸ In the case of some functions, such as education, economic affairs and safety and security that had not been performed under apartheid-era provincial governments, new government departments had to be established. The process of staff rationalisation entailed some of the apartheid-era public servants being allowed to take retrenchment packages or go into early retirement, especially those who did not want to be relocated from Pretoria to the new provincial capital of Johannesburg. The remaining public servants from the previous administrations had to be absorbed into the new provincial departments while new vacant posts were filled with new recruits. In this sense the process of establishing the provincial administration was just as lengthy and technically demanding as in other provinces, meaning that much of the first and second years after the 1994 elections were spent building the new provincial administration and less on making policies of the new province or on effective delivery of basic services.

It needs to be noted also that the process of establishing the new provincial administration lagged far behind the establishment of the province as a political entity. In other words, when the

provinces were demarcated geographically and brought into existence politically and legally by 1994, their public administrations were not yet fully in place and therefore were not functional. This particular sequencing of the creation of the province as a geographical and political entity, followed later by the creation of the public service structures and government departments, may have been unavoidable. This is because elected political structures, especially the legislature, had to be put in place first in order to pass the necessary enabling legislation for the establishment of the public services. Also the legislatures provided the necessary political authority to legitimise the decisions that had to be taken subsequently in the establishment of the public service structures as well as the appropriation of the necessary public funds. In practice, this particular sequencing of processes created problems for the new provincial government, as the existence of the political entity without a fully functioning public service meant that basic services could not be rendered to citizens immediately. Former minister of constitutional affairs, Roelf Meyer, endorsed this view not long after the advent of provinces, in July 1994. He said that the provinces were paying the price for being voted into power before proper administrations were in place.⁹ Meyer went on to add that regional elections should have been held only after their bureaucracies had been rationalised but that political factors had made this impossible.¹⁰ Also, as argued in Chapter 3, the lengthy processes of bureaucratic reintegration and rationalisation, together with the delays in the assignment of the necessary constitutional powers and functions to the new provincial administrations, delayed the emergence of the new province as a fully functioning entity within a year of its existence.

Nonetheless, the slow pace of bureaucratic institution-building did not prevent elected regional politicians from constantly making public statements about speedy social service delivery.¹¹ Such statements were perhaps meant to reassure party supporters who were anxious to see electoral promises of speedy service delivery fulfilled. One of the most controversial political interventions in this regard came from Gauteng's first premier, Tokyo Sexwale, in May 1994. He publicly declared that the province would deliver 150 000 fully built housing units a year, not only disregarding the national government's policy position on low-cost housing delivery, but also hopelessly overestimating available institutional capacity in the province at the time.¹² This declaration was made at the time when the relationship between central government and the new provinces was clouded by protracted disputes over the constitutional division of powers and functions between the central government and the provinces.

A political intervention of this nature may have been meant as a rhetorical strategy to convey a message to the national authorities of the intention of the provincial government to jealously guard its autonomy as a fully-fledged political entity capable of determining its own interests and pursuing its own public policy priorities. However such intervention also served to put undue

pressure and a considerable strain on the processes of establishing the provincial public service, thus adding to its complexity. At the time when the process was under way, some of those who took part in it alluded to the complexities and difficulties involved. For instance, an ANC official, who was part of the Gauteng process and was speaking confidentially, admitted that the ANC had hopelessly underestimated the scope of the task of establishing the new provincial administration. The official added that the pre-election preparations for governing the province were woefully inadequate, concluding “I don’t think anybody ever imagined the scope of what lay ahead”.¹³ However, as will be discussed below, such a protracted and elaborate process appeared to have led to a fairly effective and institutionally strong provincial administration in Gauteng.

5.3. PROVINCIAL EXECUTIVE: STRUCTURE AND ORGANISATION

There are two basic ways in which provincial cabinets in South Africa have been structured and organised. Firstly, cabinets may be run on a centralised basis, with the full cabinet meeting fairly frequently to take policy decisions. This way the premier usually becomes a central figure in the operation of the executive, playing a central role in sectoral policy making by ministers. In theory, this method of operation ensures that the convention of ‘collective cabinet responsibility’ is reinforced, while also strengthening the position and therefore authority of the premier as a central figure in the provincial executive. In theory, the force of personality of a strong premier would lead to a fairly coordinated and cohesive cabinet which operates as an integrated policy making and decision-making unit. Also, this format leads to cabinet committees becoming less important or less central to decision-making processes, usually serving as mere support structures or ‘think tanks’ for the ‘main cabinet’ or ‘full cabinet’. Cabinet committees would merely meet to discuss policy proposals from government departments and consider draft bills before these are submitted to the ‘full cabinet’ for deliberation and decision-making. They would also serve to coordinate policy development, especially where inter-departmental dynamics are involved.¹⁴ The key advantage of this model is that premiers with strong personalities and considerable political clout would usually assume a dominant position not only over the cabinet but also over the entire government, therefore becoming central in policy-making processes. It would also suit a premier who is an independent thinker or carries a united party behind him or her, and has a strong ‘hands-on’ approach to cabinet leadership and management. Former premiers Matthews Phosa of Mpumalanga and Popo Molefe of North West were key examples. One of the major disadvantages of this model is that it creates potential for overload at the centre of the executive because the cabinet is the central point of executive activities and decision making. Such an overload may create inefficiencies if not managed effectively and skilfully.

Alternatively the cabinet may adopt a decentralised operational structure in which decision making takes place in small cabinet committees. These cabinet committees would meet frequently

and take important decisions, only communicating such decisions to a full cabinet that meets less frequently. Here the cabinet is usually less coordinated, less cohesive and considerably less integrated as a unit. Cabinet committees are therefore central to the functioning and effectiveness of the executive but as a result of this, the work of the executive becomes fairly fragmented. However, this would not be a major problem if the premier's office plays a coordinating and integrating role, overseeing the operation of the dispersed cabinet committees. Clearly in this case the premier becomes less of a central figure in terms of sectoral decision making – only becoming 'first amongst equals'. Other cabinet ministers would therefore enjoy greater scope of freedom to make policies in their respective policy sectors, and account for these decisions, not only to other cabinet colleagues in the full cabinet, but also to the legislature. In this case the convention of 'individual ministerial responsibility' is reinforced strongly. Obviously, this format of cabinet operation is the opposite of the first in that it suits a weaker premier without a forceful personality or a strong political agenda. It would be appropriate in a cabinet full of strong personalities or political heavyweights who are also independent thinkers and prefer considerable room for individual action in their portfolios. In modified form, this cabinet structure operated in Gauteng under Premier Sexwale. The major disadvantage here is the greater potential for fragmentation and individualism among MECs as was the case in Gauteng under Premier Sexwale.

These two models of the functioning of cabinets are obviously simplistic and abstract analytical tools, merely intended to help us understand and make sense of the functioning of the Gauteng provincial cabinet under the different premiers. In practice, the characteristic features of real cabinets are usually more complex, and usually cut across such neat theoretical constructs. In other words, in real life the operations and functioning of a provincial cabinet would usually display features and characteristics from both model, sometimes more from one model than the other, depending on the premier in charge, as well as the collective and individual behavioural patterns of other cabinet members. However, such idealised constructs do help simplify the usually complex reality of government institutions and politics for purposes of understanding.

The structure of the provincial executive and the way it is organised in practice are important factors in the functioning of the provincial government. The Gauteng provincial executive is known as having been one of the most dominant provincial executives in South Africa over the past decade. Despite the institutional and political challenges that the executive has faced over the years under three different premiers, as will be discussed below, it has generally been stable and strong as the primary governing unit in the province. In fact since 1994 the executive council has almost exclusively initiated and formulated provincial policies and bills as well as implemented laws passed by the legislature since inception. This institutional and political strength of the

executive has therefore been one of the most remarkable features of provincial government in Gauteng. Therefore the functioning of the Gauteng provincial cabinet will be examined and analysed in this section, with reference to the three premiers, including the impact of their styles of leadership, during the past decade.

The Gauteng provincial executive has tended to conform to the standard size found across all the nine provinces. It has usually had ten MECs and the premier. As already indicated in Chapter 3, Gauteng had two premiers during the 1994-1999 period – starting with the charismatic Tokyo Sexwale who stepped down in 1998 in favour of Mathole Motshekga, a constitutional lawyer with enormous grassroots popularity among many branches of the ANC in Gauteng. The management and leadership styles of the two premiers will be analysed, compared and contrasted in the next subsection. At this stage, suffice it to note that the structure and organisation of the executive underwent subtle changes with the arrival of premier Mathole Motshekga in 1998, heralding interesting dynamics and patterns of authority within the provincial executive. Also, like all other provincial executives the Gauteng cabinet started in 1994 under the provisions of the interim constitution that provided for the government of national unity. In terms of this provision any political party holding at least 10.0% of the seats in the provincial legislature was entitled to representation in the provincial executive “in proportion to the number of seats held by it in the provincial legislature relative to the number of seats held by the other participating parties”.¹⁵ Accordingly, Gauteng had a ‘government of provincial unity’ that was meant to elapse in 1999. However, it lasted for only two years due to the withdrawal of the official opposition NP (later the NNP) from this arrangement at both national and provincial levels in 1996. The NNP also withdrew from the Gauteng provincial executive where the party enjoyed the status of official opposition. The NP had been allocated the three cabinet portfolios of conservation and agriculture, public transport and social welfare. After the NNP’s withdrawal, the Gauteng provincial cabinet became a conventional, one-party unity controlled by the ANC until today.

During the first five years of provincial government, the Gauteng cabinet was overwhelmingly male dominated with only two women – Mary Metcalfe in education and Jessie Duarte in the safety and security portfolio – as female MECs. When Premier Motshekga took over in 1998 the number of female MECs increased to three, with the addition of Joyce Kgoali in the Department of Transport and Public works. However, the dominance of male MECs in Gauteng reflected a common organisational feature of executives across all provinces. This changed dramatically when Premier Mbhazima Shilowa took over in 1999, with four female MECs, increasing to five after the 2004 general elections. However the gender composition of the provincial executive appeared not to have any bearing on its functioning and effectiveness.

What was critical in the functioning of the executive was the structure of the executive, as will be discussed further in the following subsections. At this stage it is sufficient to state that under Premier Sexwale, the executive was fairly decentralised, with the office of the provincial director-general not fully integrated into the cabinet system. It became increasingly clear that this arrangement was creating operational inefficiencies within the executive and was set to change by the time Sexwale stepped down as premier in 1998. For instance, it increasingly became clear at the time that an arrangement whereby the office of the provincial director-general – the most powerful executive administrator in the province – was situated outside of the premier's office and not serving the cabinet directly, was not only strategically detrimental to the effective functioning of the executive. It was also potentially crippling for the smooth interface necessary between the administrative and political leadership inside the executive. In other words, the Gauteng provincial executive was strategically disarticulated, with the political superstructure not properly anchored onto the underlying administrative structure. As will be discussed below, this was exacerbated by the decentralised nature of the cabinet that caused severe operational fragmentation, leading to constant confrontations between the executive, especially the MECs as political heads of departments, their heads of departments and the provincial director-general. Therefore Gauteng was one of the provinces where MECs were constantly accused of interfering in administrative matters while MECs, in turn, constantly accused the provincial administrative leadership, especially the director-general, of insubordination.

The root cause of the problem was the lack of proper definition and clarification of the different roles of MECs, heads of departments (HoDs) and the director-general. This was compounded by the fragmentation of the Gauteng cabinet under Premier Sexwale. For instance, as argued earlier, cabinet systems may be decentralised or centralised, possibly leading to a fragmented or integrated institutional set-up of the cabinet.¹⁶ A decentralised cabinet would lead to a fragmented and weak structure where decisions are usually poorly communicated to the entire executive, especially the executive agencies and departments that have to carry out such decisions. In cases such as the Gauteng executive under Premier Sexwale, where the position of the cabinet secretariat was occupied by a ordinary low-ranking official, the chains of command and the lines of communications become longer, thus further crippling the smooth and effective functioning of the executive. Also, in the case where the office of the director-general is not only situated outside the premier's office, but also not serving the cabinet directly as an administrative secretariat as was the case under Premier Sexwale, the director-general becomes considerably weak in relation to the MECs as well as the various HoDs. An attempt was made to rectify this structural problem in 1996 when the office of the director-general was placed within the office of the premier in an attempt to bring it closer to the political centre of the executive where policies were determined and executive decisions taken. The office of the director-general was also made

to serve as an administrative secretariat to the cabinet. This arrangement meant that the office of the director-general served as an administrative resource to the premier and cabinet and also provided the necessary technical coordination to ensure that executive decisions and policy initiatives taken inside the cabinet were effectively relayed to all the departments and other executive agencies. This will be discussed further later. However this did not necessarily resolve the problem of lack of clarity on the role of the provincial director-general and its proper relationship with the MECs and other HoDs. This problem was resolved with the promulgation of the Public Service Laws Second Amendment Act (no. 93) of 1997, which provided this much needed clarity, as well as the departure of Vincent Mntambo as Gauteng director-general within the first few months of Premier Mathole Motshekga taking over in 1998.

5.4. THE FUNCTIONING OF THE PROVINCIAL EXECUTIVE (1994-1999)

5.4.1. 'Government of Provincial Unity' Under Premier Sexwale (1994-1997)

5.4.1.1. Brief background

As already indicated above, Tokyo Sexwale became first premier for Gauteng in 1994 and stepped down in January 1998 to pursue private business interests. He headed Gauteng's first executive constituted under the 'government of national unity' provisions of the interim constitution. Sexwale's background shows that he had basic business training when he became premier combined with long service in the ANC as a cadre during the liberation struggle against apartheid. He obtained military training in Swaziland, followed by training as a military officer in the former Soviet Union. He subsequently spent 13 years on Robben Island as a political prisoner after being arrested in 1976. On his release in 1990, Sexwale assumed active duty as a political activist within the regional structures of the ANC, becoming the chairman of the party's provincial executive in Gauteng in 1991 and eventually assuming the role of premier in 1994.¹⁷

Like all the first premiers in 1994, Sexwale assumed this role at a time when the provincial system of government was in its formative stage and largely in a state of flux. Also, like many premiers, he lacked the necessary experience in heading and running a complex modern government, which meant that the first year or two were spent learning the job. His inexperience in government was compounded by his lack of the technical management skills, which had a particular impact in his style of leadership, as will be argued shortly. Clearly, Sexwale's time at the helm as provincial chairman of the party's Gauteng region from 1991 to 1994 had not prepared him adequately for the task of running the richest and most industrialised province in the country. This became quite evident in the way he managed the provincial executive. Sexwale was

widely regarded by many interviewees as a 'hands-off' premier. What exacerbated the situation was that the ANC itself had no prior experience of running any type of government, whether national or regional, and therefore had not been able to prepare its new premiers thoroughly for the task of running their governments effectively. However, given that system of government was still in flux, both at national and provincial level, the inexperience of the premiers, including that of Sexwale, had no immediate detrimental consequences. Moreover, starting on a clean slate enabled Sexwale to create his own style of leadership and executive management where none had existed before. Sexwale was also a charismatic leader, a competent public speaker and a confident media personality with a good rapport with the media. He was therefore able to project an image of confidence and calm, which showed him as a strong leader in charge of his government.

5.4.1.2. Leadership, style and impact

Based on the interviews conducted with some MPLs, senior government officials and former MECs in Gauteng, it was found that under Premier Sexwale the Gauteng province had a fairly decentralised cabinet system that appeared to suit Sexwale's executive leadership style. Sexwale's inexperience, especially his lack of technical management skills, was an important factor, not only in creating a decentralised cabinet system. It also shaped his widely acknowledged 'hands off' executive leadership style and led to the decentralised way in which his cabinet operated in practice. Many interviewees argued that the premier's 'laissez-faire' approach to executive leadership and management was as much a function of his own personal capacity constraints as it was shaped by the institutional constraints of the cabinet itself and the constraining political environment within which the cabinet functioned. Very early on in the operation of the provincial system of government, many premiers were not sure of their powers and functions, given that the national government took time to devolve some of their powers. It appears that many premiers reacted differently to this situation based on their own expertise and skills, with Sexwale adopting a 'presidential', 'hands off' approach with interesting consequences as will be discussed below.

Sexwale's personal characteristics and leadership style were clearly important factors in the functioning of the provincial cabinet. Almost all the informants interviewed for this study argued that his 'hands-off' style of leadership meant that he had limited impact in the day-to-day running of government, especially in the different policy sectors. For instance, one ANC informant remarked that the premier had restricted his role to that of creating a vision, outlining broad policy objectives and then letting his MECs 'run with the ball', formulating and implementing their own policy programmes.¹⁸ Interestingly, there was considerable support for the premier's 'hands-off' approach among the predominantly white opposition parties, which dominated the opposition benches in the provincial legislature during his premiership. The black opposition

parties, such as the IFP and PAC, were very small in terms of their share of the seats. Therefore some of the informants from the opposition NNP and DP (later DA) expressed their admiration of the premier's 'hands-off' approach. For instance, DP MPL in the legislature, Brian Goodall, described the premier as a "king rather than a premier...he allows MECs large scope for individual action in their portfolios".¹⁹

This style appeared to suit the circumstances of the 'government of provincial unity' at the time. For instance, among the predominantly white opposition the NNP appeared particularly enamoured with this style of leadership, for obvious reasons. Between 1994 and 1996, as the official opposition party in the province, the NNP was part of the Gauteng provincial executive under the 'government of national unity'. Given the serious political and ideological differences between the NNP and ANC on key questions of economic and social policy, compounded by the historical animosity between the two parties, for the first two years Sexwale presided over a fairly uncomfortable constitutional arrangement that called for a suitable leadership style. Therefore it would appear that the 'hands-off' style of leadership was strategically suited for the two parties to co-exist in that arrangement. As already argued, this style allowed all MECs, including the three NNP MECs, to enjoy a certain level of freedom to run their portfolios and make policy decisions without interference by the premier.

It could be argued that the premier's leadership style was an important factor because he preferred to stay above the party political squabbles between the ANC and the opposition parties, especially the predominantly white opposition parties. This meant that the premier refrained from intervening in the numerous policy-based disputes that regularly played out between the ANC and opposition parties in the legislature and portfolio committees. For instance the ANC's 1994 election manifesto, including its RDP document,²⁰ called for a fundamental 'transformation' of society, the economy and the state, to deal with the racially skewed distribution of wealth and resources in the country. One of the fundamental ideological and political battlefields between the ANC and the predominantly white political parties in the Gauteng legislature was the area of education policy and in particular, mother-tongue education. The education portfolio committee that was chaired by Julie Killian of the NNP was the formal arena within the provincial legislature where such ideological contests over education policy were played out.

This contest came to a head in 1995 when the Gauteng provincial government introduced its School Education Bill. The NNP and the other predominantly white parties like the DP and FF contested the provisions of the bill giving the provincial education MEC powers to intervene in the schooling system, as well as provisions eliminating language and religious restrictions on

admissions to public schools.²¹ The premier stayed out of this battle, allowing the parties to battle it out. Clearly, the premier's style as leader of a two-party government suited the political context at the time, especially where fundamental differences between the ANC and the opposition extended to key issues such as the role of the state in the economy and its power to make radical changes in many areas of social policy. With hindsight, Sexwale's style appeared consistent with the broader project of national reconciliation in that it appeared to provide an arena at provincial level where minority parties were able to vigorously contest and question the policies of the ruling party as well as express their social policy preferences without being unduly constrained or crowded out by the majority party. This was one of the key reasons for the creation of the provincial system of government in South Africa.

Premier Sexwale's executive was fairly decentralised in its structure and organisation, allowing considerable scope for MECs to make policy in their sectors, obviously within the confines of the ANC political mandate. In an interview in 1996, one MEC revealed that while the premier did allow 'freedom of activity' to the MECs, he showed interest in the affairs of the departments by holding informal meetings and discussions with individual MECs, "but without going into too much detail".²² This tendency not to go into too much detail was seen as Premier Sexwale's abiding characteristic. Sexwale was also seen as a leader who "looks at the bigger picture and not the nuts and bolts".²³ As already indicated, Sexwale was a strong politician with a high-profile public image. It appears that this character created a public relations persona for him, which he enjoyed more than being bogged down in managing the daily affairs of government. Some of Sexwale's celebrated qualities as premier included his apparent charm and style, confidence as a media figure, charisma and popularity.²⁴ Indeed, Sexwale had an eye for the media spotlight and publicity, and was considered the most photogenic premier in the country. He brought a certain level of glamour and publicity to the institution of premiership in Gauteng. He once stated in 1998 that "the great thing about the Gauteng government is that you are just a few minutes away from the media".²⁵ Therefore, Brian Goodall of the DP confirmed in 1996 that "the premiership as an institution is more oriented towards public relations rather than playing a role of setting policy programmes and enforcing them through structures of government".²⁶

At the level of political symbolism and public relations Sexwale's leadership was, to some extent, fairly effective, at least in attempting to obfuscate if not bridge some of the glaring divisions within the province. Brian Goodall of the DP characterised Sexwale as "very affable and acceptable to business, foreign dignitaries and so on...this makes up for a good public relations role which is good for the province".²⁷ Also Julie Killian of the NNP agreed, adding that Premier Sexwale was "an ideal politician...he will always listen. Tokyo never gets involved in the political controversies of the parties...he knows how not to offend people".²⁸ This is consistent with

Sexwale's attempt, during his premiership, to project an image of a statesman above petty party politics. That was important, especially for a province like Gauteng that was characterised by multiple societal divisions and powerful interest groups with the means to pursue their sectoral interests. While some critics saw him as being "all show and little substance",²⁹ politically Sexwale was strong and very popular not only within the province but also within the ANC. As already argued in Chapter 2, Sexwale and Matthews Phosa of Mpumalanga were the only first generation ANC premiers who dared to openly criticise the ANC-controlled central government's reluctance to give more powers and functions to the provinces during the early years of the system. To some extent, Sexwale and Phosa saw themselves not as mere regional political leaders, but as national figures with the ability to shape and influence the course of South Africa's political system.

At a broader national level, Sexwale's style of leadership was consistent with the politics of the time. For instance South Africa had just emerged from a highly contested and bruising constitutional negotiations process as well as the electoral process, which culminated in a landslide victory for the ANC and its alliance partners over their arch-enemy – the NNP. The first period of provincial government (1994-1999) in Gauteng, as was the case at national level under President Nelson Mandela, was the era of 'reconciliation' and 'nation building'. It would appear that Premier Sexwale attempted to embody these notions during his time as premier. Importantly, he attempted to project an image of a non-partisan leader who appealed across social and political divisions in the province at the time when the country was attempting to deal with the legacy of its divided past. This style may have been meant to adapt to the politics of the time when lip service was paid to notions such as 'reconciliation' and 'national unity'. Ironically, at the level of political engagement in the legislature, the relations between the ANC and the predominantly white opposition political parties were always fraught with conflict and animosity. On the surface this would suggest that the project of 'reconciliation' and 'nation building' was not being advanced under Sexwale, because of the deep-seated animosity that characterised politics inside the provincial legislature at the time. However, a different reading of the same situation could suggest that his leadership style created space for the political and ideological conflicts between the ruling party and the predominantly white opposition parties to come out into the open, inside the formal arena of the provincial legislature, as part of resolving and reconciling them. In other words, under Sexwale these conflicts were institutionalised in that they were channelled through the safe formal procedures of the provincial legislature. This is an important function that Michael Mezey refers to as a 'system maintenance' function as it helps generate legitimacy for the political system.³⁰

Sexwale's style of leadership had its critics. His 'hands-off' approach to cabinet leadership and management, as well as the decentralised organisation of the executive, was widely seen as leading to a fragmented cabinet. Such fragmentation was accompanied by poor coordination, resulting in a premiership that was fairly detached from the policy programmes and activities of provincial government departments. One informant interviewed for this study said that the premier's style meant that he did not have a firm enough grasp of concrete policy details.³¹ One NNP MPL added that the premier was strong in public relations, but weak in management and policy making.³² Another MPL from the DP added further "the premiership lacks a strong policy input and direction".³³ A senior official in the corporate services unit believed that as leader, the premier's style "impacts on how the province and departments...work".³⁴ This official went on to add that the premier "gives a great deal of autonomy and space to his MECs...they are expected to deliver and asked to account on their performance...but there is no one at a political level who looks at the functioning of the cabinet as a whole, as Thabo Mbeki does for the national cabinet..."

Another official, while agreeing that the premier was a very 'hands-off' leader, added "someone needs to bring the system together and that it will run into problems if the premier is not hands-on".³⁵ The informant explained further that premier Sexwale had "a powerful cabinet", which possibly accounted for his style of leadership. However, it is not clear to what extent the composition of Sexwale's executive was a factor with a bearing on his leadership approach. For instance, the provincial cabinet was indeed made up of fairly senior figures from the ANC and its allied organisations. Some of them were prominent civic leaders with fairly impeccable political credentials dating back to the liberation struggle against apartheid. For instance, leaders from important political constituencies such as the South Africa National Civics Organisation (SANCO), SACP, Youth League, Congress of South African Trades Unions (COSATU) and the ANC itself occupied positions as MECs in Sexwale's cabinet. Also some of the MECs occupied important positions within the Gauteng Provincial Executive Committee (PEC). For instance Paul Mashatile, MEC for transport and public works, was deputy chairman and head of administration; Dan Mofokeng, MEC for local government and housing was also head of the PEC's local government unit; Jessie Duarte, MEC for safety and security, was also head of the PEC's security department. Mary Metcalfe, MEC for education, was also head of the PEC's education unit; Amos Masondo, MEC for health, was also head of the PEC's health unit, while Ignatius Jacobs, MEC for Social Welfare, was also heading the PEC's social welfare unit. Therefore, most MECs were also specialists in their field of expertise, which obviously enhanced their positions within the cabinet. In addition, some of the MECs like Amos Masondo, Jabu Moleketi and Jessie Duarte were also members of the ANC's National Executive Committee, the highest decision-making body in the party.

The implication is that the premier may have been unable to impose his authority and control over such a 'powerful' cabinet of senior local party leaders with strong political constituencies of their own. For instance a senior official from the corporate services unit of executive pointed out that most MECs in Sexwale's cabinet were strong political figures who preferred to drive policy processes from their own departments rather than from the cabinet. The official argued "as the new departments found their feet and line functions were formulated, so has the policy process been driven by the line ministries and the MECs".³⁶ He added that there was an emergence of a "strong move to a fragmented approach, turf wars and the hegemony of the lines [function departments]". The 'turf wars' the informant referred to were clearly one of the typical elements of a decentralised and therefore fragmented provincial executive under Sexwale. It would appear that the presence of several strong political figures in the cabinet led to perpetual manoeuvrings as they struggled to gain advantage over rivals during policy processes and, especially, during provincial budget allocations. A senior government official confirmed this, arguing that the constant inter-ministerial tensions and struggles needed "someone to lay down the law", especially when MECs all wanted increased shares of the provincial budget each year.³⁷ It could be argued therefore that a 'hands-off' approach was the result not only of Sexwale's personal limitations, such as lack of expertise and technical management skills, but also the collective and individual political profiles of his MECs combined with their skills and technical expertise in their specific portfolios. His style of leadership therefore suited this scenario as it allowed the political 'heavyweights' in his cabinet to enjoy considerable freedom of action in their portfolios.

Finally, one of the weaknesses of Premier Sexwale's premiership was the lack of elaborate processes and practices to maintain regular direct contact with ordinary citizens. In addition to being a well-known public figure and media personality, Sexwale was popular within the high echelons of the ANC and amongst party activists. However, as was discussed in Chapter 4 in relation to the provincial legislature, Sexwale was premier at the time when the politics of public participation was not as advanced as it subsequently was under his successors. For instance it was only after 1998, under the premiership of Mathole Motshekga, that the province put in place elaborate programmes, structures and legislation aimed at promoting direct public participation in the government of the province. Prior to that, under Premier Sexwale, the provincial government was fairly distant in its dealings with ordinary citizens in the province, relying mainly on the use of the mass media and other forms of indirect communication to convey messages to the public. For instance, in his major speech at the opening of the legislature in 1996, Premier Sexwale informed the legislature that his government had communicated its achievements to the people through "several of our newspapers, magazines and videos..."³⁸ Therefore to some extent, the provincial government under Sexwale was fairly elitist in its character and orientation. It was

fairly comfortable developing strong and direct channels of communication with other elite interest groups in the province, such as organised business, development experts, trade unions and others. The Gauteng Economic Development Agency (GEDA), established by Sexwale's administration in 1996, was one structure serving to bring these interest groups together to discuss questions of economic policy and development strategies for the province. The provincial administration therefore lacked the grassroots orientation that became a common feature of governance under his two successors, as will be discussed in the following subsections.

5.4.1.3. Key institutional issues in the functioning of the executive

Sexwale's 'laissez-faire' style of leadership had resulted in a particular institutional design and consequences that caused a fair amount of disquiet among some of the key stakeholders in the provinces at the time. Some of the interviewees at the time also felt that the premier's leadership style and accompanying institutional design systems were detrimental to effective governance. Some of these consequences, as already pointed out, were lack of proper management, ineffective policy coordination and fragmented approach to policy-making by the cabinet. These are typical problems of a decentralised executive structure. Consistent with an office that was not engaged in any meaningful coordination and management of the activities of the provincial executive, Sexwale's office was one of the smallest at provincial level. For instance, a range of internal support structures dealing with issues such as legal advisory services, corporate services, human resource management, strategic policy and planning, policy research and labour relations were located outside the premier's office, operating mainly as self-standing entities within the larger provincial executive. These directorates are critical in providing the premier's office with the necessary knowledge and expertise in the various policy issues under the jurisdiction of the provincial departments. They also provide the necessary linkages with other units and directorates in other provincial departments, thus extending the reach of the premier's office into different policy sectors. Also, the office of the provincial Director-General was situated outside the premier's office. Because of this arrangement premier Sexwale's office lacked the necessary institutional capacity to compensate for his widely acknowledged lack of technical management skills and ineffective coordination of the executive.

To illustrate this point, the North West province under Premier Popo Molefe had one of the largest premier's offices in the country, with about 200 officials at the disposal of the premier. All the executive directorates mentioned above were part of the premier's office, serving as support structures. As a result, the North West premier's office was very central to policy processes, creating synergies and coordinating policy and planning across departments and policy sectors across the province.³⁹ Also initially, the office of the director-general in the North West was located outside the office of the premier. The separation of the offices of the premier and the

provincial director-general led to two centres of power, thus causing severe political tensions between the two offices. The North West director-general at the time, Job Mokgoro, revealed that “two centres of power [political and administrative] emerged and the two lacked policy linkage and coordination”.⁴⁰ He added “there was no proper linkage between policies made by the cabinet on the one hand, and administrative policies on the other hand.”

Gauteng experienced fairly similar problems. For instance the location of the provincial director-general’s office outside of the premier’s office left the director-general’s office fairly isolated from policy decision-making processes in the cabinet. Some of the informants interviewed for this study testified to these problems, especially the structural weakness of the position of the director-general. One MPL argued that the role of the provincial director-general was “difficult without clarity”.⁴¹ A senior official from the executive’s corporate services unit added that the office of the director-general was weak because it was undermined by powerful MECs who insisted that heads of departments report directly to them rather than to the director-general as the head of the provincial administration. Therefore, as was the case in the North West, Gauteng had a problem of structural tension between the cabinet as the primary political leadership structure in the province and the office of the director-general as the primary administrative leadership structure. There was a fairly debilitating power struggle between the two, compounded by the fact that there was lack of proper role definition and clear functional boundaries between the MECs, the director-general and heads of departments.

This situation was compounded by the confusion resulting from the legal contradictions in the provisions of the Public Service Act of 1994 and the Provincial Exchequer Act of 1994. In terms of the Public Service Act, the provincial director-general was head of the entire provincial administration, while each of the ten or so provincial departments had its own administrative head. However, in terms of the Provincial Exchequer Act, the provincial director-general was the financial accounting officer of the entire province, including the individual departments. This was a serious institutional design problem in Gauteng at the time of Premier Sexwale. It created confusion and conflicts between the directors-general and the heads of departments. By extension, this problem also affected the authority of MECs as political heads of their departments in that their heads of department were also obliged to account to the provincial director-general as administrative head of the entire provincial government. There was a severe lack of clarity in terms of how the provincial director-general was supposed to relate to heads of department functionally and procedurally, especially in terms of financial accountability issues.

A senior official in the corporate services unit revealed some of the dynamics in 1996, saying “HoDs have two bosses – the director-general and the MECs, but they do not really want the

director-general”.⁴² The informant added that there was a “strong push from MECs to do away with the director-general”. In fact, this statement was later borne out by events towards the end of 1997 during the last few months before Premier’s Sexwale left office. Two MECs – Jessie Duarte (safety and security) and Dan Mofokeng (housing) laid complaints of misconduct and insubordination against the Director-General Vincent Mntambo.⁴³ This prompted Premier Sexwale to appoint the Khumalo Commission of Inquiry to investigate possible grounds for disciplinary action against Mntambo. Although the inquiry cleared Mntambo of charges of misconduct, it was a clear indication of the sour relations between him and some MECs, which blighted effective administrative management and policy coordination at the time.

Some attempts were made between 1995 and 1996 to overcome some of the institutional weaknesses in the Gauteng provincial executive. One of these was the establishment of a policy unit inside the premier’s office. Among its tasks the unit was intended to serve the office of the premier as a resource unit, with researchers to conduct public opinion surveys on perceptions about the performance of the provincial government. More importantly though, the unit was also meant to conduct analyses of key policy issues on which the premier intended to adopt a high-profile stance. The idea behind it was clearly to enable the premier to have an internal unit on which to draw technical support and advice when setting the vision for the province and determining the agenda for the provincial government. However, Sexwale’s office remained largely small and limited in its technical capacity to effect meaningful changes.

The second, fairly important, institutional change introduced was the decision to place the office of the provincial director-general inside the premier’s office. The decision was a clear strategic move intended to achieve a number of key objectives. Firstly, it was intended to strengthen the office of the premier by enhancing its institutional capacity for effective management and coordination of executive policy processes. Secondly, the decision was meant to integrate effectively the political processes within the cabinet, with the necessary administrative processes in the various departments. Thirdly, placing the office of director-general in the premier’s office was intended to complement the work of the policy unit referred to above. Its responsibility for conducting policy research and analysis, combined with the administrative coordination and management by the director-general was meant to enhance the institutional capacity of the premier’s office. Finally, placing the office of the director-general inside the premier’s office helped reduce its political weight and rendered it less threatening to the MECs. Essentially the office of director-general was turned into a largely technocratic/administrative tool of the premier’s office and by extension, the cabinet, which deprived it of its high-profile status that led to tensions with some of the MECs and their HoDs. However, this was not entirely successful in reducing the tensions between the director-general and some of the MECs.

Also, as indicated earlier in this chapter, the promulgation of the Public Service Laws Second Amendment Act of 1997 helped resolve the legal and practical confusion regarding the functions of the provincial director-general and heads of department as accounting officers. In terms of the Act, individual HoDs became accounting officers for their respective departments while the provincial director-general was retained the status of overall head of the provincial executive. This change of status further diminished the standing of the office of the Gauteng director-general in relation not only to the various heads of departments, but also to MECs as political heads of their departments. It appears though that this move did not entirely resolve some of the issues relating to the boundary of the responsibilities of the director-general in the province as overall head of the provincial administration. The office of the director-general was merely placed in a more subordinate position, thus further rendering it vulnerable to attacks by some MECs. One senior official in the corporate services unit argued that subsequently the Gauteng director-general became weak, even though it was still head of the provincial administration. This informant added “MECs see HoDs reporting directly to them and see themselves as having the last word on their relationships with their HoDs”.⁴⁴

Another less critical but still important institutional issue is the cabinet committees, which can play a valuable role in the management and coordination of the work of the cabinet as indicated above. Available evidence shows that Premier Sexwale had created a fairly rudimentary cabinet committee system at the time. As argued above, given that Sexwale’s cabinet was highly decentralised in its operation, such a rudimentary cabinet committee system appears inconsistent with its structure. Theoretically a decentralised cabinet structure would need a highly organised and elaborate cabinet committee system to bring some systemic consistency in the work of the executive, to ensure effective coordination. For instance in the North West province under Premier Popo Molefe, the province had a fairly centralised cabinet where the premier acted as powerful and centralising figure, pulling the activities of his cabinet together. Under premier Sexwale in Gauteng the opposite was true in that the provincial cabinet lacked a centralising force to hold it together. Logically therefore, a decentralised model of the executive would need cabinet committees to serve as arenas where much of the work of the cabinet, including routine policy decision making, would take place. The cabinet itself would usually serve as a plenary where such policy decisions are discussed and ratified.

Premier Sexwale’s cabinet had three cabinet committees.⁴⁵ These were ‘safety, security and quality of life sub-committee’, ‘finance, growth and development sub-committee’ and ‘RDP sub-committee’. This number was consistent with the number of cabinet committees in other provinces such as Mpumalanga and North West at the time. Interviews with senior officials from

the Gauteng provincial government suggested however that the operation of the cabinet committee system was not very organised or even efficient. It is not clear what the powers of these committees were, but it appears that they were meant only to help identify issues of concern for the attention of the provincial cabinet when it met. In other words, it appears that these subcommittees were under-utilised, perhaps consistent with the limited role that the premier's office played in the work of the provincial executive. Premier Sexwale did not stay long enough in office to complete his five-year term to ensure that some of the institutional changes he introduced would bear fruit. After only three years in power, he announced his intention in the middle of 1997 to step down as premier, thus precipitating one of the most acrimonious and divisive battles within the ANC to find a successor. That was the prelude to the premiership of Mathole Motshekga.

5.4.2. Provincial Government Under Premier Motshekga (1998-1999)

5.4.2.1. Brief background

Premier Mathole Motshekga's period at the helm in the Gauteng province was the shortest of any premier in the 1994-1999 period. It started on 19 January 1998 and ended on 15 June 1999. He was in office for seventeen months before being removed from office. Yet this was no ordinary premiership. As will be discussed below, Motshekga's arrival in office was bitterly contested within his party and after his victory he was dogged by controversy, intrigue and scandals for much of the time that he was in office.

Motshekga came from a legal academic and community activist background when he became premier. He obtained law degrees, including a doctorate, from the University of South Africa and an LLB from Harvard University in the United States of America. Among others, he lectured at Ludwig University in Germany and the University of South Africa between 1984 and 1994. He was admitted to the bar council in 1984.⁴⁶ Motshekga had worked as a clerk at the University of the North in the South Africa. He had carried out community-based work in townships around Pretoria in the mid 1980s, especially during the 'states of emergency' under the old apartheid government. As a result, he earned the title of 'people's lawyer'. He is known to have helped set up a number of organisations, including the National Children's Right Committee. He was recruited into the ANC's underground activities in the mid-1980s but never went into exile like many of the party's leaders. Motshekga is also a former president of the National Association of Democratic Lawyers. After the ANC was unbanned, Motshekga served the ANC as head of the party's constitutional commission in the Gauteng province, and was second in command in the party's national local government desk at the ANC party headquarters in Johannesburg.⁴⁷ Motshekga was voted into the position of deputy chairman of the ANC's Gauteng PEC in 1991 – a position he held until 1998 when he became premier. At the time when he was elected

premier, Motshekga was and still is a partner at a law firm Meltz, Le Roux & Motshekga in Johannesburg.

On the face of it therefore, Motshekga appeared to be best suited for the position of Gauteng premier, with better academic qualifications than his predecessor's. Also, at the time when he contested the leadership and the position of premier, he had considerable grassroots political support among various sections within the ANC, including youth and women's leagues and several regional branches of the party such as Pretoria, the Vaal region, East Rand and Kyalami – the latter including his stronghold of Ivory Park where he held the position of branch chairman. It is considered one of the biggest branches in the province.⁴⁸ Also, as former head of the ANC local government desk he had forged strong ties with organised local government structures in the country, which strengthened his position as a grassroots leader and community activist.

Perhaps this popularity was what put him on a collision course with the ANC establishment when he contested the premiership in the province. Moreover, Motshekga was widely perceived within the party leadership as a fiercely independent thinker and individualist. This was seen as risky for the party as there were fears that “he would go it alone and push [for] new ideas” without consulting the party.⁴⁹ Therefore, Motshekga evoked a fair amount of anxiety within the high echelons of the party. The top leaderships of the ANC and its alliance partners like COSATU and the SACP actively opposed his candidacy, thus precipitating serious political tensions between those who supported Motshekga and those opposing him. The ANC leadership went the extent of attempting to thwart Motshekga's ambition to become premier by putting forward Amos Masondo, then MEC for health, and later Reverend Frank Chikane, director in the office of deputy president Thabo Mbeki, as alternative candidates.

It was clear that unlike former Premier Sexwale, Amos Masondo and Frank Chikane who had a good standing as leaders either within the tripartite alliance or other affiliated organisations, with impeccable liberation struggle credentials, Motshekga was a relative outsider without a long track record in the liberation struggle. He was also not part of the mainstream political leadership of the ANC in the province when he contested the premiership. The fact that he was deputy chairman of the PEC in Gauteng during that period did not make it easier for him. One informant from the ANC revealed “people isolated him when he was deputy chair of the ANC and they never associated with him”.⁵⁰ Therefore his status as an outsider in the party rendered him politically weak as head of the provincial government, especially in the eyes of many of the MECs that he found already in the provincial cabinet. His victory was widely perceived as a grassroots revolt against heavy-handed interference by party leaders in the affairs of provincial party branches. However the controversy also raised key questions about provincial autonomy

and the value of the system of provincial government in South Africa. Motshekga's victory implicitly suggested political strength deriving from his popularity among the grassroots support structures within his party, at the same time as it pitted him politically against the mainstream leadership of his party, thus setting the scene for a volatile period of government in the province between 1998 and 1999.

5.4.2.2. Leadership, style and impact

Motshekga's arrival in the office of premier faced severe hostility and opposition not only from the party leadership in the province but also from within his new cabinet that he took over, completely unchanged. It was widely reported in the media at the time that almost all the MECs in Motshekga's cabinet had opposed his candidacy, with two of them (Jessie Duarte and Amos Masondo) actively campaigning against him. One ANC informant confirmed that "the majority of the cabinet members were hostile to him, they didn't support him when he came in".⁵¹ Combined with this was the fact that Motshekga became premier in the middle of a term of office. The previous incumbent had served three of the five-year term, which left Motshekga with just under two years to serve as premier. Therefore not much time was left for him to make the necessary structural and political changes to the provincial executive to have meaningful and lasting impact in the government of the province. In particular, Motshekga faced severe political and structural limitations in that he inherited a full cabinet appointed by his predecessor that was hostile to him. However, surprisingly, it was during Motshekga's premiership in 1998 that the provincial government introduced the most extensive set legislative programme ever produced in a single year in the province over the ten-year period covered in this study. As indicated in Chapter 4, the legislature processed 18 bills during that session, covering a wide variety of policy issues such as gambling, public transport, housing, education, local government, social welfare and tourism. One of the most innovative policy initiatives was introduced in terms of the Gauteng Tourism Act of 1998, which made provision to impose levies on tourist establishments in the province to help develop and market the industry.⁵² This was the first provincial revenue-raising initiative of its kind by a provincial government at the time.

Motshekga had a distinct style of leadership that endeared him to some within the ANC in the province but also earned him ardent critics. His supporters saw him as a highly intelligent leader, a powerful orator and a visionary.⁵³ He was considered an individualist and 'a free thinker' with a lot of ideas. He was not loath to disagree with or dissent from his party line. He was also outspoken, which on occasions led him to openly criticise the provincial government's policies in the past, especially from his position as chairman of the legislature's portfolio committee on local government.⁵⁴ One informant stated that "he had strong views and he engaged in debates and arguments, defending certain ideas".⁵⁵ In other words, unlike his predecessor who essentially

allowed free contestations among MECs in his cabinet while staying clear of such contests, Motshekga usually chose to be part of these contests, sometimes initiating them. This suggests that premier Motshekga did not attempt to stand above cabinet conflicts and be in the position to bring together the ‘warring’ factions within his executive whenever necessary, as was the case with Premier Sexwale. However, like his predecessor, Motshekga often raised uncomfortable questions about the division of power and authority between central government and the provinces. As discussed in Chapter 2, Motshekga resented the power of the MINMECs through which central government departments could make decisions that were binding on provincial executives. Therefore Premier Motshekga could be regarded as one of the few ANC premiers who dared question openly the unequal relations between the central government and the provinces, which his party certainly did not appreciate.

Motshekga was the first premier in Gauteng to initiate the practice of direct interactions between the provincial executive and communities in the province. This was done through road-shows and community meetings where the premier and his entire cabinet would meet community members to report on his government’s social policies, service delivery activities and general progress. For instance, two months after taking over in 1998, Motshekga announced that his government would spend R5 million on province-wide communication campaigns, including road shows, to publicise government programmes among communities in the province. As already discussed, Motshekga became premier on the back of his grassroots popularity and adopting this practice of direct interactions between his government and local communities in the province may have been an implicit tactic to maintain his political base.⁵⁶ This practice proved to be fairly popular with communities around the province and was one of the features of his leadership that set him apart from his predecessor. Unlike Sexwale, who seemed far more comfortable among elite groups such as organised business, foreign investors, local and foreign dignitaries, the media and others, Motshekga appeared far more at home among local communities. In fact, as will be discussed below, Motshekga’s successor, Mbhazima Shilowa, adopted and continued this practice of community meetings and executive road-shows, making it more regular and systematic than Motshekga.

Besides his positive attributes Motshekga also had weaknesses that accounted for a fairly chaotic style of leadership and eventually harmed his premiership irreparably. He was highly disorganised and lacked effective management and organisational skills.⁵⁷ He is believed to have a history of over-extending himself by engaging in too many, often unsuccessful, private ventures simultaneously. One informant indicated that at one stage Motshekga was believed to have set up a total of 33 private businesses and/or organisations under his name, many of which were either struggling to function properly or did not exist at all. Another informant argued that Motshekga

had a habit of getting engaged in “too many ventures outside the legislature and could not master even 20% of them”.⁵⁸ One ANC MPL said that when Motshekga was deputy chairman of the PEC in Gauteng, “he was unable to chair PEC meetings effectively...the meetings would usually disintegrate...[he was] unable to hold together all the factions within the party”.⁵⁹ Another MPL described Motshekga’s intellectual style as being “all over the place...he had too many ideas but he had not the faintest idea of how to operationalise them”.⁶⁰

Perhaps because of his academic background, Motshekga was always generating and articulating new ideas and opinions about a range of issues. However he lacked the ability to conceptualise the practical application and implementation of many of these ideas. He was prone to making impulsive decisions, sometimes announcing innovative projects and policy initiatives on the spur of the moment, which eventually fizzled out due to lack of ‘follow through’ from his office or insufficient ‘buy in’ from his colleagues in the executive. One such initiative that he vigorously pushed for was the establishment of “an alternative criminal justice system” based on municipal and community or ‘people’s’ courts.⁶¹ What was more damaging for Motshekga was that he tended to ignore sound political and legal advice. On several occasions this led him into trouble after making politically and legally naïve public statements that severely embarrassed his own government and the ANC. The most infamous example was an incident in April 1998 when a farmer in a Benoni smallholding shot and killed a small black child and wounded the second one.⁶² Motshekga impulsively declared that the farmer’s property would be confiscated and handed over to the mother of the dead child. Another incident occurred in May of the same year, at the Mamelodi campus of Vista University. On that occasion Motshekga pledged that, in order to combat the taxi violence that had affected the province at that time, all the taxis owned and illegally operated by public servants would be confiscated and donated to the victims of the taxi violence.⁶³ Both statements were not only embarrassing for their apparent disregard for the due process of the law, but they also made the premier, a trained lawyer, come across as ignorant of the law in that only duly constituted courts of law, rather than elected politicians, were competent to make such judicial judgements.

Compared to Premier Sexwale, under whom provincial government in Gauteng was fairly serene, provincial government under Premier Motshekga became tainted with an image of scandals, blunders and political intrigue. For instance, a day after taking office Motshekga was embroiled in allegations of nepotism, self-enrichment, misappropriation of international donor funds and even spying for the apartheid regime in the 1980s. The scandal virtually paralysed his office and overshadowed the work of his government. Although the Negota Commission of Inquiry appointed by the ANC eventually cleared him of these allegations, the Commission made fairly damaging findings of a history of administrative chaos, lack of financial management skills

and little regard for accepted management practices. Motshekga was described as a shambolic administrator who performed his duties as former director of the National Institute for Public Interest Law in the 1980s in a “disorganised and haphazard manner”.⁶⁴

Immediately after Motshekga took over as premier, evidence of chaos in his office was widely reported, including the leaking of secret official documents to the press and the opposition DP in the provincial legislature. Some of the leaked secret documents referred to allegations of corruption, nepotism, fraud and mismanagement in some departments such as Housing, Safety and Security as well as Development Planning and Local Government. The opposition DP used some of the leaked documents relentlessly to put enormous pressure on the premier through questions in the legislature and highly damaging press coverage. These incidents created a sense of crisis and panic within the ANC, while also fuelling speculation among commentators of widespread political intrigue and skulduggery within the provincial executive to unseat the premier.⁶⁵ The subsequent over-reaction by Motshekga, issuing legal threats to newspapers and journalists as well as to the opposition DP just added to a sense of panic.⁶⁶ Also, the legal threats to some newspapers and journalists signalled the extent to which relations between the media and the premier’s office had become hostile, especially in contrast to the cordial relations between the two under Premier Sexwale. Apparently, the police and the intelligence services were also called in to investigate the sources of the leaks from Motshekga’s office, accompanied by threats to force his office staff to sign secrecy oaths. All this portrayed Premier Motshekga as politically weak and also paranoid. The legal threats that he made to the DP also resulted in a climate of increased tension and adversarial confrontations between the ruling party and the opposition in the legislature, which again provided a clear contrast between Motshekga’s style of leadership and that of his predecessor who was fairly successful in avoiding such party political squabbles.

Some of the informants interviewed for this study believed that the tensions, political intrigue and machinations that preceded Motshekga’s arrival in office had a severe impact in his approach to government. For instance Motshekga was surrounded by many of his enemies in the cabinet and the PEC. The majority of the MECs he had inherited from his predecessor had opposed his candidacy for premiership, and therefore implicitly did not trust him as leader. According to some of the informants, Motshekga also did not trust many of those around him in the cabinet and the PEC, on which he served as chairman. Former MEC in Motshekga’s cabinet, Mondli Gungubele, argued “there was a clear sense that he was unacceptable to the existing situation and the environment he was placed in charge of...there were internal factions within the ANC and the PEC, including factions against Motshekga...Motshekga found that the cabinet was not in favour of him”.⁶⁷ Former MEC Mary Metcalfe added that the acrimonious nature of Motshekga’s

arrival in office “created a climate of mistrust in the cabinet...he did not trust anyone”.⁶⁸ This was endorsed by another former MEC in Motshekga’s cabinet, Sicelo Shiceka, who argues “Mathole came in...in a bruising battle...he was a person...who was not trusting people around him”.⁶⁹

This lack of trust in those around him perhaps partly explains some of Motshekga’s actions as premier, including the habit of ignoring advice from his colleagues. One informant corroborated this, arguing that “he was a person who didn’t listen to advice...[when] you talk to him, he would pretend to understand but he would do something else...compared to Tokyo, if you had agreed with Tokyo on anything, he would back you up through and through. He [Motshekga] did not trust people...we didn’t even know who advised him on certain things”.⁷⁰ In fact Motshekga was known to rely on political advice from questionable individuals that he had appointed as advisers. It appears that this lack of trust in those around him caused Motshekga to ‘look over his shoulder’ constantly. In other words, there was an atmosphere of tension and mutual mistrust between the premier and many of those around him.

It appears that Motshekga subsequently became aware that his premiership depended on creating some semblance of rapport with his enemies in the PEC and the cabinet. This prompted him to attempt to gain their trust, resulting in bizarre tactical errors that ultimately weakened him politically. Some of the informants who were witnesses to the events that brought Motshekga to power painted an image of a premier torn between distrust of his enemies and a pragmatic desire to be accepted by his enemies. They argued that Motshekga’s first tactical error was his decision to leave the cabinet that he inherited from his predecessor intact instead of reshuffling. It is believed that the decision was informed by a naïve desire to appease his enemies. After his victory, many of the MECs who opposed Motshekga’s candidacy feared for their positions and expected to be dismissed. However, in addition to retaining these MECs in his cabinet, Motshekga left all of them in the same positions that they had occupied for considerable lengths of time, as a result of which they had acquired considerable experience and political capital within the party caucus. These were fairly experienced MECs who were not only entrenched in the administrative politics of their departments, but also entrenched in the power networks within government and the turf wars that came with this.

For his part Motshekga was not on such solid ground. He was new to his position and inexperienced in the processes of government. Therefore he had to learn everything relating to the formal and informal networks of power in the provincial administration, which undermined his authority over his cabinet colleagues. It appears also that his attempts to master these networks of power were ineffective. One informant confirmed this, arguing that former premier,

Sexwale, “was very confident in his authority”,⁷¹ compared with Motshekga who lacked the authority and needed to establish it through informal networks of support, loyalty and patronage. One informant argued “If I was him, I was going to reshuffle the cabinet, putting everybody into new portfolios so that when I learned my new position as premier, they would also be forced to learn their new portfolios, and they wouldn’t have the energy and strength to fight me.”

Apparently, Motshekga had received the green light from former president Mandela to “do what he thinks he must do, that he must appoint his own people if he wanted to”.⁷² The fact that he inherited a cabinet comprising many of his political enemies and left it unchanged may have been an attempt to gain the loyalty and support of his foes, both inside and outside the cabinet. One informant argued “he wanted to be accepted...therefore he went out of his way to make other people accept him, at the expense even of his support base inside the party, and you don’t do that in politics.”⁷³ The informant added that the people that Motshekga attempted to win over “are the ones who sank him”. Motshekga eventually got the opportunity to appointment two of his close allies to his cabinet only after the resignations of Jessie Duarte and Amos Masondo in April and June 1998 respectively precipitated a cabinet reshuffle. Incidentally, the two departing MECs were two of Motshekga’s ardent foes when he contested the premiership.

There are two other possible reasons why Motshekga refrained from carrying out a cabinet reshuffle when he took over. Firstly, there was frenzied speculation in media and inside the ANC about an impending ‘political purge’ of his enemies. Such rumours were so intense that they created a serious amount of uneasiness among many MECs, posing a risk of political instability within the provincial government and the ANC in Gauteng.⁷⁴ Motshekga confirmed this in a newspaper interview in May 1998, revealing that he “inherited a cabinet which was scared because of perceptions that I was going to reshuffle and that some people were going to lose their jobs”.⁷⁵ Motshekga added that “there were even stories that some cabinet members would not agree to work under me”. Secondly, despite former president Mandela’s reported support for a complete cabinet reshuffle, it is fairly certain that the ANC leadership would have been very keen to ensure as much continuity and stability as possible, especially given that a mere one-and-half years was left before the 1999 general elections were held when Motshekga took over as premier. It would therefore be plausible to suggest that enormous political pressure was brought to bear on Motshekga to refrain from any cabinet reshuffles when he took over. This explains why, prior to taking office and afterwards, Motshekga went out of his way to declare publicly that he would not reshuffle the cabinet.⁷⁶ Clearly, in addition to his desire to win over his enemies Motshekga had his room to manoeuvre, in terms of choosing his own cabinet, severely limited.

Some of the informants interviewed for this study argued that Motshekga's desire to appease his foes and win their loyalty was to blame for some of the key errors of judgement that he committed during his premiership. One of these errors had to do with the findings of the Moerane Commission of Inquiry, set up by Motshekga to investigate allegations of fraud, corruption and mismanagement against the department of Safety and Security. Among others, the commission investigated an attempted official cover-up of an incident in which Jessie Duarte was involved in an accident, driving an official car without a driver's licence. Among its recommendations regarding the attempted cover-up of the car accident, the commission urged the premier to take the matter to the attorney general for possible criminal investigations. However, Motshekga announced controversially that this recommendation would not be followed.⁷⁷ This decision surprised many observers, thus raising suspicions of a conspiracy by an alleged secret cabal of senior ANC leaders in the province which was supposedly manipulating Motshekga by offering him bad political advice in order to undermine his authority as premier.⁷⁸ After a public outcry, Motshekga was forced to make a humiliating retraction of his statement. There were other questionable decisions by Motshekga during his premiership that fuelled similar speculations that his enemies were constantly putting him under enormous political pressure that, in turn, led him to commit errors of judgement with fatal political consequences to his premiership. Some informants thought that these errors of judgment were not due to political pressure but due to self-interested decisions on Motshekga's part as he attempted to win over the loyalty and support of his foes in the party. Others, like Peter Leon of the DP, believed that Motshekga was "trying too hard to trade his intellectual character for a populist trademark...trying to imitate ANC leaders like Peter Mokaba and his predecessor Sexwale".⁷⁹ Whatever the case might have been, Motshekga's leadership was severely undermined by these problems and contributed significantly to his removal from office in 1999.

5.4.2.3. Key institutional issues in the functioning of the executive

Soon after Motshekga became premier, it was widely reported in the press that his office was in a shambles. Although he denied this initially, Motshekga subsequently acknowledged these problems in an interview in May 1998. He revealed that "there was basically no office to speak of..."⁸⁰ He had no personal assistant, press secretary or even chief director to oversee operations in his office. Apparently most of the staff in the premier's office had resigned when former Premier Sexwale left office, thus creating severe capacity problems in the office.⁸¹ This was compounded by Motshekga's lack of administrative and managerial skills as revealed by the Negota Commission. In fact the Negota Commission had called on the ANC to assist Motshekga to run his office – a proposal that the ANC took seriously because soon afterwards Public Service minister, Zola Skweyiya, was mandated by the party's National Working Committee to strengthen Motshekga's office by deploying skilled managers.⁸² However, Motshekga resented

this apparent interference by his party and opposed it vigorously in public, which strained relations between him and the party leadership. Nonetheless the institutional problems were real, which means that at a crucial time when Motshekga was still new to his position, his office was not in the position to provide the necessary institutional support he needed.

As indicated above, Motshekga had to deal with the unresolved problem of the precise role and the powers of the provincial director-general.⁸³ This was an institutional matter that former Premier Tokyo Sexwale had left office without resolving, and it continued to undermine the smooth functioning of the cabinet as well as the overall management of the provincial administration. To sort these institutional problems out, Motshekga made key staff appointments, including to the key post of deputy director-general, to stem the administrative chaos.⁸⁴ His attempt to designate the then Director-General, Vincent Mntambo, as administrative head of the cabinet, located in the premier's office, failed to resolve the problem and instead led to Mntambo's resignation in April 1998. The resignation of Mntambo was therefore an indication that there were still serious institutional issues that remained unresolved especially regarding the administrative leadership of the province. One key aspect of this was the complex relationship between the provincial director-general as head of the entire provincial administration, individual MECs as political heads of their departments and the individual departmental HoDs. Actually, the problem disappeared with the appointment of Mntambo's successor. This suggests that the problem was not purely a technical/functional matter, but was also a matter of interpersonal relations between Mntambo and some of the MECs at the time. Therefore subsequent provincial directors-general in Gauteng did not experience similar problems.

Another important institutional issue was the structure of the cabinet, especially cabinet committees and their operation in relation to the cabinet. As indicated above, Premier Sexwale allowed his cabinet to operate as a decentralised structure, but did not ensure that cabinet committees brought coherence and systemic coordination to the functioning of the cabinet. In contrast, it appears that Premier Motshekga was keen to centralise cabinet authority under him in an attempt to control and manage its activities. However, he lacked the necessary organisational and coordination skills to do that. As already discussed, Motshekga was an idealistic leader, with many ideas and initiatives, but often lacked the practical skills to see these ideas bear fruit. For instance, some of the interviewees revealed that Motshekga was constantly coming up with new ideas and initiatives, including setting up cabinet committees or subcommittees to carry out these ideas, which never bore fruit. One informant argued that the premier was constantly interfering with the arrangement of cabinet committees and changing their composition and functions. The same informant also revealed "Motshekga kept establishing new units and directorates in his office, which were not properly managed or monitored. He was also constantly fiddling with

cabinet committees, changing them and reconstituting them...”⁸⁵ This means that such constant structural changes in the executive would have caused a significant level of institutional instability. Given Motshekga’s acknowledged lack of organisational and management skills, it is safe to assume that cabinet committees were not more useful during his premiership than they were under former Premier Sexwale.

5.5. THE FUNCTION OF THE PROVINCIAL EXECUTIVE (1999-2004)

5.5.1. Provincial Government Under Premier Shilowa

5.5.1.1. Brief background

In the wake of the political turmoil caused by Premier Motshekga’s leadership of the Gauteng provincial government, there was clearly an urgent need for a new leader, especially from the political mainstream of the ANC/alliance, to provide the much-needed political stability in governing the province. Motshekga’s removal from office was widely expected by many observers and analysts long before it even happened. In fact it is common knowledge that his controversial victory for the premiership over rivals supported by the party leadership was one of the reasons that prompted the ANC to make a decision in 1998 that all future candidates for positions of premier would first have to be cleared by the party leadership.⁸⁶ The decision also presaged a shift within ANC thinking which saw the ANC at national level gradually rein in the provinces, especially the errant premiers who routinely questioned the authority of the centre over the provinces, ostensibly to ensure greater compliance with national political and socio-economic policy agendas. In Motshekga’s case, he had become a political liability for the ANC in Gauteng, especially as the 1999 elections approached.

Some of the informants from the ANC revealed that there were real fears that the Gauteng province was going to be lost if the ANC went into the election with Motshekga at the helm. Moreover, there were continuing fears among some of the MECs inside Motshekga’s cabinet that if the party had retained him as premier after the 1999 elections, he would have radically reshuffled the cabinet to remove some of his enemies.⁸⁷ There was therefore an implicit pressure from the ANC branch in the province for urgent intervention by the national leadership. An ANC member argued for example that “the people [Motshekga] wanted to win over, who were against him, continued to report to higher structures about his failures and weaknesses, even his utterances...they said Gauteng was going to be lost if it has this public face [i.e. Motshekga] during the election campaign”.⁸⁸ This informant added “nobody in the party could afford to lose a province of that magnitude...therefore the best thing was to put a new candidate that could

inspire the people...and ensure that the ANC wins'. Mbhazima Shilowa was the perfect replacement for Motshekga.

Shilowa was the popular choice for premiership in Gauteng and his popularity derived from the years of mobilising workers in the country through COSATU. He has been a member of the SACP's Central Committee since 1991 and a member of the ANC's National Executive Committee since 1994. He was also assistant secretary-general of COSATU from 1991 to 1993 and secretary-general from 1993 to 1999. Therefore he was from the political mainstream of the tripartite alliance. In particular, Shilowa is widely regarded as being close to the ANC leadership, especially President Mbeki.⁸⁹ He became premier in the same year that Thabo Mbeki became president, which makes his appointment seem highly strategic in terms of relations between the national government under President Mbeki and the Gauteng province as the country's economic powerhouse. Some analysts saw his appointment precisely as a highly calculated move by Mbeki, intended to "deliver the unions" to the ANC, especially at a time when the government's GEAR policy programme was increasingly coming under attack from some leaders in the labour movement.⁹⁰ In fact, it was well known that Shilowa was less vocal over GEAR compared with some of his colleagues within COSATU and the SACP.

Unlike his predecessor, Shilowa did not bring into the job a predominantly academic background. However he had a strong practical experience of getting things done, with approximately nine years of leadership experience at the helm of COSATU as assistant secretary general and later as secretary-general. His track record of mobilising millions of unionised workers against a wide range of industries in the country in defence of their rights provided him with an effective grounding in grassroots politics. He was popular not only within the ANC and its alliance partners, but also within one of the key actors in the country's economy – the country's labour force. He also had some support within the business sector – he received some endorsement from the Johannesburg Chamber of Commerce and Industry when his candidacy was announced early in 1999.⁹¹ Although, like the previous two premiers, he lacked the necessary experience and expertise in government, his long period as COSATU's secretary-general provided him with a significant level of technical and administrative experience and expertise that helped ease his entry into the job of premier, as will be discussed further below.

When Shilowa took power, party politics was experiencing significant shifts within the Gauteng provincial legislature. Constitutionally, the provisions governing the government of national unity had elapsed. The NP had not only lost its status as the official opposition in the party, but it had become one of the smallest parties in the province, while the DP had become the official opposition. The DP went on to become the DA during Shilowa's premiership and incorporated

some of the smaller white political parties in the legislature such as Federal Alliance, and at some stage even the NP, had adopted a fairly aggressive style of opposition towards the ruling ANC, which had also in turn adopted an equally hostile attitude towards the DA in the provincial legislature. Some of these the political developments had actually started under the premiership of Mathole Motshekga and had merely become more pronounced during the time of Premier Shilowa. Therefore political polarisation between the two main parties had become a strong feature of legislative politics in the province during Shilowa's first term of office.

However, administrative restructuring and rationalisation processes had been completed when Shilowa took over, meaning that institutions and systems were fully functioning. Also, public policies were put in place so that official public rhetoric had shifted decisively from preoccupation with the creation and rationalisation of new administrative systems and the formulation of new social policies, towards greater concern with the improvement of the quality, efficiency and effectiveness of these administrative institutions. Also as the new president after 1999, Thabo Mbeki had constantly referred to accelerated service delivery by the provinces, which had the effect of focusing the minds of all premiers, including Shilowa, predominantly on service delivery. Moreover, as argued in Chapter 2, one of the effects of Mbeki's rise to the presidency was a clearer division of labour between the national and provincial spheres of government whereby the central government increasingly, but not exclusively, focused attention on making policies and framework legislation; setting national norms and standards, as well as providing institutional and financial support to sub-national governments. The provinces had increasingly become policy administrators and implementers.

It appeared therefore that Shilowa's task, like other premiers', had become simply that of ensuring continuity and the speedy delivery of services. This perhaps explains why most of the long-serving and experienced MECs that Shilowa inherited from his predecessor were retained, although not all them in the same posts. Shilowa made only three new appointments when he took over in 1999 to fill the posts vacated by Dan Mofokeng, former MEC for housing; Joyce Kgoali, former MEC for transport and public works; as well as Sicelo Shiceka, former MEC for development planning and local government. The last two MECs were known members of former Premier Mathole Motshekga's faction and their dismissal was widely seen as signalling the demise of the Motshekga faction in provincial government. Overall though, it would appear that Shilowa's first term of office heralded a new era of political stability and a strong focus on practical and non-controversial 'bread and butter' issues.

5.5.1.2. *Leadership, style and impact*

Based on in-depth interviews with several Gauteng MPLs, a picture has emerged of Shilowa's leadership, which appears to suggest a transformation in his leadership style and approach in the first term of office. From an intense desire to consult colleagues and cabinet for advice and ideas in a clearly consensus-based style of leadership, especially during the early part of his term of office, it appears that Shilowa's approach changed towards that of increasing sense of self-confidence and self-reliance, especially later in his first term of office. Some informants argued that the increasing level of self-assurance reflected his gaining experience in the job and the confidence that accompanied this. Others felt that the self-confidence increasingly bordered on arrogance as the premier increasingly mastered his job as premier.

Obviously, when Shilowa took over he, like his two predecessors, was inexperienced in the running of complex modern institutions of government and managing its affairs. Unlike former Premier Sexwale who came to power at the time when the new provincial administrations were being established from scratch, and a range of institutions and processes had to be established anew, Shilowa benefited from all this institution-building, the administrative advances and all the groundwork laid by his predecessors during the 1994-1999 period. It would be reasonable therefore to conclude that when Shilowa took over, much of the hard work had been done. In other words, Shilowa took over a machinery of government that was already coherent and effective in its operation, with the necessary policies and programmes in place. His task was merely to ensure continuity by implementing existing policies and improving the quality of service delivery. He therefore did not have a lot to grapple with and learned his job fairly quickly. However, the fact that Shilowa found the broad policy frameworks and programmes of the provincial government already pre-determined, and had to continue their implementation without much modification, imposed some constraints on him. Therefore the initial willingness to consult cabinet colleagues for advice and his consensus-oriented approach was clearly owing to inexperience and his keenness to learn. It appears that he abandoned this approach afterwards, when it was safe to do so.

Interviews revealed that initially, Shilowa adopted a fairly consultative style of leadership that ensured that the cabinet was operating as a coherent and cohesive unit. One informant pointed out that due to his initial inexperience as a new premier, Shilowa even relied extensively on the advice of Jabu Moleketi, MEC for finance and economic affairs.⁹² The informant added "the two of them met regularly on their own to take decisions on a variety of policy initiatives...the two would make decisions and Shilowa would announce them...the whole Blue IQ⁹³ thing was started in the same way". Shilowa also consulted fairly widely when he put together his first cabinet in 1999. As already indicated, he opted for an experienced cabinet, obviously to improve

the chances of accelerated service delivery as demanded by Thabo Mbeki on becoming president in 1999. He only dropped three serving MECs from the previous cabinet and replaced them with three new appointments. Shilowa retained Mondli Gungubele, a well-known Motshekga supporter, and appointed Angelina Motshekga, wife of former Premier Mathole Motshekga, in 2000 as MEC for social services. Some informants believed that these two appointments came as a result of political pressure from the national leadership of the ANC for Shilowa to extend an olive branch to the Motshekga faction of the ANC in the province.

Shilowa is a good negotiator and communicator. Clearly, the years spent in the labour movement as well as the experience gained as a labour representative in the National Economic Development and Labour Council (NEDLAC) were helpful to him as a new premier, especially in avoiding the public relations disasters that characterised Motshekga's accession to the premiership. Many of the informants interviewed for this study agreed that Shilowa is an effective manager and a good communicator. Also, he appears to have managed and coordinated the provincial executive effectively since he took office. One informant argues that Shilowa is a "good manager,...a very good and effective chairman of cabinet meetings and helps it to take collective decisions".⁹⁴ Another informant added that Shilowa is "highly structured and procedural in his approach...he insisted on meeting every individual MEC to discuss issues, to be briefed and for enforcing accountability".⁹⁵ Clearly, in contrast to his predecessors Shilowa believes in clear and elaborate systems and procedures to anchor his authority, especially through regular and systematic reporting and accounting by the MECs not only to himself as premier, but also to the provincial legislature and the general public.⁹⁶ One informant endorsed this analysis, arguing that unlike Sexwale, who was very confident of his authority, "Shilowa is less so and needs to assert it more and does so through structure and reporting".⁹⁷

Also, during the 1999-2004 period, Shilowa introduced the idea of releasing and presenting progress reports to the legislature on the achievements of his government.⁹⁸ This was combined with a programme of regular community outreach activities, commonly referred to as road shows, that Shilowa adopted from his predecessor, Mathole Motshekga. It involved a series of 'imbizos' or community meetings whereby the provincial executive visited various local communities to report on the activities of the provincial government. These meetings were fairly popular among local communities and served to enhance the popular accountability of the provincial government.⁹⁹ The direct interaction with ordinary people helped dispel long-standing perceptions that provincial governments were distant from their citizens despite their *raison d'être* being to 'bring government closer to the people'.

One of Shilowa's campaign slogans was 'good governance' and his apparent efforts to promote accountability may have implicitly derived from this commitment to promote good governance in

the province. For instance, some of the MPLs interviewed for this study revealed that Premier Shilowa preferred to have a strong provincial legislature capable of enforcing accountability on his government. In fact Shilowa was quoted in a newspaper interview, before he took office, as saying “I will also expect the opposition to keep an eye on the provincial government and keep it on its toes to do as they promised voters”.¹⁰⁰ He added “I would like even ANC MPLs asking critical questions in the legislature about the provincial government, even use the opportunity to question the premier.” Clearly Shilowa had crafted a style of leadership that conveyed a sense of transparency and willingness to subject his government to scrutiny. Some of the informants pointed out that as COSATU secretary-general, Shilowa was entirely responsible for reporting and accounting to the members on all aspects of the Federation’s affairs. This meant that he had to have a thorough knowledge of the operations and activities of the organisation in order to be able to account and report effectively to the stakeholders.¹⁰¹ This clearly had a significant impact and shaped his approach and leadership style as premier. One informant argued that Shilowa insisted on being “briefed about everything...[he] wanted to know everything...about individual departments”.¹⁰² Another informant pointed out that Shilowa “had knowledge of what was going on around him...he made efforts to inform himself of what the departments were doing”.¹⁰³

During the interviews it became obvious that a division existed in terms of perceptions about the meaning of Shilowa’s leadership approach. As indicated above, there was a feeling among some informants that Shilowa genuinely believed in a consensus-seeking style of leadership and promoted collective decision-making practices in the cabinet. Others, however, questioned the extent of his commitment to genuine consultative and collective decision-making. For instance there is a school of thought that emerged during interviews that contends that Shilowa tends to resort to collective decision making as a strategy to avoid making difficult and controversial decisions. One informant argued “Shilowa gave the impression of a premier who believed in collective decision-making processes. However this was a cover he used to avoid taking tough decisions”.¹⁰⁴ This informant added that “instead of making difficult decisions, he would go to the cabinet or the PEC for a decision”.¹⁰⁵ The informant added that in contrast, “Motshekga was not afraid of tough decisions, even if they landed him in political trouble with the party. He took tough decisions and took the rap for them”.

To illustrate the point, in February 2002 the Gauteng provincial government decided to start rolling out a programme of antiretroviral drugs to pregnant women infected with HIV/AIDs throughout the province. Contrary to public perceptions created by media reports some informants pointed out that Premier Shilowa did not take the lead and instead deferred to the party. The decision was largely credited to Shilowa by the media, and it prompted newspaper headlines such as “Shilowa starts AIDS drug revolution”, “AIDS Drugs: Shilowa’s bold step”

and “Shilowa’s plan gets the go-ahead”.¹⁰⁶ It was clearly implied that Shilowa made the decision and therefore defied the national government’s policy stance on the issue. However this perception was contested by some of the informants interviewed for this study, who argued that Shilowa avoided taking the lead on this matter, and that instead the PEC took the difficult decision. One informant argued “It was a decision of the party’s Provincial Executive Council, not even of the cabinet”.¹⁰⁷ Another informant pointed out that “it was a party decision and the government. It was not an individual person...”¹⁰⁸

However, it could also be argued in defence of Shilowa that the ANC’s 1998 policy decision on the appointment of premiers by the national leadership of the party has been crucial in limiting the room to manoeuvre for ANC premiers. As predicted by many analysts, one of the effects of the decision has been to eliminate ‘populist’ premiers who are prepared to go it alone, occasionally disregarding party structures and collective decision-making processes. One of the major criticisms of the policy was that it would result in the appointment of ‘middle of the road’ premiers who played it safe and conformed to party directives. It is common knowledge that on several occasions, former premiers Sexwale and Motshekga were able to defy the party or even make critical public statements against central government. However this was prior to the 1998 policy decision. Shilowa is a new generation premier and is definitely not in the same mould as Sexwale and Motshekga. Even before assuming office in 1999, Shilowa was already stating in a newspaper interview “I want the provincial government to be answerable to the national government...”¹⁰⁹ Therefore what his critics saw as inability to make difficult and unpopular decisions on his own may just be a strategy to play it safe and be a ‘team player’, which is what a party like the ANC, with a strong and centralised system of authority, would value most in a premier.

Despite this perception of Shilowa as a compliant premier, some informants felt that as he gained more experience on the job as premier and the resulting self-confidence, he increasingly became unilateralist in his approach and gradually dispensed with consultative and collective decision-making practices. One informant also pointed out that when he first became premier Shilowa “appointed MECs but did not insist on appointing heads of departments. The MECs were given the latitude to appoint their own heads of department”.¹¹⁰ However after the 2004 elections, Shilowa apparently went ahead and appointed several heads of departments in the province, and also moved several others to different departments, “without the knowledge of the MECs concerned”.¹¹¹ Another informant argued that “he got involved in these appointments, without proper consultation...something he never did previously”.¹¹² This informant argued that the relationship between an individual MEC and “the people you work with are very important...the staff that you work with, you must have complete confidence and trust so that there are no

conflicts, you don't spend time fighting among yourselves..."¹¹³ There was a general feeling therefore that a certain level of arrogance had been increasingly creeping into the style of leadership of Premier Shilowa lately, replacing the initial tendency to consult and promote collective decision-making practices. However the apparent arrogance is clearly confined to his cabinet and does not extend to the relationship between the provincial government and the national government.

5.5.1.3. Key institutional issues in the functioning of the executive

On coming into office, Shilowa carried out a number of institutional changes not only to restructure the premier's office that had become chaotic, unmanageable and uncoordinated under former Premier Motshekga and his provincial director-general, but also to align it with the objective of accelerated service delivery. In other words, Shilowa wanted a coherently working office with the necessary support structures and skilled personnel to ensure that he had the capacity to manage and coordinate the provincial executive effectively. Within the first year of his term, he had appointed a new and highly skilled provincial director-general to pull the administration together and bring about strategic coherence. Shilowa also appointed a deputy director-general in his office to oversee the operations of the office and to enhance its effectiveness in communicating with the media – a notable weakness under Premier Motshekga.

As part of the institutional restructuring process, one informant pointed out that Shilowa abolished a number of units within the premier's office, including the strategic planning unit that was established under former Premier Tokyo Sexwale, and created an entirely new policy unit to strengthen the capacity of his office to monitor and ensure policy coherence and coordination across provincial departments. Incidentally the new policy unit inside Shilowa's office mirrored a similar structure in the office of the then deputy president and later President Thabo Mbeki (the policy Coordination and Implementation Unit (CIU)) established in 1998 also to enhance policy coordination and monitoring of policy implementation across national departments. This was critical for realising Mbeki's vision of integrated and coordinated approaches between the two spheres in the implementation of national policy programmes and service delivery.

Amidst these institutional changes, Shilowa's office experienced severe stresses, tensions and instability among the staff in 2000, leading to a spate of senior staff resignations. One newspaper went as far as reporting that the premier's office was "in a state of total chaos and near collapse",¹¹⁴ which prompted immediate official denials reminiscent of former Premier Motshekga's own virulent denials when reports of administrative chaos in his office first appeared in the press in 1998. It is important to note therefore that both Motshekga and Shilowa experienced severe difficulties with their offices on coming to power, suggesting that the office

of the premier is a critical institution to stabilise first when a new premier is appointed. However, the provincial executive in general and the office of the premier in particular did subsequently achieve a measure of stability and functioned fairly effectively to ensure coherence throughout the Gauteng provincial government during the rest of the 1999-2004 term of office.

5.6. POLICY PRIORITIES AND IMPLEMENTATION

5.6.1. First Term Of Office (1994-1999)

As already argued in this chapter, the Gauteng provincial administration was established virtually from scratch, using few administrative components inherited from the previous TPA and related structures. This process took nearly two years to complete, which meant that much of the province's newly created administration was not functioning at full capacity between 1994 and 1996.¹¹⁵ During that time the province experienced a wide range of problems related to lack of capacity in policy coordination and planning at departmental level as well as fragmented strategic approaches by different departments.¹¹⁶ This was the time when heavy demands were placed on the provincial bureaucracy to start implementing the government's RDP projects. It was only after 1996 that there was sufficient capacity for departments to undertake planning as well as effective policy implementation and delivery of basic services. The provincial public administration has subsequently developed into an effective modern public service with the necessary institutional capacity to handle some of the complex tasks of policy making, management and implementation of national and provincial policy programmes.

The province's public administration was found to be one of the two best-run provinces in South Africa by the Ncholo provincial review commission in 1997. Among others, the commission's report classified Gauteng as being "well run" and that it has "competent, dynamic and creative managers".¹¹⁷ The Ncholo report drew attention to the fact that Gauteng "benefits...from strong and effective leadership by its senior managers".¹¹⁸ It added that the province has "access to the highest level of skills in the country" and that it is in a position to "draw on the best administrative and managerial capacity that South Africa has to offer".¹¹⁹ Importantly, the report suggested that Gauteng was institutionally and administratively so advanced that public administration managers "appear to be primarily limited...by legislative constraints and the restrictive nature of nationally imposed systems in the public service".¹²⁰ To underscore this point, the report further added "the province has taken the...lead in putting many of its systems in place, so much so that national departments and other provinces use its resources to assist them with their development".¹²¹ This assessment of the administrative and institutional strength of Gauteng was endorsed in 1998 by the Presidential Review Commission (PRC) set up in 1996 by President Mandela. Broadly, the PRC was mandated to investigate and evaluate the

effectiveness of government institutions and administrative systems at national and provincial level.¹²² Among others, the PRC report stated that Gauteng, together with Western Cape “seemed to have functioned better than other provinces...”¹²³

It should be noted that the positive evaluation of the Gauteng provincial administration by both the Ncholo Commission and the PRC does not suggest that there were no problems. In fact, the Ncholo report on Gauteng did identify some of the administrative and functional problems found. These included, among others, lack of clarity on the respective roles of politicians, heads of departments and the provincial director-general; problems in the monitoring and coordination of cabinet decision-making, which prevented effective implementation of decisions by government departments; lack of financial management capacity and skills in some provincial departments; and the centralisation of financial management functions.¹²⁴ However the PRC report added that “It was refreshing, in the case of Gauteng, to be offered not only problems but solutions as well. We recommend that these solutions are shared with other provinces through the appropriate intergovernmental structures”.¹²⁵ All this therefore portrays a province with not only strong and effective administrative institutions, but also strong and effective administrative leaders capable of grappling with the challenges they faced regularly.

As already argued in previous chapters, provinces in South Africa have fairly limited room to manoeuvre, not only in terms of exclusive policy-making functions, but also in meeting most of their own locally formulated social policy priorities. Despite its status as ‘the goose that lays the golden egg’ in the country, Gauteng has been just as financially constrained as the other provinces over the years. The key cause of this financial constraint is lack of adequate powers to raise revenues from local sources, and the resultant dependence on fiscal transfers from central government. In fact, Gauteng has experienced a decline in revenues raised from local sources. In 1995/96, the province raised 7.7% of its total budget,¹²⁶ which declined to 6.0% in 1998/99 and has not increased significantly from this level. This decline in locally raised revenues has also occurred for all the provinces in general, from 5.6% in 1995/96 to 3.6% in 1998/99 and remained below 4.0% in 2003/4.¹²⁷ Before 1997 the financial constraints on the provinces had severe consequences in terms of provincial freedom to determine allocations to the various departments. This was caused by the system of provincial allocations at the time. It was based on centralised intergovernmental negotiations inside national ‘function committees’ for each policy sector rather than for each province.¹²⁸ However after the 1997 budget reforms based on the ‘equitable share’ provisions of the new constitution governing fiscal transfers, provincial allocations were transferred as lump sums, giving provinces some room to manoeuvre in determining their allocations to specific policy programmes.

The issue of funding for service delivery was one of the key battlegrounds between the Gauteng provincial government under Premier Sexwale, and central government. The funding environment became stringent after the introduction of the country's macro-economic policy framework in 1996. GEAR imposed a stringent regime of fiscal discipline measures on the provinces and Gauteng, which contributes a large proportion to the country's gross domestic product, was severely affected. For instance, the province experienced a reduction in its national budgetary allocations, resulting in budget cuts in some policy sectors, especially education. Despite the demands for fiscal discipline Gauteng, like other provinces, was obliged to meet the urgent social policy priorities, including complying with nationally imposed norms and standards as well as the funding parameters specified by central government in the delivery of basic social services.

Premier Sexwale was very vocal on the debilitating financial constraints at the time, regularly warning against potential damage to the province's economy of redistributing wealth generated in Gauteng.¹²⁹ For instance, in a policy speech to the legislature in 1996, Premier Sexwale decried the fact that Gauteng was penalised for adhering to fiscal discipline requirements. He argued "it is proper to reward and not punish those who are adhering to principles of good governance".¹³⁰ In the same speech Sexwale decried the resultant budget cuts in education, which had "placed great restrictions on our ability to meet increasing demand for education in Gauteng". He criticised the fact that "other provinces that have not been as disciplined...have been assisted with grants from the national government". This was in reference to central government's policy at the time of enforcing budget cuts in richer provinces like Gauteng in order to redistribute funds to some of the poorer provinces like Eastern Cape and Northern Province that had overspent their budgets.

Despite the fact that Gauteng is the wealthiest province in the country, with a comparatively well functioning and effective public administration, it pursued largely similar social policy programmes as other provinces, especially during the early part of the 1994-1999 period. For instance, the province devoted the largest proportion of its budget (over 85%) to the three key social policy programmes of education, health and welfare (mainly social grants).¹³¹ The delivery of low-cost housing was also one of the key political priorities for Gauteng. The three social policy programmes, including low-cost housing delivery, were key pillars of the government's RDP priorities during the 1994-1999 period as the new post-apartheid government attempted to overcome the legacy of past racial inequality in the distribution of resources. Due to the political importance of these policy programmes, the provinces have generally had very limited scope to redirect resources to other areas of priority, and Gauteng has not been an exception.

In addition to the financial constraints, Gauteng also experienced fairly similar problems that affected other provinces in the implementation of RDP programmes and projects during the 1994-1999 period. Due to the province's widely acknowledged well-functioning administration, analysts in general have tended to overlook these operational problems. In particular, problems undermining effective strategic planning and prioritisation of RDP programmes and projects were typical.¹³²

Another critical problem that Gauteng has grappled with for a long time, which also affects other provinces, was the large proportion of spending in the social services sector that goes to personnel costs and social security. High personnel expenditure leaves very little for other critical non-social services priorities, particularly investment in public transport, public works, tourism and the building of the province's industrial capacity and infrastructure. For instance, in the 1996/97 budget, Gauteng was spending 52% on personnel.¹³³ The figure went up to 59.8% in the 1999/00 financial year – the provincial average was 61.7%.¹³⁴ In terms of capital expenditure the province spent only 9% (R1, 076 billion) of its 1996/97 on capital projects. However, Gauteng has subsequently made the most efforts compared with other provinces in increasing its allocations to capital expenditure. In the 1998/99 budget, the province allocated 11.3% (R1, 7 billion) to capital expenditure. Only KwaZulu-Natal came close with R1.4 billion.¹³⁵ This shows that the province was increasingly realising the importance of investing more resources in these economic sectors especially after 1996, when it became evident that a strategic development path for the province, based mainly on large-scale social spending, would not only run foul of the country's stringent macro-economic policy regime, but would also be inadequate to stimulate economic growth.¹³⁶

Initially though, the provincial government vacillated between two strategic alternative development strategies – deciding whether to prioritise general social development and consumption spending over economic growth through promotion of foreign direct investment or vice versa. Obviously, massive state expenditure in social service delivery was critical for the ANC's predominantly impoverished political support base while fiscal discipline, foreign direct investment and economic growth were urgent priorities for the business sector. The provincial authorities resolved this dilemma by adopting both options as equal priorities in order to avoid making a clear choice and risk offending either constituency. Premier Motshekga referred to this as “an integrated model for rapid development and delivery of social services”.¹³⁷ However, the outcome of this apparent indecision was a clash between strategic planners inside the provincial government who sought better clarity on key priorities for purposes of effective planning, and politicians who, for purposes of political expediency, tended to promise large-scale state expenditure on social services, at the same time as they promised economic growth and

investment in infrastructure. For instance, one senior public servant admitted to this conflict and tension between planners and political leaders, arguing “politicians must understand that senior civil servants do understand the art of the possible, given various constraints...this tension undermines the ability of government to act and make workable decisions”.¹³⁸ Another senior official stated that there was “complete disjuncture between politicians and priorities... politicians say ‘police, economic growth, housing delivery...’ while the province actually pays pensions, does schooling and health...there is a big gap between this and the vision statements of the province”.¹³⁹

However there is no doubt that the 1994-1999 period in Gauteng was dominated by large-scale spending as part of the government’s RDP, especially in the three social services areas of education, health and welfare. As already argued, the provision of low-cost housing was particularly important in that it encapsulated the political urgency of visible delivery not only at national level but also at provincial level. The Gauteng provincial government placed special emphasis on this sector because expenditure in large-scale housing provision was seen as part of the province’s capital expenditure and infrastructure investment programme that was vital for leveraging economic growth in the province.¹⁴⁰ Housing provision in Gauteng therefore proved to be one of the battleground policy issues between the province and the national government in the early part of the 1994-1999 period. For instance, a highly publicised clash occurred between Gauteng and the national housing ministry in 1994 over the province’s approach to low-cost housing delivery, which underscored the high stakes involved in this policy sector at the time. In his first major policy speech to the provincial legislature in May 1994, Premier Tokyo Sexwale declared, “we shall not be party to any scheme or plan whose eventual outcome on housing is to create serviced informal settlements in the name of housing. People deserve...to live in proper low-cost houses”.¹⁴¹ Sexwale had also controversially committed his government to spending R90 billion to deliver a total of 150 000 housing units per annum, fully supplied with all the essential services such as electricity, running water and telephones. Gauteng’s target was in excess of the national government’s estimated target of 50 000 units in the same year.¹⁴² Also when the pledge was made, the Gauteng province was still building its administrative structures like other provinces, and would therefore not have had the necessary institutional capacity in place to deliver 150 000 housing units within a year.

Moreover, the costs of the housing units as envisaged by the Gauteng government would have far exceeded what the national authorities had in mind. As Tomlinson points out, Gauteng’s pledge was based on “unconfirmed commitments of R4.5 billion by the pension funds and life offices industry and a further R750 million by central government”.¹⁴³ Importantly though, the pledge was ultimately a direct challenge to the division of powers and functions between the

national and provincial levels, whereby the latter was essentially expected to implement policies largely designed at national level. It is important to note also that at the time of the clash the system of provincial government in South Africa was still in its infancy, before the complex ensemble of intergovernmental structures such as the MINMECs, IGF and others were established to deal with such policy differences and forge consensus approaches to avoid conflict. To some extent the incident helped highlight the fact that the boundary between national and provincial decision-making powers on matters of concurrent responsibility was not well defined. It also helped Gauteng to test the boundaries of tolerance on the part of central government regarding the extent to which a province would be allowed to set its own priorities within a key national policy issue. Gauteng was eventually forced to back down in the face of a determined national minister of housing.¹⁴⁴

As the second most populous province in the country, Gauteng has had a huge housing backlog since 1994, exacerbated by high levels of annual immigration from other provinces. The province's Department of Housing had set itself a target of 243 000 low-cost units for the 1994-1999 period. This was the largest individual delivery target of all the provinces, with only KwaZulu-Natal coming a close second with a target of 195 000. As already indicated, owing to the slow and protracted process of creating new administrative structures between 1994 and 1996, Gauteng experienced a number of critical problems during the early part of implementation. These included problems with tender procedures, non-payment of municipal services, lengthy procedures in releasing land for housing construction, lack of bridging finance, and land invasions. These problems undermined effective and speedy housing delivery in the province considerably before effective housing delivery picked up in earnest after 1996. For instance the province could only spend R400 million of its housing capital budget in 1994/95. However expenditure was to increase significantly to R900 million in 1997/98, signalling that many of the institutional problems were being overcome, resulting in improved administrative capacity.¹⁴⁵

It was also indicated in Chapter 3 that by 1997 Gauteng was the leading province in the country in terms of the absolute numbers of low-cost housing units completed or under construction. However in terms of performance relative to its stated target, by December 1997 the province had only managed to achieve 22.7% of the 243 000 units intended.¹⁴⁶ Only the Northern Province (15.1%) and Eastern Cape (11.7%) had achieved less while KwaZulu-Natal (22%) had performed similarly.¹⁴⁷ Clearly, the implementation problems were critical factors despite significant improvements in administrative and spending capacity in the province. By March 1999, Gauteng had shown better performance, achieving 73% of its delivery target. However, the province was still performing comparatively worse than many of the provinces, with only

Northern Province (59%) and Eastern Cape (52%) achieving lower figures in comparison.¹⁴⁸ In fact by the end of the 1994-1999 period, the Gauteng's Housing Department was widely perceived as one of the worst performers in the province, with persistent allegations of corruption in the department as well as the Provincial Housing Board. This under-performance saw MEC Dan Mofokeng, one of the long serving MECs at the time, being removed from the housing portfolio at the end of the 1994-1999 period.

As already indicated, the province could not decide whether or not to prioritise economic growth over a state-expenditure-led development path. However, as the province increasingly experienced lower economic growth than expected during the 1994-1999 period, combined with the failure of the RDP to meet the urgent social services needs of its citizens as rapidly as was expected, the authorities began rethinking their development strategy. This was followed by the release of two key strategic planning and policy documents in 1995 and 1997. The Gauteng Economic Policy Document was released in 1995 and it attempted to shift the province's development strategy towards economic growth and greater investment promotion. It also sought to diversify local sources of revenues to underpin a locally driven economic growth strategy, seen as the best way to meet the province's social policy expenditure priorities.¹⁴⁹ The second document, The Gauteng Growth and Development Framework 1997/98,¹⁵⁰ came out in 1997. It derived its approach from the national government's GEAR framework and went further in elaborating the province's economic growth and investment promotion strategy.¹⁵¹

The adoption of a new, growth-oriented development strategy did not signal a decline in the importance of social spending to deal with poverty and other legacies of apartheid. It signalled that greater attention and resources were to be directed to a number of policy objectives essential for economic growth. These included support for small, medium and micro enterprises (SMMEs), land development, tourism, and investment in telecommunications and information technology. The new development strategy therefore sought to maintain spending in critical social services sectors while attempting to pay greater attention to the goal of economic growth, which was largely neglected during the 1994-1999 period. As will be discussed further in the next subsection, the new strategy was an attempt to shift the province's industrial development strategy from a low-value-added economy, depending on primary industries such as mining and agriculture, to a high value-added economy based on innovative hi-tech or smart industries such as electronics and telecommunications. The plan also sought to promote growing economic sectors such as tourism, financial services, commerce and the service industry in general. Given the severe funding constraints facing the province, the plan envisaged greater private sector investment in the province while also exploring the maximisation of existing local sources of

revenue sources such as increasing certain licence fees, user charges and gambling, including debt financing as a last resort.¹⁵²

5.6.2. Second Term Of Office (1999-2004)

When he took over, Premier Mbhazima Shilowa identified a set of policies and programmes for the five years ahead and these were not different from his predecessor's policies, suggesting that continuity rather than radical change was the theme for his premiership. In his first major policy speech to the legislature, Shilowa reiterated President Mbeki's call for accelerated service delivery. He identified as priorities delivery of quality social services, economic growth, job creation, infrastructure development and good governance.¹⁵³ Also on several occasions in 1999, Shilowa signalled his desire to see a much closer cooperation between the national government and his province. This served to reinforce a prevalent perception among analysts and critics that as a close ally of President Mbeki, Shilowa would seek a more cordial relationship between the province and central government, unlike his two predecessors who often openly challenged the authority of central government by seeking greater powers and room to manoeuvre for the province in key policy matters. Shilowa, like Mbeki, also tended to stress the importance of technical/managerial and administrative issues, such as institutional capacity, efficiency and effectiveness, to accelerate service delivery, thus staying clear of controversial political and constitutional issues that used to cause conflicts with central government during the 1994-1999 period.

In terms of service delivery the three key social service sectors – education, health and welfare – continued to dominate the provincial government's expenditure priorities, regularly consuming 80% – 86% of the budget during the 1999-2004 period. The provision of low-cost housing also maintained a fairly high profile as a priority sector, because of the continuing political importance of homelessness among the poor in the province. However as will be argued later, policy shifts in the housing sector emerged in the latter years of the 1994-1999 period and were made more explicit under Shilowa. Poverty relief became much more centrally linked to the delivery of social services, especially through the provision of social welfare grants in the province. But more importantly, HIV/AIDS became an important policy priority issue for the Shilowa administration, and an unexpected battleground issue that briefly soured relations with the national ministry of health in February 2002. Prior to 2002 the Gauteng policy on HIV/AIDS was determined on the basis of national policy. It was mainly based on two key strategies: awareness and educational campaign messages targeted at the youth and high-risk groups to encourage abstinence from sex before marriage, and the use of condoms, as well as a programme (launched in 2001) of prevention of mother-to-child transmission through the distribution of

Nevirapine to limited research centres selected in consultation with the national ministry of health.

As has been briefly discussed, in his 2002 policy speech Premier Shilowa controversially announced that “during the next financial year, we will ensure that all public hospitals and our large community centres provide Nevirapine for the prevention of mother to child transmission”.¹⁵⁴ Shilowa further announced that post-exposure prophylaxis AZT would be made available throughout the province to all rape victims. A total of R30m was made available for this programme, as well as a further R35m to be allocated to nongovernmental organisations involved in the fight against HIV/AIDS in the province.¹⁵⁵ This was a major policy decision by Gauteng and appeared to effectively contradict national policy because, prior to the announcement, the distribution of Nevirapine had only been confined to selected pilot health centres in the province. The decision prompted a fairly angry response from the national health ministry, with Health Minister Manto Tshabalala-Msimang arguing that Gauteng went against the government’s position on rolling out the programme to prevent mother-to-child transmission “based on the experiences and lessons learnt from the agreed-upon research sites”.¹⁵⁶ Tshabalala-Msimang added that Gauteng’s decision was “contrary to the resolution adopted by all MECs for health and the minister” during a MINMEC meeting a month earlier.¹⁵⁷

While this policy decision threw the spotlight firmly on the issue of HIV/AIDS and national policy on the distribution of antiretroviral drugs, it also raised important questions regarding the extent to which a province can exercise its policy-making powers, especially in key areas of concurrent national/provincial responsibility without incurring the wrath of central government. Technically it would seem that Gauteng was within its constitutional and legal powers in making the decision. However, politically the decision appeared to come across as a defiance of the national health ministry’s position of restricting the distribution of Nevirapine to a small number of selected sites until such time as central government would give the go-ahead for a large-scale roll out. In a way, Gauteng’s decision appeared to anticipate, if not pre-empt, a national policy decision on this issue. However the fact that the decision was allowed to stand was critical in that it not only set a precedent whereby provinces could pursue important policy initiatives even if they contradicted national policy, provided that the necessary funding was available. The decision also appeared to imply that intergovernmental agreements reached through MINMEC meetings on key policy issues can be overturned by the provinces. This also essentially highlights the fact that many MINMECs, including health, are not statutory bodies and therefore their decisions are not legally and constitutionally binding on the provinces. It should be noted though, that Gauteng’s decision on the distribution of Nevirapine was a challenge to the authority of central

government to make policy framework policies for the country within which provinces are expected to pursue their own programmes.

To underpin speedy delivery of basic services, the Gauteng provincial government introduced some important institutional and other changes to enhance the coordination and monitoring of policy implementation. As discussed earlier, one of the key institutional changes to occur in the premier's office was the establishment of the policy unit. The second institutional innovation, unique in the country at the time, was the establishment of the Shared Services Centre (SCC) for the province in February 2001.¹⁵⁸ The Centre is based on the concept of a 'one stop' service centre whereby all the critical functions shared by the ten different provincial departments, as well as the premier's office, would be centralised and rendered under one roof in order to take advantage of economies of scale. These functions include tendering or procurement services, information technology, human resources, accounting and internal auditing. The central objective was to enhance administrative efficiency as well as to eliminate duplication of functions and wastage of resources. It was believed that once freed from these functions, departments would be able to devote more time and resources to their core functions, especially improving the quality of services delivered to citizens in the province. The third critical change that Shilowa made was to appoint a new provincial director-general, Mogopodi Mokoena. Mokoena replaced the previous Motshekga appointee Lulamile Mbetse, who left office just before Shilowa became premier, after an eventful short stint in the office tainted by allegations of corruption and mismanagement.¹⁵⁹ These were important changes intended to put the province on a sound footing for effective administration.

In 2002, three years after Premier Shilowa took office, the provincial government released a report called *Mid-Term Report Back To The People of Gauteng*. The report was very short and designed in a format of a glossy pamphlet, ostensibly intended to be a frank account of the provincial government's achievements and failures halfway through the 1999-2004 term of office. However it was mainly self-congratulatory, dwelling more on the successes and playing down the failures. It dwells at length on the provincial government's successes in the various policy sectors, especially in the areas of education, health and housing. For instance it claims impressive successes in improving the quality of public education, including a 22% improvement in the matriculation pass rate in the province between 1997 and 2001; improving access to primary health care services and better health care facilities in public hospitals; as well as a comprehensive HIV/AIDS treatment programme. The report also dwells on successes in various other sectors such as urban renewal, fighting crime, job creation and poverty relief.

Regarding the delivery of low-cost housing, the report boasts impressive achievements, although it did not provide hard figures of low cost housing units delivered at the time. However it stated, among others, that 890 000 people had been provided with shelter, and that 425 000 people were given access to ownership of land. As indicated in the subsection above, despite its comparatively better resources and institutional capacity, Gauteng's low-cost housing delivery programme performed relatively poorly in terms of reaching its own target of 243 000 units by the end of 1999. However, in terms of absolute numbers, the province had delivered more low-cost housing units than any other province. For instance, by 2002 a total of 1.3 million low-cost housing units had been built throughout the whole country¹⁶⁰ and, according one national newspaper, 'more than half' of these units were delivered in Gauteng alone, implying that the province's housing delivery institutions and their administrative capacity had improved significantly after 1999. However, the province continued to face difficulties in its low-cost housing delivery programme during the 1999-2004 period. For instance, large numbers of immigrants from other provinces continue to come into the province, swelling the ranks of the homeless and squatters, thus increasing its housing backlog. This has prompted significant policy shifts in the housing sector as the province attempted to find innovative solutions to its housing problem. In some instances the policy innovations and shifts revealed the complexity of managing the relationship between provinces and the national government on key policy matters where the two spheres share functional responsibility.

As already argued, the low-cost housing programme began experiencing numerous problems towards the end of the 1994-1999 period. Some of these problems included the poor quality of housing units delivered, the small size of the units and rising rates of inflation that considerably reduced the value of the R16 000 capital subsidy. In addition, criticisms had been repeatedly levelled against the government's RDP housing programme for focusing predominantly on the quantity of the units delivered as an indicator of performance, at the expense of the quality of these units, and also for reproducing economically unviable, apartheid-era township housing patterns characterised by urban sprawl on the periphery of towns and cities.¹⁶¹ These problems and criticisms applied to other provinces as well, and heralded a serious rethinking of state policy in low-cost housing provision and led to policy shifts at national and provincial levels, especially from 1999 onwards.

The rethinking of housing policy at national level also occurred in Gauteng. One of the key elements of the policy shift was the idea of scaling down state involvement in the provision of low-cost housing in favour of greater involvement by the private sector in state housing provision through public-private partnerships. Also, options such as rental housing and social housing were widely promoted in Gauteng as alternatives to the traditional single house/single

plot dwelling, including encouraging low-income groups to build their own houses through personal savings, informal credit schemes, cooperatives or other similar non-state initiatives.¹⁶² One of the earliest legislative underpinnings of the shift in housing policy in Gauteng was the promulgation by the provincial legislature of the The Residential Landlord and Tenant Act, 1997 followed by The Gauteng Housing Act, 1998. Also the Rental Housing Act, 1999, passed by the National Assembly and adopted by the Gauteng province, further underpinned the new policy shift towards less provincial involvement in low-cost housing delivery. These pieces of legislation helped provide a legal basis for the gradual shift in housing policy towards less state involvement in the provision of low-cost housing for the poor. This was also perhaps an acknowledgement that the state lacked adequate capacity and resources to deal with some of the urgent social policy problems the country faces, especially in the context of unrelenting demands for fiscal discipline at provincial level.

However, the housing policy shift was not as straightforward in Gauteng as it sounds. The way it came about suggested the complexity of the relationship between central government and the provinces, and revealed the ability of central government to impose its authority over the provinces. For instance, in July 2001 squatters from Tembisa and Daveyton townships on the East Rand illegally occupied a piece of state-owned land in Bredell, near Kempton Park, before being evicted. The significance of this incident was that it epitomised the limitations of the RDP/state-centred mass housing provision programme and underscored the need to implementing alternative forms of low-cost housing delivery. The Gauteng provincial government was prepared to abandon the RDP housing approach and significantly scale down its involvement in the direct provision of low-cost subsidised housing units in favour of alternative housing strategies as identified already.

Therefore in the wake of the Bredell land invasions the provincial government announced that it would abandon the strategy of providing free, subsidised low-cost housing units in favour of providing land and serviced sites to assist households in building their own houses.¹⁶³ Ironically, the provision of mere serviced sites is precisely what former premier, Tokyo Sexwale, denounced publicly in May 1994 in his first major policy speech to the provincial legislature. Premier Shilowa's government was now prepared to implement this particular strategy as well as various others in terms of which citizens would largely bear the costs of their own housing needs. However national housing Minister Sankie Mthembu-Mahanyele intervened immediately, preventing Gauteng from going ahead with the decision and emphasising that the RDP housing strategy was still "the core solution and would continue...as part of a number of options including self-help housing".¹⁶⁴ Clearly the national government did not oppose the introduction of alternative forms of low-cost housing delivery by Gauteng. However, she was not yet prepared

to allow Gauteng to abandon the RDP approach, despite the problems experienced. The intervention was clearly intended to ensure Gauteng's compliance with national policy but it also served to highlight one of the key constraints to the ability of provinces to make policy, which is the power of central government to impose its authority on the provinces.

The Gauteng provincial government also pursued a number of economic policy initiatives in response to the restrictive fiscal environment imposed by the country's GEAR policy framework. The province sought to promote investment-led economic growth and job creation, thereby gradually moving away from a state-led developmental strategy centred on mass-scale state expenditure. In order to stimulate the province's economy the government introduced a three-year economic stimulus package of R1.2 billion in 2000.¹⁶⁵ The strategy is based on eleven infrastructure projects, collectively labelled Blue IQ and is intended to stimulate growth through the promotion of trade and foreign direct investment in the province's economy. The Blue IQ projects are categorised into specific sets with a common thrust. For instance, the first set of projects was aimed at promoting high-tech industries. At the centre of these was the establishment of the 'innovation hub' in Pretoria, intended to promote investment, skills training and job creation in industries such as information technology, communication, electronics and digital industries. The idea was to move Gauteng's economy from its traditional base of low value-added heavy industries centred on mining and commercial agriculture, towards high value-added industries, thereby making the province's economy globally competitive in these high-tech industries.

The second set of projects were linked to the promotion of tourism, and they included the creation of the 'Big 5' game reserve in the province, upgrading the Cradle of Humanity world heritage site at Sterkfontein, and the construction of a high-speed rail link between Pretoria, Johannesburg central business district and Johannesburg International Airport. The Johannesburg International Airport was also being upgraded as an economic zone. The third set of projects focused on promoting the province's manufacturing industry, especially the automotive manufacturing industry located around the Roslyn plant in the north of Pretoria. It sought to focus especially on the manufacturing of automotive spare parts and components. In a report released in 2004 detailing its achievements over the past ten years, the Gauteng provincial government states that 96% of the R1.2 billion set aside for Blue IQ has been spent and that "progress had been made on all the projects".

However the report is less than frank in that some of the flagship Blue IQ projects have taken a long time to get off the ground and missed initial deadlines, suggesting ongoing planning and logistical difficulties in the administration. For instance, Shilowa had stated in a speech in 2000

that the Gauteng high-speed rail link would be operational in 2005. However the feasibility study was completed only in 2002, which meant that the construction schedule had fallen behind. In another policy speech in 2004 premier Shilowa effectively abandoned the original deadline of 2005, announcing that construction work would begin in February 2004. By the time the 1999-2004 term of office came to an end, construction work on the Gauteng high-speed rail link had not yet started. Nonetheless the discussion indicates that the Gauteng province is increasingly engaging in a variety of policy initiatives to improve its ability to meet the needs of its citizens. However, this is being done within a variety of constraints, including inadequate funding as well as the need to work within the policy parameters set by central government, which are often too restrictive and stifle local initiative and innovation. One of these national policy parameters is the high level of expenditure required of the provinces in the provision of basic social services in education, health and welfare. The province is responding by pursuing a set of policy programmes intended to develop its productive resources, especially by focusing greater attention on the area of economic growth and job creation in addition to the high level of expenditure in social services.

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CHAPTER 6: THE MPUMALANGA PROVINCIAL LEGISLATURE

6.1. BACKGROUND

The province of Mpumalanga was initially established as Eastern Transvaal under the interim Constitution of 1993, before the new name was adopted in August 1995. Geographically, it was carved out of the former Transvaal province under the previous political era, and incorporates the former 'self-governing territories' of KaNgwane and KwaNdebele. In terms of size Mpumalanga is only 79 490 km², which makes it one of the smallest provinces in the country, covering only 6.5% of the total geographical area.¹ Only Gauteng has a smaller share of the country's total geographical area, at 1.4%. In 2004, the population of Mpumalanga was estimated at 3.2 million – 7.0% of the total national population – and the second smallest share after Northern Cape (1.9%). The province's population is overwhelmingly black African (92.4%), followed by whites (6.5%), coloureds (0.7%) and Indians (0.4%).² As will be argued later, these demographic characteristics were critical in shaping the outcomes of elections in the province and the current party political dynamics within the provincial legislature.

With a Human Development Index measured at 0.53 against the national average of 0.58³, and an urbanisation rate of 42.1% compared with the national average of 57.9%, Mpumalanga is one of the most predominantly rural provinces in the country, with low social and economic indicators. As already indicated, the province inherited the former homelands of KaNgwane and KwaNdebele, which have huge numbers of impoverished social groups and therefore obviously contribute to the province's lower socio-economic development indicators. In fact the *Intergovernmental Fiscal Review* of 2003 reported that 53.6% of the population of Mpumalanga was living in poverty in 1999, which was above the national average of 47.3%.⁴ Mpumalanga is one of the provinces with the largest share of the country's low-income households. For instance in 1996, only 4.7% of the country's total remuneration accrued to Mpumalanga, compared with Gauteng's 43.2%.⁵ This low level of socio-economic development means that, like other provinces that have within their geographic borders components of the former homelands, Mpumalanga faces enormous backlogs in the provision of basic social services. Added to this is the challenge posed by the HIV/AIDS pandemic in recent years. For instance the province is reportedly the second most highly affected by the HIV/AIDS pandemic after KwaZulu-Natal, with limited access to medical and health care services for the largest proportion of the population.⁶

While the province's economy is the fourth largest in the country, it still contributes only approximately 8.0% to the national GDP. The economy is based mainly on manufacturing,

agriculture, energy and mining.⁷ However the tourism sector is developing rapidly, becoming an important sector of the provincial economy especially in creating job opportunities, economic growth and development. The economy is also affected by a significant shortage of people with higher/tertiary educational qualifications and skills. For instance the 1996 census figures had shown that the province had the second highest proportion (29.4%) of people over the age of 20 without any form of education, behind Northern Province with 36.9%.⁸ Such educational and skills shortages pose critical limitations in terms of human resource capacity for the province's economy to develop rapidly, and therefore present serious challenges for the provincial authorities.

In terms of government and political institutions, the province has been governed by the ANC since its inception in 1994. Like in other provinces the first provincial executive was based on the principle of 'government of national unity' involving the ANC and the New National Party (NNP) sharing cabinet portfolios, and was meant to last until 1999. However, the arrangement collapsed in June 1996 when the official opposition NNP withdrew from the 'government of national unity' at the national level. With only 30 MPLs, the Mpumalanga legislature is one of three smallest legislatures (together with Free State and Northern Cape) in the country. In the 1994-1999 period, only 3 political parties (the ANC, NNP and Freedom Front (FF)) won seats in the 30-member provincial legislature, with the ANC taking 25 seats, NNP taking 3 and FF, 2. Predominantly white political parties, drawing their support from the small component of the white, mainly Afrikaans-speaking section of the provincial population, therefore played the role of opposition in the legislature.⁹ As an overwhelmingly black political party, the ruling ANC draws its electoral support from the large black population of the province, which is mainly based in the two former homelands of KwaNdebele and KaNgwane. There was therefore a clear racial divide in the composition of the Mpumalanga legislature during the 1994-1999 period, reflecting not only the predominantly race-based voting patterns among voters in the province, but also the high levels of internal unity within the racial groups in the province.

In the 1999-2004 period the number of political parties represented in the provincial legislature increased to 5. These were the ANC, NNP, FF, United Democratic Movement (UDM) and Democratic Party (DP) – later Democratic Alliance (DA). The two new parties, UDM and DP, also came from opposite racial divides, with the UDM drawing its support from predominantly black voters while the DP drew its support from predominantly white voters. This appeared to show that the racial voting pattern of 1994 maintained its salience in that voters from particular racial groups tended to vote for parties led by politicians from the same racial groups. While the number of political parties represented in the legislature increased from 3 to 5 during the 1999-2004 period, the total number of opposition MPLs declined from 5 to 4. Also, the slight increase

in the number of predominantly white political parties represented in legislature from 2 to 3, and the predominantly black political parties from 1 to 2 suggests that socio-political, economic, geographical and other differences within the respective racial voting groups may have played a bigger role in 1999 than in 1994. These differences sought alternative forms of political expression through other political parties, and in 1999 the UDM became the first alternative, predominantly black, political party to win votes and a seat in the provincial legislature. Even though the party does not pose any serious electoral threat to the ANC, it does draw support from the same support base as the ANC, which suggests that the black majority vote in the province may not remain solidly behind the ANC. Similarly a greater number of parties than before competed for support within the smaller white section of the provincial population.

Besides the racial demographics of the provincial legislature, the age profile, educational qualifications and professional backgrounds of the MPLs are important factors. They provide valuable insights into the types of skills, knowledge and expertise that the legislature and its committees could draw on to create the institutional capacity necessary for its representative functions and for playing a 'watch-dog' role over the activities of the government. However, much of the information on the social backgrounds of Mpumalanga MPLs, especially their educational qualifications and professional training backgrounds, was difficult to obtain. Also, the available information is extremely sketchy. The Mpumalanga legislature handled requests for information poorly, and the responses were extremely slow. This was probably a fair reflection of the institutional capacity constraints that have characterised the legislature's functioning. The legislature's administration seemed chaotic in its handling of requests for information and some officials appeared incompetent or unwilling to assist.

During the fieldwork period of this study, several written and telephone requests addressed formally to a number of office bearers in the Mpumalanga legislature, including the secretary of the legislature, went unanswered and follow-up phone calls were not helpful either. Only officials in the office of the speaker, William Lubisi, were usually helpful and responsive to requests for assistance. Some of the political parties were no better in their responses, with their administrative officials often either failing to respond or responding after several calls to remind them. The DP/DA and NNP were exceptions. Despite or perhaps because of their small sizes, their clerical support personnel were helpful and prompt in dealing with requests for information.

Examining and analysing the demographic profiles, educational and professional training backgrounds of Mpumalanga MPLs was therefore fairly problematic. One of the key problems was that during the 1994-1999 period as well as the early part of the 1999-2004 period, the legislature experienced a high turnover of MPLs, especially within the ruling ANC. For instance,

after the 1999 elections nearly half of all the previous MPLs were replaced by new ones. Also in 2001, several high-profile and talented ANC MPLs were re-deployed to the National Assembly in an attempt to manage the perennial internal political conflicts and rivalries within the ANC's provincial branch and the party caucus in the legislature. However with only 30 MPLs at its disposal, or only 14 available for committee work if the provincial cabinet and other high office bearers in the legislature are accounted for, the removal of MPLs and the accompanying loss of experience and expertise was crippling for the effectiveness of the Mpumalanga legislature.

The following analysis of the age, educational qualifications and professional training backgrounds of the MPLs is meant to provide an illustrative picture of those elected to serve as public representatives in the province during the period being studied. This will be vital in providing insight into the functioning of the provincial legislature, as will be discussed later in this chapter. In terms of the age profile of the MPLs at the inception of the provincial legislature in 1994, information was obtained for 27 of the 30 MPLs. It shows that in 1994 the Mpumalanga legislature was predominantly young.¹⁰ For instance, 17 of the 30 MPLs were below the age of 40 when they entered the legislature. Only 10 were middle-aged to old-aged – ranging from 41 to 60. The predominantly young age profile of the Mpumalanga legislature contrasted sharply with the much older age profile of the Gauteng legislature during the same period.

For the 1999-2004 period, information was available for 29 MPLs. It shows that the young age profile of the Mpumalanga legislature had changed significantly at the start of the second term of office. Unlike the Gauteng provincial legislature whose age profile became even more middle-aged at that time, the Mpumalanga legislature's age profile was almost evenly split between the younger and middle-aged MPLs. For instance, 15 of the MPLs were 39 years of age or younger, while 14 were older than 40. Incidentally, available information shows that approximately 11 new MPLs entered the provincial legislature in 1999. For a small, 30-member legislature, this was a high turnover rate, illustrating a significant loss of MPLs in the middle of their legislature careers. That represented a significant haemorrhage of experience and expertise gained during the 1994-1999 period that could have been retained for the second term of office. No doubt such loss of human capacity and expertise played a role in some of the constraints that affected the functioning of the legislature, as will be discussed below.

Information was available on the educational qualifications and backgrounds of only 21 of the 30 MPLs in 1994. It shows that the majority (19 out of 21) had tertiary educational qualifications (i.e. post-matriculation diploma, certificates, university degree, etc). It also shows that 11 MPLs actually had university degrees (i.e. bachelors' degrees or higher). Only 2 MPLs had primary and secondary school education. Therefore clearly, the higher proportion of MPLs with higher

educational qualifications suggests that the provincial legislature was significantly less reflective or representative of the ordinary population of the province where higher educational qualifications are fairly low. For instance in 1994 the average literacy level in the province was 54.6% – one of the lowest in the country at the time.¹¹ However, the elitist composition of the legislature was similar to that of the Gauteng legislature at the time, implying clearly that the political parties tended to select fairly educated members to serve as public representatives. For the 1999-2004 period, information was available for only 18 of the 30 MPL. The information shows that the educational profile of the legislature changed significantly after 1999. For instance the number of MPLs who had tertiary educational qualifications had declined from 11 in 1994 to 7 in 1999 while those with primary and secondary school education had increased from 9 to 11. The apparent decline in the legislature's higher level educational qualifications profile may suggest that many of the MPLs who left the legislature at the end of the 1994-1999 period were those with higher tertiary educational qualifications. It could be plausibly suggested therefore that the higher proportion of MPLs with lower level educational qualifications after 1999 rendered the provincial legislature more representative or reflective of the provincial population than before. However, it is difficult to gauge precisely the extent to which the changing educational and professional profile of the membership of the legislature had any bearing at all on its performance.

Finally, an analysis of the professional backgrounds and expertise of the MPLs shows that many of them had been in the education profession, especially as teachers, as well as in the fields of political activism and trade unionism. It is possible that these categories were overlapping. Also, a significant number of MPLs had served in the government, especially as local councillors and politicians in the former homelands of KaNgwane and KwaNdebele. For Mpumalanga, as will be shown later, prior service in the former 'homelands' did not necessarily represent accumulated expertise and knowledge that could be tapped into for developing the institutions of government in the province. While such MPLs brought with them some rudimentary knowledge of the formalities of government and the relevant processes, they also brought with them some of the unpleasant aspects of politics in the former 'homelands' such as corruption, nepotism and a good knowledge of how to play the system for purposes of patronage. The abiding image of Mpumalanga as the 'corruption capital' of the country owes a lot to this heritage from the former homelands system. Other professions such as law, business, finance, development and community development were not well represented.

Overall, it is clear that the Mpumalanga legislature experienced significant instability between the two terms of office, especially in terms of fluctuating membership composition and high levels of turnover. The constant state of flux in the legislature's membership between the two terms of office may have played an important part in the inability of the legislature to define a clear role

and a sense of vision for itself as an elected representative body, thus allowing the ANC's internal party politics to dominate the internal workings of the legislature. Obviously the overwhelming numerical dominance of the ANC is also a critical factor in ANC party politics influencing the functioning of the legislature as a representative institution. Also, the internal political dynamics within the ANC in the province had underpinned the constant conflict between the legislature and the executive. As will be shown below, this led to the intervention of the ANC national leadership, which saw the largest number of MPLs in a single province taken away from the legislature in the middle of a term of office.

6.2. DEMOCRATIC/POLITICAL EFFECTIVENESS

6.2.1. *Representational Effectiveness*

The first annual report of the Mpumalanga legislature published in 1998 declares, as the legislature's vision, striving towards ensuring "public inputs and participation" in the "exercise of executive powers and functions".¹² In addition to this, the report identifies law making, oversight, public representation and participation as elements of its mandate. Therefore like Gauteng, the law-making function of the legislature was placed at the top of its stated functions even though, as argued earlier, the significance of law making has subsequently declined, especially after 1999, compared with other functions such as oversight, representation and promoting public participation. The important function of the legislature examined here is the promotion and institutionalisation of the legislature's representational role as well as efforts to promote public participation not only in the activities of the legislature but also to enable citizens in the province to influence decision-making processes in the province. As in the case of the Gauteng legislature, a number of formal processes have been put in place over the years to enhance the representational effectiveness of the legislature and to attract ordinary citizens to participate in the affairs of the province. These formal mechanisms and processes will be examined and analysed below.

6.2.1.1. *Citizen participation through provincial elections*

It has been indicated that during the first term of office (1994-1999), there were only 3 political parties represented in the Mpumalanga legislature. The ruling ANC, which had won 80.7% of the popular vote and obtained an 83% share of the seats in the legislature, had 25 out of the 30 MPLs in the legislature. The official opposition NNP had obtained 9.0% of the popular vote and 3 seats while the other party to get representation in the legislature was the Freedom Front, with a 5.7% share of the popular vote and 2 seats. As already pointed out, clearly the majority of the black voters in the province had overwhelmingly voted for the ANC while the minority sections of the province's population, especially the white voters, had voted for the two predominantly

white opposition parties in the legislature. In fact, the racial composition of the provincial legislature did not change much after the 1999 elections. The two additional political parties that entered the legislature after the 1999 elections merely reinforced the racial division in the representation of citizens in the provincial legislature. For instance, the UDM, formed in 1997, became the second predominantly black political party to achieve representation in the legislature after the 1999 elections. It won 1.4% of the popular vote and secured 1 seat in the legislature.

In addition to the Freedom Front and the NNP, the DP became the third predominantly white political party in the province to get elected to the legislature. However, as already pointed out, the number of opposition parties increased from 2 to 4 after 1999 but the total number of opposition MPLs dropped from 5 to 4. At the same time, the ruling ANC increased its share of representation from 25 to 26 MPLs. Therefore, the total number of black MPLs in the legislature increased from 25 in the 1994-1999 period, to 27 in the 1999-2004 period, perhaps indicating that the minority white sections of the provincial population, who had voted for the predominantly white political parties in 1994, may have disengaged from participation in politics and therefore in provincial elections in 1999. The racially divided composition of the Mpumalanga legislature in the 1994-1999 period was therefore carried over to the second term of office.

The establishment of the provincial system of government in South Africa was intended, among others, to bring government closer to the people as well as to increase opportunities for citizens to influence decision-making processes that affect their lives on a regular basis. Therefore political parties serve as vital formal mechanisms through which citizens can participate and influence processes of government in their provinces. Also, the number of political parties contesting the provincial elections, as well as those achieving representation in the provincial legislature, is an important indicator of popular or civic engagement in the government of the province. The number of political parties that have consistently achieved representation in the Mpumalanga provincial legislature over the 1994 to 2004 period has been rather limited, perhaps reflecting the limited nature of political contestation in the province. For instance, Table 1 in Chapter 3 shows that Mpumalanga has been one of the less contested provinces in the country during the past three provincial elections if the number of political parties entering to contest the provincial elections is used as a crude indicator. In fact the province has remained among those with low numbers of political parties contesting elections over the past three general elections.

An increasingly important development that not only reflects citizen participation in the formal process of government but also has a bearing on the representational effectiveness of elected institutions of government is the number of women representatives. It could be argued that

greater representation of women not only inside the various political parties, but also in the formal institutions of government, is likely to improve the representational effectiveness of these institutions in terms of giving greater voice to issues of concern for women. Provincial institutions of government increasingly provide opportunities for greater participation in politics and government by women. As discussed in Chapter 3, female representation in formal political institutions has increasingly received attention from political parties, which in turn has led to a significant increase in the presence of women in political parties and institutions of government.

In the case of the Mpumalanga legislature the representation of women has tended to be among the lowest, and has been growing very slowly. For instance, after the 1994 elections the Mpumalanga legislature was among those with the lowest number of female MPLs in the country. Only 6 women were elected to the legislature, which was 20% of the total number of MPLs in the province,¹³ and lower than the provincial average of 24%. Only KwaZulu-Natal, with 13.6%, had a lower figure. The number increased to 8 (26.6%) in 1999, and this was closer to the provincial average of 27.7%. In 2004, the figure increased again, slightly, to 9 (30%) female MPLs in the legislature. The increase in female representation has therefore been very slow, and confined exclusively to the ruling ANC due to the small number of opposition party MPLs in the province. Since the inception of the provincial government in Mpumalanga in 1994, there has never been a female opposition MPL in the legislature.

The level of general popular participation in provincial elections is another important indicator of the success of provinces in attracting participation by ordinary people not only in electing their own public representatives, but also in influencing processes of government in the province. In general, levels of voter turnout in the past three provincial general elections in Mpumalanga have been high. In fact, voter turnout in the inaugural 1994 general elections was high, at 86.2%. It increased significantly in the 1999 elections, to 90% before dropping to 78.3% in the 2004 elections. As indicated in Chapter 3, Mpumalanga was one of five provinces (together with Free State, Gauteng, KwaZulu-Natal and Northern Province) that experienced an increase in voter participation in the 1994 and 1999 elections, before a generalised drop in voter turnout in the 2004 elections. The latter occurred across all the provinces and at the national level. Therefore the levels of voter participation in elections, as one of the indicators of civic engagement in politics and government in the Mpumalanga province, have been impressive.

6.2.1.2. Citizen participation in legislature activities

Compared with the Gauteng legislature, the Mpumalanga legislature has performed relatively poorly in terms of concrete efforts to promote public participation in formal processes of government in the province. In the case of the Gauteng legislature, after inception in 1994 a fairly

intensive process was initiated seeking to define a proper and appropriate role for the legislature. The process was open to members of the public and other organised interest groups in the province in order to provide them with an opportunity to voice their preferences regarding how the legislature ought to serve them. The process was also intended to forge consensus between elected public representatives and citizens on the role of a sub-national representative institution and the best ways to promote popular democratic participation in the way the province was governed. As was discussed in Chapter 4, this participatory process in Gauteng was even extended to the formulation of the internal 'rules and orders' of the legislature as well as the routine revisions of these rules, even if this occurred only during the early years of the legislature's existence. Such a process was important, at least at a symbolic level, in attempting to create a semblance of popular accountability by public representatives to citizens as well as to forge a sense of ownership among citizens of the institutions of government in the province.

The Mpumalanga legislature took a completely different route in establishing its own systems after inception. There is no evidence suggesting that the inception of the provincial legislature, and the design of its internal rules and processes was as open, transparent and participatory as Gauteng's. In fact the process of developing the legislature's internal 'rules and orders' was started quite late – in 1997. Also, an interview with the secretary of the legislature, Linda Mwale, in 1999 gave a clear hint that the task was to be assigned to a consultant to draft the rules. For instance, Mwale said at the time that the legislature was “running projects...to develop our own policies, rules and regulations. We need to contract consultants because we don't have the skills”.¹⁴ In fact, it would appear that the first copy of the legislature's 'rules and orders' was a mere copy or was modelled along the early copy of the Gauteng legislature's own 'rules and orders'. For instance, the first copy of the Mpumalanga legislature's 'rules and orders', and the subsequent two revised copies contain many provisions that are remarkably similar to those found in early copies of the Gauteng legislature's 'rules and orders'.¹⁵ However, in the case of the Gauteng legislature, the 'rules and orders' were relentlessly developed, revised and changed constantly to incorporate new experiences and to take account of changing conditions of governance and the rulings of the speaker. In contrast, it would appear that the Mpumalanga legislature was not as meticulous in taking account of new developments and experiences of government, and incorporating them into the 'rules and orders' of the legislature through frequent revisions. The Mpumalanga legislature published only two revised copies of its 'rules and orders' over a period of ten years, compared with the Gauteng legislature which undertook numerous revisions of its internal rules, and published more than ten revised versions over the same period of time. This suggests that the Mpumalanga legislature's leadership was not as dynamic as that in Gauteng and was unable to adapt the legislature fast enough to the rapidly changing conditions of governance.

One of the key problems that debilitated the Mpumalanga legislature's effectiveness during the early years of its operation was the poor quality of its leadership. The first speaker of the Mpumalanga legislature, Elias Ginindza, was one of a group of former KaNgwane 'homeland' politicians who joined the ruling ANC in the early 1990s after the Mpumalanga province was established. Ginindza was an ineffective leader of the legislature and a poor manager who had virtually lost control of the legislature and its affairs.¹⁶ He presided over a corrupt, administratively chaotic, under-resourced and ineffective provincial legislature from 1994 to 1998. He was sacked in 1998 after the Mpumalanga legislature was hit by the first major corruption and fraud scandal that was later fully attributed to his poor leadership skills.

The rampant administrative chaos and lack of financial management controls under Ginindza allowed corruption to flourish inside the legislature. The corruption scandal involved Ginindza's deputy, Cynthia Maropeng, and several administrative officials such as a former head and serving head of the legislature's administration, as well as the director of the legislature's Finance Department. They were all found guilty of corruption, fraud and mismanagement in 1998 after it was found that they embezzled approximately R1 million of public funds from the legislature intended for the ANC's constituency service. The scandal remains the biggest ever to be perpetrated by the leadership of a provincial legislature in South Africa. Ginindza himself was never found guilty of financial corruption or fraud. However the Ngobeni Commission of Inquiry that was appointed by Premier Matthews Phosa to investigate held him directly responsible. It found that he had failed in his duties as speaker to ensure that proper financial controls were in place.¹⁷ The ruling ANC sacked him from his position as speaker in July 1998, suggesting that it agreed with the findings of the Ngobeni Commission regarding Ginindza's poor leadership. Ginindza became an ordinary backbench MPL and was not returned to the legislature after the 1999 elections.

The whole incident was extremely embarrassing for the ruling ANC at the time. One of the ANC MPLs in the province and member of the party's PEC, Jackson Mthembu, remarked at the time of his colleague Elias Ginindza's role in the scandal, "this was the result of incompetence and gross negligence on his part with regard to the management and financial controls of the legislature".¹⁸ The premier of the province, Matthews Phosa, also remarked "This picture is one of dishonesty, of collusion, of perjury, of mal-administration, of misuse of authority and of corruption that is rife. It leaves one with a deep sense of shame and displeasure at such malfeasance and sickening contempt for public interest".¹⁹ The frank and open criticism of an ANC member by his colleagues is one feature of the Mpumalanga politics that has always set it apart from other provinces. It reflects the complexities of the politics of internal factions and

rivalries within the ANC in the province in general and inside the legislature in particular, which have characterised the process of government in the province and the functioning of the provincial legislature over the past decade.

The poor and ineffective leadership of the legislature under Ginindza and Maropeng was detrimental to the Mpumalanga legislature, especially as it occurred during the formative years of the legislature. It created an atmosphere where certain basic democratic principles, such as accountability and transparency, failed to take hold. Administratively, the legislature lacked the necessary professionalism to function properly and was characterised by low morale and discontent among ordinary staff members. In fact some of the most highly publicised corruption scandals to be uncovered in the province in the 1994-1999 period occurred at the time when Elias Ginindza was the speaker. That period of corruption scandals was marked especially by the failure of the Mpumalanga legislature consistently to take a stand and openly hold the executive accountable not only to itself but also to the people of the province. In the same vein, the legislature also failed to develop effective internal mechanisms and processes to promote the ethos of public accountability by those in leadership positions. The notion of promoting public participation in the activities of the provincial legislature and to enable citizens to hold their government accountable was never articulated and developed as a political objective under the leadership of Elias Ginindza. Perhaps due to poor leadership, during the early period of institutional development, the Mpumalanga legislature failed to adopt some of the innovative provisions adopted by the Gauteng legislature at the time to formally promote public participation in the affairs of the legislature. One of these was the introduction of the Public Participation and Petitions Committee and its Unit between 1996 and 1998 in Gauteng. The Mpumalanga legislature either failed to emulate this or deliberately ignored it.

It was only after the arrival of the new speaker, William Lubisi, on 16 July 1998 that the idea of promoting public participation and good governance in the province began to appear consistently in the political rhetoric of the legislature's new administrative and political leadership. However the development of the legislature's public participation programmes has always been ad hoc and piecemeal. For instance, as will be argued below, the legislature's Public Participation Unit, which serves as an administrative support structure for the committee on public participation, was only established in 2002 – two years after the necessary legislation was passed. In fact, as the fieldwork for this study was being conducted in 2002 and 2003, the Unit was still new and fairly weak, lacking the necessary institutional capacity and resources to do its work effectively. The idea of promoting public participation in the affairs of government in the province had two aspects to it – one of them was a 'public relations' aspect, while the other was intensely political. The public relations aspect appeared to focus the efforts of the public

participation unit mainly on promoting the corporate image of the legislature as well as enhancing popular awareness of the province's institutions of government. It was less focused on enabling citizens to make inputs into formal processes such as law making, budget hearings and other formal processes inside the legislature.²⁰

As part of the public relations aspect of promoting public participation in the province, the new and controversial legislature building that was constructed just outside the town of Nelspruit, and apparently on an ecologically sensitive site, became the focal point. The building was marketed aggressively as an attractive public monument for citizens of the province. Therefore, citizens in general are constantly encouraged to visit it. Schools around the province, tourists and others are routinely encouraged to visit the building to see its impressive art collections in the hope that this would engender a sense of pride in the institutions of government in the province. Such visits to the legislature building are usually referred to in official and political rhetoric in the legislature as 'public participation'.²¹ Perhaps this is understandable given that many citizens in the province live in distant local communities, far from the provincial capital where government institutions, including the legislature, are situated. Therefore popular ignorance and lack of familiarity with government institutions is a reality of politics in South Africa, both at national and provincial levels, and this is hardly conducive to effective public participation in the formal processes of government.

The political aspect of the effort to promote public participation is important. However one of the major problems is that it was never part of a systematic and coherent political discussion in the province about the appropriate role of the legislature as a representative institution, as was the case in Gauteng. The Gauteng provincial legislature had engaged in intensive and open public discussions during the 1994-1999 period in an attempt to define its role as a sub-national representative institution. As discussed in Chapter 4, the idea of systematically promoting public participation in the affairs of government emerged strongly from those debates as one of the key functions to be pursued by the Gauteng legislature. For the Mpumalanga legislature, public participation as a notion was conceived of in a fairly top-down manner, and only after William Lubisi became the new speaker in 1998. It reached its full momentum after the 1999 elections and, importantly, appeared to draw inspiration from the leadership power struggles and internal dynamics within the provincial ANC. After the 1999 elections the arrival of the new premier, Ndaweni Mahlangu, appeared to ignite political appetite and desire within the ruling ANC's caucus for greater public participation in the affairs of the legislature and the government. As will be argued in Chapter 7, Mahlangu was a controversial appointment by President Thabo Mbeki in the context of the new 1998 party policy giving the president of the ANC the power to appoint ANC provincial premiers. Mahlangu lacked a strong political base within ANC branches in the

province and was not part of the mainstream leadership of the party in the province. The political weakness of the premier seemed to stoke political determination within the legislature, especially among ANC leaders, to turn 'public participation' into a serious issue of governance in the province.

In March 2001, Speaker William Lubisi outlined a grand vision of public participation and accountability in the province, arguing "our new dispensation treats public participation as a critical pre-requisite for any laws that are passed...at national and provincial levels. We envisage that public participation...[should] become the lifeblood of the legislature and that [it] should happen ceaselessly, whether there is a bill for discussion or not".²² Lubisi went on to add "the programme also seeks to maximise the participation of the members of the public in committee meetings and sittings of the legislature". This sudden zeal for public participation in the affairs of the provincial government was unprecedented in that it was missing during the 1994-1999 period when Matthews Phosa was premier. However, as already indicated, this was driven by the internal politics of the ANC that was characterised by factional rivalries. Because of his political weakness, Mahlangu was vulnerable to the machinations of hostile factions within the ANC. For instance, the legislature's public participation programme was spearheaded by two prominent MPLs who were known to be staunch critics of the premier and were determined to ensure that his leadership was tested vigorously. They were Fish Mahlalela and Speaker William Lubisi. Mahlalela is a fairly heavyweight political figure in ANC circles in Mpumalanga. Mahlalela had also been a key figure in the political controversies that saw Matthews Phosa removed from the position of premier at the end of his term of office in 1999. It is widely believed that Mahlalela harboured hopes of succeeding Phosa as premier, and his political ambitions were thwarted when the ANC selected Ndaweni Mahlangu for the post. This appeared to create a sense of bitterness that was amplified considerably when Premier Mahlangu dismissed Mahlalela as MEC for local government in 2000.

It is not clear why the speaker, William Lubisi, had reason to be hostile to Premier Mahlangu. Interviews with several ANC members and MPLs in the province indicated that he did not belong to any of the factions inside the party. However Lubisi did attempt unsuccessfully to challenge Premier Mahlangu in a contest for the provincial chairmanship of the party in 1999, losing by a mere eight votes, suggesting that he did harbour leadership ambitions. Other informants believed that Lubisi had support from a political faction sympathetic to former premier Matthews Phosa, whose supporters were still bitter following Phosa's demise. Therefore these leaders and their factions inside the party were constantly mobilising against Mahlangu's new administration, in a clear attempt to undermine his authority. The resulting hostilities between the new premier and his detractors within the party and the legislature created an

untenable situation where the relationship between the legislature and the executive was fraught with serious political tensions. Therefore the fact that public participation became a serious political matter for the legislature during the tenure of Ndaweni Mahlangu should be seen within this political context.

A number of key developments occurred soon after Mahlangu took power, which pointed towards a clear strategy by his detractors to use the programme of public participation as a political tool against the premier. The first development was the decision, taken in 1999, to de-link the administration of the financial affairs of the legislature from the government.²³ In 2000 Lubisi made the announcement to the legislature, “we have finalised the process to de-link the legislature from the government’s financial systems. This breakthrough will help the legislature to establish independence from government and to ensure that we execute our oversight role objectively”.²⁴ In 2001 Lubisi elaborated further on the theme, adding “this is necessary to develop the public confidence in the sovereignty of the legislature as an institution that enforces government accountability and ensures that the tax payers’ money is spent prudently”. This was a fairly hostile rhetoric towards the executive, its harshness reinforced by phrases and concepts such as ‘breakthrough’, ‘independence from government’ and ‘sovereignty of the legislature’. It underscored the level of hostility within the provincial legislature, towards Mahlangu’s administration.

The second and critical development was the introduction of the Mpumalanga Petitions Bill in 2000. This Bill was a virtual copy of an Act passed by the Gauteng legislature two years earlier. Importantly, the Bill was introduced by Fish Mahlalela, one of premier Mahlangu’s archenemies and a leader of one of the anti-Mahlangu factions in the ANC. On the face of it the Bill, like its Gauteng counterpart, was aimed at promoting public participation in the affairs of government. However the Act came in the wake of critical developments in the province. One of these was the dismissal of Fish Mahlalela MEC for local government in the same year (2000) the Petitions Bill was introduced. Apparently Mahlalela had attempted to root out corruption from some of the local councils in the province – an act viewed with suspicion by Mahlangu and other factions within the ANC – allegedly leading to political pressure on Mahlangu to dismiss Mahlalela.²⁵ It was the second time that Mahlalela had been dismissed from the provincial cabinet. Former Premier Matthews Phosa also dismissed Mahlalela as MEC for environmental affairs and tourism in 1998 following bitter disagreements between the two regarding the handling of a corruption scandal involving the previous MEC, senior officials in the Department of Environmental Affairs and Tourism, and the Mpumalanga Parks Board (MPB).²⁶

The third key development was that, as part of the strategy to strengthen his position in the legislature to pursue the goal of public participation, Fish Mahlalela became chairperson of the select committee on “petitions, public participation and private members’ legislative proposals”. Coincidentally, Mahlalela also became provincial chairperson of the ANC in 2001, defeating Premier Mahlangu by an overwhelming 261 votes, to Mahlangu’s 98.²⁷ This placed Mahlalela in a very strong position in the party and in the legislature. He secured the legal and political platform as well as the necessary institutional support within the legislature to mobilise popular anger against Mahlangu’s administration. This served to highlight the fact that Mahlangu lacked popular support, especially within the ANC. Soon after these developments the leadership of the legislature mounted a widely publicised campaign in 2001, called the ‘public accountability and transparency initiative’. The campaign was ostensibly part of the effort to promote public participation by encouraging local citizens and organised interest groups to flood the legislature with questions for the premier and his executive members, for oral reply inside the legislature. The fact that the questions were intended for oral rather than written reply was clearly intended to create a political spectacle inside the legislature and therefore embarrass the premier and his cabinet. In terms of this initiative, ordinary citizens and interested parties in the province were allowed to pose questions directly to the premier and his executive during an Open Day debate in the legislature in September 2001. This was the first time such an event had occurred in a provincial legislature and, significantly, it has not happened since. Importantly, citizens were encouraged to demand answers to questions about corruption, inefficiency and maladministration in government. Based on available press reports, it appears that the response from the public was fairly enthusiastic, resulting in a large number of detailed questions submitted to the legislature.²⁸

On the surface, what was happening in Mpumalanga appeared to be beneficial for ensuring good governance and entrenching the principle of accountability in the province. It appeared to bear out the view that elected regional or sub-national political institutions provide vital opportunities for citizens to engage in the affairs of their government, especially by influencing decisions that affect their lives, and to hold those in positions of power accountable. Therefore the Mpumalanga legislature appeared politically dominant over the executive as it was able to enforce its agenda on the government and appeared to be succeeding in enforcing some semblance of political accountability on Mahlangu’s administration, despite its institutional capacity constraints and inadequate resources. On the other hand though, the political rivalries and power struggles within the ANC that underpinned the Mpumalanga legislature’s pursuit of popular accountability and public participation, also created severe political tensions and instability in government, thus preventing the new premier from governing effectively. As will be discussed in the next chapter, in an attempt to stem these problems and to ensure that the province was governable, the ANC’s

national leadership had intervened on a number of occasions during the rule of Premier Mahlangu. On one occasion several prominent MPLs and known critics of the premier were removed from the legislature, to strengthen his authority over the legislature.²⁹

The controversy that followed the introduction of the Mpumalanga Petitions Bill turned mainly on the potentially threatening powers it conferred on the speaker in particular, and on the legislature in general. Firstly, it conferred on the speaker the power to promulgate Acts of the legislature as well as to issue proclamations and regulations to implement such Acts. Secondly and ominously, the Bill sought to enhance public participation in the government of the province by enabling members of the public to petition the legislature to investigate any corrupt practices in government. Premier Mahlangu was clearly aware of the potential political threats emanating from the legislature and he responded by challenging the constitutionality of the Petitions Bill in the Constitutional Court, in 2001.³⁰ Mahlangu's challenge was premised on the belief that only the premier had the constitutional power to promulgate Acts of law, and to formulate the necessary regulations to implement the legislation. However, he lost the challenge as the Constitutional Court argued that the Constitution does not specifically empower the premier to promulgate Acts of law even though this is a widely accepted practice.³¹ The Constitutional Court also decided that the nature of the Act made it imperative that the speaker was the appropriate functionary to make the necessary regulations. The Mpumalanga Petitions Bill was therefore promulgated in 2002. Clearly, the political significance of the premier losing a Constitutional Court challenge against the speaker cannot be overestimated in that it bolstered the political stature of the speaker and enhanced the political status of the legislature, thus manoeuvring it into a position of power against the executive.

During interviews with several MPLs regarding the Mpumalanga legislature's public participation programme, all of them, without exception, were disparaging in their comments. For instance Chris MacPherson of the NNP described the public participation programme as "a lot of hogwash", adding that it is "a lot of talking, bugger all achieved."³² Clive Hatch of the DA argued that public participation, as a programme of action, was "non-existent". Joe Nkuna of the UDM argued that there was no public participation in the government of the province.³³ Even several ANC MPLs agreed. For instance Jackson Mthembu, a long-serving MPL, said that the "intention is there", while Pinkie Phosa, wife of former premier Matthews Phosa, and deputy speaker during the 1999-2004 period, said that the legislature lacked the capacity to promote public participation.³⁴ Thoko Mabena, another long serving MPL in the legislature, also indicated that the legislature lacked the capacity to promote public participation.³⁵ Even the head of the legislature's 'committee section', which includes the public participation and petitions unit, admitted that the programme in general was still in its early stages and therefore ineffective.³⁶

It would seem therefore that given the legislature's institutional capacity and resource constraints to implement the programme effectively, it was the internal political dynamics within the ANC and strong political will of some of its senior leaders in the legislature that catapulted the legislature's public participation to the top of the agenda. Without this strong political push, even if for clearly hidden political motives, these institutional weaknesses are too great to sustain the programme for long. Nonetheless the legislature did put in place a number of formal mechanisms commonly found in other legislatures, like Gauteng, in an attempt to enable citizens to influence decision-making processes in the province. Included among these are the three to be examined below – public hearings, petitions and constituency service. These will be examined closely in the following subsections. This section will conclude with a subsection examining the ability of citizens in general in the province to influence processes of government.

6.2.1.2.1. Public hearings

There is evidence to suggest that the Mpumalanga legislature did conduct some public hearings during the 1994-1999 period but it is not clear how consistent this was. Not much information is available, which possibly reflects the generally poor state of the legislature's administration and lack of skills among its support staff. For instance many of the legislature's annual reports regularly fail to capture and report many of the activities of the legislature, including some of the public hearings conducted, the purpose for which they were conducted and which committees were involved. The first annual report of the legislature for the 1994-1999 period was only produced in 1998, after the appointment of the new speaker. It reveals that some public hearings were conducted. However, there appears to be some confusion in the annual report in that ordinary committee meetings in the legislature are also labelled as public hearings. For instance the report makes reference to a total of 37 public hearings conducted in 1998, even though clearly, many of these were mere committee meetings held in the legislature. No information is provided on the number of public hearings conducted on draft legislation even though the report does provide a list of all the provincial bills handled by the legislature during that year. As already argued in Chapter 4, the constitution mandates legislatures to make provision for public inputs into bills before these become law. Therefore the processing of bills provides potentially valuable opportunities for legislatures to encourage members of the public to participate in the formulation of provincial bills.

During the 1999-2004 period, it would appear that not many public hearings were conducted in the province, despite the numerous provincial bills passed each year during that period. This could reflect the same problem of the inability of the support staff to capture all the necessary information when compiling the annual reports. For instance in a budget policy speech at the

beginning of the 2000/2001 session, the speaker revealed that late in the previous year public hearings were conducted on farm attacks and the abuse of farm workers.³⁷ Again, at the closing of the provincial legislature in November 2000, the speaker referred to “dozens of public hearings” convened by the legislature to “afford citizens the opportunity to participate in law making”.³⁸ However, further evidence on these public hearings is hard to come by. The legislature’s 1999, 2000 and 2001 annual reports do not provide any in-depth information, including hard figures, on public hearings conducted annually by the legislature and the issues of concern. The 2002/3 annual report states that only one public hearing was conducted on the provincial budget in that year.

Clearly, there are serious logistical and administrative problems. The legislature’s 2000 annual report attempted an explanation, from the point of view of the legislature’s administrative support staff. It placed the blame for their inability to attract citizens to public hearings on the lack of public enthusiasm among ordinary citizens.³⁹ However in his budget speech in March 2000 the speaker appeared to put the blame on the administrative support staff, arguing that “there is a need for improvement in the manner in which we conduct public hearings”.⁴⁰ Lubisi added “the notices for public hearings should be sent out on time. There is a need to target the right stakeholders...The venues for holding public hearings should be easily accessible to...the stakeholders, including those in rural areas. To ensure effective participation, we need to improve the manner in which we distribute documentation to stakeholders. It is essential that such documentation be easily understood”. The speaker’s statement clearly supports the view that lack of capacity within the legislature was the main problem, and it appears that this is still the case.

6.2.1.2.2. Submissions of petitions

It appears that the legislature established its petitions and public participation committee only in 2000 – several years after its counterpart in Gauteng had been in existence. Also, the Mpumalanga Petitions Bill of 2000 only came into force in 2002, after a Constitutional Court challenge by the premier. Furthermore, the legislature’s administrative support unit for handling and processing the petitions – the public participation and petitions unit – was only established in 2002. Clearly the institutional and legal mechanisms appropriate for dealing with petitions in Mpumalanga were very slow and late in taking effect, and the development of these processes was fairly ad hoc and haphazard.

However soon after Fish Mahlalela became the chairman of the select committee on petitions, public participation and private members’ legislative proposals, the legislature mounted an enormous effort to encourage citizens to lodge complaints about the government in the form of petitions submitted to the legislature. In fact, according to Clive Hatch of the DA, the first five

or six petitions submitted to the legislature were directed towards the Premier's Department.⁴¹ Hatch added that this development reinforced Premier Mahlangu's fear of the legislature's public participation process. However, there is inadequate information regarding the total number of petitions submitted to the legislature annually. The 2002 annual report notes that 82 petitions were submitted but the information was inadequate and poorly presented. It does not provide vital details such as the issues of concern, the departments or government agencies targeted and how the petitions were dealt with. This makes it difficult to assess how effective and efficient the legislature was in dealing with the issues addressed in the petitions. Lack of information also makes it difficult to assess the frequency with which local citizens have been resorting to the petitions as a form of engaging the government in resolving their grievances.

This dearth of information could also suggest that perhaps the petitions mechanism has failed to function effectively and had therefore fallen into disuse. It needs to be noted that, despite the enactment of the Petitions Act and the establishment of the necessary support structures, the legislature has struggled to fulfil this function effectively owing to the institutional capacity problems and resource constraints, as already argued. The petitions process of the legislature has been subject to the same logistical and capacity constraints that affected the conduct of public hearings. In fact, the speaker has been quite open and frank about the legislature's institutional weaknesses. He remarked in 2003, about the petitions and public participation unit, "in its current form, with personnel placed on an ad hoc basis, we... are incapable of handling petitions with the speed that they deserve".⁴²

6.2.1.2.3. Constituency service

The Mpumalanga legislature makes provision in its annual programme schedules, during what is called 'constituency period', for MPLs of all parties to spend time in their allocated districts attending to the interests of ordinary citizens. In theory, there are four constituency periods during the annual session of the legislature. Like in Gauteng and other provinces, political parties in Mpumalanga have demarcated their own geographic/political districts in the province and allocated individual MPLs accordingly, in many cases assigning them together with other party representatives from the National Assembly and the local councils in the province. Based on interviews conducted with some MPLs, it was found that, at least notionally, all five political parties represented in the provincial legislature were operating their constituency offices. Realistically though, given the small size of the representation of opposition parties in the legislature, only the ANC appeared to be running a reasonably coherent and sustainable constituency service in the province.

The ANC had a total of 33 constituency offices throughout the province. Two of these offices were visited in order to observe directly the interaction between constituency office staff and ordinary citizens seeking assistance.⁴³ Owing to limited resources, only two ANC constituency offices were visited. The first one was in the large township of Kabokweni, formerly under the KwaNdebele homeland, just outside White River and to the north west of the provincial capital, Nelspruit. This office was visited on two separate occasions due to its close proximity to Nelspruit where most of the interviews were conducted. The other office was in the small farming town of Belfast in the Highveld region of Mpumalanga. During conversations with the constituency office staff, it was found that the ANC makes provision for its staff to undergo formal training on a range of skills to enhance their ability to assist citizens with problems. The staff members are also expected to abide by a clear code of conduct relating to running constituency offices to ensure that services are rendered effectively to local citizens. On the surface, it appeared as if professional processes were in place to ensure that citizens seeking assistance were assisted accordingly. Also, local citizens were observed entering the two offices visited to seek assistance on a range of problems, such as applications for state grants and low-cost housing subsidies, labour disputes, farm evictions and other problems. In some cases local citizens sought assistance on private and personal problems such as the costs of burial services.⁴⁴

The DA had only four offices throughout Mpumalanga. It was found that the offices also doubled as party offices, as was the case for other smaller parties in Mpumalanga and other provinces. Only one DA office was visited in Witbank, which also serves as the provincial head office of the party. Clive Hatch, the DA's sole MPL in the Mpumalanga legislature, also operates from this office. During the visit it was observed that the office was clearly labelled as a DA office even though the office staff indicated that it was also a constituency office. There was therefore a clear contrast with the ANC whose constituency offices were always clearly marked as Parliamentary Constituency Office. The same pattern was observed in Gauteng, where more DA and ANC constituency offices were visited for observation. During the visit to the DA's Witbank office, no observations were made of local citizens entering the office for assistance. The office staff did insist though that local citizens regularly approached the office.

In addition to visiting ANC and DA constituency offices, telephone interviews were conducted with constituency office staff from several other constituency offices throughout the province. It emerged from these interviews that, as in the case of Gauteng, the parties utilised these offices for their own party political ends such as recruitment for membership, distributing party-related information, holding party meetings and coordinating election-related activities.⁴⁵ This is forbidden. For instance, in his budget speech to the legislature in 2000, William Lubisi cautioned MPLs "against using the offices to pursue political interests".⁴⁶ Lubisi added "A member of the

public should be free to visit any constituency office to get information and assistance he or she requires.” In practice it is widely acknowledged that political parties do utilise their constituency offices to serve party needs most of the time. Smaller parties, not only in Mpumalanga but also in other provinces, argue against what they see as state resources being used by parties with a larger number of constituency offices to serve party political interests. For instance the UDM’s sole MPL in Mpumalanga, Joe Nkuna, argued that the constituency offices of all parties “are supposed to provide services to all community members”, irrespective of political affiliations. He strongly condemned the ANC for using its many constituency offices in the province to provide assistance to its own supporters while discriminating against supporters of the UDM. While Nkuna did not provide evidence to substantiate his accusation, it is a commonly held view among smaller parties that their supporters are being discriminated against. This highlights some of the problems of the current system of constituency service.

Clearly the ANC is the only party, given its overwhelming electoral majority, that can afford the costs of operating a full system of constituency service, parallel to running its own party offices, even though these offices are clearly being used for party political ends. Ironically though, due to their smaller sizes many opposition parties are also forced to cut costs by using their party offices as constituency offices or vice versa, which means that these smaller parties, like the ANC, also utilise state resources for party political needs. On the one hand, it was clear that these offices do serve a potentially important purpose in that they are usually accessible and open to citizens as formal sources of authoritative information on matters relating to government and state services. It became clear during the visits to the constituency offices that some members of the local communities did utilise some of the offices for assistance on a range of matters, particularly for advice on public services provided by the state. On the other hand the fact that all the parties regularly used the constituency offices to serve party political needs virtually turns these offices into party political tools, thus limiting their utility as a tool for promoting public participation and enabling citizens to influence government decision-making processes. In fact, it would appear that the extent to which local communities utilise the constituency offices is fairly limited in Mpumalanga. For instance, the findings of a survey conducted by the HSRC in 1999 showed that only 0.7% of respondents in Mpumalanga regularly made inquiries at constituency offices – the average for all the provinces was 2.1%. Also 2.6% of the respondents from Mpumalanga often made inquiries at constituency offices – lower than the provincial average of 6.7%. The findings showed that 84.7% of the Mpumalanga respondents never made any enquiries at constituency offices in the province. This was the second highest figure after Free State’s 88.3% – the average for all provinces was 73.3%.⁴⁷

The necessary funding for the operation of the constituency service system is provided through the legislature and this is, partly, on the understanding that such services would help to promote civic engagement with government institutions, in particular the legislatures. For instance, in his budget speech in 2002, William Lubisi stated that constituency offices are significant “in our endeavour to bring the legislature closer to the people”.⁴⁸ He added “political parties represented in the legislature should ensure that our constituency offices are linked to the legislature...” However, the major problem here is that the political parties are left to themselves to run these offices as they see fit, and to render constituency services in ways that appear to be aimed at enhancing their political interests. The legislature’s involvement in the running of constituency offices is kept absolutely minimal. As in the case of the Gauteng legislature, the ‘rules and orders’ of the Mpumalanga legislature do not make provision for the legislature to get involved in the conduct and monitoring of constituency service. Therefore the current system of constituency service appears designed to keep the activities of constituency offices and provincial legislatures separate most of the time. Contact between the legislature and constituency offices, and the coordination of their respective activities, appears at best very minimal, suggesting that the contribution of constituency offices towards citizen participation in the formal workings of the legislature is fairly limited, if not completely nonexistent.

Also, while constituency office personnel are expected to submit quarterly reports to the legislature on their activities, in practice such reports are not submitted regularly and consistently. And when they are, they are strictly submitted to party chief whips who control the use to which such information is put, and thus keep the legislature uninformed. In any case the Mpumalanga legislature, or even other legislatures, may not have the necessary institutional capacity and resources to monitor the operation of the system of constituency service. It is also not clear to what extent this level of involvement would enable the legislature to reap the benefits of closer and direct contact with citizens and enhance its representational effectiveness. Currently, there are no formal processes and mechanisms for effectively monitoring the operation of the constituency offices in rendering services to citizens or for enabling them to participate directly in the activities of the legislature.

6.2.1.2.4. Citizen ability to influence decision making

Given their close proximity to citizens, provincial institutions of government are potentially key instruments for mediating and articulating the view of citizens in the regions to influence, directly or indirectly, policy-making process to shape decisions that affect their lives. This was one of the arguments advanced in favour of establishing a system of provincial government during South Africa’s constitutional negotiations in Kempton Park between 1992 and 1994. Like other provincial legislatures, the Mpumalanga legislature has attempted to realise the vision of its

citizens being able to voice their interests and concerns directly to their elected public representatives in order to influence government decisions. As in Gauteng and the other provinces, there has been a gradual move towards participatory government in the provinces since 1999. Even provincial executives are increasingly attempting to engage citizens directly in the activities of government through public 'outreach' programmes and the Mpumalanga province has been no exception since Premier Mahlangu came to power.

The thinking behind these efforts is ostensibly to enhance the ability of government institutions, especially during policy-making processes, to respond effectively to the needs of their citizens. This subsection draws on the material relevant to Mpumalanga from the findings of two surveys conducted as part of this study among senior public servants and MPLs. The surveys were conducted in all nine provinces to gauge the perceptions of respondents on, among others, the ability of citizens to influence decision-making processes at provincial level. Using a 4-point scale ('poor', 'fair', 'good' and 'very good'), the senior public servants were asked to rate the level of influence of public participation on decision-making processes in their province. Out of the 10 heads of departments in Mpumalanga who received survey questionnaires, 5 responded. Of these, 3 rated the level of influence of public participation as 'fair'. Only 1 respondent rated it as 'good' while the other 1 said 'very good'. Clearly this is a very small sample and the responses may not be helpful on their own to make firm conclusions. However the response appears consistent with a trend observed in the bigger sample of 48 respondents from the nine provinces where the majority (52.2%) of senior public servants rated the level of influence of public participation as only 'fair', while 13% rated it even lower, as 'poor'; 23.9% of the respondents rated the level of influence as 'good', while 10.9% said 'very good'.

The survey of MPLs also revealed fairly negative findings regarding the ability of citizens in Mpumalanga to influence decision-making processes. Out of the 30 MPLs in the provincial legislature, 13 (43%) responded to the questionnaire. Also using a 4-point rating scale ('not applicable', 'poor', 'fair' and 'good'), the MPLs were asked to rate their perceptions about the level of influence of public participation in the decision-making processes in the province. A large majority (9) of the 13 MPLs who responded rated the level of influence of public participation as only 'fair', while the remaining 4 MPLs rated it as 'poor'. No one said 'good'. This means that the Mpumalanga MPLs were even more negative compared with the senior public servants in the province. These findings were also consistent with those from the larger sample of 81 MPLs who responded from all nine provinces. For instance, 43.2% of them rated as 'poor' the level of influence of public participation in decision-making processes in their provinces, while 50.6% rated it as 'fair'. In general therefore, these survey results appear to cast a fairly negative light on the ability of citizens in Mpumalanga to influence decision-making

processes. This is in spite of the various mechanisms and efforts by the provincial legislature as well as the executive to encourage greater public participation in provincial decision making.

6.2.2. Oversight Effectiveness

Overseeing and monitoring the activities of government departments has become a very important responsibility for provincial legislatures in South Africa, particularly during the 1999-2004 period of government. As already argued, as the role of the provinces in South Africa's system of government became primarily focused on the implementation of policies and the need for effective delivery of social services grew in its importance for the national government after Thabo Mbeki assumed the presidency in 1999, it became critical for the provinces to put in place effective oversight and monitoring systems. This section will examine the development and performance over the period under study of the Mpumalanga legislature as a body that oversees and monitors the work of the provincial government and its departments. The Mpumalanga legislature has generally been weak vis-à-vis the executive, but after 1999 it grew in its political strength and became bolder in its relations with the executive, mainly due to the political dynamics within the ANC. After 1999 the legislature acquired considerable political strength and willingness to demand the government to observe the principles of good, clean and accountable governance. This was in clear contrast to the 1994-1999 period when the legislature was largely deferent in its relationship with the provincial executive, headed by former Premier Matthews Phosa. However, inadequate administrative capacity and resources played a significant part in undermining the legislature's growing political strength.

6.2.2.1. Oversight in a weak, complacent legislature: 1994-1999

6.2.2.1.1. Practical issues and capacity problems

Like the Gauteng legislature, the Mpumalanga legislature faced two critical sets of problems that undermined its effective performance as an oversight body during the first five years of its existence. The first set of factors was related to practical operational aspects. The second set of factors, which will be discussed in the next subsection, derives from systemic/political and functional matters related to important constitutional questions. In terms of the first category of problems, the operation of the legislature was paralysed by severe administrative weaknesses and inefficiencies that derived partly from lack of financial resources and proper office facilities, and partly from poor, ineffective and corrupt leadership – both administrative and elected political leadership. This was particularly the case during the first four years of the legislature's existence. Simply put, the institution was overwhelmed by practical/operational and administrative constraints that had to be overcome before it could function effectively.

During the interviews conducted in 1999 with various MPLs from all the political parties represented in the legislature, there was clear unanimity that the legislature faced enormous technical/administrative problems that undermined its ability to function effectively as an oversight body. The legislature simply lacked adequate financial resources to employ essential support staff such as skilled committee clerks, administrators, coordinators and researchers. As a result, the portfolio and standing committees, where the bulk of the legislature's vital oversight work occurs, lacked the necessary institutional capacity to oversee the work of government departments. For instance, groups of committees and MPLs were often forced to share very limited secretarial and clerical support staff.⁴⁹ One of the key aspects of effective oversight at committee level is the ability to generate vital information from independent sources in order to monitor and assess the performance of the government in general and government departments in particular. Several informants revealed that during that period, committee staff was usually employed along political affiliations, thus lacking in professionalism and skills. Therefore many committees were unable to deal effectively with the rigours of oversight work. Of critical importance was that the legislature had no researchers during this period to provide back-up support during their oversight work. This left the committees heavily dependent on information provided by government departments. Lucas Nel of the NNP argued at the time "the legislature is hundred percent dependent on information from departments, so it is difficult to execute oversight functions".⁵⁰ This dependence on the government for vital information is detrimental to the legislature's institutional independence in terms of holding the government accountable.

What exacerbated the situation was that such information as was supplied by government departments was not submitted regularly and consistently. Government departments are required to submit quarterly management reports as well as half-yearly and annual reports to legislature's portfolio committees to enable the legislature to monitor and oversee the performance of the government. Many departments failed to supply these reports, as Chris MacPherson of the NNP argued in 1999, "we are supposed to receive quarterly reports but we don't get the information...therefore the only way to get the information is to start digging and give it to the media, which may lead to an investigation".⁵¹ In cases where such reports were submitted, they were usually submitted very late, which made oversight difficult. Moreover, departmental reports were usually poorly prepared and unreliable, mainly because many government departments in Mpumalanga also suffered from severe staff shortages of skilled personnel, corruption and mismanagement of resources. For instance, Busi Coleman of the ANC stated that due to staff shortages in government departments, the writing of quarterly reports was poor and that "their statistics don't correspond from one quarter to the next, lots of mistakes and the manner of writing is not satisfactory".⁵² The skills shortage, not only among committee support staff but also among MPLs, served as a serious disadvantage for the legislature during the 1994 to 1999

period. Despite the fact that many of the MPLs during the this period possessed fairly high educational qualifications and impressive professional backgrounds, there was still considerable lack of knowledge and familiarity with a parliamentary system of government and what the legislature was expected to do – a common problem across many legislatures in South Africa at the time. Some MPLs who were interviewed in 1999 revealed that, due to the widespread poor capacity and other constraints, committees in general were forced to restrict the scope of their oversight work, merely focusing on deliberating on the departmental budgets, which in itself is inadequate because, as discussed in the previous chapters, the current Constitution does not allow provincial legislatures to participate extensively and influence the formulation of provincial budgets.

The practical and operational constraints that faced the legislature during the 1994-1999 period must be seen against the backdrop of weak, ineffective and corrupt administrative as well as political leadership at the time. As already indicated a serious corruption scandal involving the finances of the legislature was uncovered in 1997. Two of the senior officials involved in the scandal were very highly placed leaders in the administration of the legislature. The first one was the legislature secretary, Wilson Ngwenya, who was the serving administrative head of the legislature at the time. The second was Jomo Sibozza, director of finances. Moreover, the Ngobeni Commission of Inquiry that was set up by Premier Phosa following long-standing allegations of gross administrative and political corruption at the highest levels in the legislature also found out that the previous secretary of the legislature was involved in corrupt activities before being allowed to resign without the money being recovered. Alfred Mahlangu, who was the first secretary of the legislature, had also misappropriated funds totalling R69 000 from the same funds meant for the ANC's constituency service. There was therefore an endemic culture of corruption in the way the legislature was run in the early years of its existence. This signalled an institutional decay that needed to be overhauled urgently.

It is quite clear therefore that the Mpumalanga legislature had debilitating problems in terms of its administrative capacity and leadership. It needs to be noted that during the first period of government (1994-1999) in Mpumalanga, there was a prevailing organisational culture of corporate corruption, maladministration and patron-client relations, which was a hangover from the homelands system. As indicated at the beginning of this chapter, Mpumalanga had inherited thousands of its civil servants as well as politicians from the two former self-governing territories of KaNgwane and KwaNdebele. These two homelands were known to have in their service extremely corrupt politicians and large numbers of unskilled and under-qualified public servants. The legislature had employed some of the bureaucrats in its administrative divisions, some of them in fairly senior positions, thus incorporating this organisational and corporate culture of

corruption and mismanagement in the new legislature's administrative and management systems. Therefore it did not come as a surprise to many observers that many of the officials who were involved in the 1997 financial corruption scandal came from the two homelands. Some of the MPLs interviewed in 1999 acknowledged the pernicious consequences of the homelands system's legacy of corporate corruption and mismanagement in the governance of the new province. For instance Busi Coleman of the ANC blamed the "homeland practices that are still ongoing".⁵³ Although she acknowledged that "some [public servants] who got in after 1994 [also] got involved in such practices", she believed that they did this "without knowing what they were getting involved in".

Before the corruption scandal was uncovered, it had been the subject of widespread media reports throughout much of the early period of the existence of the legislature. When these reports were reinforced by similar allegations from ordinary legislature staff, combined with constant conflicts between the ordinary staff and the management over salaries and fringe benefits, the legislature experienced considerable instability, culminating in a week-long strike by the staff members in July 1997.⁵⁴ The strike paralysed the legislature further, hastening the resignation of the first secretary, Alfred Mahlangu, in October 1996 on suspicions of financial misappropriation. The resignation left the legislature without an administrative head for more than a year and therefore severely dysfunctional and unable to provide the necessary administrative support to elected public representatives during their regular oversight work.⁵⁵ For instance, problems such as lack of forward planning, poor programme scheduling, cancelled or constantly changing committee meetings, lost or misplaced order papers and others had become the order of the day. Since its inception in 1994, the leadership of the legislature had simply failed to put in place proper systems for the institution to function effectively; many MPLs acknowledged this at the time. Busi Coleman of the ANC revealed that there were "no job descriptions" for legislature staff and "people [got] used to operating without the necessary authorisation...signing things without knowing".⁵⁶ The speaker at the time, William Lubisi, also revealed that due to lack of proper administrative systems, the legislature lacked vital personnel and other records, and had no filing systems for documentation and no clearly defined organisational structure. Lubisi added that as a result, ordinary legislature staff members did not know what they were doing, leading to low morale and general discontent.

The low morale among the legislature support staff was particularly debilitating for legislature committees given that this is where much of the legislature's oversight work takes place. According to William Lubisi, this led to under-performance by the committees with some support staff arriving late at work and leaving early.⁵⁷ Poor quality of work at committee level such as badly written committee reports, inability to undertake forward planning and bad

organisation of committee activities became common. A similar sense of disenchantment with the legislature appeared to also affect some politicians in the legislature at the time. For instance the NNP's Lucas Nel revealed in 1999 that "it is easy to do nothing as an MPL".⁵⁸ ANC MPL Jabu Mahlangu added that "MPLs spend 20% of their time in the legislature" while the rest was spent elsewhere outside of the legislature.⁵⁹ It is clear therefore that these practical and other operational problems had served as serious impediments to the functioning of the Mpumalanga legislature during the 1994-1999 period, thus retarding its proper institutional development as an oversight structure.

6.2.2.1.2. Systemic/political and functional problems

This subsection examines the second category of factors that had a bearing on the development and performance of the Mpumalanga legislature during the 1994-1999 period. These factors have received more attention from observers and the public media than the practical problems dealt with earlier, largely due to the political dramas and controversies that have been so endemic to the politics of the provincial legislature and the ANC over the years. The Mpumalanga legislature, like the Gauteng legislature and others, operates on the same basic principles underlying the Westminster parliamentary system of government. Firstly, the members of the executive are drawn from the legislature. Secondly, the executive branch tends to be dominant while the legislature is usually subordinate. One of the reasons for this is that as an institution, the executive has considerable constitutional powers to control the budget and other public resources at its disposal.

Also, members of the executive have access to more and better trained administrative support staff than members of the legislature. This creates an institutional capacity imbalance in favour of the executive because the latter is usually administratively better equipped to face the rigours of modern governmental processes. Thirdly, the legislature as an institution is usually subject to stringent party discipline in order to guarantee support for the executive. This is primarily because, under the Westminster system, the loss of a vote by the government in the legislature is tantamount to a loss of confidence among its own members and is politically and even constitutionally damaging for purposes of effective government. During the 1994-1999 period, the legislature was generally subordinate to a strong, politically and institutionally dominant executive branch led by former premier Matthews Phosa, who was also a dominant political figure in the province. As will be discussed below, on one occasion during the 1994-1999 period the legislature was able to reassert its political authority against the executive at a critical moment in the process of government. However, for much of this period the legislature conformed to the model of a subordinate legislature, mainly due to the capacity constraints discussed above but also due to the nature of the current political and constitutional system that appear to place more

authority and power in the executive. As will be shown later in this chapter, it was only during the 1999-2004 period that there was a resurgence in the political power and authority of the legislature.

Despite its capacity constraints, like other legislatures the Mpumalanga legislature faces the same daunting challenges of maintaining oversight over an executive branch comprising ten departments and several parastatals. Some of the departments, especially Education, Health and Welfare, are complex in their structures and operations. They also have huge budgets and very large numbers of public servants dispersed in thousands of frontline agencies like schools, hospitals and welfare offices across the province. The complexity of monitoring and overseeing their activities cannot possibly be overestimated. Moreover, this responsibility falls on one of the smallest legislatures in the country, with a total of only 30 MPLs. When the 11 members of the executive are accounted for, the legislature is left with only 19 MPLs to carry out its oversight work. If, as is generally the case in many legislatures in South Africa, the high office bearers who are usually not available for committee work, such as the speaker, deputy speaker, chief whip, leader of the house and 'chairperson of committee chairs' are also excluded, then the picture becomes even more bleak. Only 14 MPLs are available for regular oversight work at committee level where much of this critical work takes place.

Clearly, the chances of such a small group of MPLs being able to produce a high quality of oversight work over the service delivery activities of ten government departments and several parastatals are severely limited. This was even more so during the 1994-1999 period when many MPLs lacked the necessary experience and knowledge to carry out their oversight responsibilities effectively. Added to this is the fact that the opposition component in the Mpumalanga legislature has always been very small and weak compared to the ruling party. Traditionally under the Westminster system, the opposition parties are the key role players in terms of questioning, demanding answers and generally keeping the government on its toes and accountable to the legislature. It is general practice that the ruling party's own members in the legislature are usually less inclined to question their government vigorously and insist on proper accountability. As already indicated, during the 1994-1999 period there were only five opposition MPLs in the provincial legislature, which was too small a number to mount an effective opposition to the ruling party. Any effective and viable opposition forces capable of undertaking effective oversight of the work of the government and holding the executive accountable, had to come from among the members of the ruling party itself. Even one of the opposition MPLs in the legislature at the time actually acknowledged this in an interview. Lucas Nel of the NNP admitted, "The only monitoring [of the activities of the government] is within the [ruling] party".⁶⁰ However under

normal circumstances the members of the ruling party in the provincial legislature could not be relied upon to provide effective opposition to their own government.

Technically, the role of the legislature is to hold the government of the day accountable, and MPLs from across all the parties have a duty to fulfil this function. However, the adversarial nature of party political relations in a Westminster-based system prevent the emergence of a cross-party consensus that would make this possible. This was also the case in Mpumalanga during this period. For instance, Gareth Newham points out that having incorporated many politicians from the former KwaNdebele and KaNgwane homelands in 1994, the ANC in Mpumalanga sought to build its organisational unity and consolidate its control over some of the disparate and unruly political elements in the legislature at that time. Newham believes that this quest for party unity during the first years of the legislature's existence had ultimately turned into a quest for a strong executive rule in the province, which in turn led to a fairly weak legislature. Newham argues "under the powerful figure of the premier, Matthews Phosa, loyalty to the party has been ensured to prevent the kind of splits and turbulence experienced in the Northern Province and Free State. The overriding dominance of the ruling party in the province has meant that the legislature cannot effectively challenge the executive..."⁶¹ Although Phosa was not always able to maintain complete control over the party and therefore guarantee internal unity, he had nonetheless succeeded in creating a climate where party MPLs avoided openly confronting the executive and raising questions about its performance inside the legislature.

Another important factor that had a significant bearing was the bitter historical political animosities between the NNP and the ANC, as well as the fundamental ideological differences between the two parties over how to deal with the legacy of socio-economic and racial inequalities of the past. These fundamental differences had shaped the politics of the Mpumalanga legislature at the time, turning the relationship between the ruling ANC and the predominantly white opposition parties into regular epic confrontations on the floor of the house. Given these animosities, many MPLs toed their party lines and in particular the members of the ruling party MPLs tended to defend their government or were largely unwilling to see their government severely punished for acts of corruption if this would play into the hands of their political foes. An example of this occurred in 1998 during a legislature debate on the findings of the Ngobeni commission of inquiry into the corruption involving deputy speaker Cynthia Maropeng. ANC members vigorously defended the former speaker, Elias Ginindza, from demands by the opposition to take strong disciplinary action against Ginindza even when it was clear that he had failed to put proper control systems in place and virtually turned a blind eye to the fraud and mismanagement by others under his leadership.⁶²

The Hansard recordings of other debates during the early years of the 1994-1999 period also reveal the stark bitterness as well as the political and racial hostility that characterised the relationship between the ruling ANC and the predominantly white opposition parties inside the legislature. A typical example of this was an acrimonious debate in April 1998 on a motion sponsored by the ANC to condemn the killing by a Gauteng farmer of a small black child on his farm on the East Rand.⁶³ This generalised political hostility and tensions that characterised the debate prevented the emergence of a cross-party consensus on the issues. Such cross-party hostility in the functioning of the Mpumalanga legislature was largely responsible for the failure to forge consensus over the importance of an effective legislature capable of holding the government regularly accountable. Nonetheless the provincial legislature proved vital in providing a forum in which debates on many controversial social issues that created hostility among regional social groups were institutionalised and safely vented. Arguably this could be considered one of the advantages of having a decentralised system of government in South Africa in that the national parliament would have been too distant and therefore unable to mediate social and political conflict at regional level.

As in the case of the Gauteng legislature during the same period (1994-1999), the desire within the ruling party to project a semblance of party unity tended to override the importance of ensuring an effective legislature with the capacity to enforce principles of good government and accountability. As a result, several incidents of bad government in the province were either poorly handled by the ANC-dominated legislature or ignored until a public scandal broke out. In the majority of cases, the corruption scandals broke out in the same government departments that were being routinely monitored and overseen by the legislature, suggesting either that the ANC majority in the legislature lacked the political will to raise critical questions to voice their public disapproval or that the government departments concerned were successful in hiding instances of corruption and misuse of resources from the legislature. A clear example of the consequences of this was the case of the widespread vehicle licence scam uncovered in Mpumalanga in 1997. It was found that Steve Mabona, then MEC for safety and security, had assisted the then deputy speaker of the National Assembly, Baleka Mbete-Kgositsile, to obtain a driver's licence fraudulently.

Despite the widespread allegations of fraudulent issuing of driver's licences in the province, the portfolio committee of the legislature did not investigate it as part of its monitoring and oversight work, choosing to rely on the department's own reports. Even when he announced the establishment of the Moldenhouer Commission of Inquiry to investigate the vehicle licence scam in the province in 1997, Premier Phosa had publicly slated the portfolio committee for not carrying out its oversight work effectively.⁶⁴ In fact, in the year prior to the uncovering of the

scandal, the portfolio committee on safety and security had tabled a report in the legislature indicating that concrete steps had been taken to deal with the licence scam, which was not true as it turned out later.⁶⁵ The problem is that the committee had appeared to trust the department and its MEC, and also relied solely on information submitted by the department to make its own conclusions about the way the problem was being dealt with.

In fact during that period the media and the office of the provincial auditor-general in the province have proved better at providing the necessary and critical 'watch-dog' role in the face of a weak legislature. For instance, the 1996 corruption scandal involving the Mpumalanga Development Corporation (MDC) was instructive. In that case, the need to project a semblance of unity within the ANC was clearly more important than the demands for proper accountability and good governance. An internal audit investigation cleared the managing director of the MDC of any graft, but relentless media investigations and continuing allegations of corruption and mismanagement prompted the NNP's Chris MacPherson, then chairman of the legislature's finance committee, to attempt to get the legislature to conduct its own investigation, but without success.⁶⁶ The speaker at the time, Elias Ginindza, proved extremely obstructionist, raising insignificant procedural issues to thwart MacPherson's calls for an independent investigation by the legislature.⁶⁷ The key point here is that the ANC majority in the legislature was extremely reluctant to undertake an investigation into serious allegations of abuse of taxpayers' money despite the existence of strong evidence to that effect. As it turned out later, there were dubious links between the MDC and some politicians from some of the parties in the legislature, including the ANC, which would have been embarrassing had this been exposed at the time of the scandal.⁶⁸

Usually, even after the acts of corruption had been uncovered, the legislature was generally too reluctant to take action, or the ANC majority too internally divided or lacking in political will to demand answers from its own government. The tendency is therefore for the executive to appoint official commissions of inquiry to investigate. This was the case with the corruption scandal involving the legislature's deputy speaker, Cynthia Maropeng, in 1997. The legislature failed to take urgent steps and it took Premier Matthews Phosa to appoint the Ngobeni commission of inquiry to investigate. Similarly the 'limp-wristed' weakness of the legislature was exposed by the high profile scandal of 1997, when it was found that the MPB had entered into a highly secretive and controversial multi-billion rand deal with a Dubai-based multinational company, the Dolphin Group. The deal illegally gave exclusive commercial rights to several of the province's lucrative game reserves and tourist sites to the company for over 25 years in return for underwriting the MPB's deficits to the tune of R12.5bn.⁶⁹ The legislature was completely marginalised and kept in the dark over the details during the negotiation and signing of the deal,

although the legislature did approve of the deal. Even after the scandal broke out, the role of the legislature was still very restricted. The legislature set up a multi-party committee to investigate. However its mandate was severely restricted, focusing its attention only on the operations of the Dolphin Group in Kenya and Dubai, and not on the details of the deal. Given the restricted nature of the legislature's investigation and the restricted terms of reference, it was no surprise when its investigative committee returned from Kenya and Dubai to endorse the deal. Subsequently, the scandal that followed turned out to be one of Mpumalanga's worst scandals, involving some of the most high-ranking ANC politicians in the province.

The discussion above is meant to suggest that in a legislature where the political opposition is extremely weak, and the responsibility to enforce good governance and accountability falls onto the ruling party's own majority, the chances of the legislature being an effective site for administrative oversight are severely limited unless there is sufficient political will within the ruling party to ensure that the government is held accountable. The speaker, William Lubisi, acknowledged this dilemma in 1999, pointing out that "most members in the legislature and the executive are in the ANC", when responding to a question regarding the ineffectiveness of the legislature when undertaking oversight functions.⁷⁰ Lubisi further pointed out that "the relationship between the legislature and executive [had] not been that good" following attempts by some MPLs to raise questions in the legislature regarding some of the numerous corruption scandals that had been uncovered in the province between 1996 and 1999.

This discussion should, however, not be taken to suggest that there were no occasions during this period of the legislature reasserting its authority against the executive by taking an aggressive stance on an important matter. One such incident was the highly publicised battle between the legislature and the executive in 1997 when several portfolio committees refused to pass the budgets of their respective departments.⁷¹ The 1997/98 provincial budget of R5.1 billion had a shortfall of between R600 million and R800 million, and Premier Matthews Phosa's administration was unwilling to implement the politically unpopular but necessary spending cuts to make up the shortfall, which resulted in a high-profile political standoff inside the legislature. Given the national treasury's policy decision to provide no further bailouts to any province that overspends its funds, the legislature adopted a surprisingly aggressive approach towards resolving the impasse. It seized the rare opportunity to exercise its authority and went about effecting the necessary cuts in the budgets of several departments, to find nearly R75 million for redistribution to more deserving policy programmes. One of the departments that had its budgets raided was the finance department, where R59 million intended for acquiring new government buildings was confiscated by the legislature. Its MEC, together with senior officials, walked out of the budget

deliberations in a fit of rage, only to be ordered back by the presiding chairman, ANC MPL Boy Nobunga, and forced to apologise.⁷²

However, such an example of the legislature assertiveness was extremely rare, especially during the 1994-1999 period. It was only after the 1999 elections with appointment of the new premier that the legislature began to re-assert its authority frequently, with interesting ramifications, as would be argued in the following subsections.

6.2.2.2. Reasserting the authority of legislature and political instability: 1999-2004

6.2.2.2.1. Practical issues and capacity problems

After the serious administrative and operational problems that affected the legislature's functioning during the first three to four years of its existence, a number of key changes were introduced in attempt to revamp it. In fact, most of the foundational changes were introduced in 1998, making this the watershed year in the organisational and institutional development of the Mpumalanga legislature. Firstly, after a clean up of its former corrupt and inept leadership, a new administrative and political leadership was appointed to lead the organisational and political revival of the legislature. A new administrative head (i.e. secretary) was appointed in May 1998. Linda Mwale, former director in the premier's office, was initially appointed in an acting capacity for two months but this was later turned into a permanent appointment. Mwale had a mandate to introduce vital administrative and organisational reforms to revamp the management of the legislature. The second development was the appointment of a new political head of the legislature in July 1998. William Lubisi, a member of the South African Communist Party and a respected leader in Mpumalanga politics, became the new speaker with a challenge to redefine the role of the legislature.

Mwale and Lubisi started the daunting task of turning the hitherto weak, rudderless and dysfunctional provincial legislature, with a thoroughly demoralised workforce, into an effective oversight institution with the necessary financial and human resources. The legislature introduced a range of organisational reforms programmes, with funding from the European Union's Parliamentary Support Programme (EUPSP).⁷³ The management consultancy firm SIMEKA and the auditing firm Ernst & Young were contracted to help design the administrative and financial management systems needed. These reforms were in the areas of human resource management, communications, staff policies, labour relations, information technology and resource management.⁷⁴ The third critical change was the de-linking the administration of the legislature's financial affairs from the executive to enhance its organisational and institutional autonomy. This has already been discussed.

The new speaker focused his reform efforts on re-defining the vision of the legislature. Like his counterpart in Gauteng, Firoz Cachalia, Lubisi emphasised the key themes good, clean and accountable government. In the legislature's 2001/02 annual report, Lubisi emphasised "the need for the provincial legislature to modernise its structures and functioning in pursuit of a responsive, transparent and accountable legislature".⁷⁵ In his presentation of the legislature's budget for the 2003/04 financial year, the speaker stated his intentions to prevent the legislature's function of oversight degenerating "into some form of praise singing [for] the executive".⁷⁶ Lubisi added "it is unacceptable to turn a blind eye where it is clear that the executive does not perform".⁷⁷ This was a radical stance compared with the more sedentary orientation of the legislature during the 1994-1999 period, as well as those of other ANC-controlled provincial legislatures in South Africa. Also, in his 2003/2004 budget presentation Lubisi made the largest allocation of funds yet towards the goal of strengthening the capacity of the legislature for effective oversight. An amount of R8.9 million out of a total legislature budget of R49.9 million was earmarked for the work of committees "to ensure effective oversight".⁷⁸

In addition, a great deal of emphasis has been placed on the need for skills development and training among both MPLs and the support staff. This was still a major problem. In particular many MPLs lacked the vital financial analysis skills that are so critical to effective budgetary oversight work at committee level. Therefore an amount of R781 000 was allocated towards training both MPLs and support staff for the 2003/2004 financial year. Attempts were made to overcome the problem of shortage of skilled administrative personnel, including by seconding personnel from government departments to the legislature. However, enhancing the administrative capacity of the legislature remains an intractable problem and there are continuing organisational inefficiencies. For instance, the efficiency and effectiveness of the day-to-day running of the legislature continues to frustrate many MPLs. During interviews some of the MPLs made repeated references to constantly changing or interrupted programme schedules, cancelled committee meetings, lost or misplaced order papers and so on.

At committee level, the legislature has been moderately successful in employing more administrative staff, including additional committee coordinators and clerical staff. However, the committee research staff remains woefully inadequate, unskilled and under-resourced. As already pointed out, the legislature did not have much research capacity throughout the 1994-1999 period. After 1998, through intervention by the EUPSP, some funding was made available to acquire the services of a limited number of temporary contract researchers. However, the research unit suffered constantly from severe staff turnover and by 2003, it had only three researchers serving up to 14 legislature committees. All three researchers were interviewed for

this study and confirmed the dismal state of the research capacity of the legislature. In fact, the EUPSP commissioned a study of the research units of all the nine legislatures in 2001. The study catalogues the problems experienced in Mpumalanga.⁷⁹ It is important to emphasise though that since the appointment of the new administrative and political leadership of the legislature, a lot of effort has gone into its organisational development. Also, there appears to be sufficient political commitment from the ruling party towards strengthening the legislature's administrative capacity through appropriate organisational reforms and the allocation of the necessary resources.

6.2.2.2.2. Systemic/political and functional problems

The second period of provincial government in Mpumalanga transformed the politics of the legislature radically, turning the institution into a political battleground among various factions within the ANC, between the executive and the legislature, and between the ANC and the official opposition DA. Some key political developments, both at national level and in the province, appeared to transform the provincial legislature from a largely dormant and subordinate institution into an active player that was keen to have an impact in the running of the province. Some of the key political developments that had a bearing in the political transformation of the legislature had their origins within the internal politics of the ANC. One of these developments was, clearly, the intervention by the national leadership of the ANC, which saw the premiership of the province change hands for the first time since 1994. Following the political turmoil inside the party and the provincial cabinet towards the end of the 1994-1999 period, the ANC stepped in and removed Matthews Phosa as premier, replacing him with Ndaweni Mahlangu to serve as premier for the 1999-2004 period.

This intervention followed similar interventions in other provinces such as the Northern Province and Free State during that period. These provinces experienced severe internal political instability inside provincial branches of the ANC, which had deleterious effects on the government of these provinces. In Mpumalanga the ANC sent a national delegation in October 1998, led by the then Deputy President Thabo Mbeki and Public Works minister Jeff Radebe, to the province on a fact-finding trip, amidst widespread media reports and allegations of internal divisions and debilitating leadership struggles. There had also been high-profile political and financial scandals that had been uncovered in the province, in many cases involving senior party members and leaders in the provincial government. There were therefore unmistakable signs of political and administrative decay in the province that called for decisive national political intervention. Therefore in January 1999 the ANC instituted a commission of inquiry, headed by Nosiviwe Maphisa-Nqakula, a member of the party's NEC, to investigate the internal divisions and political infighting in the province.⁸⁰

These events paved the way for the ANC's national leadership's decision to remove Premier Matthews Phosa and replace him with a political outsider, Ndaweni Mahlangu, after the 1999 elections. It was an attempt to quell factional infighting in the leadership of the party, which was causing political instability in the government of the province. Mahlangu had been a minister in the former KwaNdebele homeland, and later became ANC member of the National Assembly for Mpumalanga. He lacked secure political roots within the mass ranks of the ANC in the province. However, as in the case of Premier Shilowa in Gauteng and Winkie Direko in the Free State, the thinking behind this decision was to take the steam out of the leadership power struggles in the province by installing a relative outsider with no ties to any of the local political factions. In theory, this would enable the new premier to concentrate on governing the province effectively and ensuring delivery of basic services without unnecessary political distractions. It was also expected that, with the support of the party's national leadership, Mahlangu would bring about political unity to the hitherto unruly party leadership and a much-needed stability in the government of the province. However the intervention failed to quell the infighting. The new premier found himself leading an internally divided ruling party caucus in the legislature, and constantly being drawn into faction fights with some of the party's local political heavyweights like Fish Mahlalela who had earlier been accused, together with former premier Matthews Phosa, of causing internal political divisions and factionalism in the party, according to the findings of the Maphisa-Nqakula commission of inquiry.⁸¹

One of the unforeseen dynamics of the ANC's intervention in Mpumalanga was that the warring factions inside the party took their battles onto the floor of the legislature, and engulfed the new premier and his cabinet. In some cases some of the hostile factions found themselves brought together in 'unholy alliances' against the new premier, and often joined forces to campaign against his new administration. In fact, there is a strong belief among some insiders within the ANC that the reason why corruption, fraud and other elements of decay in Mpumalanga are easily and routinely uncovered, more frequently than in other provinces, is because of the factional rivalries within the party. For instance, a newspaper article in 2000, quoting unnamed sources within the ANC, argued "the power struggles within the Mpumalanga ANC revolve around personal ambition, with various factions exploiting the alleged corruption of their opponents – and regional differences – to advance their own careers".⁸² Therefore the removal of Phosa did not quell the internal faction fighting and his supporters in the province continued to exercise influence in the politics of the party and the legislature. Also Fish Mahlalela, also a bitter leadership rival to former premier Matthews Phosa, and rumoured to have strong ambitions for the premiership of the province, was still politically strong in the province even after the intervention of the ANC leadership, and led a political faction within the party which began campaigning vigorously against the new premier.⁸³ The new premier himself had built his

own faction inside the party, which included some of the politicians who had served in the former homelands of KwaNdebele and KaNgwane. Included among these were former homeland leaders like Steve Mabona, regarded as one of the richest, most powerful and corrupt politicians in the province, and David Mkhwanazi, also tainted by past corruption and nepotism scandals when he was MEC for environmental affairs and tourism under Phosa.⁸⁴

The Mpumalanga legislature therefore became an arena where scores were to be settled and various political factions waged protracted battles against each other and against the new premier's government. This appeared to incite the legislature politically into taking its oversight role more seriously than before, displaying unprecedented levels of political willingness to confront the executive on a range of issues including corruption and mismanagement. Also many ANC MPLs were no longer reluctant to raise uncomfortable questions on the floor of the house or at committee level where much of the oversight work took place. In fact, Joe Nkuna of the UDM and Clive Hatch of the DA, both confirmed that many ANC MPLs were no longer afraid to criticise their MEC. Clive Hatch argued "There is less protection for ANC MECs now than in the past..."⁸⁵ As already discussed in the previous subsection, the new speaker, William Lubisi, was also determined to see the executive regularly held to account by the legislature. Added to the above were the complexities of opposition politics in the legislature. Firstly, there was a change in opposition politics, with the NNP losing its status as the official opposition after the 1999 elections, and being replaced by the DP. The DP later incorporated the NNP and became the DA, bringing with it a new and aggressive style of opposition politics in the legislature. Using high-profile confrontational tactics against the provincial government and working closely with some sections of the private media, the DA's sole MPL and leader of the official opposition Clive Hatch has become extremely adept and effective in his outspoken criticisms of corruption and ineptitude under Mahlangu's government.

Clearly, these political developments in the province, particularly the internal political dynamics within the ruling ANC, played a critical role in transforming the provincial legislature into an important platform for holding the provincial executive accountable. The willingness of the ANC-dominated legislature to adopt a critical public stance against its own government when this was deemed necessary was illustrated in the publication in 2003 of the first openly scathing committee report since 1994 by the legislature's influential Public Accounts Committee.⁸⁶ The committee's outrage followed the uncovering of declining health standards in public hospitals throughout the province, especially in rural areas where patients were dying because of lack of vital facilities and essential medical supplies.⁸⁷ This incident eventually led to a decision by Premier Mahlangu to put the Department of Health under curatorship in May 2003 after forensic investigations had found that senior departmental officials, and the MEC, had allowed fraud,

mismanagement and the improper use of funds meant for HIV/AIDS programmes to occur. It needs to be noted though, that this was not the first time that a government department in Mpumalanga had been placed under curatorship. During the 1994-1999 period, several departments including Health, Education, Environmental Affairs and the MPB had been placed under curatorship.⁸⁸ However the key difference was that under Phosa, the decision was made by the cabinet on essentially technical/managerial grounds, without much involvement by the legislature, whereas under Premier Mahlangu, the decision to put the health department under curatorship was made under enormous political pressure from irate members of the ruling party as well as the opposition in the legislature.

Premier Mahlangu therefore governed throughout the 1999-2004 period under considerable hostility from a coalition of forces within the legislature, and the cumulative effect of this was that it had turned the legislature into an effective tool of oversight and accountability, despite its administrative weaknesses as discussed above. Even the survey of Mpumalanga MPLs conducted for this study in 2002/03 seemed to confirm the growing political confidence and strength of the legislature vis-à-vis the provincial executive. For instance the MPLs were asked to indicate the extent to which they agreed or disagreed with the following statement: 'the legislature is subordinate and rubber-stamps policy decisions made by the executive'. Using a 5-point scale ('disagree strongly', 'disagree', 'neutral', 'agree', 'agree strongly') to indicate their responses, 11 out of the 13 MPLs who responded to the questionnaire disagreed or disagreed strongly with the statement. Only 2 MPLs agreed strongly. Proportionally therefore, the number of Mpumalanga MPLs who disagreed or disagreed strongly with the statement was higher than the comparative figure for Gauteng (12 out of 20 MPLs) and for the entire sample of nine provinces (54 out of 82).

However, the political resurgence of the legislature also caused some alarm within the national leadership of the ANC, because the premier and his MECs were constantly being put on the defensive, both politically within the ANC and in terms of service delivery as a government. The premier and his MECs spent a great deal of time and effort fending off attacks, especially from their own colleagues, and not governing effectively. For instance within the ANC in the province, Premier Mahlangu had lost his chairmanship of the party in 2002 in a humiliating defeat by Fish Mahlalela, one of his political archenemies. To make matters worse, Mahlangu was not even elected to the PEC, as is generally a common practice across all provinces. This served to underline the fact that the premier lacked a strong political base within the mass ranks of the party in the province. In addition, more than seven of Mahlangu's MECs were also thrown out of the PEC. They included two of his staunch allies, Steve Mabona and Sibongile Manana.

Clearly, Premier Mahlangu was severely weakened politically and, together with his cabinet, lacked the necessary political credibility and legitimacy to govern effectively. For the ANC at national level, the growing political confidence and strength of Mahlangu's enemies within the party had virtually turned the provincial legislature into a potential breeding ground for uncontrollable regional leaders. This was especially significant given Mbeki's clear desire, in the wake of the 1998 party policy decision on the appointment of ANC premiers, to see fairly moderate, if not pliant, political leaders in charge of ANC-ruled provinces. Mbeki needed this to guarantee his reforms of the provincial system of government as discussed in Chapter 2, especially to ensure better intergovernmental coordination of policy implementation and service delivery at provincial level.

This explains why the ANC leadership had intervened on several occasions not only in the affairs of the party in the province, but also in the running of the province during Mahlangu's term of office. One of these dramatic interventions occurred in 2001. In a clear attempt to shore up Mahlangu's shaky grip on power as well as to crush internal political opposition to him, the ANC removed several key MPLs and known enemies of the premier from the provincial legislature. A total of six MPLs, including the party's chief whip in the legislature, Lassie Chiwayo, were removed and sent to the National Assembly. Six new MPLs were appointed as replacements, among them the ANC's influential party caucus chairman in the National Assembly, Thabang Makwetla, who eventually became premier after the 2004 elections.⁸⁹

6.2.2.3. Committees as oversight structures

Committees are the most crucial tools for carrying out the bulk of the legislature's 'watch-dog' responsibilities. These entail a variety of activities such as routine oversight of policy implementation and service delivery, detailed scrutiny of departmental reports, as well as detailed consideration of draft budgets and proposed legislation. Their effectiveness therefore largely defines the effectiveness of the legislature. One of the most critical elements in the effective functioning of committees is the size of the legislature, and therefore the number of members available to carry out committee work regularly. It was pointed out earlier in this chapter that Mpumalanga has one of the three smallest legislatures in the country, with only 30 MPLs. As already discussed, if all the members who are not always available for committee work are excluded, then the number of committee members is only about half of the 30 MPLs in the Mpumalanga legislature. This severely limits the human and institutional capacity of its committee system.

The other important element that affects the functioning of the committees is their number. Literature suggests that for small legislatures, too many committees would be inefficient and

infective.⁹⁰ This is the problem that seems to have affected the Mpumalanga legislature. For its small size, it has tended to have more committees than seems justified. For instance, over the years, the total number of committees in the legislature, both portfolio and others, has approximated 15. With the number of MPLs available for committee work also limited to approximately 15, many MPLs cannot avoid serving in several committees at the same time. To illustrate the point, an analysis of information relating to committee membership and committee assignments in the legislature during the 1999-2004 period revealed that, on average, each MPLs served in 8 committees. This represents an excessive rate of committee assignment per MPL, likely to create severe work overload for MPLs and poor quality of work at committee level. This is one of the major disadvantages of small legislatures.⁹¹ Notwithstanding this structural problem the oversight workload of small legislatures like Mpumalanga is just as hectic, if not more so, as that facing bigger legislatures like Gauteng, KwaZulu-Natal or Eastern Cape, who had more than twice the number of MPLs available for regular committee work.

6.2.2.3.1. Budget oversight/scrutiny

As already argued elsewhere in this thesis, budget oversight entails monitoring and scrutinising the government's activities relating to the management and spending of public funds and the use of other resources to deliver services to citizens. Even though in terms of current constitutional provisions the extent of the involvement of provincial legislatures in the formulation of provincial budgets is severely restricted, the legislatures do have an important role and function of examining the policies and programme priorities set by the government. In their detailed scrutiny of proposed departmental budgets, portfolio committees examine not just the proposed budget line items, but also the strategic plans, priorities, performance indicators, human resources plans and concrete output targets set by departments. Also, the management structure and other organisational aspects of government departments are closely scrutinised to ensure that resources will be utilised efficiently and cost-effectively. This information is vital during budget hearings as it helps the committees to ensure that proposed departmental policies and programmes are matched properly to available resources and institutional capacity, to avoid misuse of funds. In practice, however, the Mpumalanga legislature has experienced serious problems that undermine the effectiveness of the budget oversight/scrutiny procedures. For instance, all informants interviewed for this study agreed that government departments are generally still unable to provide their fully worked out annual programmes of action, including their strategic plans, when submitting their draft annual budgets at the beginning of the year. ANC MPL, Jackson Mthembu, confirmed this in an interview in 2003. He pointed out that "in their proposed budget allocations, departments are usually asked to provide better plans...they fail to do this. Departments are still weak in terms of providing information on their expenditure plans".⁹² Mthembu's contention corroborates the findings of the Ncholo commission report of 1997 regarding the same

problems. The report stated “whilst a process to link strategic plans to budgeting exists in theory, and senior staff understood that this is necessary, the two are not integrated yet”.⁹³

Provincial legislatures do have the authority to approve or reject government expenditure proposals. The power to reject proposed budgets is an important constitutional tool at the disposal of the legislatures even though, due to South Africa’s current political system, this power is very rarely used. As already pointed out, it was used only once in Mpumalanga, in June 1997, to block the proposed 1997/98 provincial budget and the Mpumalanga legislature has so far been the only legislature to have done this. Six portfolio committees refused to pass the proposed budgets of their respective departments, not only to prevent deliberate deficit spending by the government, but also to force departments to reprioritise their expenditure programmes and to cut unnecessary projects. In fact, the legislature’s ‘committee of the whole house’ went as far as rewriting the 1997/98 provincial appropriations bill before passing it.⁹⁴ There are two important reasons why this happened. Firstly, there was a real crisis looming in that, had the legislature passed the deficit budget, the government would have run completely out of money, thus failing to meet many of the programmes identified. The political consequences of this would have been monumental for the governing ANC, especially given the fact that the national government had pledged not to provide any more bailouts to overspending provinces.

One possible consequence of the provincial government running out of money and failing to fulfil its functional responsibilities would have been the national government invoking Section 100 of the Constitution and taking over completely the administration of the Mpumalanga province. This would have been extremely embarrassing for the ANC. It is therefore plausible that the ANC felt that the consequences of forcing severe budget cuts upon the provincial administration at the time were less onerous. The second reason why the legislature was able to take this course of action was that the legislature had earlier amended the Provincial Exchequer Act of 1994 to empower itself to introduce changes to the proposed budget.⁹⁵ It is not clear whether or not this amendment was within the scope of the constitutional provisions regarding the division of powers and functions between the legislature and the executive, as well as the constitutional provisions dealing with money bills. Nonetheless this amendment apparently allows the legislature, sitting in committee, to make the necessary adjustments to the draft departmental budgets and the entire budget of the province if it deems it necessary and this is what happened in 1997. This amendment therefore appears to provide a potentially powerful weapon for the legislature to exercise its authority over budget deliberations in the province.

Clearly, all portfolio committees play a critical role in the budget oversight processes in that the relevant departments submit their proposed budgets and expenditure plans to be examined in

detail by committee members. As in the case of Gauteng, the finance and economic affairs committee plays a crucial overarching role of deliberating on all the individual departmental budgets as well as the entire provincial budget, linking it to the overall strategic goals of the province. Unlike in Gauteng though, it appears that the finance committee in Mpumalanga does not participate in the preliminary inter-departmental budget discussions prior to the budgets being presented to the legislature at the beginning of the year. This means that the legislature is denied the vital opportunity of influencing critical budget decisions at an early stage.⁹⁶ However in theory, the Mpumalanga legislature should have benefited, like other legislatures, from the introduction of the Medium Term Expenditure Framework in 1997, which was aimed at providing legislatures and their committees with a three-year time frame during which to influence important decisions relating to the formulation of medium-term policy priorities in the province and the allocation of fiscal resources to such priorities. In practice though, it appears that the legislature and its committees have generally been ineffective in utilising some of these oversight tools.

6.2.2.3.2. Monitoring policy implementation and service delivery

Once departmental budgets and the entire provincial budget have been approved, the oversight process moves to the second and critical stage. This stage essentially entails the monitoring of the activities of government departments on the ground where the funds appropriated in the legislature are spent to implement policy programmes and deliver social services. This is to ensure that public resources are used efficiently and services delivered to citizens in accordance with departmental policy programmes and strategic plans as presented to the portfolio committees and the legislature during budget hearings at the beginning of the financial year. In practice, the fieldwork-based oversight and the monitoring activities of the Mpumalanga legislature committees improved significantly after 1999. Justin Arenstein, an independent journalist based in Nelspruit, who has written extensively on Mpumalanga politics for the past decade, points out that “committees are increasingly engaging in site trips...[they have become] more active in oversight, leading to more criticisms of departments and the executive”.⁹⁷

However, there is insufficient information on the activities of the committees to assess whether or not there has been a noticeable improvement during 1999-2004 compared with the past. For instance, vital information about the total number of committee meetings per annum, the volume or number of different types of reports routinely scrutinised by the committees, the number of committee reports presented to the legislature, the number of oversight trips and so on is difficult to obtain. Such little information as is available is extremely sketchy, unreliable and does not reveal any patterns to make even tentative conclusions. Despite the improvements, the quality of oversight work inside the legislature remains largely poor. There are still severe

weaknesses and capacity constraints that continue to undermine the ability of the legislature and its committees to fulfil their oversight and monitoring responsibilities thoroughly. In fact there is a general consensus among observers, including some of the MPLs interviewed for this study, that the history of serious corruption and mismanagement of public resources in the province has been accompanied by the poor quality of oversight work inside the legislature. The process of monitoring policy implementation is meant to go on regularly throughout the financial year and is carried out primarily through committee investigations, oversight trips (i.e. site visits) by the various portfolio committees to service delivery and project implementation sites, as well as regular scrutiny of departmental quarterly and annual reports.

Of the three oversight methods mentioned above, independent committee investigations into service delivery problems are very rare, mainly because of lack of capacity. Oversight visits to service delivery and project implementation sites have been more common than independent committee investigations, even though information about them is patchy. As indicated above, committees have become much more active in undertaking oversight visits and some of the visits in the recent past have uncovered serious problems on the ground. A major example of this was referred to above, where the health portfolio committee visited many hospitals throughout the province in 2003 and uncovered serious problems in the entire provincial health service. However the most commonly used method of committee oversight is the scrutinising of departmental quarterly and annual reports. One of its advantages, in theory at least, is that the regular submission of these reports by departments serves as a mechanism for detecting problems in advance and dealing with them before they escalate into major crises.

In practice the legislature has had constant difficulties gaining the benefits of this method of oversight. For instance, not all departments always submit their reports. It was only after 1999 with the promulgation of the Public Finance Management Act (PFMA) that the Mpumalanga legislature began insisting on the regular submission of quarterly reports by government departments. Section 133 of the Constitution obliges departments to submit reports on their activities regularly to the legislature for purposes of oversight. With the introduction of the PFMA in 1999, this constitutional requirement was reinforced and the provincial legislatures were provided with a potent legal weapon to meet their oversight responsibilities. In theory, the PFMA should have made budget oversight and especially the monitoring and scrutinising of departmental activities a lot easier, more effective and stringent. In terms of the Act, departments and other executive agencies like parastatals are legally required to submit quarterly management and annual reports, with audited financial expenditure statements, to their respective portfolio committees and to the public accounts committee. Such reports are vital sources of authoritative

information on the activities of the government, its departments and other agencies throughout the year.

However, the legislature has generally been unsuccessful in forcing the government to meet the requirement to willingly supply the information to the committees. To illustrate this point, after the financial scandal involving the misuse of HIV/AIDS funds was uncovered in the health department in 2003, Premier Mahlangu instituted a forensic inquiry by the auditing firms KPMG and Price Waterhouse-Coopers. Two extremely damaging reports were submitted to the premier and, despite repeated requests from the legislature and threats of legal action by the DA, the premier refused to submit them to the legislature. However, despite the failure of the government or its departments to comply regularly with the requirement to submit reports regularly to the legislature, the committees are still highly dependent on such information for their oversight work. This is primarily because committees still lack the necessary capacity to generate adequate information of their own from independent sources. The research capacity of the Mpumalanga legislature continues to be very poor, with only three researchers working with the committees in 2003 and 2004. This renders the committees absolutely dependent on departmental information and analysis, even in cases where such information is of poor quality and highly unreliable.

It also emerged during interviews with some MPLs that the implementation of the PFMA in Mpumalanga has had some interesting unintended consequences. For instance, the threat of imprisonment entailed in the Act for financial mismanagement has led to some of the managers in government being overly cautious in their strategic plans and priority setting in order to avoid falling foul of the Act. In other words, departmental managers are not attempting anything new and innovative for fear of contravening the provisions of the Act. For instance, Chris MacPherson of the NNP argued “the PFMA has created a new monster...you are being tested on the objectives you have to define and which you have to achieve. The best way to do this is to create exactly just the right ones and don’t try something new because you are going to be slammed for it...”⁹⁸ What this suggests is that, instead of the PFMA ensuring that government departments perform their functions effectively, with efficient and perhaps innovative use of public resources to achieve their policy goals, senior officials have become too cautious and are not willing to try innovative strategies or policy solutions to problems in order to achieve their goals for fear of possible prosecution. This suggests that the PFMA may not be as useful a tool of oversight for legislatures as was intended.

Finally, another impediment to effective committee oversight through departmental reports is that once committees have completed their deliberations on these reports, they have to draft

their own reports for tabling in the legislature. If problems have been identified, committee reports would contain recommendations for necessary remedial steps to be taken by departments. However, the Mpumalanga legislature does not have the necessary systems and procedures to enforce compliance with committee recommendation. This leads to a situation where committees uncover the same problems every financial year because of departments' failure to take appropriate actions and the failure of the legislature to monitor compliance with its own resolutions. Some MPLs voiced their frustrations about this problem during interviews. For instance Jackson Mthembu of the ANC argued "the legislature is still very weak as an oversight structure, unable to get departments to act on committee recommendations...reports after reports deal with the same problems which the house has passed resolutions on previously, and departments ignored".⁹⁹ Mthembu added "committee reports are not taken seriously...there are no mechanisms to oversee the implementation of committee resolutions...no tracking mechanisms...therefore problems are recurring".

Despite these difficulties, portfolio and other vital committees remain the most critical tools for monitoring and overseeing the work of government departments. In fact, the findings of the survey of senior public servants regarding perceptions about the most influential policy actors and institutions in the province seems to confirm their importance in processes of government in the province. In a scale of the five most influential institutions/policy actors in the province, the portfolio committees and the public accounts committee were placed jointly in first position, followed by all legislature committees combined, the mass media, the ruling party and the legislature's debating chamber in the last place.¹⁰⁰ This is crucial in that it points to a vital and precise area of intervention in any future organisational development programmes to strengthen the capacity of the legislature for effective oversight. In fact as pointed out above, the speaker of the legislature, William Lubisi, had already begun focusing attention on allocating greater resources to the committees to strengthen their capacity, especially during the 2003/04 financial year.

6.3. DELIBERATIVE AND LAW-MAKING EFFECTIVENESS

6.3.1. Legislature's Performance As A Deliberative Body

The legislative chamber or plenary is an important site for holding the government accountable by elected representatives. Its deliberative functions are also critical in regularly overseeing and monitoring the work of government. As in the case of Gauteng, the importance of the deliberative functions of the Mpumalanga legislature for purposes of oversight was overlooked and therefore understated during the first term of office. The main reason for this was that

during that period, many provincial legislatures regarded the technical function of law making as the primary, and therefore most important, function of the legislature because it entails the power and authority to lay down the laws that the executive and other agencies of government have to abide by and implement. At best, oversight was regarded as a secondary function. However this changed significantly after it became obvious that many legislatures did not always have the necessary technical capacity and resources to draft bills and formulate complex legislation. The function of law making has lost its primacy as a function of provincial legislatures. It became just one of several important functions of the legislature, which included promoting public participation, overseeing and monitoring the work of government departments.

In addition, Thabo Mbeki's assumption of power as president in 1999 led to important reforms in the system of intergovernmental relations in South Africa, as discussed in Chapter 2. Mbeki's emphasis on the need for speedy, efficient and better quality service delivery at provincial level meant that not only was the administration of policy implementation to occupy centre stage in the provinces, but also that provinces had to put in place effective monitoring and oversight mechanisms to ensure speedy, efficient and better quality of service delivery. It was also pointed out in Chapter 2 that President Mbeki demanded provincial institutions of government to be more accountable to their citizens and to encourage citizens to participate in the affairs of government at provincial level. Therefore in addition to committees fulfilling the legislature's oversight responsibilities, the debating chambers of provincial legislatures were increasingly expected to assume an even greater role in fulfilling routine oversight functions; the Mpumalanga legislature was no exception, especially under the leadership of the new speaker, William Lubisi. To fulfil its deliberative oversight functions, Mpumalanga legislature has a number of methods at its disposal. These include general debates in the chamber on important issues placed before it, questions/question time as well as questions specifically directed to the premier. The performance of the Mpumalanga legislature as a deliberative body will therefore be examined and analysed in terms of the effectiveness of these methods of oversight.

6.3.1.1. Debates in the chamber

Plenary debates are potentially very important tools of deliberative oversight in the legislature. However the extent to which this potential can be realised depends, among other things, on the frequency with which the legislature meets per annum. It was pointed out in Chapter 3 that on average, provincial legislatures convened about 23 sittings per annum to deliberate on a range of issues such as motions, committee reports, draft legislation, the budget, premier's policy speech and others. It was also pointed out that on average the Mpumalanga legislature convened about 20 sittings per annum between 1997 and 2001.¹⁰¹ This was below the provincial average for that period. There is no objective benchmark to judge the performance of the Mpumalanga legislature

in terms of average number of annual sittings. However, as indicated in Chapter 3 the legislature was one of the poorest performers compared with the provincial average during the 1994-1999 period, and also compared poorly with the Gauteng legislature during the same period. As already pointed out, one of the key weaknesses of the Mpumalanga legislature was its chaotic administration during the 1994-1999 period. Although efforts were made by the new speaker to improve the situation, there are still considerable administrative weaknesses evident in routine changes to programme schedules resulting in many scheduled legislature sittings, including committee meetings, being regularly postponed or cancelled. After being appointed speaker in 1998, William Lubisi stated that his office was “constantly striving to increase the number of sittings” for the 1999-2004 period and it seemed to have worked to some extent.¹⁰² For instance the number of sittings appeared to increase slightly between 2000 and 2003, to an average of 26 sittings per year, suggesting that the legislative chamber was becoming more important and active than before previously.

It should be noted that despite the low average number of legislature sittings during the 1994-1999 period, the legislature did serve as an important site for deliberations on some of the most important issues confronting society and the government, such as racism, corruption, crime, violence and others. These recordings of legislature debates reveal the extent of divisions and sometimes hostility and animosity between political parties, which clearly reflect some of the divisions within the broader society. Much of this animosity came through during plenary debates over important and sometimes controversial political and social policy issues, often leading to bitter party political divisions and mud-slinging. The recordings of the plenary debates also reveal some of the difficulties in the operation of the legislative chamber during the early period of government, often undermining its effectiveness as a deliberative body. For instance during the 1994-1999 period the under-developed ‘rules and orders’ of the legislature, the poor knowledge of the rules among presiding officers and their inability to apply these rules objectively during debates, had regularly caused severe tensions and unnecessary disagreements among parties. Even under the new speaker, William Lubisi, the chamber was occasionally susceptible to similar problems, especially during the first year or so of his tenure. As a result, some of the senior ANC MPLs often took advantage of the confusion and used their party’s overwhelming majority to frustrate the small opposition component of the legislature during debates. One of the most common problems that usually resulted from lack of understanding or poor application of the ‘rules and orders’ of the legislature was the inability of presiding officers to judge whether or not ‘un-parliamentary’ language was used during debates. This usually resulted in long, acrimonious and chaotic squabbles among MPLs.¹⁰³

The Mpumalanga legislative chamber did gradually become busier, especially during the last three years of the 1999-2004 period. As more sittings were convened, more debates took place on a variety of matters. Also, as departments increasingly complied with the requirement to submit quarterly and annual reports, more sittings and debates occurred to deal with these reports. The annual reports of the legislature also reveal that the chamber did debate many substantial motions placed before the house, mainly by the ruling party, although occasionally the opposition did place sometimes controversial motions before the house for debate. An example of the latter was the 'motion of no confidence' in the leadership of Premier Ndaweni Mahlangu in April 2000.¹⁰⁴ The first ever 'motion of no confidence' in a provincial administration was also placed for debate in the Mpumalanga legislature, by the NNP, in July 1997. Both motions led to furious debates in the legislature and angry exchanges between the NNP and the ANC. In general though, the debates in the Mpumalanga legislature are usually robust and do serve as occasions, especially for opposition parties, to vent their frustrations, thereby confining socio-political conflict among elected representatives of major social groups in the province to the formal institutions of government.

6.3.1.2. Questions and question time

The Mpumalanga legislature also provides regular and formal opportunities for the members to pose simple questions to the executive for oral and written response.¹⁰⁵ MPLs can also submit interpellations,¹⁰⁶ which usually lead to short debates, in addition to opportunities for questions specifically intended for the premier.¹⁰⁷ The rules governing the submission of questions and interpellations are clearly defined and substantially similar to those in Gauteng. Despite their small number, the opposition parties tend to pose most of the questions to the members of the executive. Precise figures are not always available because not all the legislature's annual reports supply the necessary information about the total number of oral and written questions posed to the members of the executive. As Christina Murray and Lia Nijzink point out, the biggest problem regarding the use of 'question time' as a tool for deliberative oversight is that government departments and MECs regularly ignore written questions or take far too long to respond.¹⁰⁸ This is despite the fact that, under current 'rules and orders',¹⁰⁹ failure to respond to written questions within 10 legislature working days automatically allows the written question to be converted into a question for oral reply, and the MECs concerned would have to respond verbally in the chamber.¹¹⁰ The problem is so serious that even Premier Mahlangu openly criticised some of his MECs in 2001 for avoiding to answer 78 written questions about corruption and mismanagement in the province for over six months.¹¹¹ What exacerbates this problem is that the legislature does not have proper mechanisms or punitive measures for ensuring that departments respond to written questions.¹¹²

6.3.2. Legislature's Performance As A Law- Making Body

6.3.2.1. Law making during the 1994-1999 period

The legislature has the right, in terms of the current Constitution¹¹³ and current legislature 'rules and orders'¹¹⁴ to initiate and draft legislation on any matter under provincial concurrent or exclusive jurisdiction. Although this prerogative has been utilised successfully at least on two occasions during the period under study, the bills concerned were only dealing with internal matters regulating the business of the legislature rather than substantive social policy matters. The first occasion was in 1998, after the new speaker was appointed, when the legislature promulgated the Mpumalanga Legislature Services Act to set up its own internal management systems and administrative structures.¹¹⁵ The second occasion was the passing of the Mpumalanga Petitions Act of 2000, as already discussed earlier in this chapter. The legislature tried to introduce two other Acts between 2001 and 2002, on the code of ethics for MPLs as well as for legalising the process of de-linking the management of the finances of the legislature from the public service. However these Acts were never passed following legislative developments at national level.¹¹⁶ As has been argued in previous chapters, in general provincial legislatures lack the necessary resources and institutional capacity to sustain the technical acts of law making on their own for long periods of time. Therefore the overwhelming majority of provincial legislation in Mpumalanga, as in other provinces, is initiated and drafted by government departments, and brought to the legislature for deliberations and detailed scrutiny at committee level, and for approval in the chamber.

Like other provinces, during the first two years of its existence the Mpumalanga province produced very little legislation, mainly because the new provinces were awaiting the necessary powers and functions to be assigned by the national government. Once this was done, much of the law-making activity was restricted to creating new administrative and other agencies, as well as enabling the new provincial institutions of government to operate lawfully. For instance, new institutions such as the provincial public service commission, tender board, provincial public protector, gaming board and house of traditional leaders and so on were created, while specific new laws were also passed to bring the parastatals inherited from the old homelands under the jurisdiction of the province. Also, legislation was passed enabling the province to pay the salaries of public servants and MPLs, as well as providing for the immunities and privileges of the newly elected provincial politicians. Between 1994 and 1996, an average of 3 bills were passed a year. After 1996 there was a significant increase in the rate of law making as the constitutional powers and functions were being devolved to the provinces. As the new administrative systems and structures in the province began to operate, more bills were being drafted and the legislature's law-making workload increased accordingly. For instance a total of 13 bills were introduced in

the provincial legislature in 1997, even though only six were eventually processed and promulgated into Acts dealing mainly with financial matters and budget appropriation. This suggests that the legislature's capacity was still severely limited in 1997.

The majority of the bills were only processed in 1998, leading to a total of 16 bills passed into law. This was the peak of law making in the provincial legislature in the ten-year period under study. The bills covered a wide range of policy areas including road traffic, land administration, housing, education and financial/budgetary matters. The wide scope of the legislation illustrated that the province had established the necessary systems and structures and these had begun to function properly for purposes of administering critical RDP social policy programmes and delivery of basic services to citizens. However, among the many pieces of legislation passed in 1998 were amendment Acts, suggesting that mistakes were being made in previous Acts. Alternatively, limitations and inadequacies had been exposed or new challenges identified during policy implementation and service delivery, which could be dealt with through such amendments.

In general therefore the legislature was fairly active as a law-making body during the 1994-1999 period, despite the political and administrative problems experienced during that period. Even though the rate of law making subsided significantly during the 1999-2004 period, the legislature was still actively involved in the processing of laws introduced by the provincial government. It was not possible to determine how efficient the legislature was in handling and processing some of the legislation. The legislature was unable to provide transcripts or documentation of selected bills processed by them in the past, including copies of the draft bills and their final Acts. This would have enabled an in-depth analysis of the quality of committee deliberations on a selected bill and the changes, if any, that had been introduced to determine the extent to which the legislature or its committees were able to exercise their power to amend or change government bills.

6.3.2.2. Law making during the 1999-2004 period

The pace and intensity of law making in the province and the law-making workload of the Mpumalanga legislature have subsided significantly compared with the mid-1990s. This is not surprising given that 1999 was the year of the second democratic elections in South Africa and the first half of the year was taken up by elections campaigning. Even so, information supplied by the legislature appears to show that departments introduced six bills, even though the legislature processed only two of them. The others were processed during the following year. The bills dealt with budgetary appropriations and the restructuring of corrupt parastatals in the province, following the uncovering of massive corruption in some of these institutions during that period. The arrival of Thabo Mbeki as the president also had an effect on the law-making activities of the

provinces. There was greater emphasis on the need for effective implementation of existing laws, enhancing the management capacity of provincial administrations and improving the quality of service delivery on the ground.

Consequently, law making as a component of the activities of the legislature declined to about six or fewer Acts per annum. The largest proportion of the legislation during this period was about annual budgetary appropriations, adjustments appropriations as well as amendments of previous legislation. Other legislation during this period dealt with substantially important policy matters. For instance, several pieces of legislation dealing with the establishment of new municipalities in the province in accordance with the Municipal Structures Act (1998) and the Municipal Systems Act (2000) passed by the National Assembly were passed. There were also a few but important bills dealing with economic policy issues such as economic empowerment, gambling and tourism. As many provinces, including Mpumalanga, began focusing attention on regional economic growth and development as a priority, some of these issues became important subjects for legislation.

Clearly the need for law making in the province has not disappeared. However there is the likelihood that the scope and type of law making in the province will become increasingly more specialised and targeted towards areas of exclusive competency for the provinces. This is primarily because, as argued in Chapter 2, one of waves of reforms introduced within the intergovernmental relations system has led to provinces in general deferring to the national government to formulate much of the legislation, especially in areas of concurrent responsibility. Therefore the function of oversight and monitoring of policy implementation and service delivery received greater attention and became more important as an activity of the legislature during the 1999-2004 period.

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CHAPTER 7: THE PROVINCIAL EXECUTIVE AND ADMINISTRATION

7.1. INTRODUCTION

As in other provinces the executive in the Mpumalanga province has occupied a crucial role in the functioning and performance of the provincial government over the years. It is the ultimate decision-making institution that coordinates and implements policy programmes formulated at national and provincial level. The provincial government in general, and the executive in particular, have played a crucial part over the years in developing the necessary administrative systems and processes for managing service delivery in the provinces – a responsibility that has become extremely critical in a relatively poor province like Mpumalanga. The institutional development, functioning and performance of the provincial executive will be the subject of this chapter, which examines and analyses the processes of establishing the provincial administration that started in 1994. It discusses some of the critical moments in the institutional development of the executive, and the dynamics that shaped the outcomes of these processes. The chapter also looks at how the executive was structured, the role it has played and its impact on processes of government over the years. Importantly, the examination and analysis of the development, performance and effectiveness of the provincial government over the years will be related to the era of the two premiers who ruled the province respectively in the periods 1994-1999 and 1999-2004. Finally, the chapter will discuss the policy priorities and performance of the two provincial administrations under the two premiers, especially pinpointing some of the challenges they encountered.

7.2. ESTABLISHING THE MPUMALANGA PROVINCIAL GOVERNMENT

The creation of the Mpumalanga provincial administration was a complex exercise. The process took place between 1994 and 1996 although some of the key aspects of the restructuring process were implemented in 1997, as will be discussed throughout the chapter. Before the process started, the provincial leadership had to determine where to situate the provincial capital. The city of Nelspruit and the coal mining town of Witbank were in the race for the status of provincial capital in 1994. However it would appear that the process of deciding on the provincial capital was fraught with political tensions that went to the heart of the complex factional rivalries inside the Mpumalanga branch of the ANC. The source of the political tensions was a deep Highveld/Lowveld regional split within the ANC – between the political network based in the Highveld region, drawing political support from the former homeland of KwaNdebele and preferring Witbank as the provincial capital on the one hand. On the other hand there were the political networks based in the Lowveld, especially around Nelspruit and the KaNgwane homeland area where Phosa had well established political roots and other interests, which preferred Nelspruit as the provincial capital.¹

Phosa eventually decided on Nelspruit as the provincial capital, based on what appeared to be objective, technocratic considerations rather than on political grounds. For instance, in a major speech in July 1994, a few months after assuming office as premier, Phosa elaborated on some of the grounds on which the decision was based.² Firstly he indicated that a consultant was hired to advise the provincial cabinet on the choice. Secondly, Phosa indicated that the decision was based on considerations of cost-effectiveness; the developmental needs of impoverished areas surrounding Nelspruit (i.e. Kanyamazane and Kabokweni townships); the central location of Nelspruit in relation to other parts of the province; as well as the city's close proximity to Mozambique and Swaziland – an obviously important consideration, given Phosa's acknowledged desire at the time for provinces to be assigned some powers over diplomatic matters.

On the face of it, some of the factors identified above are important factors on which to base the decision on the choice of a provincial capital. However, it is clear that a technocratic discourse was being used by Phosa to hide the obvious political factors that may have weighed heavily on his decision. In fact, Phosa hinted at the politically charged nature of the process by revealing that “the idea of a split capital between the two towns” was once considered as an option “to ascertain whether this could be a political compromise”.³ The reference to an attempt at a ‘political compromise’ clearly suggests that the process was characterised by deep political divisions. Also, delegating the function of advising the provincial cabinet to a consultant was intended to obscure or obfuscate the highly political nature of such a decision, thus essentially relegating it to the realm of impartial, technical expertise that could not be challenged on political grounds.

However this was to a large extent a political decision and it would seem that those who favoured Witbank as the capital saw the choice of Nelspruit as a decision motivated by political interests. As Tom Lodge points out, prior to becoming the premier, Phosa had already established deep roots within the Lowveld region where he had built extensive political and business networks while based in Maputo as an Umkhonto we Sizwe intelligence Chief, and also ran Nelspruit's only black-owned law firm.⁴ Lodge also adds, “Phosa's administration drew upon the old KaNgwane political establishment, the youth congresses and the civic associations developed during the era of the UDF (which he had helped to found)...”⁵ Therefore the choice of Nelspruit as the capital served to crystallise the regional/political split between the Highveld and the Lowveld based political networks even though, as Lodge points out, Phosa attempted to pacify the Highveld lobby by including a number of prominent Highvelders in his cabinet.⁶

Once the issue of the provincial capital was sorted out, the task of creating the provincial administration began. It was a complex task as it entailed the rationalisation of pre-existing bureaucratic structures inherited from the homelands of KwaNdebele and KaNgwane. Other structures were inherited from other entities such as the former Transvaal Provincial Administration and the relevant public service components from the former tricameral parliament of the old regime. In particular the new province inherited 10 departments from KwaNdebele and 10 from KaNgwane.⁷ In addition to these departments, several parastatals and utility companies were inherited from the two homelands, including the KaNgwane Economic Development Corporation, KaNgwane Electricity Corporation and the KwaNdebele Economic Development Corporation.⁸ These disparate structures and departments had to be rationalised into a single provincial administration comprising 10 departments. The process also entailed the incorporation of thousands of public servants inherited from the same entities. For instance, a total of 15 300 public servants were inherited from the homeland of KaNgwane, and another 12 500 inherited from KwaNdebele.

Those in charge of the process of bureaucratic restructuring had to deal with the technical complexity of rationalising the different structures. Absorbing public servants from disparate public service entities with varying job titles and job descriptions, as well as creating parity among groups of public servants with incompatible salary packages and conditions of service was lengthy and complex exercise. The technical complexity of this process was compounded by the fact that the new provincial administration, like other provinces at the time, had no 'blueprint' or best-practice model to draw on to ensure that the rationalisation exercises were done effectively. The Public Service Commission points out that it would have been practically impossible to impose a single amalgamation and rationalisation model from the centre, worked out down to the last detail, to be adopted and followed by the different provinces.⁹ Therefore the rationalisation and restructuring process in Mpumalanga, like other provinces, was a locally driven exercise involving local role players, particularly the provincial public service commission based in Nelspruit, which guided the process in terms of the relevant public service regulations.

Unlike in the Gauteng province where the process of establishing the new provincial administration was fairly decentralised, in Mpumalanga it would appear that the process was fairly centralised under Premier Matthews Phosa's office. For instance, in Gauteng each department had its own Strategic Management Team (SMT) comprising its designated MEC and other role players in the province, with the task of designing the organisation of their departments following the relevant public service legislation.¹⁰ All these SMTs fell under the jurisdiction of an overarching SMT presided over by Premier Tokyo Sexwale, whose role was merely to provide overall guidance and define a strategic vision for the province (see Chapter 5). In Mpumalanga it

would appear that there was one SMT driving the entire process, incorporating all the relevant role players but presided over by Premier Phosa. The SMT was driving the complex task of creating departmental organisations and their management structures. This perhaps explains why the head of Premier Phosa's office at the time described the entire exercise as "traumatic to say the least".¹¹ Yet this centralised method allowed the premier to be in charge of the process of defining the provincial administration and fashioning it according to his government's strategic needs.

One of the problems experienced during the process of incorporating personnel from KwaNdebele and KaNgwane was that many public servants from these homelands were reluctant to leave their houses and residential areas for relocation to the capital of Nelspruit where property and rental prices were high. As a result, many of the public servants initially commuted between their residential areas and the capital of Nelspruit, with disastrous consequences, such as poor performance and absenteeism. Other public servants refused to take up their posts or accept permanent appointment in Nelspruit.¹² Apparently, the premier's office was one of the worst affected. This problem is one of the factors that delayed the restructuring process, especially with regard to the rate of absorption of personnel from previous entities. As a result many departments operated with large numbers of vacancies, thus preventing long-term strategic planning and service delivery.

Nonetheless Mpumalanga went through the same phases of bureaucratic rationalisation and integration as other provinces that inherited public service components from the homelands. For instance, the old inherited public service structures were rationalised and integrated into the new provincial administration, while new departments such as Education, Safety and Security, Economic Affairs and Health, which were previously not the responsibilities of sub-national entities, were established. Also, the public servants who were inherited from the old structures, as well as newly recruited personnel, filled the vast majority of the posts in the new departments.¹³ Initially 12 departments were established in Mpumalanga but this was later reduced to 10. It is not clear to what extent elected members of the provincial legislature or any other interest groups were involved in this process. In the case of Gauteng, some of the MPLs of the ruling party were intricately involved in the bureaucratic rationalisation and integration process, and some of them went on to serve in the newly established departments as advisers to the new MECs or even as heads of departments. In Mpumalanga, it would appear that the process was removed from the majority of elected public representatives, thus ensuring that it was a largely top down exercise with the premier's office at the apex. As already argued in the previous chapter, perhaps this provides some insight into the process by which not only the executive branch but also the premier's office achieved its dominant status within the provincial government.

As already pointed out above, the premier's office was not immune from some of the problems affecting general departments, particularly staff recruitment problems. Therefore its ability to maintain a tight grip on the process of designing the provincial administration must have drawn from the dominant constitutional and political status of the office. Ironically, the fact of being in charge of that process also helped entrench the premier's authority in the province. As will be argued below, the premier was extremely 'hands-on' in terms of managing and directing the bureaucratic rationalisation and integration process and sought to achieve a number of institutional goals. For instance, he strongly questioned the legislative framework under which the bureaucratic restructuring and integration process was undertaken, believing that it forced the provinces into an inferior public service administration model.

It would appear that Phosa wanted the new provincial administration to be institutionally equal in status to the national government's public service. He argued, "provinces are allowed only one director-general and a certain number of superintendent-generals on the same level as a director-general. I will firstly not call any of the heads of departments in my province 'superintendent-general' because they are neither medically inclined nor [are they] caretakers of buildings. They are, in fact, fully fledged heads of departments and I intend to not only fully call them directors-general, but give them the full benefits of service that a Director-General enjoys at national level".¹⁴ Phosa added, "In my province, I have already employed some of the best minds and managers from the private sector, civil society and previous government administrations, which I am not going to allow to enjoy inferior status to the directors-general at national level...the principle is unacceptable". This sentiment extended even to the design of the provincial cabinet and the designations of members of his cabinet. For instance, Premier Phosa also questioned the terminology used in the Constitution and other public service legislation to designate the provincial cabinet and the members of the cabinet, believing that the titles and official designations being used were demeaning. Phosa preferred to designate the members of his provincial cabinet as 'ministers' rather than 'MECs', arguing "we do not refer to the meeting of the cabinet as the meeting of the executive council, neither do we refer to political heads of departments as executive councillors...we live in an adult world where we need adult phrases for adult political systems. I expect my ministers...to act with great responsibility, authority and accountability. I would like therefore to give [them]...the correct political titles that add to their authority [and] status within society".¹⁵

Clearly, the extent to which Premier Phosa was involved in the creation of provincial administrative structures foreshadowed his general 'hands-on' style of leadership and management of the provincial government during his premiership. The type of righteous anger

towards central government rules and regulations expressed above characterised Phosa's general attitude during the period of the creation of the new provincial administration. Phosa's expressed preferences about the nature of provincial administrative structures and systems suggested that the premier placed a great deal of importance on institutions above everything else. It will be argued below that Phosa appeared to believe in a genuine federal system of government, with provinces exercising strong decentralised constitutional powers. Obviously, as a premier at the apex of provincial institutions of government, Phosa sought to exercise that power in Mpumalanga. It was clear therefore that he perceived provincial institutions of government as concrete expressions of sub-national political power and authority and he sought to fashion these institutions in ways that augmented that authority and power, especially in relation to the central government. In other words, Phosa placed a great deal of importance on institutions of government because he appeared to see them as important beacons or symbols of authority, power and political autonomy. For instance, as will be discussed below, Phosa wanted to create a position of deputy premier as well as positions of deputy ministers in his provincial cabinet in a clear attempt to create a model of provincial government equal and similar to what national government had.

7.3. PROVINCIAL EXECUTIVE: STRUCTURE AND ORGANISATION

The creation and development of the Mpumalanga provincial executive during the first two years of the province's existence was strongly influenced by Premier Matthews Phosa's desire to see a strong system of provincial government in South Africa. The structure and model of the provincial executive he desired reflected his strong and dominant personality. Phosa sought to create an executive that was dominant and could be used to push his government's agenda unchallenged. For instance, he conceptualised a model of the provincial executive where his office was in charge of strategic planning throughout the province to an extent of even producing five-year development plans for the entire province.¹⁶ The plans would then be adopted and implemented by all provincial departments. In other words, there was to be central planning for the province, undertaken inside the office of the premier, suggesting an extremely dominant and commanding position for the premier in terms of long-term strategic planning and economic development for the province.

Accordingly, a model of cabinet was created that was fairly centralised and very powerful. Unlike in the Gauteng province where the first provincial cabinet under Premier Tokyo Sexwale was fairly decentralised, with MECs exercising strong powers over their portfolios while the premier had a smaller office exercising an oversight role, Premier Phosa's cabinet was far more tightly controlled, with him at the apex. Phosa's conception of an effective exercise of political power

and constitutional authority demanded a strong and hierarchical provincial cabinet with a strong office of the premier at the top. Consequently the Mpumalanga premier's office was probably the largest in the country at the time, with a total of 410 staff members in 1996 – in fact, it was bigger than several line function departments such as Public Works, Roads & Transport (80), Housing (380) and Economic Affairs & Tourism (126).

The premier's office grew even bigger after 1997. With the abolition of the provincial Public Service Commission, some of its directorates were incorporated into the premier's office, including the corporate services division. By 1998 the premier's office had a total of 15 separate directorates and units. Among these directorates were the office of the provincial Director-General, Communications, Labour Relations; Legal Advisory Services, RDP, Strategic Planning and Development Unit (SPDU), Special Projects and Policy Unit (SPPU), Protocol as well as the Training and Development.¹⁷ There were also others dealing with youth, disability and women's affairs. Phosa considered the role of his office as that of driving “the process of transformation, reconciliation and most importantly the building of a new society, based on peace, democracy, prosperity and justice for all”.¹⁸ This was clearly a grand vision of the role of a sub-national institution of government. However the premier's office developed into a huge and cumbersome structure that became unwieldy and difficult to manage.¹⁹

Phosa's first cabinet was one of the largest in the country with 12 MECs plus the premier. This made it a 13-member executive. This size exceeded the constitutional limit of 10 departments plus the office of the premier. The size of the provincial cabinet was subsequently reduced to 10 departments plus the office of the premier following the restructuring process carried out after 1997. Although he did not realise his wish, Premier Phosa had wanted to create a super cabinet even if this would not have conformed to the model or format envisaged by the country's Constitution. For instance, as already pointed out, he wished to create a position of deputy premier as well as deputy MEC positions. Had he succeeded, Mpumalanga would have been the only province to have a deputy premier and deputy MECs. He wanted the province to draft its own constitution that would enable him to create these positions. He pointed out in 1994 that he had already appointed “a senior minister of my cabinet in my office to oversee cabinet affairs, constitutional and macro-administrative matters as a first step...”²⁰

Had Phosa succeeded in this, he would have assumed a more dominant and high profile ‘presidential’ role in the affairs of the province, similar to that of the president at the time, Nelson Mandela, who presided over the country while his deputy, Thabo Mbeki, ran the cabinet. Clearly, Phosa had wanted to recreate the national executive structure at provincial level. For instance he argued “the appointment of a deputy premier, in line with the appointment of two

executive deputy presidents [at] national level, as well as the appointment of deputy ministers, would also allow us to take further the extremely important principle of a government...of national and provincial unity".²¹ By this, Phosa meant that a larger cabinet would have allowed him to increase the representation of more political parties in the executive, which he believed would have furthered the course of national reconciliation. He went on to add that had he been allowed to appoint deputy MECs, he would have provided a seat to the Freedom Front. At the time, only the NNP was included in the provincial cabinet as part of the 'government of national unity' arrangement. However some thought at the time that the premier was building an empire – a large cabinet would have meant a huge budget and more power for the premier.²²

It is not clear how many deputy MEC positions Premier Phosa wanted but in principle, had he been allowed to do so, he could have appointed as many as five or even more, and the Mpumalanga provincial cabinet would have been the biggest of all the provinces. That would have left the provincial legislature extremely emasculated, with possibly very few MPLs left out of the cabinet to undertake oversight work over a very large and powerful provincial executive. It is clear therefore that Phosa had a fairly grand vision of the power and authority structure of the provincial government under his control. With the super-cabinet that he was seeking, Phosa could have felt emboldened politically and constitutionally to push for even greater autonomy from central government and for even more constitutional powers and functions. This provides valuable insights into his thinking, and possibly his ultimate ambition for power, which may clearly have played a significant role in his deteriorating relations with the national leadership of his party, and his eventual removal from office in 1999.

It is clear that Phosa was intending his cabinet to be a top-heavy structure and he sought to replicate this design philosophy at departmental level. Interviews with senior public servants in the province in 1999 revealed that the premier had sought to create a provincial public service with a strong cadre of technically competent and experienced managers leading the provincial departments. However, this was at the expense of a weak middle management that lacked important skills for financial management, policy analysis and implementation. For instance, Jeets Hargovan, a senior public servant in Phosa's office until 1999, revealed that the province needed "management training not only for senior management but also for middle level and junior managers...people at the top work too hard while the middle and junior levels lack a work ethic".²³ Hargovan went on to explain that the weaknesses in the middle and junior levels of management of the provincial public administration derived mainly from the absorption of untrained and unskilled public servants inherited from the former KwaNdebele and KaNgwane homelands. He believed this had created conditions for financial mismanagement and corruption in the province. Another senior public in the premier's office endorsed this view, arguing, "we

are flooded by capacity building at [senior] management level, neglecting the level below...”²⁴ This lack of technical capacity at the middle and junior management levels of the public service explains the provincial administration’s tendency in the early to mid-1990s to resort to costly consultants to carry out a range of projects and tasks for the provincial government.

The structure and organisation of the executive did not change much under Phosa’s successor, Ndaweni Mahlangu, after 1999. It remained highly centralised, with the premier’s department at the apex. The premier’s office inherited from Phosa remained just as large and top-heavy. Most of the directorates and units were retained and in fact, for the first year of Mahlangu’s tenure, the structure of the office remained exactly as inherited from Phosa although a lot of personnel appointed by Phosa were ‘purged’ to other departments, as will be discussed later in this chapter. Only in the second year did Mahlangu make changes to the office of the premier, adding a few more directorates and thus increasing its size even further. Some of the new directorates included the transformation and research units. Phosa’s office did not have a separate research unit, although the SPPU did carry out research and analysis work for the premier when necessary. Significantly though, the Protocol directorate inherited from Phosa was changed and renamed Intergovernmental Relations and Protocol. The significance of this, especially after Thabo Mbeki became president, was that the new name was intended to reflect the new president’s desire to see relations between the national government and the provinces better organised and coordinated to improve the management and implementation of national social policy programmes across the country.

The new name for the protocol directorate by the new premier appeared to herald a slight shift in approach to the issue of diplomatic powers and responsibilities for provinces. Under Phosa, the work of the Protocol directorate had failed to focus on the broad theme of intergovernmental relations. It did focus some attention on ensuring better coordination and liaisons with the Department of Foreign Affairs but that was because the unit was mainly oriented towards international/diplomatic and corporate donor relations, which Phosa was so keen to cultivate.²⁵ Phosa did not have a specific directorate in his office for handling intergovernmental relations, perhaps because he felt that intergovernmental relations bodies such as the MINMECs, IGF, Premiers Forum and the Forum of South Africa’s Directors-General (FOSAD) – through which the provinces participated in intergovernmental activities – were adequate for this purpose. It would appear that under Mahlangu, the participation of the province in such bodies was to be monitored and overseen from his office through the intergovernmental relations and protocol unit – a task that was not performed by any specific unit under Premier Phosa.

Another change introduced by Premier Mahlangu in the second year of his tenure was the abolition of the controversial SPPU inherited from his predecessor. During Phosa's reign, this unit operated almost autonomously and some MPLs in the legislature questioned its purpose. The unit obtained its funds from foreign and corporate donors, especially the British Department for International Development (DFID).²⁶ Its role was ostensibly to coordinate and monitor the premier's special projects. However there were suspicions in the province at the time that it served as a private 'slush fund' to raise Phosa's international profile.²⁷ During the last year or so of Phosa's premiership, the unit and its head, Pieter Rootman, became embroiled in allegations of misuse and mismanagement of donor funds. The allegations eventually led to a lengthy court case against Pieter Rootman. Therefore the unit had too much baggage, which perhaps led to its abolition by Premier Mahlangu in 2000. Also significant was that the SPDU inherited from Phosa was retained, enabling the new premier to continue being in charge of the task of drawing up strategic development plans for the entire province. Unlike in Gauteng where there was a fully-fledged department responsible for development planning, in Mpumalanga the function was carried out centrally, especially under Premier Phosa.

While Premier Mahlangu did not introduce too many changes to the structure of the executive, both the office of the premier and the executive were organised differently. For instance, the premier's department was organised in to three clusters: Transformation, Corporate and Macroeconomic and Strategy.²⁸ The concept of cabinet clustering appeared in 1999 with the arrival of Thabo Mbeki as president and this was incorporated into the executive structures of many provinces at the same time. The provincial cabinet was also organised into clusters and numerous ad hoc committees. In general though, the premier's office retained its grip on the running of the provincial executive branch even after Phosa left office. However, as will be argued below, Mahlangu did not possess the same level of charisma and dominance of personality that Phosa had, and therefore lacked the political clout to command the power and authority of the executive to the same extent and effect.

7.4. THE FUNCTIONING OF THE PROVINCIAL EXECUTIVE (1994-1999)

7.4.1. 'Government Of Provincial Unity' Under Premier Matthews Phosa

7.4.1.1. Brief background

Before becoming premier, Matthews Phosa was in exile from the 1980s until the early 1990s. He underwent military training in the former East Germany and served as regional commander of the ANC's underground military wing, Umkhonto we Sizwe, while based in Maputo, Mozambique. Phosa obtained a law degree from the University of the North and practised as an attorney in the early 1980s in Nelspruit where he was a partner in Phosa, Mojapelo & Makgoba

Attorneys – the first black-owned law firm in the city at the time – before going into exile in 1985. On his return from exile in the early 1990s, after the ANC and related organisations were unbanned, Phosa headed the ANC's legal department and went on to play an important role as part of the ANC team during the historic Groote Schuur talks between the ANC and the former apartheid regime in 1990. He also served as adviser to the ANC at the first Convention for a Democratic South Africa (CODESA).

Phosa had no experience of government when he became premier in 1994 but he had been chairman of the ANC provincial branch in Mpumalanga for nearly four years at the time of his appointment. He went on to retain that position for a further five years during his premiership, making him the longest-serving ANC provincial chairman. His prior leadership experience as ANC's Umkhonto we Sizwe regional commander, as chairman of the provincial party in Mpumalanga, and as a partner in a law firm in Nelspruit, had clearly shaped his approach to the task of being premier. As Tom Lodge points out, Phosa became a popular leader in the province and appeared to enjoy favourable ratings amongst the general public. Public opinion survey evidence in 1998 showed him achieving far higher approval ratings than the other premiers.²⁹ Also, in terms of the evaluation of the provincial administration by the national Public Service Commission in 1997, Phosa's strong leadership of the provincial administration at the time appeared to receive official endorsement. For instance, the Public Service Commission report on Mpumalanga stated, "throughout all departments in the province there was evidence of strong leadership by senior management. There was a coordinated management system in place, driven by the premier's office".³⁰

As the first premier of the province, Phosa had a strong influence in fashioning the institutions and processes of government to suit his particular style of leadership. As already pointed out, he formed the provincial executive into a strong, dominant and centralised body, where loyalty to the party under his leadership was an important element in the functioning of the executive. This type of design of the executive was to some extent clearly influenced by his background as a commander of the ANC's military wing.

7.4.1.2. Leadership, style and impact

Like other first generation premiers, Phosa came to power in 1994 at the time of constitutional change and institutional uncertainty regarding how the new provincial system of government was going to pan out. It was a time of experimentation and even the ANC in charge of the national government was not sure of how to structure relations between the centre and the provinces. Premier Phosa took advantage of this state of uncertainty to stake his claim to the system and to pronounce on his views about the future of the provincial system of government in South Africa. As already discussed in Chapter 2, Phosa was one of only two ANC provincial premiers at the

time, together with Tokyo Sexwale of Gauteng, who openly expressed dismay at the slow pace of central government's assignment of the necessary constitutional powers and functions allocated to the provinces. However, Phosa was far more radical than his fellow ANC premiers in his views about the provincial system of government and went the farthest in expressing indignation at what he appeared to perceive as the inferior status of the provinces compared with the central government.

Phosa appeared to believe in a strong type of federalism where provinces were allocated strong and wide-ranging powers that certain opposition parties such as the IFP and NNP were arguing for and his party disapproved of. He loudly demanded a bigger room for the provinces to manoeuvre in terms of division of constitutional powers, policy decision making and functional responsibilities. During some of his speeches urging for this type of federalism, he appeared to portray the ANC-led central government as an overbearing entity that impeded progress towards greater autonomy for the provinces, and hoped that in time the political system would evolve towards a strong decentralised federal structure with different provinces allowed to develop "unique systems and mechanisms". Despite his military training and socialisation into the ethos of uniformity and the culture of obeying orders from superiors, Phosa appeared especially willing to defy his party leadership. For instance, exactly two months after being inaugurated as premier, he addressed a public forum in Johannesburg on the future role of the provinces in South Africa. He was the first premier to publicly state his views on this topic. Phosa made a speech that must have created alarm within ANC senior leadership ranks at the time, arguing, "we have an inherited culture of big brother (the centre) and small brother (the provinces) which over a very long period of time became embedded in the very fibre of our society".³¹ Phosa clearly wanted more powers for the provinces, stating that the ANC was failing to live up to its own slogan, "on the letterhead of the ANC, we have the words 'the people shall govern'...After achieving our aim of political power we have to deliver to this very people. It is therefore of the utmost importance that as much as possible of the powers that belong constitutionally to the provinces be devolved there as quickly as possible".³²

Phosa also believed that as institutional capacity improved at sub-national level, additional legislative powers would have to be assigned to the provinces, clearly suggesting that the assignment of constitutional powers to the province was merely a function of institutional capacity rather than ideological and political considerations, as the ANC tended to believe at the time. He believed this would "enable [the provinces] to deliver services, goods and effective government to their constituencies".³³ In particular, he identified a number of the functions, currently assigned to the national level, that he believed ought to be given to the province. These included water, forestry, labour as well as some role in foreign affairs. He condemned central

government for what he perceived to be a slow process of assigning powers and functions, at times even invoking the spectre of political conspiracy, that “the powers of the provinces are being passed down slowly so as to enable central government to keep with themselves the more important and substantial parts of those powers so that the provinces get the harmless and less controversial parts...”³⁴ He also criticised central government’s lack of consultation, labelling the interactions between the central government and the provinces through the intergovernmental relations structures at the time as “cooption”.³⁵

Phosa’s vitriolic pronouncements against central government appeared to mark him as a champion of provincial autonomy in South Africa. In a political party that adhered to hierarchical and collectivist leadership traditions and practices, Phosa struck out as an individualist leader, a free and outspoken thinker who revelled in controversy and open defiance of his own party’s position on some of the difficult issues that characterised the Constitution-making process in the early 1990s – especially on the issue of the division of powers and functions between the centre and the provinces. In particular, his views appeared to provide ammunition to some of the ANC’s political opponents in public debates about the centralised nature of the federal system of government in South Africa. Phosa therefore came across as insubordinate, arrogant, ambitious and more concerned with building his political power base and national profile.³⁶ In fact, ironically, Phosa himself did not tolerate insubordination under his leadership in the province, as will be discussed below. According to one informant interviewed for this study in Gauteng, Phosa together with Tokyo Sexwale, had become “too independent...and popular outside their provinces” and outside the party, and “this could not be allowed”.³⁷

One plausible scenario regarding Phosa’s outspoken and controversial views at the time about the current system of federalism in South Africa, was that in fact he was addressing a wider audience than just his party, and was staking his claim to national political leadership status. Phosa was undoubtedly a national figure with a strong political base in the province and good future prospects for high office at national level. This was later given credence in 1997 when he allowed his name to be put forward by the Mpumalanga PEC, including the provincial youth league, as a candidate against Jacob Zuma for the position of deputy president of the ANC.³⁸ The fact that the ANC provincial executive committee and the provincial youth league had initially supported his candidacy suggests that these structures felt that, on merit, he had the necessary political clout and credentials to serve as deputy president of the party. Even though Phosa was eventually forced to back down, he was clearly an ambitious and respected leader with strong national leadership ambitions, and he used the provincial structures effectively to build his national political profile.

A number of other important factors related to Phosa's leadership as premier of the province appear to suggest a leader who was meticulously building a power base among a range of key interest groups in the province, the country and abroad. In other words, Phosa had significantly consolidated his position within the provincial executive, while building a strong base in the province that would have strengthened his position within the country's politics for a possible leadership role at national level in the future. Firstly, it has already been pointed out above that Phosa had designed a very centralised provincial executive, with his office occupying a strategically powerful position at the top. A minor but still important development that further enhanced Phosa's executive powers was the promulgation by the provincial legislature in 1998 of the Mpumalanga Commissions of Inquiry Act. This Act gave Phosa far-reaching powers to institute independent commissions of inquiry into corruption and maladministration in the province. Secondly, in addition to his popularity among ordinary citizens, Phosa had also established fairly cordial relations with the Afrikaner constituency in the province. As already pointed out, he had indicated his willingness to create positions of deputy MECs in his cabinet in order to appoint a member of the Freedom Front to his cabinet. There was an important strategic political consideration to this. For instance when the leader of the Freedom Front in the Mpumalanga legislature, Hein Mentz, vacated his seat as an MPL in 2002, he reflected with fond memories that "the first five years [under Premier Matthews Phosa] were great".³⁹ Also Phosa's ability to speak fluent Afrikaans and even produce literary work in it, leading to an Afrikaans literature award from Die Afrikaanse Taal en Kultuurvereniging (The Afrikaans Language and Cultural Association) in 1997, clearly helped enhance his stature and endeared him to the Afrikaans section of the country's population.⁴⁰

Thirdly, the premier had cultivated fairly strong relations with local corporate donors and local subsidiaries of international corporations. As Tom Lodge points out, "investment attracted by the proposed upgrading of the N4 highway to Maputo helped boost provincial growth rates as well as Phosa's local popularity".⁴¹ The close relations between Phosa's administration and some of these corporate donors need to be seen in the light of his success in building a strong base in the province as part of his huge political ambitions. In addition to corporate donors, there were also foreign bilateral donor organisations from some foreign governments such as Canada, Germany, Austria, Australia, Britain and Japan. In fact, Phosa was one of the most ardent lobbyists for provinces to be allowed to raise funds from overseas agencies. For instance, in a strongly worded memorandum to the Department of Constitutional Development in November 1994, Phosa's administration lamented that various foreign governments that were keen to provide direct assistance to the province "have been instructed to deal on a government to government basis only...".⁴² The memorandum added further "provinces make detailed proposals to potential donors only to be told that [they would] have to go through the channels of

national line departments...” It argues “there is no doubt that a form of coordination is necessary when provinces deal with foreign donors. This coordination, however, should not negatively impact on the fact that provinces are very pro-active in their approach to foreign donors” and recommended that “provinces be allowed to deal directly with overseas development agencies and countries...”⁴³

During his term of office, Phosa’s administration was indeed fairly successful in attracting considerable funding assistance from foreign governments and bilateral donor agencies. For instance, DFID from Britain and the German Technical Cooperation Agency (GTZ) had actively assisted the province’s administrative capacity-building programmes through funding and technical support.⁴⁴ Austria, Japan and Australia provided valuable support in funding capacity building and skills training for local councillors in the province. In his last budget speech as premier in February 1999, Phosa thanked some of the corporate donors, international bilateral agencies and foreign countries for their assistance. Amongst these were Ingwe Coal Mining Corporation, Billiton Development Trust, Sasol, ISCOR, Columbus Steel, DFID, Canada and Germany for their “various donations as well as assistance...” in the form of secondments of technical personnel to his office as well as for “assisting in the renovations of schools, building of new schools, the upgrading of hospitals, donating whole hospitals, the drilling of bore holes...”⁴⁵

It would appear that the cordial relations between Phosa and these donors had aroused suspicion in some quarters and even led to strong perceptions that undue political influence was being exercised over his administration. These suspicions and perceptions were raised in the context of the controversy that broke out in 1998/99 amidst allegations of misuse of donor funds involving Premier Phosa’s special adviser, Pieter Rootman.⁴⁶ For instance in his last budget speech in 1999, Phosa asked the speaker rhetorically “do you think it is possible that our policies could be influenced by each and everyone of the above businesses and international donors in an improper fashion?”⁴⁷ According to Phosa, some of these perceptions came from the opposition DA and, based on his utterances, possibly also from some of his own colleagues within his party. In a cryptic remark, Phosa charged “those opposition members who have tried hard, without success,...to discredit me and those who are in unholy alliances with them” of not being interested “in supporting the agendas of reconciliation and nation building or of the economic re-development of our province”.⁴⁸ Phosa argued that the support received from the donors was a show of “patriotic concern and friendship...”⁴⁹

However it is possible to understand how some of Phosa’s critics at the time, especially within the ANC, would arrive at a conclusion that some of the agencies involved may have exercised undue influence over his administration. For example, three of the four countries mentioned

above (i.e. Canada, Germany and Austria) have systems of government with fairly strong sub-national entities and are known to have spent a great deal of resources, time and effort assisting countries that had adopted similar political systems. It would therefore have been fairly easy for Phosa's critics at the time to draw simple conclusions and to presuppose, for instance, a direct causal relationship between support from some of the agencies and countries involved on the one hand, and Phosa's well-known and controversial views in favour of strong constitutional powers for the provinces in South Africa, on the other.

In the last two years of his premiership, Phosa's style of leadership and the way he ran the provincial government came under severe criticism, especially from inside his own party. For instance, from 1996 to 1998, the province experienced a string of embarrassing corruption scandals involving prominent MECs in Phosa's cabinet. Some of the people involved were known to be his close political allies (e.g. former finance MEC Jacques Modipane) while others were known rivals (e.g. former MEC for safety and security, Steve Mabona). Phosa had adopted a stern approach in dealing with all these individuals by dismissing them from their positions, irrespective of his relations with them, in a clear attempt to build a reputation for running a clean administration that did not tolerate corruption. However, in the process Phosa earned himself powerful enemies within the party who eventually played a role in his demise in 1999. One of these enemies was Fish Mahlalela. Phosa had dismissed Mahlalela from his cabinet in 1998 for 'insubordination' after Mahlalela had reinstated ANC provincial youth league secretary-general, James Nkambule, and four other directors to their posts in the Mpumalanga Parks Board (MPB). Nkambule and the others had earlier been sacked under Phosa's orders for their alleged role in the R1.3 billion promissory notes scandal of 1997.⁵⁰ It is believed that Mahlalela and Nkambule played a crucial role in a 1999 ANC internal inquiry that found Phosa guilty, among others, of fermenting factionalism and divisions within the party, which destabilised the provincial administration.

Phosa's troubles appeared to start with his aborted 1997 grab for power through his challenge for the party's deputy presidency. This challenge led some in the party to question his loyalty to the party's senior leadership. Therefore in the last two years of his premiership, his style of leadership came under severe and sustained attacks from some of his critics in the ANC. Reports appeared in the press of Phosa's critics accusing him of a dictatorial style of leadership, failure to consult on important issues, use of questionable advisers and an uncontrollable drive to appear 'clean' and untainted by corruption scandals in the province.⁵¹ Despite successfully crafting an impeccable image as a 'crusader' against corruption in the province, his critics charged that his well publicised anti-corruption 'crusader' image was a mere cover to obfuscate the fact that he presided over a corrupt administration and tended to react only after incidents of corruption had

been uncovered – and by only dealing with the symptoms.⁵² The ANC's 1999 commission of inquiry into the leadership squabbles in the province regurgitated some of these accusations, charging that “Matthews Phosa’s style of leadership was autocratic and encouraged factionalism within the organisation”.⁵³

This damning indictment of Phosa’s leadership by his own party led directly to his removal from office after the 1999 elections and his replacement by Ndaweni Mahlangu. However this should not detract from his enormous talents and leadership abilities. He was a respected premier of the province and, despite his outspoken views on the provincial system of government, he served out his full term of office, which is testimony to his political tenacity and the support he enjoyed in the party and the province. Other ANC premiers who were also fairly outspoken in their views about important political issues did not last as long – Tokyo Sexwale and Mathole Motshekga of Gauteng are cases in point.

7.4.1.3. Key institutional issues in the functioning of the executive

It has already been pointed out that the executive was highly centralised and tightly managed by Phosa, with the head of his department serving as a cabinet secretariat. This allowed the premier’s office to maintain a tight grip in the running of the executive in general and the cabinet in particular, allowing executive decisions to be coordinated by the secretariat and communicated to other departments through an elaborate chain of command that encompassed the provincial director-general, whose office was also located inside the premier’s department. The cabinet did have cabinet subcommittees but these were absolutely powerless, only serving as advisory bodies to the cabinet, which took all the decisions.

A strong administrative leadership corps inside the various departments and the premier’s office supported the executive. The office of the provincial director-general, the most powerful administrative office in the province, had originally been situated outside the office of the premier, as was the case in other provinces. This created tensions with the executive and the administration, and led to disjointed management and lack of synergy in the provincial administration. However Phosa incorporated the office of the director-general into his office in order to strengthen his capacity to manage the administration. Unlike in Gauteng where the relationship between the office of the provincial director-general and the executive tended to be problematic during the first period of government, in Mpumalanga premier Phosa was able to stamp his authority right from the beginning and ensure that the director-general served the political leadership in the executive. Also, the public profile of the office of the director-general in Mpumalanga was fairly subdued due to being placed under the authority of the head of the premier’s office – a model that was adopted in the North West province at the same time. The head of the premier’s office served as cabinet secretariat, which further enhanced the ability of

the premier to maintain a tight grip on the operations of the cabinet and, together with the director-general, to ensure that there was proper alignment between the policy decisions and positions taken by the cabinet, and the entire provincial administration.

The abolition of the former provincial Public Service Commission, which was in charge of building and developing the provincial administration, enabled the premier to incorporate some of its functions into his office. Chief amongst these was the corporate services function, which provided vital assistance to all other departments in terms of organisational restructuring and management services. These responsibilities were therefore subsumed under the premier's office, thus ensuring that he could fashion the provincial administration and its operation as he preferred. The negative consequence of this, however, was that the premier was occasionally getting too involved in the affairs of government departments and their MECs, thus creating tensions. Importantly, strategic planning capacity was also placed inside the premier's office rather than in the executing agencies. This meant that departments lacked independent planning capacity, and had to submit proposals to the SPPU in the premier's office for approval. This created severe bottlenecks in the planning process, and slowed down the ability of departments to respond to problems creatively and speedily. It was only after 1998 that Premier Phosa began urging departments to establish their own internal planning units, possibly after it became clear that a centralised planning unit in the premier's office was obstructing the speedy implementation of the Mpumalanga provincial growth and development strategy (PGDS).⁵⁴ Moreover as indicated before, the premier's office had a large number of directorates spanning the entire spectrum of administrative and sectoral divisions, which rendered the office organisationally and structurally cumbersome. This created a huge potential for duplication of functions, lack of effective coordination and therefore tensions. The fact that such tensions were kept to the minimum was in large part due to Phosa's ability to stamp his authority over all the disparate units in his office, ensuring that they served him as head of government.

Another important institutional issue was that during the early part of Phosa's premiership, the executive experienced a significant level of institutional instability, which undermined its effectiveness as a collective unit. For instance, as already pointed out, a number of MECs were dismissed from their positions, mainly for alleged involvement in corrupt activities. Added to this was the restructuring and reorganisation of the provincial executive that occurred after 1997, which saw the executive shrink in size from 12 MECs to 10. One of the consequences of this restructuring and reorganisation was that certain departments that had existed separately were combined, leading to serious institutional compatibility and staff placement problems. For instance the former separate departments of housing and local government were amalgamated into one department after the reorganisation. During interviews conducted in 1999, it was

revealed that despite the amalgamation, the two components (i.e. housing and local government) of the department continued to operate as separate entities with their separate administrative heads even though they fell under a single MEC and head of department.⁵⁵

During the same period, several key departments including Health, Education and Environmental Affairs were placed under curatorship for overspending their budgets. This meant that the management of their financial affairs was placed under the province's Department of Finance.⁵⁶ The finance department was a key ministry in Phosa's cabinet, occupied for the most part by Phosa's political allies – firstly Jacques Modipane and later Lassy Chiwayo. Its control of the pursestrings in the province reinforced the centralised nature of the executive, and created political tensions within the cabinet. For instance, during Phosa's reign, provincial departments did not have their own individual bank accounts.⁵⁷ There was only one central bank account managed by the Department of Finance. This enabled the finance department to exercise enormous institutional power over line function departments, often leading to conflicts between the MEC for finance and other spending agencies, especially regarding budget allocations. However, it was difficult to ensure individual accountability by each department's financial accounting officer, as departments had no control over their budgets and expenditure.⁵⁸ Also, mismanagement and misuse of resources was common as a result of this arrangement.

Crucially, the financial management system of the province under Premier Phosa was debilitated by the fact that the province was on a different financial management software system (NEWFIN) from that used at national level. According to one informant, the NEWFIN financial system was extremely problematic in that even junior departmental officials could easily manipulate it so it was easy for corruption to go undetected in many departments.⁵⁹ Also, the system used in Mpumalanga was unable to communicate with the system used by the national government (i.e. PERSAL), which made it difficult for financial monitoring and coordination to be effected from national level. It was only in April 2000, under Premier Ndaweni Mahlangu, that the province's financial management system was decentralised, with each department allowed to maintain a separate bank account to comply with the provisions of the Public Finance Management Act (PFMA) of 1999.⁶⁰ Also, a new financial accounting system was implemented in the province in October 2000, making sure that each department managed its own account.

7.5. THE FUNCTIONING OF THE PROVINCIAL EXECUTIVE (1999-2004)

7.5.1. Provincial Government Under Premier Ndaweni Mahlangu

7.5.1.1. Brief background

Ndaweni Mahlangu's appointment to the premiership of Mpumalanga in 1999 was as controversial as the removal from power of his predecessor, Matthews Phosa. He was not the candidate that many political analysts, commentators and the Press had expected to be appointed to the position. Reverend Smangaliso Mkhathshwa, former deputy education minister and currently executive mayor of Pretoria, was one of the few politicians widely expected to be the next premier of Mpumalanga.⁶¹ Mahlangu's appointment was a complete surprise and in fact a story appeared several times in the press during the first year of his premiership suggesting that a different candidate, with the same surname and at least one initial in common, was recommended to President Mbeki and that instead a wrong Mahlangu was appointed by mistake.⁶² Like Matthews Phosa, Mahlangu had a legal qualification, with a bachelor of jurisprudence degree from the University of South Africa. He had served as a public prosecutor and magistrate in the self-governing territories of Lebowa and KwaNdebele in the 1970s and 1980s. He also held a cabinet post as minister of education in the homeland of KwaNdebele at the time when the homelands were abolished in 1994. Mahlangu's official biography states that he campaigned against the granting of 'independence status' to the homeland of KwaNdebele by the apartheid regime and that he was detained under the 'state of emergency' laws in the mid-1980s.⁶³

However, Mahlangu lacked the necessary political and leadership credentials possessed by leaders from the ANC political mainstream. He also had no political base within the Mpumalanga ANC at the time he was appointed, although he did enjoy some support from his former homeland of KwaNdebele.⁶⁴ This lack of political credibility and clout, and his background as a former homeland leader was a serious political baggage that tarnished his image as the only ANC premier in the ten-year period under study (1994-2004) to have been an active homeland politician. This image served to undermine his authority as premier and rendered him politically weak, placing him in a situation where he had to rely on the support of the national leadership of the ANC to govern the province. Mahlangu was unknown within the ANC mass ranks because he had not held any leadership or executive position in the party. His appointment encountered fierce resistance from party activists and some of the leaders in the province.

After his nomination as a premiership candidate, Press reports appeared indicating that he was being booed and snubbed at 1999 election rallies by the party rank and file angered by the removal from power of Matthews Phosa.⁶⁵ The party's election strategists had to roll out a high-profile campaign, headed by prominent local politicians including outgoing Premier Matthews

Phosa, to accompany Mahlangu during some of the campaigns and to introduce him to party supporters throughout the province.⁶⁶ At the time of his nomination, Mahlangu was an undistinguished ANC member of the National Assembly, which made his appointment even more puzzling to many observers and commentators. The fact that his appointment followed in the wake of the ANC's 1998 policy decision that gave the party's national leadership the power to appoint provincial premiers was not lost to many commentators. Critics of the policy had argued that the policy would lead to the appointment of politically weak and subservient premiers who would easily be forced to toe the party line. Indeed Premier Mahlangu was widely regarded as a political lightweight and therefore a perfect product of the 1998 party policy.

7.5.1.2. Leadership, style and impact

After inauguration in June 1999, Premier Mahlangu went about putting together a new cabinet and in the process committed a number of political errors that would ultimately undermine his relationship with the national leadership of the ANC. Due to his weak standing within the ANC, Mahlangu designed his cabinet with a strong desire to strengthen his grip on power as well as build some sort of political power base for himself. He did this, among other things, by appointing a number of people, including politicians from the former homelands of KaNgwane and KwaNdebele, to his own office as well as the cabinet. This received fairly negative publicity and was damaging, especially for the ANC, with some newspapers labelling the outcome 'a homeland coup'.⁶⁷ For instance, former KaNgwane homeland minister, David Mkhwanazi, previously MEC for environmental affairs and tourism under Matthews Phosa, was appointed Mahlangu's special adviser. Steve Mabona, former KwaNdebele leader and previously Phosa's MEC for safety and security, was given his old portfolio back, combined with the important function of public works. However, appointing political leaders from KaNgwane and KwaNdebele to the provincial cabinet was a practice that dated back to Phosa's administration, and was an acknowledgement of the political importance of these areas in the electoral fortunes of the ANC.

There is no doubt though, that the new premier, himself a former homeland leader, saw a potential opportunity to create allies among some of these leaders and others who had previously fallen foul of Phosa's iron-fisted crusade against corruption in the province. However, some of Mahlangu's appointments were also known critics of his administration that he either hoped to win over or silence. These included Fish Mahlalela, David Mabuza and the long serving and experienced MEC for economic affairs, Jacob Mabena.⁶⁸ Fish Mahlalela is a local political strongman who had previously been dismissed from Phosa's cabinet as MEC for environmental affairs and tourism, and was also found by an internal ANC commission of inquiry, together with Phosa, to have fomented factionalism and political divisions in the party that had rendered the province ungovernable. Mahlangu appointed him MEC for local government. David Mabuza,

formerly education MEC in Phosa's cabinet, was appointed to the sports, culture and recreation portfolio, despite the fact that he had been implicated in the province's 1998 matriculation results scam that led to his disgrace and dismissal by Phosa. Mabuza was also still under police investigation when he was appointed to Mahlangu's cabinet.

There were other newly appointed MECs in Mahlangu's new cabinet who were being investigated for previous acts of corruption and fraud – for instance Steve Mabona, who was forced to resign in 1997 for his involvement in the vehicle licence scam uncovered in 1997, including the fraudulent misuse of public funds from the safety and security department for his personal use. The other one was David Mkhwanazi, former MEC for environmental affairs and tourism in Phosa's administration. He was under investigation for his alleged role in the fraud and corruption scandals involving the MPB in 1997/98. Other new appointments to Mahlangu's new cabinet were former close allies of former Premier Matthews Phosa. Jacques Modipane was a prime example. Modipane was the first Mpumalanga finance MEC in Phosa's cabinet until he was forced to resign in 1998 following his alleged role in the MPB promissory notes scandal. Modipane had denied signing the notes, despite his authentic signature appearing on some of the promissory notes. Mahlangu reappointed him as finance MEC in 1999. In fact, it was in the course of defending Modipane's appointment that premier Mahlangu, during his first ever Press conference in June 1999, became notorious for his remark that it was acceptable and “not a very bad thing” for politicians to lie to the public about their actions.⁶⁹ The appointment of former close allies of Phosa may have been a strategy to either win their loyalties or silence them.

Mahlangu attempted to justify the appointment of people with such questionable backgrounds by claiming that the politicians concerned were the only ones in the province with the necessary skills and expertise needed. However, his choices had created inbuilt political tensions and fault lines at the heart of his administration that undermined the efforts to ensure clean and effective governance in the province. Ironically, Mahlangu had campaigned on a platform of clean and corruption-free government. The inclusion of several discredited and corrupt politicians in the cabinet had not only harmed the image of his government and damaged his own credibility in the process. It had also caused problems between himself and his party leadership. After the ANC leadership had declared Mpumalanga ungovernable under Matthews Phosa, combined with a string of high-profile corruption and fraud scandals during that period, Mahlangu's appointment was meant to be a new beginning to ensure clean and effective governance. The redeeming feature of his appointment as premier was that as an outsider without explicit ties or loyalties to local political factions in the province, he would stay above the fray and devote attention to effective governance. Instead, his approach to cabinet design and choices of MECs strongly suggested that he was keen to be firmly ensconced within these local political power struggles

rather than stay above them, and this served to further refuel the factional rivalries that the ANC had sought to eliminate when appointing him premier. The impact of this was that the provincial government became more mired in factional squabbles and the province was rendered even more ungovernable, especially during the first three years of his administration.

Apparently Mahlangu had been strongly advised by the ANC not to appoint politicians who had previously been dismissed as MECs by Matthews Phosa. Mahlangu chose to disregard the advice and immediately put a severe strain on his relations with his party leadership, barely a month after inauguration. As already pointed out, Mahlangu was politically weak and had no prior experience of executive leadership in the ANC or in the new government. He had therefore not been exposed to the rigours and political challenges of modern executive leadership and the ANC expected him to govern in close consultation with the party leadership. This fact became quite clear when the party moved swiftly to appoint a team of advisers and a spokesman for him to deal with a number of embarrassing incidents and public utterances by Mahlangu during his first few months in office. However, Mahlangu's leadership was subject to two key political tensions that drove him to commit these political errors. On the one hand, he had come to power against all odds, and was indebted to President Mbeki for being appointed premier to replace the very popular, charismatic and respected Matthews Phosa. For this, Mahlangu was clearly expected to show gratitude and loyalty to the party leadership by carrying out his orders as expected. On the other hand, Mahlangu was keen to dispel any impressions that he would be a subservient and compliant premier. He sought to establish himself within the politics of the province, especially by creating a power base for himself and forging new alliances with some of the local power brokers.

As already pointed out, as Mahlangu went about putting together his government he also 'purged' the office of the premier of the support staff appointed previously by Matthews Phosa.⁷⁰ Most of the staff were transferred to other departments. A newspaper article at the time quoted an anonymous source from the province as saying Mahlangu "came to the province to fight Phosa as if that was the mandate he was given when he was appointed".⁷¹ Several informants interviewed in 2003 for this study also argued that Mahlangu's actions fuelled political factionalism in the province, which in turn undermined his leadership of the province. Clearly for Mahlangu, the choice of MECs and staff appointments to his office was a key opportunity to stamp his authority on the provincial institutions of governance.

Mahlangu was also very keen to build his image and public profile in the province. To achieve this he appointed an image consultant and engaged in a series of 'public outreach' activities or 'imbizos' throughout the province. As part of these activities, Mahlangu's office blazed a trail of

publicity, branding him “the people’s premier”, and coordinating weekly trips by the premier, his entire cabinet and heads of department to villages, townships and small towns throughout the province to meet local communities and discuss their concerns.⁷² Press reports regarded these community meetings as very popular and effective tools for the provincial government to gauge the views of local communities on the performance of the government. Justin Arenstein, a local journalist, confirmed this and argued that the weekly cabinet outreach activities were vital in allowing not only local communities in general but also local ANC activists in branches throughout the province to register complaints about poor government services.⁷³ In particular, the cabinet meetings with local communities played a vital role in exposing the widespread collapse of the province’s health services in 2002. The Department of Health was later hit by a major scandal involving the mismanagement and misuse of funds allocated to combating HIV/AIDS and was subsequently placed under curatorship in 2003.

The practice of ‘community outreach’ was a positive development in that Phosa’s executive did not engage in such activities. The practice was important for purposes of enhancing democratic accountability in the province. However, it also served an important political goal for Mahlangu – raising his public profile in the province in an attempt to generate grassroots support for himself. It is not clear to what extent his profile was indeed raised by this practice. However, Mahlangu’s pursuit of self-promotion, combined with his seeming disregard for party orders during the early part of his premiership, alienated the leadership of his party considerably. The fact that he was willing to disregard political advice and party orders in pursuit of narrow political self-interest was precisely what the ANC’s 1998 policy on the appointment of premiers sought to discourage. One ANC MPL considered Mahlangu “politically not astute”, leading him to make political blunders during his time in office.⁷⁴

A string of political blunders, including widespread political infighting inside the party, were compounded by administrative incompetence and widespread financial mismanagement in the province, which led to a debt of well over R300 million between 1999 and 2000. At one stage in 2000, the provincial legislature’s public accounts committee found that Mahlangu’s office failed to meet prescribed accounting management standards.⁷⁵ The provincial administration was therefore plunged into chaos within the first two years of Mahlangu’s leadership, prompting a combination of drastic financial and political intervention by the national treasury and the ANC leadership between 2000 and 2002. In terms of financial intervention, the national treasury provided a R300 million financial bail-out package to help the province out of its debt, and invoked section 100 of the Constitution.⁷⁶ This section of the Constitution allowed the national treasury to manage the financial affairs of the province and imposed strict financial controls over expenditure. Politically, Mahlangu’s blunders and incompetence created a frenzy of speculation

among commentators, leading to predictions that he would be dismissed late in 2000 or early in 2001 and replaced by Reverend Smangaliso Mkhathshwa.

In fact the ANC-dominated provincial legislature appeared to contribute to the frenzy of speculation about Mahlangu's imminent dismissal. Based on Press reports, the legislature apparently attacked Mahlangu's rudderless leadership late in 2000, following a series of critical audit reports from the provincial auditor-general regarding the poor state of financial management and lack of controls. This came in the wake of an independent study funded by the Canadian government in 2000, which was highly critical of the poor political leadership in the province and specifically blamed Mahlangu's lack of leadership for the falling levels of foreign direct investment in the province's Maputo Development Corridor project.⁷⁷ As will be argued towards the end of this chapter, Mahlangu was not entirely to blame for this. Nonetheless the attack on his leadership abilities was damaging. Also, the legislature's attack on the premier was not unexpected. As already pointed out in the previous chapter, some of the ANC's senior leaders in the legislature had been fairly hostile to Mahlangu's appointment in 1999. The attack was therefore part of a broader strategy that some of the opponents of the new premier in the legislature had adopted to put his leadership under severe strain and highlight his inadequacies. The time of the attack was also significant in that it occurred amidst the general sense of political crisis prevailing in the province at the time, compounded by widespread Press speculations about Mahlangu's political future. It is plausible that the attack was calculated to add to the general atmosphere of dissatisfaction with his leadership and to create justification for the removal of Mahlangu from office – something that several prominent ANC leaders in the province would have preferred to see happen.

As it turned out, Mahlangu was not fired and there is not sufficient evidence to suggest that the ANC national leadership wanted to dismiss him, despite fierce Press speculations to the contrary. In fact, in 2002 Dumisani Makhaye, a member of the ANC's NEC, was sent by the party to Mpumalanga as part of the broad political intervention under way in the province at the time. He addressed the provincial party conference and expressed the ANC leadership's confidence in Mahlangu's leadership of the party and the provincial government. At the conference the top posts in the party's PEC were up for re-election, including the position of chairman held by Premier Mahlangu at the time. He was facing a stiff challenge from Fish Mahlalela, one of his archenemies who he had dismissed from his cabinet in 2000. In his address to the conference, Makhaye argued "you will note that the intervention of the NEC did not lead to the disbandment of elected structures in the province as was the case in the Free State, Gauteng and the Northern Province. This is not an indication that there were lesser problems in your province than in the other three provinces. But it is an indication that the NEC has full confidence".⁷⁸ Makhaye went

on to add “over the years the National Executive Committee has sought to strengthen the ANC leadership in this province through various interventions. Senior comrades have been deployed in this province. A series of meetings have been held to try and resolve problems among comrades. Strategic changes have been made in our caucuses. Comrades from the National Assembly have been deployed into the province and vice versa. Intense political work is being carried out in our structures”. Incidentally, as already mentioned elsewhere in this thesis, Mahlangu went on to lose the position of provincial party chair to Fish Mahlalela despite the national leadership’s attempt to drum up support for him. This was an unambiguous message to the national leadership of the ANC that local party leaders and activists disapproved of political interference in local matters.

As already indicated, the crisis provided the ANC with a vital opportunity to mount one of the biggest political interventions ever carried out in an ANC-controlled province. The party adopted a twin-track strategy to deal with the crisis and to reassert its authority over the province. Firstly, the party prevailed on Mahlangu to toe the party line, obey orders from his superiors and promote the province’s economic interests by actively attracting investment. Secondly, the party supported Mahlangu politically by strengthening his grip on power while sidelining his critics and opponents in the provincial legislature. In terms of the first track of the strategy, Mahlangu subjected the running of the province, including his own leadership, to close supervision by the ANC. He also had to crack down on administrative corruption and mismanagement of public resources. For instance, Justin Arenstein points out that in 2001, the ANC appointed minister of safety and security, Steve Tshwete, land affairs minister, Thoko Didiza and two additional senior party members to sit in the Mpumalanga provincial executive, “to attend all meetings and to maintain an active, stabilising role in the province’s affairs”.⁷⁹

Some of the informants interviewed for this study argued that following the ANC’s intervention, Mahlangu was forced to clear every decision his government made first with the president.⁸⁰ An anonymous source within the province was quoted in the press at the time as claiming, “the province is governed via remote control”.⁸¹ From 2001 onwards, Mahlangu began paying greater attention to the province’s economy and engaged in a series of high profile campaigns in an attempt to attract foreign investment into the province.⁸² This included a number of trips to foreign countries including China, Saudi Arabia and India or invited foreign trade missions, notably from Germany, in an attempt to attract investment into the province especially in the Maputo Development Corridor project.⁸³ However, as will be discussed later, Mahlangu’s administration also devoted a great deal of attention to the promotion of tourism as an engine of economic development, growth and job creation. Also in 2002 the province launched an anti-corruption manual for government officials and strengthened the internal audit unit in the premier’s office as part of an anti-corruption drive. From 2001 onwards, many government

officials in the province were prosecuted for corruption and fraud.⁸⁴ For instance in 2002 alone, a total of 44 government officials were dismissed for defrauding government of huge amounts of money, while a further 50 were awaiting disciplinary action.⁸⁵ While this did not stem the tide of corruption, the fact that more officials were being prosecuted showed that the effort achieved some important results.

The second track of the ANC strategy was to deal with Mahlangu's opponents in the legislature. As already pointed out in Chapter 6, a total of six ANC MPLs considered to be 'troublemakers' and known to be fierce and outspoken critics of the premier were removed from the provincial legislature in 2002 and sent off to the National Assembly in Cape Town. They were replaced by members drawn from the national parliament, the political mainstream of the ANC-alliance in the province, as well as the former KwaNdebele homeland. Among these was Thabang Makwetla, the man who eventually replaced Mahlangu as the third premier of Mpumalanga in 2004. One of the known 'troublemakers' was Fish Mahlalela. His dismissal by Mahlangu as MEC for local government in 2000 was done with the backing of the ANC leadership. Apparently his initial appointment to Mahlangu's cabinet was in hope that he would mend his ways, but after Mahlalela had attempted to institute a commission of inquiry into corruption in several district municipalities, in some cases led by some of Mahlangu's close allies, the party believed that he had not abandoned his political machinations and long-held ambitions for leadership of the province. This ambition had apparently got him into trouble the first time back in 1998 when his political rivalry with former Premier Matthews Phosa led both of them to be declared 'troublemakers' by an ANC internal inquiry.

In addition to Mahlalela's removal, finance MEC Jacques Modipane was also dismissed in 2000⁸⁶ as part of a broader crackdown on perceived non-performing or controversial MECs that Mahlangu had included in his cabinet against the advice of his party leaders. As already pointed out, Modipane had been implicated in a corruption scandal during Phosa's administration. In 2002 the intervention led to a wide-ranging cabinet reshuffle, which saw a few more MECs dismissed. Among them was David Mabuza, MEC for housing. Like Modipane, Mabuza was also implicated in a previous corruption scandal. In the wake of the cabinet reshuffle, Mahlangu was ordered by the ANC to appoint three new MECs to his cabinet, among them Thabang Makwetla, who eventually replaced Mahlangu as premier. Surprisingly though, Steve Mabona, the most controversial and corrupt politician in the province, and once declared 'unfit to hold public office' by the Moldenhauer Commission report in 1997, was allowed to remain in the cabinet although he was stripped of the key safety and security portfolio that was given to Thabang Makwetla. Besides being a strong ally of premier Mahlangu, Mabona's retention in the cabinet

was seen as an acknowledgement of the importance of the KwaNdebele political constituency for the ANC.

7.5.1.3. Key institutional issues in the functioning of the executive

One of the most critical institutional issues in the functioning of Mahlangu's cabinet was its lack of stability and continuity. As already discussed, Premier Mahlangu had selected his new cabinet with a view to building a political power base for himself and to strengthen his position in government as well as in relation to political rivals in the party caucus. At the same time, his cabinet contained some of his political rivals as well as discredited politicians, which alienated his party leadership at national level. In other words, Mahlangu's cabinet had inbuilt political and other fault lines that meant that he did not have a politically strong, united and respected cabinet behind him. Also, the presence of known critics in his cabinet at some stage, like Fish Mahlalela and David Mabuza, and others who were not fully behind him like economic affairs MEC, Jacob Mabena, alongside those who were close to Mahlangu like Steve Mabona and Sibongile Manana, cemented the factional divisions inside the cabinet. This meant that the premier was always fighting political rivals even inside his cabinet. He was therefore never completely in charge and could not always count on the full political support of the entire cabinet, at least during the first three years of his administration. These weaknesses created a legitimacy crisis that was compounded by the constant state of tension between the executive and the legislature dominated by his critics and intent on undermining his political authority. Premier Mahlangu and his executive were therefore unable to govern the province effectively during the first three years of his tenure.

The intervention by the ANC from 2000 onwards and the far-reaching cabinet reshuffle Mahlangu carried out in 2002 under instructions from his superiors, heralded more changes and therefore further institutional instability. For instance by 2002 a total of four MECs in Mahlangu's cabinet had been replaced with new ones. In 2003 another small-scale cabinet reshuffle occurred in the wake of the scandal involving the misuse of HIV/AIDS funds in the department of health. Health MEC Sibongile Manana swapped portfolios with Sesezwe Masango, MEC for arts, culture, sports & recreation. Therefore by the end of Mahlangu's term of office in 2004, only 2 MECs, besides the premier himself, had been in the same, unchanged portfolios for the full term of five years. The two portfolios concerned were economic affairs and education. The important economic affairs portfolio had had its MEC, Jacob Mabena, since Phosa's administration. He thus headed the department for 10 years, making him one of the longest-serving economic affairs MECs in the country. The other members of Mahlangu's cabinet had either been in charge of portfolios that were changed structurally and organisationally, or had spent insufficient time in their portfolios by the time Mahlangu's term of office came to an end in 2004. Therefore, Mahlangu's cabinet had experienced significant levels

of instability, with the majority of MECs not having spent sufficient time in their portfolios to gain thorough knowledge and expertise in order to make a lasting impact in their policy sectors.

In addition to the constant shifting or replacements of MECs in Mahlangu's cabinet, many departments underwent drastic structural reorganisations during the first three years of his administration. The first round of institutional/structural reorganisation occurred soon after Mahlangu took over in 1999. For instance, the two portfolios of environmental affairs and tourism were separated, with tourism incorporated into the finance department while environmental affairs was joined up with agriculture; the department of health and welfare was split into two separate departments; and most importantly, the two departments – public works, roads & transport and the safety and security were amalgamated and placed under one MEC. After the 2002 cabinet reshuffle, another round of institutional changes was effected in several departments. In some cases the changes introduced during the first round of institutional reorganisation in 1999 were reversed. Key amongst them was the safety & security portfolio, which was separated from public works, roads and transport. Also the hitherto separate departments of finance and economic affairs were amalgamated into one department under the political leadership of Jacob Mabena. These drastic structural changes resulted in widespread institutional disruptions and discontinuities that affected staffing policies, strategic plans, programme coherence and ultimately effective performance. Therefore during the first three years of Mahlangu's premiership, the provincial executive did not get sufficient time to settle into a stable set of structures to develop their long-term strategic plans and policy programmes.

Finally, the office of the premier was not as politically and structurally dominant under Premier Mahlangu as it was under Matthews Phosa. Even though Mahlangu's office was virtually as large in size as Phosa's, it lacked the same level of authority, power and influence, and therefore Mahlangu was not able to use it to the same effect as Phosa in terms of intervening in the affairs and programmes of the other government departments to push his policy agenda. In addition, Mahlangu's tendency to appoint individuals with questionable professional backgrounds helped to tarnish the image of his office and undermine its authority in the provincial administration. For instance in 2000, Mahlangu appointed Stanley Soko as the provincial director-general based in the premier's office. Soko had earlier served as head of the safety and security department under Steve Mabona during Phosa's administration. He was also implicated in the province's vehicle licence corruption scam in 1997 when it was found that his MEC, Steve Mabona, had assisted deputy speaker of the National Assembly, Baleka Kgotsitsile-Mbete, to obtain a driver's licence fraudulently.⁸⁷ It was revealed subsequently that prior to his appointment as director-general, Soko was interviewed by Steve Mabona, the premier's close confidant and MEC for safety and security, and that the appointment was made disregarding the requirement for Soko to

undergo a national intelligence clearance check as a standard procedure for such high-profile positions in government. In fact Soko's predecessor, Coleman Nyathi, was also engulfed in a scandal when it was revealed that he had questionable academic qualifications and that he was not even South African.

Another damaging event for Mahlangu and his office was that in the wake of the 2003 scandal involving the HIV/AIDS budget, the head of the health department, Rina Charles, who was implicated in the mismanaged of the funds, was moved to the premier's office and appointed as deputy director-general. Many commentators saw this as a promotion for Rina Charles who was later arrested and prosecuted with other officials and business associates for acts of fraud and corruption involving her department. In addition, the Youth Commission, a directorate in the premier's office, was also implicated in the misuse of the HIV/AIDS budget.⁸⁸ The premier's office therefore had a severely tarnished image and lacked the necessary credibility and integrity, which ultimately undermined his authority as head of government.

7.6. POLICY PRIORITIES AND IMPLEMENTATION

7.6.1. First Term Of Office (1994-1999)

The social policy agenda and policy programmes of the first provincial administration in the then Eastern Transvaal were determined by the national government's RDP programme, as was the case in other provinces. Eastern Transvaal, like all the other new provinces at the time, had not yet developed the policy capacity or procedures and mechanisms for gauging the social policy preferences of the local population. Therefore the policy priority setting process in the province was a fairly top-down exercise in that the social policy agenda set by the national RDP programme was adopted by the Eastern Transvaal, as did other provinces. The mitigating aspect of this top-down priority setting process was that the RDP was widely perceived as a broad policy framework formulated through participatory processes, in which the ANC and its alliance partners allowed local communities to express their preferences. Also, given the fairly broad and sometimes vague nature of the RDP policy priorities, the provinces enjoyed a measure of latitude in terms of local prioritisation or variation of emphasis within the broad parameters of the programme. It needs to be emphasised also that before 1997, the provinces depended entirely on nationally determined sectoral allocations to finance their social policy priorities, which was instrumental in ensuring that they adopted the policy priorities of the national government without too much modification.

As stated at the beginning of Chapter 6, the new Eastern Transvaal (later Mpumalanga) province was and still is predominantly rural – characterised by inadequate access to basic social and

economic services by the large number of impoverished rural communities in the province. Premier Phosa's new administration therefore faced the challenge of improving access to basic social services by the poor. A number of priorities were identified within the broad framework of the RDP. Four top social policy sectors were prioritised. The first one was primary health care, especially the building of clinics in rural areas. This was followed by education and training, which was intended to contribute to the broader objective of skills training and human resource development in the province. The third programme priority for the province was the provision of basic infrastructure, especially water and sanitation, in the rural and impoverished regions of the province.⁸⁹ Finally, the provision of low-cost housing was an important and politically high priority objective. Despite adopting nationally determined and funded RDP priorities, these specific sectoral priorities did, to some extent, attempt to tailor the provincial social policy agenda to local needs and priorities.

In order for its social and economic policy goals to be realised, the province needed to put in place the necessary institutional mechanisms for effective implementation. Given that at the time the ordinary line function departments were still being established, it was necessary to avoid the process of service delivery from being delayed. Therefore the establishment of parallel structures to begin immediately with the task of implementing the RDP was a priority. The Mpumalanga province was quicker than other provinces in terms of establishing these RDP implementation structures mainly because at the time the province already had considerable development planning capacity and expertise in place in the form of all the parastatals and development corporations inherited from the former homelands. Although some of these homeland institutions were riddled with corruption, in many instances they became valuable assets for the province's development planning processes. In addition, the province had also inherited the Regional Development Advisory Councils (RDACs) that used to serve the former apartheid era development region 'F'⁹⁰ on which the boundaries of the new Eastern Transvaal/Mpumalanga province were largely based.⁹¹ These parastatals and other development planning structures had experts with considerable development planning skills and knowledge that proved valuable to the new province. Many of them were fairly keen to put their skills and expertise in the service of the new province in order to justify the retention of these parastatals whose future was being debated at the time. The province therefore had fairly sophisticated planning capability and was using it to good effect to design its RDP implementation mechanisms and development strategies.⁹²

In addition, the province was subdivided into three regions, seven sub-regions and several districts in each sub-region. This was followed by the establishment of Reconstruction and Development Councils (RDCs) at local/ sub-regional level, overseen by an overarching RDP Planning Forum bringing together key interest groups in economic and social development.⁹³

This was a fairly elaborate institutional network intended to underpin the implementation of the RDP throughout the province. However it also reflected a certain level of institutional fetishism among the planning authorities in the province at the time, which led to other problems such as lack of effective coordination and duplication of responsibilities. The province was also quick in releasing its RDP policy document, which led to the establishment of the RDP Commission in the premier's office. The release of the document before the establishment of the RDP Commission was unusual at the time, because in many other provinces the RDP commission came first and proceeded to compile the necessary policy documents.

Like in other provinces, much of the early RDP-related implementation in Mpumalanga was carried out through parallel structures and processes, like RDP structures and others, created precisely to avoid the delays caused by the slow exercise of establishing new provincial line function departments. Many of the RDP projects being implemented were mainly short-term, high priority and high-visibility projects to achieve maximum political impact. They were meant to create a sense of visible and concrete delivery by the new government in the eyes of the ruling party's predominantly impoverished supporters who were keen to reap the benefits of the new democratic order as soon as possible. Many of the projects were subsumed under the rubric Presidential Lead Projects (PLPs) as they were specifically identified and funded by the national government to initiate development programmes throughout the country. During the 1995/96 fiscal year the province implemented a number of PLPs that appeared to target the impoverished rural parts of the province where developmental services were needed the most.⁹⁴ For instance, in the health sector, a clinic building programme was implemented, including the provision of free health care services for pregnant women and children under the age of six.

In the education sector, the province implemented a primary schools nutrition programme, which involved interdepartmental cooperation between the education and health departments. A rural water supply and sanitation project was also undertaken together with a project to upgrade and maintain rural roads. These projects were all critical in Mpumalanga, especially in focusing attention on the province's historical backlogs in the provision of vital developmental services to its predominantly poor and disadvantaged communities. This task of focusing attention on the needs of the poor was enhanced by the role of political leadership in the province. Premier Phosa was instrumental in designing RDP-related institutions and, through the RDP Commission and SPDU in his office, championing the developmental agenda of the province at a political level. Also, his very vocal stance towards central government at the beginning, in terms of lobbying for greater powers and responsibilities for the provinces, was made in the belief that this would be vital for effective implementation of the RDP and better service delivery.⁹⁵

However the institutional arrangements that had been put in place to implement RDP programmes also precipitated serious difficulties in practice.⁹⁶ As already alluded to, the resulting institutional clutter often meant that institutions duplicated each other's responsibilities or experienced conflict due to poor coordination. Also critically, the RDP Commission in the premier's office was headed by an MEC whose position could not be justified constitutionally and in terms of public service regulations. The result was that it weakened the MEC politically vis-à-vis other MECs with line function responsibilities and commanding bigger budgets and enjoying better institutional and constitutional prestige. Also, the relationship between the RDP Commission and its MEC on the one hand, and the strategic planning processes in the province on the other, was not properly defined and this served to undermine the coordination role of the RDP Commission.

As ordinary line function departments increasingly found their feet and took on more service delivery responsibilities, the existence of parallel RDP-related structures became increasingly questionable, leading to frequent conflicts between the two institutional arrangements. Ordinary line function departments saw the RDP Commission and its related structures as political creations, not operating in terms of regular public service regulations. This created severe tensions inside the government, especially as ordinary line function departments sought to take over the implementation of RDP-related projects, including PLPs. There was no clarity on the relationship between the RDP-related institutions and ordinary line function departments – a common problem in many other provinces at the time. These institutional problems undermined the effective implementation of the RDP in the province. In addition, during the first two years Mpumalanga's budgetary priorities were still heavily influenced by the expenditure commitments of the previous KwaNdebele and KaNgwane homelands as well as the Transvaal Provincial Authority. This meant that the desire of the RDP Commission and its MEC to push for programme reprioritisation in favour of RDP-related policy objectives was being undermined, leading to further conflicts.⁹⁷

Basic social service delivery did benefit when line function departments became operational from 1995/96 onwards. The social services began consuming a large proportion of the annual budget. For instance, in the 1997/98 budget 75.1% was allocated to the three key social service sectors (i.e. education, health and social welfare).⁹⁸ This proportion increased to 80% in the 1998/99 and 1999/00 budgets respectively. Also, a very large proportion of the provincial budget was going towards recurrent costs such as the wage bill and household transfer payments, leaving very little for capital expenditure and maintenance of existing stock and infrastructure. For instance, in the 1997/98 fiscal year the provincial wage bill alone took 56.8% of the budget.⁹⁹ This figure increased to 61.3% in the following fiscal year. In terms of total recurrent costs, these consumed

92% of the 1997/98 provincial budget – this includes personnel remuneration, social pensions and subsidy transfers.¹⁰⁰ Non-social service-related capital expenditure suffered significantly, especially areas such as the promotion of tourism, small business enterprises, skills development and expenditure on the basic infrastructure that is vital for underpinning economic growth and investment. For instance, the province allocated only 8.3% of its 1997/98 budget to capital expenditure. The figure was slashed by almost half in the following financial year (1998/99) to 4.8%.¹⁰¹

As already discussed in Chapter 6, the 1997/98 fiscal year saw a budget crisis in the province precipitated by a fairly large deficit (R900 million), which led to as many as six departments failing to get their budgets approved by the legislature. The budget crisis was part of endemic institutional problems in the province. For instance, many departments had suffered from severe shortages of skilled personnel at managerial levels, including a shortage of skilled financial managers and inadequate financial controls. The crisis led to the provincial legislature imposing a regime of severe budget cuts on several departments and forcing the provincial government to carry out an extensive cost-cutting exercise throughout the administration in 1998.¹⁰² As pointed out in Chapter 6, the financial crisis led to several departments being placed under curatorship, including departments of education, health and environmental affairs & tourism together with the Mpumalanga Parks Board under its jurisdiction. Also, many departments found themselves without permanent administrative heads and other crucial positions such as chief financial officers (CFOs). Some directorates in the premier's office at the time were also affected. In many cases department and directorates were headed by acting appointments. In some cases, as part of the cost-cutting exercise the provincial government deliberately left a large number of vacancies unfilled in many departments, which affected service delivery significantly between 1997 and 1998.¹⁰³

The most critical aspect of the 1997/98 budget crisis is that it led to drastic cuts in capital expenditures of any kind, which meant that in key social sectors such as primary health care and education, there was severe shortage of funds to build new classrooms and clinics, and to provide vital medical supplies to the province's hospitals. In the non-social service sectors there were insufficient funds to invest in economic growth-promoting activities in the province. Moreover, many departments lacked the capacity for strategic planning and the ability to prioritise. This was also the case in key departments such as education, health and welfare. As was pointed out earlier in this chapter, some of the strategic planning capacity in the province was located inside the office of the premier, as well as in some of the development parastatals inherited from the homelands. Line function departments lacked this function and therefore were unable to identify policy priorities, formulate targets, or draw up proper business plans with proper budgeting. Such

weaknesses led to departments like education, health and environmental affairs & tourism overspending their budgets for three years in a row, between 1995 and 1998, hence the 1997/98 budget crisis.¹⁰⁴

Despite these problems Mpumalanga performed reasonably well in terms of the key area of low-cost housing during this period. As was the case in other provinces, low-cost housing delivery was an important political priority. As one of the predominantly rural and impoverished provinces, Mpumalanga had a huge demand for state-subsidised housing, with a housing backlog projected at 300 000 units by the end of 2001.¹⁰⁵ However, for the 1994-1999 period the province had set itself a target of building 53 000 low-cost housing units.¹⁰⁶ Mpumalanga was the first province to start approving these projects, with the launch of the Mpumalanga Housing Initiative in 1996, using private sector developers to spearhead the initiative.¹⁰⁷ Delivery was sluggish in the 1994/95 fiscal year, mainly because this was the period when many departments were being created and therefore administrative systems had not yet started functioning properly. The province had to roll over unspent housing funds to the 1995/96 fiscal year, when delivery picked up significantly.¹⁰⁸ For instance, in the 1995/96 budget year, the province spent 39% of its R201 million¹⁰⁹ allocated for housing capital expenditure. This was slightly higher than the provincial average of 30% but still suggested that spending capacity was either still weak or hampered by lack of capacity within the province's housing construction industry on which the province relied for its low cost housing delivery. In fact this sluggish performance was also the case in many other provinces.¹¹⁰ However in the 1996/97 fiscal year there was a dramatic increase in spending performance, with the province spending 111% of its low-cost housing budget, thus exceeding its R1.2bn allocation. This was against a provincial spending average of 72%.

The over-expenditure caused the national housing ministry to step in and impose a freeze on the province in March 1997, thus preventing Mpumalanga from approving any more new subsidy applications and housing projects until January 1998.¹¹¹ Mpumalanga had severely over-committed itself in terms of the number of these projects that had been approved at that time. In fact, the province had run out of funds for low-cost housing construction in 1997, and was even advised by the national housing department to cancel some of the non-performing housing projects. Mpumalanga was one of five provinces (including Free State, Gauteng, Northern Cape and Western Cape) that had also overspent their housing capital budgets in the same fiscal year and had also suffered the same temporary freeze in terms of approvals of new housing projects for that year. It was only in January 1998 that the freeze was lifted and low-cost housing delivery was resumed.

The figures provided by the national housing department show that between 1994 and 1997 there were 19 884 low-cost housing units completed or under construction in Mpumalanga, which breaks down to just over 6 600 units per annum.¹¹² That was below the annual target of about 10 600 units per annum that the province needed to achieve to reach its overall delivery target of 53 000 by 1999. In the following two years however, delivery figures increased noticeably – 10 873 (1997/98), 16 838 (1998/99) – before dropping significantly to 4 808 in 1999/00, perhaps due to the fact that this was an election year which anticipated a change of political leadership and subsequently a shift in housing policy and expenditure in the province, as will be discussed in the next subsection. Nonetheless, Mpumalanga did meet and exceed this delivery target of 53 000 units in 1999, delivering 59 000 units.¹¹³

Housing delivery in Mpumalanga was not without its problems though. For instance, early in 1997 the Mpumalanga Housing Department was hit by a major corruption scandal when it was alleged that the contract for the province's rural housing scheme – one of the largest low-cost housing projects in the country at the time, intended for the construction of 10 500 houses for R190.9 million – had been awarded irregularly to an unknown company called Motheo Construction. It was also found that the director of the company was a close friend of the national minister of housing, Sankie Mthembu-Mahanyele, which led to widespread allegations of nepotism and improper use of political influence in the awarding of the contract. A subsequent report by the auditor-general found that the awarding of the contract was characterised by “complete disregard for the due process and proper procedure in terms of requirements of the national Department of Housing's implementation manual”.¹¹⁴ The report revealed that the costs of the contract had been deliberately inflated to the tune of R24 million, and that financial controls and the requirement for proper evaluation of the contract had been disregarded by the provincial housing department and the housing board. The auditor-general also pointed out that the province had exceeded its housing budget by R313.4 million at the time when the contract was awarded.¹¹⁵ The auditor-general's conclusions were subsequently endorsed by the public protector in a report released in January 1999, which also pointed to “non adherence to the prescribed rules and regulations pertaining to the control of government expenditure”.¹¹⁶ Therefore the widespread practice of officials disregarding the proper procedures and financial controls was an endemic problem throughout the provincial government, invariably creating opportunities for corruption. The allocation of low-cost housing subsidies in Mpumalanga was not immune from such problems. For instance, in 1998 the provincial housing MEC, Craig Padayachee, handed over to the police for criminal investigation 13 cases of alleged financial corruption in the allocation of subsidies, estimated at about R3.6 million.¹¹⁷ Therefore the relative success of the province in the provision of low-cost housing was in spite of these problems.

In addition to delivering basic social services, the provinces have a responsibility towards regional economic development. During the 1994-1999 period Mpumalanga had a number of economic policy objectives it sought to pursue, which appeared to divert somewhat from the basic strategic path entailed by the RDP framework. As already argued elsewhere in this thesis, the RDP had envisaged a predominantly state-driven development strategy, based on large-scale state expenditure programmes to deal with apartheid era social services backlogs. Premier Phosa's provincial government had declared a stable macro-economic policy environment in the province as a prerequisite for economic growth. The government identified private sector investment as a driving force for economic growth, and sought to attract such investment especially in the areas of tourism, manufacturing and agriculture.¹¹⁸ The acknowledged strong relations between Phosa's administration and corporate investors in the province therefore testifies to the economic growth imperative under Phosa, and his keenness to encourage greater private sector involvement to lead this regional economic growth and development.

As already pointed out, Mpumalanga faced enormous socio-economic backlogs and, like many other provinces, its dependence on national funding was clearly inadequate to deal with these backlogs. Also, given that a very large proportion of the provincial budget is always consumed by basic social service delivery, especially recurrent costs, there are usually limited resources for investment in the provincial economy and job creation as an alternative strategy to address the enormous social services backlogs and poverty alleviation. The 1997/98 budget crisis had led to a near total collapse in non-social service capital expenditure from which the province did not emerge for three years. This meant that few fiscal resources were invested in the type of capital stock and infrastructure that is necessary for local economic growth and development.

Interestingly, Premier Phosa's administration did not see any strategic conflict between the state-led development path charted by the RDP, and the open promotion of a private sector-led development path. Even the central government did not regard this as an important issue. The province had been emphasising the importance of economic growth as a strategic priority as early as 1995, and official economic policy statements had always called for greater private sector involvement in the province's economy. This was strengthened by the adoption in 1996 of the country's GEAR policy framework, which called for curbs in public expenditure and for greater trade and private sector investment into the country. For instance, in a speech to the legislature in 1997, Premier Phosa talked about the need for "private sector profit opportunities [to] be translated into a better quality of life for the majority of the people in our province".¹¹⁹ Phosa also stated, "the engine for development remains the private sector", adding, "it is better geared for streamlined and speedy delivery. Government's role remains that of an active creator of an enabling environment for the private sector to flourish..."¹²⁰ The MEC for economic affairs at

the time also emphasised the need for controlling public expenditure as well as focusing on economic growth to deal with the needs of the poor.¹²¹

These policy statements were merely restating a long-held preference for an investment-led economic growth strategy, which received reinforcement when the national government adopted its new macro-economic policy framework. At national level this was a clear strategic shift from a state-led development path entailed in the RDP, towards a trade and investment-led economic growth philosophy. Mpumalanga's own economic growth strategy document, the Provincial Growth and Development Strategy (PGDS), released in 1997, aligned itself with the new macro-economic policy framework and its call for fiscal restraint. The irony of a predominantly impoverished province like Mpumalanga promoting policies that are likely to lead to cuts in social expenditure cannot be clearer, especially given that state spending in basic social services has been very high since the mid-1990s, and is likely to remain high for the foreseeable future. This contradiction fully captures the dilemma that many poor provinces in South Africa find themselves in – the need to promote private sector investment and regional economic growth, which is usually accompanied by calls for fiscal restraint, and the need for the provincial government to deal with enormous historical social services backlogs, which usually calls for large-scale state expenditure.

7.6.2. Second Term Of Office (1999-2004)

The new provincial administration of Premier Ndaweni Mahlangu was faced with a less onerous task of continuing a set of broad socio-economic policy programmes that the previous administration had pursued. In his first major policy speech to the provincial legislature in July 1999, Premier Mahlangu committed his administration to accelerated and effective delivery of basic social services, arguing “in the past five years we were reconstructing and reconciling. Now it is time to consolidate, develop and deliver to fulfil our people's expectations”.¹²² Mahlangu identified a set of broad policy goals, which basically aligned the province's policy agenda to that outlined by the national government. These included speeding up the delivery of basic services, developing human resources, transformation, economic growth, job creation and combating crime and corruption. In particular the premier identified specific sectors such as education, health care, social welfare and housing for attention.

The province still faced backlogs in these areas. In education, especially in the rural areas, there was severe shortage of critical facilities and amenities in rural schools, such as classrooms, school administration buildings, textbooks, school toilets, electricity, clean water and sanitation. In the area of health care, existing hospitals needed upgrading while new clinics had to be constructed in many rural communities. The province faced an enormous challenge of improving delivery of basic health care services, which was generally in a poor and deteriorating state, as indicated

earlier. For instance, the province's major public hospitals suffered from poor and aging equipment, lack of adequate funds to order basic medical supplies, as well as inadequate medical personnel. Also, one of the major health care challenges for the province was dealing effectively with the HIV/AIDS pandemic. This is dealt with at length below. In the social welfare sector, the province faced enormous challenges in that it is a province with high levels of unemployment and a large proportion of its population living in poverty. Mpumalanga is the fifth poorest province in South Africa, with 57% of its population living in poverty.¹²³ This presented serious challenges to the welfare services department, which sought to increase access to welfare support services and other support grants to impoverished households as a tool for poverty relief.

The three key social policy programmes identified above were already prioritised under Premier Phosa's administration, and Mahlangu's government had to continue without much deviation. In fact, an examination of information relating to the provincial budget allocation and expenditure over the five years of Mahlangu's administration shows that the three programmes continued to dominate the policy agenda. Between 75% and 80% of the provincial budget was consistently allocated towards these social sectors during that period. That is broadly similar to the share of the annual budget that Phosa's administration was allocating to the same sectors between 1997 and 1999. Education consistently received the biggest share of the allocation, followed by social welfare services and health care.¹²⁴ The fact that the social welfare department consistently received the second largest budget allocation underscored the prevalence of poverty in the province and the vital role of state assistance to poor households. However, these large shares of the provincial budget going to the social sectors did not mean that service delivery performance was always effective. For instance, despite the largest share of the budget going towards education, the province's education sector has usually performed worse than in many other provinces over the years.¹²⁵ The province's matriculation results have always been among the lowest in the country. In 1998 the province was hit by a major scandal, with education department officials and markers conspiring to inflate the province's 52% matriculation pass rate by 20%. A similar scandal was repeated in 2004 when it was found that some education officials and markers in the province had again attempted to fraudulently inflate the province's matriculation results.

The health sector has also been affected by poor performance during Mahlangu's administration, with the HIV/AIDS issue proving the most damaging. Initially, during Premier Phosa's administration, the HIV/AIDS pandemic was not treated as a priority. In fact before 1998 Mpumalanga was only the fourth worst affected province in terms of HIV/AIDS infections, behind KwaZulu-Natal, Gauteng and Western Cape.¹²⁶ Consequently, Premier Phosa's administration did not have a clear policy for dealing with the pandemic in terms of treatment,

other than awareness campaigns focusing on prevention through abstinence, fidelity and the use of condoms.¹²⁷ However by the time Mahlangu came to power in 1999 the province had moved from the fourth to the second worst affected after KwaZulu-Natal. In addition HIV/AIDS had become not only an urgent and controversial social policy issue but also a key political battleground between the government and civic organisations such as the Treatment Action Committee (TAC). Therefore Premier Mahlangu's administration was faced with the major challenge of formulating a more effective policy response and strategy towards dealing with the pandemic.

The way Mahlangu's administration subsequently handled the challenge presented by HIV/AIDS as a policy issue was highly indicative of the often difficult relationship between the provinces and the central government over the years. For instance despite the urgency with which the province needed to respond to the HIV/AIDS situation, Mahlangu's administration chose not to deviate significantly from the approach of the previous administration. The new MEC for health, Sibongile Manana, signalled the province's intention to continue the policy of focusing on awareness and educational campaign messages of prevention, while also encouraging home-based care and support for those infected and orphaned by the pandemic.¹²⁸ The province was increasingly coming under pressure to provide anti-retroviral drugs to rape victims. In 2002 the province's health MEC, Sibongile Manana, refused to accede to pressure from opposition parties and civic organisations to allow anti-retroviral drugs to be administered to rape survivors.¹²⁹ It was widely acknowledged by many commentators that the province failed to provide clear and effective political leadership in terms of its response to the challenge, instead opting to conform to a controversial national policy that prevented the roll out of anti-retroviral drugs at provincial medical facilities. This policy stance was even more damaging for Mahlangu's administration given that other provinces were rolling out the drugs.

According to national policy on the distribution of anti-retroviral drugs (especially nevirapine), only pilot sites agreed upon between the province and central government could distribute these drugs and there were only two of these in Mpumalanga at the time. The health MEC even defied a Constitutional Court order to allow public health facilities in the province to make nevirapine available, and instead adopted a hard line stance against any medical personnel attempting to provide these drugs to rape victims in provincial hospitals.¹³⁰ A superintendent at Rob Ferreira Hospital in Nelspruit, one of the major hospitals in the province, was expelled on 'gross misconduct' charges for letting a local anti-rape non-governmental organisation to use the hospital to distribute anti-retroviral drugs to rape survivors.¹³¹ The MEC's hard line stance even led to open rebellion by professional medical staff in some hospitals and a general sense of despondency in the medical profession in the province. At the same time as the department of

health refused to allow the distribution of drugs in provincial hospitals, the health MEC was contesting the efficacy of anti-retroviral drugs, referring to lack of capacity in the province and stressing the need to focus instead on fighting poverty. These were all key aspects of the national health minister's policy stance on the issue of the provision of anti-retroviral drugs.¹³² There was therefore no doubt that the province did not want to deviate from national government policy on this issue. In fact it was found at the time that the province had failed to spend R59 million of its health budget, which included funds allocated towards the prevention of mother-to-child transmission (MTCT). This was particularly puzzling given that other provinces were already rolling out their prevention of MTCT programmes at this time.¹³³

The explanation for the policy stance of the Mpumalanga health department can be found in the relationship between Mpumalanga and the central government at the time, especially given the political developments that took place in the province between 2000 and 2002. For instance, as discussed earlier in this chapter, the financial and political crisis that gripped the province between 2000 and 2002 led to intervention by the national treasury and the ANC leadership. The intervention severely restricted the provincial government's room to manoeuvre, effectively handing over power to the national leadership of the ANC in terms of major decisions on key policy issues such as the distribution of anti-retroviral drugs. For instance, Justin Arenstein argued at the time, "Mahlangu is still in his post, but he and his MECs must be absolutely clear that the only way to hold onto their jobs is to toe the party line at all times. There is no place for mavericks in Mpumalanga and certainly no leeway for interpretation of party policy on a supremely sensitive matter such as the provision of anti-retroviral drugs".¹³⁴ It would appear therefore that the national authorities were directly involved even in the handling of the anti-retroviral drugs issue. For instance, during the disciplinary hearing of Dr. Thys von Mollendorff, superintendent of Rob Ferreira Hospital who was charged with gross misconduct, evidence was led by the defence that health MEC, Sibongile Manana, had received a phone call from the national health department instructing her to ensure that the NGO distributing drugs to rape victims was removed from the premises of Rob Ferreira hospital – an instruction that was subsequently carried out.¹³⁵

The issue of low-cost housing delivery remained important but its policy focus shifted significantly following national policy development. In a ten-year review report released by Mahlangu's administration in 2003, it is claimed that a total of 60 310 low cost housing units were completed in the province between 1994 and 2003.¹³⁶ This was not sufficient to eliminate the backlog in the province, estimated at over 300 000 units by 2003, and there was no prospect of the province attempting to eliminate such a huge and growing backlog. Therefore the policy focus was subsequently shifted away from a developer-driven and project based subsidised

housing strategy towards self-help and ‘people-centred’ housing delivery strategies.¹³⁷ The provision of state subsidised low-cost housing was not abandoned completely, as was the case in Gauteng. Instead, there was a greater focus on providing housing to rural areas while also encouraging credit-linked end-users and promoting contractor-based subsidy packages.¹³⁸ Importantly, greater attention was being paid towards encouraging people to save for their own housing needs through what is called people’s housing process (PHP), which echoed similar policy initiatives in Gauteng and other provinces.¹³⁹ It appeared to signal a shift from the basic approach of the RDP housing process. In a budget speech to the legislature in 2002, housing MEC David Mabuza confirmed this policy shift, stating, “we are...no longer prepared to build regimented, monotonous and uniform houses...Beneficiaries who are prepared to financially add to their houses will be encouraged to propose their own designs.”¹⁴⁰

Regarding the regional economic growth imperative and investment promotion, the province did not deviate significantly from the strategy adopted by Premier Phosa’s previous administration. However, despite the province’s positive disposition towards the role of private sector investment, the efforts and strategies put in place to promote investment were not as effective as expected and this was largely a problem of institutions. The province has had a plethora of institutions whose collective task of supporting regional economic growth through the promotion of investment has not always been carried out effectively over the years. In fact former Premier Matthews Phosa acknowledged the poor performance of these institutions in terms of investment promotion in 1999. Despite the establishment of the Mpumalanga Investment Initiative (MII) in 1998, Phosa acknowledged when he left office in 1999 that the MII had not succeeded in improving the levels of investment in the province. In his last budget speech to the provincial legislature, Phosa argued that the performance of the MII around the ability of the Maputo Development Corridor project to attract investment was still “sub-optimal”.¹⁴¹ He contended in February 1999 “when you consider that the total investment in Mpumalanga in all sectors of the economy since 1994 only equals the value of several mega-projects taking place in Mozambique...you have to question our investment strategy”.¹⁴²

The discussion above indicates that on taking office in 1999, Premier Mahlangu was facing a clear economic policy challenge of putting in place an effective investment promotion strategy. In such a predominantly rural province with limited fiscal resources, economic growth may play an important role in long-term social development, job creation and poverty alleviation. Despite the low levels of investment, Mahlangu’s new administration found the provincial economy on an upward curve, set to outgrow the national rate of growth at 3.4% per annum between 2000 and 2001 according to a study by the Independent Development Corporation (IDC).¹⁴³ To sustain the predicted rate of growth, the provincial economy needed greater investment in the Maputo

Development Corridor project in addition to the fast-growing sectors such as tourism, electricity, steel manufacturing and chemicals. In fact, the province did attract investment in manufacturing, estimated at R50.4 million in total value in the 2001/02 fiscal year.¹⁴⁴

However, tourism has been identified as providing the best prospects for the province's economy and Mahlangu's administration opted to focus greater attention on promoting tourism as an engine of economic growth and job creation. Between 1999 and 2003, a great deal of effort and resources went into promoting the industry. For a start, the government converted the Mpumalanga Tourism Authority (MTA), a Section 21 company established in 1995, into a parastatal in order to drive the development of tourism in the province.¹⁴⁵ The MTA developed the province's Tourism Growth Plan in 1999 and a Five Year Tourism Implementation Strategy. Also, a Tourism Safety and Security Task Group was launched in 1999 to protect foreign tourists to the province. Considerable amounts of money have since been devoted to the sector, with R317 million allocated towards upgrading the province's basic tourist infrastructure particularly the province's roads network, in 2002.¹⁴⁶ The government also sought to create a R10 billion start-up capital fund for investors with at least R10 billion to invest in the sector, as well as encouraging the emergence of black empowerment enterprises in the tourism industry.¹⁴⁷

Therefore, Mpumalanga has been fairly pro-active in its attempt to turn the tourism sector into an engine for growth. However, it would appear that the province's limited fiscal resources remain an important constraint, preventing more resources being devoted to the sector. For instance, in 2003 the budget allocation towards the tourism portfolio was only R10 million, compared with R30 million in the Northern Province.¹⁴⁸ In the 2000/2001 budget, the government attempted to improve the level of fiscal resources flowing towards the regional economic growth and investment imperative. For instance, the province sought to reverse the trend dating back to 1998 which saw increasing personnel spending squeezing out capital expenditure. Therefore 8.6% of the 2000/2001 (R6.93 billion) budget was allocated to capital expenditure projects, with 4.3% going towards economic development functions.¹⁴⁹ This was a significant increase even though it merely returned capital expenditure to a level achieved in the 1997/98 budget. However, as already pointed out, the inability of the Mpumalanga Development Corridor to attract more foreign direct investment into the province continued to be a constraint to the province's plans to boost its economic growth and job creation.

It was argued earlier in this chapter that the poor performance of the provincial authorities in attracting greater levels of investment into the province was seen as a problem of political leadership, especially under the perceived un-dynamic leadership of Premier Mahlangu. However the problem was a little more complex than that. Firstly, in defence of Premier Mahlangu the

poor level of investment in the province was already acknowledged as a problem by Matthews Phosa, in his last budget speech to the legislature in 1999. Phosa admitted then that the province was “adopting a rather shotgun, untargeted approach to the attraction of investment”.¹⁵⁰ Secondly, the problem was not just political. To a very large extent, it was also structural and institutional, and pre-dated Mahlangu’s provincial administration. In his last speech to the provincial legislature, Phosa appeared to put the blame for low levels of investment in provincial economy on the province’s export profile, especially the dominance of primary export commodities like minerals, energy and agricultural products.¹⁵¹ Also, the relevance of government institutions and their effectiveness as a fact has played a key role in the government’s ability to promote investment. For instance, the economic affairs, finance and tourism functions were originally split into three separate departments during Phosa’s administration. This had resulted in debilitating fragmentation, ineffective coordination of investment strategies and lack of coherence in the province’s growth and development strategies.

In addition, during Premier Phosa’s premiership, the department of environmental affairs and tourism, with the MPB under its authority, were in charge of the tourism promotion functions. However, they were riddled with corruption, nepotism and mismanagement of resources. This was a key institutional constraint that contributed towards poor performance in attracting investment to the province. As already discussed, after coming to power in 1999 Mahlangu carried out extensive institutional reorganisation of government departments in an attempt, among other things, to improve the coherence and effectiveness of a number of key functions including finance, economic affairs and tourism. Crucially, he disbanded the former environmental affairs and tourism department, allocating its two components (i.e. environmental affairs and tourism) to the departments of agriculture and economic affairs respectively. Mahlangu also combined the hitherto separate departments of economic affairs and finance into one department under one MEC.

Despite the institutional problems and the political dynamics that have characterised governance in Mpumalanga over the years, a measure of political and institutional stability necessary for consistent implementation of policies and delivery of basic social services has been achieved. There is no doubt that the large-scale political intervention carried out by the ANC between 2000 and 2002 to quell the debilitating political leadership struggles in the province was critical in restoring some stability to the government of the province.

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CHAPTER 8: CONCLUSION – THE PROVINCIAL SYSTEM AND FUTURE PROSPECTS

This thesis provides an in-depth examination and analysis of the evolution and development of South Africa's federalism between 1994 and 2004. In particular it evaluates the performance and effectiveness of its provincial institutions of government, using the two provinces of Gauteng and Mpumalanga as in-depth case studies. The central question in this study is to what extent has the provincial system of government fulfilled its responsibilities of promoting democratic governance and ensuring effective delivery of social services to citizens at sub-national level? The argument adopted in this thesis is that South Africa has a highly centralised federal system of government, with the provinces highly dependent on the financial support of the central government. This significantly constrains the provinces' room to manoeuvre in fulfilling their functional responsibilities. However, within this centralised federal system and financial dependence on central government, the provinces have been able to meet their obligations and serve the interests of their citizens, subject to a variety of important factors such as institutional capacity, availability of resources, relations with the central government as well as the role of political parties and elected members at provincial level in the performance of their oversight responsibilities.

8.1. EVOLUTION AND DEVELOPMENT OF THE SYSTEM

Since inception, the current federal system of government has generated heated debates and contestation regarding its efficacy. Perceptions among major political parties in South Africa have always differed as to precisely what purpose its federal system of government in general, and its provincial institutions of government in particular, are expected to serve. However, the literature on the South African constitution-making process of the early 1990s and the intense public debates about the need to establish a decentralised system of government in South Africa provides ample insights into the constant dissatisfaction with the efficacy of the system over the years. Crudely put, the creation of federalism or a decentralised system of government in South Africa was an attempt to resolve an intractable political problem of the distribution of power in a divided post-apartheid political dispensation. The central political divide at the heart of the constitution-making process of the early 1990s was precisely how to ensure that constitutional power was not centralised and concentrated in the hands of one political party in power at national level. At the same time it was critical for the post-apartheid political and constitutional settlement to ensure that constitutional power and authority was not so divided and dispersed as to prevent the emergence of sufficiently strong national institutions of government to underpin national unity or unity of purpose in government at the centre.

The political parties and interest groups that preferred a decentralised system of government believed that a unitary or centralised system of government, especially in a society with a bitter history of racial and ethnic divisions, would lead to suppression of minority political and social interests not represented by the majority party in power at central government level. A decentralised system was seen as vital to provide some guarantees that regional minorities and political interests not represented at the centre would have other opportunities to seek representation and achieve power, especially at sub-national level. As already pointed out in this thesis, a number of political parties including the IFP, NNP and DP supported this view during the Kempton Park constitutional negotiations. Equally, the ANC and a range of other political parties and civil society organisations aligned to it were apprehensive of the potential limitations federalism or a decentralised political dispensation placed in the way of their stated goal of re-uniting the country. The party believed that a strong central government, with strong constitutional and legal powers, was vital to overcome the historical divisions and the legacy of socio-economic inequalities imposed by the previous apartheid system of government.

The central political division outlined above led to the design of a Constitution that implied a federal system of government, entailing a compromise between the two critical political imperatives of decentralising constitutional power and entrenching the functional responsibilities to sub-national entities, at the same time as it reserved enormous constitutional powers at the centre. This clear political compromise at the heart of the country's Constitution has generated fierce discussions over the years among political parties and commentators about the efficacy of the current federal system of government as a device for the effective promotion of democracy and delivery of basic social services. Therefore the evolution and development of South Africa's federalism during the period under study has essentially been an attempt to balance the need to promote democratic practices in government processes at sub-national level on the one hand, while improving the effectiveness of sub-national institutions of government in implementing social policy programmes and delivering basic social services to citizens on the ground, on the other.

It can be argued that South Africa's post-apartheid constitutional settlement was essentially a political exercise that resulted in the establishment of a federal system of government that was widely acknowledged as ineffective in practice, both as a device for promoting democratic governance at sub-national level and for effective delivery of basic services. The fact that the country's federal system was the result of a political compromise intended to resolve the problem of the distribution of constitutional power between the centre and the provinces had created an enormous political incentive for regional political elites to attempt to acquire more powers from

the centre. In other words, the entrenching of the division of constitutional powers between the centre and the provinces led to a struggle for power between the two spheres of government during the early years of the system, leading to debilitating intergovernmental conflicts. It is concluded therefore that the attempts to resolve these conflicts took much of the attention of political elites in the country at the time, and were at the expense of developing effective institutions and processes of governance at sub-national level to promote democratic practices and effective delivery of services.

Clearly the issue of the devolution of constitutional authority to regional elites during South Africa's Constitution-making process was an essential prerequisite for a peaceful post-apartheid political settlement. Inevitably, the country's political elites had paid more attention to resolving this issue, while less time and effort went into consideration of the practical issues in the operation of the system in general. Therefore the subsequent reforms that were implemented during the late 1990s were ultimately intended to address some of the practical deficiencies in the functioning of the system.

During the first few years of its operation, South Africa's federal system was clearly unable to achieve the goal of promoting effective democratic practices in governance at sub-national level, especially through forging closer relations between ordinary citizens and elected public representatives, as well as encouraging greater public involvement in the formal processes of policy making. However, the newly established provincial governments were also experiencing many practical difficulties in terms of efficient service delivery to citizens. Even some of the political parties that had argued for the division of constitutional powers and functions between the centre and the provinces during the Kempton Park constitutional negotiations, most notably the IFP, were severely critical of the country's federal system at the time. Of course the IFP's criticisms were based on the view that the division of constitutional powers and functions between the two spheres of government was inadequate and that the provinces were mere administrative arms of the central state. Nonetheless the criticisms did add to the general sense of despondency about the system in general and the provinces in particular.

For their part, the ANC and its allied organisations perceived the current system of dispersed constitutional authority as hampering effective governance, especially the national coordination of service delivery by provinces. The party saw the constant intergovernmental conflicts that emerged during the early part of the 1994-1999 period over constitutional powers and functions as an inherent defect of the system. As the ruling party with a huge socio-economic and political transformation agenda at the time, the ANC believed that the system of fairly restricted constitutional powers for the centre was hampering the goal of a strong central government

capable of dealing with the legacy of socio-economic deprivations and inequality throughout the country. For the ANC the power struggle between the national and provincial governments was compounded by the fact at least two of the party's own provincial premiers, Matthews Phosa and Tokyo Sexwale, joined premiers from the two opposition-controlled provinces of KwaZulu-Natal and Western Cape to make extremely vocal demands for more powers and functions. This served to blur the party political nature of the initial divisions between the ANC and its political opponents over the desirability of a federal system of government in South Africa. It also helped considerably to rekindle the ANC's fears of the potential dangers posed by such a system of government. The ANC's desire for change and reform in the system was caused by frustration resulting from constant intergovernmental conflicts and the fact that the Constitution had not provided effective ways of managing such conflicts. But, more critically for the ANC, some of the party's own premiers were at the forefront of these intergovernmental conflicts, suggesting the existence of unresolved internal divisions within the party regarding the provincial system of government at the time. Such conflicts were serious enough to be perceived by the central government as hampering effective governance and service delivery at provincial level.

The intergovernmental conflicts between the centre and the provinces could be read in two ways. From the perspective of those like the ANC leadership harbouring deep-seated misgivings about the federal system of government, the problems were a clear sign of the failure of the country's new federal system in that it pitted the provinces against the centre, promoting division and disunity at the same time as it emasculated the centre and restricted its constitutional capacity to hold the system together. This had to be remedied by reclaiming strong authority for the central institutions of government to ensure a much more centrally coordinated and managed system of relations between the national government and the provinces. From the point of view of those in favour of a federal system of government, the conflicts were a welcome sign of healthy contestation, which is part of a federal arrangement. It was believed that the 'dualist' and competitive character of South Africa's system of government at the time had allowed for regionally based political and socio-economic interests to be articulated through regional institutions of government established precisely for this purpose.

Another important factor was that, while the provinces appeared to demand more constitutional powers and responsibilities, many of them were still institutionally and administratively weak and unable to fulfil their policy implementation and service delivery responsibilities properly. As discussed in Chapter 3, many provinces experienced widespread technical and institutional constraints during the 1994-1999 period, accompanied by reports of endemic corruption and widespread maladministration. This created widespread public perceptions of deep-seated institutional and administrative malaise within the provinces and contributed to a strong political

pressure for reform. The fact that the provinces were also perceived as unable to forge closer relations with regional populations to promote their interests through formal processes of government and policy making was an important element. Clearly therefore, the federal system of government as introduced in 1994 and its operation during the first few years of its inception appeared to please very few people and had to be changed significantly to enhance its efficacy.

As was discussed in Chapter 2, two waves of reforms were subsequently introduced during the 1994-1999 period. Based on the discussion and analysis in Chapter 2, an important conclusion to be drawn is that the nature of the first wave of the reforms was consistent with an attempt to increase the ability of the central government to regain the constitutional and political high ground in its relations with the provinces. This would enable the centre to restructure its relationship with the provinces through a centralised and highly coordinated intergovernmental institutional framework. At the centre of this centrally controlled institutional framework was a doctrine of 'cooperative governance' that elevated the notions of cooperation, consultation, coordination, mutual assistance and friendly relations above those of competition, contestation and conflict. The first wave of reforms came as part of the new constitution that took effect in 1997. In particular, Chapter 3 of the Constitution was central to the new philosophy of cooperative intergovernmental relations. In terms of institutional design, the newly created NCOP was to take centre stage in underpinning the new set of principles intended to bring the relationship between the centre and the provinces under tighter coordination. In this new philosophy of cooperative intergovernmental relations, politics was to be elevated above legal procedures as a method of settling intergovernmental disputes. Therefore, the first wave of reforms appeared to constitute a rejection of the 'dualist federalism' that derived from constitutional and legal disputes over provincial powers and functions during the early part of the 1994-1999 period. During that period, the system encouraged the emergence of a decentralised pattern of intergovernmental conflict whereby the provinces could contest the authority, power and dominance of the central government and freely call for greater constitutional powers. This pattern of conflict and political bargaining was difficult for central government to manage effectively. Therefore, the centralisation resulting from the first wave of reforms was an attempt to re-configure the pattern of intergovernmental conflict at national level, under the tutelage of central government institutions, which would make it more manageable.

Importantly, the reforms led to a re-structuring of the functional division of labour between the centre and the provinces whereby the central government largely, though not exclusively, focused its attention on making policies and framework legislation for the entire country. While in terms of the new division of labour the provinces would be allowed greater inputs into national policy making and legislative processes, they would mainly focus their attention on policy

implementation and service delivery to citizens. The key factor that was critical in underpinning this new division of labour between central government and the provinces was the superior fiscal resources of the national government and the near-total dependence of the provinces on central government for the necessary funds for their social policy programmes. This clearer functional division of responsibilities also helped to reduce the constant pressure from the provinces for more functional responsibilities and greater legislative powers. However the centralisation thrust of the first wave of reforms, combined with South Africa's Westminster-oriented system of parliamentary government that tends to allow the executive to dominate the legislative branch, created a situation whereby the new division of labour between the two spheres of government resulted in central government becoming increasingly overbearing and domineering to the provinces. For instance, executive intergovernmental institutions such as the MINMECs, usually led by national government ministers, became the central tools for articulating and mediating the dominance of the national government over the province. This dominance of the centre created new political tensions and disputes between the centre and the provinces. It led to new criticisms that the provinces had become mere administrative and service delivery arms of central government. As was discussed in Chapter 2, such new intergovernmental tensions were to lead to a major intergovernmental conference in March 1999, just three months before the second democratic elections in South Africa, attended by all the provincial premiers and the then Deputy President, Thabo Mbeki.

It needs to be emphasised that the first wave of reforms was predominantly constitutional in nature. The reforms were aimed at addressing the problems arising out of the nature of the constitutional division of powers between the centre and the provinces, especially by strengthening the role of central institutions of government in intergovernmental relations. However, the reforms failed to address the lack of effective institutional performance at provincial level with respect to administration and efficient delivery of services. The provinces in general experienced inadequate technical and managerial capacity to implement both national and provincial social policy programmes and to deliver basic services effectively and efficiently to citizens. This was particularly critical in that at the time the ruling ANC was attempting to implement a nation-wide mandate of socio-economic and political programmes dubbed the Reconstruction and Development Programme (RDP). The implementation of the RDP presupposed the existence of effective and efficient state machinery at sub-national provincial level where most implementation of policies and delivery of basic services takes place. Important social policy programmes at the time in areas such as education, health, social welfare and housing floundered due to lack of institutional and administrative capacity at provincial level, with allocated budgetary funds being rolled over because of that. In many cases provincial public services were afflicted by severe lack of financial management expertise and proper controls,

which often led to widespread corruption, mismanagement and wasteful spending of public resources. In fact, as indicated in Chapter 3, a Public Service Commission report of 1997 attested to the widespread administrative and technical deficiencies at provincial level.

In the wake of the institutional performance and delivery problems in the provinces a broad public consensus had emerged in the country on the need for effective and efficient delivery of public services. It can therefore be concluded that the second wave of reforms was aimed at creating effective institutional performance in service delivery. The implementation of these reforms began during the last years of former President Nelson Mandela's term of office, spearheaded by Deputy President, Thabo Mbeki, and continued during the early years of Thabo Mbeki's first term of office as president. The reforms were mainly technocratic and managerial in nature.

A number of key aspects of the second wave of reforms are worth setting out briefly. Firstly, the reforms entailed a new set of technocratic/managerial values and principles as discussed in Chapter 2. The principles were articulated within the context of President Mbeki's call for speedy and efficient service delivery at provincial level. There was particular emphasis on capacity building and support for the provinces, coordination and supervision of the policy implementation and service delivery activities, and integration of policy making and implementation at sub-national level. An important part of this national supervision entailed financial supervision of the provinces, which led to stringent financial management practices and controls imposed on the provinces by the national ministry of finance to curb mismanagement and corruption. For instance, the national treasury adopted a strict policy of not automatically assisting any province that overspent its budgets. Also, any province that had received financial rescue packages from the national government for overspending their budgets had to agree to a tough set of financial and fiscal control measures, including central government taking over temporarily the management of its financial affairs, until financial stability is achieved.

This national intervention in the financial management of the provinces occurred mainly, but not exclusively, under the provisions of Section 100 of the constitution. For instance, it was invoked in the case of Eastern Cape and KwaZulu-Natal during the 1994-1999 period, and in Mpumalanga in the 1999-2004 period. It almost happened to Mpumalanga for the first time during the 1997/98 budget crisis, under the reign of Matthews Phosa. However, the province chose to impose its own set of stringent financial control measures, thus avoiding the political embarrassment of a Section 100 intervention. The need to ensure proper financial management and stringent financial controls at provincial level was underpinned by the introduction of the Public Finance Management Act (PFMA) of 1999. The Act sought to tighten up financial

management controls and accountability inside the public service and other state institutions, as well as to strengthen the legal framework within which the legislatures (national and provincial) could oversee and monitor the management and use of public resources. The Act obliged government departments and state institutions to plan their activities on the basis of proper annual strategic plans, clear performance indicators and achievable targets to eliminate mismanagement and wasteful spending of public resources.

The interventions in the financial affairs of the provinces were extremely successful in that they helped improve the situation in the provinces considerably. For instance, in the 1997/98 fiscal year all the provinces had overspent their budget allocations, resulting in a collective provincial deficit of R5.9 billion. After the interventions, the 1997/98 provincial deficit had been converted into a surplus of R3.2 billion in the 2001/02 fiscal year. Admittedly, the financial turnaround was at a huge cost to capital expenditure, both in social policy sectors such as education and health care, as well as in non-social policy sectors such as economic infrastructure investment and regional economic growth. A conclusion can be drawn therefore that despite the cost to basic social service delivery and the regional economic growth imperative, the financial management reforms were effective in halting the rot that had begun to take hold at provincial level. The reforms also placed many provinces on a reasonably sound footing to begin increasing budgetary allocations towards the major social services as well as investment in promoting activities in capital expenditure and economic growth from 2002 onwards.

Secondly, a set of new institutional structures was introduced to underpin the new philosophy of integrated planning, supervision and coordinated policy implementation. One of these structures was the Coordination and Implementation Unit (CIU) established inside former Deputy President Thabo Mbeki's office in 1998. Its role was to supervise policy implementation as well as to monitor and coordinate service delivery across the spheres of government. The other structure was the Presidential Coordinating Council (PCC) whose function was to monitor the provinces and assess institutional capacity and performance. The PCC also sought to pay closer attention to the issue of promoting democratic governance through provincial institutions of government, especially through increased interaction between elected provincial public representatives and citizens on the ground. This was based on a clear belief that greater citizen involvement in formal processes of government was essential in improving the quality of government policy-making processes and service delivery to citizens. However, the PCC has failed to fulfil its promise and has tended to adopt a fairly low-profile stance on major issues affecting provincial government.

The third aspect of the second wave of reforms was the adoption in 1998 of a new policy on the selection of premiers for ANC-controlled provinces. Although this was essentially a decision on an internal party policy matter, the decision has an important bearing on issues of local democracy and governance at provincial level. In terms of local democratic practice, the decision gives the national leadership of the ANC the right to interfere with local choices of provincial political leadership and therefore, potentially, could distort regional democratic outcomes. In terms of the governance of the province, in theory the decision means that instead of regional political leaders being elected to positions of premiership purely on the basis of grassroots popularity, the national leadership of the ANC would ensure that the selection of premiership candidates was carried out on the basis of other considerations necessary for effective provincial government. These include political maturity and the technical managerial skills and expertise which are clearly considered essential by the party to govern effectively. In addition, the fact that the decision removed the automatic assumption that a provincial party chairman would necessarily become premier ensured that effective provincial governance would not be debilitated by constant struggles among regional political leaders for the position of party chairman as a stepping-stone towards the premiership. Another important consideration that many commentators believed informed the decision was that central government had to be certain that the 'right' premiership candidates would be nominated to ensure cooperative relations with central government rather than question its authority and policies as used to happen during the early years of provincial government in South Africa.

The 1998 policy was generally not popular among the party's rank and file membership in many regions and led to instances of defiance in provinces such as Gauteng, Northern Province, Free State and Mpumalanga, where officially approved candidates were challenged for the positions of party chairman. However it can be concluded that in general the policy did bring some measure of stability to governance in many provinces. Many incumbent premiers were able to pay greater attention to issues of good governance and effective service delivery, especially during the 1999-2004 period. In other provinces, particularly Mpumalanga, the policy failed utterly in that constant leadership struggles within the ANC regional structures and the provincial government continued to create instability, often leading to interventions by the ANC national leadership.

It can also be concluded that the development of South Africa's federal system of government has generally followed a clear trajectory, from the initial attempt to resolve the problem of parcelling out constitutional power between the political elites in the regions and at central government, towards greater concern for and focus on issues of proper governance and effective service delivery. During the evolution of South Africa's system of federalism the central government came to assume an increasingly dominant role over the provinces in general

processes of government, prompted mainly by the early and formative experiences during the 1994-1999 period of vocal provincial premiers and the struggles for constitutional powers. These struggles had rekindled within the national leadership of the ruling ANC the residual mistrust of a federal system of government in which provinces wield strong constitutional powers.

8.2. INSTITUTIONAL PERFORMANCE

One of the major justifications for the creation of a federal system of government in South Africa is that it serves to bring government closer to the people, thereby promoting democratic participatory governance at sub-national level and improving the efficiency of service delivery on the ground. Therefore, since their inception in 1994 South Africa's provinces have been faced with these twin challenges. The two provinces of Gauteng and Mpumalanga were used as in-depth case studies to examine the extent to which the provincial system has fulfilled its responsibilities to promote democratic governance and ensure effective delivery of social services to citizens at sub-national level. A broad analytical framework was utilised to assess the performance and effectiveness of provinces between 1994 and 2004. The framework allowed the performance of the provinces to be assessed in terms of the three broad concepts of democratic/political effectiveness, deliberative/law-making effectiveness and administrative effectiveness. These were elaborated on in Chapter 1.

8.2.1. Democratic/Political Effectiveness

8.2.1.1. Representational effectiveness

Provincial institutions of government are expected to serve as alternative avenues for a variety of organised social and political interest groups to seek formal representation in government, especially if such interest groups are unable to find expression and articulation at national level. In addition, given their close proximity to local communities and ordinary households that are the targets and recipients of provincial social policy expenditures, provincial institutions of government are in a position to attract regular interaction with citizens as well as to encourage popular participation in processes of government. As was argued in Chapters 3, 4 and 6, provincial legislatures did serve as important avenues for regional social and political interests to find expression and formal representation. For instance, it was shown that citizen participation in provincial elections as an indicator of civic engagement in governance has generally been high. Even if the percentage levels of popular participation in provincial elections showed a drop across provinces in 2004, the drop was a national phenomenon that also occurred in the national elections.

It was also indicated that there was a general increase in the number of political parties that contested the two subsequent provincial elections after 1994 and more political parties were contesting elections for provincial governments than for the national government. Therefore the high levels of popular participation and also participation by political parties in provincial elections suggests that provincial institutions of government do provide, or are perceived to provide, valuable alternative entry points into formal politics and present many political groups in the regions with good prospects of achieving representation in government. In addition, it was illustrated that provincial institutions of government are increasingly providing opportunities for women to achieve representation in government. Since 1994 the number of elected female public representatives at provincial level has been increasing steadily. For instance, after the 1994 elections, out of a total of 425 provincial MPLs, 102 (24%) were females. After the 1999 elections, of the 430 provincial MPLs, 119 (27.7%) were female. After the 2004 elections the number of female MPLs increased to 139 (32.3%) out of 430 provincial MPLs. This is an average rate of increase of female representation of 4.1% since the 1994 provincial elections. It is a slightly higher rate of growth in female representation than in the National Assembly (2.6%) as indicated in Chapter 3. If the current rate of increase of female provincial representation is upheld in future elections, there will be more female public representatives at provincial level than at national level, in terms of percentages and absolute numbers.

As was argued in Chapter 3, the ruling ANC accounts for most of the overwhelming majority of elected female public representatives both at the national and provincial levels. This suggests that the policies of political parties regarding the inclusion of female candidates in their election lists play a critical role in the levels of representation of women in government institutions. In particular, the opposition parties have been slow not only to increase the numbers of female candidates in their lists, but also in placing women higher up these lists to ensure that female candidates are guaranteed to be elected. Despite these limitations, a conclusion can be drawn that provincial institutions of government have served as effective representational structures for the formal participation of women in government. It is important to acknowledge though, that the provincial institutions of government have so far provided only limited opportunities for political parties that are unable to capture power at national level, to do so at sub-national level, as the proponents of federalism had hoped for. So far, only the two provinces of KwaZulu-Natal and Western Cape have ever been governed by opposition parties, on their own (Western Cape) or in partnership with the ruling party (KwaZulu-Natal). For a brief period of about two years (2002-2004) the Western Cape was governed by a partnership/coalition between the ANC and NNP, after the latter had broken away from the DA in 2001. However, after the 2004 provincial elections, the ANC gained absolute control of all the nine provincial governments. On the surface this presents fairly bleak prospects for opposition political parties' chances of achieving

power at sub-national level. However, there remain real chances that an opposition party or coalition of opposition parties could still gain power in the future in the two provinces of Western Cape and KwaZulu-Natal.

In terms of promoting active citizen participation in the activities of provincial governments, including in the formal provincial decision-making processes, the evidence presented in this thesis suggests that South Africa's federalism is extremely enabling to citizen participation and actively promotes the goal of greater citizen involvement in governance. The public rhetoric of politicians at provincial level is always replete with statements about promoting public participation. It was shown that a variety of formal methods and processes have been put in place and/or utilised in many provinces in an attempt to encourage active citizen involvement in the formal processes of government. Among these mechanisms are public hearings, petitions and constituency service, which were examined in depth in this thesis, especially through the two case studies of Gauteng and Mpumalanga. In practice, this area has generally been one of the weaknesses of the system so far in terms of success in promoting active citizen participation in the affairs of government. Generally, provinces still lack the necessary capacity to promote greater public participation in their affairs.

Also, many local communities in the provinces face a wide range of difficulties in realising the ideal of citizens able to influence the affairs of their government. However, individual provincial legislatures have a potentially important role to play in terms of the extent to which citizens can overcome these difficulties. The two case studies of Gauteng and Mpumalanga provide insights into the contrasting capacities of the provinces in their attempts to encourage citizen participation in government. For instance, it was found that the Gauteng province was more successful than Mpumalanga in terms of putting in place proper and reasonably effective systems and processes for promoting public participation in the government of their provinces. The main explanation for this differential performance was the unequal institutional capacity between the two provincial legislatures as well as the quality of their political leaderships. In general, the Gauteng legislature was led by fairly competent and skilled political leaders (i.e. speakers) since its inception in 1994, who were clearly keen to promote citizen participation in the processes of government. Consequently, the province's legislature had the most effective systems and mechanisms for promoting public participation of all provinces, and had been relatively more successful than the Mpumalanga legislature in terms of promoting public participation.

As discussed in Chapter 6, the Mpumalanga legislature had experienced serious institutional capacity constraints and political leadership problems during the 1994-1999 period. These difficulties had hampered the legislature's institutional development, especially its ability to

promote effective popular participation in the affairs of the provincial government. In particular, the Mpumalanga legislature had generally failed to take seriously the idea of generating strong relations and regular interactions between elected public representatives and local citizens during the 1994-1999 period. It was only after the new speaker was appointed in 1998 that the issue of promoting active citizen participation in the affairs of the province in general and the legislature in particular became an important political issue. Even here it was mainly as a result of the internal political dynamics within the ANC in Mpumalanga, especially during the premiership of the unpopular Ndaweni Mahlangu, that the issue of promoting public participation was finally being taken seriously. Institutionally, the Mpumalanga legislature was still very weak and lacked the necessary capacity to sustain a consistent and effective public participation programme. The Mpumalanga legislature's capacity constraints are typical of many other provincial legislatures in South Africa. Therefore a conclusion can be drawn that in general the provincial legislatures have experienced severe constraints in promoting effective popular participation in government activities.

8.2.1.2. Oversight effectiveness

This study has found that in general the ability of provincial governments to meet the needs of their citizens for basic social goods and services and the effectiveness with which they achieve this has become a critical element of governance over the years. Citizens in each province in South Africa get the opportunity every five years to express their preferences through the vote for alternative social policy programmes offered by the different political parties during the elections. Once elected, provincial governments are usually expected to carry out their mandates of social policies and programmes. This study also found that the task of monitoring and overseeing the activities of provincial governments to ensure that the socio-economic agenda on which the government was elected is implemented effectively is increasingly being taken seriously by political leaders. This is vital to ensure that provincial government bureaucracies do not deviate from the government's stated public policy programmes and that if they do, they account for this regularly to the elected public representatives and citizens.

It was argued in this thesis that the function of maintaining oversight over the activities of government departments at provincial level has become extremely important over the years. All provincial legislatures have developed the necessary internal structures, rules of procedure and formal practices to undertake this function. For instance, all the provinces in South Africa have followed the example of legislatures around the world by developing specialist internal committees for monitoring and overseeing the work of individual government departments and parastatals to ensure that they fulfil their service delivery responsibilities and use public resources

properly. Such committee systems have become relatively sophisticated in their organisation and workings, often allowing for coordination of committee activities or clustering of committees according to common functional interests to enhance the effectiveness of oversight. A particularly innovative feature of the provincial committee system is that each government department has a dedicated legislature committee that focuses on its activities, thus enabling the committee to develop in-depth and specialist knowledge of the affairs and programmes of the department. In general, this has helped to improve the quality and effectiveness of oversight.

A variety of formal methods and techniques of oversight are regularly employed by legislature committees, as was discussed in Chapters 3, 4 and 6, to monitor the work of government departments. However, as the Gauteng and Mpumalanga case studies illustrate, the effectiveness of provincial legislatures and their portfolio committees as oversight instruments is largely subject to a variety of factors, such as administrative capacity, financial and human resources, the skills and expertise of committee members, and the adversarial nature of party politics inside the legislatures. Different provincial legislatures are affected differently by a combination of these factors and as was illustrated in the two case studies, the Gauteng provincial legislature was institutionally stronger and therefore capable of providing the necessary institutional support and resources to its committees to undertake their oversight work fairly effectively. In the case of the Mpumalanga legislature, lack of adequate institutional capacity and resources presented a major obstacle in the quest for effective oversight.

The approaches of individual legislatures in the way they carry out their oversight functions is also of critical importance in the effectiveness of the function. In this regard, an important contrast was found between the two case studies. For instance, in the Gauteng legislature, the ruling party majority tended to adopt a relatively conciliatory approach towards the executive when carrying out its oversight work. On the one hand, this approach resulted in extremely cooperative and friendly relations between the executive and the ruling party majority inside legislatures, which was valued above everything else by the ruling party, as it helped to maintain party unity. On the other hand, such cooperative and friendly relations between the executive and the ruling party majority in the legislature allowed for an effective enforcement of internal party discipline which in turn blunted the effectiveness of legislature oversight.

In contrast, the ruling party majority in the Mpumalanga legislature was internally divided. This meant that some members of the ruling party were often hostile towards the executive, making the enforcement of internal party discipline difficult if not impossible. Therefore, in most cases the legislature committees tended to adopt an aggressive stance towards the executive during their oversight activities. On the one hand, the aggressiveness of the legislature during

oversight work was critical in terms of getting the government to take the legislature seriously as an oversight structure. On the other hand, the internal hostilities and lack of discipline within the ruling party often led to political tensions between the executive and the legislature, which destabilised governance and caused the national leadership of the ANC to intervene frequently in the affairs of the province. This occurred in Premier Ndaweni Mahlangu's term of office. This suggests that for oversight to be effective without resulting in hostility, a balance would have to be struck between the need for aggressiveness during oversight work, and the need for cordial and cooperative relations between the legislature and the executive. However, this is essentially a political problem.

Despite the constraints outlined above, a general conclusion can be made that provincial legislatures have become increasingly effective in fulfilling their oversight responsibilities and ensuring greater accountability to citizens on the part of provincial governments and their departments. In particular, the improvement in financial control measures such as the PFMA, the MTEF and other budgetary oversight tools over the years has enhanced the capacity and effectiveness of provincial legislatures to undertake the oversight work. Problems of lack of accountability and misuse of public funds continue to occur in many provinces in South Africa. However, the systems and procedures for dealing with these problems are in place and there is sufficient political will to enforce the principles of accountability through the oversight activities of provincial legislatures. The challenge remains for the legislatures in general to enhance their skills and resources, and to learn rapidly to utilise the variety of tools available to them effectively to monitor and oversee the activities of provincial governments and their departments.

8.2.2. Deliberative/Law-Making Effectiveness

In addition to monitoring policy implementation and service delivery by provincial government departments and other executive agencies through specialist internal committees, provincial legislatures also fulfil two important functions to ensure that provincial institutions serve the interests of their citizens. Firstly, they serve as a deliberative forum through which they consider and debate a range of issues of public importance. The second function is that of law making, through which values are allocated to a range of important social policy issues. In terms of their deliberative functions the study found that provincial legislatures are potentially important instruments for holding governments to account for their activities in an open and transparent manner. Through their debating chambers, the legislatures provide a platform for elected public representatives to pose critical questions to government ministers regarding government policies and performance in delivering services to citizens. In particular, public representatives and their political parties have been able to utilise the deliberative functions of the legislatures to articulate publicly the demands or seek solutions to problems experienced by their constituencies.

However, as was discussed in this thesis, commentators have correctly pointed out that there are severe limitations regarding the effectiveness of the deliberative function of provincial legislatures. Firstly, government ministers usually do not take the deliberations on the floor of the provincial legislature chambers seriously. Secondly, due to the adversarial nature of party politics in South Africa, chamber debates are usually characterised by intense party political divisions and confrontations, especially between the ruling party and the official opposition, that often trivialise the important issues being debated. The official opposition usually utilises such debates to embarrass and score political points against the government, which regularly forces the ruling party to adopt defensive postures, thus leading to exaggerated political confrontations intended for the public gallery and the media. This is hardly conducive to the emergence of cross-party consensus that is necessary in the resolution of important policy matters or political issues of the day. Finally, the average number of days on which provincial legislatures convene their sittings is still generally considered low. As was indicated in Chapter 3, the average number of provincial legislature sittings per annum is 23. Some legislatures do not convene their sittings consistently, which means that the deliberative function of provincial legislatures has largely been under-utilised. In general therefore, it can be concluded that the potential usefulness of the deliberative functions of provincial legislatures is still limited.

With regard to the law-making function, the provinces do have legislative powers entrenched in the current Constitution. As was discussed in Chapter 3, law making as a constitutional function of provincial legislatures was particularly emphasised and taken seriously by elected public representatives during the first period of government (1994-1999). Many provinces passed most of their laws during that period. In fact many commentators and the media in South Africa still tend to judge the effectiveness of provincial legislatures in terms of the number of provincial laws passed per annum. However, as argued in this thesis, virtually all provincial bills are actually drafted by government departments while provincial legislatures participate in the law-making process in terms of detailed deliberations and scrutinising of these bills. The provincial legislatures in general lack the necessary institutional capacity and resources to sustain consistently the actual function of drafting laws. This applies even to relatively well-resourced legislatures such as Gauteng and Western Cape. Even though the legislatures have been able to draft pieces of legislation in the past, as illustrated in the two case studies, this was limited to bills concerned with internal administrative and organisational matters.

Notwithstanding their capacity limitations in terms of drafting bills, the provincial legislatures do regularly play a critical role in terms of deliberating on the details of government bills, especially at committee level. This deliberative function is critical as the involvement of elected public

representatives helps in the preparations of government departments in ensuring that law making is sufficiently responsive to the real needs of citizens. It can also be argued that over the years provincial law-making and the substance of provincial laws has generally been in key areas of social policy (e.g. education, health, welfare, housing, economic development) in which they have been allocated constitutional responsibilities. In other words, provincial legislature has generally served as an important instrument to guide the service delivery activities of provincial governments, and the provincial legislatures have played a critical role in this process. In fact, all provincial legislatures have the power to amend or change government bills substantially, or even reject them, at committee level, as was illustrated in the Gauteng case study. However, as in other functions of provincial legislatures, critical factors such as institutional capacity, resources, the skills and expertise of individual legislators and available administrative support available usually affect the effectiveness with which the provincial legislatures carry out their law-making functions.

It was also argued that the law-making function at provincial level in general has declined significantly in terms of its importance and intensity, especially during the 1999-2004 period of government. It is generally acknowledged in literature that the decline in the law-making functions of legislatures has been a worldwide phenomenon, especially at sub-national level. However, in the case of South Africa's provinces, the decline also came in the wake of a clear division of labour that led to the national sphere focusing attention mainly on setting the national policy agenda and making nation-wide legislation, while the provinces devoted their resources mainly to policy implementation and service delivery. This was accompanied by an increase in the importance of other non-legislative functions of provincial legislatures, particularly the oversight responsibilities and promoting public participation. In fact, during interviews conducted with MPLs in Gauteng and Mpumalanga, virtually all the respondents in the two provinces placed the oversight functions above the law-making function of their legislatures, in terms of their order of importance. However this does not mean that the provinces have abandoned their law-making function. The need for more law making at provincial level may arise in the future if more functional responsibilities are devolved towards sub-national levels of government.

8.2.3. Administrative Effectiveness

In addition to being political entities, provinces are also technical/managerial structures fulfilling important administrative and service delivery functions. The constitution allocates important administrative and policy implementation responsibilities to the second tier of government in South Africa. Since the advent of the provincial system, a huge proportion of the annual national budget is regularly spent at provincial level to provide vital social services in sectors such as

education, primary health care, low-cost housing, welfare support to households and others. Therefore, while the provinces do serve an important function in promoting democracy at sub-national level, such a crucial role in social expenditure makes it inevitable that questions about their technical efficiency, administrative capacity and policy implementation effectiveness would always receive greater attention. In addition, the widespread administrative weaknesses, especially the corruption and mismanagement of public resources, that came to light across the provinces in the mid-1990s created enormous public and political pressure to place the technical and administrative effectiveness of provincial public services on the national agenda. Therefore, as already discussed in this thesis, the effectiveness of provinces as policy implementation and service delivery agents has dominated, and will continue to dominate, debates about the future of the provincial system.

Broadly, provinces have two types of administrative functions: delivery of basic social services as well as economic growth and developmental responsibilities. In practice the two functions usually reinforce and have a bearing on each other. It was discussed, especially in the two case studies of Gauteng and Mpumalanga, that there is always a tension between these two types of responsibilities. Given the fact that all the provinces in South Africa generate insignificant levels of funds from their own revenue sources, and therefore rely heavily on the national government for fiscal resources, the national government has been able to achieve broad national policy goals through provincial expenditures programmes. For instance, the national government has recommended that the provinces devote about 85% of their budgets towards the three key social sectors of education, health and welfare. Even though the majority of the provinces have failed to meet this target, the target is significant in that it serves as an indicator of the political importance for the national government of certain social policy goals and the role of provincial institutions of government in fulfilling these national goals.

The other challenge facing the provinces has been that very large proportions of their budgets are spent on personnel costs due to nationally determined social welfare grants, as well as public service salary expenditure levels determined through national bargaining chambers. These nationally determined costs have often had the undesirable effect of squeezing out capital expenditure in both the social services and non-social service programmes. For instance, in the area of education, spending in infrastructure programmes like the building of schools and additional classrooms as well as the supply of school textbooks was severely affected in many provinces in the late 1990s due to lack of adequate funds. Similarly in the area of health care, the building of hospitals and clinics, the procurement of vital medical equipment and supply of life-saving drugs has been severely affected, as was indicated in the case of Mpumalanga.

The dominance of nationally determined social expenditure responsibilities has also prevented many provinces from devoting sufficient resources to meeting their other important responsibility: economic growth and regional development. In fact one of the criticisms levelled against South Africa's federal system of government is that the dominance of the centre over the regions – constitutionally and in terms of its superior fiscal position – allows it to distort policy and expenditure priorities at provincial level. In addition, the national government's macro-economic policy demands that provinces observe a regime of fiscal discipline that places restrictions on their capacity to tackle some of the intractable socio-economic policy challenges they face. As a result the provinces in general are increasingly looking towards growing their economies in order to deal with problems such as joblessness, social development and poverty alleviation. As was discussed in the two case studies of Gauteng and Mpumalanga, promoting foreign direct investment into the regional economies and attracting tourism play an increasingly important role in the strategic planning processes at provincial level to deal with the imperative of economic growth and development. However, in many provinces limited fiscal resources makes this difficult.

Based on the above, a conclusion can therefore be made that due to reliance on central funding and insufficient locally generated fiscal resources, the ability of the provinces to balance their basic social service delivery responsibilities on the one hand, and their economic growth and developmental responsibilities on the other, is severely undermined. In other words, the provinces have predominantly become spending and service delivery agencies, which has undermined their effectiveness in pursuing their economic growth and developmental responsibilities. The poorer provinces have even fewer prospects of devoting resources to their economic and developmental responsibilities.

8.3. FUTURE PROSPECTS

South Africa's federal/provincial system of government has not been in existence for long and has a long way to go. However the experience gained and the pattern of activities observed during the ten-year period under study provide valuable insights into the possible future developments and direction of the system. The most enduring aspect of the system of federalism in South Africa so far is that, as was shown in Chapter 2, it continues to be characterised by deep divisions among major political parties about the future role of the provinces and these differences remain unresolved. Another important aspect of the current provincial system is that it has been facing increasing levels of dissatisfaction regarding the precise role of provincial governments and their capacity to meet the needs of citizens. There is no doubt that many key role players would prefer to see the current role of the provinces redefined. The central motive

here is the widespread perception that there will be gains by way of enhanced efficiency and effectiveness in delivering services to citizens.

Three perspectives on the future of the provinces were explored in Chapter 2, and all three of them imply clearly that the provincial system of government cannot be left as it currently stands. Briefly, the first perspective calls for scaling down the provinces and the second calls for the devolution of more powers and functions to them. The third perspective is the most radical, calling for the abolition of the provincial system. As was discussed in that chapter, the ruling party is highly unlikely to support the option of abolishing the provinces. As the ruling party governing all the provinces at the moment, it would seem not to be in the interests of the ANC to abolish the provinces, as it has more to lose by doing this than other political parties. It has more members occupying positions of authority and enjoying privileges of patronage at provincial level than other parties. This means that, should the provinces be abolished, the consequent loss of positions, power and pecuniary benefits by its members could cause considerable political tensions. In other words, the current provincial system of government serves two important functions. Firstly, it serves a political function of providing an outlet for regional political leaders without prospects, or as stepping stones for those destined for high offices at national level. Secondly, it serves the function of providing employment for many party political functionaries and this is likely to remain a critical reason for retaining the provinces as part of the political landscape in South Africa. Therefore despite the initial lack of enthusiasm for the provincial system by the ANC, the party's provincial organs and its members occupying positions of authority in these regional entities have developed a considerable stake in the retention of the provinces. This is sufficient guarantee that the provinces would be protected for the foreseeable future.

In spite of, or because of, the intractable differences among key stakeholders regarding the role of the provinces as political entities, a multi-party consensus did emerge in the late 1990s on the importance of improving the institutional capacity and administrative effectiveness of the provinces as policy implementation and service delivery agents. This consensus was the result of the pragmatism that had crept into the thinking of the major political parties on the practical challenges that have and continue to face the provinces since their inception in 1994. It is therefore possible that as differences among key political parties over the future role of the provinces remain unresolved or even deepen, practical issues of institutional capacity, resource distribution and efficiency of service delivery, on which there appears to be fewer fundamental differences among the major role players in the country, will drive the future pattern of development in the provincial system. In other words, it would seem highly plausible that more progress would be made in those areas of consensus than in those of disagreement and conflict.

However this holds its own risks, in that the ever-growing imperative to devote greater attention and resources to resolving practical administrative problems and managerial/technocratic constraints is likely to increasingly overshadow the imperative for provinces to serve as the site of political contestation, democracy and governance. It needs to be stated that provinces are not mere technocratic instruments for the efficient and effective management of policy implementation and service delivery. They have a vital role to play as arenas for contestation among different political formations and constantly changing political alliances between politicians with constituencies. Therefore the increasing dominance of the technocratic/managerial discourse in public debates about improving the performance of the provincial system of government is likely to pose a threat to this vital democratic role of the provinces in the future.

It should be noted also that even the administrative and service delivery functions of the provinces might be due for review in the future, especially in the light of institutional developments at local government level. For instance, a range of extensive legislative and institutional reforms were introduced at local government level in South Africa between 1997 and 2000 to democratise this tier of government and strengthen its administrative capacity. In the wake of these changes, it has become increasingly clear that this tier of government would play a greater role in the future in terms of delivering basic social services to citizens. There is still a long way to go, and many municipalities are still institutionally weak and rely heavily on the support of both the national and provincial governments. However, it is possible that in the future, as municipalities across the country succeed in improving their institutional and administrative capacity, they would increasingly come to play the role of agents of social service delivery. The provinces and the national government are more likely to devolve more responsibilities and resources down to the local authorities for delivering a range of basic social services such as primary health care and primary education, as well as local economic development.

In fact, the view that municipalities ought to become the primary agents for basic social service delivery could gain more currency, not only in general public debates, but also within the ANC in the future. For instance, it could appeal to many local political leaders and grassroots communities as it promises control over significant levels of fiscal resources that may be devolved to local government. Such an eventuality could lead to a phenomenal growth in the political importance of the local sphere as an alternative arena of power to the provincial sphere. However all this will depend on the extent to which municipalities in general throughout the country improve their institutional capacity to manage, administer and deliver social services to

citizens. The impact of this is likely to be that, with the bulk of the service delivery functions devolved to the local sphere, the provinces could take on the role of supervision and oversight of the activities of municipalities within their boundaries, providing the necessary institutional and other types of support. However, this is a long-term prospect. In the short to medium term, the provinces will continue to play an indispensable role of policy implementation, administering basic social service delivery throughout the country as well as overseeing the work of municipalities in their areas of jurisdiction – a function that the national government and the municipalities themselves are not able to carry out effectively at the moment.

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