

**OPENING REMARKS BY THE SPEAKER OF THE KZN LEGISLATURE, HON.
NELISWA NKONYENI MPL, DURING THE MEMBERS INDUCTION /
ORIENTATION PROGRAMME**

DATE: 18TH MAY 2009

Deputy Speaker

Members of the Executive present

Secretary

All Presiding Officers of our Legislature

Leaders of all political parties in our House

Honourable Members

Management Team and Staff of the KZN Legislature

Heads of Department present

Ladies and Gentlemen.

THE PEOPLE SHALL GOVERN

Honourable Members, after the establishment of the first democratic Government in South Africa (1994), emphasis was placed by the Executive on establishing a policy framework that would enable Government to deliver on its mandate. Central to the development of new policy was the Citizen, and the ideology of direct democratic participation, the principal of which is contained in the freedom charter

(1955) clause, "The people shall govern". Giving effect to this principal, the state through its representative's carry out functions informed by and on behalf of the citizen in a continuous effort to systematically and incrementally facilitate the will of the people while discharging their duties.

As representatives of the people of KwaZulu-Natal, we have an onerous responsibility of ensuring that the will of the people is systematically and incrementally realized. 80 % of the voters of KwaZulu-Natal voted us into office to perform a function that they bestowed on us. As legislators, we will have to balance representative and participatory democracy as we proceed to carry out our mandate.

It is therefore indeed an honour and a pleasure to congratulate all of us on being elected as public representatives for the people of KwaZulu-Natal. As we get down to our work as legislators, let us always be mindful of the high expectations that we carry from the electorate. As we celebrate fifteen years of our democracy, let us not lose sight of the fact that the patience of the people who have entrusted us with their vote is not infinite. It is my wish that posterity will collectively view us as legislators who were able to rise up to this challenge of leading.

In the same vein, I would like to commend those members who served during the third term of our legislature for laying a very solid foundation for us as new legislators. In particular, I want to thank our immediate former Speaker and his team of Office Bearers for raising the bar in terms of the political management of

this institution. Their “Agenda for Change” has helped to instil a great sense of pride and belonging to the people of KZN. The citizens of this province are now able to say with their heads high that indeed ours is their legislature, irrespective of party political affiliations.

I would also like to thank the Secretary and her team for driving the transformation agenda. The planning for the swearing in of members and the initial Sittings of the Legislature was done by the Secretary and her team and it is clear that as we take on the 4th term of our democracy, jointly, we understand our roles. This induction programme is one of the tools to enable all of us to be empowered but most importantly to respect each other and each other’s function.

Honourable Members, the adoption of the Constitution of South Africa (1996) made enforceable through law, democratic participation by the Citizen in affairs of the State as a Constitutional right of all South Africans. The proliferation of new policies between 1994 and 2009 attempted to set the stage for reforming the public sector by defining aspects necessary for institutional change and delivery of services to be carried out within. The reform process and the associated re-engineering of institutions to give effect to new policy was, and to a limited extent is, still taking place within institutions. These very institutions that were expected to continue delivering services, based on apartheid era policy and regulations, while at the same time transforming both internally and externally.

The foundation however has been set and it has been set through a painful and at times confusing birth, of a new framework for public institutions to operate within. The success of Government in meeting the public's need of sustaining and improving existing services while addressing expectations and backlogs associated with apartheid planning, will to a large extent be reliant on these institutions and how they apply policy. The curtain has been lifted, the necessary policy framework is in place to deliver within, and the stage has been set for civil society to participate. Although the stage is set for the actors to apply themselves to deliver a winning performance the legacy of apartheid remains far from eradicated, in the lives of the participating audience.

Jody Kollapen, the South African Human Rights Commissioner has been quoted as stating that

“The Commission remains concerned about the quality of services reaching people and the impact these services have in terms of rolling back poverty and in terms of closing the disparities between rich and poor”.

Kollapen's comments stemmed from the HRC's Sixth Economic and Social Rights Report,. The report while acknowledging the progress made amongst others, in housing, land restitution and providing anti-retrovirals states that the Constitutional rights of millions of South Africans are being violated by the lack of proper service delivery and bureaucratic red tape.

It is within this context that we as legislators need to understand our roles. You were not sent here to manage the Legislature or Departments. There are people who are paid to perform that task. Our task is to gear ourselves for the next five years. As Speaker, my task is to work with the Secretary and create frameworks and parameters within which we operate to allow you to best accomplish your task. I may require guidance from you and I will seek you out at those times. You are welcome to make suggestions to me as well but this must always have some relevance to the end result of delivery to the people of our mandate.

The first 10 years of our democracy at National Parliament has been on passing the necessary legislation. The five years that followed have been on strengthening the oversight capacity and public participation.

Notwithstanding the fact that we are a separate sphere of government and a separate arm of government, as a Legislature, we do not work as an island, we work within a national sector. We work with 9 other legislatures and national parliament. We have the combined responsibility of passing legislation, creating mechanisms for ensuring that the Executive is accountable to the Legislature and ensuring that the voices of the People are heard. It is within this context that I want to emphasise that this Legislature is an “Expression of the People’s Voice”!

The Constitution while establishing rights of the citizen, also expects the citizen in return to be subject to the duties and responsibilities of citizenship. In effect creating a partnership between state and citizen. The democratic partnership is further concretized in the preamble to the constitution which states, inter alia,

“the people of South Africa through their freely elected representatives adopt the constitution to establish a society based on democratic values, in which Government is based on the will of the people.”

South Africa’s constitutional framework establishes a complex network of institutions that are interdependent of one another, however through their functioning inter-related. The constitutional obligation on each ensures that the relevant checks and balances are put in place to safeguard democracy and promote the principles of transparent, accountable government which is informed by and accountable to the citizenry.

The Constitution therefore allocates prescribed responsibilities to the various arms of government utilizing the separation of powers as one of the systems of ensuring the balance of power is maintained between each of the arms in respect to the executive, legislature, and judiciary.

Honourable Members, let us constantly remind ourselves of the crucial role of this institution that we have all been elected to serve on. When the people of KwaZulu-Natal went to the polls three weeks ago, they wanted to elect a government that will be responsive to their urgent needs. They wanted men and women who will rise above petty party politicking. They wanted people who were willing and able to serve in the true sense of the word. Collectively, we are an expression of the

people's voice. It is therefore no co-incidence that we have six political parties represented in this House during this fourth term of our legislature.

I am certain that we all know the doctrine of the separation of powers which is a cornerstone of our constitutional democracy. I wish to emphasise this concept during this induction programme as I believe that we have not been very successful in giving true meaning to this doctrine, and by extension, our very own constitution. I hope that by interrogating this concept, we will be able to digest the crucial role that the Constitution has placed on us as legislators.

Essentially, the separation of powers in the Constitution means the government's functions and power is split into three organs or branches. These organs are independent of each other and they keep a check on each other. Separation of powers is an important part of democracy because it prevents any elected official or government body from abusing their powers. In a nutshell, the three organs are:

- the Legislature which makes the laws
- the Executive which enforces (carries out) the laws
- the Judiciary that interprets the laws

Some of you amongst us might say that we know this, but I want us to really think about whether we have really interrogated our role properly within the parameters of the Constitution. I want us to ask ourselves whether in thought, action and speech, we collectively irrespective of party politicking have really entrenched and properly understood the role of the three organs of state.

The oversight role of legislatures pertaining to the executive is derived from and contained in section 55 (2)b at a national level and section 114(2) b at a provincial level. These sections both make provision for legislatures to maintain oversight of the executive in exercising their executive authority. Section 55(2)a and section 114(2)a ensure that the executives are accountable to the national and provincial legislatures.

It is to be noted that members of the executive are accountable collectively and individually to parliament in respect to national ministers and to the legislature in respect of members of executive committee provincially.

Section 85(2) at national level and section 125(2) at provincial level sets out executive authority which ensures that the executive is responsible for implementing legislation, developing policy and co-ordinating the functions of state and provincial departments administratively, amongst other functions.

The right of the citizen to participate in legislative activities at a national and provincial level, which includes but is not limited to the oversight function of parliament and legislatures is contained in section 59 (national), 72 (NCOP) and 118 (provincially) and stipulates the national assembly must – (a) facilitate public involvement in the legislature and its committees; and (b) conduct its business in an open manner, and hold its sitting and those of its committees in public.

Derived from these constitutional provisions, legislation and policy has been enacted and adopted. Legislation and policy, that require the executive to implement, through the civil service, the legislature to oversight, through public representation, and the judiciary to interpret, through the courts, on behalf of the citizen.

Our Constitution goes further in giving true meaning to the doctrine of separation of powers by allocating, what I believe are immense powers to our Legislature. Section 104 of the Constitution confers the legislative authority of a province in its provincial legislature. These include powers:-

- a. to pass a constitution for its province or to amend any constitution passed by it in terms of sections 142 and 143;
- b. to pass legislation for its province with regard to
 - i. any matter within a functional area listed in Schedule 4;
 - ii. any matter within a functional area listed in Schedule 5;
 - iii. any matter outside those functional areas, and that is expressly assigned to the province by national legislation; and
 - iv. any matter for which a provision of the Constitution envisages the enactment of provincial legislation; and
- c. to assign any of its legislative powers to a Municipal Council in that province.

The legislature of a province, by a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province.

These powers are further articulated in Section 114 of the same Constitution.

Among these are powers to: -

- ✓ consider, pass, amend or reject any Bill before the legislature; and
- ✓ initiate or prepare legislation, except money Bills.
- ✓ 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.

Honourable Members, I am not sure whether we have ever pondered on the significance of these constitutional provisions and our role thereof. Can we really say we understand our legislative function, which rightfully resides with us in terms of the separation of powers? It is my view that we seem to have delegated this function to another organ of state, i.e. the Executive, and I dare say, we have not done a good job at this. I will expand on this.

By and large, a majority of the legislation, which this House passed since 1994, originated from the Executive, either nationally or provincially. By extension, our

legislative function was inadvertently diluted. At times, we did not thoroughly interrogate the true objectives of the legislation brought before us. By so doing, our legislative role did not have a full impact on the people that we represent. This induction programme presents us with a golden opportunity to revisit our role as legislators.

I also want to further argue that, collectively, we have not done a sterling job in maintaining our oversight of the exercise of provincial executive authority. Besides maintaining financial accountability of the executive through such Committees such as Finance and Standing Committee on Public Accounts, how many times have we gone out as legislators to monitor the implementation of legislation passed by our own House? I am tempted to reach a conclusion that we have not fared any better in this regard. This could be attributed to a number of factors, one of which could have been a strong desire to put new systems in place as a fledgling democracy. It could also be that we, ourselves, have been trying to acclimatise to our new role as legislators. Either way, the change that has come through as a result of the recent elections has afforded us an opportunity and an added impetus to be more innovative in our approach.

I am fully aware of the significant strides that we have made as the KZN Legislature in fulfilling one of our constitutional mandates of promoting public

involvement in the activities of our institution. Programmes such as Taking Legislature to the People, our sectoral parliaments targeting Workers, Youth and Women as well the People's Assembly have given a true meaning to the concept of participatory democracy, one of the cornerstones of our constitution and one that is very close to our heart.

However, the Secretary of the Legislature and her team have told me that notwithstanding these and other achievements, there are instances where our public participation efforts that are linked to our legislative function have not yielded the desired outcomes. I am told that some of the public hearings that we organized were not well attended as a result of many factors. These included lack of clear identification of stakeholders who have a direct interest in Bills before the House. In a nutshell, we failed to identify the right people, their geographic spread, thus rendering this public involvement tool an exercise in futility. This lack of foresight on our part has its own attendant problems, chief amongst these, a legal challenge in the Constitutional Court.

Honourable Members, another useful innovation that we have as legislators is that of our own Constituency Offices. May I remind you Members that this facility is funded by the Legislature so that the people that we represent can have access to us as well as to other services offered by the Legislature. Coupled with this is what we call Constituency Period. Members, this is not a holiday period in between our normal recess period, rather it is a period for us go and report back to our constituency on how far we are in implementing their mandate. The whole idea of

mandating and accounting informs this approach. I therefore urge all Members, new and those returning to be more vigorous in their constituency work.

Dr Frene Ginwala, former Speaker of the National Assembly, Parliament, South Africa (2001) commenting on the socio-political mandate of the National Assembly and Legislatures states:

‘democracy requires that citizens should be continuously engaged in governance through interaction with those who make decisions. Making a ballot and dropping it into a ballot box once every few years is an important element of democracy, but it is only one step in the process of building a society that continually serves the interest of all its people. Those who are elected to make policy and laws on behalf of the people are required to fulfill their mandate in continuous consultation and dialogue with the citizens on whose behalf they act. In South Africa, the gap between those whose influence, for historical reasons, is limited by poverty and disadvantage is deep and wide. Thus there is a very real danger that, while the voices of the powerful may be heard, the majority remain imprisoned in the silence to which their history and circumstances have condemned them. We must secure and maintain consensus among all our people – by involving them, empowering them and engaging them in the issues that lie at the very heart of transforming our society.’

It is the responsibility of Legislatures to conduct oversight of the executive, in so doing promoting the implementation of systems that establish a framework for

good governance, the key elements of which are issues of performance and conformance.

Legislatures, in holding the executive accountable for the implementation of policies which are responsible for transforming society, must encourage the systematic addition of direct citizen's oversight in the legislative and governance process. It is accordingly recognized that sectors of society previously advantaged wield disproportionate influence in the development and implementation of policy to be over-sighted. Re-sourcing democracy becomes critical in the promotion of values that will ultimately lead to the establishment of formal social structures giving a collective voice to the masses of our people in identifying their needs and shaping their futures in an equitable environment. The performance of government is to a large degree dependant on the management of the relationships with social organizations and groups.

As a Legislature, we must accept that school governing bodies have been established by legislation, Hospital Boards have been established, Community Policing Forums have been established. What relationship do we as legislators have with these bodies to assist us in performing our oversight role? Have we ever established strong relationships with them to assist us in performing our tasks. These are structures created by our legislation, yet we do not turn to them for information on service delivery. Batho Pele, a policy of government, what have we as legislators done in relation to it?

Honourable Members, I will be failing in my duties if I do not touch on the role of our parties in the Legislature. Here, I am referring to a known reality that we belong to various political parties. However, we happen to be grouped together here through the mandate of the voters. During the inauguration of the Premier last week, the five priority areas of the KZN Government which are Creation of decent work and sustainable livelihoods; Education; Health; Crime and Rural development were clearly spelt out. I am convinced that there is no one in this House who will honestly argue that the priority areas mentioned above have no value or relevance to the people of our province and beyond. I therefore believe that as an oversight body, we will use our authority to gauge how the government is adhering to these priority areas.

Equally, we expect all the opposition parties to conduct their constitutional role in a manner that is constructive, a role that promotes the achievement of the goals of this legislature. We need to transcend our political differences when we deal with matters of common good, in this case the development of our province and its people. We do not expect an opposition that will conduct its role in an obstructionist manner as this will not only hamper the development our province, but will also make a mockery of us as responsible elected representatives.

Let us not shift our focus to the periphery. Let us not be obstructionist as the opposition and let us not be defensive as the majority party. The only people that suffer in this type of game is our citizens. I will be calling on the Chief Whip of the

majority party to present me with reports of attendance of her members in relation to official responsibilities. I will be doing the same with the opposition and other parties in this House. The primary responsibility of Whips is to ensure attendance of Members in respect of work of this House and I am requesting that Members always respect the role of their whips in so far as that role is concerned.

I will be calling on the Chairperson of Committees to provide me with reports on the performance of Members in relation to the transformation of the lives of the citizens of the people. I request that Portfolio Committee Chairpersons work closely with the Chairperson of Committees in ensuring that they participate in a system that is designed to ensure that they perform their task. In this respect, I will be asking the Chairperson of Committees to provide me with direction in respect of developing a performance management system for members of this House. You have to be seen to be performing your tasks through effective outcomes and not through being obstructionist. In this respect, such a system must also take cognisance of the principles of co-operative governance.

In conclusion, I wish all of you success in your deliberations for the next three days. Having looked at the Programme before us, I am certain we will come out of this induction better equipped to deal with the urgent challenge before us, to lead KZN into prosperity to 2014 and beyond.

It is my fervent wish that as we go about our business, we take seriously our roles but also respect processes and offices created for specific functions. I urge all of you to ensure that protocol be followed.

As Speaker, I will not entertain being taken out of the discussion on the floor of the House by Members approaching me directly whilst I am presiding and the same applies to any other presiding officer, that is the Deputy Speaker, the Chairperson of Committees and the Deputy Chairperson of Committees or any other person elected by this House to preside in the absence of the Presiding Officers mentioned.

The Rules of this House must be studied and understood by all Members. The administrative systems must be adhered to, without fear or favour and I will not accept any member of the administrative staff being bullied into working outside processes that have been established. By the same token, I have called on Administration to ensure that Members are supported in a manner that is most conducive to them functioning effectively, but within the confines of the budget.

Accordingly, any request from Members must be made in writing to the Speaker, whereafter, it will be taken up with the Secretary of the Legislature and an appropriate response will be provided to Members. I also want political office bearers, (whips through the Chief Whip and portfolio committee chairpersons through the Chairperson of Committees) to inform me in writing, where there is any

incapacity or misconduct on the part of staff so that these types of matters can be officially addressed with the Secretary and appropriate disciplinary processes can be followed. It does not help to meet me or the Secretary in the corridor or in an unrelated meeting and raise issues of competence or misconduct on the part of staff with us. Specific, formal issues will be responded to appropriately. This protects all of us. By the same token, I have requested staff to address in writing to me, through the office of the Secretary where there are any forms of misconduct or deviation from policy by Members of the Legislature. We have a duty, to respect each other and to always act in the interest of the people of the province of KwaZulu-Natal

I wish all of us well as we move forward. The people of our province are waiting. Five years is all we have.

I thank you.