



PEOPLE'S POWER PEOPLE'S PARLIAMENT

A Civil Society Conference on South Africa's Legislatures

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Introduction

Chapter 4 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) entrenches Parliament as the heart of our democracy by providing the framework for a National Assembly to be elected as the institution to ensure government by the people under the Constitution. Parliament does this by “choosing the President, by providing a national forum for the public to consider issues, by passing legislation and by scrutinizing and overseeing executive action.”

It is in this spirit of strengthening our constitutional democracy that the ***People's Power People's Parliament: A Civil Society Conference on South Africa's Legislatures*** (“the conference”) was held on 13–15 August, 2012, at the Townhouse Hotel, Cape Town. We wish to open a constructive dialogue with Parliament as groups of citizens and acknowledge the calls made by the Speaker of Parliament and the President for a “strong activist Parliament”. We believe that active citizenship is essential to this vision and to building a government that is accountable, representative and participatory.

This memorandum contains recommendations originating from the conference, public deliberations and a community workshop held in Khayelitsha on 7 August 2012. These are aimed at enhancing the contribution that the Country's National Parliament and Provincial Legislatures can make to realise the commitments set out in the Constitution, including the founding provisions. They are made in reference to the *National Development Plan: Vision 2030 [NDP]*; the *Report of the Independent Panel Assessment of Parliament [RIPAP]*; and the Declaration of the *Open Government Partnership [OGP]*, of which South Africa is a founding member.

We stress that the realisation of constitutional rights, and the creation of a state that can better address poverty and inequality, requires strong legislatures. South Africa's democratic legislatures established in 1994 are exemplary in their provisions for transparency, access and

public participation. Few other parliaments in the world provide their citizens with as many avenues for input.

Over the first decade of its existence, the country's National Parliament worked tirelessly to repeal hundreds of apartheid laws and replace them with legislation in line with the Constitution.

However, a number of critical challenges remain. The NDP states that "there are serious concerns about whether Parliament is currently fulfilling its role adequately in the building of a capable, accountable and responsive state that works effectively for its citizens." To this end, there has been debate about whether the current electoral system should be replaced by a mixed system that encapsulates the benefits of both constituency-based and proportional representation. Events such as the "Arms deal" and "Travel-gate", as well as the silence of provincial legislatures regarding the crises in health and education, have undermined the good work and commitment of most committees, MPs and MPLs.

The conference has gathered a wide range of citizens and citizen groups to deliberate on how to best support the country's legislatures, address weaknesses and support endeavours to ensure citizen engagement. Participation in the discussion of these challenges must be the bedrock of a vibrant representative democracy. Although the recommendations in this memorandum focus on National Parliament and the provincial legislatures, we recognise too the need for self-reflection and critique among citizen groups, the importance of which was recognised by delegates at the conference and at the community workshop in Khayelitsha.

We have identified core areas where key changes could be implemented to strengthen our constitutional democracy and the responsibilities of elected representatives in Parliament, provincial legislatures, and local government. We believe that these recommendations are representative of a wide range of voices and request National Parliament to respond to our memorandum within 60 days.

RECOMMENDATIONS

REPRESENTATION

“While the size and complexity of modern democracies require governance systems that delegate decision making power to elected representatives, it should be remembered that the mandate and legitimacy of representative institutions stem from the citizenry.”

RIPAP, Pg 16

We believe that leadership in National Parliament and the Legislatures must foster a willingness and ability to assert their independence and that they ought to be accountable to all citizens and not to any one party. To this end, we make two primary recommendations:

1. First, as per the recommendations of the [Report of the Independent Panel Assessment of Parliament](#) regarding the Electoral System, we call on both the national and provincial legislatures to initiate a public debate on the current electoral system to question the value of a mixed system that attempts to capture the benefits of both constituency-based and proportional representation. We call on the current (4th) Parliament to act on these calls before its term ends in 2014.
2. Second, as per the decision of the [Institute for Democracy in South Africa and Others v African National Congress and Others](#) 2005 (5) SA 39 (C) 2005, we believe that Parliament should address the concerns regarding political party funding in the 2014 term.

Further, we request political parties to:

1. Prioritise the debate on the electoral system within their parliamentary caucuses and place the issue on the parliamentary agenda of 2013.
2. Publicise their list of MPs and MPLs, in the case of representatives who continue to be elected on a proportional representation basis, prior to election day in order to enable informed choices by voters.

MEANINGFUL PARTICIPATION

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

Reconstruction and Development Programme- section 5.2.6

Constitutional mandate for participation

1. Sections 42(3) and 42(4) of the Constitution state that the National Assembly must provide a national forum for public consideration of issues and that the National Council of Provinces must provide a forum for public consideration of issues affecting the provinces. The Constitution makes available public access to the National Assembly, the National Council of Provinces and the Provincial Legislatures in sections 59, 72 and 118. These sections require that the Assembly, Council and legislatures facilitate public involvement in their legislative and other functions. Furthermore, significant court judgments such as the *Doctors for Life International v Speaker of the National Assembly and Others* [2006] SA 416 (CC) have emphasised the important function and benefit of public participation in representative democracy.

Comment on the presentation

2. We recognise the work of Parliament and the Provincial Legislatures over the past 18 years to promote public participation. We also note the need for continued improvement of these efforts. In particular, public participation in the oversight function of Parliament and the Provincial Legislatures is weak.
3. We welcome the approach of the recently launched Oversight Model of the South African Legislative Sector (March 2012), which has incorporated public participation into oversight. We undertake to support its implementation. Furthermore, we are encouraged by the continued improvement of public participation — for example, the development of the Public Participation Strategy of the Gauteng Provincial Legislature. We look forward to the national public participation model that has been proposed. Finally, we recognise the value and potential of initiatives such as the “Taking Parliament and the Legislatures to the People”.
4. In spite of the above, insufficient attention by legislatures and citizen organisations to providing information means there is widespread lack of knowledge among citizens about the role of the legislatures, and opportunities for participation remain underutilised by citizens and by citizen groups.
5. Citizens have expressed significant mistrust in the legislatures and in elected representatives. (Community Workshop 07 August 2012 Khayelitsha.)
6. Administration systems meant to enable meaningful participation are weak and undermine the effectiveness of those participation platforms provided. Insufficient attention to follow up on issues raised by citizens through participation platforms further erodes trust in legislatures as institutions of our democracy.

Re-prioritising citizen engagement

7. In support of the development agenda, leadership in National Parliament and the Legislatures, as well as political parties, should provide guidance and direction to ensure greater commitment from elected representatives to

listening to and engaging with citizens, promoting a culture that is receptive, supportive and responsive to both assenting and critical voices.

8. We urge Parliament and the legislatures to finalise the national strategy to promote public participation and, importantly, call for participation in the development of this strategy.

Expanding participation

9. Continued endeavours by the legislatures and organised civil society to extend the reach of the legislatures to citizens who are physically remote, whether they be in rural or urban areas, is essential.
10. The “public” includes citizens, community-based groups and organisations, non-governmental organisations, academic institutions, organised labour and the private sector, among others. In addition, “citizens” and the “general public” are constituted by a range of individuals with different contexts, interests, resources and capacities.
11. As such, different approaches must be taken to ensure engagement of different actors. Importantly, initiatives by the legislatures and civil society organisations and movements must ensure that marginalised groups of citizens, who may be excluded as a result of oppressive social systems and other barriers, are effectively engaged. We must guard against creating platforms only for those citizens and citizen groups who are already empowered to speak.
12. National Parliament, the provincial legislatures and civil society organisations and movements must undertake a widespread programme to provide information on the role and purpose of the legislatures and in particular on the ways in which citizens can access these. We urge legislatures to call for the inclusion of civic education as an integral part of basic and higher education.
13. Communication about systems and opportunities for, and feedback from, participation processes must be undertaken in accessible language and communicated through platforms to which a wide spectrum of citizens have access (such as community radio, cell technology, etc.).
14. In addition to the strengthening of mechanisms for people to participate in committee meetings and the “Taking Parliament/Legislatures to the People” initiatives, new mechanisms for participation using communications technology, and especially, cell phones and the internet must be used by the legislatures and civil society organisations and movements.

OVERSIGHT AND ACCOUNTABILITY

“Meaningful oversight requires that the interaction between Parliament and the executive is guided by the goal of ensuring effective governance to the citizens of South Africa. In exercising their oversight mandate Members of Parliament...must be willing to assert [their] authority to improve service delivery and the quality of governance”

RIPAP Pg 35

Recognising the oversight model and stressing the role of oversight

1. With the project of overhauling the country's apartheid legislation largely behind us, oversight has become a greater imperative. Greater resources (financial, time, human and otherwise) must be invested in overseeing the impact and implementation of legislation. We therefore welcome the recommendations and mechanisms introduced by the *Oversight Model* and urge the Legislatures to implement these without delay.
2. We wish to stress that oversight is a democratic and not a bureaucratic process. Oversight should be exercised on behalf of citizens with the objective of effective public services.

Effective oversight will require a stronger relationship between elected representatives and citizens.

3. The Legislatures' oversight role therefore will continue to be hampered as long as recommendations relating to the electoral system are not addressed.

We need to establish a culture of oversight

4. Oversight that represents citizens' concerns requires political support from the leadership of the legislatures and political parties: under any electoral system, effective oversight in the legislatures will require that MPs and MPLs are willing to ask difficult questions of political party colleagues. We note that in recent times committees have preferred to ask questions of public officials rather than elected representatives. We would like to question this practice. As called for by RIPAP, Parliament needs to "inculcate a culture of oversight among MPs."

Citizen participation in oversight is a right and will enhance the quality of oversight

5. Deliberations on the *Annual Reports, Strategic Plans, Annual Performance Plans*, as well as its investigations into the impact of legislation and the perceived and real quality of services delivered, would significantly benefit from information from citizens.
6. Committees in Legislatures should also consider the use of "ordinary" media (e.g. radio) and social media to gather information from citizens for the purpose of oversight.
7. In this regard, information to citizens on the oversight process and role of Parliament is important.

Oversight in the provincial legislatures needs to be strengthened

8. We agree with the NDP when it states that:

"Given their limited legislative capacity, provincial legislatures need to be particularly robust in their accountability function to ensure provinces perform their core function in the delivery of basic services equitably, effectively and honestly. Provincial legislatures need to shine a light on issues of poor and uneven performance..."

NDP pg 385

9. The silence or ineffectiveness of Provincial Legislatures regarding the serious governance challenges hampering the public services, especially health and education services, are a concern. Special attention must be paid to addressing challenges in these institutions.

Oversight is meaningless without follow up/redress/sanctions

10. Parliament's leadership must ensure responsiveness from the executive: An area where National Parliament's leadership is especially required is that of executive feedback on parliamentary resolutions and questions. We welcome the National Assembly committees' increased requests for written answers from the executive, but as long as these do not receive a response, they do not serve citizens or the nation's commitment to a better life for all.
11. Follow-up to oversight visits: As noted in RIPAP, stronger follow up and reporting procedures are also required with regards to oversight visits. As with other oversight processes, executive responses to oversight visit reports must be tracked until they are satisfactorily resolved.

PUBLIC FINANCE

"The ability of Parliament to amend money Bills is also a matter linked to the independence of the institution, as it provides a mechanism through which Parliament may interrogate the policy priorities of the Executive as expressed in financial frameworks."

RIPAP pg 24

1. As the institution mandated to ensure that public finances are used to advance the interests of citizens, it is Parliament's role to question both the broad priorities reflected in the national budget, as well as the details of the expenditure and the services it buys. The enactment of the *Money Bills Amendment Procedure and Related Matters Act* [No. 9 of 2009] constitutes a significant step in entrenching Parliament's independence and enabling it to exercise such powers on behalf of citizens. The implementation of the *Money Bills Amendment Procedure and Related Matters Act* is crucial.
2. Without a budget office, committees and MPs will not have the requisite capacity to use their independence and power. We recognise that National Parliament has now appointed a consultant to lead the establishment of a Parliamentary Budget Office, but urge the institution to complete the process without delay. Importantly, Parliament should allocate funds not from the surplus fund and look towards establishing more secure funding. A well-resourced budget office with civil servants is crucial to the entire process.

Recommendations

We recommend to National Parliament:

1. The full implementation of the Money Bills and Related Matters Act must be prioritised.

2. Parliament must initiate a public education campaign on the implications of the *Money Bills Amendment Procedure and Related Matters Act* and its implications for the role of Parliament and the powers of MPs.
3. Parliament's leadership, as well as committee chairs, **must ensure that** the importance of instruments such as the BRRRs is reflected in committee schedules and members' engagement.

To the NCOP and the Provincial Legislatures:

Beyond the work of SCOPA, the Provincial Legislatures need to strengthen their oversight over the oversight of public finance, especially expenditure pertaining to social services such as health and education. We call on the NCOP to convene a dialogue with the Provincial Legislature speakers, the chairs of these committees and civil society to deliberate on a way forward with this regard.

CONSTITUENCY WORK

These offices are critical institutions to the Legislature as they are located closest to the people. We acknowledge that Parliament has made it clear that as elected representatives of the people, Members of Parliament *"is done inside Parliament and part of it is done directly with citizens during constituency periods....[and that] during constituency periods MPs have a duty to be available to the public, help solve problems and report back to their constituents on what is happening in Parliament."* We maintain that constituency offices and Parliamentary Democracy Offices (PDOs) as tools to enhance public participation and bring Parliament to the people have had disappointing outcomes. Parliamentary Democracy Offices are situated in relatively under-resourced areas to ensure that marginalised groups are also able to take part in parliamentary processes.

Recommendations

1. Reform in this regard needs to be linked to electoral reform. We call on Parliament to conduct a comprehensive review of the manner in which constituency work is structured. This should include an assessment of the responsibilities of constituency work and how these structures and processes relate to newly established Parliamentary Democracy Offices.
2. We call on political parties to ensure that constituency offices become spaces for dialogue and engagement as a matter of urgency.

ESTABLISHING THE LEGISLATURES AS OPEN, TRANSPARENT AND ACCOUNTABLE INSTITUTIONS

"We uphold the value of openness in our engagement with citizens to improve services, manage public resources, promote innovation, and create safer communities. We embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in our own countries and in an increasingly interconnected world."

We require the establishment of an institution which is open and transparent and whose members' conduct is beyond reproach. The ramifications of the public's trust in representative institutions and elected representatives are significant. Damage to voters' trust in National Parliament, one provincial legislature or one public representative undermines trust in the democratic system as whole. Perceptions of Parliament and Members of Parliament are linked to the durability and quality of our democratic system.

Recommendations

To National Parliament:

1. We support RIPAP's recommendation that "the conditions under which Members of Parliament become ineligible to hold office should be reviewed. It is proposed that any person who is convicted of corruption, fraud or a similar offense should be deemed ineligible to serve as an MP" (pg 9).
2. We add that MPLs should be subject to the same standards. The National Assembly and the National Council on Provinces must take immediate steps to affect this recommendation.

To National Parliament and the Provincial Legislatures:

3. Institute *Speakers' Question time in the House*: Establish a time for the Speakers of National Parliament and the Legislatures to answer members' questions about the management of the institution.
4. *Non-partisan Parliamentary Support Services*: It is critical that Parliament's support services remain non-partisan.
5. In 2003 National Parliament began a process to develop an attendance policy that would see sanctions against members missing sessions without leave. 9 years later, this policy is yet to be finalised. We call on National Parliament to finalise this policy before December 2012, and that Provincial Legislatures adopt this policy also by the end of 2012.
6. Chairs should conduct meetings in a manner in which government officials or state owned enterprises must answer questions by MPs. In current practices Chairs allow large rounds of questions which enable officials to pick and choose the Q's they want to answer. All chairs should consider SCOPA's model of chairing.
7. We request that the 'unrevised' Hansard be made available on the Parliament website because the Hansard takes up to six months to be published.

To Provincial Legislatures

8. Committee meeting schedules, with agendas included, must be available and updated daily on the website. Information technology must be embraced to ensure that schedules, minutes, attendance lists can all be made available easily.

SUMMARY OF CONTRIBUTIONS FROM THE CONFERENCE

People were encouraged to provide input to the memorandum through the Conference website and the following points and recommendations were made. They represent views taken from citizens around the country. The original quotes from contributors can be read in their entirety at www.peoplesparliament.nu.org.za.

- More public participation is needed.
- Government should reach the people at the grassroots level through organisations that are initiated by the people at the community level.
- Greater integration of three tiers of government in particular relating to communication and planning.
- As members of the Steering Committee of the Open Government initiative and signed the Open Government Declaration in Sept 2011. This commits government to make “high quality information” available on government performance.
- Provision of adequate information on calls for submissions in time. Information must be provided in an appropriately accessible format.
- Publicly funded research and evaluation must be made publicly available.
- Call for greater respect and responsiveness of MPs MPLs and support staff towards the public.
- Legislature and government buildings must be more visible and accessible.
- Make legislature and government buildings available to the public for meetings.
- Greater information on ‘rules of engagement’.
- Children’s voice must be heard in Parliament.
- Recognition that civil society is necessary for development.
- Decision makers are out of touch with citizens.
- MPs must be able to act without fear or threat from Political Parties. This enables greater action from MPs on the contributions they receive from citizens.
- The most senior members of political parties must be elected to National Parliament so that Parliament receives the respect that it deserves and MPs are of the calibre to exercise oversight over the executive, provinces, civil service and the private sector.

- Parliament must ensure that public funds are utilised properly.

Handed over 15 August 2012