

# **Participatory democracy and active citizens - research for government**

## **Civil society and the legislatures: Strategy workshop - EU**

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# Baseline assessment

- Participatory democracy is a right that enables the realisation of all other human rights and empowers citizens
- Trust in government is at an all time low, and progress towards the realisation of human rights and inclusive governance has not been as rapid as it should be
- Vulnerable groups are not able to exercise their rights and responsibilities as citizens and are not included adequately in decision-making
- Current approaches to participatory democracy in South Africa are largely ineffective
- Currently there is no policy or framework that standardises the delivery of participatory democracy

# Constitutional Values - Preamble

We, the people of South Africa,

Recognise the injustices of our past ...

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to -

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
- Improve the quality of life of all citizens and free the potential of each person; and
- Build a united and democratic South Africa ...'.

# Constitutional Values – s.1

## 1. Republic of South Africa

The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- b. Non-racialism and non-sexism.
- c. Supremacy of the constitution and the rule of law.
- d. Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. (Emphasis added)

# Values of public administration

The values of public administration are set out in **section 195** of the Constitution.

The relevant principles include that –

(e) The public must be encouraged to participate in policy-making;

(f) Public administration must be accountable;

(g) Transparency in decision-making must be fostered by providing the public with timely, accessible and accurate information.

# Recognising a right to public participation

- Chapter 2 rights applicable: s16 Freedom of expression; s17 Right to assemble, demonstrate, picket and petition; s18 Freedom of association; s19 Right to make political choices; S32 Right of access to information; S33: Just administrative action; s34 Access to courts; s38: Right to enforce their rights
- Read together with the purpose , spirit, values and principles of the Constitution – the right to participate in government and governance in the public sphere

# Participatory democracy - RDP

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

- Reconstruction and Development Programme - para 5.2.6

# RDP: Capacity-building for effective participation

7.6.1 Capacity-building is essential for effective participation of civil society in RDP implementation. Through initiatives such as Presidential Projects, path-breaking approaches to consultation, participation and local control will be explored.

- The Government will co-operate with civic organisations, and other community based organisations, to develop capacity during the course of an RDP campaign to establish local government legitimacy and hence improve both service delivery and user payments.
- Development projects such as those funded through the National Public Works Programme (with a business-labour-community commitment to labour-based construction methods) will contain a training and capacity-building component, with women and youth targeted as beneficiaries

# RDP on capacity-building (contd)

- The Public Service Training Institute will make its resources available to civil society in addition to the Public Service.
- Increasingly, organisations of civil society will be involved in planning and policy-making through a variety of boards, commissions, forums and other venues by which experience is gained and skills are acquired. The new approach to freedom of public information will also play an enhancing role in capacity-building.

# Independent Panel Assessment of Parliament

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

- (2009:16)

# What the courts say

- ‘The notion of participatory democracy is ... an African one. Victim participation was the norm in deciding the proper “punishment” for offenders in traditional African society. It was an expression of the participatory democracy practiced in those societies. That is my understanding of African tradition. The main judgment therefore finds support in the African legacy of participation of citizens in affairs of the society, not as direct authority for its particular application to the facts of this case, but as further legitimisation that it accords with a tradition that runs deep in the lives of many people in this country.’

- Froneman J in *Albutt v Centre for the Study of Violence and Reconciliation and Others* 2010 at para 91.

# What the courts say

- Generally, in case law the courts have provided pointers that should be taken into account in all instances of public participation and meaningful citizen engagement. The elements of good faith and mutual respect stand, and especially the recognition of dignity and humanity of the poor and vulnerable - Ubuntu as Sachs J described it in the *PE Municipality* case.

# What the courts say

- The **Constitutional Court** emphasises the need for the expansion of the definition of public participation as an act that goes beyond merely informing or consulting the public but that should also take into consideration the time that the people were given to participate, and whether it was reasonable and sufficient for them to participate in a meaningful and effective way.

*- Doctors for Life International v the Speaker of National Assembly and Others (2006), Matatiele Municipality and Others v President of the Republic of South Africa and Others (2006) and Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others (2008)*

# National Development Plan: Vision 2030

- National Development Plan (NDP Vision 2030) defines active citizenship as equalising opportunities and enhancing human capabilities. The NDP identifies the very purpose of an active citizenry as being ‘to strengthen development, democracy and accountability’:
- ‘In many respects, South Africa has an active and vocal citizenry, but an unintended outcome of government actions has been to reduce the incentive for citizens to be direct participants in their own development. To prevent this practice from being entrenched, the state must actively support and incentivise citizen engagement’.
- Recall ‘meaningful engagement’ – more than participation

# Insights from interviews 1

- Deliberative democracy, not merely participatory - increasing spaces for deliberation in civil society, and between state and civil society
- Varieties and intersectionalities of power
- Procedural issues and substantive issues – “The best way to get to process is through substance”
- Public participation can take place in different ways –
  - ‘inside’ and ‘outside’ frameworks - frameworks within government structures, or within legislative structures, as well as those spaces outside - civil society-created spaces
  - Invited spaces vs created spaces - ‘politics of the invitation’

# Interviews 2

- Civil society needs to work collectively – alliances and networks – to have the impact on the bigger political and financial issues – try to equalise power.
- Long-term engagement with institutions and processes, underpinned by long-term thinking about social justice and equality.
- Communications – social / media; awareness; ATI; research; knowledge; capacity building; mentoring; skills development; facilitating people's engagements; engagement; participation – fluid, dynamic intersections.

# Interviews 3

- Timing of invitations for public comment - OUTA petition - not during summer holidays
- Timely notice of meetings in Parliament – declining quality (6pm the day before) – push back
- Adequate time for comment – varies according to issues, stakeholders, novelty of the issue / capacity, etc.
- Comment and response document – critical mechanism for transparency, accountability and responsiveness
- Start by insisting that MPs to hold quarterly meetings and provide feedback to ‘their constituencies’ – build and maintain relationships (Try it!)

# Interviews 4

- Representative and participatory and deliberative democracy
- Without defined parliamentary constituencies, direct public participation acquires greater significance
- Barriers to access to participation –
  - Information
  - Knowledge
  - Education and skills
  - Location – distance and cost
  - Mode – didactic or facilitative
  - Time – duration, timing
  - Language
  - Power

# Observations from case studies

Participation struggles with complexity - including a wide range of stakeholders, ranging from different spheres of government, to large private corporations, and to individual, unorganised informal workers/traders/entrepreneurs; technology; skills – i.e. power - means that different approaches to participation will be needed for different types of issues

- Disagreement is an inevitable consequence of an inclusive approach: consensus may simply not be possible
- Managing disagreement is part and parcel of participation - with the right facilitation skills it can be done effectively, building trust and relationships in the process
- An inclusive approach builds trust in govt's willingness to ensure human dignity and equality

- Building capacity for meaningful participation (required by PAJA) takes time and needs careful planning, particularly where marginalised communities need to be involved
- The evidential value of the ‘lived experience’ of such communities needs to be given equal weight with technical expertise and industry knowledge
- Transparency can help strengthen understanding and acceptance of the purpose of the policy - stakeholders view regular updates and an ongoing willingness to communicate progress and challenges as particularly useful

- A commitment to sustaining the level of participation will encourage flexible and appropriate approaches, in turn building relationships and trust with stakeholders;
- The location, mode and language of participation matter, ensuring that the process is accessible to all;
- Providing feedback to stakeholders strengthens accountability and trust. Providing feedback on an ongoing basis helps build the perception that the process has been inclusive and trustworthy, and the outcome is legitimate.

# Examples of good practice

- Participatory processes have been widely used, eg –
  - 1994 Consultative National Environmental Policy Process (CONEPP) has been heralded as one of the finest examples of a public participation process in the environmental sector post-apartheid.
  - Other DEA policy processes

Started by organising information-sharing stakeholder workshops early in the process

- Regular workshops with industry participants, various tiers of government, and other stakeholders throughout the policy / law-making process
- Held workshops in places where affected parties had easy access to facilitate their participation
- Variety of communication mechanisms: website, walk-in centres, call centres, media releases, outreach, stakeholder liaisons, community relations programmes, and public perception surveys - enhance public access and create public awareness
- Special effort to sponsor the participation of civil society in policy development processes

- Choice of mechanisms depends on the context, issue, and the resources and time available
- Challenges to maintaining effective participation by virtue of complexity of governance and society.
- Diverse stakeholders, perspectives and needs makes consensus difficult.
- Disagreement can be difficult to manage.
- Target-driven nature of policymaking processes doesn't encourage a flexible approach to participation.
- Different perceptions about policy issues in context of the larger economic and social challenges facing the country.

# Summary of main findings

- Participation is a philosophy about how to make policy, as enshrined in the South African Constitution. The Constitution observes that participation is the right thing to do to ensure human dignity and equality before the law, that it supports the achievement of the country's goals, and that a participatory approach to policymaking will achieve better outcomes for South Africans.

- **An inclusive and diverse approach to policymaking is likely to uncover disagreement rather than consensus.** If the desire to seek consensus becomes too strong because of time or budget pressures, it can lead to tokenistic participation and a lack of trust. Similarly, a target-driven approach can work against a recognition of the need for and value of broader and deeper participation. However, if this is anticipated from the beginning, effective measures can be planned that may be able to harness different views to uncover innovative thinking, and build relationships of trust and mutual respect.
- Acknowledge, embrace and plan for complexity.

**It may take special effort to ensure that the voices of the marginalised are heard.** South Africa faces many pressing issues, each fighting for attention in a crowded policy space.

- Encouraging participation from a wide range of stakeholders helps build strong coalitions for change / transformation - respecting 'lived experience' of stakeholders who are often marginalised from debates, as well as technical and industrial knowledge.
- Time, resources and expertise in facilitating complex dialogues - helpful, cost-effective and efficient to establish a shared set of human resources with these essential soft skills so as to enable consultation processes to both –
  - elicit a full range of relevant and useful information
  - in a manner that builds confidence in the process, its outputs (such as policy or legislation) and its outcomes

# Inclusive governance, human rights, citizenship and participation

- In sum:
  - Arguments for participatory democracy are equally arguments for institutional accountability (transparency and responsiveness).
  - These arguments are usually grounded in the conceptions of rights where rights are generally regarded as 'real' only when citizens have been engaged in the decisions and processes which affect their lives.
  - Debates about participatory democracy should adopt a multi-layered concept that links governance, human rights and citizenship.

# Recommendations and proposals

- Improve the **CONDITIONS** for active citizenship and participatory democracy
- Improve the **QUALITY** of the implementation of citizen participation and the promotion of active citizenship
- Set out **PRINCIPLES** to guide participatory democracy across all levels and branches of government
- Pilot **METHODS** that are proven most effective at including vulnerable groups and contributing to realising human rights

# Principles for promoting active citizenship and participatory democracy 1

- **Ubuntu and inclusivity** – To promote Ubuntu, an African understanding of humanness and community, and to embrace all views and opinions in the process of community participation, especially for vulnerable groups.
- **Diversity** – To understand and recognise the differences associated with race, gender, religion, ethnicity, language, age, ability, economic status and sexual orientation and other vulnerabilities.
- **Accessibility** – Ensures not only that the role players can relate to the process and the issues at hand, but also that they are, at the practical level, able to make their input into the process.
- **Transparency** – Promoting openness, sincerity and honesty among all the role players in a participation process, and guaranteeing equitable access to information.

# Principles for promoting active citizenship and participatory democracy 2

- **Trust, Commitment and Respect** – Promote trust between government and citizens and between citizen groups through an ongoing process of relationship building and mutual respect.
- **Accountability** – Decisions reached must be enforceable and government or civil society groups involved must be answerable or able to provide redress for the enforcement of decisions
- **Integration** – Public participation processes should be integrated into all levels and branches of government, including economic decisions that affect livelihoods. It should also be coherent across government.

# Principles for promoting active citizenship and participatory democracy 3

- **Flexibility** – The ability to respond to the context and the particular barriers or challenges in order to benefit the participatory process.
- **Sustainability** – Participation is not a one-off exercise. It takes time to build trust, commitment and respect; to develop flexible approaches and learn from them, to ensure diversity and inclusivity and to understand what it really means to be accountable in each context. It should recognise the needs and interests of all participants and decision-makers.
- **Capacity-building** for participatory democracy – for government, civil society and citizens.

Thank you

Questions and comments are welcome