



The Role of the Speaker: The Experience of South Africa in Transition

Andrew Feinstein



Global Partners
Governance

Cover photo by Shi Zhao

Publication design by
Joe Power

+44 (0) 207 549 0350
gpgovernance.net
hello@gpgovernance.net

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Background

South Africa's system of government since the first democratic elections in 1994 is a hybrid between a Westminster and a Presidential system. The President and Deputy President, who lead the Executive, are members of the National Assembly, which is the pre-eminent legislative body, led by the Speaker. Parliament is also intended to hold the executive to account through the practice of oversight of each executive portfolio.

The immediate years after 1994 were typical of a complex political transition from authoritarian rule to democracy. A Government of National Unity was in place comprised of the majority African National Congress (ANC) and the second largest party, the National Party. There were a large number of smaller parties represented in Parliament. Besides the National Party that had held power during the years of apartheid and one small opposition group, none of the other parties had any experience of the legislative process.

The country's first Speaker, Frene Ginwala, a member of the ANC also had no previous legislative experience. She was faced with both a constitution-making process and an Executive impatient to replace a plethora of apartheid legislation with laws that would reflect the country's new democratic, non-racial order and address its many political and socio-economic challenges.

Unsurprisingly, on each piece of legislation there were many competing interests: members of cabinet came from two parties who had been engaged in a low-intensity civil war for decades and rarely agreed on key principles; parties in Parliament ranged from the far right to the far left of the political spectrum and everything in-between.

Below is a summary of key mechanisms utilised by the Speaker to facilitate the smooth functioning of the National Assembly in relation to both its legislative and oversight functions in terms of relations with the Executive and the management of the Legislature.

Mechanisms and Strategies Utilised by the Speaker in South Africa:

Relations with the Executive

1. Legislative

There were significant divisions within the Executive, not only between members of the two parties which constituted the cabinet, but even within the majority ANC itself.

The Speaker's first challenge was to ensure that the Executive understood the time-frames and procedures necessary to pass legislation. She also needed to explain to Ministers (at one of their early cabinet meetings) that they had to present draft laws that had been agreed as broadly as possible within cabinet. She strongly encouraged them to try and resolve as many of their differences as possible before the draft came to Parliament, emphasizing that by doing so the bill was likely to have a smoother passage through the Legislature.

On occasion the Speaker would request ANC political structures to convene meetings between ANC Ministers who were proposing contradictory bills to Parliament. The Speaker would ask to be present at such meetings so that she could explain the difficulties of getting both bills through the legislative process.

In addition, the Speaker encouraged, and sometimes facilitated, meetings between Committee Chairpersons and their relevant Minister to discuss forthcoming legislation, its content and timing. This was soon formalised, at least within the majority ANC. The party created Study Groups consisting of all of its members on a particular portfolio committee, which would meet at least monthly with the relevant Minister.

When there were too many draft laws emanating from cabinet at the same time, the Speaker would work with cabinet to prioritise the bills so that Parliament did not become log-jammed. This was especially so in relation to key portfolios such as Finance and Defence.

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Contact between the Speaker and the Executive was required so frequently in the early stages of the country's democracy that a decision was taken to create the new position of Leader of Government Business. This was a senior cabinet minister, or at one point the Deputy President, who would meet with the Speaker on a regular basis to discuss the government's legislative priorities and the timing of the introduction of draft laws.

I would strongly encourage Speakers and politicians in countries undergoing transitions to consider the creation of such a liaison position between the Speaker and the Executive. The alternative is to ensure that the Speaker has regular meetings with the Prime Minister to discuss the government's legislative agenda.

2. Oversight and Accountability

In addition to the need for liaison on legislative matters, the Speaker also needed to ensure that the Executive understood and supported the Legislature's oversight and accountability functions. To this end the Speaker interacted with the Executive in its early days to explain this function.

Importantly, the first time tension developed between the Executive and the Legislature, the Speaker convened a meeting between the Minister, the head of the Committee providing oversight and President Mandela. Before the Speaker could even explain why the Committee had recommended the sacking of the Minister's head of department in relation to corruption in the department, the President intervened. He explained to his Minister in very forthright terms that the National Assembly was fulfilling its constitutional responsibility and if the Minister had a problem with that, her job would be under threat as well.

This interaction, which quickly became widely known about in Parliament, set the tone for the oversight role throughout President Mandela's term of office.

Management of the Legislature:

1. Legislative:

To manage a very fluid, diverse and inexperienced Legislature, the Speaker put in place certain key management committees.

The Chief Whips' Forum comprised the Chief Whip of each political party, no matter how small. This committee ensured that all parties agreed, at a political level, to the daily and future schedule and functioning of Parliament.

Parallel to the Chief Whips' Forum was a committee of the Chairperson of each of the Parliamentary Committees, both Portfolio or subject Committees and broader committees such as the Committee on Public Accounts and the Committee on the Improvement of the Quality of Life and Status of Women.

This body discussed the functioning of committees and the legislative programme. On occasion, when there was too much legislation for the Committees to handle, it was necessary to convene joint meetings of the Chief Whips' Forum and the Chairpersons of Committees. The Leader of Government Business would also attend these special meetings. They often successfully addressed any conflicts in the legislative programme in a manner that was acceptable to all parties, committees and to the Executive.

Where deadlocks about scheduling could not be resolved, or where significant differences arose about a specific piece of legislation on political grounds, the Speaker would often play the role of facilitator. She would, with the help of her staff (which included a politically astute legal adviser who was trusted and respected by all parties) identify who was crucial to break the deadlock (including senior politicians, party leaders, etc.) and convene a meeting between them. Often, but not always, these meetings had the desired effect. The Speaker did not intervene on content but provided the process within which conflicts could be resolved.

Crucial to the effective functioning of Parliament is the efficiency of the committee process. It is incumbent upon the Speaker to state, first to the chairperson or committee themselves, and if that doesn't elicit a response, publicly, if a chairperson of a committee or a committee as a whole, is not fulfilling its responsibilities in a timely and adequate manner. In South Africa the Speaker would address such concerns to a committee in one of its meetings,

sometimes privately to a chairperson and deputy chair, occasionally to the party's caucus meeting or, in rare and extreme situations, publicly in plenary sessions.

Two other interventions were crucial for the legislative process: ensuring that each committee had adequate research and administrative support; and public participation.

The support available to committees was obviously limited by budgetary considerations. However, the Speaker was very successful in eliciting contributions (both monetary and personnel) from a wide range of international organisations, resulting in a highly skilled research team available to the important committees.

Public participation in the legislative process is enshrined in the South African constitution. It is a difficult issue to address in a society in transition and one with varying degrees of literacy. To address these challenges the Speaker created an Office for Public Participation which in turn has created Public Democracy Offices in each of the country's nine provinces. This has led to South Africa's Legislature being acknowledged to incorporate very high levels of public participation.

2. Oversight and Accountability

Early in the life of South Africa's first democratic parliament, the Speaker insisted that parties appoint skilled members to the main oversight committees, particularly the Committee on Public Accounts. The committee was assisted in its work by a highly professional staff provided by the Office of the Auditor-General.

However, more important than the resourcing of these key committees was the manner in which the Speaker was prepared to stand up for the oversight role of the Legislature in relation to the Executive. When committees were investigating issues critical of the Executive, or disagreed with Ministers about legislation or policy, the Speaker would personally support the MPs both privately and publicly.

President Mandela gave the Speaker his support to do this. The role of Parliament flourished. Under Mandela's successor the Speaker was expected to bend more towards favouring the executive. In certain key instances the Speaker sacrificed her role as guardian of the Legislature, in favour of pleasing her party political masters in the Executive. As a consequence, Parliament's standing in the eyes of the public was diminished, so that it is now seen as a rubber stamp for the Executive. This has weakened the country's young constitutional democracy.

Tools Available to the Speaker:

The Speaker can crucially provide the environment and process in which blocs can, away from the public eye, try and reach compromise over key differences as they arise in legislation. Parliament provides a safe forum for the many diverse views in a society to be heard, and is, thus, the ideal place for differences to be aired and resolved. To achieve this, however, the Speaker must make clear the expected norms and standards of behaviour - preferably with the assistance of a Parliamentary Rules Committee on which all blocs are represented. These agreed norms and standards must then be enforced by the Speaker with the support of the parties. Publicly identifying and even disciplining those who violate these standards is sometimes crucial to creating an appropriate Parliamentary environment. Sensible and strategic use of the media to identify bad behaviour can be useful.

The use of private and, if necessary, public admonishing of MPs, including committee chairs, is also useful in order to ensure the efficient and timely conduct of committee and plenary business. If the problems persist the Speaker should consider talking to the political principals of the person concerned and even suggesting that the person be removed from a position they are incapable of filling effectively.

Where logjams in legislation develop it is incumbent on the Speaker to make decisions about which non-contentious legislation should be accelerated in the committee and plenary process. Similarly, decisions about pausing non-essential legislation, to free up time for more important matters, should be taken by the Speaker. Such decisions should be adequately communicated and explained to all Parliamentary participants.

The Speaker can, through their actions, elevate Parliament in the public eye by being seen to resolve disputes, enforcing appropriate behaviour and ensuring the efficient and timely conduct of Parliamentary business.

Where significant differences arose about a specific piece of legislation on political grounds, the Speaker would often play the role of facilitator.

The Speaker did not intervene on content but provided the process within which conflicts could be resolved.

In addition, the Speaker can use their office to make symbolic gestures that reflect well on not only the Parliament but the broader political process in the country. For example, in South Africa the Speaker decided that every party or bloc should have representation – even if only one person - on the front benches of Parliament. This broke with tradition but meant that every group, however small, could see their representative in Parliament. It was a small change but one of great symbolic significance in the process of national reconciliation.

Conclusion

While each transition is unique there are sufficient similarities to suggest that the Speaker can play a crucial facilitating role not just in relation to legislation but to the entire political process during the transition.

A crucial element of the role is successfully balancing the protection of Parliament while maintaining a good working relationship with the Executive. Additionally, using the Office of the Speaker to resolve differences, setting and enforcing behavioural standards, and ensuring the efficient and timely conducting of Parliamentary business are key.

The role can feel overwhelming at times. The South African experience suggests that it is important to ensure you have the appropriate structures in place to deal with the myriad and conflicting demands made of you. The appointment of an equivalent to the Leader of Government Business is encouraged, as are the two management forums discussed.

The Speaker has a vital role to play in any democracy, and more especially in a transition to democracy. Crucial is to balance decisive leadership and consultation and facilitation. In this way the Speaker becomes not just the protector of Parliament but also a protector and leader of the political process and the constitution.

About the author



Andrew Feinstein served as an ANC Member of Parliament in South Africa from 1994 – 2001. He served first as a member of the Gauteng Provincial Legislature where he chaired the Finance and Economics Committee, acted as Economic Advisor to the Provincial Premier and was involved in the establishment of the provincial Treasury and Department of Economic Affairs; and then the National Parliament where he served primarily on the Finance and Public Accounts Committees. He chaired the committee that drafted the country's Public Finance Management Act and served as Deputy Chair of the country's Audit Commission. He is currently Executive Director of Corruption Watch UK.