

PEOPLE'S POWER PEOPLE'S PARLIAMENT

A Civil Society Conference on South Africa's Legislatures

What happens in Parliament [must be] located within the context of power globally... unless we [acknowledge] that, we're never going to shift the poverty and inequality in our country... To what extent will our parliament represent the interests and the rights of the majority of South Africa's citizens? To what extent will it collude and be corrupted by those who own the wealth of the world?

– Pregs Govender

My area of concern is making sure that we as the people are being listened to, and that parliament needs to remain to do its duty, to be a guardian of the citizens, not guardians of parties...we have to in this conference... dialogue on how to strengthen our Parliament to remain a People's Parliament.

– Vuyiseka Dubula

It is a threat to our democracy if parliament cannot exercise [its] oversight role because of constraints... even the executive does not get a good deal out of this... it gets a poisoned chalice because now you have an executive that can act unilaterally and does not enjoy the cooperative power of oversight from parliament... it weakens democracy.

– Nkosikhulule Nyembezi





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This document summarises key themes and discussions from *The People's Power People's Parliament Conference* held in Cape Town, 13 – 15 August 2012. It was co-hosted by the following organisations:



Conference funded by the EU & HBF



Publication written by Keren Ben-Zeev

This publication would not have been possible without the valuable input of a number of colleagues. Gregory Solik and Zukie Vuka reviewed the representation section and the infographics on the electoral system; Samantha Waterhouse reviewed section 2; Jennifer Williams, Heather Durham and Stefani Jones of the Women's Legal Centre contributed to thinking through and analysing the participation case study, which Dee Smythe reviewed. Additional information for the participation case study was provided by the Law, Race and Gender Unit. Nikki Stein of Section27 provided input for oversight case study 3. Lastly, Gaile Fullard, Rashaad Alli, Nada Barqawi, Raymond Yosimbom and Amanda April from PMG provided invaluable research support, and compiled the dictionary at the end of the publication.

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For a full programme, the memorandum, recordings and videos of presentations, documents and transcripts of the conference, go to www.peoplesparliament.nu.org.za

The conference was organised by the following people:

Axolile Notywala (Social Justice Coalition, SJC); Candice Pretorius (Community Law Centre, CLC); Claudia Lopes (Heinrich Böll Foundation, HBF); Debbie Gordon (CLC); Elroy Paulus (Black Sash); Ella Scheepers (Corruption Watch); Gaile Fullard (PMG); Gavin Silber (SJC); Gregory Solik (Ndifuna Ukwazi, NU); Jennifer Williams (Women's Legal Centre); Keren Ben-Zeev (HBF); Lauren McNeil (PMG); Lynn Basson (HBF); Mary-Anne Munyemba (Corruption Watch); Metumo Shilongo (Section27); Nkosikhulule Nyembezi (Black Sash); Phumeza Mlungwana (SJC); Samantha Waterhouse (CLC); Shaun Russell (NU); Simonia Mashangoane (Treatment Action Campaign) and Tiffany Mugo (PMG).

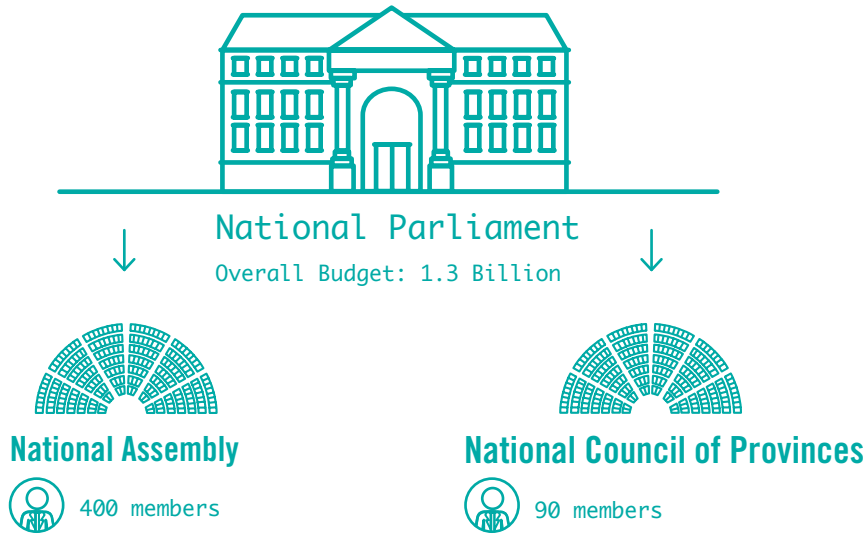
FROM SOUTH AFRICA'S CONSTITUTION:

42. Composition of Parliament

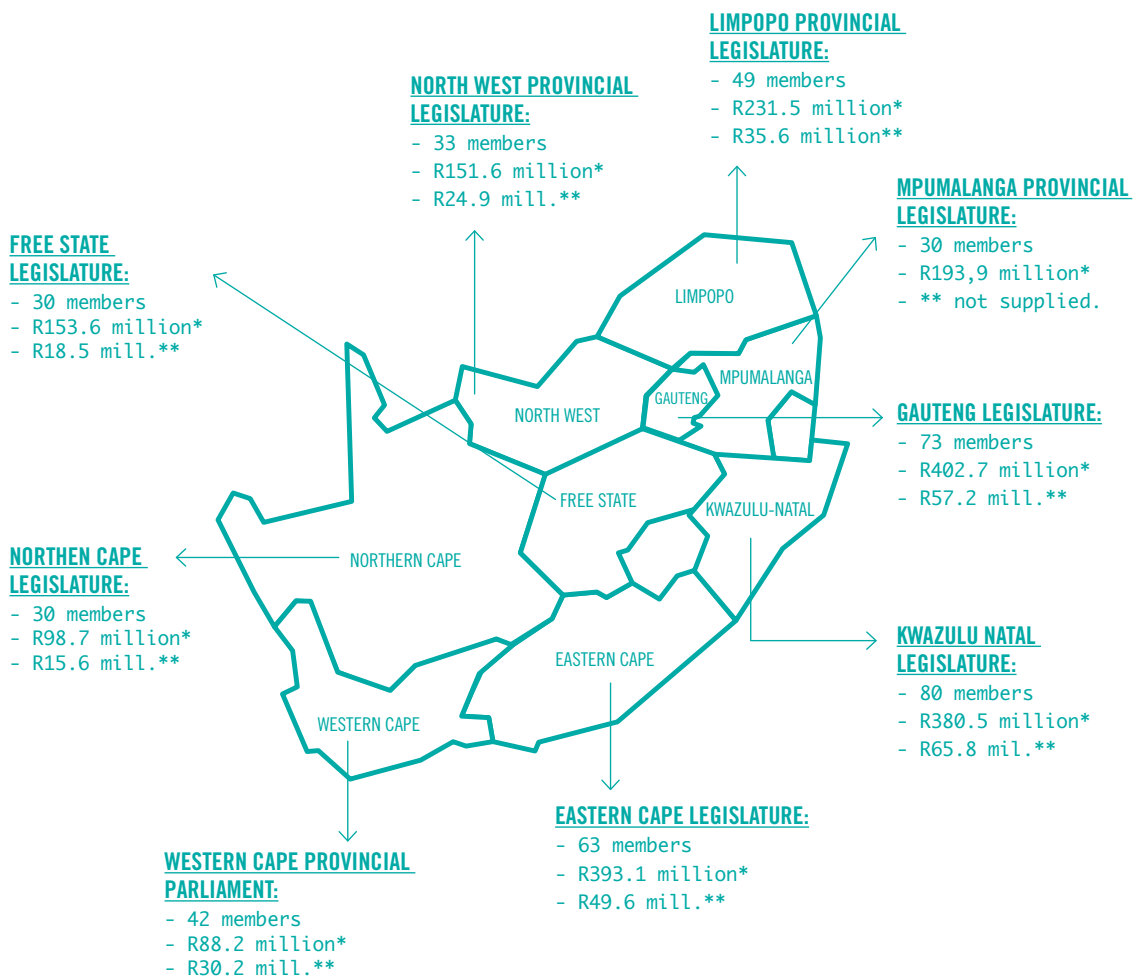
1. Parliament consists of
 - a. the National Assembly; and
 - b. the National Council of Provinces.
2. The National Assembly and the National Council of Provinces participate in the legislative process in the manner set out in the Constitution.
3. The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.
4. The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.
5. The President may summon Parliament to an extraordinary sitting at any time to conduct special business.
6. The seat of Parliament is Cape Town, but an Act of Parliament enacted in accordance with section 76(1) and (5) may determine that the seat of Parliament is elsewhere.

PARLIAMENT & THE LEGISLATURES:

Some facts and figures



02



INTRODUCTION

In democratic countries such as South Africa, the **legislatures**, or **legislative institutions**¹, are incredibly important. Members of the legislatures are elected to **represent** the people, and ensure that government serves them. They do so by electing the president and premiers, passing laws and overseeing the actions of the executive. Without the legislatures, the use of state power and resources cannot be democratic, because it is not sanctioned by the people or their representatives.

In South Africa, our legislatures, or houses of elected representatives, include the **National Council of Provinces (NCOP)**, the **National Assembly (NA)** and the nine **provincial legislatures**. All of these institutions must literally 'represent' the citizens in the affairs of government. Our elected representatives, **MPs** and **MPLs**, should make our voices heard and raise our concerns in parliament and the provincial legislatures without us necessarily having to be there ourselves. Although they do not 'deliver' services, without the legislatures, government would not be able to ensure that all South Africans enjoy the rights set out in the constitution: rights to equality, freedom of expression, education, health and adequate housing. The role of members of the legislatures comes with great responsibility: those elected are required to ensure that the public good is promoted, and the most marginalised included in decisions that affect them.

But how well are South Africa's parliament and provincial legislatures living up to this mandate? Are they making laws that truly reflect citizens' interests? How effective are they in monitoring government's use of state resources? To what extent are South Africa's **representative institutions** addressing the many challenges relating to health, education and basic service provision?

It was to contemplate and debate these questions that the *People's Power People's Parliament: A Civil Society Conference on South Africa's Legislatures* (PPPP) was held 13–15 August 2012 in Cape Town. The wide range of citizens and citizen groups that participated reflected on the opportunities that the country's legislatures embody, and the challenges they face. They discussed both initiatives that are under way to address difficulties, as well as suggested new ways to address them. Much of the deliberation focused on representative institutions, but the forum also addressed the need for self-reflection and critique among conference participants.

This document summarises key themes and discussions from the conference. It aims to document the conversations and issues raised, as well as provide background information on the questions debated. Ultimately, it aims to popularise the debate on how well South Africa's legislatures are living up to their mandates. The purpose of such an exercise is to encourage public ownership, and hence, the strengthening, of these important institutions.

ABOUT THIS PUBLICATION

This publication is based on the discussions that took place in the *People's Power People's Parliament: A Civil Society Conference on South Africa's Legislatures*. For this reason, it extensively quotes from participants at the conference, as well as refers to material from the memorandum that was drafted at the conference, endorsed by participants, and handed over to the **Presiding officers** of all of the country's legislatures.

Unless otherwise indicated, all quotes on margins are from the conference.

Information about the persons quoted is provided at the end of the publication, in the 'Voices' section.

Words in **bold text** are included in the dictionary at the end of the publication.

Each section contains recommendations from the memorandum handed over to the legislatures. For considerations of space, some of the memorandum recommendations have been rephrased. They retain their intended meaning. The original memorandum is available at www.peoplesparliament.nu.org.za.

In the process of integrating the conference material – quotes, presentations and background information – additional recommendations have emerged. These are included in the memorandum recommendations under the heading '*unfinished business*' to indicate that they require further consideration by the legislatures and civil society.

¹ This publication uses the terms 'legislatures', 'representative institutions', 'representative bodies', 'democratic institutions' and 'legislative institutions' interchangeably. South Africa's provincial legislatures are referred to as such, while 'parliament' refers to South Africa's national parliament.

THE SOUTH AFRICAN STATE



THE CONSTITUTION:

South Africa's highest law

Protects the rights of all persons in SA & establishes fundamental rules and principles for government and people
Can only be changed by a two thirds majority in parliament and the consent of 6 out of 9 provinces

THE 3 ARMS OF GOVERNMENT:

The judicial, legislative and executive arms of government operate independently from one another. This enables each arm to check and balance the powers of the others



THE LEGISLATURES

Make laws; oversee the executive



THE EXECUTIVE

Propose and implement laws; make policies



THE JUDICIARY

Interpret and uphold the rule of law

NATIONAL SPHERE

National Parliament

<p><u>The National Assembly (NA)</u></p> <ul style="list-style-type: none"> - 400 MPs elected through a PR system - Work through Portfolio Committees (PC) - Each government department is tracked by one PC 	<p><u>The National Council of Provinces (NCOP)</u></p> <ul style="list-style-type: none"> - 90 MPs (10 representing each of the 9 provincial legislatures) - Represent interests of provinces in debates and laws - Work through Select Committees (SC) - An SC typically follows more than one government department
<p>Parliamentary Constituency Offices (PCO)</p> <ul style="list-style-type: none"> - Each MP is responsible for a constituency where they have a duty to help solve problems and report back on what is happening in parliament. Most MPs do this through constituency offices 	

<p><u>President:</u></p> <ul style="list-style-type: none"> - Elected by MPs in parliament - Upholds and defends the Constitution - Presides over ministers - Sets government agenda - Appoints Constitutional Court judges 	<p><u>Cabinet:</u></p> <ul style="list-style-type: none"> - Includes MPs appointed as political heads of departments (ministers) - Decide on government initiatives with president - Accountable to parliament & president - Require parliament to approve their budgets
<p><u>National Departments:</u></p> <ul style="list-style-type: none"> - Implement cabinet's decisions on national level 	

<p><u>The Constitutional Court</u></p> <ul style="list-style-type: none"> - South Africa's highest court - Makes final rulings about whether the constitution has been followed by government and citizens - Can declare laws invalid 	<p><u>Supreme Court of Appeal</u></p> <ul style="list-style-type: none"> - Highest court of appeal on all matters except constitutional matters
<p><u>Specialist high courts</u></p> <ul style="list-style-type: none"> - Includes the Labour, Land Claims, Competition Appeal, Electoral, Equality and Tax Courts 	<p><u>High courts</u></p> <ul style="list-style-type: none"> - Each court deals with matters in specified geographical area - Review judgements of magistrate courts

The different spheres of government should co-operate with each other.

The national sphere can only exercise power over local and provincial government under special circumstances.

PROVINCIAL SPHERE



<p>The 9 Provincial Legislatures:</p> <ul style="list-style-type: none"> - Oversee the provincial executive - Represent the interests of people residing in a specific province - Legislate but only on matters over which the provinces have jurisdiction, e.g. welfare, housing, education and police 	<p>Premier:</p> <ul style="list-style-type: none"> - Elected by the provincial legislature - Sets the agenda for the provincial government
<p>PCO:</p> <ul style="list-style-type: none"> - Each MPL is responsible for a constituency where they have a duty to help solve problems and report back on what is happening in the legislature. Most MPLs do this through constituency offices. 	<p>The Provincial Executive Council (PEC):</p> <ul style="list-style-type: none"> - Includes MPLs appointed as the political heads of provincial departments (MECs) - Decides on provincial government initiatives and priorities - Accountable to the provincial legislature & the premier - Requires the legislature to approve its budgets

<p>Provincial Departments:</p> <ul style="list-style-type: none"> - Implement the PEC's decisions in the province - Responsible for provision of key public services e.g. welfare, housing, education and police. About 80% of provincial budgets are allocated to these. - Monitor and support municipalities 	<p>Specialist courts:</p> <ul style="list-style-type: none"> - Includes the Equality, Family, Sexual Offences, Children's, Small Claims and Tribal courts,
<p>Magistrates courts</p> <ul style="list-style-type: none"> - Lower courts that decide on less serious matters in specified districts - They have limited powers and are bound by judgements of higher courts - Decisions subject to review by higher courts 	<ul style="list-style-type: none"> - Can rule on some constitutional matters

LOCAL SPHERE

The different spheres of government should co-operate with each other .

The national or provincial spheres can only exercise power over local government under special circumstances.

<p>The Municipal Council (MC)</p> <ul style="list-style-type: none"> - 50% of representatives in the MC are elected through a PR system. The other 50% are elected directly as individuals, regardless of party affiliation - Makes by-laws & policies - Decides on development priorities - Oversees the provision of services to the community by the administration 	<p>The Mayor</p> <ul style="list-style-type: none"> - Elected by the municipal council
<p>Ward Committees</p> <p>Forums where residents can:</p> <ul style="list-style-type: none"> - Have a say on the local government development plan & budget - Monitor the municipality's performance - Make decisions on municipal services - Communicate with elected representatives 	<p>The Municipal Administration</p> <ul style="list-style-type: none"> - Headed by the Municipal Manager - Implements the decisions of the Municipal Council - Responsible for the services closest to the people: electricity, water, refuse removal, sanitation
<p>Constituency Offices:</p> <ul style="list-style-type: none"> - Every ward councillor is responsible for a constituency where they should have presence 	

CHAPTER 9 INSTITUTIONS

State institutions tasked with supporting our constitutional democracy. They are independent and subject only to the law. All other state institutions must assist them and protect their independence.

<p>THE HUMAN RIGHTS COMMISSION</p> <ul style="list-style-type: none"> - Promotes and protects human rights (HR) - Investigates HR violations 	<p>THE COMMISSION ON GENDER EQUALITY</p> <ul style="list-style-type: none"> - Promotes & protects gender equality - Investigates complaints 	<p>THE PUBLIC PROTECTOR</p> <ul style="list-style-type: none"> - Investigates abuses of state power 	<p>THE INDEPENDENT ELECTORAL COMMISSION</p> <ul style="list-style-type: none"> - Manages elections to make sure they are free and fair 	<p>THE AUDITOR GENERAL</p> <ul style="list-style-type: none"> - Inspects government's financial management 	<p>ICASA</p> <ul style="list-style-type: none"> - The Independent Communications Authority of South Africa - Encourages fair and diverse broadcasting in SA 	<p>CRL</p> <ul style="list-style-type: none"> - Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Groups - Promotes respect for diversity
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REPRESENTATION

The constitutional democracy, the parliament that was established in 1994, was established in the hope that it would address the power imbalances of our society.

-Pregs Govender

We [those who wrote South Africa's Constitution] took the decision... [that] the main repository of power in representing the democratic will of the people should be Parliament, and Parliament chooses the president.

-Albie Sachs

HOW WELL DO LEGISLATIVE INSTITUTIONS REPRESENT ORDINARY CITIZENS?

In 1994, South Africa recognised the right of all adults to vote. Ideally, all citizens now have an equal say in determining how and by whom they are governed. But making this ideal a reality requires effective and responsive **representative institutions**. To assess how well South Africa's legislatures **represent** citizens, the *People's Power People's Parliament* conference discussed the structure of the country's democratic system.

In complex modern democracies, citizens hand over the responsibility to govern to political parties or individuals who are chosen to represent them through regular elections. As the people's representatives, **MPs** and other elected politicians are given the power to create or change legislation, to run the state and to decide how its resources should be directed. In doing so, they should act on behalf of citizens, and in accordance with their wishes and preferences.

But whose interests are actually represented in practice? On whose behalf do individual politicians and political parties act? This question is central to **representative democracies**. When MPs raise issues in parliament, ask questions, or vote on **legislation**: whose welfare do they have in mind? Is it possible for them to represent all voters or sectors, all the time? If not, which voices are heard? How MPs answer these questions for themselves has a big effect on who will be served by our institutions. It influences how seriously the legislatures take issues of public concern, whether they pass fair and appropriate legislation, how well they **oversee** the **executive**, and whether people are listened to when they participate in decision-making processes.

Representation, in other words, is not guaranteed by the act of voting. It also depends on the strength of the relationship between voters and their elected

representatives. It is through this relationship that Parliament can indeed 'represent the people' and 'ensure government by the people' as the South African Constitution demands.

Conference participants were concerned about the weak relationship between MPs, **MPLs** and citizens. They wondered whether politicians were more interested in what is best for the leadership of their political party than what is best for citizens or their **constituencies**.

The biggest opposition party is not the DA; it's the people who don't vote.
- Zackie Achmat

Voter turnout also raises questions about the quality of representation in our democracy. Although the turnout of registered voters was over 77 percent in the 2009 elections, more than 40 percent of voting-age citizens did not vote. If so many South Africans do not participate in deciding who is in parliament, how can their interests, or the interests of the population as a whole, be considered?

It's not a people's parliament, it's a parties' parliament. You would think MPs would put on boots and takkies and go to where people protest year after year.
-Vuyiseka Dubula

When many citizens do not know who their MP is, or how to make contact, can we say that they are represented? And when members of the public do contact an MP, does it make a difference to how the MP acts? How can a woman who lives in a rural area, works in the informal sector, and is a single mother get parliament to pay any attention to her?

Underlying these concerns are three key questions:

1. Does our current **electoral system** encourage MPs and MPLs to act on behalf of ordinary citizens?
2. What is the impact of internal party democracy on representation and **accountability**?
3. How does money influence the decisions representatives make, and at whose expense?

1. DOES OUR ELECTORAL SYSTEM ENCOURAGE MPS AND MPLS TO ACT ON BEHALF OF ORDINARY CITIZENS?

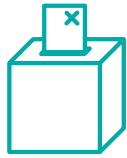
We organised our electoral system in such a way that our strategic objective of creating a non-racial society and a non-sexist society is achieved ... That's why in our parliament we have all sections of our society, black and white ... That's why we have women represented ...
-Mathole Motshekga

Currently, South Africans elect representatives through a '**closed list**' **proportional representation (PR) system**. By ensuring that every vote counts equally, this system is inclusive, fair and simple. It also encourages diversity. For instance, it is largely due to this system and the ANC's commitment to gender equality that South Africa has more women elected to parliament than almost any other country. Because a vote is cast for a party and



WHAT DOES IT MEAN TO VOTE IN SA'S PROPORTIONAL REPRESENTATION (PR) ELECTORAL SYSTEM?

CITIZENS VOTE FOR A PARTY



THE VOTE IS FOR A POLITICAL PARTY, NOT AN INDIVIDUAL.



Political Parties

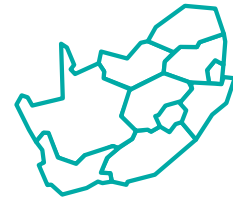


SEATS IN PARLIAMENT ARE ALLOCATED TO PARTIES IN DIRECT PROPORTION TO THE VOTES THEY GET.

e.g. 50% of votes = half of seats

PARTY CHOOSES WHO TO SEND TO PARLIAMENT²

THE ELECTED REPRESENTATIVES OWE THEIR SEATS TO THEIR PARTY



Each party has its own system to decide which of its members could become an MP.

The names of the people chosen are put on a list in order of preference. When the party knows how many seats it won, it allocates them to the people on their list, starting from the top and going down. This means that not everyone on the list goes to parliament.

In SA, the list is closed. This means that only the party can decide on the order of candidates.

In some electoral systems, the list is open. This means that voters have some say on the order in which a party's candidates are elected. In this case, for example, candidates who are lower on the party's list, but receive more votes than candidates high on the list, go to parliament first.

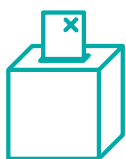
MPs are allocated constituencies by their party.

Parties with very few representatives in parliament have to allocate very large areas to their MPs. If a party has only one seat, for example, this MP will have the entire country as his/ her constituency.

Some constituencies, however, will have more than one representative. This is because different parties may each allocate them a representative.

WHAT IF THE COMMUNITY ISN'T HAPPY WITH THE ELECTED REPRESENTATIVE?

OPTION 1



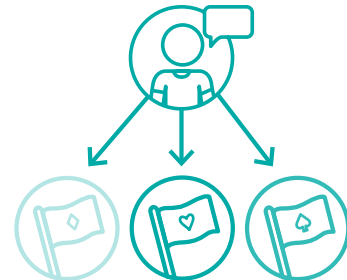
AFTER FIVE YEARS, IN NEXT ELECTIONS CHOOSE A DIFFERENT PARTY

OPTION 2



THE COMMUNITY CAN ASK THE LEADERSHIP OF THE POLITICAL PARTY TO APPOINT A NEW REPRESENTATIVE.

OPTION 3

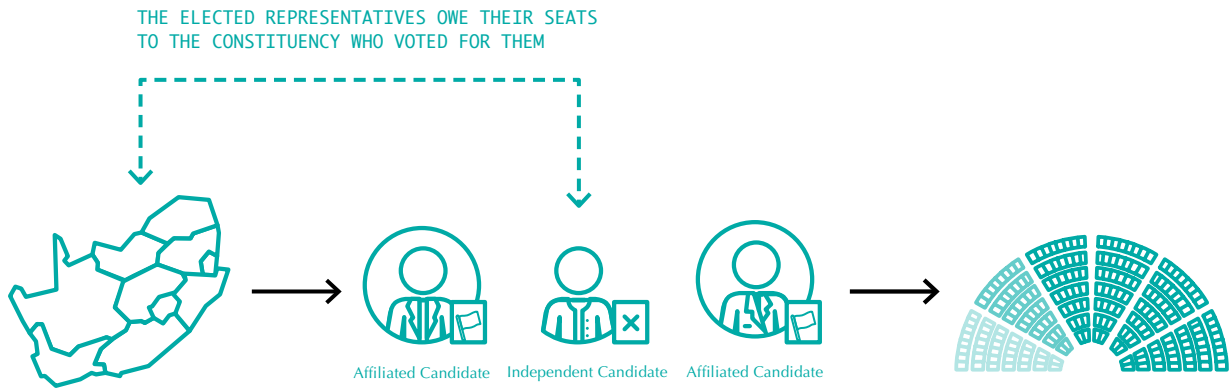


A COMMUNITY CAN APPROACH DIFFERENT PARTY REPRESENTATIVES IN ITS AREA AND SEE WHO IS THE MOST RESPONSIVE.



VOTING IN A CONSTITUENCY BASED ELECTORAL SYSTEM³

CITIZENS VOTE FOR A REPRESENTATIVE



THE COUNTRY IS DIVIDED INTO MANY GEOGRAPHICAL AREAS (CONSTITUENCIES)

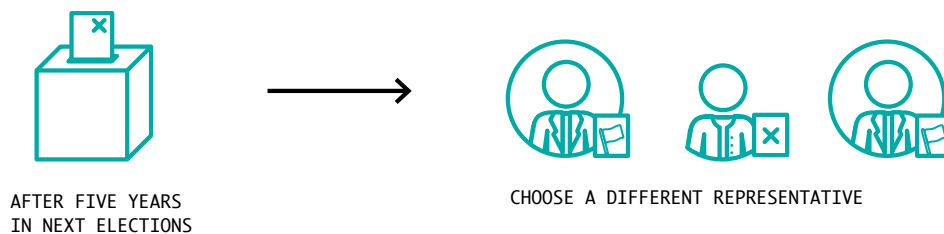
In each area people vote for the candidate they trust the most. The candidate with the most votes wins a seat in parliament

CANDIDATES CAN BE MEMBERS OF POLITICAL PARTIES OR THEY CAN BE INDEPENDENT (NOT AFFILIATED TO A PARTY).

Political parties have internal elections to decide who their candidate for a constituency will be.

IN THIS CASE THE NUMBER OF SEATS IN PARLIAMENT EQUALS THE NUMBER OF CONSTITUENCIES

WHAT IF THE COMMUNITY ISN'T HAPPY WITH THE ELECTED REPRESENTATIVE?



2. These illustrations also apply to elections at provincial level and local government councillors who are elected through a PR system (about 50% of councillors).
 3. There are many different types of constituency systems. This illustration refers to a system where each constituency only has one representative.

The best of [PR] has been increased participation of women in the first parliament; and then accordingly, impact on legislation, on the Constitution, on budgets ... The worst of it was seen in decisions on GEAR and the arms deal.
- Pregs Govender

Who are parliamentarians accountable to? Who do they perceive their constituency to be? Are they accountable to their party? Are they accountable to people? Who is their constituency?
- Stephen Brislin

Parliament has become dysfunctional in that I don't know who my MP is.
- Zackie Achmat

My constituency is all the people of South Africa, whether they voted for my party or not. It's as simple as that.
- Sandy Kalyan

It is necessary for us to know who we elect; otherwise our parties can impose candidates on us.
- Zackie Achmat

not an individual, public prejudice and discrimination play less of a role in who is elected, and supporters of even very small parties can secure representation in parliament.

But PR also has shortcomings. Because voters elect a party rather than an individual, they may not know who their MP is, and it is difficult to build strong relationships. MPs and MPLs owe their parliamentary **seats** to their parties rather than to voters. In the conference, Pregs Govender described the Growth, Employment and Redistribution (GEAR) economic policy, the HIV-AIDS policy under President Thabo Mbeki, and the 'arms deal' as examples of decisions that served political party leadership but not citizens. These were also examples of how the system can be used to silence and punish members who disagree with the official party position.

PR also undermines the ability of MPs to serve constituencies. In simple **constituency-based** systems, such as **'first-past-the-post'**, communities vote for a representative in a particular geographical area, and the candidate with the most votes is elected to represent them. In South Africa's PR system, political parties assign geographical areas to their members after election, but constituencies are not well defined and links between communities and representatives are weak.

If an MP is to take the concerns of a constituency to parliament, the community must know who their elected official is, and have strong relationships with this person. At present, however, representatives are often out of touch. There were repeated complaints about the absence of elected representatives from communities, particularly impoverished and rural ones. The result of this is that MPs or MPLs are unable to represent the interests of marginalised groups – whether farm workers, rural people or township dwellers – in parliament.

Because of these shortcomings, many participants called for the reform of the South African electoral system. They echoed the recommendations of **RIPAP** and the **Report of the Electoral Task Team** for some combination of the constituency system – in which voters directly elect a representative for their area – and the PR system, which allows for diversity and fairness.

In the PR system, voters can only choose or reject political parties. The constituency system, by giving citizens the power to remove individual MPs from office without necessarily rejecting the party, fosters stronger relationships between the public and their representatives. If citizens feel that a person has not worked on their behalf, they will not vote for him or her again.

We had to go to the Constitutional Court to be heard as people living with HIV, and many of the people in parliament that spoke out on the issue of health policy in South Africa were either sacked because they spoke the truth to power ... [or were] disciplined by their parties.
- Vuyiseka Dubula

We ... didn't want fighting over the boundaries ... Given apartheid South Africa ... constituencies would follow the patterns of the Group Areas Act ... It would be repeating the spatial division of people in the representation in parliament.
- Albie Sachs

We support the idea that the MPs must be elected by the people on the ground, because it's people we know and it's people we interact with, and they are accessible to us. Right now we are faced with the situation where even a ward councillor does not stay in the area ... They're not accessible when we need them in the rural areas.
- Sizani Ngubane

*South Africa's electoral system "must result, in general, in proportional representation".
- Constitution, Section 46(1)(d)*

There are also serious problems with the constituency-based system. As Pregs Govender pointed out, the constituency system in the UK and the US gives the corporate sector a high level of influence and creates a strong conservative tendency in parliament. Because politicians are so dependent on the votes of the majority to retain their positions, they are often unable to take unpopular decisions that involve individual sacrifice but serve the common good, such as cuts to carbon emissions to reduce climate change.

— A reformed electoral system in South Africa would take the best of both the proportional representation system and the constituency-based system.

2. WHAT IS THE IMPACT OF INTERNAL PARTY DEMOCRACY ON REPRESENTATION?

Some delegates questioned whether electoral reform alone would be sufficient to balance the power of the party with that of the voter. Pierre de Vos emphasised the importance of how political parties manage themselves, noting that **internal party democracy** is as important as the electoral system to ensure citizens' ability to hold their representatives accountable.

*If you are an MP and your party wishes you to vote in a particular way, even if your conscience doesn't allow you to, you are forced to. I am reminded of an MP who decided to excuse himself from a particular debate. Subsequently we heard that that person was under risk of being disciplined.
- Bishop Lunga Ka Siboto*

— MPs are generally expected to 'follow the **party line**' in parliament. This means that they vote, ask questions or raise issues according to directions from their political parties. But how do parties decide what issues they will pursue? If a party's position goes against what MPs see in their constituencies or what they believe, how should this difference be resolved? Are MPs allowed to disagree with their parties when they vote in parliament?

For this reason, the nature of political parties – whether they have democratic decision-making processes, whether power is shared broadly or concentrated in very few people – directly affects how well MPs and MPLs can represent the public. When parties do not allow differences of opinion, elected representatives may not be able to act on behalf of citizens, and are forced to follow the party line instead.

*A rethink is necessary about how political parties are structured, how democracy in political parties happens, in order to make it easier for individual parliamentarians, at least, to encourage this kind of interaction that is really going to bring parliament close to the people.
- Pierre de Vos*

— In addition, the membership of parliament is based on party lists, and the list selection process itself may not be transparent or democratic. This means that elected representatives can be easily removed from their positions in the legislatures if they disagree with party bosses. It also implies that those sent to the legislatures may not be the people that the constituents themselves would choose to represent them.

*We already have a mixed [electoral] system in local government, but accountability is not really working. I would say the reason for that is the way in which political parties control who gets selected to represent them.
- Pierre de Vos*

*If a member feels strongly enough that he or she is not going to abide by caucus, they are allowed to abstain. We don't discipline them if they express an opinion and it's discussed and debated in caucus.
- Sandy Kalyan*

— *When parliament is controlled by a small group of people in a party – who happens to be the governing party – then parliament is not the engine room of our democracy. It becomes a rubber stamp.
- Pierre de Vos*

— *We often talk as if the people who are selected by political parties to represent us in parliament are done so in a completely transparent and democratic process ... There are democratic processes, but [they] are partial; they are not fully democratic.
- Pierre de Vos*

What happens in parliament [and] electoral systems within our country is located within the context of power globally ... [U]nless we [acknowledge] that, we're never going to shift the poverty and inequality in our country ... To what extent will our parliament and our government represent the interests and the rights of the majority of South Africa's citizens? To what extent will it collude and be corrupted by those who own the wealth of the world?
- Pregs Govender

3. HOW DOES MONEY INFLUENCE THE DECISIONS THAT ELECTED REPRESENTATIVES MAKE, AND AT WHOSE EXPENSE?

Decision-making in parliament is not protected from the influence of wealth and power. Influential individuals, organisations and companies – local and foreign – can interfere with MPs' ability to act for the common good or on behalf of the majority. Often, this means that key decisions are made outside parliament, and MPs are not given an opportunity to disagree with them. Pregs Govender related that the GEAR policy was "developed very much in secret, outside even of the ANC caucus", and that "economic decisions, trade decisions, were being made elsewhere" (not in parliament). Such accounts reveal how powerful interests can outweigh the welfare of citizens in political decision-making.

UN studies show that there is sufficient food to feed everyone in the world, [but] about a billion people are suffering from hunger and related disease. Why is that? It comes back to decisions that are made outside of individual parliaments—for example, the patenting laws in relation to seeds at the World Trade Organisation.
- Pregs Govender

The conference discussion on the impact of wealth and political power on public representation was only partial, and focused particularly on the absence of regulations on political party funding in South Africa.

Politics costs money. Parties need to advertise their message to the broader public, to travel to their constituencies, to pay staff to help them research and communicate, and to organise party congresses where decisions are made and leadership is elected. All of this needs funding.

In South Africa, political parties that have representatives in the national and provincial legislatures receive money from government on the basis of how many seats they hold (see **page 15**). In 2009, parties received a total of R93 million. However, political parties spent an estimated R550 million in the same year.⁴ Political parties rely on donations from individuals, companies and even foreign countries.

I am an ANC member, but I don't know whether China funds my political party... I want to know who owns my political party. Similarly, I don't know whether Daimler Benz owns the DA.
- Zackie Achmat

Money from private or foreign sources can undermine the voices of citizens if a party takes it in exchange for political influence, government tenders or other favourable arrangements. Secret donations can also undermine **internal party democracy** by giving some people in the party more power than others. To prevent this, a variety of political parties, civil society organisations and businesses have called for laws that would regulate how parties receive and report donations. In 2005, the Cape High Court advised that

4. MAPP Policy brief, "Money and Politics in South Africa: The Party Funding Challenges", December 2011. Supported by OSF-SA and the Wallace Global Fund.

[The] 1 percent that controls the wealth of the world is unaccountable. They make decisions in secret ... That kind of secrecy versus transparency and openness is something that our parliaments have to stand up to.
- Pregs Govender

I believe that who funds a political party should not be a secret, because political parties can be hijacked – even by fundamentalist organisations abroad – and be made to implement policies that advance the interests of foreigners... And it is for that reason that this parliament is going to be introducing party political funding legislation to make sure that we fund our own political parties.
- Mathole Motshekga

parliament would be best placed to address this matter and parliament promised to do so. To date, party funding regulations have not been passed.

Those who argue for regulations mainly promote four principles.

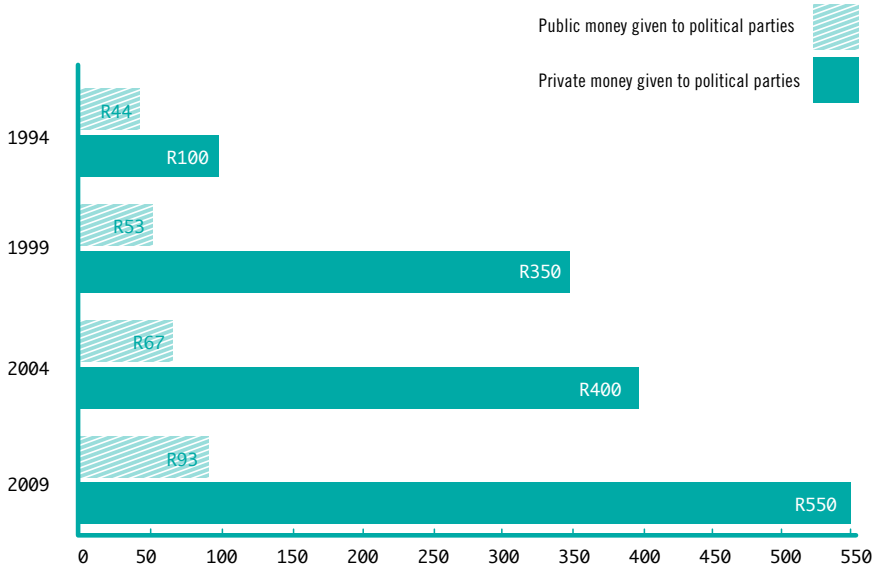
- **Transparency.** This means that parties have to openly say who has given them donations and how much. When political parties keep the sources of their money secret, it is impossible to tell whether the decisions they make in parliament are on behalf of the public good or for the benefit of the donor. A problem with transparency is that it can discourage donations to opposition parties if the donors are afraid to lose government tenders or support.
- **Limits.** Setting limits on the amount of money that each donor can give prevents the situation where only a small number of people have a lot of influence over a political party. With limits, political parties are encouraged to seek small amounts of money from many donors. This means that they need to act on behalf of their many supporters, not only a few.
- **Reform of government funding.** Government funding for political parties is currently based on how many votes they got in the last election. If the money was instead divided according to how many paid members each party has, this would promote fairer competition between governing and opposition parties, and nurture emerging political groups.
- **Restrictions on who can donate.** Many countries around the world do not allow political parties to receive money from foreign donors (see **page 14**). Likewise, South Africans should consider if they want their political parties to receive money from foreign governments or foreign business interests. Another group of donors that should possibly be restricted are those who may present conflict of interests, such as the investment arms of political parties who do business with the state. This restriction was proposed in a **private member's bill** presented in parliament in 2011 by MP Lance Greyling.

It's all very well to disclose who our donors are, and we have no problem with it; but if the donor had requested confidentiality then that must be respected – because after all, it's their money.
- Sandy Kalyan

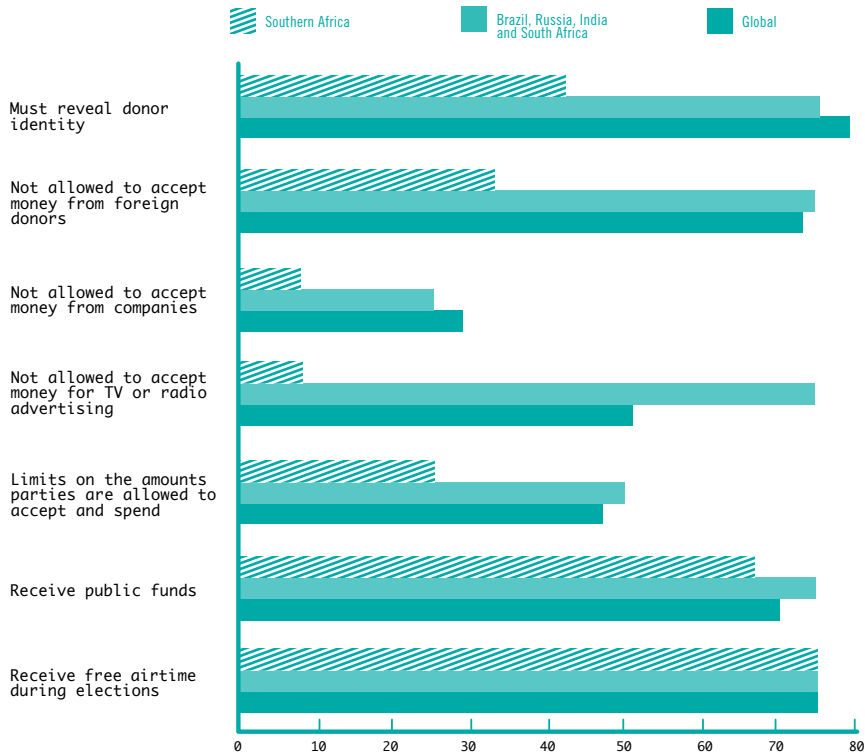
I exactly want to know those ones who want to stay confidential. They're not normally the nice people; they're normally the bad people ... Now, I would say perhaps people who want to build a small business on a corner, or know that if they give the DA a donation, then the ANC might keep the tender away from them – right, that's the real worry you have.
- Zackie Achmat

As the illustration on **page 14** shows, most democratic countries have similar regulations for political party funding. South Africa, by contrast, has almost no regulations or restrictions regarding private funding of parties.

ELECTION SPENDING: WHAT PARTIES SPENT VS PUBLIC MONEY PROVIDED (MILLIONS)⁵



HOW IS POLITICAL PARTY FUNDING REGULATED ELSEWHERE IN THE WORLD?⁶ (PERCENT)



5. Sourced from MAPP Policy brief, "Money and Politics in South Africa: The Party Funding Challenges", December 2011. Supported by OSF-SA and the Wallace Global Fund.
 6. Sourced from MAPP Policy brief, "Political Party Funding Regulation: Lessons from Abroad", August 2012. Supported by OSF-SA and the Wallace Global Fund

POLITICAL PARTIES IN SOUTH AFRICA: MONEY RECEIVED FROM THE STATE

Political parties that are represented in parliament can access public funds through the IEC, national parliament and the provincial legislatures where they have seats.

For the 2013/14 financial year, national parliament and the IEC will distribute money as follows:

Total given by the IEC⁷:

R114.8 MILLION

10%

Divided proportionately to the number of seats in each province and then equally between the parties represented in each legislature.

90%

Allocated to parties in proportion to the number of seats they have in national parliament

ALLOCATIONS TO THE FOUR BIGGEST PARTIES:

ANC: R71,7 million DA: R18,9 million COPE: R10,7million IFP: R5,2 million

Total given by National Parliament⁸:

R330.8 MILLION

26%

Funds given to parties for administration purposes. Divided in proportion to seats in national parliament.

74%

Funds given to parties for constituency work. Divided in proportion to seats in national parliament.

ALLOCATIONS TO THE FOUR BIGGEST PARTIES:

ANC: 213.6 million DA: 58.3 million COPE: 27.2 million IFP: 13.7 million

7. Figures issued by the IEC and e-mailed to political parties on 15 April 2013.

8. Figures provided through the official channels of the Parliament of the RSA.

At a policy/institutional level, there is no doubt that civil society organisations may possess skills, resources and expertise that government may lack... [T]here is a need for civil society to... contribute to the complex task of governing... Yet, the extent to which government uses these skills depends on the relationship between itself and civil society.
- Peggy Nkonyeni

There is a lot of commitment from... the ANC and from government to listen to the people, and at the same time in the academia there is a lot of information which suggests diminishing democracy- that now... public participation is left to organised groups like you guys. You are the ones now that claims to be representing the people, while on the other hand you are not really representing people you are representing yourselves.
- Pumla Kweyama

There is an unfortunate tendency when we talk about the people, or we talk about democracy or we talk about the need to redistribute power, to confuse the people with civil society
- Steven Friedman

The frustration from us is when that engagement at provincial level is either met with silence, or met with false commitments that aren't carried through... [S]o I hear the need for us to engage, but it is very frustrating when we do try and do that.
- Daygan Eager

WHO DO CIVIL SOCIETY ORGANISATIONS REPRESENT AND WHAT IS THEIR ROLE?

There is a lot of disagreement about exactly who and what 'civil society' is. Some consider civil society to include organisations that are not part of government or business. More specifically, civil society can be thought of as organised groups of people who are independent of government, but who are interested in the welfare of society or specific populations. Civil society can include charities, trade unions, church groups and NGOs, as well as small CBOs and associations that are not registered. Although some align themselves with a particular political party, civil society groups are not organised around the intention of winning elections and running the government.

As Section 2 in this publication emphasises, people must be able to organise to ensure that political decision-makers hear them. Civil society organisations are important for strengthening representative democracies. They allow people to build effective relationships with elected representatives through collective action.

When lobbying for particular political outcomes, civil society organisations often claim to act in the public's interest. But what exactly is meant by this? Some civil society groups have very weak links to the people. Their view of the 'public interest' does not necessarily take into account the views of the marginalised.

The question of representation – "On whose behalf do you act?" – was therefore directed to civic organisations at the conference, and not only political representatives. They were asked to reflect on whether they themselves were sufficiently accessible and actively building partnerships and empowering those with less resources.

Broadly, the role of civil society in South Africa's democracy is recognised as a positive one. Public representatives emphasised their willingness to work together with citizens' groups. However, while elected politicians wondered whether civil society's intentions are genuinely for the common good, civil society groups felt that politicians are not open to criticism, and are prevented from acting in the public good by political party hierarchies or conflicting interests.

The issue of trust was central to discussions of how citizens' groups work. Public representatives argued that civil society chose to raise issues in the media or in public instead of working with them. In response, civil society organisations cited examples where their attempts to engage were ignored or met with false commitments.

The citizens of South Africa have a big role to play, but they also play games. You're very territorial as civil society. You tend to align yourself politically.
- Sandy Kalyan

I would understand if civil society protested because they are not inside parliament. But those who are inside parliament, [and who leave] the debate inside parliament [in order to] protest outside, or leave the debate... and go to the Supreme Court... That creates the impression, not only in South Africa, but also to the outside world, that the parliament is dysfunctional.
- Mathole Motshekga

We should look at ourselves, the so-called structures of civil society. Are we effective...? We become lobby groups, and a lobby group does not necessarily represent the interests of the people.... We need to be creative in redistributing the ability to influence.
- Bishop Lunga ka Siboto

I do not think that we must pretend that there is sufficient trust between civil society and political society. The lack of trust could result from (a), real ideological and policy divergences between civil society and government; and/or (b), from perceptions that civil society does not have representative political authority like the government does.
- Peggy Nkonyeni

MEMORANDUM RECOMMENDATIONS*

REVISE AND STRENGTHEN THE ELECTORAL SYSTEM

1.1 & 1.2: PARLIAMENT AND THE PROVINCIAL LEGISLATURES ARE REQUESTED TO INITIATE A PUBLIC DEBATE ON THE REFORM OF OUR ELECTORAL SYSTEM BEFORE THEIR TERMS END IN 2014.

TRANSPARENCY OF PARTY FUNDING

1.3 PARLIAMENT SHOULD CONSIDER LEGISLATION TO REGULATE DEMOCRACY WITHIN POLITICAL PARTIES.

UNFINISHED BUSINESS

- PARLIAMENT SHOULD INITIATE LEGISLATION ON TRANSPARENCY AND REGULATION OF POLITICAL PARTY FUNDING BEFORE ITS TERM ENDS IN 2014.

**The numbering of the recommendations relates to numbering in the memorandum submitted to the legislatures. This publication contains extracts of the memorandum. The full document can be found at www.peoplesparliament.nu.org.za*

PARTICIPATION

That phrase in the Constitution about the public being involved was not simply [so that] the public can watch, [or] make representations to ... committees. It meant an ongoing act of connection and association. The democratic relationship is not like Sleeping Beauty [who] goes to sleep for five years, is kissed just before elections, wakes up and then goes to sleep again ... The organic interactive relationship is important ... The crucial issue is that sense of citizenship that's established with ongoing communication.
- Albie Sachs

The Constitutional Court has made it clear that we as the public have a right to participate in the law-making processes. This also means that there is a corresponding obligation on the side of the public to participate in these processes.
- Lisa Draga

CAN CITIZENS INFLUENCE THE LEGISLATURES' DECISIONS THROUGH PUBLIC PARTICIPATION PLATFORMS?

The 'architects' of South Africa's transition envisioned its democracy as not only representative, but also **participatory**. Therefore, the quality of our democracy depends on whether those who are elected can represent voters well, but also on the opportunities provided for the public to **directly participate** in and affect decision-making.

Therefore, the Constitution calls on parliament¹ and the provincial legislatures² to allow the public to attend its meetings, but also, importantly, to *facilitate* participation in deliberation and decision-making.

A number of Constitutional Court judgements have affirmed the importance of this obligation when they ruled that legislation developed without enough *meaningful* public participation opportunities could be declared invalid. As a result of the constitution's provisions and court decisions, South Africa's legislatures offer a range of opportunities for public input. Initiatives like *Taking Parliament to the People*, public hearings on legislation, committee discussions on **annual reports**, **annual plans** and **budgets** all allow the public to directly participate in parliament's work. As shown in the infographic on **page 38-39**, participation can take many forms.

MEANINGFUL PARTICIPATION IS NOT SO SIMPLE

But what *is* meaningful participation? Is having an opportunity to speak enough? Or is participation only meaningful when it makes a difference to the decisions that are made?

When the Constitutional Court considered these questions, it thought about both the **process** and

In South Africa, public participation is defined as an "open accountable process through which individuals and groups within selected communities can exchange views and influence decision making".
- Peggy Nkonyeni

Our Constitution ... strikes a balance between the mandate of public representatives to represent the people in the decision-making process and the need for direct participation of the people in matters concerning their governance.
- Mninwa Mahlangu

South African legislatures... [have] been progressively increasing the space for people ... to participate in the processes of law-making and oversight... Civil society organisations, experts and ordinary people have been involved in public participation programmes and legislative oversight, including attending committee meetings to make inputs ..., submission of petitions to raise their concern with service delivery challenges, and participation in [the] sector parliaments.
- Lindiwe Maseko

1 Sections 59 and 72 of the Constitution of South Africa

2 Section 118 of the Constitution of South Africa

the **outcomes**. Likewise, our conference discussions suggested that whether or not participation is meaningful depends on

1. **who** participates
2. the **information** they have about what is being discussed
3. whether their participation **affects decisions** that are made.

WHAT DO THE CONSTITUTION AND THE CONSTITUTIONAL COURT SAY ABOUT MEANINGFUL PARTICIPATION?

- The National Assembly, NCOP, and provincial legislatures must *facilitate* public involvement in their decision making processes³.
- The legislatures must ensure that the participation opportunities they provide are 'meaningful'⁴. This means that:
 - government has a duty to consult people *before* a final decision has been made⁵
 - representatives must listen to people's opinions with an open mind⁶
- The legislatures *must* also ensure that people can participate *effectively* in those opportunities⁷. To achieve this, the legislatures must consider whether:
 - they have provided information about the location and time of the consultation
 - they have provided information on the impact the decisions will have on people's lives
 - they have given people enough time to prepare for consultation.
- The legislatures have a special duty to consult a section of the population that may be affected by the decisions under consideration⁸.

3 The South African Constitution, Sections 59(1)(a), 72(1)(a), 118(1)(a)

4 Doctors for Life International v. National Assembly & Others (CCT 12/05) [2006] ZACC 11

5 Matatiele Municipality and Others v President of the Republic of South Africa and Others (CCT 73/05) [2006] ZACC 2

6 Merafong Demarcation Forum and Others v. President of the Republic of South Africa (CCT 41/07) [2008] ZACC 10

7 Doctors for Life International v. National Assembly & Others (CCT 12/05) [2006] ZACC 11

8 Matatiele Municipality and Others v President of the Republic of South Africa and Others (CCT 73/05) [2006] ZACC 2

1. THE PROCESS: WHO IS INCLUDED? WHOSE VOICE IS HEARD?

In parliament... there are committee meetings that sit. I have been several times but I've never seen people from the ground. It is very, very rare that you see ordinary citizens attending committee meetings. But the question for you is: what is it that you as civil society groups are doing to encourage your constituencies to come to Parliament and be part of decisions...? It's just you who go there; it's just something for a privileged few.
-Pumla Kweyama

What we all too often end up with in this society... is a conversation between the elite about what ought to be done about everybody else, a conversation which always excludes the most important citizens of this country... the people who live in poverty and the people who live in deprivation.
-Steven Friedman

South Africa's institutions may provide many opportunities for people to take part in decision-making (see **pages 38-39**), but not everyone is able to participate equally. This might be because of where they live and transport costs, because they aren't aware of the opportunity to participate, because of the language they speak or their level of literacy. Factors like these reflect the power imbalances within our society. Some of these are discussed in more detail below.

Public hearings [on the Traditional Courts Bill] took place in five areas. How many people were able to have enough money to travel to those areas?
-Sizani Ngubane

The only people who get a chance to speak are those who can read and write in English. That [includes] so few women in South Africa.
-Sizani Ngubane

Most of the time, many women like me are seen as children, and the voices that we raise are seen as children's voices.
- Vuyiseka Dubula

— **Geography:** The legislatures are located in city centres. People in the rural areas and people in townships who don't have money to travel cannot attend meetings.

— **Language:** Many **public hearings** are conducted in English, and draft laws and other documents are written in English and not always translated into local languages.

— **Literacy:** Many people are not literate. Even when they can read, draft laws are written in technical language that is not easy to understand without training.

— **Gender:** It may be more difficult for women to participate than it is for men. Women usually have to spend more time caring for children, cooking and cleaning. Even when they do find time to participate, women's opinions and problems are often not taken seriously.

— **Status:** As with gender discrimination, sometimes people will not be heard equally because of the status they hold in society. In the case of the Traditional Courts Bill (TCB), in some of the hearings, the chiefs were seen as more important than others (see **page 36**). In other cases, people may be heard or ignored because of their education or the work they do.

We are from a system whereby the majority of black people, in particular, are illiterate... [W]hen we go out for public hearings, you will only have interest groups coming to... make their inputs... The ordinary people who are not well informed will never participate effectively... That is what... this government should be worried about. How do you inform a citizenry that is totally illiterate?
- Peggy Nkonyeni

Which groups are invited ... [to] the policy-making processes during the initial stages [is an issue]. With the Traditional Courts Bill, it was only the traditional leaders, and the women who are recipients of these policies, who may have a not-so-good deal, were not involved.
- Sizani Ngubane

Unless people are highly organised, public participation processes are always biased against poor people, and they always entrench inequalities, because essentially: (a) they are only there for organised people; and (b) they are there on the terms of the powerful.
-Steven Friedman

If you don't give people access to information, they will not be able to participate. They will not be able to claim their power and they will not be able to hold parliament and legislators accountable.
- Andre Viviers

In February every year, all government departments table strategic plans. We have never seen people come out vociferously and say, "We reject a particular department's strategic plan because it doesn't make sense" ... There's a cycle around annual reports. In September, we [look] at how departments have performed, how they've spent ... We again don't often hear civil society voices coming out and saying, "We reject some of the departmental annual reports".
- Joy Watson

Know the committee programme. All committee programmes are available at the beginning of the year. Committees' priorities are available, committees' programmes are available. Know that programme. Request to be heard but keep the programme in mind.
- Annelize van Wyk

Organisation: Possibly the most important factor in whether or not citizens can participate meaningfully is whether they have access to the resources they need to organise themselves politically. Organisation and mobilisation enables people to gather information, and most importantly, to get their message across to those in power. Civil society was heavily criticised during the conference for not linking up with people in communities who are not organised (see **page 31**) for further discussion).

Political differences: There is a perception that some organisations are not invited to participate because they will come with complaints, while others that are less critical of government are made welcome. 'Handpicking' the voices that will be heard undermines both the principle and purpose of participation.

2. THE PROCESS: DO WE HAVE ENOUGH INFORMATION TO MAKE PARTICIPATION MEANINGFUL?

In 2006, the Constitutional Court ruled that Parliament's duty to facilitate participation also included making sure that people have the information they need to make their participation meaningful⁹. Such information includes:

Where and when. People need to know when and where they can get involved. Therefore, the legislatures should advertise participation opportunities in ways that will reach the people who will be most affected. Often, as in the case of the TCB (see **pages 34-35**) this information is not as widely available as it should be, or is provided very late. To ensure that people can *effectively* participate, as the Constitutional Court directs, the legislatures should make sure that this information is provided early enough to allow participants to prepare. On the other hand, public representatives at the conference complained that the response to the legislatures' advertising can be poor.

Equally, public representatives argued that citizens' groups have a responsibility to find out about the work of the **committees** they want to influence, and the work of Parliament in general. Parliament follows a yearly cycle, and must perform certain responsibilities at fixed times [see infographic on **pages 38-39**]. These are opportunities that citizens can make use of, if they know the schedule and organise around it.

The programme of the National Parliament is available

Who gets to speak, who gets to be listened to, has a lot to do with who has access to resources. Whether you're in civil society or whether you're in business, if you don't have access to resources to mobilise people, and if you don't have access to the money, you're not going to be listened to.
-Pierre de Vos

There is lack of debate and tolerance for people who disagree with power, and that is problematic.
- Vuyiseka Dubula

We cannot hope to achieve a people's parliament without an active and informed citizenry.
- Lindiwe Maseko

I think [prioritising issues] is one of the things [on which] we need to meet one another ... It's important that civil society also understands [that], because of parliament's programme, there are certain things that have to be done at certain times. Therefore, your priority at one point in time might not be the parliamentary priority—and it's not because parliament doesn't want to engage; it's a reality of the programme.
- Annelize van Wyk

⁹ Doctors for Life [DFL] International v. National Assembly & Others (CCT 12/05) [2006] ZACC 11 (para 129).

We're trying to find space also in the media, so that on a weekly basis we can also have a page on "What's happening at Gauteng legislature", so that a member of the public can see that [the Committee on Safety is sitting, the House is sitting.

- Lindiwe Maseko

We managed to [present] the information [on the city's budget] in an understandable way for people...[we] printed out the documents to look out for, [the] budget, [the] IDP's... and people started asking questions. They were interested.

- Phumeza Mlungwana

— online [www.parliament.gov.za] and through mailing lists. However, not all provincial legislatures have regularly updated programmes online. This is a serious gap that must be addressed.

Why and what. In addition, to basic information on when and where, Parliament should provide information that explains the impact that a policy or decision will have on people's lives. Unless people understand what difference a law will make for them, they will not be able to form an opinion about what should be done to improve it. For this reason, the Constitutional Court ruled that people must be given enough time and information to study the issue properly. It was also noted that when such information is given, people are more interested in participating.

Feedback. Public representatives and parliamentary officials acknowledged that the legislatures need to improve their ability to give feedback. Whether it is presentations to committees or complaints raised in public hearings or oversight visits, people rarely know whether their views made a difference, and if not, the reasons why. While committees must write reports on public participation processes, there are no agreed on standards for these reports, and at times they are of low quality. Good feedback would help to build stronger relationships between citizens and their representatives, and it would also ensure transparency in decision-making, because the government would have to show how it had reached its decisions.

It's important that bills are printed in a language that people can actually understand. After that ... they should have a summary of what the bill actually is saying and what it actually means ... so that whether they accept, or whether they do not accept ... they actually know what it is.

- Isaac Mbadu

Communication on the side of the parliament ... is not two-way. We [the legislatures] do get some responses from [citizens] that this is your view, but you don't get [responses back].

- Kholiswa Fihlani

3. THE OUTCOMES. DOES PARTICIPATION MAKE A DIFFERENCE?

There is a perception among people – or a reality – that people are not being listened to... that there is a... growing gap between Parliament and the people. And this has led to demonstrations, service delivery demonstrations, and there is a certain anger.

-Archbishop Stephen Breslin

It would not suffice to involve people in a process when the final decision has already been made... [T]he legislature [must] engage with an open mind, and... take into consideration the views of the masses when ultimately making their decision.

-Lisa Draga

Organised citizen groups are increasingly concerned that decision makers are not organising participation platforms so that they can listen to citizens. Rather, it is felt that participation is invited to confirm decisions that have already been made by political parties. If this is the

case, then participation platforms are organised so that officials can 'tick the box' and so courts won't reject the legislation. Many participants felt that their inputs were not truly considered in participation processes.

But the Constitutional Court ruled that, for participation to be meaningful, it must provide people with a reasonable opportunity to *influence* the outcome of the decision.

This does not mean that the public's view must always override other considerations. The legislatures are only required to *consider* the concerns and values of the public when making decisions. They do not necessarily have to do what the public wants. In addition, in a **constitutional democracy** like South Africa's, a law that goes against the Constitution can't be passed – even if a majority of people support it.

Many citizen groups at the conference complained that their inputs were not considered with an open mind. They felt that this was because MPs and MPLs follow the party line. Of course there were many differing views on this issue. Some representatives argued that civil society had unreasonable expectations about influence. Others noted that citizens were willing to participate in the platforms provided and that this demonstrated that the processes are meaningful.

However, it was also clear from the conference that, while the balance of power may be with political leadership or donors to political parties, citizens could still have an influence in decision-making. In spite of the frustrations, participation is not always without impact. Even though major shifts on controversial issues are often unlikely, many gains are still made through participation. Although the gains are smaller than those demanded, they are also important.

MEANINGFUL PARTICIPATION: ADDRESSING THE DIFFICULTIES

In light of the Constitutional Court judgements, the legislatures have worked hard to improve opportunities for citizens to participate. Below is a short discussion of the ways they have tried to address challenges, as well as other possibilities discussed in the conference. At the time of writing this report, the legislatures are busy finalising a joint Public Participation Framework. This represents a significant and comprehensive effort to address public participation challenges

There is a danger [that] our democratic discourse—its majoritarian emphasis—ignores that democracy is about values and rights. In my view, "participation" should take into account the values we aspire to.
- Mazibuko Jara

Are public views really taken into account? I will categorically say No. We are so busy with ... party politicking and point-scoring in parliament, we actually forget what we are there to do.
- Sandy Kalyan

Reports coming from the twenty-one NCOP hearings on the Protection of State Information Bill [indicated that] there's a real, a deeply concerning trend towards debate being shut down, and a certain kind of outcome being engineered ... It's testament to ... civil society and community-based networks that citizens were still able to attend those meetings and speak out, and abuses were documented.
- Murray Hunter

The duty to involve the public in the law-making process does not mean that ultimately the public has final say on what outcome those deliberations take.
- Lisa Draga

The committee, because [it is] under instructions from the leadership of the party, is never going to engage really meaningfully with what the submissions are ...
- Pierre de Vos

Participatory initiatives are doomed for failure if the public feel that their opinions will not be really considered—people are intuitive and will quickly realise when a process is tokenistic, versus when their perspectives are genuinely sought.
- Peggy Nkonyeni

Gun Free South Africa [undertook what is] in my mind the most successful lobbying that ever took place in parliament since 1994. We were dealing with the Firearms Control Act. Gun Free South Africa was there every single day of that process and it was a months-and-months process ... They picked members of parliament that they saw were close to what they want to see ... and they empowered those members over teatime, over lunches, seeing them afterwards, etc.—and they influenced that legislation. At some point in time, the ruling party didn't want to include spouses being visited by police before you get a license (to check for domestic violence). And they spoke to us, and we said, "Okay, let's change this. We see the need."
- Annelize van Wyk

TAKING LEGISLATURES (OR PARLIAMENT) TO THE PEOPLE (TLTP)

WHAT IS TLTP?

- About twice a year, the NCOP or a provincial legislature hosts a ‘sitting’ of representatives in rural or semi-urban areas across South Africa.
- MPs, MPLs, MECs and local councillors attend.
- In the months before the sitting, there should be many preparatory meetings with communities. These include:
 - public meetings with MPs and MPLs from all parties
 - visits of MPs and MPLs to particular areas to assess the quality of services
 - the presence of mobile units from government departments (e.g. home affairs)

[The] issues raised by the community inform the agenda of the sitting; MECs and other public representatives are expected to respond to the concerns raised by the community ... Issues raised by the community also inform the oversight objectives for particular portfolio committees.

- Peggy Nkonyeni

The public participation models are from KZN and Gauteng ... It sounds very good; but it sounds very foreign to me as a citizen of the Western Cape, because those processes are certainly not being implemented here. Maybe [these] are happening in the cities, but not in the outlying areas of the Western Cape.

- Patrick Sambo

Generally we engage about 2 000 people during multi-party [public meetings], and as many as 3 000 people during the sitting. This suggests that more and more people are placing their trust in us, as the provincial legislature, to improve their [lives]. It has been argued that participation rates are one indicator of perceptions of the legitimacy of an initiative; as long as people consider it worth their time to participate ... it reflects that the public consider participation important and the initiative as legitimate.

- Peggy Nkonyeni

The TLTP is an initiative of parliament and the legislatures. It tries to make the legislatures more accessible to people who live outside urban areas by literally taking parliament to them. This is important for a number of reasons. Firstly, it meets the legislatures’ duty to make participation accessible, especially to the most marginalised. Secondly, because it brings together public representatives from the national, provincial and local levels, it encourages co-operation between the different spheres of government, where a lack of co-ordination is often a cause of service failures. Lastly, MPs and MPLs get direct experience of the challenges facing people in various communities. This can strengthen the important relationship between public representatives and citizens as well as the quality of the policies and decisions that are taken.

You recreate parliament in one province decided upon by the [parliamentary] speaker, and the theme is decided by parliament, and we take parliament to the people and we set it up in a big fancy tent ... Big tent, lots of money spent ... and the politicians speak. So civil society is left out of the so-called ‘people’s parliament’. If the theme was decided by people ... and then we took the parliament to them and let them speak and we listened, it would be really and truly a people’s parliament.

- Sandy Kalyan

However, TLTPs have been criticised for being ‘talk shops’ and conference delegates questioned their reach. There were contradictory accounts of how the agenda for the events are set, and whether people are listened to. Questions were also raised about who was included. Although it is one of the country’s largest social movements the Treatment Action Campaign (TAC) has not been formally invited to participate in TLTP in the seven provinces where it is active. It was noted that feedback in the TLTP processes was particularly weak, undermining the effort and costs behind the initiative. Its supporters, however, asserted that real changes were achieved through the TLTPs. For example, in Kwa-Zulu Natal, an additional R2.4 billion was raised for water provision as a result of taking parliament to a particular area.

Taking parliament to the people, which I’m hearing about ... for the first time—I hope that in the Western Cape [it] does exist ... I have never seen it, and I think it’s a great initiative that needs to be rolled out in all legislatures ... I would love to hear examples of how [TLTP] has actually resulted [in] something [that was resolved] in a particular rural area ... or maybe the area where they reported the issue.

- Vuyiseka Dubula

SECTORAL PARLIAMENTS

WHAT ARE *SECTORAL PARLIAMENTS*?

- These are sittings that are dedicated to engaging exclusively with a marginalised group and the challenges it faces.
- National parliament and all legislatures host these sittings annually; they typically last one or two days.
- Members of the identified group engage with decision-makers on the issues that specifically affect them.
- Examples include¹⁰:
 - Workers' Parliament in May
 - Youth Parliament in June
 - Women's Parliament in August
 - Children's Parliament (timing varies)

The convening of sectoral parliaments ... [is a] democratic breakthrough ... but [they have] tended to be more like a ritual ... than a meaningful exercise that includes implementation and follow-ups on resolutions taken ... A people's parliament must ensure a meaningful public participation process, not a feel-good exercise. Not a malicious compliance process.
- Kholiswa Fihlani

Every so often we call people together, especially in the sectoral parliaments; we hear wonderful stories, and everybody's hyped up for the next forty-eight hours—and then it disappears ... There's no accountability, and I think it is unethical to solicit inputs from people, especially those more marginalised, more voiceless ... and not use it—or not consider it, at least.
- Andre Viviers

The voices of particularly marginalised groups with specific needs, such as young people, women, workers, and the disabled, are often absent from public discussions. Sectoral parliaments try to create a dedicated space where they can speak and be heard, especially concerning government actions that will affect their lives. By providing the opportunity for such groups to participate, the sectoral parliaments aim to enhance the diversity of voices in decision-making processes and address power imbalances in our society.

Discussions in the conference showed disagreement about how effective sectoral parliaments are in making unheard voices heard.

Can sectoral parliaments truly act to integrate the concerns of marginalised groups, or do they just isolate them further?

It was noted that a particular weakness of the sectoral parliaments is that information and recommendations from these events are often not channelled to relevant legislative committees. As a result resolutions are often disregarded.

10. The target groups of sectoral parliaments and their timing vary between the legislatures.

We also have... sectoral parliaments ... What happens is we get to invite people to come to us ... Public reps or constituencies are allowed to invite their people, but it is not civil society. It's your [party] activists, it's your branch members, it's your rent-a-crowd; and sometimes you don't get a seat, and we spend lots of money and we defeat the purpose.
- Sandy Kalyan

I don't want a separate children's parliament. I want children to be acknowledged as citizens of this country in their own right, as equal right bearers.
- Joan van Niekerk

PARLIAMENTARY CONSTITUENCY OFFICES (PCOS)

WHAT ARE CONSTITUENCY OFFICES?

- These are offices around the country where members of the public can approach elected representatives and ask for help.
- When the legislatures are **in session**, one day a week is dedicated to constituency work. On this day, the representative should be in his or her constituency. The weeks when the legislatures are not sitting are dedicated to constituency work (see **pages 38-39**).
- During constituency periods MPs and MPLs have a duty to¹¹:
 - be available to the public;
 - help solve problems
 - report back to their constituents on what is happening in parliament

All legislatures set aside at least one day a week, and a few weeks a year, for representatives to be in their constituency – the geographical area that they are responsible to represent. During this time, representatives should get updates from their constituency office, listen to the concerns of residents in the area, and assist them to solve problems. All political parties who have members sitting in the legislatures receive money to conduct this work (see **page 15**), and most use it to open offices where the public can visit them. MPs and MPLs can raise issues from their constituency in the legislatures, and so constituencies should provide a ‘direct line’ to the spaces of decision making.

However, representatives in a PR electoral system are not elected directly from a constituency and many people do not know who their MP or MPL is, or where to find the office. They are also not aware of representatives’ responsibility to provide constituency services. In addition, the legislatures have not provided strict guidelines on how constituency work should be conducted, nor do they monitor that it is actually done. Often, constituency offices are used for party political work. This means that the quality of constituency work is inconsistent.

Delegates to the conference agreed that PCOs are not used enough to involve the public in decision making. They should be central in facilitating consultation on budgets, oversight and draft laws.

It’s so important that we make use of our constituency offices. In my constituency office we deal with farm evictions almost on a daily basis, and it’s just that difference of the MP phoning the department of labour and saying, “I’m sending somebody to you who has been evicted from a farm. Please assist them and give me feedback.”
- Annelize van Wyk

As a constituency MP you’re supposed to have ‘clinics’ in your area twice a week ... You need to go around and let people know who you are ... I send out a newsletter once a month in my area with all [DA local government] councillor names, telephone numbers, contacts.
- Sandy Kalyan

We need to empower the constituency work that we do [so] it doesn’t become partisan... Already the funding thereof is not partisan, but it is from government; and therefore we need to make sure that constituency offices serve everybody.
- Noxolo Abrahams-Ntantiso

Those PCOs must be accessible. We must propose that they must take [them] to the [rural] communities ... Those are the people that need the PCO more than the people that are in town ... Those are the people’s offices ... They must go to the people, they must use a rondavel in that same area so that they operate there. [Then] they will even know that there’s no electricity in that area.
- Nomantu Nkomo-Ralehoko

The issue of funds—money bills—should be discussed at [the PCO] level. It should not be that, when people from constituencies want to participate in the money bills, it is too late for them.
- Noxolo Abrahams-Ntantiso

¹¹ Sourced from http://www.parliament.gov.za/live/content.php?Category_ID=29

NEW MEDIA

'NEW' AND 'SOCIAL' MEDIA IN SOUTH AFRICA

- 'New Media' is communication using new technology, like the internet. 'Social media' refers to new media that allow networking, like Facebook, Twitter or text-based interaction on cell phones.
- 90 percent of South Africans use a cell phone.
- 59 percent of South Africans access the internet in various ways.
- About seven million South Africans use Mxit, a locally developed networking platform that works on basic cell phones.
- By 2015, it is estimated that 50 percent of South Africans will have a smart-phone—a cell phone that can access the internet.
- Airtime in South Africa is very expensive compared to the cost in other developing countries.

Technology can be expensive, but most people today have access to a cell phone, even if it's not their own. If used with other forms of media – such as radio and television – as well as physical meetings, communication technologies may be able to improve relationships between the public and elected representatives. They may also improve people's ability to organise among themselves.

Technology is easy. It's actually largely there. What we're actually talking about is whose power, whose influence will be magnified through technology—and I know actually probably more examples of technology being used to oppress and obstruct and hide than open. The fact is, technology today isn't the issue: it's what we want to do with it.
-Peter Benjamin

For all those little beeps to actually mean anything ... there needs to be trust and some feeling of solidarity.
-Peter Benjamin

But technology by itself doesn't guarantee better democracy. Like other resources, those with power often try to control and direct how it is used. If we want to deepen democracy through technology, we will have to take advantage of the ways it can help more people to become more active in the political life of this country. We will also have to pay attention that technology does not further exclude those who already excluded – for instance, people who can't read, people who are not comfortable with technology and find it overwhelming, or people who cannot afford airtime.

For this reason, the conference emphasised that technology cannot replace face-to-face engagement, and that the use of technology must be based on and

Over 90 percent of the population in South Africa use a cell phone – [they] can send an sms or make a call... That's an extraordinary fact about South Africa... Can't we use that in the work we are doing...? This is what is potentially revolutionary.
-Peter Benjamin

The access to technology by itself does not mean active democracy at all ... Just as easily, these tools can lead to passive recipients, not active citizens.
-Peter Benjamin

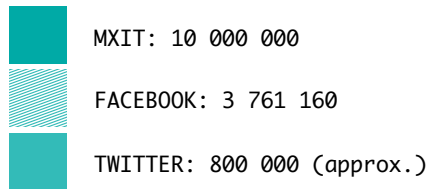
The issues and actual physical engagement must be the driving force of a social media strategy, and not the other way around.
-Gregory Solik

MXIT VS FACEBOOK VS TWITTER USERS IN SOUTH AFRICA



— Many people are still excluded by this technology, but many people are [also] currently excluded from parliament or from direct involvement.
-Peter Benjamin

— We need to consider how we can use social media to engage with our MPs. I like that and I think it may be exciting, so that our MPs are accessible in the way that many of [our] young people are, using the platform of technology.
-Vuyiseka Dubula



SOURCES:
en.wikipedia.org/wiki/MXit
mybroadband.co.za

GRAPHIC BY:
afrographique.tumblr.com

*The real power of these technologies is when they work together. So [if] you have broadcast media like community radio, and then an interactive response that can come through mobile ... The most obvious example of that is SA's Got Talent and Idols South Africa last year. Twelve million votes were sent by SMS in half an hour. That is an engaged population... We say we've got the best constitution in the world. There are dozens of NGOs involved in democracy here, hundreds of thousands of activists ... Why are we less creative about participatory methods than the entertainment industry?
- Peter Benjamin*

NEW MEDIA: WHAT CAN WE DO WITH TECHNOLOGY?

SLIDES FROM PETER BENJAMIN'S PRESENTATION:

EXAMPLE 1: IDEAS FROM THE OPEN DATA HACKATHON*

- Students could use Mxit to report on education issues such as: teacher absenteeism, sexual abuse, matric results, school budgets, malfunctioning infrastructure, teachers to class ratios
- A 'Democracy Hub' website could collect and publicise information on how MPs & senior civil servants perform. For example: attendance records, information on how they voted, a list of financial interests data and newspaper reports as well as contact details and constituency office location.

EXAMPLE 2: KHAYENET

- A project to make NGO information and services more accessible to Khayelitsha residents
- In Khayelitsha, many strong NGOs with great websites But almost no-one there can access the web
- The project will support organisations to make their info & services available through mobile technologies: SMS, USSD, Mxit, Mobi
- Working with 10: TAC, SJC, Free Gender, Ikamva Labantu, Equal Education, Rape Crisis, Njonga Trust ...

EXAMPLE 3: LUNGISA ('FIX IT')

- Project will enable residents to report service delivery problems to the city and to NGOs using cell phone technology like SMS
- Will enable citizens to monitor problems and engage with decision makers
- A website component will visually map the service problems
- With the Social Justice Coalition

EXAMPLE 4: CLINIC MONITORING

- A project that will monitor the quality of health services by using information submitted by people waiting in clinic waiting rooms using cell phones
- People will be asked to provide information on issues such as:
 - Quality of health service
 - Waiting time
 - Cleanliness
 - Attitude of staff

EXAMPLE 5: PARTICIPATION IN THE NSP

- Project uses social mobile media to gather input for the National Strategic Plan for HIV, TB and STI (2012 – 2016)
- Used PCM (Please call me) adverts & Mxit splash screens to let people know about the participation opportunity
- 93,000 people expressed interest in participating in 1 week
- 11,000 people gave input (SMS, Mxit, Facebook)

IDEAS FOR THE LEGISLATURES

- Hansard.mobi: put the hansard on websites accessible through mobiles or Mxit. Individuals can subscribe according to their interest and get sms alerts when parliament addresses the subject.
- Monitoring and reporting on the quality of public services.
- Connecting citizens with representatives.
- Twitter blogging of parliament sessions & input to committees.

*The Open Data 'Hackathon' was a gathering of activists and computer programmers, 3 – 5 August 2012. Hosted by OSF-SA and Ndifuna Ukwazi.

Parliament must use social media...even committee meetings, if they are discussing a bill...we must see it on Facebook, on Mxit so that our children can start asking us about this Traditional Courts Bill. So by doing that it's an education in itself because as a parent we will start explaining why.
- Nomantu Nkomo-Ralehoko

encourage active community engagement.

‘INVENTED’ VS ‘INVITED’ SPACES

*Until we reach a situation where those people who are expressing their frustration in this way [e.g. ‘service delivery’ protests] are able to do it in an organised fashion, in a way in which they are in control of the agenda, in a way in which they will speak for themselves, then we are not going to have the kind of vigorous democracy in this society which we need in order to make progress.
- Steven Friedman*

Most interactions between elected representatives and the public take place in the spaces which are created by the legislatures: public hearings, the sectoral parliaments and on the sidelines of committee meetings and other formal proceedings. In these spaces, public participants are guests, and the issues raised for discussion are generally issues that were identified by the legislatures.

*In the ghettos where Hispanic and black people live in some of the US cities, they don’t go to the city hall to see the mayor, the mayor comes to them. And not only [that]... the first time they challenged the mayor to come to them, they told him to come at 6:00. He came at 6:15 and they said, “Terribly sorry, you’re 15 minutes late. Come at the right time next time and you’ll get a speaking opportunity.” It sounds trivial, but it starts to change the whole power relationship.
- Steven Friedman*

For a variety of reasons, as we have seen, many people are not able to come to these invited spaces, or participate in them effectively. As Steven Friedman noted, they are “on the terms of the powerful”. While public representatives urged citizen groups to “get to know parliament’s calendar”, others argued that meaningful spaces of participation are ones where “powerless people start saying, “You’d better come and talk to us”, as Steven Friedman put it. In these spaces, the community sets the agenda and is in control of proceedings.

*One of the undiscovered realities of South Africa is that... people do have organisations, but very often these organisations... are not devoted to expressing citizenship. They are... survivalist organisations... people who get together to solve common problems. And the intriguing question is – why do these organisations not participate in public life?... [Is it] because they do not wish to... or do they not do it... because they don’t feel they have the power [or] ... because they’re not linked up to the processes? And is there not an important task in trying to link people up to those processes?
- Steven Friedman*

*The conference must reflect on the role that civil society organisations should play to make these [participatory] processes... more meaningful. [This could] include partnering with the legislatures to roll out public education... campaigns so that our people can then make informed inputs into the legislative processes.
- Lindiwe Maseko*

Elected representatives were heavily criticised at the conference for not going to communities where protests were happening, or being open to engage with communities on their terms. Civil society, on the other hand, was criticised for not connecting with those who need to be heard the most.

CAN CIVIL SOCIETY MAKE PARTICIPATION OPPORTUNITIES MORE MEANINGFUL?

Effective participation requires organised and informed collective action.

Civil society can make participation opportunities – and parliament itself – more meaningful to the lives of ordinary people by connecting them and their concerns to parliamentary processes.

Such action can take many forms, and can relate to both draft laws and oversight (see the next section, and pages 38 – 39). In general, however, organised citizens groups

enhance participation opportunities by identifying such opportunities; analysing the implications of proposed laws or decisions on affected communities; sharing this information with those who will be affected; and assisting them to communicate their views.

The case studies on **pages 34 - 37, 50 - 52 and 53 - 55** are examples of how this can be done.

Two problems can undermine the potential of citizen groups to enhance participation in the legislatures.

The first is civil society's failure to connect with grassroots organisations that do not have the skills or information to contribute to government consultation processes. As noted on **page 16**, 'civil society' should not be confused with 'public'. It does not necessarily represent the marginalised.

To address this weakness, both civil society and the legislatures should increase their efforts to connect with local networks: schools, youth associations, church groups, protest movements, saving societies or traditional leadership structures.

The second problem is the lack of trust between civil society and public representatives. MPs and MPLs feel that civil society organisations are more interested in embarrassing the government over delivery failures, rather than working together with legislatures to find solutions. But even when they don't trust the 'messenger', elected representatives should investigate whether there is truth behind civil society claims and act on them. Citizens' organisations, on the other hand, have failed to get results when they have tried to approach the legislature. This situation is unlikely to change without reform of the electoral system and regulation of internal party democracy.

*The wider problem is that most South Africans do not have power because they do not have the levers of organisation which are required to exercise that power, and therefore the challenge of any democratisation project in South Africa is how do we change that?
- Steven Friedman*

*[T]hose of us who are urban based... need to make sure that organisations who work in the urban areas establish much closer links with organisations, with churches, with other organisations who are in the rural areas.
- Zackie Achmat*

*When invited, please, guys, do come forward... at some point I had to sit for hours calling some of the NGOs to come and participate in the Safety and Security Committee ... I think it is time that we avoid only talking through the media. There are actually opportunities for us to engage with each other and make sure that we better the life of our people
- Sizakele Malubane*

*We are prepared to work with yourselves [civil society]. We are prepared to listen to you and we will never get offended... [T]hose of us who want to be offended then must resign, because it's not compulsory to be in parliament.
- Mathole Motshekga*

MEMORANDUM RECOMMENDATIONS

THE DUTY TO KEEP CITIZENS INFORMED

- 2.1 MEANINGFUL PUBLIC PARTICIPATION REQUIRES THAT CITIZENS ARE WELL INFORMED OF THEIR REPRESENTATIVES' PRIORITIES, ACTIONS AND DECISIONS. IN SPITE OF EXISTING EFFORTS, INFORMATION REGARDING THE LEGISLATURES REMAINS LIMITED. IN ADDRESSING THIS, THE LEGISLATURES SHOULD CONSIDER A WIDE SPECTRUM OF FORUMS AND MEDIA (FROM NEIGHBOURHOOD MEETINGS TO SOCIAL MEDIA FORUMS SUCH AS MXIT) THAT CAN DISSEMINATE THE LEGISLATURES' SCHEDULES, INFORM CITIZENS OF THEIR MANDATE, AND ENABLE INPUT AND FEEDBACK.
- 2.2 RECORDS OF THE LEGISLATURES' PROCEEDINGS (E.G. COMMITTEE MEETING MINUTES, THE HANSARD) SHOULD BE DISSEMINATED WIDELY AND PROMPTLY. THIS IS PARTICULARLY A CONCERN REGARDING THE PROVINCIAL LEGISLATURES.
- 2.3 MECHANISMS FOR FOLLOW UP (OF ISSUES RAISED BY CITIZENS) AND FEEDBACK (TO CITIZENS ON MATTERS RAISED) SHOULD BE STRENGTHENED TO SUPPORT PARTICIPATION.

INCLUSIVITY

- 2.4 A DIVERSITY OF IDEAS AND OPINIONS IS THE LIFEblood OF DEMOCRACY. GREATER EFFORTS MUST BE MADE TO ENSURE THAT ALL PUBLIC PARTICIPATION FORUMS ARE RECEPTIVE AND RESPONSIVE TO BOTH ASSENTING AND CRITICAL VOICES. WE SUGGEST THAT THE LEADERSHIP OF THE LEGISLATURES, AS WELL AS POLITICAL PARTIES, PROVIDE GUIDANCE TO THIS END, AND THAT THE NATIONAL STRATEGY PUT IN PLACE ADDRESS THE REQUISITE SKILLS AND PROCEDURES.
- 2.5 INITIATIVES BY THE LEGISLATURES MUST ENSURE THAT CITIZENS EXCLUDED AS A RESULT OF OPPRESSIVE SOCIAL SYSTEMS, GEOGRAPHICAL LOCATIONS AND OTHER BARRIERS, ARE EFFECTIVELY ENGAGED. WE NOTE WITH CONCERN THAT, IN PARTICULAR, CITIZENS WHO ARE PHYSICALLY REMOTE, WHETHER IN RURAL OR URBAN AREAS, STRUGGLE TO PARTICIPATE. THE NATIONAL STRATEGY AND EXISTING EFFORTS SHOULD ADDRESS THIS CHALLENGE.
- 2.6 IT IS IMPORTANT THAT PUBLIC REPRESENTATIVES DO NOT ONLY ENGAGE WITH CITIZENS IN FORMAL OPPORTUNITIES, BUT, SO LONG

AS THESE ARE LAWFUL, ARE ALSO OPEN TO CITIZEN ATTEMPTS TO ENGAGE OUTSIDE OF ESTABLISHED PLATFORMS.

CONSTITUENCY OFFICES

5.2 CONSTITUENCY WORK MUST BE CENTRAL TO ANY PARTICIPATION, LEGISLATION, OR OVERSIGHT PROCESS. THE LEGISLATURES SHOULD CONSIDER HOW REGULAR CONSTITUENCY MEETINGS CAN CONTRIBUTE TO OVERSIGHT AND OTHER RESPONSIBILITIES.

UNFINISHED BUSINESS

- THE LEGISLATURES SHOULD PROVIDE CLEARER GUIDELINES ON HOW CONSTITUENCY WORK SHOULD BE CONDUCTED. MONITORING AND EVALUATION OF CONSTITUENCY SERVICES PROVIDED SHOULD ALSO BE UNDERTAKEN FROM TIME TO TIME.
- THE LEGISLATURES SHOULD CONSIDER THE ESTABLISHMENT OF AN INDEPENDENT COMPLAINTS MECHANISM REGARDING PUBLIC PARTICIPATION FORUMS.

MEANINGFUL PARTICIPATION?

TESTING THE REAL VS THE IDEAL IN THE CASE OF THE TRADITIONAL COURTS BILL

Over the course of 2012, the National Council of Provinces (NCOP) invited public participation on the Traditional Courts Bill (TCB or ‘the Bill’). This process included 30 public hearings held in all nine provinces between 16 April and 18 May. These were hosted by the provincial legislatures, and were meant to inform their **negotiating mandates**.

But were these opportunities meaningful? Using the criteria set out by the Constitutional Court and international best practice, the table below provides an assessment. Of particular importance is the Constitutional Court’s judgement that the legislatures must ensure that the sections of the population that are likely to be affected are given a reasonable opportunity to express their views. In the case of the TCB, it would be people living in rural areas who would be most affected.

The principles ¹	What actually happened? ²	What can civil society and the legislatures learn?
1. Accessibility & timeliness		
a. Was there accurate information on where and when the hearings were held?	<ul style="list-style-type: none"> – The public hearings were not widely advertised, and in some places people did not know about them at all. Although radio would have been the best way to spread information in rural areas, radio adverts were not used. – The venues and times for hearings were changed without notice, not giving people a fair chance to participate. 	<ul style="list-style-type: none"> – Advertise using media likely to be accessible to the affected group. – Advertise using local networks: youth associations, church groups, local social movements, saving societies. – Select a venue that can cater to people across a wide geographical area.
b. Were the venues accessible to people who would be affected by the Bill?	<ul style="list-style-type: none"> – Centres in rural areas are far apart. Ordinary people found it difficult to attend hearings that were held many kilometres away. The residents of Herschel, for instance, had to travel more than 200km to the hearings. People across the provinces complained about the choice of venues. 	<ul style="list-style-type: none"> – Make transportation available to all who want to participate, regardless of who they are. – Venues should not be changed at the last minute. If they must, the legislatures should provide transport from the initial venue to the new venue.

1. The principles provided are based on the provisions of the South African Constitution and various Constitutional Court judgements (see box on page 19). They are also based on the paper presented in the conference by KZN Legislature Speaker P. Nkonyeni. The paper draws on international best practice and is available on www.peoplesparliament.nu.org.za.

2. Information on what happened in the public hearings is based on Dee Smythe’s presentation to the conference. Additional details, as well as accounts of what happened in the NCOP hearings, are based on further work of the Law, Race and Gender Unit at UCT. A comprehensive paper on the process by the Unit’s De Souza, Thijs and Luwaya is forthcoming and will be available on www.lrg.uct.ac.za. An audio recording of the presentation to the conference is available on www.peoplesparliament.nu.org.za.

<p>c. Was enough time given to people to prepare for the hearings?</p>	<ul style="list-style-type: none"> - The notice given did not provide people with enough time to prepare by educating themselves about the Bill. In some cases, the notice period was a week, in others, only a day. This is not sufficient time to gain an understanding of a draft law. Many of those who attended the hearings complained that they had not been given adequate time to engage with and understand the Bill. 	
<p>d. Were the hearings held before the final decision was taken?</p>	<p>Formally, a final decision was not taken before the hearings were held. However, flaws in the way in which hearings were conducted (see principle 3) and a seeming resistance from the NCOP's (see principle 4 below) to rejecting the Bill suggests that political parties may have had preferences for the outcome. This questions whether representatives listened to people with an 'open mind'³.</p>	
<p>2. Full access to relevant information⁴</p>		
<p>a. Was information about the difference the decision would make to people's lives easily available?</p>	<ul style="list-style-type: none"> - Only two provincial legislatures (KwaZulu-Natal and Eastern Cape) organised public education sessions. - A verbal explanation by an elected representative or legislative staff, at the hearings, was the only other way in which information was given about the Bill. In some cases, the Bill was read out and translated. In others, a translated summary document was read out. Presenters also explained sections of the Bill that they identified as important. Often, heavily criticised parts of the Bill were not mentioned or not discussed in detail. This part of the hearings lasted about 20 – 30 minutes. - In contrast, the Alliance for Rural Democracy (ARD), a collective of citizen groups that worked together on the TCB, held at least six preparatory workshops, each two days long, in which they explained the Bill, and allowed people to link the proposed law to their lived experience. ARD also developed a pamphlet that explained the Bill. 	<ul style="list-style-type: none"> - Information on the decisions that are to be made and how they will change people's lives needs to be easily available. - Information should be provided in local languages and clearly explain the impact of the proposed decisions on people's lives. - When people are involved in preparatory workshops, they are more confident to speak at public hearings.
<p>b. Was this information accurately and objectively presented?</p>		
<p>c. Was it in language and form that was accessible to ordinary people?</p>		
<p>d. Was the information given at the hearings consistent and unbiased?</p>		

Continued on page 38

For participation to be meaningful it should be accessible, impartial, transparent, consistent, efficient, accountable, fair and timely. In addition, meaningful participation should include full access to relevant information, an opportunity to critically review and comment on the information in a mutual interaction, and sufficient time for review and responses.
- Peggy Nkonyeni

3. Merafong Demarcation Forum and Others v. President of the Republic of South Africa (CCT 41/07) [2008] ZACC 10.

4. The Constitutional Court states that the legislatures must provide notice of and information about the legislation and opportunities for participation (DFL at para [129]. Since information on the participation opportunities is covered in principle 1, this principle reflects only on information about the draft law or decision to be made.



PARLIAMENT'S YEARLY CYCLE



THE BRRRs

On the basis of the annual and quarterly finance reports, committees must assess how well departments provided services and how efficiently they used their resources.

These reports are called the Budget Review and Recommendation Reports (BRRRs). Importantly, they may also make recommendations on how the department must use its money in future.



THE MINI BUDGET

This is also known as the Medium Term Budget Policy Statement (MTBPS).

This document tells us how much money the government expects to have in the next 3 years, how this will impact service delivery, and the main priorities for these funds.

COMMITTEE PROGRAMME Committees decide on their priorities and schedule for the **first term**. (~January)

The committee programme is important because much oversight takes place outside predetermined events noted here.

Citizens should lobby for their concerns to be included in the programme.

CITIZENS CAN:

- tell MPs and the media their views on the decisions set out in the mini budget
- look into who is getting extra money and for what purpose.

THE 'MINI- BUDGET'

The finance minister presents spending plans for the next three years. At this time the **Adjustments Budget** is also presented. This means that some departments get extra money for the current year. (~October-November)

CITIZENS CAN:

- ask committees to hold public hearings where they can give their own views of how departments have performed
- make recommendations for the BRRRs
- let other people, the committee and the media know if the BRRRs do not include important issues.

REVIEW OF ANNUAL REPORTS AND PREPARATION OF BRRRs

Parliamentary committees discuss ARs and whether departments used their money well to make a difference. Many committees have public hearings to hear what citizens think of departments' work. Committees write the BRRRs. (~October-November)

ANNUAL REPORTS

All provincial and national departments must submit annual reports for the financial year that ended March 31. These are due 30 September.

COMMITTEE PROGRAMME Committees decide on their priorities and schedule for the **fourth term** (~September)

SECTORAL PARLIAMENTS

In June many of the legislatures host a 'Youth Parliament' and in August many of the legislatures host a 'Women's Parliament'.

CITIZENS CAN:

- lobby for the agenda of the sectoral parliament to reflect issues of concern to them
- ask to attend the sectoral parliament or send delegates
- note the recommendations made and follow up on promises made
- ask for the reports on the events.



OVERSIGHT AND OPPORTUNITIES IN YEARLY S

SPECIAL OVERSIGHT PROJECTS

During this time of the year committees often embark on study tours, oversight visits, special oversight or legislative projects. (~June-July)

CITIZENS CAN:

- lobby for the committee to focus on oversight of issues of concern to them
- once oversight visits are scheduled, find out where they are and organise in those locations
- ask to participate in deliberations regarding oversight and legislation on issues of concern to them
- ask for the report on the oversight undertaken.



THE ANNUAL REPORT (AR)

This report tells us how well a department managed to achieve the goals it set for itself in the year that ended on March 31. The AR must:

- fairly present the state of affairs of the department
- document how much money was lost through corruption
- document whether actions were taken against people linked to corruption.

	Parliament committee work	- All dates with (-) are estimates.
	Executive action	- NCOP, provincial parliaments follow a similar cycle, but usually with a two week delay.
	Constituency period	- Constituency periods vary from year to year

THE STATE OF THE NATION ADDRESS (SONA)

The president presents an outline of the country's priorities for the year. SONA influences committees' annual programme (~February).



THE BUDGET:

THE BUDGET IS MADE UP OF:

- the Fiscal Framework tells us how much money the government has to spend, and where it is from (e.g. taxes, loans)
- the Division of Revenue [DOR] tells us how government will divide the money it has between the national, provincial and local levels
- the (national) Appropriations Bill tells us how the money available for national government will be divided between the different departments.



THROUGHOUT THE YEAR CITIZENS CAN:

- submit petitions
- participate in public hearings
- request MPs to ask questions on their behalf in the weekly questions sessions to the executive.

JANUARY

FEBRUARY

MARCH

MARCH 31
END OF FINANCIAL YEAR

APRIL

MAY

JUNE

PARTICIPATION OF THE LEGISLATURES: SCHEDULE

THE YEARLY BUDGET

The finance minister presents the budget for the year. At this time the s/he also provides a response to the BRR Reports submitted by parliament in October the year before. (~February)

Each minister presents an Annual Performance Plan [APP] and a Strategic Framework [SF] for their department. (~March)

COMMITTEE PROGRAMME Committees decide on their priorities and schedule for the **second term**. (~March)

REVIEW OF THE BUDGET

- The **Finance Committee** holds public hearings on how much money the country can and plans to spend in the coming year. (~March)
- The **Appropriations Committee** holds public hearings on how the money available should be divided between national, provincial and local governments. (~April)

REVIEW OF DEPARTMENTS' BUDGETS

For each department, committees review the budget together with the APP and SP.

Many committees hold public hearings on these.

After discussions, committees can recommend:

- Changes to the amounts allocated. (e.g.: more money for salaries and less money for travel).
- Certain amounts are only given if the department meets certain conditions.
- Certain amounts are only given for specific projects. (~April-June)

CITIZENS CAN:

- tell mps and the media what they think are the most important issues government should work on
- tell mps and the media what they think are the most important things the country's budget should pay for
- tell mps what they think the committee's programme for the term and year should include.

CITIZENS CAN:

- make submissions to the committees holding hearings
- ask to participate in the public hearings
- tell mps and the media what they think are the most important things the country's budget should pay for.

CITIZENS CAN:

- ask to see the APP and SP.
- tell mps whether they agree with the department's plan for the year or suggest alternative priorities
- make a submission to the committee and ask to participate in the public hearings on the budget.

COMMITTEE PROGRAMME Committees decide on their priorities and schedule for the **third term** (~June)



THE STRATEGIC PLAN (SP)

The Strategic Plan tells us what a department's goals are for the five year period between elections.

The goals must be realistic and achievable with the money government has.

Generally, departments are not allowed to dramatically change these plans once they are made.

Very small changes are allowed in annual revisions that are presented with the APP.



THE ANNUAL PERFORMANCE PLAN (APP)

The APP tells us how a department plans to use its money over a period of one year. The APP gives us detail on how the SP will be achieved.

It is important that the APP is 'fully funded' - i.e. it only includes plans that can be paid for by the budget.

At the end of the year, the APP should make it easy to see whether the department used its money well.

The plan must be published on the department's website every year.

The principles ¹	What actually happened? ²	What can civil society and the legislatures learn?
3. Impartiality and fairness³		
<ul style="list-style-type: none"> – Were the presiding officers impartial, unbiased and open minded? – Did the presiding officers accept, allow and encourage diverse views? – Were participants treated consistently, equally and fairly? – Were available resources allocated fairly and consistently? – Was there intimidation? 	<ul style="list-style-type: none"> – In most hearings, officials defended the Bill. In Nkomazi, people were told that if they didn't like the Bill they should leave the country. In Kabokweni, officials criticised the ARD's pamphlet as being 'misinformed'. In another case, people were told that draft laws cannot contradict the Constitution, a misleading claim. – In many cases, people tried to describe how the Bill would impact their lives in general. However, their inputs were ruled out as irrelevant because they didn't refer to specific provisions. – At many hearings, traditional leaders were treated as if they were more important than ordinary people. They were introduced individually and given unlimited time to speak. Traditional leaders were allowed to speak freely, even if they did not mention specific provisions. They were also given food first, and in some places, asked to give closing remarks. People were warned to be careful of what they said in front of traditional leaders in the room. – The presence of traditional leaders discouraged women from speaking at the hearings. In Port Shepstone, it was mostly men and traditional leaders who spoke. Of the 15 women present, only one spoke. – In many areas, there were reports that traditional leaders received public money for transport or had been provided with transport. Ordinary people and other interest groups were not funded by the state. It appears that the funds were provided by provincial departments of cooperative governance and traditional affairs, which facilitated the workshops. – In some hearings, people who spoke were photographed and had their names noted. This exposed them to intimidation after the hearings. The ARD asked the Human Rights Commission to be asked to be present at the hearings to monitor intimidation. 	<ul style="list-style-type: none"> – Presiding officers of public hearing opportunities and information workshops must be impartial and encourage all views, especially those of the marginalised. This includes recognising power differentials and attempting to balance them. The Public Participation Framework that will be adopted by the legislatures must set out the values to guide the conduct of presiding officers when holding public hearings. – Measures should be put in place to ensure that the use of public finances does not magnify existing power imbalances between different groups in society.

So the lesson is that civil society engagement can change the content of laws if people take [the] opportunities, but also that the official processes are deeply one-sided. They're inaccessible, and without a broader alliance that's mustering resources to enable people to be able to use them effectively, the power imbalances are really almost insurmountable.

- Dee Smythe

⁵ Decision makers must listen to the concerns, values and preferences of the public and consider these in shaping their decisions and policies. The government is obligated to ensure that the views of the public are heard by conducting public hearings about draft legislation and amendments to legislation.

The principles ¹	What actually happened? ²	What can civil society and the legislatures learn?
4. Transparency & accountability:		
<ul style="list-style-type: none"> - Were parliament's decisions made in a transparent manner? - Did parliament's decision making procedure follow established and predictable processes? - Were questions and concerns about the process adequately and timeously addressed? - Were the hearings accurately documented and monitored to ensure adherence to constitutional values? - Was it possible to lodge complaints about the process? 	<ul style="list-style-type: none"> - The decision making process did not follow the usual procedures. The NCOP's established process is that, once provincial hearings are held, provincial legislatures submit their negotiating mandates to the NCOP for consideration. After further discussions with the NCOP, the legislatures submit their final mandates. In the case of the TCB, the responsible select committee (on safety and constitutional development) did not consider the negotiating mandates, but instead requested the provinces to hold further hearings. - While there may have been good reason for not following the usual process, this decision was not clearly explained by the NCOP. The ARD expressed concerns that the SC's decision would lead to a repetition of the hearings. This would mean that the voices of ordinary people, who had invested significant time and money in preparing and travelling to the hearings, would not be heard. - All provincial legislatures but one felt that further hearings would not be necessary. This suggests that the ARD's concerns had a basis. The NCOP held national hearings instead. To date, the negotiating mandates have yet to be formally considered. - In principle, the hearings were open. Unfortunately, most media did not report on them. National radio only began to cover the hearings after ARD complained. - ARD organised for volunteers to monitor every hearing. A monitoring template was developed, therefore accurate and detailed records of most hearings are available. - The ARD wrote a letter to the chairperson of the NCOP expressing its concerns about the SC's decision to not follow the usual procedure. Unfortunately, the NCOP did not respond. - Currently, the NCOP and the provincial legislatures do not have formal mechanisms for complaints on issues like public participation. 	<ul style="list-style-type: none"> - Public hearings need to be monitored for deviations from constitutional principles. The media, legislatures and civil society should contribute to this. - Parliament and the legislatures should establish an independent complaints mechanism where procedural unfairness can be addressed. - Where public finances are distributed to interest groups, their source and usage need to be transparent and subject to objections.

OVERSIGHT AND ACCOUNTABILITY

As the democratic body entrusted with the oversight of government, [parliament is] responsible to ensure that government is obliged to account to the people for all its decisions and actions.
-Max Sisulu, 124th IPU Assembly, 16 April 2011

IS PARLIAMENT HELPING TO BUILD A STATE THAT WORKS EFFECTIVELY FOR ITS CITIZENS?

When government fails to provide **public services**, both the media and the public often blame the ministers or president. However, when schools are without textbooks, clinics are without medicines, or there's no electricity, this is also due to the failure of legislatures to effectively oversee and hold government accountable. 'Oversight' can be thought of as supervision. 'Accountability' refers to the duty that people in power have to explain and justify their actions and decisions.

Money for public services comes largely from taxes. The government collects taxes from companies that make profits and from people who have incomes (such as wages, salaries or investments), and we pay VAT (value added tax) on most things that we buy. This money comes from all of us, so we need to know that it is spent properly. It is the legislatures' responsibility to help us do so.

The structure of South Africa's government follows the **'separation of powers' model**: that is, the legislative, executive and judicial branches are separate and essentially independent from each other. One reason for this is to empower the legislatures to oversee the executive and the administrative agencies and hold them accountable when things go wrong. The legislatures, in other words, are there to investigate whether the executive is making the best use of the country's money; to ask for explanations when things go wrong; and if necessary, to insist that programmes or people in the executive are changed when they are clearly not improving the lives of South Africans.

It is a threat to our democracy if parliament cannot exercise [its] oversight role because of constraints... even the executive does not get a good deal out of this... it gets a poisoned chalice because now you have an executive that can act unilaterally and does not enjoy the cooperative power of oversight from parliament... it weakens democracy.
- Nkosi Nyembezi

One rand out of every three rand spent in this entire economy is spent by government... [This spending] can either have a positive impact on socio-economic development or [not]... So when we talk about power, if we don't talk about how it impacts on resources, we really are not going to be getting very far.
-Tania Ajam

Section 114 of the Constitution demands that provincial legislatures set up mechanisms to hold the provincial executive and administration to account. Section 115 enables them to summons any government official or government agent to account for their performance... it's not "ask" - it's "summons". [They are legally obliged to] account to the legislature for their performance.
-Daygan Eagar

If the legislatures' oversight role is exercised in pursuit of good governance, then the legislatures too bear some responsibility for overall government performance. In this way, public representatives deployed in the legislature and those deployed in the executive are collectively accountable to the people who elected them.

-Lindiwe Maseko

Legislative oversight is supposed to ensure that:

- the state spends money carefully and according to the rules
- legislation and policy lead to the intended results
- corruption is prevented and punished
- the public can judge government's performance.

The national parliament is tasked with overseeing the work of the president and the national departments. In the same way, provincial legislatures hold the provincial departments accountable for the work they do.

Parliament also must oversee the government's dealings with the business sector and foreign countries, whose interests may go against the social and political interests of South African people and the goals set out in the Constitution. The government will not be able to address the power imbalances of our society if it does not use its power to challenge **corporate collusion** or unfavourable international **trade** regulations.

Without effective oversight and accountability, public participation... would not have the desired value and impact.

-Peggy Nkonyeni

Meaningful oversight and accountability practices are essential if we are to build a government that responds to the needs of communities. Community participation can only be meaningful if elected representatives listen to the public and act on what they hear.

HOW DO THE LEGISLATURES CARRY OUT OVERSIGHT AND ACCOUNTABILITY?

Since 1994, both national and provincial legislatures have developed various ways to track and monitor the work of the executive and administration. MPs and MPLs review documents such as **annual** and **quarterly reports** (ARs and QRs), reports from the **auditor-general** (AG), yearly budgets, **annual performance plans** (APPs) and **strategic plans** (SPs). These reports and plans show how well departments are doing overall. Committees also make **oversight visits** and hold **public hearings** to look more deeply into specific concerns. The infographic on **pages 38–39** shows that oversight activities happen every year in a regular cycle.

A significant amount of oversight also takes place outside the cycle of regular activities: committees will place issues of concern onto their programme, and call for departments and citizens to give information on these. For this reason, effective oversight also depends

What do we do oversight on? We do oversight on budgets: financial oversight. We do oversight on the implementation of government policies and priorities. We do oversight on the implementation of legislation, and we do oversight on the execution of the government policies. We do oversight on service delivery.

-Annelize van Wyk

Committee[s] look at expenditure trends for the past three years, [and] compare expenditure with... service delivered. This kind of oversight is done during the year through quarterly reports, focussed intervention studies, oversight visits – both announced and unannounced – stakeholder engagement... [They] highlight areas of weakness and make suggestions for improvement.

-Sizakele Malubane

Apart from drafting legislation, oversight is the main responsibility of portfolio committees – oversight of the executive, but also of the entities that report to the executive...

[F]or instance, in the committee of police, civil society would think that we deal only with the department of police. The fact of the matter is that this portfolio committee actually has quite a number of entities that it's responsible for, [that] influence the programme of the committee.

-Annelize Van Wyk

on whether committees correctly identify and prioritise issues, and who they invite to speak about these. In the beginning of their electoral term, representatives in a committee will agree on a five year strategic plan which identifies the key problems to address. This plan guides the committee programme, which is considered on an annual basis, and updated before each quarter.

Most legislatures now also have committees to accept petitions submitted by members of the public. The procedures for submitting petitions vary across the different legislatures.

Whether regular or not, oversight activities should allow the lessons of past successes and failures to shape future plans. For example, a careful review of annual reports should directly inform the discussions on budgets, priorities and goals for the following year. Oversight should also enable government to identify problems in ongoing programmes and solve them, and as such avoid wasteful expenditure.

*The auditor-general audits actual spending to see if a department actually spent what it was supposed to spend. But more importantly, [they are] also auditing service delivery... [I]f we say that we've delivered 3 000 houses, have we actually delivered those 3 000 houses?
-Tania Ajam*

Public accounts committees (PACs), like parliament's Standing Committee on Public Accounts (**SCOPA**), are particularly important to the legislatures' oversight and accountability roles. PACs study reports from the auditor-general about whether departments have spent their money according to the rules, and hold hearings to ensure that action is taken to correct bad management and corruption.

*[We are] increasing the role of the SCOPA in probing financial management and monitoring spending of public funds; pioneering strategic oversight work on issues of women, children and people with disabilities; establishing petition system[s] and using them to resolve concerns of the people as well as to identify policy gaps.
-Lindiwe Maseko*

Since 2009, a number of steps have been taken to strengthen the ability of the legislatures (and particularly national parliament) to conduct oversight and hold the executive accountable. These include:

*We believe that the Sector Oversight Model and also the Financial Management of Parliament Amendment Bill will reassert the importance and the centrality of legislatures.
-Lindiwe Maseko*

THE SECTOR OVERSIGHT MODEL (SOM)

As young democratic institutions, South Africa's legislatures are still building the knowledge, experience and tools required to hold the executive accountable. The activities outlined in the infographic on pages 38–39 have developed over the past two decades. However, the different legislatures act on their own and do not necessarily know of the successes and failures of the other legislatures in the country. The Sector Oversight Model, released in 2012, aims to strengthen oversight in all the legislatures by providing standards and norms for the different activities through which oversight can take place.

THE POWER TO AMEND NATIONAL BUDGETS

*When we don't get the budgets right it really has terrible consequences for those who are most dependent on public services, which are, [the] vulnerable groups.
-Tania Ajam*

A 2009 law gave national parliament the powers to amend budgets. Until the Money Bills Amendment Procedure and Related Matters Amendment Act ("Money Bills Act", for short) was passed, parliament could either

When you democratise the budget process, you deepen democracy in general because you are giving people more scope to direct, or to have a certain level of control over, their lives.
-Fundi Nzimande

accept or reject an executive budget, but it could not suggest changes to it. The Act creates spaces for citizen input and empowers committees to review executive budgets. Committees are now mandated to produce Budget Review and Recommendation Reports (BRRRs, for more information see **pages 38 and 47**). The Act also mandates parliament to establish a Budget Office which will provide it with expert non-partisan advice on budgets. There are currently efforts to extend the powers to amend budgets to the provincial legislatures.

THE FINANCIAL MANAGEMENT OF PARLIAMENT ACT (FMPA)

In 2009, in line with the **separation-of-powers** principle, parliament passed legislation that gives it greater control over its own budget and minimises the national treasury's ability to determine how it spends its money. This means that the executive cannot prevent parliament from allocating available resources to oversight. At the time of writing this report, this law is being amended to give provincial legislatures the same powers.

While these steps constitute important progress, have they succeeded to making oversight meaningful? In some instances, oversight has been strong. In many cases, however, it has not. The next section will discuss some factors that impact on the effectiveness of oversight.

Legislative oversight is failing, and in many circumstances, [representatives'] hands are tied. They produce reports, they make recommendations, but very seldom are these followed.
-Daygan Eagar

Reports, reports, reports, reports... [F]or me it is clear: it's about report writing and showing the world, or the people that you need to show... in order for you to get the money.
-Patricia Dyata

Our challenges remain: independent information..., time, time, and again, time.
-Annelize van Wyk

WHAT MAKES LEGISLATIVE OVERSIGHT AND ACCOUNTABILITY EFFECTIVE?

While oversight processes have become more established and sophisticated, citizens' organisations question whether these have genuinely contributed to better governance and services. They see a lack of political will as the main constraint on oversight – but legislative representatives and staff argue that the problem lies in resource limitations.

RESOURCES AVAILABLE TO COMMITTEES

To do proper oversight, committees need time to engage with the plans, budgets and reports presented by the department. They need a broad understanding of the sector, including perspectives from outside the department. They require skilled research and analysis personnel, and the representatives themselves may need to become comfortable working with complex documents.

For the most part, committees don't currently have these resources (there are exceptions). In most developed countries, each elected representative is given at

Why has the (Eastern Cape) legislature been so ineffective...? [T]here's a lack of technical capacity to engage with budget issues and expenditure tracking within... committee[s]. SCOPA probably has the best capacity to do this, but they have to oversee all departments. Within the committee on health, there is no capacity. The members themselves don't really understand the budget issues and the expenditure issues.
-Daygan Eagar

If you think about the police... we're talking about a department with five programmes, 186 000 personnel, a budget of R62 billion. It is mind boggling... that you must actually understand every single aspect of it in order to do proper oversight over it. And therefore your committee members and their commitment to the work is also very important.
-Annelize van Wyk

If you're not prepared, a department will pull the wool over your eyes. There's no question about it.
-Annelize van Wyk

[I]n most legislatures, there is not sufficient research capacity to... have independent research... - outside the executive - to be able to conduct the oversight.
-Lindiwe Maseko

Besides the question of capacity and integrity, the number of people that get deployed in the legislatures is too few compared to the task that lies ahead for the entire country.
-Noxolo Abrahams-Ntantiso

The speaker of [the] Gauteng [legislature] writes to... the member of the executive that... the House took a decision... and these were the recommendations... We [expect] a response by a certain date... If a certain date comes and it's not done, the member of the executive has to come and explain [this] in the House... But also it's the responsibility of the committee concerned that [tracking resolutions] becomes a permanent feature on their agenda.
-Lindiwe Maseko

Committee members are either political juniors or from the opposition... So it's very difficult for them to actually, politically, bring about any change when members of the executive are their political seniors... In the way legislatures are structured in the country at the moment, not only do they not have power in terms of legislation, but, politically, members have very little power and say.
-Daygan Eagar

least one research assistant; in our national assembly, an entire committee typically has only two or three dedicated researchers. Few MPs have legal or financial backgrounds, and English is not a first language for many. By contrast, the government departments that report to parliament have teams of policy analysts and advisors.

While departments negotiate their budgets with the treasury over months, committees get only a few weeks to review annual reports and budgets. The resource imbalance between departments and the committees means that most oversight is based on information provided by the very department being overseen.

It seems that parliamentary representatives are generally not sufficiently prepared to effectively challenge departments, and their oversight ability is weakened if it relies only on information from the executive, rather than information from affected citizens and other expert sources.

Resources are even more unbalanced at the provincial level, where committees often lack even a single dedicated researcher and representatives may have to serve on more than one committee. This problem is also serious in the NCOP, where one **select committee** can be expected to oversee more than one department.

Oversight also includes checking that departments act on legislative recommendations. Even the public accounts committees—which do not deal with legislation, and as such are only responsible for holding the executive to account— have been inconsistent in developing procedures to keep a record of recommendations and regularly check that they have been implemented. Often, resources and time go into oversight, and good recommendations are made with the political will to implement. At times, however, these recommendations get lost because there is no system to track and ensure follow-up. The conference put forward a proposal to build regular follow-up into committee programmes.

While acknowledging the impact of limited resources on effective oversight, civil society representatives questioned the extent to which this reasoning masks an absence of political will. They pointed to examples where legislatures have failed to act – even when citizens offered them documentation of critical service failures. It was further noted that in some cases, committees with significant resources – such as a number of policy experts, a legal advisor, committee secretary and assistants – have failed to effectively oversee the executive.

To be effective, efficient and comprehensive, oversight requires timely, accurate, relevant and up-to-date information. The research capacity that the legislative sector has is at its disposal... must be completed by the knowledge, evidence and expertise that... resides with the civil society organisations, institutions supporting democracy, and the people themselves.
-Lindiwe Maseko

While we understand that micro-oversight... can't be exercised in respect of every single function of the executive: where there are priority issues which affect... 1.7 million people in the province, there comes a time when arguments about 'constraints' are not enough.
-Nikki Stein

So what has the [Eastern Cape] legislature's response been to the [health care] crisis? Well, beyond the ramblings of DA MPLs... the legislature has been conspicuously absent from debates. They've been unwilling to engage with us... For the legislative oversight bodies, it's business as usual. Oversight reports do not accurately reflect the extent of the problem, causes or possible solutions. Civil society's analysis is far superior to what the legislatures are producing... and this has been acknowledged by both treasury and the department itself, and they're actually relying on much of [Section 27s] analysis.
-Daygan Eagar

[The legislatures] have very little real power to compel the executive or the administration to make changes. It's similar to writing a strongly worded letter without having any kind of real follow-through. If recommendations aren't taken into account and issues aren't resolved., they can't really take action themselves to resolve these crises. And I think that's a major weakness.
-Dayan Eagar

In Gauteng we [developed] a manual that we refer to as Ministerial Accountability where we show instances where the executive must account and what are the consequences of not accounting, including the responsibility to resign if you are not able to adhere to those ministerial accountability processes.
-Mmusi Moraka

There's no use in having a budget office and having these powers if... within political caucus, they say, "No, no, we're not touching the budget". [MPLs] must [have] an ability to act on conscience and adjust budgets where necessary.
-Dayan Eagar

POLITICAL WILL AND AUTHORITY

As explained in section 1 (representation), representatives in the current electoral system owe their jobs to their political parties. Ruling parties generally appoint senior members to cabinet posts, while junior members are sent to the legislatures. This puts MPs and MPLs in the awkward position of having to question the very people who can determine their own parliamentary futures.

For this reason, the quality of oversight also depends on the members of a committee. In particular, effective oversight depends on the quality of leadership that is provided by the chairperson. Whether members of the committee set aside party interests and are able to work together to hold departments to account also makes a difference. Lastly, the committee's relationship with the minister and senior officials, and their openness to listening to the committee is important.

The imbalance of political power between the legislatures and the executive also means that the ability of MPs and MPLs to enforce change is limited. Consequently, they may feel they have nowhere to turn if the executive ignores the recommendations of a legislative committee.

It was suggested that legislatures and the executive be made aware of the legal and political options that are available to deal with non-accountability.

THE POWER TO AMEND PROVINCIAL BUDGETS

The Money Bills Act instructs the provincial legislatures to develop procedures for amending budgets, but by mid-2013 this had yet to happen.

This is an important power for provinces, as they are responsible for the bulk of spending on education, health and social services. Budgetary powers could strengthen legislative oversight over these key services and create a space for citizens to have an influence. Without such power, in fact, citizens' input has little chance of being meaningful.

At the provincial level, the issue of oversight and participation again boils down to resources and political will. New procedures to change budgets will require more skilled personnel and time. Not only do the provincial legislatures have less staff and financial resources than national parliament, they also have fewer representatives.

Broadly, the conference agreed that it was important for the provinces to have the power to amend budgets, but that this is only one aspect of the more comprehensive reform that is needed.

To a large extent not receiving responses from the executive leads to a kind of malaise, and in this case submissiveness, so speaking to the Portfolio Committee Chair for example, there's a feeling that there's a disempowerment of people as important and integral to the situation as committee chair.
- Zukiswa Kota

We may want to... make our legislators aware that it is actually unlawful not to implement resolutions of the House, because the legislatures are given that constitutional responsibility to undertake oversight... So if there are instances wherein departments... are not implementing resolutions, we should [tell] legislators... that they can actually go to an extent of even instituting criminal charges.
--Mmusi Moraka

[I]n the Western Cape, a whole load of NGOs... showed that there was R300 million rand that even the provincial treasury [agreed] was being allocated to [unnecessary] administrative functions.... [But there was] nothing they could do about it, because the only power they have is to either accept or reject the entire budget. And I'm not just talking about the social development budget: we're talking about the entire provincial budget.
-Lucy Jamieson

There is a need to explore the possibilities of a much more meaningful role for civil society organisations [in] oversight. This role may include provision of independent information from the ground as well as expert advice on resources allocation.... In most legislatures... there is no appropriate research capacity to... scrutinise the budget in such a manner that... [would] allow MPs and MPLs to propose amendments whenever necessary.
-Lindiwe Maseko

Hopefully we can find ways as civil society to hold legislatures to account for their role in oversight. But in a way that is constructive, in a way that enables them to fulfil their constitutional obligations. It's not simply a question of criticising but finding constructive ways of ensuring that these constitutional bodies can hold relevant departments to account.
-Daygan Eagar

BRIDGING THE GAP? PUBLIC PARTICIPATION IN OVERSIGHT PROCESSES

How can citizen action help to address some of the weaknesses in legislative oversight?

Citizens' groups can inform representatives about what is really happening on the ground and where services should be provided. This is particularly important where provincial and national government do not cooperate well. In these cases, civil society may provide national government with information about shortcomings in provincial services.

In theory at least, organised citizens can also create enough political pressure to allow portfolio committees to force the executive into action. As we'll see below in the case of the 'Limpopo textbooks', however, MPs and MPLs have failed to act even in the face of great public pressure.

Below are four examples of how citizen participation may strengthen legislative oversight, and in some cases, counter its absence: citizen participation in budgets; Section27 and the Limpopo textbooks; citizen participation in tracking expenditure; and the contribution of DAG/Participation Junction to provincial oversight in the housing sector.

The role of CSOs as watchdogs serves us well in the legislatures, as it aligns squarely with our aim of conducting oversight over government departments. CSOs may also provide critical and politically objective feedback to parliamentarians on the process of public engagement.

-Peggy Nkonyeni

As civil society, our relationship with the legislature, on both national and provincial levels, is potentially very powerful. Working together to hold the executive to account, we can address the cases of the executive's failure to discharge its obligations, and the impact that this has on our rights.

-Nikki Stein

Put us on your mailing lists, send us information. Your research reports, send it to us. It empowers us. It not only empowers us but it makes us aware of what you are doing as well.
-Annelize van Wyk

IN OUR EXPERIENCE: INFLUENCING THE BUDGET & FOLLOWING THE MONEY

[U]sing participatory budgeting In Porto Alegre... improved the position of poor people [even though] in the rest of Brazil... there was a very high unemployment rate... So we do need to consider using participatory budgeting very seriously as part of our battle to reduce inequality, to reduce poverty, to reduce unemployment.
-Fundi Nzimande

There was a time when our mayor... outlined in a media statement, "This is how much we've spent in Khayelitsha. We've spent so much in informal settlements". [B]ut when we started analysing exactly... it was a small percentage of the actual budget.
-Phumeza Mlungwana

SOM provides for structured civil society participation in the budget ...the legislatures will make summarised budget [documents] available to civil society organisations so that they can prepare submissions to the committee expressing their views and recommendations regarding allocation of resources...
-Lindiwe Maseko

The government's budget is a difficult balancing act: there are many needs, but limited resources. Giving more money to one project often means taking away from another. Worldwide experience indicates that budgets that are drawn up with the participation of the public deliver better results. Money is less likely to be wasted on projects that people don't want, and there is greater approval and ownership of what the government does provide. Decisions about priorities and spending will also be more fair if people can participate equally. When people and governments make difficult decisions together, it builds a more accountable and transparent state, increases trust in government, and cuts down on corruption.

Because it involves difficult decisions, the executive takes 14 months to prepare the budget. Public participation and parliament's input only take place at the very end – after treasury and different departments have discussed it for many months. This means that to truly influence the budget, citizens cannot only rely on the opportunities parliament provides – they also need to explore ways of engaging with the executive in the very early stages of the budget. However, in theory, where it is not possible to integrate parliament's recommendations in the budget for the year that is about to start, they should be integrated into the budget for the following year.

In South Africa, both the Money Bills Act and the Sector Oversight Model (SOM) create opportunities for the public to have a say on how the state's budget should be used. As the infographic on **pages 38-39** indicates, parliament provides two separate (formal) opportunities for public participation in the budget.

- In October, portfolio committees consider, amend and adopt draft documents called the Budget Review and Recommendation Reports (BRRRs). These are based on the departments' annual and quarterly reports, assess their performance and make recommendations on how their budgets should be spent (full description on **page 38**). The minister of finance must consider these and respond to them in February the following year. Many committees hold public hearings at this point.

When people are able to say, "These are our priorities", it really improves the standard of life. In South Africa, you find a situation where houses have been built but no one wants to occupy them because people were not consulted. Somebody just decided that we have to build RDP houses, then you find that there are no takers for those RDP houses. That's a strange development.
-Fundi Nzimande

In a country with the perception that a majority of government officials are susceptible to corruption, there is a strong need for participatory budgeting to ensure increased transparency, increased trust...
-Fundi Nzimande

During budget time... we invite certain organisations within the police environment to come and speak to us. We invite the trade unions. We invite academic institutions that do training on policing. We invite NGOs and we say to them, "Come and speak to us on the budget of SAPS. Give us your input in terms of where the money is going, and is it going where it should be going?"
-Annelize van Wyk

Treasury has the greatest influence over budget allocations in the country, more so than departments themselves. We need to work towards a stage where Treasury is an equal partner and not a big brother... This will require a great deal of capacity building within departments and again within provincial legislatures.
-Daygan Eagar

The process of influencing the budget must be an on-going process; it can't just be an event... If we have the call for comments in March, when the Budget's already presented, we're deceiving ourselves, we're deceiving people who come and make inputs...
-Peter Skosana

When we call people to a meeting, we call them at a time that is not suitable... to consult them. Also we come with documents in a way that is inaccessible. Thick documents! Who is going to read those thick documents? People can't participate effectively in the budget process.
-Fundi Nzimande

We are 73 [MPLs] in Gauteng, and 11 of [us] are in the executive... We have a constituency of 11.6 million... So we depend on [citizen groups] as our eyes and ears, because we cannot be in every street, every township, every village, to know what is it that is happening.
-Lindiwe Maseko

- Between February and June, committees consider the departments' **Annual Performance Plans** (APPs) (see page 39), together with their proposed budgets. Committees must consider whether the priorities are appropriate, and whether the targets are reasonable given the resources that are available. The SOM recommends that this process include public hearings.

These opportunities are not easy to take up. Time is limited, especially in the October period when committees draw up the BRRRs. Meaningful input to the budget requires knowledge, skills, information and networks. It is not only citizens who struggle with capacity on these issues, but also MPs, MPLs, and officials in departments outside of the Treasury. As the most capacitated department at provincial and national level, Treasury itself fosters the view that budgets belong in the realm of experts.

Improving these opportunities will require capacity building, greater access to simplified information and – importantly – broad participation by civil society. After the Money Bills Act was passed in 2009, the committees produced BRRRs that relied on executive information and were mostly descriptive, rather than analytical or critical. Greater attention needs to be paid – by both representatives in parliament and civil society – to the strategic and the annual plans, and whether they are properly costed.

The government's budgetary process should be reviewed in order to create better opportunities for public participation and oversight, including the provision of funds for building citizen engagement.

FOLLOWING THE MONEY

The SOM and the Money Bills Act direct parliament to include the public when it reviews government spending and performance. Oversight bodies like the attorney-general and parliament are expected to assess not only whether money was spent according to the rules, but also whether it was spent well: did the executive get good value for money? Were they able to provide the services South Africans need in the most cost-effective way?

As the infographic on **pages 38-39** indicates, committees consider departments' spending and performance at least every three months:

- In July, October, January and April, departments table their quarterly financial and narrative reports. These are important because they allow parliament to assess performance in the current financial year, and attempt to solve problems as they arise.

Some of the BRR Reports are well done, but others fail to meet statutory requirements... they rely on information that the departments give.. they don't validate... that information with other external sources... They say what has happened but not why it's happened, and what we need to do to stop it happening again... There's opportunity for more use of civil society information in BRR Reports... Typically, [the BRRRs] seem to be backward-looking rather than forward-looking.
-Tania Ajam

Even with the late process [you can influence the budget]. We had the situation where SAPS [South African Police Service] came to us and they said, "National Treasury said [that] all departments had to cut their budgets, and we can no longer employ the number of people that we wanted to employ." We said to them: "Nonsense... Treasury will tell you to cut, but it's not going to tell you where to cut. And we tell you: reprioritise. Spend less on entertainment and spend less on overseas travels, but find the money to employ the people."
-Annelize van Wyk

Civil society needs to make input on the annual reports, because no one reviews some of [those] except us. Whether things that departments indicated, at the beginning of the year, that they will do have been done... I'm actually requesting that we do get involved.
-Sizakele Malubane

Tracking the budget expenditure is as important as tracking the budget, I might tell you. We found some provinces sending money back to Treasury – in social development, believe it or not. Sometimes for the HIV and AIDS section of the budget, which nearly drove us crazy for Kwa-Zulu Natal.
-Joan van Niekerk

- *In October*, committees consider the annual reports on executive performance for the year that ended the previous March 31. At this point, discussion about problems can only aim to hold those responsible to account, or prevent the same problems from happening again.
- In addition, a number of legislatures, such as Gauteng and national parliament, have Petitions Committees that investigate citizen complaints. Potentially, these should enable citizens to lodge service delivery complaints directly with MPs and MPLs. However systems to ensure effective follow-up of petitions are uneven across the legislatures.

SOM recommends that public hearings take place when committees consider both quarterly and annual reports. In practice, because information in the quarterly reports is technical and inaccessible, it is mostly the review of the annual reports that provides opportunities for citizen input. Unfortunately, the practice of holding public hearings on the annual reports is inconsistent.

Citizens and civil society organisations can contribute significantly to these reviews simply by sharing their experiences. Organisations like the Social Justice Coalition have organised large-scale reviews where citizens check what government has paid for against the services they themselves receive. The Treatment Action Campaign and Section27 track the availability of antiretroviral medicine and other medical supplies in clinics across the country. Such information would greatly help MPs and MPLs to oversee departments and ensure that their services improve.

But public representatives questioned the reliability of the information provided to them by citizen groups. They also queried the motivations behind the work of civic organisations: is there a genuine interest in better services, or is it an interest in embarrassing the government and getting exposure in the media?

Citizen groups, on the other hand, questioned whether representatives genuinely have the political will to address problems, when facing them will embarrass their senior political party colleagues.

The most significant challenges to citizen input in performance reviews are mistrust, hostility to criticism and a lack of political will. Improvement will require stronger relationships between public representatives and citizens' groups. It will require public representatives to be able and willing to acknowledge problems and to challenge their seniors when they see things are going wrong. And it will require civil society groups to find ways to engage more effectively with elected representatives and the machinery of government.

In Gauteng our petition system encourages an individual or a group of people to petition the Legislature on any issue, whether it's a burst pipe or pension grant... in the Gauteng Legislature petitions by ...the public have led to a development of policy on the regulation of funeral undertakers. So ...some [petitions] are taken into consideration and are formulated into policy
-Lindiwe Maseko

You don't have to look at who's saying it, you have to look at the problem... With our sanitation campaign, we've spent a number of years trying to convince the city that there was a problem with sanitation in the informal settlements. They didn't listen... If they didn't believe what we were saying, they should have gone to the community and checked for themselves.
-Phumeza Mlungwana

We did a budget analysis... and what we saw, very clearly, was that they were going to run out of the goods and services budget well before the end of the year... We engaged with ...the Portfolio Committee on Health... A couple of months after they agreed to a meeting, we presented to them, and there was a commitment to resolve the issue. We followed up a number of times, and the next time we heard from them was in a public meeting... [where] they came out and said, "There's no problem. It's been resolved. There's no issue..." What we saw was there was a very real problem... Goods and services at hospitals [were] being pulled back.
-Dayan Eagar

A big challenge with monitoring and evaluation is the credibility and the validity of the detail that comes through. We not only have to believe the message, we have to trust the messenger.
-conference participant

Some issues need to be reported to the chairpersons of different committees. I've never received – except again from ordinary members of the community... – a report or a suggestion from... civil society. The only time you hear from them is when there are serious problems and it's in the media. It's better if we get the reports, and through question time, [we can] address those issues...
-Sizakele Malubane

OVERSIGHT FAILURE?

THE CASE OF THE LIMPOPO TEXTBOOKS¹

In 2012, many Limpopo schools did not receive textbooks on time. This was a serious failure by the executive to fulfil its duties and uphold the basic rights of children. Could legislative oversight have prevented this?

In the discussion below, the text on the left hand side documents events as they unfolded, while the text on the right provides information on what the legislatures were able to do at each step.

There are contradictory versions of what led to the delay in the delivery of textbooks. The chronology below has been compiled on the basis of Section27's presentation, documents from National Parliament and the Limpopo Legislature, as well as press reports. This version of events was sent to the relevant committees in National Parliament and the Limpopo Legislature, as well as the Provincial and National Departments of Basic Education and the Intervention team for comment and correction. No feedback was received.

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JUNE 2011

The Limpopo Provincial Legislature (LPL) approves the Limpopo Department of Education (LDE)'s budget and Annual Performance Plan (APP) for April 2011 to March 2012².

The budget includes money for textbooks for the 2012 school year. The APP sets a target for 100 percent delivery of textbooks and allocates R303 million for the task.³

Important background information is that over the course of 2010, then Acting Chief Financial Officer for the LDE, Solly Tshitangano, raised concerns about a multi-million rand tender awarded to company Edusolutions. The contract was for buying and delivering textbooks to schools, a function that previously the department did itself. Tshitangano raised his concerns with the Education MEC, the Public Protector, the Auditor General, the Premier and the President⁴.

We [were] told that the budget tabled before, and approved by, the legislature did not reflect the true state of affairs. In fact, [at that stage] there were only funds available to fully fund one item: remuneration of staff. We've also been told that the budget under-reflects the funds needed for this item and the intention was that, once the budget had been approved, they would just shift funds from other items, including goods and services, so that remuneration of staff could be fully funded.

-Nikki Stein

MARCH - JUNE 2011

The budget was first presented to the LPL on 22 March 2011.

Between March and June, the provincial Portfolio Committee on Education (PCE) was required to review the documents presented. Its job was to:

- check that the plans could realistically be achieved with the budget available
- check that the proposed budget and APP met the department's service delivery obligations
- preferably and if possible, host public hearings to check that proposals met the needs of citizens
- question the department about its plans to solve the problems identified in the annual and AG's reports, and insist on timeframes for corrective action
- ensure that the department is aware that shifting funds between line items is strictly regulated by the country's financial management laws.

In his Adjustment Budget speech of 2012, Limpopo's MEC for finance at the time noted that the LDE had overspent on salaries for employees in 2008, 2009, and 2010⁵. If addressed decisively by the legislature, this problem may have not repeated.

1. Based on the presentation by Nikki Stein, SECTION27. "Education in Limpopo: A failure of legislative oversight? An analysis of the role of the Limpopo provincial legislature in the textbooks crisis". Presented in the People's Power, People's Parliament: A civil society conference on South Africa's Legislatures.

2. Limpopo Legislature, Verbatim Report [Hansard] Of The Deliberations And Debates Of The Fourth Session Of The Fourth Legislature, June 24 2011.

3. Limpopo Department of Education, Annual Performance Plan for 2011/2012. Pg 32.

4. Hlongwane, Siphiso, "Whistleblower out in the cold", www.dailymaverick.co.za; 19 July 2012.

5. Limpopo Legislature, Verbatim Report [Hansard] Of The Deliberations And Debates Of The Fourth Session Of The Fourth Legislature, 20 November 2012, pg. 60.

OCTOBER 2011

The LDE's annual and AG reports for 2010/2011 are tabled in the LPL. The AG report reveals serious corruption and financial mismanagement in the LDE. Its audit findings note the R307 mill. payment to Edusolutions as irregular expenditure.

The LDE is scheduled to table its 2nd Quarter Report (QR) in the LPL. It is not clear whether the department submitted this report on time. The PCE only discusses this report in April the following year.

NOVEMBER 2011

The LDE does not order textbooks for 2012 academic year. According to the Metcalfe Report⁶ this is the result of the LDE overspending its budget. The Presidential Task Team later establishes that the LDE has overspent approximately 122.8 million on salaries⁷.

DECEMBER 2011

Given the AG's report on the LDE, the national department of basic education (DBE) uses Section 100(1)(b) of the Constitution to take over the LDE's functions. An intervention team is appointed, and must submit regular reports to the DBE, and is overseen by the National Council of Provinces (NCOP)'s Select Committee on Basic Education (SCBE).

The minister of basic education becomes responsible for Limpopo's education services, and parliament assumes a direct oversight role.

The Publishers Association for South Africa writes to the DBE's director general to inform him that textbooks for Limpopo have not been ordered⁸.

The LPL's PCE is still obliged to oversee education services in Limpopo.

Solly Tshitangano is dismissed from his position in the LDE.

JANUARY 2012

The school year begins and a significant proportion of Limpopo's school children have not received textbooks. The LDE has not yet ordered textbooks for 2012.

Parliament's Portfolio Committee on Basic Education (PCBE) travels to underperforming districts in Limpopo on an oversight visit. Textbook shortages are noted, but no immediate action is taken.

The LDE is scheduled to table its 3rd Quarter Report (QR) in the LPL. It is not clear whether the department submitted this report on time. The PCE only discusses this report in April the following year.

OCTOBER/NOVEMBER 2011

The 2nd Quarter Report covered what the department had spent and achieved from April to September. The AR provided an overview of LDE's performance over the 2010/11 financial year. The PCE was again tasked with carefully reviewing these reports.

- Given the negative AG report, the PCE should have, together with Limpopo's PAC, insisted on drastic action on mismanagement and corruption, identifying who was responsible and holding them to account.
- Analysis of the QR, should have indicated that overspending on salaries would affect the department's ability to provide other services in the current financial year.
- The PCE could have called the department in for questioning on the overspending and insist that the department provides time frames for the resolution of the matter.
- The department could then have been called back to report at regular intervals on their progress in resolving the problem.

JANUARY - MARCH 2012

Legislative oversight must respect the separation between national and provincial spheres of government. However, it must also address violations of human rights. In addition, the NCOP could have requested monthly reports from the intervention team. This was a problem that required inter-governmental co-operation.

The SCBE, the PCBE and the PCE could have met together with government stakeholders to insist that the problem is urgently resolved.

The legislative committees could have given the department a deadline for resolving the problem. The committees could have called the department in for questioning at regular intervals until the problem was solved.

6. On the 27th June 2012, Professor Mary Metcalfe was asked by SECTION27 and the national department of Basic Education to verify the state of delivery of textbooks to schools in Limpopo. Her full report is available at www.section27.org.za

7. Report of the Presidential Task Team established to investigate the non-delivery and/or delays in the delivery of Learner, Teacher Support Material (LTSM) in Limpopo schools. Available on www.presidency.gov.za.

8. Ibid.

FEBRUARY 2012

SECTION27, a public interest law centre, engages with the national and provincial departments to try to secure urgent textbook delivery. The national dept promises delivery by mid-March.

MARCH 2012

The intervention team reports to the SCBE that textbooks have still not been ordered. It notes problems with the service provider (EduSolutions) as the reason for the delay. No urgent action is taken.

In parliament, the PCBE tables its report on the January oversight visit to Limpopo. It notes the delay in the delivery of textbooks. It calls on DBE to investigate this. No further steps are taken.

It publicly emerges that LDE has already overspent its 2011/2012 budget and does not have money to order textbooks. In addition, it is reported that R2 billion simply disappeared from the department's accounts.

APRIL 2012

The PCBE meets to discuss the DBE's 4th Quarter Report. The delay in textbook provision in Limpopo is not discussed in detail. The PCBE's call for an investigation into delays in textbook delivery is not followed up. The LDE's contract with EduSolutions is cancelled.

MAY 2012

SECTION27, together with a secondary school and a parent of two primary school learners go to court with an urgent demand for the national minister and the LDE to supply textbooks and a catch-up plan for affected learners.

The DBE tells the court that a catch-up plan "would be a monumental waste of time and limited resources" and claims that textbooks are "not essential" to the learning process.

The court rules that textbooks must be delivered by June 15.

JUNE 2012

Textbooks are not delivered by 15 June – or the extended deadlines of 18 and 21 June.

By 27 June, only 15 percent of textbooks have been delivered⁹, although the DBE claims that it's 98 percent.

An independent expert, Prof. Mary Metcalfe, is appointed to verify figures and resolve the dispute. Although books are delivered throughout the month, SECTION27 is still receiving reports of textbook shortages on June 26.

JULY 2012

The PCBE visits Limpopo to gather information on the textbook delays and related matters. By this stage, President Zuma appoints his own task team to investigate the matter, and the Metcalfe Commission is almost halfway through their work.

MARCH - JUNE 2012

Throughout this period (March-June), the legislatures were still responsible for overseeing that textbooks got to schools. The three committees (SCBE, PCBE and the PCE) could have put pressure on the executive to:

- summon government stakeholders to provide explanations for the continued delay
- insist that alternative teaching support be provided
- follow-up when the DBE did not comply with the PCBE's recommendation to investigate and report to the committee on textbook shortages and delivery delays
- hold the DBE to account for contradicting its own policies and plans in its court affidavit
- hold the DBE to account for providing misleading information on textbook delivery.

Let me take this opportunity to remind honourable Members... that as part of our oversight role, we could have prevented a situation where legal rights groups such as Section27, acting on behalf of frustrated communities, resort to courts to defend their rights. - Mokgadi Raganya, Member of the Provincial Legislature, Limpopo¹⁰.

What were the teachers doing? what were the school governing bodies doing? what were the parents doing? what were the learners doing? Was it that their voices weren't heard, or was it that they simply... accepted that this was their lot? ... Or did they think it was not worth complaining because they would not be listened to? But there is a real question... that the Limpopo crisis generates about active citizenry or inactive citizenry. - David Lewis

The question arises whether this was too little, too late, given the fact that they'd now known about this crisis for at least six months. - Nikki Stein

9. The Report of the Metcalfe Commission.

10. Limpopo Legislature, Verbatim Report [Hansard] Of The Deliberations And Debates Of The Fourth Session Of The Fourth Legislature, 22 May 2012, pg. 32.

STRENGTHENING OVERSIGHT

HOUSING IN THE WESTERN CAPE¹

Together with Participation Junction, the Development Action Group (DAG) has for a number of years participated in public hearings on the provincial departments' annual reports. These are some of its experiences.

LEGISLATIVE REVIEW OF THE ANNUAL REPORT

Treasury recommends that, when parliamentary committees review departments' performance, they do so with the input of experts or stakeholders.

Accordingly, some committees host public hearings when they consider annual reports.

DAG used such opportunities to hold government accountable on critical areas such as:

- budget allocations and expenditure
- design and implementation of programmes and projects
- impact of implementation: e.g. N2 Gateway as a cause of community dislocation
- department priorities vs community priorities

PREPARATION & SUPPORT

DAG would analyse the AR and identify issues for discussion.

It would then have workshops with community-based organisations, where it would share its reflections, discuss areas of concern, and provide support for communities to develop their own submissions on the AR.

This preparation included strategic discussions. DAG and the communities would agree on the most relevant issues to bring up in the submission and how best to use their limited time.

If people had not appeared before a committee before, DAG would brief them about protocols and procedures.

Finally, DAG provided travel support so that communities could attend hearings.

The terms of engagement were inconsistent. For one committee chair, they would have one procedure to follow, for another committee chair, [a] different [procedure]. At the moment, there are committee chairs that decide not to have public hearings. So that inconsistency was something that we had to work with
-Ardiel Soeker

[In our submissions, we would] clearly state what our concern is, link [it] to a specific item in the report ... explain the implications of the decision made by the department... provide alternative responses, [and] reference [those] with good practice examples.
-Ardiel Soeker

You have five minutes or two minutes to articulate all the issues and troubles that you have, and often this is not enough... But the preparation and the strategic support we give enabled people to take ownership of that two or five minutes and use it to its maximum.
-Ardiel Soeker

1. From presentation to conference by Ardiel Soeker, Development Action Group

SHOW TIME

When making submissions, presenters from DAG and the communities would ask specific questions.

For example, there was a question about the government's decision to provide marquee tents to house people affected by the N2 Gateway fire. The cost of hiring the marquee tents was more than the cost of building about 80 houses. People stayed in the tents for about six months – although, internationally, the United Nations only uses large tents for periods no longer than a few days. This decision was criticised. The department was asked to explain its plans to avoid this mistake in future.

FOLLOW UP

After the hearings, DAG would publicise the content of the discussions through the media. Sometimes an opinion piece in the newspaper would capture what community leaders and MPLs said. It would also note what MPLs committed to, so that these become public commitments. DAG would obtain the record of the decisions made, and use this as a basis for further advocacy and action: protests, letters, meetings, phone calls, etc.

Community leaders and ourselves began to get a much deeper understanding of the problem, not only from our own perspective but [also] the perspective of... the parliamentarians and the department... Through discussions, through preparing, looking at the annual report and the goals set, we began to understand the dimension of the problem, the hugeness of the problem
-Ardiel Soeker

It's also an important realisation for community leaders that we can question and engage with elected leaders... [That] was quite an empowering realisation.
-Ardiel Soeker

Affecting the performance of the department through annual reports requires different skills... to engage with people [and] build partnerships... We partnered with other NGOs and CBOs, but also with insiders [who] could influence the outcome or decisions made by parliamentary committees. Participation at this level does not only offer the opportunity to influence implementation but also [to] shift relationships between civil society and decision-makers.
-Ardiel Soeker

We focused on the [annual report] then we learnt that we needed to influence the budget... it's not an isolated intervention, so you can't just make your submission and walk home, nê, it needs a number of activities to ensure that you have success.
-Ardiel Soeker

MEMORANDUM RECOMMENDATIONS

POLITICAL WILL FOR OVERSIGHT AS DEMOCRATIC PROCESS:

- 3.1 THE LEGISLATURES' OVERSIGHT ROLE WILL CONTINUE TO BE HAMPERED BY THE DISTANCE BETWEEN ELECTED REPRESENTATIVES AND CITIZENS, AND BY THE DEPENDENCE OF MPS AND MPLS ON SENIOR POLITICAL PARTY COLLEAGUES. WE THEREFORE RE-EMPHASISE THE RECOMMENDATIONS RELATING TO ELECTORAL SYSTEM REFORM.
- 3.2 OVERSIGHT IS MEANINGLESS WITHOUT FOLLOW-UP AND SANCTIONS. WE THUS URGE THE LEADERSHIP OF THE LEGISLATURES TO ENSURE RESPONSIVENESS FROM THE EXECUTIVE, AND REQUEST THAT AS OF 2013 THE LEGISLATURES INTRODUCE STEPS TO TRACK EXECUTIVE IMPLEMENTATION OF HOUSE RESOLUTIONS UNTIL THEY ARE RESOLVED.

CITIZEN PARTICIPATION:

- 3.3 THE MOST IMPORTANT INFORMATION REQUIRED TO FAIRLY ASSESS THE PERFORMANCE OF THE EXECUTIVE IS THAT OF CITIZENS. AS SUCH, AND AS PER THE OVERSIGHT MODEL, CITIZEN INPUT WOULD STRENGTHEN CONSIDERATIONS OF THE ANNUAL REPORTS, STRATEGIC AND PERFORMANCE PLANS AS WELL AS INVESTIGATIONS INTO LEGISLATION IMPACT. THE LEGISLATURES SHOULD CONSIDER BOTH THE USE OF CONSTITUENCY OFFICES (SEE RECOMMENDATION BELOW) AND THE IMPORTANCE OF INFORMATION (AS PER RECOMMENDATION 2.1) TO ENABLE SUCH EXCHANGE.

PUBLIC FINANCE:

THE ENACTMENT OF THE MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS ACT [NO. 9 OF 2009] SIGNIFICANTLY CONTRIBUTES TO ENTRENCHING PARLIAMENT'S INDEPENDENCE. AS SUCH, AND TOWARDS THE END OF REALISING THE LEGISLATURES' POWERS OVER PUBLIC FINANCE, THE FULL IMPLEMENTATION OF THIS ACT IS CRUCIAL AND MUST BE PRIORITISED. THIS ENTAILS:

- 4.1 THE URGENT ESTABLISHMENT OF THE PARLIAMENTARY BUDGET OFFICE WITH STABLE SOURCES OF FUNDING;
- 4.2 THE LEGISLATION OF PROCEDURES FOR THE PROVINCIAL LEGISLATURES TO AMEND BUDGETS.

UNFINISHED BUSINESS:

- THE LEGISLATURES SHOULD CONSIDER PUBLISHING AN ANNUAL REPORT THAT TRACKS THE EXTENT OF DEPARTMENTS' COMPLIANCE WITH THEIR (THE LEGISLATURES') RECOMMENDATIONS AND RESOLUTIONS. IN PARTICULAR, THIS IS CRITICAL FOR PUBLIC ACCOUNTS COMMITTEES.
- THE LEGISLATURES SHOULD REVIEW THE BUDGETING CYCLE, AS WELL AS THE RESOURCES ALLOCATED TO IT, WITH A VIEW TO FACILITATING GREATER CITIZENS PARTICIPATION IN IT. THIS SHOULD INCLUDE FUNDING FOR CITIZEN PARTICIPATION, THE DISSEMINATION OF ACCESSIBLE INFORMATION, AS WELL AS SPACES FOR CITIZENS' INPUT AT VARIOUS STAGES OF DEVELOPMENT AND OVERSIGHT OF THE BUDGET.

INTEGRITY

ARE THE LEGISLATURES THEMSELVES ACCOUNTABLE?¹

Parliament as a key institution of democracy does not only hold government accountable, but is itself accountable to the people.
-Max Sisulu, 124th IPU Assembly, 16 April

Corruption, mismanagement and abuse of political power always cost more than the money that is lost. The highest cost is the breakdown of trust between citizens and **public institutions**. When the public loses faith in the legislatures – the very institutions that hold the political power in a democracy and have a duty not to abuse it – the impact on the stability and quality of our society is negative and long-lasting. Therefore the legislatures and their members must be ethical and accountable, and people must see that they are.

The cost of corruption is not only financial. Corruption reduces public trust and confidence in leadership, both in the private and public sectors, and also diminishes trust in political authority. This has a significant impact on the will of the citizen to follow the rules.
-Lemias Mashile

It is... very useful [and important] for public representatives to engage with interest groups... But you don't know at what stage the interest begins to become a conflictual interest... It's completely legitimate for people in... representative positions to be friendly with people... in the private sector... But at what stage do those friendships become fundamental interest conflicts?
-David Lewis

The term 'conflict of interest' refers to a situation where a public representative has personal or private interests (property, family duties or a stake in business) that could influence decisions that should be made only on merit and in the best interests of the public. Having different interests is not a bad thing in itself – in fact, it's normal – but when an elected representative chooses to use political power or public resources to benefit themselves or persons close to them, that is corruption.² 'Conflict of interest' does not mean that wrong-doing has happened. It only refers to a situation where it might.

The difficulty with conflict of interest is that it doesn't only concern whether you actually have a conflict or not: it concerns whether there is an appearance of a conflict. And sometimes when there's an appearance of a conflict, it is as bad as when there is actually a conflict.
- David Lewis

To ensure that our institutions have and *are seen to have* integrity, it is not only important to prevent outright corruption, but also to identify conflicts of interests. It is also not enough for representatives to simply not break the law: their behaviour should be held to high ethical standards. This means that we need to define exactly what actions are appropriate and inappropriate for public representatives.

As a public representative you need to stand the test of the public in the manner that you are doing your work.
-Lemias Mashile

1. Much of the background information in this chapter relies on Schultz-Herzenberg, C & Vickerman, R. 2009. "Financial disclosure requirements in South Africa 2004 – 2008: Holding elected politicians accountable", ISS Paper 192, Institute for Security Studies. Hereafter referred to as ISS 2009.
2. Corruption Watch defines corruption as "the abuse of public resources to enrich or give unfair advantage to individuals, their family or their friends", <http://www.corruptionwatch.org.za/content/what-corruption>

The ethical standards that guide South Africa's legislatures are based in the National Constitution and set out in codes of conduct. How are these overseen and enforced? What precautions are there to ensure that MPs and MPLs are people who act with integrity? Below is a discussion of some of South Africa's benchmarks.

WHAT STANDARDS? (1) THE CONSTITUTION

Section 47 of the Constitution specifies that "anyone who [has been] convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine" cannot be a member of the legislatures for five years after they have completed their sentence.

The **Independent Panel for the Assessment of Parliament**, however, believes that this needs to be stronger. Currently, people who have been convicted of fraud or corruption can serve in the legislatures if they were only given a suspended sentence or a fine. The Panel recommended that "any person who is convicted of corruption, fraud or a similar offence should be deemed ineligible to serve as an MP."³ This must also be extended to members of provincial legislatures. Our standards should better reflect the serious damage that corruption has done in our society.

WHAT STANDARDS? (2) CODES OF CONDUCT AND REGISTERS OF FINANCIAL INTERESTS

National parliament and the nine provincial legislatures have all adopted codes of conduct that set the rules for their members on ethical matters.

Although the codes differ around the country, they all require MPs and MPLs to **disclose** their financial interests. MPs must list any businesses they get income from (as owners, directors or shareholders), any other sources of income, expensive gifts they have received and who gave them, discounts they have received, and assets such as property⁴. Members are also required to declare the interests of their wives, husbands or life partners, as well as those of their non-adult children. Where conflicts of interest do appear, members must remove themselves from discussions or decisions.

Members' interests are compiled in a register. Some of the information is public and some is kept private. The public section lists all the interests, but their value is kept confidential. The interests of spouses and children are also in the confidential section.

It is important that public representatives disclose this

Members of parliament, currently they all... submit their disclosure forms. Of course, the question is the completeness of the disclosure in each form. It's something that is out of our powers [to investigate].
-Lemias Mashile

3. RIPAP, page 9

4. The full list is included in national parliament's and the provinces' codes of conduct. These can be found at www.ipoafrica.org

I'm particularly struck by... how many public representatives – and particularly public servants – think that simply declar[ing] an interest... means your interest has been... eliminated.
-David Lewis

We will... [invite]... NGOs to... make proposals on the finalisation of [Parliament's] Code.
-Lemias Mashile

information, but that is not enough to make sure that these private interests don't affect their public duty. Firstly, the legislatures do not systematically check that members' disclosures are complete or accurate. Secondly, the forms are received and filed away, but there are no established procedures to detect conflicts of interests that the forms may reveal. Lastly, many of the codes – including national parliament's – do not set out ethical standards and principles to guide members where their behaviour might be legal but still potentially corrupt. The Gauteng code, for example, lists the following principles that members should follow in their conduct: selflessness, integrity, accountability, openness, honesty and leadership. The conference also raised the question of whether it would be better for all legislatures to have a single code of conduct.

For many years, national parliament has been trying to amend its code of conduct to include ethical standards and principles. This is an opportunity for a national dialogue about the standards citizens expect from their representatives. There are many issues to clarify. Should there be a limit on the value of gifts that members of the legislatures receive? If so, what should that limit be? Should members be allowed to have external business interests during their term? If so, what's the best way to manage potential conflicts of interest? Should there be less information that is kept confidential? After members leave public office, should they be allowed to work immediately in the same sector they oversaw in government? What if these rules become too restricting and discourage people from getting involved in political life? What do other countries do, and why?

Is it really necessary for each province to develop their own [codes of conduct]? Don't we have a standard of ethics in behaviour that is common to all of South Africa?
-Fiona Nicholson

We need to conduct a national conversation about the public expectation of ethical conduct, and ensure that [those who] serve in public operate within the confines of that particular social contract.
-Lemias Mashile

ENFORCEMENT (1): ETHICS COMMITTEES AND REGISTERS OF MEMBERS' INTERESTS

Codes of conduct are important, but they have to be enforced to be meaningful.

All of the legislatures have a special committee of members, usually called the Ethics and Members' Interests Committee, to ensure that their colleagues act according to the code. The ethics committees include representatives from all parties, and broadly reflect the proportional control parties have of the legislature. Their multi-party membership and **consensus** decision-making are meant to keep their rulings fair.

With the exception of North West and Gauteng provinces, all the legislatures also have a registrar. This is the official in charge of collecting members' disclosure forms and keeping and updating the register of interests. Registrars must ensure that all members submit their declarations on time, that the information submitted is (at least reasonably) complete, and ask for clarification or more detail if needed. The registrar also

CODE OF CONDUCT FOR MEMBERS OF NATIONAL PARLIAMENT – EXTRACTS

DISCLOSURE OF REGISTRABLE INTERESTS

5. DISCLOSURE OF REGISTRABLE INTERESTS

1. Members must disclose to the Registrar, on the form prescribed for this purpose by the Committee, particulars of all their registrable interests.
2. The first disclosure must be within 30 days of the opening of Parliament or appointment as a Member. If a Member has no registrable interests, a "nil" return must be submitted.
3. After the first disclosure Members must disclose annually at a time determined by the Committee.

6. KINDS OF INTERESTS TO BE DISCLOSED

The following kinds of financial interests are registrable interests:

- Shares and other financial interests in companies and other corporate entities;
- Remunerated employment outside Parliament;
- Directorships and partnerships;
- consultancy;
- Sponsorships;
- Gifts and hospitality from a source other than a family Member or permanent companion;
- Any other benefit of a material nature;
- Foreign travel (other than personal visits paid for by the Member, business visits unrelated to the Member's role as a public representative and official and formal visits paid for by the state or the Member's party);
- Ownership and other interests in land and property; and
- Pensions.

9. CONFIDENTIAL PART OF REGISTER

1. Only a Committee Member, the Registrar and staff assigned to the Committee has access to the confidential part of the Register.
2. No person who has access to the confidential part of the Register may, except when a court so orders, disclose particulars of any entry in the confidential part to anyone other than the Member concerned or another person who has such access.
3. A Committee Member who contravenes sub item (2) - (a) is liable to a reduction of up to 30 days' salary; and (b) becomes ineligible to continue as a Committee Member.
4. The Registrar or a staff Member who contravenes sub item (2) is subject to disciplinary action applicable to parliamentary staff, including dismissal.

10. PUBLIC PART OF REGISTER

1. Any person has access to the public part of the Register on a working day during office hours.
2. The Registrar must publish the public part of the Register during April of each year in a manner determined by the Committee.

ETHICAL CONDUCT

11. DECLARATION OF PRIVATE INTERESTS TO PARLIAMENTARY COMMITTEES AND FORUMS

A Member must -

- Declare any personal or private financial or business interest that that Member or any spouse, permanent companion or business partner of that Member may have in a matter before a joint committee, committee or other parliamentary forum of which that Member is a Member; and
- Withdraw from the proceedings of that committee or forum when that matter is considered, unless that committee or forum decides that the Member's interest is trivial or not relevant.

12. DECLARATION OF PRIVATE INTERESTS WHEN MAKING REPRESENTATIONS

If a Member makes representations as a Member to a Cabinet Member or any other organ of state with regard to a matter in which that Member or any spouse, permanent companion or business partner of that Member has a personal or private financial or business interest, that Member must declare that interest to that Cabinet Member or organ of state.

13. LOBBYING FOR REMUNERATION

No Member may lobby for remuneration.

14. REMUNERATED EMPLOYMENT OUTSIDE PARLIAMENT

A Member may only engage in remunerated employment outside Parliament when such employment is –

- Sanctioned by the political party to which the Member belongs; and
- Is compatible with that Member's function as a public representative

CODE OF CONDUCT AND ETHICS FOR MEMBERS OF THE GAUTENG PROVINCIAL LEGISLATURE— EXTRACTS

PART I – PRINCIPLES

3. Principles:

A Member of the Gauteng Provincial Legislature shall adhere to the following principles:

1. Selflessness: A Member shall take decisions only in the interest of the public.
2. Integrity: A Member shall ensure at all times that the integrity of the Legislature and the Provincial Government is maintained.
3. Accountability: A Member is accountable to the public for his or her decisions and actions.
4. Openness: A Member shall exercise his or her public duties in an open and transparent manner.
5. Honesty: A Member shall act honestly and in the public interest at all times.
6. Leadership: A Member shall promote these principles by leadership and example.

PART II – ETHICAL CONDUCT

4. General obligations: A Member shall, at all times, in the exercise of his or her duties adhere to the principles as set out in Part I of the Code and shall, inter alia –

7. Not take decisions in order to gain financial or other material benefit for himself or herself, his or her family, or his or her friends;
8. Exercise his or her duties and conduct himself or herself with dignity and integrity appropriate for his or her office;
9. Not place himself or herself under financial or other obligations to outside individuals or organisations that might improperly influence him or her in the performance of his or her duties;
10. Ensure that his or her personal conduct is consistent with the dignity and integrity of the Legislature and the Provincial Government;
11. Make choices on merit in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for reward or benefit;
12. Subject himself or herself to any form of scrutiny appropriate to his or her office;
13. Declare any private interest relating to his or her official duties;
14. Declare, in the Members' Register of Interest located in the Integrity Commissioner's office, all the interests as required; and
15. Take steps to resolve any conflict of interest that may arise in a manner that protects the public interest.

5. Declaration of private interests in Committees and Proceedings of the Legislature

16. A Member shall declare any personal or private financial or business interest that a Member or spouse, permanent companion or business partner of that Member may have, in a matter before a Standing Committee or ad hoc Committee or Legislature structure in which that Member serves.
17. A Member shall withdraw from the proceedings of that Committee or Legislature structure when a matter referred to in section 5 (1) is considered, unless that Standing Committee or Legislature structure decides that the Members' interest is immaterial.

helps the public to access to the open part of the register and receives complaints about members who are not acting in line with the code.

While the registrar is in the best position to evaluate whether interests have been disclosed in full⁵, he or she is not legally required to. Registrars in national parliament and the legislatures can investigate potential conflicts of interests once a complaint has been lodged. However, none of them has the power to start an investigation, even if they suspect that something is wrong. They can only investigate a complaint that has been made by a member of the public or an elected representative. Once an investigation is started, the ethics committees have the power to summon witnesses and demand more information.

In addition to a registrar, the legislatures of the North West and Gauteng also appoint an integrity commissioner. The commissioner is not an ordinary staff member, and is usually a person with stature and moral authority.

As such, they are independent. This is a key difference. Where the rest of the legislatures rely on internal review mechanisms, where members are expected to investigate and sanction one another, the North West and Gauteng rely on an external person to do so. The commissioners have more significant investigation powers than registrars⁶, and may initiate their own investigations. Like the registrars, they are tasked with ensuring compliance. They also receive complaints from the public about members contravening the code.

Complaints go to the registrar (or commissioner). They look into the matter and then pass on the information and their recommendations to the ethics committee. The committee may conduct more detailed investigations into the matter, after which recommendations are made, either to the **plenary** or the **presiding officers**, for a final decision.

The penalties for members who have acted against the code vary from legislature to legislature. In general, they include **reprimands**, reductions of allowances, fines and temporary suspension. In many cases, there has been concern that these sanctions do not reflect the seriousness of the wrongdoing.

Although the legislatures have successfully ensured that members disclose their interests, it is not so clear that these disclosures have been tested for accuracy and comprehensiveness⁷.

*Going further, even where somebody has picked up that there might be a conflict of interests, there is no mechanism to follow up, to then say “Honourable Member, in terms of your declaration this indeed points to a conflict of interests.” And so we need to find a way to resolve that as may be appropriate.
-Nkosi Nyembezi*

*In order for us to improve accountability, citizens need to be informed of the rules which regulate the behaviour of those in positions of public trust. They will be required to stand up against abuse of power and lodge complaints to ensure that corrupt behaviour is challenged... [Parliament’s committee on ethics] [will receive] complaints from... anybody and then we will actually investigate them
-Lemias Mashile*

*Last week, [the Committee on Ethics and Members’ interests]... pronounced on a potential conflict of interest with the chairperson of the committee on transport... There was an issue [with] the chairperson of finance, where we ended up clearing him, and... we are seized with the issue relating to [Communications] Minister Pule.
-Lemias Mashile*

*You say that there are these processes to investigate and prosecute unethical behaviour, [but] how many times has this been done? Where has it been done? How do we [know that] these structures are actually working? Because it’s our own perception that they aren’t.
-Sekoetlane Phamodi*

5. A first step to doing this is comparing new forms to ones from previous years.

6. ISS 2009: 15

7. ISS 2009.

This may be due to the weak investigative powers assigned to the registrars, as well as the built-in problems of self-regulation. There has been no study that compares the effectiveness of legislatures with integrity commissioners and those with registrars in South Africa. International experience (India, Latvia) indicates that integrity commissioners are better able to fight corruption⁸.

ENFORCEMENT (2): POLITICAL PARTIES

Political parties control which persons become public representatives. Whether our public representatives act with integrity, therefore, has much to do with whether political parties insist on ethical behaviour.

When it comes to behaviour that is clearly improper but has not been proven illegal in court, political parties have sometimes chosen to turn a blind eye. For example, MPs who have been accused of corruption have been 're-deployed' to the provincial legislatures. Political parties may also influence the decisions of their representatives on the ethics committees. When people who have done wrong are seen to get off too lightly, the credibility of the legislatures is damaged. It becomes hard to believe that they will be able to effectively play their role.

As set out in the Constitution, political parties are free to bring whoever they choose to sit in the legislature, just as long as the person hasn't recently served a five year prison sentence. If legislators would like to set the bar higher, they will need to implement RIPAP's recommendation for stronger codes of conduct.

Citizens, on the other hand, need to consider whether their political party promotes the ethical conduct they would like to see in public life.

ENFORCEMENT (3): CITIZENS

Citizens have an important role to play when it comes to enforcing ethical standards – and not only during elections. Registrars and committees can only investigate complaints that are brought to them. The register of members' interests is open to the public. These two facts show that active citizens are at the centre of South Africa's model of fighting corruption⁹.

In theory, citizens, media and civil society organisations are free to inspect the registers of interests kept by national parliament, the legislatures and the Presidency¹⁰. Most legislatures stipulate that the public can access the public part of the registers during office

[In the] Gauteng legislature, a member of the executive committee, Humphrey Mmemezi, was found to have abused... public power to the extent that he was compelled to step down as an MEC. But he's still a member of the legislature. And I wonder if this doesn't send a message that a higher standard applies to being a member of the executive committee than to being a member of the legislature? I would have thought exactly the opposite applied.
-David Lewis

In order for us to combat the scourge of corruption we require first and foremost an active citizen... [T]he code of conduct that we have in South Africa is much better than what they have in Germany, but the difference is that, in Germany, the people there are highly active. And if there is any public representative that misbehaves, then the political party responsible for that particular public representative will actually deal with the matter quick-quick. Because if it doesn't, the public then will punish the political party in the next elections.
-Lemias Mashile

What do those responsible for our legislatures do when [a political] party... appoints as one of its representatives... somebody who appears by all public standards, if not necessarily criminal standards, to not be [an] appropriate representative of the people of South Africa?
-David Lewis

8. Ibid.

9. Ibid.

10. ISS 2009: 22.

[From] our experience with the Promotion of Access to Information Act, [it could] really be called the Denial of Access to Information Act.
-David Lewis

hours, while others, like the Northern Cape, publish and distribute the public part of the Register “to the media, libraries and other stakeholders annually”¹¹. National parliament publishes MPs’ declared interests under their profiles at www.parliament.gov.za.

In practice, it is not so simple. Over the course of 2008, the Institute for Security Studies (ISS) compiled a record of the interests of all elected representatives in the three spheres of government¹². Their experience of getting access from the legislatures was, on the whole, positive. However, it did take a lot of time to submit written requests and inquiries. It is understandable that the legislatures will want to keep records of these transactions, but the formal requirements for accessing what should be public in the first place can be a hardship for individuals and small organisations. ISS reported that getting hold of executive members’ registers of interests was significantly more difficult, requiring repeated requests and even applications through the Promotion of Access to Information Act (PAIA).

Delegates at the conference were critical about how hard it was to access information from the registers, and the way that government officials misused PAIA. It was clear that the tools meant to strengthen civil society’s access to information – such as PAIA – are experienced as hurdles to climb. Lemias Mashile, co-chair of parliament’s ethics committee, even suggested that organisations should collect information continuously so that, when a problem arises, they can rely on their own database rather than waiting for the results of a PAIA application.

Citizens’ ability to watch out for conflicts of interest in government is also undermined by the differences that exist across the country regarding timeframes for updating the register, as well as variations in its format. Along with codes of conduct, the procedures for the registers should be standardised. This will make it easier for citizens to know when to ask for information, what information can be accessed, and where.

Improving public oversight clearly calls for improvements in the way both legislatures and citizens operate. The legislatures should create more awareness of their codes of conduct, and make freely available the public areas of the register of members’ interests, as national parliament and the Northern Cape have committed to do.

You expect that when you walk into the office of the Speaker and you say, “I would like to see a register of the declaration of interests in relation to so-and-so”, you would be able to access it immediately and without delay. But most often you are referred to PAIA, to say, “Why don’t you fill in the form in terms of PAIA... wait for 30 days, declare this and that...” [P]ublic representatives, government, use these pieces of legislation as hurdles to access information as opposed to... the other way around.
-Nkosi Nyembezi

11. Chapter 6, clause 6.1.1, of the North West Legislature Code of Conduct, as cited in ISS 2009: app. 2.

12. In ISS 2009 and www.ipocafrika.org

MEMORANDUM RECOMMENDATIONS

ESTABLISHING THE LEGISLATURES AS ACCOUNTABLE INSTITUTIONS

IT IS IMPERATIVE THAT LEGISLATURES ARE ACCOUNTABLE INSTITUTIONS WHOSE MEMBERS' CONDUCT IS BEYOND REPROACH. THE NEGATIVE RAMIFICATIONS OF THE PUBLIC'S LACK OF TRUST IN REPRESENTATIVE INSTITUTIONS AND ELECTED REPRESENTATIVES ARE SIGNIFICANT, AND IMPACT ON THE DURABILITY AND QUALITY OF OUR DEMOCRATIC SYSTEM AS A WHOLE. TO REINFORCE EFFORTS TO DATE WE OFFER THE FOLLOWING RECOMMENDATIONS:

ELIGIBILITY TO HOLD OFFICE

6.1 WE STRONGLY SUPPORT **RIPAP**'S ASSERTION THAT "THE CONDITIONS UNDER WHICH MEMBERS OF PARLIAMENT BECOME INELIGIBLE TO HOLD OFFICE SHOULD BE REVIEWED. IT IS PROPOSED THAT ANY PERSON WHO IS CONVICTED OF CORRUPTION, FRAUD OR A SIMILAR OFFENSE SHOULD BE DEEMED INELIGIBLE TO SERVE AS AN MP" (PG 9). WE SUGGEST THAT MPLs SHOULD ALSO BE SUBJECT TO THE SAME STANDARDS. WE REQUEST NATIONAL PARLIAMENT TO TAKE STEPS TO AFFECT THIS DURING THE COURSE OF 2013.

NON-PARTISAN PARLIAMENTARY SUPPORT SERVICES

6.2 IT IS CRITICAL THAT PARLIAMENT'S SUPPORT SERVICES REMAIN NON-PARTISAN AND BE FREE FROM PARTY POLITICAL INFLUENCES.

UNFINISHED BUSINESS

- NATIONAL PARLIAMENT AND THE PROVINCIAL LEGISLATURES SHOULD CONSIDER INSTITUTING A SINGLE CODE OF CONDUCT. THIS CODE SHOULD BE DEVELOPED TOGETHER WITH CITIZENS.
- NATIONAL PARLIAMENT AND THE LEGISLATURES SHOULD COMMISSION INDEPENDENT RESEARCH INTO THE IMPACT OF INTEGRITY COMMISSIONERS. SHOULD RESEARCH SHOW THAT INTEGRITY COMMISSIONERS DEAL WITH CONFLICT OF INTEREST MATTERS MORE ROBUSTLY, ALL LEGISLATURES SHOULD APPOINT ONE.
- REGISTRARS' MANDATE AND CAPACITIES SHOULD BE BROADENED TO INCLUDE
 - CHECKING THAT DISCLOSURE IS ACCURATE AND COMPLETE
 - IDENTIFICATION OF POSSIBLE CONFLICTS OF INTERESTS, AND INVESTIGATION OF THESE

DICTIONARY¹

Accountability	The responsibility of people in positions of authority to give reasons for their decisions and to take the consequences for any mistakes or problems.
Adjustments budget	The budget presented to the legislatures in the fourth term of the legislative year. It asks the legislatures to approve changes to the budget presented in the first term of the year.
Annual performance plan (APP)	Identifies the performance indicators and targets that the government institution will seek to achieve in the upcoming budget year. It should be aligned to the budget process. See more information on APPs in the diagram on pages 38-39.
Annual report (AR)	A comprehensive report about the activities and financial performance of a government department or agency throughout the preceding year. See more information on ARs in the diagram on pages 38-39.
Auditor-general (AG)	A Chapter 9 institution required to report on how finances are managed by all national, provincial and local government departments. In terms of the Constitution, the auditor-general can choose to examine the finances of any institution that receives money for a public purpose. See the diagram on pages 4-5.
Budget	A national budget sets out how much money a country will have over a period of a year and how the government intends to use it over that time. In South Africa, the national budget also tells us how the country's money will be divided between the national, provincial and local spheres of government, and between the different provinces and municipalities. See more information on the budget in the diagram on pages 38-39.
Closed list	There are different types of Proportional representation electoral systems. Closed list systems are ones in which only the party can determine the order of candidates on its list. Voters can only influence which party is elected, but not who the party sends to parliament. In open list systems the voters have some say.
Committee	A working group of MPs or MPLs from different parties who meet regularly to focus on a particular area. There are a few types of committees: portfolio committees; select committees; standing committees; and ad hoc committees. Some of these are described below. Committees do not take decisions but make reports and recommendations to the legislature ² .
Consensus decision-making	Unlike majoritarian decision-making processes, consensus requires that all members of a group agree with the decision. This means that group members who disagree must negotiate and compromise, until they reach a decision that everyone can live with.
Constituency	A group of voters who live in a particular area and can elect an individual to a legislative body (as opposed to voting for a party – see proportional representation and the illustration on pages 8 -9); also known as an electoral district, riding, ward, division or electorate.
Constitution	A national constitution is the document that sets out the rules and principles about how the country should be run. It is separate from and higher than statutory or common laws. The Constitution of the Republic of South Africa, 1996, is the supreme law of South Africa ³ .

1 Definitions are based on those provided by www.pmg.org.za; www.parliament.gov.za; Gauteng public education booklet; 2002 South Africa Budget Guide and Dictionary – Allison Hickey & Albert van Zyl; Fact sheets produced by parliament and available at http://www.parliament.gov.za/live/content.php?Item_ID=443

2 http://www.parliament.gov.za/live/content.php?Category_ID=28

3 Parliament fact sheet http://www.parliament.gov.za/live/content.php?Item_ID=443

Constitutional	Consistent with the principles of the constitution and allowed under its rules.
Constitutional democracy	A system of democratic government where the constitution is supreme. This means that the structures, powers, and limits of government are set out in the country's constitution.
Constitutional provision	A rule or a law that comes from the constitution itself.
Corporate collusion	An illegal anti-competitive arrangement between two or more corporations in an industry to manipulate prices and profits for their own gain, often causing hardship for their customers, clients and would-be competitors.
Democracy	A form of government in which all eligible citizens participate equally, either directly or through elected representatives, as opposed to governments that are controlled by one person (a monarch or dictator), or by a small group.
Direct participation	Opportunity for the public to interact directly with parliament and give their views on draft policy or legislation or a topic of interest. This is done by means of a written submission or in person at a public hearing.
Disclose / disclosure	To disclose is to make known information that was previously secret. Disclosure is the act of making information known.
Electoral system	A legal system for voters to select people to represent them in law-making institutions. South Africa uses the electoral system of "proportional representation" (see below and in the illustration on pages 8-9).
Enforcement	Making sure that a law or a rule is followed.
Executive	The committee of senior members of the government – the president, deputy president, ministers and their deputies – who are responsible for policy and administration of state departments; also known as the cabinet.
In session	Indicates that parliament is 'sitting'; that is, actively meeting and not in recess.
Internal party democracy	Refers to democracy within a political party and the ways that party members take part in the decision-making processes within the party. This includes candidate selection, leadership selection, policy-making, membership relations, and party funding.
Final mandates	MPs in the NCOP must vote and argue according to the views of the provincial legislatures that they represent. A final mandate is the way a province instructs the MPs representing it to vote.
First past the post (FPTP) electoral system	In FPTP systems the candidate with the most votes wins elections. Another way to describe it is 'winner-takes-all' because the candidates who did not get the highest number of votes in a particular constituency do not get any seats in parliament. In PR systems, while there is an overall winner, parties with small number of votes are still represented in parliament.
First term	The legislative year is divided into four terms. The first term is between January – March every year.
Fourth term	The legislative year is divided into four terms. The fourth term is between October – December every year.
Legislation	Laws that are put in place by a legislature or governing body. Legislation can be created for many purposes.
Legislative body	A group of public representative with the power to pass, amend and repeal laws.

Legislative sitting	A session or a meeting of a legislature for the transaction of business.
Legislatures	Houses of elected representatives. In general, this word can refer to all representative bodies. In South Africa, it usually refers to the provincial legislatures.
Majoritarian	A simple electoral system, in which decisions are made by the majority and other voices need not be accommodated.
Member of parliament (MP)	A person who is elected to represent voters in the national legislature, which is also called parliament.
Member of provincial legislature (MPL)	A person who is elected to represent voters in legislative branch of the government of a province.
Money bills	Legislation that allocates public money for a particular purpose, or imposes taxes, levies or duties. These can only be introduced by the minister of finance and must be introduced in the National Assembly.
National Assembly (NA)	Parliament is divided into two houses – the National Assembly and the National Council of Provinces. The task of the NA is to represent the people. It is made up of 400 representatives that are elected through the PR system. It debates and makes laws, and oversees national government departments.
National Council of Provinces (NCOP)	The task of the NCOP is to represent the concerns of the provinces in national decisions. The NCOP is made up of representatives sent from the 9 provincial legislatures and the South African local government association (SALGA).
Negotiating mandates	Before MPs in the NCOP are given a final mandate on a law, they are expected to put forward the opinions of the province they represent in discussions. These are the negotiating mandates, and they can include proposed changes to laws.
Open List	There are different types of Proportional representation electoral systems. Unlike closed list systems, in open list systems voters have some influence on the order of candidates on a party's list. This means that citizens can vote for a party while rejecting individuals within it.
Outcome	The final product or end result of an action; a consequence.
Oversee / Oversight	To supervise, manage or observe in order to ensure good governance.
Oversight visits	Events when parliamentary committees visit particular communities in order to observe government performance, service delivery and the implementation of policies and legislation, and make recommendations to address any concerns.
PAIA/ Promotion of Access to Information Act	South Africa's constitution specifies that the country's residents have a right to access information held by the state. PAIA is the legislation that outlines the procedures and rules by which the public can access state information.
Participatory democracy	In representative democracies people elect others to make decisions in government on their behalf. In participatory democracies, government seeks to involve citizens in decision making on an ongoing basis, not only elections. Citizens are called upon to directly participate in decision making in-between elections.

Partisan	When actions or decisions serve the interests of a political party, they are referred to as partisan. When political party interests are narrow, or when decision making processes in political parties are not democratic, partisan decisions do not necessarily benefit all.
Party line	A political party's official positions and opinions. Members of the party are expected to agree with and support these opinions.
Plenary session	A full meeting of the legislature which all members and the executive attend.
Portfolio committee (PC)	A committee that is directly linked to a particular government department (e.g. education). When the executive presents proposals to the legislatures, the work of reviewing these proposals is handed over to PCs.
Presiding officers	Representatives in each legislature elect officers who lead the work of the institution. All legislatures have a speaker and a deputy speaker who direct legislative work and who are mandated to liaise with the executive. National Parliament's presiding officers include the speaker and deputy speaker of the National Assembly, the chairperson and the deputy chairperson of the NCOP, and house chairpersons, who are responsible for leading the work of parliament on special issues (e.g. use of technology).
Process	A series of actions or steps taken to achieve a goal.
Proportional representation (PR) electoral system	An electoral system in which votes are cast for a party, rather than an individual, and representatives are selected from a party list in proportion to the number of votes won by each party in the election. This is the system used in South Africa and other countries (see " constituency ").
Public accounts committee (PAC)	A committee responsible for overseeing the spending of each government entity to ensure they are effective and honest. Each legislature and municipality must have one and it is a crucial mechanism for ensuring transparency and accountability in government finances. It can hold hearings to ensure that action is taken to correct bad management and corruption (see " SCOPA ").
Public hearings	Special meetings held by committees, where members of the public are invited to comment on draft policy, legislation or a topic of importance to the country.
Public institutions	Institutions that are funded by public money and that are part of government.
Public services	Services that are provided by government to people, either directly or by financing private provision of services, such as education, healthcare, transport and water. It is related to the idea that certain services are a public or human right, and should be available to everyone, regardless of income.
Quarterly report	Report on financial matters presented by departments to stakeholders four times a year. It notes whether or not targets have been achieved during the preceding three months.
Questions to the executive	One of the ways in which members of parliament can hold the executive to account. MPs and MPLs can ask the ministers and the president questions on a regular basis. These questions must be answered either in writing or by appearing before plenary .
Representative bodies/ institutions	An organisation that acts on behalf of a group of people or another organisation.
Representative system (representative democracy)	The liberal system of democracy in which citizens elect people to represent them in government. It became common when cities and nations grew too big for citizens to run them directly.
Represent	To speak in the name of others in an official capacity.

Reprimand	A formal verbal warning given by a person of authority, often publicly.
Report of the Electoral Task Team	In 2002 South Africa's Government established a task team to consider the country's electoral laws. This refers to the report explaining their findings. The task team is also referred to as the 'Van Zyl Slabbert Commission'.
RIPAP	The Report of the Independent Panel Assessment of Parliament. A Panel of experts was established by national parliament in December 2006 to "inquire into, report and make recommendations regarding the extent to which parliament is evolving to meet the expectations outlined in the Constitution". The report focused on the extent to which parliament ensured accountability, responsiveness and openness; its co-operation with other organs of government; the maintenance of its independence; its administration and allocation of resources; and any issues of importance within the public domain.
SCOPA	The Standing Committee on Public Accounts in parliament acts as a watchdog over the way taxpayers' money is spent by the national executive. Government entities that have not received a clean audit from the auditor-general can be called in for questioning by SCOPA.
Seat	A place reserved in a legislature for an elected representative. South Africa's National Assembly has 400 seats. Political parties compete to win those seats in elections.
Second term	The legislative year is divided into four terms. The second term is between April – June every year.
Select committee	The National Council of Provinces (NCOP) appoints from its permanent members a number of select committees to shadow the work of the various national government departments and to deal with bills.
Separation of powers model	A government structure that is found all over the world, in which the powers of the legislative (parliament), executive (cabinet) and judicial (courts) branches are separate and essentially independent from each other, with a system of checks and balances that forces the branches to co-operate and prevents any one from taking control. South Africa's constitutional democracy has this structure. See the diagram on pages 4-5 for more.
Spheres of government	South Africa's government is divided into three spheres: local, provincial and national. Each of these spheres has specific areas of responsibility. Different spheres are not allowed to interfere in the governance of other spheres unless special rules are followed.
State	A self-governing political entity (such as a country). See pages 4-5 for the structure of the South African state.
Strategic plan (SP)	Identifies strategically important goals and objectives against which public institutions' results can be measured and evaluated by parliament, provincial legislatures and the public. See the diagram on pages 38-39 for more information on SPs in South Africa's oversight and participation processes.
Submission	Written or oral comment presented by a member of the public or an organisation to decision-makers.
Summons	A legal order to appear before the legislature.
Third term	The legislative year is divided into four terms. The third term is between July – September every year.
Trade	A transfer of the ownership of goods from one entity to another in exchange for something from the buyer.
Voter turnout	The percentage of citizens who vote in an election, considered in relation to the number of citizens who could potentially vote in that election.

VOICES

Below is some information on conference speakers and participants quoted in this publication. More comprehensive biographies of the speakers who presented at the conference can be found on www.peoplesparliament.nu.org.za.

Justice Albie Sachs	was a judge in South Africa's Constitutional Court between 1994 and 2009. Between 1990 and 1994 he was a member of the national executive of the ANC and took an active part in the negotiations which led to South Africa's democracy.
Andre Viviers	is a senior social policy specialist at UNICEF.
Annelize van Wyk	is the chairperson of the Police Portfolio Committee in the National Assembly. She has served in national parliament since 1999.
Ardiel Soeker	is a programme director at the Development Action Group (DAG).
Berenice Pause	is a researcher in Parliament's Research Unit.
David Lewis	is the executive director of Corruption Watch.
Daygan Eager	worked for Section27 as the researcher and coordinator of the Budget Expenditure Monitoring Forum (BEMF) until early 2013. The BEMF is a coalition of civil society organisations that monitors the funding and implementation of national strategic plans on HIV/AIDS and TB.
Dr. Dee Smythe	is the director of the Law, Race and Gender Unit, University of Cape Town. She is also an Associate Professor in the Department of Public Law.
Elroy Paulus	is an activist who works for Black Sash.
Fiona Nicholson	is the founder and current programme director of the Thohoyandou Victim Empowerment Programme.
Fundi Nzimande	worked for the National Labour and Economic Development Institute (NALEDI), a research institute that aims to build the capacity of the labour movement.
Gregory Solik	is the coordinator of Ndifuna Ukwazi.
Isaac Mbadu	works for the Social Justice Coalition.
Joan van Niekerk	is the national coordinator of Childline SA.
Joy Watson	is a senior researcher in Parliament's Research Unit.

Kholiswa Fihlani	is the chairperson of the Women's Caucus in the Eastern Cape Legislature. She is an ANC MPL and a member of the South African Communist Party provincial executive committee.
Lemias Mashile	is the co-chairperson of Parliament's Joint Committee on Ethics and Members' Interests. He serves in the NCOP as a delegate of Mpumalanga. He is also the deputy president of the South African national civic organisation.
Lindiwe Maseko	is the speaker of the Gauteng Legislature. She is also the provincial treasurer of the ANC in Gauteng.
Lisa Draga	is an attorney at the Equal Education Law Centre.
Lucy Jamieson	works for the Children's Institute, UCT.
Bishop Lunga Ka Siboto	is the presiding bishop of the Ethiopian Episcopal Church. He also serves on the South African Council of Churches.
Dr Mathole Motshekga	was the African National Congress's chief whip in national parliament between 2009 and June 2013. He also serves as legal advisor to the National House of Traditional Leaders.
Mazibuko Jara	is an activist and the executive director of Ntinga Ntaba ka Ndoda, a community-controlled organisation that works in 13 villages in Keiskammahoek in the Amathole district of the Eastern Cape.
Mninwa Mahlangu	is the Chairperson of the National Council of Provinces. He has been in national parliament since 1994.
Murray Hunter	is an activist with the Right 2 Know Campaign.
Mmusi Moraka	is the political advisor for the Gauteng Legislature
Nadia Dollie	is a researcher in Parliament's Research Unit.
Neliswa (Peggy) Nkonyeni	is the speaker of the Kwazulu-Natal Legislature. She also serves as the provincial treasurer of the ANC and as member of the ANC's provincial executive committee.
Nikki Stein	is an attorney at Section27.
Nkosikhulule Nyembezi	is an activist working with Black Sash.
Nomantu Nkomo-Ralehoko	is the chair of chairs, Gauteng Provincial Legislature. She is also the deputy chair of the ANC Women's League in Gauteng.
Nomboniso Gasa	is a researcher, analyst and commentator on gender, politics, leadership and cultural issues. She was the spokesperson for the Alliance for Rural Democracy.
Noxolo Abrahams Ntantiso	is a member of the Eastern Cape Provincial Legislature.
Patricia Dyata	is the General Secretary of Sikhula Sonke, a women-led trade union that works with farm dwellers, mainly in the Western Cape.
Patrick Sambo	works for the Southern Cape Land Committee.

Peter Benjamin	was the director of Cell Life, an organisation dedicated to using information & communications technology (ICT) for social change and development.
Peter Skosana	is the secretary of the Gauteng Legislature
Pumla Kweyama	Pumla Kweyama was a conference participant and a student at the University of the Western Cape in 2012.
Phumeza Mlungwana	is the secretary general of the Social Justice Coalition.
Prof. Pierre de Vos	is the Claude Leon Foundation Chair in Constitutional Governance at the Law Faculty of the University of Cape Town. He teaches constitutional law.
Pregs Govender	is the deputy chairperson of the South African Human Rights Commission. She was an ANC MP from 1994 to 2002, and between 2007 and 2009 served as the chair of the Independent Panel Assessment of Parliament.
Bishop Rubin Phillip	is the Anglican bishop of Natal.
Sandy Kalyan	is the deputy chief whip for the Democratic Alliance in national parliament. She has been an MP since 1999 and has served on the health, social development and home affairs portfolio committees.
Shaamela Cassiem	works for the International Budget Partnership (IBP). The IBP collaborates with over 100 civil society organisations across the world to foster more open, participatory, accountable public budgeting and budget systems for social justice and development transformation.
Sekoetlane Phamodi	is a blogger and activist. He also works for the Save Our SABC (SOS) campaign.
Sizakele Malubane	is the chairperson of the education portfolio committee in the Gauteng Legislature.
Sizani Ngubane	is the founder and director of the Rural Women's Movement (RWM). RWM works with 500 community-based organisations with a membership of about 50,000 women in South Africa.
Most Reverend Stephen Brislin	is the Archbishop of Cape Town. He is also the president of the Southern African Catholic Bishop's Conference.
Prof. Steven Friedman	is the director of the Centre for the Study of Democracy. He is a political scientist who has specialised in the study of democracy.
Tania Ajam	is a commissioner in the Financial & Fiscal Commission. She is a public finance economist.
Vuyiseka Dubula	is the secretary general of the Treatment Action Campaign (TAC). She is the national representative for people living with HIV in the South African National AIDS Council (SANAC). She is on the boards of Section27 and Corruption Watch.
Zackie Achmat	is the director of Ndifuna Ukwazi. He is a political activist, and was a founder and a chairperson of TAC.
Zukiswa Kota	is a researcher with the Public Service Accountability Monitor (PSAM).

NOTES

A series of horizontal dotted lines for writing notes.



Who are parliamentarians accountable to? Who do they perceive their constituency to be? Are they accountable to their party? Are they accountable to people? Who is their constituency?

– Stephen Brislin

The view that parliament is dysfunctional is not true. Parliament is not dysfunctional. We have to problematise our role [as citizens], all our roles here. What is it that we are doing to assist parliament to do what we want it to do?

– Pumla Kweyama

That phrase in the Constitution about the public being involved was not simply [so that] the public can watch, [or] make representations to ... committees. It meant an ongoing act of connection and association. The democratic relationship is not like Sleeping Beauty [who] goes to sleep for five years, is kissed just before elections, wakes up and then goes to sleep again ... The organic interactive relationship is important... The crucial issue is that sense of citizenship that's established with ongoing communication.

– Albie Sachs

How do we ensure as a society that we build solidarity, not just to hold accountable, but to put in [parliament] people who will represent the poorest? [And] ensure that when we put [MPs] into those positions, that they are supported every single step of the way so that they themselves do not lose sight of who they are and who they are accountable to, and are not overwhelmed by, and are not exhausted by, what it is that needs to be done.

– Pregs Govender

We need more opportunities like today where we can talk to one another about what works and what does not work. It's a learning curve, and NGOs, civil society and parliament must grow into this process.

– Annelize van Wyk