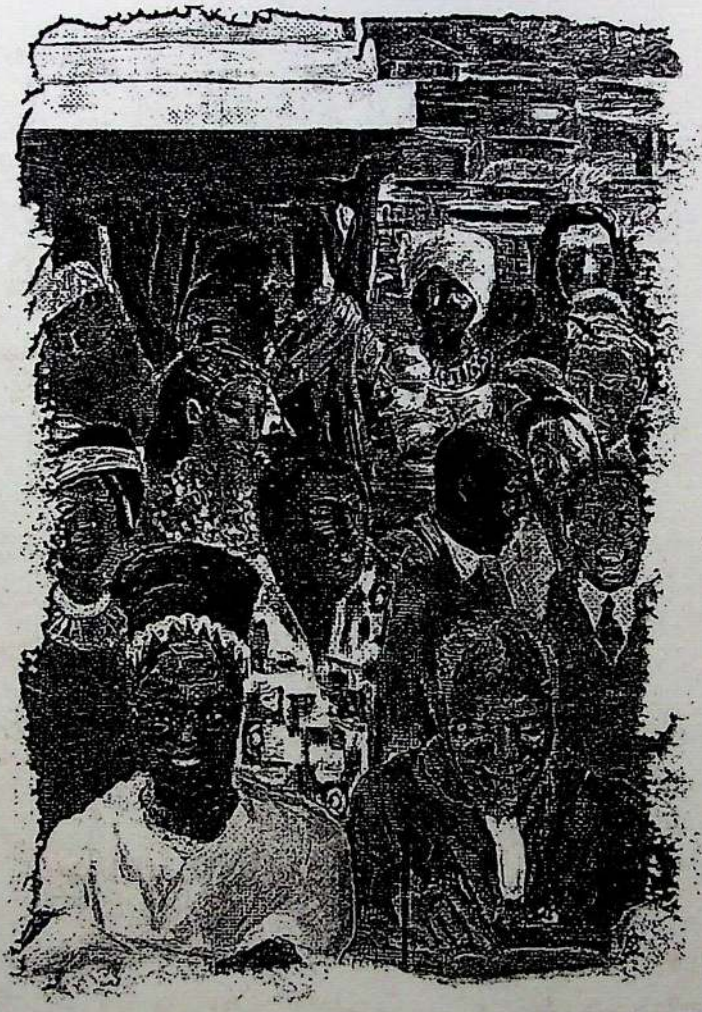
A People's Government. The People's Voice.



Susan de Villiers

AN KPA
1



A REVIEW OF PUBLIC PARTICIPATION IN THE LAW AND POLICY-MAKING PROCESS IN SOUTH AFRICA.

"In adopting our new Constitution, we began the process of establishing a vibrant and responsive democracy in South Africa. This book contributes to that process by analysing the role members of the public can play in parliamentary procedures and arguing that such participation is an essential part of our democracy. It is a welcome contribution to the national constitutional project."

JUSTICE KATE O'REGAN, Judge of the Constitutional Court

"Far more than the episodic intervention at election time, the participation of the public in the week-to-week policy and law-making work of government is the real life-blood of democracy. Weak democracies exclude the poor from having a meaningful say in the decisions that affect them; strong democracies welcome and facilitate access."

RICHARD CALLAND, IDASA

"Any initiative which strives to push the frontiers of public understanding and - by extension - participation in government should be lauded. The ascendancy of this country from the bottomless pit of apartheid to the steady rock of the new democratic dispensation could also be ascribed to public forums in which people determined how they wished to be ruled. This book, which explores their role, should be a required text for everyone involved in public life."

MANDLA LANGA, Chairperson,
Independent Communications Authority of South Africa

"The participation of citizens in formulating decisions that affect them is most desirable. But, often, the words sound pious and worn-out. Is it indeed realisable? This is the challenge that genuine democracies face - to bring government to the man and woman in the street. It is South Africa's goal that this should be the case. The point is to make it happen across all spheres of government and among all the people - rich and poor, men and women, young and old. Governance, after all, is about the people."

JOEL NETSHITENZHE, Chief Executive Officer,
Government Communication and Information System

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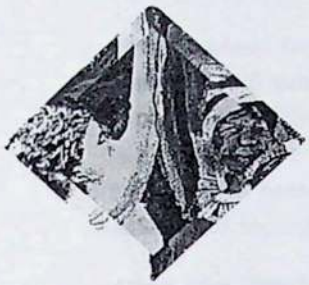
A People's Government. The People's Voice.



PUSTAKAAN

Susan de Villiers





A People's Government. The People's Voice.

A REVIEW OF PUBLIC PARTICIPATION IN THE LAW AND POLICY-MAKING PROCESS IN SOUTH AFRICA

"Knowledge will forever govern ignorance:
And a people who mean to be their own governors must
arm themselves with the power which knowledge gives."

James Madison, 1822

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WRITTEN BY
Susan de Villiers

BASED ON RESEARCH BY
The Political Information Service of the Institute for Democracy in South Africa (IDASA) and Susan de Villiers



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"First, I would say, when I heard the news that I would be going to Cape Town to make an oral submission on the Firearms Control Bill, I got excited, nervous and proud. I got excited in the sense that it would be my first time to fly and also my first visit to Cape Town and to Parliament as well as to the sea. I got nervous when I thought of presenting before the MPs, and I felt proud at being invited by the Safety and Security Portfolio Committee.

Adele [the Director of Gun Free South Africa] and myself left her home at 16h15 to Joburg International Airport. Our flight to Cape Town was scheduled for 18h00. On board the flight I was relaxed because I was sitting next to Adele and she comforted me. We arrived in Cape Town at 20h00. We waited a couple of minutes for Claire's arrival because we were not on the same flight. After Claire's arrival we drove to Sea Point where we spent the night. Sea Point is next to the sea and really I had a clear view of the sea.

In the evening, Adele acted as the Portfolio Committee Chairperson and asked me to present. After my presentation, she asked me questions. She encouraged me – and this kind of practice really helped me. I went to bed at 23h00 and woke up at 5am.

Before we drove to Parliament Claire and myself walked on foot to the sea where she took pictures of me. We arrived at Parliament at 8h30.

During the Public Hearings I listened carefully to presenters. Some of the presenters were furious, criticising the Bill as a whole. Nevertheless I realised how friendly the MPs were. When the Chairperson called my name, I felt nervous, but when I started talking I regained confidence. My presentation focussed on two issues: Gun Free Zones (GFZs) and the Age Limit. I supported chapter 20 (of the FCB) on GFZs. GFZs are about community safety and the initiative has been going on for three years in Mapela and is getting support from more residents. I also objected to the age limit of 18 (in the FCB) and proposed the age should go to 25. This will exclude school going kids and will also make the implementation of GFZs in schools easier. After my presentation, the MP's applauded me for the work I've been doing.

We all went out then and took photos in front of Parliament and then went to a meeting where we discussed what our experiences were during the hearings.

After the meeting, Adele, Claire and John Katane (from Rustenburg) drove me to Cape Town International Airport. I was no longer afraid of flying because I had experience. Even though I was alone I enjoyed the trip back home."

Letter from Samuel Kobela of Mapela, who made an oral submission to the Safety and Security Portfolio Committee on the Firearms Control Bill.

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TABLE OF CONTENTS

Foreword Dr Frene Ginwala, Speaker of the National Assembly, Parliament, South Africa 9

Introductory Notes
Hoosain Kagee, Acting National Director of the Parliamentary Support Programme 13

SECTION 1 FRAMEWORK AND CONTEXT

Chapter 1 Introduction 15
2 Exploring Forms of Democracy 19
3 The Public and the Public Sphere 25
4 "Two South Africas": Defining the Public 27
5 What the South African Constitution Provides 38

SECTION 2 PUBLIC PARTICIPATION IN THE CURRENT POLITICAL ENVIRONMENT

Chapter 6 The Role of Committees 47
7 The Role of the NCOP and Provinces 53
8 The Role of the Executive 57
9 Other Institutional Arrangements Affecting Public Participation 63
10 The Role of Legislation, Regulations and Rules 72
11 Representivity and Public Participation 79
12 The Role of Language 84
13 The Role of Information Technology 87

SECTION 3 PUBLIC PARTICIPATION THEORY AND PRACTICE

Chapter 14 Looking at Alternative Models 91
15 A Review of Current Practice in the Legislatures 99
16 Current Institutional Arrangements in South African Legislatures 105

SECTION 4 THE INTERNATIONAL CONTEXT

Chapter 17 Public Participation in Other Parts of the World 115

CONCLUDING REMARKS: WHERE TO FROM HERE? 137

Appendix 1 FUNCTIONS OF BEST PRACTICE 150

2 SOME DEFINITIONS OF PUBLIC PARTICIPATION 159

3 PUBLIC PARTICIPATION QUESTIONNAIRE 163

4 HOW TO EXERCISE YOUR PUBLIC PARTICIPATION RIGHTS 171

List of Acronyms 175

Bibliography 176



FOREWORD

DR FRENE GINWALA, SPEAKER OF THE NATIONAL ASSEMBLY, PARLIAMENT, SOUTH AFRICA

When South Africa's first democratic Parliament was elected in 1994, it faced the enormous, and often daunting, challenge of transforming the way in which the country's elected leaders fulfilled their contract with those who had elected them to power. The challenge we faced was to transform Parliament from an unrepresentative and largely executive dominated institution into a vibrant centre for dialogue between the people of South Africa and their elected representatives.

Democracy requires that citizens should be continuously engaged in governance through interaction with those who make decisions. Marking 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 genuinely serves the interests of all its people. Those who are elected to make policy and laws on behalf of the people are required to fulfil their mandate in continuous consultation and dialogue with the citizens on whose behalf they act.

In South Africa, the gap between those with the resources to influence government and 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.

If these imbalances are allowed to persist, we will be jeopardising our transformation to a meaningful democracy. By failing to create and maintain the channels through which the majority of the people may express their views and participate in decisions that affect their lives, we will reinforce patterns of marginalisation and exclusion. The reconstruction and

development of our society cannot be reduced to words on paper. 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.

The voices of the people must be heard in our legislative and executive institutions, but this will not happen if we sit back in our committee meetings and offices. We need, instead, to seek out those voices and opinions and facilitate ways and means of engaging all sectors of society in crucial debates.

This is what is meant by a "people's parliament". It is what we must strive for in our endeavours to open the doors of our political processes and discussions. We must work particularly hard to ensure that the voices of the hitherto voiceless are heard in the debates that shape their lives. This means reaching far into the rural areas and accessing the views of the poor and particularly women. We must find ways to open the doors of our institutions to those who may struggle to enter because of disability, age or poverty so that they may speak frankly and openly about the issues that concern them. This must be the vision that guides our daily work.

It is for this reason that I am very happy to commend this important publication to you. For the elected representatives of South Africa, it offers a strong motivation to pursue our goal of encouraging public participation in our institutions. For those who are responsible for providing services to the people of South Africa, it is a reminder of the nature of service and our obligation to put people first, according to our adopted principle of Batho Pele[1]. By critically assessing and evaluating our efforts and making recommendations on ways in which we may deepen and broaden our commitment to public participation, this study contributes to the development and consolidation of our democracy.

The publication, "A People's Government. The People's Voice", is a modest review of the steps we have taken towards fostering a form of democracy that departs from the crude representative model and moves towards a much more participatory form of political engagement. It also alerts us to the

[1] *Batho Pele* is the Sesotho expression for 'People First' and became the subtitle of the *White Paper on Transforming Public Service Delivery* (1997).

dangers that lie ahead and should be avoided.

We have been fortunate that, when writing our Constitution, we were able to draw from the experiences and wisdom of democracies all over the world. In doing so, however, we developed a set of institutions and practices that are entirely our own. This study may thus also be of interest to countries currently engaged in reforming their institutions to promote a more participatory democracy, thus adding value to the international debate on the ability of citizens to engage with and influence the political process.

I wish to thank the European Union for its support and assistance with this important project. My thanks, too, to the members and staff of the legislatures and the public participation practitioners who made this study possible.

DR FRENE GINWALA
June 2001



Introductory Notes

The aim of the Parliamentary Support Programme (PSP) is to promote good governance and democratisation in South African legislatures at national and provincial level and to assist them in the performance of their responsibilities. These include legislation, policy formulation, executive oversight, constituency work and public education and outreach.

The PSP focuses on the following areas:

- Assisting legislatures with structural support and services
- Promoting knowledge and legislative skills
- Facilitating the participation of women
- Funding and supporting improvements in institutional arrangements
- Improving representation and responsiveness in the legislatures
- Enhancing communication and co-operation between legislatures

Public participation is central to any democracy and needs to go beyond voting at national, provincial or local level. A dynamic process of engagement should be facilitated to allow the electorate to participate in processes that may affect their lives.

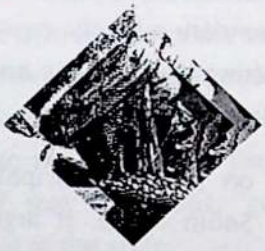
This publication assesses how successfully the young South African democracy has engaged in the process of public participation and how it may improve its performance. By strengthening and building on the structures and practices that already exist, we can look forward to greater participation – and hence more effective governance – in the future.

Hoosain Kagee

HOOSAIN KAGEE
Acting National Director
Parliamentary Support Programme

SECTION 1

FRAMEWORK AND CONTEXT



1
INTRODUCTION

For over three hundred years, from the time when the first European voyagers landed at the Cape, black[2] South Africans were subjected to discrimination, harsh treatment and oppression. With the election of a National Party government in 1948, this oppression was formalized under the apartheid system, resulting in the legalized suppression of human rights in South Africa. Under apartheid, most South Africans were deprived of their basic human rights and denied the right to authentic forms of representation. The opinions of black South Africans were considered irrelevant and immaterial.

Oppression inevitably led to struggle and, with struggle, the emergence of alternative voices and forms of expression. Popular organization and resistance bred their own traditions and democratic norms. These traditions, ideals and experiences helped shape expectations during the transitional period (1990-94) and in the period after the first democratic elections in 1994. They are reflected in a number of key documents that emerged at the time, in particular the Reconstruction and Development Programme (RDP), the policy platform on which the African National Congress (ANC)

[2] 'Black' encompasses South Africans of African, Indian and Asian origin and 'Coloured' people.

contested the 1994 election and which was afterwards formalized as the policy (White Paper) of the newly elected democratic government.

During the transitional period, an interim constitution was drawn up by the protagonists and became the basis of the agreement that led to elections in 1994. After the election, the Constitutional Assembly (consisting of the National Assembly and Senate[3]) drew up the South African Constitution, which was to create the foundation for the new order. The Constitution was adopted in 1996. The drafting process was accompanied by an extensive public education and participation programme.

This publication focuses on public participation in the legislative and policy-making process in South Africa. It argues that the South African Constitution creates a requirement that government engage with citizens when making the decisions that affect their lives. The constitutional requirements for public access and participation are dealt with in detail in Chapter 5. Broadly, they provide for a right to participation in the legislative and policy-making processes that goes well beyond the right to vote in periodic elections. Not only must citizens be given the opportunity to speak on issues that affect them; there is also an onus on the legislatures and the executive to take their views seriously.

A right to participate does not, however, automatically translate into broad-based participation across society. President Thabo Mbeki has spoken of "two South Africas" – of a society that remains deeply divided between those who have access to the resources of the country and those who remain poor and marginalised. This reality crucially influences the ways and extent to which South African citizens can take advantage of the opportunities for participation offered by the Constitution. Although the principle is that *all* groups in society should have a voice in the decisions that affect their lives, it is inevitably the powerful and the organized who are able to make the best use of the opportunities available.

> ***The most disadvantaged sectors are often unable to participate in the democratic process. Limited access to media, low education levels and geographic isolation from the centres of government, not to mention constraints of time and money, preclude meaningful participation by much of society.***[4]

[3]The Constitution replaced the Senate with the National Council of Provinces (NCOP), created to give provinces a greater say in national affairs.

[4]UNDP (2000) 80

In order to meet its constitutional obligations, therefore, government needs to work proactively to ensure that the voices of the widest possible 'public' are heard and taken into account.

A democratic society that encourages healthy participation depends on a variety of institutions. This study focuses on issues of public participation in the formal political domain, looking particularly at the legislative and policy-making processes. The institutions under review include the national Parliament and the nine provincial legislatures set up in terms of the Constitution (the legislative arm) and the various government departments led by Ministers appointed to the Cabinet by the President (the executive arm). For the purposes of this document, 'government' includes the legislative and executive arms of the state.

The national Parliament is responsible for making national legislation, while the provincial legislatures are responsible for areas of legislation ascribed to them by the Constitution.[5] The national Parliament is made up of the National Assembly, consisting of representatives of political parties elected according to a system of proportional representation, and the National Council of Provinces (NCOP), which consists of delegations from the provincial legislatures. All national legislation passes through the NCOP, which has varying powers depending on whether the proposed legislation does not (section 75 bills) or does (section 76 bills) affect the provinces. This ensures that the provinces are represented and have a say at the national level.

The provincial executives consist of an Executive Council (provincial cabinet) headed by a Premier. Members of the Executive Council (MECs) head up provincial departments responsible for areas where the provinces have powers. This applies primarily to areas involving service provision, such as housing and education.

As far as forms of public participation are concerned, the study focuses chiefly on public hearings arranged by the various institutions under review, as well as opportunities to make submissions to the legislatures and the executive. It also gives close attention to various efforts to build a

[5]These are divided into "functional areas of concurrent national and provincial legislative competence" (Schedule 4) and "functional areas of exclusive provincial legislative competence" (Schedule 5).

foundation for broader public participation. These include public education and outreach and public information and public relations activities. As indicated, the sharp divisions in South African society demand special strategies. In order to build and maintain a system of democratic public participation that includes the traditionally marginalised, the role of public education must be to inform, educate and build capacity.

This is the focus of this study. Section 1 looks at democracy and what is meant by participative democracy. It explores what we mean when we speak of the public and the public sphere and how we can begin to define this in South Africa. It then sets out the various provisions of the Constitution that relate, either directly or indirectly, to public participation. Section 2 looks at other aspects affecting public participation in South Africa. Section 3 offers four models for participation and reviews progress towards public participation in the national Parliament and the nine provincial legislatures. The data on which this part of the work is based is drawn from quantitative questionnaire surveys conducted in the various legislatures and interviews with key personnel, analysed by the Political Information Service of the Institute for Democracy in South Africa (IDASA). It builds on an earlier IDASA review, commissioned by the Parliamentary Support Programme in 1998/99. Section 4 looks at the international context for public participation. The final chapter tries to draw lessons, ideas and a way forward from the preceding chapters.



2
EXPLORING FORMS OF DEMOCRACY

> *Reconstruction and development require a population that is empowered through expanded rights, meaningful information and education, and an institutional network fostering representative, participatory and direct democracy.*[6]

It may be argued that the South African Constitution provides the framework for a democratic system that is both representative *and* participatory. In order to understand notions of public participation in the context of the new constitutional order, these concepts are briefly explored.

Democracy is generally agreed to have its conceptual roots in certain of the city-states of ancient Greece. This system, now described as "direct democracy", is based on the notion that every citizen is directly consulted in every decision of government. In ancient Greece, political decisions were taken by a popular assembly of the whole body of citizens, according to the procedures of majority rule. Such a system was possible in ancient Greece because a city-state's population rarely exceeded 10 000 people. Also, women and slaves were excluded from citizenship and therefore from political participation.

Although the concept of direct democracy persists in a much-modified form in modern life, Greek democracy had little direct influence on the development of modern democratic practices. Two millennia separated the fall of the Greek city-state and the rise of the modern democracies. Although this form of direct democracy is impractical and inappropriate to a large complex society, direct democracy does, nevertheless, lay the basis for the notion of democracy as broadly participative.

Modern concepts of democratic government in the West were shaped to a large extent by efforts to restrain the exercise of public power. Pressure on monarchs and the church to consult powerful groups or "estates" increased during the Middle Ages and, as time went on, representatives of these groups began to come together in what were the forerunners of modern parliaments or legislative assemblies. By the 18th century, concepts of natural rights and

[6] African National Congress [1994] 119

political equality began to emerge and were expressed in the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789). There were still significant exclusions and it was to be well over a century before women were allowed to vote in the more advanced democracies, and longer still before the concept of universal suffrage came to include all classes and groups of adults.

Representative democracy, that is government by men and women elected in free and fair elections in which each adult citizen's vote is equally weighted (universal suffrage), became the standard Western form. Representatives are elected to office and are charged with the responsibility of making decisions on behalf of the electorate. These representatives are subject to a variety of rules and sanctions and may, if the electorate so chooses, be removed from power at a subsequent election. What is described as constitutional democracy is generally a form of representative democracy, where the rules of the political game are formalized in a written constitution, which is difficult to change and where the courts are given the power to enforce the constitution, against the popular will if necessary.

In its narrowest interpretation, representative democracy means that elected representatives must *directly* represent the views of those who voted them into power. Voters give their representatives a specific mandate to speak and make decisions on their behalf. Such a system is a feature of many trade unions, for example, where a representative must seek and receive a direct mandate before speaking or voting on an issue. This person acts as a delegate and is directly accountable to his or her constituency.

However, in general, representative democracy is more broadly interpreted. According to 18th Century political philosopher and politician, Edmund Burke:

> *A representative is entitled to, and in effect has a right (by virtue of election or appointment), to exercise independent judgement during the course of the deliberations and process that accompanies the law and policy-making government of the State. Hence, individually and as a collective, the elected representative determines the common good.*[7]

According to the Burkean/Trustee conception, the legislator determines

[7]quoted in Held [1996]

what is in the constituents' best interests. This gives the representative a far more open brief. While broadly adhering to his/her election manifesto, s/he has the latitude to develop views on other topics, adapt a mandate in line with the party policy programme and take other 'unmandated' decisions on behalf of the electorate. Accountability rests on the fear of losing office in the next election. The risk is that representatives (or their parties) may abandon or modify the policy framework on which they were elected. However, the system also enables decisions on issues on which it may be extremely difficult to secure a mandate, as for the abolition of the death penalty or the legalisation of abortion.[8]

It is clear that, like direct democracy, representative democracy is no more than a broad concept against which one may measure other forms of political participation. Democracy is not a static process and, just as the numbers of the enfranchised grew over the years, so too did people devise and struggle for ways of influencing and controlling the political process. Direct democracy persists in new forms. It may be seen at a national level in the form of referenda on particular issues. Although increasingly common, canvassing public opinion on issues that generate public emotion may result in decisions that run counter to international human rights principles. At local level, forms of direct democracy are employed to mobilise public opinion and express collective grievances. As communities and other groups are empowered or empower themselves in these ways, new ideas enter the system, influencing government opinion and impacting on its procedures. This tendency is well illustrated by environmental struggles over the past few decades. In many countries, environmental legislation now relies heavily on contributions and involvement by civil society.

Although it can be argued that the Burkean form of representative democracy is most appropriate to the scale of modern life and is most conducive to efficiency, it carries the risk of alienating the broader citizenship from the process of government. Where people believe they have limited power to influence, they lose faith in the electoral system and in the

[8]Other views on representation include: "Politicos (where the legislator serves as a broker finding common ground amidst competing constituent interests), Leninist conceptions (the party leads constituents through representatives), and Exemplar conceptions (where the legislator fulfils symbolic concerns of constituents by sharing racial, ethnic, religious or other characteristics)." See UNDP [1999] Chapter II

checks and balances that regulate the use of power. If democracy is about involving people in the decisions that affect their lives, the challenge for modern governments is to seek a balance between efficiency and effective administration on the one hand, and accountability and public participation on the other.

DEMOCRACY IN SOUTH AFRICA

The South African Constitution provides for a broadly representative constitutional democracy based on universal adult suffrage. However, its emphasis on public participation introduces elements that, in the formal sense at least, distinguish it from many of the longer established democracies.

South Africa owes its institutional arrangements in part to an international political environment that increasingly favours public participation in political processes. Drawing up its constitutional and institutional arrangements in the latter part of the 20th century, it was able to take advantage of contemporary thinking on the evolving relationship between people and their governments.

There is little doubt, however, that the history of the struggle against apartheid also influenced the development of the South African model. Political oppression provides a powerful impetus to alternative forms of organization. In South Africa during the 1980s, rejecting imposed institutions that were seen as illegitimate, communities organized themselves into civics, street committees and other local organisations. Organised labour came together to form powerful structures that, in the repressive and punishing climate that prevailed, played a key strategic role. Youth, students and even children built organisations and claimed the right to political participation and recognition. Such structures established a tradition, at least in principle, of both direct and generally participatory democracy.

This history influenced the manner in which South Africans approached the period of preparation for elections and government. During the 1990s, a plethora of participative forums was set up to discuss, debate and prepare

for every aspect of governance. The notion of a more participatory form of democracy was captured in the RDP thus:

> *Democracy for ordinary citizens must not end with formal rights and periodic one-person, one-vote elections. Without undermining the authority and responsibilities of elected representative bodies (Parliament, provincial legislatures, local government) the democratic order we envisage must foster a wide range of institutions of participatory democracy in partnership with civil society on the basis of informed and empowered citizens and facilitate direct democracy ... social movements and CBOs are a major asset in the effort to democratise and develop our society.*[9]

But, what does participatory democracy mean? Unlike direct democracy, it does not imply that every decision taken by government must first be subjected to a public referendum. Nor, however, does it mean that the right to and responsibility for political decision-making is relinquished to a collective of elected representatives. Participatory democracy, it is suggested, is a form of representative democracy in which citizens are *actively involved* in the decision-making processes of government.

> *Democracy is defined as ongoing and regular interaction between citizens and their popularly elected institutions. This includes mechanisms for public participation ... as well as the constitutionally entrenched responsibility of certain institutions to facilitate public participation in their processes.*[10]

The rationale for a participatory form of democracy goes beyond that created by the South African Constitution. It is, as we shall discuss, part of a growing international trend aimed at creating vehicles for dialogue between governments and people. It is, indeed, grounded in the common-sense view that, where people are not involved in the decisions that affect their lives, social policies and political interventions are likely to fail. This changed perspective takes place in a climate of growing concern in Western democratic systems. Declining voter participation, a narrowing of political choices and a decline in popular trust in the electoral and political process have prompted the need for renewal in the way we conceive of democracy. Conceptually, this has opened up the space for a redefinition of the boundaries between the state and civil society.

This publication argues that public participation processes strengthen and

[9] ANC [1994] 120

[10] Houston et al [1999]

further democratise the institutions of representative democracy. Participatory democracy is not necessarily a new or different form of democracy, but a strengthening or expansion of formal representative democracy to include greater levels of participation by civil society. While participation may and has indeed been used to assimilate and manipulate social movements and political actors, the form of participatory democracy envisaged here aims to empower civil society to drive legislative and policy agendas from the grassroots.



3
THE PUBLIC AND THE PUBLIC SPHERE

Another concept that is of key importance to an investigation of public participation is the notion of a public, and hence of a public sphere.[11] The idea of a public is a relatively new one. In Medieval Europe, the only 'public' persons were the sovereign or the feudal lords and princes, and only in the sense that they displayed their status publicly before the people. With the development of mercantile capitalism in the 16th century and the emergence of new, non-feudal state systems of government, the significance of the royal 'court' began to decline and the locus of established authority to shift. Public authority now became synonymous with the state. Those occupied in trades and professions under the old feudal systems developed into a sphere of civil society that stood opposed to the state.

It has been argued that the first 'public sphere'[12] emerged through two institutions: the 18th century coffee houses and *salons* and the rise of the independent market-based press. Originally a literary 'space', the public sphere evolved into a 'political' public sphere that became the site for the formation of politically-oriented 'public opinion'. Through the activities of the periodical press, a new climate of political criticism arose, challenging traditional authority.

The press was established as a critical organ of a public engaged in political debate: as the "fourth estate". This institutionalised commentary and criticism *transformed* public authority. As its activities were brought into the public domain, parliament was increasingly required to justify its actions and publicise its proceedings. The new constitutions of modern state systems in which rights were guaranteed resulted in the political role of the public sphere being formally recognised in law.

Habermas describes certain defining criteria for the public sphere. A public sphere is a social space to which all citizens are guaranteed access; all citizens are considered equal; all citizens are free to engage in dialogue and express their opinions. It is autonomous and free from interference by the

[11]See Curran [1997] 82-3. Also Boyd-Barrett [1995] and Thompson [1995] for a discussion of Habermas and the public sphere

[12]Habermas [1989]

state and the market, and it is distinct from the 'private sphere', with a concern for public good rather than individual private gain. Finally, it embodies a democratic ideal.

In practice, Habermas' concept of an 18th century bourgeois public sphere is deeply flawed in that it incorporates only those with the means and education to participate in it. It also overlooks the history of the working-class press and the fact that relations between the bourgeois public sphere and popular social movements were often conflictual. It was, of course, also a predominantly male preserve. It may be argued, further, that it is impossible today to maintain a distinction between the public sphere and the state and the market.

The concept is, however, useful when considering what we mean by a participating public. Key principles are: guaranteed access, equality, freedom to express opinions, the notion of a public good and, of course, the democratic ideal. Applying these criteria, one can begin to measure the extent and degree of public participation and how this affects different sections of the public.

Based on these principles, we need to consider how we should go about defining the South African public sphere. In other words, how do we take into account what President Mbeki has described as the "two South Africas" when dealing with practical issues of public participation by the well-resourced, on the one hand, and the poor and marginalised on the other?



4
THE "TWO SOUTH AFRICAS": DEFINING THE PUBLIC

The Constitution requires us to have a participatory democracy and I don't think we have a common understanding of what that means. We have one of the most open parliaments in the world. Committees have public hearings and the public can walk into any meeting. Is that public participation?

I have an image of a rural woman walking into one of those meetings. I mean, as it stands, does she know that what we do affects her and what she says can affect our decisions? We need to reach her.[13]

Public participation is about access to power and decision-makers. In most systems, certain people or interests have greater access to power and decision-makers than others. Patterns of access will tend to reflect the socio-economic landscape and inequalities of society. Even relatively well-functioning democratic systems tend to favour the views of the powerful and organised over the poor and unorganised.

South Africa's socio-political landscape has undergone a process of fundamental change. The privileges of those that were previously guaranteed access and influence have been diminished; others are rising to positions of influence. Despite considerable political change, however, certain sectors remain strong and others weak. Although South African civil society, with its long history of struggle and advocacy, remains active and involved in issues of change and governance, it has been weakened by a withdrawal of international financial support and a loss of personnel to government and the private sector. Organised labour, which developed strong institutions and traditions in the 1970s and 1980s, remains relatively strong and is represented in the National Economic Development and Labour Council (NEDLAC). The Congress of South African Unions (COSATU), the largest federation of unions, is part of a tripartite alliance with the ruling ANC and the South African Communist Party (SACP), with members on the ANC party list. Organised business has had to adapt to a sharply different political system and a new culture of accountability. Typically, it has responded with new lobbying techniques – some effective, some less so. In South Africa,

[13]Interview with Dr Frene Ginwala, *PSP newsletter*, edition 8, April – May 2000, 3

lobbyists tend to be directly employed by organisations that wish to present their case to government. Lobbyists have become an institution in many Westminster-style systems, giving rise to debates about their morality and whether or not their (particularly commercial) efforts should be subjected to some form of control or code of conduct.[14]

In this fluid advocacy environment, it is important to ensure that public participation does not become skewed in favour of any one sector. No sector, particularly the less powerful and organised, should be excluded or marginalised.

Case Study: The Gun Control Alliance[15]

If you give people information, they know what to do with it.

Adele Kirsten, Gun Free South Africa

When the Portfolio Committee on Safety and Security in the National Assembly called for submissions on the Firearms Control Bill, the stage was set for a radical divide between those who supported relatively unfettered ownership of guns against those who, in varying degrees, sought tougher controls. With more power, more money and a louder voice, there was a danger that the gun owners lobby would dominate the scene.

Gun Free South Africa (GFSA) recognised the importance of building broad support for the introduction of stricter firearm legislation. In order to do this, it did three things. It mounted a public information and awareness campaign. It built a broad tactical alliance, which agreed on specific legal reforms. In addition, it ensured that members of the Gun Control Alliance were empowered to lobby Parliament effectively. GFSA had little funding for such a campaign, yet it succeeded in building and maintaining an articulate community voice in the ensuing debate.

One of the most powerful tools developed by GFSA was the Gun Free Zone (GFZ) project. Through this project, GFSA developed relationships with a number of communities who had declared their public spaces

[14]See, for example, Commonwealth Parliamentary Association *Summary of Best Practice*, 'Extra-Parliamentary Institutions and the Public', 1

[15]Summarised from Taylor (2000)

gun-free. These relationships would form the foundation for the broad consensus that was the essential strength of the Gun Control Alliance.

The Gun Control Alliance was built around the Gun Control Charter – essentially a list of minimum demands to be included in a new Firearms Control Act. The Charter was developed in consultation with as many stakeholders as possible, followed by an intensive campaign aimed at persuading organisations and individuals to endorse it. The over 200 national and regional organisations that did so became members of the Gun Control Alliance.

In order to encourage communities to make submissions at the parliamentary hearings on the Bill, GFSA provided assistance to help them take advantage of the opportunities offered. Two tools were of particular importance. One was a plain language summary of the legislation, focusing particularly on those aspects included in the Charter. The second was a document – ***Making sure your voice stops a bullet*** – aimed at giving people the necessary skills to make submissions and lobby parliament. These tools were used at workshops where communities raised local issues and concerns, out of which they prepared the submissions they would later make to Parliament.

The participation of the Gun Control Alliance in the debate had a number of results. First, as a well-informed lobby group, it was able to counter the claims of the better-resourced gun owners' lobby, thereby supporting the parliamentary committee in its efforts to discuss and consider the Bill. Secondly, its efforts did much to raise public awareness about the hazards of firearms and their impact on communities. Thirdly, and perhaps most important of all, community representatives claimed that the process had empowered them. As one of them said:

> *No one in our community had ever made a submission before ... (so) the submission pack was very good. It empowered us. We learnt that individuals could make a submission. Also, if we had to make other submissions, we could use these guidelines, which help us stay focused on the areas that affect us.*

SOCIO-ECONOMIC REALITIES

While it is true that political change in South Africa has been profound, there is also no doubt that the prevailing socio-economic conditions are still largely determined by its apartheid past. And while South Africa is classified as a middle income country, according to the UNDP [2000] report:

> *Conventional measures and indicators do not ... accurately reflect the development or quality of the life of citizens. A high GDP does not imply equal distribution, nor does a growth in GDP mean an improvement in standards of living. Indeed, a higher GDP may even imply lower standards of living for the majority of the people.*[16]

A more telling statistic is the Gini coefficient[17], which measures the extent of income inequality within a country. South Africa has a Gini coefficient of 0.58, ranking it the third most unequal society in the world after Guatemala and Brazil[18] and the second highest amongst countries at a similar level of development.[19] The South African rate of poverty is 45 percent (a measurement of the extent of absolute poverty).[20] This translates into 3126000 households or more than 18-million citizens living below the poverty line (defined as a household income below R353 per month). In mainly rural provinces, the figure rises above 50 percent. The poorest 40 percent of citizens are overwhelmingly African, female and rural.[21] South Africa also has a very poor record in terms of social indicators (health, education, safe water, fertility).[22]

In addition, despite significant delivery successes by early 1999, sustainability has proved a problem.[23] Growth and human development are also seriously threatened by the unemployment crisis[24] and the HIV/AIDS

[16]UNDP [2000] 48

[17]The Gini coefficient is a number between 0 and 1 indicating the level of income inequality within a population. A value of 0 indicates perfect equality (everyone has the same income), while a value of 1 indicates perfect inequality (one person or household has all the income). As the Gini coefficient becomes larger and closer to 1, the extent of inequality increases. UNDP [2000] 71

[18]UNDP [2000] 64

[19]UNDP [2000] 63

[20]UNDP [2000] 55

[21]UNDP [2000] x & 55

[22]SALDRU [1995] 3; Statistics South Africa [1995]

[23]For an assessment of successes and sustainability issues, see UNDP [2000] 29-31

[24]Since 1994, more than half a million jobs have been lost in the formal sector, with a negative impact on at least five other citizens per job loss. UNDP [2000] 32

pandemic.[25] The result is that, despite some significant improvements, many so-called "formerly" disadvantaged individuals remain disadvantaged. Most white and Indian households are in the top income quintile (65% and 45% respectively), compared with only 17 percent of coloured and 10 percent of African households.[26] At the other end of the scale, 23 percent of all African households are found in the poorest quintile, compared with 11 percent of coloureds and 1 percent of Indians and whites.[27]

According to Statistics SA, twice as many female-headed (26%) as male-headed households (13%) are found in the bottom quintile. When race and gender are aggregated, the figure rises to 31 percent of African female-headed households compared to 19 percent of African male-headed households.[28] Overall, the poverty rate amongst female-headed households is 60 percent, compared with 31 percent for male-headed households. Women account for 56 percent of the unemployed and earn, on average, 76 percent of what their male counterparts earn.[29]

Rural/urban inequality is also significant, with African and coloured median incomes in rural areas about half that of their urban counterparts.[30] Eight percent of rural people have an income in the top quintile; 29 percent in the bottom. This is almost the reverse of the urban areas where 34 percent of people have an income in the highest quintile, and only 9 percent in the lowest.[31] Although South Africa is considered to have a medium human development ranking, HDI[32] varies across provinces. There is a close relationship between HDI values and rural areas, particularly in provinces

[25]For example, if one assumes no HIV and a constant growth rate in population and incomes, South Africa's human development can be expected to be 0.654 by the year 2010, based on a growth rate of 0.3 percent per year between 1996 and 2010. This prediction drops drastically with HIV/AIDS. According to the government *HIV/Aids Strategic Plan for South Africa, 2000–2005*, published in May 2000, there are approximately 3.5 million South Africans living with HIV. In its *Report on the Global HIV/AIDS Epidemic*, published in June 2000, UNAIDS estimates that more than 4.2 million South Africans were living with HIV/AIDS at the end of 1999. UNDP [2000] x & 44

[26]Because the categories White, Indian, Coloured and African reflect deep class and income divisions, they continue to be used in statistical analysis.

[27]UNDP [2000] 64

[28]UNDP [2000] 65

[29]UNDP [2000] 68

[30]UNDP [2000] 65

[31]SALDRU [1995] 3

[32]The Human Development Index (HDI) measures average achievements in human development in terms of income, level of educational attainment and life expectancy (health). UNDP [2000] 53

that include former homeland areas.[33]

It is thus relatively straightforward to identify where the inequalities in South Africa lie and which groups are most vulnerable to poverty. It is perhaps less easy to relate this to potential inequalities in public participation. The *Poverty and Inequality in South Africa Report* says that:

> *poverty typically comprises continuous ill health, arduous and often hazardous work for low income, no power to influence change, and high levels of anxiety and stress. The absence of power is virtually a defining characteristic of being poor, and is worsened for women by unequal gender relations.*[34]

The aim of public participation in legislative and policy-making activities is to offer poor people the opportunity to make their circumstances known and to express their needs and grievances. There is, in addition, a clear government commitment to public participation by the poorest sectors of society. According to the ANC National General Council Mid-Term Report and Review:[35]

> *The transformation of Parliament and the Legislatures has taken place within a framework that seeks to encourage public participation in the making of laws and policies, through public hearings on all Bills and policies. Our experience over the last few years indicates that mainly those who have access to resources and who are better organized have used these processes.*

The major constraint is a lack of capacity and resources amongst those whose participation is most desired – the poor and marginalised. Indeed, increased opportunities for public participation generally may even exacerbate existing inequalities. Hence, while public participation is frequently viewed as a form of empowerment, the danger is that only the already empowered may be able to enjoy its benefits. According to COSATU researcher, Oupa Bodibe:

> *to make public participation meaningful, it is imperative that this skewed access to resources does not perpetuate the inequalities and hinder the participation of other stakeholders.*[36]

[33]Poverty is deepest in the Northern Province, Eastern Cape and Mpumalanga which, together, account for 48 percent of the total poverty gap. UNDP [2000] 54-6

[34]Government of South Africa [1998] 2.4

[35]ANC [2000] 3.1.5

[36]Bodibe [1998]

Case Study: The Child Support Grant[37]

Although those with resources and expertise are often better able and more likely to participate in the political process, there are a number of cases where civil society has been able to influence government process in a way that benefits its most disadvantaged members.

One such case arose out of the introduction of the Child Support Grant, introduced to replace the racially discriminatory State Maintenance Grant.

Reacting to a government announcement of a R75 flat rate grant per month for each child younger than six years of age, targeting only 30 percent of poor children, a number of organisations decided to lobby the Portfolio Committee on Welfare for a better deal.

Through their submissions, they were able to show that government figures and calculations were incorrect. As a result of their efforts, the Portfolio Committee chose not to support the government's policy, but proposed an option that set the benefit at R135, targeting 80 percent of children between zero and nine years of age.

Eventually an agreement was reached and the grant was increased to R100 – 33 per cent more than the government's original offer of R75.

CONSTRAINTS ON THE POOR

The constraints on the participation of the poor and disadvantaged are numerous. Four areas are of particular significance.

Time

Time has been identified as an important cost to poorer sections of the population, especially women and those who are employed. Heavy time obligations preclude active participation in anything beyond basic survival and the maintenance of livelihood.

> *Time is an important cost associated with many of the livelihood plans constructed by the poor, especially for women, who are often singly responsible*

[37]Summary of an account in UNDP [2000] 80-1

> *for child-care, cleaning the house, fetching and heating water, washing and ironing, shopping, collecting firewood, cooking and washing dishes. The long and arduous working hours experienced in many households are exacerbated by seasonal demands in rural communities.*[38]

Communications

Access to the media is vital for public participation. And yet, as a study on radio listenership patterns noted:

> *the section of our population which does not receive any media is, in development terms, vital. They are likely to be poor, rural, African, and low-educated. These are people who (arguably) are most in need of education about their newly guaranteed Constitutional rights; of points of access to resources; of democratic processes; and so on.*[39]

The HSRC has noted that, although television is the predominant source of information about what the government is doing, almost half of their survey respondents in the rural former homelands did not watch television at all because they did not possess a television set and only 17.9 percent watched television programmes dealing with political and social issues. Similarly, one quarter of respondents in urban informal settlements had no access to a television set and only 29.9 percent watched television programmes dealing with political and social issues.[40] Radio was seen as the most appropriate medium for receiving information on what the government is doing.[41]

Although 1.3 million telephone connections have taken place since 1994[42], only 14 percent of African households have a telephone line, compared to 85 percent of white households[43]. Across all races, 1 percent of rural households have a telephone, compared with 32 percent of urban households. This points to serious difficulties in accessing information and communicating opinions and preferences. It also has implications for the capacity of South Africans to enjoy the opportunities offered by electronic forms of communication (See further Chapter 13).

Transport

Clearly transport is a major factor in facilitating participation. Here again the

[38]Government of South Africa [1998] 2.5
[39]CASE [1996] 9
[40]Houston et al [1999] 25-6
[41]Houston et al [1999] 28
[42]UNDP [2000] 29
[43]Government of South Africa [1998] 5.6

poor, particularly the rural poor and people with disabilities, are at a serious disadvantage. This is acknowledged by the Department of Transport's strategic framework for the transport sector, *Moving South Africa — The Action Agenda*, which introduces:

> *for the first time ... a vision for transport that is focused on customer needs: be they freight, urban passenger, tourist, or the forgotten customers ... the disabled or the rural poor cut off from the mainstream of our economy.*[44]

Although difficult to quantify, statistics on the burden of transport to and from work give some indication of the problems faced. One survey found that, amongst consumers in the lowest consumption quintile, 62 percent walk to work, while most others use taxis or buses.[45] It is also noteworthy that, although transport costs rise with income, they constitute a much larger share of expenditure (more than 30% in some cases) among the working poor.[46]

It is clear that making the journey to a legislature that may be in another town – or even on another side of town – is likely to be both physically and financially daunting.

Education

According to the 1997 *School Register of Needs Survey*[47], South Africa has one of the highest illiteracy rates in the world. In some provinces, nearly half the adult population is illiterate. Twenty-seven thousand learners with disabilities are outside the school system. Twenty-four percent of Africans have received no education, compared with 1 percent of whites. Similarly, 40 percent of whites have received education up to standard 10 compared with 12 percent of Africans.[48]

A prerequisite for an informed and active citizenry is a literate population. The ability to access information and communicate appropriately is key to economic and social empowerment in all spheres of society. Hence,

[44]Maharaj [1999]

[45]SALDRU [1995] 22

[46]SALDRU [1995] 22

[47]Department of Education [1997] The most comprehensive survey ever to have been undertaken on South African schooling, it highlights numerous backlogs inherited from the apartheid era, including lack of power supply, water, telephones, toilets, sports facilities, media centres and classroom shortages. See UNDP [2000] 142.

[48]Statistics SA [1998]

illiteracy remains one of the most disempowering factors faced by a large majority of people of the country. It affects democratic participation, and consequently hinders human development.[49]

THE CONSEQUENCES OF POVERTY FOR PUBLIC PARTICIPATION

Providing the political space is not enough. Human development depends on the extent to which citizens are able to make use of that space.[50]

The relevance of these inequalities for public participation was illustrated in a recent Opinion '99 poll on levels of voter education. Only 36 percent of people with no formal education understood the necessity for registering on the voters roll, compared to 56 percent of those with some high school education and 67 percent of those who have completed high school. Rural people were much less likely to understand the need to register (49%), compared to those who live in cities and towns (57%) or metropolitan areas (69%). Significantly, knowledge of the electoral process also increases steadily with income.[51]

In September 1999, a national survey conducted by the Human Sciences Research Council (HSRC) reached similar conclusions. Some of the figures are very revealing. For example, less than 15 percent of South Africans said that they understood the different legislative processes operating in the country, and only 7 percent that they had sufficient knowledge of the functions of the national legislature. Just over 6 percent said they had sufficient knowledge about public hearings at the national level and close to 94 percent had insufficient or no knowledge of the functions of parliamentary constituency offices.[52]

Clearly then, socio-economic status is a key determinant in the ability to access and participate in the political system. Countering the argument that "ever-increasing amounts of participation and consensus-building" are necessarily progressive, critics have pointed out that extensive lobbying and

[49]UNDP [2000] 142

[50]UNDP [2000] 80

[51]IDASA, SABC, MARKINOR [1999]

[52]Media Release, Human Sciences Research Council, 30 November 2000

participation by powerful groups may, in fact, sideline or diminish the role of those who have been elected to represent the interests of the broader (and often less organised and powerful) public.[53]

Furthermore, although there is no longer the unequal *de jure* access to formal participation that existed under apartheid, South Africa may, unless remedial steps are taken, experience a *de facto* inequality of access to participation – a division along almost identical lines to those of the past. Hence, it may be argued that constitutional and legislative requirements for open and accessible processes are a necessary but *insufficient* condition for effective public participation in the South African socio-economic context. The right to legal access and participation must be backed up by dedicated strategies and programmes aimed at involving the broadest possible spectrum of society.



[53]Steytler [1999]

5
WHAT THE SOUTH AFRICAN CONSTITUTION PROVIDES

In some countries the Constitution only formalises, in a legal instrument, a historical consensus of values and aspirations evolved incrementally from a stable and unbroken past to accommodate the needs of the future. The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive, and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic.[54]

A number of sections in the Constitution deal directly with public participation. Other sections deal with issues that either directly or indirectly support public interaction with government. The purpose of this chapter is to identify sections in the Constitution that relate to or impact on the obligation of government to involve the public in its deliberations.

The Constitution also stresses the principles of accountability, transparency and openness. This has relevance for public participation in that it imposes a general obligation on government, particularly its elected representatives, and creates a climate that encourages and promotes interaction.

Sections dealing with provisions for the different spheres of government (national, provincial and local) and the different arms of the state (executive, legislative and judicial) are also broadly relevant in that they provide the framework of checks and balances and also help map where, when and how the public can participate in various processes.

These sections and others with implications for public participation are surveyed below.

A BILL OF RIGHTS

Adopted in 1996, the Constitution recognizes a "common South African citizenship" with equal entitlement to rights and responsibilities.[55] Rights are

[54] Mohamed, Justice I [1995] para 262

[55] Section 3

guaranteed under the Bill of Rights. The Equality clause (section 9) underpins the other rights in Chapter 2 of the Constitution, providing as it does for the "full and equal enjoyment of all rights and freedoms". Its requirement that "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth" has profound implications for the manner in which both representivity and public participation should be pursued.

Beyond the political rights common to most forms of parliamentary democracy, the Bill of Rights includes a number of rights aimed at ensuring the realization of the ideal of a common citizenship, including freedom of religion, belief and opinion,[56] freedom of expression,[57] freedom of assembly, demonstration, picket and petition,[58] freedom of language and culture[59] and freedom of access to information.[60] The freedom of expression clause does not protect the expression of "hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm".[61] This so-called "hate speech" provision, although contested, was seen by the Constitutional Assembly to be necessary in a deeply divided society.

The Bill of Rights also, and unusually, provides for socio-economic rights that are enforceable by the courts to some degree.[62] These include the right to have access to adequate housing, to health care services, to sufficient food and water, and to social security.[63] The state is enjoined to "take reasonable legislative and other measures to achieve the progressive realisation" of these rights.[64] In this sense, as one Constitutional Court judge has put it, the central purpose of the Constitution and the system of democratic, parliamentary governance that it establishes, is to "deliver a social and economic transformation".[65]

[56] section 15
[57] section 16
[58] section 17
[59] section 30
[60] section 32
[61] section 16(2)(c)
[62] sections 26, 27, 29
[63] sections 26 and 27
[64] sections 26(2) and 27(2)
[65] Justice Kate O'Regan of the Constitutional Court at an IDASA workshop on 'The Judiciary and Social Justice', Cape Town, February 1998

Plainly, the role of the legislature as an *agent of change* is central to this enterprise.[66] Thus the national and provincial legislatures may be seen as offering a vital forum where the public can engage with law- and policy-makers on questions of socio-economic transformation. Importantly, these and other rights are enforceable by the Constitutional Court. This provides another point of access for citizens wishing to impact on or force government to fulfil its constitutional obligations.

As with all constitutionally-guaranteed rights, there are concomitant obligations. Having been granted the right to 'participate', citizens are required to comply with, respect and uphold legislative and executive decisions. Thus, it may be argued that, by encouraging the participation of citizens in the process of restructuring and governing the country, we promote a responsive and accountable government whose decisions are accepted and respected by the people. In this sense, public participation may be seen as a process of deepening and consolidating democracy, rather than overburdening it.

South Africa's constitutional framework creates a complex array of new, inter-related and largely interdependent institutions, designed to put in place the checks and balances required for the proper functioning of democracy. This in itself is a considerable achievement. At the same time, those charged with operating the new institutions have acquired significant obligations. Inevitably, there have been growing pains as well as gains. Like other processes, public participation has evolved in the context of a new and rapidly evolving institutional environment.

SUPREMACY OF THE CONSTITUTION

Chapter 1 of the Constitution states that the "Republic of South Africa is one, sovereign, democratic state", founded on a number of values. Section 1(c) provides for "Supremacy of the Constitution and the rule of law" and section 2 states that "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled".

[66] See Calland & Taylor [1997] for a wider discussion of the role of Parliament as a socio-economic agent of change.

The effect of section 1(c) and section 2 is to limit the power of the state, making it clear that the Constitution is supreme and that the state may not act in a manner that is inconsistent with it. All structures, bodies, individuals and institutions are bound by the Constitution. Section 92(3) of the Constitution explicitly requires that members of the Cabinet must act in accordance with the Constitution.

ACCOUNTABLE, RESPONSIVE AND OPEN GOVERNMENT

Amongst the values listed in Section 1 is that of "Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, *to ensure accountability, responsiveness and openness*"[67]. Thus, from the outset, the Constitution establishes the principle of an open and accountable government that responds to its citizenry.

PUBLIC PARTICIPATION IN THE LEGISLATURE

The means by which it must do so extends beyond the granting of formal voting rights at periodic elections. The constitutional sections governing the national and provincial legislatures provide explicitly for public access and involvement. Thus, for example:

> *The National Assembly must – (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and (b) conduct its business in an open manner, and hold its sittings and those of its committees, in public.*[68]

Certain provisions govern limitations to public access, where "reasonable and justifiable ... in an open and democratic society." It is provision (a) that adds a participatory dimension to the South African legislative system.

PUBLIC PARTICIPATION IN THE CIVIL SERVICE

The onus the Constitution lays on the legislatures is extended to the public administration (in Chapter 10). Amongst the principles laid down for the public administration are the requirements that: "people's needs must be

[67] section 1(d), author's emphasis

[68] section 59. Section 72 has the same requirements for the NCOP and section 118 for the provincial legislatures.

responded to, and the public must be encouraged to participate in policy-making",[69] "public administration must be accountable"[70] and "transparency must be fostered by providing the public with timely, accessible and accurate information".[71] These principles apply to "administration in every sphere of government", "organs of state" and "public enterprises".[72]

INSTITUTIONS SUPPORTING DEMOCRACY

> *Human rights commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.*[73]

Chapter 9 of the Constitution provides for a number of independent "state institutions supporting constitutional democracy". From the point of view of public access and participation, the most significant of these is the Public Protector, whose role it is to investigate, report on and act against "any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice".[74] Crucially, "the Public Protector must be accessible to all persons and communities".[75]

> *There is no doubt that the work of the public protector represents an important advance in the promotion of the ordinary person's access to government and ability to obtain redress.*[76]

Other bodies aimed at strengthening the rights of citizens include the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General and the Electoral Commission.

RELATIONS BETWEEN ARMS OF GOVERNMENT

The Constitution allocates particular responsibilities to the different arms of government. The doctrine of the separation of powers is one of the checks

[69] section 195(1)(e)
[70] section 195(1)(f)
[71] section 195(1)(g)
[72] section 195(1)(2)
[73] Commonwealth [1998] VII The Role of Non-Judicial and Non-Parliamentary Institutions, 9-10
[74] section 182(1)(a)
[75] section 182(4)
[76] UNDP [2000] 121

and balances introduced to ensure that power is distributed between the different arms of government. Power is divided between the executive, the legislature and the judiciary.

The most complex of these relationships is between the executive and the legislature. The legislature is the body vested with the power to make laws.[77] However, while the legislature may, after debate and discussion, adopt legislation, the executive takes primary responsibility for the formulation of policy[78] and the drafting of legislation.[79] Although the legislature may initiate or prepare legislation, this happens rarely.[80]

As the body of elected representatives of the people, the legislature is also responsible for maintaining some measure of control over the executive.[81] The executive is accountable to the legislature and is bound to report to the legislature on its actions.[82] The Constitution makes explicit provision for the legislature to maintain oversight over the activities of the executive.[83]

The third arm of government, the judicial authority, is "independent and subject only to the Constitution and the law".[84] The Constitutional Court, as the "highest court in all constitutional matters"[85] may, amongst other things, decide on the constitutionality of any Bill referred to it by the President or a Premier[86] and hear cases brought to it by individuals.[87] In a constitutional democracy, not only do the courts provide an important check on the legislature, they also allow individuals and groups the opportunity to test and enforce their rights. The result is that the courts often become directly involved in policy formulation or even implementation.

RELATIONS BETWEEN SPHERES OF GOVERNMENT

The relationships between the different levels or spheres of government (national, provincial and local) have important implications for public participation. If the public is to impact successfully on the decision-making processes of government, some knowledge of where and how these

[77] See sections 55(1)(a), 68(a), 114(1)(a)
[78] section 85(2)(b)
[79] section 85(2)(d)
[80] sections 55(1)(b), 68(b), 114(1)(b)
[81] section 55 (2)
[82] section 92(3)
[83] sections 42(3)and 55(2)
[84] section 165(2)
[85] section 167(3)(a)
[86] section 167(4)(b), 79 & 121
[87] section 167(6)

decisions are made is important, as is an understanding of the mandate and responsibilities granted by the Constitution to each sphere.

The provincial legislatures are a critical ingredient in the process of broadening public access and participation. Active participation promotes good governance, at least in part, by preventing the separation of the governors from the governed. Provincial governments are, by their nature, closer to the people they represent and their actions are more likely to affect the citizens of that province directly.

Political change at provincial level has been as dramatic as that at national level, perhaps even more so. The Constitution provided for the creation of nine new provinces as political entities, the setting up of new legislative institutions and the incorporation of the former homeland governments. Each province is represented in the National Council of Provinces in the national Parliament. These changes have given new weight to provincial politics and have increased the ability of provinces to wield influence in the national sphere.

RULES, PROCEDURES AND PUBLIC PARTICIPATION

The general principle in most parliamentary democracies is that Parliament makes its own rules and procedures. This is based on the notion that Parliament is a sovereign body, made up of the elected representatives of the people. The South African Constitution, however, provides some limitations to this principle. As we have noted, the Constitution requires that the proceedings of Parliament be held in public. Furthermore, public participation in parliamentary proceedings must be facilitated, a further restriction on the ability of Parliament to regulate its own procedures absolutely.

However, even though the Constitution accords the public a role in parliamentary proceedings, it is debatable whether this diminishes the ability of Parliament to regulate its internal arrangements. While the National Assembly and the NCOP must *facilitate* the involvement of the public, it will be for the courts to decide whether this means that the Constitution grants the public a *right* to participation.

PARLIAMENTARY COMMITTEES

An activist parliamentary committee system which allows unprecedented room for public participation is one of the hallmarks of South Africa's relatively young democracy. Starting tentatively in 1994 — with little experience to build upon — the committees are increasingly playing a key role in ensuring that government is by and for the people.[88]

A defining characteristic of the new parliamentary scene at both national and provincial level is the role and importance the Constitution gives to parliamentary committees. This is supported in the Rules of the national Parliament, which provide committees with extensive powers to monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, of the government departments falling within the category of affairs consigned to the committee. Moreover, a committee may summon any person to appear before it to give evidence or to produce documents required by it.[89]

These substantial powers are in line with international developments and are based on practical considerations. Plenary sessions are unable to deliver the sort of detailed discussion and scrutiny of legislation and policy that modern government requires. Moreover, committees encourage the development of individual and collective specialisation and wisdom in various policy fields, leading to better policies and laws and more effective oversight of the executive arm of government.

Finally, unlike plenary sessions, committees provide a point of entry for the public. In this sense, the shift towards more influential committees is in line with the shift away from a purely representative towards a more participatory model of democracy. Committees have become the critical institutional sub-structure through which the legislature and the public can interact. They constitute, therefore a key site for public participation.

[88] PSP newsletter, Edition 9, June-August 2000, 1

[89] For a general discussion on the development and powers of committees, see Calland (1997). For a general overview of committee development in some of the provincial legislatures, see Molatedi (1998).

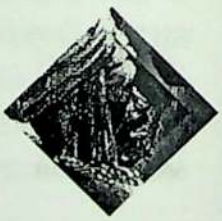
Case Study: The Making of the Constitution

The Constitutional Assembly Public Participation Programme (CAPPP) aimed to involve as large as possible a section of the population into the constitution-writing process. An important focus was to ensure that marginalised groupings had access to constitution making.

> *Six theme committees were set up by the Constitutional Assembly to collate and consider submissions from a wide variety of stakeholders, including organs of civil society, ordinary individuals, political parties and all those who had an interest in contributing to the new Constitution. The South African population was exhorted to participate in the constitution-writing process in hundreds of advertisements on buses, taxis and billboards, in newspapers, pamphlets and posters, and on radio and television ...*
>
> *Popular participation ... was made possible by encouraging the population to make submissions in their own languages, resulting in approximately 2.5 million written submissions ...*[90]

All official languages were used in publications and advertising. Media with maximum outreach, like radio, was used to carry messages, particularly to rural communities. An education programme was run in all provinces and thousands of public meetings were held in rural areas. In addition, national sector hearings were held in order to ensure the participation of organised sectors, providing them with an opportunity to engage directly with the drafters on particular issues.

Overall, the Constitutional Assembly displayed a commitment to engage directly with all members of the population, not only those who were already in a position to impact on policy. The national hearing on socio-economic rights, for example, had a significant impact on the eventual content of the Bill of Rights.



[90] Houston et al [1999] 37-8

SECTION 2

PUBLIC PARTICIPATION: REFLECTIONS ON THE ENVIRONMENT



6
THE ROLE OF COMMITTEES

The role of ... committees ... is to ensure executive accountability to an informed Parliament. Committees provide an important space for intervention by minority parties and the public, so increasing opportunity for informed public debate on policy and legislation.[91]

The model adopted by the national Parliament provides an example of a committee system that has been structured to meet its constitutional obligations.

The National Assembly has twenty-five portfolio committees, each of which focuses on the work of one of the twenty-five government departments. The NCOP has eleven select committees, nine of which broadly correspond to clusters of government departments. Both the National Assembly and the NCOP have committees that deal with private members' legislative proposals. There are also joint committees, *ad hoc* committees and 'house-keeping' committees. Party political representation on committees is proportional to the number of seats each party has in Parliament. This allows for the views of the minority parties to be heard and taken into account. In

[91] PSP newsletter, Edition 9, June-August 2000, 2

two instances in the present National Assembly, committee chairs are members of minority parties.

COMMITTEES AND EXECUTIVE OVERSIGHT

The Constitution requires that the National Assembly "provide for mechanisms ... to ensure that all executive organs of state in the national sphere of government are accountable to it" and "maintain oversight of ... the exercise of national (provincial) executive authority ... and any organ of state".[92] The provincial legislatures are granted similar rights and obligations in respect of the provincial executive and other bodies.[93] Oversight is exercised through the various committees in the legislatures and is essential to the fulfilment of the values of accountability, responsiveness and openness enshrined in the Constitution.

Although the NCOP has no formal oversight role, the Constitution grants it certain powers to summon people to give evidence or produce documents; require any institution or person to report to it, and "receive petitions, representations or submissions".[94] It has been pointed out that, while the Constitution does not explicitly require the NCOP to perform an oversight function, "various provisions leave no doubt that the NCOP must exercise oversight as defined by its constitutional mandate."[95] The power that the oversight role gives to the National Assembly and the legislatures may be illustrated by the relative weakness of the NCOP in this respect (see further Chapter 7).

UNDP has noted that, if the National Assembly is to continue to monitor the work of the executive effectively, some changes to the present structure may be necessary. Increasingly, there is a tendency for the executive to establish interdepartmental committees to consider policy of common concern. President Thabo Mbeki has introduced a system of collaborative cabinet clusters that bring ministries together in order to promote better co-ordination of policy and a more efficient use of resources. It has thus been argued that, "If they are to maintain effective policy coherence and

[92] section 55

[93] section 114

[94] section 69

[95] Corder, Jagwanth & Soltau (1999)

oversight of the executive, parliamentary committees will need to respond and adapt to these changes".[96]

Another problem raised by UNDP is a lack of clarity both on how and when the executive can be called to report to Parliament and what the nature and content of that reporting should be. The Report calls for "regulations or even legislation to clarify procedures for parliamentary oversight".[97] A report prepared for Parliament by the Faculty of Law, University of Cape Town,[98] stresses the need to strengthen the means available to the legislatures to ensure accountability. Amongst other things, it recommends a change to the present practice of funding the various "state institutions supporting constitutional democracy" via the budget vote of departments of State and suggests that "legislation be considered to guarantee the independence and accountability of constitutional institutions". The report also recommends the establishment of a Parliamentary Standing Committee on Constitutional Institutions to scrutinise the reports of the constitutional bodies and make recommendations on their budgets to Parliament.

Committees are likely to be assisted in their oversight role by the new Public Finance Management Act, which requires that government departments set performance targets for delivery and for individual managers. By providing a framework for assessment, committees will find it easier to exercise their oversight function.[99]

COMMITTEES AND PUBLIC PARTICIPATION

> *There is a need for Parliament to access people who have something different to say.*[100]

It has been noted that committees in the legislatures offer the most important platform for public participation. Public hearings seek to obtain the views of civil society on draft legislation and policy. Members of the public may also be invited to make written or oral submissions to a committee.

[96] UNDP [2000] 79

[97] UNDP [2000] 87

[98] Corder, Jagwanth & Soltau [1999]

[99] PSP newsletter, Edition 9, June-August 2000, 2

[100] Barbara Hogan, Finance Committee chair, quoted in PSP newsletter, Edition 9, June-August 2000, 4

However, for the reasons outlined in Chapter 4, the system tends to favour those with the resources to attend and make submissions at public hearings. Committees in the National Assembly are making efforts to remedy this situation. National Assembly Chairperson of Committees, Johannes Mahlangu says that:

> *Parliament is currently trying to make provisions in its budget to enable those without funds to travel to Cape Town to make presentations ... and is also looking at the possibility of going out to the people in order to hear their views.*[101]

As discussed below, the Gauteng Provincial legislature has demonstrated its commitment to public involvement through its law on public petitions. However, in its assessment of public participation in the activities of the legislatures, the UNDP report notes that legislatures and civil society presently have very limited opportunities to contribute to the formulation of the national budget. It recommends, amongst other things, that:[102]

- Parliament be given amendment powers in line with international best practice, which suggests, as a minimum, the power to decrease expenditure and increase tax.
- Portfolio committees be given the power to suggest amendments in the plenary session.
- The draft budget be released in December or January to allow Parliament and civil society sufficient time to voice their concerns and develop alternative proposals.
- More time be allocated for committee debate relative to general debate in the plenary session.

GENERAL CONSTRAINTS ON COMMITTEES

There are a number of general constraints on the optimal functioning of committees. Perhaps the most obvious of these is the inadequacy of budgets and staffing in the legislatures. This means that some committees inevitably work better than others. In the National Assembly, for example, one researcher is shared by three committees,[103] despite the fact that:

[101] Johannes Mahlangu, quoted in PSP newsletter, Edition 9, June-August 2000, 4

[102] UNDP [2000] 87

[103] PSP newsletter, Edition 9, June-August 2000, 3

> *We have worked through a legislative programme that is more intense than in any parliament in South Africa in the past and probably in the world.*[104]

Another constraint relates to the power and importance of the political party in Westminster-style systems, particularly where the ruling party is politically and electorally strong. In such systems, members of the national cabinet and provincial executive committees are also members of their respective legislatures. The effect is to blur the separation of powers between the executive and the legislature, thereby weakening the institutional framework. On the plus side, however, Cabinet is likely to be more directly accountable to Parliament, and its members more accessible to MPs and thus public concerns. The point has been made, however, that:

> *Members of Parliament (MPs) are constrained by the need to balance political oversight of the executive with the need to understand and take into account the fact that the executive is under immense pressure from very powerful vested interests. Indeed, MPs themselves may experience similar pressures.*[105]

The effect of a powerful majority party is not necessarily to weaken the public participation process. Indeed, the reverse may be true, especially where the majority party is able to commit itself without reservation to the practical implementation of an extensive public participation process. Public participation may, however, be weakened if party managers and strategists are persuaded, for strategic or other political reasons, that meaningful public consultation should be kept to a minimum. Should this happen, the current electoral system, in harness with the fundamental institutional weaknesses of a Westminster-based parliamentary system and the relative dominance of a majority party, could well result in a decline in public participation. The public participation process needs to be designed with this in mind. It should be robust and as independent as possible of party political pressures.

Case Study: Bringing science and technology closer to the people[106]

The Portfolio Committee on Arts, Science, Culture and Technology, chaired by Dr Wally Serote, has developed a programme that aims not

[104]Dr Gavin Woods, Chairperson of the Standing Committee on Public Accounts, PSP newsletter, Edition 9, June-August 2000, 3

[105]UNDP (2000) 79

[106]PSP newsletter, Edition 9, June-August 2000, 2

only to bring people closer to the legislative process by helping demystify science and technology, but also draws on the rich cultural traditions and indigenous knowledge of the people.

The *Indigenous Knowledge Systems Programme* seeks to codify indigenous knowledge, protect and promote indigenous knowledge within a legal framework and harness indigenous technology in rural development and international trade. The committee has been collecting indigenous knowledge systems, including engineering and farming practices, soil and water conservation, wild food products, fermentation techniques, storage, medicinal products, energy systems, arts, crafts and musical instruments.

In this very real sense, the knowledge, the expertise and the cultural forms of often-neglected sectors of our society are drawn into the mainstream of political and economic life. Programmes such as this contain a promise that, one day, people will participate in the affairs of state, not as outsiders, nor as supplicants or people requiring special training and support, but as equals participants in the national project.



7
THE ROLE OF THE NCOP AND PROVINCES

The decentralisation of power and decision-making offers greater potential for the representation of women and diverse interests. This is not, however, an automatic consequence. Participation in mainstream social, political and economic activity depends on the types of choices and access to opportunities that are made available to the poorest people.[107]

The enhanced role of provinces has resulted in a number of challenges. The system offers new opportunities in shaping the direction and role of national and provincial government.[108] However, the new provincial legislative and executive structures have placed a variety of complex demands on politicians and officials, who have been forced to confront issues and practices without recourse to precedent.

THE NCOP AND SECTION 76 BILLS

The role of the NCOP and provinces in vetting legislation is a case in point. Given the relatively limited range of exclusive provincial powers,[109] the area in which the provinces have the greatest impact is in the realm of concurrent (or shared) national-provincial powers – in other words, powers that affect the provinces.[110]

Section 76 bills (so named because Bills that affect provinces must be passed in accordance with section 76 of the Constitution) offer provinces the greatest opportunity to influence law and policy on socio-economic transformation. The NCOP must refer section 76 bills to the provincial legislatures and the amendments proposed by each province must be considered. Each ten-person delegation has one vote, for which a mandate must be given by the provincial legislatures.

The fact that the NCOP must obtain mandates on some national legislation in itself opens up a significant opportunity for public participation. For the first time, national legislation is being debated in the provinces, giving the public the opportunity to impact on national policy in the provincial legislatures.

[107] UNDP [2000] 81

[108] See Newham [1998]

[109] Schedule 5 of the Constitution

[110] Schedule 4 of the Constitution

However, concern has been raised about the amount of time allowed to provincial legislatures and the NCOP when dealing with section 76 Bills and the impact this has on public participation. Usually, provinces have a relatively short period of four weeks to give feedback to the NCOP. This puts considerable pressure on provincial legislatures which must not only mandate their NCOP delegations in line with the requirements of section 76, but which may wish to arrange an extensive public participation process before doing so.

The relationship between the procedures laid down for section 76 bills and the requirement for public participation needs further consideration.

THE NCOP'S POWER TO COMMAND THE PRESENCE OF MINISTERS

As noted above, the NCOP has a lesser role in demanding accountability from the executive. The lesser influence of the NCOP in commanding the presence of Ministers was illustrated when, in March 1998, the then Chairperson of the NCOP, Lesuia Lekota, took Cabinet Ministers to task for what he described as a "dismissive" attitude to the NCOP. He charged that several Ministers had absented themselves from the House during regular question time and had also failed to draft written responses to tabled questions. When the Ministers responsible for the Adjustments Appropriation Bill failed to turn up to deal with questions relating to the Bill, sending the Minister of Finance in their place, the Chairperson postponed the matter, insisting that the relevant Ministers present themselves to the House. In an interview, he later said:

> *They tend to speak of the Assembly as though that is the whole of Parliament ... There was even an attitude prevailing at the time that the NCOP had no oversight role. Clearly, this reflected a failure to understand the important role of the NCOP. We had put up with the situation for over a year. Ministers would not attend and did not send apologies. We had suffered this humiliation in the NCOP for the better part of a year.*[111]

Lekota pointed out that, after tempers had cooled and reason prevailed, "there was total agreement that it was the necessary and correct step to have taken".

The Report of the Faculty of Law, University of Cape Town, provides some guidance on the role of the NCOP in respect of oversight:

[111] NCOP [1999] 25

The NCOP is constitutionally enjoined to represent provinces in the national sphere, and local government is also represented in the national sphere by the NCOP. Thus, the NCOP is not to oversee all of national government; it is to exercise oversight over the national aspects of provincial and local government. Its goal in doing this is to contribute to effective government by ensuring that provincial and local concerns are recognised in national policy making, and that provincial, local, and national governments work effectively together. In this way the NCOP needs to respect the oversight roles of both the provincial legislatures and the National Assembly. A provincial legislature must conduct oversight of the provincial executive. This will include oversight of programmes contained in national legislation that the provincial executive is expected to implement and for which the province receives national funding. The National Assembly is primarily responsible for overseeing the national executive. However, neither provincial legislatures nor the National Assembly are in a position easily to identify and act upon problems with those national policies that are implemented by provincial executives. The NCOP is uniquely situated to fulfil this role.[112]

THE NCOP AND SALGA

The opportunity for national representation of the views of citizens was increased by the passage of the Organised Local Government Act, which created the South African Local Government Association (SALGA). Each of the nine provincial local government associations nominates up to six delegates to a national pool, from which SALGA's national executive chooses delegates to participate – depending on the issues arising from legislation. These delegates make up a pool of fifty-four who participate (although they may not vote) in the NCOP.[113] The significance of SALGA was emphasised by Mohammed Bhabha of the NCOP:[114]

Clearly the status of local government has been elevated to that of a key player in government. It has become an intrinsic element of policy-making in this country. This is in recognition of the key role local government will play in the development of the country and in deepening participatory democracy. It stands as a monument to the ideals for which our people fought to ensure that their voices, however humble, will be heard no matter how hallowed the corridors of power may be.[115]

[112]Corder, Jagwanth & Soltau [1999]

[113]See NCOP [1999] 37-40; UNDP [2000] 82

[114]Chairperson of the Select Committee on Constitutional Development and Public Administration and permanent delegate from Mpumalanga

[115]NCOP [1999] 40

PUBLIC PARTICIPATION: NCOP OR PROVINCIAL LEGISLATURES?

The approach the NCOP has adopted on public participation is that this should take place in the provincial legislatures. Thus, mandates reached by the provincial legislatures[116] should be informed by the views of the public in each particular province. The two biggest difficulties provinces face are resources and time. As noted above, the four-week cycle demands very tight planning and hardly affords the time to prepare for large-scale public participation.

Select Committees do, of course, sometimes attend joint public hearings with their counterparts in the Assembly. There is also nothing in the NCOP Rules to prevent Select Committees from holding their own public hearings.

At an NCOP workshop in November 1998, provinces called on the NCOP to play a co-ordinating role concerning public participation. It has also become clear that public participation in the NCOP cannot succeed without an extensive public education programme. Without this, the NCOP risks being what its present Chairperson, Naledi Pandor, has described as "an invisible institution".[117]

Despite these and other efforts, it is clear that the public remains largely unaware of the opportunities for public participation at the provincial level. According to the HSRC Survey conducted in September 2000, almost nine out of ten South Africans said that they had insufficient or no knowledge about the functions of provincial government, 89 percent never attend a public hearing of a provincial legislature and more than 90 percent never make written submissions to public hearings at provincial legislatures.[118] Significantly, focus group interviews conducted in March 1999 demonstrated "a direct relationship between lack of knowledge about the role of provincial legislatures and willingness to participate".[119]

The Constitutional Assembly process described in Chapter 5 offers valuable lessons for a culture of broad involvement and participation. Applied in the provinces, these lessons could assist in enhancing the legitimacy of provincial government.

[116] NCOP [1999] 20

[117] NCOP [1999] 21

[118] Media Release, Human Sciences Research Council, 30 November 2000

[119] Houston et al [1999] 16

8
THE ROLE OF THE EXECUTIVE

Lawmaking has its roots in policy. In pursuing the argument that participation by the public must extend beyond that of simply casting a periodic vote at election time, it follows that the executive must engage with the public when drawing up and formulating policy. It is not sufficient, as it may be in a purely representative democracy, for the government simply to formulate policy in accordance with its party manifesto. As described in Chapter 5, the Constitution obliges the executive to respond to the needs of the people and encourage the public to participate in policy-making.[120] It also stipulates that "transparency must be fostered by providing the public with timely, accessible and accurate information".[121]

Indeed, as discussed later in connection with older democratic systems where no such constitutional obligations exist, it is often simply more efficient to consult the public *before* drawing up policy. It has been argued in South Africa too that it is at the policy making and legislative drafting stages that public input may prove most valuable. This is, after all, when the aims and objectives of the legislation are established and the mechanisms to achieve them mapped out.

Generally speaking, policy is conceptualised by the executive. The policy formulation process is usually a two-step process, including a (discussion) Green Paper, which is published for comment and a (policy) White Paper. The process whereby a Green or White Paper is drawn up is often a lengthy one and may involve consultations within the department responsible for making policy in the area, with the relevant parliamentary committee(s), with other experts or stakeholders and with the public.

The publication and dissemination of Green and White Papers help promote public involvement in policy formulation. Despite time and cost implications, this is certainly a worthwhile investment. Public involvement in policy formulation and the subsequent drafting of legislation makes it more likely that laws will be respected and obeyed. Certainly, the public participation processes followed by the Constitutional Assembly during the drafting of the

[120] section 195(1)(e)

[121] section 195(1)(g)

Constitution appear to have resulted in a founding document that is widely accepted and used.

Legislation, whether or not it is preceded by a policy paper, is also generally drafted by the executive. The public is seldom involved at this stage, although there are some exceptions to this rule.

A Case Study: Drafting Policy in a Co-operative Way[122]

Although the development of policy is generally considered the prerogative of the executive, the White Paper on Local Government was drafted through a process that involved both the executive and legislative levels of all three spheres of government.

The drafting team consisted of a political committee, consisting of members of the national and provincial legislatures and two local councillors, and a technical committee, consisting of representatives from local government, civil society organisations, researchers and civil servants.

A three-phase process was devised, with comment periods for each.

One of the most comprehensive examples of a public participation and consultation in policy and legislative drafting is provided by the extensive work of the Project Committee on Juvenile Justice of the South African Law Commission on the Child Justice Bill. The methodology adopted by the project committee will be described in some detail as it contains all the elements required for a successful public participation process and, therefore, offers a useful model on which to base other efforts.

The purpose of the project was to develop a procedural and legislative framework to deal with young offenders and accused. Following South Africa's ratification of the Convention on the Rights of the Child in 1995, there was deepening concern about the treatment of juveniles in the justice system. The challenge was to create a framework that, first, conformed to South Africa's constitutional requirements and international obligations with respect to children; second, was realistic, affordable and workable, and

[122]Summarised from an account by UNDP [2000] 81-2

third, that took account of public alarm about rising levels of crime and the perceived failure of the justice system to deal with young accused and offenders.

From the outset, the project committee was acutely aware that the successful transformation of the child justice system would need the understanding and support of all stakeholders. Those targeted included experts, officials and practitioners throughout the criminal justice and social welfare systems, government departments, NGOs, parliamentarians and the media. Uniquely, a workshop was arranged to consult the views of child offenders, considered by the project committee to be "experts in their lives".[123] Every aspect of the legislation was considered, including a careful costing of the proposed system.

Funding was raised to make a video, conduct special briefings and run workshops throughout the country, targeting both general and specialist audiences. Particular attention was given to ensuring that audiences understood what was being proposed so that they were able to comment in an informed manner. Thus, a plain language summary of proposals and a questionnaire identified and explained key issues, while members of the project committee attended and assisted at all workshops. The media were kept informed throughout.

The consultation with the children provides an excellent example of how public participation can strengthen policy and legislation.

Case Study : Consulting the Children[124]

Article 12 of the Convention on the Rights of the Child requires that "State Parties shall assure to the child who is capable of framing his or her own views freely in all matters affecting the child the views of the child be given due weight, in accordance with the age and maturity of the child".

The project committee on juvenile justice wanted to test its ideas about a future child justice system with the very people it would most affect – children themselves. In order to do this, the project committee

[123]Interview with project committee member, Associate Professor Julia Sloth Nielsen

[124]Summarised from a paper by Skelton (2000)

teamed up with the National Institute for Crime Prevention and Reintegration of Offenders (NICRO). The aim of the project was to explain the proposals to the children, and to hear their opinions on it. A broad spectrum of children was involved, from a range of different socio-economic backgrounds. All, save a control group of children who had had no contact with the criminal justice system as alleged offenders, had been accused of having committed a crime. Some were in a diversion programme; some were over the age of 14 years and awaiting trial in a welfare-run care facility; some were below the age of 12 years and awaiting trial in a welfare-run care facility; some were awaiting trial in prison; some were serving prison sentences, and some were serving sentences in a reform school.

The children were asked to respond to a range of different questions.[125] For example, the draft Bill proposes a range of diversion options, including "orders" which can be made by the magistrate. The project committee was sensitive to the fact that some of these orders might be seen as being rather restrictive of children's rights, and felt that it was very important to get their opinions on these. The orders include supervision orders, compulsory school attendance orders, family time orders and positive peer association orders.

Seventy percent of the children responded positively to the idea of supervision orders, saying things like "Yes, because it was gonna help me to be more responsible and aware of the people I asociate with" and "It would keep me out of more trouble". Some (29.3%) felt that it would not have a strong enough impact and that children would be likely to commit further crimes.

Most of the children felt that a compulsory school attendance order would be useful. They commented as follows: "It will keep me busy"; "It could take my mind off bad things"; "Because you are every day at school, away from the street"; "It would have been better because in places like this (a reform school) many things that is bad happens here."

Family time orders require children to be at home with their families at

[125]The NICRO report was later summarised, edited and published with quotations from the children themselves. Community Law Centre [1999]

certain times. For example, a child might be required to be home by 5pm and stay at home for the evening on weekdays. Again, the majority of children felt that this would be useful. Some added additional requirements such as: "Spending most of your time helping around the house."

Positive peer association orders proved to be the most controversial. Just over half of the group thought they were a good idea, recognising that bad friends are often the reason children get into trouble. However, 44.8 percent raised concerns about these orders, saying that a person's friends cannot be chosen for them, and that they would be "very difficult to monitor."

The project committee found the feedback from children regarding the orders very useful, and a number of the concerns they raised were dealt with in the final version of the Bill.

The comments from children about the sentencing provisions in the draft Bill were interesting. Perhaps their views were influenced by the limited options currently available, but they were generally rather retributive in their suggestions for sentences for children committing serious crimes. Most of them opted for long periods of imprisonment; a small number felt that the death penalty was appropriate, and one or two of them even felt that severing of limbs might be appropriate. In order to understand these unexpected responses properly, we would need to know a lot more about the children and their particular situations. Clearly they did not see themselves as the people needing to be dealt with in this harsh way. Perhaps they actually see themselves more as victims than as offenders.

The fact that the project committee offered a range of sentencing options that were more progressive than the children's suggestions raises an important question; "What weight should be given to the views of children?" The intention of the committee was to conduct a genuine consultation process whose results would affect the final outcome. This meant we had to take children's views seriously.

> At the same time, the Convention and the Constitution require us to make the best interests of children paramount, and to ensure that our system uses imprisonment only as a measure of last resort.
>
> In a postscript to a judgment *(Christian Education South Africa v Minister of Education)* of the South African Constitutional Court, Justice Albie Sachs remarks that it was unfortunate that the court had not had the benefit of hearing the views of the children who would have been affected by the decision. He continued: "Their actual experiences and opinions would not necessarily have been decisive, but they would have enriched the dialogue, and the factual and experiential foundations for the balancing exercise in this difficult matter would have been more secure."
>
> It can be said that the participation of children in the lawmaking process in South Africa has enriched the dialogue and has, in fact, gone further. A member of the project committee, writing about the children's participation process, has said: "The children's views have been reflected fully in the final Law Commission report. Their insights have influenced several provisions directly, and many others indirectly. As a first for law reformers in this country, an important benchmark towards hearing the voices of children has been set."[126]

The Child Justice project brings together many of the elements identified as crucial to successful public participation. It contained a strong public education component; it involved active outreach to a wide variety of affected sectors and stakeholders; it took careful steps to ensure that those targeted understood and were therefore able to comment on the issues raised, and it took those comments and views into account. In doing so, the project was also able to identify potential problems, test procedures and consider cost and other implications, thereby arriving at a legislative framework that takes account of all aspects relating to its implementation.

[126] Sloth Nielsen [1999] 19

9
OTHER INSTITUTIONAL ARRANGEMENTS AFFECTING PUBLIC PARTICIPATION

Effective public participation depends not only on dedicated institutions and procedures but on the creation of a broader environment in which general rights can be exercised and the empowerment of marginalised groups pursued. This chapter deals briefly with some of these institutions and arrangements in order to highlight the role they play in strengthening and promoting the transformation of society as a whole. In so doing, they underpin the right of all South Africans to a voice in the decisions that affect their lives.

THE ROLE OF THE JUDICIARY

> *People should have easy and unhindered access to courts, particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed.*[127]

The judiciary, as the third arm of government, has a critical role to play.

Citizens can use the courts to enforce their rights against government and others and, in this way, may influence the manner in which policy is implemented. With the adoption of the Constitution, this right has been greatly extended. Constitutional litigation offers citizens a fairly direct way of intervening and thus participating in the implementation of government policy. Indeed, public interest litigation, used in a limited way during the apartheid years, is now thriving in South Africa.

The fact that the Bill of Rights contains socio-economic rights, which are enforceable to a limited extent, creates further scope for citizens to use the courts to shape government policy.

Case Study: the Grootboom case[128]

There has been much debate about whether the courts can enforce the social and economic rights in the Constitution. This was put to the test

[127]Commonwealth [1998] 1.6

[128]'NGOs weigh their own Grootboom' chances, Stan Winer, *Sunday Independent*, October 15 2000

in what became known as the Grootboom case heard by the Constitutional Court in October 2000.

Irene Grootboom is one of a destitute group of 510 children and 390 adult squatters stranded on a sports field in the Oostenberg municipality of the Western Cape. Judge Zac Yacoob, in a judgement supported unanimously by the other ten judges, described their living conditions as "lamentable". The court ruled that the state has an obligation to implement an effective housing plan and to provide emergency shelter to destitute people.

The judgement has major implications for Government policy on housing, social services, health and welfare. Geoff Budlender, who argued the case in the Constitutional Court on behalf of the Human Rights Commission and the Community Law Centre of the University of the Western Cape, said:

The Constitution says the government must take 'reasonable' steps to achieve the right of access to adequate housing, water and health services ... The courts will decide whether the government's programmes comply with its duties under the Constitution. This does not mean that the courts will take over the business of running the government. It is for the government to decide how to perform its constitutional duties.

In the Grootboom situation, the government must decide what land should be made available to homeless people, how they should be assisted to obtain effective shelter, and how basic services should be provided to them. But what the Grootboom decision means is that if the government does not make these decisions and implement them effectively, the court will order it to do so.

The decision also means that for government programmes to be 'reasonable' and meet the requirements of the Constitution, they must cater for the requirements of people who are in desperate need.

Special legislative provisions, such as the procedures for public inquiry laid down in the Administrative Justice Act (sections 6-8); the establishment of Children's Courts proposed in the Child Justice Bill and of special courts set up to deal with sexual offences and maintenance matters are all designed to promote better access to and exercise of rights.

It goes without saying that the way in which these institutions conduct

themselves with regard to the public and the efforts they make to ensure that their proceedings are easy to access and understand is crucial.

THE ROLE OF INSTITUTIONS SUPPORTING DEMOCRACY AND OTHER BODIES

Chapter 9 of the Constitution provides for the establishment and lists the duties of state institutions aimed at strengthening democracy. These institutions are established by legislation and are accountable to the National Assembly, to which they must report at least once a year.[129]

Public Protector

The role of the Public Protector is to investigate and report on "any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice", and to take remedial action where appropriate.[130] The effectiveness of this office depends, crucially, on its ability to reach out to communities throughout South Africa. In May 1999, the Public Protector launched a national public awareness programme, funded by the European Union Foundation for Human Rights in South Africa and targeting the public service, government agencies and parastatals and NGOs active in rural areas.

> *The project aims ultimately to increase the ability of the target groups to access the office of the Public Protector through having an informed Public Service and by empowering rural communities to seek redress and be protected against corruption and malpractice more effectively.*[131]

Mr Eduardo Menem President *pro tempore*, Senate of Argentina has underlined the importance of this function internationally:

> *To safeguard the balance between the three powers, many states have put in place formal institutions to deal with possible conflicts between the citizens and the government or between the three branches. Based on an outstanding Nordic tradition, Argentina has established the Office of the Ombudsman that reports to the national parliament. The role of this body is to protect the interests of the citizens, groups of citizens and the community in general in the face of any government act that violates the fundamental rights of citizens. The results of this institution in Argentina have been very promising. Its existence has also allowed for greater participation of the citizenry in the oversight mechanism. In some*

[129] section 181(5)

[130] Public Protector Act of 1994

[131] Press statement issued by the Office of the Public Protector, 20 May 1999

countries, the Ombudsman reports to the executive branch. But the experience from Argentina supports the general view that this institution should report to the legislative branch.[132]

The South African Human Rights Commission

The South African Human Rights Commission has a broad mandate, which involves the promotion and monitoring of human rights in South Africa. It has powers to investigate and secure redress, and to carry out research and educate. It must also require the state to provide it with information on measures taken towards the realisation of rights concerning "housing, health care, food, water, social security, education and the environment".[133] The Commission may also be granted "additional powers and functions prescribed by national legislation".[134] Thus, for example, the Promotion of Access to Information Act requires that the SAHRC perform various functions including the publication of a guide on how to use the Act and reporting annually to the National Assembly. It must also, "to the extent that financial and other resources are available", provide other services, including the provision of assistance and advice and "develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act".

Commission on Gender Equality

The Commission on Gender Equality (CGE) includes amongst its functions "the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality".[135] South Africa is a signatory to CEDAW and participated in the Beijing Platform of Action. It has thus committed itself to observe international requirements in respect of women. The CGE acknowledges the need for public participation. Thus:

In the execution of its duties, the CGE will endeavour to bring to the centre the voices and experiences of the marginalised, to become part of, and to inform, the nation building and transformation agenda of South African society.[136]

[132]UNDP [1997] Part 4. Forum for Parliamentarians, *Creating Enabling Environments*

[133]section 184(3)

[134]Promotion of Access to Information Act, Part 5

[135]section 187(2)

[136]Commission on Gender Equality [website] *Vision and Mission*

Its Action Programme 1999-2000 contains a number of educational and outreach elements. Projects are undertaken in partnership with other organizations. The CGE is, however, concerned about the lack of resources to promote the rights of women.[137]

It also expresses concern about the "major challenge" of establishing good working relationships with the Office on the Status of Women (OSW)[138] and the Houses of Traditional leaders at National and Provincial levels. "If we are to make a success of our mandate to promote and protect gender equality in the rural areas this sector is crucial."[139]

The Independent Communications Authority of South Africa

The Constitution also makes provision for an Independent Authority to Regulate Broadcasting (IBA). In 2000, the Independent Communications Authority of South Africa (ICASA) replaced the IBA, also subsuming the South African Telecommunications Regulatory Association (SATRA). The IBA is charged with ensuring "fairness and a diversity of views broadly representing South African society".[140] One of its most important duties in respect of the promotion of public participation is the licensing of community radio stations in a manner that promotes community empowerment, the dissemination of information and opportunities for ordinary citizens to express their views.

Other institutions and bodies with a bearing on public participation

It is difficult to be exhaustive about institutions and bodies with a bearing on public participation.

Other Chapter 9 institutions include the Electoral Commission, which obviously has a key role to play in ensuring that citizens are able to exercise their formal voting rights during regular "free and fair" elections. The

[137]Commission on Gender Equality [website] *Background*, section 3

[138]The Office on the Status of Women was established in 1996 and is located in the President's Office. It is intended to coordinate gender desks in each government department. These desks are charged with reviewing department policy and developing strategies to ensure integration of gender concerns in policy and planning. They also undertake investigations of reported gender discrimination.

[139]Commission on Gender Equality [website] *Background*, section 4

[140]section 192

proposed role of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, also required by the Constitution, is to "promote respect for the rights of cultural, religious and linguistic communities" and "promote and develop peace, friendship, humanity, tolerance and national unity" amongst these communities.[141] This Commission has not yet been established, although draft legislation is before Cabinet.[142] Like the Office of the Auditor-General, also required under Chapter 9, it has no direct bearing on public participation. The important point, however, is that these bodies "are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year".[143] This puts their activities and accountability firmly in the public domain. As discussed above, the report prepared by the Faculty of Law of the University of Cape Town has made recommendations on ways to strengthen parliamentary oversight of these institutions.

Of the numerous other bodies, commissions and task groups set up by government, two are of particular relevance to public participation: the National Economic Development and Labour Council (NEDLAC) and the Government Communication and Information System (GCIS).

NEDLAC is a product of worker struggles in response to the 1988 attempt by the Nationalist party government to amend the Labour Relations Act (LRA) in an effort to curb union power. Finally, in 1990, unions, employers and government signed the Laboria Minute, in terms of which it was accepted that all future labour law would be considered by employer bodies and the major union federations *before* it was sent to Parliament. As part of the agreement, unions would participate in the National Manpower Commission (NMC), reconstituted as a more powerful body. A second impetus was the apartheid government's attempt to impose Value-Added Taxation (VAT) in late 1991. Labour demanded a role in the formulation of macroeconomic policy. This gave rise to the establishment of the National Economic Forum (NEF) in 1992. When the first democratic government was elected in 1994, NEDLAC was created by an Act of Parliament (Act 35 of 1994), taking over the

[141] section 185

[142] According to the Mr Johan Beukes of the Department for Provincial and Local Government, 12 February 2001.

[143] section 181(5)

role of the NMC and the NEF. According to then President Nelson Mandela, speaking at the launch of NEDLAC:

> *Democratisation must reach beyond the narrow governmental domain ... [NEDLAC] represents the broadening and deepening of our democracy, by directly engaging sectors of society in formulating policies and in managing institutions that govern their lives.*

Relations between business, government and NEDLAC have shown signs of strain. UNDP attributes these to a combination of factors, including the immaturity of the institution, a lack of capacity amongst the various constituencies, weak links with mandating constituencies, disagreements about whether or not economic policy should be discussed by NEDLAC and the lack of a united strategic vision.[144] Intersecting relationships also complicate the picture, such as the now fairly tense relationship between Cosatu and the ANC in the Tripartite Alliance and the inclusion of Cosatu members on the ANC list. There have also been criticisms that NEDLAC undermines the sovereignty of Parliament.

The GCIS was set up in terms of the recommendations of the Task Group on Government Communications (COMTASK) which reported to the then Deputy President, Thabo Mbeki in October 1996. The report[145] noted that:

> *In South Africa, where government's attempts to open up such a relationship are as young as our democracy itself, and where the majority of the population has never experienced (and is still indeed generally not experiencing) such a relationship, the challenge is great. Where other democracies have had the advantage of a long evolution of ideas and practice, trial and error, South Africa urgently needs to do, in a short period of time, what other democracies have had years to perfect. In short, we must preserve and nurture our fragile democracy, and we must build a human rights culture through the length and breadth of our society.*[146]

The Report:

> *takes account of the fact that large parts of our society are information deprived. The worst scenario can be seen in our remote rural areas where some 30% of South Africans – the majority of them women – live poor, isolated and out of touch with the rest of the country and, hence, with democracy itself.*
>
> *No task is greater or more pressing than finding ways to alleviate the isolation of those who, through apartheid, poverty and present circumstance are deprived of the information with which to take control of their lives and enter into dialogue with government.*[147]

[144]UNDP [2000] 162-64

[145]Comtask [1996]

[146]Comtask [1996] 8.1

[147]Comtask [1996] 8.10

The Report recommended a new structural framework for government communications, replacing the politically-tainted South African Communication Service that had been extensively used as a propaganda arm of the former regime. Underlying all the recommendations of the report was the need to reach, by a variety of means, the entire South African population, in order to bring them into dialogue with government. The GCIS was established in 1997 under the direction of the Office of the President. As the communication arm of government, its role is, amongst others things, to serve the information and communication needs of all South Africans.

POLITICAL PARTIES AND THE ELECTORAL SYSTEM

There are various aspects of the electoral system that have a bearing on public participation.

In the South African electoral system of proportional representation based on party lists, it is the political parties rather than individual candidates who receive their mandate from the public. The political party lists determine who the individual representatives are. The advantage of this system is that it binds representatives more strongly to party policies and programmes; the disadvantage is that it may result in a lower level of personal, community and lobbying services than is generally offered by constituency-elected representatives. The onus is thus on the political party to ensure that such services are provided by, for example, allocating representatives to constituency offices. Many involved in the debate about the relative advantages and disadvantages of the proportional representation and constituency-based systems favour a combined approach.

All possible consequences will need to be carefully reviewed when considering a change. It is clear, for example, that the present system contains some important advantages for women, particularly as the majority ANC has stipulated that one-third of the people on the party list should be women. In its Action Programme 1999-2000, the Commission on Gender Equality says that:

> *At present, South Africa boasts approximately 25 percent of women in the National Assembly and provincial legislatures and 18 percent women in local*

councils: some of the highest such proportions in the world.

The fact that the current proportional representation or list system, which favours the participation of women, will be reviewed post-1999 casts a dim light on the chances of achieving gender parity in political representation in the foreseeable future.[148]

Inevitably, the party that holds the majority in a legislature plays a significant role. It has the capacity to control, not only decision-making itself, but also the rules that govern that process. Further, in a Westminster-based parliamentary system, where members of cabinet are drawn from the legislature, the parliamentary caucus of the majority party is a powerful forum in which the executive and the legislature are able to meet.

Furthermore, where the majority party has strong and efficient regional and local party structures, the wider party structure may provide a valuable network, linking individual constituents and communities with their elected representatives. Party structures can be used to ensure that local views and grievances filter up through the system as well as providing channels for the distribution of information on the ground.

At the same time, minority parties are accorded proportional representation in the House and on all committees. This ensures that they have regular opportunities to make their views heard. The system of proportional representation also ensures that small parties have a greater chance of being represented.

Finally, the South African national ruling party is part of an alliance with COSATU, the largest labour confederation in the country, and the South African Communist Party. This results in a broader public social agenda than is found in democracies in the United States and Europe. This further broadens opportunities for participation and interaction beyond the formal procedures and institutions of representative governance.



[148]Commission on Gender Equality [website] *Action Programme*, Part 3, Introduction

10
THE ROLE OF LEGISLATION, REGULATIONS AND RULES

PETITIONS AS AN ASPECT OF PUBLIC PARTICIPATION

The right to petition government generally is recognised in section 17 of the Constitution.

> *Petitions allow individuals or groups to raise issues in a formal way without having to go through a particular member of the legislature. They are useful mechanisms for unorganised sectors of society to come together to raise particular issues for consideration by the legislative authority.* [149]

The Rules of the National Assembly provide a procedure for petitions.[150] According to the Rules, a person wishing to petition the legislature must approach an MP who must lodge the petition with the Secretary. The Secretary must submit the petition to the Speaker for approval. If approved, the Speaker must table the petition in the Assembly.

"Special" petitions are referred by the Speaker to the Committee on Private Members' Legislative Proposals and Special Petitions. These generally involve requests for variations of regulations on civil service pensions. If the request is approved, the Committee refers the petition to the Treasury for implementation.[151] In the Eastern Cape legislature, there is a Petitions Office and a Standing Committee on Petitions. The Eastern Cape has recently advertised its petitions procedure and receives a variety of petitions ranging from issues relating to social welfare pensions to disputes between employees and government departments.[152]

The Gauteng legislature has formalised the opportunity to petition the legislature by passing the Petitions Act of 1998. It is anticipated that regulations will be promulgated in March 2001. The legislature has established a Public Participation and Petitions Unit and a Standing Committee on Petitions and Public Participation. Education Outreach officers

[149] Houston et al [1999] 6

[150] Standing Rules, National Assembly, section 3, 309-315

[151] Interview with Advocate Johnny de Lange MP, Chair of the Justice and Constitutional Portfolio Committee, 14 January 2001

[152] Interview with Thabo Mvubo, Petitions Office, Eastern Cape Legislature, January 2001

are employed to ensure that the public is aware of its rights in this respect. Mr Tsheburi, the Petitions Officer in the Legislature, sees petitions as being an important channel for public input *after* legislation has been passed. The legislature will also entertain petitions in respect of the 2002/03 provincial budget.[153] The Eastern Cape Legislature plans to follow the example of the Gauteng Legislature in 2001, when it will introduce a similar law on petitions.[154]

Significantly, the Gauteng Petitions Act makes provision for assistance to be given to prospective petitions. Thus:

> *4(2) The Administration support service must render assistance to any prospective petitioner who wishes to submit a petition to the Committee.*

In South Africa, where language, illiteracy, poor educational background and lack of confidence and material resources stand in the way of participation in political processes, such assistance is a crucial way of ensuring that petitioners are assisted through the intricacies of the petition process. Such assistance might be more broadly interpreted as involving an obligation to provide infrastructural support such as transport and assistance with drafting a petition.

Thus, to a greater or lesser degree, there are procedures whereby the public may bring petitions to a legislature. The question is whether and how the public is making use of this opportunity. The Gauteng Legislature is currently assessing the effectiveness of this mechanism; while the Eastern Cape Legislature believes that, once the system matures and people come to understand the opportunities it presents, the number of substantive (rather than individual) petitions will increase. The Clerk of the Papers in the National Assembly acknowledges that no petitions of a general nature are currently received and that the potential to petition the legislature on general matters is not being used.[155]

The Chair of the Portfolio Committee on Justice and Constitutional Affairs, Advocate Johnny de Lange, points out that there are a number of other ways

[153]Interview with Mr Masego Tsheburi, Petitions Officer, Gauteng Legislature, February 2001; Houston et al [1999] 10

[154]Interview with Mr Thabo Mvubu, Petitions Officer, Eastern Cape Legislature, January 2001

[155]Interview, Clerk of the Papers, National Assembly, 12 January 2001

in which members of the public or constituencies can use their MPs to approach the legislature, including asking for motions to be put in the House and raising issues for consideration.[156] This may well be the case where the right to bring a petition to a legislature is simply one of a number of ways in which a member of the public may apply to an MP for assistance in getting his or her views heard. Petitions laws, however, seem to open up what is perhaps a less intimidating way in which communities and less organised groups may approach legislatures about issues that concern them. Ideally, they provide a means whereby public comment and experience with regard to existing legislation, regulations and processes may be entertained or revisited.

OTHER LEGISLATION PROMOTING OR AFFECTING PUBLIC PARTICIPATION

A great deal has been written and said about public participation during the drafting of policy and legislation. Another area of interest relates to the right of the public to contribute to and participate in the implementation of laws and regulations.

Internationally, environmental legislation leads the field in this respect, probably because environmental lobbies challenged the prevailing power of established sectors and tend to be driven from the grassroots. The environmental lobby groups that came to the fore in the 'sixties and 'seventies operated from the "fringe" of the political order. Today, after over a quarter of a century of activism, including some prominent court cases, many of their arguments occupy centre stage; even though governments may still prove reluctant to confront powerful private sector interests to achieve what has become the conventional wisdom.

South Africa's National Environmental Management Act (NEMA) reflects the trend towards the broadest possible participation in national environmental affairs. Expanding on the constitutional principle that "Everyone has the right ... to an environment that is not harmful to their health or well-being; and ... to have the environment protected, for the benefit of present and future generations ..."[157], the Preamble of the National Environmental

[156]Interview, Advocate Johnny de Lange, 14 January 2001

[157]section 24

Management Act "develops a framework for integrating good environmental management into all development activities". Not only does the framework require compliance by "organs of state" and the facilitation and promotion of "co-operative government and intergovernmental relations", it calls for *"procedure and institutions to facilitate and promote public participation in environmental governance"*[158]. Further, "the law should be enforced by the State and ... *should facilitate the enforcement of environmental laws by civil society"*[159].

The close relationship between environmental concerns and governance is emphasised. Thus, "Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably".[160] Further,

> *The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.*[161]

Two other important pieces of legislation are the Promotion of Access to Information Act and the Administrative Justice Act. Both are responses to constitutional provisions. The Bill of Rights requires that national legislation be enacted to give affect to the right to access to "any information held by the state; and ... any information that is held by another person and that is required for the exercise or protection of any rights".[162] Similarly, national legislation must be enacted to give effect to the "right to administrative action that is lawful, reasonable and procedurally fair".[163]

The significance of this and similar legislation for public participation is clear. The Preamble to the Promotion of Access to Information Act recognises the need to "foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information (and) actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights". Further, one of the aims of the Act is to:

[158]Emphasis added
[159]Emphasis added
[160]Principles, 2
[161]Principles 4(f)
[162]section 32
[163]section 33

promote transparency, accountability and effective governance of all public and private bodies by, including, but not limited to, empowering and educating everyone –

(i) to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies;

(ii) to understand the functions and operation of public bodies; and

(iii) to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.[164]

It is not, however, only legislation with a direct bearing on information and public participation that promotes citizens' involvement in decision-making processes. The Bill of Rights, contained in Chapter 2 of the Constitution, provides the framework for a legal system based on a culture of human rights. This means that all legislation must comply with the Bill of Rights and must, indeed, seek to promote the exercise of those rights. In this sense, any legislation aimed at advancing the rights of citizens contributes, directly or indirectly, to their empowerment as participating members of society. Thus, for example, by improving the socio-economic circumstances of citizens – their access to better health care, housing and water – their capacity to engage in issues affecting their lives is automatically increased. National education legislation has a critical role to play in advancing the ability of citizens to engage in public issues. By legislating for equality, as in the Promotion of Equality and Prevention of Unfair Discrimination Act, one promotes more equitable access to the opportunities provided for participation.

Thus, the promotion of public participation must be viewed within the much broader context of the transformation of the entire society.

STANDING RULES AND PUBLIC PARTICIPATION

The rules regulating Parliament need to conform to the requirements of the Constitution. The rules of the provincial legislatures must also comply with the national and (where it exists) the provincial constitution. Beyond this, a legislature may make whatever rules it decides are necessary in order to conduct its business.

[164] Part 1: Introductory Provisions, Chapter 3: General Introductory Provisions, 9. Objects of the Act

The first point to note is that not all the rules of the provincial legislatures conform to the Constitution. For example, section 118(2) of the Constitution states explicitly that a provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

Yet there are a number of situations where the rules provide for public exclusion from committee meetings. For example, the chairperson of a committee in the Gauteng legislature may, in terms of its rules, order members of the public to withdraw from a committee meeting in terms of a resolution of that committee.[165] Presumably, such an order would be made in the context of section 118 ("unless it is reasonable and justifiable to do so in an open and democratic society"). However, until this rule is put to the test, it will remain unclear what circumstances justify the exclusion of the public.

The rules of the provincial legislatures reflect the different ways they have opted to deal with the constitutional obligation placed on them in terms of section 118. At the same time, it is clear from the data collected by IDASA that members of committees and staff involved in public participation processes are not themselves always clear on the rules. All those involved in the legislatures need to know how the committees work as well as the constitutional provisions relating to public participation. This will ensure that the rules are applied in a manner consonant with participatory democracy.

The ability of the public to engage in the legislative process may be limited by a number of factors, one of which is language. The Free State legislature has taken the initiative in this regard, requiring that notice and the "essence" of bills be published in the Provincial Gazette and the available public media in English, Afrikaans, Sesotho, IsiZulu and IsiXhosa. Members of the public are also advised that they may make representations to the Speaker.[166]

It is clear that there is a fair degree of difference between the rules of different provincial legislatures. Does this matter? What is the impact of this on public participation processes? There is a strong case for a review of the

[165] rule 5.1 (2)
[166] rule 138 (b)

rules and procedures to see whether they both comply with and optimise the opportunity provided by the Constitution. What is important and may well require further examination is the extent to which there is a divergence between the rules and what they require and the actual practice.



II
REPRESENTIVITY AND PUBLIC PARTICIPATION

It is recognised that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights. Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment or election.[167]

Nothing about us without us! (Disabled People's Organisation)

The Equality clause in the South African Constitution (section 9) establishes the principle that "everyone is equal before" and entitled to "equal protection and benefit by the law". Neither the state nor any person may discriminate "directly or indirectly" on grounds of "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth". The Equality clause also provides for action to "promote the achievement of equality", including national legislation to "prevent or prohibit unfair discrimination".

Although it seems obvious that effective representation depends on government institutions that are broadly representative of the society they serve and represent, women throughout the world still struggle for proper representation in political life. Over the years, there has been considerable international focus on strengthening the role of women in government. The Beijing Platform for Action, for example, states that:

Without the active participation of women and the incorporation of women's perspectives in all levels of decision-making, the goals of equality, development and peace cannot be achieved.

The issue of women in legislatures is regularly raised in national and international fora. At the 45th Parliamentary Conference in September 1999, for example, the question of whether Commonwealth legislatures should reserve one-third of seats in parliamentary chambers "to ensure a critical mass of representation by women" was raised.[168] The concern is well founded. At a symposium of Commonwealth women parliamentarians in the previous year, it was noted that the Commonwealth average of women in

[167] Commonwealth (1998) *'Principles'*

[168] Commonwealth Parliamentary Association (1999) 2

parliament was 7.2 percent and the international average 11.4 percent.[169] Again in 2000, at a conference on Transforming African Parliaments in the 21st Century, hosted by the South African Parliament, the issue of women's participation in politics in the Commonwealth Africa region was again raised.[170]

These debates are underpinned by national, international and regional obligations. In addition to the obligations imposed by the South African Constitution, the South African Development Community Declaration on Gender and Development, the UN Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration and Platform for Action all call for gender balance and women's participation in political and decision-making structures.

The representation of women in the South African legislatures is high in comparison to world standards. After the June 1999 elections, the proportion of women in the National Parliament was 29.3 percent and in the provincial legislatures 27.3 percent. Women in the NCOP constitute 33 percent. These figures are due in large part to the fact that the ANC requires that one in three candidates on its party lists are women. There have also been solid attempts to promote women within the structures of Parliament and the legislatures. Both the Speaker and the Deputy Speaker of the National Assembly are women, as is the Chairperson of the NCOP. However, as Thenjiwe Mtintso points out[171], "access does not necessarily translate into participation". Warning against the tendency to measure the influence of women in mere numbers, she says:

> *Gender roles themselves do not automatically change for women when they enter Parliament. The expectations and the need to perform socially-defined women's roles continue.*

She emphasises the fact that while:

> *It is critical that women should be mobilised to enter the sphere of Parliament and explode the myth of the incapacity of women to be decision-makers ... they should not only enter but should be agents of change of both the institution and society.*

In the words of former ANC MP, Melanie Verwoerd:

> *We must go beyond numbers. We must stop making history and start making policy.*

[169] Commonwealth Parliamentary Association [1998] 2

[170] Commonwealth Parliamentary Association [2000] CPA News, September, 1

[171] Mtintso, Thenjiwe [1999]

At the time of writing[172], nine out of twenty-seven Ministers and six out of thirteen Deputy Ministers in the national Cabinet are women, giving women a direct role in high level decision-making. More significantly perhaps, women head ministries in what might traditionally be seen as the male sphere. The Ministers of Agriculture and Land Affairs, Foreign Affairs, Intelligence and Minerals and Energy are women; as are the Deputy Minister of Defence and the Deputy Minister of Minerals and Energy. Thus the common criticism that women are placed in 'soft' portfolios cannot be said to apply in South Africa.

An important initiative in this regard is the Women's Budget Initiative

Case Study: Women's Budget Initiative[173]

The South African Women's Budget Initiative was born in mid-1995, approximately a year after the first democratic elections. It was driven by an alliance of parliamentarians and representatives of two non-governmental organisations. The parliamentarians were determined to introduce a gender focus to the work of the Joint Standing Committee on Finance of which they were members.

Over five years, the Initiative has published five women's budgets and a number of more focused studies. Three simplified versions (*Money Matters*) and a full set of workshop materials have been produced. Within two years of the Initiative's birth a parallel exercise was introduced within government, led by the Department of Finance.

Gender budget analysis is based on an understanding that budgets should follow policy rather than vice versa. Policy, in turn, should reflect the situation in the society. The Women's Budget does not propose a separate budget for women. Rather the exercise examines the entire government budget in order to determine its differential impact on women and men, girls and boys. It also emphasises differential impacts on different groups of women and men, along lines such as race, geography and income. Limited resources and seemingly unlimited needs pose the classic economic problem of resource

[172]February 2001

[173]Interview with Debbie Budlender, 16 February 2001

allocation. This is what budgets are all about. The Women's Budget Initiative openly acknowledges that resources are not infinite. It does not simply argue for "more". Rather, whenever proposing that "more" be allocated to women or gender-sensitive programmes and policies, it tries simultaneously to point out where savings can be made. In particular, it points to expenditures based on policies that may be subverting gender equity.

The South African Women's Budget Initiative has evoked widespread interest not only in South Africa, but beyond its borders. Over forty countries have launched their own budget initiatives. Many others have plans to introduce similar programmes. The Initiative has also provided inspiration to other interest groups which have investigated, or plan to investigate, the impact of the budget on groups such as children, rural people, the disabled and the poor.

Representation in respect of people with disabilities is also on the international agenda. At the Commonwealth conference hosted by the South African Parliament in 2000, one of the topics debated was the "transformation of Parliaments in CPA Africa Region to Accommodate Persons with Disabilities and the Need to Create Space for Members of Parliament Representing their Interests".[174]

Shuaib Chalklen who heads up the Office on the Status of Disabled Persons in the President's Office reports that the South African legislatures have the highest percentage of disabled people in the world. The National Assembly has a Joint Monitoring Committee on the Improvement of Life and Status of Youth and Disabled Persons. However, a great deal of work needs to be done to make the legislatures barrier-free. Practical barriers to full participation range from a shortage of appropriately designed bathrooms and toilets to problems experienced by deaf representatives in the House itself. Disabled people are given little extra assistance in the legislatures and resources such as Braille or voice recorded documents are rare. Presence is a good start, however, and with real political power, disabled people can lobby for better working conditions.[175]

[174]Commonwealth Parliamentary Association [2000] CPA News, September, 1

[175]Interviews with Shuaib Chalklen and Matthew Parks (Parliamentary Liaison Office, Disabled People South Africa), February 2001

Ms Wilma Newhoudt Druchen, the first deaf woman to be elected a Member of Parliament in South Africa describes the role she will play in reaching the deaf community and bringing new understanding to her colleagues in Parliament:

> *What I have learnt, the deaf will ask of me. I will have to inform them about how everything gets done here. There are older deaf people who never had the opportunity to find out about politics. It is also a learning experience for Parliament to have a deaf person in the Assembly.*[176]



[176]Summarised from article in PSP Newsletter, edition 4, January – March 2000, 7

12
THE ROLE OF LANGUAGE

Both the choice of language used by government and the simplicity or obscurity with which it is expressed impact significantly on the ability of citizens to obtain information and participate in the decisions of government.

Section 6 of the Constitution recognises eleven official languages, all of which "must enjoy parity of esteem and ... be treated equitably". It states, further, that the national and provincial governments may choose to use at least two languages, based on a consideration of various factors, including usage, preferences and expense. Municipalities are also required to take usage and preferences into account.

A Pan South African Language Board (PANSALB) was established in 1996 as required by the Constitution to promote and create conditions for, the development and use of, all official languages, the Khoi, Nama and San languages, and sign language. It is also charged with promoting and ensuring respect for "all languages commonly used by communities in South Africa " and "languages used for religious purposes in South Africa".

Clearly, the languages in which original documents are generated and the choice of translations impact on the ability of citizens to understand and thereby make use of the political processes available to them. This is compounded by high illiteracy rates and the often extremely complicated language used in government publications, particularly legislation.

The promotion of what has become known as "plain language" is also now recognised as a key factor in the reform of democracy. There are a number of reasons why this is so.[177]

First, language has, over the ages, been used in a way that creates divisions in society. Often language takes its particular form because it reflects the position of a class or a gender or a profession that wishes to insulate itself or maintain its status.

Second, what plain language lobbyists call "gobbledegook" wastes time and

[177]See further paper on "Plain Language Principles and International Perspectives", Susan de Villiers, delivered at PSP Workshop, 17 May 1999

money. Difficult documents take longer to read and understand. They also demand personnel who can explain them, raise printing costs and increase the level of error.

The third reason is that access to the law is essential to our understanding of our rights and responsibilities as citizens. The function of the law is to tell us what we may or may not do. Law is one step in the chain that begins with government policy and ends with the rules by which we live. It is the stuff on which we build our norms, our standards and our moral behaviour. It is the very fabric and foundation of our society.

The fourth reason is that access to information about things that concern us is our right as citizens. If we deny people information about their rights and obligations, we deny them their rights as members of a rights-based democracy.

A number of efforts have and are being made to address this question in South Africa. Perhaps the earliest and most noteworthy example was the decision to draft the Constitution in plain language. The Constitution was also translated from English into the other ten official languages. More recently, Parliament has set up a Task Group on Plain Language and the NCOP has commissioned a project to translate its Standing Rules into plain language.

Acknowledging the difficulties experienced by citizens when attempting to engage with legislation, the South African Law Commission Project Committee on Juvenile Justice prepared plain language summaries for public review, as well as questionnaires phrased so that issues could be understood and discussed. Without this, the extensive consultation that accompanied the drafting of the various documents would have been fruitless.

Similarly, the Gun Control Alliance recognised that, in order to draw on the widest possible support for its position on the Bill, communities would need to understand the implications and provisions of what was extremely technical legislation. This required plain language summaries of sections of the Bill before Parliament.

It is clear then that the way documents are phrased and expressed is critical for effective public participation. People need not only to receive information from government; they must be able to understand and use it. If they are to make submissions, submit petitions or express their views and grievances, they need the knowledge and understanding to do so. Language that is obscure or difficult to understand makes them less able to participate in the decisions that affect their lives. It therefore obstructs other efforts at public participation.



13
THE ROLE OF INFORMATION TECHNOLOGY

The relationship between the United Nations and civil society has changed beyond all recognition. Information technology has empowered civil society to be the true guardians of democracy and good governance everywhere. Oppressors cannot hide inside their borders any longer. A strong civil society, bound together across all borders with the help of modern communications, will not let them. In a sense, it has been the new superpower – the people determined to promote better standards of life in larger freedom. (Kofi Annan)[178]

One of the most important tools used by civil society in the developed world is the Internet. It is used to argue positions, to mobilise action, to circulate petitions and build world action around programmes and campaigns. In this way, it has fundamentally affected the range, visibility and impact of issues on an increasingly global agenda.

The Internet began as a communications system for the US military in the event of nuclear conflict. Yet, as Graham May points out[179]:

Technology is often used in surprising ways not anticipated by its originators or developers ... It is unlikely that the US military anticipated the anarchy of the Net. It is probably the last thing they would have imagined and certainly not what they planned.

It is clear, however, that access to the Internet is limited. Current debate suggests that the much acclaimed 'information society' has created new divisions between an 'information-rich' and an 'information-poor'. This issue has received a great deal of attention in South Africa. In June 1996, then Deputy President Thabo Mbeki said:

It would not be an exaggeration to say that as the West is cruising in automobiles on the information superhighway, we are still moving on horse-drawn carts in a dirt road in some small village.[180]

The costs of establishing the infrastructure for universal access and making hardware and software available to all are extremely high and, often, even the most basic infrastructure is not available. Thus:

[178] UNDP Civil Society and Participation Programme http://www.undp.org/csopp/CSO/

[179] May [1996]

[180] Mbeki [1998] 'The Information Revolution' (Budget vote, Senate, Cape Town, 11 June 1996), 169

> *More than half of humanity has never made a telephone call. There are more telephone lines in Manhattan than in all of sub-Saharan Africa.*[181]

In 1999, then Minister of Posts, Broadcasting and Telecommunications Jay Naidoo, drove from Bizerte in Tunisia to Cape Agulhas to highlight the need to improve basic telecommunication infrastructure in Africa. The rally was part of a project called the African Connection, a project of the Pan African Telecommunications Union (PATU).

These and many other voices brought the issue of the 'digital gap' squarely into the international forum. In 2000, the Economic and Social Council of the United Nations (ECOSOC) issued a draft Ministerial Declaration which stated, *inter alia*:

> *While considering the impact of ICT [information and communication technology] on the creation of a global knowledge-based economy, we highlight that the majority of the world population still lives in poverty and remains untouched by the ICT revolution. The emerging new economy, characterized by a rapidly increasing reliance of value creation on information and knowledge, still remains concentrated in the developed countries. Unless access to and use of ICT is broadened, the majority of people particularly in the developing countries will not enjoy the benefits of the new knowledge-based economy.*[182]

ECOSOC recommended that an Information and Communication Technologies Workforce be set up to address the issue.

There are currently just over 2 million people actively using the Internet in South Africa. About 1.2 million have access from their homes. The average number of users sharing a single household Internet facility is about 2.5 million, hence the number of households connected is in the region of 500 000. About 300 000 people are connected through public facilities (primarily educational establishments). Access from business and government organisations totals about 1 million, with about a 25 percent overlap between these categories.[183]

In the developed world, electronic communication has played an important role in bringing people closer to government. This trend is reflected in a

[181] Mbeki [1998] 'South Africa and the Information Superhighway' (Speech at G7 Conference on the Information Society, Brussels, 24 February 1995), 181

[182] ECOSOC [2000]

[183] Interview with Devan Naidoo, Department of Communications, 16 February 2001; *BMI-TechKnowledge: Communication Technnologies Handbook 2000*

number of South African policy and other documents.[184] Thus, for example, the Task Group on Government Communications (Comtask) reported that:

> *There is universal recognition that an efficient and accessible telecommunications infrastructure is an essential prerequisite for government to accelerate social development and economic growth. Such an infrastructure permits the exchange and dissemination of vital information among citizens' educational, cultural, health, welfare and other institutions. Therefore, it is of critical importance that telecommunications infrastructure be pervasive.*[185]

Information technology offers the opportunity to improve the flow of information between citizens and government, thereby building dialogue and participation. What has been called 'e-government' offers access to information and the opportunity to comment on issues, policies and laws. It is thus a critical tool in the expansion of public participation.

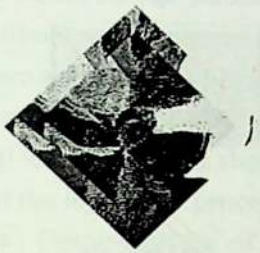
The opportunities presented by the Internet in respect of public participation are self-evident. Yet, although government is increasingly using the Internet, performance is uneven and the pool of users extremely small relative to the developed countries. Despite a number of initiatives, including the development of telecentres and an information network for schools[186], it is clear that neither the infrastructure nor the necessary hardware and software required for universal access is available to the majority of South Africans.

Another important application of computer technology relates to the need for legislatures to maximise their public participation efforts by setting up and maintaining a database. If public participation is to be effective, keeping information and records about the involvement of the public is essential. Although some committee clerks keep manual records of organisations attending public hearings, this is a tedious process that does not lend itself to easy updating or the sharing of information. A far more effective solution would be for a database to serve the legislature as a whole. Due partly to lack of resources, few legislatures currently use a database to assist in their interaction with the public. However, the time and cost *savings* of using an efficiently run and maintained database (retrieval, storage, accuracy, internal communication, decreased duplication and so on) need to be factored into calculations about affordability.

[184] See, for example, White Paper on Telecommunications Policy, Green Paper on E-Commerce.
[185] Comtask [1996] 5.9.4
[186] See, for example, the Acacia Initiative of the IDRC.

SECTION 3

PUBLIC PARTICIPATION IN THEORY AND PRACTICE



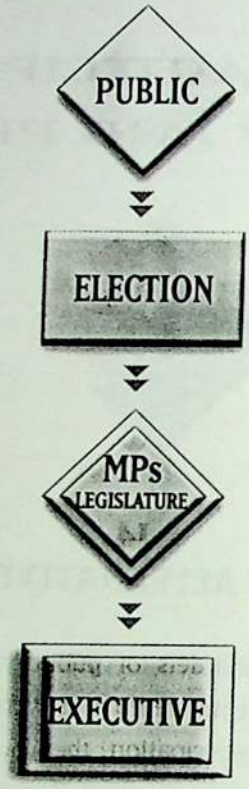
14
LOOKING AT ALTERNATIVE MODELS

IDASA has identified four models of public participation. Although the models owe something to a conceptual and comparative investigation of different forms of public participation, they derive mainly from a review of the current practice in the ten South African legislatures (one national and nine provincial). The data was extracted from the results of (mainly quantitative) questionnaire surveys.

The models represent four ways in which public participation in the legislative and policy-making process may be facilitated. They also offer insights into the way public participation currently works in the national Parliament and the nine provincial legislatures. The possible strengths and weaknesses of each model are also discussed.

The models make it possible to rise above the detail of current practice in individual institutions and identify *core elements* that should, ideally, underlie broad-based and effective public participation.

Model One: "Pure" Representative Democracy



According to this model, the electorate or public elects its representatives, who pass laws in the legislature and oversee their implementation by the executive arm of government. The participation of the citizen is limited essentially to election time.

Model Two: A Basic Model of Public Participation

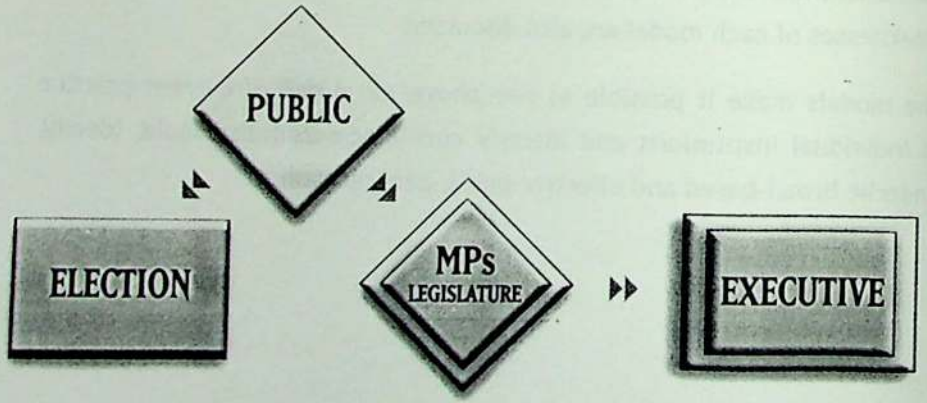
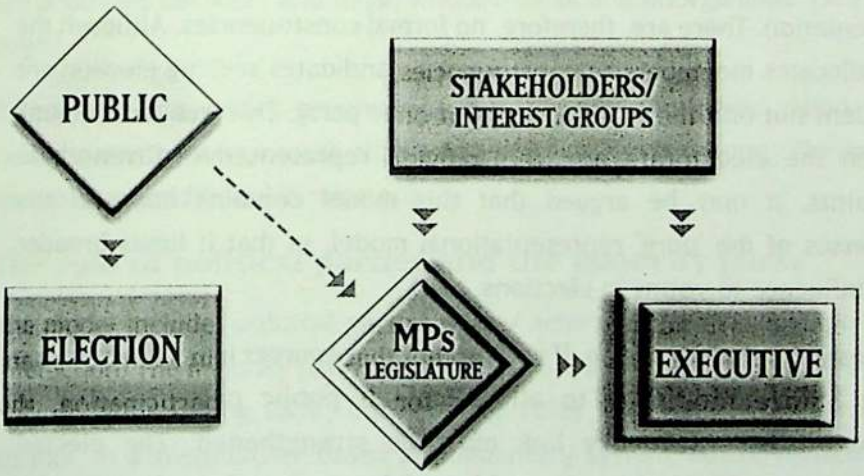


Figure Two depicts a basic model of public participation. In terms of this model, the public intervenes by interacting with its elected representatives at various times between elections. The model, however, says nothing about the nature and form of that interaction.

The usefulness of this model is also limited by the fact that it does not define or explain who or what is meant by the 'public'. Although the voting public potentially includes all citizens over eighteen years of age, the nature and identity of the 'public' shown to be in dialogue or relationship with MPs is not revealed. As IDASA monitoring of public hearings and public submissions in the national and provincial legislatures has shown, the 'space' that has been created for participation in the legislative process is used chiefly by what are described as 'stakeholders'. Despite a lack of precise data, it is generally agreed that these consist mainly of organised and relatively powerful interest groups.

This phenomenon is obviously not unique to South Africa. In the established democracies of Britain and elsewhere in the North, interventions in the legislative process tend to be dominated by vested (often commercially-motivated) interest groups and other organised sectors. Model Three (below) depicts this reality.

Model Three: A 'Realism' Model of Public Participation



There are those who argue that the 'realism' model offers the most effective form of public participation. Such an argument is based on an essentially corporatist model of political interaction, where consensus is reached at a 'round table' consisting of the primary interest groups. NEDLAC, established as a forum for organised labour, employers and government, is a typical example of such a model. Applied to the legislative process, the key public actors consist of the broader general public or electorate, represented by their elected representatives on the one hand, and the various key interest groups or stakeholders on the other. The public participation process arbitrates an exchange between the two.

The successful balancing of these interests depends on a dynamic relationship between elected representatives and their constituencies, characterised by constant interaction and clear communication. Such engagement depends, however, on the capacity of and resources available to the representative concerned. In South Africa, not only are capacity and resources seriously limited, they are compounded by two other factors. The first factor is physical. The sheer size of the country, with its vast distances and weak transport links between urban and rural areas, makes regular and intensive interaction difficult.

Secondly, as already discussed, representatives are elected by the party to a party list and occupy seats in the legislatures on the basis of proportional representation. There are, therefore, no formal constituencies. Although the party allocates members to constituencies, candidates seeking election are dependent not on the constituency but on the party. This weakens the link between the electorate and the individual representative. Given these constraints, it may be argued that this model contains many of the weaknesses of the 'pure' representational model, in that it limits broader public influence to voting in elections.

This presents us with a choice. If we accept that resources in South Africa are at this stage too limited to allow for full public participation, the representative/constituency link must be strengthened. The elected representative must be able to act with confidence as mediator between the common good and the interests pursued by organised participants. Thus,

while ensuring that organised interest groups have the opportunity to participate, time, energy and resources must be invested in building a strong, vibrant, contemporary and meaningful link between MP and constituent.

Given the numerous constraints to public participation in South Africa, one might be tempted to argue that this is the best system available. It is not, however, the system favoured by government or the legislatures themselves. As National assembly Speaker Dr Frene Ginwala put it when launching the National Public Education Department of Parliament in 1995:

> *The person we must all have in mind when we think of public participation is a black African, rural, illiterate woman. We must aspire to reach her.*[187]

It was also not the intention of the Constitutional Assembly, which engaged in a widespread public participation exercise during the constitution-making process. Not only was the Constitutional Assembly made up of all political parties represented in the National Assembly, it also consulted widely with people all over South Africa. Furthermore, as detailed in Chapter 5, the Constitution makes specific provision for public participation. In this sense, it commits government to the development and promotion of broad-based public participation in political processes.

Thus, a fourth model may be proposed – extended to include three categories of participants: those who are organized and strong, those who are organized but weak and those who are weak and unorganised. (See next page.)

By applying this model, government may develop a strategic vision for a public participation process that addresses all three groups. The model includes two additional dimensions.

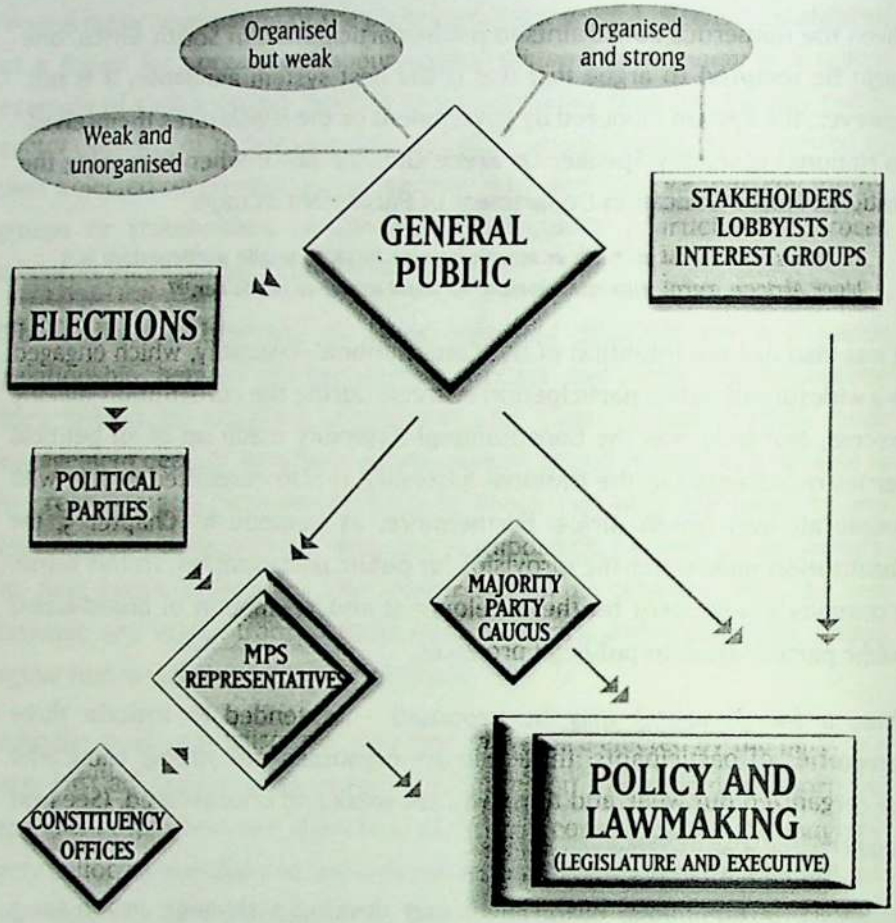
The role of political parties and the majority party

The model includes political parties as key actors in the matrix of political interaction. The majority party, particularly, has the capacity to control, not only decision-making itself, but also the rules that govern that process. Further, in a Westminster-based parliamentary system, where members of cabinet are drawn from the legislature, the parliamentary caucus of the

[187] Subsequently, in an interview on the DSTV Parliamentary Channel in late 1998, Dr Ginwala conceded that there was still a long way to go to realise this ambition, and that thus far it was the organised interest groups that had taken the greatest advantage of the new opportunity to participate in the legislative process.

majority party is the forum where the executive overlaps with the legislature.

Model Four: The 'Possible Ideal' for South Africa



It is, therefore, an essential location of power.

Moreover, where the majority party has strong and efficient regional and local party structures, the wider party structure may provide a valuable network, linking individual constituents and communities with their elected representatives. Party structures can be used to ensure that local views and grievances filter up through the system as well as providing channels for the distribution of information on the ground.

Finally, the South African national ruling party is part of an alliance with COSATU, the largest labour confederation in the country, and the South

African Communist Party. This results in a broader public social agenda than is found in democracies in the United States and Europe. This further broadens opportunities for participation and interaction beyond the formal procedures and institutions of representative governance.

The relationship with the executive

Secondly, in its representation of the decision-making process, the model links the executive with the legislature. This is the reality of Westminster-based systems. It has become increasingly apparent that one of the key sites for intervention is in the executive domain. It is also clear that the earlier the intervention the better. In other words, intervention should take place when the executive drafts policy rather than after that policy or legislation is introduced in a legislature. The model, therefore, proposes a holistic approach to public participation, rather than a separation of the legislative from the policy-making process. According to COSATU:

> *It is self-evident that the earlier an intervention is made in the policy chain, the greater the scope for influence tends to be. By the time a Bill is tabled at parliament there is in general limited opportunity to fundamentally reshape its content. Being able to input into earlier stages of the process should increase the chance to influence the overall direction taken. This approach requires both written submissions, as well as bilaterals with the Ministry or Department.*[188]

Suggested criteria for public participation

Based on the premise that the public must and should have a say in the decisions and actions that affect their lives, one may consider certain criteria for public participation.[189]

- Public participation should encompass a sense that the public's contribution will influence the final outcome.
- The public participation process must communicate the interests of and meet the process needs of participants.[190]
- The process must seek out and facilitate the involvement of those potentially affected. That means that consideration must be given to

[188] COSATU [2000] 9.6

[189] See Appendix 2 for some criteria and definitions proposed internationally.

[190] The notion of "unorganised" participation is problematic. In order to participate, individuals need to mobilise around issues that affect them. Thus, either they need to be in some sense organised or otherwise represented by NGOs or other organisations that take up issues on their behalf.

how unorganised communities or interest groups can be brought together as participants.

- Participants should be involved in defining the manner in which they wish to participate.
- Participants should be provided with the information they need to make their contribution meaningful.
- Participants need to be informed as to the manner in which their submissions were accounted for and how they are reflected in the decisions made.

The criteria are relatively modest. They include no guarantee that the legislators will necessarily be persuaded to amend a law or policy as a result of participation. They do, however, imply that participation *will be taken seriously.* Their significance is to be found in their potential to generate a palpable sense of involvement in the political process, together with a sense that democracy can and does work at a practical level.

The criteria focus on notions of participation beyond the mere rhetoric of involvement and periodic participation through elections and referenda. At their heart lies the unwritten idea that effective public participation is not achieved simply by making opportunities available, but is determined by setting up processes that encourage, aid and promote the fullest possible participation by the public.

Thus effective public participation depends on dedicated education, information and outreach strategies aimed at providing the knowledge and means to access what may otherwise appear to be a set of remote and incomprehensible institutions. The purpose of such strategies is to bring those who exist on the margins and periphery of society into the mainstream political process, creating a system of governance that is inclusive, responsive and transparent. The goal is to consolidate a form of democracy that engages with and recognises the interests of all. Thus public participation in South Africa may play a valuable role in the transformation of what is still a fundamentally unequal society.

15
A REVIEW OF CURRENT PRACTICE IN THE LEGISLATURES

Public participation in the legislative process and the accountability and oversight tasks of legislatures is essential for long term democratic stability. Public participation promotes legitimacy and public support for legislation and government policies, and thereby ensures democratic stability.[191]

The Constitution provides the constitutional framework for public participation. However, how that framework is interpreted and implemented is perhaps even more important. In order to explore this, this chapter reviews current public participation practices in the nine provincial legislatures and the national legislature. A critical analysis of each legislature is not envisaged. The review will, instead, offer a general summary of existing practices and procedures with reference to common structural weaknesses and strengths.[192]

RESPONSIBILITY FOR PUBLIC PARTICIPATION

All the legislatures surveyed by IDASA indicated that they had some sort of dedicated programme encouraging public participation, although the extent of the programmes differs widely. Two legislatures have a unit specifically responsible for public participation, although not all public participation functions are dealt with by these units.

Several other legislatures are in the process either of establishing similar units or investigating their efficacy. In these legislatures, public participation functions fall under various departments, most commonly a combination of the committee section and communication/public relations departments. As a result, public participation is, to varying degrees, only one of several functions of the departments to which it is delegated. Both questionnaire responses and interviews with the relevant personnel indicate that, both in terms of resources and defined responsibilities, the greater part of the work

[191]HSRC [1999] 5

[192]The data in this review is derived from questionnaire responses and interviews with members and officials of the legislatures, as well as stakeholders involved in legislature activities. See questionnaire at Appendix 3.

in these departments consists of basic communication tasks, with little scope for targeted public participation programmes. There is, however, a noticeable trend towards the inclusion of public participation activities within the scope of work of these departments.

FORMS OF PUBLIC PARTICIPATION

Public hearings are the most common form of public participation initiated by the legislatures. Most institutions reported that they held public hearings in centres other than the capital. All said they held public hearings outside the urban centres. Legislatures give the public between five days and three weeks notice (sending invitations, placing advertisements in newspapers, public places and on radio).

Stakeholders/participants in several of the provinces complained that the notice given for public hearings was frequently too short for effective preparation. The administration of the invitation process and the identification of potential participants is another area of noted weakness. Lists of previous and potential participants are poorly maintained and only a few institutions have computerised versions of lists.

Submissions, outside of those solicited during public hearings, are fairly uncommon. All legislatures have at least some committees that invite expert opinion. Some stakeholders have made submissions without specific invitation and on their own initiative. Other interviews suggested that recognition by politicians and officials as a 'relevant stakeholder' or an already existing relationship with the legislature play a role in ensuring that views are heard.

Involvement in the activities of committees outside of public hearings is another aspect of public participation. In all the legislatures, most committee meetings are formally open to the public, although encouragement and ease of access varies. Committees most commonly closed are certain sittings of the public accounts committees (in four institutions) and the sittings of various internal committees. However, although meetings are generally open to the media and public, several of the

provincial legislatures noted that few people or organisations sit in on committee meetings.

Records and minutes of meetings and other legislative documents are difficult to access. Even when not explicitly unavailable, records of committee meetings are very hard to obtain. No full transcripts or Hansard-type reports of committee meetings are available and sometimes there are no records at all. Recording, transcription and publication are expensive and, without the appropriate resources and capacity, are unlikely to take place.

PUBLIC EDUCATION AND OUTREACH

Most legislatures have some form of outreach programme and most have programmes that specifically target rural communities. Strategies used include holding public hearings outside of cities; committee visits to rural communities and, most commonly, using rural and community radio stations to reach specific communities.

Three legislatures have programmes that target ordinary people who do not belong to organised structures; four have programmes targeting under-resourced and unorganised communities. These interventions take the form of educational workshops and information dissemination through focused media strategies. Those responsible for facilitating workshops and training programmes noted, however, that organised structures and groups were both more likely to be included in workshops and discussions and far more likely to be successful in making submissions.

Almost all questionnaire respondents believed that the public frequently does not understand how government operates. They saw this as a major impediment to effective participation, especially by rural and poor communities. Most legislatures have produced pamphlets and other materials as educational tools and use targeted media for information dissemination. Legislatures also use youth, women's and special interest group 'parliaments' as educational opportunities to raise the profile and encourage an understanding of the role and functions of legislatures. The

National Youth Parliament, for example, aims at educating young people about the processes of democratic practice.

Case Study: A Youth Parliament[193]

The Free State Legislature's third youth parliament was planned to commemorate Youth Day on 16 June and focused on how to deal with the anti-social activities that have damaged the South African educational system, including drugs and gangsterism on school grounds.

The Youth Parliament consisted of 100 learners, ten from each of ten selected schools. The province was well represented geographically and demographically and included schools from both urban and rural areas. Preference was given to disadvantaged schools.

The project was two-fold.

First, each school was required to come up with a cultural presentation depicting the situation in schools today. All the schools gave a remarkable display of talent and the first prize went to Teto Secondary School for a play written and directed by one of its students.

The second event consisted of mock parliamentary debates. Students were divided into three different parties and debated topics such as corporal punishment, the powers of principals and access to resources. The debates were followed by a panel discussion, enabling learners and educators to pose questions to a panel of Members of the Provincial Legislature (MPLs).

Despite these activities, almost all officials interviewed conceded that the impact of public education and outreach programmes on targeted communities was limited, citing a lack of resources for proactive work as the cause. There were very few examples of institutional assistance aimed at actively encouraging targeted communities to participate, despite the fact that this is a stated goal of many legislatures.

[193]Summary of account in PSP edition 9, June – August 2000, 9

CAPACITY

Not surprisingly, lack of capacity was the overwhelming weakness identified, although the extent of this varied widely. Some institutions are prevented from carrying out even the most basic public participation activities due to a straightforward lack of funds. Others fulfil the basic requirements but feel frustrated in attempts to extend their programmes.

All respondents noted a shortage or lack of funds for public hearings, particularly for advertising purposes. The availability of other resources varies widely. Only some institutions dedicate a specific budget item to public participation. Other programmes and functions are funded by departments carrying out particular activities, or out of general legislative funds. Four legislatures use donor funds for public participation.

Staff capacity is also limited. None of the provincial legislatures has an adequate staff complement. Some have only one staff member whose core function is public participation.

RESPONSIVENESS

Both the legislatures and stakeholders felt lack of feedback to participants was a particular weakness. Some stakeholders expressed disillusionment with the public participation process because of a lack of tangible results or feedback.

Generally speaking, participants are not effectively tracked, with only two institutions indicating that they have electronic lists of potential and past participants. Others reported that they have comprehensive, non-computerised lists. Significantly, not one of the national or provincial legislatures keeps sufficiently good records to be able to indicate precisely whether or not public participation (in the form of formal submissions to committees or other informal contact) has increased year on year since 1994. This reflects very poorly on individual and collective commitment to realising substantive public participation. It is reasonable to expect that legislatures that not only claim to be committed to effective public

participation, but are also constitutionally bound to facilitate such a process, should keep such records.

In conclusion, the weaknesses in public participation in the national and provincial legislatures seem to derive, not from obstruction or unwillingness, but rather from a lack of knowledge amongst potential participants on how and why they should participate coupled with a chronic lack of resources. Similarly, the processes and systems in place in the legislatures are not deliberately unhelpful, but rather lack the capacity and know-how to be purposefully constructive.



16
CURRENT INSTITUTIONAL ARRANGEMENTS IN SOUTH AFRICAN LEGISLATURES

INTRODUCTION

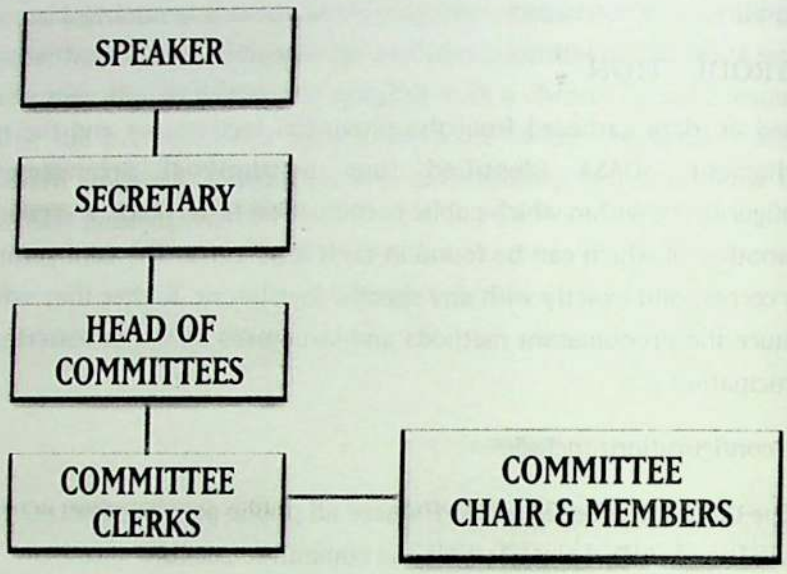
Based on data gathered from the provincial legislatures and the national Parliament, IDASA identified four institutional arrangements or configurations within which public participation takes place, a version of one or another of which can be found in each legislature. The configurations do not correspond exactly with any specific legislature. Rather they attempt to capture the predominant methods and structures aimed at fostering public participation.

The configurations include:

- The Committee Configuration: where all public participation activities are functionally located under the committee section.
- The Specialist Public Participation Unit Configuration: where public hearings and submissions are the responsibility of the committee section and most other functions fall under a public participation unit whose sole responsibility is the management of public participation. In this model, there is sometimes collaboration between this unit and the committee section in the co-ordination of public hearings.
- The Outsource Configuration: where some public participation functions are outsourced to specialist organisations, usually NGOs or CBOs.
- The Public Relations/Communications Configuration: where functions are dispersed, with public hearings and submissions falling under the committee sections and other functions allocated to information, public relations or communications offices where they become one of various other responsibilities.

THE COMMITTEE CONFIGURATION

Typical Structure



In this configuration, the public participation function is centralised within the committee section. The bulk of the responsibility falls on the committee clerks, who report to the head of the committee section and to the committee they serve. Their responsibilities include the organisation and publicising of public hearings and calling for and receiving submissions on behalf of committees. Committee clerks are also responsible for conducting parliamentary tours, may launch limited public education campaigns and may, as a team, handle major parliamentary events like youth, people's and women's parliaments.

Public participation is not, however, their only – nor indeed their most important – responsibility. Furthermore, while committee clerks may have specialist knowledge of the workings of the legislature and legislative processes, it is unlikely that they will have the training or background required to impart knowledge successfully.

Advantages

The advantages of this structure are that clerks are continually exposed to procedural aspects of their work and are familiar with the Standing Rules and Orders of debate. They will also be aware of the content of issues under discussion in their committee. Ideally, clerks are specialists in the area in which they work. This gives them the necessary skills to respond to the needs of their committees and the confidence to deal with the public and other stakeholders. As they are in charge of the committee's programme, they also have first hand information on when and where hearings will take place and, through their contact with the chair, are in a strong position to ensure that hearings are properly advertised and arranged. Clerks also have access to relevant documents.

Committee clerks also have good access to politicians, particularly the committee chairs. This means not only that they have access to up to date information, but also that they may serve as a conduit between their committees and the public.

This configuration can be contrasted to those in which the public participation function is located elsewhere. Such a separation may be physical (for example, where the public participation function is in a separate building) or more intangible (for example, where those engaged in public participation have limited access to politicians).

Disadvantages

The main disadvantage of this configuration is that there is no centralised communications system to ensure the effective internal co-ordination of information for public participation purposes. There is thus poor internal communication between the committee section and other departments and between the committees themselves. As a result, administrators, departments and other committees are often unaware of what a particular committee is doing. Although this problem is not unique to this kind of configuration, it is likely to be exacerbated by it.

A related weakness is that, because activities are focused and centralised around individual committees, the broader aspects of public participation tend to be ignored. Thus administrative tasks and resources may be

inefficiently managed and unnecessarily duplicated.

The Committee Configuration also decreases the likelihood that manual or electronic records of invitees and participants will be kept. The result is poor feedback to participants and a lack of calculated efforts to draw new stakeholders into the process. This, in turn, leads to poor response from communities, a problem that emerged strongly in interviews with stakeholders. Another concern raised by both participants and the media was that information tends to arrive too late, making it difficult to attend and prepare inputs for hearings. In addition, because the public participation function has no dedicated office, members of the public may struggle to find the information or documents they require.

Another problem with this configuration is that public education happens (if at all) on an *ad hoc* basis, with no one taking full responsibility for it. Although some legislatures have produced pamphlets and guides providing basic information, these are rarely sufficiently comprehensive. Committee clerks do not have the specialist skills needed to arrange effective programmes or develop popular media, leading to poor responses from those they aim to reach.

Due to a lack of appropriate skills, limited prioritisation and a dedicated budget, outreach programmes also happen on an *ad hoc* and infrequent basis. Consequently, the public is often unaware of the opportunities for participation that exist. In most cases, only those residing within easy travelling distance of the legislatures are able to participate. This means that those who are already marginalised will continue to be so, while only those with adequate resources will engage in the process.

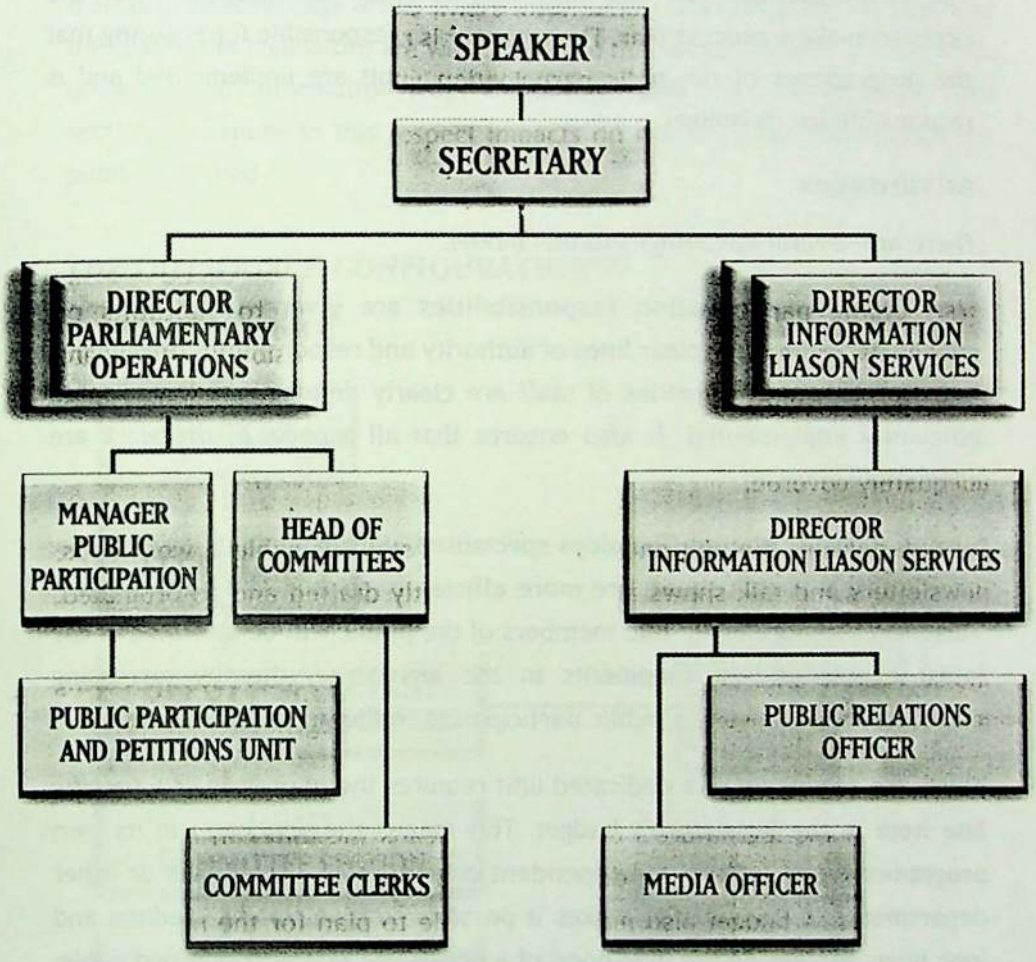
The Committee Configuration also makes it unlikely that there will be mechanisms to evaluate the system and programmes.

The root of these problems is, of course, that committee clerks have many duties to attend to and that public participation and organising hearings may not be a priority. Sometimes the load on clerks is very heavy, particularly when one clerk serves more than one committee. This may result in demoralisation, lack of commitment and neglect of responsibilities.

Finally, the Committee Configuration makes it unlikely that legislatures will allocate a specific budget line item for public participation activities. This means that funds for public participation must be requested from other sources which may not necessarily see public participation as a priority.

SPECIALIST PUBLIC PARTICIPATION UNIT CONFIGURATION

Typical Structure



In this configuration, a specialist unit handles all public participation activities except public hearings and media and public relations. The

Committee Clerk is responsible for public hearings and the Director of Information and Liaison Services for public relations and media liaison.

The focus of the Public Participation and Petitions Unit is, amongst other things, on conducting outreach programmes, developing of educational training manuals and programmes, conducting educational workshops, handling petitions, organising and conducting youth and women's parliaments and producing educational pamphlets.

The responsibilities of the unit and its staff are defined and the decision-making process clear. The manager is responsible for ensuring that the programmes of the public participation unit are implemented and is responsible for its budget.

Advantages

There are several advantages to this model.

First, public participation responsibilities are given to sub-units or individuals, promoting clear lines of authority and responsibility. This means that the tasks and priorities of staff are clearly defined and hence more efficiently implemented. It also ensures that all aspects of the work are adequately covered.

Second, because the unit employs specialised staff, pamphlets, workshops, newsletters and talk shows are more efficiently drafted and co-ordinated. This makes it more likely that members of the public will be informed of the latest events and developments in the legislature, thereby increasing awareness and improving public participation in the legislative process.

Third, the setting up of a dedicated unit requires the allocation of a specific line item in the legislature's budget. This means the unit can run its own programmes and will not be dependent on individual committees or other departments. A budget also makes it possible to plan for the medium and long term, increasing the likelihood of a consistent and well-planned public participation programme.

Fourth, a centrally managed public participation function makes it easier to establish and maintain centralised information systems.

Disadvantages

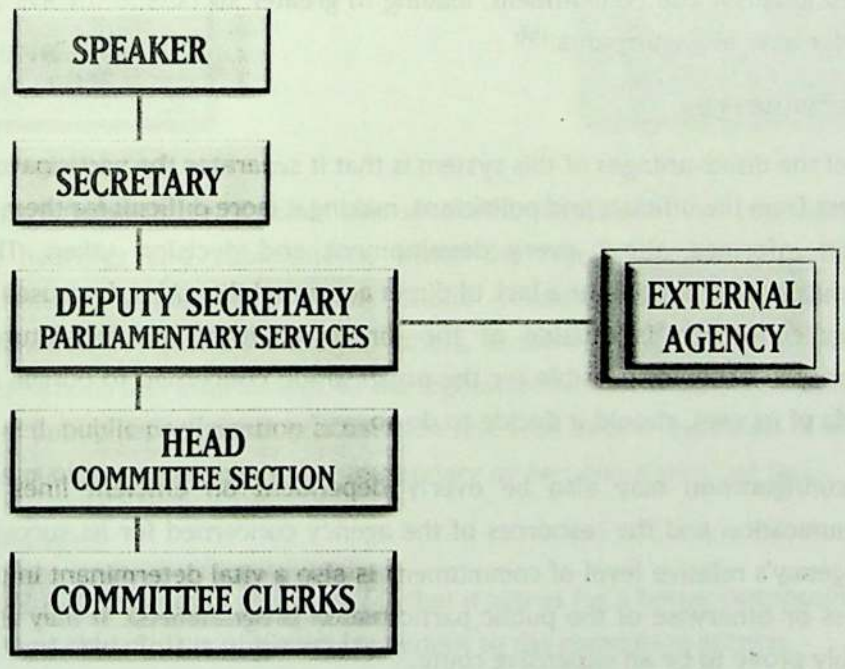
There are also disadvantages to this model.

The first of these relates to the fact that public hearings are not conducted by the unit responsible for public participation. This point was made in a report by the public participation unit in the Gauteng legislature in November 1997, which reported a tremendous increase in the number of submissions to a hearing in which it was effectively involved.[194]

A second disadvantage arises where information links between the unit and the rest of the legislature are weak. Because the success of the unit depends on a flow of information from committees and other departments and sections, a failure in this respect impacts on the unit's ability to keep the public informed.

THE OUTSOURCE CONFIGURATION[195]

Typical Structure



[194]In 1996 when they were not involved, 48 oral submissions were made and in 1997, when they were actively involved, 71 written and 121 oral submissions were made.

[195]Clearly this configuration will vary depending on which functions are outsourced and who contracts and liaises with the agency involved.

In this configuration, some functions and areas of public participation are outsourced to an external agency, which is then accountable to the contracting official or to a politician. Typically, external agencies have been contracted to facilitate and organise the logistics and administration for public hearings and submissions. In some instances, they are also contracted to gather information and conduct research. An external agency may also be asked to conduct workshops on the legislative process and organise special legislature-related functions such as youth parliaments. Where viable and affordable, recording and transcription have sometimes been outsourced to private commercial concerns.

Advantages

There are several advantages to this model.

First, it reduces the burden on committee clerks, allowing them to fulfil their primary role.

Second, by delegating public participation to an agency with specialist skills in the area, the legislature can expect and demand a high level of professionalism and commitment, leading to greater success in involving a broader base of participants.[196]

Disadvantages

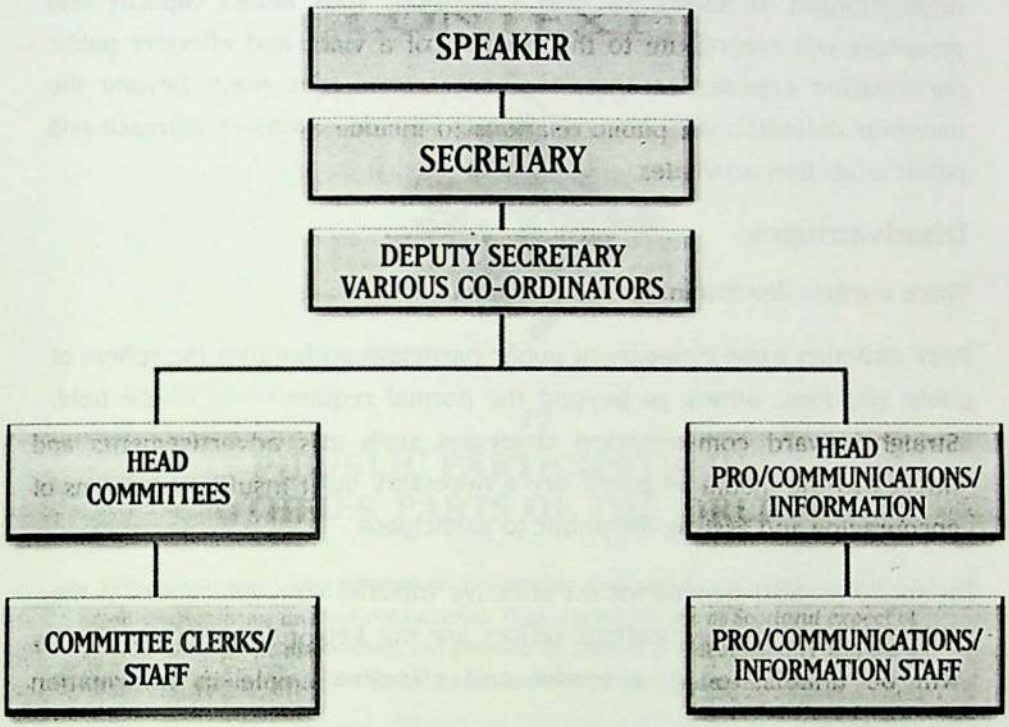
One of the disadvantages of this system is that it separates the participatory process from the officials and politicians, making it more difficult for them to remain informed about every development and decision taken. This introduces the potential for a lack of direct accountability. Also, because the agency concerned is outside of the direct ambit of the legislature's authority, it becomes possible for the organisation concerned to pursue an agenda of its own, should it decide to do so.

The configuration may also be overly dependent on efficient lines of communication and the resources of the agency concerned for its success. The agency's relative level of commitment is also a vital determinant in the success or otherwise of the public participation programme(s). It may also possibly prove to be an expensive route.

[196]This is evident in KwaZulu-Natal where the Provincial Parliamentary Programme was involved in organising public hearings of the KwaZulu-Natal Legislature.

THE PUBLIC RELATIONS & COMMUNICATION CONFIGURATION[197]

Typical Structure



In this configuration, the committee section is responsible for organising public hearings and submissions, while the responsibility for public education, outreach and other public relations and information dissemination rests with, amongst others, those responsible for media, public relations and information. In the legislatures from which this model is derived, public participation activities are not seen as core functions of the various offices responsible, but as secondary or peripheral to other tasks.

Advantages

One of the advantages of this model is that it allows for a better distribution of the workload. This is of particular benefit to the committee section.

A second advantage is that public relations and information staff are more

[197]Although the designations at each level in the flow of authority differ from province to province, the basic functionalities of each level of authority remain similar.

likely to have specialist communication skills. This results in better design, co-ordination and implementation of programmes and publications.

Thirdly, the model is 'scalable'. In other words, because of its inherent differentiation, it allows for easy expansion. Thus added capacity and resources will contribute to the creation of a viable and effective public participation system, incorporating programmes that reach beyond the narrower definition of public relations to include extensive outreach and public education activities.

Disadvantages

There are also disadvantages to this model.

First, although some elements of public participation fall into the sphere of public relations, others go beyond the normal requirements of the field. Straightforward communication strategies such as advertisements and notices to the media and public are a necessary but insufficient means of encouraging and assisting the public to participate.

The model is also dependent on effective internal communication. If the public relations/communications offices are not kept fully informed, they will be unable to play a useful and effective role in information dissemination.



SECTION 4

THE INTERNATIONAL CONTEXT



17
PUBLIC PARTICIPATION IN OTHER PARTS OF THE WORLD

This Parliament was elected on a promise: that policy making would be more open, participative and consultative. That is what the people of Scotland expect of us. Our success in meeting the promise of openness and accessibility will be a litmus test of our achievement of the wider aspirations for devolution.

We can no longer hide behind remoteness. We have no excuses for not meeting public expectations of the new politics of partnership – because partnership politics means better policies.[198]

A review of trends and developments in the international arena suggests that public participation is an idea whose time has come. There appears to be a fundamental shift towards more participatory forms of decision-making: a movement towards new definitions of democratic governance and its relations with civil society. This chapter does not pretend to offer a survey or analysis of international trends in public participation. Rather it offers a few examples that may be of interest when reflecting on the South African situation.

When drafting its own Constitution, South Africa was fortunate in that it was able to draw on the experiences, mistakes and accumulated wisdom of other

[198]Scottish Parliament [2000]

countries. Thus, for example, while in many of the older, more established democracies, public participation is the result of the evolution of a political system; in South Africa the concept was enshrined in the Constitution itself.

PUBLIC PARTICIPATION AND PARLIAMENTARY SOVEREIGNTY

Based on the principle of parliamentary sovereignty, legislatures are given the latitude to determine their own procedural arrangements. While in South Africa, there are some limitations on this right, the rules that govern legislatures in the older established democracies allow them to determine the extent of public access and participation. Thus for example, section 49 of the Danish Constitution provides that:

> *The sittings of the parliament shall be public. Provided that the President, or such number of members as may be provided for by The Rules of Procedure, or a Minister shall be entitled to demand the removal of all unauthorised persons, whereupon it shall be decided without debate whether the matter shall be debated at a public or a secret sitting.*

In Germany, similarly, the House of Representatives has the discretion to exclude the public. According to Article 42 of the German Constitution, although the debates of the House of Representatives are public:

> *Upon a motion of one tenth of its members, or upon a motion of the Government, the public may be excluded by a two-thirds majority. The decision on the motion is taken at a meeting not open to the public.*

In South Africa, as we have seen, the legislatures may not exclude the public and media "unless it is reasonable and justifiable to do so in an open and democratic society".[199]

The Danish Constitution also places no obligation on the legislature and its elected members to facilitate public involvement or to consider and canvass public inputs and views from interested parties. Section 51 gives committees the prerogative to involve (or not to involve) the public in decision-making:

> *The Parliament may appoint Committees from amongst its members to investigate matters of general importance. Such Committees shall be entitled to demand written or oral information both from private citizens and from public authorities.*

[199] section 59(2)

Similarly, Article 44 of the German Constitution provides as follows:

> *The House of Representatives has the right, and upon the motion of one quarter of its members the duty, to set up a committee of investigation, which takes the requisite evidence at public hearings. The public may be excluded.*

In South Africa, as discussed earlier, legislatures are required to facilitate public participation. Similarly, in Uganda, citizen participation in the planning process is guaranteed in its constitution.[200] Thus Article X of the National Objectives and Directive Principles of State Policy states that:

> *Government shall take the necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.*

Article 38 (2) of the Ugandan Constitution further provides that:

> *Every Ugandan has a right to participate in peaceful activities to influence policies of government through civic organizations.*

This means that, while legislatures in countries like South Africa and Uganda have a *constitutional* obligation to facilitate public participation, legislatures that are governed by older constitutional and political arrangements enjoy greater sovereignty. Yet, despite the somewhat exclusionarynature of these earlier constitutions, in practice public participation has increasingly become a feature of modern democracies.

PUBLIC PARTICIPATION IN PRACTICE: THE CANADIAN EXAMPLE

In democracies such as Canada, public participation in government decisions is now a regular feature of political life. Public participation became a feature of public policy in Canada from the 1960s and 1970s and, today, decisions by government without public consultation are the exception rather than the rule.

There are numerous examples of public participation in Canada. For example, the Canadian Centre for Foreign Policy Development was established in 1996 to help Canadians outside government contribute to the development of Canadian foreign policy. In 1996 and 1997, Canada involved civil society to an exceptional degree in the Geneva and Ottawa conferences

[200]Gariyo [2000] The Ugandan Constitution was finalised in 1995.

that sought to secure a global ban on land mines. At the latter conference, the Programme to Eradicate Poverty was employed as a basic instrument to support policies and programmes aimed at transforming relations between the state and civil society.[201]

One of the mechanisms used by the Canadian government has been to confer public participation rights under specific legislation. The deliberations that resulted in the Environmental Protection Act, 1988 (CEPA) are of particular interest in this regard. Some of the key principles included in the CEPA include: the right to a healthy environment; improved access to the courts to prosecute and to sue where ones right to a healthy environment has been infringed upon; increased public participation in government decision-making; improved monitoring and reporting to the public on the state of the environment; increased government responsibility and accountability for the environment.

In a policy document entitled *Creating Opportunity*, the Canadian Liberal Party recognised that Canadian citizens have greater awareness and expertise than government in the environmental field. The document noted that these assets are often not tapped because of financial or legal restrictions. Thus, a commitment was made to "build on this public awareness and give individuals new tools to protect the environment and to participate in environmental decision-making."[202] The Liberal Party further committed itself to "use the forthcoming review of the Canadian Environmental Protection Act to examine giving members of the public access to the courts as a last recourse if the federal government persistently fails to enforce an environmental law."[203] It noted that the "Government of Canada is interested in receiving comments on public rights to file notices of objections, requests for review of approvals and of regulations, and for intervenor funding for appearances by interested parties before Boards of Review".

Hence, although neither the Canadian Constitution nor any general law provides for public participation, it now plays a significant role in policy and law making. In addition, specific legislation may oblige the executive to

[201]Summit of the Americas [1998a]

[202]CEPA [1995]

[203]CEPA [1995]

involve the public in promoting, implementing and monitoring policy and laws, in order to ensure that publicly-defined standards are met.

PUBLIC PARTICIPATION AND THE EXECUTIVE: THE GERMAN EXAMPLE

While in South Africa the focus of public participation is on how to reach the poor and marginalised sectors of society, the German public participation process draws mainly on experts. The significance of the German system for the South African experience lies in the fact the public participation process begins *before* the executive commits its ideas to paper.

In Germany, legislation derives from a number of sources (government programmes, the administration, court rulings, associations of trade and industry and interest groups, local authorities and as a result of public discussion in the mass media). Specialist divisions in the ministries receive and monitor potential issues for legislation, and invite interest groups[204] to attend discussions with a view to exchanging views and information. These groups do not act arbitrarily on behalf of a few individuals, but represent, in principle, the interests of broader social groups. This prior consultation is considered more efficient than first drawing up provisions, which may later prove to be ill-founded or impossible to implement. It also means that interest groups can influence a Bill before it reaches the lawmakers.

The influence of interest groups is extended into the legislative process. Indeed, the legislature is considered to be dependent on the expertise, opinions and concerns of those potentially affected by the planned legislation. Taking interests into account has become routine procedure in the German legislature, which often solicits different and even conflicting views on an issue.

Both the executive and legislative process depends heavily on expertise. There are experts in every relevant field, many appointed by government to provide specialist advice on a wide range of topics. In all, approximately 6,000 experts serve on a wide variety of scientific advisory committees, commissions and specialized committees.

[204] Schick & Zeh [1997] Together with information adapted from: http://www.uni-uerzburg.de/law/gmooo.html/

The first formal process in the German legislature is the first reading debate. The purpose of the first reading debate is not simply to place a Bill on the agenda of the legislature as in South Africa, but rather to present the different political standpoints on a particular bill to the public and the media. In this way, issues are placed in the public domain, ensuring that the public is aware of the issues and various political viewpoints *before* the Bill is considered in greater depth by the committees.

As in South Africa, the Bill then goes to the relevant committee where it is discussed clause by clause. The chairperson calls the individual chapters and sections and the *rapporteurs,* committee members or representatives of the Federal Government or the legislature have an opportunity to express their views. At this stage, amendments may be proposed and formal motions for amendments moved. During the committee stage, members do not make formal speeches but discuss individual points with each other, submitting and withdrawing proposals for debate. Thus, the committee stage consists of specialized discussions aimed at the creation of sensible and workable legislation.

The deliberations of committees responsible for particular pieces of legislation or policy conclude with the submission of a report and recommendation to the plenary, on the basis of which the bill is given a second reading.

Until recently, committee meetings in Germany were not, in principle, open to the public, although a committee could decide to admit the public during the discussion of a particular item of business or during parts of the discussion. In 1995, however, in the process of reforming its procedures, the German legislature introduced so-called "extended" public committee meetings. These are held only in connection with the final debate, after which the committee makes its recommendation.

If the subject matter of the bill is significant, very complex or politically controversial, a public hearing of experts and representatives of interest groups is held. One reason for holding such hearings is to obtain additional specialist information and advice about particular problems relating to the

bill in order to assist the progress of deliberations. Another is to attract media interest in the bill, in order to clarify the significance of the issues involved and encourage public debate.

Parliamentary groups regularly endeavour to choose experts whose assessment of the difficulties, risks or chances of success of the bill either back up their own political views or are likely to undermine the arguments of opposing parliamentary groups. Similarly, the views of powerful organizations such as employers' federations, trade unions or environmental organizations are engaged, as their opinions will potentially influence public opinion on the bill. These hearings may be very influential. Indeed, in the past, bills have been withdrawn because the majority or all of the experts invited to a hearing considered the proposed legislation either inappropriate or harmful.

Both Germany and South Africa have used the notion of public participation as an antidote to the authoritarian regimes they have experienced in the past. There are, however, some significant differences between the two systems. While public participation in Germany is encouraged and directly facilitated, its chief purpose is to facilitate a flow of information in order to encourage debate and create an awareness of public issues. However, by focusing heavily on the role of expert witnesses, the German model tends to entrench a participatory democracy for and of the elite.

The South African model, on the other hand, envisages participation in the popular domain, with the aim of encouraging a continuous interaction between the elected and the electorate through all stages of governance. In this sense, it promotes a real and direct participatory process. Although the reality may fall far short of the vision, there is no doubt that the legislatures are committed to broad public participation, even though they are currently hampered by a lack of resources.

As noted above, the particular value of the German model for our purposes lies in the fact that it provides opportunities for participation at the pre-policy and policy-making stages.

PUBLIC PARTICIPATION IN INTERNATIONAL AND REGIONAL AGREEMENTS

International and regional agreements, as well as popular pressure to open up governmental decision-making processes, are spurring national governments to take steps to improve transparency, participation, and accountability. Environmental and other activists must take a large part of the credit for their role in creating awareness for and popularising the notion that people must have a say in decisions that affect their lives and well-being.

From the 1960s and 1970s, organisations like Green Peace and others have brought issues into the public domain, challenging the right of governments and corporations to pursue interests that impoverish, degrade or damage the environment. In turn, the struggle for the environment was taken up by communities, public interest lawyers and other groups, creating a pool of expertise on which governments came to rely. The recognition that much of the specialist knowledge required to draft and implement environmental policy resides in civil society helped create the space for new and more participatory forms of governance in the national, regional and international spheres.

Over the last decade, there have been a number of key regional and international agreements on the environment. At the 1992 Earth Summit in Rio, for example, nations from around the world adopted Principle 10 of the Rio Declaration, which recognized the critical role that civil society plays in protecting and managing the environment. Principle 10 emphasizes the importance of public access to information, participation in decision-making processes and access to judicial procedures and remedies, affirming that: "environmental issues are best handled with the participation of all concerned citizens at the relevant level." In Agenda 21, the plan of action that accompanied the *Rio Declaration*[205], governments pledged themselves to the pursuit of broader public participation in decision-making processes and policy formulation for sustainable development – understood as development that meets present needs without compromising the ability of future generations to meet theirs.

[205] UNEP (1992)

In 1998, the United Nations Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[206] (known as the Aarhus Convention). This binding convention establishes minimum legal and institutional requirements to ensure that citizens have the opportunity to obtain environmental information, participate in decision-making processes, and have access to judicial and administrative redress to protect the environment. The Aarhus Convention has energized countries and organizations around the world seeking to promote environmental governance.

The Bolivian Summit Declaration, the product of the Summit of the Americas for Sustainable Development held in Santa Cruz in December 1996, reflected growing co-operation between governments in the American hemisphere on issues relating to public participation, particularly on environmental matters. By signing the Declaration, heads of states and government officials demonstrated their strong support for the broad participation of civil society in decision-making processes, including policies and programmes and their design, implementation, and evaluation. The heads of state charged the Organisation of American States (OAS) with "the formulation of an inter-American strategy for the promotion of public participation in decision-making for sustainable development." They emphasized legal and institutional mechanisms, access to information, training programmes, and consultation processes to ensure civil society involvement. The role of public participation was again highlighted at the 1998 Santiago Summit of the Americas, where the governments pledged to develop, with the participation of civil society, principles and recommendations for legal and institutional frameworks to stimulate the formation of responsible and transparent non-profit and other civil society organizations and encourage public sector-civil society partnerships.[207]

Soon after the Santa Cruz Summit, the OAS began a 15-month programme to formulate an Inter-American Strategy for Public Participation in Environment and Sustainable Development Decision-Making in the Americas (ISP). As part of this effort, the OAS launched pilot projects on participatory

[206] Aarhus [1998]

[207] Summit of the Americas [1998b]

environmental management in Dominica, Peru, and the Gulf of Honduras, in order to test effective means of involving civil society in public initiatives.[208]

PUBLIC PARTICIPATION AND THE ROLE OF CIVIL SOCIETY

Recent decades have seen phenomenal growth in civil society organisations (CSOs) in both Northern and Southern countries. These CSOs make up a vast array of sectoral and interest groups, including agriculture, environment, development, health, human rights, indigenous peoples, peace, population, religion, trade, youth, and women. They embrace a wide range of types: charities, church groups, trade unions, grassroots community groups, local self-help groups, professional associations and international networks. And they are engaged in an enormous variety of activities and struggles – social, economic, and political.

Increasingly, CSOs are forming international networks to address the growing range of issues that cross national borders, such as climate change, biodiversity destruction, deforestation, trade, debt, and development policy. The Group of Lisbon has described this development as "global civil society", noting that it plays an historically important role with regard to three basic functions. It acts as the emerging planetary moral consciousness; it shapes and expresses global needs, aspirations, and objectives; and it offers a global capacity for politically innovative behaviour, and so contributes to the solution of problems.[209]

At the same time, it is important not to romanticize CSOs. Civil society includes a good number of organizations that contribute little or nothing to the good of society. Some CSOs are not democratic in their structure and there may be questions about their legitimacy, accountability to their members and right to represent the interests in their sector. Many are chronically under-funded and beholden to governments or foreign donors.

Representatives of civil society and the private sector are now routinely included in joint forums with governments, United Nations agencies and international organizations like the World Bank. Most visible has been the

[208] Summit of the Americas [1998a]

[209] International Institute for Sustainable Development [1998a] Idea 3

participation of thousands of civil society organisations (CSOs) at large United Nations and other international conferences during the 1990s and early 2000s.

The International Institute for Sustainable Development[210] argues that CSOs bring expertise, commitment and grassroots perceptions to the policy-making process. They are often able to mobilize popular support for or against policies proposed by governments and can offer alternative policies and solutions to problems. Frequently, CSOs have led the way in showing the connections between environmental, development and social issues and in drawing out the implications for public policy. They may also provide early-warning and information-gathering services that help in the establishment, implementation and monitoring of policies, treaties and conventions.

Some observers believe that the CSO shift beyond advocacy towards broader participation in the public policy realm will lead to significant changes in methods of governance in the next century. While the growing range of actors involved in policy fora makes the challenge of governance more complex, it can also greatly increase the capacity of the governance system to meet the complex demands placed upon it. CSOs bring to policy-making a much greater range of information, perceptions, and potential solutions than official bodies could hope to generate on their own. This is especially true in the area of sustainable development. Many development mistakes have occurred because bureaucrats, national and international, failed to foresee or ignored the likely effects of new projects.

Case Study: International Landmines Campaign[211]

In December 1997, activist Jody Williams received the Nobel Peace Prize on behalf of the International Campaign to Ban Landmines (ICBL). "It is amazing", she said in her acceptance speech in Oslo. "It is historic. It proves that civil society and governments do not have to see themselves as adversaries. It demonstrates that small and middle powers can work together with civil society and address humanitarian concerns with breathtaking speed."

[210] International Institute for Sustainable Development [1998] Idea 3
[211] Summarised from International Institute for Sustainable Development [1999] Idea 5

This remarkable campaign began in the field where international CSOs work daily with the reality of landmines. These relief and reconstruction organizations work in countries like Angola, Cambodia, and Afghanistan where they mend shattered bodies, provide prosthetics and rehabilitation and clear minefields so that they may be returned to productive use. Past conflicts have left 100 million mines in the ground in 60 countries, most of them the poorest in the world. Every year, the lives and livelihoods of 26,000 people are shattered by these silent killers. Landmines kill one person every twenty minutes, 80 percent of whom are civilians and many of whom are children.

These organisations soon realised that their relief efforts alone would never solve the problem and that the only effective solution was an outright ban on landmines. They accordingly mounted a campaign in Europe and North America. In 1992, six CSOs (Handicap International, Human Rights Watch, Medico International, Mines Advisory Group, Physicians for Human Rights and the Vietnam Veterans of America Foundation) came together to form the International Campaign to Ban Landmines (ICBL). They were quickly joined by CSOs in dozens of countries.

Up until this time, work at the diplomatic level had focused on methods of controlling the use of landmines, while official agreement depended on reaching unanimity after years of tedious negotiations. In 1994, after yet another fruitless meeting in Geneva, a small number of governments – including Canada, Austria, Belgium, and Switzerland – entered into discussions with the ICBL about the more radical idea of banning landmines completely. This was the origin of an unprecedented collaboration between governments and CSOs that would lead to a new treaty and a Nobel Prize three years later.

Each side had resources that the other side lacked. Governments could provide funding for meetings, communications and educational materials, as well as official access to other governments. CSOs had knowledge and expertise on the effects of landmines, credibility with

the media and the ability to influence public opinion. In October 1996, at a conference of CSOs and governments, Canadian Foreign Affairs Minister Lloyd Axworthy invited the countries of the world to meet in Ottawa to sign a treaty to ban landmines. The intervening months saw a well-coordinated campaign by CSOs and governments in both public and official arenas and, in December 1997, 125 countries came to Ottawa to sign the treaty.

The work of the campaign now involves ensuring that the treaty is ratified and implemented by the signatories and lobbying those countries that have not yet signed.

Many factors contributed to the success of this campaign: its clear objectives, the quality of its leadership, the post-Cold War environment, the decision to work outside normal diplomatic channels on a treaty that did not require consensus, and even the new technology that permitted rapid communication by Internet and e-mail. But the most striking and significant feature of this story is the collaboration between governments and organizations in civil society.

As Jody Williams observed, the two do not have to be adversaries, and when they work together they can change the world.

PUBLIC PARTICIPATION AND POVERTY REDUCTION

Since 1999, the international community has made sustainable poverty reduction the primary focus of financial support to poor countries. This was accompanied by a new approach requiring that debt relief and concessional flows be based, in the future, on country-led poverty reduction programmes. The approach is closely related to two other international policy initiatives: the Heavily Indebted Poor Countries (HIPC) initiative, launched by the international financial institutions in 1996; and the Comprehensive Development Framework (CDF) approach, introduced by the World Bank in 1999.

An important part of this approach is the requirement that civil society be involved in drawing up and monitoring these policies. Although an admirable

ideal, realisation has often been hampered by a number of deficiencies in the conception of what public participation means and how it should take place. Some of the findings of a report on the Poverty Reduction Strategy Paper (PRSP) process, prepared for the British Department for International Development (DfID)[212], offer some important lessons for public participation. The report draws on PRSP experiences in Ghana, Vietnam and Zambia.

A common understanding

There is a need for a common understanding of what is meant by public participation (as opposed to consultation) and how and with what objectives it should be engaged. Without such an understanding, it is relatively easy for governments (and international organisations) simply to go through the motions.

Linked to this is the need to determine what most appropriately represents civil society. This may be disputed territory. In Ghana, for example, some NGOs are perceived as "government-linked". Other organisations are seen by governments as little more than a mouthpiece for the opposition.[213] There is also the danger that those with the most resources and the loudest voices may appear to speak on behalf of a large constituency or express the dominant view.

In answering the question as to whether civil society represents the poor, the report concludes that:

> *Mass-based organisations – churches, trade unions, the women's movement – are best at providing channels to the poor. NGOs can help to bring resources and capacity, but themselves may not adequately reflect the interests of poor communities. In general, the wider the civil society coalition, the less the danger of making assumptions.*[214]

The need for a long view

Public participation processes take time. This is illustrated by the fact that the urgent need to secure relief has resulted in governments setting too-short timetables for the PRSP participation process. Thus:

> *For the PRSP to be truly effective, democratic processes must be firmly rooted; culturally and gender sensitive; and proceed at an appropriate pace. In this*

[212] SGTS & Associates [2000]
[213] SGTS & Associates [2000] 2.31
[214] SGTS & Associates [2000] 3.19
[215] SGTS & Associates [2000] 1.34

regard, the kind of 'force feeding' demanded by the exigencies of speedy debt relief may prove counter-productive to good civil society-government relationships in the longer term.[215]

Related to this is the need to develop capacity. Public participation should not be viewed as a short-term or 'one-off' process, but must be underpinned by capacity-building to ensure that civil society can play a genuine role in the construction of economic and other policies.

The need for legitimacy

The process must be seen as legitimate. The HIPC initiative has attracted widespread antipathy from civil society organisations and some governments, fuelled by a perception that the PRSP process is dominated by the World Bank and the IMF. Similar issues arise when the intentions of government are viewed with suspicion. In Ghana, for example, large sections of civil society expressed doubts about government's intention seriously to involve civil society structures in the PRSP process.

Interestingly, this is at odds with the "generally received view within the World Bank and elsewhere, that participation in the development of Ghana's CDF has been exemplary"[216]. A similar gap between the perceptions of civil society and those of the international financial community is illustrated in the case of Bolivia (see page 130). This underlines the lack of a common understanding of what public participation should entail.

Political will

It follows, therefore, that government must be willing to work with civil society, both in defining the framework for public participation and in working through its processes. The three case studies in the DfID report demonstrate that the state is often cautious about working with civil society, recognising that it creates political risks. In Zambia, for example, stakeholders were agreed about the lack of an established culture of consultation.[217]

However:

The level of commitment of leaders and senior officials is an important barometer for the prospect of effective civil society participation.[218]

[216]SGTS & Associates [2000] 2.28
[217]SGTS & Associates [2000] 2.77
[218]SGTS & Associates [2000] Executive Summary, 11

> *Unless the process is supported at Cabinet level, or Head of Government, or at least, there is willingness not to obstruct a new participatory process, the output from participation will be limited.*[219]

The role of Parliament and parliamentary institutions is important, as is the work of individual members who should be aware of local priorities.

> *Their participation significantly enhances the scope of civil society engagement. There can always be a question over the democratic legitimacy of civil society bodies, and the involvement of elected representatives, including local leaders, and Parliamentary institutions helps to broaden the inclusivity of the participation process, and support for the PRSP strategy.*[220]

Ultimately:

> *The nature of interaction between the State and civil society depends on the prevailing system of governance – of rights to information, accountability and transparency – and respect for democratic practice.*[221]

Access to information

Ready access to and the appropriate distribution of information is critical. This is a perennial problem. In Ghana, for example, civil society complained of difficulty in gaining access to government information, even that which is already in the public domain. Such information should be presented in a "manner accessible to all sections of civil society"[222].

The credibility of information is also critical. This issue relates closely to the question of legitimacy. Ideally, information should be available from a wide variety of sources, including a media that is not only free but is also prepared to advance the process by informing civil society about relevant issues.

THE STATE AND CIVIL SOCIETY: THE CASE OF BOLIVIA

> *Only together can we construct human development for all, to initiate a time of kindness, solidarity and justice – a true Jubilee for all. (National Forum Declaration, April 2000).*

There are those who argue that participation in joint consultative conferences and committees gives greater legitimacy to organizations like the World Bank, without delivering any significant changes in their policies or democratising their practices in individual countries. Expectations of what

[219] SGTS & Associates (2000), 3.7
[220] SGTS & Associates (2000), 3.12
[221] SGTS & Associates (2000), 3.5
[222] SGTS & Associates (2000), 2.30

participation involves and what it should deliver may also differ markedly.

On the face of it, Bolivia provided a fertile arena for the First National Dialogue, launched in September 1997 in order to reach consensus among civil society groups on poverty reduction and a medium to long-term national development strategy. In Bolivia, public participation is governed by a Law of Popular Participation, which established a national Secretariat for Popular Participation with the aim of integrating civil society into all levels of sustainable development decision-making. In 1997, the Secretariat introduced a Programme of Strategic Actions in Natural Resources, Environment and Planning for La Paz and began offering institutional support for public participation programmes at the regional level as well. According to the National Secretary of Popular Participation in Bolivia, Mr. Carlos Hugo Molina:

> *Bolivia is perhaps the first country where the state has passed a law for popular participation and a national system for community development has been put in place. The policy promotes people's participation in indicative planning and about three hundred municipalities in the country are implementing a process of participatory planning.*[223]

Recent events show, however, that there may be a big gap between the ideal and the reality. While there is no doubt that the exercise was perceived in a positive light by international financial institutions, civil society in Bolivia saw it more as an exercise in managing the expectations of the donor community than as a commitment to popular participation in public policy formulation. They complained of lack of preparation time, lack of transparency (documents not circulated with sufficient lead-time) and insufficient follow-up.

When the IMF announced its support for a debt reduction package for Bolivia under the Heavily Indebted Poor Countries (HIPC) initiative, once Bolivia had "adopted a poverty reduction strategy – in a process with civil society",[224] many Bolivians were sceptical. They feared that the government would, once again, embark on an exercise in public consultation aimed at meeting the expectations of the international financial institutions and that the lessons of the First National Dialogue had not been learnt and were likely to be repeated.

[223]UNDP [1997]

[224]Jubilee 2000 Coalition [2000] Jubilee 2000 is an international movement in over 65 countries advocating a debt-free start to the Millennium for a billion people.

Civil society organisations decided, therefore, to launch a massive public consultation of their own. The Bolivian Jubilee 2000 consultation involved more than 4,000 individuals and 800 organisations over nine regions and culminated in a four-day National Forum on Poverty Reduction in La Paz from 24-28th April 2000. The forum was organised, with the strong backing of the Bolivian Catholic church, to run parallel to a government initiative to consult the population on poverty reduction as it defined a strategy paper to be presented to the IMF. The declaration issued at the end of the forum called for the participation of civil society in drawing up the government's eventual debt reduction strategy and also participation in monitoring and evaluating its implementation on an annual basis. In relation to the debt relief expected under the HIPC initiative, the forum considered it to be a "first step towards greater international justice". Nevertheless, it also stressed that the new funds available as a result of debt relief do not present a solution to the problems imposed by debt.[225] Participants of the Forum are now eager to ensure that the issues that were discussed are effectively taken into account by the government and included in its Poverty Reduction Strategy Plan – which Bolivia must complete in order to qualify for debt relief under the HIPC II Initiative.[226]

PUBLIC PARTICIPATION IN AFRICA

In line with international trends, African countries and regional organizations are considering ways to incorporate environmental governance principles into national legislation and regional initiatives.[227]

Local people often know the causes and best remedies for such problems as deforestation or soil erosion, how to find and use plants with unique properties and how to prevent animals from damaging their crops. With public participation, this knowledge and these skills and resources can be mobilized to increase the effectiveness of government initiatives. Equally, when people are allowed to take part in assessing problems, resources and opportunities, they acquire information and enhance their awareness of factors affecting their lives.

[225]Jubilee 2000 Coalition [2000] *Bolivian civil society asserts demand for involvement in fight for debt cancellation and poverty reduction*

[226]Jubilee 2000 Coalition [2000] *Take the people's view: Urge Bolivia's government to listen to the national forum on debt*

[227]Environmental Law Institute [2000]

Thus, public participation encourages people to take more responsibility for their actions and puts pressure on governments to address environmental issues more explicitly and effectively. However, although public participation in decision-making is on the increase in Africa, there is a serious need to promote the access of women and youth to decision-making processes. Public participation in the state of the environment reporting process in such countries as Lesotho, Malawi, South Africa and Zimbabwe illustrates how all stakeholders can be involved in decision-making.[228]

The African Charter for Popular Participation in Development and Transformation is another example of the trend towards public participation. The aim of the Charter is to help civil society contribute to the maturation of Africa's polity and economy. Sponsored by the ECA in 1990 and adopted by national and international agencies and Africa's heads of state, the Charter reflects the "fundamental right of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times."[229]

> *Many cultural, economic, and political barriers effectively prevent the poor from having any real stake in development activities. Without special efforts by the designers and sponsors of projects and without appropriate policies to address and overcome these obstacles, the voices of the poor will not be heard and their participation will at best be token. Reaching the poor, therefore, requires working with them to learn about their needs, understanding how development decisions are made in their communities, and identifying institutions and mechanisms that can get opportunities and resources into their hands.*[230]

Uganda: Public Participation and the Budget

> *It is the right of people to know how their resources are allocated and utilised. Budgets are instruments for mobilisation, allocation and utilisation of resources. It is a right for ordinary people and poor people in particular to participate in the design, planning and implementation of programmes and activities that should benefit them.*[231]

In Uganda, where citizen participation in the planning process is guaranteed by the Constitution, the majority of citizens do not influence budgetary processes and policy formulation. In order to address this problem, both central and local government has introduced initiatives to broaden the scope of citizen participation.

[228] UNEP [2000]
[229] Amoako [1997]
[230] World Bank [a]
[231] Gariyo [2000] 1

The Uganda Participatory Poverty Assessment Project (UPPAP) was a three-year process that sought "to bring the perspectives of poor Ugandans, through consultations, into the formulation and the implementation of policies and planning for poverty reduction at both district and national levels".[232] The Project began work in 1998 and involved consultations with the poor in both urban and rural areas. Not only has the resulting information been incorporated in the Poverty Eradication Action Plan; it has influenced budget allocations. For example, as a result of communities identifying access to clean water as a priority, a higher weighting was given to the provision of safe water supply in budgets at central and district levels.[233]

It is recognised that the language and mechanisms for constructing the budget are complex and require special skills and knowledge. Although the flow of information has increased with the publication of, amongst other things, an abbreviated version of the Budget Framework Paper (the version that goes to Cabinet before allocations are approved) and an annual *Background to the Budget*,[234] efforts to make information more accessible are critical. In early 2000, the Ministry of Finance, Planning and Economic Development set up Budget Reference Groups – described as "a participatory process aimed at demystifying the budgetary process and policy formulation".[235] Work includes the simplification of budget figures to make them easily understandable by the public and making information on the budgetary process available through public publications. A citizens' guide on the budgetary process is envisaged.

Other important work is being done by organisations such as the Uganda Debt Network (UDN) which is, amongst other things, arranging for citizens to participate in discussions on public policies such as the Poverty Eradication Action Plan on local radio and television stations. Through the District Poverty Monitoring Committees (DPMCs) being set up by UDN, citizens will participate directly in policy dialogue.[236] Another organisation, the Budget Advocacy Initiative, seeks to take advantage of opportunities offered by government. One of its members is the Forum for Women in Democracy

[232]UPPAP

[233]World Bank [b] 1

[234]World Bank [b] 1

[235]Gariyo [2000]

[236]Gariyo [2000]

which is launching a pilot National Gender Budget Project; other traditionally marginalised groups are also involved, including people with disabilities and women in agriculture.[237]

CONCLUSION

The examples in this chapter make it clear that there is a global shift towards greater public participation. Civil service organisations have mobilised people both in their own countries and all over the world and participation is now incorporated in the policy frameworks of a number of international organisations. Although many efforts are flawed and some hopelessly inadequate, it may be argued that the long-term benefits far outstrip the set-backs. One positive outcome is a growing awareness of public participation as an integral part of democracy. Not only is it perceived as more democratic, but there is now a realisation that it is likely to be more efficient and more likely to be successful than the old 'top-down' methods. Increasingly governments are having to acknowledge that the source of wisdom and inspiration may lie with the people they are elected to represent, or on whose behalf they act.

But perhaps the greatest long-term benefit is that public participation is an enormously important way of empowering communities. By engaging with governments on issues that affect their lives, civil society is brought into the mainstream and acquires skills, knowledge and capacity. It may lead, as in Uganda, to the development of information in a form that is readily available and understandable to the public. It may lead, as in Bolivia, to powerful collective efforts to counter poor government performance. Thus, like many social and political movements in the past, it signals a new way of thinking about governance and democracy.



[237]Gariyo [2000] 6

CONCLUDING REMARKS

WHERE TO FROM HERE?



Focus groups conducted by the HSRC revealed an alarming lack of knowledge about opportunities for participation in South Africa, and a wistful longing to be better informed.

> *We are willing to participate but at times we don't know about these things. We are always informed when decisions have been taken already ... You find that a few people participated and took decisions for the majority, by the time we realise, the decision has been taken without us having participated.*[238]

> *I don't have a television in my house because I don't have electricity. I would sometimes go and listen to the news at a friend's place.*[239]

> *People would like to be educated about how to communicate with the government because if you have no education and you go there by yourself, they will tell you don't you know there's this and that in your community ..."*[240]

> *We need a lot of things in our squatter camp, toilets are not enough, we do not have enough water, we are really struggling ... The presenters of the workshop will educate us on how to go about solving our problems.*[241]

> *We all don't know who to talk to, it's true, and we need so many things in our community. Look at our roads – we are living in shacks and do not know for how long we'll be living like this ...*[242]

The purpose of this publication has been to offer a survey of public participation in South African government. It explores the theoretical and

[238]Respondent, Nellmapius Focus Group, HSRC [1999] 45

[239]Respondent, Alexandra Focus Group, HSRC [1999] 51

[240]Respondent, Extension 6 Squatter Camp Focus Group, HSRC [1999] 61

[241]Respondent, Thembisa Freedom Square Focus Group, HSRC [1999] 65

[242]Respondent, Mandela Village: Block S Soshanguve Focus Group, HSRC [1999] 66

constitutional framework for public participation. It considers the environmental factors that promote or impede public participation in South Africa. Based on research conducted by IDASA, it offers various models for consideration and analyses the practice in the various legislatures. Finally, it explores public participation exercises elsewhere in the world in order to draw lessons that may provide a basis for further debate and possible action at home.

The objective of this final chapter is to identify some of the opportunities that may assist government on its journey towards a genuinely participatory form of representative democracy. Further, based on IDASA's research into current practice in the national Parliament and the nine provincial legislatures, it seeks to identify core elements of best practice.

THE CONSTITUTIONAL AND LEGAL FRAMEWORK

The South African Constitution draws on two broad traditions of democracy: formal representative democracy and participatory democracy. That is, while its structures and institutions reflect the principles of best democratic practice in the more established democracies, the Constitution also contains clear requirements for a form of government that is open, transparent and participatory. In addition, various "State Institutions Supporting Constitutional Democracy" in Chapter 9 of the Constitution further broaden opportunities for public access.

South Africa has also bound itself to abide by a number of international instruments and is, furthermore, actively involved in international and regional efforts to secure equality rights for marginalised groups, such as the representation of women and people with disabilities. South Africa's performance in respect of women's representation in the legislatures compares well with the rest of the world. This is bolstered by a number of attempts to ensure that such representation is not 'token' but seeks the genuine advancement of women in society. Similarly, the inclusion of people with disabilities in the legislatures continues to drive measures to make their participation meaningful through the creation of a barrier-free environment. There have also been initiatives aimed at strengthening the capacity of young

people while, in one significant example, the views of affected children were thoroughly consulted and considered in the preparation of recommendations and draft legislation on a revised child justice system.

The Constitution also required the passage of certain laws. Some simply provide for the setting up of the required institutions. Others seek to strengthen democracy itself. As discussed, legislation providing for freedom of access to information and administrative justice are important elements in the process of extending rights to the broader public.

Other significant legislation is also specifically directed at strengthening public participation. The Petition Law passed by the Gauteng Legislature provides a practical legal framework for public participation. A similar law is planned by the Eastern Cape legislature in the current year (2001). The National Environmental Management Act (NEMA) follows international practice and contains important provisions for public participation in the monitoring and implementation of environmental law.

However, as the quotations from the HSRC focus groups illustrate, South Africa still has a long path to travel if it is to realise its vision of involving people in political processes and decisions. Yet despite the magnitude of the task, levels of commitment are high. It is clear that there is a general, if sometimes uneven, commitment to public participation amongst many politicians and officials in the legislatures.

ADDRESSING THE LEGACY

Poverty, lack of resources and education prevent many people from engaging with the processes of government. There is a deep divide between those who are able to make use of the existing opportunities – and thus influence government – and those who are often unaware of the opportunities that exist. It has even been suggested that the opening up of opportunities may widen this gap, further benefiting those who are already privileged by giving them a disproportionate say in national affairs.

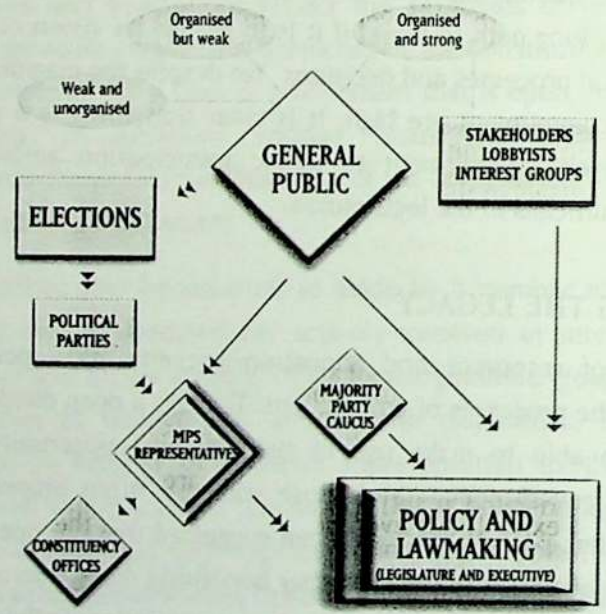
This suggests that radical measures are needed to redress these imbalances. Some of these opportunities may be found in the three-sphere framework set

up by the Constitution. The creation of provincial governments offers citizens the opportunity to participate in provincial affairs and, through the NCOP, to have a say in national policy legislation. Similarly, local government allows, ideally, for participation in matters closer to home. Again, through the participation of the South African Local Government Association (SALGA) in the NCOP, matters of local import can be raised at the national level.

However, while co-operative government provides the opportunities, the challenge is to ensure that this potential is exploited by the broader population. Poverty, the sheer size of the country, poor transport and other infrastructure, language difficulties, illiteracy, inequalities under customary law and a host of other factors militate against equal participation.

THE 'IDEAL' MODEL FOR PUBLIC PARTICIPATION

Although the easiest model to pursue might be that suggested by what has been called the "realism" model of public participation (see Chapter 14), South Africa has chosen the harder route.



What we have described as the "possible ideal" for South Africa envisages a number of participants in the policy and law-making process. These include

citizens (through public participation), citizens (through their representatives and constituency offices), lobbyists and interest groups, political parties represented in the legislature (through committees) and the majority party caucus (as a joint legislative-executive forum).

Laws are founded in policy and it is at the policy-making stage, traditionally the function of the executive, that public intervention should first be considered. Indeed, as the German example shows, engaging the public in policy formulation at this early stage may be more efficient and cost-effective. The model envisages public participation in policy and lawmaking as an integrated process. In other words, it works from the assumption that laws are a natural expression and outcome of policy. This means that the lawmakers need to understand the process that led to and reasons for the draft Bill they will be required to discuss. It also means that public input should be sought earlier rather than later. The activities surrounding the Child Justice process provide an admirable example of the way in which consultation and participation can add value to the final product. In the light of the constitutional requirement that not only the legislatures but also the executive engage the public in deliberations, some further consideration of this aspect may be useful.

ENSURING EFFECTIVE PUBLIC PARTICIPATION

Research by IDASA reveals that legislatures have adopted one of four basic configurations within which they carry out the public participation function (Chapter 16). These include the Committee configuration, the Specialist Public Participation Unit configuration, the Outsource configuration and the Public Relations/Communications configuration. As discussed, each has its advantages and drawbacks. Whatever system is in use, however, there are a number of core elements of best practice that may be applied to ensure that it functions effectively. These include:

Knowledge of process and content

Those who organise public hearings or liaise with the public should have detailed knowledge of standing rules and procedures. They must also know about the progress of draft legislation and when hearings are likely to be called. In addition, they should be familiar with the content of legislation.

This saves the public time and increases their confidence in the legislative process.

Committee clerks are the most likely to have access to this information. Because they are often charged with organising public hearings for their committee and are in regular contact with the committee chair and members, they are also in an ideal position to arrange for public access.

However, as discussed, committee clerks have a variety of functions, only one of which is public participation. While they may have good knowledge of procedures and content, they are unlikely to have either the specialist knowledge or the time to develop successful communications or promote public education and outreach.

Another weakness is that committee clerks tend to work for one committee only. Thus, public participation work may be undertaken in isolation and without the knowledge of the committee section or other structures in the legislature. This underlines the need for co-ordination and clear lines of communication.

Internal communication and co-ordination

Whatever institutional structure is adopted, communication between the various internal structures involved in the legislative process is essential. Administrators, legislators and government departments all need to be aware of one another's activities.

The most effective environment for public participation is achieved when there is a good relationship between the executive and its departments and the legislature. Close co-operation between a ministry/department and the corresponding committee in the legislature is essential. Such co-operation keeps legislatures in touch with issues that may need to be clarified or discussed in a public forum and increases the likelihood of rigorous engagement with the subject matter. It may also encourage the smoother passage of legislation. A discussion of issues *before* draft legislation is prepared, for example, reduces the potential for conflict or prolonged negotiations at the committee stage.

Another crucial aspect relates to the internal flow of information within the

legislatures themselves. Heads of Committees need to have a good overview of the work of committees, its progress and any planned public participation activities. Politicians need to be aware of what public participation offices are doing by way of education and outreach. Without such co-ordination and shared knowledge, the public may be passed from hand to hand and resources may be duplicated.

Capacity and resources

Low capacity and limited resources were some of the most important elements identified in the IDASA surveys. In several of the provinces, public participation is not identified as a specific activity requiring human and financial resources and has no allocated budget. Committees are expected to find money for public hearings and similar initiatives out of their overall budgets.

Inevitably, this results in low commitment to the public participation process. Where committee clerks or other units take on public participation in addition to their other responsibilities, it may not be seen as a priority. Even where dedicated public participation units have been set up, they need to be matched by skilled personnel and adequate budgets.

This is a hard problem to solve. As discussed earlier, legislatures are chronically short of human and financial resources. In this environment, it becomes more than ever essential that resources are well co-ordinated and put to the best possible use. This requires good internal communication and a collaborative approach.

It also requires that staff responsible for public participation are trained and motivated. Motivation depends, in part, on a belief that there is a need for the work that is being done. This requires that the leadership demonstrates the political will to support it and make it happen. With involvement and enthusiasm from the leadership, staff are more likely to be motivated.

Appropriate training not only helps staff provide a good service, it also helps raise motivation levels. Providing training in the absence of motivation is counter-productive as staff may become discouraged and take their skills elsewhere.

COMMUNICATING WITH THE PUBLIC

There are a number of levels at which public communication should take place.

Providing practical information

The public must be provided with timely information about hearings and other opportunities to engage with the legislative process. They should also have ready access to the necessary documentation. Effective engagement is impossible without advance copies of draft legislation and other relevant information.

The purpose of such information should be to give the public the tools with which to participate. Thus, appropriate language, clarity and relevance is essential. Public participation depends on the ability and confidence to understand and argue issues. This is well illustrated by the Gun Control Alliance's strategy of ensuring that communities were in possession of the clear and understandable information they required to put their case. This underlines the need for skilled personnel, adequate lead times and dedicated budgets.

Public education and outreach

However, providing the information to those who ask for it is not enough. This is why various legislatures and other government structures have put public education and outreach programmes in place. In an environment where many people do not understand their rights or how to use them, public education is an essential component of public participation. Without it, the urban-based, the educated and the privileged will continue to dominate, wielding undue influence on policy and legislation.

Public education needs to be combined with effective outreach. The poor, the marginalised and those living in remote rural areas cannot be expected to travel long distances at great cost in order to exercise their rights. Outreach is a mechanism to involve communities that would not ordinarily engage with the political process and is a vital part of the process of involving all citizens in the new democracy.

The role of language

It is clear that information and communications should be written in a way that can be understood by those who need to engage with it and use it. Yet many laws, policy papers and other government documents are written and expressed in a way that excludes rather than empowers or includes the people they affect.

Despite a variety of efforts, little progress has been made in this area. It is, nevertheless, essential that government develop a policy on language use if it is to make significant progress in achieving meaningful public participation. As the Uganda example has shown, public participation exercises need to be accompanied by simultaneous efforts to provide the public with information in a form they can understand and use.

The role of representatives

The South African system of proportional representation means that, at the national and provincial levels, representatives are not automatically accountable to specific constituencies. This emphasises the importance of allocating MPs and Members of the Provincial Legislatures (MPLs) to, and making them responsible for, constituencies. Regular visits to hear the views of communities, assist them with their problems and report back on the work of the legislatures are essential. Constituency offices offer a means through which citizens can seek help and information.

Not only do such mechanisms offer citizens opportunities to stay in touch with their representatives, they offer important channels for public education and the dissemination of information. Ideally, materials and messages developed at national and provincial level should be distributed through a network of representatives. It is also important to note that, while essential, the mere distribution of information is insufficient, as indicated by the preferences expressed in the HSRC focus groups for workshops. Thus, for example:

> *Workshops are much better because if one person can come to the community and workshop the people, in their own languages so that they can all understand.*[243]

[243]Respondent: Wattville focus group, HSRC [1999] 80

Using the media

Links also need to be made and built between legislatures and the media. Community radio, particularly, offers important opportunities to reach constituencies that may be unable to access or use national or provincial media. Material should be prepared in a way that is geared to the audiences it is intended to reach, with careful attention to language, comprehensibility and relevance.

Information should also be presented in a creative and interesting way. Audiences are not necessarily automatically interested in what government has to say. Drama, 'infotainment' and other media breathe life into essential information that may otherwise be ignored or overlooked. Regular 'phone-in' programmes linking representatives and officials with constituencies are also valuable ways of hearing what people have to say and keeping them in touch with developments at a broader level.

Although television broadcasts of events in the legislatures reach a narrower audience, they offer an important way of extending the 'public gallery'. They may also be used to advertise public hearings and other events, raise specific issues in respect of legislation being discussed and make people aware of ways in which they can input or participate in policy and law-making processes.

The value of these broadcasts may also be enhanced by providing some context to the debates taking place. Thus, for example, the objectives of the Bills being discussed could be summarised. Question-time could be vastly improved if the question being answered were to be read out for the benefit of the general public. Currently, only members themselves know what has been asked and often the answers make no sense to those sitting in the public gallery or watching proceedings at home.

Accessibility

Physical accessibility is very important. Where legislatures are not easily reached by public transport, arrangements should be made for participants who might not otherwise be able to attend a hearing.

Legislatures should also be accessible to people with disabilities, taking the

various types of disability into account so that nobody is excluded. This means, for example, making proper arrangements for people in wheelchairs and providing assistance of various kinds to people who are blind or deaf. This is an important consideration when arranging public hearings and committee meetings.

Members of the legislatures should themselves be accessible. Being able to meet with and discuss issues with their representatives gives the public confidence in the democratic process and encourages the belief that their views can make a difference.

STRENGTHENING THE OVERSIGHT FUNCTION

The need to strengthen the oversight function of the legislatures and the NCOP has been discussed. Parliament has commissioned a report on the current status and recommendations have been made, including a recommendation for a committee to consider the reports of Chapter 9 institutions. In addition, the Public Finance Management Act has set out procedures to improve the standard of reporting to Parliament.

These measures will undoubtedly create a stronger framework for scrutiny and oversight in the legislatures. However, they may be hampered by lack of resources, overstretched politicians and low research capacity. Again, one might refer to the German practice of drawing on the expertise of the various government bodies. The legislatures could strengthen their oversight capacity by drawing more extensively on the considerable knowledge and skills available in the variety of specialist commissions, institutions and other bodies set up by government.

WORKING WITH CIVIL SOCIETY

> *Social capital is formalized in civil society organizations (CSOs) – the voluntary associations, organizations, movements, and networks that live and work in the social space outside the state and the private sector.*[244]

Social capital depends on a healthy relationship and interaction between civil society and the state. Where the state is weak, civil society is also weak and the level of social capital is low.[245]

[244] International Institute for Sustainable Development [1998a] Idea 2
[245] International Institute for Sustainable Development [1998] Idea 3

Building partnerships with civil society organisations can do much to extend and strengthen outreach and public education efforts, particularly where resources are limited and capacity is stretched. Civil society organisations with the appropriate focus and skills may offer important routes to otherwise untapped communities. Through their networks, they can play the role of messenger, mediator, information source and educator. Civil society organisations, particularly the more formalised NGOs, often generate media products of their own. They may also have the capacity to take on portions of work, such as running public participation workshops or meetings.

It should be born in mind that civil society organisations also have knowledge that governments may not have access to. This is generally of two kinds. As illustrated by the mainstreaming of civil society in decisions about the environment in Canada and elsewhere, civil society has built up areas of specialist knowledge and expertise that is of value to governments. Secondly, civil society organisations tend, by their nature, to be closer to the constituencies they serve. What they hear and see in the course of their work provides important insight to institutions that have little time and few resources to conduct intensive surveys or mobilise participative initiatives on the ground.

MAKING GOVERNMENT WORK

Public participation in South Africa depends on the commitment of political will, time and extensive resources. In a society where the demands on the public purse are sometimes overwhelming, government is faced with hard choices about how and where it should allocate its budgets. Some may see money spent on public participation as money taken away from more pressing needs, such as housing, water and social services.

The argument underlying this publication is, however, that public participation needs to be seen as an integral part of the process of delivery. That is, in order to establish its own priorities, government needs to engage people in dialogue about *their* priorities and needs.

Further, by engaging in discussion and consultation with the public, government remains in touch with the perspectives and opinions of those on

whose behalf it acts. In this sense, public participation benefits government by enriching its knowledge and understanding and strengthening its institutions.

Finally, the vision of democracy expressed in the South African Constitution is holistic and needs to be implemented in its entirety. Institutions do not stand alone but are interdependent; the strength or weakness of one will strengthen or weaken others. Socio-economic rights lay the foundation for other rights. Rights such as the right to equality, dignity and freedom of expression are dependent on a political and socio-economic environment in which those rights can be exercised.

As we have seen, those who drafted the Constitution in 1994 and 1995 made extensive efforts to consult the views and opinions of the people of South Africa. This was, in itself, a remarkable process. Embedded in the final document is the vision of a government that is open, transparent and accountable to the people it serves.

One of the ways in which the realisation of this founding vision is contemplated is by facilitating the involvement of the people in the decisions that affect their lives. This cannot be done in a token way, or by passively allowing participation to take its course. Efforts to engage the public in dialogue must be proactive, energetic and imaginative.

This means that government must consult not only the opinions of the well resourced or simply rely on the input of experts and specialists. It must draw on the wisdom and experience of the entire society – of rich and poor, women and men, able and disabled, old and young, urban and rural.

This is the ideal towards which government must work. It is an ideal that should be actively supported and promoted by civil society. And it is an ideal on which, ultimately, the transformation of our society must depend. For, as the Speaker of the National Assembly, Dr Frene Ginwala has said:

> *Transformation is not a static thing, not a technical thing that you pull out of a textbook. It is an organised culture. It is the components, the ways in which you function, the objectives you serve, the degree of participation you have. These are all part of the process. It is democratising the institution itself.*

APPENDIX ONE
FUNCTIONS OF BEST PRACTICE

PUBLIC EDUCATION AND OUTREACH FUNCTIONS

This function may be located either in the communications section or public relations office of the legislature. Its core activities should include, amongst other things:

- Designing training materials for public education in order to encourage an understanding of what public participation means and how citizens can participate in the affairs and activities of the legislatures.
- Running workshops on roles, functions and processes for members, administrators and the public, including NGOs.
- Developing and periodically reviewing the effectiveness of public education programmes.
- Preparing information bulletins before public hearings for distribution at education workshops and public forums.

Outreach

A dedicated and systematic outreach programme is required and, even where resources are limited, attempts should be made to co-ordinate efforts around predefined goals. This is much more likely to be effective than *ad hoc* efforts. Elements of such a co-ordinated programme should include:

An allocated budget

An allocated budget promotes the holistic and long-term planning of outreach type programmes.

Common methodologies

Rather than different departments or even staff initiating their own methods for outreach programmes, a general standard should be set. This will assist in the development of a uniform policy, smooth out logistical issues and prevent individual sections and departments from continually 'reinventing the wheel'.

A focus on areas of greatest need

The focus should be on areas where assistance is most needed. This almost invariably includes rural areas. Issues relating to transport, communication and media need to be given particular attention and, where at all possible, attendance should be subsidised.

Setting realistic and attainable goals

Realistic and attainable goals should be set for each programme, based on the number of people to be reached or other similar indicators. This is particularly important in the initial stages, when the best ways of involving groups may be difficult to ascertain. Comparing desired and achieved outcomes allows for the monitoring and fine-tuning of programmes.

Public Education

A dedicated public education programme should accompany and collaborate with outreach activities. The requirements for public education are:

A dedicated budget

A dedicated budget may be even more necessary for public education than for outreach, giving staff the opportunity to make long-term plans without being dependent on ***ad hoc*** grants.

Linking with other programmes and special events

Maximum advantage can be gained where educational programmes are tied in with other awareness programmes.

Effective use of the media

Using the media effectively can result in an impact far beyond what can be achieved with the resources of a legislature alone. Partnerships should be built with local media and local media institutions (radio and press) should be targeted. Regular 'talk-out' programmes, where members of legislatures take calls on air, seem to have been fairly effective in several provinces.

Partnerships with NGOs and CBOs

Effective public outreach and education in South Africa calls for

extensive efforts and initiatives. As resources are often very limited, alternative strategies are necessary. This is why it is important to make use of the existing skills and resources of NGOs and CBOs. Although many of these are also facing a funding squeeze (particularly since 1999 when much of their guaranteed overseas funding dried up), their established infrastructure and community networks may open the way to reaching the broadest possible base of participants.

First, as already discussed, outsourcing to an NGO or CBO by a legislature gives it access to specialist capacity not otherwise available to it. This may, however, be a relatively expensive route and may not make the best use of existing infrastructure in the legislature. It may also involve some loss of control over the process.

Secondly, NGOs and CBOs may be directly targeted. Because they are frequently connected to wide groups of people, this may prove a cost-effective way of reaching a broader audience. Sectoral networks are particularly useful as they can unite dispersed groups around particular issues.[246] To use this method successfully, legislatures should compile lists of potential partners. Low profile organisations should not be neglected as small CBOs may offer the potential to reach into rural areas. However, targeting organisations cannot be the only focus. Participation cannot be made to depend on the strength of local civil society organisation in particular areas, while neglecting less organised communities.

THE PUBLIC HEARINGS AND SUBMISSIONS FUNCTION

The core activities of this function are to:

- Provide a logistic, procedural and administrative service to committees envisaging public hearings.
- Receive, summarise and distribute copies of submissions (and summaries) to members of the relevant committees and the public/stakeholders/participants.

[246] For example, in addition to its other activities, the Legal Resources Centre (LRC) has a regional network programme that provides important linkages.

- Liaise with committees, stakeholders, and the public.
- Summarise bills and policy documents and distribute them to the public.
- Keep records of participants, their submissions and feedback.

A dedicated unit, equipped with administrative staff, may be created to carry out these tasks. This would remove the task of organising public hearings from committee clerks, allowing them to give more attention to the more content-related aspects of their work.

It has been noted that few legislatures make use of a computerised database. This is undoubtedly the most efficient way to record and maintain the necessary information. Such a database should contain contact data on all previous participants and a list of potential participants and stakeholders. It may also be used to record all contacts, attendance and submissions made by organisations and individuals. A database will pave the way for far more effective and efficient feedback and follow-up than at present. It will also allow officials to track participation trends by gender, race, groupings, structures and so on, making it easier to identify whether all relevant groups are participating. A database can also be used as a "marketing" resource, aimed at drawing in as many stakeholders a possible.

Generally speaking, legislatures have no facilities for the recording or transcription of committee proceedings. Even in the National Assembly and the NCOP, only committee decisions and divisions are recorded and not all committee deliberations and proceedings. Where at all possible, Committee proceedings should be recorded, transcribed and stored in a database for easy access. Such public records are a valuable source of information for civil society interest groups and the public at large. They also serve as a frame of reference for officials preparing reports, as well as ensuring that the viewpoints of participants are properly represented.

PETITIONS FUNCTION

Where no other such mechanism exists, a Petitions Standing Committee should be set up to receive petitions, respond to enquiries and receive public complaints against individuals, politicians and government

departments. Such a committee may be established by legislation, as has already been done in some provinces. This gives the petitions process a higher profile. The petitions committee should be supported by an adequately resourced sub-unit located within the committee section. Its responsibilities will be to:

- Serve as the secretariat for the petition's process.
- Develop and design formats for petitions.
- Assist the public in the drafting and framing of their petitions.
- Receive petitions from the public and submit them to the relevant committees of the legislature.
- Provide feedback to those who submitted petitions.

INTERNAL COMMUNICATION FUNCTION

The purpose of the internal communication function is to improve information flow, keeping relevant people in the legislatures and various departments informed of developments. Effective internal communication inevitably improves external communication, increasing the likelihood that the public will receive relevant and good quality information.

This function can be implemented by setting up a dedicated and adequately staffed and resourced desk in either the communications or public relations section of the legislature. Staff at this desk should be well informed about procedural and substantive issues and will be responsible for collecting information from government departments and the legislature and disseminating it internally and externally.

Where resources are available, the ideal is to develop a legislature information base intranet. This would give all staff access to all relevant information and obviate the need for constant and time-consuming enquiries to various personnel. The data should always be online and should be capable of being regularly updated on a decentralised basis (that is, by each department). Such a system requires specialist skills and equipment, but some legislatures have already installed the basic infrastructure

or are planning to do so. Staff can also be kept up to date by installing an email list server (electronic mailing lists), allowing them to archive information for later reference.

Where digital solutions are not possible, information may be regularly distributed on paper in order to keep departments, legislatures and the public informed. Such information should be stored in an easily accessible way.

Two other problems emerged in the course of the research:

Firstly, members of the legislatures as well as potential participants commonly complain that relevant information (such as the time and venue of hearings) is not made available in good time. The implementation of an effective communication system would do much to overcome this problem. It may also be necessary (where legislatures have not already done so) to allocate this responsibility to a particular member of staff. A line of information accountability would make it easier to trace gaps in the communication process.

Secondly, participants and clerks complain that information is often delayed by problems with programming and scheduling. It is essential that politicians inform the relevant officials and administrators about their programming and scheduling decisions in good time so that they can be implemented and executed.

THE CO-ORDINATION FUNCTION

Public participation activities are to some extent dispersed in all the legislatures. For example, even where there is a dedicated public participation and petitions office, public hearings are administered by the committee section. This results in the lack of a co-ordinated strategy for public participation, with little cooperation between the various sections handling functions that should, ideally, closely complement each other. This leads to duplication; or worse, to certain functions not being executed at all.

There are various ways of improving this situation:

Clear job descriptions

Clear job descriptions help define roles by allocating specific responsibilities to individual staff members. This is particularly important where a particular function or task is not a core function. (For example, committee clerks are expected to take on a number of participation-related activities in addition to their core work). The other advantage of job descriptions is that they force those drawing them up to address the workload of staff, highlighting where they may be overburdened. Finally, job descriptions improve accountability, making it clear who is responsible when a task is not performed or inadequately carried out.

Strategic Co-ordination

Dispersed functions make it difficult to develop coherent and cohesive policies and strategies, increasing the possibility that certain functions or programmes end up forgotten or ignored. This problem can be addressed by introducing some kind of co-ordinating mechanism. Thus, a co-ordinator or liaison officer may be appointed to liaise between the various departments or sections or, alternatively, an interdepartmental committee could be set up to make and implement decisions affecting public participation.

Awareness

Finally, it is important to emphasise that all members, officials and staff in the legislatures should be made aware of the constitutional obligation to facilitate public participation in the legislative and political process. This affects, particularly, those working in other areas of administration who may be called upon to approve and disburse funds, make transport and accommodation arrangements or generally assist and co-operate in organising and facilitating activities that promote citizen involvement in the legislative process.

THE INSTITUTIONAL FUNCTION

The success of any programme depends on the capacity to implement and execute it. This capacity depends on the availability of adequate resources and the number and abilities of people available to carry out the required tasks.

Both budgetary and operational resources are necessary, although the latter clearly depends on the former. However, perhaps the most important resource for effective public participation is a staff component equipped with the appropriate skills to play a front line role in the legislature.

People Resources

A shortage of staff was identified as one of the major problems in almost all the legislatures and a major cause of the ineffectiveness of most programmes. This means that existing staff are overburdened and hampered in carrying out their duties, particularly where public participation is only one of many functions allocated to a member of staff. The obvious solution is to employ more staff although, given the limited resources of many legislatures, this may not be possible.

Financial Resources

Although legislatures have a responsibility to fund and implement public participation, almost all programmes are badly under-funded. This makes public participation activities dependent on other departments or sections for whom they are not a priority.

This problem can be ameliorated in various ways.

First, legislatures should include a separate line item for public participation in their budgets. This will give those responsible for public participation and outreach the financial independence to plan and execute programmes based on the amount of money they have available and what they can afford. Control over a dedicated budget is essential for purposes of long term planning, even where resources are relatively easy to obtain from elsewhere.

Second, legislatures can increase their capacity by forming partnerships with the private sector. By these means, public participation activities can be funded or sponsored as part of private sector corporate social responsibility and community development programmes.

Third, legislatures can approach donors with an interest in promoting democracy in South Africa.

Operational resources

Many legislatures lack even basic office equipment and other facilities. Particularly important for purposes of public participation is communication equipment such as fax machines, e-mail facilities and so on. Because of the importance of outreach activities to successful public participation in South Africa, other resources such as vehicles are also necessary.



APPENDIX TWO
SOME DEFINITIONS AND GUIDELINES FOR PUBLIC PARTICIPATION

The Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development requires the "internalisation" of these basic principles of public participation[247]:

1. *Proactivity.* Public participation requires that governments and civil society take initiatives, in accordance with their respective roles, to develop their maximum potential and enrich the process of decision-making for sustainable development.

2. *Inclusiveness.* Full participation by all those interested in and/or affected by sustainable development issues is essential to achievement of durable solutions. Special efforts should be made to include the participation of the private sector, and to create equal opportunities for women and vulnerable groups such as indigenous populations, youth, disadvantaged racial and ethnic minorities (including disadvantaged populations of African descent), and other traditionally marginalized groups.

3. *Shared Responsibility.* Governments and civil society must share equitably the commitments, burdens, and benefits of development.

4. *Openness Throughout the Process.* Inclusive and continuous participation throughout the process of design, implementation, and evaluation of projects, policies, or programs inspires new ideas and expertise, legitimizes decisions, and enriches outcomes. A decision-making process that is open to input at all phases can benefit from adjustments wherever they are needed to respond to new information or circumstances.

5. *Access.* The involvement of civil society in development decisions is essential for lasting solutions. In order to participate effectively, citizens must have timely access, at the various levels of government, to

[247] Organisation of American States [2000]

information, to the political process, and to the justice system.

6. *Transparency.* Productive relationships between civil society and government require that both be more accountable and transparent. Transparency on the part of all concerned parties in a decision-making process facilitates more meaningful participation by ensuring that all motivations and objectives are explicit and that all information vital to the decision is reliable and available in a timely manner.

7. *Respect for public input.* Citizen participation will only be effective and efficient if there is assurance that, in the process of decision-making, contributions deriving from the implementation of various mechanisms for participation are evaluated, analyzed, and given proper consideration in a timely manner.

These principles highlight several key conditions that are necessary to promote the success of policies and practices of public participation, which require firm, ongoing commitment from government and civil society.

The Report to the Canadian Minister of the Environment describes "meaningful public participation" as follows[248]:

Some of the key principles of meaningful public participation that should be reflected in a guideline on interactive public participation where required in screenings and comprehensive studies include - should be based on full access to relevant and required information; must include the opportunity to critically review and comment on the information in a two-way exchange; must be done early enough to allow participants to have an influence on the planning of the project; must allow sufficient time to review and respond; must require a consultation plan to be developed and shared with the public; must be efforts to relate public comment to process or project decisions; must include notification, information out, and information discussion and exchange; must be timely. (27.2)

The HSRC defines public participation as:

participation in various political behaviours which the public can legally enact. These acts range from undemanding activities such as seeking

[248]CEPA (2000)

information and being interested in politics, discussing politics and voting to more demanding forms of participation such as attending public hearings, contacting politicians and campaigning for a political organisation. In this paper the focus is on those aspects of public participation aiming at influencing political procedures and decisions.[249]

USAID provides some "values" for measuring public participation:[250]

1. **Does the activity respond or contribute to efforts that people in the host country are already trying to do?** (Examples: funding natural resource management activities of a commission established at the initiative of the local communities; enabling a government agency to implement an approach to elementary education or to primary health care that was pioneered by local community organizations; supporting an NGO or business association to expand or improve advocacy or service activities to which it has already demonstrated commitment.)

2. **How fully have the potential customers (or affected populations), as well as other local stakeholders, been consulted to ensure that the program is consistent with their values and priorities?** (Examples: good qualitative research through rapid appraisal interviewing, focus group meetings, skilled observation, and participatory appraisal methods; consulting a broad range of local experts and informants.)

3. **Does the approach provide greater voice and influence to the poor and disadvantaged?** (Examples: promoting norms that provide for public hearings in potentially affected communities and supporting changes in the legal/regulatory environment that favor civic organization and action; building capacity of community organizations to advocate effectively; and bringing organizations representative of the poor "to the table" in policy discussions involving USAID and business or government leaders, as members of a USAID Strategic Objective team.)

[249] HSRC [1999]

[250] La Voy [1994]

4. **Does the approach put information into the hands of customers (individuals, organizations, communities) to permit them to hold USAID and its partners accountable for the usefulness of the assistance provided?** (Examples: using broadly representative advisory or reference groups–and expanded Results Package Teams – to design, monitor, and evaluate activities; publishing, in local language, information about the development activities; giving local organizations access to budget information about umbrella grants run for their benefit.)

5. **Does the activity strengthen the capacity of institutions throughout the society to carry out programs that are responsive to people's priorities?** (Examples: training local government officials to work in partnership with the initiatives of neighbourhood associations; assisting host-country NGOs to develop governance that is more representative of and responsive to the community; strengthening the knowledge base of local universities, think tanks, and agencies by including them on Strategic Objective teams and employing them in assessments, research, and evaluation.)

6. **Does the approach strengthen and broaden communications among players in the development process?** (Examples: create opportunities for policy discussion among public sector, business, and non-profits; enable communities to be heard by local officials and local officials to be heard by national-level officials; enlarge the scope of permissible discussion between citizens and government or broaden the range of players who participate in the discussion, to include women and other groups that typically are excluded; build attitudes and skills that engender good listening.)

7. **Does the activity or approach unleash innovation and local initiative?** (Examples: individuals and families adapting new farming, business, or sanitation techniques to different circumstances; poor women taking action where before they appeared powerless or unmotivated; local or national-level institutions developing new ways to approach problems; organizations of the poor taking the next steps in their community's development after the assistance ends.)

APPENDIX THREE
IDASA [PIMS] – EUPSP
PUBLIC PARTICIPATION QUESTIONNAIRE
OCTOBER 2000

Please tick in the appropriate box.

1. Does your legislature have a program that encourages public participation?

YES	01	NO	02

2. In what office is the program on public participation
   a) located ? b) what does the PP programme entail? (Submissions, Public education, outreach etc...) and provide a description of all the elements of the programme.

(a) Legislature	01
Speaker's Office	02
Secretary's Office	03
Premier's Office	04
Other (please specify)	05

(b) _____

3. Where is the office or equivalent structure physically located?

4. How accessible is it to ordinary people?

Very accessible	01
Fairly accessible	02
Not very accessible	03
Not accessible at all	04

(b) Please explain _____

5. Do you have designated staff?

YES	01	NO	02

(b)(If yes) How many?

Less than 5	
06 – 10	
11 – 14	
15 – 19	
20 – 24	
25 and above	

5. (c)What are their responsibilities?

   (d)Have they had any special training in the area of public participation, or other relevant areas such as public relations, media liaison, civic education etc.....

   (d)How well are they coping with the volume of work?

Coping very well	01
Coping well	02
Barely coping	03
Not coping at all	04

6. What resources does the legislature have to support public participation? (circle all that apply)

Specific line item in legislature's budget	01
Personal computers	02
Computerised data base programmes to monitor public participation	03
Non-computerised lists of potential participants	04
Non-computerised lists of past participants	05
Desk-top publishing for creating posters, pamphlets, etc...	06
Funds for public outreach programmes	07
Vehicles for public outreach programmes	08
Other: (Please Explain)	09

7. What additional resources do you need in order to make your legislature more accessible to ordinary people?

8. How do you facilitate the participation of the public in the legislative process (public participation)? (circle all applicable answers)

They initiate on their own	01
Make relevant documents available	02
Ensure that all committee proceedings are open to the public	03
Ensure that all committee proceedings are well publicised	04
Other (Please Explain)	05

9. Is anyone in the legislature specifically responsible for enabling ordinary people to participate (public participation)?

   YES 01 NO 02

   (b) If yes, who?_____

10. Who takes ultimate political responsibility for public participation

Speaker	01
Secretary to parliament	02
Various committee chairpersons	03
Other	04

11. In the following table, please list (1) all parliamentary committees in your legislature, (2) whether that committee holds public hearings or not, (3) whether committee proceedings are open to the public, or not, and (4) how each committees facilitates public participation?

(1) Committee Name:

(2) Hold Public Hearings

a. yes

b. no

(3) Committee Proceedings

a. always open

b. sometimes open

c. never open

(4) a. Keep records of committee proceedings

b. Publicly available summaries of committee proceedings

c. Publicly available verbatim transcript of proceedings

d. Publicly available record of members' votes

e. Published plain language summaries of bills or policy oversight

f. Hold public hearings on bills

g. Hold public hearings on policy issues

h. Publicise public hearings

i. Publish invitations to general public to attend or make submissions

j. Invite expert testimony to committee hearings

k. Committee proceedings open to public

l. Other _____

12. In question 11 above, if any committee is listed as "sometimes open" or "never open" to the public, please explain the basis on which its hearings may be closed to the public.

13. How often are public hearings advertised?

Always	01
Most of the time	02
Some of the time	03
Never	04

14. Where do you place public notices and state the media or other institutions used ?

On television	01
On radio	02
In newspapers	03
In magazines	04
On the internet	05
In public places	06
Not applicable	07
Other	08

15. Are public notices available in all relevant languages?

Always	01
Most of the time	02
Some of the time	03
Never	04

16. Do you have a minimum notification period for placing public notices prior to the actual hearing date?

YES 01 NO 02

17. (If yes) What is it? _____

18. What happens to the public submissions you receive?

The are always summarised	01
They are always passed on to the committee as is	02
It depends on the specific committee	03

19. What constraints does your legislature face in this process?

a. General lack of funds
b. lack of staff
c. no available media
d. lack of funds for advertising
e. lack of interest on part of political leaders
f. lack of interest on part of members
g. public not interested
h. other _____

20. Besides Public Hearings, Petitions and Public Submissions, in what other ways does this legislature interact with the public?

21. Where do you hold public hearings? (circle all that are appropriate)

At parliament	01
Provincial Capital	02

Other cities in province	03
Places outside cities	04

22. How do you publicise national and provincial bills?
    a. On television
    b. On radio
    c. In newspapers
    d. In magazines
    e. On the internet
    f. In public places (e.g. billboards)
    g. Not applicable
    h. Other _____

23. Are these notices available in all relevant languages?

Always	01
Most of the time	02
Some of the time	03
Never	04

24. Do you have any particular focus or approach to your media strategy?

25. Do you have outreach programmes targeted at rural communities?
    a. No
    b. Yes (please explain what it entails)

26. Do you have outreach programmes targeted at ordinary people who do not belong to or participate in community structures?
    a. No
    b. Yes (please explain what it entails)

27. Do you do anything to encourage participation from under-resourced and unorganised communities?
    a. No
    b. Yes (please explain what it entails)

28. Does your legislature have a budget for public participation?

No	01	Yes	02

29. (if yes) How much is the budgeted figure per annum (please provide for figures for the years since 1994)?

1994	_____	1995	_____
1996	_____	1997	_____
1998	_____	1999	_____
2000	_____		

30. If you do not have a budget, how are public participation activities financed?

They aren't	01
Commercial sponsorships	02
Donor funds	03
Other	04

31. Do you have an accounting officer for expenditures on public participation events?

Yes 01 No 02

31. (if yes) Who is the accounting officer for any expenditure on public participation?

32. Does the legislature have a system for tracking the extent of public participation, and any increases or decreases?

Yes 01 No 02

33. (if so) Which of the following do you use?

a. Computerised data base programmes to monitor participants

b. Non-computerised lists of past participants

c. Records of all submissions

d. Other: (Please Explain)

34. Does the legislature have a mailing list?

Yes computerised	01
Yes non-computerised	02
No	03

35. Do you have any method for categorising submissions and participants (e.g. business/non-business, organised/non-organised, by sector etc...)?

a. No

b. Yes (please explain)

35. Are these public participation records available for public scrutiny?

Yes 01 No 02

36. Do you use these records to evaluate your public participation policy?

Yes 01 No 02

37. Do you have any other method to evaluate the effectiveness of your system for facilitating public participation?

a. No

b. Yes (please explain)

38. Do you have any method of assessing the impact of public participation?

a. No

b. Yes (please explain)

39. Do you have plans to strengthen public participation in the legislative process?
    a. No
    b. Yes (please explain)

40. Who do you invite to make submissions? (circle all appropriate answers)

community based organisations	01
non-governmental based organisations	02
business	03
political parties	04
experts	05
ordinary citizens	06

41. Do you have a set list of people or organisations that you always invite?

Yes	01	No	02

42 What proportion of your invitees would you say respond to these invitations?

OPTIONS	CBOs	NGOs	Business	Parties	Experts	Citizens
a. Almost all						
b. Most						
c. Some						
d. Few						
e. None						

43. Do they come again?

OPTIONS	CBOs	NGOs	Business	Parties	Experts	Citizens
a. Yes						
b. No						

44. How do you select your participants?

45. How easy is it for physically impaired people to participate?

Very easy	01
Easy	02
Not very easy	03
Impossible	04

46. Do you ask for feedback from participants?

Yes	01	No	02

47. What form of feedback do you receive from participants?

Verbal	01
Filled out forms prepared by the legislature	02
Letters	03

48. What has this feedback told you about your public participation programme?

Nothing useful	01
Working well	02
Can be improved	03
Needs major improvement	04

49. Why do you say this?

50. How often do you offer the following types of Public or Civic education about your legislature?

OPTIONS	Outreach programmes in schools	Outreach programmes in universities	Internships	Guided tours of parliament
a. Very often				
b. Often				
c. Not very often				
d. Never				

53. Please attach

- any policy documents or other relevant papers which explain your policy on public participation)
- an up-to-date copy of your Standing Rules (i.e. Rules of Procedure).
- any documents setting out your practice or procedure with regard to your public participation policy.)
- a list of those print and electronic media that you use to publicise bills and other legislature related events?)
- a list of all those you invite to make submissions
- a list of participants that a) have made submissions to Committees or the Legislature
  b) participated in workshops, outreach programmes or public education programmes or any other structured public participation programme
  c) submitted petitions to the Legislature

54. Who should have the primary responsibility for facilitating public participation in the legislative process?

The institution of parliament	01
The members individually	02
Political parties	03
A mixture of all the above	04

Thank you for your assistance and co-operation.

APPENDIX FOUR
HOW TO EXERCISE YOUR PUBLIC PARTICIPATION RIGHTS

You, your organisation or your community may have something to say about a new Bill that is being introduced in Parliament or your provincial legislature. Or you may wish to raise an issue that concerns you. Here are a few guidelines on how to go about it.

WHO YOU CAN CONTACT

There are a number of people you can contact:

- You can telephone or visit the constituency office in your area and ask to meet with your MP or MPL when he or she next visits. If you do not know where this office is, please telephone your political party and ask them.
- You can contact your MP at Parliament or your MPL at your provincial legislature and make an appointment to discuss your problem or concern.
- You can contact the Committee Clerk of the Committee that is dealing with the legislation or issue that concerns you and make an appointment to speak to the Committee Chair or a member of the Committee.
- You can contact Parliament or your local legislature and ask to speak to the office or person responsible for public participation.

HOW YOU CAN PARTICIPATE

There are several ways you can participate:

- You can attend any Committee meeting in Parliament or your provincial legislature.
- You can attend a public hearing.
- You can attend a plenary session in Parliament or your provincial legislature.

- You can make a written submission to the Committee or at a public hearing.
- You can ask for permission to make an oral (spoken) submission to a Committee or at a public hearing.
- You can ask your MP, MPL or a Committee to conduct a workshop on a particular issue in your area.
- You can make a petition to Parliament or a legislature, asking for a change in legislation.

SEVERAL VOICES ARE STRONGER THAN ONE

Your submission or petition will be stronger if you join with others who share your views.

- You can organise a meeting to discuss an issue in your community, your church or workplace and agree on a shared position.
- You can find out if there is an NGO that is working on the problem or may be interested in helping.
- You can find out if other people elsewhere feel the same way as you do about your issue and contact them.

GETTING THE INFORMATION YOU NEED

- You can request the information you need from the person or institution you contact (see above).
- You can read the newspapers, listen to the radio or watch TV to find out what is going on in Parliament or your provincial legislature. Often there are advertisements informing people of when and where a public hearing will take place.
- You can ask your MP or MPL to give a report-back in your community.

Often Bills are written in complicated legal language. It sometimes helps to read the Memorandum which is attached to the Bill and explains what it is about. You can also ask for an explanation or simple language version of the information you need. Sometimes NGOs can help with this.

WHAT IS THE DIFFERENCE BETWEEN A SUBMISSION AND A PETITION?

A submission is a way of making your voice heard when a Bill is being discussed in Parliament or a provincial legislature. It gives you the opportunity to change people's minds before the Bill becomes a law.

A petition is a way of making your voice heard after a Bill has become a law and may be a request for a change in that law.

GENERAL TIPS ON MAKING A SUBMISSION OR PETITION

There is no set format. A submission or petition can be a simple letter of support or opposition, or it can be a longer document with suggestions for changes. The important thing is to say what you want to say clearly. The following tips may help you when preparing your submission or petition:

- Usually, the shorter and simpler the better. MPs are busy people and will probably not have time to read very long complicated documents.
- If your document is long, write a summary. Your summary should briefly outline your main points and recommendations.
- If you are making the submission or petition as an individual, explain why you want to comment on the legislation. If you have training or experience that is relevant to the issue, say so.
- If you are making the submission or petition as an organisation, describe the organisation: Who are its members? Why are they concerned about this law? Does the organisation have special expertise or experience in this issue?
- Explain your point of view. Say whether you want to support or oppose a Bill or other matter. If you want to suggest changes, explain what they are.
- Use the language you feel most comfortable with. The main language used in Parliament is English. However, the majority of MPs speak Xhosa, Zulu or Sotho. They will enjoy reading submissions in any of these languages. But remember, the media probably do not understand many

South African languages. So attach a one-page summary of your main points in English.

WHAT TO DO WITH A SUBMISSION ONCE YOU HAVE COMPLETED IT

- You can deliver or post a submission. If you post it, make sure you leave enough time for it to arrive before the deadline. If it is not too long, you can fax it.
- If you want to make an oral submission, send a letter with your request then telephone Parliament or the legislature to find out when you will be able to speak.

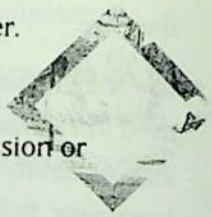
WHAT TO DO WITH A PETITION ONCE YOU HAVE COMPLETED IT

A petition has to go through a process in Parliament. This means you have to get the support of your MP or MPL. It may be useful to talk to her or him before you write your petition to find out if he or she will support you.

Usually, the MP or MPL must give the petition to the Speaker who can send it to the special committee that deals with members' petitions or to the committee that deals with that kind of law.

OTHER WAYS YOU CAN MAKE YOUR VOICE HEARD

- You can write letters to Ministers, MPs or MPLs telling them how you feel about a matter.
- You can circulate a petition and ask other people who agree with you to sign it. A petition with many names on it can then be sent to the committee or Minister concerned.
- You can send a letter to the editor of your local newspaper.
- You can issue a press statement.
- You can ask your local radio station to host a panel discussion or phone-in programme on the issue.



ACRONYMS

ANC	African National Congress
CAPPP	Constitutional Assembly Public Participation Programme
CDF	Comprehensive Development Framework
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CEPA	Canadian Environmental Protection Act
COMTASK	Task Group on Government Communications
COSATU	Congress of South African Trade Unions
CSO	Civil society organisation
DfID	Department for International Development
DPMC	District Poverty Monitoring Committees
ECOSOC	United Nations Economic and Social Council
FCB	Firearms Control Bill
GCIS	Government Communication and Information System
GFSA	Gun Free South Africa
GFZ	Gun Free Zone
HIPC	Heavily Indebted Poor Countries
HSRC	Human Sciences Research Council
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
ICBL	International Campaign to Ban Landmines
IDASA	Institute for Democracy in South Africa
ISP	Inter-American Strategy for Public Participation in Environment and Sustainable Development Decision-making in the Americas
LRA	Labour Relations Act
MEC	Member of (Provincial) Executive Council
MP	Member of Parliament
MPL	Member of the Provincial Legislature
NCOP	National Council of Provinces
NEDLAC	National Economic Development and Labour Council
NEF	National Economic Forum
NEMA	National Environmental Management Act
NICRO	National Institute for Crime Prevention and Reintegration of Offenders
NMC	National Manpower Commission
OAS	Organisation of American States
OSW	Office on the Status of Women
PANSALB	Pan South African Language Board
PATU	Pan African Telecommunications Union
PRSP	Poverty Reduction Strategy Paper
PSP	Parliamentary Support Project
RDP	Reconstruction and Development Programme
SACP	South African Communist Party
SALGA	South African Local Government Association
SATRA	South African Telecommunications Regulatory Association
UDN	Uganda Debt Network
UNDP	United Nations Development Programme
UPPAP	Uganda Participatory Poverty Assessment Project
VAT	Value Added Taxation

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