



# 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 public consideration of 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 in Cape Town. We wish to open a constructive dialogue with “the legislatures” (National Parliament and the provincial legislatures) 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 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. Many valuable points not included in this document due to space limitations are available on [www.peoplesparliament.nu.org.za](http://www.peoplesparliament.nu.org.za).

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. Important progress has also been made in building capacity through the establishment of research units, the development of oversight and participation procedures and the enactment of laws enabling our legislatures to amend the state's budgets.

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 systems. Events such as the "Arms deal" and "Travel-gate", as well as the silence of provincial legislatures regarding crises in health and education, have undermined the good work and commitment of most committees, MPs and MPLs. As a result, citizens have expressed significant mistrust in the legislatures and in elected representatives (Community Workshop 07 August 2012 Khayelitsha).

The conference 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 meaningful 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 believe that as citizens and citizens groups, and as MPs and MPLs we share common values. These are: the supremacy of human rights, responsive democratic institutions; the importance of vigorous citizen participation; state and citizens who together work towards a just society; a government that governs on behalf and for the benefit of all. This document identifies core areas for recommendations and dialogue that aim to strengthen our constitutional democracy and better realise these values.

While this memorandum does not specifically address local government, we would like to acknowledge the importance of this tier as a fundamental avenue for citizen engagement. Likewise, recent cases of Section 100(b) interventions demonstrate the importance of a commitment to chapter 3 of the Constitution. Our legislatures must play a role in ensuring that the spheres of government co-operate to "provide effective, transparent, accountable and coherent government for the republic as a whole".

We believe that these recommendations are representative of a wide range of voices and request the leadership of National Parliament and the provincial legislatures, through the Speaker's Forum, to table this memorandum for discussion in the houses of assembly provincially and nationally, and respond to it within 60 days (7 November 2012).

# RECOMMENDATIONS

## 1. 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 provincial 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 or special interests. To this end, we make recommendations in two primary areas:

### Revise and strengthen the electoral system

- 1.1. As per the recommendations of the [Report of the Independent Panel Assessment of Parliament](#) we believe that a different electoral system – one that integrates both constituency and proportional representation characteristics – is required to strengthen the relationship between citizens and elected representatives. We therefore request that both the national and provincial legislatures initiate a public debate on this matter before their term ends in 2014.
- 1.2. We request political parties to prioritise the debate on the electoral system within their parliamentary caucuses and place the issue on the parliamentary agenda of 2013.

### Transparency of party funding

- 1.3. 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 transparency and regulation of political party funding will strengthen accountability to citizens. We therefore request Parliament to initiate legislation towards this before its term ends in 2014.

## 2. 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 facilitate 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

As per the constitution, we believe that public participation is essential to a strong democracy. We recognise the efforts of the legislatures over the past 18 years to realise the Constitution’s provisions on this matter as well as address concerns raised by

significant court judgments such as the *Doctors for Life International v Speaker of the National Assembly and Others* [2006] SA 416 (CC). We look forward to engaging with the national public participation strategy that has been proposed.

We propose review and discussion in two areas to strengthen achievements to date:

#### **The duty to keep citizens informed**

- 2.1. Meaningful public participation requires that citizens are well informed of their representatives' priorities, actions and decisions. In spite of existing efforts, information regarding the legislatures remains limited. In addressing this, the legislatures should consider a wide spectrum of forums and media (from neighbourhood meetings to social media forums such as MXIT) that can disseminate the legislatures' schedule, inform citizens of their mandate, and enable input and feedback.
- 2.2. Records of the legislatures' proceedings (e.g. committee meeting minutes, the Hansard) should be disseminated widely and promptly. This is particularly a concern regarding the provincial legislatures.
- 2.3. Weak follow up (of issues raised by citizens) and feedback (to citizens on matters raised) mechanisms in particular undermine participation.

#### **Inclusivity**

- 2.4. A diversity of ideas and opinions is the lifeblood of democracy. Greater efforts must be made to ensure that all public participation forums are receptive and responsive to both assenting and critical voices. We suggest that the leadership of the legislatures, as well as political parties, provide guidance to this end, and that the national strategy put in place address the requisite skills and procedures.
- 2.5. Initiatives by the legislatures must ensure that citizens excluded as a result of oppressive social systems, geographical locations and other barriers, are effectively engaged. We note with concern that in particular, citizens who are physically remote, whether in rural or urban areas, struggle to participate. The national strategy and existing efforts should address this challenge.
- 2.6. It is important that public representatives do not only engage with citizens in formal opportunities, but, so long as these are lawful, are also open to citizen attempts to engage outside established platforms.

### **3. 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

To realise human rights in South Africa, oversight over the executive by the legislatures must become a greater imperative. This is particularly true for the provincial legislatures, whose legislation mandate is limited, and who preside over the provision of critical public services such as education and health. We welcome the adoption of the *Oversight Model* of the South African Legislative Sector (March 2012), which has incorporated public participation into oversight processes and undertake to support its implementation. In addition, we propose that the following two areas require attention:

**Political will for oversight as democratic process:**

- 3.1. The legislatures' oversight role will continue to be hampered by the distance between elected representatives and citizens, and by the dependence of MPs and MPLs on senior political party colleagues. We therefore re-emphasise the recommendations relating to electoral system reform.
- 3.2. Oversight is meaningless without follow-up and sanctions. We thus urge the leadership of the legislatures to ensure responsiveness from the executive, and request that as of 2013 the legislatures introduce steps to track executive implementation of house resolutions until they are resolved.

**Citizen participation**

- 3.3. The most important information required to fairly assess the performance of the executive is that of citizens. As such, and as per the *Oversight Model*, citizen input would strengthen considerations of the *Annual Reports*, *Strategic* and *Performance Plans* as well as investigations into legislation impact. The legislatures should consider both the use of constituency offices (see 5.2 below) and the importance of information (as per 2.1 above) to enable such exchange.

**4. 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

The enactment of the *Money Bills Amendment Procedure and Related Matters Act* [No. 9 of 2009] significantly contributes to entrenching Parliament's independence. As such, and towards the end of realising the legislatures' powers over public finance, the full implementation of this Act is crucial and must be prioritised. This entails:

- 4.1. The urgent establishment of the Parliamentary Budget Office with a stable sources of funding;
- 4.2. The legislation of procedures for the provincial legislatures to amend budgets.

## 5. CONSTITUENCY WORK

*“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*

*The purpose of these periods is to encourage MPs to remain in contact with the people they represent.”*

Parliament’s website

Constituency work is vital to the legislatures’ mandate, and must be underpinned by a culture that encourages vigorous engagement with citizens. To strengthen South Africa’s constituency work, we propose the following:

- 5.1. Our current electoral system undermines the role and relevance of constituency offices. As such, we re-emphasise recommendations 1.1 & 1.2.
- 5.2. Constituency work must be central to any participation, legislation, or oversight process. The legislatures should consider how regular constituency meetings can contribute to oversight and other responsibilities.

## 6. ESTABLISHING THE LEGISLATURES AS 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.”*

Open Government Declaration, endorsed by South Africa as of September 20, 2011

It is imperative that legislatures are accountable institutions whose members’ conduct is beyond reproach. The negative ramifications of the public’s lack of trust in representative institutions and elected representatives are significant, and impact on the durability and quality of our democratic system as a whole. To reinforce efforts to date we offer the following recommendations:

### **Eligibility to hold office**

- 6.1. We strongly support RIPAP’s assertion that *“the conditions under which Members of Parliament become ineligible to hold office should be reviewed. It is proposed that any person who is convicted of corruption, fraud or a similar offense should be deemed ineligible to serve as an MP”* (pg 9). We suggest that MPLs should also be subject to the same standards. We request National Parliament to take steps to affect this during the course of 2013.

### **Non-partisan parliamentary support services**

- 6.2. It is critical that Parliament’s support services remain non-partisan and be free from party political influences.

## ENDORSEMENTS

1. Aids Response
2. Prof. Amanda Gouws, Deputy Chairperson of the CGE (in her personal capacity)
3. Black Sash
4. Built Environment Support Group
5. Catholic Archdiocese of Cape Town
6. Childline
7. Community Law Centre, UWC
8. Corruption Watch
9. Development Action Group
10. Democracy Development Programme
11. Democratic Governance and Rights Unit, UCT
12. Earthlife Africa Johannesburg
13. Equal Education
14. Equal Education Law Centre
15. Idasa
16. Law Race and Gender Unit, UCT
17. Lawyers for Human Rights'
18. National Welfare Forum
19. Ndifuna Ukwazi
20. Parliamentary Monitoring Group
21. Prof. Pierre de Vos, Claude Leon Foundation Chair in Constitutional Governance, UCT
22. Pregs Govender (in her personal capacity as the former chair of the Independent Panel Assessment of Parliament)
23. Public Service Accountability Monitor
24. RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect)
25. Section 27
26. Sikhula Sonke
27. Alternative Information Development Centre
28. Southern Cape Land Committee
29. Southern African Faith Communities' Environment Institute
30. South African Peace Alliance
31. St. Anne's Home
32. Studies in Poverty and Inequality Institute
33. The Right Reverend Rubin Phillip (in his personal capacity)
34. The Social Justice Coalition
35. Treatment Action Campaign
36. Trust for Community Outreach and Education
37. Tshwaranang Legal Advocacy Centre
38. Thohoyandou Victim Empowerment Programme
39. Women's Legal Centre
40. Women's Net
41. Working Together for Rural Change
42. World Vision South Africa

**In support of this civil society initiative, the organisations involved and the principles of this memorandum:**

1. Heinrich Böll Foundation
2. Oxfam