Strategic Framework for Public Participation
in the SA Legislative Sector

Adopted by Speakers’ Forum SA

2009
1. Introduction

As resolved at the national conference on “Deepening Democracy Through Public Participation”, convened on 25-26 July 2006, representatives of each legislature together with task team representatives met to address recommendations emerging from the conference, and develop an implementation strategy.

This workshop was facilitated by the Centre for Public Participation (CPP). The workshop was structured to specifically address practical recommendations emerging from the conference, and commenced with a presentation on these.

2. Expectations

Participants at the workshop identified the following expectations for the implementation strategy workshop:

- Implementation strategies
  - To develop a uniform approach on the implementation of section 118 of the Constitution (provincial legislatures’ public participation responsibilities).
  - To identify which the office that will be responsible for the implementation.
  - To develop timelines for implementation.
  - To complete the document on the model of best practice for public participation.
  - To legislate or not on public participation.
- To develop guidelines or an implementation plan on public participation: what; how; who; when.

- Uniform standards for public participation for all legislatures
  - To establish the need for public participation.
  - To have a standard structure in all legislatures.
  - To have a unified approach to public participation.
  - To develop minimum standards for all public participation programmes which should be applied or used by all legislatures.
  - To develop an action plan.
  - To develop a standard programme to be adopted and implemented by all legislatures.

- Cooperation between committees
  - To develop a way forward for committees to be involved in public participation.
  - To encourage departments to do presentations at public meetings (provincial head office).
  - To develop mechanisms for cooperation between public participation units and committees.

- Feedback mechanisms
  - To obtain clarity on when public hearings should be held.
  - To develop clear feedback mechanisms.
  - To develop stakeholder identification strategies.

- Funding tool
  - To develop a negotiating tool for funding of public participation at Speakers’ Forum.
• Role of public participation officers

- To develop a strategic definition of the role of public participation officers (PPOs).
- To develop an ideal organogram for public participation units (PPUs).

3. Framework for public participation

Towards a working definition

The facilitator took participants through an exercise to develop a working definition of public participation. When asked what public participation means to legislatures, and why we do it, and why we distinguish this from involvement or engagement, participants identified the following:

• It forms part of building and deepening our democracy, by building transparency and accountability.
• It is a constitutional obligation – there is no common understanding of this concept, however, which needs a checklist and guidelines.
• It is about involving people in decision-making so that they can own the process – it creates buy-in and credibility, and lends legitimacy to decision-making.
• It gives meaning to the notion of a “People’s Parliament”.
• It creates opportunities to draw on local knowledge.
• People will only feel that this is real public participation if they see their influence.
• We need to move beyond superficial engagement and involvement – public participation is a process, not an event, and it requires giving feedback. Public participation is all about active engagement before, during and after the decision-making process.
• The notion of “public” requires interrogation, as there are implications relating to representation and the public voice that need to be addressed.
• There is a balancing process required: to manage assumptions supported by information and education. There is also an acknowledgement that there is a political agenda to decision-making, that does frame the scope for and impact of public participation – we need to manage these interests.
Scope for participation

The conference had requested clarity on when public participation should be conducted, and where responsibility for this lies viz officials and elected representatives. Participants debated this rigorously, and came up with several recommendations in this regard.

Firstly, members of Parliament and Provincial Legislatures and committees take ultimate responsibility for facilitating public participation in legislative processes. PPUs and PPOs have an important role to play in advising, supporting and implementing this.

When public participation is compulsory … and when we should strive to do it.

- When legislatures make and amend laws
  - This includes the budget process. Legislatures should look for opportunities for public participation in an otherwise fairly closed process.
  - This also includes the policy priority-setting process and allocation of resources. This is a contested arena and the role of legislatures is contested here, but legislatures do engage with this process and again, should look for opportunities to facilitate public engagement with this process.

- In executing the oversight function of committees
  - This includes site visits and information gathering.
  - Feedback is important here, in that elected representatives should give feedback to communities on issues raised and what action has been taken.
  - This includes identifying and debating matters of public importance.
  - This includes deliberation of departmental quarterly and annual reports – legislatures can facilitate interaction between the public, the legislature and departmental representatives.
  - This could include SCOPA investigations, in that these should be open and accessible, and documentation available.
  - The public should also have access to processes where minister or department’s performance is being interrogated, and should have access to information.
  - In all of these processes, we need to secure a balance between managing a political process and facilitating public input.

- Parliamentary sittings
- These should be accessible and well-publicised, and information and documents should be widely available. This is an important lobbying opportunity for civil society.

- Committee meetings
  - Again, these should be accessible and well-publicised, and documents should be made available to those present. Opportunities should be created for informal networking between members of the public and members of Parliament or Provincial Legislatures present at meetings.

- During constituency periods
  - This is the responsibility of members of Parliament or Provincial Legislatures, who should make themselves available to their designated constituency during this period, making use of a publicised calendar of meetings and visits.

- In receiving petitions
  - Again, this includes providing feedback on action taken.

When we don’t have to do it…

- This is limited to internal, administrative processes, such as secretariat functioning, internal procedures and arrangements, and processes relating to the formulation of legislative Rules.

- Also, if a sitting or committee meeting has met the constitutional requirements of a closed process, and members of the media and public are not permitted to participate, with sound reasons being given.

Defining the “public” in public participation

The national conference had identified that there is a need to identify the stakeholders to be drawn into public participation processes. Participants deliberated on this, and came up with the following:

- Voters and citizens (although this was seen in itself as an exclusionary category)
- The people within the state or area of jurisdiction
- Corporate entities
- Business sector
- Education sector
• Traditional leaders and healers
• Coalitions
• Criminals (there was some debate and consensus that in a particular investigation, such as into Correctional Services functioning, it may be appropriate for a legislature to convene a session to tap into inmates’ views or experiences)
• organised civil society (non-governmental organisations (NGOs), community based organisations (CBOs), refugee communities, women’s and youth groups, and other sectoral groups)
• Unorganised civil society – individuals
• In short - every living human being!

Building an indigenous approach to public participation

The workshop noted the call from the national conference on the need to develop indigenous approaches to public participation. Participants were reminded to draw on appropriate local and indigenous models when deliberating on implementation of public participation strategies and programmes.

4. Actioning public participation recommendations

Participants took the sets of public participation programme and strategy recommendations emerging from the national conference, and divided these into four cluster groups. They worked on these in groups to identify:

• Planning implications
• Recommended steps for implementation
• Timeframes and responsibilities where possible

These were presented to plenary for further discussion and recommendation.

a. Public hearings

Pre-public hearings and petitions planning
- Establish *sound* relationships with stakeholders (by sound relationships, we mean political, economic, social, moral).

- Develop effective communication and awareness programmes.
  - Mobilise communities, lobby, convene consultation meetings.
  - Develop media campaign, adverts.
  - Make use of Africanised ways, for example blowing horns, making use of traditional leadership structures.
  - Develop interactive publicity programs, branding.
  - Use loudspeakers as reminders.

- Facilitate an education programme around the bill
  - Bill interpretation - bill simplification and in various relevant official languages.
  - Convene workshops, training sessions involving legal practitioners.
  - Provide information on how to make submissions, petitions, processes to follow, etc.

**During the hearing**

- How do you measure effective participation?
  - By building a relationship with the committee secretaries.
  - Acquire committee minutes.

**After the hearing**

- Follow up with the input provided within the institution.
  - Feedback to the stakeholders using the captured database.
  - Follow up with referrals of the issues, e.g. discussion at another committee, referral to the house, timeframes, oversight or decision made, amendment, etc.

- Feedback to the public.
  - In writing.
Resource implications

There are resource implications in all the above-mentioned processes. These include finance (transport, catering, material, venue), human resources (training, skills), and physical resources (ICT).

b. Petitions

Generally

- Legislatures to pass legislation on petitions before year end.
- Standing committees should be established and dedicated to deal with petitions.
- Put into place the skills sharing exchange programme between legislatures.
- Uniform approach required to deal with petitions.
- Restructuring the administration to support the petitions process.
- Resources: Budget and human capacity to deal with petitions, information technology, systems and procedures for tracking petitions.

Coordination is required

- Between staff of PPUs and committees.
- The executives of these two structures need to develop a discussion paper or guide on how they see this happening.
- A guide or model of best practice is required, that could constitute a checklist on how to convene a public hearing – this should be developed by the Public Participation and Petitions Forum.

Additional comments

- Legislatures should possibility explore a more deliberative model for public hearings, that builds on local spaces for dialogue and discussion.
- Legislatures should be able to tailor approaches to public participation to suit different stakeholders.
- Technology should support the process and enable a record of evidence of verbal submissions.
- Legislatures must provide for systematised processing of submissions, for example committee’s developing a draft report or table summarising inputs.
- Legislature timeframes often prevent or reduce public participation opportunities, and planning has to accommodate this.

c. Sectoral parliaments

These should form part of the legislative programme, and legislatures should develop an action plan for these before and after convening such sessions.

Proposed plan of action
- Involve the South African Local Government Association (SALGA) in setting themes and identifying stakeholders.
- Define roles and responsibilities of units and committees.
- Establish clear timeframes for responsibilities.
- Identify stakeholders.
- Organise pre-workshops to prepare participants.
- Report back to project co-ordinator.

After the event

- Compile report on content and process and circulate among stakeholders.
- Refer submissions to relevant committees.
- Undertake feedback and review what action taken on submissions.

Implications for planning

- Resources are required (human, financial, technical tools).
- These recommendations should be adopted by the Speakers’ Forum.
- Committee secretaries are responsible for the implementation.

**d. Taking Parliament to the people**

Planning

- This should also form part of legislative programmes.
- There should be a publicised calendar of events – where sittings and committee meetings will be held, in which communities, on what dates, addressing what issues, etc.
- The same planning processes as those identified for sectoral parliaments should be followed.
- There should be a post-event visit, to report back to communities on what action has been taken.
- Prior public education interventions are required to enable communities to understand the structures and processes of the legislature.
- There should be follow up on issues raised and fed to Portfolio Committees and departments.

Generally

- There should be a formal adoption of recommendations raised through sectoral parliaments and “Parliament to the People” sittings by the House, in the form of a resolution.
- There is a need to strengthen feedback mechanisms – post-event debates in legislatures is not sufficient. There should be a report compiled on what was accepted and what was not, giving reasons.
- Legislatures should give feedback during sectoral parliament sessions on what came up in the previous year’s session and what action was taken.
- Legislatures should draw on the model of municipality “listening campaigns”, followed by feedback.
- How do themes for these events get established? Provinces should include local government in this process (through SALGA).
- Participation of ministers in sectoral parliaments is important - to observe and take up issues raised.
e. Public education and media

Planning implications

- Publicise education and media programmes.
- Consider financial implications.
- Identify appropriate service providers.
- Require services of interpreters.
- Identify appropriate stakeholders.
- Identify human resources required.
- Broker appropriate access to facilities and information.
- Develop public education, media and communication implementation plan.
- Compile network implementation plan with civil society.
- Collaborate with Department of Education, and lobby for inclusion of information on legislatures and their processes in school curriculum.
- Conduct feasibility study.

Steps

- Compile activity-based budget.
- Develop or update database of service providers.
- Develop in-house capacity with regard to interpretation skills.
- Conduct stakeholder management plan review.
- Compile resource organogram (of training practitioners).
- Simple language and driving ongoing workshops.
- Uniform approach on content of legislative processes.
- Establish effective partnerships with communities (immediate).
- Identify accessible facilities for people living with disabilities (ongoing).
- Collaborate with libraries and other community structures (ongoing).

Timeframes

- Feasibility study – September 2006
- Communication/Media strategy – Early November 2006
- Database (service providers) – immediate
- Capacity building – Ongoing
- Stakeholder management plan – October/December 2006
- Recruitment of appropriately trained people – January 2007

Generally

- Details are required on how public education is going to be implemented, and the use of proposed parliamentary democracy offices (PDOs) and community development workers (CDWs). The PPP Forum has already tasked stakeholders with developing this plan.
- There should be a measure of uniformity, balanced by flexibility for legislatures to tailor plans to suit local needs.
- The PPP Forum must develop the communication strategy plan as agreed.
- Legislatures to conduct feasibility study, develop stakeholder databases, and strategise around use of national broadcaster.
- Public education packages need to be developed for flighting on SABC.
- PPP Forum must honour the original timeframe for this process.

f. Constituency offices

Generally

- Our constituency office model is driven by our political system of proportional representation.
- Legislatures should publicise constituency offices, their roles (what information or support communities can get from offices) and deployees (profiling MPs/MPLs designated to those offices).
- The prospect of a multi-party approach to constituency offices should be considered.
- Constituency offices and MPLs should have designated days to address common community problems.
- Legislatures should develop a code of practice for constituency offices and responsibilities and behaviour expected.
- Offices should be branded with the logo of provincial legislatures, as well as party logos.
- Legislature staff should assist with administration and public consultation processes during the constituency period.
- Operational cost for offices should come out of the legislative budget, and should include resources for rent, equipment, basic infrastructure. This will require a change in funding and functional financial system, with provision for direct funding of administrative aspects.
- Constituency allowances should be standardised – the same to all MPs and MPLs, regardless of province.
- Accountability and reporting on constituency office work needs to be addressed – especially for NA/NCOP MPs designated to provinces.
- Legislatures should be responsible for training of constituency office staff, provision of documents/information, linking websites to legislature.
- Constituency office staff, supported by the legislative secretariat (constituency liaison officers), can conduct public education, community audits, information dissemination.
- There should be regular constituent management meetings, convened by MPLs, drawing in councillors and ward committee members, to identify local needs and issues, and disseminate information on legislative developments.
- A local speakers’ forum should be convened, comprising Speaker of the legislature and Speakers of local municipalities to tap into local issues/needs.
- Chief Whips to account to Speaker for expenditure and performance of constituency offices.
- Code of practice to include compulsory pro-active attempts by MPLs and MPs to engage communities.
- MPLs to have calendar/programme for constituency work – dates and locations of meetings, visits.
- PDOs should work together with constituency offices and PPUs.

Planning

- Speakers’ forums should take decisions on this (table at next meeting).
- Should be implemented in next financial year.
- Pilot for next 2 years (remainder of current term).
Recommendations on work of offices

- Receive petitions / complaints.
- Disseminate information on legislative processes – plain and local language documents.
- Conduct public education workshops – this role should be supported by legislative secretariat.
- Convene pre-hearing workshops – again, should be supported by legislative secretariat.
- Mobilising communities – should be supported by legislative secretariat.

5. Organisational aspects

In addressing how best to structure public participation arrangements within legislatures, participants first noted that the national conference had recommended that legislatures establish a Public Participation and Petitions (PPP) committee and unit to oversee implementation of responsibilities. Participants discussed the implications of this, noting the different approaches taken to structure internal arrangements within the different legislatures, and the need for strengthened cooperation between units and committees, and agreed as follows:

a) Political responsibility for public participation resides with the presiding officers of legislatures.

b) Legislatures should develop their own internal structures to ensure effective implementation of public participation programmes.

c) PPP programmes of legislatures to be standardised, in terms of approach, interventions, budget and human resources, and should be implemented through PPP units. These units should be adequately resourced to fulfill their responsibilities.

d) Public participation should be located in all committees, which are ultimately responsible for public participation activities.

e) Legislatures are to develop their own internal mechanisms to ensure an integrated approach to public participation. This will require coordination and cooperation between PPP units and committees, researchers and legal units, for example regular meetings of appropriate stakeholders, briefings, sharing information on public participation interventions and the like.
f) Resources and budgets are to be allocated by legislatures within their internal budgets. Legislatures are required to translate their political commitment to public participation into budget allocations for programme activities, which can possibly be supplemented by EU funding for the time being. PPP units are to feed programme requirements and costing into legislative budget processes.

6. Monitoring and evaluation systems

Participants reviewed the monitoring and evaluation recommendations put forward at the national conference, and agreed upon the following combination of systems and approaches:

a) Participatory processes with communities, making use of interviews, discussion groups, constituency offices, and involving community development workers and ward committees.

b) Contract external consultants to conduct an evaluation.

c) PPP units conduct their own monitoring of the implementation of programmes, creating opportunities for reflection on and assessment of public participation opportunities.

d) PPP units continue to make use of the PPP Forum as a space for sharing insights and best practices, and to facilitate exchange programmes to enable learning between PPP units of legislatures.

In addressing questions related to assessing the long-term impact of public participation programmes, participants agreed that this could be gleaned through feedback from communities, and an assessment of the extent to which public participation programmes have resulted in influence on policy, legislation and programmes of government.

Participants spoke of the need to assess the extent to which we have inculcated a spirit of patriotism, activism and active engagement in our youth, and of the need for us to move from “ruling” to “co-governance”, and the role legislatures can play in closing this gap.

7. Way forward

Participants considered and agreed upon the following plan of action:
a) The public participation strategy framework developed by this forum should be adopted by the Speakers’ Forum, and embodied by legislatures as part of their legislative framework. This could take various forms, for instance:

- Regulation and provincial legislation on petitions.
- Formal adoption of public participation programmes and integration into internal structures and budget processes.
- Appropriate provisions with Rules of legislatures.
- Policy statement by legislatures.
- Minimum standards for public participation.
- Legislation on public participation.

The Speakers’ Forum should pronounce on the appropriate process to regulate this legislative framework.

b) Feedback to civil society. As outlined in the national conference resolutions, this initiative needs to provide feedback to conference participants on how recommendations are being taken up.

c) Internal public participation mechanisms need to be endorsed by the Speakers’ Forum. Participants recommended as follows in this regard:

- Dedicated office or capacity in the Speakers’ Forum Secretariat.
- PPP Forum identified as a coordinating body.

d) There is a need to begin now with processes already endorsed, in the form of the development of a public education strategy and materials, and the development of a communications strategy.

8. **Evaluation and conclusion**

Participants reflected on the structure, process and facilitation of the workshop, and commented as follows:
• Venue and seating were good.
• Happy with the programme.
• For future events, legislatures need a copy of programme and details of what participants are required, in advance.
• Happy with participation by participants, and facilitation style.
• Happy with the outcomes – the process has met the terms of reference required of the CPP, achieved the desired objectives and met expectations.
On developing a Public Participation Strategy for South Africa’s legislatures

2006

RESEARCHED AND COMPILED BY THE CENTRE FOR PUBLIC PARTICIPATION

Funded by the EU-LSP

A Partnership Programme between the European Union and the Speakers’ Forum of South Africa
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Chapter 1: Introduction

Introduction
A democracy allows people to participate in governance since democracy rests upon the consent of citizens. Free and fair elections, representative assemblies, accountable executives and a politically neutral administration are all elements designed to ensure that democracy is “for the people”. However, in many democracies, these processes are insufficient to ensure public consent, with the consequence that people are choosing not to participate in government – a reality evidenced by the extremely low turn-out at elections.

Citizens as partners
Many authors have written about the notion of a “democracy deficit” – the failure of established, liberal notions of representative or participatory democracy to link citizens with the institutions and processes of the state, impacting on the quality and vibrancy of democracy and resulting in reduced accountability (Gaventa, 2004; Luckham et al., 2000). Democracy needs to change to meet the needs of its new environment. It needs to become more participatory, more transparent and more accountable. It needs to go out and actively seek the views and opinions of its partners, the citizens – not just because it is the right thing to do, nor even to “save” democracy, but because it is in the interest of government to do so. Public participation improves the quality of policy and legislation, strengthens accountability and transparency and strengthens trust in the government.

Constitutional provisions and the right to participate
There are a number of sections in South Africa’s Constitution, which deal directly with the concept of public participation. Sections 59, 72 and 118 charge both houses of the National Parliament and all provincial legislatures with the responsibility of facilitating public participation.

There are also other constitutional provisions that allow for parliamentary processes to be open and transparent:
Section 17: Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions

Section 59 (1): The National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its Committees

Section 70 (b): The National Council of Provinces may: make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

Section 72 (1) (a): The National Council of Provinces must: facilitate public involvement in the legislative and other processes of the council and its Committees

Section 115 (a): A provincial legislature or any of its committees may: receive petitions, representations or submissions from any interested person and institutions.

Section 118 (1) of the Constitution makes provision for the public to have access to provincial legislatures and to be involved in legislative processes. It states that provincial legislatures must facilitate such public involvement. It also maintains that legislatures must conduct their business in an open manner and may only block access on reasonable grounds.

The South African Constitution offers the public a commitment to an open and democratic form of governance. Over and above people’s right to exercise an elective option of choosing their representative, they have a right to exercise influence over all decisions made by government. The ability to bring a petition before the legislature is an important right, because it allows a member of the public to bring a matter before the legislature, via the relevant committee. The public can, through this process, initiate legislation or bring a matter to the attention of the legislature.

Having rules for public participation in the legislative process does not by itself guarantee that people will be able to exercise that right. Around the world governance actors, analysts and activists are grappling with this issue, and exploring how best to engage citizens in government decision-making processes. However, citizen
participation is often reduced to participation by elite, organised civil society, in the form of predominantly non-governmental organisations (NGOs), business and other interest groups with access to resources. Crenson and Ginsberg refer to this monopoly of participatory processes by elite forces as “downsized” democracy (2002).

Carothers notes that typically, with growth in poverty and inequality, and as citizens become increasingly sceptical and distrustful of political parties and institutions, and of corruption, there is declining political participation. This widening gap between citizens and state institutions results in a “diminished democracy” (Skocpol, 2003: 11). With parties’ focus characteristically being on electoral processes to the detriment of effective representation, links between citizens and the state are not being developed. The result: a “weak democracy marked by poor representation” (Carothers, 2005).

Participation mechanisms that are established to channel citizen input are in the main not accessible to the majority population in societies characterised by inequality, particularly marginalised communities and sectors, and typically do not “automatically benefit poor people and groups that have long faced social exclusion” (Manor, 2004: 5). The critical focus is thus around developing mechanisms that enable the poor and unorganised to participate effectively in processes of governance.

The international context
A review of trends and developments in the international arena suggests that public participation has become the focal point of many democracies around the world. There appears to be a shift towards more participatory forms of decision-making: a movement towards new definitions of democratic governance and its relationship with civil society. However, it should be noted that there are limitations to the right to participate in processes of governance.

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 secret sitting.*
Similarly in Germany, the House of Representatives has the discretion to exclude the public. According to Article 42 of the German Constitution:

*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, the legislatures may not exclude the public and media “unless it is reasonable and justifiable to do so in an open and democratic society.” Also in South Africa, as alluded to earlier, legislatures are required to facilitate public participation. Similarly in Uganda, citizen participation in the planning process is guaranteed in its constitution. Article X of the National Objectives and Directives Principles of State Policy states that:

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

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

*Every Ugandan has the right to participate in peaceful activities to influence policies of government through civic organisations.*

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. Despite the exclusionary nature of some of the earlier constitutions, in practice public participation has increasingly become a feature of modern democracies.

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1 Section 59(2).
2 Gariyo (2000). The Ugandan Constitution was finalised in 1995.
CHAPTER TWO: HISTORY OF PUBLIC PARTICIPATION IN SOUTH AFRICA

The experience of democratic participation during the struggle against apartheid provides the basis for our democracy. For most activists and communities, exposure to active political participation came through trade unions, local community structures (street committees and people’s courts), and civic associations. South Africans of all political persuasions came together in a multitude of groupings to form organisations, which furthered specific goals.

A large amount of civil society activity surfaced around the struggle against apartheid. NGOs in particular, played a crucial role in the anti-apartheid struggle, and had a strong sense of identity and an easily available agenda, which provided a sense of political purpose and direction. Clearly it must also be mentioned that a range of political formations, labour organisations and civics also played a central role in mobilising communities, particularly in the eighties. It is obvious that these organisations helped to achieve the downfall of apartheid, but it is also obvious that the downfall of apartheid created a new set of challenges for civil society in South Africa.

The nature and focus of public participation changed dramatically with the drafting of South Africa’s new constitution in 1994 to 1996. The Convention for a Democratic South Africa (CODESA) and later multiparty negotiating forums set a precedent for public participation in policy issues. Replacing the fairly clear division between the old order, on the one side, and those demanding change on the other, issues emerged that brought participants together across party lines and even across the traditional divide between supporters and opponents of apartheid. For example, women came together from all political groupings to demand more participation for women in their own parties and in the forum itself. Within the political parties, too, the first round of constitution drafting generated participation ranging from conferences and meetings to formulate constitutional proposals, to educational activities within branches to explain the parties’ position and generate support for particular constitutional options (Klug et al., 1996: 45).

With a large budget and a strong commitment to reaching the population, the National Assembly held meetings throughout the country to hear the views of ordinary South African citizens, and conducted a massive public education programme on the
procedures and substantive issues being addressed in drafting the new constitution. In advertisements on the sides of buses and full-page newspaper advertisements, members of the public were called to submit their views, and the response was overwhelming.

Telephone help lines to answer specific queries and an audio-text constitutional talk line, which provided pre-recorded information in a selection of languages, was made available. A national television programme focussing on issues before the Constitutional Assembly supplemented all these activities, and a site on the Internet was created with provisional draft texts of different provisions of the new constitution, as they were being developed and debated by the assembly (Klug et al., 1996: 46).

With the inauguration of the democratic government in May 1994, the initial optimism regarding how NGOs might work with government rapidly vanished, as the new democratic government struggled to come to terms with the apartheid bureaucracy that it had inherited. NGOs, while playing a critical role in policy thinking in relation to almost every area of human endeavour, largely began to see themselves as victims of the transition. This was brought upon by significant shifts in donor funding patterns, the uncertainty of the funding environment and high levels of mobility of people out of the NGO sector (IMPD, 1996: 13).

The policy making process followed by the South African government has changed since 1994. Prior to the election of the first democratic government, policy making was a very closed affair with very little, if any public participation. This has changed with the new South African Constitution, which asserts that South Africa is a representative and participatory democracy. The Constitution provides for public access to and involvement in the legislative process. Participation in the legislative process is open to all; the organised and powerful, the marginalised and unorganised.

The legislative authority of the nine provinces in South Africa is vested in the provincial legislature of each province. The creation of provinces as political entities, followed by creation of new legislative institutions, has added important dimensions to provincial politics. Provincial governments are spheres of government, less removed from the national government, and thus legislation and policy are more likely to directly affect the
people of that particular province. It is therefore the responsibility of each provincial legislature to ensure that all the necessary steps are taken to ensure that public opinion is taken into account in decision-making. This, however, does not mean that civil society cannot push for issues to get onto the governmental agenda.

Public participation in South Africa, like its political and legal history follows patterns of participation which are defined racially into broad categories of formal and “legal” activity on the one hand, and informal and “illegal” protest on the other. While it may be true that South Africa has undergone profound political changes, it is also the case that the prevailing socio-economic conditions are largely determined by the apartheid past. Improving public participation in the legislative activities of this country would serve as an impetus to empowering those affected by poverty to influence the policy agenda and its implementation. Indeed the founding principles of the present government clearly indicate its commitment to this course. The legislatures provide a vital interchange for the public to engage with law and policy makers on questions of socio-economic transformation.
Chapter 3: A review of current public participation structures, systems and practices in provincial legislatures

Introduction
The Centre for Public Participation (CPP) undertook an assessment of legislatures' experiences, structures, systems and practices with regard to public participation, with a view towards developing a sector-wide public participation strategy and best practice model. Legislatures were engaged on a range of issues, namely around structures, systems, budgetary and general issues relating to the facilitation of public participation.

In addition to responses received from legislatures, the CPP has drawn on its interactions with provincial legislatures, namely its own research with the KZN legislature, and a public participation training and strategic planning process conducted with the Free State legislature, to add to this review and development of recommendations.

Structures
In responding to a question on where the responsibility for public participation was located, most indicated that the Speaker/Deputy Speaker was the “custodian” of public participation. In some cases, legislatures have a dedicated public participation unit and in others, the communications unit facilitates public participation processes. The Eastern Cape legislature indicated that, as a political arrangement, portfolio committees are responsible for all public participation activities relating to their portfolios, and the public participation unit is administratively responsible for public participation.

Legislatures indicated that public participation/communication units facilitate public outreach in the form of public education workshops and promotional material. The Western Cape legislature is yet to establish a public participation unit and the communications unit does, to some extent, oversee and implement public participation programmes.

Legislatures also indicated that in order to improve the structure for public participation, there needs to be dedicated management of public participation. The Northern Cape legislature proposed a “move towards using technology and making information
informative and entertaining”. Gauteng will be conducting an organisational development exercise to ensure appropriate structuring of the administration for effective and efficient support. The Free State legislature supported the establishment of a standing committee on public participation, as is existent in the Gauteng legislature, thus serving to encourage members to play a key role in the formulation of public participation programmes and interaction with the citizenry.

**Systems, programmes and practice**

In the post 1994 context, all legislatures have established some form of dedicated programme encouraging public participation, even though the extent of the programmes may differ. A range of formal and informal options exists for legislatures, or more specifically their portfolio committees, to seek public input on policy or legislation.

**Public hearings**

The most common form of public participation is holding public hearings, where comments are invited from interest groups, stakeholders and individuals. It is noted that generally legislatures give the public between five days’ and three weeks’ notice, sending invitations, placing advertisements in newspapers, public places and on radio. Despite this, there often are instances where the notice given for public hearings is too short for effective preparation. Committees encourage submissions from members of the public, even those unable to attend public hearings.

Encouragingly, many legislatures indicated that venues for public hearings are generally accessible to rural communities, with hearings held in centres other than capital cities. In some cases, transport is provided for rural communities. Some legislatures do undertake pre-hearing work in the form of community briefing sessions where Bills are simplified and explained (Free State and Northern Cape and Gauteng). The Free State legislature specifically indicated that it organises community-briefing sessions when the legislature is considering new legislation. These sessions are chaired by the chairperson of the relevant committee, who explains the process for making submissions, and the impact that the proposed legislation would have on the community. In addition the Gauteng legislature provides information on how to prepare submissions. All legislatures indicated that they make provision for public hearings to take place in the local language.
With regard to the processing of submissions, despite some vagueness in responses, most legislatures indicated that they do have a system whereby submissions are processed in an accountable manner. Notable exceptions here were the Northern Cape and Western Cape legislatures. The Free State legislature indicated that a register is kept by a committee coordinator who records the submissions, while the Gauteng legislature indicated that submissions are processed by the committee coordinator in conjunction with the researchers for the relevant committees. Upon “approval” by the committee, some of the issues raised are reflected in the report of the committee to the house.

The provision for public hearings enables for a direct, formal input by community groups into the refining of legislation, and many groups have taken advantage of making submissions and have seen their recommendations taken up in legislation. Many legislatures have noted a disappointing turn-out at hearings, or the lack of relevance of submissions to the subject matter at hand, questioning the interest and capacity of civil society to engage at this level. With greater consideration given to preparatory work, as undertaken by some of the legislatures, means of disseminating information, building a database of sectoral stakeholders, and manner in which hearings are facilitated, there is great potential for public hearings to become truly effective and productive in promoting participation in processes of governance.

Public access to committee meetings and House sittings
Portfolio committee meetings are open to members of the public, although publicity of this fact, encouragement and ease of access varies. Records and minutes of meetings and other legislative documents are difficult to access, particularly from committee processes. Many legislatures have initiated a processing of “Taking Parliament to the People”, a process whereby some committee meetings and even formal sittings of a legislature are held in community venues, or towns more accessible to more rural parts of the province. Participation unit staff have pointed out that such processes could be strengthened if politicians remained within the community for a designated period after the meeting or sitting, to enable members of the public to engage with them and raise issues of concern.
Legislatures also make use of sectoral parliaments, for groups such as youth, women and other special interest groups, as educational opportunities to raise the profile of issues affecting these sectors, and encourage an understanding of the role and function of legislatures among these stakeholders. While these events generate huge interest and excitement, and are generally marked by high levels of participation, legislative stakeholders have commented that better use could be made of sectoral parliaments, in the selection and preparation of participants, and in follow-up on the very serious issues raised by them in their mock parliamentary debates.

Most legislatures also facilitate committee on-site tours and visits to community sites to assist in the gathering of information, deepening of committees' understanding of community issues and establish linkages between committees and communities. As part of a public relations exercise, most legislatures also facilitate parliamentary tours by interest groups and schools.

**Outreach programmes and information dissemination**

Legislatures generally have some form of outreach programme, particularly programmes aimed at the rural communities. Strategies here include using educational workshops and information dissemination through focused media strategies, with some legislatures innovatively making use of community radio stations to reach particular communities. The Western Cape indicated its use of the website and the Northern Cape legislature makes use of the Government Communication and Information System (GCIS), municipalities and schools as avenues for information dissemination and encouraging public participation.

Some legislatures have also developed programmes to target people that do not belong to organised civil society structures, although organised structures and groups are more likely to be included in workshops and discussions and far more likely to be successful in making submissions. In the context that significant pockets of the public do not understand how legislatures are structured and function, and the significance of the work of portfolio committees, most legislatures produce pamphlets and other materials and educational tools to supplement outreach programmes. Such interventions have the potential to radically increase interest in and awareness of legislative processes,
strengthen relationships between legislatures and communities, and build capacity of community groups to understand and engage with legislative processes.

**Constituency offices**

While most legislatures indicated that they did make use of constituency offices to facilitate public participation, there seemed to be broad agreement that much could still be done to improve the situation in this regard. The Gauteng legislature explained that the use of constituency offices to facilitate public participation was not consistent and greater interaction was required. It was also suggested that constituency offices can assist by informing their constituencies about the work of the legislature and popularising the petitions process.

**Petitions**

Some legislatures have passed legislation providing for the submission of petitions to the legislature by members of the public. A dedicated petitions standing committee is established to receive and deliberate petitions, and make decisions on forwarding issues raised to relevant stakeholders within government.

**Resources and decision-making for public participation**

Legislatures were generally unable to provide a concrete figure in terms of the budget allocated for public participation activities; with the exception of the Western Cape legislature, that indicated a figure of R1.5 million. In the main, legislatures have on average five people charged with the responsibility for public participation.

In terms of decision-making processes, there was no uniformity in the range of responses elicited. With regard to decisions about public participation, the Gauteng legislature indicated that programmes are formulated through a process of discussion and consultation, where the Speaker and office bearers generally initiate the process. The Free State legislature schedules a strategic planning session with the presiding officers to identify key areas that need attention, while in the Northern Cape, decisions are made by the senior manager on both public participation issues and budgetary issues. Staff are, however, allowed to make input on proposals regarding public participation.
When it comes to budgets and financial management, the Free State legislature uses a system where projects are costed and the Secretary to the legislature with the office of the Speaker will commit to projects and programmes that have been approved. In the Gauteng legislature financial management is undertaken by various managers, and periodic reports are presented to the secretariat and office bearers.

Commitment
The legislatures have all committed themselves to the principle of public participation, and have given it high priority for the next decade.

Monitoring and improving public participation
A question related to improving the system for public participation elicited various responses, among which the more notable were the following. The Western Cape legislature pointed to the fact that a definition of public participation was required and this model of best practice would help improve systems for public participation, while the Northern Cape legislature called for a more creative and expansive use of technology to improve public participation.

A minority of legislatures does not monitor and evaluate public participation programmes, which clearly is a huge limitation. Those that do monitor the programme were not able to show clearly how the outcomes of the evaluation are fed into programme planning. Generally evaluation would take the form of reports that are submitted by the unit charged with the responsibility of facilitating public participation. The Gauteng legislature acknowledged the need for more concrete evaluation methods that would help measure the impact of public participation initiatives.

The Free State legislature (FSL) contracted the CPP to facilitate a training workshop and strategic planning session on public participation. At this workshop, the following points were raised with regard to strengthening and deepening public participation in legislative processes:

- There is a need for stronger collaboration between the legislature and the executive to facilitate public input – parliamentary liaison officers (PLOs) should play a stronger role in liaising with municipalities and community structures.
• There are invitations and opportunities for members of the public to make input, but we must question whether this provides for meaningful input. We need to provide for concrete means to solicit meaningful input from communities – tailored to their interests and needs.

• We need to open up the concept of public participation beyond merely seeking meaningful input by members of the public into our legislative processes - this should also be sought in budget processes, our oversight function and the work of committees.

• The FSL should put in place an effective management system to track Bills and ensure that information is disseminated timeously, and in advance.

• The FSL should develop effective information dissemination and communication programmes, including making use of local media, constituency offices, stakeholder databases, schools, municipality and community structures, theatre and the like.

• The FSL should include public education on public participation, governance and legislation in its programmes. This should be ongoing and reiterated.

A set of recommendations on a public participation strategy for the FSL was developed, and is attached as an annexure to this report.
Chapter 4: Perceptions and experiences of civil society of public participation mechanisms

Interrogating “civil society”

Even if appropriate participatory mechanisms were put in place, we would have to examine whether civil society stakeholders would be able to engage with policy processes with equity. The notion that civil society participation can be strengthened simply through enhancing opportunities for stakeholders to engage with policy processes has to be challenged. Issues such as what comprises civil society, the power relationships within civil society – and between civil society and government stakeholders, representation and accountability among civil society actors, and the capacity and motivation of individuals and groups to act, have to be explored.

Houtzager states that there is no civil society “sector”, but a diverse array of actors with different capacities and interests. Rather than being seen as an “autonomous, democratising force in opposition to the state”, civil society should be viewed as “a set of actors whose capacity to organise is influenced by their internal organisation, their links with other actors, and by the way institutions are designed” (Houtzager et al., 2003: 2).

Many authors express concern that any new spaces created for public participation in policy processes tend to be taken over by organised interest groups, and that participation processes “tend to give advantages to those who have the capacities which come with access to resources”, with the result that “mechanisms which ‘add to’ representative democracy by creating special channels for citizen participation are likely to reduce avenues for participation by the poor” (Friedman, 2004: 23). The effectiveness of participatory or deliberative governance, and the degree to which the ideals to which it aspires are achieved, are questionable when the opening of spaces leads merely to “the empowerment of local elites, not …consideration of the voices and interests of the more marginalised” (Gaventa, 2003: 12). Clearly, it is important to examine this concern, and the civil society terrain.

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3 This emerged from research conducted by the CPP (2005) on civil society perceptions and experiences of public participation in policy processes
This thinking reveals that the introduction of participatory or deliberative mechanisms to facilitate greater public participation in policy processes, thereby addressing the democratic “deficit” and strengthening governance, requires genuine, transformative approaches that enable civil society stakeholders to significantly influence decision-making. It is critical to bear these distinctions and concepts in mind when assessing existing participatory initiatives and exploring the crafting of new democratic spaces to complement different forms of democracy. Questions of access to and representation of citizens in participatory initiatives have to be addressed, as well as the nature of the participatory space itself.

**Civil society experiences of (participatory) policy processes**

Some critics might argue that there are existing spaces for engaging with policy processes, as highlighted above, and that civil society needs to be better informed, positioned and active to engage with these. However, it would seem that only a privileged few have access to these spaces, which are not sufficiently advertised or accessible, particularly to marginalised groups. Attempts to facilitate community input are largely superficial, and do not tap into the real power-base where decisions are made. Most processes present pre-determined positions and programmes for limited feedback or information-sharing only, or create opportunities for communities to raise concerns, and therefore make very little substantive difference to policy decisions.

Groups at discussion forums convened by the CPP to learn of civil society experiences of public participation spoke of mixed experiences of the policy process. Feelings of being sidelined and marginalised, excluded and disempowered overwhelmingly dominated. These were occasioned by not receiving feedback on inputs made in processes, not seeing any recommendations being taken up or any impact from having participated and made input, being co-opted into participating in a process with a pre-determined outcome, being excluded from an “inner circle” enjoying privileged access to decision-makers and information, and not being recognised as worthy of participating.

Concerns were raised at government’s tendency to call for community input at advanced stages of policy formulation, for political buy-in and implementation, rather than at the outset when problems and solutions are being developed. In this regard, participants from the children and women’s group noted as follows:
Meaningful, participatory spaces are closing up – the really consultative processes or spaces where decisions are made are not in the public arena. There is not meaningful engagement with civil society – decisions are taken elsewhere (children and women’s discussion forum).

They also commented that the use of primarily print media in government communication and information dissemination excludes certain groups and communities. Representatives from the community based organisation (CBO) discussion group noted further that language used in these processes further alienated communities, and that notice of opportunities to make submissions tended to “come late”, and as a result CBOs were excluded from decision-making. They stated that CBOs needed to be involved from the outset of the policy process.

**Power in the (participatory) policy process**

Discussion forum participants were particularly struck by power relationships at play in the policy process, both among policy-makers themselves, and between policy-makers and civil society. Groups reflected on how this impacts on the process, resulting in the kinds of experiences they shared. These were typified by unequal power relationships between politicians and bureaucrats, government and civil society representatives, those with access to information and resources and those without, those belonging to organised structures and those not, those who are viewed as educated and those not, urban and rural residents, men and women, and people with different abilities.

Participants reflected that these unequal power relationships play themselves out in the policy arena, resulting in some issues not making it onto the agenda, the exclusion of some stakeholders, the rendering invisible of others, and the exclusion of many from that critical juncture where decisions are made. Participants noted that unless these power issues are surfaced and addressed through careful planning, collaboration and facilitation, they will continue to undermine participatory initiatives seeking to gain civil society input and buy-in.

Participants from the children and women’s group discussion noted in addition that as a starting point, power resides with political parties. There is power in the process of setting the agenda for discussion itself, and participants questioned how issues get onto
the political agenda, and attract sufficient support and attention. When it comes to the implementation of policies and programmes, power is devolved to government agencies, and this is not monitored by or made accountable to civil society.

Participants from the HIV/AIDS discussion group picked up on this concept, and thought it important to distinguish between the power base of political and bureaucratic actors, and national government actors as opposed to provincial and local actors. While politicians deliberate ideas and make decisions, bureaucrats have the final power of implementation. Likewise, most policy processes are formulated at national level, which is perceived as being far removed from communities and difficult to access, with provincial and local governments then tasked with implementing these policies.

These experiences and reflections from civil society stakeholders have told us that although we have legislative provision for participatory mechanisms, and have many such provisions in place, this is not enabling civil society to participate meaningfully. Policy-makers acknowledge the limitations of these mechanisms, and civil society experience leaves us in no doubt that these are inadequate, inaccessible and disempowering, and that new approaches to participatory policy-making are required.
Chapter 5: Analysis and recommendations

Introduction
The following recommendations for attention in the development of a public participation strategy stem from those raised by legislature stakeholders through this research initiative, and are supplemented by CPP observations from working intensively with this sector.

Development of a public participation strategy
The CPP supports the notion of developing a sector-wide public participation strategy for provincial legislatures, and trusts that the information consolidated in this report will be of use in feeding into this process. The CPP wishes to put forward the notion that the proposed workshop to deliberate this report be structured as a forum for representatives from the provincial legislatures to jointly develop such a strategy. At such a forum, participants would be able to jointly develop a common understanding of the objectives, proposed outcomes and terminology related to public participation strategy and practice.

The CPP proposes however that each provincial legislature be given the opportunity to tailor the national strategy to meet provincial needs. In this respect, the CPP recommends that appropriate stakeholders within provincial legislatures, whether from public participation or communications units, begin building up a database of civil society stakeholders within their provinces, and conduct a consultative process with representatives groups. Such a process would generate information on civil society structures within each province, as well as information on their needs with regard to public participation – such as what sort of information they would require, what form of engagement would suit them best, how communication and feedback could best be facilitated, and what resources are available to supplement programmes of the legislature.

Scope and timing of public participation
To address concerns around the scope and timing of public participation, the following should be considered:

- Legislatures should seek to ensure that community groups are enabled to make input into legislative processes timeously – that is, not when decisions have been
made and the scope for influence is minimal. For instance, if public hearings have been arranged around the provincial budget process, these should not be convened at a stage when the budget has already been determined, but rather at the initial, prioritising and planning stages, so that community input can influence this process.

- Related to this, legislatures should explore broadening the scope for public participation in the public policy management process – from the framing of issues for policy and legislative consideration; the drafting of policy or legislation; its implementation; and evaluation. While this goes beyond the scope of legislatures’ direct interventions, through their oversight function, committees could place greater pressure on departments to ensure that they are providing for public participation in policy and programme formulation, implementation and evaluation. Even where departments contract out the delivery of services or programmes, they remain ultimately accountable to communities, and legislatures, for the delivery of services. This accountability cannot be subcontracted.

**Public hearings**

With regard to public hearings, there needs to be a clear system of processing submissions and providing feedback to members of the public on issues raised, and follow-up on these issues. There needs to be a serious attempt at engaging in pre-hearing work, whereby particularly marginal communities are enabled to understand the content of proposed legislation and its implications, and develop their responses to this.

Related to this, legislatures need to pay careful attention to the dissemination of information to communities to enable them to engage meaningfully with legislation. Creative use of formal and community media, and community and municipality structures, is required. Such initiatives should also be supported by an intensified process of building the capacity of community groups to understand and engage with legislative processes and structures. Ensuring that rural communities are afforded meaningful opportunities to participate cannot be emphasised enough.

Careful attention needs to be paid to identifying stakeholder groups to invite to public hearings, by categorising stakeholders through a database. In addressing issues
relating to representation and voice within civil society, legislatures should be mindful in planning for hearings, of issues relating to which groups are invited to make presentations or submissions, and who speaks on behalf of groups or communities.

Hearings can be used as a tool to measure the progress and impact of legislatures in implementing their public education and participation programmes. Clearly, public hearings must take place in the local language, using plain and simple language. Public hearings themselves could be better facilitated, in a more interactive, participatory manner, making use of discussion groups, to enable greater deliberative dialogue on policy options.

**Constituency offices**

In the context that legislatures agree that a great deal can be done in terms of using constituency offices to facilitate public participation, the following needs to be considered:

- Constituency offices should be used to channel information on legislative processes to communities, and facilitate community input into these processes.
- Members need to serve their constituency offices adequately, and provincial legislatures should lay down guidelines on what this entails.
- There is a need for public participation training for constituency office staff. Members should also receive this training and be part of this training process, to strengthen networking.
- Constituency officers and members need training on how to make use of the media.
- Administrators of constituency offices need support – capacity building, fed with information on legislative developments, provided with the resources needed to run their offices efficiently, and given assistance with career-pathing.
- Constituency offices should be an extension of the legislature, not party offices.

**Monitoring and evaluation**

Legislatures need to be constantly monitoring and evaluating their programmes to assess how effective they are in strengthening public participation in legislative processes, and the outcomes of this process need to be fed into programme planning.
Such a monitoring process ideally should engage civil society stakeholders for their assessment, feedback and recommendations.

**Media and information dissemination**

In ensuring an effective dissemination strategy, there is a need to go beyond mainstream media and make use of community print and electronic productions (especially radio), as this has the potential of reaching a significantly greater population. Legislatures need to supplement media strategies by making use of local networks – such as schools, church groups, municipalities, traditional leadership structures – to ensure that diverse and marginalised communities gain access to information timeously.

**Internal structures**

It is clear that considerable intervention is required in developing an optimum structure to facilitate public participation, with legislatures making use of different departments to fulfil this responsibility. As a result, internal structures very often do not seem to support the kind of coordination and cross-cutting collaboration needed for public participation.

Although some legislatures have public participation and petition units, it is not always clear how these relate to other internal structures, especially communication services. It would seem that most legislatures would support the notion of a political standing committee, supported by an administrative public participation unit, to assume overall responsibility for implementing and monitoring public participation strategy and programmes. This issue would need to be thoroughly debated and recommendations developed at the proposed workshop.

**Collaboration between legislatures**

The present forum seems to constitute a very good basis for such collaboration. However, there is room for extending collaboration to the preparation of generic documents and on legislation under consideration.

**IT issues**

The quality and accessibility of websites varies from legislature to legislature. Two legislatures do not appear to have websites at all. Of particular concern is the fact that the National Council of Provinces (NCOP) does not have a working website. As
coordinator of legislation affecting provinces and other provincial matters, this needs to be rectified.

Public participation and the national and provincial budgets
Attention needs to be given to this issue. Gauteng has made some good headway in this respect. However, space needs to be made for such processes in all legislatures, and new deadlines need to be set in respect of public access to budgetary choices.

Language
There needs to be consistent application of plain language principles to all documents, including legislation. It is recognised that this may take time and additional resources, yet the lack of summarised, plain language versions of policy and legislation under scrutiny further prevents marginalised groups from participating effectively in these processes.

Resources
In light of the fact that most legislatures are not able to provide concrete figures allocated for public participation activities, there should be more careful attention paid to this area, with adequate funding made available. Moreover, there would need to be sufficient staff employed to address issues around participation. The proposed workshop should include a component addressing decision-making around programme planning, budgeting and implementation, as many legislatures appear to be hamstrung or frustrated in their attempts to implement programmes, either through lack of adequate resources or capacity, or through not having sufficient authority to make decisions on programmes and expenditure.
Conclusion

The CPP is of the opinion that much commitment and effort and substantial resources have been ploughed into addressing the critical need to engage members of the public, and marginalised groups in particular, in processes of provincial legislatures. There is a clear demonstration of political will in this regard, although this does not appear to have been translated into the provision of necessary resources by legislatures themselves.

This initiative to consolidate attempts by legislatures to strengthen public participation, and develop a sector-wide strategy to act as a much-needed guide and bench-mark for legislatures is welcomed. Without a clear sense of appropriate internal structures and resources, effective programmes and means to measure their impact, the many innovative initiatives and attempts to transform practice within individual legislatures could well be lost.

The CPP is confident that with such an appropriate strategy, refined locally with provincial stakeholders’ input, legislatures are set to transform they way in which provincial legislatures engage with members of the public. This will particularly significantly impact on creating meaningful opportunities for marginalised groups to understand and engage with legislative processes, in a manner that is supportive and empowering to them.
References
Annexure: Free State legislature recommendations on public participation strategy

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Educator.
Instigator and facilitator of public participation.
Information disseminator.
Communicator.
Liaison.
Generator of public discourse and debate.
Deepening Democracy Through Public Participation

CONFERENCE REPORT

2006
1. Introduction

The Speaker of the Gauteng Legislature was mandated by the Speakers’ Forum of South African legislatures to lead a task team that organised a national consultative conference on public participation, inviting a broad spectrum of civil society organisations and legislatures. Civil society organisations (CSOs) came from labour, youth organisations, the women’s coalition and the non-government organisation (NGO) sector, all coming together for the common purpose of discussing and developing a national framework on public participation for all legislatures. The conference took place on 25–26 July 2006 with more than 500 people attending, and was the first gathering of its kind, setting out to explore opportunities to enhance public participation. A number of resolutions were adopted, outlining recommendations for a national framework on public participation.

Speaker Richard Mdakane outlined the conference objectives, and the keynote address was delivered by the chairperson of the NCOP, Hon. Mbete M. J. Mahlangu. Prof. Shadrack Gutto and Dr Chris Landsberg provided expert input on public participation. This was followed by a presentation on public participation by various civil society formations.

Five commissions were formed to look at a standard set of questions and this began during the latter part of day one and continued on day two, after which commission representatives reported on recommendations, which were then synthesised into a document containing overall recommendations.

2. Summary of presentations

**SUMMARY OF KEYNOTE ADDRESS BY HON. MBETE BY M. J. MAHLANGU – CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES (NCOP)**

Hon. Mahlangu pointed to the fact that the Constitution of South Africa provides for a
representative and participatory democracy, where the legislature is the voice of the people and carries the mandate of the people.

Initiatives undertaken to promote public participation include:

- **Taking Parliament to the People**: An initiative driven by the NCOP. Ensures meeting and interacting with communities.
- **People’s Assembly**: An annual event. This year it will take place in Oudtshoorn in the Western Cape where the entire Parliament will go and sit in another province.
- **Women’s Parliament**: Takes place in August.
- **Youth Parliament**: Took place in June this year.

The establishment of Parliamentary democracy officers (PDOs) is under way to further maintain and strengthen the link between Parliament and the people. Through these offices, it is hoped, the following will be achieved:

- An increased number of points where people can access Parliament
- The creation of an immediate parliamentary presence in the provinces
- A greater level of efficiency in accessing communities and providing ground support for parliamentary programmes.

The PDOs will be established in all nine provinces, and a fleet of mobile offices will be equipped to take Parliament even further into rural areas.

The United Nations Development Programme study entitled *A People’s Government, The People’s Voice* noted that the public remains largely unaware of the opportunities for public participation at the provincial level, and that there was a “direct relationship between lack of knowledge about the role of provincial legislatures and willingness to participate.”

*Summary of address by Prof. Shadrack Gutto*

Prof. Gutto pointed to the fact that the question around public participation is captured within our Constitution, where it talks of involving the public.
People can participate directly or through representation and thus we need to look at the quality and nature of direct participation, and the quality and nature of representation, because both of them are important. Gutto questioned whether representatives are really “capturing the pulse of society” and providing meaningful input.

Regarding the function of law-making, the speaker pointed to the fact that of 918 laws, about 910 have been initiated by the executive, raising questions around whether the legislatures are weak and incompetent or whether the executive is “overactive in carrying out its responsibility”?

The right to participate is captured in the Constitution and Section 118 requires that provincial legislatures facilitate public involvement in legislative and other processes. There are also informal ways of influencing the outcome of processes and sometimes the most influential ways include “participating” on the golf course.

Gutto explained that sometimes participation processes are dominated by the elite, where for example a submission by a powerful person in society is carefully looked at and taken into account. He also highlighted the difference between the “ruling class” and the “governing class”, where legislatures rule and governance encompasses institutions of cultural governance and institutions of economic governance, and that participation should be sought in these institutions also.

Gutto concluded by saying that there are direct and indirect ways of participation and we must be able to ensure that we are represented at all those levels.

**SUMMARY OF ADDRESS BY DR CHRIS LANDSBERG**

Landsberg began by saying that participation is often invited only in “certain stages” of the policy process and people feel excluded from the “agenda setting” phase of policy-making, thus creating the feeling that people are “invited only to go and implement policies that have already been decided upon before an invitation comes”. Also, what seem to be tensions in our constitution around being a representative or a participatory democracy need to be resolved.
The speaker raised concerns about well-resourced NGOs dominating public participation processes at the expense of the poor and marginalised.

Parliaments feel that there are not enough resources for participation, but also need to use cost-effective methods, like public education workshops and information sharing, and civil society needs to become serious about embracing spaces for public participation.

Landsberg explained that the policy process involved:
- Agenda setting
- Construction of policy
- Policy implementation
- Policy evaluation.

Here, he once again stressed the importance of involving stakeholders at critical points of the policy cycle and not only when policies have been decided upon already, stressing also the need for civil society to be involved in the monitoring and evaluation of policy.

Deliberative policy-making is important because it is participatory and addresses the idea that policy-making processes in South Africa are secretive.

Engaging does not mean that one is compromising ones independence, but rather engagement can reinforce independence, where stakeholders can walk away and claim that it was a critical and constructive engagement; without being co-opted.

Landsberg concluded by saying that evidence-based research is important since it:
- Seeks to make decisions more effective
- Ensures burden sharing of decisions.

*Summary of presentations by civil society*

*Ms Marima – National Council of Trade Unions (NACTU)*
Ms Marima emphasised that public participation was a constitutional obligation, and said that people should also ask what they were doing for their government as opposed to what government did for them, since this was an important part of democracy. Workers must be afforded the opportunity of getting knowledge, as knowledge is power. She further noted that good policies were in place, but that implementation was a problem. People asked what gains each policy package had for them and she told the conference that they were there, as NACTU, to realise the provision that “all shall have equal rights” through public participation. Their mandate was to ensure that the voice of ordinary people was heard in deepening democracy. She concluded by saying that the use of plain and simple language would aid the process of public participation greatly.

Ms Naomi Nkondlo – National Youth Commission

The National Youth Commission viewed this conference as important as it was set against the backdrop of our country’s commemoration of the 30th anniversary of Soweto and the connected uprisings that took place in 1976. The events of 1976 are an indication of what happens when people are denied the opportunity to participate in the deliberations that affect their lives. For Nkondlo, South Africa’s democratic order, through our Constitution, has afforded all its citizens and all sectors of society the opportunity to have their voice heard. The public participation process would not make sense to the millions of people and the youth if it did not translate into concrete improvement in the quality of their lives.

The speaker was critical of the media as she argued that the media has always championed the notion that the youth are apathetic, failing to give coverage when youth involve themselves in programmes of social transformation.

It is critical that space is afforded to young people to participate at the local government level as youth need to be not only beneficiaries of social transformation, but also contributors.

South African National Civic Organisation (SANCO)

SANCO sees public participation as vital, where the principle of accountability becomes and integral part of that democratic society, and a space where strong and sustainable
organs of civil society thrive.

In the context of local government, integrated development plans (IDPs) do not reflect community needs, but rather those of consulting civil engineers. Communities are not afforded the opportunity to give input into the first drafts of budgets, but are called in when the final budget processes are underway, in order to adopt decisions already taken. SANCO concluded by saying that we need to bear in mind that utilising democratic processes deepens a shared understanding and produces an outcome of long-term benefit to the whole community or society.

Mr Mhlongo – people with disabilities
The speaker emphasised the need to provide access, including access to sign language, for people with disabilities. He also spoke about transport for participation, accessible public transport, and materials such as videos, particularly for those that are deaf.

He complained that nothing was done at the conference to check whether disabled or deaf people needed assistance. Disabled people believe inclusion is characterised by self-representative participation, through organised structures of disabled people such as Disabled People South Africa (DPSA). He concluded by making a call for continuous education on parliamentary proceedings as well as legislative processes.

Rev. Moerane – religious sector
The speaker stated that government bears a unique responsibility and that there are specific requirements which the legislature or government must satisfy including:

- A government must assess itself against God’s given purpose of ruling the people correctly. Those who lead must do so as servants and not as masters. The legislature should make ordinary people feel worthy of participating.
- Avoidance of addiction to power and using power wrongfully.
- Officials must be open to dialogue and prepared to compromise. This will avail space for alternative ideas and approaches to resolve issues facing communities.

Mr Ramova – Congress of Traditional Leaders of South Africa (CONTRALESA)
The speaker stated that participation by CONTRALESA took place on an ad hoc basis. He felt that CONTRALESA must be represented at all levels of government and not only
nationally; all legislatures must have traditional councils. CONTRALESA must be consulted on all issues that affect its members, as at present there is no consultation.

He lamented the fact that there was no budget in place for parliamentarians to consult with them, and parliamentarians were often unavailable to consult. Ramova concluded by referring to kgoros as important, as they have been in place for a long time. They must not be forgotten when participation is taking place in the community, as this is where the majority stays.

Mr Ntsanwisi – House of Traditional Leaders
Mr Ntsanwisi of the House of Traditional Leaders told the conference that they do not want to be consulted, but want to take part in decision-making because their lives and destiny are at stake. Patriotism and love of country and language must be engendered in the people.

The speaker explained that the government’s attempts at public participation were covered by sibidzo/imbizo/pitso/xibidzo and pitšo (gatherings). These imbizos, created an opportunity for communities to talk about their needs.

Traditional xhibidzo serves as a platform where different wards or settlements learn about issues in the community and the problems experienced by other wards. Ntsanwisi concluded by saying that participatory opportunities in Limpopo are seldom attended by people of other race groups.

3. Commissions

The conference provided for five commissions that looked at a common set of questions. There were approximately 100 people in each commission, made up of a broad spectrum of representatives from civil society and from legislatures. Imraan Buccus from the Centre for Public Participation (CPP) presented a draft report on “developing a public participation strategy for South Africa’s provincial legislatures” to each of the commissions before participants engaged with the questions.
The following set of questions were looked at by each commission:

Generic questions

1. How does the legislature capture the interest of the “unorganised people” in their public participation process?
2. What are the mechanisms of assessing public participation programmes (PPP) across the legislatures?
3. How do you ensure qualitative PPP without compromising the legislature’s work and its interaction with the executive?

Tailored questions on each mechanism for commissions

I PUBLIC HEARINGS

1. How can the current system be improved in terms of the following:
   - Format
   - Location
   - Facilitation
   - Advertising
   - Processing submissions and providing feedback

2. Is any pre-hearing work undertaken to ensure understanding of the issue, participatory process, etc., especially among the poor and less literate?

II CONSTITUENCY OFFICES

1. How do we strengthen their role in terms of information dissemination and access?
2. How can constituency offices be effectively used to facilitate linkages between communities and legislatures?
3. How do we generally strengthen the role of constituency offices in deepening public participation?

III MONITORING AND EVALUATION
1. How do we involve civil society in giving feedback and recommendations on public participation processes?

IV PETITIONS PROCESS
1. Access the effectiveness of the administrative process around:
   • Receiving and registering lodged petitions
   • Investigating and giving feedback.

V MEDIA AND INFORMATION DISSEMINATION
1. How can it be improved in terms of the following:
   • Choice of appropriate medium, taking into account reach
   • Choice of appropriate language.
2. How can local networks (schools, municipalities, etc.) be used to deepen reach?

vi Public education programs for legislatures
1. How effective are public participation programmes in relation to the following; are we reaching the people?
2. Material relevancy: To what extent do legislatures involve CSOs in designing materials?
   • Language
   • Packaging
   • Distribution
   • Access to information
   • Feedback mechanisms
vii  Sector parliaments

The same questions as above.

Do they add value to legislative processes *vis-à-vis* law-making; policy formulation?

viii  Taking Parliament to the People/People’s Parliament

What is the response of the public to concept of a “people’s parliament”?

How effective is the process in relation to:

- Representation
- Processing of inputs
- Feedback to the legislature and civil society
- Contributing to policy formulation.

*Deliberations/issues raised*

The commissions were useful in that they provided an opportunity to engage critically with the questions in a smaller forum, and some important issues around mechanisms for public participation were raised. Several commissions raised issues regarding submissions and the fact that legislatures needed to have a mechanism to process submissions and provide feedback.

The issue of the use of plain and simple local language was also raised. It was argued that this was critically important if effective participation were to take place. Other issues raised included criticism that constituency offices were not used effectively as a means of facilitating public participation and that there was an urgent need for constituency offices to be depoliticised.

Other issues were also raised, but are covered in the recommendations that follow below.
Recommendations

Each commission surfaced recommendations. These intersected greatly and were therefore synthesised, with the following presented as overall recommendations:

i Scope of public participation

There is a need to define the scope of public participation in terms of the following:

- There is a need for a guiding definition of the terms “public” and “participation”.
- What actually informed the use of “public participation” instead of “involvement”, “engagement” or “consultation”?  
- When is public participation required, and when is it not required?
- The responsibility of the elected representatives cannot be taken away by public participation.
- There is a need to redefine “stakeholders”, “public” and policy formulation.
- Legislatures are too Eurocentric and research must be done on how to Africanise these institutions.

II PUBLIC HEARINGS

- Traditional leaders should be involved in public participation programmes.
- Provision of transport to venues by the legislatures.
- Legislatures should develop and maintain databases of stakeholders.
- Community-based organisations, faith organisations, community development workers and ward committees should be trained and capacitated for effective public hearings, which means disseminating information and providing feedback to the public.
- There should be pre-hearing workshops to enable communities to participate effectively – one week’s notice should apply.
- Public hearings should be advertised sufficiently in advance – at least 14 days.
• Legislature’s research units should take a pro-active role in tracking Bills and proactively provide simplified versions of Bills ahead of public hearings.
• Simplified versions of Bills should be translated into local languages and Braille.
• NCOP and provincial Bills should be sent to provinces early.
• Access for people with disabilities should be guaranteed – provision of sign language interpreters, documents in Braille and physical access for people using assistive devices.
• Legislatures should develop and strengthen feedback mechanisms.
• Submissions should be considered and included in negotiating mandates, and feedback must be provided to the public.
• Committees must have comprehensive planning and budgeting that covers all costs for public hearing programmes.
• In some cases hearings held over the weekend may be more effective. Therefore, the appropriate time for conducting public hearings should take into account what is relevant for a given area.

iii Constituency offices

• Constituency offices must be broadened and well resourced to service the whole community irrespective of their political affiliation.
• Constituency offices should be capacitated with information to be able to function as a resource centre for broader communities, e.g. newsletters, brochures, government documents, etc.
• There should be coordination between the constituency office and the ward committees.
• The continuous operation of constituency offices should be guaranteed.
• The constituency period should enhance contact between MPs or MPLs and the public.
• There is a need to use constituency offices for purposes of channelling information relating to legislative processes and government services.
IV PETITIONS

- Legislatures should expedite the process of establishing a dedicated standing committee for petitions.
- The Petitions Committee should be empowered with a petitions Act, which would compel legislatures to consider petitions within time frames.
- There should be a process of educating people in preparing petitions.
- Petitions committees should acknowledge receipt of petitions and provide feedback.
- There is a need for human and financial resources.
- There should be mechanisms to link all three spheres of government with regard to petitions.
- The Petitions Committee should have a programme of sittings.

V SECTOR PARLIAMENTS

- Proper processing and tracking of information that is generated by sector parliaments.
- Sector parliaments should unfold from municipalities to provincial parliaments and National Parliament.
- Holding of an imbizo before a sector parliament sits.
- Put in place formal procedures to host sector parliaments that include feedback to different sectors.
- Resolutions and inputs should be considered for inclusion in policy and be taken to departments for further engagement.
- Legislatures must provide sufficient budget allocations to host sector parliaments.
- Review of role and significance of Sector Parliaments.
- Focus should be on the impact sector parliaments have rather than the number of participants.
- Sector parliaments should be consistently monitored and evaluated to avoid being perceived as once-off events.
VI  TAKING COMMITTEES/PARLIAMENT TO THE PEOPLE

• Aim for maximum participation in sittings or committee meetings.
• Legislatures should develop mechanisms to process inputs and provide feedback to public
• Committee meetings or sittings must use languages that are accessible to communities.
• Publicise and inform the public about meetings in advance to be able to make meaningful contributions – 14 days.
• Parliament/committees should ensure accessibility and participation (not observer status).

VII  PUBLIC EDUCATION

• Ensure that education materials, flyers are accessible in terms of language and provide for people with disabilities.
• Establish collaborative programmes with civil society organisations.
• Public education must be intensified and budgeted.
• Public education must be legislated and thus be placed in the school curriculum.
• Emphasis should also be on the less advantaged, especially in rural areas.

VIII  MEDIA

• Community radio stations
• Local print media (community newspapers)
• Media to be involved from the beginning of public participation processes, especially with public hearings
• Every legislature should have a clear, well-planned communication strategy.
• MPs and MPLs should be encouraged to use indigenous languages in parliamentary sittings.
• There should be a continuous update of legislature websites, including information on public hearings.
IX GENERIC RECOMMENDATIONS

- All legislatures must have dedicated public participation and petitions units and committees. Therefore, provinces without them should be assisted in setting them up.
- Ward councillors’ involvement in public participation should be guaranteed.
- Legislatures should strengthen cooperation among different units supporting public participation programmes, e.g. Hansard, communication, and PPP.
- Legislatures must budget for administrative support units for PP programmes.

X MONITORING AND EVALUATION

- Communities should be involved in the evaluation of public participation efforts, e.g. through assessment tools.
- Legislatures may consider using independent bodies for the evaluation of public participation programmes.
- There is a need for synergies between community development workers and ward committees to facilitate the monitoring and evaluation process.

4. THE WAY FORWARD AND CONCLUSION

The conference was indeed historic, as it was the first gathering of such a broad spectrum of civil society formations and legislatures, exploring opportunities to enhance participation and develop a national framework for all legislatures. The implementation workshop has taken the process of facilitating meaningful participation closer to being realised, as legislatures will now have a common perspective on the implementation of public participation at their respective legislatures.

What remains is for the implementation report to be adopted and agreement to be reached on a process of achieving the outcomes of the report. The foundation for truly participatory and meaningful forms of engagement in processes of governance has been laid.