AN EXPLORATORY STUDY OF THE ROLE OF SYNERGY BETWEEN THE STATE AND CIVIL SOCIETY IN POPULAR PARTICIPATION WITH REFERENCE TO THE PROVINCE OF KWAZULU-NATAL

BY

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DEDICATION

In loving memory of my father, Dumisani Victor Errol Mtaka who passed away on the eve of my graduation ceremony.
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DECLARATION

I, Nhlanhla Dalibhurhwana Mtaka, do hereby declare that this thesis has been composed by me, that it has not been accepted in any institution as part of a degree, that the work has been done by me, and that all quotations have been denoted with quotation marks and the sources of information specifically acknowledged.

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A healthy democracy is generally seen as one in which citizens participate regularly in formal political activities. Citizens’ participation in governance has come to be accepted as an expression of their rights and the manifestation of citizen agency. Access to information remains a crucial component of the right to participate. Transparency, as a normative and constitutional value, represents a means, not an end. The means is the mechanism of access to information. Within the South African context, there is evidence of an increase in participation of a variety of interest groups by means of different processes, as well as through the establishment of numerous consultative bodies and mechanisms for popular participation at all levels of the political structure (Houston, 2001:1).

However, accountability to citizens can best be gauged by assessing citizens’ opportunities to influence legislation between elections. Ultimately, the effectiveness and sustainability of mechanisms aim at improving citizens’ participation in policy formulation in order to become effective when they are “institutionalized” and when the state’s own “internal” mechanisms are rendered more transparent and open to civic engagement. Furthermore, the success depends on some form of effective interaction between the state and civic society.

In the case of South Africa, whilst the political context and culture for participation exist in the form of the constitutional provisions and several pieces of legislation, a discrepancy exist whereby many South Africans are excluded or devalued by the vast differences in wealth. Citizen’s votes may count equally, but they are still not able to participate on an equal basis between elections. Participatory mechanisms established to ensure citizen’s participation, access to information and monitoring inside and outside the legislature, remain ineffective.

These unequal opportunities mean that the poorer and less organised segments of society are prejudiced in terms of influencing legislation and policy. Their lack of full and meaningful participation means legislative outcomes are less representative of, and responsive to, the interests of the poorer segments of society (Habib, Shultz – Herzenberg, 2005: 144).

The focus of this study is limited to the province of KwaZulu-Natal. The aim is to, firstly, assess the extent to which citizens can control those who make collective decisions about public affairs. Secondly, it assess the extent to which citizens participate in the existing participatory mechanisms, and thirdly, the study explores the possibilities of the synergy between the state and civil society in promoting effective participation by its citizens.
The study, therefore:

1. Assess the theoretical and policy framework for citizen’s participation in South Africa; and
2. Evaluate the level of participation and effectiveness of participatory mechanisms inside and outside the KwaZulu-Natal Legislature.

The study introduces the theoretical and conceptual framework of citizen participation through a literature review; followed by an empirical study of citizen participation in the legislative process in the KwaZulu-Natal legislature.

The study makes the following findings:

1. The literature review concurs that South Africa has one of the most progressive and liberal constitutions in the world. This is coupled with a sound policy framework demonstrating genuine political will for citizens’ participation in policy formulation.

2. Within the political context and culture for citizen participation, the main question of how much control citizens have over the actions of their government remains. Another issue is whether existing mechanisms in the legislature are effective in engendering citizen’s participation and quality input in public policy-making processes.

3. The study showed that ultimately the effectiveness and sustainability of citizen participation mechanisms is improved when they are “institutionalised” and when the state’s own internal mechanisms of accountability are rendered more transparent and open to civic engagement. The study also highlighted the need for synergy between the state and civil society. This includes, among other things, participatory budgeting, public expenditure tracking, monitoring of public service delivery, investigative journalism and citizens’ advisory boards.

The study, therefore, makes two recommendations:

1. A comparative Citizens Education and Outreach Programme be developed and spearheaded by both the legislature and civil society in KwaZulu-Natal; and

2. A further study needs to be undertaken to investigate the possible structural nature of the synergy (relationship) between the state and civil society in the province.
LIST OF ABBREVIATIONS

ANC – African National Congress
ACDP- African Christian Democratic Party
CBO- Community-Based Organisation
CPP- Centre for Public Participation
DA – Democratic Alliance
DDP – Democracy Development Programme
IDASA- Institute for Democracy in South Africa
IDP – Integrated Development Plan
IFP – Inkatha Freedom Party
IMF- International Monitory Fund
KZN – KwaZulu-Natal
KZNPD- KwaZulu – Natal Policy Dialogue
MF- Minority Front
MP – Member of Parliament
MPL – Member of Provincial Legislature
NADECO- National Democratic Convention
NCOP- National Council of Provinces
NGO – Non – Governmental Organisation
NEPAD – New Partnership for Africa’s Development
OAU – Organisation of African Unity
UDM – United Democratic Movement
UN – United Nations
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CHAPTER 1

OVERVIEW, STRUCTURE AND METHODOLOGY

1.1 Introduction

The study is a monograph on citizen participation in the legislative policy-making process in the KwaZulu-Natal Provincial Legislature since 1994. It looks at the existing mechanism and existing capacity inside and outside the legislature and the possibility of a synergy between the state and civil society in ensuring effective participation.

The overall achievements of post-apartheid transformation in South Africa rests on the state’s ability to deliver basic functions and extend effective systems and social programmes in response to the people’s needs. There is an observation that South Africa faces grave challenges regarding the capacity within the state in relation to skills, the number of professionals, the competence to manage complex systems and, ultimately, the ability to deliver its mandate. On the other hand, there is consensus that a vibrant civil society is a prerequisite for a functional democracy. Civil society organisations are an important part of the democratisation process in that they provide a central link between citizens and the state (Wa Kivulu, 2001 124-128).

Civil society actors can influence the quality and type of democracy that flourishes and also assert the needs and the desires of society in general. Thus, a strong relationship between the state and civil society can be one way of ensuring that governmental efforts at reconstruction and delivery, and the transformational goals in the constitution, are met through joint efforts. Where civil society and government appear to be committed to the same goals, and where government is largely made up of long-standing political allies, a relationship of cooperation appears natural. Indeed, this spirit of cooperation has frequently featured in relationships between the state and civil society in South Africa. Civil society also has an important role to play in relation to the work of state institutions supporting constitutional democracy, such as the Human Rights Commission (Case Report 1999:55-60).

This chapter firstly highlights the nexus between the state and civil society. This is done in order, firstly, to attempt to understand the character of the South African state in terms of its mandate and capacity to develop and sustain effective mechanisms for its citizen’s participation. Secondly, it explores the linkages between the state and civil
society with other key stakeholders such as political parties and the media. Thirdly, it sets out the structure of the overall study, followed by the methodology undertaken in the empirical study.

1.1.1 Effecting a conceptual separation between state, government and civil society

According to Ken Post (1996), the term “state” suffers from two problems. It is not a homogeneous entity, but, in fact involves a range of aspects that are not usually clearly distinguished; and it is subject to a peculiar anthropism which causes it to be treated as though it were an actual person acting directly upon society. Emanating from Gramscian literature of the 1980s, the state was perceived as “hegemony protected by amour of coerci” whereas civil society was perceived to be the bearer of democratisation and the agent of setting limits on the state power.

Particular configurations of the state, its orientation, nature and character can either give effect to, or undermine the interests of citizens in countries that are faced with the challenge of fighting underdevelopment. Debates about what constitutes a developmental agenda are in part about different and even contending conceptions of the state. The state, as a concept and political reality, has assumed different meanings ranging from a “collection of institutions, a territorial unit, a philosophical idea, an instrument of coercion or oppression” to set off relationships between state and non-state actors. The state is a political conception and has numerous political types: democratic, liberal and servile have been discussed by theorists. Economic types have also been conceived by an interdisciplinary theorist of the state. Many, but not all of them, are Marxists who stress the capitalist socialist dichotomization of modern state forms. If the state is perceived to be a system of power, an economic characterization, such a “capitalist sate” is logical, since capitalists do exercise power. Classical liberals are indeed prone to believe that competitive capitalism is a “necessary” condition for political freedom; hence their partiality for “capitalist” as opposed to “socialist” states (Sklar 1996: 18).

The “capitalist state”, like “socialist states”, extends the functional analysis of the concept of class to an even further shore of abstraction from social reality, since it implies that the nature and form of political power are also determined by the mode of economic production (Poulantza, 1973:113). Political structures, including the degree of constitutional liberty, are relegated by this conception of the state to a secondary rank in order of importance, in as much as both the legal status of citizenship and the political status of constituents are overshadowed by considerations of occupational status in the economic order of society.
In his paper titled, "Public Policy and Law Making: Challenges and Prospects," Shabalala (2005) argued that the nature of the state, its socio-political character, class composition and role, provide the important context for the nature of the prevalent political system and processes. The normative foundation of the state is represented by its dominant ideology and discursive practices. These contribute to the character of the political system, which in turn informs the policy and law-making system. All states have some form of mechanism in place to promote and/or ensure accountability of their public servants. Systems of accountability that are internal to the state are often referred to as a “horizontal” mechanism of accountability (Schedler et al. 1999). These include:

1. **a political mechanism** (for example, constitutional constraints, separation of powers, the legislature and legislative commissions);
2. **a fiscal mechanism** (for example, formal systems of auditing and financial accounting);
3. **an administrative mechanism** (for example, hierarchical reporting, norms of public sector probity, public service codes of conduct, rules and procedures regarding transparency and public oversight) and
4. **a legal mechanism** (for example, corruption control agencies, an ombudsman/public protector and the judiciary) (Goetz and Gaventa, 2001).

The manifestation of the state is different. The harsh reality of the state formation in post-colonial Africa is that in many countries the apparatus of governance has begun to crumble before it has been fully consolidated. There is a crisis of political authority that is just as severe as the well-known crisis of economic production (Bratton, 1989a: 409). Both states and state systems exist in an ambiguous manner with the informal, at times attempting to control and co-opt, while at other times seeking to distance and divorce. Such contradictory and changeable external contexts are both an impediment and also an incentive to popular participation (Shaw, 1990, 1991).

For the purposes of this study, the state must be understood to be a political association that establishes sovereign jurisdiction within defined territorial borders, and exercises authority through a set of permanent institutions. These institutions are those that are recognisably “public” in that they are responsible for the collective organisation of communal life and are funded at the public’s expense. Furthermore, the state embraces the various institutions of government and can be identified with the entire body politic. The following arise from this definition (Fakir: 2008, 80):

- The state is sovereign.
- The state is an exercise in legitimisation
• Unlike the private institutions of civil society, the state occupies a “public” space.
• The state is an instrument of domination / coercion.

But the state should not be conceptually confused with the government because:

• Government is an institution subset of the state.
• Unlike government, the state is a continuing or permanent entity.
• Government is the instrument through which the policy orientation and content of the state find effect and are given expression.
• The state is “impersonal”
• The state represents the “permanent” interests of society

Lastly, it is important to acknowledge that the emergence of a hegemonic set of interests in the society is, to a certain extent, dependent on the nature and character of a particular state and given society. This determines the orientation of the state towards the unique challenges facing a particular society. These, in turn, inform the nature of contests within that society and, therefore, how society, as represented by different interests within it, engages the state (Fakir, 2009: 81).

1.1.2 The Nature of the South African State

It is necessary at this juncture to attempt to unravel the nature and the character of the South African state. After 15 years of democracy, it can be argued that South Africa has moved moderately from building democracy to consolidating democracy. Consolidated democracy, according to Linz and Stephan (1996:15), means “a political regime in which democracy as a complex system of institutions, rules, and patterned incentives and disincentives has become, in a phrase, the only game in town”. They further characterise the above definition as follows: Firstly, when no significant political group seriously attempts to overthrow the democratic regime. Secondly, attitudinally, even when in the face of severe political and economic crisis, the overwhelming majority of the people believe that any further political change must emerge within the parameters of democratic procedures. Thirdly, constitutionally, all actors in the polity become inured to the fact that political conflict within the state will be resolved according to established norms, and that violations of these norms are likely to be both ineffective and costly.

There are two possible surrogates that are used in describing the nature of the South African state. It is normally referred to as a democratic state, non – racial, non-sexist, and so on. Equality, equal rights and constitutionalism, which are the cornerstone of a bourgeois legal system and liberal democracy, are emphasized. This is done,
notwithstanding the limitations of bourgeois equality, which normally has tensions with equity and social justice (Shabalala 2005). Furthermore, formal democracy is emphasized more than substantive democracy.

The role of the state has not received sharp-pointed articulation and has ranged from the promise of the Reconstruction and Development Programme (RDP), which is more interventionist, redistributive and active, to Growth, Employment and Redistribution (GEAR), which advocates for the less active state that is pro-capital accumulation and market forces. South Africa has changed from being a parliamentary to a constitutional state, with the constitutional court being the supreme law-interpreting institution.

In general, the public does not understand this differential. The South African government has, on a number of platforms, expressed its desire to be a developmental state. The government has argued that the country is committed to building a developmental state that guides national economic development efficiently by mobilizing the resources of society and directing them toward the realization of common goals. It also claimed that, over the years, it had placed the needs of the poor and social issues such as health care, housing, education and a social safety net at the top of the national agenda. But what is a developmental state and what is its role? A developmental state plays an active role in guiding economic development and using the resources of the country to meet the needs of the people.

A developmental state tries to balance economic growth and social development. It uses state resources and state influence to attack poverty and expand economic opportunities. In all countries the state plays some role in shaping the structure and output of the economy. States in different countries use a variety of instruments and policies like the regulation of industry and trade, the redistribution of incomes and assets, the use of fiscal and monetary policies and direct state ownership of key industries. The degree of state intervention depends on whether a government chooses to leave economic development and redistribution to the whims of the free market, or to be a more interventionist or developmental state. A developmental state must be able to direct and support economic development through building a strong public service, creating an investor-friendly environment, supporting small business development, using state-owned enterprises effectively and driving strategic investment initiatives. The state has to play a role in keeping our economy competitive and close to the leading edge in the global development of knowledge and technology. The state has to be able to control its vast resources and apply them directly to the strategic tasks that will enable us to meet our goals. But more importantly, a state purporting to be developmental needs a strategic, organizational and technical capacity to play its developmental role.
The success of a developmental state depends on the active involvement of social partners. In its endeavors to be a developmental state, the South African approach to governance places a strong emphasis on building a broad front for development that involves a strong relationship between government, labour, business and other organizations that are formed by different groups of citizens. Lastly, the nature of a democratic developmental state can be measured not only against the principles of fairness, inclusivity and accountability, but also by the extent to which they respond to the needs of the people.

1.1.3 Civil Society Theory and Practice

Defining civil society in the modern day is clearly not easy, but as in centuries gone by, civil society has a context and a history from which we draw our understanding. Larry Diamond’s (1997: 5) captures some aspects when he states that civil society is a realm of organized social life that is open, self-generating, at least particularly self-supporting, autonomous from the state and bound by a legal order or a set of shared rules. It involves citizens acting collectively in a public sphere to express their interests, passions, preferences and ideas, to exchange information to achieve collective goals, to make demands on the state and hold state officials accountable.

In a recent study conducted by the Chapter 2 Network on Civil Society, Popular Participation and Bridging the Inequality Gap in South Africa, researchers argue that there are three difficulties occurring in the modern academic understanding regarding the definition of civil society. The first is that civil society means different things to different people. This has allowed the definition of civil society to become arbitrary and to escape rigorous conceptual and empirical scrutiny. A proper definition of civil society should clarify how the concept has been defined differently in different historical epochs with their various social formations.

Taking a historical account requires an understanding that civil society took shape within a conceptual environment created by Roman law which provided that an individual was entitled to a private and separate life from the political community. It further requires an understanding that civil society not only took shape from this conceptual environment, but that it was also conceptualized in political theory in the context of changing social formations and ideologies. The second issue concerns the functionalistic definition of civil society. It is common to find that civil society is defined by what it does and not what it is. For example, a UNESCO pamphlet reads, “Who makes up civil society? In the context of EFA [Education for All], civil society can be understood to be all non-governmental and non-profit groups and associations involved in the “education for all” drive. It embraces NGOs and campaign networks, teacher unions… social movements
Overarching definitions encourage us to understand the function rather than the definition of civil society. It is common in contemporary literature to define civil society as organizations working toward some common interest. The third issue concerns the associative definition of civil society. It is common to find contemporary literature defining civil society by associating it with democracy. Not only do such definitions tend to be historical, they unwittingly subsume civil society as a feature only of contemporary democratic societies. While it is true that civil society is a feature of democracy - although not an exclusive one, such a definition does not explain what we understand by civil society, but rather points to one of the constitutive properties of democracy. “The inherent danger here is the risk of tautology. If civil society associations are defined or taken to be only those associations which are organised along democratic lines and pursue democratic goals, their support for, and pressure for, a democratic government is predetermined” (Zuem: 2000:104).

In another context, an Africanist account of civil society seems to combine analysis and prescription, on the one hand, and description and advocacy on the other, without hinting at the fundamentals, Chabal speaks of a triple entity consisting of traditional civil society, colonial civil society and modern civil society without fully discussing their content or their relationship (Chabal, Power in Africa). On the other hand, Peter Ekeh proposes a two-fold distinction between a civic public realm which is presided over by the state and a “primordial” public realm which lies beyond the state. In general it tends to ignore or, as the occasion demands, resist the state. (Ekeh, The constitution of the civil society). He begins with a critical observation that Africa’s political spaces are fragmented and that the state has only partial control over the space it claims as its own. The sphere of the primordial public occupies vast traces of the political spaces that are relevant for the welfare of individuals, and acts to limit the extension of the state’s sphere. Although associated with the ancient kinship structures, these primordial publics are modern rather than traditional social formations.

Far from confining civil society to the formal public sphere, Ekeh argues that civil society in Africa is largely indifferent to the affairs of the civic public realm over which the state presides. Civil society is content to look after the affairs of other segments of the public realm out of the reach of the state or the affairs of those about whom the state shows little concern. This, in his view, marks a “dramatic” difference between Europe and Africa in the conception of civil society (ibid, 197). By grounding civil society in the “primordial” rather than civic public sphere he is able to perceive a rich civil society in Africa while Bratton and other Africanists see it on a thin line. These questions and many others
reflect the broader issue of whether we are or should be working with a single “universal” model or with relativistic notions of civil society, and whether a choice made in this regard would be appropriate for Africa’s cause.

The core problem with the “conventional” notion of civil society (Orji, 2002), is the separation of the organisations that have roots in the society from the civil society. Since the success of democratization ultimately depends on the broad acceptance or acquiescence in the process of distributing power, the organisations that promote it must themselves be connected to the social roots of the society. Indeed some African rulers have enormous power to resist the democratic process because they represent the interests of strong social forces that benefit from their regime.

Therefore, organisations which struggle to compel them to conform to democratic principles must also have strong social roots in the society. With few exceptions, NGOs in Africa lack a connection to social roots (Kasfir, 1998). As such, they may not single-handedly play a prominent role in negotiating contentious issues in African politics. Mamdani’s (1996) in “Citizen and Subject” argues that the concept of civil society in Africa developed differently from that of Europe in order to construct and maintain white domination. The construction of the concept and its application is imbued with the colonial “pothering” racial discourse and power relations. Civil society was constructed to differentiate the “civilized” from the “uncivilized” namely the Europeans from the indigenous Africans, and was, therefore, exclusionary and discriminatory. It was a political terrain exclusively reserved for Europeans and expressly barred indigenous African “subjects” from political participation. He argues that, “the history of civil society in colonial Africa is laced with racism. That is, as it were, its original sin, for civil society was first and foremost the society of the colonies. Also it was primarily a creation of the colonial state”. Mamdani’s explanation of the colonial epoch, where citizens, the colonizers were the only ones who had civil and political rights, while subject peasants and urban-based natives had no such privilege, is juxtaposed to pre-colonial times. Then civil and political aspects of social life were integrated, such that there was no distinction between the state and civil society, as was the case in colonial times (Wiredu, 1999:33).

Colonial versions of civil society thus encompassed “group activity under the paternal tutelage of mission churches, colonial corporations, and ethnic associations” (Young, 1994:38). Legislation was widely enacted to screen any such associations to determine their subversive nature and thereby, curtail their existence. The colonizers’ scramble for Africa in the 19th century and the consequent demarcation of state boundaries by Western colonizers had the effect of hanging the prevalent political space to an extent that any likelihood of the emergence of credible, indigenous civil society was strongly restrained (Young 1994:38). The relevance of state-civil society
relations in the African context emerged at the time of the anti-colonial struggle. It was here that the African middle class and the working class were able to assert their demands for emancipation by gradually participating in civic action.

The relationship between the state and civil society in post-colonial Africa is characterized by a legacy of colonialism. The socialization of politically dominant groups within the colonial civil society explains the emergence of the state as the dominant form of political organization. The African elite embraced the idea of the state as a natural form of political community for Africans and during de-colonization African nationalists continued to espouse the state as the most appropriate form of political organization. Community-based associations and groups, such as ethnic and religious organisations, are typically excluded from the civil society by proponents of the "conventional" notion of civil society, while the recently created reform-minded NGOs are included (Kasfir, 1998).

However, it is imperative to assess the usefulness of this "inclusion and exclusion". This is particularly so because it is not all ethnic and religious interests, for example, that are so intense that their promoters are unwilling to accept procedural rules, compromises and democratic decisions. If ethnic and religious organisations perceive that the design of the political structure in which they must act upon will provide them and their constituents with opportunities for rewards in the future, they are more likely to compromise current claims (Przeworski, 1995).

Considering that traditional associations have deep social roots in Africa, it is almost an incongruity to exclude them from the analysis of the struggle to ensconce democracy in the continent. If the process of shaping democracy in Africa is left entirely to new public interest advocacy groups, it is likely that the interests represented by traditional organisations may be excluded from the content of that reform. It would, therefore, be more helpful to expand the space for civil society in Africa by including both old and new civil associations.

A more useful notion of civil society would be found in Africa, if it were based on a combination of what Ekeh (1992) described as "civic public realm" and "primordial public realm". Surely, if the main point of the concept of civil society is to understand the variegated impact of organisational activity on democracy, then there is no reason to leave out either realm. This is important in the African context, given the articulated views and positions within the governance architecture which emphasise the overall participation by the "peoples" of Africa. A more plausible notion of civil society therefore, hinges on a scheme that divides the society into three sectors: the state, the market and the civil society (Whaites, 2000). Each of the sectors functions to make and enforce laws, provide avenues for exchange of goods and services, and serve as
an arena for debate and common endeavour, respectively. The civil society creates room for debate on the direction of social development and makes it possible for people with disabilities to influence and control both the state and the market. There is a danger of “homogenising” the voice of community representatives which can deepen the exclusion of and perpetuate inequitable relations between these various actors (Cornwall 2003). In addition, the tendency to disregard differences between and within groups and emphasize consensus may result in the replication of “dominant discourses”, rather than challenge them (Gaventa and Cornwall 2001: 75)

1.1.4 The State – Civil Society Dilemma in South Africa

The relationship between the state and civil society in apartheid South Africa was simple to understand: civil society existed in opposition to the state. Thus, the election to power of South Africa’s first democratic government in 1994 had significant implications for not only state-civil society relations, but also for civil society itself. Informed by social movement literature, the expectation was that civil society would enter a period of demobilisation after the institution of democracy and that the high levels of political mobilisation that characterised much of the 1980s and early 1990s would dissipate. The end of apartheid, the resulting transition and reconstruction of South Africa into a democratic society, has posed an array of challenges. South Africa demands an especially active and organised civil society to ensure the well-being of its new democracy. But the post – apartheid era presented an interesting picture for both civil society and the state.

In post- apartheid South Africa civil society is vibrant and viable. In the first decade of democracy about 60% of South Africa’s population was actively involved in at least one social, political or cultural organisation. Not only did a substantial portion participate in civil society organisation during the decade, but participation in these organisations also had a significant influence on the people’s assessment of government and on other interests and participation in politics. South Africans who were involved in civil society trusted government more, were more interested in politics, were more likely to vote in an election and were more likely to participate in collective action (Kladermans, Roefs and Oliver 2001).

Moreover, they were more likely to turn any disaffection into participation in collective action. In short, in the decade of democracy there was very little evidence of demobilisation, as civil society continued to mediate between the citizens and the state (Kladermans, Roefs and Olivier, 2001). During this decade, however, the configuration of civil society changed. Some organisations gained in significance, while others declined, the most important example of the latter being political parties. Not
only did a few people participate actively in political parties as members, but political parties also became less central to the mediation between the citizens and the state (Khosa, 2005: 132).

However, it is critical at this stage to assess who participates in the decision-making arena and whose voice is heard. Naïve assumptions about the democratic nature of civil society must be analyzed and interrogated to prevent a superficial treatment that diffuses any notions of class, race and special interest. The relative inaccessibility of information on government decision-making, and the resources and abilities required to engage in these processes, results in the domination of such spaces by the organised groups and those with access to resources, such as NGOs, business and other similar interest groups. Many NGOs and other self-styled representative groups tend to claim that they are speaking on behalf of the “voiceless” – the marginalized and poor – and representing their interests in the government decision-making process. Increasingly, government agencies are rightfully asking on what basis such representation can be claimed. Very seldom are opportunities created for affected groups to obtain information on a proposed policy process, reflect on proposals and options, articulate preferred options and mandate representatives to speak on their behalf, with measures created for accountability and feedback.

It is also important to disaggregate this “voice”, and question whether such representation has included the stated needs of women, the elderly, youth groups and people with disabilities. Critical considerations for civil society include:

1. The practice of democracy within and between civil society organisations;
2. The racial, ethnic and rural versus urban composition of membership and the consequences thereof;
3. Their political orientation, roles and relations with the state and participation in the political processes;
4. Their development orientation and capacity including their characteristics and role in the democratic processes; and
5. Their capacity as institutions of national and social integration (Sachikonya: 1998). Based on the above arguments we cannot define civil society simply as an element or part of something else. Instead, scholars are required to define civil society by explaining and analyzing its properties and features.

1.1.5 Links between the State, Civil Society and other key stakeholders

The notions of the state and civil society are linked to a number of key concepts and stakeholders including the media and political parties. For the purposes of this study, we will look at these two stakeholders as agents of democracy. In
democratic political systems the media function both as transmitters of political communication, which originates outside the media organisation itself, and as senders of political messages constructed by the journalist.

While arguments about the precise efficacy of the media's political output continue, there is no disagreement about their central role in the political process, relaying and interpreting objective happenings in the political sphere, and facilitating subjective perceptions of them in a wider public sphere. For this reason, media biases are of key political importance (McNair, 2003:12). The importance of an informed, knowledgeable electorate dictates that democratic politics must be pursued in the public arena. The knowledge and information on the basis of which citizens will make their political choices must circulate freely and be available to all. But democratic policies are public in another sense too. While democratic theory stresses the primacy of the individual, the political process demands that individuals act collectively in making decisions about who will govern them. The private political opinions of individuals become the public opinion of the people as a whole, which may be reflected in voting patterns and treated as advice by existing political leaders.

In contemporary politics, links are increasingly made between democracy, globalisation, neo-liberalism and mass media. It is generally acknowledged that the mass media represents a critical element of the democratic process. The assumption is that for democracies to function, citizens require access to information as a means to make informed political choices. Similarly, politicians require the media to take stock of the public mood, present their views and interact with society. There are five functions of the communication media in an ideal-type democratic society:

- First, they must inform citizens of what is happening around them (what we may call “surveillance” or “monitoring” functions of the media.

- Second, they must educate as to the meaning and significance of facts the importance of this function explains the seriousness with which journalists protect their objectivity, since their value as educators presumes a professional detachment from the issues being analysed.

- Third, the media must provide a platform for public political discourse, facilitating the formation of public opinion, and feeding that opinion back to the public from whence it came. This must include the provision of space for expression of dissent, without which notion of democratic consensus would be meaningless.
• The media’s fourth function is to give publicity to governmental and political institutions— the watchdog role of journalism, exemplified by the role of the media in exposing political scandals like the South African arms deal.

• Finally, the media in democratic societies serve as a channel for the advocacy of political viewpoints. Parties require an outlet for the articulation of their policies and programmes to a mass audience, and thus the media must be open to them.

On the other hand, political parties have increasingly become a prominent feature of political systems in Africa, particularly since the onset of democratisation in the early 1990s (see Salih, 2003; Matlosa, 2005; Kadima, 2006; Salih, 2006; Chenge, 2006). Current advocates of “participatory”, “direct”, “deliberative”, or “strong” democracy often regard parties with considerable suspicion. This perspective is hardly new; as far back as the eighteenth century, Madison and Rosseau viewed party organisations as “sinister, interest prone to undermining, perverting, or usurping the will of the majority”. Yet in reality, direct forms of decision-making such as referenda, initiatives, and community Town Hall meetings can only play a limited role in determining policy for and governing mass societies.

At the level of nation—state, political parties are indispensable. Indeed, without parties, modern representative democracy is simply unworkable. Political parties can serve multiple functions. They are necessary to:

1. Build and aggregate support among broad coalitions of citizens’ organisations and interest groups;
2. Integrate multiple conflicting demands into a coherent policy programme;
3. Select and train legislative candidates and political leaders;
4. Provide voters with choices among governing teams and policies; and
5. If elected to office, organise the process of government and stand collectively accountable for their actions in subsequent contests.

Representative democracy is impossible without multi-party competition. Political parties accordingly function uniquely and constitute the cornerstone of a democratic society. The long list of their potential functions can be summarized under five key headings:

1. The integration and mobilization of citizens;
2. The articulation and aggregation of interest;
3. The formulation of public policy;
4. The recruitment of political leaders; and
5. The organization of parliament and government
On the other hand ACE defines the main functions of parties in a democratic system as:

- Aggregating and articulating the needs and problems of the members and supporters;
- Socialising and educating voters and citizens in the functioning of political and electoral systems and generating general political values;
- Balancing opposing demands and converting them into general policies;
- Activating and mobilizing citizens into participating in political decisions and transforming their opinions into viable policy options;
- Channeling public opinion from citizens to government; and
- Recruiting and training candidates for public office.

Political parties are also key vehicles for political representation, mechanisms for the organization of government, and for maintaining democratic accountability. Political parties should be more than campaign machines aimed at consolidating their position of power. In this regard, the function of parties is to aggregate interest among the electorate into policies, and to engage in public debate about these policies with the aim of gaining support for them. A recent publication by the United Nations Development Programme (UNDP) notes “political parties play a vital role in democratic governance. No democratic system can function without alternative parties and candidates. Political parties are crucial in aggregating interest, presenting political alternatives to citizens, nominating candidates and linking voters with elected public officials. Moreover, political parties can play a central role in generating cadres of leaders who promote democratic governance principles and monitor elected representatives” (2006:92).

Hague et al, remind us “Party competition is the hallmark of a liberal democracy. It is the device which makes governments responsive to the electorate, providing voters with the same choice, while also restricting that choice to a few broad alternatives” (Hague et al, 1992:236). Collaborating the UNDP (2006) and Hague et al (1992) above, Webb argues aptly that “political parties are universally regarded as essential components of democratic regimes and key vehicles in the process of securing effective political representation, mobilizing voters, organizing government and shaping public policy” (2005:631).

1.2 Structure of the Study

There is a wide variety of approaches to the study of popular participation in political activities. Three of these have particular relevance to this study.
• The first looks at these levels of participation in political activities and focuses on electoral turnout (Rose, 1980; Crewe, 1981; Borg, 1995); involvement in campaigning activities (Kenny, 1993); involvement in interest groups (Le Roy, 1995); active membership of a political party, etc.

• The second looks at the social variables that influence individual and group participation in political activities and includes studies of socio-economic status (Tingsten, 1937:155); education (Linder, 1994:95-6; Powell, 1986:27-8; Seligson et al., 1995:166-71; Muller et al., 1987; Lijphart, 1997:2-3), environment (Kenny, 1993) race (Olsen, 1970), ethnicity; gender; personality (Campbell et al., 1960; Dowse and Hughes, 1986:279ff), etc.

• The third approach examines attitudinal reasons for non-participation and includes studies of apathy and lack of interest (Campbell 1962; Milbrath, 1972; Vebra, Nie and Kim, 1971); cynicism about political influence through participation (Agger, Golstein and Pearl, 1961 Baker, 1973; Brody, 1978); and alienation from the political system (Brody and Page, 1973; Olsen, 1969).

Within this framework, the specific objectives of the study are to:

• Examine existing popular participation initiatives championed by the KwaZulu – Natal legislature; identity challenges facing both the legislature and civil society in their quest for effective participation and quality public policy in KwaZulu-Natal; and,

• Contribute to the academic base of knowledge on the successes of state-civil society synergy in South Africa.

The study is divided into four chapters. The first chapter presents an overview of the study, the structure and the methodology. Chapter 2 presents an overview of legal, constitutional and legislative provisions for participation in governance by the citizens. The focus will be on all three spheres of government. Chapter 3 investigates whether existing provisions and mechanisms in KZN are able to deliver participatory forms of governance which are responsive to the aspirations of its citizens from the perspectives of both civil society and government actors. As far as forms of public are concerned, the chapter will focus mainly on public hearings, parliamentary committees and constituency offices as facilitated by the legislature, as well as opportunities to make submissions to the legislature. It will also pay attention to various efforts aimed at deepening democracy. These include public education and outreach, and public information and public relations activities. In conclusion, Chapter 4 presents research analysis, the conclusion and recommendations.
1.3. Terminology

A number of points regarding this study require elaboration from the outset. The first of these is the terms “the state” and “civil society” and participation

The State:

For the purposes of this study, the state must be understood to be a political association that establishes sovereign jurisdiction within defined territorial boarders, and exercises authority through a set of permanent institutions. These institutions are those that are recognisably “public” in that they are responsible for the collective organisation of communal life and are funded at the public’s expense. Furthermore, the state embraces the various institutions of government and can be identified with the entire body politic.

The following arise from this definition (Fakir: 2008, 80):

- The state is sovereign.
- The state is an exercise in legitimisation
- Unlike the private institutions of civil society, the state occupies a “public” space.
- The state is an instrument of domination / coercion.

But the state should not be conceptually confused with government because:

- Government is an institution subset of the state.
- Unlike government, the state is a continuing or permanent entity.
- Government is the instrument through which the policy orientation and content of the state find effect and are given expression.
- The state is “impersonal”
- The state represents the “permanent” interests of society

Civil Society Organisations:

For the purposes of this study, civil society organisations are viewed as formations representing diverse and sectoral interest groups, widening access to and popular participation in public institutions and processes (Muthieen & Oliver, 1999; Markoff, 1997; Liebennerg, 1997). In the context of South Africa, two terms are constantly used to define
the sector, community-based organisations (hereafter CBOs) and non-governmental organisations (hereafter NGOs).

The KwaZulu-Natal Legislature:

The South African Constitution of 1996 provides for the separation of the legislative, executive and judicial arms of government. For the purpose of this study, the term “legislature” will mean a sphere of government, a legislative arm of the KwaZulu-Natal government. The legislature should not be confused with government, as the legislature is represented by the Speaker, whilst government is represented by the Executive led by a Premier.

1.4 Research Methodology

1.4.1 A review of relevant literature and the construction of a theoretical framework

In Chapter 2 a literature review is undertaken which serves as the theoretical and empirical base for the conceptualisation of the study. The purpose of the literature review in a social research is to familiarise the researcher with studies that are similar to the one being undertaken. More specifically, it helps to connect the study to the broader discussions continuing on the subject matter, filling gaps and referring to other studies. It also provides a benchmark upon which the results of the study can be compared with other findings (Creswell, 1994:21).

In this study, the literature review provides relevant information on the nature, process and practice of citizen participation in general, and the legislative policy-making process and civil education, in particular. Much has been researched and written about participatory forms of governance outside of South Africa resulting in the prevalence of a well-founded theoretical critique on such experiences. In the case of South Africa discourse on forms of participatory governance is only beginning to take root. Therefore, a very scant collection of research literature exists on this subject matter (Govender, 2006). A study of this nature has not been, to the best of my knowledge, conducted in the country. Hence, the exploratory nature of the study has the potential to advance new theory, interpreting the significance of the phenomena within its social and political context within the country, and, more importantly, assist both the KwaZulu-Natal Provincial Legislature and civil society organizations in their future endeavours.

1.4.2 Consultation with authoritative sources of information

The lack of local information on the subject matter necessitated contact with authoritative
sources in the province in the early stages of the study. In this respect, several informal interviews were mistaken with informants in authority. These interviews were open-ended, flexible and not based on any specific pre-formulated assumptions about the study. Rubin and Babbie (1997:387-389) attest that this methodological approach is an important research tool. The review of various policy documents from the KZN Legislature served as an important base to test out conceptual issues with experts in the field. It helped to provide an operational definition of key concepts, both in the literature and in the framing of the problem. Berg (1988:25) attests that operational definitions concretize the intended meaning of a concept in relation to a particular study and provide some criteria for measuring the empirical existence of the concept. In this way, agreement is reached on what different concepts mean and how these relate to one another and how they can be applied in practice.

1.4.3 Method of data - collection

This study was of an exploratory nature. It used a combination of qualitative and quantitative forms of data-collection methods in the form of unstructured and structured interview schedules. Several unstructured interviews were undertaken with civil society players who were directly involved with the legislature. Discussions were held with Ward Committee members, Members of the Provincial Legislature (MPLs), Councillors and officials to gain first hand information on various aspects of citizen participation and challenges encountered in the province. Creswell (1994:21) provides an appropriate justification for the use of qualitative research approaches in studies that are exploratory in nature. It is most appropriate in instances where not much has been written about the subject under investigation. Ragin (1994:91-93) provides a further understating of the use of qualitative methods of data - collection:

- They are often identified with participant observation, in-depth interviewing, fieldwork and ethnographic study; and
- They are data - enhancer as in-depth knowledge is yielded, correcting any misrepresentations or new representations about the subjects in the study.

In this study, the structured interview schedule contained a range of qualitative responses, which have been grouped in thematic categories and analysed for their implications and impact.

1.4.5 Measuring technique

The interview schedule was chosen as a measurement tool to gather data. According to Babbie (1998: 264) in order to capture the insider’s perspective, the most appropriate
interviewing strategy is that which is less formally structured and flexible enough in keeping with the interests of the respondents. Like other measuring devices, the interview schedule has both advantages and disadvantages. Bailey (1996: 174) states that an interview is more flexible and probes for specific responses resulting in increased response rates. The illiterate are able to respond adequately in an interview situation.

In addition, the interviewer is present to observe non-verbal behaviour and to assess the validity of the respondent’s answers. There is also better control over the environment such as privacy, order of the question can be maintained, the responses are spontaneous, the respondents alone can answer questions and it ensures that all questions are answered. More importantly, Bailey (ibid) asserts that complex questions can be probed in an interview situation by a skilled, experienced and well-trained interviewer.

However, Gochros (1998: 269-273) and Bailey (1996: 175) identify certain weaknesses with the interview technique. They maintain that by standardizing interview schedules, it often represents the least common denominator in assessing people’s attitudes, orientations, circumstances and experiences. By designing questions that will be at least minimally appropriate to all respondents, one may miss out on what is most appropriate to some respondents. Furthermore, it is often contended that the interview offers less of an assurance of anonymity.

This is known to pose an element of potential threat to respondents, particularly if the information sought is incriminating, embarrassing or otherwise sensitive in nature (Bailey, 1996: 175). The assurance of maintaining strict confidentiality circumvented the problem that might have imposed on the study. Despite some of the known disadvantages of the interview as a data - collection method, it is a popularly used measurement instrument in most social sciences.

1.4.5 The structure of the interview schedule

Two sets of interview schedules were prepared. The first was aimed at civil society organisations and ward committees, whilst the second targeted elected representatives and officials within the KZN Legislature. Both interview schedules comprised four broad categories of research questions with a mixture of open and closed -ended questions. The content of each category of research equations was almost identical for both groups of respondents, with the exception of a few variations. These are tabulated below and highlight similarities and differences in the construction of the interview schedule.
### Civic Society & Ward Committees

<table>
<thead>
<tr>
<th>Category</th>
<th>Elected Representatives &amp; Officials</th>
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<tr>
<td>Section 1: General Information</td>
<td>Section 1: General Information</td>
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<tr>
<td>Section 2: Role of civil society, ward committees and political parties</td>
<td>Section 2: Legislature’s policy and approach on citizens’ participation</td>
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<td>in citizen’s participation</td>
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<tr>
<td>Section 3: Capacity and levels of participation and interaction.</td>
<td>Section 3: Past representation to the KZN Legislature and outreach programmes.</td>
</tr>
<tr>
<td>Section 4: Future plans and recommendations</td>
<td>Section 4: Future plans and recommendations</td>
</tr>
</tbody>
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### 1.4.6 Sampling

Both probability and non-probability sampling methods were used in the study. The civil society organisations were chosen using the probability sampling method. Names from a data base from the kwaZulu-Natal chapter of SANGOCO and the Centre for Public Participation were selected from different sectors. The database represented organizations located in both urban and rural parts of the province. Since not all civil society organisations were represented on the database from all three sub-areas, it was not possible to subject the study population to a stratified random - selection process. Although probability-sampling techniques are known to ensure that each sampling unit be included in the sample in a single draw from the population (Nachmias and Nachmias 1987: 187), there is no guarantee of this. In this instance, not all civil society organisations at the time had formal relationships with the legislature, and some were not even functioning due to funding and changes to their scope of work. Although the database of civil society organizations is limited, it remains the only reliable source to identify research subjects. In the final study, only 20 civil society organizations participated. The selection of ward committee members as respondents was based on locality. All ward committee members were from the Richmond Municipality which is situated in a semi- rural area and which is nearest to the legislature. This was to assess levels of participation. For each ward in the area, five executive members were chosen. A total of 50 ward committee members and 24 councillors were selected to participate in the study of which all were interviewed.

### 1.4.7 Steps followed in interviewing respondents

The study necessitated careful planning of interviews with respondents. Considering fact that officials elected representatives and that civil society organisations are often busy, much effort had to be placed on adequate fieldwork planning. Respondents were initially contacted by telephone and in some cases by e- mail and informed of the nature and
scope of the study, followed by requesting a suitable appointment for the interview.

Some respondents were reluctant to commit to face-to-face interviews, preferring telephone interviews. This necessitated the researcher to contact each respondent before the interview with a view to gaining clarity on the limitations and whether they would be comfortable with an interview at a preferred venue.

In the case of civil society organisations and ward committees, an agreement was reached whereby one-day seminars/workshops on the subject matter were held. With the elected representatives and officials, interviews were held at their preferred venues.

1.4.8 Limitations of the study
The study was guided by the basic principles of scientific research. Precautions were taken to ensure that where inherent limitations were apparent, the best alternatives were chosen, so that concepts under study were conceived in their scientific abstractness, logic and rationality. Attempts were made to ensure that there be little room for misinterpretation and misjudgement in the final findings and conclusion of the study. This study has not been exhaustive in its analysis. It was done over a short period of time. An extended period of study would have allowed some of the sensitive aspects which have been raised by this discussion to receive in-depth analysis. The researcher feels that more benefit would have been derived had it been possible to get more information from the KwaZulu-Natal Legislature and relevant officials. The study acknowledges that there may be developments in the province and in the country that may change some of the arguments presented. The study seeks to make recommendations regarding a working framework for state–civil society synergy in KwaZulu-Natal and it presents some critical factors that may contribute to the country’s success.

1.5 Conclusion
The preceding background of the study briefly presented the nexus between state and civil society with particular relevance to the South African scenario. Ultimately, the success of a citizen participation mechanism depends on some form of effective interaction between civil society and the state. A vibrant civil society is a prerequisite for a functional democracy. Civil society actors can influence the quality and type of democracy that flourishes and can also assert the needs and desires of society in general (Fleming, Herzenburg and Africa, 2003). Capacity and trust in the institutions of civil society and the state are is an important indicator of a flourishing democracy. The capacity of civil society and the state actors is the key factor of the success of meaningful participation. However, civil society organisations and the state need to question their representation of marginalised groups, acknowledge
deficits in accountability and mandate, and put in place mechanisms to address these. The chapter also explained the methodology adopted in the study.

The study was guided by the basic principles of scientific research. Precautions were taken to ensure that where inherited limitations were apparent, the best alternatives were chosen, so that the concept under study was conceived in its scientific abstractness, logic and rationale. Attempts were made to ensure that there be little room for misinterpretation and misjudgment in the final findings and conclusion of the study.
CHAPTER 2

CONSTITUTIONAL PROVISIONS RELATING TO PUBLIC PARTICIPATION

2.1 Introduction

Chapter 2 is dedicated to three interrelated issues, namely, the South African Constitution, a theoretical perspective on provincial government and legislatures, and the current institutional arrangements in South African legislatures. The chapter relied heavily on local literature for all three issues.

The sub-section on the constitutional provisions intends to identify sections in the constitution that relate to or impact on the obligation of government to involve the public in its work. The sub-section on provincial government and legislatures focuses on the legislature’s constitutional obligation insofar as public participation is concerned. The final sub-section examines the current institutional arrangement in South African legislatures, using a recent study conducted by the Institute for Democracy in South Africa.

In all the above sources there appears to be general acceptance that the country has clear constitutional and legislative provisions for the role of the provincial legislatures and their citizens’ participation, leaving no doubt as to the existence of extraordinary political commitment to notions of constitutionality and participatory governance. Provincial legislatures are tasked with great responsibility of inter alia, developing, implementing and monitoring public policy and law-making.

2.2 The South African Constitutional Provisions

The South African Constitution owes its institutional arrangements in part to an international political environment that increasingly favours popular participation and accountability. One of its most notable aspects is that it aims to transform society and respond to the history of inequality and oppression, and is often described as one of the most advanced and progressive Constitutions in the world. It has been presented as a visionary document, calling for a breakaway from the past and establishing a new democratic state that is integrated in the world order. This is because it draws on two broad traditions of democracy: formal representative’s democracy and participatory democracy. This is the reason why its structures and institutions reflect the principles of the best democratic practice in the more established democracies. The Constitution also
stresses the principles of accountability and transparency. This has relevance for public participation in that it imposes a general obligation on government, particularly its elected representatives, and creates a climate that encourages and promotes interaction. The Constitution places the burden on the state to govern according to democratic norms and values, which encourage civil liberties of the citizens. It speaks to the ability of the state to redress the grievances of citizens, responding to their needs and creating avenues for them to participate in issues pertaining to governance. The Constitution also contains clear requirements for a formal government that is open, transparent and participatory. Amongst the values highlighted in the Constitution is the right to vote through regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness. In emphasizing this, the constitution establishes the principle of an open and accountable government that responds to its citizenry (De Villers, 2001).

The constitutional sections governing the National and Provincial Legislatures provide explicitly for public access and involvement, Section 59 states: The National Assembly must:

(a) Facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
(b) Conduct its business in an open manner, and hold its sittings and those of its committees.

Section 72 has the same requirement for NCOP and Section 118 for the Provincial Legislatures.

2.3 Provincial Government and the Legislatures

Democracy is based on the notion that people should be self-governing and that the representatives of the people should be held accountable for their actions. The legislature, which represents the people and acts as their agent, is therefore at the core of the Western democratic tradition. The Oxford English Dictionary defines a legislature as “a body of persons invested with the power of making the laws of a country or state.” The first and foremost characteristic of a legislature is its intrinsic link to the citizens of the nation or state representation. Legislature is a necessary ingredient for democratic governance in the complex societies of the modern world. In theory, Legislatures represent a permanent and independent link between the populace and the Government.

Through elections, petitions, lobbying and participation in political parties and interest groups, citizens can express their will and affect the outcomes of the legislative processes. Ultimately, the most important task of the Legislature in a democratic regime is to give legitimacy to the Government by providing representation for the citizenry. As
John Stuart Mill wrote in 1862, in a representative democracy the Legislature acts as the eyes, ears and the voice of the people: “Then proper function of the representative assembly is to watch and control the Government; to throw the light of publicity on its acts, to compel a full exposition and justification of all of them which may any one considered questionable; to censure them if found condemnable...in addition to this, Parliament has an office to be at once the nation’s committee of grievances and its Congress of opinion”.

2.3.1 Provincial Government and Legislatures

The South African Provincial Government, initially a product of the negotiated political transition, has subsequently become an entrenched feature of South African politics following the passing of the Constitution in 1996. The structure and form of provincial government thus reflects a careful balancing act structured by shifting power relations of post – apartheid South Africa. The country is neither explicitly federal nor centrist, although provincial government finds itself in a peculiar, and sometimes precarious, position vis-a-vis both national and local government. The Constitution stipulates that the Provincial Legislature should consist of between 30 to 80 members. The number of members will differ among provinces, and this is determined by using a formula prescribed by national legislation.

The 1998 Electoral Act, furthermore, provides for awarding one seat for every 100 000 persons whose ordinary places of residence are within that province. Each Provincial Legislature is elected in terms of proportional representation (PR), with an executive comprising a Premier and a number of members who form the Executive Council. From 1994 to 1999 the National and Provincial Governments were structured in terms of the Government of National Unity (GNU). The GNU rules meant that consensual politics and PR were to play a role in the composition of the Executive and the distribution of Cabinet portfolios. Under the rules of the GNU, a party required at least 10% of the seats in the Provincial Legislature to be represented by a member in the executive council. The 1994 elections resulted in the ANC gaining provincial power as the majority party in seven provinces. Only in KwaZulu-Natal (Inkatha Freedom Party) and the Western Cape (National Party) did other political parties hold greater power and the Premiership. However, the picture changed in the 1999 elections as the ANC dominated all the provinces. The Western Cape and KwaZulu – Natal remained hotly contested. In the South African system, legislature constitutes an important sphere of government. In terms of the Constitution, a provincial legislature can make laws and hold the Executive accountable.

The effectiveness of the Legislature to hold Government accountable depends on the quality of the elected representatives in terms of professional expertise and direct
accountability to their constituencies. Specialised committees, such as portfolio committees on public accounts and finance, the holding of open hearings and proceedings of parliamentary/legislature committees, as well as the provision of research support, enhance the capacity of the Legislature to scrutinise Government accountability. The South African Constitutions Section 118 (1) makes provision for the public to have access to provincial legislatures and to be involved in the legislative process. It states that provincial legislatures must facilitate such public involvement. It also points out that legislatures must conduct their business in an open manner and hold their sittings and those of their committees in public. In addition to this constitutional provision, there are also provisions in the Standing Rules of Legislatures.

The relationships between the different levels or spheres of government (national, provincial and local) have important implications for public participation. If the public is to impact successfully on decision-making processes of government, some knowledge of where and how these decisions are made is important, as is an understanding of the mandate and responsibilities granted by the Constitution to each sphere. The Provincial Legislatures are a critical ingredient in the process of broadening public access and participation. Active participation promotes good governance, at least in part, by preventing the separation of the governors from the governed. Provincial governments are, by nature, closer to the people they represent and their actions are more likely to affect the citizens of that province directly (de Villers, 2001).

2.3.2 Parliamentary Committees

A defining characteristic of the new parliamentary scene at both national and provincial level is the role and importance the constitution gives to parliamentary committees. This is supported in the Rules of the National Parliament, which provide committees with extensive powers to monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme. Also included are the budget, rationalization, restructuring, functioning, organization, structure, personnel, policy formulation or any other matter it may consider relevant, to the Government departments falling within the category of affairs consigned to the committee.

Committees in the legislatures offer the most important platform for public participation. Public hearings seek to obtain the views of civil society on draft legislation and policy. Members of the public may also be invited to make written or oral submissions to a committee. Moreover, a committee may summon any person to appear before it to give evidence or to produce documents. These substantial powers are in line with international developments and are based on practical considerations. Plenary sessions are unable to deliver the sort of detailed discussion and scrutiny of legislation and policy that modern
government requires. Committees encourage the development of individuals and collective specialization and wisdom in various policy fields, leading to better policies and laws and more effective oversight.

Finally, unlike plenary sessions, committees provide a point of entry for the public. In this sense, the shift towards more influential committees is in line with the shift away from a purely representative model towards a more participatory model of democracy. Committees have become the critical institutional substructures through which legislature and the public can interact. They constitute, therefore, a key site for public participation.

However, whilst the political context and culture for participation exist in the form of the constitutional provisions and several pieces of legislation, a discrepancy is that many citizens are excluded or devalued by the vast differences in wealth. Citizens’ votes may count equally, but they are still not able to participate on an equal basis between elections. Generally, participatory mechanisms which have been established to ensure citizens’ participation, access to information and monitoring inside and outside the legislature remain ineffective. These unequal opportunities mean that the poorer and less organised segments of society are prejudiced in terms of influencing legislation and policy. Their lack of full and meaningful participation means legislative outcomes are less representative of, and responsive to the interests of poorer segments of society. (Habib-Shultz- Herzenberg, 2005).

2.4 Current Institutional Arrangements

This sub- section deals briefly with some of the institutional arrangements in order to highlight the role they play and also criticize where necessary. The analysis is based on the data gathered from the Provincial Legislatures and National Parliament by the Institute for Democracy in South Africa (IDASA). The institute identified four institutional arrangements or configurations within which popular participation takes place, a version of one or another of which can be found in each legislature. The study noted that the configurations did not correspond exactly with any specific legislature. Rather they attempted to capture the predominant methods and structures at fostering popular participation. The configurations include:

1. The Committee Configuration: where all popular participation activities are functionally located under the committee section;

2. The Specialist Popular Participation Unit Configuration: where public hearings and submissions are handled;
3. *The Outsource Configuration*: where some popular participation functions are outsourced to specialist organisations, usually NGOs or CBOs; and

4. *The Public Relations/Communications Configuration*: where functions are dispersed with public hearings and submissions falling under the committee sections and other functions allocated to information, public relations or communications offices where they become one of various other responsibilities.

### 2.4.1 The Committee Configuration

In this configuration the popular participation function is centralized within the Committee Section. The bulk of the responsibility falls on the Committee Clerks who report to the head of the Committee Section and to the committee they serve. Their responsibilities include the organisation and publicising of public hearings and calling for and receiving submissions on behalf of committees. Committee Clerks who are responsible for conducting legislature tours, may launch limited public education campaigns and may, as a team, handle major legislature events like youth, and people’s and women’s legislatures. Popular participation is not, however, their only – nor indeed their most important – responsibility. Furthermore, while Committee Clerks may have specialist knowledge of the workings of the Legislature and legislative processes, it is unlikely that they will have the training or background required to impart knowledge successfully.

**Advantages:** The advantages of this structure are that clerks are continually exposed to procedural aspects of their work and are familiar with the Standing Rules and Orders of debate. They will also be aware of the content of the issues under which they work. This gives them the necessary skills to respond to the needs of their committees and the confidence to deal with the public and other stakeholders. As they are in charge of the committee’s programme, they are also, through their contact with the chair, in a strong position to ensure that hearings are properly advertised and arranged. Clerks also have access to relevant documents. Committee Clerks also have good access to politicians, particularly the Committee Chairs. This means not only that they have access to up to date information, but also that may serve as a conduit between their committees and the public. This configuration may contrast with those where the popular participation function is located elsewhere. Such a separation may be physical (for example, where the popular participation function is in a separate building) or more intangible (for example, where those engaged in popular participation have limited access to politicians).
**Disadvantages:** The main disadvantage of this configuration is that there is no centralized communications system to ensure the effective internal coordination of information for popular participation purposes. There is, thus, poor internal communication between the committee section and other departments and between the committees themselves. As a result, administrators, departments and other committees are often unaware of what a particular committee is doing. Although this problem is not unique to this kind of configuration, it is likely to be exacerbated by it. A related weakness is that, because activities are focused and centralized around individual committees, the broader aspects of popular participation tend to be ignored. Thus administrative tasks and resources may be inefficiently managed and unnecessarily duplicated.

The committee configuration also decreases the likelihood that manual or electronic records of invitees and participants will be kept. The result is poor feedback to participants and a lack of calculated efforts to draw new stakeholders into the process. This, in turn, leads to poor responses from communities, a problem that emerged strongly in interviews with stakeholders. Another concern raised by both participants and the media was that information tends to arrive too late, making it difficult to attend and prepare inputs for hearings. In addition, because the popular participation function has no dedicated office, members of the public may struggle to find the information or documents they require. Another problem with this configuration is that public education happens on an *ad hoc* basis, if at all, with no-one taking full responsibility for it. Although some legislatures have produced pamphlets and guides providing basic information, these are rarely sufficiently comprehensive. Committee Clerks do not have the specialist skills needed to arrange effective programmes or develop popular media, leading to poor responses from those they aim to reach.

Due to a lack of appropriate skills, limited prioritization and a dedicated budget, outreach programmes also happen on an *ad hoc* and infrequent basis. Consequently, the public is often unaware of the opportunities for participation. In most cases, only those residing within a short travelling distance of the legislatures are able to participate. This means that those who are already marginalized will continue to be so, while only those with adequate resources will engage in the process. The committee configuration also makes it unlikely that there will be mechanisms to evaluate the system and programmes. The root of these problems is, of course, that Committee Clerks have many duties and that popular participation and organizing hearings may not be a priority. Sometimes the load on clerks is very heavy, particularly when one clerk serves more than one committee. This may result in demoralization, a lack of commitment and the neglect of responsibilities. Finally, the committee configuration
makes it unlikely that the Legislature will allocate a specific budget line item for popular participation activities. This means that funds for popular participation must be requested from other sources which may not necessarily see popular participation as a priority.

2.4.2 The Specialist Popular Participation Unit Configuration

In this configuration, a specialist unit handles all popular participation activities except public hearings, media and public relations. The Committee Clerk is responsible for public hearings and the Director of Information and Liaison Services is responsible for public relations and media liaison. The focus of the Popular Participation and Petitions Unit is, amongst other things, conducting outreach programmes, developing educational training manuals and programmes, conducting educational workshops, handling petitions, organizing and conducting youth and women's legislatures and producing educational pamphlets. The responsibilities of the Unit and its staff are defined and the decision-making process is clear. The manager is responsible for insuring that the programmes of the Popular Participation Unit are implemented and is responsible for its budget.

Advantages: There are several advantages to this model. Firstly, popular participation responsibilities are given to sub-units or individuals, promoting clear lines of authority and responsibility. This means that the tasks and priorities of staff are clearly defined and hence more efficiently implemented. It also ensures that all aspects of the work are adequately covered. Secondly, the Unit employs specialized staff, pamphlets, workshops, newsletters and radio programmes more efficiently drafted and co-ordinated. This makes it more likely that members of the public will be informed of the latest events and developments in the Legislature, thereby increasing awareness and improving popular participation in the legislative process. Thirdly, the setting up of a dedicated unit requires the allocation of specific line items in the Legislature’s budget. This means the Unit can run its own programmes and will not be dependent on individual committees or other departments. A budget also makes it possible to plan for the medium and long term, increasing the likelihood of a consistent and well-planned popular participation programme. Fourthly, a centrally managed popular participation function makes it easier to establish and maintain centralized information systems.

Disadvantages: There are also disadvantages to this model. The first disadvantage relates to the fact that public hearings are not conducted by the Unit responsible for popular participation. This point was made in a report by the Popular Participation Unit in the Gauteng Legislature in November 1997, which reported a tremendous increase in the number of submissions to a hearing in which it was effectively involved. A second
disadvantage arises where information links between the Unit and the rest of the Legislature are weak. Because the success of the Unit depends on a flow of information from committees and other departments and sections, a failure in this respect impacts on the Unit’s ability to keep the public informed.

2.4.3 The Outsource Configurations

In this configuration some functions and areas of popular participation are outsourced to an external agency, which is then accountable to the contracting official or to a politician. Typically, external agencies have been contracted to facilitate and organize the logistics and administration for public hearings and submissions. In some instances, they are also contracted to gather information and conduct research. An external agency may also be asked to conduct workshops on the legislative process and organize special legislature-related functions such as Youth Legislatures. Where recording and transcription have been found to be viable and affordable, they have, on occasion, been outsourced to private commercial concerns.

Advantages: First, it reduces the burden on Committee Clerks, allowing them to fulfil their primary role. Second, by delegating public participation to an agency with specialist skills in the area, the Legislature can expect and demand a high level of professionalism and commitment, leading to greater success in involving a broader base of participants.

Disadvantages: One of the disadvantages of this system is that it separates the participatory process from the officials and politicians, making it more difficult for them to remain informed about every development and decision taken. This introduces the potential for a lack of direct accountability. Because the agency concerned is outside of the direct ambit of the Legislature’s authority, it becomes possible for the organisation concerned to pursue an agenda of its own, should it decide to do so. The configuration may also be overly dependent on efficient lines of communication and the resources of the agency concerned for its success. The agency’s level of commitment is vital and will determine the success or otherwise of the popular participation programme(s). It may also possibly prove to be an expensive route.

2.4.4 The Public Relations and Communication Configuration

In this configuration, the Committee Section is responsible for organizing public hearings and submissions, while the responsibility for public education, outreach and other public relations and information dissemination rests with, amongst others, those responsible for media, public relations and information. In the Legislatures from which this model is derived, popular participation activities are not seen as core functions of the various...
offices responsible, but as secondary or peripheral to other tasks.

**Advantages:** One of the advantages of this model is that it allows for a better distribution of the workload. This is of particular benefit to the Committee Section. A second advantage is that public relations and information staff are more likely to have specialist communication skills. This results in better design, coordination and implementation of programmes and publications. Thirdly, because of the model’s inherent differentiation, it allows for easy expansion. Thus added capacity and resources will contribute to the creation of a viable and effective popular participation system, incorporating programmes that reach beyond the narrower definition of public relations to include extensive outreach and public education activities.

**Disadvantages:** First, although some elements of popular participation lie in the sphere of public relations, others go beyond the normal requirements of the field. Straightforward communication strategies, such as advertisements and notices to the media and public, are necessary, but methods of encouraging the public to participate are insufficient. The model is also dependent on effective internal communication. If the public relations/communications offices are not kept fully informed, they will be unable to play a useful and effective role in information dissemination.

2.5 Conclusion

The chapter has demonstrated that South Africa has one of the most progressive constitutions in the world, and a combined sound policy framework demonstrates a serious political will for public participation. Firstly, the decade of democracy has entrenched a number of processes, and established a variety of institutions for citizens’ participation at all the levels of political structure. These include Chapter 9 institutions, petitions and public hearings in the legislative process at provincial and national levels and the Green and White Paper legislative processes of the Provincial and National Government departments. In addition, a number of consultative forums have been introduced since 1994 to engage civil society actively in the legislative, policy-making and planning processes of government at local, provincial and national levels. However, as it will be demonstrated in the later chapters, whilst political context exist nationally, most public participation within the legislatures remains ineffectual due to a number of constraints such as time, communication, education and a low capacity. Low capacity and limited resources were some of the most important elements identified by IDASA surveys, the most comprehensive survey to ever have been undertaken on South African legislatures. In several provinces, public participation is not identified as a specific activity requiring human and financial resources and has no allocated budget.
The next chapter investigates whether or not existing provisions and mechanisms in KZN are able to deliver participatory forms of governance, responsive to citizens' aspirations from the perspectives of both civil society and government actors. As far as the forms of the public are concerned, the chapter will focus mainly on public hearings, parliamentary committees and constituency offices as facilitated by the Legislature, as well as opportunities to make submissions to the Legislature.
CHAPTER 3

PUBLIC PARTICIPATION MECHANISMS IN THE KWAZULU-NATAL LEGISLATURE

3.1 Introduction

The South African Provincial Government, initially a product of a negotiated political transition, has subsequently become an entrenched feature of South African politics following the passing of the Constitution in 1996. The structure and form of provincial government thus reflects a careful balancing act structured by shifting the power relations of post-apartheid South Africa.

The South African Constitution (1996), Section 118 (1) makes provision for the public to have access to Provincial Legislatures and be involved in the legislative processes. The Constitution states that Provincial Legislatures must facilitate such public involvement and that the Legislature must conduct its business in an open manner by holding its sittings and those of its committees in public.

Chapter 3 examines the KwaZulu-Natal Legislature’s public participation mechanisms. It investigates whether existing mechanisms are able to deliver participatory forms of governance which are responsive to citizens’ aspirations. The chapter will focus mainly on Legislature Portfolio Committees and Constituency Offices. In addition, the chapter pays attention to legislature’s outreach initiatives aimed at creating a platform for public participation. These include taking parliament to the people and sector parliamentary sessions.

3.2 Legislature Overview

The KwaZulu-Natal Legislature consists of 80 members of the Provincial Legislature (MPs). The Legislature has its own office bearers who are responsible for the day-to-day work of the institution. The Speaker is the Presiding Officer who, while being a member of the majority party, is expected to be impartial when conducting proceedings. Other office bearers are: the Chairperson of Committees, who coordinates the work of committees and acts as the Presiding Officer in the absence of both the Speaker and the Deputy Speaker; the Leader of the House, who acts as the link between the Legislature and the Executive; Party Whips, who are responsible for the discipline of their members and the organisation of their party caucuses; the Chief Whip, a member of the majority party, who is the most
senior whip; the Leader of the Opposition; and the Secretary of the Legislature who is the Head of the Legislature’s administration. The KZN Legislature has a committee system whereby issues before the Legislature are first debated in committees before they are adopted by the House. These committees consider legislation and oversee or monitor Provincial Government Departments. Committees fulfil the Legislatures’ mandate in terms of the constitution, which makes provision for participatory democracy, accountability, transparency and public participation. By the nature of their existence and functions, committees are the engine room of the Legislature. It is in committees that most of the work of the Legislature is done, since there are too many issues that need to be debated by the Legislature. Committees do all the groundwork required before the tabling of order for a session. Committees must involve all stakeholders and the public through public hearings, so that they are able to inform government about what the citizenry says, thinks or feel about a particular legislation or issue. Public hearings conducted by committees provide an important opportunity for the interest groups, individuals and organizations to express their opinions and participate in formulating public policy. At the conclusion of their work, committee members, through a Chairperson, report their findings and recommendations to the House for consideration.

There are three types of committees. They are Standing Committees, Portfolio Committees and Ad Hoc Committees. Standing Committees deal mainly with internal matters such as the Rules of the House (Rules Committee) and disciplinary matters pertaining to the conduct of members (Standing Committee on Discipline). There are also those whose mandate does not limit them to in-house matters such as the NCOP Standing Committee, the Standing Committee on Public Accounts, the Standing Committee on the Status of Women and Children, the Women’s Caucus and Private Members Bills, Motions and Petitions.

Portfolio Committees oversee their respective departments/portfolios. For example, the Health Portfolio Committee would oversee the functioning of the Department of Health. They deal with departmental policies, bills emanating from their respective departments, conduct public hearings pertaining to those bills and scrutinise departmental budgets, including expenditures. On the other hand, Ad Hoc Committees - unlike Portfolio Committees which last for the duration of the Legislature - are established to deal with specific issues. Once these issues have been finalised, these committees are dissolved.
3.3 KZN Legislature Portfolio Committees

The KZN Legislature has several committees which consist of MPLs from the parties that they represent in the House. Party membership in every committee is based on the number of seats each party enjoys in the House. Each committee has a Chairperson who is a member of the Legislature appointed into that position by committee members. Each committee formulates its programme of action each financial year. Committees have two key support pillars in the form of committee coordinators and researchers. Each committee is allocated a committee coordinator who supports the chairperson of the committee, co-ordinates the work of the committee and ensures that the rules are adhered to. This work by committee coordinators involves, amongst others: sending out notices of meetings; drawing up the committee agenda with the help of the Committee Chairperson; auctioning minutes, handling submissions from individuals and/or groups, liaising with provincial departments, attending public hearings convened by the committee, filing and keeping a record of committee documents and meetings, and helping with the drafting of reports. On the other hand, the Research Unit provides research support for the committees which include the following services:

- Conduct empirical research;
- coordinate, facilitate and monitor commissioned research;
- provide advice and information on policy matters;
- provide reports and summaries on national bills;
- provide speech-writing services to offices – bearers; and
- analyse and process public comments.

3.4 Current Mechanisms for Public Participation

Since 1994, the KZN Legislature has budgeted for, developed and implemented a number of initiatives, which are aimed at ensuring popular participation in line with its constitutional mandate. In addition to its budgeted initiatives, the Legislature has sought funding from international donors to fulfil its mandate of involving the public in the legislative processes. According to the Legislature’s Annual Report 2006/07, the Legislature has benefited from international donor funds, key being the European Commission (EC) Fund. The EC has funded the Parliamentary Support Programme (PSP) under the auspices of the Speakers Forum (SF) since November 1996. The Legislature Support Programme was a three – year programme estimated at 10 million euro’s. The programme was designed to contribute to the strengthening of democracy and good governance. The specific
purpose was to support the Legislature to fulfil its constitutional mandate in a citizen-oriented manner. The core challenge that the programme addresses is to make the Legislature proactive in their interactions with key stakeholders and improve the participation of citizens in the legislative sector.

3.4.1 Public Hearings

The main purpose of public hearings is to provide an opportunity for legislators to hear the views of experts and citizens on public policy issues and to express and promote their agenda. Public hearings are often held in hearing rooms in the Legislature, but they can also be held in district centres or community halls. In most cases, public hearings are organized by legislative staff with a view to soliciting civil society views on particular legislative issues. Public hearings have a wide range in format. Formal hearings may be organized within the Legislature (for example in hearing rooms) with specialized experts, academics or government officials who have been invited to make presentations on a well-defined issue. On the other hand, more informal Town Hall meetings may be organized in community centres to solicit the perspective of citizens on a particular issue. In such a forum, individuals will be asked to present their views to the public officials - usually on a first come, first serve basis.

Over the years, the KZN Legislature has conducted a number of hearings on issues such as the Provincial Constitution, traditional leadership and economic development. The office responsible for public hearings is the Public Participation and Petition Division discussed hereunder.

3.4.2 The Public Participation and Petition Division

The Public Participation and Petition Division (PPP) is housed within the Speaker’s office. The division has been created solely to facilitate public participation and provide administrative support to the petition processes. Through PPP, the Legislature is committed to:

- Respond actively respond to the need to inform, educate and involve all communities of the province in its policy, legislative processes and general good governance, so that the Government of KwaZulu-Natal remains accountable to its people;
- bring legislature closer to the people, thereby enabling the public to make a meaningful contribution towards the governance of the province;
• reach out to all communities in the province, educating them about their elected representatives and promoting the principle of an accountable and open government;
• inform the public about processes and developments within the legislature and ways in which they can access and participate in these; and
• increase the effectiveness and efficiency of existing public participation mechanisms within the Legislature, such as public hearings and submissions procedures.

3.4.3 The Taking Parliament to the People Initiative

Inaugurated in 2005, the “Taking Legislature to People” programme was developed with the intention of enhancing the level of implementation of Section 118 of the Constitution of the Republic of South Africa. With the approval of the Speaker, this programme sought to implement the directives set by the state of the nation and the state of the province addresses. The Research Unit of the Legislature played a pivotal role in the development and implementation process of the programme in question. The initiative has three strategic objectives, namely (i) raising public awareness and education on the work and processes of the Legislature, (ii) raising the level of public involvement and participation in Legislature processes, and (iii) deepening and broadening the oversight role played by the legislature on the work of the Executive.

According to the Legislature’s Research Unit, the Legislature has conducted a “scientific research” which has shown that, “contrary to observations by some political players in the province, the KwaZulu – Natal Legislature’s outreach programme of “Talking the Legislature to People” brought tangible benefits to the poorest of the poor. Addressing the media after the Official Opening of the 2008/2009 Legislature, Speaker Willies Mchunu described this parliamentary outreach programme as a “winner” with R2,3 billion having been spent by the National Government on the pressing needs of the people in the province. Mchunu continued to explain that up to then this programme had been taken to the districts of uMkhan yakude, Ugu, uMzinyathi and Zululand, reaching 140 000 people. However, he lamented the fact that, because of time constraints and large attendances, not everyone was able to voice their concerns, prompting the Legislature’s Research Unit to glean more information from the people using the use of questionnaires. There are two issues to be noted here:

• Currently there are no performance indicators for this programme, thus it is thereafter difficult to evaluate the impact.
For the purposes of this study, the researcher attempted in vain to obtain the said research and/or questionnaires and the exact budget.

3.4.4 The Sectoral Parliament Initiative

The Sectoral Parliament sessions were established with the aim of providing a platform for raising issues pertinent to the youth, women, workers and people with disabilities. According to Mchunu (2008), this was structured so as to coincide with national days of recognition of these sectors. Such sessions provide for representative structures to convene and run a mock-parliamentary debate, assuming the roles of parliamentarians to raise the real issues of concern. Such debates are supplemented with training for representatives from these sectors to enable them to enact a parliamentary debate. The MECs maintain their presence to respond to issues raised and undertake to take these issues forward. Two of the three Sectoral Parliaments (Youth and Women) are structured in such a way that the participants are from the political parties that currently structure the representation at the KZN Legislature. However, the workers parliament is made up of the workers from the organized trade unions of South Africa, namely COSATU, NACTWU, and FEDUSA.

Commenting on the 2008 Women Parliament, Speaker Willies Mchunu said “Since the launch of the Women Parliament in 2004, issues such as poverty eradication, economic empowerment, with particular emphasis on access to funding, gender equity in the workplace, and rural development continue to dominate our issues of engagement. We have been able to get the Provincial Government and other public entities to address these issues with tangible results. Mchunu added, “As the KZN Legislature we have made every effort to put the issues of empowerment of women at the top of our agenda of social change. Our efforts, programmes and interventions have been guided by a strong conviction that if you empower women, you empower the nation” (Willies Mchunu, 08 August 2008).

3.4.5 Civic Education

The purpose of the civic education programme in the Legislature is to inform the public about the structure, roles and functions of government, and citizens’ rights and responsibilities in a democratic nation. Civic education includes voter education, informing citizens about their broader democratic responsibilities, their rights and responsibilities to participate in referenda following a parliamentary debate, expressing their concerns through civic groups and legislative representatives, and voicing their views about decisions that affect their lives to Local Government officials. The office of the Speaker, through the Public Participation and Petitions Division, has been proactive
in empowering and encouraging the public to take part in legislative processes.

According to the Legislature’s Annual Report 2006/7, the following Municipalities benefited from this programme:

- ILembe
- uThungulu
- uThukela
- Amajuba
- uMzinyathi
- Zululand
- Ugu
- uMgungundlovu; and
- eThekwini

3.4.6 Constituency Offices

The role of the constituency offices is to inform the citizenry about political parties and law-making processes. Parliamentary constituency offices should therefore be redefined as vehicles for improving public participation in governance. This would include setting standards for the training of staff, defining the functions of constituency offices, and gaining clarity on who is served by these offices. Constituency offices need to provide links with the communities in their particular areas. They need to be seen as forums where the public can articulate local interest, and where the general public is being exposed to information about the legislation and government policy at national, provincial and local levels. In KwaZulu-Natal each of the 80 MPLs is allocated a constituency office proportionally.

3.4.7 Legislature Newsletters

As part of the dissemination of information, the Legislature publishes a bi-monthly publication, Iso Elibanzi. The publication appears in leading newspapers in the province, namely, the Mercury, Isolezwe, and UmAfrika. In addition, the legislature participates in a weekly radio slot run by Ukhosi FM. It is important to note that the ability of citizens to engage in the legislative process may be limited due to a number of factors, one of which is language. The KZN Legislature has taken the initiative in this regard, requiring that all documents, including newsletters, be published in IsiZulu, English and Afrikaans.

3.5 Conclusion

For its part, the KZN Legislature, as demonstrated in this chapter, has attempted to
come up with a number of initiatives aimed at deepening democracy and increasing public participation. Unfortunately, a general lack of empirical consideration of the quality of these initiatives rises from confusion as to the appropriate benchmark for evaluation. Another issue is the weakness of the civil society sector in the province and its failure to collaborate on capacity building programmes aimed at capacitating its citizenry. In essence, as it has been evident in this study. Public participation is not a binary subject. Just because people are poor, illiterate or from the rural areas does not mean they cannot or do not participate in some way or for. Conducting this study has exposed us to the rich texture of the subject and nuances. The conclusions challenge us to acknowledge that in the case of KZN:

- Access to information is a crucial component of the right to participate. Transparency, as a normative and constitutional value, represents a means to an end. The means is the mechanism of access to information.

- There is a need to address the capacity of and resources for officials to facilitate genuinely participatory processes and address the change of mindset identified as fundamental to this initiative. Work is needed in identifying solutions to these challenging issues and for this to be integrated into the Provincial Executive’s programme of action.

- There is a need to establish links between state institutions and civil society stakeholders at provincial and local levels as a basis for participatory policy-making and to enable the joint planning and facilitation envisaged.

- There is a need to provide capacity building for CSOs seeking to engage with policy processes and build a sense of urgency among community groups over time. This would address information needs and include programmes such as understanding policy-making, policy research, analysis and monitoring support; and advocacy training and planning.
CHAPTER 4

RESEARCH ANALYSIS, CONCLUSION AND RECOMMENDATIONS

4.1 General Trends in Public Participation

Participants Surveyed

The survey aimed to use participants who would be sufficiently knowledgeable about public participation, law-making and policy formulation. Thus, Ward Committees, civil society leadership and senior officials were targeted as respondents. According to the survey results, the vast majority of respondents came from civil society and Ward Committees. The remaining respondents were officials from provincial and local government, researchers, advocacy coordinators and practitioners. There was a perception from the outset that NGOs tended to work in urban areas and focus on advocacy and policy work, while CBOs tended towards grassroots communities and focused mainly on service delivery in rural areas. The representation breakdown was also skewed towards urban centres.

Organisations Targeted

The overwhelming majority of organisations targeted local people from the rural areas (80%). This included Ward Committees and Civic Leaders (56%), while less than 30% targeted government. The participants also indicated that other NGO’s constituted 60% of their focus. Both researchers (10%) and Community Workers (40%) formed part of the audiences.

Scope of Work

Seventy percent of civil society organisations indicated that they ran projects in the areas of democracy, participation and human rights. The rest overlapped with areas of social welfare, HIV/AIDS and poverty reduction.

Relationship with the Legislature or Government

Organisations were asked about their relationship with the Legislature and most
indicated that they did not have a formal relationship with the Legislature (70%) while 20%, mainly Ward Committees, identified their relationship as “on and of”, Ten percent said the relationship was complex. These were mainly NGOs working with the Legislature on different issues. This indicates that the relationship between civil society and Government is very complex and the nature of engagement can vary, depending on the issue being discussed or handled.

Interaction with Government Officials and Institutions

The participants - civil society and Ward Committees were asked how frequently they interacted with the Provincial Legislature and the Municipality. The majority indicated that they didn’t regularly interact with the officials (80%) while Ward Committees (100%) indicated that they interacted with government as part of nature of their work / mandate.

The Political Context and Culture and the State Capacity

The parameters for successful and effective public participation and state – civil society synergy are largely determined by the existing political context and culture. The study has established that, in theory, the Legislature and Government of KwaZulu-Natal is committed to public participation and in engaging civil society. This is evident in their pronouncements and numerous initiatives aimed at including the public and civil. However, the fundamental question is how effective initiatives are and how one can measure success.

This study has identified a shortage of staff within the Legislature as one of the major problems and a major cause of the ineffectiveness of most initiatives aimed at public participation. According to the United Nations Development Programme Report (2000), providing the political space is not enough. Human development depends on the extent to which citizens are able to make use of that space. Another challenge is the issue of the capacity of the state. An interview with the Speaker, law- makers and civil society organisations has confirmed that the Legislature, despite good intentions, is still faced with a number of challenges, including the lack of its institutional capacity.

The capacity which is currently lacking in the context of the Legislature is (I) the capacity to promote democracy and public participation, (ii) to improve the structure and mechanisms for law - making, (iii) to invigorate the strength of civil society to contribute to social empowerment for people where they can effectively contribute to decisions that affect their lives and development processes. This entails the unavailability of human resources, material and financial resources essential for the efficiency of managing the
institution and the identification and recruitment of experience, competence and leadership to manage institutions and initiatives.

Civil Society Capacity

The capacity of the civil society actors is another key factor in successful public participation initiatives. The level of the organization, the breadth of their membership, their technical and advocacy skills, their capacity to mobilize and use the media effectively, their legitimacy and representatively, and their level of responsiveness and accountability to their own members, are central to the success of public participation initiatives. The study has established that, while there are good intentions from both sides and sometimes loose working relationships, the fact is that in KZN there is no formal relationship between the Legislature and organized civil society. Any existing relationship is based on personalities and tender work.

As part of the Task Team discussion document, Jennie Hicks (2005) articulates perfectly the state of civil society in the province: “Tensions are particularly apparent between organized network bodies such as the South African National Civics Organisation (SANCO), the South African NGO Coalition (SANGOCO), the CBO network bodies and the CSOs and the communities they claim as membership bases. There is a perceived level of competition and struggle for dominance between these structures, which has diverse identities, yet a shared membership base. CBOs at the discussion forum challenged network representatives, claiming that they were not accountable to them. They also claimed that they were not representative of their needs and interests, yet had access to information, and recognition and resources, all in the name of the membership interests they claimed to represent. They appeared wary of the networks’ agenda, and suspicious of their perceived - and sometimes outright - political affiliation which they stated discouraged many CBOs from identifying and engaging with them. Clearly the question arises: How can these tensions and power imbalances be surfaced and addressed so that these issues do not play themselves out in any new democratic spaces created? It is more than apparent that CSOs and representative umbrella bodies must be challenged on issues of mandate and representation. The challenge for the participatory policy initiative is to consciously address these issues consciously in the design and facilitation of new spaces, and the rules for engagement, which I take up in the next section”.

This state of affairs clearly impacts on civil society’s capacity to provide support for any participatory initiative in the province and this should be a cause for concern. The results show that where government and civil society do work in partnership, the results are generally successful. Still on the issue of civil society’s capacity, it is important to note
that, just as citizens must understand the legislature in order to influence it, so must civil society groups.

In countries with a limited history of legislative democracy, like South Africa, civil society organizations tend to lack the knowledge of legislative processes, even though they may be well organized around a particular issue and/or at implementing programmes to address their particular concerns. And yet, in legislative systems, civil society organizations have a critical role to play, whether in lobbying legislators for policy change or in representing the aspirations of their constituents at public hearings. Legislative information in the form of publications or the Internet information referred to above can help supply some of the knowledge needed, but civil society groups can also benefit from formal training designed to help them deal more effectively with the legislature. Such training may include basic textbook information, such as the legislative process, how a bill becomes a law, or the roles and responsibilities of the Legislature. It may also include specific information on who to deal with on specific issues and explanations of the power structure of the Legislature not revealed in the Constitution or in rules and procedures. Individuals’ best equipped to teach this material may include members of the legislative press corps, former legislators or legislative staff, and individuals who regularly interact with the Legislature.

The Role of the Media

As demonstrated in this study, the media plays an important role in promoting public participation. A common element of almost all successful public participation initiatives is the strategic use of both traditional and modern forms of the media to raise awareness. The media can be a leading force in informing/educating citizens and in monitoring government performance. Local level media - in particular community radio stations) provide an important means whereby ordinary citizens can voice their opinions on public issues. During the visioning conference, officials from the Legislature and Government were asked about the relationship between government and the media in the province. The same question was posed to the media workshop. Both groups agreed that there was no formal relationship, and if there was, it was based on business principles. For example, the Legislature will pay for a slot to SABC radio for a slot or buy a space in a newspaper. Government officials indicated that in some cases they developed and published newsletters and in the case of the Legislature, a bimonthly newsletter, Iso Elibanzi.

However, as it has been evident during this study, the weakness of the above initiatives is that they are perceived as propaganda aimed at promoting the ruling party and individual politicians instead of informing and educating the public. Civil society organizations instead lamented the fact that, in the case of the paid radio slots,
programmes and topics were edited by the same Legislature before they went on air. In the end, both groups concurred that there was a need for the Legislature to produce regular newsletters informing constituents of their activities and their positions on issues. The proposed newsletters should include questionnaires to help members gauge public opinion. Both groups also called for independent media coverage and media training on issues of democracy and public participation. Journalism training programmes could be useful in developing a cadre of legislative reporters. Such training would include briefings on the functions of the legislature in reading legislation.

Access to Information and Participation

When asked how often they engage with the Provincial Legislature 95% of Ward Committee members indicated that they never engaged with the legislature. When asked if they had participated in any sessions of the Provincial Legislature that involved public participation, 100% of the Ward Committee members interviewed indicated that their participation in sessions, such as taking parliament to the people or izimbizo were not effective platforms for participation. This was because they had never been given time to ask questions. They also complained that such sessions (izimbizo) were staged-managed and given limited time. On the other hand, civil society organisations (NGOs and CBOs) complained strongly that the Legislature appeared to be in the hands of party caucuses which always considered the interest of the party above those of the citizens. They complained that processes such as “budget hearings” were staged-managed as decisions about budgets were taken at political party level.

The study also found no evidence of meaningful participation in policy formulation processes in the province. It unfortunately established that, in the case of any participation, only the organised groups who were generally an extension of political parties already in the Legislature, participated. In addition, as noted by Janine Hicks (2003), there appears to be inadequate planning and communication between the executive and the legislature about forthcoming legislations. As a result, MPLs committees and the secretariat are not given adequate time to consult communities on their views. When asked if they had ever submitted proposals to the Legislature, Ward Committees and CBOs indicated that they had never done so or attended a public hearing. They also indicated that they didn’t know the process to be followed to submit a recommendation and / or a proposal.

In another context, interrogating existing opportunities, spaces and mechanisms at the levels of the Provincial Legislature and Executive and at Local Government in the province, Ngwenya and Ngema (2005) argued that public participation within the processes of the Provincial Legislature was undermined by inadequate time for
members to consult with communities, and few opportunities for public comment. The lack of the political will to implement broader participatory processes, a lack of clarity on where responsibility for this lay, as well as a lack of guidelines, resources and the capacity to facilitate this, further weakened participation. Poor information dissemination and a lack of summarised, plain language versions of policy and legislation under scrutiny, further prevented marginalised groups from participating effectively in the processes. The civil society group had the following suggestions for the Legislature on the issue of access:

- Access to information should include the introduction of a helpline or information line for legislation and information to be timeous, Rural areas require better information dissemination and better information about how government works.

- There should be an increase in advertising and in communication and consultation by the Legislature, which includes an increase in advertising in the local media, the use of pamphlets in the rural areas and the effective use of internet and multimedia.

**Legislative – Constituency**

When asked if they knew the role of constituency offices and if they had ever visited one, almost all the Ward Committee members indicated that they didn’t know the role and functions of constituency offices and that they had never visited one in their area. On the other hand, civil society organisations lamented the level of incompetence, poor management and nepotism in the constituency offices. The Speaker conceded that the Legislature had yet to devise performance mechanisms and implement capacity building programmes for constituency offices. The Speaker could not present a budget or a list of such offices and staff in the province.

Civil society groups noted that constituent offices and constituent affairs did not run themselves. They required staff, budgets and the time of legislative members. The group also argued that legislative-constituency relations required a reciprocal system of communication. On one hand, it is incumbent upon the Legislature and legislators, as representatives of the people, to communicate their deliberations and decisions with the public. Such communication is essential for strengthening public appreciation for the work undertaken by the Legislature, which is instrumental in ensuring its legitimacy. On the other hand, it is important that mechanisms are introduced to enable and encourage constituents and civil society groups to contact and influence their legislative representatives.
Finally, it is important to note that the role of the Constituency Officers is to inform the citizenry about political parties and law-making processes. Legislature constituency offices should therefore be redefined as vehicles for improving public participation in governance. This would include setting standards for the training of staff, defining the functions of constituency offices, and getting clarity about who is served by these offices. Constituency Officers need to provide links with the communities in their particular areas. They need to be seen as forums where the public can articulate local interest, and where the general public is being exposed to information about the legislation and Government policy at national, provincial and local levels.

**Civic Education and Outreach Programmes**

Most legislatures in South Africa have some form of outreach programme and most have programmes that target organised and unorganised communities specifically. When asked about civic education in KZN and the role of civil society, most respondents believed that the public frequently did not understand how government works. They saw this as a major impediment to effective participation. Ms Zama Mkhize, a presenter of the visionary conference and a facilitator from the Centre for Public Participation (CPP) argued that, in KZN, civic education imparted by organized civil society was somewhat flawed. In a province faced with huge socio-economic challenges, issues such as public participation, understanding how government functions or how and why to vote - important as they are - become trivial to poverty-stricken communities. Zama also argued that at the time, the interest of many CSOs and NGOs in the province was not in how Government functioned or how best they could engage government, but rather how Government could aid them in setting up self-sustaining projects which could generate an income for them and would translate to a better way of life. In addition to this, a number of organized organizations have always geared their civic education towards rural communities and not urban areas, giving the notion that people living in urban or peri-urban areas do not need to be empowered. Zama also noted that with the current situation it is quite difficult to truly measure the impact of any civic education initiative in the province.

This assessment was profound as Cornwall speaks of the need to assess what work is required with the groups, prior to their participation in a process, to ensure that people participants with greater equity (Cornwall 2004). This includes, as a starting point, capacity building to develop an understanding of the policy framework and the process (Logolink 2002). The role played by NGOs in providing support to participatory
initiatives is acknowledged. It includes providing marginalized groups with access to information and material support, as well as establishing “vertical lines” of communication and linking grassroots issues and structures with the national process (Stiefel and Wolfe, 1994: 207). Public education needs to be combined with an effective outreach. The poor, the marginalised and those living in the remote rural areas, cannot be expected to travel long distances, at great cost, in order to exercise their rights. Outreach is a mechanism to involve communities that would not ordinarily engage with the political process and is a vital part of the process of involving all citizens in the new democracy (de Villers, 2001:144). One of the main objectives of the Sectoral Parliaments is to engage the participants in a meaningful debate with the aim of raising the issues and taking them forward. However, the Sectoral Parliaments have turned into talk shows. The inputs are achieved in a safe place in a form of verbatim reports and when the next Sectoral Parliament comes out, they again aim to find out what was actually said in the previous one. It is acknowledged from the Legislature that this process thoroughly excludes the large number of people who are not aligned to any political organization and might have a desire to take part in the mock parliamentary session, let alone the workers who also are not from any organized labour movements. This kind of participation results in the democracy being monopolized by the elite forces which can be termed, according to Crenson and Gisberg (2002) as “downsized” democracy. Further, people who form part of these Sectoral Parliaments have been the participants in the previous sessions and this, if not managed, can undermine the constitutional imperative that makes provision for the public to have access to provincial legislatures and to be involved in legislative processes.

On the issue of taking Legislature to the people, there is an agreement among all stakeholders, including civil society and the office of the Speaker, that there is a need to review this initiative, assess its impact and how it has strengthened the institutionalisation and policy improvements in the KZN Government. All stakeholders are also in unison on the need for broader consultation. They argue that the consultative process should involve all the stakeholders, especially civil society organisations during the planning, coordination and proceedings of the sitting. The build-up workshops, with various stakeholders and civil society organizations, should be convened in order to guide delegates towards informed and constructive deliberations on proceedings. All groups concurred that the Taking Legislature to the People programme should be encouraged, with the emphasis on Local Government to involve all the community structures and stakeholders throughout the stages.
CONCLUSION AND RECOMMENDATIONS

This study provides an insight into public participation in South Africa, focusing specifically on the kwaZulu-Natal Legislature. It conveys the perception of community members represented by the Ward Committees from the Richmond Local Municipality and civil society organisations (CBOs and NGOs). Most of these people identified themselves as service delivery and capacity building organisations, working with grassroots citizens and community leaders in the province. In terms of fulfilling its constitutional mandate the study shows that South Africa has one of the most progressive and liberal constitutions in the world, coupled with a sound policy framework demonstrating a genuine political will for the citizens’ participation in policy formulation.

As for the KZN Legislature, the study shows that it has developed some form of public participation mechanisms over the years and that it has attempted to work with communities and civil society organisations in the province. The study also shows that the political context and the culture for public participation does exist in the province. However, despite the existing political context and culture, there was some disparity between the communities and civil society’s level of actual engagement with policy formulation. This may well have to do with what both Ward Committees and civil society organisations identify as obstacles to effective public participation. Among these were a lack of understanding of how the Legislature (government) works, a lack of resources, access, skills and funds.

The study investigated firstly the extent to which citizens control those who make collective decisions about public affairs, and secondly, the extent to which citizens participate in this process. Thirdly, the study explored the possibilities for state – civil society synergy in promoting effective participation by citizens. Ward Committees identified that the biggest impact they had made on policy-making had come from interacting with councillors. While they acknowledged that they attended government Izimbizo, which they don’t consider as ideal platforms for discussing policy issues, they indicated that they never participated in the Legislatures’ portfolio committee meetings and/or hearings. On the other hand, civil society organisations identified that the most impact they’d made on policy making had come from interacting with departmental, legislature officials through discussion and submission. As has been established by other studies on civil society and public policy, reasons for high levels of civil society engagement in law-making and policy formulation
generally could include the fact that policy or bills are in draft form and are more likely to receive criticism from civil society.

A Department may also be willing to incorporate a wider variety of input than Parliament due to the functional nature of drafting. All participants in the study, including officials and policy makers, concurred that the system of public participation in the province still requires work to achieve better results in terms of input and output. An important issue which was raised in this regard was the issue of access and information. Ward Committees and civil society organisations accepted that since 1994 better channels of communication do exist, but concluded that more needs to be done to ensure that not only the organised sectors of society do not participate alone in policy formulation. Without including the unorganised, Government runs the risk of public participation structures and initiatives serving only the interests of the organised sector of society only leaving the unorganised who are mainly identified as poor and reside in the rural areas. Civil society organisations are perceived to lack impact. It was due to a number of factors, including a lack of resources, that their input was not well received by officials and politicians, a lack of skills and a lack of clarity on the structural nature of their relationship with the Legislature.

In many ways this study has established that engaging citizens in policy-making is a sound investment and a core element of good governance. It allows governments to tap wider sources of information, perspectives and potential solutions, and improves the quality of decisions reached. Of equal importance is that it contributes to building public trust in Government, raising the quality of democracy and strengthening civic capacity. Thus, the act of assessing public participation and the possibilities for state–civil society synergy in the KZN legislative processes was not solely an academic matter. It has several other benefits for both the state and civil society. The first is diagnostic. The biggest challenge was identified as being that, the state, in this case, the KwaZulu-Natal Government, often views citizens as recipients of programmes. Consequently, the state will always come up with the “perceived” needs and solutions that are often in conflict with communities’ “real” needs. This tendency usually results in social unrest and threatens social cohesion.

The reality is that a case for publicly promoted public participation in public policy discourses is becoming more irresistible. It is supported by the following considerations, among others; the public and political context are becoming more complex, exhibiting characteristics of “radical uncertainty”. No central agency or group of persons can have sufficient knowledge and capacity to determine the social, economic and political reality, and craft, for collective action, appropriate responsive
policy instruments. Most of pressing societal problems are no longer confined or amenable to treatment through the established traditional systems of politics, administration and society. There is a conciliation of factors with porous and fluid boundaries, emphasizing the need for collaboration, interaction and solidarity to reach consensus where possible and to understand dissensus where it exists and be ready to deal it collaboratively (Shabalala 2006: 208). Therefore, in ensuring effective participation and state–civil society synergy the study recommends the formation and institutionalisation of a KwaZulu-Natal Policy Dialogue Forum (KZNPDF) as a joint state–civil society initiative in line with the resolutions from the visioning conference.

At the visioning conference, the notion of a provincial public policy participation forum was mooted – and adopted (figure below), and tested in a participatory process to seek civil society input into the drafting of the KZN Provincial Constitution. The idea would be for this forum to operate at provincial and local levels, initiated by civil society networks at these levels in conjunction with state actors. Forum stakeholders who are active in these spheres would build on existing spaces or mechanisms where civil society groups are active, and jointly convene a deliberation on the emerging policy issue, using the format of new democratic spaces, that is, paying careful attention to design, facilitation and the rules of engagement.

These deliberations would focus on the emerging sectoral policy issue, as well as crosscutting thematic focus areas, such as poverty, HIV/AIDS, and rural development, and would draw appropriate state and civil society actors together to initiate, develop and monitor policy in these arenas. Forum stakeholders, in the relevant provincial or local sphere, would jointly take responsibility for the planning and facilitating processes, information dissemination and civil society mobilisation among organised and non-organised sectors. The KZNDP initiative, in line with the visioning conference resolutions should seek primarily to create a space for policy engagement, not a structure. However, for such an initiative to succeed, the following issues need to be addressed:

- **Empowerment**: The entry point(s) for the forum in the policy-making process has to be determined, as does its empowerment to influence the policy process. This is a political process, and there may be tensions with elected officials and their consultative processes.

- **Form and institutionalization**: The constitutional nature, powers, empowerment and recognition of the forum are critical, and it should seek institutionalisation as part of the provincial policy framework.
• **Coordination:** Forum stakeholders need to address the issues of coordination at provincial and local levels to ensure that responsibility is taken for collaborating with state actors to convene forums, manage the dissemination of information, collaborate on capacity-building, link provincial and district level forums, and ensure feedback to stakeholders.

• **Funding:** The forum needs to address the issue of funding and independence. It will need to obtain resources from the state and the donor community to get district and local forums operational, yet retain a critical voice.

• **Linking with national policy initiatives:** The majority of strategic policy processes happen at the national level, and the forum needs to be able to engage with these.

• **General vs. specific:** There is a need for the forum to avoid becoming a mere convenor of events for sectoral pockets of stakeholders, and to promote sustained levels of interaction and deliberation on general policy focus areas, such as poverty alleviation, rural development and HIV/AIDS. These policy issues could become platforms for such “cross-deliberation”.

This approach presents an ideal starting point to begin opening up spaces for participatory policy-making and to encourage and enable marginalised groups to enter and engage with the process. It offers all stakeholders an opportunity to deepen democracy, strengthen policy processes and enhance accountability between government representatives, civil society and citizens. However, it is important to note that in endorsing this approach, there are a number of issues that need to be decided upon as part of the institutional design for popular participation in public policy-making. These include the identification and selection of participants, their capacitating, the subject and scope of deliberation, and the monitoring of the system to ensure the quality of the deliberation. Of critical importance is the need to conduct a social and cultural analysis in order to determine and understand social relations at the community level. This will help to work against the barriers on inclusion caused by different forms of inequalities and cultural practices. In general, community participation might hide individual and group inequalities within these communities which tend to have some actors being vocal while others remain voiceless.

According the Archon Fung (2003), there are four types of institutional design choices to be considered to establish meaningful public participation in public policy
management specifically, and in politics, generally. These include educative forums, participatory advisory panels, participatory problem-solving collaborations and participatory democratic governance. Educative fora take into consideration inequalities that exist among the actors in various public spheres and such inequalities take the form of information, wealth, gender, education, formed public opinion and so forth. Educative fora inform citizens through training and the provision of information in order to improve on representation, inclusion and the quality of the public opinion of the participants.

Participatory Advisory Panels aim to improve the quality of public opinion and promote the alignment of public policy with social choices or considered preferences by participants. Participatory problem-solving collaboration is more continuous and emphasizes cooperative relationships between the state policy actors and those outside the state occupying public policy subsystems in the public spheres. This type of collaboration provides an opportunity to solve wicked and novel problems that even the best capacitated experts find intractable. Resources and ingenuity from both state and civic spheres are leveraged to create trust and to solve wicked and novel societal problems. Participatory democratic governance is more demanding and encompassing, as it promotes the direct incorporation and involvement of citizens in the entire public policy system and processes.

According to Fung, [2003: 342]: “Injecting direct, mobilized, deliberative citizen participation into democratic governance might favour the voices of the least advantaged and so, offering a procedural antidote, enhances the quality in legislation and policy making.” It is important to note that the success of the above is heavily dependent on several factors. Some of these are discussed below:

- **The political context and culture**: The parameters for popular participation are largely determined by the existing political context and culture. For example, the feasibility and success of citizens’ participation initiatives are highly dependent upon whether the political regime is democratic, a multi-party system is in place, basic political and civil rights are guaranteed including access to information and freedom of expression, association and assembly and whether there is a culture of political transparency and probity.

- **The role of the media**: The media plays a critical role in promoting popular participation. Independent media should be the leading force and the vanguard in informing/educating citizens and monitoring government performance. Local level media in particular community radio, should provide the means whereby ordinary citizens can voice their opinions and discuss legislative and policy development issues. This they should do without fear or favour.
• **Civil society’s capacity:** The capacity of civil society actors is another key factor to the success of meaningful participation. Civil society organisations themselves need to question their representation of marginalised groups, acknowledge deficits in accountability and mandate, as well as put in place mechanisms to address this. Civil society should revive its role, its technical and advocacy skills, its capacity to mobilize and use media effectively, its legitimacy and representatively, and its level of responsiveness. There is a need to provide capacity-building for CSOs seeking to engage with policy processes, and build a sense of urgency among community groups over time. This would address information need, and include programmes such as understanding policy-making, policy research, analysis and monitoring support and advocacy training and planning.

• **The Provincial’s Legislature capacity:** The success of any of the recommendations made in this study depends upon the capacity and effectiveness of the Provincial Legislature. Any initiative will make no sense where the state in this case the Legislature machinery is dysfunctional or not responsive. A functional public administration that has some capacity to respond to its citizens demands is, therefore, a prerequisite.

• **The Provincial Legislature – civil society synergy:** Ultimately, the success of these recommendations and initiatives depends on some form of effective interaction between the Provincial Legislature and civil society. This critical solidarity should be based on mutual respect. There is a need to establish links between state institutions and civil society stakeholders at the provincial and local levels as a basis for participatory policy-making, and to enable the joint planning and facilitation envisaged.
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**JOURNALS**


**PAPERS**


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**APPENDIX 1: RESEARCH METHODOLOGY AND DETAILS**
1. **The Vision Conference**: From 25-26 October 2005, about 60 participants attended a one day conference at the Riverside Hotel in Durban, KwaZulu-Natal. Participants were drawn from the Provincial Department and Local Government units, local NGCs and CBOs, civil society network and umbrella bodies, trade union structures, research and academic institutions and donor organisations.

2. **KZN Constitution Dialogue**: IDASA, civil society partners CPP and the Democracy Development Programme (DDP), and local newspaper *The Mercury*, jointly convened a participatory workshop on 2 March 2005 seeking civil society input into the drafting of the KZN Provincial Constitution. The desired outcome was twofold:

   - to facilitate a deliberation among civil society stakeholders on the draft constitutional options and alternatives and generate a submission to present to the parliamentary committee convening public hearings on the draft constitution; and
   - to test a deliberative process to enable maximum participation by civil society stakeholders and interaction with government representatives.

   Approximately 60 people participated in this workshop, which was held at the Diakonia Centre, Durban. Participants were drawn from a wide range of civil society organisations, including media and business representatives, as well as from government.

3. **Discussion Forums**: As part of the resolution of the Visionary Conference, a task team representatives convened a series of three forums with representatives from civil society organisations on participatory policy-making, and the proposed KZN Public Policy Participation Forum. Desired outcomes were to capture civil society experiences of policy-making, collect their thoughts of what participatory policy-making should look like, and identify civil society and government responsibilities for making participation work. Forums also sought to identify any capacity-building and support needed by civil society stakeholders to engage with policy processes. Details of forums, all which were held in Durban’s CPP offices, were as follows:

   - HIV/AIDS sector - 18 January 2006 – 13 participants
   - Women’s and children rights sector – 21 February 2006 – 12 participants
   - CBO sector – 7 April 2005 – 13 participants

   - **The Media Workshop**: A workshop / discussion session was convened with a
selection of 30 senior journalists, all from KwaZulu-Natal. The session was held as part of an IDASA / IEC initiative and a follow up series of semi-structured discussions were later convened, in South Coast Kapenta Bay and Dranksberg Holiday Inn respectively. The desired outcomes of these sessions were to elicit information on the possible role that the media in KwaZulu-Natal could play in ensuring overseeing, access and broader citizen participation.

- **Ward Committee and Policy Makers Workshop / Interviews:** In January 2008, a workshop / interview with members of the Ward Committee and community development workers from the Richmond Municipality was facilitated by the researcher. The session was funded by the Independent Project Trust. In addition, interviews with following policy makers and officials were conducted:

1. The Hon, Mr Cyril Xaba, (African National Congress), Chief Whip, KwaZulu-Natal legislature


3. The Hon, Mr Thulasizwe Buthelezi, Inkatha Freedom Party. Member of the Provincial Legislature, 26 April 2005.

4. The Hon, Prof Jabulani Maphalala, Deputy Chairperson of Committees, National Democratic Convention, 26 April 2005.

5. The Hon Andrew Ragavaloo, Speaker, Richmond Municipality, January 2008.


**APPENDIX 2: PUBLIC PARTICIPATION QUESTIONNAIRE - OFFICIALS**
1) Does your legislature have a programme that encourages public participation?

2) In what office is the programme on public participation (a) located and (b) what does the programme entail? Provide a description of all elements of the programme.

3) Where the office structure is is physically located?

4) How accessible is it to ordinary people?

5) Do you have designated staff? (if yes, how many?)

6) What are their responsibilities?

7) What resources does the legislature have to support public participation?

8) What additional resources do you need in order to make your legislature more accessible to ordinary people?

9) How do you facilitate the participation of the public in the legislative process?

10) Do you have a method of assessing the impact of public participation?

11) Do you have plans to strengthen public participation in the legislative process?

Please Attach:

- Any policy documents or other relevant papers which explain your policy on public participation;
- Any documents setting out your practice or procedure with regard to your public participation policy;
- A list of the print and electronic media that you use to publicise bills and other legislature related events.
REPRESENTATIVES

1) Is anyone in the legislature specifically responsible for encouraging public participation in policy development?
2) Who takes ultimate political responsibility for public participation?
3) Does your legislature have a budget for public participation?
4) If yes, how much is budgeted per annum (please provide figures for each year since 2004)?
5) How many committees do you have in the legislature?
6) How does each committee facilitate public participation?
7) Where do you place public notices and state the media or other institutions used?
8) Are public notices available in all relevant languages kindly provide an example?
9) Do you have a minimum notification period for placing public notices prior to the actual hearing date?
10) What happens to the public submission you receive?
11) What constraints does your legislature face in this process?
12) Besides public hearings, petitions and public submissions, in what other ways does this legislature interact with the public?
13) Where do you hold public hearings?
14) Do you have any particular focus or approach to your media strategy?
15) Who do you invite to make submissions and how?
16) Do you have anything to encourage participation from under resourced and unorganised communities?
17) Are public participation records available for public scrutiny?
18) Explain how the constituency offices system works in your legislature?
19) How many constituency offices do you have? kindly provide us with the list and other details
20) Are these offices effective?