PUBLIC PARTICIPATION IN THE SOUTH AFRICAN LEGISLATURE

WE, THE PEOPLE

ACTION 24
Active Citizens for Responsive Legislatures
ACTIVE CITIZENRY AND SOCIAL ACTIVISM IS NECESSARY FOR DEMOCRACY AND DEVELOPMENT TO FLOURISH. THE STATE CANNOT MERELY ACT ON BEHALF OF THE PEOPLE – IT HAS TO ACT WITH THE PEOPLE, WORKING TOGETHER WITH OTHER INSTITUTIONS TO PROVIDE OPPORTUNITIES FOR THE ADVANCEMENT OF ALL COMMUNITIES.

ALL SECTORS OF SOCIETY, INCLUDING THE LEGISLATURES AND JUDICIARY, HAVE TO ENSURE THAT THE FRUITS OF DEVELOPMENT ACCRUE TO THE POOREST AND MOST MARGINALISED, OFFSETTING POSSIBLE ATTEMPTS BY ELITES TO PROTECT THEIR OWN INTERESTS AT THE EXPENSE OF LESS-POWERFUL COMMUNITIES.

NATIONAL DEVELOPMENT PLAN, 2011 (P.38)

(…) IN THE FIELD OF THE ENVIRONMENT, IMPROVED ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN DECISION-MAKING ENHANCE THE QUALITY AND THE IMPLEMENTATION OF DECISIONS, CONTRIBUTE TO PUBLIC AWARENESS OF ENVIRONMENTAL ISSUES, GIVE THE PUBLIC THE OPPORTUNITY TO EXPRESS ITS CONCERNS AND ENABLE PUBLIC AUTHORITIES TO TAKE DUE ACCOUNT OF SUCH CONCERNS.

PREAMBLE TO THE AARHUS CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS, 1998
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INTRODUCTION

The South African Constitution entrenches public participation as a crucial element of democracy. It makes it a key requirement of government decision-making and oversight processes for both the legislative and the executive powers. It gives each citizen equal opportunities to get involved in deciding upon matters that concern them or the society they live in, beyond elections, and to hold authorities to account.

Yet, many people still lack a clear and practical understanding of the principles and mechanisms by which the South African public is entitled — and in fact, encouraged — to take part in the working of the legislature at national and provincial levels.

This is despite the efforts deployed by Parliament and the Provincial Legislatures to educate, inform and engage the public through direct outreach and various communication channels. Information about what public participation entails is publicly available on these institutions’ websites as well as number of other platforms such as the Parliamentary Monitoring Group. However, that information is quite scattered, and at times packaged in such a way that it is not easy for members of the public to get a full picture of what public participation in the legislative sector means, or to extract the information they need to engage meaningfully.

This is why this booklet was produced as part of the ‘Action 24’ initiative, in an attempt to compile basic concepts, information and facts that explain the rationale and features of public participation in the South African legislative sector. It does not claim to be exhaustive. Instead, it was designed to be as concise and to-the-point as possible so that it is a useful instrument to support the initiative’s objective, which is to strengthen environmental governance in South Africa through effective broader civil society participation in legislative processes. One of the expected outcomes is enhanced citizens’ engagement capacity in law-making and legislatures’ oversight on matters pertaining to sustainability and climate-resilience.

To that effect, the booklet focuses on key concepts and information. Links to more relevant content on the web and contact details to the South African legislatures are provided for those who wish to further expand their knowledge.

Furthermore, this booklet does not intend to replace experience and social learning, which are critical for people to grasp the importance and practical implications of effective public involvement, and adapt their engagement strategies to their context and constrains. Rather, it seeks to help stakeholders identify — or invent — opportunities for engagement. It also considers what makes for meaningful public participation, so that members of the public can critically assess the various forms of public participation they engage in.

The booklet includes the following sections, following a logical path:

Chapter 1 — Public participation and democracy
Chapter 2 — The Legislature: mandate, structure and workings
Chapter 3 — Public participation in the legislative sector in South Africa

The booklet is designed with civil society and media organisations in mind, to serve as a reference document for their work and efforts to engage their respective constituencies or audience on the subject. It is also available online and in several national languages, so that the general public can have access. Lastly, some of the information contained in this booklet is featured in other resource materials offering a variety of formats for different usage and audiences.
Public Participation in the South African Legislature

GLOSSARY

Accountability — the relationship where an actor (an individual or a body) has an obligation to explain and justify their conduct to another. It involves two stages: answerability, i.e. the obligation to provide information; and enforcement, where the actor responsible for oversight can sanction and/or remedy the contravening action.

Bill — the draft version of a law or Act.

Committee — a group of Members of a legislature appointed by the House to undertake specific tasks. A Committee is headed by a Chairperson (elected representative) and supported by a Secretary or Coordinator (staff).

Constituency — a body of citizens from a specific geographic area, represented by an elected official. Because of the proportional representation electoral system, Members of Parliament and of Provincial Legislatures are not directly elected by constituencies, rather constituencies are allocated to them by their respective political parties. Only ward councillors (local government) are elected per area.

Constitution — the basic, fundamental law of a state which sets out how it is organised and the powers and authorities of the various organs of government and of the people. The South African Constitutions also include the Bill of Rights, which lists the fundamental rights of the citizens.

Constitutional democracy — a system of government based on popular sovereignty in which the structures, powers, and limits of government are set forth in the Constitution.

Democracy — a system of government in which power is vested in the people (the whole population or all the eligible members of a state), who rule either directly or through freely elected representatives.

Executive — the administrative branch of government that runs the daily business of government by implementing the laws and policies.

Government — a government is the system or group of people governing an organised community, generally a state. It normally consists of a legislature, an executive and a judiciary.

House — another word to designate a legislative assembly.

Judiciary — the independent system of courts that interprets and applies the law in a given country.

Law — the system of rules which a particular community or country recognises as regulating the actions of its members, and which it may enforce by imposing penalties.

Legislature — the system of institutions, elected by the people, that are empowered to make, change or repeal the laws, and to which the Executive is accountable.

Oversight — the proactive interaction initiated by a legislature with the executive and administrative organs of state, that encourages compliance with their constitutional obligation to ensure delivery on agreed-to objectives for the achievement of government priorities.

Petition — a formal, written request to a legislature for intervention in a matter. It can be either a complaint or a request for assistance with a specific issue.

Plenary session — session that may be attended by all Members of a legislature.

Public hearing — a public meeting of a legislative committee(s) on a particular subject at which any citizen may speak and offer his or her views on the subject.

Public participation — the process by which an entity (be it public or private) consults with interested or affected parties, including individuals, communities, organisations and institutions of all sorts, before making a decision. Public participation is two-way communication and collaborative problem solving with the goal of achieving better and more acceptable decisions.

Proportional representation — an electoral system in which parties gain seats in proportion to the number of votes cast for them.

Representative democracy — a system of government where citizens of a country vote for representatives to handle legislation and rule the country on their behalf.

Rule of Law — the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced; the principle of government by law.

Secretary of the Legislature — the senior administrative officer of a legislature responsible for ensuring that its business runs smoothly.

Speaker of the Legislature — the presiding officer, or the chair, of a legislature. He or she is essentially the political Head of the institution.

Submission — the presentation of views or opinions on a matter or piece of legislation under consideration by a parliamentary committee.

Tiers of government — levels of government recognised in the Constitution: national, provincial and local. Each level has legislative and executive authority, based on a system of interdependent, interrelated and co-operative government.

Whip — official of a political party whose task is to ensure party discipline in a legislature. A Whip ensures that the Members of the legislature attend and vote in the House, and undertake their parliamentary duties as the elected representatives of the people. The Chief Whip is usually the Whip of the party with the most members in the House.

LIST OF ACRONYMS

MEC — Member of Executive Council
MP — Member of Parliament
MPL — Member of Provincial Legislature
NCOP — National Council of Provinces
NDP — National Development Plan
LSS — Legislative Sector Support
We, the People of South Africa

Democracy means that the people are entitled to influence decisions that will affect their lives. In a democratic system, the views and interests of all the citizens are brought together, so that the rules of society and its future can be decided collectively, taking into account all these views. It doesn’t mean that each and every view will prevail, which would make society ungovernable. Rather, each individual has a say and their voice will be considered.

Decisions are made based on the will of the majority: this is the majority rule. In a well-functioning democracy, the interests of the few cannot prevail if they go against the interests of the majority.

MAJORITY RULE AND MINORITY RIGHTS

When the majority rules, there is a risk it could abuse its powers to oppress a minority just as easily as a single ruler would (the “tyranny of the majority”). Thus a democracy must guarantee that the majority will not violate the basic and inalienable rights of a minority. Minority rights are essential to balance out majority rule.
Key features

A few fundamental principles distinguish democratic systems from others:

**Respect for basic human rights:** these include freedom of speech, thought and assembly, and equality. All citizens enjoy the same rights, as long as they don’t interfere with someone else’s rights.

**Separation of powers:** the power of the state is divided between three arms, namely the executive, the legislature and the judiciary. Each has separate and independent powers and areas of responsibility so that the powers of one arm don’t conflict with the powers of the others.

**Multi-party political system:** several political parties are able to contest elections, ensuring voters a choice and that diverse and competing views will be represented in the legislature. Democracy entails the right to differ in opinions, and the acceptance of these differences 2.

**Free, fair and regular elections of representatives:** By electing representatives, citizens determine who is going to exert power on their behalf. It is one of the ways popular sovereignty is expressed. Any citizen with the right to vote shall be free to do so, and to stand for office. The elections must be honest throughout (campaigning, vote, counting of the ballots). Also, they must be regular and frequent enough to ensure citizens the right to change the majority and the policies of government if they so wish.

**Rule of law:** it means that the country is governed by laws that are chosen by the people (possibly through their representatives), that are clear and publicised so that all know them. These rules constrain individual and institutional behaviour: all decisions and actions must be within the law. This protects the people against arbitrary power. The laws are applied equally and fairly to all; no individual or group gets preferential treatment or finds itself above the law.

**Good governance:** where a government aims to be efficient, transparent and responsive, as prerequisites to be accountable to its citizens 3.

**Citizen participation:** the People’s rule is manifested through participation in various democratic processes which provide individuals an opportunity to influence public decisions. Electing representatives is one form of participation, but not the only one. If they are to rule, the People must also monitor and influence the behaviour of their representatives and officials while in office, to ensure that they actually work for the public good. This implies that the citizens have access to information, that they have knowledge that enables them to partake in decision making, and that they can peacefully organise themselves to promote their interests if need be.

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**ACTIVE CITIZENS VS PASSIVE SUBJECTS**

As much as we have rights as citizens, we also have responsibilities. They are equally important for democracy to function properly. These include:

- Abiding by the Constitution and the laws
- Respecting and protecting the rights of others
- Staying informed
- Participating in the democratic process — voting, for instance
- Paying taxes
The South African Constitution – balancing representative and participatory democracy

South Africa is a representative democracy. This means that we elect representatives to defend the public interest and to govern the country on our behalf.

**DIRECT DEMOCRACY**

In a direct democracy, people have a direct say in every single decision that affects them. In practice, it is very difficult to implement, especially in large entities such as countries, but also because each region may be facing different issues. The majority of today’s democracies are representative — or “indirect”. Two small districts of Switzerland still practice direct democracy, where the inhabitants gather yearly in a public assembly to vote on local questions.

The elected representatives form the Legislature, i.e. the legislative arm of the State. We elect them at all levels of government, known as the “tiers of government”: national, provincial and local.

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<tr>
<th>NATIONAL</th>
<th>PROVINCIAL</th>
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<tr>
<td><strong>The Parliament of the Republic of South Africa:</strong></td>
<td><strong>The National Assembly:</strong></td>
<td><strong>The National Council of Provinces:</strong></td>
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<tr>
<td>- two Houses</td>
<td>- 400 members elected by the voters</td>
<td>- 90 delegates from the Provincial Legislatures</td>
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<tr>
<td>- elected every five years during the General Elections</td>
<td>- Elected by proportional representation, from regional and national party lists</td>
<td>- Appointed by each Provincial Legislature</td>
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<td>- 200 seats are distributed to the provincial lists; the other 200 are elected from the national lists.</td>
<td>- Provincial delegations of 10 members per province: six permanent delegates and four special delegates. Special delegates include the Premier and three other members of each Provincial Legislature, rotated depending on the subject matter being considered by the NCOP.</td>
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<td>- 10 delegates appointed by the South African Local Government Association (SALGA)</td>
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<td>- Deliberative power only; no voting power.</td>
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**The Provincial Legislatures (9):**

- representatives elected by the people of each province
- elected every five years during the General Elections
- elected by proportional representation

**The Municipal Councils:**

- elected every five years
- electoral system varies between metropolitan and local municipalities on the one hand, and district municipalities on the other hand

**Metropolitan and local municipalities:**

- Representatives elected by the residents of each municipality
- Elected through a mixed system: 50% by proportional representation, 50% by constituency (ward councillors)

**District municipalities:**

- Representatives elected by the residents of each municipality
- 40% elected by proportional representation; 60% appointed by the councils of the local municipalities in the area (local councillors)
**SOUTH AFRICA’S ELECTORAL SYSTEM**

The configuration of an electoral system is of fundamental importance to the nature of a country’s politics. It determines how the preferences of citizens are reflected by choices of elected officials and in government’s policy direction.

Except for the ward councillors, all elected representatives in South Africa are chosen by closed-list proportional representation. This system was selected for its inclusiveness, its simplicity, and its tendency to encourage coalition government. It is intended to circumvent the shortcomings of winner-takes-all style of elections, such as in the majority or plurality electoral systems.

Proportional representation is an electoral system that seeks to create a representative body that reflects the overall distribution of public support for each political party. The seats are distributed proportionally to the distribution of the votes to the parties competing in the elections. In other words, voters vote for parties, not for individuals. The party list voting system means that each party contesting in the elections puts up a list (or ‘slate’) of candidates equal to the number of seats in the legislature or council. The parties select as many delegates as the number of seats they receive, according to the order they appeared on the party list.

**ENSURING ACCOUNTABILITY IN A PROPORTIONAL REPRESENTATION IN SOUTH AFRICA**

All representative democracies face the same question: how well are the elected representatives able to represent the interests of the citizens who elected them – and the public interest at large – when voting legislation and holding government to account? And how to ensure that they are accountable to those they represent? Good representation is not guaranteed by the act of voting. It also depends on the strength of the relationship between voters and their elected representatives. This is largely influenced by the type of electoral system, i.e. how the representatives get their seat, but also how parties are funded.

**PRO’S**

- This system is inclusive and fair, as it ensures that parties contesting elections are represented according to their shares of the votes.
- The closed-list system encourages diversity: parties are able to “impose” otherwise discriminated or marginalised groups through their lists (women, youth, people with disabilities, etc.)

**CON’S**

- Voters elect a party rather than an individual, therefore they may not know who their representative is.
- Because of the closed-list system, elected representatives owe their seat to their party. Thus their decisions may be dictated by the interests of the political party leadership rather than those of the citizens. MPs may be requested to “toe the party line”, instead of voting with their own conscience. This is a key problem when MPs must hold the members of the government from their own party to account.
- Constituencies are not well defined. Political parties assign geographical constituencies to their MPs, based on the number of seats they get; the fewer representatives they have, the larger the constituencies per representatives. If a party wins one seat in Parliament, its MP will have the whole country as their constituency. Conversely, some constituencies have more than one representative as different parties allocate their own representative to them.

This makes it difficult to build strong relationships between the voters and their representatives, hence to ensure that the latter act on behalf of the former. Communities with less agency are more at risk of being ill-represented.

**REFORMING THE ELECTORAL SYSTEM?**

A reform of the South African electoral system was recommended in the 2003 Report of the Electoral Task Team, and echoed by the Independent Panel Assessment of Parliament (RIPAP) in its 2009 report. They recommend shifting the electoral system at national and provincial levels towards greater constituency-based representation – in which voters directly elect a representative for their geographic area – while maintaining some proportional representation for diversity and fairness. These recommendations have not been further considered nor implemented to this day.

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4 See the report from the conference “People’s Power, People’s Parliament” held in 2012 for an in-depth analysis of how party funding from government and donations influences the fairness of party competition and the decisions elected representatives make.
PARTICIPATORY DEMOCRACY

While democracy means that the people are in power, the representative system, through which citizens delegate the conduct of the country’s affairs to elected representatives, tends to distance the public from decision-making. In addition, elected representatives are technically under no obligation while in office to uphold the promises that got them elected.

To overcome these flaws, the South African Constitution entrenches public participation as a crucial element of democracy, and makes it a key requirement of government decision-making and oversight processes for both the legislative and the executive powers. [See Chapter 3]. By setting out the principles of a participatory democracy, the Constitution gives each citizen equal opportunities to get involved in deciding upon matters that concern them or the society they live in, beyond elections, and to hold authorities to account.

“In a participatory democracy, the public is actively involved in the decision-making processes of the government.”

Why is Public Participation important?

While representatives are elected to govern on behalf of the citizens, they are not given a free pass for the duration of their mandate. Checks and balances must be applied to ensure that they are not abusing the powers vested in them by the citizens, or failing to exert them while they are in office.

“The idea of citizen participation is a little like eating spinach: no one is against it in principle because it is good for you.”

— Sherry R. Arnstein, 1969

WHO IS “THE PUBLIC”?

To understand what constitutes operative public participation, it is useful to get clarity on the definition of the term “public”. “Public” refers to the general population or the ordinary citizens of the country. It is not uniform, especially for a country like South Africa that comprises of a very diverse society. This means that people may have different needs and views depending on their ethnicity, language, gender, physical condition, socio-economic status, place of residence, sexual orientation, religious beliefs or political beliefs.

The public encompasses individual persons in their own capacity as citizens, as well as entities that represent various sections of the population — either political parties or interest groups of various forms.

WHAT IS PUBLIC PARTICIPATION?

The premise of public participation is that those who are affected by a decision have a right to be involved in the decision-making process. It implies that the public’s contribution will influence the decision.

Public participation is:

Æ a process by which an entity (be it public or private) consults with interested or affected parties, including individuals, communities, organisations and institutions of all sorts, before making a decision
Æ a two-way communication and collaborative problem solving mechanism, with the goal of achieving better and more acceptable decisions for all
Æ a fundamental right of all people
Æ intended to promote the values of good governance and human rights
Æ to be designed to narrow the social distance between the electorate and elected institutions
Æ a way to assist duty-bearers in fulfilling their mandate, recognising and addressing injustices
Æ a way to prevent or minimize conflicts by creating an inclusive process for resolving issues before they become polarised

In the interests of democracy, public participation facilitates effective legislative decision-making through the involvement and input of citizens. It thus enables civil society to contribute to the policies developed and implemented by the Government. It also allows the traditionally excluded members of society to make their needs and opinions known.

“The intention of public participation provisions in the Constitution is clear – to influence government policy outcomes so that they reflect “the will of the people”. Therefore, a vibrant civil society plays an indispensable role in a democracy. It facilitates public engagement with government organs, including legislatures, and ensures that institutions, policies and laws enjoy legitimacy among citizens. An activist parliament, and legislatures, cannot be sustained without an activist people, an activist society. Parliament and legislatures are, in fact, meant to be people orientated – hence a ‘People’s Parliament’, and legislatures. One of the defining features of an activist Parliament and legislature is that it should seek to involve all citizens in issues of governance for better service delivery and development. As a key institution of democracy it does not only hold government accountable, but is itself accountable to the citizens.”
CHAPTER 2 - THE LEGISLATURE: MANDATE, STRUCTURE AND WORKINGS

South Africa is a parliamentary republic, which means a system of government where the executive branch (the government) derives its legitimacy from and is accountable to the Legislature (the Parliament, the Provincial Legislatures and the Municipal Councils).

Structure

The South African Legislature consists of several institutions within the three spheres of government:

- **National**
  - National Assembly (400 members)
  - National Council of the Provinces (90 members)
- **Provincial**
  - Provincial legislatures
  - Limpopo PL (49 members)
  - Gauteng PL (73 members)
  - North West PL (33 members)
  - Mpumalanga PL (30 members)
  - Northern Cape PL (30 members)
  - Eastern Cape PL (63 members)
  - Western Cape PL (42 members)
  - 8 Metropolitan councils (Category A)
  - 226 Local councils (Category B)
- **Local**
  - Municipal councils
  - 44 District councils (Category C)
  - 90 delegates
  - 10 delegates from SALGA
**Mandate and functions**

The Constitution of South Africa gives the following mandates to the Legislature:

- Represent the people
- Hold legislative power, i.e. make and pass laws
- Scrutinise and oversee the actions of the executive

The institutions of the legislative sector have well-defined functions and powers within their sphere of government:

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<td>National Assembly</td>
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<td>MANDATE</td>
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<td>• Represent the people</td>
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<td>• Ensure government by the people under the Constitution</td>
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<td>FUNCTIONS &amp; POWERS</td>
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<td></td>
<td>• Amend the Constitution</td>
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<td>• Choose the President of the Republic</td>
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<td>• Provide a national forum for public consideration of issues</td>
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<td>• Initiate or prepare legislation on matters subject to Schedule 4, except for money Bills</td>
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<td>• Consider, pass, amend or reject legislation on matters subject to Schedule 4 and section 44 (2)</td>
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<td>• Consider, amend, approve or reject the national budget</td>
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<td>• Scrutinise and oversee the action of all national executive organs of state, and hold them accountable</td>
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<td>• Request information or report from any person or institution</td>
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### PROVINCIAL

#### SPHERE
- Provincial Legislatures

#### MANDATE
- Represent the people of the province
- Ensure government by the people under the Constitution

#### FUNCTIONS & POWERS
- Pass a constitution for the province
- Elect the Premier of the Province
- Provide a provincial forum for public consideration of issues
- Initiate or prepare legislation, except for money Bills
- Consider, pass, amend or reject legislation on matters subject to Schedule 4 and Schedule 5, or any matter assigned by national legislation
- Consider, approve or reject provincial budgets
- Scrutinise and oversee the action of all provincial executive authorities and other provincial organs of state, and hold them accountable
- Request information or report from any person or institution

### LOCAL

#### SPHERE
- Municipal Councils

#### MANDATE
- Provide democratic and accountable government for local communities;
- Ensure the provision of services to communities in a sustainable manner;
- Promote social and economic development;
- Promote a safe and healthy environment; and
- Encourage the involvement of communities and community organisations in the matters of local government.

#### FUNCTIONS & POWERS
- Elect the Mayor
- Make by-laws on matters listed in Part B of Schedule 4 and Part B of Schedule 5, or as otherwise assigned by national or provincial legislation
- Approves municipal budgets
- Oversee the provision of services to the community by the Municipal Administration
How the legislatures works

The legislatures, both Parliament and the Provincial Legislatures, organise their work either in plenary sittings (where Members of a House meet altogether) or in committees (smaller groups of Members appointed by the House).

In addition, both houses of the Parliament, i.e. the National Assembly and the National Council of Provinces, may meet in joint sittings (where Members of both Houses meet in one assembly) and form joint committees.

Each legislature has Standing Rules that define how it operates to perform its constitutional obligations. The rules are normally drawn up by a dedicated Committee at the beginning of each new legislature.

COMMITTEES

The committees are described as the “engine room” of the legislatures, because these are where much of the law-making and oversight work is done. Working in Committees allows the legislatures to:

- Escalate the quantity of work to be done
- Guarantee that matters can be discussed with more specification than in plenary sittings
- Intensify the degree of involvement from Members of Parliament (MPs) in deliberations
- Allow MPs to build exhaustive knowledge of the specific Committee’s area of work, and be better equipped to deal with the matters at hand
- Make available spaces for the public to present opinions directly to MPs, something that is unlikely in a complete sitting of Parliament
- Offer an environment for Parliament to receive indication and gather facts linked to the work of an exact Committee.

Each Committee consists of Members of the House. It is headed by a Chairperson (elected representative) and supported by a Secretary or Coordinator (administrative staff).

Mainly their roles are to:

- Initiate, consider and propose amendments on bills put before the legislature.
- Consider private members’ and provincial legislative proposals and special petitions.
- Monitor and oversee the work and budgets of the executive authorities and hold them accountable.
- Consult the public on legislation and oversight matters. They may also receive petitions, representations or submissions from the public.
- Examine specific areas of public life or matters of public interest.
- Take care of domestic issues and ensure the smooth functioning of the House.

Committees have the power to summon any person to appear before them, give evidence or produce documents. They may require any person or institution to report to them.

The Committees report regularly to the House and the House debates their recommendations and takes final decisions.

They perform a very significant role in the process of constructing democracy and connecting the public in the procedures and actions of the legislatures.

QUESTIONS / INTERPELLATIONS

At regular times, Members of a House may put a question to any member of the executive in their sphere of government about their work. The questions must concern matters falling within the area of responsibility of that official. This is important because it is the way that elected representatives of the people check that the various government departments are doing their work properly.

MOTIONS

Members of a House may introduce a motion (or subject) for debate in the House. The House can be asked to take a decision on such a motion. This is called a ‘resolution’.

STATEMENTS BY MEMBERS

Members of the legislatures may request the permission from the Speakers to make statements to the House, on any matter.

SPEAKER’S DEBATES

The Speaker may table debates on topics of interest in the House.

STATEMENT BY THE EXECUTIVE

Members of the executive may request the Speaker to make statements relating to government policy, executive actions or similar matters which they feel the House should be informed of.

PETITIONS

The legislatures can receive petitions addressed to them by individuals or groups after having exhausted other avenues. Petitions are written requests, complaints, or representations either on service delivery or policy matters.
**TYPES OF COMMITTEES**

**Portfolio Committees**

- Appointed by a House.
- Shadow the work of the various government departments (national / provincial) in specific sectors. This oversight role includes the possibility to enquire and make recommendations about any aspect of the department, including its structure, functioning and policy.
- At national level, there is a Portfolio Committee for each national Ministry and its associated government department(s).
- At provincial level, one committee may cover several portfolios.

**Types of Bills**
- Consider Bills
- Deal with departmental budget votes
- May investigate any matter of public interest (including outside government) that falls within their area of responsibility.

**Select Committees**

- Appointed by the National Council of Provinces from its 54 permanent members.
- Shadow the work of the various national government departments. Each Select Committee oversees the work of more than one national government department.
- Deal with Bills.
- Consider petitions tabled in Parliament.

**Standing Committees**

- Appointed to a specific portfolio (government department), although terminology differs from one legislature to another. They deal mainly with cross-cutting matters, such as financial ones.

**Joint Committees**

- Appointed together by the National Assembly and the National Council of Provinces.
- Deal with matters of national interest and overlapping competence between the two Chambers.

**Joint Standing Committees**

**Internal / Management Committees**

- Appointed by the house from its members.
- Deal with special tasks.
- Dissolved when the task is completed.

**THE PUBLIC ACCOUNTS OR BUDGET COMMITTEES**

The National Assembly Standing Committee on Public Accounts acts as Parliament’s watchdog over the way taxpayers’ money is spent by the Executive. Every year the Auditor-General tables reports on the accounts and financial management of the various government departments and State institutions. Heads of government departments and institutions are regularly called by this Committee to report and account for expenditure. The Committee can recommend that the National Assembly takes corrective actions if necessary.

Similarly, the provincial legislatures have a public account or budget committees (name may vary) performing the same functions within their respective provinces.
CONSTITUENCY WORK

The parliamentary programme assigns every Monday during session, and several weeks during the year for elected representatives to concentrate on constituency work. During these periods, the representatives must be available to the public; help solve problems; and report back to their constituents on what is happening in the legislature.

RECESS PERIODS

Recess periods are the times in the year when the legislatures are not meeting. They usually happen at mid-year (July/August) and end of the year (December).

Notes:
- NCOP, provincial parliaments follow a similar cycle to National Assembly, but usually with a two week delay
- Constituency periods vary from year to year
- Constituency Work

The legislatures’ yearly cycle

State of the Nation / State of the Province Address (SONA / SOPA)
Yearly national / provincial budgets
Quarterly programme
Quarterly programme
Mini-budget (national)
Review of annual reports; Preparation of BRRRs
Annual reports
Quarterly programme
Woman Sectoral Parliaments
Special oversight programmes (Committees)
Youth Sectoral Parliaments
Quarterly programme
Quarterly programme
Quarterly programme
Source: Parliament of South Africa, 2018
How laws are made and passed

Who can introduce bills in Parliament?

- a Minister or a deputy Minister
- a Parliamentary Committee
- an individual Member of Parliament (National Assembly or National Council of Provinces)

Most bills are drawn up by a government department under the direction of the relevant Minister or deputy Minister. In this case, it sometimes begins with a discussion document, called a Green Paper, which may become a White Paper if further refined. This kind of bill must be approved by the Cabinet before being submitted to Parliament.

Bills introduced by individual MPs are called “private members’ bills”. These bills are considered by the Standing Committee on Private Member’s Legislative Proposals and Special Petitions (National Assembly) or the Select Committee on Petitions and Executive Undertakings (NCOP). If the Committee agrees with the principle of the draft Bill, a Bill will be prepared and dealt with by Parliament as per the diagram on the next page.

FOUR TYPES OF BILLS

The type of bills (draft laws) is dictated by the functional areas they cover:

1. Bills that amend the Constitution (Section 74 Bills)
2. Ordinary bills which do not affect provinces (Section 75 Bills): these are the bills that relate to national functions, such as Defence, Foreign Affairs or Justice
3. Ordinary bills which affect provinces (Section 76 Bills): for instance Education, Transport, Welfare and Health
4. Money Bills (Section 77 Bills)

A Bill that affects the provinces (Section 76 Bill) may be introduced in either the National Assembly or the NCOP, but must be considered in both Houses.

Members of the NCOP do not vote as individuals on Section 76 Bills but rather as provincial delegations. Each provincial delegation has one vote. This implies that these Bills must be discussed by each provincial legislature so that each legislature can give its NCOP delegation a voting mandate. This makes it necessary to have six-week legislative cycles so that a number of Bills can go to each province at one time.
### Bills before Parliament (national level)

**Section 75 bills**
- ordinary bills not affecting the provinces

1. A Bill is introduced in the National Assembly by a minister, portfolio committee or Assembly member
2. Discussed and amended by portfolio committee
3. Publication in Government Gazette for public comment
4. Public participation
5. Debated in National Assembly
6. Passed
   - No compromise
   - Passed with amendments
7. Passed by National Assembly
8. Mediation Committee
9. Compromise
10. Signed into law by president

**Section 76 bills**
- ordinary bills affecting the provinces

1. A Bill is introduced first in the National Assembly or NCOP
2. Discussion and amendment by portfolio committee
3. Publication in Government Gazette for public comment
4. Public participation
5. Debated in first house
6. Passed
7. Tabled in second house
8. Discussed by committee
9. Debated in second house
10. Passed with amendments
11. Passed
12. Back to first house
13. Disagreement
   - Passed
   - Rejected
   - No compromise
   - Lapses after 30 days
14. Mediation Committee
15. Compromise
16. Passed by National Assembly

**Bills before Parliament (national level)**

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>A Bill is introduced in the National Assembly by a minister, portfolio committee or Assembly member</td>
</tr>
<tr>
<td>2</td>
<td>Discussed and amended by portfolio committee</td>
</tr>
<tr>
<td>3</td>
<td>Publication in Government Gazette for public comment</td>
</tr>
<tr>
<td>4</td>
<td>Public participation</td>
</tr>
<tr>
<td>5</td>
<td>Debated in National Assembly</td>
</tr>
<tr>
<td>6</td>
<td>Passed</td>
</tr>
<tr>
<td>7</td>
<td>Passed by National Assembly</td>
</tr>
<tr>
<td>8</td>
<td>Mediation Committee</td>
</tr>
<tr>
<td>9</td>
<td>Compromise</td>
</tr>
<tr>
<td>10</td>
<td>Signed into law by president</td>
</tr>
</tbody>
</table>

**Public Participation**
- A Bill is introduced in the National Assembly by a minister, portfolio committee or Assembly member.
- Discussed and amended by portfolio committee.
- Published in the Government Gazette for public comment.
- Debated in the National Assembly.
- Passed with amendments or rejected.
- Back to National Assembly for further discussion.
- Passed by National Assembly.
- Mediation Committee.
- Compromise or no compromise.
- Signed into law by the president.

**Bills before Parliament (national level)**

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
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<td>A Bill is introduced in the National Assembly by a minister, portfolio committee or Assembly member</td>
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<tr>
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<td>9</td>
<td>Compromise</td>
</tr>
<tr>
<td>10</td>
<td>Signed into law by president</td>
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</tbody>
</table>
Bills are usually considered by a provincial Committee, which may hold public hearings on the Bill to receive comments and suggestions. These Committees make recommendations to their legislatures, which then decide on their position on each Bill and mandate their NCOP delegation accordingly.

The four special delegates to the NCOP (who should be chosen according to their expertise and knowledge of the Bills being debated) go to Cape Town to join the six permanent delegates. The full delegation of ten people participate in the national debate on the Bills, thus enabling the provinces to contribute to national legislation that affects them. The delegation then casts its one vote on behalf of its province and in accordance with the provincial legislature’s mandate.

**MONEY BILLS**

These bills allocate public money for a particular purpose or imposes taxes, levies and duties. They are treated slightly differently. They can only be introduced by the Minister of Finance in the National Assembly. In terms of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No 9 of 2009), Parliament may amend money bills.

At provincial level, the law-making process is similar although simplified because there is only one chamber.

Who can introduce bills in the provincial legislatures?

- a member of the Executive Council (MEC)
- a Member of the Legislature
- a Committee

These inputs should be taken into account in the next phase, which is when the Committee considers the Bill, possibly proposing amendments to it.

The Committee submits a report with recommendations on the Bill to the House, which serves as the basis for the Members of the Provincial Legislature to debate and vote on the Bill in a plenary session. The Bill is passed when it receives a majority of favourable votes.

A Bill becomes “Act” (law) when it is signed by the competent head of the Executive, i.e. either the President of the Republic (national sphere of government) or the Premier (provincial level).
WHEN IS A LEGISLATIVE MATTER NATIONAL OR PROVINCIAL?

- Schedule 4 of the Constitution lists the functional areas in which Parliament and the provincial legislatures both have the right to make laws.
- Schedule 5 of the Constitution lists the functional areas in which only the provincial legislatures may make laws.

Residual matters that are not mentioned in either schedule are reserved for the national legislature. In exceptional circumstances Parliament may make provincial laws to maintain national security, maintain economic unity, establish minimum standards for service delivery, or to prevent unreasonable action by a province which affects the interests of another province or the country.

<table>
<thead>
<tr>
<th>ENVIRONMENTAL ISSUES: WHO IS COMPETENT FOR WHAT?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SCHEDULE 4</strong></td>
</tr>
<tr>
<td>Functional areas of concurrent national and provincial legislative competence</td>
</tr>
<tr>
<td><strong>PART A</strong></td>
</tr>
<tr>
<td>• Agriculture</td>
</tr>
<tr>
<td>• Health</td>
</tr>
<tr>
<td>• the environment</td>
</tr>
<tr>
<td>• nature conservation (excluding national parks, national botanical gardens and marine resources)</td>
</tr>
<tr>
<td>• pollution control</td>
</tr>
<tr>
<td>• Public transport</td>
</tr>
<tr>
<td>• Soil conservation</td>
</tr>
<tr>
<td>• Urban and rural development</td>
</tr>
<tr>
<td><strong>PART B</strong> (local government matters)</td>
</tr>
<tr>
<td>• Air pollution</td>
</tr>
<tr>
<td>• Storm water management systems in built-up areas</td>
</tr>
<tr>
<td>• Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems</td>
</tr>
</tbody>
</table>

| **SCHEDULE 5**                                   |
| Functional areas of exclusive provincial legislative competence |
| **PART B** (local government matters)            |
| • Refuse removal, refuse dumps and solid waste disposal |

Part B of Schedules 4 and 5 refer to the matters (‘functional areas’) on which the municipalities have executive authority.
Legislative oversight

The true test of democracy is the extent to which the legislature can ensure that government remains answerable to the people. This is done by maintaining constant oversight (monitoring) of government’s actions.

The legislature represents the people of South Africa and it has a responsibility to keep the government, i.e. the executive – national, provincial and local levels – accountable to the people.

The functions of oversight are 23:

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies while protecting the rights and liberties of citizens.
- To hold the government to account in respect of how the taxpayers’ money is used by detecting waste within the machinery of government and public agencies, and improve the efficiency, economy and effectiveness of government operations.
- To ensure that policies announced by government and authorised by Parliament and Provincial Legislatures are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government’s own programmes.
- To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.

ACCOUNTABILITY

Accountability is the relationship where an actor (an individual or an agency) has an obligation to explain and justify their conduct to another.

When exercising oversight, the legislature focuses on the following areas:

- implementation of laws
- application of budgets
- strict observance of laws of the country and the Constitution
- effective management of government departments.

Members of the legislature at national and provincial levels keep the executive accountable by:

- putting questions to the executive
- having parliamentary debates about important issues, including by moving motions for debates
- proposing and voting on motions requiring the executive and state institutions to report to the legislature
- considering the annual reports of the government, and reports of the Auditor-General (done by the Committees)
- depending on the purpose of the oversight, requesting a briefing from the executive organ concerned or visit it for fact-finding (done by the Committees)
- voting on and/or amending the budget: in this case, the Committees engage the various departments on their performance in executing their budget during the previous year.

The legislatures and their committees have strong powers. They can summon any person to give evidence or to produce documents, and they can require any person or institution to report to them. A legislature has the power to make the President, the Cabinet (national), a Premier and an Executive Council (provincial) resign by passing a motion of no confidence.

The NCOP has a special oversight role. First, it oversees national aspects of provincial and local government 24. Second, it intervenes in situations where a provincial government has taken over a local government’s functions, or cases where national government has taken over a provincial government’s functions.
# Chapter 3 - Public Participation in the Legislative Sector in South Africa

## Constitutional provisions for public participation in the legislatures

The South African Constitution enshrines that the principles of democratic government must ensure accountability, responsiveness and openness.

> “government is based on the will of the people”
> — Preamble, South African Constitution, Act 108 of 1996

The facilitation of public participation and involvement in the legislative processes is central to the mandate of the legislature, at all levels. Sections 59, 72 and 118 of the Constitution enjoin the National Assembly (NA), the National Council of Provinces (NCOP) and the Provincial Legislatures respectively to facilitate the involvement of the public in their legislative and other processes.

<table>
<thead>
<tr>
<th>Section</th>
<th>Public access to and involvement in National Assembly</th>
<th>Public access to and involvement in National Council</th>
<th>Public access to and involvement in provincial legislatures</th>
</tr>
</thead>
<tbody>
<tr>
<td>59</td>
<td>(1) The National Assembly must—</td>
<td>(1) The National Council of Provinces must—</td>
<td>(1) A provincial legislature must—</td>
</tr>
<tr>
<td></td>
<td>(a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and</td>
<td>(a) facilitate public involvement in the legislative and other processes of the Council and its committees; and</td>
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<td></td>
<td>(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken—</td>
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</tr>
<tr>
<td></td>
<td>(i) to regulate public access, including access of the media, to the Assembly and its committees; and</td>
<td>(i) to regulate public access, including access of the media, to the Council and its committees; and</td>
<td>(i) to regulate public access, including access of the media, to the legislature and its committees; and</td>
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<tr>
<td></td>
<td>(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.</td>
<td>(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.</td>
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</tr>
<tr>
<td>72</td>
<td>(2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.</td>
<td>(2) The National Council of Provinces may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.</td>
<td>(2) A provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.</td>
</tr>
</tbody>
</table>
What does ‘meaningful, effective and inclusive participation’ imply?

“There is a critical difference between going through the empty ritual of participation and having the real power needed to affect the outcome of the process.”


THE LADDER OF PUBLIC PARTICIPATION

The ladder of participation, which was developed by S.R. Arnstein in the 1960’s, depicts various levels of public participation. Each of them corresponds to an increased opportunity for public input to influence or impact the decision-making process.

![The Ladder of Participation of the South African Legislative Sector](source: Public Participation Framework, South African Legislative Sector, 2013)

**Level 1: Inform**
(Provide Opportunity for access to Information)

**Level 2: Consult**
(Provide Opportunity for Input)

**Level 3: Involve**
(Provide Opportunity for Dialogue & Interaction)

**Level 4: Collaborate**
(Provide Opportunity for Partnering)

Members of Parliament and Members of the Provincial Legislatures are the representatives of the people of South Africa. Citizens have the right – and the duty – to hold them to account.
The South African Legislature has adapted this ladder, based on what it regards as a “best fit approach”, i.e. intended to take into account the limitations and constraints that the legislative sector faces to implement public participation systems and programmes while striving to meet public expectations.

In its Public Participation Framework (2013), the South African Legislative Sector states that it “seeks to Inform, Consult, Involve, and Collaborate wherever appropriate in order to achieve the highest level of opportunity for input into the relevant processes. Meaningful public participation ensures that the appropriate level of participation is utilised on the ‘ladder’. “

In this approach, the level of public participation processes is determined based on the level of public interest. The Constitutional Court confirmed the validity of this approach, stating that “Parliament and the provincial legislatures have a broad discretion to determine how best to fulfil their Constitutional obligation to facilitate public involvement in a given case, as long as it is reasonable to do so” b.

CRITERIA OF MEANINGFUL, EFFECTIVE AND INCLUSIVE PARTICIPATION

The Constitution gives indications as to what the Legislature must do to ensure that public participation is achieving its objectives. A number of Constitutional Court rulings c,d have provided further information as to what it requires:

☐ The Legislature (National Assembly, NCOP, and the Provincial Legislatures) must facilitate public involvement in their decision-making processes.
☐ People must be consulted before a final decision has been made.
☐ Consultation should include the groups who may be affected by the decisions/actions under consideration.
☐ Representatives must listen to people’s opinions with an open mind.
☐ The Legislature must provide feedback on the impact of the inputs that are made by the public
☐ People must be provided information about the location and time of the consultation.
☐ People must be provided information on the impact the decisions will have on people’s lives.
☐ People must be given enough time to prepare for consultation.

Information is key

To be fair and effective, public participation requires that all citizens have access to the relevant information, which in itself is a constitutional right (section 32 (1), Constitution, 1996).

Still today, several factors hamper adequate access to information: language barriers, illiteracy, lack of access to the media and to Internet, etc. If these are not properly taken into consideration, various sections of society end up being left out of the public participation processes.

Members of the public need to have information about:

- the structure and systems of the legislature
- the mechanisms through which they can participate
- ongoing and upcoming work of each institutions

Public participation structures and mechanisms

Public participation in law-making, oversight and other processes of Parliament is an important constitutional provision of our democracy. The Legislative sector has developed a number of ways to promote public involvement in the work of the institution.

On the following page is an overview of the various types of structures, mechanisms and activities supporting public involvement in the Legislatures’ work.

---

b Judgement of the Constitution Court in Doctors for Life International v Speaker of the National Assembly and Others (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006).

### Information, Education and Outreach
- Each legislature has a responsibility to provide information about its structure and systems, activities and opportunities for the public to engage.
- Information must be accessible to the public at large, using appropriate channels.

### Constituency Offices
- 350 permanent offices throughout the country.
- Facilitate interaction between elected representatives and their constituencies. Each MP is responsible for a constituency where they have a duty to:
  - Channel information/report back to the public on what is happening in the Parliament / the Provincial Legislature.
  - Receive inputs from the public as to concerns on service delivery by government.

### Parliamentary Democracy Offices
- Offices of Parliament intended to establish a meaningful and immediate presence in the provinces, especially in the under-serviced, under-resourced and deep rural areas.
- Roles: Information of the public; interface between Parliamentary committees and communities; assisting the public with making submissions/petitions.
- Only established in Limpopo, Northern Cape and North West (2017).

### Public pre-hearings, hearings & post-hearings
- Convened when the committees seek to engage with the general public on a particular issue or a specific segment of the society which might be greatly affected by proposed legislation.

### Submissions / representations
- Presentation of views or opinions on a matter or piece of legislation under consideration by a committee.
- May be presented in any official language of South Africa.
- Submissions can be in writing or oral form (upon invitation by a committee).

### Petitions
- Formal, written request to a legislature for intervention in a matter.
- Can be lodged at any time, provided it is in the form prescribed by the legislature.
- May be presented in any official language of South Africa.

### Sector parliaments
- Sittings for identified special interest groups (Workers, Youth, Women, Senior Citizens, Persons with Disabilities, etc.).
- Organised at the discretion of each legislature.

### Taking Parliament to the People (TPTP)
- Programme whereby NCOP hold formal sittings in various locations of the country.
- Intended to facilitate interaction between the communities and Parliament.

### Parliament
- This extends the national legislature to the far ends of the country and permits the average person the opening to participate with Members of Parliament or Members of the Provincial Legislatures.
- Should take place twice a year.

### Taking the Legislatures to the People
- Programme similar to TPTP, whereby some provincial legislatures hold committee meetings or plenary sessions in various locations of the province.
- Supposed to target communities in more rural areas.
- Should take place at least once a year.

### Oversight activities
- Verification and decision on annual plans, annual budgets, quarterly and annual reports
- Oversight visits and Focused Intervention Studies
Public participation in the South African Legislature

The table above shows that there are multiple ways and channels for the public to engage the legislatures, at different stages of the parliamentary cycle (see also the diagram p. 34). The section below focuses on a few mechanisms that are the most generic and accessible to all.

**ATTEND COMMITTEE MEETINGS AND PLENARY SITTINGS**

All meetings of the Parliament, Provincial Legislatures and their committees are open to the public, unless there are reasonable and justifiable rounds for denying public access.

1. Why attend?

   The main reason for attending Committee meetings or sittings of the legislatures is to hear first-hand what is being said (and by whom) during these sessions. This represents a limited form of participation, as it relates mostly to information sharing. Indeed, the public does not actively participate in these meetings, unless they are specifically invited to address a Committee on specific issues (see section on ‘Submissions’).

   Nonetheless, attending meetings has its importance. It is a way for the public to bear witness to the work of their elected representatives, and to assess the extent to which they are indeed representing them as they wished. Attending meetings therefore contributes to the citizens holding their representatives to account.

   This is time and money consuming, thus a challenge for citizens living far from the legislatures’ premises and/or those with professional or family obligations that clash with meetings held during working hours or week days.

2. How to attend?

   The first step is to find out about the legislatures’ schedules. The way they are notified, updated and advertised to the public differs from one legislature to another:

<table>
<thead>
<tr>
<th>Platforms</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Website</td>
<td>Annual</td>
</tr>
<tr>
<td>Social media</td>
<td>Per term</td>
</tr>
<tr>
<td></td>
<td>Weekly</td>
</tr>
</tbody>
</table>

   You can also contact the Secretaries or Coordinators of the Committees which you are interested in, to ask them about upcoming meetings. Their details are sometimes available on the legislatures’ websites. Alternatively, you can call the legislature to ask for their names and contact details.

   If you are unable to attend a meeting or a sitting but you would like to know what has been discussed or decided, you may consult the minutes or reports on proceedings on:

   - **Proceedings of national Parliament:**
     - The Hansard, available on the Parliament’s website (sittings of the National Assembly and NCOP only; no minutes of their Committees’ meetings):
     - Parliamentary Monitoring Group’s website:
       [https://pmg.org.za/](https://pmg.org.za/)

   - **Proceedings of the Provincial Legislatures:**
     - The Hansard, available on some of the Provincial Legislatures’ websites (House sittings only)
     - Parliamentary Monitoring Group’s website (started recording the proceedings of some Provincial Legislatures in 2018): [https://pmg.org.za/](https://pmg.org.za/)

   **Tip:** when attending Committee meetings, record or take notes of the discussions held and views of the participants. The legislatures are not making these records available to the public spontaneously or systematically. In Parliament, the Parliamentary Monitoring Group endeavours to record these proceedings, but this is not done in all provinces yet.
**ENGAGE YOUR REPRESENTATIVES**

As the people’s representatives, part of the work of elected Members of Parliament and of the Provincial Legislatures is done inside Parliament or the Provincial Legislature, and part of it is done directly with citizens during constituency periods.

**MP’S ARE DIRECTLY ACCOUNTABLE TO YOU BECAUSE YOU VOTED FOR THEM TO GOVERN ON YOUR BEHALF.**

Political parties attach their members to specific geographic areas to take charge of constituency offices. It is expected that members of the public will use these constituency offices as an empowering mechanism to get their concerns and views across to relevant legislative committees and government institutions.

---

**Do you know which MPs represent your constituency in Parliament?**

In the Provincial Legislature?

**Do you know where the nearest Parliamentary Constituency Office is?**

---

**HOW CAN YOU FIND OUT WHO YOUR MP’S / MPL’S ARE?**

- People’s Assembly website, tab ‘Rep Locator’: [https://www.pa.org.za/](https://www.pa.org.za/).
- Contact your Provincial Legislature.
- Contact the offices of political parties to enquire about the constituency area you live in, and the MPs/MLPs attached to it.
- Contact the Constituency Office closest to where you live.

**WHAT CAN YOU ASK FROM YOUR MP’S / MPL’S?**

- Ask them to raise questions to the executive on your behalf, during the weekly question session.
- Recommend targeted oversight engagements (including visits).
- If you wish to lodge a petition to the National Assembly, you need an MP to submit it for you.
- Give your representative(s) feedback on issues of concerns, or information that may influence their work and votes in the legislature.
SUBMIT A PETITION

A petition is a formal, written request to a legislature for intervention in a matter. It can be either a complaint or a request for assistance with a specific issue.

Each legislature may set specific rules and procedures to be followed for the submission of petitions.

1. Who can submit petitions?

- The Constitution provides that everyone has the right to present petitions (sections 56 (d)), 69 (d) and 115 (d)). This includes both natural and juristic persons such as associations or companies.
- Petitions may be submitted by an individual (‘single’ or ‘special’ petition) or by a group of citizens with similar interests or grievances (‘collective’, ‘public’ or ‘general’ petitions).
- Some legislatures provide for the right to submit a petition in the interest of another person who are not in a position to seek relief on their own.

2. What can you petition about?

Each legislature defines the scope of issues that qualify for petitions. However, the general rule is that a legislature will only consider petitions on matters of its competence or matters for which the corresponding sphere of government is competent.

To know which area or issues a specific legislature (national/ provincial) is competent, you need to refer to their mandate and to Schedules 4 and 5 of the Constitution.

3. Write your petition

A petition should comply with the following minimum requirements:

- Be in a form prescribed by the relevant legislature: each legislature has its own petition form which can be obtained from their offices or sometimes online
- Include the name(s) and contact detail(s) of the petitioner(s)
- Clearly indicate to whom is the petition being addressed
- Clearly indicate the subject of the petition – nature of the request being made
- Include a clear motivation for the petition, with details of steps taken to resolve the matter
- Indicate the nature of the relief (assistance) or action requested from the legislature
- Be in any of the official languages of South Africa
- Be signed by the petitioner(s) themselves, possibly also by a witness
- Include supporting documents on the issue raised in attachment
4. Lodge your petition

**Parliament**

Special petition

General petition

THE CLERK OF PAPERS

NATIONAL ASSEMBLY

NCOP

Committee on Private Members' Legislative Proposals and Special Petitions

Select Committee on Petitions and Executive Undertakings

Referred to

Referred to

Petitions to the National Assembly must be formally presented by a Member of Parliament (MP)

NATIONAL ASSEMBLY

NCOP

Relevant Committee

Relevant Committee

Recommendations / resolution on how to deal with the petition

Provide feedback to petitioner on progress made and outcome of the petition

Speaker

Implementation of recommendations / resolution

* The approved format for your petition may be obtained from Parliament’s Clerk of the Papers.

**Provincial Legislatures**

The procedure for filing a petition may differ from one legislature to another. Generally, it is as follows:

**Public Participation Unit**

or

Public Education and Outreach Unit

or

Petitions Unit

Member of the Legislature

or

e-petition (online)

Preliminary investigation by dedicated administrative support service

Speaker

May recommend referral to other person/ organs

Petition Committee

Recommendations / resolution on how to deal with the petition

Provide feedback to petitioner on progress made and outcome of the petition

Speaker

Implementation of recommendations / resolution

* The forms can be retrieved from most Provincial Legislatures’ websites or obtained at their offices.
MAKE A SUBMISSION OR REPRESENTATION

A submission consists in presenting the views or opinions of the public on a matter or a piece of legislation under consideration by a legislature. As such, submissions are an important way for the public to provide input directly into the work of the Committees — and ultimately, of the whole of the legislature concerned.

Making submissions creates an opportunity for a member of the public to make their voices heard, i.e. propose changes or suggest possible actions to ensure that the laws passed by the legislature or any other matter being considered by them serve the interests of the person or group making the submission.

1. Who can make submissions?

Any interested person or institution may present a submission or representation to the National Assembly, National Council of Provinces and the Provincial Legislatures (see section 56 (d)), section 69 (d) and section 115 (d)). This means, both natural and juristic persons such as associations or companies.

2. What can submissions be about?

You can make written submissions on any matter, either of your own initiative or upon invitation by a Committee. The submissions are referred to the relevant Committee, which decides whether oral evidence should be heard. If so, you may be invited to make an oral submission (or ‘representation’) to that Committee.

3. Prepare your submission

There is no set format for a submission to a committee. Submissions in writing should be well thought-out and easy to read. If you wish to make an oral submission, you should clearly indicate it in your request. It may be presented in your language of choice.

Your submission should contain the following:

- **Heading** — Indicate the name of the Committee to which the submission is addressed. Preferably, try to find out the name of the Chairperson.
- **Author** — clearly state who is making the submission, by giving your name or the name of the entity (organisation, company, school, etc.) you represent as well as the contact details (address, phone number, email).
  
  If you are writing on behalf of an organisation, give a brief overview of its mission, work and membership.
- **Subject** — indicate the topic of the submission in clear wording. If your submission concerns a specific bill, it should be referenced accordingly.
- **Background** — provide a summary of the key issues that you would like to bring to the attention of the legislature, and their relevance in relation to the matter or bill at hand.
- **Substantiate your submission**
  
  - after laying out the issues, you need to explain your concerns in more details, provide evidence of facts that support your views (if any).
  
  - if applicable, you may also include concurrent legal considerations.

- Include a proposal or suggestion for a way forward to deal with the issues you are raising. Try to keep your suggestions realistic, keeping in mind the mandate and power of the Committee or legislature you are addressing.

- **Oral submission** — if you or somebody else from the entity making the submission wish to make an oral presentation before the Committee, state it in your request. Be specific about the name and role of the person who would be making the oral submission.

- **Keep it Relevant, Accurate, Concise** — your submission should focus on the matter at hand, evidence-based, simple and direct. Committee members are more likely to consider submissions that are to the point and offer clear argumentation and propositions.

4. Lodge your submission

Usually, submissions can be either posted, delivered by hand or submitted online. For general matters, legislatures often require the submission to be addressed to the Secretary of the legislature. For submissions invited on specific matters, the contact details will usually be provided in the invitation/ advertisement.

\[\text{Drawn from guidelines from the Parliament and the Western Cape Provincial Parliament on how to make submissions.}\]
PARTICIPATE IN OVERSIGHT

Public input is essential to guarantee that the monitoring and assessment of the executive’s action is as objective and inclusive as can be.

Throughout the yearly parliamentary cycle (see diagram p.32), various documents are put to the legislatures for oversight of the government’s action:

- **Annual performance plans** –
  
  These documents tell how each department plans its work for the year ahead in the framework of their Strategic Plans, and how it intends to use its budget. External inputs help the relevant Committees and support staff assess the quality of the plans and make recommendations to the departments concerned.

  Annual performance plans are usually submitted for review to the legislature in the first quarter of the calendar year.

  You can make inputs via submissions. You may also be invited by a committee to attend a presentation meeting by the department.

  Annual performance plans should be published online to facilitate public inputs. Alternatively, you can request them from the committees’ coordinators.

- **Appropriation Bills/departmental votes** – these Bills serve to authorise the spending of government fund, and give the budget allocation per department. They should be made available to interested stakeholders once tabled in the House. The public has about one or two weeks to make submissions, to be addressed to the relevant committee coordinators. Some stakeholders might be invited to make oral presentations to the committees to further explain their submission.

- **Quarterly Reports** – these allow the committees to monitor progress of the government departments on the implementation of their annual programmes. Inputs from interested stakeholders can assist with verifying the information provided, and assessing performance. At least a summarised version of the reports should be made publicly available; if not, it can be obtained from the committees’ coordinators.

- **Annual Reports** – like for the Quarterly Reports, public contributions are essential to verify how well the government departments have delivered on their Annual Performance Plan and executed the budget entrusted to them.

  This work is conducted to a large extent by the Committees, hence it is useful to monitor their work programme and request updates on ongoing oversight activities in the sector(s) that you are interested in.

  Usually the oversight cycle runs parallel to the government’s cycle, except for ad hoc oversight functions.

**OVERSIGHT VISITS AND/OR FOCUSED INTERVENTION STUDIES**

These are two forms of inspection of government programmes or situations brought to the attention of the committees. They can take place whenever committees decide they are needed, but the Budget Cycle prescribes at least two per financial year. They entail conversing with people, assessing the impact of delivery and developing reports which contain recommendations for the Houses to consider.

As a member of the public, you may either suggest visits or studies, or seek to make inputs.
LIST OF REFERENCES


17 South African Legislative Sector, Public Participation Framework, 2013.


Other references used:

Carothers, T., What really lies behind challenges of deepening democracy and establishing the rule of law? Presentation at the conference New Challenges in State Building organised by the Centre for the Future State, June 2005, London.


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SEE ALSO
Parliamentary Monitoring Group — www.pmg.org.za
People’s Assembly — www.pa.org.za