

An analysis of public participation in the South African legislative sector

by

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Thesis presented in partial fulfilment of the requirements
for the degree of Master of Public Administration



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March 2009

DECLARATION

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February 2009

ABSTRACT

Globally participatory democracy is viewed as essential to ensure a high level of legitimacy, contribute to empowerment and strengthen democracy. Although South Africa is a representative democracy, it also adheres to the principles of participatory democracy as Parliament and the nine Provincial Legislatures are constitutionally mandated to elicit public participation in its decision-making and policy processes.

This study's main aim is to determine whether the public participation strategies employed in the South African legislative sector at present are effective and enhance decision-making and policy processes.

Following a discussion of the theoretical context and rationale for public participation, a limited international perspective on public participation was given. The study proceeded to explore the application of public participation in the local South African context with specific focus on the legislative environment.

In order to provide evidence in support of the research statement an investigation was done on the current state of public participation in the South African legislative environment. Responses from a semi-structured questionnaire on public participation in the South African legislative context were processed into a comparative table to obtain an overall picture of the legislative sector. From the findings it is clear that there are many positive factors and innovative ideas in place across the legislative sector, yet the weaknesses still far outweigh the strengths.

Generally the Constitution of the Republic of South Africa (Act 108 of 1996) provides the policy basis and guidance for all public participation programmes. In terms of institutional arrangements, all ten legislative institutions have operational public participation units of varying capacity in place, while some also have a

political structure dealing specifically with public participation. There are human and financial resources in place to facilitate the basic public participation function. There are systems and processes in place for most public participation aspects, though these are not necessarily formalised or consistently applied. The same types of implementation activities are executed across the legislative sector in the well recognised macro areas of public participation, namely public hearings, petitions, public education and outreach, constituency office use, and committee proceedings and house sittings as well as sectoral parliament events.

The area of petitioning is fairly regulated and there are public education processes in place across the country. At present constituency offices are clearly not playing an active role in facilitating public participation, and public submissions and attendance of open committee and house proceedings is limited. The critical aspects of monitoring and evaluation receive little attention and systems are not working effectively.

Progress is varied and limited by a number of similar challenges experienced across the legislative sector. These challenges relate to limited human and financial resources, lack of materials development, communication and language barriers, illiteracy levels, geographical distances to be covered, logistical and equipment challenges, planning and programming difficulties, information and communication technology limitations. In addition there are challenges in terms of human resource experience and capacity, ensuring the correct target audience attendance and quality of inputs, overcoming public and members' apathy as well as managing to implement an effective feedback mechanism and monitoring and evaluation system.

An analysis of the findings and main challenges identified therefore provides sufficient evidence for the hypothesis of this study, namely that the public participation strategies currently employed by the South African legislative sector on the whole remain ineffective and add little value in influencing decision-

making and policy processes. Therefore the constitutional aim of conducting public participation with the goal of contributing to a strengthened democracy has not been realised.

The study concluded by putting forward a number of recommendations for addressing the identified challenges in order to enhance public participation in decision-making and policy processes within the South African legislative environment.

The recommendations made relate mainly to a general trend identified from the review on the state of public participation, which is the lack of a uniform approach and standardised policies and strategies for implementing public participation across the legislative sector. Only once these are in place, will it be possible to revisit current practices and develop new implementation activities for the South African legislative environment to generate effective public participation and therefore enhance democracy in South Africa.

OPSOMMING

Deelnemende demokrasie word wêreldwyd as noodsaaklik beskou om 'n hoë vlak van legitimiteit te verseker, by te dra tot bemagtiging en demokrasie te versterk. Hoewel Suid-Afrika 'n verteenwoordigende demokrasie is, word die beginsel van deelnemende demokrasie ook nagevolg deurdat die Parlement en nege Provinsiale Wetgewers grondwetlik verplig is om openbare deelname in hul besluitnemings- en beleidsprosesse te verkry.

Die hoofdoel van hierdie studie is om te bepaal of die strategieë vir openbare deelname wat tans in die Suid-Afrikaanse wetgewende sektor toegepas word, doeltreffend is en bydra tot die verbetering van besluitnemings- en beleidsprosesse.

Na bespreking van die teoretiese konteks en rasionaal vir openbare deelname, word 'n beperkte internasionale perspektief van openbare deelname gegee. Die studie gaan dan voort om die toepassing van openbare deelname in die Suid-Afrikaanse konteks te ondersoek met spesifieke fokus op die wetgewende omgewing.

'n Ondersoek na die stand van openbare deelname in die Suid-Afrikaanse wetgewende omgewing is gedoen om bewys te lewer ter ondersteuning van die navorsingstelling. Die terugvoer van 'n semi-gestruktureerde vraelys oor openbare deelname in die Suid-Afrikaanse konteks is verwerk in 'n vergelykende tabel om 'n oorsig van die wetgewende sektor te verkry. Die bevindinge maak dit duidelik dat daar baie positiewe faktore en innoverende idees in plek is binne die wetgewende sektor, maar die swakpunte oorskadu steeds die goeie aspekte.

In die algemeen verskaf die Grondwet van die Republiek van Suid-Afrika (Wet 108 van 1996) die beleidsbasis en leiding vir alle openbare deelname aktiwiteite. Wat interne reëlings betref, het al tien wetgewende instellings aktiewe eenhede

vir openbare deelname (met verskillende personeelkapasiteit) in plek, terwyl party ook 'n politieke struktuur het om spesifiek sake rakende openbare deelname te hanteer. Daar is menslike en finansiële hulpbronne beskikbaar om die basiese funksie van openbare deelname te fasiliteer. Daar is stelsels en prosesse in plek vir die meerderheid aspekte rakende openbare deelname, hoewel dit nie noodwendig geformaliseer is of konsekwent toegepas word nie. Dieselfde tipe implementeringsaktiwiteite word oor die wetgewende sektor heen uitgevoer in die welbekende makro-areas van openbare deelname, naamlik openbare verhore, petisies, openbare opvoeding en uitreik, gebruik van kieserskantore, en komiteevergaderings en parlementêre sittings sowel as spesiale parlamentsittings vir verskillende sektore van die samelewing.

Die aspek van petisies word redelik goed gereguleer en daar is landswyd openbare opvoedingsproesse in plek. Tans vertolk kieserskantore nie 'n aktiewe rol in die fasilitering van openbare deelname nie, en die indiening van voorstelle en bywoning van die publiek by openbare komiteevergaderings en parlementêre sittings is beperk. Die kritieke aspekte van monitering en evaluering geniet min aandag en stelsels is ondoeltreffend.

Die vordering ten opsigte van openbare deelname wissel en word beperk deur 'n aantal uitdagings van dieselfde aard wat die wetgewende sektor ondervind. Die uitdagings het te make met beperkte menslike en finansiële hulpbronne, gebrek aan produkontwikkeling, kommunikasie- en taalprobleme, ongeletterdheidsvlakke, fisiese areas en afstand wat gedek moet word, uitdagings ten opsigte van logistiek en toerusting, asook beplanning en programskedules, en beperkings rakende inligtings- en kommunikasietegnologie. Verder is daar uitdagings ten opsigte van menslike hulpbronne en kapasiteit, die bywoning van toepaslike teikengroepe en verkryging van kwaliteit insette, hoe om die publiek en parlamentslede se apatie teen te werk sowel as die implementering van 'n doeltreffende terugvoermeganisme en stelsel vir monitering en evaluering.

Die ontleding van die bevindinge en identifikasie van die hoofuitdagings verskaf dus genoegsame bewys vir die hipotese van hierdie studie, naamlik dat die strategieë vir openbare deelname wat tans deur die Suid-Afrikaanse wetgewende sektor toegepas word, grootliks ondoeltreffend is en nie veel waarde toevoeg tot verbeterde besluitnemings- en beleidsprosesse nie. Die grondwetlike oogmerk van openbare deelname met die doel om demokrasie te versterk, het dus nog nie gerealiseer nie.

Die studie sluit af met 'n aantal aanbevelings om die geïdentifiseerde uitdagings aan te spreek en sodoende openbare deelname in die besluitnemings- en beleidsprosesse in die Suid-Afrikaanse wetgewende omgewing te versterk.

Die aanbevelings is grootliks verwant aan 'n algemene tendens wat deur die ondersoek na die stand van openbare deelname geïdentifiseer is, naamlik die gebrek aan 'n eenvormige benadering en gestandaardiseerde beleid en strategieë vir die implementering van openbare deelname in die Suid-Afrikaanse wetgewende sektor. Slegs nadat hierdie aspekte aangespreek is, sal dit moontlik wees om huidige toepassings te hersien en nuwe implementeringsaktiwiteite vir die Suid-Afrikaanse wetgewende omgewing te ontwikkel met die mikpunt om doeltreffende openbare deelname te ontlok en sodoende demokrasie in Suid-Afrika te versterk.

ACKNOWLEDGEMENTS

I would like to thank the following individuals and groups for their valued contribution, assistance, support, understanding and sacrifices made:

Edyss Scott

Nicola Scott

Billy and Linda Sterrenberg

Sandisiwe Mangcu

Matome Mawasha

Colleagues at the EU Legislature Support Programme

Professor Erwin Schwella

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1 INTRODUCTION

1.1 INTRODUCTION

This introductory chapter acts as project plan that will guide the study from identifying the research statement to be addressed through the different stages to reaching a conclusion to this thesis.

The motivation and reasons for embarking on this specific study are clarified in this chapter. It also states the basis for conducting the study through context setting, referring to available literature on the topic, giving an overview of envisaged design and methodology options, and alluding to certain findings, analysis and recommendations. Finally, the chapter concludes with an outline of the thesis linked with a breakdown of the chapter content.

1.2 RATIONALE

1.2.1 Contextualising the study

The study falls within the broad theme of public participation. The term 'public participation' is mainly used in relation to public interaction with government and participation in government processes through certain mechanisms. Public participation is encouraged in democracies to enhance decision-making and implementation processes. Public participation strategies and methods are broadly applied by democratic governments across the globe, with the main emphasis on the method of direct participation in specifically participatory democracies.

This study focuses on addressing the quest for improved effectiveness and quality of public participation activities in South Africa, specifically with reference to the legislative arm of the state. Though South Africa is technically a

representative democracy, the legislative sector – consisting of Parliament and Provincial Legislatures – is constitutionally mandated to elicit public participation in directing its decision-making processes. Therefore South Africa also adheres to the principles of participatory democracy as outlined in sections 59(1)(a), 72(1)(a) and 118(1)(a) of the Constitution of the Republic of South Africa (Act 108 of 1996) (hereafter the Constitution).

South Africa is a young democracy which came into being in 1994 after the first fully democratic elections in this country. In its first term (1994-1998) Parliament and Provincial Legislatures focused on establishing democratic structures and repealing discriminatory legislation flowing from the Apartheid era. During the second Parliament (1999-2003) emphasis was placed on the function of lawmaking. Only now in the third democratic Parliament term (2004-2009) is there an active move towards strengthening its core functions by developing strong oversight and public participation strategies within the legislative sector in line with its constitutional mandate.

Historically public participation in the South African legislative sector was limited to undemocratic elections and exclusive public hearings. Since 1994 however, the concept has been explored in much depth in line with the constitutional obligation placed on Parliament and Provincial Legislatures. Many of these institutions have moved forward in passing laws, proclaiming policies and developing strategies for public participation, yet many are still grappling with implementation challenges and instituting mechanisms for monitoring and evaluation of activities and their impact. To date the matter of public participation has been dealt with largely at an individual institutional level within Parliament and each Provincial Legislature given the autonomy of each institution, rather than informing the process from a sectoral perspective. As yet no overarching public participation framework for the South African legislative sector has been compiled upon which Parliament and Provincial Legislatures could base their own strategy for public participation. Thus there has been a lack of a uniform

approach and set of minimum standards for public participation within the South African legislative sector. This gap has been confirmed by a series of Constitutional court rulings relating to criteria and minimum standards for public participation activities, e.g. the *Doctors for Life International v The Speaker of the National Assembly* [2006] CCT 12/05 and *Matatiele Municipality v President of the Republic of South Africa* [2006] CCT 73/05.

Though a standard Draft National Strategic Framework for Public Participation (2006) has since been agreed on among all legislative institutions, there are still many discrepancies and ad hoc application of strategies without assessment of the impact of these in enhancing the democratic process.

Therefore, following a review of the current state of public participation in the legislative sector, the study will proceed to focus on the weaknesses or challenges identified in terms of public participation in the sector taking into consideration the findings and analysis of the review. Finally, the study will seek to make recommendations for an improved public participation framework and effective implementation strategies for the legislative sector.

1.2.2 Reasons for selecting the topic

From a theoretical vantage point there are few academic publications or material focusing on the topic of public participation with specific application in the legislative sector, whether locally or internationally, in developed or developing nations. The completion of this study will therefore contribute to the body of knowledge regarding public participation in the legislative environment. The legislative sector in South Africa is still in the process of establishment and development in terms of systems, structures, models, capacity and best practice, and should benefit from a study tracking its progress and independently assessing its effectiveness in implementing public participation strategies. In many instances legislation or policy with regard to public participation is in place,

yet execution remains problematic and ineffective. This is reflected in the limited and elite participation in committee proceedings. More examples are the lack of meaningful contributions in conducting public hearings with the general public and the lack of a feedback mechanism to inform the public of action taken to address concerns. Many of the practices regarding public participation are not formally documented and this study could contribute in assisting with this process.

At an empirical level there seems to be a lack of structured information gathering and record-keeping of information pertaining to the subject of public participation owing to various factors. In conducting this study, the aim is therefore twofold, namely to engage relevant literature (formally published and studies commissioned) on public participation strategies in the legislative sector as well as recording the expert knowledge, views and opinions of those involved with the subject on a day-to-day basis through appropriate fieldwork. In this manner direct input on the daily realities of conducting public participation activities in the South African legislative environment will be obtained and documented for future use. Institutions have noted a challenge experienced in establishing and maintaining effective information systems and tracking of activities. This in turn impacts on the effectiveness of their decision-making and feedback to the public. Furthermore, the expertise and knowledge resting with public participation practitioners has not been extracted and recorded to ensure continuity, institutional memory and create a platform for sharing of information regarding this area of work. Through the study this aspect will be addressed.

At a practical level, the aim is to conduct a purposeful and useful study with practical application value for the legislative sector. It is envisaged that the fieldwork results and recommendations of the study will be accessed and utilised in this dynamic field of public participation and will be of benefit to all legislative institutions in South Africa. Another reason for executing the specific study is to assist institutions in evaluating their public participation strategies, and

successfully customising these given each institution's unique environment. Lastly, the motivation for exploring this subject matter is mainly to contribute towards improving the sectoral approach to public participation, assessing and increasing the quality and impact of implementation strategies and activities that would ultimately lead to effective and efficient decision-making and as such enhance and strengthen participatory democracy in South Africa.

1.3 PRELIMINARY READING

Flowing from preliminary readings and sourcing of information it has become clear that the topic of public participation with specific application to the legislative sector is a new and underdeveloped field of study, which is understandable given that South Africa is a new democracy with a legislative sphere barely fourteen years old.

There are a number of international sources dealing with the topic of public participation and its application in the developed world and developing nations. The principle of public participation in government processes is clearly adhered to, yet practical application differs from country to country, between different spheres and naturally there are deviations in the application thereof between developed and developing nations. In South Africa there are a limited number of books, journal articles and academic papers attending to the subject of public participation in the legislative environment. Much of the existing literature on public participation relates to the executive arm of government and deals mainly with environmental, local government and health issues.

In relation to the legislative arm of the state, the function of public participation is stated in the Constitution from which Parliament and the nine Provincial Legislatures derive their mandate relating to public participation. To account for the unique circumstances and autonomy of each legislative institution, sets of provincial legislation have been passed or strategies developed, yet no uniform

national approach has been adopted to date. Recently, agreement has been reached on a best practice model for public participation in the legislative sector which is the first step toward a uniform approach to public participation (after fourteen years of democracy). What is still lacking in the sector is the development and adoption of a national strategic framework for public participation and subsequent provincial adaptation.

Public participation, one of the main functions of Parliament and the Provincial Legislatures, forms part of the strategic and business plans of these institutions, yet the implementation of public participation programmes are not vehemently checked through a monitoring and evaluation process and measuring instruments on a continuous basis to ensure an effective, quality public participation process contributing to enhanced decision-making in legislative institutions.

A number of implementation activities such as conducting public hearings, educational programmes and “Taking Parliament to the People” campaigns involving public participation are taking place across the country at regular intervals, yet effectiveness and efficiency are not necessarily one of the main aims of these events. Institutions are also at different levels in their development and implementation of public participation strategies and the level of interaction differs markedly.

The general observation is that public participation is not well-structured per institution, the setting up of adequately staffed and capacitated units for implementation and driving the public participation process is a challenge, adhering to all requests for public input becomes problematic given tight timeframes and vast geographical areas to be covered as well as limited research capacity. Therefore, although public participation activities are taking place, the effectiveness and efficiency of these are questionable in the majority of cases. Participation in committee proceedings, for instance, attracts mainly the

elite and organised groupings while excluding the perspective of people at grassroots level. Mass events such as Youth Parliament elicit excellent participation and inputs, yet follow up action and feedback to communities are lacking. To address this challenge, it is necessary to determine the progress to date in terms of public participation in the legislative sector (i.e. legislation and policies, structures, programmes and resources in place, etc.) before going ahead with making recommendations for improvement and employment of effective monitoring and evaluation mechanisms to determine the quality and choice of inputs received from the public.

1.4 STATEMENT OF THE RESEARCH PROBLEM

1.4.1 Overall purpose of the study

Despite a reasonable body of literature on the subject of public participation, the lack of a sector-wide public participation strategic framework, practical and inclusive implementation strategies and activities, and monitoring and evaluation of the extent and effectiveness thereof in the legislative sector remains problematic. This study will specifically focus on reviewing the current situation pertaining to public participation in the legislative sector, i.e. National Parliament and the nine Provincial Legislatures.

The purpose of this study is to determine weaknesses or challenges experienced with regard to public participation in the sector and compile recommendations for improvement of public participation based on the available literature and a review of the status quo in the legislative sector. This is an invaluable exercise in ensuring quality public participation in order to enhance the decision-making processes within the legislative environment.

In order to arrive at this end product, it is necessary to define the concept of public participation and related concepts, do a literature review focusing on

theory and the international and local context (including review of relevant legislation, and existing policies and strategies), as well as administer a questionnaire to the public participation managers at the various legislative institutions in order to obtain information on the status quo and envisaged strategic interventions regarding public participation. Focus group sessions with public participation managers should also prove useful in assessing and proposing improved implementation strategies for public participation in the legislative sector.

The overarching purpose of the concluded study is to be of practical value and benefit to legislative institutions in the planning, execution and evaluation of their public participation initiatives. The results and recommendations of the study will assist the sector to identify generic and institution-specific challenges and to deal with these constructively. Through the assessment process it is envisaged that institutions will appreciate and realise the importance of the monitoring and evaluation aspect of project management which is generally downplayed or non-existent. Generally the study would also aim to assist the legislative sector in directing its focus with regard to long-term public participation strategic planning and finding creative ways of implementation given limited resources, yet obtaining effective outcomes.

1.4.2 Specific research objectives

Subsequent to this introductory chapter the research design and methodology will be explained. Thereafter the concept of and theory related to public participation will be discussed based on a review of the available literature on the subject and related concepts. The international and local South African context with regard to public participation will also be explored after which certain models and techniques of public participation will be put forward. Following these steps the status quo with regard to public participation implementation (in terms of legislation, policy, structures, resources, practice and assessment) in the

legislative environment will be determined through literature review and fieldwork. This report will include annexes in the form of a comparative table listing the different legislative institutions and a summary of their current state pertaining to the different aspects of public participation as well as an example of the questionnaire used to extract such data from legislative institutions. Once this research objective is concluded, an assessment of the quality and effectiveness of public participation implementation activities will be done and gaps and challenges identified as experienced within the legislative sector. Finally, the main objective of this study will culminate in putting forward recommendations for achieving quality and effective public participation as well as attending to monitoring and evaluation of such activities within the legislative sector.

1.5 OVERVIEW OF RESEARCH DESIGN AND METHODOLOGY

1.5.1 Research design

A qualitative research design has been employed focusing on a case study, namely the South African legislative sector. The research design of the study can be classified as an empirical, textual, hybrid data, medium control study (Mouton, 2001:146). This design type is best suited to use as basis for the study which has focused mainly on content analysis of documentary sources, self-reporting and observation (Mouton, 2001:99). The reasoning used is a deductive approach (Mouton, 2001:117) where certain recommendations have been made or conclusions have been reached based on the statements or views of various authors, public participation managers and practitioners, and documentary data sourced.

1.5.2 Research methodology

The theory, background and concepts related to the research were identified and defined based on a desktop review of literature sources. Data collection was

furthermore based on the feedback from a semi-structured questionnaire (Mouton, 2001:105) distributed to the respective public participation managers of Parliament and the nine Provincial Legislatures for completion. This questionnaire was aimed at identifying the status quo on public participation and challenges experienced in the legislative sector as well as putting forward certain proposals for solutions. It was envisaged that a minimum of one focus group session (Welman and Kruger, 2001:189) with senior public participation representatives from each legislative institution would be held.

The non-probability purposive sampling technique (Welman and Kruger, 2001:63) was used to determine the sample for data collection. This was adequate since a specific group of persons were targeted for focus group session(s) and answering questionnaires, namely the ten public participation managers, i.e. one each from National Parliament and the nine Provincial Legislatures.

Content analysis of relevant documentation and data gathered was the data analysis technique envisaged. This study was based mainly on following the conceptual analysis type of content analysis. The unit of analysis in this research document is the South African legislative sector, i.e. consisting of Parliament and the nine Provincial Legislatures. From the semi-structured electronic questionnaire one could derive the current state of public participation per legislative institution. The focus group session and institution specific questionnaire data alluded to the frameworks utilised, the existing gaps in policy, implementation challenges and monitoring and evaluation mechanisms utilised.

1.6 OUTLINING THE STUDY

This introductory chapter provides a background and overview of the study and acts as guideline to focus the execution of the research. Chapter 2 explains the research design and methodology in detail. The literature review is covered in

chapter 3 and focuses on international and local literature aimed at providing a theoretical basis for the study. Also included in this chapter is the definition of relevant concepts and scoping of the study within the available resource context and a brief overview and examples of the international context relating to public participation.

Chapter 4 focuses on the local South African context with regard to public participation, more specifically from a legislative sector perspective. Models for public participation are also investigated and an overview of general implementation strategies is given. Chapter 5 will present the findings from the investigative study into the state of public participation in the legislative sector as at present based on the questionnaire (annex 1) feedback received. The data has been processed into a comparative table format displaying the progress and discrepancies between the different legislative institutions. Chapter 5 will also focus on assessing the effectiveness of public participation implementation strategies from the findings presented as well as identifying challenges experienced and possible gaps in implementation. Chapter 6 will conclude with an overview of the main conclusions of the study linked with the hypothesis, literature review done and stated methodology. Finally, recommendations for improved quality and effectiveness in public participation implementation will be put forward.

2 RESEARCH DESIGN AND METHODOLOGY

2.1 RESEARCH DESIGN

2.1.1 Hypothesis, key concepts and variables

The hypothesis (Welman and Kruger, 2001:11) of this study is that the majority of public participation strategies employed in the South African legislative sector at present are ineffective and extract poor quality inputs that do not enhance the decision-making and policy processes.

A qualitative research design will be employed during this study which relies on description and thorough understanding of the field of study as well as obtaining of the insider perspective through participant observation (Welman and Kruger, 2001:184). The study is narrowed down to focus on the legislative sector consisting of Parliament and the nine Provincial Legislatures as a case study. Clear conceptualization, contextual detail, in-depth description of context, multiple sources of data collection and a specific type of analytical strategy are important aspects which form part of the general design of case study research (Welman and Kruger, 2001:182-3). These principles are adhered to in this study with the use of multiple data collection sources, a comparative data set and a SWOT analysis approach to assessment.

The research design and methodology applied will aim to provide evidence for the validity of the hypothesis and find solutions to address the inherent problems. The research can therefore be classified as an empirical study which will focus on addressing the hypothesis through a combination of fieldwork and engagement of relevant literature on the issue. Furthermore, the study can be characterised as being a textual, hybrid data, medium control study (Mouton, 2001:146). It is textual given that much of the information extracted will be from documentary sources collected and can be regarded as a medium control study

as the researcher will have a fair degree of control over the research process, yet might experience challenges in conducting focus group sessions and obtaining questionnaire responses timeously. Lastly, the study will be based on hybrid data (Mouton, 2001:146) since existing documented information and newly gathered data will be combined to present findings, recommendations and conclusions to the study. This design type is best suited to use as basis for the study which will focus mainly on content analysis of documentary sources, questionnaires, observation and focus group session results.

2.1.2 Issues of measurement

To counter the probability of subjective inputs through individual responses, certain questions will be qualified by a rating system which may range from poor or failed to being excellent or successful (see questionnaire in Annex 1). The majority of questions as per the questionnaire are also quantitative to elicit facts, with few evaluative questions present to extract opinion and proposals for addressing challenges.

2.1.3 Sample design and methods

Given the qualitative nature of the research project, the non-probability sampling (Welman and Kruger, 2001:63) method will be used to determine the sample for data collection purposes. The legislative sector and specifically the field of public participation is an area of specialised knowledge, skills and expertise, therefore purposive sampling will be the most meaningful in this case. This entails that a specific group of persons will be targeted for answering questionnaires. The criteria for selecting the respondents in this sample relates to their specialised knowledge, skills and experience in the field of public participation and is limited to the identified group given the time constraints of the project. For this study, the purposive sample for focus group sessions and administering the semi-structured questionnaire will be a very specific selection of participants, namely the ten

public participation managers, i.e. one each from Parliament and the nine Provincial Legislatures respectively.

The engagement of the public participation managers follows naturally from their senior management position where they are responsible for implementation of public participation strategies at a national or provincial level and the strategic knowledge and experience of public participation that resides with a person in such position. These managers possess institution specific expertise, memory and knowledge and can contribute a wealth of information mainly unrecorded thus far.

The input of Secretaries to Legislatures and Parliament (administrative heads) through a strategic planning workshop (Misty Hills, 2007) is a strategic move to obtain a sectoral overview or understanding of the legislative environment and the significance of public participation as part of their mandate for implementation. These managers are ultimately responsible for driving the process of public participation within their institutions as well as taking into account the bigger picture pertaining to strengthening of the legislative sector in the interest of a stronger democracy in South Africa. They will provide a broader, more strategic perspective on the matter of public participation and its effectiveness in the legislative sector as a whole. Their collective inputs are reflected in the Legislative Sector Policy and Strategic Framework (2007) which has been adopted as a working document by Parliament and the Provincial Legislatures.

2.2 RESEARCH METHODOLOGY

2.2.1 Data collection methods and fieldwork

2.2.1.1 Full details of process

The first step in the data collection process entailed the sourcing of literature from documentary sources such as academic books, journal articles, reports, web references and internal documents. These were used to prepare the literature review and obtain a sense of public participation theory and application globally and locally. Next the electronic survey questionnaire (Mouton, 2001:105) was constructed to collect primary data on the state of public participation in the legislative sector. The questionnaire was piloted (Welman and Kruger, 2001:141) with two respondents with intrinsic knowledge of the public participation field (10% of the selected sample size). After piloting and finalisation of the questionnaire content, a focus group session (Welman and Kruger, 2001:189) was set up with the respondents in order to administer the questionnaire. Eight of ten questionnaire feedbacks were received immediately after the focus group session while another was completed within four weeks. The questionnaire data was then processed into a table format comparing information of the different legislative institutions. Subsequent to this step, the findings on public participation implementation in the legislative sector were derived from this data set followed by an analysis thereof. Telephonic confirmation or updating of certain data was done prior to finalisation of the conclusions. During this period the researcher engaged with the respondents in a second focus group session to assess progress and identify possible solutions for challenges noted. Finally, certain conclusions and recommendations were made in support of the objectives of the study.

2.2.1.2 How to gain access to respondents

The researcher had ready access to the target sample selected through the position of employment held. The researcher holds the position of project manager of donor funding to legislative institutions which entails close cooperation, coordination and regular liaison with Parliament and the nine Provincial Legislatures at a strategic and operational level. No risk was foreseen in setting up a suitable schedule for the administration of questionnaires and

executing a focus group session for data collection purposes. From an ethical perspective, no personal information has been disclosed in this study and respondents were therefore afforded confidentiality and anonymity. Permission was also obtained to undertake the research and utilise relevant gatherings to conduct focus group sessions in order to collect the necessary primary data. Respondents were willing participants during all data collection activities (Mouton, 2001:243).

2.2.1.3 Data collection methods and procedures

Below is a discussion of the data sources and related data collection methods that were regarded as relevant for this qualitative study:

- a) Documentary sources (literature review) (Mouton, 2001:99) – These are textually-based, and were available in electronic and physical format. The sources consulted cover a period ranging from approximately 1977 until 2008, i.e. evidence produced during the recent past (last thirty years).

Data collection of the literature sources was done via library and web searches and journal articles (electronic), textbooks on the subject, newspaper articles, research reports and legislation relating to public participation were obtained in this manner. The researcher also had access to the internal documents on public participation of the various legislative institutions.

- b) Observation – The researcher has been a participant observer (Welman and Kruger, 2001:184) at relevant events pertaining to the discussion of public participation in the legislative sector.

For this study specifically, the data collection method of observation was employed. This method is certainly subjective given that the researcher was an outside and participant observer and may have conveyed own

views based upon observation during focus group sessions with respondents as well as other meetings and events where public participation in the legislative sector has been the topic of discussion, e.g. national conferences on deepening public participation and the involvement of civil society in legislative processes.

- c) Self-reporting (Mouton, 2001:99) – In terms of self-reporting as a data source, two methods of data collection were applied, namely an electronic survey questionnaire and focus group sessions.

Firstly, a semi-structured questionnaire (Mouton, 2001:105) was developed, piloted and finalised after which the electronic survey questionnaire was administered to the targeted respondents to obtain information on the current situation pertaining to public participation in the South African legislative sector. Ten respondents were involved in questionnaire completion or feedback, i.e. the public participation managers of Parliament and the nine Provincial Legislatures. Where necessary, certain data collected through the questionnaire feedback was followed up and the accuracy thereof confirmed or updated with the respondents via telephone.

Secondly, the researcher had the opportunity of conducting a semi-structured focus group session (Welman and Kruger, 2001:189) in a workshop setup to administer the above-mentioned questionnaire to the sample of respondents. A second focus group session was held after analysis of the data set to discuss progress as well as possible solutions for the challenges identified in relation to public participation in the legislative sector. This information has contributed to expand, confirm and validate the information obtained via the semi-structured questionnaire.

Data coverage was not from a complete “population” but from a sample of “subjects” or respondents as per 3.1.3. The decision to limit the data collection to a selected sample was derived from the fact that the area of public participation is a specialist field. Therefore, given the time constraints and limited financial resources for fieldwork, it would be most meaningful to extract information from the managers of units dealing with public participation in legislative institutions, since they have intrinsic knowledge in this field and there was the assumption that they would be able to give an overview and detail information which is accurate, precise and valid.

During this study, the researcher developed new measuring instruments for primary data collection, namely constructing a template for a focus group session as well as a semi-structured electronic survey questionnaire for use in extracting relevant data. The researcher had direct access to certain data sources for literature review and analysis, as well as contact with the respondents to facilitate questionnaire administration, focus group sessions and observation and permission was obtained to utilise certain sources and information, especially with regard to the questionnaire construction, with acknowledgement. The information was largely accessible in electronic format.

2.2.1.4 Dates and settings of data gathering

Apart from the ongoing process of data collection from documentary sources, a focus group session for administering the electronic survey questionnaire to respondents was arranged for December 2007. The questionnaire administration took the form of personal administering to the target sample at a scheduled workshop and feedback by the identified sample of ten respondents was received promptly. A second focus group session was held with the respondents in October 2008 to discuss the results from the questionnaire responses. Throughout the process the researcher has aimed to record detailed field notes.

2.2.2 Data capturing and editing

Data capturing took place in the form of converting textual data into electronic format for use, securing written responses to electronic survey questionnaires, recording notes of focus group sessions conducted and electronic capturing of relevant literature. Measures taken to minimize errors were recordkeeping and electronic backup of the completed questionnaire responses, the questionnaire itself, documentation and notes of focus group sessions.

2.2.3 Data analysis and interpretation

Content analysis of data gathered was the main data analysis technique utilised. This study was based mainly on applying the conceptual analysis type of content analysis. The unit of analysis in this research document was the South African legislative sector, consisting of Parliament and the nine Provincial Legislatures.

From the semi-structured electronic questionnaire the researcher was able to derive the state of public participation per legislative institution and display it comparatively. The SWOT (strengths, weaknesses, opportunities and threats) analysis technique (Wikipedia, <http://en.wikipedia.org/wiki/SWOT-analysis>) was also employed for assessing the findings derived from the questionnaire feedback as well as during the second focus group session. The focus group session and institution specific documentation alluded to the frameworks utilised, the existing gaps in policy and implementation, etc. Recommendations on the possible solutions for addressing weaknesses or challenges relating to public participation activities in the legislative sector were derived from various academic publications, journal articles, participant observation and information from public participation practitioners within the sector. On interpretation of the data certain patterns or trends in the area of public participation were identified which proved valuable in deriving recommendations for increased effectiveness

in implementation of public participation strategies in the South African legislative environment.

2.2.4 Limitations of the study

The study does not make provision for investigating current external stakeholder views. It will draw from available reports of conferences on public participation in the legislative sector held with the aim of comprehensive stakeholder involvement in the form of broad civil society, non-governmental organisations, and community based organisations to obtain an external stakeholder perspective.

As Mouton (2001:101) warns, a possible bias might be reflected flowing from the use of non-probability sampling techniques for this study. Additionally, with the data collection method of participant observation as envisaged, one may record the bias of the observer or interviewer as well as the subjective views of the questionnaire respondents or focus group participants. Last-mentioned is called the “social desirability effect” (Mouton, 2001:106) where the subject may portray a situation in a more positive or negative light given the personal perspective than may be the reality.

The reasoning used in this study is a deductive approach (Mouton, 2001:117) where certain recommendations are made or conclusions are reached based on the statements or views of various authors, respondents and focus group participants.

Concepts that are critical to the research will be identified and defined based mainly on the literature study. The definitions of certain of the relevant concepts are fixed, yet others – such as the broad theme of public participation and democracy – may present a number of different perspectives and thus varied definitions.

Questionnaire and focus group session results may reflect a measure of subjectivity given that each individual is responding from professional and practical experience which may vary significantly in content, time and scope.

2.3 SUMMARY

In summary it is clear that the research design and methodology as envisaged and described in this chapter is fairly simplistic and therefore no risk or major obstacles are foreseen in carrying out the study.

Subsequent to the introduction and the stated research design and methodology, the next chapter presents a review of relevant literature on public participation by defining critical related concepts, creating a theoretical perspective and providing a picture of the international context with regard to public participation.

3 LITERATURE REVIEW

3.1 PUBLIC PARTICIPATION

3.1.1 Introduction

In this chapter the literature relating to public participation will be reviewed and the main concept of public participation will be defined and investigated in order to provide a basis for conducting the rest of this study. In addition concepts closely related to the topic of public participation will be defined and clarified.

Furthermore, the theoretical context of public participation as an essential element of democracy and the rationale for public participation will be discussed. The rationale touches on aspects such as the role and purpose, characteristics, benefits and challenges of public participation. Lastly, the chapter will be concluded with an international perspective of public participation in developing and developed nations as well as with regard to international agreements. A number of publications, i.e. textbooks, recognised journals and industry-related reports will be utilised as part of the investigation into the topic of public participation.

3.1.2 Defining public participation and related concepts

The proposed study will focus on determining the state of public participation in the South African legislative sector to provide evidence for the research hypothesis. Following this investigation, recommendations for improvement of public participation implementation strategies will be made which could contribute to a strengthened democracy and greater legitimacy and confidence in the work of Parliament and Provincial Legislatures. A long-term effect of such action will also be an increased sense of citizen empowerment.

Therefore, this chapter will ensue with a definition of democracy and description of the various types of democracy. The concept of public participation is the main topic of this study and requires comprehensive definition and description as a major element of participatory (deliberative) democracy. Further concepts related to public participation and democracy in this study are 'public' and 'legislative sector' and these will also require clarification.

3.1.2.1 Democracy

Definition

In his publication, Brynard (1996:53) adopts the definition of democracy suggested by Ranney, as it emphasises the importance of public participation in government activities. Ranney (1971:76 as cited in Brynard, 1996:53) defines democracy as "a form of government organised in accordance with the principles of popular sovereignty, political equality, popular consultation, and majority rule".

Types of democracy

Direct democracy – "The theory of *direct democracy* is based on the premise that 'the people' assemble and every citizen is directly involved in every government decision" (Calland, 1999:61). Examples of direct democracy are voting in elections or referendums. With the sizeable populations of democracies today, opportunities for true direct democracy are limited.

Representative (or parliamentary) democracy – Calland (1999:62) states that representative democracy assumes that elected representatives must represent the views of the people – the electorate – and "representation is defined as a limited mandate where the representative is empowered to speak or vote, reflecting the view of the constituency".

According to Carrim (2001:107) the system of representative democracy tends to "homogenise intra-group differences in the interest of manageability". This

political system therefore makes it difficult to find effective ways for the public voice to be heard and to give them freedom of expression of their own varied interests despite their differences.

“In an indirect, or representative, democracy, elected representatives are accountable to the electorate – i.e. to those citizens who vote” (Briand, 2007:5). What it does mean is that, “whether they are members of local, regional, or national legislative bodies, elected representatives have a *duty to hear and heed* to the fullest extent feasible the concerns, needs, interests, beliefs, experiences, and priorities of all members of the public” (Briand, 2007:7).

Participatory democracy - The South African Constitution (sections 59, 72 and 118) asserts the need for the realisation of a *participatory democracy*, yet the rationale goes far beyond the Constitution. “It is important not to underestimate the growing crisis in other pluralist, liberal democracies throughout the past century when declining voting levels, lack of real political choice, rise of shadow security governments and decay in popular trust in the electoral process have prompted the need for renewing public participation. Public participation processes strengthen institutions of representative democracy, democratising those institutions” (Calland, 1999:62).

“In the most pragmatic sense, in a participatory democracy the public is actively involved in the decision-making processes of the government. Within this system, two forms of key public ‘actors’ exist: the citizenry, as represented by parties, and interest groups or stakeholders. In this model, public participation negotiates a meaningful exchange between the public actors and government” (Calland, 1999:62)

3.1.2.2 Public participation

According to Kotzé (1997:37), the concept of people’s or public participation is

the main emphasis of the people-centred development approach and may refer to the following aspects, i.e. involvement, communication, a new attitude from government, reciprocal influence.

Dauids (2005:19, 29) attempts a definition of public participation “as an inclusive process aimed at deepening democracy through formal participatory mechanisms...” He advocates that authentic public participation should entail participation in decision-making, implementation, monitoring and evaluation, as well as in sharing the benefits of governance and development outputs and outcomes.

Meyer and Theron (2000:1) also begs the question ‘what is public participation?’ yet conclude that *public participation* defies attempts to define the concept and that there is no one universally accepted definition. “With regard to development ... participation includes people’s involvement in decision-making processes, in implementing programmes, their sharing in the benefits of development programmes and their involvement in efforts to evaluate such programmes” (Meyer and Theron, 2000:1).

According to Creighton (2005:7) “public participation is the process by which public concerns, needs, and values are incorporated into governmental and corporate decision-making. It is two-way communication and interaction, with the overall goal of better decisions that are supported by the public”.

Creighton (2005:7) summarises the difficulty in capturing the essence of public participation by noting that there are numerous definitions as shown above, yet most include the following elements:

- “Public participation applies to administrative decisions.
- Public participation is not just providing info to the public – interaction is an important component.
- There is an organised process for involving the public.

- Participants have some level of impact or influence on the decision being made”.

Creighton (2005:8) notes that the word *participation* has many different meanings and is best understood and illustrated as a continuum.

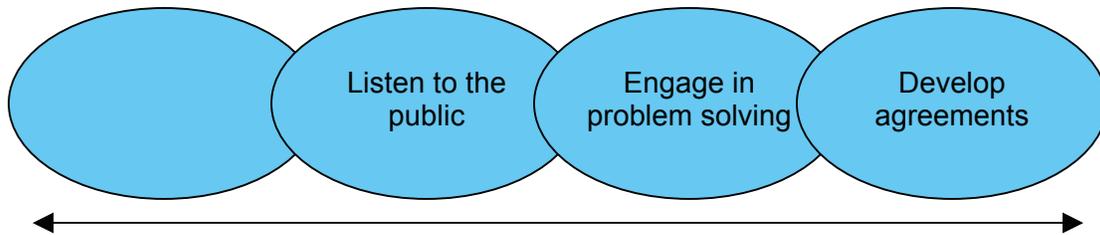


Figure 3.1: Continuum of participation

From: Creighton (2005:9)

3.1.2.3 Public

According to Thomas (1995:1) the ‘public’ in public participation can “include individual citizens, community groups and interest groups”. Masango (2002:53) confirms that members of the public could be defined as “individuals, members of groups, or group representatives”.

Creighton (2005:22-23) goes further to say that “the public is different from issue to issue. Public participation programs are always involving a subset of the public... The reality is that people participate when they perceive themselves to have significant stake in the decision being made”. Public participation should therefore involve the participation of members of the public who are involved and interested in the issue at stake. As Craythorne (1997:99) aptly puts it, “... the secret of public participation is to ensure that the relevant ‘publics’ are approached on any particular issue”.

As displayed above, authors have tried various ways of describing constantly shifting definitions of the public. The term stakeholders is now used to describe those who choose to involve themselves in a particular issue.

3.1.2.4 Legislative sector

Chapter 4, section 43 of the Constitution states that the legislative authority in South Africa is vested as follows:

- “43. In the Republic, the legislative authority -
- (a) of the national sphere of government is vested in Parliament, as set out in section 44;
 - (b) of the provincial sphere of government is vested in the provincial legislatures, as set out in section 104; and
 - (c) of the local sphere of government is vested in the Municipal Councils, as set out in section 156”.

In South Africa, “there is one national Parliament and a Provincial Parliament for each of the nine provinces. The national Parliament has two houses – the National Assembly and the National Council of Provinces (NCOP). The two houses of Parliament have distinct functions. The role of the National Assembly is to represent the people, ensuring government by the people. It does this by participation in the national legislative process and providing a national forum for raising issues. The NCOP’s role is limited to representing provincial interests at the national level. It does this by participating in the national legislative process and providing a national forum for public consideration of issues affecting the provinces” (Calland, 1999:9).

For the purposes of this study, the researcher will focus on the national and provincial sphere of legislative authority and this will be termed the “legislative sector” throughout the study. The legislative sector includes the National Parliament of the Republic of South Africa as well as the Provincial Legislatures

of the Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, and the Western Cape.

3.1.3 Theoretical background and rationale for public participation

As proven by the definition of concepts in section 3.1.2, public participation is inextricably linked to democracy, and more specifically participatory democracy. The type of participation and extent thereof may vary given the different types of democracies one finds ranging from direct to representative to participatory democracy. The 'public' in public participation may also vary depending on a number of factors, i.e. topic for discussion, geographical area, format of event, etc. Bratton *et al* (2005:263) notes that "theorists have long recognised that political participation is a multifaceted concept that embraces a variety of forms, including voting, campaigning for candidates, lobbying, and contacting leaders, and (when all else fails) protesting".

3.1.3.1 Theoretical background to public participation

In order to discuss public participation it is necessary to trace the origins of democracy and the role of participation in early democratic societies. The essentiality of public participation to the continued existence of democracy can clearly be seen when the ancient concept of democracy is considered (Stewart, 1976:XI as cited in Clapper 1996:52). According to Rejai (as cited in Clapper, 1996:52) the word 'democracy' originally referred to the type of government in which the power to rule resided in the people and it refers to the governmental system of the city states of Athens at the time of Pericles. "Under this system all-important decisions affecting the citizens of Athens were made directly by the *ekklesia*, which was the face-to-face assembly of all the citizens" (Ranney, 1971:73 as cited in Clapper, 1996:52). The outstanding characteristics of Athenian democracy, also known as participatory democracy, were public control

of public decisions and maximum public participation in making the decisions and in holding public office (Brynard, 1996:52).

Given the above excerpt from Brynard it is clear that participation is a centuries old notion that is rooted in the first democracy proclaimed in Ancient Greece. Even then it was understood that democratic rule was not possible without hearing the people's voice. Over time the principle of participation was entrenched, formally or informally, in all democracies across the globe.

In modern society "democracy is widely believed to be the regime that of all regime forms makes the best provision for public participation by institutionalising rule *by, for, and of, the people*". However, given the various types of democracy that has emerged, "one has to recognise that not all proponents of democracy would necessarily see public participation as a key indicator of democracy" (Nel and Van Wyk, 2003:55).

In this regard Parry and Moyser (1994:44-46) distinguishes between 'realist' theories of democracy that emphasise representation, responsible leadership, and elite responsiveness as the key elements of democracy, and theories that see direct participation as the *sine qua non* of democratic practices.

"The first set of theories point out that the degree of direct democracy that was exercised by citizens in the relative small assemblies of ancient Athens is no longer possible in large, complex societies". Thus, "to the extent that the 'realist school' of thinking about democracy does recognise public participation as a feature of democracy, they reduce it to only one manifestation, namely voting" (Nel and Van Wyk, 2003:55). This theory shows that "not everyone is convinced that democracy should necessarily try to involve the public in intensive ways. Elite models of democracy understand that a vote into office is essentially a political blank cheque for elected representatives to proceed as they see fit" (Ballard, 2007:17). "In this model there is little need to go to the trouble of

facilitating the participation of citizens since representatives have been authorised to act on their behalf” (Young, 2000:128).

A second set of theories emphasise, on the other hand, that democracy in its original sense of ‘rule by the people’ is hardly conceivable without a whole range of participatory activities through which the public not only vote for the sake of appointing and monitoring representatives, but through which they become *political* citizens in the full sense of the word (Nel and Van Wyk, 2003:56). Such is the enthusiasm for participatory government that it is sometimes seen as a substitution for representative democracy (Cohen and Arato, 2003:276). “Rather than replacing representative democracy with participatory democracy, they advocate that systems of representation be deepened so that they are more accountable and develop stronger relationships with their constituencies” (Young, 2000:125). Therefore the uptake of participation is based on a conviction that representation requires participation to work well.

“In contrast to the elite model, elected representatives are not seen simply as trustees who can proceed as they see fit, but also as delegates who have mandates from the constituencies to which they are accountable” (Young, 2000:128 citing Pitkin). The expanding body of writing on deliberative (participatory) democracy therefore attempts to find ways in which the public can become increasingly involved in democratic practice.

As illustrated above the concept of public participation “features strongly in the debate about democracy and in a push for a more direct or participatory form of democracy to involve wider sections of the population more directly in decisions affecting them” (Dahl, 1990:62). In this regard Barber (1984:151) talks about ‘strong democracy’ and calls for active citizens to govern themselves, “not necessarily at every level and in every instance, but frequently enough and in particular when basic policies are being decided and when significant power is being deployed”. The participatory form of democracy further maintains that the

exercise of power is good for the public. In this sense, democracy would allow the public, and not only elites, to acquire a democratic political culture (Cohen and Arato, 2003:7).

The difficulty relating to participation is that many democratic societies have a high degree of apathy among the voters. "If enfranchised people actually failed to vote in stable democratic countries in the second half of the twentieth century, this actuality sharply confronted theoretical assumption about the efficacy of participation in a democracy. Consequently, electoral apathy came to be seen as essential in maintaining stability whilst mass participation was associated with societal disorder and a tendency towards totalitarianism" (Kornhauser, 1957 in Deegan, 1999:5).

This debate returns to the theoretical assumptions underpinning much of participatory theory, that is, that the very act of participation is somehow educative and politically significant. Greater participation in political spheres is seen as enhancing democracy, but mechanisms may be at play within a democratic state which affect public participation (Deegan, 1999:153). In the South African context there is a tendency towards elite participation and representation by organised civil society, while the individual rarely participates. However, "social movements reject democracy as operating through elected representatives only and pursue a strategy of direct democracy which seeks ongoing accountability" (Ballard, 2007:20).

Today public participation is increasingly considered standard practice and is regarded as an essential characteristic of and condition for a successful modern democracy. This is supported by Pimbert and Wakeford (2001:23 in Creighton, 2005:2) in stating that "democracy without citizen deliberation and participation is ultimately an empty and meaningless concept". The essential principle of a democracy is that the public be enabled to participate should they choose to do so, through effective channels of communication and civil society with the

ultimate mark of liberal democracy being the freedom to choose to participate or not (Deegan, 1999:153). The type of participation envisaged in a participatory democracy, namely ongoing interaction between the people (public) and their elected representatives in all decision-making is seen as contributing most to the enhancement of democracy in a society.

Participatory democracy is sometimes counter-posed to representative government. “But strategies to improve public participation can also be thought of as reinforcing and strengthening representative government – by providing public representatives with information they would not otherwise have but which is necessary for effective and responsive decision-making. Strategies to facilitate and promote public participation are also critical in ensuring the participation of marginalised and under-resourced constituencies in decision-making by representative bodies. In the absence of special measures, public decision-making is also vulnerable to ‘capture’ by special interests” (Cachalia, 2006).

As De Villiers (2001:135) states there are many flawed and inadequate efforts, yet the long-term benefits [of participation] far outstrip the setbacks. One positive aspect is a heightened sense of public participation being integral to democracy. Modern democracies which employ public participation as standard practice are perceived as more democratic, efficient and more likely to remain successful than democracies where old “top down” methods are used.

In summary, then, “the challenge is to conceive of modes of participation that would provide citizens with the necessary incentives to participate, would empower them to do so and would provide the space within which they can discover what their real interests are. The proponents of what has become known as ‘participatory, deliberative democracy’ believe that these three requirements can be met if the locus of decision-making is radically *decentralised* and brought closer to the citizens, and if *deliberation* becomes the mode of interest articulation and mediation” (Nel and Van Wyk, 2003:56-57).

3.1.3.2 Rationale for public participation

a) Role and purpose of public participation

Why is so much emphasis placed on public participation and what is its relevance globally and in the South African situation? Public participation is beginning to be viewed as an integral part of democracy itself. Traditionally, the defining characteristic of democracy is the right to elect the leaders of the government. “Democracy is intended precisely to give the people power over choices about the ultimate aims and goals of government action” (Creighton, 2005:17). According to Gildenhuis, Fox and Wissink (1991:124) “a situation that encourages and/or allows participation in general elections only is, therefore, not entirely democratic. In fact, public participation in decision-making is an imperative for a democratic government”. Therefore, in any democratic country, public participation in the policy-making and implementation processes is a necessary requirement.

“Public participation creates a new direct link between the public and the decision-makers in a bureaucracy. At its most basic level, public participation is a way of ensuring that those who make decisions that affect people’s lives have a dialogue with that public before making those decisions. From the perspective of the public, public participation increases their influence on the decisions that affect their lives. From the perspective of government officials, public participation provides a means by which contentious issues can be resolved. Public participation is a way of channelling these differences into genuine dialogue among people with different points of view. It is a way of ensuring genuine interaction and a way of reassuring the public that all viewpoints are being considered” (Creighton, 2005:17).

Dauids (2005:12) furthermore rightly maintains that the “key factor in preserving democratic practice may be participation. Participation rates – at least through legal channels – are one indicator of the legitimacy of the system. As long as

people consider it worth their time to participate, they are assumed to have some level of efficacy, that is, belief that participation matters (and that they still consider the system legitimate)". This statement is supported by Midgley *et al* (1986:5) in noting that the survival of government depends, among other things, on its legitimacy and such legitimacy is mainly derived from public support. "Public involvement in policy-making and implementation makes a positive contribution to government legitimacy" (Fagence, 1977:340).

Public participation is an essential ingredient for good governance in any democratic country. The role of public participation in facilitating the interaction between members of the public on the one hand and policy-makers and implementers on the other, shows that it should be encouraged and preserved. This becomes more apparent when considering the role of public participation in democratising and controlling the making and implementation of policy, facilitating the exchange of information between the government and members of the public, promoting responsiveness to public needs, facilitating the processes of policy implementation and community development (Masango, 2002:63).

However, Beierle's (1998:4-5) 'social goals' framework incorporates all the evaluative measures discussed above in a more compact form. The following six goals (or purpose of public participation) are distinguished: 1) educating and informing the public; 2) incorporating public values into decision-making; 3) improving substantive quality of decisions; 4) increasing trust in institutions; 5) reducing conflict; and 6) achieving cost-effectiveness.

b) Characteristics of and criteria for public participation

De Villiers (2001:159-160) maintains that the basic principles of public participation are proactivity, inclusiveness, shared responsibility, openness throughout the process, access, transparency, and respect for public input. These principles point to some key aspects required to promote successful public

participation policies and practices, which require firm, continuous commitment from government and civil society.

“It must be emphasized that public participation requires more than simply following a set of procedures; it involves public authorities genuinely listening to public input and being open to the possibility of being influenced by it. In other words, the public input should be capable of having a tangible influence on the actual content of the decision. From this, it can be deduced that public participation should be timely, effective, adequate and formal, and contain information, notification, dialogue, consideration, response” (Aarhus Convention, 1998:86).

According to Creighton (2005:23) the one obligation of public participation is that the larger public must be kept informed of the possible impacts of a decision, so that they can decide whether they wish to become involved in the public participation process. Therefore it should be standard practice to establish and maintain an effective public information programme as a precondition for the public participation programme. Secondly, the public participation programme must be highly visible and accessible to the public so that should they decide to participate, they have a clear understanding of how and where they can participate.

The International Association for Public Participation has adopted a set of ‘Core Values for Public Participation’ that are intended to serve as the warrant and the touchstone for public participation principles, priorities, and practices:

- “The public should have a say in decisions about actions that could affect their lives.
- Public participation includes the promise that the public’s contribution will influence the decision.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.

- Public participation promotes sustainable decisions by recognising and communicating the needs and interests of all participants, including decision-makers.
- Public participation seeks input from participants in designing how they participate.
- Public participation provides participants with the information they need to participate in a meaningful way.
- Public participation communicates to participants how their input affected the decision” (Briand, 2007:1).

c) Benefits of public participation

Creighton (2005:18-19) lists the following benefits of public participation:

- “Improved quality of decisions.
- Minimizing cost and delay.
- Consensus building.
- Increased ease of implementation.
- Avoiding worst-case confrontations.
- Maintaining credibility and legitimacy.
- Anticipating public concerns and attitudes.
- Developing civil society”.

In support of the above, Beierle and Cayford’s research concluded that “the case study record of the past 30 years paints an encouraging picture of public participation. Involving the public not only frequently produces decisions that are responsive to public values and substantively robust, but it also helps to resolve conflict, build trust, and educate and inform the public about the environment” (Creighton, 2005:20).

Moreover, Theron, Ceaser and Davids (2007:2) maintain that public participation strategies have two main benefits for the democratic policy-making process, namely first, participation leads to better policy outcomes; and second,

participation assists the public in developing the capacity for improving their lives. Also, “taking the input of the public into account during the processes of policy-making and implementation is important, since it contributes towards combating dictatorship and promotes principles of good governance” (Masango, 2002:55-56).

Public participation furthermore “paves the way for the process of policy implementation to run smoothly” (Midgley *et al*, 1986:34) and “fosters a sense of ownership and commitment to the outcomes of the process” (Clapper, 1996:76). “It can therefore contribute to policy implementation by building support and eliminating resistance. In addition, it could save costs by minimising and/or eliminating the need for policy implementation to be policed” (Masango, 2002:59). “Importantly, continuous public participation in policy-making and implementation could serve as a control mechanism to limit the abuse of authority. For instance, an informed citizenry could ensure that public officials use their discretion in a responsive and responsible manner” (Clapper, 1996:76).

Adding to the multiplicity of benefits already mentioned, public participation offers even more, which includes “the provision of valuable information about the needs and aspirations of local people to public authorities in order to initiate and implement informed decisions. Participation also offers a platform through which to express civic interest with the aim of influencing public managers (as well as councillors) to adopt a particular direction of thinking. Through public participation the general public is informed, involved and educated” (Hanyane, 2005:267). Also, community institutions are created which will enable the public to bridge the existing gap between themselves and public authorities.

“Public participation is also instrumental in that it consolidates democratic beliefs (commitment), practices and principles that would otherwise not be observed by the majority of citizens in a democratic state. In practice, public participation constantly reaffirms one’s identity and feeling of self-worth and dignity as a

citizen, thereby giving effect to the principle of basic equality” (Lawrence and Stanton, 1999:236). Public participation as the promoter of the realisation of civic interest has the capacity to enhance and consolidate the democratic culture of any aspiring nation (Hanyane, 2005:267). De Villiers (2001:99) adds that public participation in the legislative and oversight process is essential for long term democratic stability. It enhances legitimacy and creates public support for legislation and government policies, thereby ensuring democratic stability.

But perhaps the greatest long-term benefit is that public participation is an enormously important way of empowering communities. By engaging with governments on issues that affect their lives, civil society is brought into the mainstream and acquires skills, knowledge and capacity. It signals a new way of thinking about governance and democracy (De Villiers, 2001:135).

d) Challenges and limitations of public participation

Greyling (as cited in Bradshaw and Burger, 2005:48) points out that participation is not necessarily aimed at building consensus, but rather at ‘generating a diversity of opinions and views’. This in itself presents a huge challenge. It is furthermore problematic that public participation is too often just conducted as a ‘therapy’ for stakeholders while the crucial decisions have already been made.

Jansen (2002:208) has noted that internally, the “processes of participation had a number of significant limitations: not all groups were able to participate equally due to differentials of access, power and expertise; and the views expressed in various final reports often did not reflect exact opinions of stakeholders and participants”. Creighton (2005:2) emphasises that there are many challenges in converting the concept of public participation into the difficult reality of everyday interaction between the state, companies and the public, for example the reality of budgets and legal constraints. There is a need to make quick decisions and to base decisions on the best available scientific and technical information. There are some of the external political realities.

“Compounding the challenges relating to public participation is the negative attitude toward participation, which stems from two chief sources: lack of clarity in the definitions used to describe public (or citizen) participation, and the use of inappropriate strategies to achieve it” (Theron, Ceaser and Davids, 2007:2).

e) Public participation in practice

According to Masango (2002:60) the factors that could contribute towards the realisation of an effective and sustainable process of public participation include “cultivating a culture of participation, public education, organising for participation, capacity-building for participation, reforming attitudes towards participation, utilising appropriate methods of participation, and publicising local government affairs”.

This is confirmed by De Villiers (2001:98) who asserts that effective public participation is dependent on strategies aimed at education, information and outreach in order to provide the knowledge and means to access seemingly distant and incomprehensible institutions. Such strategies are focused on bringing people on the margins and periphery of society into the direct political process, creating a system of governance that is inclusive, responsive and transparent. The objective is to consolidate a form of democracy that engages with and recognises the interests of all people.

f) Conclusion

Clearly, despite theories to the contrary as shown above, public participation is here to stay in modern democracies, though the extent of its application may vary. It remains a vitally important aspect of democratic practice in especially developing nations to increase legitimacy, contribute to empowerment and strengthen democracy. Participatory democracy is viewed as the type of democracy which is essential in ensuring a high level of legitimacy and stability of democracy in developing countries such as South Africa. In the next part of this

chapter the researcher describes the international context and application of public participation in a few democracies.

In order to analyse public participation in the South African context, it is essential to create an understanding of the international context relating to public participation against which the South African situation can be measured. In this instance public participation in democracies in a number of developing and developed countries across the globe will be examined.

3.1.4 Selected international examples

The Scottish Parliament (2000) proclaimed that “this Parliament was elected on a promise: that policy making would be more open, participative and consultative. That is what the people of Scotland expect of us. Our success in meeting the promise of openness and accessibility will be a litmus test of our achievement of the wider aspiration of devolution” (De Villiers, 2001:115).

This statement by the Scottish Parliament embodies the international trends and developments with regard to the notion of public participation. It reiterates the renewed commitment to and view of public participation as an essential ingredient to democracy. Public participation in practice is regarded as contributing to empowerment and education of the public as well as enhancing the stability and legitimacy of democracies.

3.1.4.1 The Danish and German constitutions

De Villiers (2001:116) states that “the rules that govern legislatures in older established democracies allow them to determine the extent of public access and participation”. Examples of this are found in the Danish and German constitutions, which respectively allow their parliaments to exclude the public at their discretion. The Danish and German constitutions also “place no obligation

on the legislature and its elected members to facilitate public involvement or to consider and canvass public inputs and views from interested parties” (De Villiers, 2001:116). They therefore have the prerogative to involve (or not to involve) the public in decision-making.

According to De Villiers (2001:117) the implication is that legislatures in countries like South Africa and Uganda (new democracies) have a constitutional obligation to facilitate public participation, whereas legislatures that are governed by older constitutional and political arrangements have greater sovereignty. However, despite the somewhat exclusionary nature of these earlier constitutions, public participation has increasingly become a feature of modern democracies.

Public participation in Germany is encouraged and directly facilitated, yet its main purpose is to facilitate a flow of information to encourage debate and create an awareness of public issues. The German model, however, tends to entrench elitist participatory democracy since it relies heavily on the role of expert witnesses (De Villiers, 2001:121).

3.1.4.2 The Canadian example

In the Canadian democracy public participation in government decision-making is now a regular aspect of political life. It became a feature of public policy in Canada from the 1960s and 1970s with the consequence that today, decisions by government without public participation are the exception rather than the rule. The Canadian Constitution and general legislation does not provide for public participation, yet it now plays a significant role in policy and law-making (De Villiers, 2001:117-118).

3.1.4.3 The Ugandan situation

Hyden and Venter (2001:63) state that “it is quite clear that the people as a whole

played the leading role in Uganda's constitution-making process as they demanded a new constitution, suggested the agenda, presented their viewpoints, elected the Constituent Assembly delegates, and continued to exert pressure on them to keep their mandate”.

The mass media contributed to the democratic process by voicing the very concerns of the people, articulating the views of those who disagreed with certain provisions being discussed, keeping a very keen eye on all those who were playing special roles in the process so that they did not manipulate or mislead the people, and exposing any apparent undue influence by government on the outcome of the process (Hyden and Venter, 2001:63). Most observers would agree that the Uganda Constitutional Commission was quite successful in consulting the public throughout the country.

3.1.4.4 The example of Ethiopia

According to Hyden and Venter (2001:141) “the new Ethiopian Constitution makes a break with past principles of governance in the country. It deliberately marks a new order when it declares that sovereignty emanates from the various ethnic groups. The four-year process of producing a new constitution for the Federal Democratic Republic of Ethiopia was a serious effort to produce a document that was not merely the product of legal minds, but also enjoyed the understanding and support of the people”.

3.1.4.5 Public participation in international and regional agreements

International and regional agreements, as well as popular pressure to open up governmental decision-making processes, are spurring national governments to take steps to improve transparency, participation, and accountability. At the 1992 Earth Summit in Rio nations from around the world adopted Principle 10 of the Rio Declaration, which emphasises the importance of public access to

information, participation in decision-making processes and access to judicial procedures and remedies, ... In Agenda 21, the plan of action that accompanied the Rio Declaration, governments pledged themselves to the pursuit of broader public participation in decision-making processes and policy formulation for sustainable development (De Villiers, 2001:122).

In 1998, the United Nations Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (known as the Aarhus Convention). The Bolivian Summit Declaration (1996) ..., reflected growing co-operation between governments in the American hemisphere on issues relating to public participation, particularly on environmental matters. Bolivia for example has passed a law for popular participation and a national system for community development has been put in place (De Villiers, 2001:122). The Manila Declaration (1982) and African Charter for Popular Participation in Development and Transformation (1990) are further examples of the trend towards public participation.

The above examples clearly illustrate a global shift towards greater public participation. How this translates into practice in our own country's legislatures remains to be seen in the following chapters.

3.2 SUMMARY

It is clear from the attempt at defining the concept that there are different interpretations of public participation with unique application in the different state spheres. Based on the rationale discussed in this chapter, one can only derive that public participation is regarded as an essential element of modern democracies which needs to be explored comprehensively in order to ensure its practical effectiveness. Following a discussion of the theoretical context and rationale for public participation, the chapter concluded with an international

perspective of public participation in developing and developed nations as well as with regard to international agreements. From these examples it is clear that effective public participation contributes to the enhancement of long established democracies and the strengthening and maturation of young democracies.

4 PUBLIC PARTICIPATION IN THE SOUTH AFRICAN CONTEXT

4.1 INTRODUCTION

In the previous chapter the concept of public participation was explored in terms of theory and rationale as well as citing some international applications thereof. Following the international examples presented, it is now important to provide an overview of public participation in the South African environment and more specifically its application in the legislative arm of the state.

The first aspect that requires attention is to provide a more detailed history and context for public participation in South Africa after which the South African model or approach to public participation will be clarified. Furthermore, the legislative framework, policies and strategies for applying public participation in the South African legislative sector will be discussed before concluding the chapter.

4.2 PUBLIC PARTICIPATION IN THE SOUTH AFRICAN LEGISLATIVE CONTEXT

4.2.1 Introduction

“South Africa is a multi-party, representative democracy, under a constitution which is sovereign and which entrenches human rights. Despite being a representative democratic system, the South African Constitution and some legislation complements the power of elected politicians with forms of public participation” (Bucchus *et al*, 2007:9).

Prior to the introduction of a democratic dispensation, Apartheid policies caused South Africa to be deprived of a history of good public participation in the making and implementation of policy. For instance, during the Apartheid era, black South

African citizens, who constitute the majority of the South African population, were not given an opportunity to participate in general elections, or to contribute to the process of making and implementing policies that affected them.

Indeed, it was undemocratic, since democracy requires that all people should have access to resources which could empower them, as well as the right to exercise their power in such a way that they are able to participate in public affairs. It is hoped that the new democratic order in South Africa, and the democratisation of institutions and processes, will contribute to the deepening and broadening of a democratic culture in South Africa. Democratisation requires that the structures and functioning of public institutions be re-established in such a way that they allow and encourage public participation (African National Congress, 1994:120-121).

Historically, however, the culture of public participation in South Africa has been instilled through the struggle process during the Apartheid era since it relied on and provided an avenue for mass participation by persons excluded from formal state participation. The first opportunity for formal direct mass participation by all the peoples of South Africa was voting in the first democratic elections on 27 April 1994. Around this time Nelson Mandela made a pronouncement that South Africans should continue the culture of participation of the struggle by participating in government and legislative structures in order to influence and improve decision-making. "We are determined that the people of South Africa will make their future and that they will continue to exercise their full democratic rights after liberation from apartheid. We do not want popular participation to cease at the moment when apartheid goes. We want to have the moment of liberation to open the way to ever-deepening democracy" (Mandela, 1991:18 in Barnes, 2006:1).

In support of the above statement, political office bearers have been calling for public participation in public affairs continuously since a democratic government

was introduced in South Africa. Their calls have been accompanied by the promulgation of legislation which encourages public participation in governance and politics, indicating that public participation has a role to play in democracy.

In accordance with the above-mentioned, the constitution-making process in South Africa post 1994 was the most comprehensive public participation exercise the country has ever seen. It is regarded as the benchmark for all future public participation initiatives and sets an example of what can be achieved through wide-ranging public consultation and encouraging public participation. The overwhelming success of public participation in the above process also made it an international point of reference. Through the empowerment of civil society (civil society organs, non-governmental organisations, experts on all matters under discussion, universities, business, rural communities – i.e. every sector of the population) to participate in the constitution-making process, the Constitutional Assembly was added a new dimension to the concept of democracy in South Africa – namely ‘participatory democracy’. This has set a tough precedent for government, and provides a glimpse onto what a fully-fledged participatory democracy could be (Hyden and Venter, 2001:155).

“South Africa’s Constitution asserts that public participation is a cornerstone of democratic government. Citizens, including the weak and unorganised, have a right to participate in the legislative process – beyond episodic participation at election time” (Calland, 1999:61). In terms of the Constitution (1996:section 59[2]), South African legislatures may not exclude the public and media “unless it is reasonable and justifiable to do so in an open and democratic society”.

South Africa recognised the importance of involving the public in the constitution-making process and through involving the public in the process ensured that there was ownership of the final document and, consequently, a willingness on the part of the public to abide by the Constitution and its provisions. However, the Constitution is only one piece of legislation, and the question remains as to

whether the public will be involved in the drafting of legislation on an ongoing basis. This is a constant challenge for all democracies. South Africa has taken up this challenge, learning from the constitution-making process, and is in the process of extending the involvement of the public in the legislative process (Hyden and Venter, 2001:182).

There has been a serious attempt to turn this constitutional aspiration into a workable reality in South Africa, yet progress has been uneven. Although there is commitment to empowering the poor, improving participation is hampered by lack of capacity on the part of those whose participation is most necessary. The extreme inequalities in South Africa could pose problems to increasing public participation. Although public participation is constantly advocated in the name of empowerment, it may be that only those already empowered are able to take advantage of this principle (Calland, 1999:65).

Mbeki (as cited in Nel and Van Wyk, 2003:50) implicitly acknowledged that public participation in policy making is not yet what it should be: "One of our tasks during the next decade will be to defend and further entrench this important gain of our people. Building on what we have already achieved, we must work to activate the masses of the people more directly to participate in our system of governance. We must translate into reality our vision of people-driven processes of change as well as the fundamental principle that the people are their own liberators".

"Internationally, the value of participatory decision-making in respect to development issues, and the potential participation holds for enhancing democratic influence, is widely accepted. But 'on the ground' in South Africa, the benefits of participation are often discounted, in large measure because participatory processes ... often are poorly implemented, breeding cynicism amongst proponents, local government officials, and beneficiaries alike" (Theron, Ceaser and Davids, 2007:2).

Public participation in South Africa depends on the commitment of political will, time and extensive resources. It needs to be seen as an integral part of the process of delivery, which means that, in order to determine government priorities, it is compelled to engage the public in dialogue about their priorities and needs. The South African Constitution draws on two broad traditions of democracy, namely formal representative democracy and participatory democracy. This means that, while its structures and institutions reflect the principles of best democratic practice in the more established democracies, the Constitution also contains clear requirements for a form of government that is open, transparent and participatory (De Villiers, 2001:138).

Apart from the general trend towards ensuring public participation in government processes in South Africa and the policy pronouncements made, the South African Constitution more specifically places an obligation on Parliament and Provincial Legislatures to ensure public participation in their decision-making processes. In her budget speech in Parliament in June 1997, the Speaker of the National Assembly, Dr Frene Ginwala, said: "The National Assembly is elected to represent the people and to ensure government by the people under the constitution" (in Kebeni, 2001:14). In addition, the South African legislative environment is characterised by the guarantee of autonomy of each Provincial legislature and Parliament. This means that legislative institutions have been operating independent from each other and have been working in isolation to enhance public participation. This approach has not been successful in eliciting meaningful public participation and therefore has had little impact on the overall aim of strengthening democracy in South Africa.

Recently, there has been an agreement between Provincial Legislatures and Parliament to cooperate closely on shared functions and interests. Bearing in mind the relevant independence from each other, there has been a shift to regarding these institutions as the "legislative sector" with the aim of strengthening and raising the profile of the legislative arm of the state. In terms of

public participation specifically, there is a concerted effort to consolidate all work done across legislative institutions and work towards adopting minimum standards for public participation activities.

This is critical in view of a series of constitutional court rulings against the legislative sector which questioned the validity of public participation processes conducted, e.g. the *Doctors for Life International* case (2006) and *Matatiele Municipality* case (2006). The processes followed were found to be wanting in the specific case and the essence of the court rulings were that, although the constitutional obligation allows quite some discretion on how Parliament and Provincial Legislatures conduct public participation depending on the specific situation, there has to be certain minimum standards that should be met in order to adhere to the requirement of sufficient public participation.

The court furthermore emphasised how the constitutional concepts of representative and participatory democracy are intertwined and that the Constitution requires a “degree of public participation in lawmaking, and a permanently engaged citizenry alerted to and involved with all the legislative programmes” (Seedat, 2006:17). According to Seedat (2006:17), “the court’s judgement makes it clear that legislative timelines should respect the requirement of public participation. Participation should not be seen as an obstacle to legislation but as a means to promote the effectiveness of ... laws. Constructive results can be achieved only if participatory channels act as genuine catalysts for citizen participation and are not merely cosmetic fulfilment of constitutional requirements”.

Clearly, if South Africa wants to consolidate its democracy, public attachment to democratic institutions and procedures needs to grow. Legislatures play a crucial role in fostering a democratic culture and South African legislatures have taken many successful initiatives in this regard. But, public participation programmes urgently need to move beyond their emphasis on providing education about the

role and function of legislatures. They need to reach out and actively involve the public in the work of the legislatures. That means that legislative proceedings can no longer be isolated from public participation programmes. Communities, organised interests and individual members of the public need to be regarded as essential resources for active, responsive and effective legislatures. At the same time, members themselves need to engage in a more public way with the people, using the media and other resources, so that they are valued as representatives and contribute to growing loyalty to and trust in our representative institutions. They must inject the values of co-operative government and inclusiveness into the workings of the system, thus overcoming South Africa's legacy of division and violence (Murray and Nijzink, 2002:132).

As part of the study, a survey on public participation progress will be done across all South African legislative institutions (National Parliament and the nine Provincial Legislatures) in order to determine the status quo. This includes determining policy directives, structures set up, strategies developed and actual implementation activities. In order to analyse and interpret the data relating to public participation obtained through the survey, it is vital that one investigates the approach or model of public participation applicable in South Africa with some mention of other models applied globally.

4.2.2 The South African model of public participation

According to the World Bank Sourcebook on Participation (1994:3) there is no perfect model for public participation and their development experience has proven that the form public participation takes is highly influenced by the overall circumstances and the unique social context in which action is being taken.

In seeking the 'perfect model' of participation for South Africa, Idasa (the Institute for Democracy in South Africa) has identified four models of public participation. The models represent four ways in which public participation in the legislative

and policy-making process may be facilitated locally or globally. “The models make it possible to rise above the detail of current practice in individual institutions and identify core elements that should, ideally, underlie broad-based and effective public participation.” Model one to three are respectively those of ‘pure’ representative democracy, a basic model of public participation and a ‘realism’ model of public participation (De Villiers, 2001:91).

Cohen and Arato (1995:6 in Deegan, 1999:5) view the elite competitive model of democracy (equated to Idasa’s ‘pure’ representative model) with its emphasis on secret ballots, civil rights, electoral choice, regular elections and political parties, to be “central to every modern conception of democracy”. None of these models, however, manage to address the unique South African context and development needs.

Thus, a fourth model (as depicted below) may be proposed and applied to the South African context – “the model is extended to include three categories of participants: those who are organised and strong, those who are organised but weak and those who are weak and unorganised” (De Villiers, 2001:95).

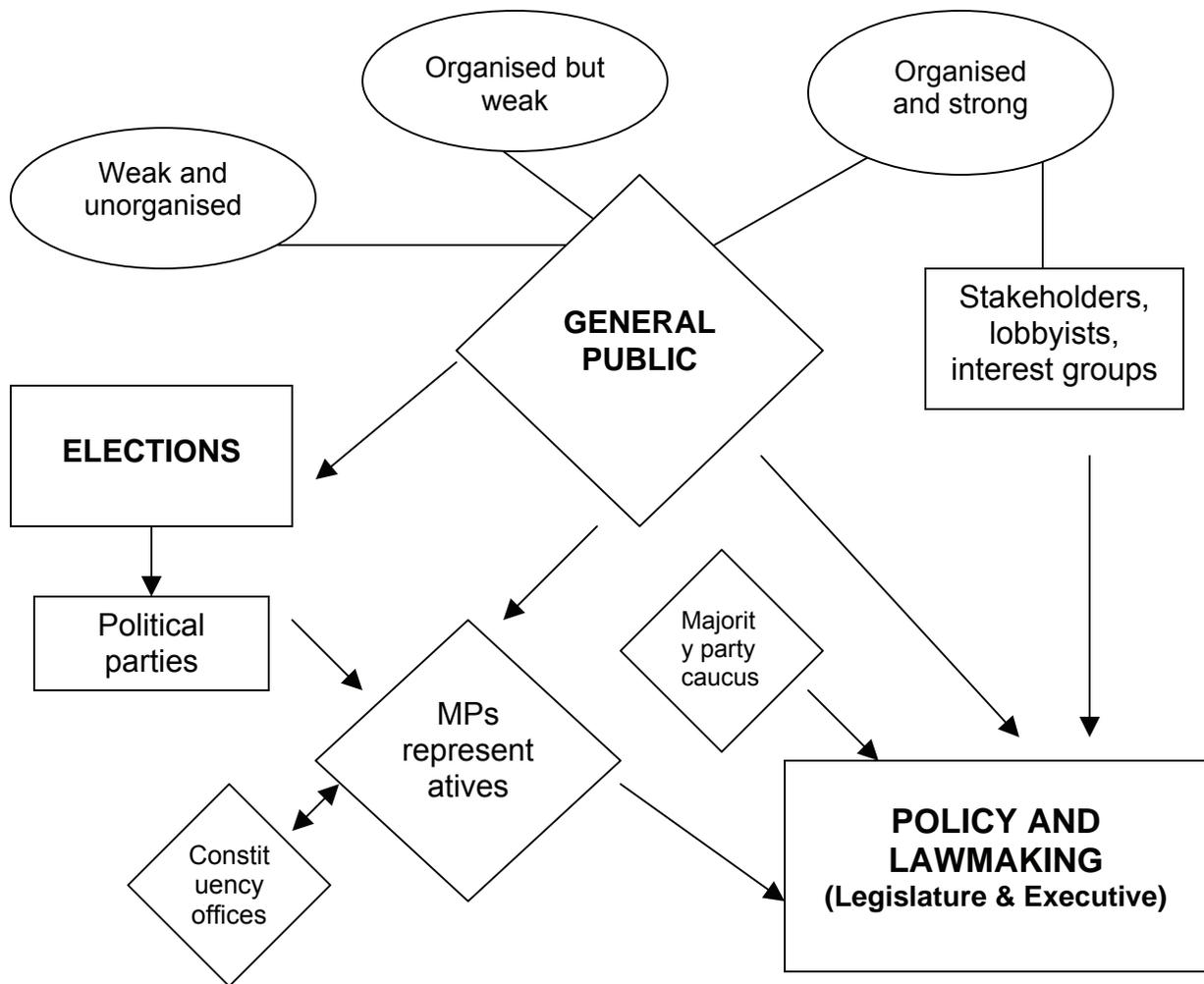


Figure 4.1: Model four – The ‘Possible Ideal’ for South Africa

From: De Villiers (2001:96)

“The model includes political parties as key actors in the matrix of political interaction. The majority party, particularly, has the capacity to control, not only decision-making itself, but also the rules that govern that process. Further, in a Westminster-based parliamentary system, where members of cabinet are drawn from the legislature, the parliamentary caucus of the majority party is the forum where the executive overlaps with the legislature” (De Villiers, 2001:95).

According to De Villiers (2001:96) “it is, therefore, an essential location of power. Moreover, where the majority party has strong and efficient regional and local

party structures, the wider party structure may provide a valuable network, linking individual constituents and communities with their elected representatives. Party structures can be used to ensure that local views and grievances filter up through the system as well as providing channels for the distribution of information on the ground". Since South Africa is essentially a one-party dominated society, public participation in terms of this model may lead to "rubber-stamping" of ruling party policies under the guise of public participation.

Furthermore, "the South African national ruling party is part of an alliance with Cosatu, the largest labour confederation in the country, and the South African Communist Party. This results in a broader public social agenda than is found in democracies in the United States and Europe. This further broadens opportunities for participation and interaction beyond the formal procedures and institutions of representative governance". Adding to this, "in its representation of the decision-making process, the model links the executive with the legislature. This is the reality of Westminster-based systems" (De Villiers, 2001:96-97). This alliance may also have a negative effect when applying this model as it tends to undermine or ignore unorganised individuals.

In support of model four as put forward by Idasa, the International Association for Public Participation (IAP2) spectrum of participation could prove useful in identifying the degree of participation linked to the interaction illustrated in the model. "The IAP2's construct of five forms or degrees of participation (the 'Spectrum') represents a continuum of 'increasing levels of public impact or influence'. Participation generates progressively greater 'public impact or influence', moving first from informing the public to consulting it; next, to involving it; then, to collaborating with it; and finally, to empowering it" (Theron, Ceaser and Davids, 2007:2).

"The South African model of public participation envisages participation in the popular domain, with the aim of encouraging a continuous interaction between

the elected and the electorate through all stages of governance. In this sense, it promotes a real and direct participatory process. Although the reality may fall far short of this vision, there is no doubt that the legislatures are committed to broad public participation, even though they are currently hampered by a lack of resources” (De Villiers, 2001:121).

4.2.3 Legislative and policy framework for public participation in South Africa

In this section the legislative and policy framework for implementing public participation in the South African legislative sector is discussed broadly (in hierarchical order). National legislation applies to all legislative institutions, whilst provincial legislation is applicable only to each respective institution that passed such legislation. The respective legislative institutions furthermore have policy processes independent from each other and do not adhere to e.g. Parliament policies as the national level of the legislative arm of state.

With reference to the policy environment pertaining to public participation, it should be emphasised that any national policy framework and strategy may guide legislative institutions whilst they are not forced to adhere to it. Furthermore, any provincial policies and strategies in place are institution-specific documents and have no influence on other legislatures.

As part of this study the gaps in terms of policy and strategy development, review, implementation and impact will be determined and assessed.

4.2.3.1 National and provincial legislation

Notably the legislative sector derives its overall mandate, including that of public participation specifically, from the Constitution of the Republic of South Africa, Act 108 of 1996. According to the rule of law the Constitution is the highest law

in the country and it therefore applies to Parliament (at a national level) and Provincial Legislatures.

In South Africa, public participation is entrenched in the Constitution in a number of sections (sections 17, 59, 70, 72, 115, 118) that set the tone for public involvement and participation in the legislative process (Constitution, Act 108 of 1996). Related provisions concern accountability, transparency and openness which, together with public participation ensure that government is accountable, open and transparent between elections.

In addition, the Constitution mandates specific functions to Parliament: “The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. The National Council of Provinces (NCOP) also has public participation functions similar to that of the National Assembly, as highlighted in section 42(4). Moreover, both the National Assembly is required by the Constitution to “facilitate public involvement in the legislative and other processes of the Assembly and its committees; and conduct its business in an open manner, and hold its sittings, and those of its committees, in public... (section 59). According to section 118 of the Constitution, the nine Provincial Legislatures are placed under the same duty. With regard to public participation and the various techniques utilised, there is no overarching national legislation specifically relating to this subject matter.

4.2.3.2 Provincial legislation

There is no provincial legislation in place regulating the full scope of public participation, however a number of legislative institutions have passed provincial legislation that regulates the process of petitioning by the public. At the forefront of developing petitions legislation, was the Gauteng Provincial Legislature which passed the *Gauteng Petitions Act, Act 5 of 2002*. Most legislative institutions have followed suit by passing provincial petitions legislation to regulate petitions

processes in their respective provinces. Four institutions do not have a Petitions Act – North West Provincial Legislature has a draft petitions bill in place; the Evidence Act regulates the petitions process in the Eastern Cape, in Parliament the petitions process is part of the Standing Rules whereas in the Northern Cape Provincial Legislature no formal legislation exists, though a petitions system is in place.

4.2.3.3 National policy framework

Given Parliament and the nine Provincial Legislatures' decision to cooperate closely, a *Legislative Sector Policy and Strategic Framework (2007)* has been developed to guide planning and implementation within the South African legislative sector. The document states the legislative sector's policy stance through a number of policy principles, one of which is the strategic goal of "Deepening and entrenching people-centred democracy in South Africa". Linked to this strategic goal is the strategic objective relating specifically to public participation, namely "deepening public participation and representation".

At a national level a *Model for best practice regarding Public Participation and Involvement*, an initiative by the Secretaries Association of the Legislatures of South Africa, was developed in conjunction with the Centre for Public Participation (2006). It has been adopted as a working document for the legislative sector, though is yet unpublished. At present legislative institutions are utilising this document as a guide for conducting public participation planning and activities.

4.2.3.4 Provincial policy framework

At present all legislative institutions are guided by the Constitution and national policy documents in conducting their planning for and implementation of public participation. Parliament and the nine Provincial Legislatures prepare five-year

strategic plans together with an annual operational plan in which the core function of public participation is addressed.

4.2.4 Overview of public participation implementation activities in the South African legislative sector

Generally the Constitution provides the policy basis and guidance for all public participation programmes in South Africa. The same types of public participation implementation activities are executed across the legislative spectrum, namely public hearings, petitions, public education and outreach, constituency office use, as well as committee proceedings and house sittings. “Common obstacles faced by the public participation units are the lack of funds for public participation, inadequate or shortage of staff and skills, illiteracy in the provinces and lack of access to resources by the public they are meant to serve” (Cloete, 2002:10).

4.3 SUMMARY

From the description of the context of public participation in South Africa, it is clear that the country’s history of exclusion of the majority has influenced the democratic constitution-making process and subsequently the adoption of a challenging approach to conducting public participation in the legislative environment specifically. A number of models for eliciting public participation exist, yet South Africa has opted for a comprehensive approach where all individuals, groups and sectors of society are engaged at all levels to ensure maximum participation and influence on legislative and policy decision-making in the legislative sector. The chapter concludes with an overview of the legislative framework, policies and implementation strategies for applying public participation in the South African legislative sector. In the next chapter the findings and analysis of a review on the state of public participation in the South African legislative sector are conveyed which may provide conclusive evidence for the hypothesis of this study.

5 THE STATE OF PUBLIC PARTICIPATION IN THE SOUTH AFRICAN LEGISLATIVE SECTOR

5.1 INTRODUCTION

Globally public participation is regarded as an essential ingredient to ensure the enhancement of democracy and the increased legitimacy of governments by creating public buy in, influence and support of government decision-making. This is illustrated by the application of public participation in the various international examples cited in chapter 3. In the South African context, given the country's history and culture of participation, the approach by the legislative sector is to ensure comprehensive public participation in order to improve its decision-making in terms of its core functions of oversight, lawmaking and public participation. In this regard, the Idasa model for comprehensive public participation put forward is best suited for South Africa.

In addition, since the country's democratisation in 1994 a number of constitutional, legal, and policy frameworks had been put in place specifically to create spaces for ordinary people to participate in processes of governance and development policy-making.

Despite agreement among politicians, practitioners and academics on the importance of participation for good governance and sustainable development, implementing participation in South Africa's unique circumstances has proven to be a serious challenge. "Context-specific features of the South African socio-economic-political landscape – such as poverty, the expanse of municipal areas, poor public transport, language barriers, illiteracy, patriarchal social structures, and a host of other factors – continue to slow the design and implementation of participatory development initiatives" (Theron, Ceaser and Davids, 2007:2).

In order to provide evidence in support of the research statement that the execution of public participation in the South African legislative sector remains

ineffective and fails in its quest to ensure increased influence on and enhanced decision-making and policy processes, an investigation was done on the current state of public participation in the legislative environment. A semi-structured survey questionnaire (annex 1) covering all elements of public participation as applied in the South African legislative context was developed and used as data collection instrument. The questionnaire was administered to a limited sample group – namely the public participation manager of each of the ten legislative institutions – at a workshop involving public participation managers and practitioners that took place in December 2007. Questionnaire responses for the nine Provincial Legislatures were received between December 2007 and February 2008 whilst the response from National Parliament was dated July 2008. The data was captured and processed into a comparative table format where an overall picture of the sector and of the individual institutions could be obtained. Given the lapse between data collection and data analysis, the researcher engaged in a follow-up process in order to confirm and update the data received.

The data set provides the basis for the findings on the various elements of public participation as conveyed in the remainder of this chapter. The findings are structured to cover the main strategic and operational aspects relating to the function of public participation, namely *mandate*, *governance*, *resourcing*, *practice*, and *monitoring and evaluation*. Under the topic of *mandate* the question of “why public participation” is addressed together with the legal and policy basis for this imperative. The *governance* heading covers the structures, systems and processes as well as communication aspect. The part on *resourcing* recounts the findings on human, financial and physical resources including information technology. The section on *practice* discusses the various standard areas of application of public participation in the South African legislative sector, namely public outreach activities, public hearings, petitions, public education, committee proceedings and house sittings, and the use of constituency offices. The last

section relates to *monitoring and evaluation* processes in relation to public participation activities.

The researcher proceeded to do a situational analysis based on the findings for all sections through the SWOT analysis method aimed at determining the strengths, weaknesses, opportunities and threats related to the current state of public participation. The findings and analysis stated in this chapter provide sufficient evidence in support of the research hypothesis through identification of a series of trends and challenges pertaining to the execution of public participation in the legislative environment.

5.2 CURRENT STATE OF AFFAIRS ON PUBLIC PARTICIPATION – FINDINGS AND ANALYSIS

5.2.1 Mandate

5.2.1.1 Commitment

Findings

In response to a question about the importance of public participation to legislatures as per the questionnaire, all respondents (public participation managers of Parliament and Provincial Legislatures) emphasised the fact that facilitating public participation is a constitutional imperative in South Africa. Given South Africa's history of exclusion public participation is of the utmost importance to ensure open and transparent decision-making and accountability, to provide people with a platform for raising concerns and an opportunity to influence decisions that affect their lives. Furthermore, the importance of public participation lies in the fact that it ultimately leads to improved service delivery and enhances democracy.

The constitutional mandate of ensuring public participation in legislative matters is seen as the basis for all activities pertaining to public participation in the legislative sector.

Analysis

The high value placed on and the level of respect for the Constitution and the principles it embodies, is the reason for the strong commitment to executing constitutional imperatives. The imperative of public participation is a core function of the legislative sector together with oversight and lawmaking, yet it has been playing a backseat role with the emphasis on lawmaking during the 1990s. During the past third parliamentary term (since democratisation) however, the importance of public participation has come to the fore and much political emphasis has been placed on this core function which is closely related to the oversight function.

For authentic public participation, there is three way commitment required, i.e. political, administrative and public commitment and this resides within each human being as an individual playing a role in one or all of the above areas. These three elements need to be present and in balance. Without one of the essential elements, the public participation process is doomed for failure. There is clear commitment to public participation from a political perspective. There have been a number of bold public statements from the ruling party and government (including the executive and legislative arm) pertaining to its commitment to public participation.

On an administrative level, capacity has been created for implementation of public participation activities in the legislative environment. At this level, it is of the utmost importance to employ skilled and committed persons who believe in the worth and value of public participation for the greater good of the nation.

With regard to public commitment to participate in activities which will enhance the public contribution and influence on the South African democracy, there is still a relatively strong and widespread willingness for active participation. However, there is a perception of apathy amongst a growing number of citizen groupings. The challenge is therefore to find a way of influencing the South African mindset into active participation again thus ensuring greater political, administrative and individual citizen commitment and buy-in which in turn will strengthen the democratic character of our country.

In support of the above, Briand (2007:7) states that “citizens can best ascertain their (collective and individual) needs, interests, priorities, etc. by engaging each other and their elected representatives in democratic discussion”. On the other hand, “discussion enables both citizens and their elected representatives to develop the soundest, most effective policies possible in response to public problems and issues”.

5.2.1.2 Legislation and policy

Findings

Legislatures base their public participation activities on the mandate derived from sections 59 and 72 of the Constitution of the Republic of South Africa, 1996. Six Provincial Legislatures have passed a Petitions Act which regulates the manner in which petitions are dealt with whilst the Eastern Cape Provincial Legislature’s Evidence Act regulates the petitions process there. The Northern Cape Provincial Legislature has not passed specific legislation pertaining to petitions whereas Parliament’s petitions system is fixed in its Standing Rules and Orders. North West Provincial Legislature has a draft petitions bill in place.

Five of ten legislatures (Eastern Cape, Free State, North West, Parliament and Western Cape) noted that, apart from above-mentioned legislation, there is no specific public participation policy in place whilst the other five have an existing

policy. All except one institution (Eastern Cape) has indicated that public participation forms an integral part of the strategic planning process in the institution. Seven out of ten institutions have an existing public participation strategy and implementation plan which they adhere to whilst three institutions (Limpopo, Parliament and Western Cape) have no such strategy and implementation plan. All but two institutions (Free State and Parliament) are compiling annual plans linked with specific implementation activities according to which public participation is carried out. The general elements of public participation programmes in legislative institutions include public hearings, petitions, public education and public outreach in the form of sectoral parliaments (People's Assembly, Women's Parliament, Workers' Parliament, Youth Parliament, etc.), the use of constituency offices and public involvement in committee proceedings and house sittings.

Analysis

The Constitution provides a clear and strong platform for executing the core function of public participation which resides with legislative institutions. It acknowledges the great importance attached to public participation and sets the broad parameters for this core function. Therefore it is inevitable that this is the document which most legislative institutions cite as the basis for conducting public participation. More importantly, it is one of the most progressive and democratic constitutions globally.

The constitutional mandate however does not clearly define the parameters of public participation, does not provide the focused guidance and direction that should be encompassed in a specific public participation policy and strategy document.

Such policy document should expand on the constitutional imperative and provide policy direction in more detailed and clearer terms so as to provide institutions with a legally sound and binding guideline for executing public

participation. From the above findings it is clear that such policy document providing focused direction is lacking in five of ten institutions. The five institutions that have existing public participation policies have developed them as individual institutions pointing to the fact that there is no national policy document which drives public participation in the South African legislative sector. In addition there is no public participation strategic framework for the legislative sector linked to such policy. This means that there is a lack of a strategic vision and mission for conducting and guiding public participation activities.

It is quite concerning to learn that even with the current political emphasis on the aspect of public participation, three legislative institutions to date have failed to produce a public participation strategy and implementation plan. This is a minimum requirement that should be in place for guiding the public participation activities conducted in the demarcated area that the institution serves.

The public participation strategies of the various institutions have been developed in isolation from each other and do not necessarily reflect a uniform approach. Though South African legislative institutions are independent structures, they have the same mandate and it is important that public participation is based on a set of minimum standards reflected in a sectoral public participation strategic framework so as to ensure that institutions operate from a legally sound basis. Having a similar and consistent approach towards public participation provides protection against legal challenges and gives the public a measure of certainty and knowledge of what can be expected across the legislative spectrum with regards to their participation as individuals or groupings. This is especially relevant in the light of a series of recent court rulings noting that public participation processes are not up to standard and not evenly applied, e.g. the *Doctors for Life International* case (2006) and *Matatiele Municipality* case (2006).

5.2.2 Governance

5.2.2.1 Structures

Findings

All ten legislative institutions in South Africa, i.e. Parliament and the nine Provincial Legislatures, have a public participation programme in place which is linked to a budget. The general consensus among respondents is that the primary responsibility for public participation does not lie with one unit specifically, but that the institution as a whole, i.e. the political and various administrative components, needs to share responsibility for facilitating public participation in legislative decision-making processes.

All legislatures unanimously responded that the Speaker of Parliament and Provincial Legislatures takes ultimate political responsibility for public participation engagements. At present five institutions have a political structure (Committee) in place to deal with public participation matters and in another the Chair of Chairs is tasked with this aspect. Four others (Free State, KwaZulu-Natal, North West, and Parliament) have no political structure in place to facilitate public participation. Where political structures exist, their role varies from providing political leadership and direction, facilitating public involvement and presiding over petitions received.

All ten institutions have administrative public participation units (PPU) in place whose role it is to ensure implementation of public participation plans and provide support to the committees in terms of public participation matters.

The public participation units (PPUs) are placed in various directorates within legislatures. In five institutions the PPU is located in the Parliamentary Operations directorate, in three more the PPU is located in the Secretary's

Office (Free State, Limpopo, Western Cape), whereas this function resides in the Speaker's Office in two other institutions (North West, Northern Cape).

The responsibilities within PPU's include project and events management, coordination and implementation as well as administrative support and liaison. In some instances aspects like research, monitoring and evaluation, public relations, communication, marketing and procurement is also this unit's responsibility.

The accounting officer for expenditure on public participation is generally the director or senior manager of the PPU. In two institutions the Secretary (KwaZulu-Natal) and the Speaker (North West) of the legislature respectively are the accounting officers.

Analysis

The respective Speakers of Parliament and the Provincial Legislatures are placed in these key positions given their high political standing in the ruling African National Congress (ANC) party structures nationally and provincially. It is therefore correct that they are unanimously regarded as the political champions ultimately responsible for political direction and commitment to public participation as core function and ensuring the participation of the South African public through the implementation of public participation initiatives.

Having a political structure in place to deal with public participation matters is not a prerequisite, though it could play a critical role in ensuring a high level of public participation. Where such structure is in place, it creates a forum where political responsibility for public participation is shared and where matters can be discussed and resolved at a political or strategic level by a diverse group instead of one individual (the Speaker) carrying the full weight of this responsibility. Where a petitions process is in place, this structure can also centrally consider and make decisions on petitions received by the institution.

All legislative institutions have administrative units in place to carry out political decisions relating to public participation. Such units are essential in implementing public participation initiatives and attention should be paid to ensuring the units are well managed and resourced in order for them to function optimally.

The placement of the administrative public participation unit is quite critical. Though the Speaker takes ultimate political responsibility for public participation, the Secretary to the legislature is accountable for implementation and operations, therefore it is preferable that the PPU reports directly or indirectly to the Secretary who in turn accounts to the Speaker of the legislature. It is not good practice to place an administrative implementation unit directly in the Speaker's Office as is the case in two institutions. By its very nature, the Office of the Speaker is politically based and is prone to uncertainty and instability.

In the interest of smooth operations, it is important that the lines of responsibility and parameters of decision-making are clearly demarcated for the political structure and the administrative structure respectively, since they are working closely to enhance public participation. Within the legislature operations, it is furthermore critical that the functions and responsibilities of the PPU are clearly defined, limited to the core function and do not overlap with other functions or overburden the unit. At present there are a number of discrepancies between the roles and operations of the respective PPUs in the different legislative institutions. Some of these include the questionable placement of the communications, research and monitoring and evaluation role within certain PPUs. This points to the fact that there is a lack of standardisation with regard to the structuring and role of PPUs.

5.2.2.2 Systems and processes

Findings

Five of ten legislatures (as per 5.2.2.1) have a political structure (either a Rules

Committee, Standing Committee on Public Participation or all committees jointly) that guides and determines the work carried out by PPU's who in turn are responsible for project planning and implementation.

a) All but three institutions (KwaZulu-Natal, Limpopo and North West) indicated that there is a standard management process in place with regard to planning and execution of each public participation activity. Generally a project or task team consisting of staff from various units is put together to project manage events. The public participation process is an integrated process where a number of other legislature units are involved and work closely with the PPU. These units include Communication, Security and Protocol, Legal, Committees, Research, Hansard, Procurement and Speaker's Office. More detail on the processes pertaining to each area of public participation implementation (outreach, petitions, education, public hearings, committee proceeding and house sittings, and constituency office use) is provided under 5.2.4 relating to *practice*.

Five institutions noted that project management and planning is done manually whilst two institutions (Mpumalanga and Parliament) have electronic systems and three have no project management and planning system in place (Eastern Cape, Gauteng and KwaZulu-Natal).

b) All institutions have a communication process in place that also addresses communication for public participation specifically. Three institutions have a manual communications system whilst three have electronic communications software (Free State, Limpopo and Parliament) and four institutions have no system in place (Gauteng, KwaZulu-Natal, Mpumalanga and Western Cape). The following communication methods are utilised for public participation activities:

- Personal visits to communities
- Constituency offices and municipalities

- Media (national and community radio, print, advertising and electronic)
- Community development workers
- Stakeholder briefing sessions and road shows

The majority of institutions regard the above communication methods as effective (especially radio) yet with room for improvement. In response to a question about reviewing the relevance and effectiveness of communication methods for a specific target audience, some institutions noted that evaluation reports are submitted and considered, debriefing sessions are held, and the responsiveness of the public to events is used as an indicator.

- c) In terms of database management, four institutions indicated that they have a manual system in place, whilst four (Gauteng, Limpopo, Northern Cape and Parliament) have specialised software in place to manage databases. Two others have no database management system in place (KwaZulu-Natal and Mpumalanga).
- d) Six institutions said there were no tracking systems in place whilst the remaining four (Gauteng, Limpopo, Mpumalanga and North West) had manual tracking systems in place. In terms of performance monitoring and evaluation six legislatures have no formal systems in place and four have manual systems in place (Gauteng, Limpopo, Northern Cape and Parliament).

Analysis

On questioning the effectiveness of the internal process relating to public participation, five legislatures responded that it is not working very well and some improvements were suggested. Three institutions (Eastern Cape, Mpumalanga and Northern Cape) noted that the mentioned process was working fine. Free State Provincial Legislature noted that their political structure involvement is ad hoc and suggested a structured standing political committee to deal with public

participation matters. In KwaZulu-Natal the political structure's responsibilities are limited to dealing with petitions and even in this regard they are lacking sufficient capacity. Others noted the importance of political commitment to the oversight and public participation processes.

From the above feedback, one can derive that political commitment to public participation may be lacking in some respects and that certain political structures have limited powers when it comes to public participation, e.g. dealing only with petitions matters. These challenges play a major part in hampering efforts to encourage and enhance participation from the public. It is essential to address the factors that contribute to the creation of these challenges. A main factor that plays a role in the perceived lack of political commitment is time management and workload. This is especially true in the case of smaller Provincial Legislatures where there are few members, these members have a number of portfolio committees they sit on and the legislative programme is very full. This leaves very little time for members to actively engage in eliciting public participation. In addition, limiting a political structure to dealing only with the petitions aspect of public participation leaves a huge gap in terms of political decision-making with respect to other aspects of public participation – outreach, hearings, education, committee proceedings and house sittings, and constituency office use.

- a) The practice of setting up cross-functional teams to carry out projects is a dynamic tool for project management. It is a positive factor indicating the legislative sector's ability to keep up in a fast-paced modern environment. This phenomenon is much more prevalent in the private sector environment than to be expected in a bureaucratic institution.

Clearly there is a lack of electronic project management systems available within institutions in order to facilitate more effective and efficient project management and tracking.

b) In order to reach or mobilise a specific target audience to participate it is important to have an effective communication plan for each activity. The communication method, medium and timing are critical factors in determining the participation of the right target group who in turn are able to assist and influence political decision-making through relevant and quality inputs. Given the feedback from the questionnaires, it seems that institutions are of the opinion that they are communicating with the public fairly successfully, yet need to evaluate their communication methods to identify challenges and find ways to improve their external communication relating to public participation initiatives.

Despite the coverage that the media could give South African legislatures, they pay little attention to legislatures. The National Assembly gets fair coverage, especially on television, but the Provincial Legislatures and National Council of Provinces do not have the same degree of visibility. They fear that they are slowly becoming invisible and that their importance as key locations and sources of political news and events is diminishing seriously. It is clear that Parliament and the Provincial Legislatures need to work with the media in a structured and regular way (Murray and Nijzink, 2002:117-118).

“The media can help legislatures to build public understanding, to enhance their credibility, to extend their reach to the people they serve and to increase transparency and openness. The media offer only indirect communication for politicians and have their own role to play. But, they are potentially a powerful tool for legislatures” (Murray and Nijzink, 2002:119).

c) From the findings it appears there is a need for an electronic database management system which would greatly assist in public participation planning and project implementation. General feedback from practitioners indicates that the existing databases are not as useful given that they are manual, incomplete and lack certain important information. The poor quality

database management system impedes the process of identifying a relevant target audience for the various public participation activities. In addition it is indicative of the lack of an integrated knowledge management system within legislative institutions.

- d) The findings indicate that there is a lack of tracking, monitoring and evaluations systems (whether electronic or manual) in place at legislative institutions. This points to the neglect of an important aspect of management and project management specifically and is a very real concern throughout the public sector.

5.2.3 Resources

5.2.3.1 Human resources

Findings

The structure and size of PPU's in Parliament and the respective Provincial Legislatures differs (in terms of staff numbers) and does not seem to relate to factors pertaining to its urban or rural nature, number of members, size of geographical area or population concentration. In terms of staff capacity the main response (100%) from institutions was that there is a lack of sufficient and well-trained staff to function optimally. Below is a chart reflecting the size of PPU's per institution.

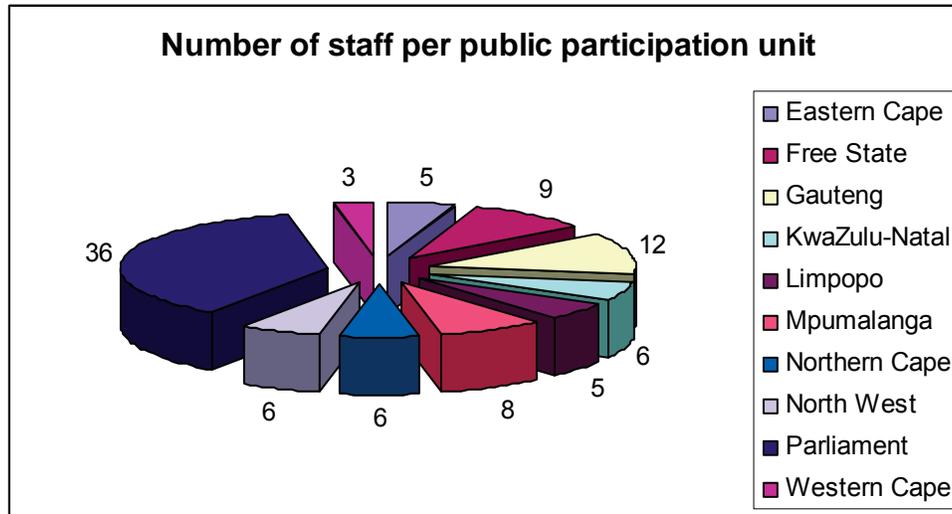


Figure 5.1: Staff capacity per legislative institution

Seven institutions indicated that PPU staff have been trained in public participation or related areas (public relations, etc), yet three (Mpumalanga, Northern Cape and Western Cape) noted that staff had not received specialised training in this area. The majority of public participation practitioners have post-matric qualifications which range from public relations, project management, public management, education, legal to development studies and communication. On a scale of “very well” to “not coping at all” the indication is that two PPU’s are coping *very well* (Limpopo, Northern Cape) with their volume of work, four are coping *well* (Eastern Cape, Free State, Gauteng and North West) and four mentioned their rating is *average* – meaning these units (KwaZulu-Natal, Mpumalanga, Parliament and Western Cape) are not coping too well with the work volume.

Analysis

On average institutions require at least an additional four to five staff members to deal with the various aspects of public participation. There are on average six persons employed per institution (excluding Parliament) to assist with the implementation of public participation activities (including managers). Given the extent of this core function together with the geographical size of areas to be

covered and population numbers that need to be reached, the allocation of six staff members to implement public participation initiatives is well below the required capacity. It is unthinkable that these units can perform well without a much expanded staff complement. The lack of staff capacity impedes the institution in executing its constitutional mandate to secure public participation.

Staff members employed in PPU generally possess post-matric qualifications in the field of public relations, project management, public management, education, legal, development studies and communication. From this statement it is clear that there is at present a gap in the training field as no specific and specialised training in public participation is available at institutions of higher learning in South Africa. The International Association for Public Participation runs a five-day training course which results in the receipt of a Certificate in Public Participation. This is the only specialised training available to public participation practitioners in South Africa, is not accredited locally and is presented ad hoc.

All institutions have indicated that their PPU staff members require specific skills training to optimise their performance. The type of training recommended ranged from communication and liaison skills, events management, financial management, minutes and report-writing skills to advanced computer training. Further training areas identified were project management, conflict resolution, training, presentation and facilitation skills, adjudication skills, and research skills. In addition there was a call for protocol training, public speaking, desktop publishing and monitoring and evaluation training.

From the above feedback on skills required and types of training interventions that would assist in optimising the performance of PPUs, it is clear that this is a very diverse field of work requiring a range of skills from the practitioner. There are very few persons who can claim to possess all the listed skills and qualifications which therefore makes it impossible to appoint a single candidate with all the skills readily available. Since there is no single training programme

that incorporates all of the above aspects, it is important for legislative institutions to develop staff to master this diverse area of work through acquisition of the above skills either externally or through in-house training.

Masango (2002:63) concurs that “capacity-building is therefore essential – both for public officials and members of the public – if participation is to be effective”. In this regard Midgley *et al* (1986:32) recommend the introduction of training that includes workshops and programmes designed to equip community workers with participatory skills. It would appear that training of this nature could contribute towards boosting public participation in the mean time. However, a long-lasting approach that will educate members of the public about the nature and functions of their local authority as well as their rights and duties, is needed.

5.2.3.2 Financial resources

Findings

Public participation managers in all legislative institutions reported that there is a budget for public participation implementation which has steadily increased over the past five years. Only three institutions (Free State, Gauteng, KwaZulu-Natal) indicate having a specific budget for public participation in 2003 ranging between five hundred thousand to one million rand. In 2008 all legislatures indicate specific public participation budgets which range between one and a half to nine million rand up to nearly twenty million rand for KwaZulu-Natal Legislature. Below is a chart reflecting the public participation budget of legislative institutions for 2008.

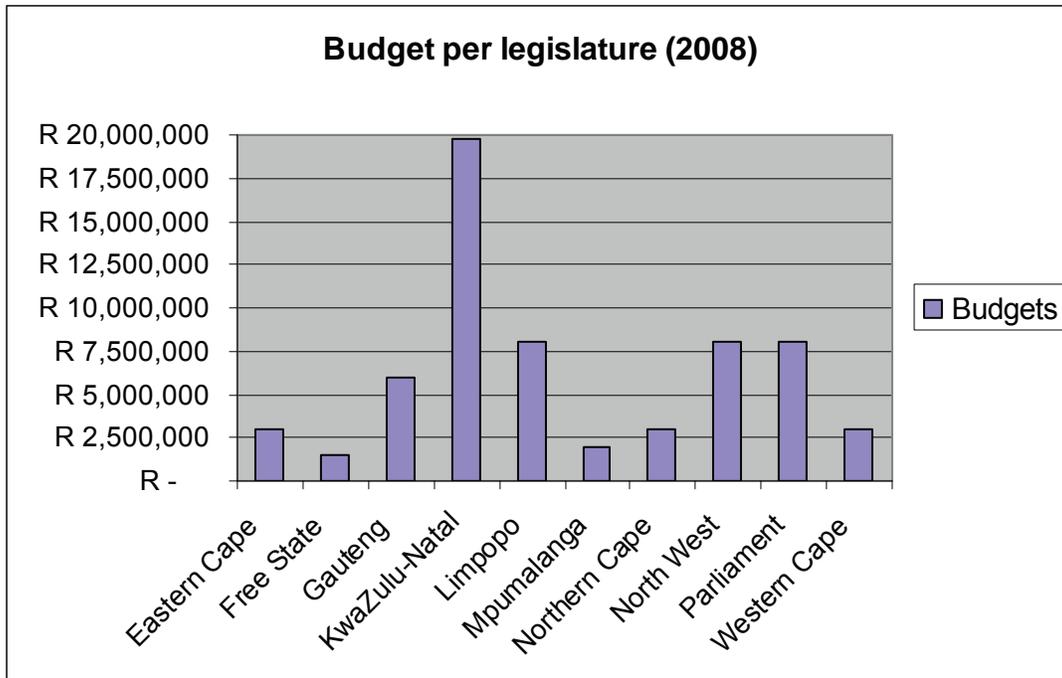


Figure 5.2: Public participation budget per legislative institution (2008)

In total the nine Provincial Legislatures (excluding Parliament) have a budget of approximately forty five million rand to conduct public participation across the country, i.e. on average five million rand per Provincial Legislature per annum at present. All legislatures' budget for public participation is supplemented by donor funding from the European Union (EU).

Analysis

From the above it is noticeable that years after the advent of democracy, the core function of public participation in the legislative sector was given recognition in the form of a budget to mobilise participation. This budget has grown substantially over the past five years, yet remains insufficient to reach South Africa's population of more than forty million persons. Clearly budgetary commitment to public participation has to follow on political commitment to reach people and have meaningful interaction.

In the first years post-democracy legislative institutions nearly solely relied on donor funding (mainly EU funding) for public participation activities. In the past five years, the public participation budgets of legislatures have continued to be supplemented fairly extensively with EU donor funding.

An average of five million rand per annum is budgeted for public participation per legislative institution (National Parliament excluded). Given the scope of public participation activities or techniques, the population and geographical size of the respective provinces, the rural nature of certain provinces and the high poverty and illiteracy levels prevailing, this budget is clearly insufficient to make any real impact. One could easily envisage spending five million rand on communication and awareness alone, thus leaving nothing for a whole range of other items to be financed in order to ensure effective public participation.

5.2.3.3 Physical resources

Findings

Facilities - All public participation units are physically located in the main buildings of the respective legislatures which are situated in the capital cities of the respective provinces of South Africa. In response to a question on the accessibility of these offices to ordinary people (ranging from “very accessible” to “not accessible at all”), four respondents indicated the offices were *very accessible*. Three respondents (Eastern Cape, Limpopo and North West) noted that the PPU office was *fairly accessible*, whilst three others (KwaZulu-Natal, Parliament and Western Cape) said that the office was *not very accessible*. Factors supporting positive responses were that the PPU office is user-friendly in terms of its location near communities and infrastructure (central and easy access via all modes of transport), as well as being accessible for disabled persons. Others regarded the location of the legislature, internal security process and cost of long distance transport as a challenge in terms of accessibility.

On questioning the conduciveness of the office environment for staff efficiency, seven of ten legislative institutions said they were content with the office environment setup whilst three (Eastern Cape, North West and Western Cape) noted some challenges such as insufficient office space, sharing of offices, lack of telephone lines and internet access as well as inaccessibility to the public.

Equipment - Legislatures indicated that they have the following resources to support their public participation initiatives:

Resources to support public participation	EC	FS	Gau	KZN	Lim	Mpu	NW	NC	Parl	WC
Specific line item in legislature budget	√		√	√	√	√		√		
Personal computers	√	√	√	√	√	√		√	√	√
Computerised database programmes to monitor PP	√				√			√		
Non-computerised lists of potential participants	√	√	√							√
Non-computerised lists of past participants	√	√	√				√			√
Desktop publishing software for creating posters, pamphlets, etc.	√	√				√		√	√	
Funds for public outreach programmes	√	√	√		√	√		√	√	√
Vehicles for public outreach programmes	√					√		√		

Table 5.1: Resources available for public participation in South African legislative institutions

Analysis

Facilities - There are varying perspectives on the accessibility of PPU offices to the public. These offices are generally within legislature buildings which are located centrally in provincial capital cities. In this sense, the PPU offices are fairly easily accessible to the urban population of a specific province. However,

for those living farther afield or in a different city, physical access is not an option owing to long distances and the high cost and time of travel. For those who are able to access legislature buildings physically, on the positive side there is disabled access yet strict security procedures are in place which may deter easy access.

Furthermore, with regard to office facilities, the findings point to a certain degree of dissatisfaction about the physical office setup in some legislative institutions. This aspect would require attention since it could impact on staff productivity which in turn would have an impact on public participation activities.

Equipment - All legislative institutions (except Limpopo) indicated that there is lack of sufficient technology to effectively conduct public participation activities. Gaps identified are the lack of technology provision in terms of notebooks, remote access (3G), desktop publishing software and printing equipment, mobile printers, digital video and still cameras, data projectors, audiovisual recording and editing equipment.

Additional resources that would enable and facilitate public participation implementation are: transport, audiovisual equipment (digital still and video cameras, recording equipment, public announcement system), high volume photocopier, colour copier, financial resources for media exposure and advertising, information and communications technology (notebooks, remote access (3G modem), mobile printers, internet access), a functioning website, cell phone allowance, Braille and sign language services.

In terms of the feedback regarding equipping of PPUs, it is evident there is no uniform approach to equipping PPUs and these units are in urgent need of a number of basic equipment items as well as technologically advanced items that would enable the staff to perform at their optimum and be more efficient and effective in the execution of the core function of public participation. Given the

nature of the work involving much time out of office, it is essential for a practitioner to have as basics a notebook, mobile printer and remote access (3G modem) in order to remain effective and accessible.

Much publishing is also done internally in preparation for public participation initiatives and therefore warrants the setup of a fully outfitted desktop publishing and printing space. The majority of public participation events furthermore require the use of data projectors and public announcement systems. Therefore it would be economical to purchase these items once-off rather than pay rental for each event.

5.2.4 Public participation practice

As mentioned in chapter 4 there are a number of methods employed or vehicles utilised for conducting public participation or eliciting public inputs in South Africa. These include public outreach, public hearings, petitions, public education, committee proceedings and house sittings, and the use of constituency offices. The findings and analysis stated below relate to each of these methods and cover a number of aspects ranging from the motivation for a public participation activity to the format and content, the target audience, accessibility, scheduling, the process and communication.

5.2.4.1 Public outreach

Findings

All legislative institutions have specific public participation outreach initiatives taking place in urban and rural communities. These activities vary in type and format. Examples of such outreach initiatives are the celebration of days of significance, sectoral parliaments held (for the youth, disabled persons, elderly, workers, women), schools programmes, educational workshops on the role of the legislature, taking parliament to the people campaigns, etc.

Legislatures take a number of steps to encourage participation from especially rural communities that are under-resourced and unorganised. These include providing transport, accommodation, meals, assistance in petitioning, taking parliament to the communities, and workshops in rural areas.

Generally institutions have mailing lists of persons invited to participate and these are either computerised or written lists. There is also follow a specific method of categorising submissions and participants for public participation activities. Categories developed are based on different sectors such as health, education, etc. Public records are also available for public scrutiny in the majority of institutions. Six institutions said it is *easy* or *very easy* for physically impaired persons to participate in legislature activities whilst four (Gauteng, KwaZulu-Natal, Mpumalanga and North West) indicated a rating of *not easy*.

Analysis

It is evident from the above that much is being done through public outreach initiatives to involve the public in the decision-making processes of our legislatures (representing the citizenry). One weakness is that the stated outreach initiatives are usually mass-based events where our politicians are heard, but the public have very little opportunity to participate and give inputs pertaining to the specific topic of the event. Apart from the lack of sufficient opportunity to communicate their concerns at such events, the relevance and usefulness of inputs are sometimes wanting. Therefore the impact and influence on decision-making flowing from such outreach events to date remain very limited. There is also a lack of an effective feedback mechanism to inform communities of the outcomes of such gatherings on decisions taken. It remains a challenge for disabled persons to participate in all outreach activities, especially in terms of physical access and communication. Further challenges to be noted are the quest for quality inputs (instead of quantity) and obtaining representivity from all sectors and groups in society.

According to Atlee (2003), “we face increasing complexity and scope in public issues and in the social and political contexts within which those issues are addressed. In this new environment one-time, single-process public participation events, however sophisticated, are proving less capable of satisfying the needs of contemporary democracy. Neither citizens nor stakeholders nor decision-makers are being adequately served”.

Creighton (2005:24) maintains that “if a public participation process includes only those people in the mainstream of opinion, those whose opinions fall outside that mainstream will feel unrepresented and left out of the process. As a result, they are likely to see the public participation process as fundamentally flawed. My experience [Creighton] is that it is less crucial to have a cast of thousands participate in a public participation program than it is to have the full range of opinion represented. If people choose not to participate, that’s unfortunate but rarely a source of political controversy”.

5.2.4.2 Public hearings

Findings

Public hearings are held on all provincial legislation and section 76 national legislation and the topic of the hearing depends on the bill being discussed. The public hearing process normally entails giving notice of the intended hearing, pre-hearing workshops with stakeholders, public mobilisation and submissions at the public hearing, post-hearing submission finalisation and tabling of legislation in the house for adoption.

All legislative institutions have indicated that their portfolio committees hold public hearings and proceedings are open to the public (exceptions are rare). Generally the following steps are taken to facilitate public participation:

- Keep records of committee proceedings.
- Publicly available summaries of committee proceedings.

- Publicly available verbatim transcript of proceedings.
- Publicly available record of members' votes.
- Published plain language summaries of bills or policy oversight.
- Hold public hearings on bills.
- Hold public hearings on policy issues.
- Publicise public hearings.
- Publish invitations to general public to attend or make submissions.
- Invite expert testimony to committee hearings.
- Committee proceedings open to public.

At the public hearing itself the chairperson (member of Parliament or Provincial Legislature) introduces the topic and explains the purpose of the hearing after which presentations and inputs are heard from the public and relevant portfolio committee following which participants have an opportunity to ask questions. Written record is made of all deliberations at public hearings and reports with recommendations are prepared.

Six institutions indicated that public hearings were *always* advertised whilst four (Gauteng, Mpumalanga, North West and Western Cape) noted advertising was done *most of the time*. Public notices are mostly communicated via radio and local newspapers. Some institutions make use of notice boards in public places whilst few use television and the internet to publicise intended public hearings. Six institutions noted that public notices were *mostly* or *always* available in the relevant languages whilst four (Gauteng, Limpopo, Mpumalanga and North West) said *sometimes* notices were available in the relevant languages. In five of ten institutions (Free State, Gauteng, KwaZulu-Natal, Limpopo and North West) there is no minimum notice period whilst the notice period in the remaining institutions varies between seven to fourteen days notice. Public hearings are held at legislatures (mostly in provincial capital cities) as well as in places outside cities.

The target audience for public hearings is determined based on the topic covered by the bill at hand, e.g. for a fishing bill the fishing community and business would be targeted. The possible target groups include stakeholders from specific communities, issue-based interest groups, civil society organisations, political parties, business and the general public. Communication with the target audience is done via invitations, briefing meetings, pre-hearings, public notices, radio, community structures, constituency offices and municipalities.

Analysis

From the above feedback it is clear that the public hearing process has been well-developed and institutionalised over the past fourteen years of democracy. Legislatures have also developed categorised databases used for targeting a specific audience depending on the topic at hand during a public hearing. General public notices are also published via the media inviting the general public to participate. Challenges that remain are sufficient notice periods, attracting the relevant citizenry to participate on a particular issue, and ensuring that inputs are of suitable quality and useful to consider during decision-making.

With regard to a question on the general quality of inputs at public hearings, six respondents indicated that inputs were good or adequate whilst three (KwaZulu-Natal, Mpumalanga and Western Cape) noted that inputs were poor quality. Suggestions for improvement of input quality include strengthening public education, availability of documents in relevant languages, conducting pre-hearing workshops and increasing the public hearing notice period.

Another area of concern is whether our legislative institutions are making it very easy for the public to participate at public hearings. Challenges pertaining to public hearings are timeframes and scheduling, language use, content and relevance of discussions, resources, make-up of the target audience and communication in general. Apathy and poor attendance, lack of sufficient information, lack of educational material, poor quality submissions and the

absence of a feedback mechanism are further challenges listed. Furthermore, there is a lack of strong civil society participation and few meaningful contributions from individual members of society.

On the other hand, people must be given an opportunity to speak to legislatures so that legislatures can be responsive and take the public's views into account. Here legislatures need to take care that they involve not only organised civil society but also individuals and disadvantaged groups, for whom access to the legislature is more difficult.

“Most legislatures attempt to involve the public when they discuss bills and some do when they conduct oversight. To do this, they run public hearings either at the legislature or in other places. Overall, at the moment, these public hearings and submissions from the public on specific bills provide the most significant opportunities for public participation in the political processes in legislatures” (Murray and Nijzink, 2002:123).

According to a series of constitutional court judgements recently the legislative sector could significantly broaden public participation. Judgement against the legislative sector in two cases, *Doctors for Life International* (2006) and *Matatiele Municipality* (2006) led to four recently approved laws being invalidated on the grounds of procedural shortcomings. The court found that the National Assembly conducted public hearings at national level, yet the National Council of Provinces failed to conduct provincial public hearings.

The court drew attention to the constitutional requirement for Parliament to conduct its work “with due regard to representative and participatory democracy, accountability, transparency and public involvement” and sought to determine the exact meaning of “facilitating public participation” (Seedat, 2006:17).

5.2.4.3 Petitions

Findings

The petitions aspect of public participation is fairly well regulated as seven institutions have passed specific petitions legislation. Three legislative institutions (North West, Northern Cape and Parliament) have not formalised their petitions process into legislation though a formal process does exist.

All legislative institutions have noted that the public are generally encouraged to petition at public hearings, public education workshops and to a lesser extent via the media. Seven out of ten institutions (Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape and Western Cape) have a standard form or format for petitioning. On receipt of a petition, certain institutions first summarise the matter before it is passed on to the relevant committee whereas in four institutions (KwaZulu-Natal, Limpopo, North West and Western Cape) the full petition is submitted to the relevant committee for consideration. Preliminary investigation by officials (usually the legal unit) takes place in certain institutions before the committee takes a decision and gives feedback to a petitioner.

Analysis

It is positive to note that the petitions process is formalised in legislative institutions through law or rules, though it appears there is lack of strong enforcement or implementation thereof. There are arguments for and against the usefulness of legislation in regulating the petitions process. The researcher is of the opinion that whether the petitions process flows from legislation, rules or a fixed procedure put in place, is irrelevant as long as petitions are dealt with in a consistent manner within a certain timeframe and the petitioner receives feedback on the outcome. A uniform approach to dealing with petitions across all legislative institutions would facilitate petitioning by the public and create certainty around the manner in which their petitions will be dealt with.

General constraints faced in the petitions process are a lack of sufficient funds and staff capacity. Lack of interest from members of legislative institutions in the petitions process is also cited as a challenge. Petitions processes in the different legislative institutions vary from one to the next - there is no standardised process or petitions format followed by all institutions in dealing with petitions.

Challenges identified in terms of the petitioning process are time constraints and programming challenges, the nature of particular petition topics, turn-around time for response to petitions, communication with petitioners, slow responses from departments, delays in processing of petitions, shortage of staff to conduct preliminary investigations into petitions, lack of public knowledge of petitions process, lack of proper tracking and feedback system for petitions, cross-boundary issues and politically sensitive petitions.

5.2.4.4 Public education

Findings

All ten legislative institutions have public education programmes in place. The content of these ranges from school visits, educational material, workshops that focus on various aspects of lawmaking, petitions and the role of legislatures and exhibitions as well as stage productions.

The main target groups for public education activities are schools, constituency offices, civil society organisations, community members, and community development workers. The groups are reached through different methods including meetings with target groups, adverts, pamphlets, radio, constituency offices, municipalities, community development workers and non-governmental organisations.

All institutions have developed educational material for use during public education activities. The material includes banners, booklets, pamphlets, posters

and DVDs on the role of the legislature, national and provincial symbols, the budget process, petitions and lawmaking. Only two institutions (Eastern Cape and KwaZulu-Natal) noted that the public education material and activities were *always* available in the relevant languages, whilst five institutions reported that education was *mostly* done in all the relevant languages and *sometimes* in the Northern Cape. In response to a question regarding which languages are mostly used for communication (ranked according to priority) it is clear that English is the main language of communication with Zulu, Xhosa and Afrikaans following. Most institutions communicate in the three or four main languages of the region.

Below is a table reflecting how often public education is offered to schools and universities, as well as indicating the use of internships and guided tours of legislative facilities for public education purposes.

	EC	FS	Gau	KZN	Lim	Mpu	NW	NC	Parl	WC
Outreach programmes in schools	√, not often	√, often	√, not often	√, not often	√, very often	√, not often	√, often	√, often	√, not often	√, not often
Outreach programmes in universities	√, often	√, often	Never	√, not often	Never	√, often	√, not often	√, not often	√, not often	Never
Internships	Never	Never	√, very often	√, not often	Never	√, not often	√, often	√, not often	√, not often	√, not often
Guided tours of parliament	√, very often	√, very often	√, very often	√, very often	Never	√, often	√, very often	√, very often	√, very often	√, not often

Table 5.2: Public education activities in the South African legislative sector

Six of ten legislative institutions (Eastern Cape, Gauteng, KwaZulu-Natal, Mpumalanga, Parliament and Western Cape) noted that outreach programmes in

schools do *not* take place *often* whilst the other four emphasised that their institutions *often* have schools outreach programmes. Only three institutions (Eastern Cape, Free State and Mpumalanga) *often* have outreach programmes in universities with the remaining seven legislatures indicating that they have never done outreach or do not have regular outreach programmes with universities. Interns are rarely used to assist with public education campaigns whilst eight of ten legislative institutions *very often* conduct guided tours of their facilities and two legislatures, i.e. Limpopo and Western Cape respectively, *never* or *rarely* conduct guided tours of their institutions.

Analysis

Public education is a field where much development is still required. Given the limited resources and time available for education, it is of the utmost importance that a uniform approach to public education is developed which is very strategic by nature. Attempting to educate a large population with few resources is the challenge in this area of public participation. In this area it is important to closely differentiate the target audiences and focus educational efforts to be suitable for such audience. Target audience specific educational material needs to be developed and the correct educational methods should be employed to ensure success in this regard.

“A further question is to what extent public education programmes contribute to the process of forging links between the legislature and the public. And, in South Africa, it would be absurd to expect substantial public participation in the absence of strong education programmes. However, these programmes must be geared towards increasing participation in the political processes of legislatures and enhancing the feeling amongst the public that legislatures (and thus governments) are open and responsive to their needs” (Murray and Nijzink, 2002:115).

“A legislature’s relationship with the people necessarily has two sides. Legislatures need to reach out, publicising their role, achievements, proceedings and decisions. They also need to allow the public to speak to them so that they can be responsive to the needs and concerns and take the views of the public into account in their work” (Murray and Nijzink, 2002:113).

Challenges related to the public education process are staff shortages, programming and planning challenges, lack of financial resources, poor participation by members, development of educational material, logistical and technical support difficulties, the language barrier, vast geographical areas to be covered, reaching the target audience, lack of material for visually impaired, disinterested youth, illiteracy, etc.

5.2.4.5 Committee proceedings and house sittings

Findings

Allowing the public access to the committee proceedings and house sittings of national Parliament and Provincial Legislatures is a constitutional imperative which is a crucial aspect of public participation in the legislative environment.

All legislative institutions reported that committee proceedings and house sittings are publicised in various ways, but mostly via radio, national and local newspapers, public places and the internet. Community based organisations (CBOs), non-governmental organisations (NGOs), business, political parties, experts and ordinary citizens are invited to attend or make submissions at committee proceedings and institutions make use of a set list of invitees. In terms of response rate by these invited groups, it is clear that only some CBOs attend, whilst most NGOs find time to attend proceedings. On the other hand business and experts invited show a very poor attendance figure whilst most individuals invited would attend. The indication by institutions is furthermore that groups who have attended committee proceedings or house sittings usually attend such

events again. Apart from public notices, invitations are also issued to target groups or individuals based on the nature of the matter to be considered and through a process of stakeholder analysis taking into account representivity factors.

All legislative institutions noted that they facilitate public participation in the legislative process by making the relevant documents available, ensuring that proceedings are open to the public and are well publicised. In some instances, the public initiate their own participation actions. Institutions reported that committee proceedings are always open to the public, yet indicated that proceedings may in very exceptional circumstances be closed on consideration of very sensitive or confidential internal issues.

Analysis

According to the above feedback committee proceedings and house sittings are open to the public for attendance at all times. This is an extremely positive aspect which supports the notion of transparency and access to information by the public. Two questions remain here, namely to what extent is the public aware of or encouraged to attend these proceedings and secondly, what is their level of engagement when attending. The answers to these questions have bearing on the impact that the public may have in influencing decisions taken during committee proceedings.

The constraints faced in facilitating public participation in the legislative proceedings of institutions include lack of resources (human and financial), a disinterested public, disinterested political leaders and members as well as a lack of funds for advertising or no available media.

“Perhaps the greatest difficulty legislatures face in meeting the challenge of inclusiveness lies in establishing a political culture which encourages open debate and does not always deal with dissent and disagreement through party

discipline and bland party competition. The challenge is for the political leadership in all parties to foster vigorous democratic debate and to limit posturing” (Murray and Nijzink, 2002:133).

5.2.4.6 The use of constituency offices

Findings

Constituency offices are funded by legislative institutions and provide a basis for members of Parliament and Provincial Legislatures to carry out constituency work. At present these offices are not perceived as objective or neutral structures, yet operate like political party offices.

Four institutions (KwaZulu-Natal, Mpumalanga, North West, and Parliament) indicated that constituency offices were not at all involved in public participation efforts in their provinces, whilst six others reported a good or strong relationship and active involvement of constituency offices during public participation activities.

Analysis

As Hicks (2003:3) emphasises the constituency system is intended to address the considerable gap between communities and legislative structures through facilitating and channelling public input and concerns through their designated constituency Member of Parliament (MP). While there are some well-functioning offices, the constituency system on the whole has not proven successful.

“Among stakeholders within the legislature, there appears to be no common understanding of the role and function of constituency offices, and this is inadequately publicised within communities. Offices are generally inadequately utilised as a means to disseminate information on and awareness around legislative processes to communities, and office staff are not adequately trained or resourced to fulfil this function” (Hicks, 2003:3).

Community groups feel that MPs do not make adequate use of their constituency offices to communicate effectively with communities to which they are assigned. Constituency offices do not interact adequately with community, local government and traditional leadership structures, and are therefore not effective in collecting and relaying community concerns to designated MPs. “In addition, the role of constituency offices is politicised because of their links with political parties, making them inaccessible to certain groups within communities. There is insufficient and uneven funding channelled to constituency offices, which are accountable to political parties instead of the legislature or communities. There are inadequate controls or reporting systems in place to assess the effectiveness of offices, or run an audit on finances” (Hicks, 2003:3).

This interpretation by Hicks is confirmed by questionnaire responses noting a number of challenges in working with constituency offices to reach the public. Amongst others the challenges include poorly equipped offices, lack of resources and transport, a party political agenda in most constituency offices, and lack of commitment from constituency office staff.

Constituency offices could play a much more active and vital role in facilitating public participation in legislative activities. For this to happen, a number of factors need to be addressed, amongst which is resourcing such offices (fax, computer, e-mail, telephone, transport), integrating these offices into the legislature’s operations and setting them up to be information centres for government departments and legislatures as well as providing staff training.

5.2.5 Monitoring and evaluation

5.2.5.1 Monitoring

Findings

Monitoring here entails the checking of strategic planning or project execution

against the approved strategic project plan. On a question whether institutions compiled project plans with specific milestones and performance indicators, nine of ten responded positively, whilst six of ten legislatures (Eastern Cape, KwaZulu-Natal, Limpopo, North West, Parliament and Western Cape) indicated that there is a system in place for monitoring progress on public participation.

Monitoring mechanisms used include strategic, operational and performance plans, annual, monthly and quarterly reports as well as project evaluation reports, statistics on submissions, attendance figures, and visits to venues. Three legislative institutions (Limpopo, Mpumalanga and Parliament) were of the opinion that the monitoring system in place is effective, whilst seven indicated the system is not working effectively. Flaws in the system relate to inexperience and poor knowledge of monitoring and evaluation, loss of information, lack of feedback to the public, non-addressing of resolutions, and lack of a review process to ensure improvement.

According to responses none of the institutions have a computerised database programme to monitor participants, five (Eastern Cape, Free State, Limpopo, Mpumalanga and North West) indicated they have non-computerised lists of past participants, four noted there are records of all submissions made, whilst another indicated that statistics and reports are prepared on all public events.

Analysis

The UNDP (2002) defines monitoring as “a continuing function that aims primarily to provide managers and main stakeholders with regular feedback and early indications of progress or lack thereof in the achievement of intended results. Monitoring tracks the actual performance or situation against what was planned or expected according to pre-determined standards”. As emphasised by this definition, monitoring progress in terms of any plan (operational, performance, programme or project plan) is critical in ensuring its execution is taking place according to set indicators and timeframes. The absence of a formal,

standardised monitoring system in the legislative sector is concerning as it points to the fact that there may be a lack of proper planning, project execution and tracking of implementation activities.

5.2.5.2 Evaluation

Findings

Evaluation entails a process of assessing the milestones or outputs in a process or project in order to determine the positive or negative impact thereof. Based on this an institution or project team can revisit its implementation strategies in order to negate any negative aspects and increase effectiveness and efficiency.

Six of ten institutions (Eastern Cape, Free State, Limpopo, Mpumalanga, North West and Western Cape) noted that there is a system in place for tracking the extent of public participation (increases, decreases, trends) whilst nine of ten institutions (excluding KwaZulu-Natal) request feedback from participants at events.

Feedback from the public is received mostly through verbal comment as well as through pre-prepared forms handed out by the legislature and via letters in some instances. Most institutions have reported that the public feedback emphasises that their public participation programme can be improved. The reasons given are as follows: the public have to be educated about the role of the legislature, the public require materials in their own language, new techniques are required to enable the largely disinterested public, rural areas especially need to be targeted more, illiteracy remains a challenge, public participation is events-based and driven.

Five legislative institutions (Free State, Gauteng, Limpopo, Mpumalanga and Parliament) reported that they do evaluate and revisit their public education and participation programme on a regular basis, whilst the others do not have such

process in place. The evaluation process followed takes various formats and timeframes ranging from a situational analysis at the end of each project, a debriefing session within two weeks of project completion, an evaluation checklist, reflection on the success and impact of a programme as well as putting forward corrective measures.

Public participation programmes are evaluated through quarterly and annual review meetings, use of a standard evaluation checklist, through attendance figures and quarterly reports, an evaluation questionnaire, post public hearing workshops, and annual performance plans.

Six of ten institutions noted that recommendations for improvement of public participation activities are made after evaluation and these are incorporated into the project process to ensure improvement. Only three institutions (KwaZulu-Natal, Limpopo and Mpumalanga) have a specific unit in place that deals with monitoring and evaluation. None of the institutions have included civil society in the monitoring and evaluation process relating to public participation programmes.

Analysis

According to Kusek and Rist (2004:12) “the aim of evaluation is to determine the relevance and fulfilment of objectives, development efficiency, provide information that is credible and useful, and will enable the incorporation of lessons learned into the decision-making process of all parties involved”. Given the feedback it is clear that the monitoring and evaluation aspect of management and specifically project management is still neglected to the detriment of legislative institutions. Factors that point to this is the lack of a formal consistently applied monitoring and evaluation system as well as lack of dedicated units or staff to assist with this crucial aspect of institutional performance. Furthermore, there is little to no external participation (civil society) in the assessment of legislature activities, therefore a realistic picture is not possible.

Landsberg (2005:29) suggests that “civil society must be invited to influence the crucial policy-making phase, the implementation and to monitor the outcomes of policy processes”. Also, the use of the imbizo as a powerful and unique avenue for engagement could be empowered and further strengthened (at present it is perceived merely as an information sharing or transmitting mechanism).

Without the implementation of an effective and standardised monitoring and evaluation system across the legislative sector, it will remain in a state of repetition instead of becoming learning organisations that reflect upon their actions in search of improvement. Only once the legislative sector manages to truthfully and realistically monitor and evaluate its actions and put plans in place to address flaws, will it be able to raise its profile and become a strong arm of government taking up its rightful place in the governance of South Africa.

5.3 SUMMARY ON THE STATE OF PUBLIC PARTICIPATION IN THE SOUTH AFRICAN LEGISLATIVE SECTOR

From the above report on the current state of affairs on public participation in the legislative sector it is clear that there are many positive factors and innovative ideas in place across the legislative landscape. The picture painted however also reflects some glaring gaps in areas which are crucial in ensuring and facilitating greater public participation in legislative matters.

Generally the Constitution provides the policy basis and guidance for all public participation programmes. In terms of institutional arrangements, all ten legislative institutions have operational public participation units of varying capacity in place, whilst some also have a political structure in place dealing specifically with the aspect of public participation. There are human and financial resources in place to facilitate the basic public participation function. There are systems and processes in place for most public participation aspects, though these are not necessarily formalised or consistently applied. The same types of

implementation activities are executed across the legislative spectrum in the well recognised macro areas of public participation, namely public hearings, petitions, public education and outreach, constituency office use, and committee proceedings and house sittings as well as sectoral parliament events.

The area of petitioning is fairly regulated with seven of ten institutions having formal processes in place for dealing with petitions. Constraints faced in the petitions process is generally a lack of sufficient funds and staff capacity as well as lack of interest from members of legislative institutions. Also worth noting is that there is no standardised petitions process followed by legislative institutions throughout South Africa.

In the area of public education all institutions have indicated that there are educational processes in place in their region, yet these are hampered by staff shortages, programming and planning challenges, lack of financial resources, poor participation by members, slow development of educational material, logistical and technical support difficulties, the language barrier and illiteracy levels, vast geographical areas to be covered, etc.

At present constituency offices are clearly not playing the active and vital role in facilitating public participation in legislative matters that it could play. In addition public submissions and attendance of open committee and house proceedings is limited owing to lack of resources (human and financial), a disinterested public, disinterested political leaders and members as well as a lack of funds for advertising or no available media.

In a research study conducted on behalf of the Northern Cape Provincial Legislature (NCPL) it was revealed that one of the biggest challenges ... is to maintain the enthusiasm for participation that has been so evident during our national and provincial elections. However, taking part in other processes of democratic governance is an exercise characterised by very little enthusiasm.

Begging the question is there a public will for participation in the law-making processes of the NCPL? “The research conducted showed that the majority of people do not believe that they could have any real influence on the law-making process” (Cloete, 2002:10).

The critical aspects of monitoring and evaluation of public participation activities within legislative institutions seem to be given little attention and most institutions reported that where systems are in place, it is not working effectively.

“At present a number of common problems face South African legislatures as they seek to draw the public into their work. Links between public participation processes and the political process in most legislatures are weak; many parallel processes and avenues and shared responsibilities lead to confusion; and most legislatures have not clarified the aims of their programmes. The fact that the press is staying away is another real concern. The weaknesses in links between the public and legislatures are reflected in worrying trends in the way that people perceive legislatures” (Murray and Nijzink, 2002:129).

The above report clearly reflects that progress in terms of each of the areas of public participation varies between the different institutions. Progress, impact and improvement are limited by a number of similar challenges experienced across the legislative sector. These challenges relate to limited human and financial resources, lack of materials development, communication and language barriers, illiteracy levels, geographical distances to be covered, logistical and equipment challenges, planning and scheduling difficulties (time management), information and communication technology limitations. In addition there are challenges in terms of experience and capacity pointing to a large training need, difficulties relating to ensuring the correct target audience attendance and quality of inputs, overcoming public and members’ apathy as well as managing to implement an effective feedback mechanism and monitoring and evaluation system.

As Cachalia (2006:6) rightly points out: “From their inception, newly established Provincial Legislatures in particular, faced many challenges. They had to draw their staff from a very limited pool of skills, develop systems to manage their human resources and budgets, establish committees with inexperienced members, adopt new rules, etc. It is not surprising therefore, that they show elements of ‘weakness’ – sit infrequently, pass little legislation are dependent on the Executive for information and their budget allocations”.

Murray and Nijzink (2002:133) rightly state that the problems that South Africa’s young legislatures are facing at present are not unique and are similar to those in other countries with similar political systems. The issue of executive dominance, the matter of party discipline, the lack of true deliberative decision-making and weak networks between members and the public are common complaints around the world. These challenges are to some extent characteristic of representative democracy in a parliamentary system. In addition, one has to recognise the challenge of South Africa’s specific circumstances and history. The consolidation of democracy in a country with such a divided and violent past, lack of democratic tradition and major social and economic transformation requirements is not an easy task.

“In summary the challenge is practical, not political. With better organisation and resources we can develop public participation which does impact by improving delivery, building local governance and deepening democracy” (Bucchus *et al*, 2007:3).

Subsequent to the findings and analysis on the state of public participation in the South African legislative sector as reported on in this chapter, clear recommendations for dealing with some of the challenges identified will be put forward in chapter 6.

6 RECOMMENDATIONS ON THE WAY FORWARD FOR PUBLIC PARTICIPATION IN THE SOUTH AFRICAN LEGISLATIVE SECTOR

6.1 INTRODUCTION

In order to successfully address the steep challenge set by the public participation model chosen for the South African developmental context, a number of strategic and operational aspects need to be put in place and changes need to be effected to the existing state of public participation in the South African legislative sector.

In chapter 5 the findings on the current state of affairs of public participation in the South African legislative sector was presented. The findings point to the fact that the general lack of policies, systems, processes, equipment and facilities at legislatures impacts negatively on service delivery and performance. Upon analysis of the findings a number of challenges related to the broad aspects of mandate, legislation and policy, resourcing, practice, and monitoring and evaluation were identified.

What remains is to find ways of addressing the gaps and challenges mentioned in chapter 5 given the current South African legislative context and commitment to the constitutional imperative of ensuring public participation in legislative decision-making processes. This chapter therefore attempts to find holistic and realistic solutions that can be implemented to address the challenges presently faced by the legislative sector with regard to public participation. Recommendations will be put forward for each subsection based on the relevant findings and analysis stated in chapter 5 whereafter a summary of the overarching recommendations for working towards achieving maximum public participation in legislative decision-making will follow. Finally, a concise overview of the research will be provided and a conclusion will be drawn in relation to the research hypothesis.

6.2 CONCLUSION

This study's main aim is to determine whether the public participation strategies employed in the legislative sector are effective and enhance decision-making and policy processes.

The study started off with a literature study on public participation, its origin, theories and application in an international context. Subsequently the topic was narrowed down to relaying the application of public participation in the local South African context with specific focus on the legislative environment. Given South Africa's history of exclusion and the level of inequality that still exists in society, a comprehensive model for or approach to public participation was arrived at. Striving to conduct public participation in terms of this model would certainly counter the hypothesis that current public participation strategies implemented in the legislative sector remain ineffective. An overview of the macro public participation techniques utilised at present was also given.

In order to prove or disprove the research hypothesis, it was necessary to determine the current state of public participation in the South African legislative environment. Following the review, a number of findings were made and a range of strengths and challenges were identified on conclusion of the analysis. The weaknesses relating to current public participation practice however far outweighed the strengths or successes.

An analysis of the findings and main challenges identified therefore provides more than sufficient evidence for the hypothesis of this study, namely that the public participation strategies currently employed by the South African legislative sector on the whole remains ineffective and adds little value in influencing decision-making and policy processes. Based on this the constitutional aim of

conducting public participation with the mission of contributing to a strengthened democracy has not been realised.

The researcher concurs with Briand (2007:15) when stating “I believe members of the public currently lack an effective say in the making of public policy. This matters tremendously, because their continuing absence from the political process renders democracy hollow, in both theory and practice. Without participation by ordinary citizens that enables the vast majority of people to reclaim collective control over their lives, democracy no longer serves as the means by which people become the rightful authors of their own lives. Public participation is much, much more than a means by which public policy can be made more effective and by which citizens can feel more connected with government. Public participation is the *sine qua non* of democracy, which in turn is an indispensable constituent of human well-being. Hence the form, extent, and quality of public participation are of the most fundamental importance. In our conversations and discussions of when, where, and how to bring citizens into the public decision-making process, let us bear in mind that the stakes are of the highest order. Democracy – and probably much more – hangs in the balance.”

Following the findings and analysis in chapter 5, the study concluded by making a number of recommendations for addressing the identified challenges in order to enhance public participation in decision-making within the South African legislative environment.

6.3 RECOMMENDATIONS

6.3.1 Mandate

6.3.1.1 Commitment

- All politicians and staff alike should be exposed to an awareness raising campaign focusing on WHY public participation is so critical, that it is

everyone's responsibility to encourage public participation and to generally convince all legislature members and staff of the fact that public participation is an essential element of democracy and therefore their role in the institution.

6.3.1.2 Legislation and policy

- Although the Constitution provides for the core function of public participation, it is necessary to develop a more detailed policy and strategic framework for the legislative environment which sets the parameters within which innovation can flourish and which is satisfactory from a legal perspective.
- Based on the above public participation policy and strategic framework for the sector, each legislature should adapt such framework into a provincial policy and strategy for public participation given the unique needs and environment of the province.
- In addition to the requirement of a provincial public participation strategy, each institution needs to develop a long-term implementation plan and an annual action plan stating clearly how public participation will be conducted. Having a long-term vision and implementation plan for public participation is critical, thereby ensuring well-thought through planning, achievable milestones and assisting in motivating for sufficient budget as well. It also creates a sense of security, knowledge and predictability with internal staff and members as well as with the public at large.
- An independent internal and external perception survey on public participation should be conducted across the legislative sector of which the research results and recommendations should be incorporated in the sectoral public participation strategic framework.
- It is critical to conduct a review of the state of public participation in the legislative sector at regular intervals in order to check and evaluate progress made in implementing the intended strategic framework. The

outcome of such study could again be utilised to strengthen the strategic framework and implementation plans of legislative institutions.

6.3.2 Governance

6.3.2.1 Structures

- To ensure effective strategic decision-making, it is advisable that a political standing committee is established to deal with all matters pertaining to public participation, including processing petitions. This would create shared political responsibility and buy-in with strategic decision-making instead of the Speaker being solely responsible. The following structure is proposed for management and reporting purposes:

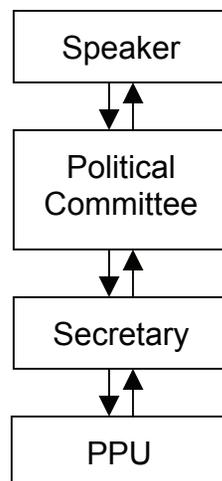


Figure 6.1: Proposed internal management and reporting structure for public participation

In terms of organisational design, it would be ideal to create an operational unit or programme for each of the core functions (law-making, oversight and public participation) as well as a support services programme. Each of these would then report directly to the secretary who is the accounting officer for the legislature and ultimately responsible for the administrative implementation of strategic decisions.

- Clearly there is cooperation and support between the different core functions and internal support services in the process of public participation. Therefore it is recommended that three separate

programmes be put in place, yet the operational setup is flexible enough to allow for the formation of cross-functional project teams when it is required. In this way fields of specialisation are created yet each function can draw on the expertise and support of staff in other components as is often necessary. These are qualities of a highly advanced and dynamic learning organisation and will be excellent for team-building, enhanced performance, improving staff morale and encouraging innovation.

- If the above recommendation is implemented, it is critical that staff members are clear about their job descriptions and parameters, yet are willing to diversify in certain cases with their prior agreement.

6.3.2.2 Systems and processes

- Putting a formal process in place for public participation implementation activities is a positive step towards giving staff certainty in the roles they need to fulfil and allows management to track progress, measure performance and check accountability throughout the process. It is therefore proposed that the legislative sector develop a standardised set of guidelines and procedures for planning and executing public participation activities:
 - Outreach events
 - Public hearings
 - Petitions
 - Public education
 - Committee proceedings and house sittings
 - Use of constituency offices

The procedure should definitely involve both the political and administrative arms and clear guidelines should be set as to when political decision-making is required during the process as well as noting exceptional circumstances.

- Following the above, each independent institution can then decide to adapt the legislative sector guidelines and procedures to be optimally

effective for its own set of circumstances and linking up with other institutional processes.

Other systems and processes

- A sectoral strategic framework for communication should be developed to serve as a guideline for the legislative sector, thus assisting them to improve perceptions of the legislative sector and elevate its status as an arm of state equal to the executive and judiciary. Such strategy should be the result of an extensive process of participation with internal and external stakeholders.
- Subsequently each legislature should embark on a process of customising a communication strategy for the institution based on the sector strategic framework. Such communication strategy should cover internal and external communication aspects as well as include a specific strategy for communication as an integral aspect of public participation activities.
- “Developing a media management protocol might provide an initial focus helping members understand the value of the media and their relationship to it, by clarifying the distinct roles of individual members and committee chairs in relation to the press, for instance” (Murray and Nijzink, 2002:119).
- From an organisational design perspective, communication is an institutional support service and such unit should be placed accordingly. It would be fundamentally wrong to include a communications unit under the public participations directorate, given that communications as a field of expertise is not limited to communicating with regard to public participation, but has to serve the institution as a whole, i.e. all directorates.
- Given the feedback from various legislatures, it would be advisable to carry out a review on the effectiveness of the communication methods used internally and externally.

- It is recommended that the legislative institutions cooperate in developing a comprehensive electronic database management system.
- With the global trend towards knowledge management, it would be to the benefit of the legislative sector to embark on a process of developing and implementing a knowledge management strategic framework to prevent loss of institutional memory.
- The lack of an electronic tracking, performance monitoring and evaluation system in legislative institutions has an adverse effect on performance and service delivery improvement. Strong consideration should be given to developing such system customised for the legislative environment and with application in each individual legislative institution.

6.3.3 Resources

6.3.3.1 Human resources

- Given that staff capacity is cited as a major impediment to successful public participation implementation, it is proposed that the organisational design structure, and specifically the PPU structure, be reviewed to determine where the greatest need lies in terms of staffing requirements. Based on this and given the allocation of budget, a recruitment and selection process should be embarked on to expand PPUs in all institutions. Bigger, correctly placed and relevantly skilled staff complements would afford public participation the attention it deserves as a core function. This would lead to increased impact of public participation and therefore enhance and strengthen our democracy.
- At present there is a mixed bag of skills in PPUs across the sector. It is advisable that a review (even across all functional areas in the sector) be done to identify the current skills available (skills audit), the skills (and qualifications if applicable) required in a PPU and to develop a standardised sector guideline for PPU human resources in terms of skills, relevant qualifications and experience required as a minimum standard.

- Furthermore, based on the required skills set for a public participation unit, a standardised training programme should be developed to ensure all PPU staff members are elevated to the same minimum standard in terms of skills set.
- Given that public participation specific training is limited in South Africa, it is recommended that the legislative sector embark on a process of development of a suitable, accredited public participation training course focusing on public participation aspects and tailor-made for the legislative environment. This can be done in conjunction with institutions of higher learning and SAQA.
- Setting up a programme of inter-legislature exchange and in-service training are further options to be explored since this will noticeably enhance the capacity and capabilities of PPU staff through the sharing of knowledge, skills and experience among public participation practitioners in the legislative sector.
- Serious attention should be given to the development and implementation of a succession policy and a promotion policy to deal with low staff morale and related issues (Legislative Sector Baseline Study, 2008).

6.3.3.2 Financial resources

- A realistic budget needs to be developed for public participation across the sector and per institution based on the outcomes of the Legislative Sector Policy and Strategic Framework, institutional strategic plans and a long-term strategic and implementation plan for the sector. In addition, a uniform guideline and benchmark for public participation activities needs to be developed and costed in order to feed into the budget adjustment. It is extremely important to have a well-motivated budget in order to convince the fiscus of the critical importance of this constitutional obligation.
- Furthermore, institutions could address the manner in which budgets are allocated and consider the role of the Speaker in accessing

supplementary funding from Treasury. Such funding could be used to implement the recommendations stated in this chapter through a phased approach.

6.3.3.3 Physical resources

Facilities

- A comprehensive investigation should be carried out to determine the accessibility of legislatures (and PPU) for the general public as well as to determine staff and members' perceptions regarding the physical office environment. This research should include a set of recommendations for dealing with the stated findings.
- Based on the above set of recommendations, a long-term plan for a phased implementation of the recommendations should be developed in order to address the challenges raised.
- Given the limited accessibility of physical legislature buildings, one should consider the possibility of procuring mobile PPUs to reach outlying areas.

Equipment

- Based on the analysis it is clear that the legislative sector should embark on a process of doing a needs assessment (in terms of equipment) and then develop a uniform or standard list of equipment (tools of trade) and facilities for all staff who have to deliver on the same key performance areas. It is critical that staff and members are enabled to perform at an optimum level as this would influence how the legislative sector is perceived and will impact positively on democratic processes.

6.3.4 Practice

6.3.4.1 Public outreach

- Given the feedback from institutions it would be recommendable to determine and assess the extent and impact of current public outreach activities and their outcomes on legislative decision-making processes

- (detailed study). Based on such research, the sector should develop a guideline document detailing a process and plan for each type of activity to ensure relevance, uniformity, smooth implementation and successful outcomes. Such guideline document should include the identification of means to negate risks and ways of dealing with challenges in the process.
- A checklist should be developed containing questions to be asked and answered satisfactorily when doing project planning for public outreach activities. Some of the important questions relate to the “why, who, what, where, and when as well as how” of the activity envisaged.
 - Why? Will the activity add value to the participative process and decision-making in legislative sector?
 - Who? Which segment(s) of society are we targeting? This will be a determining factor in the rest of the planning.
 - What? What type of activity is suitable or applicable in this case? Is the form and content relevant given the target audience?
 - Where? The activity should be accessible for the target audience. Perhaps attempt to take the activity to the audience, e.g. schools, community halls, place of work, etc.
 - When? Timing of activities is crucial since this has an impact on attendance.
 - How? The approach, way of implementation and methods of communication are extremely important factors in the planning process. Several values and principles should be taken into account here, for instance mode of communication (interpretation), accessibility (e.g. for disadvantaged, elderly and disabled persons), inclusivity (be as inclusive as possible in order to have a diverse audience).
 - One major concern raised throughout is the lack of an effective feedback mechanism in the legislative sector. It is recommended that this aspect be benchmarked internationally (and specifically in developing countries) in

order to determine suitable options for the South African environment. These applicable feedback mechanisms should then be standardised and included in the project plan for each public outreach activity. Crucially, the implementation of a feedback process should be monitored closely and evaluated after completion.

6.3.4.2 Public hearings

- A review of the public hearing processes in all legislative institutions is recommended.
- Following above-mentioned review it is strongly recommended that a guideline document for conducting public hearings in Parliament and Provincial Legislatures be developed so as to ensure consistency and provide legal protection. Such document should include standardisation of the public hearings process across the South African legislative sector.
- Vigorous awareness campaigns should be carried out illustrating how the public hearing process works and how the public can participate.
- Given that various units are involved with the public hearing process, it would be meaningful to develop an internal service level agreement where process responsibilities are shared, integrated or linked.
- Media analysis should be done to assist in choosing the most suitable and effective way of reaching a specific target audience. Following this a suitable publicity plan should be developed for reaching certain target audiences.
- The legislative sector should consider embarking on a process of expanding its stakeholder databases and categorising these correctly as well as converting them to electronic format in order to interface with other programmes and facilitate easy communication with those stakeholders who have access to modern technology.
- The role of public education as an integral part of the public hearing process needs to be clarified.

- A feedback mechanism should be developed and implemented for all public participation activities.
- Lastly, intensified and continued engagement of and relationship-building with civil society requires urgent attention as civil society has a major role to play in public participation related activities and influencing decision-making processes.
- “Building a strong relationship with the public that they represent is perhaps the most important aspect of the work of young legislatures in a young democracy. They need to ensure diverse and broad input and organise direct interactions with members of the public” (Murray and Nijzink, 2002:129).

6.3.4.3 Petitions

- In order to address the challenges noted pertaining to the petitions process, it would be recommendable to develop a uniform approach to petitioning and adopt a standardised process and format for petitioning countrywide.
- The public should be widely encouraged to petition legislative institutions through focused public education and awareness campaigns.

6.3.4.4 Public education

- The area of public education is open to innovation and requires quite intensive development. As a first step, it would be important review the current public education programmes in place in order to inform the development of a strategic framework for conducting public education across South Africa. Individual legislative institutions can then proceed to customise such framework into a long-term strategy and implementation plan for its own circumstances.
- Furthermore, the development of suitable educational material for the different target audiences is critically important.

- It would be in the interest of improved effectiveness and service delivery to develop a strategy for getting members of Parliament and Provincial Legislatures to buy into the public participation and education process and assist in countering a disinterested public.

6.3.4.5 Committee proceedings and house sittings

- A review of the current committee processes within legislative institutions would assist in determining how one can facilitate greater public participation in parliamentary proceedings and extract valuable contributions for improved decision-making.

6.3.4.6 The use of constituency offices

- The role of constituency offices should be reviewed and clarified with the aim of optimising these outlets for enhancing public participation in the legislative sector.
- Following the above, a strategy should be developed for optimal use of constituency offices to encourage and elicit public participation.

6.3.5 Monitoring and evaluation

- Given the neglect of monitoring and evaluation across the legislative sector, it is of the utmost importance that this aspect receives priority attention. The first step in addressing the gap in this area is to do a comprehensive investigation into the current monitoring and evaluation systems across legislative institutions. As a parallel process the benchmark for monitoring and evaluation should be researched locally and internationally.
- The results of the above research reports would contribute to the development of a standardised monitoring and evaluation system for the legislative sector and specifically public participation projects. Such system could be adapted and implemented by individual institutions to

ensure consistent monitoring and evaluation of institutional processes and public participation projects specifically.

- Any monitoring and evaluation system developed should be automated and have the buy-in of civil society as well as political endorsement. Training in the use of such system would be essential.

There are numerous challenges related to the execution of public participation in the legislative sector for which many solutions are recommended in this chapter. These recommendations are by no means stated in any order of importance and should be prioritised to address the most urgent challenges pertaining to public participation at present.

6.4 SUMMARY

The introductory chapter to this study stated the research hypothesis, clarified the motivation for the study, provided the context for the topic and gave an outline of the thesis content.

Chapter 2 proceeded to provide information as to the research design and intended methodology. The study employed an empirical research method for which a number of data collection instruments were used. A literature review was done based on documentary sources following which a semi-structured questionnaire covering all aspects of public participation was developed to extract information on the current state of public participation in the South African legislative environment (annex A). The questionnaire was administered to a limited sample of ten public participation managers in the respective legislative institutions in South Africa. Responses were received between December 2007 and July 2008. The questionnaire data from each of the ten legislative institutions was processed into a comparative table format and is listed as annex B.

In chapter 3 the study continued by defining public participation and related concepts, creating a theoretical perspective and providing a picture of the international context with regard to public participation. The conclusion derived from this chapter was that public participation is inextricably linked to increased legitimacy, and a stable and strong democratic environment.

Following the theoretical background and global picture presented in chapter 3, chapter 4 proceeded to provide an overview of public participation in the South African environment and more specifically on its application in the legislative arm of the state. Firstly, a history and context for public participation in South Africa was given after which the comprehensive South African model or approach to public participation was clarified. Finally, an overview of the legislative framework, policies and strategies for applying public participation in the South African legislative sector was discussed as part of chapter 4.

Chapter 5 provides the basis for proving or disproving the research hypothesis as the results from the review on the current state of affairs of public participation in the legislative sector are stated here. From the review findings it is clear that there are many positive factors and innovative ideas in place across the legislative landscape. However, the weaknesses outweighed the strengths and serious challenges were identified in areas which are crucial to ensuring and facilitating greater public participation in legislative matters. A concise version of the main findings follows below.

Generally the Constitution provides the policy basis and guidance for all public participation programmes. In terms of institutional arrangements, all ten legislative institutions have operational public participation units of varying capacity in place, whilst some also have a political structure in place dealing specifically with the aspect of public participation. There are human and financial resources in place to facilitate the basic public participation function. There are systems and processes in place for most public participation aspects, though

these are not necessarily formalised or consistently applied. The same types of implementation activities are executed across the legislative spectrum in the well recognised areas of public participation, namely public hearings, petitions, public education and outreach, constituency office use, and committee proceedings and house sittings as well as sectoral parliament events.

The area of petitioning is fairly regulated and constraints faced in the petitions process is generally a lack of sufficient funds and staff capacity as well as lack of interest from members of legislative institutions. Also worth noting is that there is no standard petitions process followed by legislative institutions throughout South Africa.

In the area of public education all institutions have indicated that there are educational processes in place in their region, yet these are hampered by planning, resource and communication challenges. At present constituency offices are clearly not playing the active and vital role in facilitating public participation in legislative matters that it could play. In addition public submissions and attendance of open committee and house proceedings is limited owing to lack of resources (human and financial), a disinterested public, disinterested political leaders and members as well as a lack of funds for advertising or no available media.

The critical aspects of monitoring and evaluation of public participation activities within legislative institutions seem to be given little attention and most institutions reported that where systems are in place, it is not working effectively.

An analysis of the review findings clearly reflects that progress in terms of each of the areas of public participation is uneven and varies between the different legislative institutions. Progress, impact and improvement are limited by a number of similar challenges experienced across the legislative sector. These challenges relate to limited human and financial resources, lack of materials

development, communication and language barriers, illiteracy levels, geographical distances to be covered, logistical and equipment challenges, planning and scheduling difficulties (time management), information and communication technology limitations. In addition there are challenges in terms of experience and capacity pointing to a large training need, difficulties relating to ensuring the correct target audience attendance and quality of inputs, overcoming public and members' apathy as well as managing to implement an effective feedback mechanism and monitoring and evaluation system.

Subsequent to the findings and analysis on the state of public participation in the South African legislative sector as reported in chapter 5, clear recommendations have been put forward for dealing with some of the challenges identified in this chapter 6.

The recommendations made relate mainly to a general trend identified from the review on the state of public participation, which is the lack of a uniform approach and standardised policies and strategies for implementing public participation across the legislative sector. Only once these are in place, will it be possible to revisit current practices and develop new implementation activities for the South African legislative environment which are focused, realistic and can be phased in to generate effective public participation and therefore enhance democracy in South Africa.

Other themes that emerged were the lack of sufficient staff capacity, financial resources, equipment and technology and the challenge of a disinterested public and members of legislative institutions. Proposals have also been made to start addressing these issues.

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Questionnaire

Survey of progress on public participation per legislative institution

To inform the process of data consolidation and assessment in terms of which a gap identification (swot analysis) will be done leading to recommendations and proposed customisation of public participation implementation plans per legislative institution given available resources

In cooperation with and administered by EU Legislature Support Programme

2007 Public Participation Survey (Legislative sector)

The Public Participation Forum of Salsa has employed the assistance of the EULSP in conducting a formal survey of public participation in each legislative institution, i.e. National Parliament and Provincial Legislatures.

The purpose of the questionnaire itself is to determine the extent to which public participation has been implemented during the existence of each legislative institution, with a special focus on 2006 and 2007. It also serves to validate the information provided in legislative documents and feedback given at forum meetings.

Kindly answer as accurately and objectively as you can and add additional comments should writing space not suffice.

This questionnaire has to be completed by the Manager of Public Participation in each institution. Please return the questionnaire to the EULSP by fax: 021-426 0947 or e-mail: rscott@lsp.org.za.

Due date: 6 December 2007

Contact information

Name of institution: _____

Name of respondent: _____

Position: _____

Contact number: _____

Fax number: _____

E-mail address: _____

Section 1: General

Please circle or tick the appropriate answer.

1.1 Does your legislature have a programme that encourages public participation? Yes No

1.2 Who should have the primary responsibility for facilitating public participation in the legislative process?

- The institution of parliament / legislature
- The members individually
- Political parties
- A mixture of all the above

1.3 Why is public participation important to the legislature? (public hearings, education, petitions, etc)

1.4 What is the basis from which you conduct public participation in your institution? (e.g. Constitution & National public participation strategy, etc.)

1.5 Does your legislature have a budget for public participation? Yes No

1.6 If yes, how much is budgeted per annum? (please provide figures since 2003)

2003	_____
2004	_____
2005	_____
2006	_____
2007	_____
2008 (estimated)	_____

1.7 If you do not have a budget or an insufficient budget, how are public participation activities financed?

- Not financed
- Commercial sponsorships (mention) _____
- Donor funds (mention) _____
- Other (please mention) _____

Section 2: Legislative, policy and strategic framework

2.1 Has legislation (bill or act) relating to public participation been passed? If yes, please mention.

2.2 Do you have an existing policy relating to public participation? Yes No

2.3 Is public participation an integral aspect of the legislature's strategic plan? Yes No

2.4 Do you have a long-term public participation strategy and implementation plan in place at your institution? Yes No

2.5 Does your institution compile an annual business plan for public participation linked with specific implementation activities? Yes No

2.6 What does your legislature's public participation programme involve or entail? Please provide a short description of all the elements of the programme.

Section 3: Institutional arrangements, systems and processes

Institutional arrangements - structure

3.1 Who takes ultimate political responsibility for public participation at your institution?

- Speaker
- Secretary
- Various Committee Chairpersons
- Other (please mention)

3.2 In which office is the programme on public participation located? (E.g. Speaker's Office, Secretary's Office, etc.)

3.3 Is there a political structure in place dealing with public participation implementation? If yes, please mention the name.

3.4 What is the role of this structure in terms of public participation in the legislature?

3.5 Is there a specific administrative unit in place to carry out public participation implementation? Yes No

3.6 What is the role of this unit in terms of public participation?

3.7 Where does this unit fit into the reporting and management structure of the legislature? (organogram or description)

3.8 How many staff is employed in the unit? (mention permanent and contract staff)

3.9 What are their responsibilities? (give overview)

3.10 Have they had special training in the area of public participation or other relevant areas such as public relations, media liaison, civic education, etc.?

3.11 What qualifications do your public participation staff members generally possess? (e.g. public relations, media liaison, civic education, development management, etc.)

3.12 How well are they coping with the volume of work?

- Very well
- Well
- Average
- Barely coping
- Not coping at all

3.13 When conducting public participation events, are other units also involved in the process? If yes, please mention them and the role that they play in the process.

3.14 Who is the accounting officer for any expenditure on public participation?

3.15 Where is the public participation office physically located? (describe)

3.16 How accessible is it to ordinary people?

- Very accessible
- Fairly accessible
- Not very accessible
- Not accessible at all

Please explain your choice.

3.17 How does the public participation (PP) process work in your institution (per activity)? – please describe or draw line diagram.

Examples:

- PP committee instructs PP unit
- all committees deal with PP
- PP unit determines activities
- PP unit carries out wishes of committees / house / NCOP

3.18 Is the present structure (political and administrative) working well for effective public participation? If no, what structural changes do you suggest for greater effectiveness?

3.19 Is there an adequate number of staff in the public participation unit in order for it to function optimally? If no, what additional staff would you like to see appointed?

3.20 What additional resources do you need to make your legislature more accessible to ordinary people?

3.21 Do staff members require specific training in order to improve or optimise their performance? If yes, please mention type of training required.

Systems, processes and resources

3.22 What resources does the legislature have to support public participation?
(Tick all that apply)

- Specific line item in legislature budget
- Personal computers
- Computerised database programmes to monitor PP
- Non-computerised lists of potential participants
- Non-computerised lists of past participants
- Desktop publishing software for creating posters, pamphlets, etc.
- Funds for public outreach programmes
- Vehicles for public outreach programmes
- Mention any other resources
- Other electronic equipment

3.23 In terms of information and communication technology, does the legislature have electronic (software) or manual systems in place for the following? If yes, please mention whether manual or electronic.

- | | | | | |
|---|-----|----|--------|------------|
| • Database management – | Yes | No | Manual | Electronic |
| • Project management & planning – | Yes | No | Manual | Electronic |
| • Tracking system (e.g. submissions) – | Yes | No | Manual | Electronic |
| • Monitoring & evaluation (performance) – | Yes | No | Manual | Electronic |
| • Communication system – | Yes | No | Manual | Electronic |

3.24 Is there a standard process in place pertaining to each public participation event of the legislature? If yes, please describe.

3.25 Is the office environment conducive for public participation staff efficiency and effectiveness? If yes, please mention positives.

3.26 Do staff members feel that they have the necessary technology available to effectively conduct public participation? If no, what is still required?

Section 4: Implementation activities (Practices)

General

- 4.1 Do you have outreach programmes targeted at rural communities? If yes, please explain what it entails.

- 4.2 How do you encourage participation from under-resourced and unorganised communities?

- 4.3 Does the legislature have a mailing list?

- Yes, computerised
- Yes, non-computerised
- No

- 4.4 Do you have any method for categorising submissions and participants (e.g. business/non-business, organised/non-organised, by sector, etc.)? If yes, please mention how you go about categorising.

- 4.5 Are the public participation records available for public scrutiny? Yes No

- 4.6 How easy is it for physically impaired people to participate?

- Very easy
- Easy
- Not easy
- Impossible

- 4.7 Which communication strategies are in place or methods are used for public participation activities?

4.8 In your view, how effective are these communication methods?

4.9 How do you review the relevance and effectiveness of the communication methods for a specific audience being addressed?

Public hearings

4.10 In the following table, please list

- 1) all parliamentary committees in your legislature,
- 2) mention whether that committee holds public hearings or not,
- 3) indicate whether the committee proceedings are open to the public, and
- 4) describe how each committee facilitates public participation.

Name of committee	Holds public hearings? – Y or N or sometimes	Proceedings open to public? Y or N or sometimes	How does the committee facilitate public participation?

Options for last column answers

- Keep records of committee proceedings
- Publicly available summaries of committee proceedings
- Publicly available verbatim transcript of proceedings
- Publicly available record of members votes
- Published plain language summaries of bills or policy oversight
- Hold public hearings on bills
- Hold public hearings on policy issues
- Publicise public hearings
- Publish invitations to general public to attend or make submissions
- Invite expert testimony to committee hearings
- Committee proceedings open to public
- Other (please mention)

4.11 In which instances are public hearings held?

4.12 Once decided, what does the public hearing process entail? (describe steps)

4.13 Which topics are discussed at such hearing?

4.14 What is the format of the public hearing itself?

4.15 How often are public hearings advertised?

- Always
- Most of the time
- Sometimes
- Never

4.16 Where do you place public notices? State the media or other institutions used.

- On television
- On radio
- In newspapers (national)
- In newspapers (local)
- In magazines
- On the internet
- In public places (e.g. billboards)
- Not applicable
- Other

4.17 Are public notices available in the relevant languages?

- Always
- Mostly
- Sometimes
- Never

4.18 Do you have a minimum notification period for placing public notices prior to the actual hearing date? If yes, what is the period?

4.19 Where do you hold public hearings? (circle all that are appropriate)

- At parliament / legislature
- Provincial capital
- Other cities in province
- Places outside cities

4.20 Who is targeted to attend public hearings and how is this decided?

4.21 How do you go about informing or reaching the target group?

4.22 On average, how would you describe the quality of inputs at public hearings?

- Very good
- Good
- Adequate
- Poor
- Very poor

4.23 How do you propose one could ensure improved quality of inputs?

4.24 Mention the challenges experienced in terms of conducting public hearings and the pre- and post-hearing process.

4.25 How do you think one could address the challenges mentioned above to ensure effective public participation at hearings?

Petitions

4.26 Is there a Petitions Act in place in your province? If yes, mention date passed.

4.27 How do you encourage the public to submit petitions?

4.28 Is there a standard format or form for petitioning? Yes No

4.29 What happens to the public submissions you receive?

- They are always summarised
- They are always passed on to the relevant committee as is
- It depends on the specific committee
- Other: _____

4.30 What constraints does your legislature face in this process?

- General lack of funds
- Lack of staff
- No available media
- Lack of funds for advertising
- Lack of interest on part of political leaders
- Lack of interest on part of members
- Public not interested
- Other: _____

4.31 Shortly describe the petitions process from receipt of a public submission till conclusion of the process.

4.32 How do you propose one could ensure improved quantity and quality of submissions?

4.33 Mention the challenges experienced in terms of the whole petitioning process.

4.34 How do you think one could address the challenges mentioned above to ensure effective petitioning?

Public education

4.35 Do you have a public education programme in place? If yes, broadly mention what it entails.

4.36 Who is targeted for public education and how is this decided?

4.37 How do you go about reaching the target group?

4.38 List the public education material that has been developed.

4.39 Is public education done in the relevant languages?

- Always
- Mostly
- Sometimes
- Never

4.40 Which languages are mostly used for communication? (Rank priority)

4.41 Mention the challenges experienced in terms of the public education process.

4.42 How do you think one could address the challenges mentioned above to ensure effective public education?

4.43 How often do you offer the following types of public or civic education about your legislature?

Options	Outreach programmes in schools	Outreach programmes in universities	Internships	Guided tours of parliament
Very often				
Often				
Not often				
Never				

Constituency offices

4.44 Are constituency offices in your province involved in public participation efforts? If yes, how do you involve these offices?

4.45 Mention the challenges experienced in working with constituency offices to reach the public.

4.46 How do you propose one could develop a better working relationship with constituency offices to promote public participation?

4.47 How could one make better use of constituency offices to promote public participation?

Public access to committee proceedings and house sittings

4.48 How do you publicise committee proceedings and house sittings?

- On television
- On radio
- In newspapers (national)
- In newspapers (local)
- In magazines
- On the internet
- In public places (e.g. billboards)
- Not applicable
- Other

4.49 Who do you invite to make submissions or attend? (circle appropriate answers)

- Community based organisations
- Non-governmental based organisations
- Business

- Political parties
- Experts
- Ordinary citizens

4.50 Do you have a set list of people or organisations that you always invite? Yes No

4.51 What proportion of your invitees would you say respond to these invitations?

Options	CBOs	NGOs	Business	Parties	Experts	Citizens
Almost all						
Most						
Some						
Few						
None						

4.52 Do they attend again (on invitation or otherwise)?

Options	CBOs	NGOs	Business	Parties	Experts	Citizens
Yes						
No						

4.53 How do you select your participants?

4.54 How do you facilitate the participation of the public in the legislative process (public participation)? (circle all applicable answers)

- They initiate their own
- Make relevant documents available
- Ensure that all committee proceedings are open to the public
- Ensure that all committee proceedings are well publicised
- Other (please explain)

4.55 Please explain the basis on which committee hearings may be closed to the public.

4.56 What constraints does your legislature face in this process?

- General lack of funds
- Lack of staff
- No available media
- Lack of funds for advertising
- Lack of interest on part of political leaders
- Lack of interest on part of members
- Public not interested
- Other

4.57 How do you propose one could ensure increased attendance of committee proceedings or house sittings?

Section 5: Monitoring and evaluation

Monitoring

5.1 Do you compile project plans with specific milestones and linked performance indicators?

5.2 Do you have a system for monitoring progress on public participation projects?
Yes No

5.3 Which monitoring mechanisms do you use?

5.4 Do you think the monitoring system is effective? If not, please explain why not.

5.5 How can one improve the monitoring system used?

5.6 Does the legislature have a system for tracking the extent of public participation?
(increases, decreases, trends) Yes No

5.7 If yes, which of the following do you use?

- Computerised database programme to monitor participants
- Non-computerised lists of past participants
- Records of all submissions
- Others (please mention)

5.8 Do you ask for feedback from participants? Yes No

5.9 What form of feedback do you receive from participants?

- Verbal
- Filled out forms prepared by the legislature
- Letters

5.10 What has this feedback told you about your public participation programme?

- Nothing useful
- Working well
- Can be improved
- Needs major improvement

5.11 Why do you say this?

Evaluation

5.12 Do you evaluate and revisit your public education programme on a regular basis? If yes, what evaluation process and timeframes do you follow?

5.13 How do you evaluate public participation programmes (why failures, assess efficiency and effectiveness) Mention methods used and timeframes.

5.14 After evaluation, do you produce recommendations for improvement and incorporate these into your project process? Yes No

5.15 Do you have a specific unit dealing with the aspect of Monitoring and Evaluation? Yes No

5.16 Who does this unit report to and how does this unit operate?

5.17 Do you include civil society in the monitoring and evaluation of public participation programmes? Yes No

5.18 Do you have any method of assessing the impact of public participation? Yes No

5.19 How effective is this method in your view? Please provide reasons and give suggestions for improvement.

Thank you for your assistance and kind cooperation.

Fax to: Renée Scott (EULSP)

Fax nr: (021) 426 0947

**RE: QUESTIONNAIRE
ON PUBLIC PARTICIPATION PROGRESS**

Kindly fax the completed questionnaire to EULSP **by 6 December 2007**

Enquiries: Renée Scott (EULSP), Tel: 021-423 7030, Cell: 082 5630 792

* Parts of questionnaire from “**A People’s Government: The People’s Voice**” as funded by the EUPSP have been utilised courtesy of the EULSP.