

**A People's Government
The People's Voice**

**A Review of Public Participation
in the Law and Policy-Making
Process in South Africa**

June 2001

**"Knowledge will forever govern ignorance:
And a people who mean to be their own governors must arm themselves with the power which
knowledge gives.
James Madison, 1822**

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"First, I would say, when I heard the news that I would be going to Cape Town to make an oral submission on the Firearms Control Bill, I got excited, nervous and proud. I got excited in the sense that it would be my first time to fly and also my first visit to Cape Town and to Parliament as well as to the sea. I got nervous when I thought of presenting before the MPs, and I felt proud at being invited by the Safety and Security Portfolio Committee.

Adele [the Director of Gun Free South Africa] and myself left her home at 16h15 to Joburg International Airport. Our flight to Cape Town was scheduled for 18h00. On board the flight I was relaxed because I was sitting next to Adele and she comforted me. We arrived in Cape Town at 20h00. We waited a couple of minutes for Claire's arrival because we were not on the same flight. After Claire's arrival we drove to Sea Point where we spent the night. Sea Point is next to the sea and really I had a clear view of the sea.

In the evening, Adele acted as the Portfolio Committee Chairperson and asked me to present. After my presentation, she asked me questions. She encouraged me – and this kind of practice really helped me. I went to bed at 23h00 and woke up at 5am.

Before we drove to Parliament Claire and myself walked on foot to the sea where she took pictures of me. We arrived at Parliament at 8h30.

During the Public Hearings I listened carefully to presenters. Some of the presenters were furious, criticising the Bill as a whole. Nevertheless I realised how friendly the MPs were. When the Chairperson called my name, I felt nervous, but when I started talking I regained confidence. My presentation focussed on two issues: Gun Free Zones (GFZs) and the Age Limit. I supported chapter 20 (of the FCB) on GFZs. GFZs are about community safety and the initiative has been going on for three years in Mapela and is getting support from more residents. I also objected to the age limit of 18 (in the FCB) and proposed the age should go to 25. This will exclude school going kids and will also make the implementation of GFZs in schools easier. After my presentation, the MP's applauded me for the work I've been doing.

We all went out then and took photos in front of Parliament and then went to a meeting where we discussed what our experiences were during the hearings.

After the meeting, Adele, Claire and John Katane (from Rustenburg) drove me to Cape Town International Airport. I was no longer afraid of flying because I had experience. Even though I was alone I enjoyed the trip back home."

Letter from Samuel Kobela of M apela, who made an oral submission to the Safety and Security Portfolio Committee on the Firearms Control Bill.

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SECTION 1

FRAMEWORK AND CONTEXT

INTRODUCTION

For over three hundred years, from the time when the first European voyagers landed at the Cape, black South Africans were subjected to discrimination, harsh treatment and oppression. With the election of a National Party government in 1948, this oppression was formalized under the apartheid system, resulting in the legalized suppression of human rights in South Africa. Under apartheid, most South Africans were deprived of their basic human rights and denied the right to authentic forms of representation. The opinions of black South Africans were considered irrelevant and immaterial.

Oppression inevitably led to struggle and, with struggle, the emergence of alternative voices and forms of expression. Popular organization and resistance bred their own traditions and democratic norms. These traditions, ideals and experiences helped shape expectations during the transitional period (1990-94) and in the period after the first democratic elections in 1994. They are reflected in a number of key documents that emerged at the time, in particular the Reconstruction and Development Programme (RDP), the policy platform on which the African National Congress (ANC) contested the 1994 election and which was afterwards formalized as the policy (White Paper) of the newly elected democratic government.

During the transitional period, an interim constitution was drawn up by the protagonists and became the basis of the agreement that led to elections in 1994. After the election, the Constitutional Assembly (consisting of the National Assembly and Senate³) drew up the South African Constitution, which was to create the foundation for the new order. The Constitution was adopted in 1996. The drafting process was accompanied by an extensive public education and participation programme.

This publication focuses on public participation in the legislative and policy-making process in South Africa. It argues that the South African Constitution creates a requirement that government engage with citizens when making the decisions that affect their lives. The constitutional requirements for public access and participation are dealt with in detail in Chapter 5. Broadly, they provide for a right to participation in the legislative and policy-making processes that goes well beyond the right to vote in periodic elections. Not only must citizens be given the opportunity to speak on issues that affect them; there is also an onus on the legislatures and the executive to take their views seriously.

A right to participate does not, however, automatically translate into broad-based participation across society. President Thabo Mbeki has spoken of "two South Africas" – of a society that remains deeply divided between those who have access to the resources of the country and those who remain poor and marginalised. This reality crucially influences the ways and extent to which South African citizens can take advantage of the opportunities for participation offered by the Constitution. Although the principle is that all groups in society should have a voice in the decisions that affect their lives, it is inevitably the powerful and the organized who are able to make the best use of the opportunities available.

The most disadvantaged sectors are often unable to participate in the democratic process. Limited access to media, low education levels and geographic isolation from the centres of government, not to mention constraints of time and money, preclude meaningful participation by much of society.⁴

In order to meet its constitutional obligations, therefore, government needs to work proactively to ensure that the voices of the widest possible 'public' are heard and taken into account.

A democratic society that encourages healthy participation depends on a variety of institutions. This study focuses on issues of public participation in the formal political domain, looking particularly at the legislative and policy-making processes. The institutions under review include the national Parliament and the nine provincial legislatures set up in terms of the Constitution (the legislative arm) and the various government departments led by Ministers appointed to the Cabinet by the President (the executive arm). For the purposes of this document, 'government' includes the legislative and executive arms of the state.

The national Parliament is responsible for making national legislation, while the provincial legislatures are responsible for areas of legislation ascribed to them by the Constitution.⁵ The national Parliament is made up of the National Assembly, consisting of representatives of political parties elected according to a system of proportional representation, and the National Council of Provinces (NCOP), which consists of delegations from the provincial legislatures. All national legislation passes through the NCOP, which has varying powers depending on whether the proposed legislation does not (section 75 bills) or does (section 76 bills) affect the provinces. This ensures that the provinces are represented and have a say at the national level.

The provincial executives consist of an Executive Council (provincial cabinet) headed by a Premier. Members of the Executive Council (MECs) head up provincial departments responsible for areas where the provinces have powers. This applies primarily to areas involving service provision, such as housing and education.

As far as forms of public participation are concerned, the study focuses chiefly on public hearings arranged by the various institutions under review, as well as opportunities to make submissions to the legislatures and the executive. It also gives close attention to various efforts to build a foundation for broader public participation. These include public education and outreach and public information and public relations activities. As indicated, the sharp divisions in South African society demand special strategies. In order to build and maintain a system of democratic public participation that includes the traditionally marginalised, the role of public education must be to inform, educate and build capacity.

This is the focus of this study. Section 1 looks at democracy and what is meant by participative democracy. It explores what we mean when we speak of the public and the public sphere and how we can begin to define this in South Africa. It then sets out the various provisions of the Constitution that relate, either directly or indirectly, to public participation. Section 2 looks at other aspects affecting public participation in South Africa. Section 3 offers four models for participation and reviews progress towards public participation in the national Parliament and the nine provincial legislatures. The data on which this part of the work is based is drawn from quantitative questionnaire surveys conducted in the various legislatures and interviews with key personnel, analysed by the Political Information Service of the Institute for Democracy in South Africa (IDASA). It builds on an earlier IDASA review, commissioned by the Parliamentary Support Programme in 1998/99.

Section 4 looks at the international context for public participation. The final chapter tries to draw lessons, ideas and a way forward from the preceding chapters.

SECTION 1

FRAMEWORK AND CONTEXT

EXPLORING FORMS OF DEMOCRACY

Reconstruction and development require a population that is empowered through expanded rights, meaningful information and education, and an institutional network fostering representative, participatory and direct democracy.⁶

It may be argued that the South African Constitution provides the framework for a democratic system that is both representative and participatory. In order to understand notions of public participation in the context of the new constitutional order, these concepts are briefly explored.

Democracy is generally agreed to have its conceptual roots in certain of the city-states of ancient Greece. This system, now described as "direct democracy", is based on the notion that every citizen is directly consulted in every decision of government. In ancient Greece, political decisions were taken by a popular assembly of the whole body of citizens, according to the procedures of majority rule. Such a system was possible in ancient Greece because a city-state's population rarely exceeded 10000 people. Also, women and slaves were excluded from citizenship and therefore from political participation.

Although the concept of direct democracy persists in a much-modified form in modern life, Greek democracy had little direct influence on the development of modern democratic practices. Two millennia separated the fall of the Greek city-state and the rise of the modern democracies. Although this form of direct democracy is impractical and inappropriate to a large complex society, direct democracy does, nevertheless, lay the basis for the notion of democracy as broadly participative.

Modern concepts of democratic government in the West were shaped to a large extent by efforts to restrain the exercise of public power. Pressure on monarchs and the church to consult powerful groups or "estates" increased during the Middle Ages and, as time went on, representatives of these groups began to come together in what were the forerunners of modern parliaments or legislative assemblies. By the 18th century, concepts of natural rights and political equality began to emerge and were expressed in the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789). There were still significant exclusions and it was to be well over a century before women were allowed to vote in the more advanced democracies, and longer still before the concept of universal suffrage came to include all classes and groups of adults.

Representative democracy, that is government by men and women elected in free and fair elections in which each adult citizen's vote is equally weighted (universal suffrage), became the standard Western form. Representatives are elected to office and are charged with the responsibility of making decisions on behalf of the electorate. These representatives are subject to a variety of rules and sanctions and may, if the electorate so chooses, be removed from power at a subsequent election. What is described as constitutional democracy is generally a form of representative democracy, where the rules of the political game are formalized in a written constitution, which is difficult to change and where the courts are given the power to enforce the constitution, against the popular will if necessary.

In its narrowest interpretation, representative democracy means that elected representatives must directly represent the views of those who voted them into power. Voters give their representatives a specific mandate to speak and make decisions on their behalf. Such a system is a feature of many trade unions, for example, where a representative must seek and receive a direct mandate before speaking or voting on an issue. This person acts as a delegate and is directly accountable to his or her constituency.

However, in general, representative democracy is more broadly interpreted.

According to 18th Century political philosopher and politician, Edmund Burke:

A representative is entitled to, and in effect has a right (by virtue of election or appointment), to exercise independent judgement during the course of the deliberations and process that accompanies the law and policy-making government of the State. Hence, individually and as a collective, the elected representative determines the common good.⁷

According to the Burkean/Trustee conception, the legislator determines what is in the constituents' best interests. This gives the representative a far more open brief. While broadly adhering to his/her election manifesto, s/he has the latitude to develop views on other topics, adapt a mandate in line with the party policy programme and take other 'unmandated' decisions on behalf of the electorate. Accountability rests on the fear of losing office in the next election. The risk is that representatives (or their parties) may abandon or modify the policy framework on which they were elected. However, the system also enables decisions on issues on which it may be extremely difficult to secure a mandate, as for the abolition of the death penalty or the legalisation of abortion.⁸

It is clear that, like direct democracy, representative democracy is no more than a broad concept against which one may measure other forms of political participation. Democracy is not a static process and, just as the numbers of the enfranchised grew over the years, so too did people devise and struggle for ways of influencing and controlling the political process. Direct democracy persists in new forms. It may be seen at a national level in the form of referenda on particular issues. Although increasingly common, canvassing public opinion on issues that generate public emotion may result in decisions that run counter to international human rights principles. At local level, forms of direct democracy are employed to mobilise public opinion and express collective grievances. As communities and other groups are empowered or empower themselves in these ways, new ideas enter the system, influencing government opinion and impacting on its procedures. This tendency is well illustrated by environmental struggles over the past few decades. In many countries, environmental legislation now relies heavily on contributions and involvement by civil society.

Although it can be argued that the Burkean form of representative democracy is most appropriate to the scale of modern life and is most conducive to efficiency, it carries the risk of alienating the broader citizenship from the process of government. Where people believe they have limited power to influence, they lose faith in the electoral system and in the checks and balances that regulate the use of power. If democracy is about involving people in the decisions that affect their lives, the challenge for modern governments is to seek a balance between efficiency and effective administration on the one hand, and accountability and public participation on the other.

DEMOCRACY IN SOUTH AFRICA

The South African Constitution provides for a broadly representative constitutional democracy based on universal adult suffrage. However, its emphasis on public participation introduces elements that, in the formal sense at least, distinguish it from many of the longer established democracies.

South Africa owes its institutional arrangements in part to an international political environment that increasingly favours public participation in political processes. Drawing up its constitutional and institutional arrangements in the latter part of the 20th century, it was able to take advantage of contemporary thinking on the evolving relationship between people and their governments.

There is little doubt, however, that the history of the struggle against apartheid also influenced the development of the South African model. Political oppression provides a powerful impetus to alternative forms of organization. In South Africa during the 1980s, rejecting imposed institutions that were seen as illegitimate, communities organized themselves into civics, street committees and other local organisations. Organised labour came together to form powerful structures that, in the repressive and punishing climate that prevailed, played a key strategic role. Youth, students and even children built organisations and claimed the right to political participation and recognition. Such structures established a tradition, at least in principle, of both direct and generally participatory democracy.

This history influenced the manner in which South Africans approached the period of preparation for elections and government. During the 1990s, a plethora of participative forums was set up to discuss, debate and prepare for every aspect of governance. The notion of a more participatory form of democracy was captured in the RDP thus:

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 CBOs are a major asset in the effort to democratise and develop our society.⁹

But, what does participatory democracy mean? Unlike direct democracy, it does not imply that every decision taken by government must first be subjected to a public referendum. Nor, however, does it mean that the right to and responsibility for political decision-making is relinquished to a collective of elected representatives. Participatory democracy, it is suggested, is a form of representative democracy in which citizens are actively involved in the decision-making processes of government.

Democracy is defined as ongoing and regular interaction between citizens and their popularly elected institutions. This includes mechanisms for public participation ... as well as the constitutionally entrenched responsibility of certain institutions to facilitate public participation in their processes.¹⁰

The rationale for a participatory form of democracy goes beyond that created by the South African Constitution. It is, as we shall discuss, part of a growing international trend aimed at creating vehicles for dialogue between governments and people. It is, indeed, grounded in the common-sense view that, where people are not involved in the decisions that affect their lives, social policies and political interventions are likely to fail. This changed perspective takes place in a climate of growing concern in Western democratic systems. Declining voter participation, a narrowing of political choices and a decline in popular trust in the electoral and political process have prompted the need for renewal in the way we conceive of democracy.

Conceptually, this has opened up the space for a redefinition of the boundaries between the state and civil society.

This publication argues that public participation processes strengthen and further democratise the institutions of representative democracy. Participatory democracy is not necessarily a new or different form of democracy, but a strengthening or expansion of formal representative democracy to include greater levels of participation by civil society. While participation may and has indeed been used to assimilate and manipulate social movements and political actors, the form of participatory democracy envisaged here aims to empower civil society to drive legislative and policy agendas from the grassroots.

SECTION 1

FRAMEWORK AND CONTEXT

THE PUBLIC AND THE PUBLIC SPHERE

Another concept that is of key importance to an investigation of public participation is the notion of a public, and hence of a public sphere.¹¹ The idea of a public is a relatively new one. In Medieval Europe, the only 'public' persons were the sovereign or the feudal lords and princes, and only in the sense that they displayed their status publicly before the people. With the development of mercantile capitalism in the 16th century and the emergence of new, non-feudal state systems of government, the significance of the royal 'court' began to decline and the locus of established authority to shift. Public authority now became synonymous with the state. Those occupied in trades and professions under the old feudal systems developed into a sphere of civil society that stood opposed to the state.

It has been argued that the first 'public sphere'¹² emerged through two institutions: the 18th century coffee houses and salons and the rise of the independent market-based press. Originally a literary 'space', the public sphere evolved into a 'political' public sphere that became the site for the formation of politically-oriented 'public opinion'. Through the activities of the periodical press, a new climate of political criticism arose, challenging traditional authority.

The press was established as a critical organ of a public engaged in political debate: as the "fourth estate". This institutionalised commentary and criticism transformed public authority. As its activities were brought into the public domain, parliament was increasingly required to justify its actions and publicise its proceedings. The new constitutions of modern state systems in which rights were guaranteed resulted in the political role of the public sphere being formally recognised in law.

Habermas describes certain defining criteria for the public sphere. A public sphere is a social space to which all citizens are guaranteed access; all citizens are considered equal; all citizens are free to engage in dialogue and express their opinions. It is autonomous and free from interference by the

state and the market, and it is distinct from the 'private sphere', with a concern for public good rather than individual private gain. Finally, it embodies a democratic ideal.

In practice, Habermas' concept of an 18th century bourgeois public sphere is deeply flawed in that it incorporates only those with the means and education to participate in it. It also overlooks the history of the working-class press and the fact that relations between the bourgeois public sphere and popular social movements were often conflictual. It was, of course, also a predominantly male preserve. It may be argued, further, that it is impossible today to maintain a distinction between the public sphere and the state and the market.

The concept is, however, useful when considering what we mean by a participating public. Key principles are: guaranteed access, equality, freedom to express opinions, the notion of a public good and, of course, the democratic ideal. Applying these criteria, one can begin to measure the extent and degree of public participation and how this affects different sections of the public.

Based on these principles, we need to consider how we should go about defining the South African public sphere. In other words, how do we take into account what President Mbeki has described as the "two South Africas" when dealing with practical issues of public participation by the well-resourced, on the one hand, and the poor and marginalised on the other?

SECTION 1

FRAMEWORK AND CONTEXT

THE "TWO SOUTH AFRICAS": DEFINING THE PUBLIC

The Constitution requires us to have a participatory democracy and I don't think we have a common understanding of what that means. We have one of the most open parliaments in the world. Committees have public hearings and the public can walk into any meeting. Is that public participation?

I have an image of a rural woman walking into one of those meetings. I mean, as it stands, does she know that what we do affects her and what she says can affect our decisions? We need to reach her.¹³

Public participation is about access to power and decision-makers. In most systems, certain people or interests have greater access to power and decision-makers than others. Patterns of access will tend to reflect the socio-economic landscape and inequalities of society. Even relatively well-functioning democratic systems tend to favour the views of the powerful and organised over the poor and unorganised.

South Africa's socio-political landscape has undergone a process of fundamental change. The privileges of those that were previously guaranteed access and influence have been diminished; others are rising to positions of influence. Despite considerable political change, however, certain sectors remain strong and others weak. Although South African civil society, with its long history of struggle and advocacy, remains active and involved in issues of change and governance, it has been weakened by a withdrawal of international financial support and a loss of personnel to government and the private sector. Organised labour, which developed strong institutions and traditions in the 1970s and 1980s, remains relatively strong and is represented in the National Economic Development and Labour Council (NEDLAC).

The Congress of South African Unions (COSATU), the largest federation of unions, is part of a tripartite alliance with the ruling ANC and the South African Communist Party (SACP), with members on the ANC party list.

Organised business has had to adapt to a sharply different political system and a new culture of accountability. Typically, it has responded with new lobbying techniques – some effective, some less so. In South Africa, lobbyists tend to be directly employed by organisations that wish to present their case to government. Lobbyists have become an institution in many Westminster-style systems, giving rise to debates about their morality and whether or not their (particularly commercial) efforts should be subjected to some form of control or code of conduct.¹⁴

In this fluid advocacy environment, it is important to ensure that public participation does not become skewed in favour of any one sector. No sector, particularly the less powerful and organised, should be excluded or marginalised.

Case Study: The Gun Control Alliance¹⁵

If you give people information, they know what to do with it.

Adele Kirsten, Gun Free South Africa

When the Portfolio Committee on Safety and Security in the National Assembly called for submissions on the Firearms Control Bill, the stage was set for a radical divide between those who supported relatively unfettered ownership of guns against those who, in varying degrees, sought tougher controls. With more power, more money and a louder voice, there was a danger that the gun owners lobby would dominate the scene.

Gun Free South Africa (GFSA) recognised the importance of building broad support for the introduction of stricter firearm legislation. In order to do this, it did three things. It mounted a public information and awareness campaign. It built a broad tactical alliance, which agreed on specific legal reforms. In addition, it ensured that members of the Gun Control Alliance were empowered to lobby

Parliament effectively. GFSA had little funding for such a campaign, yet it succeeded in building and maintaining an articulate community voice in the ensuing debate.

One of the most powerful tools developed by GFSA was the Gun Free Zone (GFZ) project. Through this project, GFSA developed relationships with a number of communities who had declared their public spaces gun-free. These relationships would form the foundation for the broad consensus that was the essential strength of the Gun Control Alliance.

The Gun Control Alliance was built around the Gun Control Charter – essentially a list of minimum demands to be included in a new Firearms Control Act. The Charter was developed in consultation with as many stakeholders as possible, followed by an intensive campaign aimed at persuading organisations and individuals to endorse it. The over 200 national and regional organisations that did so became members of the Gun Control Alliance.

In order to encourage communities to make submissions at the parliamentary hearings on the Bill, GFSA provided assistance to help them take advantage of the opportunities offered. Two tools were of particular importance. One was a plain language summary of the legislation, focusing particularly on those aspects included in the Charter. The second was a document – Making sure your voice stops a bullet – aimed at giving people the necessary skills to make submissions and lobby parliament. These tools were used at workshops where communities raised local issues and concerns, out of which they prepared the submissions they would later make to Parliament.

The participation of the Gun Control Alliance in the debate had a number of results. First, as a well-informed lobby group, it was able to counter the claims of the better-resourced gun owners' lobby, thereby supporting the parliamentary committee in its efforts to discuss and consider the Bill.

Secondly, its efforts did much to raise public awareness about the hazards of firearms and their impact on communities. Thirdly, and perhaps most important of all, community representatives claimed that the process had empowered them. As one of them said:

No one in our community had ever made a submission before ... (so) the submission pack was very good. It empowered us. We learnt that individuals could make a submission. Also, if we had to make other submissions, we could use these guidelines, which help us stay focused on the areas that affect us.

SOCIO-ECONOMIC REALITIES

While it is true that political change in South Africa has been profound, there is also no doubt that the prevailing socio-economic conditions are still largely determined by its apartheid past. And while South Africa is classified as a middle income country, according to the UNDP [2000] report:

Conventional measures and indicators do not ... accurately reflect the development or quality of the life of citizens. A high GDP does not imply equal distribution, nor does a growth in GDP mean an improvement in standards of living. Indeed, a higher GDP may even imply lower standards of living for the majority of the people.¹⁶

A more telling statistic is the Gini coefficient¹⁷, which measures the extent of income inequality within a country. South Africa has a Gini coefficient of 0.58, ranking it the third most unequal society in the world after Guatemala and Brazil¹⁸ and the second highest amongst countries at a similar level of development.¹⁹ The South African rate of poverty is 45 percent (a measurement of the extent of absolute poverty).²⁰ This translates into 3126000 households or more than 18-million citizens living below the poverty line (defined as a household income below R353 per month). In mainly rural provinces, the figure rises above 50 percent. The poorest 40 percent of citizens are overwhelmingly African, female and rural.²¹ South Africa also has a very poor record in terms of social indicators (health, education, safe water, fertility).²²

In addition, despite significant delivery successes by early 1999, sustainability has proved a problem.²³ Growth and human development are also seriously threatened by the unemployment crisis²⁴ and the HIV/AIDS pandemic.²⁵ The result is that, despite some significant improvements, many so-called "formerly" disadvantaged individuals remain disadvantaged. Most white and Indian households are in the top income quintile (65% and 45% respectively), compared with only 17 percent of coloured and 10 percent of African households.²⁶ At the other end of the scale, 23 percent

of all African households are found in the poorest quintile, compared with 11 percent of coloureds and 1 percent of Indians and whites.²⁷

According to Statistics SA, twice as many female-headed (26%) as male-headed households (13%) are found in the bottom quintile. When race and gender are aggregated, the figure rises to 31 percent of African female-headed households compared to 19 percent of African male-headed households.²⁸ Overall, the poverty rate amongst female-headed households is 60 percent, compared with 31 percent for male-headed households. Women account for 56 percent of the unemployed and earn, on average, 76 percent of what their male counterparts earn.²⁹

Rural/urban inequality is also significant, with African and coloured median incomes in rural areas about half that of their urban counterparts.³⁰ Eight percent of rural people have an income in the top quintile; 29 percent in the bottom. This is almost the reverse of the urban areas where 34 percent of people have an income in the highest quintile, and only 9 percent in the lowest.³¹ Although South Africa is considered to have a medium human development ranking, HDI³² varies across provinces. There is a close relationship between HDI values and rural areas, particularly in provinces that include former homeland areas.³³

It is thus relatively straightforward to identify where the inequalities in South Africa lie and which groups are most vulnerable to poverty. It is perhaps less easy to relate this to potential inequalities in public participation. The Poverty and Inequality in South Africa Report says that:

poverty typically comprises continuous ill health, arduous and often hazardous work for low income, no power to influence change, and high levels of anxiety and stress. The absence of power is virtually a defining characteristic of being poor, and is worsened for women by unequal gender relations.³⁴

The aim of public participation in legislative and policy-making activities is to offer poor people the opportunity to make their circumstances known and to express their needs and grievances. There is, in addition, a clear government commitment to public participation by the poorest sectors of society. According to the ANC National General Council Mid-Term Report and Review:³⁵

The transformation of Parliament and the Legislatures has taken place within a framework that seeks to encourage public participation in the making of laws and policies, through public hearings on all Bills and policies. Our experience over the last few years indicates that mainly those who have access to resources and who are better organized have used these processes.

The major constraint is a lack of capacity and resources amongst those whose participation is most desired – the poor and marginalised. Indeed, increased opportunities for public participation generally may even exacerbate existing inequalities. Hence, while public participation is frequently viewed as a form of empowerment, the danger is that only the already empowered may be able to enjoy its benefits. According to COSATU researcher, Oupa Bodibe:

to make public participation meaningful, it is imperative that this skewed access to resources does not perpetuate the inequalities and hinder the participation of other stakeholders. ³⁶

Case Study: The Child Support Grant ³⁷

Although those with resources and expertise are often better able and more likely to participate in the political process, there are a number of cases where civil society has been able to influence government process in a way that benefits its most disadvantaged members.

One such case arose out of the introduction of the Child Support Grant, introduced to replace the racially discriminatory State Maintenance Grant.

Reacting to a government announcement of a R75 flat rate grant per month for each child younger than six years of age, targeting only 30 percent of poor children, a number of organisations decided to lobby the Portfolio Committee on Welfare for a better deal.

Through their submissions, they were able to show that government figures and calculations were incorrect. As a result of their efforts, the Portfolio Committee chose not to support the government's policy, but proposed an option that set the benefit at R1 35, targeting 80 percent of children between

zero and nine years of age.

Eventually an agreement was reached and the grant was increased to R100 – 33 per cent more than the government's original offer of R75.

CONSTRAINTS ON THE POOR

The constraints on the participation of the poor and disadvantaged are numerous. Four areas are of particular significance.

Time

Time has been identified as an important cost to poorer sections of the population, especially women and those who are employed. Heavy time obligations preclude active participation in anything beyond basic survival and the maintenance of livelihood.

Time is an important cost associated with many of the livelihood plans constructed by the poor, especially for women, who are often singly responsible for child-care, cleaning the house, fetching and heating water, washing and ironing, shopping, collecting firewood, cooking and washing dishes. The long and arduous working hours experienced in many households are exacerbated by seasonal demands in rural communities.³⁸

Communications Access to the media is vital for public participation. And yet, as a study on radio listenership patterns noted:

the section of our population which does not receive any media is, in development terms, vital. They are likely to be poor, rural, African, and low-educated. These are people who (arguably) are most in need of education about their newly guaranteed Constitutional rights; of points of access to resources; of democratic processes; and so on.³⁹

The HSRC has noted that, although television is the predominant source of information about what the government is doing, almost half of their survey respondents in the rural former homelands did not watch television at all because they did not possess a television set and only 17.9 percent watched television programmes dealing with political and social issues. Similarly, one quarter of respondents in urban informal settlements had no access to a television set and only 29.9 percent watched television programmes dealing with political and social issues.⁴⁰ Radio was seen as the most appropriate medium for receiving information on what the government is doing.⁴¹

Although 1.3 million telephone connections have taken place since 1994⁴², only 14 percent of African households have a telephone line, compared to 85 percent of white households⁴³. Across all races, 1 percent of rural households have a telephone, compared with 32 percent of urban households. This points to serious difficulties in accessing information and communicating opinions and preferences. It also has implications for the capacity of South Africans to enjoy the opportunities offered by electronic forms of communication (See further Chapter 13).

Transport

*Clearly transport is a major factor in facilitating participation. Here again the poor, particularly the rural poor and people with disabilities, are at a serious disadvantage. This is acknowledged by the Department of Transport's strategic framework for the transport sector, *Moving South Africa – The Action Agenda*, which introduces:*

for the first time ... a vision for transport that is focused on customer needs be they freight, urban passenger, tourist, or the forgotten customers ... the disabled or the rural poor cut off from the mainstream of our economy.⁴⁴

Although difficult to quantify, statistics on the burden of transport to and from work give some indication of the problems faced. One survey found that, amongst consumers in the lowest consumption quintile, 62 percent walk to work, while most others use taxis or buses.⁴⁵ It is also noteworthy that, although transport costs rise with income, they constitute a much larger share of expenditure (more than 30% in some cases) among the working poor.⁴⁶

It is clear that making the journey to a legislature that may be in another town – or even on another side of town – is likely to be both physically and financially daunting.

Education

According to the 1997 School Register of Needs Survey⁴⁷, South Africa has one of the highest illiteracy rates in the world. In some provinces, nearly half the adult population is illiterate. Twenty-seven thousand learners with disabilities are outside the school system. Twenty-four percent of Africans have received no education, compared with 1 percent of whites. Similarly, 40 percent of whites have received education up to standard 10 compared with 12 percent of Africans.⁴⁸

A prerequisite for an informed and active citizenry is a literate population. The ability to access information and communicate appropriately is key to economic and social empowerment in all spheres of society. Hence, illiteracy remains one of the most disempowering factors faced by a large majority of people of the country. It affects democratic participation, and consequently hinders human development.⁴⁹

THE CONSEQUENCES OF POVERTY FOR PUBLIC PARTICIPATION

Providing the political space is not enough. Human development depends on the extent to which citizens are able to make use of that space.⁵⁰

The relevance of these inequalities for public participation was illustrated in a recent Opinion '99 poll on levels of voter education. Only 36 percent of people with no formal education understood the necessity for registering on the voters roll, compared to 56 percent of those with some high school education and 67 percent of those who have completed high school. Rural people were much less likely to understand the need to register (49%), compared to those who live in cities and towns (57%) or metropolitan areas (69%). Significantly, knowledge of the electoral process also increases steadily with income.⁵¹

In September 1999, a national survey conducted by the Human Sciences Research Council (HSRC) reached similar conclusions. Some of the figures are very revealing. For example, less than 15 percent of South Africans said that they understood the different legislative processes operating in the country, and only 7 percent that they had sufficient knowledge of the functions of the national legislature. Just over 6 percent said they had sufficient knowledge about public hearings at the national level and close to 94 percent had insufficient or no knowledge of the functions of parliamentary constituency offices.⁵²

Clearly then, socio-economic status is a key determinant in the ability to access and participate in the political system. Countering the argument that "ever-increasing amounts of participation and consensus-building" are necessarily progressive, critics have pointed out that extensive lobbying and participation by powerful groups may, in fact, sideline or diminish the role of those who have been elected to represent the interests of the broader (and often less organised and powerful) public.⁵³

Furthermore, although there is no longer the unequal de jure access to formal participation that existed under apartheid, South Africa may, unless remedial steps are taken, experience a de facto inequality of access to participation – a division along almost identical lines to those of the past. Hence, it may be argued that constitutional and legislative requirements for open and accessible processes are a necessary but insufficient condition for effective public participation in the South African socio-economic context. The right to legal access and participation must be backed up by dedicated strategies and programmes aimed at involving the broadest possible spectrum of society.

SECTION 1

FRAMEWORK AND CONTEXT

WHAT THE SOUTH AFRICAN CONSTITUTION PROVIDES

In some countries the Constitution only formalises, in a legal instrument, a historical consensus of values and aspirations evolved incrementally from a stable and unbroken past to accommodate the needs of the future. The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive, and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic.⁵⁴

A number of sections in the Constitution deal directly with public participation. Other sections deal with issues that either directly or indirectly support public interaction with government. The purpose of this chapter is to identify sections in the Constitution that relate to or impact on the obligation of government to involve the public in its deliberations.

The Constitution also stresses the principles of accountability, transparency and openness. 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.

Sections dealing with provisions for the different spheres of government (national, provincial and local) and the different arms of the state (executive, legislative and judicial) are also broadly relevant in that they provide the framework of checks and balances and also help map where, when and how the public can participate in various processes.

These sections and others with implications for public participation are surveyed below.

A BILL OF RIGHTS

Adopted in 1996, the Constitution recognizes a "common South African citizenship" with equal entitlement to rights and responsibilities.⁵⁵ Rights are guaranteed under the Bill of Rights. The Equality clause (section 9) underpins the other rights in Chapter 2 of the Constitution, providing as it does for the "full and equal enjoyment of all rights and freedoms". Its requirement that "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth" has profound implications for the manner in which both representivity and public participation should be pursued.

Beyond the political rights common to most forms of parliamentary democracy, the Bill of Rights includes a number of rights aimed at ensuring the realization of the ideal of a common citizenship, including freedom of religion, belief and opinion,⁵⁶ freedom of expression,⁵⁷ freedom of assembly, demonstration, picket and petition,⁵⁸ freedom of language and culture⁵⁹ and freedom of access to information.⁶⁰ The freedom of expression clause does not protect the expression of "hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm".⁶¹ This so-called "hate speech" provision, although contested, was seen by the Constitutional Assembly to be necessary in a deeply divided society.

The Bill of Rights also, and unusually, provides for socio-economic rights that are enforceable by the courts to some degree.⁶² These include the right to have access to adequate housing, to health care services, to sufficient food and water, and to social security.⁶³ The state is enjoined to "take reasonable legislative and other measures to achieve the progressive realisation" of these rights.⁶⁴ In this sense, as one Constitutional Court judge has put it, the central purpose of the Constitution and the system of democratic, parliamentary governance that it establishes, is to "deliver a social and economic transformation".⁶⁵

Plainly, the role of the legislature as an agent of change is central to this enterprise.⁶⁶ Thus the national and provincial legislatures may be seen as offering a vital forum where the public can engage with law- and policy-makers on questions of socio-economic transformation. Importantly,

these and other rights are enforceable by the Constitutional Court. This provides another point of access for citizens wishing to impact on or force government to fulfil its constitutional obligations.

As with all constitutionally-guaranteed rights, there are concomitant obligations. Having been granted the right to 'participate', citizens are required to comply with, respect and uphold legislative and executive decisions. Thus, it may be argued that, by encouraging the participation of citizens in the process of restructuring and governing the country, we promote a responsive and accountable government whose decisions are accepted and respected by the people. In this sense, public participation may be seen as a process of deepening and consolidating democracy, rather than overburdening it.

South Africa's constitutional framework creates a complex array of new, inter-related and largely interdependent institutions, designed to put in place the checks and balances required for the proper functioning of democracy. This in itself is a considerable achievement. At the same time, those charged with operating the new institutions have acquired significant obligations. Inevitably, there have been growing pains as well as gains. Like other processes, public participation has evolved in the context of a new and rapidly evolving institutional environment.

SUPREMACY OF THE CONSTITUTION

Chapter 1 of the Constitution states that the "Republic of South Africa is one, sovereign, democratic state", founded on a number of values. Section 1(c) provides for "Supremacy of the Constitution and the rule of law" and section 2 states that "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled".

The effect of section 1(c) and section 2 is to limit the power of the state, making it clear that the Constitution is supreme and that the state may not act in a manner that is inconsistent with it. All structures, bodies, individuals and institutions are bound by the Constitution. Section 92(3) of the Constitution explicitly requires that members of the Cabinet must act in accordance with the Constitution.

ACCOUNTABLE, RESPONSIVE AND OPEN GOVERNMENT

Amongst the values listed in Section 1 is that of "Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness"⁶⁷. Thus, from the outset, the Constitution establishes the principle of an open and accountable government that responds to its citizenry.

PUBLIC PARTICIPATION IN THE LEGISLATURE

The means by which it must do so extends beyond the granting of formal voting rights at periodic elections. The constitutional sections governing the national and provincial legislatures provide explicitly for public access and involvement. Thus, for example:

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, in public.⁶⁸

Certain provisions govern limitations to public access, where "reasonable and justifiable ... in an open and democratic society." It is provision (a) that adds a participatory dimension to the South African legislative system.

PUBLIC PARTICIPATION IN THE CIVIL SERVICE

The onus the Constitution lays on the legislatures is extended to the public administration (in Chapter 10). Amongst the principles laid down for the public administration are the requirements that:

"people's needs must be responded to, and the public must be encouraged to participate in policy-making",⁶⁹

"public administration must be accountable"⁷⁰

and "transparency must be fostered by providing the public with timely, accessible and accurate information".⁷¹

These principles apply to "administration in every sphere of government", "organs of state" and "public enterprises".⁷²

INSTITUTIONS SUPPORTING DEMOCRACY

Human rights commissions, Offices of the Ombudsman and Access to Information Commissioners can play a key role in enhancing public awareness of good governance and rule of law issues and adequate funding and resources should be made available to enable them to discharge these functions. Parliament should accept responsibility in this regard.⁷³

Chapter 9 of the Constitution provides for a number of independent "state institutions supporting constitutional democracy". From the point of view of public access and participation, the most significant of these is the Public Protector, whose role it is to investigate, report on and act against "any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice".⁷⁴ Crucially, "the Public Protector must be accessible to all persons and communities".⁷⁵

There is no doubt that the work of the public protector represents an important advance in the promotion of the ordinary person's access to government and ability to obtain redress.⁷⁶

Other bodies aimed at strengthening the rights of citizens include the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General and the Electoral Commission.

RELATIONS BETWEEN ARMS OF GOVERNMENT

The Constitution allocates particular responsibilities to the different arms of government. The doctrine of the separation of powers is one of the checks and balances introduced to ensure that power is distributed between the different arms of government. Power is divided between the executive, the legislature and the judiciary.

The most complex of these relationships is between the executive and the legislature. The legislature is the body vested with the power to make laws.⁷⁷ However, while the legislature may, after debate and discussion, adopt legislation, the executive takes primary responsibility for the formulation of policy⁷⁸ and the drafting of legislation.⁷⁹ Although the legislature may initiate or prepare legislation, this happens rarely.⁸⁰

As the body of elected representatives of the people, the legislature is also responsible for maintaining some measure of control over the executive.⁸¹ The executive is accountable to the legislature and is bound to report to the legislature on its actions.⁸² The Constitution makes explicit provision for the legislature to maintain oversight over the activities of the executive.⁸³

The third arm of government, the judicial authority, is "independent and subject only to the Constitution and the law".⁸⁴ The Constitutional Court, as the "highest court in all constitutional matters"⁸⁵ may, amongst other things, decide on the constitutionality of any Bill referred to it by the President or a Premier⁸⁶ and hear cases brought to it by individuals.⁸⁷ In a constitutional democracy, not only do the courts provide an important check on the legislature, they also allow individuals and groups the opportunity to test and enforce their rights. The result is that the courts often become directly involved in policy formulation or even implementation.

RELATIONS BETWEEN SPHERES OF GOVERNMENT

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 the 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 their nature, closer to the people they represent and their actions are more likely to affect the citizens of that province directly.

Political change at provincial level has been as dramatic as that at national level, perhaps even more so. The Constitution provided for the creation of nine new provinces as political entities, the setting up of new legislative institutions and the incorporation of the former homeland governments. Each province is represented in the National Council of Provinces in the national Parliament. These changes have given new weight to provincial politics and have increased the ability of provinces to wield influence in the national sphere.

RULES, PROCEDURES AND PUBLIC PARTICIPATION

The general principle in most parliamentary democracies is that Parliament makes its own rules and procedures. This is based on the notion that Parliament is a sovereign body, made up of the elected representatives of the people. The South African Constitution, however, provides some limitations to this principle. As we have noted, the Constitution requires that the proceedings of Parliament be held in public. Furthermore, public participation in parliamentary proceedings must be facilitated, a further restriction on the ability of Parliament to regulate its own procedures absolutely.

However, even though the Constitution accords the public a role in parliamentary proceedings, it is debatable whether this diminishes the ability of Parliament to regulate its internal arrangements. While the National Assembly and the NCOP must facilitate the involvement of the public, it will be for the courts to decide whether this means that the Constitution grants the public a right to participation.

PARLIAMENTARY COMMITTEES

An activist parliamentary committee system which allows unprecedented room for public participation is one of the hallmarks of South Africa's relatively young democracy. Starting tentatively in 1994 – with little experience to build upon – the committees are increasingly playing a key role in ensuring that government is by and for the people.⁸⁸

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, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, of the government departments falling within the category of affairs consigned to the committee. Moreover, a committee may summon any person to appear before it to give evidence or to produce documents required by it.⁸⁹

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. Moreover, committees encourage the development of individual and collective specialisation and wisdom in various policy fields, leading to better policies and laws and more effective oversight of the executive arm of government.

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 towards a more participatory model of democracy. Committees have become the critical institutional sub-structure through which the legislature and the public can interact. They constitute, therefore a key site for public participation.

Case Study: The Making of the Constitution

The Constitutional Assembly Public Participation Programme (CAPP) aimed to involve as large as possible a section of the population into the constitution-writing process. An important focus was to ensure that marginalised groupings had access to constitution making.

Six theme committees were set up by the Constitutional Assembly to collate and consider submissions from a wide variety of stakeholders, including organs of civil society, ordinary individuals, political parties and all those who had an interest in contributing to the new Constitution. The South African population was exhorted to participate in the constitution-writing process in hundreds of advertisements on buses, taxis and billboards, in newspapers, pamphlets and posters, and on radio and television ...

Popular participation ... was made possible by encouraging the population to make submissions in their own languages, resulting in approximately 2.5 million written submissions ...⁹⁰

All official languages were used in publications and advertising. Media with maximum outreach, like radio, was used to carry messages, particularly to rural communities. An education programme was run in all provinces and thousands of public meetings were held in rural areas. In addition, national sector hearings were held in order to ensure the participation of organised sectors, providing them with an opportunity to engage directly with the drafters on particular issues.

Overall, the Constitutional Assembly displayed a commitment to engage directly with all members of the population, not only those who were already in a position to impact on policy. The national hearing on socio-economic rights, for example, had a significant impact on the eventual content of the Bill of Rights.

SECTION 2 PUBLIC PARTICIPATION:

REFLECTIONS ON THE ENVIRONMENT

THE ROLE OF COMMITTEES

The role of ... committees ... is to ensure executive accountability to an informed Parliament. Committees provide an important space for intervention by minority parties and the public, so increasing opportunity for informed public debate on policy and legislation.⁹¹

The model adopted by the national Parliament provides an example of a committee system that has been structured to meet its constitutional obligations.

The National Assembly has twenty-five portfolio committees, each of which focuses on the work of one of the twenty-five government departments. The NCOP has eleven select committees, nine of which broadly correspond to clusters of government departments. Both the National Assembly and the NCOP have committees that deal with private members' legislative proposals. There are also joint committees, ad hoc committees and 'housekeeping' committees. Party political representation on committees is proportional to the number of seats each party has in Parliament. This allows for the views of the minority parties to be heard and taken into account. In two instances in the present National Assembly, committee chairs are members of minority parties.

COMMITTEES AND EXECUTIVE OVERSIGHT

The Constitution requires that the National Assembly "provide for mechanisms ... to ensure that all executive organs of state in the national sphere of government are accountable to it" and "maintain oversight of ... the exercise of national (provincial) executive authority ... and any organ of state".⁹² The provincial legislatures are granted similar rights and obligations in respect of the provincial executive and other bodies.⁹³ Oversight is exercised through the various committees in the legislatures and is essential to the fulfilment of the values of accountability, responsiveness and openness enshrined in the Constitution.

Although the NCOP has no formal oversight role, the Constitution grants it certain powers to summon people to give evidence or produce documents; require any institution or person to report to it, and "receive petitions, representations or submissions".⁹⁴ It has been pointed out that, while the Constitution does not explicitly require the NCOP to perform an oversight function, "various provisions leave no doubt that the NCOP must exercise oversight as defined by its constitutional mandate."⁹⁵ The power that the oversight role gives to the National Assembly and the legislatures may be illustrated by the relative weakness of the NCOP in this respect (see further Chapter 7).

UNDP has noted that, if the National Assembly is to continue to monitor the work of the executive effectively, some changes to the present structure may be necessary. Increasingly, there is a tendency for the executive to establish interdepartmental committees to consider policy of common concern. President Thabo Mbeki has introduced a system of collaborative cabinet clusters that bring ministries together in order to promote better co-ordination of policy and a more efficient use of resources. It has thus been argued that, "If they are to maintain effective policy coherence and oversight of the executive, parliamentary committees will need to respond and adapt to these changes".⁹⁶

Another problem raised by UNDP is a lack of clarity both on how and when the executive can be called to report to Parliament and what the nature and content of that reporting should be. The Report calls for "regulations or even legislation to clarify procedures for parliamentary oversight".⁹⁷ A report prepared for Parliament by the Faculty of Law, University of Cape Town,⁹⁸ stresses the need to strengthen the means available to the legislatures to ensure accountability. Amongst other things, it recommends a change to the present practice of funding the various "state institutions supporting constitutional democracy" via the budget vote of departments of State and suggests that "legislation be considered to guarantee the independence and accountability of constitutional institutions". The report also recommends the establishment of a Parliamentary Standing Committee on Constitutional Institutions to scrutinise the reports of the constitutional bodies and make recommendations on their budgets to Parliament.

Committees are likely to be assisted in their oversight role by the new Public Finance Management Act, which requires that government departments set performance targets for delivery and for individual managers. By providing a framework for assessment, committees will find it easier to exercise their oversight function.⁹⁹

COMMITTEES AND PUBLIC PARTICIPATION

There is a need for Parliament to access people who have something different to say.¹⁰⁰

It has been noted that 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.

However, for the reasons outlined in Chapter 4, the system tends to favour those with the resources to attend and make submissions at public hearings. Committees in the National Assembly are making efforts to remedy this situation. National Assembly Chairperson of Committees, Johannes Mahlangu says that:

Parliament is currently trying to make provisions in its budget to enable those without funds to travel to Cape Town to make presentations ... and is also looking at the possibility of going out to the people in order to hear their views.¹⁰¹

As discussed below, the Gauteng Provincial legislature has demonstrated its commitment to public involvement through its law on public petitions. However, in its assessment of public participation in the activities of the legislatures, the UNDP report note

that legislatures and civil society presently have very limited opportunities to contribute to the formulation of the national budget. It recommends, amongst other things, that:¹⁰²

Parliament be given amendment powers in line with international best practice, which suggests, as a minimum, the power to decrease expenditure and increase tax.

Portfolio committees be given the power to suggest amendments in the plenary session.

The draft budget be released in December or January to allow Parliament and civil society sufficient time to voice their concerns and develop alternative proposals.

More time be allocated for committee debate relative to general debate in the plenary session.

GENERAL CONSTRAINTS ON COMMITTEES

There are a number of general constraints on the optimal functioning of committees. Perhaps the most obvious of these is the inadequacy of budgets and staffing in the legislatures. This means that some committees inevitably work better than others. In the National Assembly, for example, one researcher is shared by three committees,¹⁰³ despite the fact that:

We have worked through a legislative programme that is more intense than in any parliament in South Africa in the past and probably in the world.¹⁰⁴

Another constraint relates to the power and importance of the political party in Westminster-style systems, particularly where the ruling party is politically and electorally strong. In such systems, members of the national cabinet and provincial executive committees are also members of their respective legislatures. The effect is to blur the separation of powers between the executive and the legislature, thereby weakening the institutional framework. On the plus side, however, Cabinet is likely to be more directly accountable to Parliament, and its members more accessible to MPs and thus public concerns. The point has been made, however, that:

Members of Parliament (MPs) are constrained by the need to balance political oversight of the executive with the need to understand and take into account the fact that the executive is under immense pressure from very powerful vested interests. Indeed, MPs themselves may experience similar pressures.¹⁰⁵

The effect of a powerful majority party is not necessarily to weaken the public participation process. Indeed, the reverse may be true, especially where the majority party is able to commit itself without reservation to the practical implementation of an extensive public participation process. Public participation may, however, be weakened if party managers and strategists are persuaded, for strategic or other political reasons, that meaningful public consultation should be kept to a minimum. Should this happen, the current electoral system, in harness with the fundamental institutional weaknesses of a Westminster-based parliamentary system and the relative dominance of a majority party, could well result in a decline in public participation. The public participation process needs to be designed with this in mind. It should be robust and as independent as possible of party political pressures.

Case Study: Bringing science and technology closer to the people¹⁰⁶

The Portfolio Committee on Arts, Science, Culture and Technology, chaired by Dr Wally Serote, has developed a programme that aims not only to bring people closer to the legislative process by helping demystify science and technology, but also draws on the rich cultural traditions and indigenous knowledge of the people.

The Indigenous Knowledge Systems Programme seeks to codify indigenous knowledge, protect and promote indigenous knowledge within a legal framework and harness indigenous technology in rural development and international trade. The committee has been collecting indigenous knowledge systems, including engineering and farming practices, soil and water conservation, wild food products, fermentation techniques, storage, medicinal products, energy systems, arts, crafts and musical instruments.

In this very real sense, the knowledge, the expertise and the cultural forms of often-neglected sectors of our society are drawn into the mainstream of political and economic life. Programmes such as this contain a promise that, one day, people will participate in the affairs of state, not as outsiders, nor as supplicants or people requiring special training and support, but as equals participants in the national project.

SECTION 2 PUBLIC PARTICIPATION:

REFLECTIONS ON THE ENVIRONMENT

THE ROLE OF THE NCOP AND PROVINCES

The decentralisation of power and decision-making offers greater potential for the representation of women and diverse interests. This is not, however, an automatic consequence. Participation in mainstream social, political and economic activity depends on the types of choices and access to opportunities that are made available to the poorest people.¹⁰⁷

The enhanced role of provinces has resulted in a number of challenges. The system offers new opportunities in shaping the direction and role of national and provincial government.¹⁰⁸ However, the new provincial legislative and executive structures have placed a variety of complex demands on politicians and officials, who have been forced to confront issues and practices without recourse to precedent.

THE NCOP AND SECTION 76 BILLS

The role of the NCOP and provinces in vetting legislation is a case in point. Given the relatively limited range of exclusive provincial powers,¹⁰⁹ the area in which the provinces have the greatest impact is in the realm of concurrent (or shared) national-provincial powers – in other words, powers that affect the provinces.¹¹⁰

Section 76 bills (so named because Bills that affect provinces must be passed in accordance with section 76 of the Constitution) offer provinces the greatest opportunity to influence law and policy on socio-economic transformation. The NCOP must refer section 76 bills to the provincial legislatures and the amendments proposed by each province must be considered. Each ten-person delegation has one vote, for which a mandate must be given by the provincial legislatures.

The fact that the NCOP must obtain mandates on some national legislation in itself opens up a significant opportunity for public participation. For the first time, national legislation is being debated in the provinces, giving the public the opportunity to impact on national policy in the provincial legislatures.

However, concern has been raised about the amount of time allowed to provincial legislatures and the NCOP when dealing with section 76 Bills and the impact this has on public participation. Usually, provinces have a relatively short period of four weeks to give feedback to the NCOP. This puts considerable pressure on provincial legislatures which must not only mandate their NCOP delegations in line with the requirements of section 76, but which may wish to arrange an extensive public participation process before doing so.

The relationship between the procedures laid down for section 76 bills and the requirement for public participation needs further consideration.

THE NCOP'S POWER TO COMMAND THE PRESENCE OF MINISTERS

As noted above, the NCOP has a lesser role in demanding accountability from the executive. The lesser influence of the NCOP in commanding the presence of Ministers was illustrated when, in March 1998, the then Chairperson of the NCOP, Lesuia Lekota, took Cabinet Ministers to task for what he described as a "dismissive" attitude to the NCOP. He charged that several Ministers had absented themselves from the House during regular question time and had also failed to draft written responses to tabled questions. When the Ministers responsible for the Adjustments Appropriation Bill failed to turn up to deal with questions relating to the Bill, sending the Minister of Finance in their place, the Chairperson postponed the matter, insisting that the relevant Ministers present themselves to the House. In an interview, he later said:

They tend to speak of the Assembly as though that is the whole of Parliament ... There was even an attitude prevailing at the time that the NCOP had no oversight role. Clearly, this reflected a failure to understand the important role of the NCOP. We had put up with the situation for over a year.

Ministers would not attend and did not send apologies. We had suffered this humiliation in the NCOP for the better part of a year.¹¹¹

Lekota pointed out that, after tempers had cooled and reason prevailed, "there was total agreement that it was the necessary and correct step to have taken".

The Report of the Faculty of Law, University of Cape Town, provides some guidance on the role of the NCOP in respect of oversight:

The NCOP is constitutionally enjoined to represent provinces in the national sphere, and local government is also represented in the national sphere by the NCOP. Thus, the NCOP is not to oversee all of national government; it is to exercise oversight over the national aspects of provincial and local government. Its goal in doing this is to contribute to effective government by ensuring that provincial and local concerns are recognised in national policy making, and that provincial, local, and national governments work effectively together. In this way the NCOP needs to respect the oversight roles of both the provincial legislatures and the National Assembly. A provincial legislature must conduct oversight of the provincial executive. This will include oversight of programmes contained in national legislation that the provincial executive is expected to implement and for which the province receives national funding. The National Assembly is primarily responsible for overseeing the national executive. However, neither provincial legislatures nor the National Assembly are in a position easily to identify and act upon problems with those national policies that are implemented by provincial executives. The NCOP is uniquely situated to fulfil this role.¹¹²

THE NCOP AND SALGA

The opportunity for national representation of the views of citizens was increased by the passage of the Organised Local Government Act, which created the South African Local Government Association (SALGA). Each of the nine provincial local government associations nominates up to six delegates to a national pool, from which SALGA's national executive chooses delegates to participate – depending on the issues arising from legislation. These delegates make up a pool of fifty-four who participate (although they may not vote) in the NCOP.¹¹³ The significance of SALGA was emphasised by Mohammed Bhabha of the NCOP:¹¹⁴

Clearly the status of local government has been elevated to that of a key player in government. It has become an intrinsic element of policy-making in this country. This is in recognition of the key role local government will play in the development of the country and in deepening participatory democracy. It stands as a monument to the ideals for which our people fought to ensure that their voices, however humble, will be heard no matter how hallowed the corridors of power may be.¹¹⁵

PUBLIC PARTICIPATION: NCOP OR PROVINCIAL LEGISLATURES?

The approach the NCOP has adopted on public participation is that this should take place in the provincial legislatures. Thus, mandates reached by the provincial legislatures¹¹⁶ should be informed by the views of the public in each particular province. The two biggest difficulties provinces face are resources and time. As noted above, the four-week cycle demands very tight planning and hardly affords the time to prepare for large-scale public participation.

Select Committees do, of course, sometimes attend joint public hearings with their counterparts in the Assembly. There is also nothing in the NCOP Rules to prevent Select Committees from holding their own public hearings.

At an NCOP workshop in November 1998, provinces called on the NCOP to play a co-ordinating role concerning public participation. It has also become clear that public participation in the NCOP cannot succeed without an extensive public education programme. Without this, the NCOP risks being what its present Chairperson, Naledi Pandor, has described as "an invisible institution".¹¹⁷

Despite these and other efforts, it is clear that the public remains largely unaware of the opportunities for public participation at the provincial level. According to the HSRC Survey conducted in September 2000, almost nine out of ten South Africans said that they had insufficient or no knowledge about the functions of provincial government, 89 percent never attend a public hearing of a provincial legislature and more than 90 percent never make written submissions to public hearings at provincial legislatures.¹¹⁸ Significantly, focus group interviews conducted in March 1999

demonstrated "a direct relationship between lack of knowledge about the role of provincial legislatures and willingness to participate".¹¹⁹

The Constitutional Assembly process described in Chapter 5 offers valuable lessons for a culture of broad involvement and participation. Applied in the provinces, these lessons could assist in enhancing the legitimacy of provincial government.

**SECTION 2
PUBLIC PARTICIPATION:**

REFLECTIONS ON THE ENVIRONMENT

THE ROLE OF THE EXECUTIVE

Lawmaking has its roots in policy. In pursuing the argument that participation by the public must extend beyond that of simply casting a periodic vote at election time, it follows that the executive must engage with the public when drawing up and formulating policy. It is not sufficient, as it may be in a purely representative democracy, for the government simply to formulate policy in accordance with its party manifesto. As described in Chapter 5, the Constitution obliges the executive to respond to the needs of the people and encourage the public to participate in policy-making.¹²⁰ It also stipulates that "transparency must be fostered by providing the public with timely, accessible and accurate information".¹²¹

Indeed, as discussed later in connection with older democratic systems where no such constitutional obligations exist, it is often simply more efficient to consult the public before drawing up policy. It has been argued in South Africa too that it is at the policy making and legislative drafting stages that public input may prove most valuable. This is, after all, when the aims and objectives of the legislation are established and the mechanisms to achieve them mapped out.

Generally speaking, policy is conceptualised by the executive. The policy formulation process is usually a two-step process, including a (discussion) Green Paper, which is published for comment and a (policy) White Paper. The process whereby a Green or White Paper is drawn up is often a lengthy one and may involve consultations within the department responsible for making policy in the area, with the relevant parliamentary committee(s), with other experts or stakeholders and with the public.

The publication and dissemination of Green and White Papers help promote public involvement in policy formulation. Despite time and cost implications, this is certainly a worthwhile investment. Public involvement in policy formulation and the subsequent drafting of legislation makes it more likely that laws will be respected and obeyed. Certainly, the public participation processes followed by the Constitutional Assembly during the drafting of the Constitution appear to have resulted in a founding document that is widely accepted and used.

Legislation, whether or not it is preceded by a policy paper, is also generally drafted by the executive. The public is seldom involved at this stage, although there are some exceptions to this rule.

A Case Study: Drafting Policy in a Co-operative Way¹²²

Although the development of policy is generally considered the prerogative of the executive, the White Paper on Local Government was drafted through a process that involved both the executive and legislative levels of all three spheres of government.

The drafting team consisted of a political committee, consisting of members of the national and provincial legislatures and two local councillors, and a technical committee, consisting of representatives from local government, civil society organisations, researchers and civil servants.

A three-phase process was devised, with comment periods for each.

One of the most comprehensive examples of a public participation and consultation in policy and legislative drafting is provided by the extensive work of the Project Committee on Juvenile Justice of the South African Law Commission on the Child Justice Bill. The methodology adopted by the project committee will be described in some detail as it contains all the elements required for a successful public participation process and, therefore, offers a useful model on which to base other efforts.

The purpose of the project was to develop a procedural and legislative framework to deal with young offenders and accused. Following South Africa's ratification of the Convention on the Rights of the Child in 1995, there was deepening concern about the treatment of juveniles in the justice system.

The challenge was to create a framework that, first, conformed to South Africa's constitutional requirements and international obligations with respect to children; second, was realistic, affordable and workable, and third, that took account of public alarm about rising levels of crime and the perceived failure of the justice system to deal with young accused and offenders.

From the outset, the project committee was acutely aware that the successful transformation of the child justice system would need the understanding and support of all stakeholders. Those targeted included experts, officials and practitioners throughout the criminal justice and social welfare systems, government departments, NGOs, parliamentarians and the media. Uniquely, a workshop was arranged to consult the views of child offenders, considered by the project committee to be "experts in their lives".¹²³ Every aspect of the legislation was considered, including a careful costing of the proposed system.

Funding was raised to make a video, conduct special briefings and run workshops throughout the country, targeting both general and specialist audiences. Particular attention was given to ensuring that audiences understood what was being proposed so that they were able to comment in an informed manner. Thus, a plain language summary of proposals and a questionnaire identified and explained key issues, while members of the project committee attended and assisted at all workshops. The media were kept informed throughout.

The consultation with the children provides an excellent example of how public participation can strengthen policy and legislation.

Case Study : Consulting the Children¹²⁴

Article 12 of the Convention on the Rights of the Child requires that "State Parties shall assure to the child who is capable of forming his or her own views freely in all matters affecting the child the views of the child be given due weight, in accordance with the age and maturity of the child".

The project committee on juvenile justice wanted to test its ideas about a future child justice system with the very people it would most affect – children themselves. In order to do this, the project committee teamed up with the National Institute for Crime Prevention and Reintegration of Offenders (NICRO). The aim of the project was to explain the proposals to the children, and to hear their opinions on it. A broad spectrum of children was involved, from a range of different socio-economic backgrounds. All, save a control group of children who had had no contact with the criminal justice system as alleged offenders, had been accused of having committed a crime. Some were in a diversion programme; some were over the age of 14 years and awaiting trial in a welfare-run care facility; some were below the age of 12 years and awaiting trial in a welfare-run care facility; some were awaiting trial in prison; some were serving prison sentences, and some were serving sentences in a reform school.

The children were asked to respond to a range of different questions.¹²⁵ For example, the draft Bill proposes a range of diversion options, including "orders" which can be made by the magistrate. The project committee was sensitive to the fact that some of these orders might be seen as being rather restrictive of children's rights, and felt that it was very important to get their opinions on these. The orders include supervision orders, compulsory school attendance orders, family time orders and positive peer association orders.

Seventy percent of the children responded positively to the idea of supervision orders, saying things like "Yes, because it was gonna help me to be more responsible and aware of the people I associate with" and "It would keep me out of more trouble". Some (29.3%) felt that it would not have a strong enough impact and that children would be likely to commit further crimes.

Most of the children felt that a compulsory school attendance order would be useful. They commented as follows: "It will keep me busy"; "It could take my mind off bad things"; "Because you are every day at school, away from the street"; "It would have been better because in places like this (a reform school) many things that is bad happens here."

Family time orders require children to be at home with their families at certain times. For example, a child might be required to be home by 5pm and stay at home for the evening on weekdays. Again, the majority of children felt that this would be useful. Some added additional requirements such as:

"Spending most of your time helping around the house".

Positive peer association orders proved to be the most controversial. Just over half of the group thought they were a good idea, recognising that bad friends are often the reason children get into trouble. However, 44.8 percent raised concerns about these orders, saying that a person's friends cannot be chosen for them, and that they would be "very difficult to monitor".

The project committee found the feedback from children regarding the orders very useful, and a number of the concerns they raised were dealt with in the final version of the Bill.

The comments from children about the sentencing provisions in the draft Bill were interesting. Perhaps their views were influenced by the limited options currently available, but they were generally rather retributive in their suggestions for sentences for children committing serious crimes. Most of them opted for long periods of imprisonment; a small number felt that the death penalty was appropriate, and one or two of them even felt that severing of limbs might be appropriate. In order to understand these unexpected responses properly, we would need to know a lot more about the children and their particular situations. Clearly they did not see themselves as the people needing to be dealt with in this harsh way. Perhaps they actually see themselves more as victims than as offenders.

The fact that the project committee offered a range of sentencing options that were more progressive than the children's suggestions raises an important question; "What weight should be given to the views of children?" The intention of the committee was to conduct a genuine consultation process whose results would affect the final outcome. This meant we had to take children's views seriously. At the same time, the Convention and the Constitution require us to make the best interests of children paramount, and to ensure that our system uses imprisonment only as a measure of last resort.

In a postscript to a judgment (Christian Education South Africa v Minister of Education) of the South African Constitutional Court, Justice Albie Sachs remarks that it was unfortunate that the court had not had the benefit of hearing the views of the children who would have been affected by the decision. He continued: "Their actual experiences and opinions would not necessarily have been decisive, but they would have enriched the dialogue, and the factual and experiential foundations for the balancing exercise in this difficult matter would have been more secure".

It can be said that the participation of children in the lawmaking process in South Africa has enriched the dialogue and has, in fact, gone further. A member of the project committee, writing about the children's participation process, has said: "The children's views have been reflected fully in the final Law Commission report. Their insights have influenced several provisions directly, and many others indirectly. As a first for law reformers in this country, an important benchmark towards hearing the voice s of children has been set."¹²⁶

The Child Justice project brings together many of the elements identified as crucial to successful public participation. It contained a strong public education component; it involved active outreach to a wide variety of affected sectors and stakeholders; it took careful steps to ensure that those targeted understood and were therefore able to comment on the issues raised, and it took those comments and views into account. In doing so, the project was also able to identify potential problems, test procedures and consider cost and other implications, thereby arriving at a legislative framework that takes account of all aspects relating to its implementation.

**SECTION 2
PUBLIC PARTICIPATION:**

REFLECTIONS ON THE ENVIRONMENT

OTHER INSTITUTIONAL ARRANGEMENTS AFFECTING PUBLIC PARTICIPATION

Effective public participation depends not only on dedicated institutions and procedures but on the creation of a broader environment in which general rights can be exercised and the empowerment of marginalised groups pursued. This chapter deals briefly with some of these institutions and arrangements in order to highlight the role they play in strengthening and promoting the transformation of society as a whole. In so doing, they underpin the right of all South Africans to a voice in the decisions that affect their lives.

THE ROLE OF THE JUDICIARY

People should have easy and unhindered access to courts, particularly to enforce their fundamental rights. Any existing procedural obstacles to access to justice should be removed.¹²⁷

The judiciary, as the third arm of government, has a critical role to play.

Citizens can use the courts to enforce their rights against government and others and, in this way, may influence the manner in which policy is implemented. With the adoption of the Constitution, this right has been greatly extended. Constitutional litigation offers citizens a fairly direct way of intervening and thus participating in the implementation of government policy. Indeed, public interest litigation, used in a limited way during the apartheid years, is now thriving in South Africa.

The fact that the Bill of Rights contains socio-economic rights, which are enforceable to a limited extent, creates further scope for citizens to use the courts to shape government policy.

Case Study: the Grootboom case¹²⁸

There has been much debate about whether the courts can enforce the social and economic rights in the Constitution. This was put to the test in what became known as the Grootboom case heard by the Constitutional Court in October 2000.

Irene Grootboom is one of a destitute group of 510 children and 390 adult squatters stranded on a sports field in the Oostenberg municipality of the Western Cape. Judge Zac Yacoob, in a judgement supported unanimously by the other ten judges, described their living conditions as "lamentable". The court ruled that the state has an obligation to implement an effective housing plan and to provide emergency shelter to destitute people.

The judgement has major implications for Government policy on housing, social services, health and welfare. Geoff Budlender, who argued the case in the Constitutional Court on behalf of the Human Rights Commission and the Community Law Centre of the University of the Western Cape, said:

The Constitution says the government must take 'reasonable' steps to achieve the right of access to adequate housing, water and health services ... The courts will decide whether the government's programmes comply with its duties under the Constitution. This does not mean that the courts will take over the business of running the government. It is for the government to decide how to perform its constitutional duties.

In the Grootboom situation, the government must decide what land should be made available to homeless people, how they should be assisted to obtain effective shelter, and how basic services should be provided to them. But what the Grootboom decision means is that if the government does not make these decisions and implement them effectively, the court will order it to do so.

The decision also means that for government programmes to be 'reasonable' and meet the requirements of the Constitution, they must cater for the requirements of people who are in desperate need.

Special legislative provisions, such as the procedures for public inquiry laid down in the Administrative Justice Act (sections 6-8); the establishment of Children's Courts proposed in the Child Justice Bill and of special courts set up to deal with sexual offences and maintenance matters are all designed to promote better access to and exercise of rights.

It goes without saying that the way in which these institutions conduct themselves with regard to the public and the efforts they make to ensure that their proceedings are easy to access and understand is crucial.

THE ROLE OF INSTITUTIONS SUPPORTING DEMOCRACY AND OTHER BODIES

Chapter 9 of the Constitution provides for the establishment and lists the duties of state institutions aimed at strengthening democracy. These institutions are established by legislation and are accountable to the National Assembly, to which they must report at least once a year.¹²⁹

Public Protector

The role of the Public Protector is to investigate and report on "any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice", and to take remedial action where appropriate.¹³⁰ The effectiveness of this office depends, crucially, on its ability to reach out to communities throughout South Africa. In May 1999, the Public Protector launched a national public awareness programme, funded by the European Union Foundation for Human Rights in South Africa and targeting the public service, government agencies and parastatals and NGOs active in rural areas.

The project aims ultimately to increase the ability of the target groups to access the office of the Public Protector through having an informed Public Service and by empowering rural communities to seek redress and be protected against corruption and malpractice more effectively.¹³¹

Mr Eduardo Menem President pro tempore, Senate of Argentina has underlined the importance of this function internationally:

To safeguard the balance between the three powers, many states have put in place formal institutions to deal with possible conflicts between the citizens and the government or between the three branches. Based on an outstanding Nordic tradition, Argentina has established the Office of the Ombudsman that reports to the national parliament. The role of this body is to protect the interests of the citizens, groups of citizens and the community in general in the face of any government act that violates the fundamental rights of citizens. The results of this institution in Argentina have been very promising. Its existence has also allowed for greater participation of the citizenry in the oversight mechanism. In some countries, the Ombudsman reports to the executive branch. But the experience from Argentina supports the general view that this institution should report to the legislative branch.¹³²

The South African Human Rights Commission

The South African Human Rights Commission has a broad mandate, which involves the promotion and monitoring of human rights in South Africa. It has powers to investigate and secure redress, and to carry out research and educate. It must also require the state to provide it with information on measures taken towards the realisation of rights concerning "housing, health care, food, water, social security, education and the environment".¹³³ The Commission may also be granted "additional powers and functions prescribed by national legislation".¹³⁴ Thus, for example, the Promotion of Access to Information Act requires that the SAHRC perform various functions including the publication of a guide on how to use the Act and reporting annually to the National Assembly. It must also, "to the extent that financial and other resources are available", provide other services, including the provision of assistance and advice and "develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act".

Commission on Gender Equality

The Commission on Gender Equality (CGE) includes amongst its functions "the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality".¹³⁵ South Africa is a signatory to CEDAW and participated in the Beijing Platform of Action. It has thus

committed itself to observe international requirements in respect of women. The CGE acknowledges the need for public participation. Thus:

In the execution of its duties, the CGE will endeavour to bring to the centre the voices and experiences of the marginalised, to become part of, and to inform, the nation building and transformation agenda of South African society.¹³⁶

Its Action Programme 1999-2000 contains a number of educational and outreach elements. Projects are undertaken in partnership with other organizations. The CGE is, however, concerned about the lack of resources to promote the rights of women.¹³⁷

It also expresses concern about the "major challenge" of establishing good working relationships with the Office on the Status of Women (OSW)¹³⁸ and the Houses of Traditional leaders at National and Provincial levels. "If we are to make a success of our mandate to promote and protect gender equality in the rural areas this sector is crucial."¹³⁹

The Independent Communications Authority of South Africa

The Constitution also makes provision for an Independent Authority to Regulate Broadcasting (IBA). In 2000, the Independent Communications Authority of South Africa (ICASA) replaced the IBA, also subsuming the South African Telecommunications Regulatory Association (SATRA). The IBA is charged with ensuring "fairness and a diversity of views broadly representing South African society".¹⁴⁰ One of its most important duties in respect of the promotion of public participation is the licensing of community radio stations in a manner that promotes community empowerment, the dissemination of information and opportunities for ordinary citizens to express their views.

Other institutions and bodies with a bearing on public participation

It is difficult to be exhaustive about institutions and bodies with a bearing on public participation.

Other Chapter 9 institutions include the Electoral Commission, which obviously has a key role to play in ensuring that citizens are able to exercise their formal voting rights during regular "free and fair" elections. The proposed role of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, also required by the Constitution, is to "promote respect for the rights of cultural, religious and linguistic communities" and "promote and develop peace, friendship, humanity, tolerance and national unity" amongst these communities.¹⁴¹ This Commission has not yet been established, although draft legislation is before Cabinet.¹⁴² Like the Office of the Auditor-General, also required under Chapter 9, it has no direct bearing on public participation. The important point, however, is that these bodies "are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year".¹⁴³ This puts their activities and accountability firmly in the public domain. As discussed above, the report prepared by the Faculty of Law of the University of Cape Town has made recommendations on ways to strengthen parliamentary oversight of these institutions.

Of the numerous other bodies, commissions and task groups set up by government, two are of particular relevance to public participation: the National Economic Development and Labour Council (NEDLAC) and the Government Communication and Information System (GCIS).

NEDLAC is a product of worker struggles in response to the 1988 attempt by the Nationalist party government to amend the Labour Relations Act (LRA) in an effort to curb union power. Finally, in 1990, unions, employers and government signed the Laboria Minute, in terms of which it was accepted that all future labour law would be considered by employer bodies and the major union federations before it was sent to Parliament. As part of the agreement, unions would participate in the National Manpower Commission (NMC), reconstituted as a more powerful body. A second impetus was the apartheid government's attempt to impose Value-Added Taxation (VAT) in late 1991. Labour demanded a role in the formulation of macroeconomic policy. This gave rise to the establishment of the National Economic Forum (NEF) in 1992. When the first democratic government was elected in 1994, NEDLAC was created by an Act of Parliament (Act 35 of 1994), taking over the role of the NMC and the NEF. According to then President Nelson Mandela, speaking at the launch of NEDLAC:

Democratisation must reach beyond the narrow governmental domain ... [NEDLAC] represents the broadening and deepening of our democracy, by directly engaging sectors of society in formulating policies and in managing institutions that govern their lives.

Relations between business, government and NEDLAC have shown signs of strain. UNDP attributes these to a combination of factors, including the immaturity of the institution, a lack of capacity amongst the various constituencies, weak links with mandating constituencies, disagreements about whether or not economic policy should be discussed by NEDLAC and the lack of a united strategic vision.¹⁴⁴ Intersecting relationships also complicate the picture, such as the now fairly tense relationship between Cosatu and the ANC in the Tripartite Alliance and the inclusion of Cosatu members on the ANC list. There have also been criticisms that NEDLAC undermines the sovereignty of Parliament.

The GCIS was set up in terms of the recommendations of the Task Group on Government Communications (COMTASK) which reported to the then Deputy President, Thabo Mbeki in October 1996. The report¹⁴⁵ noted that:

In South Africa, where government's attempts to open up such a relationship are as young as our democracy itself, and where the majority of the population has never experienced (and is still indeed generally not experiencing) such a relationship, the challenge is great. Where other democracies have had the advantage of a long evolution of ideas and practice, trial and error, South Africa urgently needs to do, in a short period of time, what other democracies have had years to perfect. In short, we must preserve and nurture our fragile democracy, and we must build a human rights culture through the length and breadth of our society.¹⁴⁶

The Report:

takes account of the fact that large parts of our society are information deprived. The worst scenario can be seen in our remote rural areas where some 30% of South Africans – the majority of them women – live poor, isolated and out of touch with the rest of the country and, hence, with democracy itself.

No task is greater or more pressing than finding ways to alleviate the isolation of those who, through apartheid, poverty and present circumstance are deprived of the information with which to take control of their lives and enter into dialogue with government.¹⁴⁷

The Report recommended a new structural framework for government communications, replacing the politically-tainted South African Communication Service that had been extensively used as a propaganda arm of the former regime. Underlying all the recommendations of the report was the need to reach, by a variety of means, the entire South African population, in order to bring them into dialogue with government. The GCIS was established in 1997 under the direction of the Office of the President.

As the communication arm of government, its role is, amongst others things, to serve the information and communication needs of all South Africans.

POLITICAL PARTIES AND THE ELECTORAL SYSTEM

There are various aspects of the electoral system that have a bearing on public participation.

In the South African electoral system of proportional representation based on party lists, it is the political parties rather than individual candidates who receive their mandate from the public. The political party lists determine who the individual representatives are. The advantage of this system is that it binds representatives more strongly to party policies and programmes; the disadvantage is that it may result in a lower level of personal, community and lobbying services than is generally offered by constituency-elected representatives. The onus is thus on the political party to ensure that such services are provided by, for example, allocating representatives to constituency offices. Many involved in the debate about the relative advantages and disadvantages of the proportional representation and constituency-based systems favour a combined approach.

All possible consequences will need to be carefully reviewed when considering a change. It is clear, for example, that the present system contains some important advantages for women, particularly as

the majority ANC has stipulated that one-third of the people on the party list should be women. In its Action Programme 1999-2000, the Commission on Gender Equality says that:

At present, South Africa boasts approximately 25 percent of women in the National Assembly and provincial legislatures and 18 percent women in local councils: some of the highest such proportions in the world.

The fact that the current proportional representation or list system, which favours the participation of women, will be reviewed post-1999 casts a dim light on the chances of achieving gender parity in political representation in the foreseeable future.¹⁴⁸

Inevitably, the party that holds the majority in a legislature plays a significant role. It has the capacity to control, not only decision-making itself, but also the rules that govern that process. Further, in a Westminster-based parliamentary system, where members of cabinet are drawn from the legislature, the parliamentary caucus of the majority party is a powerful forum in which the executive and the legislature are able to meet.

Furthermore, where the majority party has strong and efficient regional and local party structures, the wider party structure may provide a valuable network, linking individual constituents and communities with their elected representatives. Party structures can be used to ensure that local views and grievances filter up through the system as well as providing channels for the distribution of information on the ground.

At the same time, minority parties are accorded proportional representation in the House and on all committees. This ensures that they have regular opportunities to make their views heard. The system of proportional representation also ensures that small parties have a greater chance of being represented.

Finally, the South African national ruling party is part of an alliance with COSATU, the largest labour confederation in the country, and the South African Communist Party. This results in a broader public social agenda than is found in democracies in the United States and Europe. This further broadens opportunities for participation and interaction beyond the formal procedures and institutions of representative governance.

SECTION 2

PUBLIC PARTICIPATION:

REFLECTIONS ON THE ENVIRONMENT

THE ROLE OF LEGISLATION, REGULATIONS AND RULES

PETITIONS AS AN ASPECT OF PUBLIC PARTICIPATION

The right to petition government generally is recognised in section 17 of the Constitution.

Petitions allow individuals or groups to raise issues in a formal way without having to go through a particular member of the legislature. They are useful mechanisms for unorganised sectors of society to come together to raise particular issues for consideration by the legislative authority.¹⁴⁹

The Rules of the National Assembly provide a procedure for petitions.¹⁵⁰ According to the Rules, a person wishing to petition the legislature must approach an MP who must lodge the petition with the Secretary. The Secretary must submit the petition to the Speaker for approval. If approved, the Speaker must table the petition in the Assembly.

"Special" petitions are referred by the Speaker to the Committee on Private Members' Legislative Proposals and Special Petitions. These generally involve requests for variations of regulations on civil service pensions. If the request is approved, the Committee refers the petition to the Treasury for implementation.¹⁵¹ In the Eastern Cape legislature, there is a Petitions Office and a Standing Committee on Petitions. The Eastern Cape has recently advertised its petitions procedure and receives a variety of petitions ranging from issues relating to social welfare pensions to disputes between employees and government departments.¹⁵²

The Gauteng legislature has formalised the opportunity to petition the legislature by passing the Petitions Act of 1998. It is anticipated that regulations will be promulgated in March 2001. The legislature has established a Public Participation and Petitions Unit and a Standing Committee on Petitions and Public Participation. Education Outreach officers are employed to ensure that the public is aware of its rights in this respect. Mr Tsheburi, the Petitions Officer in the Legislature, sees petitions as being an important channel for public input after legislation has been passed. The legislature will also entertain petitions in respect of the 2002/03 provincial budget.¹⁵³ The Eastern Cape Legislature plans to follow the example of the Gauteng Legislature in 2001, when it will introduce a similar law on petitions.¹⁵⁴

Significantly, the Gauteng Petitions Act makes provision for assistance to be given to prospective petitioners. Thus:

4(2) The Administration support service must render assistance to any prospective petitioner who wishes to submit a petition to the Committee.

In South Africa, where language, illiteracy, poor educational background and lack of confidence and material resources stand in the way of participation in political processes, such assistance is a crucial way of ensuring that petitioners are assisted through the intricacies of the petition process. Such assistance might be more broadly interpreted as involving an obligation to provide infrastructural support such as transport and assistance with drafting a petition.

Thus, to a greater or lesser degree, there are procedures whereby the public may bring petitions to a legislature. The question is whether and how the public is making use of this opportunity. The Gauteng Legislature is currently assessing the effectiveness of this mechanism; while the Eastern Cape Legislature believes that, once the system matures and people come to understand the opportunities it presents, the number of substantive (rather than individual) petitions will increase. The Clerk of the Papers in the National Assembly acknowledges that no petitions of a general nature are currently received and that the potential to petition the legislature on general matters is not being used.¹⁵⁵

The Chair of the Portfolio Committee on Justice and Constitutional Affairs, Advocate Johnny de Lange, points out that there are a number of other ways in which members of the public or constituencies can use their MPs to approach the legislature, including asking for motions to be put in the House and raising issues for consideration.¹⁵⁶ This may well be the case where the right to bring a petition to a legislature is simply one of a number of ways in which a member of the public may apply to an MP for assistance in getting his or her views heard. Petitions laws, however, seem to open up what is perhaps a less intimidating way in which communities and less organised groups may approach legislatures about issues that concern them. Ideally, they provide a means whereby public comment and experience with regard to existing legislation, regulations and processes may be entertained or revisited.

OTHER LEGISLATION PROMOTING OR AFFECTING PUBLIC PARTICIPATION

A great deal has been written and said about public participation during the drafting of policy and legislation. Another area of interest relates to the right of the public to contribute to and participate in the implementation of laws and regulations.

Internationally, environmental legislation leads the field in this respect, probably because environmental lobbies challenged the prevailing power of established sectors and tend to be driven from the grassroots. The environmental lobby groups that came to the fore in the 'sixties and 'seventies operated from the "fringe" of the political order. Today, after over a quarter of a century of activism, including some prominent court cases, many of their arguments occupy centre stage; even though governments may still prove reluctant to confront powerful private sector interests to achieve what has become the conventional wisdom.

South Africa's National Environmental Management Act (NEMA) reflects the trend towards the broadest possible participation in national environmental affairs. Expanding on the constitutional principle that "Everyone has the right ... to an environment that is not harmful to their health or well-being; and ... to have the environment protected, for the benefit of present and future generations ..."¹⁵⁷, the Preamble of the National Environmental Management Act "develops a framework for integrating good environmental management into all development activities".

Not only does the framework require compliance by "organs of state" and the facilitation and promotion of "co-operative government and intergovernmental relations", it calls for "procedure and institutions to facilitate and promote public participation in environmental governance"¹⁵⁸. Further, "the law should be enforced by the State and ... should facilitate the enforcement of environmental laws by civil society"¹⁵⁹.

The close relationship between environmental concerns and governance is emphasised. Thus, "Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably"¹⁶⁰. Further,

The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.¹⁶¹

Two other important pieces of legislation are the Promotion of Access to Information Act and the Administrative Justice Act. Both are responses to constitutional provisions. The Bill of Rights requires that national legislation be enacted to give effect to the right to access to "any information held by the state; and ... any information that is held by another person and that is required for the exercise or protection of any rights".

Similarly, national legislation must be enacted to give effect to the "right to administrative action that is lawful, reasonable and procedurally fair".¹⁶⁴

The significance of this and similar legislation for public participation is clear. The Preamble to the Promotion of Access to Information Act recognises the need to "foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information (and) actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights". Further, one of the aims of the Act is to:

promote transparency, accountability and effective governance of all public| and private bodies by, including, but not limited to, empowering and educating everyone –

to understand their rights in terms of this Act in order to exercise their rights in relation to public and private bodies; (ii) to understand the functions and operation of public bodies; and

to effectively scrutinise, and participate in, decision-making by public bodies that affects their rights.

It is not, however, only legislation with a direct bearing on information and public participation that promotes citizens' involvement in decision-making processes. The Bill of Rights, contained in Chapter 2 of the Constitution, provides the framework for a legal system based on a culture of human rights. This means that all legislation must comply with the Bill of Rights and must, indeed, seek to promote the exercise of those rights. In this sense, any legislation aimed at advancing the rights of citizens contributes, directly or indirectly, to their empowerment as participating members of society. Thus, for example, by improving the socio-economic circumstances of citizens – their access to better health care, housing and water – their capacity to engage in issues affecting their lives is automatically increased. National education legislation has a critical role to play in advancing the ability of citizens to engage in public issues. By legislating for equality, as in the Promotion of Equality and Prevention of Unfair Discrimination Act, one promotes more equitable access to the opportunities provided for participation.

Thus, the promotion of public participation must be viewed within the much broader context of the transformation of the entire society.

STANDING RULES AND PUBLIC PARTICIPATION

The rules regulating Parliament need to conform to the requirements of the Constitution. The rules of the provincial legislatures must also comply with the national and (where it exists) the provincial constitution. Beyond this, a legislature may make whatever rules it decides are necessary in order to conduct its business.

The first point to note is that not all the rules of the provincial legislatures conform to the Constitution. For example, section 118(2) of the Constitution states explicitly that a provincial legislature may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

Yet there are a number of situations where the rules provide for public exclusion from committee meetings. For example, the chairperson of a committee in the Gauteng legislature may, in terms of its rules, order members of the public to withdraw from a committee meeting in terms of a resolution of that committee.¹⁶⁵ Presumably, such an order would be made in the context of section 118 ("unless it is reasonable and justifiable to do so in an open and democratic society"). However, until this rule is put to the test, it will remain unclear what circumstances justify the exclusion of the public.

The rules of the provincial legislatures reflect the different ways they have opted to deal with the constitutional obligation placed on them in terms of section 118. At the same time, it is clear from the data collected by IDASA that members of committees and staff involved in public participation processes are not themselves always clear on the rules. All those involved in the legislatures need to know how the committees work as well as the constitutional provisions relating to public participation. This will ensure that the rules are applied in a manner consonant with participatory democracy.

The ability of the public to engage in the legislative process may be limited by a number of factors, one of which is language. The Free State legislature has taken the initiative in this regard, requiring that notice and the "essence" of bills be published in the Provincial Gazette and the available public media in English, Afrikaans, Sesotho, IsiZulu and IsiXhosa. Members of the public are also advised that they may make representations to the Speaker.¹⁶⁶

It is clear that there is a fair degree of difference between the rules of different provincial legislatures. Does this matter? What is the impact of this on public participation processes? There is a strong case for a review of the rules and procedures to see whether they both comply with and optimise the opportunity provided by the Constitution. What is important and may well require further examination is the extent to which there is a divergence between the rules and what they require and the actual practice.

REPRESENTIVITY AND PUBLIC PARTICIPATION

It is recognised that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights. Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment or election.¹⁶⁷

Nothing about us without us! (Disabled People's Organisation) The Equality clause in the South African Constitution (section 9) establishes the principle that "everyone is equal before" and entitled to "equal protection and benefit by the law". Neither the state nor any person may discriminate "directly or indirectly" on grounds of "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth". The Equality clause also provides for action to "promote the achievement of equality", including national legislation to "prevent or prohibit unfair discrimination".

Although it seems obvious that effective representation depends on government institutions that are broadly representative of the society they serve and represent, women throughout the world still struggle for proper representation in political life. Over the years, there has been considerable international focus on strengthening the role of women in government. The Beijing Platform for Action, for example, states that:

Without the active participation of women and the incorporation of women's perspectives in all levels of decision-making, the goals of equality, development and peace cannot be achieved.

The issue of women in legislatures is regularly raised in national and international fora. At the 45th Parliamentary Conference in September 1999, for example, the question of whether Commonwealth legislatures should reserve one-third of seats in parliamentary chambers "to ensure a critical mass of representation by women" was raised.¹⁶⁸ The concern is well founded. At a symposium of Commonwealth women parliamentarians in the previous year, it was noted that the Commonwealth average of women in parliament was 7.2 percent and the international average 11.4 percent.¹⁶⁹ Again in 2000, at a conference on Transforming African Parliaments in the 21st Century, hosted by the

South African Parliament, the issue of women's participation in politics in the Commonwealth Africa region was again raised.¹⁷⁰

These debates are underpinned by national, international and regional obligations. In addition to the obligations imposed by the South African Constitution, the South African Development Community Declaration on Gender and Development, the UN Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration and Platform for Action all call for gender balance and women's participation in political and decision-making structures.

The representation of women in the South African legislatures is high in comparison to world standards. After the June 1999 elections, the proportion of women in the National Parliament was 29.3 percent and in the provincial legislatures 27.3 percent. Women in the NCOP constitute 33 percent. These figures are due in large part to the fact that the ANC requires that one in three candidates on its party lists are women. There have also been solid attempts to promote women within the structures of Parliament and the legislatures. Both the Speaker and the Deputy Speaker of the National Assembly are women, as is the Chairperson of the NCOP. However, as Thenjiwe Mtintso points out¹⁷¹, "access does not necessarily translate into participation". Warning against the tendency to measure the influence of women in mere numbers, she says:

Gender roles themselves do not automatically change for women when they enter Parliament. The expectations and the need to perform socially-defined women's roles continue.

She emphasises the fact that while:

It is critical that women should be mobilised to enter the sphere of Parliament and explode the myth of the incapacity of women to be decision-makers ... they should not only enter but should be agents of change of both the institution and society.

In the words of former ANC MP, Melanie Verwoerd:

We must go beyond numbers. We must stop making history and start making policy.

At the time of writing¹⁷², nine out of twenty-seven Ministers and six out of thirteen Deputy Ministers in the national Cabinet are women, giving women a direct role in high level decision-making. More significantly perhaps, women head ministries in what might traditionally be seen as the male sphere. The Ministers of Agriculture and Land Affairs, Foreign Affairs, Intelligence and Minerals and Energy are women; as are the Deputy Minister of Defence and the Deputy Minister of Minerals and Energy. Thus the common criticism that women are placed in 'soft' portfolios cannot be said to apply in South Africa.

An important initiative in this regard is the Women's Budget Initiative

Case Study: Women's Budget Initiative¹⁷³

The South African Women's Budget Initiative was born in mid-1995, approximately a year after the first democratic elections. It was driven by an alliance of parliamentarians and representatives of two non-governmental organisations. The parliamentarians were determined to introduce a gender focus to the work of the Joint Standing Committee on Finance of which they were members.

Over five years, the Initiative has published five women's budgets and a number of more focused studies. Three simplified versions (Money Matters) and a full set of workshop materials have been produced. Within two years of the Initiative's birth a parallel exercise was introduced within government, led by the Department of Finance.

Gender budget analysis is based on an understanding that budgets should follow policy rather than vice versa. Policy, in turn, should reflect the situation in the society. The Women's Budget does not propose a separate budget for women. Rather the exercise examines the entire government budget in order to determine its differential impact on women and men, girls and boys. It also emphasises differential impacts on different groups of women and men, along lines such as race, geography and income. Limited resources and seemingly unlimited needs pose the classic economic problem of resource allocation. This is what budgets are all about. The Women's Budget Initiative openly acknowledges that resources are not infinite. It does not simply argue for "more". Rather, whenever

proposing that "more" be allocated to women or gender-sensitive programmes and policies, it tries simultaneously to point out where savings can be made. In particular, it points to expenditures based on policies that may be subverting gender equity.

The South African Women's Budget Initiative has evoked widespread interest not only in South Africa, but beyond its borders. Over forty countries have launched their own budget initiatives. Many others have plans to introduce similar programmes. The Initiative has also provided inspiration to other interest groups which have investigated, or plan to investigate, the impact of the budget on groups such as children, rural people, the disabled and the poor.

Representation in respect of people with disabilities is also on the international agenda. At the Commonwealth conference hosted by the South African Parliament in 2000, one of the topics debated was the "transformation of Parliaments in CPA Africa Region to Accommodate Persons with Disabilities and the Need to Create Space for Members of Parliament Representing their Interests".¹⁷⁴

Shuaib Chalklen who heads up the Office on the Status of Disabled Persons in the President's Office reports that the South African legislatures have the highest percentage of disabled people in the world. The National Assembly has a Joint Monitoring Committee on the Improvement of Life and Status of Youth and Disabled Persons. However, a great deal of work needs to be done to make the legislatures barrier-free. Practical barriers to full participation range from a shortage of appropriately designed bathrooms and toilets to problems experienced by deaf representatives in the House itself. Disabled people are given little extra assistance in the legislatures and resources such as Braille or voice recorded documents are rare. Presence is a good start, however, and with real political power, disabled people can lobby for better working conditions.¹⁷⁵

Ms Wilma Newhoudt Druchen, the first deaf woman to be elected a Member of Parliament in South Africa describes the role she will play in reaching the deaf community and bringing new understanding to her colleagues in Parliament:

What I have learnt, the deaf will ask of me. I will have to inform them about how everything gets done here. There are older deaf people who never had the opportunity to find out about politics. It is also a learning experience for Parliament to have a deaf person in the Assembly.¹⁷⁶

**SECTION 2
PUBLIC PARTICIPATION:**

REFLECTIONS ON THE ENVIRONMENT

THE ROLE OF LANGUAGE

Both the choice of language used by government and the simplicity or obscurity with which it is expressed impact significantly on the ability of citizens to obtain information and participate in the decisions of government.

Section 6 of the Constitution recognises eleven official languages, all of which "must enjoy parity of esteem and ... be treated equitably". It states, further, that the national and provincial governments may choose to use at least two languages, based on a consideration of various factors, including usage, preferences and expense. Municipalities are also required to take usage and preferences into account.

A Pan South African Language Board (PANSALB) was established in 1996 as required by the Constitution to promote and create conditions for, the development and use of, all official languages, the Khoi, Nama and San languages, and sign language. It is also charged with promoting and ensuring respect for "all languages commonly used by communities in South Africa " and "languages used for religious purposes in South Africa".

Clearly, the languages in which original documents are generated and the choice of translations impact on the ability of citizens to understand and thereby make use of the political processes available to them. This is compounded by high illiteracy rates and the often extremely complicated language used in government publications, particularly legislation.

The promotion of what has become known as "plain language" is also now recognised as a key factor in the reform of democracy. There are a number of reasons why this is so.¹⁷⁷

First, language has, over the ages, been used in a way that creates divisions in society. Often language takes its particular form because it reflects the position of a class or a gender or a profession that wishes to insulate itself or maintain its status.

Second, what plain language lobbyists call "gobbledegook" wastes time and money. Difficult documents take longer to read and understand. They also demand personnel who can explain them, raise printing costs and increase the level of error.

The third reason is that access to the law is essential to our understanding of our rights and responsibilities as citizens. The function of the law is to tell us what we may or may not do. Law is one step in the chain that begins with government policy and ends with the rules by which we live. It is the stuff on which we build our norms, our standards and our moral behaviour. It is the very fabric and foundation of our society.

The fourth reason is that access to information about things that concern us is our right as citizens. If we deny people information about their rights and obligations, we deny them their rights as members of a rights-based democracy.

A number of efforts have and are being made to address this question in South Africa. Perhaps the earliest and most noteworthy example was the decision to draft the Constitution in plain language. The Constitution was also translated from English into the other ten official languages. More recently, Parliament has set up a Task Group on Plain Language and the NCOP has commissioned a project to translate its Standing Rules into plain language.

Acknowledging the difficulties experienced by citizens when attempting to engage with legislation, the South African Law Commission Project Committee on Juvenile Justice prepared plain language summaries for public review, as well as questionnaires phrased so that issues could be understood and discussed. Without this, the extensive consultation that accompanied the drafting of the various documents would have been fruitless.

Similarly, the Gun Control Alliance recognised that, in order to draw on the widest possible support for its position on the Bill, communities would need to understand the implications and provisions of what was extremely technical legislation. This required plain language summaries of sections of the Bill before Parliament.

It is clear then that the way documents are phrased and expressed is critical for effective public participation. People need not only to receive information from government; they must be able to understand and use it. If they are to make submissions, submit petitions or express their views and grievances, they need the knowledge and understanding to do so. Language that is obscure or difficult to understand makes them less able to participate in the decisions that affect their lives. It therefore obstructs other efforts at public participation.

THE ROLE OF INFORMATION TECHNOLOGY

The relationship between the United Nations and civil society has changed beyond all recognition. Information technology has empowered civil society to be the true guardians of democracy and good governance everywhere. Oppressors cannot hide inside their borders any longer. A strong civil society, bound together across all borders with the help of modern communications, will not let them. In a sense, it has been the new superpower – the people determined to promote better standards of life in larger freedom. (Kofi Annan)¹⁷⁸

One of the most important tools used by civil society in the developed world is the Internet. It is used to argue positions, to mobilise action, to circulate petitions and build world action around programmes and campaigns. In this way, it has fundamentally affected the range, visibility and impact of issues on an increasingly global agenda.

The Internet began as a communications system for the US military in the event of nuclear conflict. Yet, as Graham May points out¹⁷⁹:

Technology is often used in surprising ways not anticipated by its originators or developers ... It is unlikely that the US military anticipated the anarchy of the Net. It is probably the last thing they would have imagined and certainly not what they planned.

It is clear, however, that access to the Internet is limited. Current debate suggests that the much acclaimed 'information society' has created new divisions between an 'information-rich' and an 'information-poor'. This issue has received a great deal of attention in South Africa. In June 1996, then Deputy President Thabo Mbeki said:

It would not be an exaggeration to say that as the West is cruising in automobiles on the information superhighway, we are still moving on horse-drawn carts in a dirt road in some small village.¹⁸⁰

The costs of establishing the infrastructure for universal access and making hardware and software available to all are extremely high and, often, even the most basic infrastructure is not available. Thus:

More than half of humanity has never made a telephone call. There are more telephone lines in Manhattan than in all of sub-Saharan Africa.¹⁸¹

In 1999, then Minister of Posts, Broadcasting and Telecommunications Jay Naidoo, drove from Bizerte in Tunisia to Cape Agulhas to highlight the need to improve basic telecommunication infrastructure in Africa. The rally was part of a project called the African Connection, a project of the Pan African Telecommunications Union (PATU).

These and many other voices brought the issue of the 'digital gap' squarely into the international forum. In 2000, the Economic and Social Council of the United Nations (ECOSOC) issued a draft Ministerial Declaration which stated, inter alia:

While considering the impact of ICT [information and communication technology] on the creation of a global knowledge-based economy, we highlight that the majority of the world population still lives in poverty and remains untouched by the ICT revolution. The emerging new economy, characterized by a rapidly increasing reliance of value creation on information and knowledge, still remains concentrated in the developed countries. Unless access to and use of ICT is broadened, the majority

of people particularly in the developing countries will not enjoy the benefits of the new knowledge-based economy.¹⁸²

ECOSOC recommended that an Information and Communication Technologies Workforce be set up to address the issue.

There are currently just over 2 million people actively using the Internet in South Africa. About 1.2 million have access from their homes. The average number of users sharing a single household Internet facility is about 2.5 million, hence the number of households connected is in the region of 500 000. About 300 000 people are connected through public facilities (primarily educational establishments). Access from business and government organisations totals about 1 million, with about a 25 percent overlap between these categories.¹⁸³

In the developed world, electronic communication has played an important role in bringing people closer to government. This trend is reflected in a number of South African policy and other documents.¹⁸⁴ Thus, for example, the Task Group on Government Communications (Comtask) reported that:

There is universal recognition that an efficient and accessible telecommunications infrastructure is an essential prerequisite for government to accelerate social development and economic growth. Such an infrastructure permits the exchange and dissemination of vital information among citizens' educational, cultural, health, welfare and other institutions. Therefore, it is of critical importance that telecommunications infrastructure be pervasive.¹⁸⁵

Information technology offers the opportunity to improve the flow of information between citizens and government, thereby building dialogue and participation. What has been called 'e-government' offers access to information and the opportunity to comment on issues, policies and laws. It is thus a critical tool in the expansion of public participation.

The opportunities presented by the Internet in respect of public participation are self-evident. Yet, although government is increasingly using the Internet, performance is uneven and the pool of users extremely small relative to the developed countries. Despite a number of initiatives, including the development of telecentres and an information network for schools¹⁸⁶, it is clear that neither the infrastructure nor the necessary hardware and software required for universal access is available to the majority of South Africans.

Another important application of computer technology relates to the need for legislatures to maximise their public participation efforts by setting up and maintaining a database. If public participation is to be effective, keeping information and records about the involvement of the public is essential. Although some committee clerks keep manual records of organisations attending public hearings, this is a tedious process that does not lend itself to easy updating or the sharing of information. A far more effective solution would be for a database to serve the legislature as a whole. Due partly to lack of resources, few legislatures currently use a database to assist in their interaction with the public. However, the time and cost savings of using an efficiently run and maintained database (retrieval, storage, accuracy, internal communication, decreased duplication and so on) need to be factored into calculations about affordability.

**SECTION 3
PUBLIC PARTICIPATION IN THEORY AND PRACTICE**

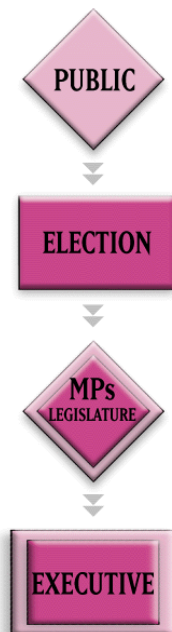
LOOKING AT ALTERNATIVE MODELS

IDASA has identified four models of public participation. Although the models owe something to a conceptual and comparative investigation of different forms of public participation, they derive mainly from a review of the current practice in the ten South African legislatures (one national and nine provincial). The data was extracted from the results of (mainly quantitative) questionnaire surveys.

The models represent four ways in which public participation in the legislative and policy-making process may be facilitated. They also offer insights into the way public participation currently works in the national Parliament and the nine provincial legislatures. The possible strengths and weaknesses of each model are also discussed.

The models make it possible to rise above the detail of current practice in individual institutions and identify core elements that should, ideally, underlie broad-based and effective public participation.

Model One: "Pure" Representative Democracy



According to this model, the electorate or public elects its representatives, who pass laws in the legislature and oversee their implementation by the executive arm of government. The participation of the citizen is limited essentially to election time.

Model Two: A Basic Model of Public Participation

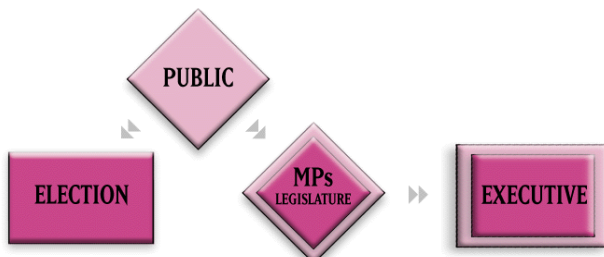
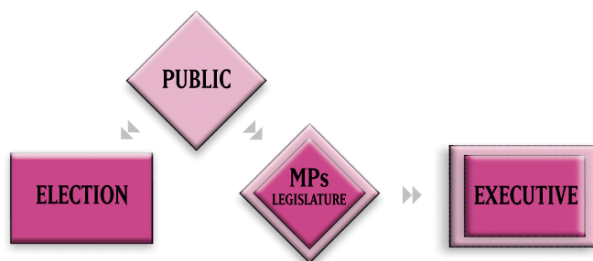


Figure Two depicts a basic model of public participation. In terms of this model, the public intervenes by interacting with its elected representatives at various times between elections. The model, however, says nothing about the nature and form of that interaction.

The usefulness of this model is also limited by the fact that it does not define or explain who or what is meant by the 'public'. Although the voting public potentially includes all citizens over eighteen years of age, the nature and identity of the 'public' shown to be in dialogue or relationship with MPs is not revealed. As IDASA monitoring of public hearings and public submissions in the national and provincial legislatures has shown, the 'space' that has been created for participation in the legislative process is used chiefly by what are described as 'stakeholders'. Despite a lack of precise data, it is generally agreed that these consist mainly of organised and relatively powerful interest groups.

This phenomenon is obviously not unique to South Africa. In the established democracies of Britain and elsewhere in the North, interventions in the legislative process tend to be dominated by vested (often commercially-motivated) interest groups and other organised sectors. Model Three (below) depicts this reality.

Model Three: A 'Realism' Model of Public Participation



There are those who argue that the 'realism' model offers the most effective form of public participation. Such an argument is based on an essentially corporatist model of political interaction, where consensus is reached at a 'round table' consisting of the primary interest groups. NEDLAC, established as a forum for organised labour, employers and government, is a typical example of such a model. Applied to the legislative process, the key public actors consist of the broader general public or electorate, represented by their elected representatives on the one hand, and the various key interest groups or stakeholders on the other. The public participation process arbitrates an exchange between the two.

The successful balancing of these interests depends on a dynamic relationship between elected representatives and their constituencies, characterised by constant interaction and clear communication. Such engagement depends, however, on the capacity of and resources available to the representative concerned. In South Africa, not only are capacity and resources seriously limited, they are compounded by two other factors. The first factor is physical. The sheer size of the country, with its vast distances and weak transport links between urban and rural areas, makes regular and intensive interaction difficult.

Secondly, as already discussed, representatives are elected by the party to a party list and occupy seats in the legislatures on the basis of proportional representation. There are, therefore, no formal constituencies. Although the party allocates members to constituencies, candidates seeking election are dependent not on the constituency but on the party. This weakens the link between the electorate and the individual representative. Given these constraints, it may be argued that this model contains many of the weaknesses of the 'pure' representational model, in that it limits broader public influence to voting in elections.

This presents us with a choice. If we accept that resources in South Africa are at this stage too limited to allow for full public participation, the representative/constituency link must be strengthened. The elected representative must be able to act with confidence as mediator between the common good and the interests pursued by organised participants. Thus, while ensuring that organised interest groups have the opportunity to participate, time, energy and resources must be invested in building a strong, vibrant, contemporary and meaningful link between MP and constituent.

Given the numerous constraints to public participation in South Africa, one might be tempted to argue that this is the best system available. It is not, however, the system favoured by government or the legislatures themselves. As National assembly Speaker Dr Frene Ginwala put it when launching the National Public Education Department of Parliament in 1995:

The person we must all have in mind when we think of public participation is a black African, rural, illiterate woman. We must aspire to reach her.¹⁸⁷

It was also not the intention of the Constitutional Assembly, which engaged in a widespread public participation exercise during the constitution-making process.

Not only was the Constitutional Assembly made up of all political parties represented in the National Assembly, it also consulted widely with people all over South Africa. Furthermore, as detailed in Chapter 5, the Constitution makes specific provision for public participation. In this sense, it commits government to the development and promotion of broad-based public participation in political processes.

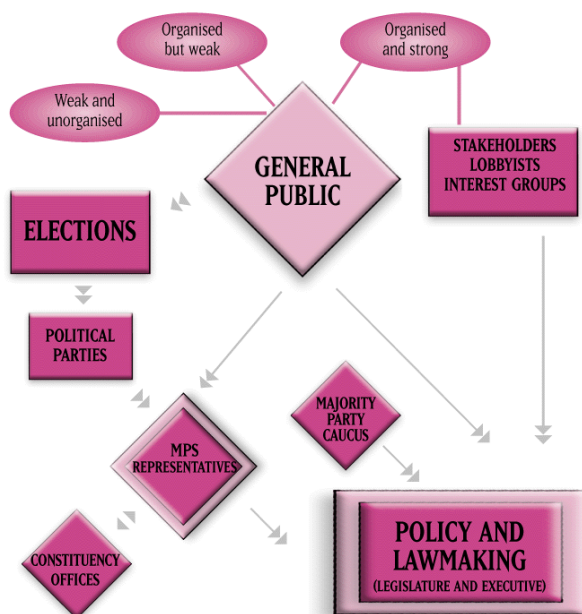
Thus, a fourth model may be proposed – extended to include three categories of participants: those who are organized and strong, those who are organized but weak and those who are weak and unorganized. (See next page.) By applying this model, government may develop a strategic vision for a public participation process that addresses all three groups. The model includes two additional dimensions.

The role of political parties and the majority party

The model includes political parties as key actors in the matrix of political interaction. The majority party, particularly, has the capacity to control, not only decision-making itself, but also the rules that govern that process.

Further, in a Westminster-based parliamentary system, where members of cabinet are drawn from the legislature, the parliamentary caucus of the majority party is the forum where the executive overlaps with the legislature.

Model Four: The 'Possible Ideal' for South Africa



It is, therefore, an essential location of power.

Moreover, where the majority party has strong and efficient regional and local party structures, the wider party structure may provide a valuable network, linking individual constituents and

communities with their elected representatives. Party structures can be used to ensure that local views and grievances filter up through the system as well as providing channels for the distribution of information on the ground.

Finally, the South African national ruling party is part of an alliance with COSATU, the largest labour confederation in the country, and the South African Communist Party. This results in a broader public social agenda than is found in democracies in the United States and Europe. This further broadens opportunities for participation and interaction beyond the formal procedures and institutions of representative governance.

The relationship with the executive

Secondly, in its representation of the decision-making process, the model links the executive with the legislature. This is the reality of Westminster-based systems. It has become increasingly apparent that one of the key sites for intervention is in the executive domain. It is also clear that the earlier the intervention the better. In other words, intervention should take place when the executive drafts policy rather than after that policy or legislation is introduced in a legislature. The model, therefore, proposes a holistic approach to public participation, rather than a separation of the legislative from the policy-making process. According to COSATU:

It is self-evident that the earlier an intervention is made in the policy chain, the greater the scope for influence tends to be. By the time a Bill is tabled at parliament there is in general limited opportunity to fundamentally reshape its content. Being able to input into earlier stages of the process should increase the chance to influence the overall direction taken. This approach requires both written submissions, as well as bilaterals with the Ministry or Department.¹⁸⁸

Suggested criteria for public participation

Based on the premise that the public must and should have a say in the decisions and actions that affect their lives, one may consider certain criteria for public participation.¹⁸⁹

Public participation should encompass a sense that the public's contribution will influence the final outcome.

The public participation process must communicate the interests of and meet the process needs of participants.¹⁹⁰

The process must seek out and facilitate the involvement of those potentially affected. That means that consideration must be given to how unorganised communities or interest groups can be brought together as participants.

Participants should be involved in defining the manner in which they wish to participate.

Participants should be provided with the information they need to make their contribution meaningful.

Participants need to be informed as to the manner in which their submissions were accounted for and how they are reflected in the decisions made.

The criteria are relatively modest. They include no guarantee that the legislators will necessarily be persuaded to amend a law or policy as a result of participation. They do, however, imply that participation will be taken seriously. Their significance is to be found in their potential to generate a palpable sense of involvement in the political process, together with a sense that democracy can and does work at a practical level.

The criteria focus on notions of participation beyond the mere rhetoric of involvement and periodic participation through elections and referenda. At their heart lies the unwritten idea that effective public participation is not achieved simply by making opportunities available, but is determined by setting up processes that encourage, aid and promote the fullest possible participation by the public.

Thus effective public participation depends on dedicated education, information and outreach strategies aimed at providing the knowledge and means to access what may otherwise appear to be

a set of remote and incomprehensible institutions. The purpose of such strategies is to bring those who exist on the margins and periphery of society into the mainstream political process, creating a system of governance that is inclusive, responsive and transparent. The goal is to consolidate a form of democracy that engages with and recognises the interests of all. Thus public participation in South Africa may play a valuable role in the transformation of what is still a fundamentally unequal society.

SECTION 3 PUBLIC PARTICIPATION IN THEORY AND PRACTICE

A REVIEW OF CURRENT PRACTICE IN THE LEGISLATURES

*Public participation in the legislative process and the accountability and oversight tasks of legislatures is essential for long term democratic stability. Public participation promotes legitimacy and public support for legislation and government policies, and thereby ensures democratic stability.*¹⁹¹

*The Constitution provides the constitutional framework for public participation. However, how that framework is interpreted and implemented is perhaps even more important. In order to explore this, this chapter reviews current public participation practices in the nine provincial legislatures and the national legislature. A critical analysis of each legislature is not envisaged. The review will, instead, offer a general summary of existing practices and procedures with reference to common structural weaknesses and strengths.*¹⁹²

RESPONSIBILITY FOR PUBLIC PARTICIPATION

All the legislatures surveyed by IDASA indicated that they had some sort of dedicated programme encouraging public participation, although the extent of the programmes differs widely. Two legislatures have a unit specifically responsible for public participation, although not all public participation functions are dealt with by these units.

Several other legislatures are in the process either of establishing similar units or investigating their efficacy. In these legislatures, public participation functions fall under various departments, most commonly a combination of the committee section and communication/public relations departments. As a result, public participation is, to varying degrees, only one of several functions of the departments to which it is delegated. Both questionnaire responses and interviews with the relevant personnel indicate that, both in terms of resources and defined responsibilities, the greater part of the work in these departments consists of basic communication tasks, with little scope for targeted public participation programmes. There is, however, a noticeable trend towards the inclusion of public participation activities within the scope of work of these departments.

FORMS OF PUBLIC PARTICIPATION

Public hearings are the most common form of public participation initiated by the legislatures. Most institutions reported that they held public hearings in centres other than the capital. All said they held public hearings outside the urban centres. Legislatures give the public between five days and three weeks notice (sending invitations, placing advertisements in newspapers, public places and on radio).

Stakeholders/participants in several of the provinces complained that the notice given for public hearings was frequently too short for effective preparation. The administration of the invitation process and the identification of potential participants is another area of noted weakness.

Lists of previous and potential participants are poorly maintained and only a few institutions have computerised versions of lists.

Submissions, outside of those solicited during public hearings, are fairly uncommon. All legislatures have at least some committees that invite expert opinion. Some stakeholders have made submissions without specific invitation and on their own initiative. Other interviews suggested that recognition by politicians and officials as a 'relevant stakeholder' or an already existing relationship with the legislature play a role in ensuring that views are heard.

Involvement in the activities of committees outside of public hearings is another aspect of public participation. In all the legislatures, most committee meetings are formally open to the public, although encouragement and ease of access varies. Committees most commonly closed are certain sittings of the public accounts committees (in four institutions) and the sittings of various internal committees. However, although meetings are generally open to the media and public, several of the provincial legislatures noted that few people or organisations sit in on committee meetings.

Records and minutes of meetings and other legislative documents are difficult to access. Even when not explicitly unavailable, records of committee meetings are very hard to obtain. No full transcripts or Hansard-type reports of committee meetings are available and sometimes there are no records at all. Recording, transcription and publication are expensive and, without the appropriate resources and capacity, are unlikely to take place.

PUBLIC EDUCATION AND OUTREACH

Most legislatures have some form of outreach programme and most have programmes that specifically target rural communities. Strategies used include holding public hearings outside of cities; committee visits to rural communities and, most commonly, using rural and community radio stations to reach specific communities.

Three legislatures have programmes that target ordinary people who do not belong to organised structures; four have programmes targeting under-resourced and unorganised communities. These interventions take the form of educational workshops and information dissemination through focused media strategies. Those responsible for facilitating workshops and training programmes noted, however, that organised structures and groups were both more likely to be included in workshops and discussions and far more likely to be successful in making submissions.

Almost all questionnaire respondents believed that the public frequently does not understand how government operates. They saw this as a major impediment to effective participation, especially by rural and poor communities. Most legislatures have produced pamphlets and other materials as educational tools and use targeted media for information dissemination. Legislatures also use youth, women's and special interest group 'parliaments' as educational opportunities to raise the profile and encourage an understanding of the role and functions of legislatures. The National Youth Parliament, for example, aims at educating young people about the processes of democratic practice.

Case Study: A Youth Parliament¹⁹³

The Free State Legislature's third youth parliament was planned to commemorate Youth Day on 16 June and focused on how to deal with the anti-social activities that have damaged the South African educational system, including drugs and gangsterism on school grounds.

The Youth Parliament consisted of 100 learners, ten from each of ten selected schools. The province was well represented geographically and demographically and included schools from both urban and rural areas. Preference was given to disadvantaged schools.

The project was two-fold.

First, each school was required to come up with a cultural presentation depicting the situation in schools today. All the schools gave a remarkable display of talent and the first prize went to Teto Secondary School for a play written and directed by one of its students.

The second event consisted of mock parliamentary debates. Students were divided into three different parties and debated topics such as corporal punishment, the powers of principals and access to resources. The debates were followed by a panel discussion, enabling learners and educators to pose questions to a panel of Members of the Provincial Legislature (MPLs).

Despite these activities, almost all officials interviewed conceded that the impact of public education and outreach programmes on targeted communities was limited, citing a lack of resources for proactive work as the cause. There were very few examples of institutional assistance aimed at actively encouraging targeted communities to participate, despite the fact that this is a stated goal of many legislatures.

CAPACITY

Not surprisingly, lack of capacity was the overwhelming weakness identified, although the extent of this varied widely. Some institutions are prevented from carrying out even the most basic public participation activities due to a straightforward lack of funds. Others fulfil the basic requirements but feel frustrated in attempts to extend their programmes.

All respondents noted a shortage or lack of funds for public hearings, particularly for advertising purposes. The availability of other resources varies widely. Only some institutions dedicate a specific budget item to public participation. Other programmes and functions are funded by departments carrying out particular activities, or out of general legislative funds. Four legislatures use donor funds for public participation.

Staff capacity is also limited. None of the provincial legislatures has an adequate staff complement. Some have only one staff member whose core function is public participation.

RESPONSIVENESS

Both the legislatures and stakeholders felt lack of feedback to participants was a particular weakness. Some stakeholders expressed disillusionment with the public participation process because of a lack of tangible results or feedback.

Generally speaking, participants are not effectively tracked, with only two institutions indicating that they have electronic lists of potential and past participants. Others reported that they have comprehensive, non-computerised lists. Significantly, not one of the national or provincial legislatures keeps sufficiently good records to be able to indicate precisely whether or not public participation (in the form of formal submissions to committees or other informal contact) has increased year on year since 1994. This reflects very poorly on individual and collective commitment to realising substantive public participation. It is reasonable to expect that legislatures that not only claim to be committed to effective public participation, but are also constitutionally bound to facilitate such a process, should keep such records.

In conclusion, the weaknesses in public participation in the national and provincial legislatures seem to derive, not from obstruction or unwillingness, but rather from a lack of knowledge amongst potential participants on how and why they should participate coupled with a chronic lack of resources. Similarly, the processes and systems in place in the legislatures are not deliberately unhelpful, but rather lack the capacity and know-how to be purposefully constructive.

SECTION 3 PUBLIC PARTICIPATION IN THEORY AND PRACTICE

CURRENT INSTITUTIONAL ARRANGEMENTS IN SOUTH AFRICAN LEGISLATURES

INTRODUCTION

Based on data gathered from the provincial legislatures and the national Parliament, IDASA identified four institutional arrangements or configurations within which public participation takes place, a version of one or another of which can be found in each legislature. The configurations do not correspond exactly with any specific legislature. Rather they attempt to capture the predominant methods and structures aimed at fostering public participation.

The configurations include:

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

The Specialist Public Participation Unit Configuration: where public hearings and submissions are the responsibility of the committee section and most other functions fall under a public participation unit whose sole responsibility is the management of public participation. In this model, there is sometimes collaboration between this unit and the committee section in the co-ordination of public hearings.

The Outsource Configuration: where some public participation functions are outsourced to specialist organisations, usually NGOs or CBOs.

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.

THE COMMITTEE CONFIGURATION

Typical Structure

Image still to be supplied

In this configuration, the public participation function is centralised 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 are also responsible for conducting parliamentary tours, may launch limited public education campaigns and may, as a team, handle major parliamentary events like youth, people's and women's parliaments.

Public 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 issues under discussion in their committee. Ideally, clerks are specialists in the area in 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 also have first hand information on when and where hearings will take place and, through their contact with the chair, are 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 they may serve as a conduit between their committees and the public.

This configuration can be contrasted to those in which the public participation function is located elsewhere. Such a separation may be physical (for example, where the public participation function is in a separate building) or more intangible (for example, where those engaged in public participation have limited access to politicians).

Disadvantages

The main disadvantage of this configuration is that there is no centralised communications system to ensure the effective internal co-ordination of information for public 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 centralised around individual committees, the broader aspects of public 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 response 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 public 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 (if at all) on an ad hoc basis, 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 prioritisation 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 that exist. In most cases, only those residing within easy travelling distance of the legislatures are able to participate. This means that those who are already marginalised 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 to attend to and that public participation and organising 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 demoralisation, lack of commitment and neglect of responsibilities.

Finally, the Committee Configuration makes it unlikely that legislatures will allocate a specific budget line item for public participation activities. This means that funds for public participation must be requested from other sources which may not necessarily see public participation as a priority.

SPECIALIST PUBLIC PARTICIPATION UNIT CONFIGURATION

Typical Structure

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In this configuration, a specialist unit handles all public participation activities except public hearings and media and public relations. The Committee Clerk is responsible for public hearings and the Director of Information and Liaison Services for public relations and media liaison.

The focus of the Public Participation and Petitions Unit is, amongst other things, on conducting outreach programmes, developing of educational training manuals and programmes, conducting educational workshops, handling petitions, organising and conducting youth and women's parliaments and producing educational pamphlets.

The responsibilities of the unit and its staff are defined and the decision-making process clear. The manager is responsible for ensuring that the programmes of the public participation unit are implemented and is responsible for its budget.

Advantages

There are several advantages to this model.

First, public 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.

Second, because the unit employs specialised staff, pamphlets, workshops, newsletters and talk shows are 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 public participation in the legislative process.

Third, the setting up of a dedicated unit requires the allocation of a specific line item 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 public participation programme.

Fourth, a centrally managed public participation function makes it easier to establish and maintain centralised information systems.

Disadvantages

There are also disadvantages to this model.

The first of these relates to the fact that public hearings are not conducted by the unit responsible for public participation. This point was made in a report by the public 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.¹⁹⁴

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.

THE OUTSOURCE CONFIGURATION¹⁹⁵

Typical Structure

Image still to be supplied

In this configuration, some functions and areas of public 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 organise 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 organise special legislature-related functions such as youth parliaments. Where viable

and affordable, recording and transcription have sometimes been outsourced to private commercial concerns.

Advantages

There are several advantages to this model.

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.¹⁹⁶

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. Also, 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 relative level of commitment is also a vital determinant in the success or otherwise of the public participation programme(s). It may also possibly prove to be an expensive route.

THE PUBLIC RELATIONS & COMMUNICATION CONFIGURATION¹⁹⁷

Typical Structure

Image still to be supplied

In this configuration, the committee section is responsible for organising 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, public 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, co-ordination and implementation of programmes and publications.

Thirdly, the model is 'scalable'. In other words, because of its inherent differentiation, it allows for easy expansion. Thus added capacity and resources will contribute to the creation of a viable and effective public participation system, incorporating programmes that reach beyond the narrower definition of public relations to include extensive outreach and public education activities.

Disadvantages

There are also disadvantages to this model.

First, although some elements of public participation fall into 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 a necessary but insufficient means of encouraging and assisting the public to participate.

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.

SECTION 4

THE INTERNATIONAL CONTEXT

PUBLIC PARTICIPATION IN OTHER PARTS OF THE WORLD

This Parliament was elected on a promise: that policy making would be more open, participative and consultative. That is what the people of Scotland expect of us. Our success in meeting the promise of openness and accessibility will be a litmus test of our achievement of the wider aspirations for devolution.

We can no longer hide behind remoteness. We have no excuses for not meeting public expectations of the new politics of partnership – because partnership politics means better policies.¹⁹⁸

A review of trends and developments in the international arena suggests that public participation is an idea whose time has come. There appears to be a fundamental shift towards more participatory forms of decision-making: a movement towards new definitions of democratic governance and its relations with civil society. This chapter does not pretend to offer a survey or analysis of international trends in public participation. Rather it offers a few examples that may be of interest when reflecting on the South African situation.

When drafting its own Constitution, South Africa was fortunate in that it was able to draw on the experiences, mistakes and accumulated wisdom of other countries. Thus, for example, while in many of the older, more established democracies, public participation is the result of the evolution of a political system; in South Africa the concept was enshrined in the Constitution itself.

PUBLIC PARTICIPATION AND PARLIAMENTARY SOVEREIGNTY

Based on the principle of parliamentary sovereignty, legislatures are given the latitude to determine their own procedural arrangements. While in South Africa, there are some limitations on this right, the rules that govern legislatures in the older established democracies allow them to determine the extent of public access and participation. Thus for example, section 49 of the Danish Constitution provides that:

The sittings of the parliament shall be public. Provided that the President, or such number of members as may be provided for by The Rules of Procedure, or a Minister shall be entitled to demand the removal of all unauthorised persons, whereupon it shall be decided without debate whether the matter shall be debated at a public or a secret sitting.

In Germany, similarly, the House of Representatives has the discretion to exclude the public. According to Article 42 of the German Constitution, although the debates of the House of Representatives are public:

Upon a motion of one tenth of its members, or upon a motion of the Government, the public may be excluded by a two-thirds majority. The decision on the motion is taken at a meeting not open to the public.

In South Africa, as we have seen, the legislatures may not exclude the public and media "unless it is reasonable and justifiable to do so in an open and democratic society."¹⁹⁹

The Danish Constitution also places no obligation on the legislature and its elected members to facilitate public involvement or to consider and canvass public inputs and views from interested parties. Section 51 gives committees the prerogative to involve (or not to involve) the public in decision-making:

The Parliament may appoint Committees from amongst its members to investigate matters of general importance. Such Committees shall be entitled to demand written or oral information both from private citizens and from public authorities.

Similarly, Article 44 of the German Constitution provides as follows:

The House of Representatives has the right, and upon the motion of one quarter of its members the duty, to set up a committee of investigation, which takes the requisite evidence at public hearings. The public may be excluded.

In South Africa, as discussed earlier, legislatures are required to facilitate public participation. Similarly, in Uganda, citizen participation in the planning process is guaranteed in its constitution.²⁰⁰ Thus Article X of the National Objectives and Directive Principles of State Policy states that:

Government shall take the necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.

Article 38 (2) of the Ugandan Constitution further provides that:

Every Ugandan has a right to participate in peaceful activities to influence policies of government through civic organizations.

This means that, while legislatures in countries like South Africa and Uganda have a constitutional obligation to facilitate public participation, legislatures that are governed by older constitutional and political arrangements enjoy greater sovereignty. Yet, despite the somewhat exclusionary nature of these earlier constitutions, in practice public participation has increasingly become a feature of modern democracies.

PUBLIC PARTICIPATION IN PRACTICE: THE CANADIAN EXAMPLE

In democracies such as Canada, public participation in government decisions is now a regular feature of political life. Public participation became a feature of public policy in Canada from the 1960s and 1970s and, today, decisions by government without public consultation are the exception rather than the rule.

There are numerous examples of public participation in Canada. For example, the Canadian Centre for Foreign Policy Development was established in 1996 to help Canadians outside government contribute to the development of Canadian foreign policy. In 1996 and 1997, Canada involved civil society to an exceptional degree in the Geneva and Ottawa conferences that sought to secure a global ban on land mines. At the latter conference, the Programme to Eradicate Poverty was employed as a basic instrument to support policies and programmes aimed at transforming relations between the state and civil society.²⁰¹

One of the mechanisms used by the Canadian government has been to confer public participation rights under specific legislation. The deliberations that resulted in the Environmental Protection Act, 1988 (CEPA) are of particular interest in this regard. Some of the key principles included in the CEPA include: the right to a healthy environment; improved access to the courts to prosecute and to sue where one's right to a healthy environment has been infringed upon; increased public participation in government decision-making; improved monitoring and reporting to the public on the state of the environment; increased government responsibility and accountability for the environment.

In a policy document entitled *Creating Opportunity*, the Canadian Liberal Party recognised that Canadian citizens have greater awareness and expertise than government in the environmental field. The document noted that these assets are often not tapped because of financial or legal restrictions. Thus, a commitment was made to "build on this public awareness and give individuals new tools to protect the environment and to participate in environmental decision-making."²⁰² The Liberal Party further committed itself to "use the forthcoming review of the Canadian Environmental Protection Act to examine giving members of the public access to the courts as a last recourse if the federal government persistently fails to enforce an environmental law."²⁰³ It noted that the "Government of Canada is interested in receiving comments on public rights to file notices of objections, requests for review of approvals and of regulations, and for intervenor funding for appearances by interested parties before Boards of Review".

Hence, although neither the Canadian Constitution nor any general law provides for public participation, it now plays a significant role in policy and law making. In addition, specific legislation may oblige the executive to involve the public in promoting, implementing and monitoring policy and laws, in order to ensure that publicly-defined standards are met.

PUBLIC PARTICIPATION AND THE EXECUTIVE: THE GERMAN EXAMPLE

While in South Africa the focus of public participation is on how to reach the poor and marginalised sectors of society, the German public participation process draws mainly on experts. The significance of the German system for the South African experience lies in the fact the public participation process begins before the executive commits its ideas to paper.

In Germany, legislation derives from a number of sources (government programmes, the administration, court rulings, associations of trade and industry and interest groups, local authorities and as a result of public discussion in the mass media). Specialist divisions in the ministries receive and monitor potential issues for legislation, and invite interest groups²⁰⁴ to attend discussions with a view to exchanging views and information. These groups do not act arbitrarily on behalf of a few individuals, but represent, in principle, the interests of broader social groups. This prior consultation is considered more efficient than first drawing up provisions, which may later prove to be ill-founded or impossible to implement. It also means that interest groups can influence a Bill before it reaches the lawmakers.

The influence of interest groups is extended into the legislative process. Indeed, the legislature is considered to be dependent on the expertise, opinions and concerns of those potentially affected by the planned legislation. Taking interests into account has become routine procedure in the German legislature, which often solicits different and even conflicting views on an issue.

Both the executive and legislative process depends heavily on expertise. There are experts in every relevant field, many appointed by government to provide specialist advice on a wide range of topics. In all, approximately 6,000 experts serve on a wide variety of scientific advisory committees, commissions and specialized committees.

The first formal process in the German legislature is the first reading debate. The purpose of the first reading debate is not simply to place a Bill on the agenda of the legislature as in South Africa, but rather to present the different political standpoints on a particular bill to the public and the media. In this way, issues are placed in the public domain, ensuring that the public is aware of the issues and various political viewpoints before the Bill is considered in greater depth by the committees.

As in South Africa, the Bill then goes to the relevant committee where it is discussed clause by clause. The chairperson calls the individual chapters and sections and the rapporteurs, committee members or representatives of the Federal Government or the legislature have an opportunity to express their views. At this stage, amendments may be proposed and formal motions for amendments moved. During the committee stage, members do not make formal speeches but discuss individual points with each other, submitting and withdrawing proposals for debate. Thus, the committee stage consists of specialized discussions aimed at the creation of sensible and workable legislation.

The deliberations of committees responsible for particular pieces of legislation or policy conclude with the submission of a report and recommendation to the plenary, on the basis of which the bill is given a second reading.

Until recently, committee meetings in Germany were not, in principle, open to the public, although a committee could decide to admit the public during the discussion of a particular item of business or during parts of the discussion. In 1995, however, in the process of reforming its procedures, the German legislature introduced so-called "extended" public committee meetings. These are held only in connection with the final debate, after which the committee makes its recommendation.

If the subject matter of the bill is significant, very complex or politically controversial, a public hearing of experts and representatives of interest groups is held. One reason for holding such hearings is to obtain additional specialist information and advice about particular problems relating to the bill in order to assist the progress of deliberations. Another is to attract media interest in the bill, in order to clarify the significance of the issues involved and encourage public debate.

Parliamentary groups regularly endeavour to choose experts whose assessment of the difficulties, risks or chances of success of the bill either back up their own political views or are likely to undermine the arguments of opposing parliamentary groups. Similarly, the views of powerful organizations such as employers' federations, trade unions or environmental organizations are

engaged, as their opinions will potentially influence public opinion on the bill. These hearings may be very influential. Indeed, in the past, bills have been withdrawn because the majority or all of the experts invited to a hearing considered the proposed legislation either inappropriate or harmful.

Both Germany and South Africa have used the notion of public participation as an antidote to the authoritarian regimes they have experienced in the past. There are, however, some significant differences between the two systems. While public participation in Germany is encouraged and directly facilitated, its chief purpose is to facilitate a flow of information in order to encourage debate and create an awareness of public issues. However, by focusing heavily on the role of expert witnesses, the German model tends to entrench a participatory democracy for and of the elite.

The South African model, on the other hand, envisages participation in the popular domain, with the aim of encouraging a continuous interaction between the elected and the electorate through all stages of governance. In this sense, it promotes a real and direct participatory process. Although the reality may fall far short of the vision, there is no doubt that the legislatures are committed to broad public participation, even though they are currently hampered by a lack of resources.

As noted above, the particular value of the German model for our purposes lies in the fact that it provides opportunities for participation at the pre-policy and policy-making stages.

PUBLIC PARTICIPATION IN INTERNATIONAL AND REGIONAL AGREEMENTS

International and regional agreements, as well as popular pressure to open up governmental decision-making processes, are spurring national governments to take steps to improve transparency, participation, and accountability. Environmental and other activists must take a large part of the credit for their role in creating awareness for and popularising the notion that people must have a say in decisions that affect their lives and well-being.

From the 1960s and 1970s, organisations like Green Peace and others have brought issues into the public domain, challenging the right of governments and corporations to pursue interests that impoverish, degrade or damage the environment. In turn, the struggle for the environment was taken up by communities, public interest lawyers and other groups, creating a pool of expertise on which governments came to rely. The recognition that much of the specialist knowledge required to draft and implement environmental policy resides in civil society helped create the space for new and more participatory forms of governance in the national, regional and international spheres.

Over the last decade, there have been a number of key regional and international agreements on the environment. At the 1992 Earth Summit in Rio, for example, nations from around the world adopted Principle 10 of the Rio Declaration, which recognized the critical role that civil society plays in protecting and managing the environment. Principle 10 emphasizes the importance of public access to information, participation in decision-making processes and access to judicial procedures and remedies, affirming that: "environmental issues are best handled with the participation of all concerned citizens at the relevant level." In Agenda 21, the plan of action that accompanied the Rio Declaration²⁰⁵, governments pledged themselves to the pursuit of broader public participation in decision-making processes and policy formulation for sustainable development – understood as development that meets present needs without compromising the ability of future generations to meet theirs.

In 1998, the United Nations Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters²⁰⁶ (known as the Aarhus Convention). This binding convention establishes minimum legal and institutional requirements to ensure that citizens have the opportunity to obtain environmental information, participate in decision-making processes, and have access to judicial and administrative redress to protect the environment. The Aarhus Convention has energized countries and organizations around the world seeking to promote environmental governance.

The Bolivian Summit Declaration, the product of the Summit of the Americas for Sustainable Development held in Santa Cruz in December 1996, reflected growing co-operation between governments in the American hemisphere on issues relating to public participation, particularly on environmental matters. By signing the Declaration, heads of states and government officials demonstrated their strong support for the broad participation of civil society in decision-making processes, including policies and programmes and their design, implementation, and evaluation. The heads of state charged the Organisation of American States (OAS) with "the formulation of an inter-

American strategy for the promotion of public participation in decision-making for sustainable development." They emphasized legal and institutional mechanisms, access to information, training programmes, and consultation processes to ensure civil society involvement. The role of public participation was again highlighted at the 1998 Santiago Summit of the Americas, where the governments pledged to develop, with the participation of civil society, principles and recommendations for legal and institutional frameworks to stimulate the formation of responsible and transparent non-profit and other civil society organizations and encourage public sector-civil society partnerships.²⁰⁷

Soon after the Santa Cruz Summit, the OAS began a 15-month programme to formulate an Inter-American Strategy for Public Participation in Environment and Sustainable Development Decision-Making in the Americas (ISP). As part of this effort, the OAS launched pilot projects on participatory environmental management in Dominica, Peru, and the Gulf of Honduras, in order to test effective means of involving civil society in public initiatives.²⁰⁸

PUBLIC PARTICIPATION AND THE ROLE OF CIVIL SOCIETY

Recent decades have seen phenomenal growth in civil society organisations (CSOs) in both Northern and Southern countries. These CSOs make up a vast array of sectoral and interest groups, including agriculture, environment, development, health, human rights, indigenous peoples, peace, population, religion, trade, youth, and women. They embrace a wide range of types: charities, church groups, trade unions, grassroots community groups, local self-help groups, professional associations and international networks. And they are engaged in an enormous variety of activities and struggles – social, economic, and political.

Increasingly, CSOs are forming international networks to address the growing range of issues that cross national borders, such as climate change, biodiversity destruction, deforestation, trade, debt, and development policy. The Group of Lisbon has described this development as "global civil society", noting that it plays an historically important role with regard to three basic functions. It acts as the emerging planetary moral consciousness; it shapes and expresses global needs, aspirations, and objectives; and it offers a global capacity for politically innovative behaviour, and so contributes to the solution of problems.²⁰⁹

At the same time, it is important not to romanticize CSOs. Civil society includes a good number of organizations that contribute little or nothing to the good of society. Some CSOs are not democratic in their structure and there may be questions about their legitimacy, accountability to their members and right to represent the interests in their sector. Many are chronically under-funded and beholden to governments or foreign donors.

Representatives of civil society and the private sector are now routinely included in joint forums with governments, United Nations agencies and international organizations like the World Bank. Most visible has been the participation of thousands of civil society organisations (CSOs) at large United Nations and other international conferences during the 1990s and early 2000s.

The International Institute for Sustainable Development²¹⁰ argues that CSOs bring expertise, commitment and grassroots perceptions to the policy-making process. They are often able to mobilize popular support for or against policies proposed by governments and can offer alternative policies and solutions to problems. Frequently, CSOs have led the way in showing the connections between environmental, development and social issues and in drawing out the implications for public policy. They may also provide early-warning and information-gathering services that help in the establishment, implementation and monitoring of policies, treaties and conventions.

Some observers believe that the CSO shift beyond advocacy towards broader participation in the public policy realm will lead to significant changes in methods of governance in the next century. While the growing range of actors involved in policy fora makes the challenge of governance more complex, it can also greatly increase the capacity of the governance system to meet the complex demands placed upon it. CSOs bring to policy-making a much greater range of information, perceptions, and potential solutions than official bodies could hope to generate on their own. This is especially true in the area of sustainable development. Many development mistakes have occurred because bureaucrats, national and international, failed to foresee or ignored the likely effects of new projects.

Case Study: International Landmines Campaign²¹¹

In December 1997, activist Jody Williams received the Nobel Peace Prize on behalf of the International Campaign to Ban Landmines (ICBL). "It is amazing", she said in her acceptance speech in Oslo. "It is historic. It proves that civil society and governments do not have to see themselves as adversaries. It demonstrates that small and middle powers can work together with civil society and address humanitarian concerns with breathtaking speed".

This remarkable campaign began in the field where international CSOs work daily with the reality of landmines. These relief and reconstruction organizations work in countries like Angola, Cambodia, and Afghanistan where they mend shattered bodies, provide prosthetics and rehabilitation and clear minefields so that they may be returned to productive use. Past conflicts have left 100 million mines in the ground in 60 countries, most of them the poorest in the world.

Every year, the lives and livelihoods of 26,000 people are shattered by these silent killers. Landmines kill one person every twenty minutes, 80 percent of whom are civilians and many of whom are children.

These organisations soon realised that their relief efforts alone would never solve the problem and that the only effective solution was an outright ban on landmines. They accordingly mounted a campaign in Europe and North America. In 1992, six CSOs (Handicap International, Human Rights Watch, Medico International, Mines Advisory Group, Physicians for Human Rights and the Vietnam Veterans of America Foundation) came together to form the International Campaign to Ban Landmines (ICBL). They were quickly joined by CSOs in dozens of countries.

Up until this time, work at the diplomatic level had focused on methods of controlling the use of landmines, while official agreement depended on reaching unanimity after years of tedious negotiations. In 1994, after yet another fruitless meeting in Geneva, a small number of governments – including Canada, Austria, Belgium, and Switzerland – entered into discussions with the ICBL about the more radical idea of banning landmines completely. This was the origin of an unprecedented collaboration between governments and CSOs that would lead to a new treaty and a Nobel Prize three years later.

Each side had resources that the other side lacked. Governments could provide funding for meetings, communications and educational materials, as well as official access to other governments. CSOs had knowledge and expertise on the effects of landmines, credibility with the media and the ability to influence public opinion. In October 1996, at a conference of CSOs and governments, Canadian Foreign Affairs Minister Lloyd Axworthy invited the countries of the world to meet in Ottawa to sign a treaty to ban landmines. The intervening months saw a well-coordinated campaign by CSOs and governments in both public and official arenas and, in December 1997, 125 countries came to Ottawa to sign the treaty.

The work of the campaign now involves ensuring that the treaty is ratified and implemented by the signatories and lobbying those countries that have not yet signed.

Many factors contributed to the success of this campaign: its clear objectives, the quality of its leadership, the post-Cold War environment, the decision to work outside normal diplomatic channels on a treaty that did not require consensus, and even the new technology that permitted rapid communication by Internet and e-mail. But the most striking and significant feature of this story is the collaboration between governments and organizations in civil society.

As Jody Williams observed, the two do not have to be adversaries, and when they work together they can change the world.

PUBLIC PARTICIPATION AND POVERTY REDUCTION

Since 1999, the international community has made sustainable poverty reduction the primary focus of financial support to poor countries. This was accompanied by a new approach requiring that debt relief and concessional flows be based, in the future, on country-led poverty reduction programmes. The approach is closely related to two other international policy initiatives: the Heavily Indebted Poor Countries (HIPC) initiative, launched by the international financial institutions in 1996; and the Comprehensive Development Framework (CDF) approach, introduced by the World Bank in 1999.

An important part of this approach is the requirement that civil society be involved in drawing up and monitoring these policies. Although an admirable ideal, realisation has often been hampered by a number of deficiencies in the conception of what public participation means and how it should take place. Some of the findings of a report on the Poverty Reduction Strategy Paper (PRSP) process, prepared for the British Department for International Development (DfID)²¹², offer some important lessons for public participation. The report draws on PRSP experiences in Ghana, Vietnam and Zambia.

A common understanding

There is a need for a common understanding of what is meant by public participation (as opposed to consultation) and how and with what objectives it should be engaged. Without such an understanding, it is relatively easy for governments (and international organisations) simply to go through the motions.

Linked to this is the need to determine what most appropriately represents civil society. This may be disputed territory. In Ghana, for example, some NGOs are perceived as "government-linked". Other organisations are seen by governments as little more than a mouthpiece for the opposition.²¹³ There is also the danger that those with the most resources and the loudest voices may appear to speak on behalf of a large constituency or express the dominant view.

In answering the question as to whether civil society represents the poor, the report concludes that:

Mass-based organisations – churches, trade unions, the women's movement – are best at providing channels to the poor. NGOs can help to bring resources and capacity, but themselves may not adequately reflect the interests of poor communities. In general, the wider the civil society coalition, the less the danger of making assumptions.²¹⁴

The need for a long view

Public participation processes take time. This is illustrated by the fact that the urgent need to secure relief has resulted in governments setting too-short timetables for the PRSP participation process. Thus:

For the PRSP to be truly effective, democratic processes must be firmly rooted; culturally and gender sensitive; and proceed at an appropriate pace. In this regard, the kind of 'force feeding' demanded by the exigencies of speedy debt relief may prove counter-productive to good civil society-government relationships in the longer term.²¹⁵

Related to this is the need to develop capacity. Public participation should not be viewed as a short-term or 'one-off' process, but must be underpinned by capacity-building to ensure that civil society can play a genuine role in the construction of economic and other policies.

The need for legitimacy

The process must be seen as legitimate. The HIPC initiative has attracted widespread antipathy from civil society organisations and some governments, fuelled by a perception that the PRSP process is dominated by the World Bank and the IMF. Similar issues arise when the intentions of government are viewed with suspicion. In Ghana, for example, large sections of civil society expressed doubts about government's intention seriously to involve civil society structures in the PRSP process.

Interestingly, this is at odds with the "generally received view within the World Bank and elsewhere, that participation in the development of Ghana's CDF has been exemplary"²¹⁶. A similar gap between the perceptions of civil society and those of the international financial community is illustrated in the case of Bolivia (see page 130). This underlines the lack of a common understanding of what public participation should entail.

Political will

It follows, therefore, that government must be willing to work with civil society, both in defining the framework for public participation and in working through its processes. The three case studies in the DfID report demonstrate that the state is often cautious about working with civil society,

recognising that it creates political risks. In Zambia, for example, stakeholders were agreed about the lack of an established culture of consultation.²¹⁷

However:

The level of commitment of leaders and senior officials is an important barometer for the prospect of effective civil society participation.²¹⁸ Unless the process is supported at Cabinet level, or Head of Government, or at least, there is willingness not to obstruct a new participatory process, the output from participation will be limited.²¹⁹

The role of Parliament and parliamentary institutions is important, as is the work of individual members who should be aware of local priorities.

Their participation significantly enhances the scope of civil society engagement. There can always be a question over the democratic legitimacy of civil society bodies, and the involvement of elected representatives, including local leaders, and Parliamentary institutions helps to broaden the inclusivity of the participation process, and support for the PRSP strategy.²²⁰

Ultimately:

The nature of interaction between the State and civil society depends on the prevailing system of governance – of rights to information, accountability and transparency – and respect for democratic practice.²²¹

Access to information

Ready access to and the appropriate distribution of information is critical.

This is a perennial problem. In Ghana, for example, civil society complained of difficulty in gaining access to government information, even that which is already in the public domain. Such information should be presented in a "manner accessible to all sections of civil society"²²².

The credibility of information is also critical. This issue relates closely to the question of legitimacy. Ideally, information should be available from a wide variety of sources, including a media that is not only free but is also prepared to advance the process by informing civil society about relevant issues.

THE STATE AND CIVIL SOCIETY: THE CASE OF BOLIVIA

Only together can we construct human development for all, to initiate a time of kindness, solidarity and justice – a true Jubilee for all. (National Forum Declaration, April 2000).

There are those who argue that participation in joint consultative conferences and committees gives greater legitimacy to organizations like the World Bank, without delivering any significant changes in their policies or democratising their practices in individual countries. Expectations of what participation involves and what it should deliver may also differ markedly.

On the face of it, Bolivia provided a fertile arena for the First National Dialogue, launched in September 1997 in order to reach consensus among civil society groups on poverty reduction and a medium to long-term national development strategy. In Bolivia, public participation is governed by a Law of Popular Participation, which established a national Secretariat for Popular Participation with the aim of integrating civil society into all levels of sustainable development decision-making. In 1997, the Secretariat introduced a Programme of Strategic Actions in Natural Resources, Environment and Planning for La Paz and began offering institutional support for public participation programmes at the regional level as well. According to the National Secretary of Popular Participation in Bolivia, Mr. Carlos Hugo Molina:

Bolivia is perhaps the first country where the state has passed a law for popular participation and a national system for community development has been put in place. The policy promotes people's participation in indicative planning and about three hundred municipalities in the country are implementing a process of participatory planning.²²³

Recent events show, however, that there may be a big gap between the ideal and the reality. While there is no doubt that the exercise was perceived in a positive light by international financial institutions, civil society in Bolivia saw it more as an exercise in managing the expectations of the donor community than as a commitment to popular participation in public policy formulation. They complained of lack of preparation time, lack of transparency (documents not circulated with sufficient lead-time) and insufficient follow-up.

When the IMF announced its support for a debt reduction package for Bolivia under the Heavily Indebted Poor Countries (HIPC) initiative, once Bolivia had "adopted a poverty reduction strategy – in a process with civil society",²²⁴ many Bolivians were sceptical. They feared that the government would, once again, embark on an exercise in public consultation aimed at meeting the expectations of the international financial institutions and that the lessons of the First National Dialogue had not been learnt and were likely to be repeated.

Civil society organisations decided, therefore, to launch a massive public consultation of their own. The Bolivian Jubilee 2000 consultation involved more than 4,000 individuals and 800 organisations over nine regions and culminated in a four-day National Forum on Poverty Reduction in La Paz from 24-28th April 2000. The forum was organised, with the strong backing of the Bolivian Catholic church, to run parallel to a government initiative to consult the population on poverty reduction as it defined a strategy paper to be presented to the IMF.

The declaration issued at the end of the forum called for the participation of civil society in drawing up the government's eventual debt reduction strategy and also participation in monitoring and evaluating its implementation on an annual basis. In relation to the debt relief expected under the HIPC initiative, the forum considered it to be a "first step towards greater international justice". Nevertheless, it also stressed that the new funds available as a result of debt relief do not present a solution to the problems imposed by debt.²²⁵ Participants of the Forum are now eager to ensure that the issues that were discussed are effectively taken into account by the government and included in its Poverty Reduction Strategy Plan – which Bolivia must complete in order to qualify for debt relief under the HIPC II Initiative.²²⁶

PUBLIC PARTICIPATION IN AFRICA

In line with international trends, African countries and regional organizations are considering ways to incorporate environmental governance principles into national legislation and regional initiatives.²²⁷

Local people often know the causes and best remedies for such problems as deforestation or soil erosion, how to find and use plants with unique properties and how to prevent animals from damaging their crops. With public participation, this knowledge and these skills and resources can be mobilized to increase the effectiveness of government initiatives. Equally, when people are allowed to take part in assessing problems, resources and opportunities, they acquire information and enhance their awareness of factors affecting their lives.

Thus, public participation encourages people to take more responsibility for their actions and puts pressure on governments to address environmental issues more explicitly and effectively. However, although public participation in decision-making is on the increase in Africa, there is a serious need to promote the access of women and youth to decision-making processes. Public participation in the state of the environment reporting process in such countries as Lesotho, Malawi, South Africa and Zimbabwe illustrates how all stakeholders can be involved in decision-making.²²⁸

The African Charter for Popular Participation in Development and Transformation is another example of the trend towards public participation. The aim of the Charter is to help civil society contribute to the maturation of Africa's polity and economy. Sponsored by the ECA in 1990 and adopted by national and international agencies and Africa's heads of state, the Charter reflects the "fundamental right of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times."²²⁹

Many cultural, economic, and political barriers effectively prevent the poor from having any real stake in development activities. Without special efforts by the designers and sponsors of projects and without appropriate policies to address and overcome these obstacles, the voices of the poor will not be heard and their participation will at best be token. Reaching the poor, therefore, requires working with them to learn about their needs, understanding how development decisions are made

*in their communities, and identifying institutions and mechanisms that can get opportunities and resources into their hands.*²³⁰

Uganda: Public Participation and the Budget

*It is the right of people to know how their resources are allocated and utilised. Budgets are instruments for mobilisation, allocation and utilisation of resources. It is a right for ordinary people and poor people in particular to participate in the design, planning and implementation of programmes and activities that should benefit them.*²³¹

In Uganda, where citizen participation in the planning process is guaranteed by the Constitution, the majority of citizens do not influence budgetary processes and policy formulation. In order to address this problem, both central and local government has introduced initiatives to broaden the scope of citizen participation.

*The Uganda Participatory Poverty Assessment Project (UPPAP) was a three-year process that sought "to bring the perspectives of poor Ugandans, through consultations, into the formulation and the implementation of policies and planning for poverty reduction at both district and national levels".²³² The Project began work in 1998 and involved consultations with the poor in both urban and rural areas. Not only has the resulting information been incorporated in the Poverty Eradication Action Plan; it has influenced budget allocations. For example, as a result of communities identifying access to clean water as a priority, a higher weighting was given to the provision of safe water supply in budgets at central and district levels.*²³³

It is recognised that the language and mechanisms for constructing the budget are complex and require special skills and knowledge. Although the flow of information has increased with the publication of, amongst other things, an abbreviated version of the Budget Framework Paper (the version that goes to Cabinet before allocations are approved) and an annual Background to the Budget,²³⁴ efforts to make information more accessible are critical. In early 2000, the Ministry of Finance, Planning and Economic Development set up Budget Reference Groups – described as "a participatory process aimed at demystifying the budgetary process and policy formulation".²³⁵ Work includes the simplification of budget figures to make them easily understandable by the public and making information on the budgetary process available through public publications. A citizens' guide on the budgetary process is envisaged.

*Other important work is being done by organisations such as the Uganda Debt Network (UDN) which is, amongst other things, arranging for citizens to participate in discussions on public policies such as the Poverty Eradication Action Plan on local radio and television stations. Through the District Poverty Monitoring Committees (DPMCs) being set up by UDN, citizens will participate directly in policy dialogue.²³⁶ Another organisation, the Budget Advocacy Initiative, seeks to take advantage of opportunities offered by government. One of its members is the Forum for Women in Democracy which is launching a pilot National Gender Budget Project; other traditionally marginalised groups are also involved, including people with disabilities and women in agriculture.*²³⁷

CONCLUSION

The examples in this chapter make it clear that there is a global shift towards greater public participation. Civil service organisations have mobilised people both in their own countries and all over the world and participation is now incorporated in the policy frameworks of a number of international organisations. Although many efforts are flawed and some hopelessly inadequate, it may be argued that the long-term benefits far outstrip the setbacks. One positive outcome is a growing awareness of public participation as an integral part of democracy. Not only is it perceived as more democratic, but there is now a realisation that it is likely to be more efficient and more likely to be successful than the old 'top-down' methods.

Increasingly governments are having to acknowledge that the source of wisdom and inspiration may lie with the people they are elected to represent, or on whose behalf they act.

But perhaps the greatest long-term benefit is that public participation is an enormously important way of empowering communities. By engaging with governments on issues that affect their lives, civil society is brought into the mainstream and acquires skills, knowledge and capacity. It may lead, as in Uganda, to the development of information in a form that is readily available and understandable to the public. It may lead, as in Bolivia, to powerful collective efforts to counter poor

government performance . Thus, like many social and political movements in the past, it signals a new way of thinking about governance and democracy.

CONCLUDING REMARKS: WHERE TO FROM HERE?

Focus groups conducted by the HSRC revealed an alarming lack of knowledge about opportunities for participation in South Africa, and a wistful longing to be better informed.

We are willing to participate but at times we don't know about these things. We are always informed when decisions have been taken already ... You find that a few people participated and took decisions for the majority, by the time we realise, the decision has been taken without us having participated.²³⁸

I don't have a television in my house because I don't have electricity. I would sometimes go and listen to the news at a friend's place.²³⁹

People would like to be educated about how to communicate with the government because if you have no education and you go there by yourself, they will tell you don't you know there's this and that in your community ...²⁴⁰

We need a lot of things in our squatter camp, toilets are not enough, we do not have enough water, we are really struggling ... The presenters of the workshop will educate us on how to go about solving our problems.²⁴¹

We all don't know who to talk to, it's true, and we need so many things in our community. Look at our roads – we are living in shacks and do not know for how long we'll be living like this ...²⁴²

The purpose of this publication has been to offer a survey of public participation in South African government. It explores the theoretical and constitutional framework for public participation. It considers the environmental factors that promote or impede public participation in South Africa. Based on research conducted by IDASA, it offers various models for consideration and analyses the practice in the various legislatures. Finally, it explores public participation exercises elsewhere in the world in order to draw lessons that may provide a basis for further debate and possible action at home.

The objective of this final chapter is to identify some of the opportunities that may assist government on its journey towards a genuinely participatory form of representative democracy. Further, based on IDASA's research into current practice in the national Parliament and the nine provincial legislatures, it seeks to identify core elements of best practice.

THE CONSTITUTIONAL AND LEGAL FRAMEWORK

The South African Constitution draws on two broad traditions of democracy: formal representative democracy and participatory democracy. That is, while its structures and institutions reflect the principles of best democratic practice in the more established democracies, the Constitution also contains clear requirements for a form of government that is open, transparent and participatory. In addition, various "State Institutions Supporting Constitutional Democracy" in Chapter 9 of the Constitution further broaden opportunities for public access.

South Africa has also bound itself to abide by a number of international instruments and is, furthermore, actively involved in international and regional efforts to secure equality rights for marginalised groups, such as the representation of women and people with disabilities. South Africa's performance in respect of women's representation in the legislatures compares well with the rest of the world. This is bolstered by a number of attempts to ensure that such representation is not 'token' but seeks the genuine advancement of women in society. Similarly, the inclusion of people with disabilities in the legislatures continues to drive measures to make their participation meaningful through the creation of a barrier-free environment.

There have also been initiatives aimed at strengthening the capacity of young people while, in one significant example, the views of affected children were thoroughly consulted and considered in the preparation of recommendations and draft legislation on a revised child justice system.

The Constitution also required the passage of certain laws. Some simply provide for the setting up of the required institutions. Others seek to strengthen democracy itself. As discussed, legislation

providing for freedom of access to information and administrative justice are important elements in the process of extending rights to the broader public.

Other significant legislation is also specifically directed at strengthening public participation. The Petition Law passed by the Gauteng Legislature provides a practical legal framework for public participation. A similar law is planned by the Eastern Cape legislature in the current year (2001). The National Environmental Management Act (NEMA) follows international practice and contains important provisions for public participation in the monitoring and implementation of environmental law.

However, as the quotations from the HSRC focus groups illustrate, South Africa still has a long path to travel if it is to realise its vision of involving people in political processes and decisions. Yet despite the magnitude of the task, levels of commitment are high. It is clear that there is a general, if sometimes uneven, commitment to public participation amongst many politicians and officials in the legislatures.

ADDRESSING THE LEGACY

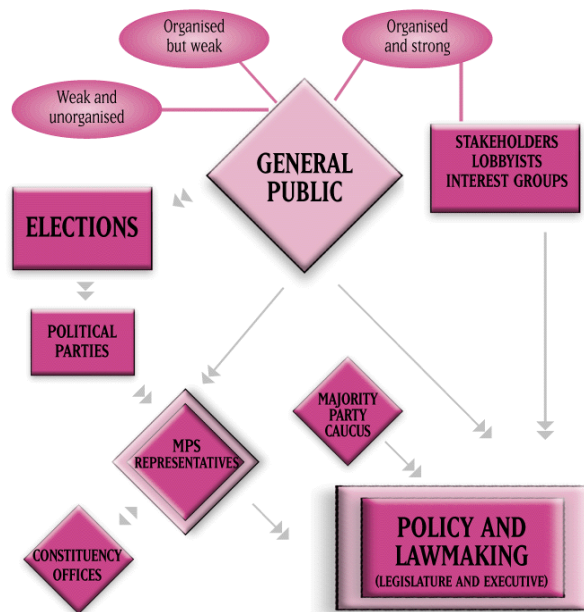
Poverty, lack of resources and education prevent many people from engaging with the processes of government. There is a deep divide between those who are able to make use of the existing opportunities – and thus influence government – and those who are often unaware of the opportunities that exist. It has even been suggested that the opening up of opportunities may widen this gap, further benefiting those who are already privileged by giving them a disproportionate say in national affairs.

This suggests that radical measures are needed to redress these imbalances. Some of these opportunities may be found in the three-sphere framework set up by the Constitution. The creation of provincial governments offers citizens the opportunity to participate in provincial affairs and, through the NCOP, to have a say in national policy legislation. Similarly, local government allows, ideally, for participation in matters closer to home. Again, through the participation of the South African Local Government Association (SALGA) in the NCOP, matters of local import can be raised at the national level.

However, while co-operative government provides the opportunities, the challenge is to ensure that this potential is exploited by the broader population. Poverty, the sheer size of the country, poor transport and other infrastructure, language difficulties, illiteracy, inequalities under customary law and a host of other factors militate against equal participation.

THE 'IDEAL' MODEL FOR PUBLIC PARTICIPATION

Although the easiest model to pursue might be that suggested by what has been called the "realism" model of public participation (see Chapter 14), South Africa has chosen the harder route.



What we have described as the "possible ideal" for South Africa envisages a number of participants in the policy and law-making process. These include citizens (through public participation), citizens (through their representatives and constituency offices), lobbyists and interest groups, political parties represented in the legislature (through committees) and the majority party caucus (as a joint legislative-executive forum).

Laws are founded in policy and it is at the policy-making stage, traditionally the function of the executive, that public intervention should first be considered. Indeed, as the German example shows, engaging the public in policy formulation at this early stage may be more efficient and cost-effective. The model envisages public participation in policy and lawmaking as an integrated process. In other words, it works from the assumption that laws are a natural expression and outcome of policy. This means that the lawmakers need to understand the process that led to and reasons for the draft Bill they will be required to discuss.

It also means that public input should be sought earlier rather than later. The activities surrounding the Child Justice process provide an admirable example of the way in which consultation and participation can add value to the final product. In the light of the constitutional requirement that not only the legislatures but also the executive engage the public in deliberations, some further consideration of this aspect may be useful.

ENSURING EFFECTIVE PUBLIC PARTICIPATION

Research by IDASA reveals that legislatures have adopted one of four basic configurations within which they carry out the public participation function (Chapter 16). These include the Committee configuration, the Specialist Public Participation Unit configuration, the Outsource configuration and the Public Relations/Communications configuration. As discussed, each has its advantages and drawbacks. Whatever system is in use, however, there are a number of core elements of best practice that may be applied to ensure that it functions effectively. These include:

Knowledge of process and content

Those who organise public hearings or liaise with the public should have detailed knowledge of standing rules and procedures. They must also know about the progress of draft legislation and when hearings are likely to be called. In addition, they should be familiar with the content of legislation. This saves the public time and increases their confidence in the legislative process.

Committee clerks are the most likely to have access to this information. Because they are often charged with organising public hearings for their committee and are in regular contact with the committee chair and members, they are also in an ideal position to arrange for public access.

However, as discussed, committee clerks have a variety of functions, only one of which is public participation. While they may have good knowledge of procedures and content, they are unlikely to have either the specialist knowledge or the time to develop successful communications or promote public education and outreach.

Another weakness is that committee clerks tend to work for one committee only. Thus, public participation work may be undertaken in isolation and without the knowledge of the committee section or other structures in the legislature. This underlines the need for co-ordination and clear lines of communication.

Internal communication and co-ordination

Whatever institutional structure is adopted, communication between the various internal structures involved in the legislative process is essential. Administrators, legislators and government departments all need to be aware of one another's activities.

The most effective environment for public participation is achieved when there is a good relationship between the executive and its departments and the legislature. Close co-operation between a ministry/department and the corresponding committee in the legislature is essential. Such co-operation keeps legislatures in touch with issues that may need to be clarified or discussed in a public forum and increases the likelihood of rigorous engagement with the subject matter. It may also encourage the smoother passage of legislation. A discussion of issues before draft legislation is prepared, for example, reduces the potential for conflict or prolonged negotiations at the committee stage.

Another crucial aspect relates to the internal flow of information within the legislatures themselves. Heads of Committees need to have a good overview of the work of committees, its progress and any planned public participation activities. Politicians need to be aware of what public participation offices are doing by way of education and outreach. Without such co-ordination and shared knowledge, the public may be passed from hand to hand and resources may be duplicated.

Capacity and resources

Low capacity and limited resources were some of the most important elements identified in the IDASA surveys. In several of the provinces, public participation is not identified as a specific activity requiring human and financial resources and has no allocated budget. Committees are expected to find money for public hearings and similar initiatives out of their overall budgets.

Inevitably, this results in low commitment to the public participation process. Where committee clerks or other units take on public participation in addition to their other responsibilities, it may not be seen as a priority. Even where dedicated public participation units have been set up, they need to be matched by skilled personnel and adequate budgets.

This is a hard problem to solve. As discussed earlier, legislatures are chronically short of human and financial resources. In this environment, it becomes more than ever essential that resources are well co-ordinated and put to the best possible use. This requires good internal communication and a collaborative approach.

It also requires that staff responsible for public participation are trained and motivated. Motivation depends, in part, on a belief that there is a need for the work that is being done. This requires that the leadership demonstrates the political will to support it and make it happen. With involvement and enthusiasm from the leadership, staff are more likely to be motivated.

Appropriate training not only helps staff provide a good service, it also helps raise motivation levels. Providing training in the absence of motivation is counter-productive as staff may become discouraged and take their skills elsewhere.

COMMUNICATING WITH THE PUBLIC

There are a number of levels at which public communication should take place.

Providing practical information

The public must be provided with timely information about hearings and other opportunities to engage with the legislative process. They should also have ready access to the necessary documentation. Effective engagement is impossible without advance copies of draft legislation and other relevant information.

The purpose of such information should be to give the public the tools with which to participate. Thus, appropriate language, clarity and relevance is essential. Public participation depends on the ability and confidence to understand and argue issues. This is well illustrated by the Gun Control Alliance's strategy of ensuring that communities were in possession of the clear and understandable information they required to put their case. This underlines the need for skilled personnel, adequate lead times and dedicated budgets.

Public education and outreach

However, providing the information to those who ask for it is not enough. This is why various legislatures and other government structures have put public education and outreach programmes in place. In an environment where many people do not understand their rights or how to use them, public education is an essential component of public participation.

Without it, the urban-based, the educated and the privileged will continue to dominate, wielding undue influence on policy and legislation.

Public education needs to be combined with effective outreach. The poor, the marginalised and those living in 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.

The role of language

It is clear that information and communications should be written in a way that can be understood by those who need to engage with it and use it. Yet many laws, policy papers and other government documents are written and expressed in a way that excludes rather than empowers or includes the people they affect.

Despite a variety of efforts, little progress has been made in this area. It is, nevertheless, essential that government develop a policy on language use if it is to make significant progress in achieving meaningful public participation. As the Uganda example has shown, public participation exercises need to be accompanied by simultaneous efforts to provide the public with information in a form they can understand and use.

The role of representatives

The South African system of proportional representation means that, at the national and provincial levels, representatives are not automatically accountable to specific constituencies. This emphasises the importance of allocating MPs and Members of the Provincial Legislatures (MPLs) to, and making them responsible for, constituencies. Regular visits to hear the views of communities, assist them with their problems and report back on the work of the legislatures are essential. Constituency offices offer a means through which citizens can seek help and information.

Not only do such mechanisms offer citizens opportunities to stay in touch with their representatives, they offer important channels for public education and the dissemination of information. Ideally, materials and messages developed at national and provincial level should be distributed through a network of representatives. It is also important to note that, while essential, the mere distribution of information is insufficient, as indicated by the preferences expressed in the HSRC focus groups for workshops. Thus, for example:

Workshops are much better because if one person can come to the community and workshop the people, in their own languages so that they can all understand.²⁴³

Using the media

Links also need to be made and built between legislatures and the media.

Community radio, particularly, offers important opportunities to reach constituencies that may be unable to access or use national or provincial media.

Material should be prepared in a way that is geared to the audiences it is intended to reach, with careful attention to language, comprehensibility and relevance.

Information should also be presented in a creative and interesting way.

Audiences are not necessarily automatically interested in what government has to say. Drama, 'infotainment' and other media breathe life into essential information that may otherwise be ignored or overlooked. Regular 'phone-in' programmes linking representatives and officials with constituencies are also valuable ways of hearing what people have to say and keeping them in touch with developments at a broader level.

Although television broadcasts of events in the legislatures reach a narrower audience, they offer an important way of extending the 'public gallery'. They may also be used to advertise public hearings and other events, raise specific issues in respect of legislation being discussed and make people aware of ways in which they can input or participate in policy and law-making processes.

The value of these broadcasts may also be enhanced by providing some context to the debates taking place. Thus, for example, the objectives of the Bills being discussed could be summarised. Question-time could be vastly improved if the question being answered were to be read out for the benefit of the general public. Currently, only members themselves know what has been asked and often the answers make no sense to those sitting in the public gallery or watching proceedings at home.

Accessibility

Physical accessibility is very important. Where legislatures are not easily reached by public transport, arrangements should be made for participants who might not otherwise be able to attend a hearing.

Legislatures should also be accessible to people with disabilities, taking the various types of disability into account so that nobody is excluded. This means, for example, making proper arrangements for people in wheelchairs and providing assistance of various kinds to people who are blind or deaf. This is an important consideration when arranging public hearings and committee meetings.

Members of the legislatures should themselves be accessible. Being able to meet with and discuss issues with their representatives gives the public confidence in the democratic process and encourages the belief that their views can make a difference.

STRENGTHENING THE OVERSIGHT FUNCTION

The need to strengthen the oversight function of the legislatures and the NCOP has been discussed. Parliament has commissioned a report on the current status and recommendations have been made, including a recommendation for a committee to consider the reports of Chapter 9 institutions. In addition, the Public Finance Management Act has set out procedures to improve the standard of reporting to Parliament.

These measures will undoubtedly create a stronger framework for scrutiny and oversight in the legislatures. However, they may be hampered by lack of resources, overstretched politicians and low research capacity. Again, one might refer to the German practice of drawing on the expertise of the various government bodies. The legislatures could strengthen their oversight capacity by drawing more extensively on the considerable knowledge and skills available in the variety of specialist commissions, institutions and other bodies set up by government.

WORKING WITH CIVIL SOCIETY

Social capital is formalized in civil society organizations (CSOs) – the voluntary associations, organizations, movements, and networks that live and work in the social space outside the state and the private sector.²⁴⁴

Social capital depends on a healthy relationship and interaction between civil society and the state. Where the state is weak, civil society is also weak and the level of social capital is low.²⁴⁵

Building partnerships with civil society organisations can do much to extend and strengthen outreach and public education efforts, particularly where resources are limited and capacity is stretched. Civil society organisations with the appropriate focus and skills may offer important routes to otherwise untapped communities. Through their networks, they can play the role of messenger, mediator, information source and educator. Civil society organisations, particularly the more formalised NGOs, often generate media products of their own. They may also have the capacity to take on portions of work, such as running public participation workshops or meetings.

It should be born in mind that civil society organisations also have knowledge that governments may not have access to. This is generally of two kinds. As illustrated by the mainstreaming of civil society in decisions about the environment in Canada and elsewhere, civil society has built up areas of specialist knowledge and expertise that is of value to governments. Secondly, civil society organisations tend, by their nature, to be closer to the constituencies they serve. What they hear and see in the course of their work provides important insight to institutions that have little time and few resources to conduct intensive surveys or mobilise participative initiatives on the ground.

MAKING GOVERNMENT WORK

Public participation in South Africa depends on the commitment of political will, time and extensive resources. In a society where the demands on the public purse are sometimes overwhelming, government is faced with hard choices about how and where it should allocate its budgets. Some may see money spent on public participation as money taken away from more pressing needs, such as housing, water and social services.

The argument underlying this publication is, however, that public participation needs to be seen as an integral part of the process of delivery. That is, in order to establish its own priorities, government needs to engage people in dialogue about their priorities and needs.

Further, by engaging in discussion and consultation with the public, government remains in touch with the perspectives and opinions of those on whose behalf it acts. In this sense, public participation benefits government by enriching its knowledge and understanding and strengthening its institutions.

Finally, the vision of democracy expressed in the South African Constitution is holistic and needs to be implemented in its entirety. Institutions do not stand alone but are interdependent; the strength or weakness of one will strengthen or weaken others. Socio-economic rights lay the foundation for other rights. Rights such as the right to equality, dignity and freedom of expression are dependent on a political and socio-economic environment in which those rights can be exercised.

As we have seen, those who drafted the Constitution in 1994 and 1995 made extensive efforts to consult the views and opinions of the people of South Africa. This was, in itself, a remarkable process. Embedded in the final document is the vision of a government that is open, transparent and accountable to the people it serves.

One of the ways in which the realisation of this founding vision is contemplated is by facilitating the involvement of the people in the decisions that affect their lives. This cannot be done in a token way, or by passively allowing participation to take its course. Efforts to engage the public in dialogue must be proactive, energetic and imaginative.

This means that government must consult not only the opinions of the well resourced or simply rely on the input of experts and specialists. It must draw on the wisdom and experience of the entire society – of rich and poor, women and men, able and disabled, old and young, urban and rural.

This is the ideal towards which government must work. It is an ideal that should be actively supported and promoted by civil society. And it is an ideal on which, ultimately, the transformation of our society must depend. For, as the Speaker of the National Assembly, Dr Frene Ginwala has said:

Transformation is not a static thing, not a technical thing that you pull out of a textbook. It is an organised culture. It is the components, the ways in which you function, the objectives you serve, the degree of participation you have. These are all part of the process. It is democratising the institution itself.

APPENDIX ONE

FUNCTIONS OF BEST PRACTICE

PUBLIC EDUCATION AND OUTREACH FUNCTIONS

This function may be located either in the communications section or public relations office of the legislature. Its core activities should include, amongst other things:

Designing training materials for public education in order to encourage an understanding of what public participation means and how citizens can participate in the affairs and activities of the legislatures.

Running workshops on roles, functions and processes for members, administrators and the public, including NGOs.

Developing and periodically reviewing the effectiveness of public education programmes.

Preparing information bulletins before public hearings for distribution at education workshops and public forums.

Outreach

A dedicated and systematic outreach programme is required and, even where resources are limited, attempts should be made to co-ordinate efforts around predefined goals. This is much more likely to be effective than ad hoc efforts. Elements of such a co-ordinated programme should include:

An allocated budget

An allocated budget promotes the holistic and long-term planning of outreach type programmes.

Common methodologies

Rather than different departments or even staff initiating their own methods for outreach programmes, a general standard should be set. This will assist in the development of a uniform policy, smooth out logistical issues and prevent individual sections and departments from continually 'reinventing the wheel'.

A focus on areas of greatest need

The focus should be on areas where assistance is most needed. This almost invariably includes rural areas. Issues relating to transport, communication and media need to be given particular attention and, where at all possible, attendance should be subsidised.

Setting realistic and attainable goals

Realistic and attainable goals should be set for each programme, based on the number of people to be reached or other similar indicators. This is particularly important in the initial stages, when the best ways of involving groups may be difficult to ascertain. Comparing desired and achieved outcomes allows for the monitoring and fine-tuning of programmes.

Public Education

A dedicated public education programme should accompany and collaborate with outreach activities. The requirements for public education are:

A dedicated budget

A dedicated budget may be even more necessary for public education than for outreach, giving staff the opportunity to make long-term plans without being dependent on ad hoc grants.

Linking with other programmes and special events

Maximum advantage can be gained where educational programmes are tied in with other awareness programmes.

Effective use of the media

Using the media effectively can result in an impact far beyond what can be achieved with the resources of a legislature alone. Partnerships should be built with local media and local media institutions (radio and press) should be targeted. Regular 'talk-out' programmes, where members of legislatures take calls on air, seem to have been fairly effective in several provinces.

Partnerships with NGOs and CBOs

Effective public outreach and education in South Africa calls for extensive efforts and initiatives. As resources are often very limited, alternative strategies are necessary. This is why it is important to make use of the existing skills and resources of NGOs and CBOs. Although many of these are also facing a funding squeeze (particularly since 1999 when much of their guaranteed overseas funding dried up), their established infrastructure and community networks may open the way to reaching the broadest possible base of participants.

First, as already discussed, outsourcing to an NGO or CBO by a legislature gives it access to specialist capacity not otherwise available to it. This may, however, be a relatively expensive route and may not make the best use of existing infrastructure in the legislature. It may also involve some loss of control over the process.

Secondly, NGOs and CBOs may be directly targeted. Because they are frequently connected to wide groups of people, this may prove a cost-effective way of reaching a broader audience. Sectoral networks are particularly useful as they can unite dispersed groups around particular issues.²⁴⁶ To use this method successfully, legislatures should compile lists of potential partners. Low profile organisations should not be neglected as small CBOs may offer the potential to reach into rural areas. However, targeting organisations cannot be the only focus. Participation cannot be made to depend on the strength of local civil society organisation in particular areas, while neglecting less organised communities.

THE PUBLIC HEARINGS AND SUBMISSIONS FUNCTION

The core activities of this function are to:

Provide a logistic, procedural and administrative service to committees envisaging public hearings.

Receive, summarise and distribute copies of submissions (and summaries) to members of the relevant committees and the public/stakeholders/participants.

Liaise with committees, stakeholders, and the public.

Summarise bills and policy documents and distribute them to the public.

Keep records of participants, their submissions and feedback.

A dedicated unit, equipped with administrative staff, may be created to carry out these tasks. This would remove the task of organising public hearings from committee clerks, allowing them to give more attention to the more content-related aspects of their work.

It has been noted that few legislatures make use of a computerised database. This is undoubtedly the most efficient way to record and maintain the necessary information. Such a database should contain contact data on all previous participants and a list of potential participants and stakeholders. It may also be used to record all contacts, attendance and submissions made by organisations and individuals. A database will pave the way for far more effective and efficient feedback and follow-up than at present. It will also allow officials to track participation trends by gender, race, groupings, structures and so on, making it easier to identify whether all relevant groups are participating. A database can also be used as a "marketing" resource, aimed at drawing in as many stakeholders as possible.

Generally speaking, legislatures have no facilities for the recording or transcription of committee proceedings. Even in the National Assembly and the NCOP, only committee decisions and divisions are recorded and not all committee deliberations and proceedings. Where at all possible, Committee proceedings should be recorded, transcribed and stored in a database for easy access. Such public records are a valuable source of information for civil society interest groups and the public at large.

They also serve as a frame of reference for officials preparing reports, as well as ensuring that the viewpoints of participants are properly represented.

PETITIONS FUNCTION

Where no other such mechanism exists, a Petitions Standing Committee should be set up to receive petitions, respond to enquiries and receive public complaints against individuals, politicians and government departments. Such a committee may be established by legislation, as has already been done in some provinces. This gives the petitions process a higher profile. The petitions committee should be supported by an adequately resourced sub-unit located within the committee section. Its responsibilities will be to:

Serve as the secretariat for the petition's process.

Develop and design formats for petitions.

Assist the public in the drafting and framing of their petitions.

Receive petitions from the public and submit them to the relevant committees of the legislature.

Provide feedback to those who submitted petitions.

INTERNAL COMMUNICATION FUNCTION

The purpose of the internal communication function is to improve information flow, keeping relevant people in the legislatures and various departments informed of developments. Effective internal communication inevitably improves external communication, in increasing the likelihood that the public will receive relevant and good quality information.

This function can be implemented by setting up a dedicated and adequately staffed and resourced desk in either the communications or public relations section of the legislature. Staff at this desk should be well informed about procedural and substantive issues and will be responsible for collecting information from government departments and the legislature and disseminating it internally and externally.

Where resources are available, the ideal is to develop a legislature information base intranet. This would give all staff access to all relevant information and obviate the need for constant and time-consuming enquiries to various personnel. The data should always be online and should be capable of being regularly updated on a decentralised basis (that is, by each department).

Such a system requires specialist skills and equipment, but some legislatures have already installed the basic infrastructure or are planning to do so. Staff can also be kept up to date by installing an email list server (electronic mailing lists), allowing them to archive information for later reference.

Where digital solutions are not possible, information may be regularly distributed on paper in order to keep departments, legislatures and the public informed. Such information should be stored in an easily accessible way.

Two other problems emerged in the course of the research:

Firstly, members of the legislatures as well as potential participants commonly complain that relevant information (such as the time and venue of hearings) is not made available in good time. The implementation of an effective communication system would do much to overcome this problem. It may also be necessary (where legislatures have not already done so) to allocate this responsibility to a particular member of staff. A line of information accountability would make it easier to trace gaps in the communication process.

Secondly, participants and clerks complain that information is often delayed by problems with programming and scheduling. It is essential that politicians inform the relevant officials and administrators about their programming and scheduling decisions in good time so that they can be implemented and executed.

THE CO-ORDINATION FUNCTION

Public participation activities are to some extent dispersed in all the legislatures. For example, even where there is a dedicated public participation and petitions office, public hearings are administered by the committee section. This results in the lack of a co-ordinated strategy for public participation, with little cooperation between the various sections handling functions that should, ideally, closely complement each other.

This leads to duplication; or worse, to certain functions not being executed at all.

There are various ways of improving this situation:

Clear job descriptions

Clear job descriptions help define roles by allocating specific responsibilities to individual staff members. This is particularly important where a particular function or task is not a core function. (For example, committee clerks are expected to take on a number of participation-related activities in addition to their core work). The other advantage of job descriptions is that they force those drawing them up to address the workload of staff, highlighting where they may be overburdened. Finally, job descriptions improve accountability, making it clear who is responsible when a task is not performed or inadequately carried out.

Strategic Co-ordination

Dispersed functions make it difficult to develop coherent and cohesive policies and strategies, increasing the possibility that certain functions or programmes end up forgotten or ignored. This problem can be addressed by introducing some kind of co-ordinating mechanism. Thus, a co-ordinator or liaison officer may be appointed to liaise between the various departments or sections or, alternatively, an interdepartmental committee could be set up to make and implement decisions affecting public participation.

Awareness

Finally, it is important to emphasise that all members, officials and staff in the legislatures should be made aware of the constitutional obligation to facilitate public participation in the legislative and political process. This affects, particularly, those working in other areas of administration who may be called upon to approve and disburse funds, make transport and accommodation arrangements or generally assist and co-operate in organising and facilitating activities that promote citizen involvement in the legislative process.

THE INSTITUTIONAL FUNCTION

The success of any programme depends on the capacity to implement and execute it. This capacity depends on the availability of adequate resources and the number and abilities of people available to carry out the required tasks.

Both budgetary and operational resources are necessary, although the latter clearly depends on the former. However, perhaps the most important resource for effective public participation is a staff component equipped with the appropriate skills to play a front line role in the legislature.

People Resources

A shortage of staff was identified as one of the major problems in almost all the legislatures and a major cause of the ineffectiveness of most programmes. This means that existing staff are overburdened and hampered in carrying out their duties, particularly where public participation is only one of many functions allocated to a member of staff. The obvious solution is to employ more staff although, given the limited resources of many legislatures, this may not be possible.

Financial Resources

Although legislatures have a responsibility to fund and implement public participation, almost all programmes are badly under-funded. This makes public participation activities dependent on other departments or sections for whom they are not a priority.

This problem can be ameliorated in various ways.

First, legislatures should include a separate line item for public participation in their budgets. This will give those responsible for public participation and outreach the financial independence to plan and execute programmes based on the amount of money they have available and what they can afford. Control over a dedicated budget is essential for purposes of long term planning, even where resources are relatively easy to obtain from elsewhere.

Second, legislatures can increase their capacity by forming partnerships with the private sector. By these means, public participation activities can be funded or sponsored as part of private sector corporate social responsibility and community development programmes.

Third, legislatures can approach donors with an interest in promoting democracy in South Africa.

Operational resources

Many legislatures lack even basic office equipment and other facilities. Particularly important for purposes of public participation is communication equipment such as fax machines, e-mail facilities and so on. Because of the importance of outreach activities to successful public participation in South Africa, other resources such as vehicles are also necessary.

APPENDIX TWO

SOME DEFINITIONS AND GUIDELINES FOR PUBLIC PARTICIPATION

The Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development requires the "internalisation" of these basic principles of public participation: ²⁴⁷

Proactivity. *Public participation requires that governments and civil society take initiatives, in accordance with their respective roles, to develop their maximum potential and enrich the process of decision-making for sustainable development.*

Inclusiveness. *Full participation by all those interested in and/or affected by sustainable development issues is essential to achievement of durable solutions. Special efforts should be made to include the participation of the private sector, and to create equal opportunities for women and vulnerable groups such as indigenous populations, youth, disadvantaged racial and ethnic minorities (including disadvantaged populations of African descent), and other traditionally marginalized groups.*

Shared Responsibility. *Governments and civil society must share equitably the commitments, burdens, and benefits of development.*

Openness Throughout the Process. *Inclusive and continuous participation throughout the process of design, implementation, and evaluation of projects, policies, or programs inspires new ideas and expertise, legitimizes decisions, and enriches outcomes. A decision-making process that is open to input at all phases can benefit from adjustments wherever they are needed to respond to new information or circumstances.*

Access. *The involvement of civil society in development decisions is essential for lasting solutions. In order to participate effectively, citizens must have timely access, at the various levels of government, to information, to the political process, and to the justice system.*

Transparency. *Productive relationships between civil society and government require that both be more accountable and transparent. Transparency on the part of all concerned parties in a decision-making process facilitates more meaningful participation by ensuring that all motivations and objectives are explicit and that all information vital to the decision is reliable and available in a timely manner.*

Respect for public input. *Citizen participation will only be effective and efficient if there is assurance that, in the process of decision-making, contributions deriving from the implementation of various mechanisms for participation are evaluated, analyzed, and given proper consideration in a timely manner.*

These principles highlight several key conditions that are necessary to promote the success of policies and practices of public participation, which require firm, ongoing commitment from government and civil society.

The Report to the Canadian Minister of the Environment describes "meaningful public participation" as follows: ²⁴⁸

Some of the key principles of meaningful public participation that should be reflected in a guideline on interactive public participation where required in screenings and comprehensive studies include - should be based on full access to relevant and required information; must include the opportunity to critically review and comment on the information in a two-way exchange; must be done early enough to allow participants to have an influence on the planning of the project; must allow sufficient time to review and respond; must require a consultation plan to be developed and shared with the public;

must be efforts to relate public comment to process or project decisions; must include notification, information out, and information discussion and exchange; must be timely. (27.2)

The HSRC defines public participation as:

participation in various political behaviours which the public can legally enact. These acts range from undemanding activities such as seeking information and being interested in politics, discussing politics and voting to more demanding forms of participation such as attending public hearings, contacting politicians and campaigning for a political organisation. In this paper the focus is on those aspects of public participation aiming at influencing political procedures and decisions.²⁴⁹

USAID provides some "values" for measuring public participation:²⁵⁰

Does the activity respond or contribute to efforts that people in the host country are already trying to do? (Examples: funding natural resource management activities of a commission established at the initiative of the local communities; enabling a government agency to implement an approach to elementary education or to primary health care that was pioneered by local community organizations; supporting an NGO or business association to expand or improve advocacy or service activities to which it has already demonstrated commitment.)

How fully have the potential customers (or affected populations), as well as other local stakeholders, been consulted to ensure that the program is consistent with their values and priorities? (Examples: good qualitative research through rapid appraisal interviewing, focus group meetings, skilled observation, and participatory appraisal methods; consulting a broad range of local experts and informants.)

Does the approach provide greater voice and influence to the poor and disadvantaged? (Examples: promoting norms that provide for public hearings in potentially affected communities and supporting changes in the legal/regulatory environment that favor *ci vic* organization and action; building capacity of community organizations to advocate effectively; and bringing organizations representative of the poor "to the table" in policy discussions involving USAID and business or government leaders, as members of a USAID Strategic Objective team.)

Does the approach put information into the hands of customers (individuals, organizations, communities) to permit them to hold USAID and its partners accountable for the usefulness of the assistance provided? (Examples: using broadly representative advisory or reference groups—and expanded Results Package Teams – to design, monitor, and evaluate activities; publishing, in local language, information about the development activities; giving local organizations access to budget information about umbrella grants run for their benefit.)

Does the activity strengthen the capacity of institutions throughout the society to carry out programs that are responsive to people's priorities? (Examples: training local government officials to work in partnership with the initiatives of neighbourhood associations; assisting host-country NGOs to develop governance that is more representative of and responsive to the community; strengthening the knowledge base of local universities, think tanks, and agencies by including them on Strategic Objective teams and employing them in assessments, research, and evaluation.)

Does the approach strengthen and broaden communications among players in the development process? (Examples: create opportunities for policy discussion among public sector, business, and non-profits; enable communities to be heard by local officials and local officials to be heard by national-level officials; enlarge the scope of permissible discussion between citizens and government or broaden the range of players who participate in the discussion, to include women and other groups that typically are excluded; build attitudes and skills that engender good listening.)

Does the activity or approach unleash innovation and local initiative? (Examples: individuals and families adapting new farming, business, or sanitation techniques to different circumstances; poor women taking action where before they appeared powerless or unmotivated; local or national-level

institutions developing new ways to approach problems; organizations of the poor taking the next steps in their community's development after the assistance ends.)

APPENDIX THREE

IDASA [PIMS] – EUPSP

Public Participation Questionnaire October 2000

Please tick in the appropriate box.

Does your legislature have a program that encourages public participation?

YES	01	NO	02
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In what office is the program on public participation a) located ? b) what does the PP programme entail? (Submissions, Public education, outreach etc...) and provide a description of all the elements of the programme.

(a) Legislature	01
Speaker's Office	02
Secretary's Office	03
Premier's Office	04
Other (please specify)	05

(b) _____

Where is the office or equivalent structure physically located?

How accessible is it to ordinary people?

Very accessible	01
Fairly accessible	02
Not very accessible	03
Not accessible at all	04

(b) Please explain _____

Do you have designated staff?

YES	01	NO	02
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(b) (If yes) How many?

Less than 5	
06 – 10	
11 – 14	
15 – 19	
20 – 24	
25 and above	

(c) What are their responsibilities?

(d) Have they had any special training in the area of public participation, or other relevant areas such as public relations, media liaison, civic education etc.....

(e) How well are they coping with the volume of work?

Coping very well	01
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<i>Coping well</i>	<i>02</i>
<i>Barely coping</i>	<i>03</i>
<i>Not coping at all</i>	<i>04</i>

What resources does the legislature have to support public participation? (circle all that apply)

<i>Specific line item in legislature's budget</i>	<i>01</i>
<i>Personal computers</i>	<i>02</i>
<i>Computerised data base programmes to monitor public participation</i>	<i>03</i>
<i>Non-computerised lists of potential participants</i>	<i>04</i>
<i>Non-computerised lists of past participants</i>	<i>05</i>
<i>Desk-top publishing for creating posters, pamphlets, etc...</i>	<i>06</i>
<i>Funds for public outreach programmes</i>	<i>07</i>
<i>Vehicles for public outreach programmes</i>	<i>08</i>
<i>Other: (Please Explain)</i>	<i>09</i>

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

How do you facilitate the participation of the public in the legislative process (public participation)? (circle all applicable answers)

<i>They initiate on their own</i>	<i>01</i>
<i>Make relevant documents available</i>	<i>02</i>
<i>Ensure that all committee proceedings are open to the public</i>	<i>03</i>
<i>Ensure that all committee proceedings are well publicised</i>	<i>04</i>
<i>Other (Please Explain)</i>	<i>05</i>

Is anyone in the legislature specifically responsible for enabling ordinary people to participate (public participation)?

<i>YES</i>	<i>01</i>	<i>NO</i>	<i>02</i>
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(b) If yes, who?

Who takes ultimate political responsibility for public participation

<i>Speaker</i>	<i>01</i>
<i>Secretary to parliament</i>	<i>02</i>
<i>Various committee chairpersons</i>	<i>03</i>
<i>Other</i>	<i>04</i>

In the following table, please list (1) all parliamentary committees in your legislature, (2) whether that committee holds public hearings or not, (3) whether committee proceedings are open to the public, or not, and (4) how each committees facilitates public participation?

<i>(1) Committee Name:</i>
<i>(2) Hold Public Hearings</i>
<i>a. yes</i>
<i>b. no</i>
<i>(3) Committee Proceedings</i>
<i>a. always open</i>

- b. sometimes open
 - c. never open
- (4)
- a. Keep records of committee proceedings
 - b. Publicly available summaries of committee proceedings
 - c. Publicly available verbatim transcript of proceedings
 - d. Publicly available record of members' votes
 - e. Published plain language summaries of bills or policy oversight
 - f. Hold public hearings on bills
 - g. Hold public hearings on policy issues
 - h. Publicise public hearings
 - i. Publish invitations to general public to attend or make submissions
 - j. Invite expert testimony to committee hearings
 - k. Committee proceedings open to public
 - l. Other _____

In question 11 above, if any committee is listed as "sometimes open" or "never open" to the public, please explain the basis on which its hearings may be closed to the public.

How often are public hearings advertised?

Always	01
Most of the time	02
Some of the time	03
Never	04

Where do you place public notices and state the media or other institutions used ?

On television	01
On radio	02
In newspapers	03
In magazines	04
On the internet	05
In public places	06
Not applicable	07
Other	08

Are public notices available in all relevant languages?

Always	01
Most of the time	02
Some of the time	03
Never	04

Do you have a minimum notification period for placing public notices prior to the actual hearing date?

YES	01	NO	02
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(If yes) What is it? _____

What happens to the public submissions you receive?

The are always summarised	01
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<i>They are always passed on to the committee as is</i>	<i>02</i>
<i>It depends on the specific committee</i>	<i>03</i>

What constraints does your legislature face in this process?

- a. General lack of funds*
- b. lack of staff*
- c. no available media*
- d. lack of funds for advertising*
- e. lack of interest on part of political leaders*
- f. lack of interest on part of members*
- g. public not interested*
- h. other*

Besides Public Hearings, Petitions and Public Submissions, in what other ways does this legislature interact with the public?

Where do you hold public hearings? (circle all that are appropriate)

<i>At parliament</i>	<i>01</i>
<i>Provincial Capital</i>	<i>02</i>
<i>Other cities in province</i>	<i>03</i>
<i>Places outside cities</i>	<i>04</i>

How do you publicise national and provincial bills?

- a. On television*
- b. On radio*
- c. In newspapers*
- d. In magazines*
- e. On the internet*
- f. In public places (e.g. billboards)*
- g. Not applicable*
- h. Other*

Are these notices available in all relevant languages?

<i>Always</i>	<i>01</i>
<i>Most of the time</i>	<i>02</i>
<i>Some of the time</i>	<i>03</i>
<i>Never</i>	<i>04</i>

Do you have any particular focus or approach to your media strategy?

Do you have outreach programmes targeted at rural communities?

- a. No*
- b. Yes (please explain what it entails)*

Do you have outreach programmes targeted at ordinary people who do not belong to or participate in community structures?

- a. No*
- b. Yes (please explain what it entails)*

Do you do anything to encourage participation from under-resourced and unorganised communities?

- a. No*
- b. Yes (please explain what it entails)*

Does your legislature have a budget for public participation?

No 01 Yes 02

(if yes) How much is the budgeted figure per annum (please provide for figures for the years since 1994)?

1994 _____ 1995 _____
1996 _____ 1997 _____
1998 _____ 1999 _____
2000 _____

If you do not have a budget, how are public participation activities financed?

<i>They aren't</i>	<i>01</i>
<i>Commercial sponsorships</i>	<i>02</i>
<i>Donor funds</i>	<i>03</i>
<i>Other</i>	<i>04</i>

Do you have an accounting officer for expenditures on public participation events?

YES 01 NO 02

31. (if yes) Who is the accounting officer for any expenditure on public participation?

Does the legislature have a system for tracking the extent of public participation, and any increases or decreases?

YES 01 NO 02

(if so) Which of the following do you use?

- a. Computerised data base programmes to monitor participants*
- b. Non-computerised lists of past participants*
- c. Records of all submissions*
- d. Other: (Please Explain)*

Does the legislature have a mailing list?

<i>Yes computerised</i>	<i>01</i>
<i>Yes non-computerised</i>	<i>02</i>
<i>No</i>	<i>03</i>

Do you have any method for categorising submissions and participants (e.g. business/non-business, organised/non-organised, by sector etc...)?

- a. No*
- b. Yes (please explain)*

35. Are these public participation records available for public scrutiny?

YES 01 NO 02

Do you use these records to evaluate your public participation policy?

YES 01 NO 02

Do you have any other method to evaluate the effectiveness of your system for facilitating public participation?

- a. No*
- b. Yes (please explain)*

Do you have any method of assessing the impact of public participation?

- a. No
- b. Yes (please explain)

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

- a. No
- b. Yes (please explain)

Who do you invite to make submissions? (circle all appropriate answers)

community based organisations	01
non-governmental based organisations	02
business	03
political parties	04
experts	05
ordinary citizens	06

Do you have a set list of people or organisations that you always invite?

YES	01	NO	02
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What proportion of your invitees would you say respond to these invitations?

OPTIONS	CBOs	NGOs	Business	Parties	Experts	Citizens
a. Almost all						
b. Most						
c. Some						
d. Few						
e. None						

Do they come again?

OPTIONS	CBOs	NGOs	Business	Parties	Experts	Citizens
a. Yes						
b. No						

How do you select your participants?

How easy is it for physically impaired people to participate?

Very easy	01
Easy	02
Not very easy	03
Impossible	04

Do you ask for feedback from participants?

Yes 01 No 02

What form of feedback do you receive from participants?

Verbal	01
---------------	-----------

Filled out forms prepared by the legislature	02
Letters	03

What has this feedback told you about your public participation programme?

Nothing useful	01
Working well	02
Can be improved	03
Needs major improvement	04

Why do you say this?

How often do you offer the following types of Public or Civic education about your legislature?

OPTIONS	Outreach programmes in schools	Outreach programmes in universities	Internships	Guided tours of parliament
a. Very often				
b. Often				
c. Not very often				
d. Never				

53. Please attach

any policy documents or other relevant papers which explain your policy on public participation)

an up-to-date copy of your Standing Rules (i.e. Rules of Procedure).

any documents setting out your practice or procedure with regard to your public participation policy.)

a list of those print and electronic media that you use to publicise bills and other legislature related events?)

a list of all those you invite to make submissions

a list of participants that:

a) have made submissions to Committees or the Legislature

b) participated in workshops, outreach programmes or public education programmes or any other structured public participation programme

c) submitted petitions to the Legislature

Who should have the primary responsibility for facilitating public participation in the legislative process?

The institution of parliament	01
The members individually	02
Political parties	03
A mixture of all the above	04

Thank you for your assistance and co-operation.

APPENDIX FOUR

HOW TO EXERCISE YOUR PUBLIC PARTICIPATION RIGHTS

You, your organisation or your community may have something to say about a new Bill that is being introduced in Parliament or your provincial legislature. Or you may wish to raise an issue that concerns you. Here are a few guidelines on how to go about it.

WHO YOU CAN CONTACT

There are a number of people you can contact:

You can telephone or visit the constituency office in your area and ask to meet with your MP or MPL when he or she next visits. If you do not know where this office is, please telephone your political party and ask them.

You can contact your MP at Parliament or your MPL at your provincial legislature and make an appointment to discuss your problem or concern.

You can contact the Committee Clerk of the Committee that is dealing with the legislation or issue that concerns you and make an appointment to speak to the Committee Chair or a member of the Committee.

You can contact Parliament or your local legislature and ask to speak to the office or person responsible for public participation.

HOW YOU CAN PARTICIPATE

There are several ways you can participate:

You can attend any Committee meeting in Parliament or your provincial legislature.

You can attend a public hearing.

You can attend a plenary session in Parliament or your provincial legislature.

You can make a written submission to the Committee or at a public hearing.

You can ask for permission to make an oral (spoken) submission to a Committee or at a public hearing.

You can ask your MP, MPL or a Committee to conduct a workshop on a particular issue in your area.

You can make a petition to Parliament or a legislature, asking for a change in legislation.

SEVERAL VOICES ARE STRONGER THAN ONE

Your submission or petition will be stronger if you join with others who share your views.

You can organise a meeting to discuss an issue in your community, your church or workplace and agree on a shared position.

You can find out if there is an NGO that is working on the problem or may be interested in helping.

You can find out if other people elsewhere feel the same way as you do about your issue and contact them.

GETTING THE INFORMATION YOU NEED

You can request the information you need from the person or institution you contact (see above).

You can read the newspapers, listen to the radio or watch TV to find out what is going on in Parliament or your provincial legislature. Often there are advertisements informing people of when and where a public hearing will take place.

You can ask your MP or MPL to give a report-back in your community.

Often Bills are written in complicated legal language. It sometimes helps to read the Memorandum which is attached to the Bill and explains what it is about.

You can also ask for an explanation or simple language version of the information you need. Sometimes NGOs can help with this.

WHAT IS THE DIFFERENCE BETWEEN A SUBMISSION AND A PETITION?

A submission is a way of making your voice heard when a Bill is being discussed in Parliament or a provincial legislature. It gives you the opportunity to change people's minds before the Bill becomes a law.

A petition is a way of making your voice heard after a Bill has become a law and may be a request for a change in that law.

GENERAL TIPS ON MAKING A SUBMISSION OR PETITION

There is no set format. A submission or petition can be a simple letter of support or opposition, or it can be a longer document with suggestions for changes. The important thing is to say what you want to say clearly. The following tips may help you when preparing your submission or petition:

Usually, the shorter and simpler the better. MPs are busy people and will probably not have time to read very long complicated documents.

If your document is long, write a summary. Your summary should briefly outline your main points and recommendations.

If you are making the submission or petition as an individual, explain why you want to comment on the legislation. If you have training or experience that is relevant to the issue, say so.

If you are making the submission or petition as an organisation, describe the organisation: Who are its members? Why are they concerned about this law? Does the organisation have special expertise or experience in this issue?

Explain your point of view. Say whether you want to support or oppose a Bill or other matter. If you want to suggest changes, explain what they are.

Use the language you feel most comfortable with. The main language used in Parliament is English. However, the majority of MPs speak Xhosa, Zulu or Sotho. They will enjoy reading submissions in any of these languages. But remember, the media probably do not understand many South African languages. So attach a one-page summary of your main points in English.

WHAT TO DO WITH A SUBMISSION ONCE YOU HAVE COMPLETED IT

You can deliver or post a submission. If you post it, make sure you leave enough time for it to arrive before the deadline. If it is not too long, you can fax it.

If you want to make an oral submission, send a letter with your request then telephone Parliament or the legislature to find out when you will be able to speak.

WHAT TO DO WITH A PETITION ONCE YOU HAVE COMPLETED IT

A petition has to go through a process in Parliament. This means you have to get the support of your MP or MPL. It may be useful to talk to her or him before you write your petition to find out if he or she will support you.

Usually, the MP or MPL must give the petition to the Speaker who can send it to the special committee that deals with members' petitions or to the committee that deals with that kind of law.

OTHER WAYS YOU CAN MAKE YOUR VOICE HEARD

You can write letters to Ministers, MPs or MPLs telling them how you feel about a matter.

You can circulate a petition and ask other people who agree with you to sign it. A petition with many names on it can then be sent to the committee or Minister concerned.

You can send a letter to the editor of your local newspaper.

You can issue a press statement.

You can ask your local radio station to host a panel discussion or phone-in programme on the issue.

ACRONYMS

ANC	<i>African National Congress</i>
CAPPP	<i>Constitutional Assembly Public Participation Programme</i>
CDF	<i>Comprehensive Development Framework</i>
CEDAW	<i>Convention for the Elimination of All Forms of Discrimination Against Women</i>
CEPA	<i>Canadian Environmental Protection Act</i>
COMTASK	<i>Task Group on Government Communications</i>
COSATU	<i>Congress of South African Trade Unions</i>
CSO	<i>Civil society organisation</i>
DfID	<i>Department for International Development</i>
DPMC	<i>District Poverty Monitoring Committees</i>
ECOSOC	<i>United Nations Economic and Social Council</i>
FCB	<i>Firearms Control Bill</i>
GCIS	<i>Government Communication and Information System</i>
GFSA	<i>Gun Free South Africa</i>
GFZ	<i>Gun Free Zone</i>
HIPC	<i>Heavily Indebted Poor Countries</i>
HSRC	<i>Human Sciences Research Council</i>
IBA	<i>Independent Broadcasting Authority</i>
ICASA	<i>Independent Communications Authority of South Africa</i>
ICBL	<i>International Campaign to Ban Landmines</i>
IDASA	<i>Institute for Democracy in South Africa</i>
ISP	<i>Inter-American Strategy for Public Participation in Environment and Sustainable Development Decision-making in the Americas</i>
LRA	<i>Labour Relations Act</i>
MEC	<i>Member of (Provincial) Executive Council</i>
MP	<i>Member of Parliament</i>
MPL	<i>Member of the Provincial Legislature</i>
NCOP	<i>National Council of Provinces</i>
NEDLAC	<i>National Economic Development and Labour Council</i>
NEF	<i>National Economic Forum</i>
NEMA	<i>National Environmental Management Act</i>
NICRO	<i>National Institute for Crime Prevention and Reintegration of Offenders</i>
NMC	<i>National Manpower Commission</i>

OAS	<i>Organisation of American States</i>
OSW	<i>Office on the Status of Women</i>
PANSALB	<i>Pan South African Language Board</i>
PATU	<i>Pan African Telecommunications Union</i>
PRSP	<i>Poverty Reduction Strategy Paper</i>
PSP	<i>Parliamentary Support Project</i>
RDP	<i>Reconstruction and Development Programme</i>
SACP	<i>South African Communist Party</i>
SALGA	<i>South African Local Government Association</i>
SATRA	<i>South African Telecommunications Regulatory Association</i>
UDN	<i>Uganda Debt Network</i>
UNDP	<i>United Nations Development Programme</i>
UPPAP	<i>Uganda Participatory Poverty Assessment Project</i>
VAT	<i>Value Added Taxation</i>

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CONSTITUTIONAL LAW

KATE HOFMEYR*†

JURISDICTION

Jurisdiction under section 167(4)(e) of the Constitution

In the year under review, the interpretation of s 167(4)(e) of the Constitution was considered by both the Supreme Court of Appeal in *King & others v Attorneys' Fidelity Fund Board of Control* 2006 (1) SA 474 (SCA) and by the Constitutional Court in *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC), 2006 (12) BCLR 1399 (discussed further under 'Standing' and 'Public involvement in legislative drafting'). Section 167(4)(e) of the Constitution provides that '[o]nly the Constitutional Court may . . . decide that Parliament or the President has failed to fulfil a constitutional obligation'.

The crisp question before both courts was whether courts other than the Constitutional Court had jurisdiction to decide cases in which it was alleged, in one case, that Parliament, and in the other, that the National Council of Provinces ('NCOP'), had failed adequately to involve members of the public in their legislative drafting processes.

In the *King* case, the appellants challenged the constitutional validity of certain amendments made to the Attorneys Act 53 of 1979 by the Attorneys and Matters Relating to Rules of Court Amendment Act 115 of 1998 on the ground that the amendments did not conform to the requirements of s 59 of the Constitution. This section requires, amongst other things, that the National Assembly must 'facilitate public involvement in the legislative and other processes of the Assembly and its committees'. Although the appellants admitted that there was some public involvement, they contended that it was insufficient. The Court *a quo* dismissed the challenge and leave was granted to appeal to the Supreme Court of Appeal.

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† Some of the discussion in this chapter relies on work published in the Constitutional Law chapter of *Juta's Quarterly Review* for 2006. My co-authors, Steven Budlender and Adrian Friedman, have kindly consented to my basing aspects of the discussion of the cases here on our work published in the *Quarterly Review*.

In the *Doctors for Life* case, the applicant approached the Constitutional Court directly alleging that Parliament had failed to fulfil its constitutional obligation to facilitate public involvement when it passed four Bills, namely the Choice on Termination of Pregnancy Amendment Act 38 of 2004; the Sterilisation Amendment Act 3 of 2005; the Traditional Health Practitioners Act 35 of 2004; and the Dental Technicians Amendment Act 24 of 2004. More precisely, its complaint was that the NCoP had failed to invite written submissions and conduct public hearings on these Bills as required by its duty to facilitate public involvement in its legislative processes and those of its committees. Furthermore, the applicant argued that the Constitutional Court was the only court that could hear its application because it involved a failure by Parliament to fulfil its constitutional obligation.

Any interpretation of s 167(4)(e) must be considered alongside s 172(2)(a) of the Constitution which contemplates that disputes concerning the constitutional validity of a statute or conduct of the President will be considered, in the first instance, by the High Courts or the Supreme Court of Appeal, which are given the power to declare any law or conduct that is inconsistent with the Constitution invalid, subject to confirmation by the Constitutional Court. As the Supreme Court of Appeal pointed out in *King*, the co-existence of these provisions requires a determination to be made of the different ways in which the Constitution envisages that statutes may be invalid (para 16).

According to the Supreme Court of Appeal, the Constitution envisages three bases for statutory invalidity. The first of these arises where, although the statute is validly adopted by Parliament, 'its provisions fall outside the scope of Parliament's legislative authority as defined in the Constitution' (ibid). Such cases would include those where it is alleged that the legislation is inconsistent with one or more of the provisions of the Bill of Rights.

The second basis for invalidity is where Parliament fails to observe the manner and form requirements for the adoption of legislation. As an example of such 'manner and form' requirements, the Supreme Court of Appeal cited s 53 of the Constitution which requires, inter alia, that a majority of the members of the National Assembly must be present before a vote is taken on a Bill. In an interesting invocation of Hart's distinction between capacity-limiting and duty-imposing rules (see HLA Hart *The Concept of Law* 2 ed (1994) 68–70), the Supreme Court of Appeal pointed out that procedural requirements that stipulate the prerequisites to validity

do not impose obligations. Rather, they define the limits of capacity. Although the Supreme Court of Appeal accepted that there may be manner and form requirements which impose obligations on the legislature, rather than define the limits of its capacity, it made clear that a requirement such as that found in s 53(1) (a) of the Constitution is an instance of the latter (para 18).

In relation to both these two bases of invalidity, the Supreme Court of Appeal held that it, and the High Courts, have jurisdiction under s 172(2) to make an order of constitutional invalidity (*ibid*).

Thus it was only in cases involving the third basis for invalidity that the Constitutional Court alone would have jurisdiction. This basis arose where 'Parliament so completely fails to fulfil the positive obligations the Constitution imposes on it that its purported legislative acts are invalid' (para 19). It seems that the Supreme Court of Appeal had in mind, as examples of such obligations, those relating to accountability, responsiveness and openness including the obligation to 'facilitate public involvement in legislative and other processes' contained in s 59(1) (a) of the Constitution (*ibid*).

In *Doctors for Life*, Ngcobo J expressly endorsed this conclusion and reasoning of the Supreme Court of Appeal, bar one proviso relating to the reference to the extent of the failure implicit in the third basis for invalidity (para 21 fn 16). What this endorsement entails is not entirely clear, however, because Ngcobo J's basis for concluding that only the Constitutional Court has exclusive jurisdiction in cases in which legislation is alleged to be invalid on the ground that the necessary public participation in its production was lacking is not obviously co-extensive with the Supreme Court of Appeal's analysis.

The core of the Supreme Court of Appeal's interpretation of s 167(4) (e) seems to be the distinction between procedural deficiencies which implicate Parliament's capacity and procedural deficiencies which constitute violations of positive obligations. By contrast, Ngcobo J's interpretation of s 167(4) (e) does not deal with disabilities but rather rests on a distinction between two types of obligation, those which are readily ascertainable and those which are not.

According to Ngcobo J, the purpose underlying s 167(4) of the Constitution is that disputes that relate to the sensitive area of the separation of powers must be decided by the Constitutional Court alone (para 24). Therefore, on Ngcobo J's analysis, 'the closer the issues to be decided are to the sensitive area of separation of powers, the more likely it is that the issues will fall within s 167(4)' (*ibid*). It

follows, therefore, that where a dispute will require a court to decide a crucial political question and thus intrude into the domain of Parliament, the dispute will more likely be one for the exclusive jurisdiction of the Constitutional Court (*ibid*).

In giving content to the notion of 'a crucial political question', Ngcobo J relied on a distinction between constitutional provisions that impose obligations that are readily ascertainable and are unlikely to give rise to disputes, on the one hand, and those provisions which impose the primary obligation on Parliament to determine what is required of it, on the other (para 25).

According to Ngcobo J, because a determination whether the former type of obligation has been fulfilled does not trench upon the sensitive area of the separation of powers, such a decision would not necessarily fall within the exclusive jurisdiction of the Constitutional Court (*ibid*). By contrast, however, where the obligation requires Parliament, in the first place, to determine what is necessary to fulfil its obligation, any review by a court to resolve whether Parliament has complied with its obligations implicates the autonomy of Parliament to regulate its own affairs and hence the separation of powers. This sort of intrusion is reserved for the Constitutional Court alone (paras 26–7).

There are two features of the *Doctors for Life* and *King* judgments which merit comment. The first of these relates to the procedural implications of the Constitutional Court's distinction between readily ascertainable and non-readily ascertainable obligations. The second deals with the question, already foreshadowed, whether it is possible to read the *King* and *Doctors for Life* judgments consistently.

At first blush it may seem curious to determine the ambit of the Constitutional Court's exclusive jurisdiction on the basis of the type of obligation imposed. However, if one considers the distinction within the framework of Parliamentary discretion, it may become clearer. To the extent that the Constitution places a duty on the legislature, compliance with which admits of little to no discretion on the part of that legislature — such as the case where the Constitution requires that statutes be passed by a specified majority — a court's determination on the matter will not invade the area of legislative discretion. However, where the constitutional obligation leaves a certain amount of discretion to the legislature in so far as it is empowered to regulate its own affairs, a decision by a court that the legislature has failed to fulfil that obligation requires the court to assess the lawfulness of the legislature's exercise of discretion. Such a determination necessarily has implications for the separation of powers and thus ought to be reserved for the Constitutional Court.

It is interesting to note the logical conclusion of this argument: Obligations which are readily ascertainable will fall within the jurisdiction of courts other than the Constitutional Court.

It would seem to follow from this that where an applicant alleges that the President or Parliament has failed to fulfil a constitutional obligation, the High Courts must have jurisdiction to determine whether the obligation is readily ascertainable, given that they will have jurisdiction if that obligation is, indeed, readily ascertainable. However, when they conclude that it is not readily ascertainable, they will not have jurisdiction to resolve the matter as only the Constitutional Court has jurisdiction to resolve such disputes. It remains an open question in such scenarios whether first approaching the High Courts will be the correct procedure to adopt.

In so far as reading the *King* and *Doctors for Life* judgments consistently is concerned, one might be inclined to conclude that Ngcobo J's class of 'readily ascertainable' obligations is co-extensive with the Supreme Court of Appeal's class of capacity-limiting rules. As an example of the former, Ngcobo J refers to s 74(2) (a) of the Constitution which requires a two-thirds majority vote of the members of the National Assembly in order to effect an amendment to Chapter 2 of the Constitution, and as an example of the latter, the Supreme Court of Appeal refers to s 53(1) (a) of the Constitution which requires that a majority of the members of the National Assembly be present before a vote may be taken on a Bill or an amendment to a Bill.

Both seem to stipulate procedural pre-requisites for the enactment of valid statutes. However, Ngcobo J identifies the former as an 'obligation' imposed on the legislature whereas the Supreme Court of Appeal classifies the latter as a type of capacity-limiting rule which it expressly distinguishes from obligation-imposing rules (*King* para 18). Although the Supreme Court of Appeal acknowledges that some requirements of manner and form may impose obligations as opposed to disabilities, it makes clear that where Parliament purports to adopt a Bill that fails to receive a majority of the votes cast, it does not breach an obligation but rather fails to legislate at all (*ibid*). If the requirement that a majority vote is required for the passing of an 'ordinary' Bill constitutes a capacity-limiting rule, it seems odd that the requirement that a two-thirds majority vote is required to pass a Bill amending Chapter 2 of the Constitution is an obligation-imposing rule. If these two rules are of the same type then either the Constitutional Court is wrong in thinking that they are duty-imposing or the Supreme Court of Appeal is wrong in thinking they are capacity-limiting.

It may be asked, however, what turns on this classification. Whether one classifies the rule as imposing a disability or a readily ascertainable duty, the consequence is the same: the High Courts and the Supreme Court of Appeal will have jurisdiction to decide the case under s 172(2) of the Constitution.

However, the first thing to note in response to this contention is that the ambit of the courts' jurisdiction may be different depending on whether the reasoning of *King* or *Doctors for Life* is adopted. The ambit of the High Courts' and the Supreme Court of Appeal's jurisdiction is potentially wider on the Constitutional Court's analysis than on the Supreme Court of Appeal's. On one reading of the *King* judgment, all questions whether Parliament has failed to fulfil an obligation are crucial political questions and hence beyond the jurisdiction of the Supreme Court of Appeal and the High Courts. By contrast, according to the Constitutional Court, the question of the fulfilment of only certain types of obligation engages a crucial political question. Thus on the Constitutional Court's analysis, disputes about a certain type of Parliament's obligations, namely those which are readily ascertainable, may be determined by courts other than the Constitutional Court.

There is, however, another reading of the Supreme Court of Appeal's judgment in *King* which tends to suggest that the ambit of the different courts' jurisdiction may be equivalent to that advanced by the Constitutional Court. This alternative reading of the *King* judgment would emphasise the fact that the Supreme Court of Appeal does not state expressly that *all* cases which deal with Parliament's constitutional obligations will fall outside its and the High Courts' jurisdiction. Rather, the Supreme Court of Appeal qualifies those questions about Parliament's obligations which are crucially political with reference to the extent of Parliament's breach, i.e. those in which Parliament has 'so renounced its constitutional obligations that it ceases to be or to act as the body the Constitution envisages and thus ceases to have legislative authority . . .' (para 23).

According to the Supreme Court of Appeal, the question whether such an extreme has been reached is a question reserved for the Constitutional Court. This distinction between degrees of breach may thus be taken to be similar to the distinction drawn by the Constitutional Court between readily ascertainable obligations and others.

However, even if the ambit of their respective jurisdictions is the same on either the Supreme Court of Appeal's or the Constitutional

Court's analysis, the basis for that jurisdiction is distinct. The distinction, which the Constitutional Court draws, qualifies the nature of the obligation, whereas the distinction which the Supreme Court of Appeal adopts qualifies the extent of Parliament's breach. Furthermore, it should be borne in mind that Ngcobo J expressly doubts the validity of the Supreme Court of Appeal's emphasis on the extent of Parliament's breach as relevant to the question of the ambit of s 167(4) (e) (*Doctors for Life* para 21 fn 16).

In so far as the basis of jurisdiction is concerned, it may be argued that the Supreme Court of Appeal's approach, which relies on the distinction between disabilities and duties, squares better with the text of s 167(4) (e) than does the Constitutional Court's distinction between readily ascertainable obligations and others. Section 167(4) (e) refers only to 'obligation' and does not, on its face, make any reference to different kinds of obligation. Thus to explain the fact that the Supreme Court of Appeal and the High Courts have jurisdiction in cases involving disabilities, but not those involving 'obligations' remains faithful to the express wording of s 167(4) (e) and does not require the reading-in of an implied distinction between readily ascertainable and other obligations.

This advantage of the Supreme Court of Appeal's analysis is, however, only sustained if there is no qualification to the extent of Parliament's breach which converts the question into a crucial political one and hence places it beyond the jurisdiction of the Supreme Court of Appeal. If the extent of the breach is material to the question whether the question is a crucial political one, then the Supreme Court of Appeal's approach is as much dependent on a reading-in of an implied distinction between degrees of breach as the Constitutional Court's approach is dependent on a reading-in of an implied distinction between readily ascertainable obligations and others.

Given that Ngcobo J expressly endorsed the conclusion and reasoning of the Supreme Court of Appeal in relation to the third basis for invalidity in the *King* case, one would suppose that the two judgments are capable of a consistent reading. The foregoing discussion seeks to highlight some of the different implications of the two courts' approaches. In so far as their similarities are concerned, both courts seem to have treated the question whether the Constitutional Court has exclusive jurisdiction as a matter of degree. For the Supreme Court of Appeal, the degree was a function of the extent of the breach, and for the Constitutional Court, the degree was a function of the ease with which the obligation

could be determined. It is important to note, however, that in cases in which Parliament 'so completely failed' to observe a readily ascertainable obligation, it would seem that on the Supreme Court of Appeal's reasoning only the Constitutional Court would have jurisdiction, whereas on the Constitutional Court's reasoning, this would be a question which the High Courts and the Supreme Court of Appeal could determine.

Jurisdiction of the Constitutional Court vis-à-vis the Electoral Court

In *African Christian Democratic Party v Electoral Commission* 2006 (3) SA 305 (CC), 2005 (6) BCLR 579 the Constitutional Court was required to determine the meaning of s 96(1) of the Electoral Act 73 of 1998, which states that the 'Electoral Court has final jurisdiction in respect of all electoral disputes and complaints about infringements of the Code, and no decision or order of the Electoral Court is subject to appeal or review'.

The case involved an urgent application for leave to appeal against a judgment of the Electoral Court in which it refused to interfere with a decision of the Electoral Commission excluding the applicant from contesting the local government elections in the Cape Town Metropolitan Council. Although the Court was split 10–1 on the merits in the case, the determination of jurisdiction is at the very least impliedly assented to by Skweyiya J in that he presented a dissent on the merits and did not refuse to engage with them on jurisdictional grounds.

The Constitutional Court established that s 96(1) of the Electoral Act does not apply to disputes arising from municipal elections and therefore cannot be said to oust the jurisdiction of the Constitutional Court to hear an appeal from a decision of the Electoral Court on a matter relating to municipal elections (para 15). In reaching this conclusion, the court stressed that legislation should not be presumed to have intended to oust the jurisdiction of the Constitutional Court when it does not expressly state as much. The court specifically left open the more fundamental question whether its jurisdiction in constitutional matters could ever be ousted without offending the Constitution (ibid).

MOOTNESS

AAA Investments (Pty) Ltd v Micro Finance Regulatory Council 2007 (1) SA 343 (CC), 2006 (11) BCLR 1255 (discussed further under 'Exercise of Public Power') presented the Constitutional Court with an opportunity to develop its approach to mootness in constitu-

tional matters. In this case, the question arose whether the Constitution applies to rules made by the Micro Finance Regulatory Council ('the Council') aimed at regulating the micro-lending sector. The Supreme Court of Appeal in *Micro Finance Regulatory Council v AAA Investments (Pty) Ltd* 2006 (1) SA 27 (SCA) had held that the Constitution did not apply to the Council's rules because the rules operated only in the private sphere by reason of a contractual relationship between the Council and those micro-lenders registered with it (para 4). This case is discussed further in the chapters on Company Law and Financial Institutions and Stock Exchanges.

Even at the stage that the matter was heard in the Supreme Court of Appeal, the exemption notice issued by the Minister at issue in the case had been replaced by a new exemption notice. This new notice set out the rules determined by the Council and provided that they were rules prescribed by the Minister. In other words, the Council's rules were deemed to be the Minister's rules under the new regime and were hence brought within the ambit of the public sphere.

The Council had contended before the Supreme Court of Appeal that the publication of the new notice rendered the issue moot. However, when this point was dismissed by the Supreme Court of Appeal, it was not pursued before the Constitutional Court (para 12).

Despite this, however, the Constitutional Court held that the possibility of mootness was so strong in the case that this consideration had to be weighed in the interests of justice in relation to the application for leave to appeal (para 27).

While the Constitutional Court held that 'the issues may well be moot' (ibid — it should be noted that in his concurrence with the majority on this issue, Langa CJ held that the issues were moot (para 67)) it ultimately concluded that this should not preclude the court from dealing with the main issues in the case. It noted in this regard that there were conflicting judgments from the High Court and the Supreme Court of Appeal on whether the rules had been validly made and that the judgment of the Supreme Court of Appeal would remain binding in respect of future regulation of the industry. The Constitutional Court therefore unanimously concluded that, notwithstanding the issue of mootness, certain of the issues raised were 'so crucial to important aspects of government as well as the rights contained in the Bill of Rights that it [would be] in the interests of justice to grant leave to appeal' in respect of those issues (para 27).

This judgment marks a progression in the Constitutional Court's approach to mootness. Previously, it had held that 'a prerequisite for the exercise of the discretion [to hear a matter that is moot] is

that any order which this Court may make will have some practical effect either on the parties or on others' (*Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) para 11). The case broadens the class of cases which have practical effect. In this case, the 'practical effect' consisted of important issues of government and rights which had received different treatment by the High Court and the Supreme Court of Appeal (*AAA Investments* para 27). It seems, therefore, that the precedential value of the Supreme Court of Appeal's determination that the Council exercised private power in the circumstances was an issue important enough to the Constitutional Court to overturn that considerations of mootness were not to stand in its way.

INHERENT POWERS OF COURTS TO REGULATE THEIR OWN PROCESSES

The case of *Phillips & others v NDPP* 2006 (1) SA 505 (CC), 2006 (2) BCLR 274 (also discussed in the chapter on Criminal Procedure) concerned the nature of a restraint order under s 26 of the Prevention of Organised Crime Act 121 of 1998 ('POCA') and the circumstances in which it may be varied or rescinded by the court that granted it.

Section 26(1) provides:

'The National Director may by way of an *ex parte* application apply to a competent High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates.'

The primary issue in the case was whether the High Court had the power to rescind an order it had made in terms of s 26 of POCA on grounds other than those specified by the Act. The Supreme Court of Appeal and the High Court differed on this question, with the Supreme Court of Appeal holding that the High Court did not have such power (see *Phillips v NDPP* 2003 (6) SA 447 (SCA)). The applicants unsuccessfully appealed to the Constitutional Court against this judgment.

The background to their appeal to the Constitutional Court began with an application to the High Court for the rescission of a restraint order which had previously been granted by the High Court under s 26(1) of POCA. In the High Court, the applicants did not seek to make out a case for the rescission of the order based on the grounds of rescission specified in s 26(10)(a) of POCA which provides as follows:

'26(10) A High Court which made a restraint order —

(a) may on application by a person affected by that order vary or rescind

the restraint order or an order authorising the seizure of the property concerned or other ancillary order if it is satisfied —

- (i) that the operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and
- (ii) that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred.’

In fact, the applicants did not seek relief under any of the provisions of POCA, despite the fact that the restraint order was granted in terms of s 26(1) and (3) of the Act. Instead, the applicants sought to make out their cause of action for rescission of the order on the basis of the inherent jurisdiction of the High Court, which is now entrenched in s 173 of the Constitution, to protect and regulate its own process, and to develop the common law by taking into account the interests of justice.

In response, the National Director of Public Prosecutions contended that the only grounds upon which the order could be rescinded were those set out in s 26(10) of POCA and therefore maintained that, as no such case had been made out on the applicants’ papers, the application had to fail.

The High Court found for the applicants on the basis that upon a proper construction, s 26(10) (a) does not take away the inherent power of the High Court to vary or rescind its order under the common law (*Philips* para 19).

The Supreme Court of Appeal reversed the High Court’s decision on the basis that the initial restraint order was not one that could be granted under the common law. If its grant depended on the invocation of the provisions of POCA, then the power to vary or rescind must also be located in POCA (para 25). Therefore the Supreme Court of Appeal concluded that a court which grants a restraint order in terms of s 26(1) of POCA has no inherent jurisdiction to rescind that order (para 27).

In the Constitutional Court, the applicants alleged that there were two possible constructions which could be given to s 26 of POCA. The first of these would allow the High Court, in the exercise of its inherent power, to set aside a restraint order made under the Act on common-law grounds. This, according to the applicants, was the construction of the provision which promoted the spirit, purpose and objects of the Bill of Rights (para 35). The second possible construction was that adopted by the Supreme Court of Appeal in terms of which the grounds for rescission provided by POCA consti-

tute a closed list such that a High Court is not empowered to rescind a restraint order on grounds other than those specified in POCA (para 36). This latter interpretation was not, according to the applicants, constitutionally compliant. The applicants did not, however, directly challenge s 26 of POCA as unconstitutional on the construction adopted by the Supreme Court of Appeal.

Skweyiya J, writing for a unanimous court, held that s 26 was not capable of the construction proffered by the applicants (para 37). The rationale behind this conclusion seems to have been the emphasis placed in previous judgments of the Constitutional Court (specifically, *S v Pennington* 1997 (4) SA 1076 (CC) para 22, and *Parbhoo v Getz NO* 1997 (4) SA 1095 (CC) paras 4–5) on the fact that the power in s 173 to protect and regulate relates to the process of court and arises when there is a legislative lacuna in the process (para 48). In this case, there was no legislative lacuna; in fact, the statute laid out the specific bases upon which rescission of a restraint order could be granted.

Thus, by failing to attempt to bring their application within the terms of POCA, the applicants had ignored the statutory provisions of an Act of Parliament. This was not competent, according to Skweyiya J. Although he did not provide a comprehensive interpretation of the meaning of s 173 of the Constitution, he did state unequivocally that a statutory provision could not simply be ignored and reliance placed directly on the Constitution, nor, indeed, the common law (paras 50–1). Furthermore, he expressed doubt as to whether the inherent jurisdiction of the courts under s 173 was such that it empowered a judge of the High Court to make orders which negated the unambiguous expression of the legislative will (para 52).

After concluding that s 26 did not admit of the construction placed on it by the applicants, Skweyiya J did speculate that the alternative construction of the section (that is, the one adopted by the Supreme Court of Appeal) might be inconsistent with the Constitution. However, he emphasised that that case had not been made out by the applicants on their papers. Given, therefore, that there was no direct challenge to the constitutionality of s 26, the Constitutional Court held that the interpretation of the section adopted by the Supreme Court of Appeal ought to stand.

It is significant that, as Skweyiya J's judgment emphasised, the constitutional issues in this case were raised only before the Constitutional Court. Thus neither the High Court nor the Supreme Court of Appeal had heard argument on the constitutional issues

(para 38). Although Skweyiya J expressly left open the possibility that there may be cases in which it would be permissible to raise a constitutional matter for the first time on appeal to the Constitutional Court, such cases would have to be exceptional, and this was not one (para 43). Furthermore, in the Constitutional Court, instead of challenging the constitutionality of s 26, the applicants had invoked the Constitution as an interpretive tool in respect of s 26. Skweyiya J branded this sort of challenge, a *collateral* attack on the statute, which he held, was not ordinarily permissible (*ibid*). According to Skweyiya J:

‘The constitutional challenge should be explicit, with due notice to all affected. This requirement ensures that the correct order is made; that all interested parties have an opportunity to make representations; that the relevant evidence can, if necessary, be led and that the requirements of the separation of powers are respected.’ (*ibid*)

It cannot be disputed that notice to parties is of critical importance when constitutional challenges are made. In cases where only an interpretive argument is made, however, what is the rationale for notice not formally being a prerequisite? The oversight role which the Constitutional Court plays in order to strike the correct balance between the different branches of the state applies only in cases where declarations of invalidity are granted by lower courts, and not in cases where lower courts interpret legislation in conformity with the spirit, purport and objects of the Bill of Rights as they are required to do in terms of s 39(2). Because interpretation in accordance with s 39(2) is always circumscribed by the meanings which the language can reasonably encompass (*Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd v Smit* 2001 (1) SA 545 (CC) para 24), the exercise is restrained in a way that declaring a legislative provision to be constitutionally invalid is not. It may be that because the implication for the principle of the separation of powers is arguably greater in respect of the latter exercise than in relation to the former, notice is required to be given to the representatives of the other branches of the State.

Currie and De Waal have suggested at least one argument which justifies the notice requirement in cases where the Constitution is directly applicable to legislation, as opposed to those cases in which it is only indirectly applicable through s 39(2). Relying on Ackermann and Sachs JJ’s judgments in *Du Plessis v De Klerk* 1996 (3) SA 850 (CC), 1996 (5) BCLR 658, Currie and De Waal argue that ‘direct application [of the Bill of Rights] rules out certain possibili-

ties as constitutionally impermissible, whereas indirect application merely proposes a construction of the law that conforms to the Constitution' (*Bill of Rights Handbook* 5 ed (2005) 74). This suggests that the legislature's legitimate interest in the former is greater than the latter because of the greater limitation placed on the legislature's discretion to amend or enact similar legislation in cases where an order of invalidity is granted. Although the authors concede that even in cases of direct application, the extent of the limitation to the legislature's discretion will depend on the extent to which the court is prepared to 'pronounce on the meaning' of the Constitution, they assert that 'direct application however inevitably rules out certain options' (*ibid*).

It seems to me, however that there is an argument to be made that the indirect application of the Bill of Rights to legislative provisions may be *as limiting* to the legislature's options as direct application of the Bill of Rights.

Currie and De Waal distinguish the effect of direct and indirect application on the basis that the former rules out certain possibilities as constitutionally impermissible, whereas the latter merely proposes a constitutionally compliant construction of the law. There is, to my mind, a false distinction at the base of this comparison. When a court is called on to adopt an interpretation of legislation that promotes the spirit, purport and objects of the Bill of Rights, such an invocation is premised on the notion that there are interpretations of the legislation which do not promote the spirit, purport and objects of the Bill of Rights. The case brought by the applicants in *Phillips*, discussed above, bears this out: According to the applicants, there were two possible constructions of s 26 of POCA — one which promoted the spirit, purport and objects of the Bill of Rights (which, I will term 'interpretation X') and one which did not (in other words, interpretation *not-X*). The Constitutional Court held against the applicants essentially on the basis that the section was not capable of interpretation X. But consider the import of a determination, by the Constitutional Court, that the legislation could admit of such an interpretation.

If the legislation could admit of such an interpretation then the court would have been required to adopt it given the injunction contained in s 39(2). Implicit in any such determination that a legislative provision ought to be given interpretation X in order to promote the spirit, purport and objects of the Bill of Rights is the proposition that giving the provision interpretation *not-X* would not promote the spirit, purport and objects of the Bill of Rights. If it is part of a court's determination that a provision must, in terms of

s 39(2), be given interpretation *X* that giving it interpretation *not-X* would not promote the spirit, purport and objects of the Bill of Rights, how is such a determination any less an instance of ruling out what is constitutionally impermissible than a declaration of invalidity? What is constitutionally impermissible is interpretation *not-X*.

If, after such a determination by the court, the legislature decided to amend the legislation or enact similar legislation, why would it be any freer to enact legislation with interpretation *not-X*, than it would be to enact legislation which was inconsistent with a declaration of invalidity granted by the Constitutional Court? If it is implicit in a court's determination that interpretation *X* promotes the spirit, purport and objects of the Bill of Rights that interpretation *not-X* does not, then a subsequent amendment of the relevant legislative provision unequivocally to admit of only interpretation *not-X*, must be 'ruled out' in the same way that the re-enactment of a legislative provision which the Constitutional Court had declared to be invalid in terms of s 172(1) (a) of the Constitution would be.¹

It may be argued that the crucial distinction between work done by the courts through ss 172(1) (a) and 39(2) is that in the former case invalidity flows expressly from the declaration granted by the court whereas no equivalent invalidity flows from an interpretive exercise. However, as is highlighted later in this chapter in relation to the Constitutional Court's declarator judgment in *Minister of Health v New Clicks South Africa (Pty) Ltd; In re: Application for Declaratory Relief* 2006 (8) BCLR 872 (CC) (discussed under 'Remedial power of courts') the Constitutional Court has long held that the theory of objective invalidity implies that a given law is invalid from the moment it is in conflict with the Constitution, and not from the moment that the court declares it to be so. The declaration of invalidity is not, therefore, what makes the law invalid; it is simply what declares it to be so. The argument I advance here suggests that implicit in the interpretive work done by courts through s 39(2) is a declaration that interpretation *not-X* is constitutionally inconsistent.

¹ It must be emphasised that there may be a number of interpretations of a legislative provisions which promote the spirit, purport and objects of the Bill of Rights. The argument I advance here does not deny this. All that the argument asserts is that when a court determines that interpretation *X* promotes the spirit, purport and objects of the Bill of Rights, it in turn concludes that interpretation *not-X* does not. When it does so, the court does not determine that *only* interpretation *X* promotes the spirit, purport and objects of the Bill of Rights.

As Roederer has pointed out, the implications of the distinction between direct and indirect application of the Bill of Rights offered by Currie and De Waal are based on the proposition that direct application is about conflict between the law and the Bill of Rights, whereas indirect application is not about conflict but about avoidance of conflict through interpretation (Roederer 'Post-Matrix Legal Reasoning: Horizontality and the Rule of Values in South African Law' 19 *SAJHR* (2003) 57, 78–9). If my argument here is accepted, this proposition is called into question because every interpretation in terms of s 39(2) carries an implicit determination of conflict, namely, that interpretation *not-X* is inconsistent with the spirit, purport and objects of the Bill of Rights.

There are at least two procedural implications of a narrowing of the distinction between direct and indirect application of the Bill of Rights which I have advanced above. The first is that the narrower the gap between these two exercises, the greater becomes the need for notice to be given to the relevant Minister responsible for the legislation at issue in cases in which only interpretive arguments are advanced. The second is that the rationale for requiring Constitutional Court confirmation only of declarations of invalidity and not of the interpretive exercises of lower courts is called into question. These procedural implications alone may provide reason enough for not narrowing the gap between direct and indirect application of the Bill of Rights. However, the existence of any gap must be capable of justification and in so far as the impact of these two exercises on the ambit of legislative discretion is concerned, I struggle to see that justification.

It should be noted that the extensive debate which has waged between academics over the implications of direct versus indirect application of the Constitution has tended to focus on the indirect application of the Bill of Rights to the common law and not indirect application of the Bill of Rights to legislation despite the fact that the injunction in s 39(2) refers to the interpretation of legislation as well as the development of the common law. It is important to stress that my comments here relate only to the indirect application of the Bill of Rights to legislative provisions. To follow the debate over the indirect application of the Bill of Rights to the common law see Sprigman & Osborne 'Du Plessis is *Not* Dead: South Africa's 1996 Constitution and the Application of the Bill of Rights to Private Disputes' 15 *SAJHR* (1999) 25 and Roederer *op cit* 57.

STANDING

In *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC), 2006 (12) BCLR 1399 (discussed further under 'Jurisdiction' and 'Public involvement in legislative drafting' Ngcobo J held that the Constitutional Court will only consider an application to declare legislation invalid on the ground that there was a failure to allow for public participation where the applicant has sought and been denied an opportunity to be heard on the relevant Bills, and where the applicant has launched his or her application for relief in the Constitutional Court as soon as practicable after the Bills had been promulgated (para 216). This is, as Ngcobo J accepts, a substantially different approach to standing to that mandated by s 38 of the Constitution in respect of breaches of fundamental rights (para 217). However, it appears to be a sensible and pragmatic approach to avoid improper intrusions into the domain of Parliament and to avoid legislation being challenged on these grounds long after its enactment.

INTERGOVERNMENTAL DISPUTE BETWEEN ORGANS OF STATE

In the case of *Minister of Education, Western Cape & others v Governing Body, Mikro Primary School* 2006 (1) SA 1 (SCA) the respondent was an Afrikaans-medium public school, the governing body of which refused to accede to a request by the Western Cape Education Department to change the language policy of the school so as to convert it into a parallel-medium school. In response to a subsequent directive by the Head of Education, Western Cape Education Department to the principal of the school to admit certain learners and to have them taught in English, the school unsuccessfully appealed to the Western Cape Minister of Education. As a result of this unsuccessful appeal, the school, together with its governing body, launched an urgent application to the Cape Provincial Division for an order setting aside the directive and the decision on appeal, as well as for ancillary relief. The application was successful in the High Court (*Governing Body, Mikro Primary School v Minister of Education, Western Cape* 2005 (3) SA 504 (C)) and the first and second appellants were granted leave to appeal against the judgment to the Supreme Court of Appeal. In resisting the application in the High Court, the appellants had argued that the High Court proceedings were premature because the school, as an organ of state was required, in terms of s 41(1)(h)(vi) of the Constitution, as well as s 7(2)(a) of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'), to exhaust the options provided in the Norms and Stan-

dards (promulgated by the Minister in terms of s 6(1) of the South African Schools Act 84 of 1996).

Key to the application of these provisions was the question whether a school is an 'organ of state'. An organ of state is defined in s 239 of the Constitution as follows:

“‘organ of State’ means —

- (a) any department of State or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution —
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation,but does not include a court or a judicial officer.’

The Supreme Court of Appeal noted that in holding that the school was not an organ of state (and was hence intended by the legislature to be independent of state or government control in the performance of its functions), the High Court had relied on the judgment of Van Dijkhorst J in *Directory Advertising Cost Cutters v Minister for Posts, Telecommunications and Broadcasting* 1996 (3) SA 800 (T) (para 19). However, it held that the High Court had erred in adopting the reasoning in this case (para 20) since Van Dijkhorst J's decision had been based on the definition of 'organ of state' in the interim Constitution and that definition has been comprehensively changed in the 1996 Constitution. In the interim Constitution, only institutions that were under the direct control of government were considered to be 'organs of state'. By contrast, on the definition provided in s 239 of the Constitution, the Supreme Court of Appeal concluded that the school was, indeed, an organ of state as it was an institution performing a public function in terms of the South African Schools Act 84 of 1996 (*ibid*).

Although the Supreme Court of Appeal held that the school qualified as an organ of state, this determination did not entail that the provisions of s 41(1)(h)(vi) of the Constitution applied to it. Relying on the dicta of the Constitutional Court in *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) the Supreme Court of Appeal held that, for the purposes of s 41 of the Constitution, an intergovernmental dispute was 'a dispute between parties that [were] part of government in the sense of being either a sphere of government or an organ of State within a sphere of government' (*Langeberg* para 21). Just as the Independent Electoral Commission was not subject to national executive control and was not an organ of state *within the national sphere of government*,

the school, at least insofar as the determination of a language and admission policy was concerned, was similarly not subject to executive control at the national, provincial or local level and thus could not be said to form part of any sphere of government (*Mikro* para 22). Accordingly, the Supreme Court of Appeal held that the High Court had correctly rejected the appellants' argument that the dispute over the school's language and admission policy was an intergovernmental dispute within the meaning of s 41(3) of the Constitution (*ibid*).

Whether organs of state are subject to the requirements of s 41 therefore depends on whether they fall within a sphere of government, and that question is to be answered in the affirmative if the organ of state is subject to executive control at the national, provincial or local level of government. This case is discussed from the perspective of the right to education in the chapter on Bill of Rights Jurisprudence.

EXERCISE OF PUBLIC POWER

In the case of *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council* 2007 (1) SA 343 (CC), 2006 (11) BCLR 1255 (CC) (also discussed under 'Mootness') the Constitutional Court upheld the validity of certain rules made by the Micro Finance Regulatory Council ('the Council') by a majority of 10. Two separate concurring judgments were delivered in the case. The first of these was written by Yacoob J and achieved the concurrence of 7 members of the court. The second judgment was written by O'Regan J and achieved the concurrence of Ngcobo J. Langa CJ wrote a dissenting judgment in the case. Critical to this determination was, first, the court's unanimous conclusion that the Council exercised public power when it made the rules in question (Yacoob J paras 31–45; O'Regan J paras 119–121; Langa CJ para 69), and secondly, the majority conclusion that the delegation of such power to the Council was lawful (Yacoob J paras 46–56 and O'Regan J paras 124–147. Langa CJ dissented partially on this issue — see paras 70–106).

Of particular significance in relation to the first finding was the court's *obiter* remark that even a determination that a particular action constitutes private power does not entail that the Bill of Rights is not applicable. In this regard, Yacoob J stressed that, in terms of s 8(2) of the Constitution, a provision of the Bill of Rights binds a natural or juristic person if and to the extent that it is applicable to it and hence reinforced the fact that some of the rights in the Bill of Rights apply horizontally, as well as vertically. He therefore held that the Supreme Court of Appeal may have been

incorrect in concluding that the attack on the rules in terms of the right to privacy became irrelevant once it had found that the Council exercised private power (para 29).

In contrast to the decision of the Supreme Court of Appeal in *Mikro*, discussed above, the Constitutional Court placed some emphasis on elements of control which the Minister exercised over the functions of the Council in reaching the determination that the Council exercised a public function and hence qualified as an organ of state within the terms of s 239 of the Constitution. Despite the fact that it was common cause between the parties that the Council was an organ of state as defined in s 239, Yacoob J spent some time discussing the elements of the s 239 test in reaching his determination that the Council was bound by the legality principle and Bill of Rights in the exercise of its functions.

In reaching the contrary conclusion in *Micro Finance Regulatory Council v AAA Investment (Pty) Ltd & another* 2006 (1) SA 27 (SCA) the Supreme Court of Appeal had emphasised the fact that the Council was incorporated as a company and its object, in terms of its memorandum of association, was to make and to enforce rules that were to be complied with by micro-lenders that were registered with the company (SCA judgment para 23). Furthermore, the Supreme Court of Appeal relied on the fact that the company was not, and did not purport to be, a public regulator with authority unilaterally to exercise powers over outside parties. It was, according to the Supreme Court of Appeal, a company that conducted business as a private regulator of lenders who chose to submit to its authority by agreement and hence was a mere private entity (SCA judgment para 24).

For Yacoob J, the extent of the Minister's control over the Council was relevant to the question of the public character of the function performed by it. Given the definition of organ of state, if the Council performed its functions in terms of national legislation, and these functions were public in character, it would be subject to the legality principle and privacy protection (para 29). Having concluded that the Council exercised its functions in terms of the Exemption Notice promulgated by the Minister, which qualified as national legislation (para 42), Yacoob J turned to consider the character of the functions exercised by the Council. In determining that those functions were public in character, Yacoob J emphasised the 'almost absolute ministerial control over the Council's functions' (para 45). Although the Council's composition and mandate showed that its legal form was that of a private company, its func-

tions were essentially regulatory of an industry and closely circumscribed by the terms of the ministerial notice.

It seems, therefore, that control is not only relevant to the question whether an organ of state falls within a sphere of government, as the Supreme Court of Appeal held in *Minister of Education, Western Cape & others v Governing Body, Mikro Primary School* 2006 (1) SA 1 (SCA), but also to the question of the character of the functions performed by a private company in terms of national legislation. In this respect, the majority of the Constitutional Court seems to have taken a slightly different approach to that of the Supreme Court of Appeal in *Mikro*, at least to the extent that it regarded issues of control as still relevant to the character of the functions performed by an institution which performs those function in terms of national legislation and hence to the question of whether it qualified as an organ of state.

On the second key finding in *AAA Investments*, Yacoob J stressed that while the rules made by the Council were legislative in nature, the Council had not, by making the rules, usurped the legislative authority of Parliament (para 49). Similarly, in a concurring judgment, O'Regan J held that the fact that the rules were public in character did not automatically mean that they constituted an unlawful usurpation of legislative power. On the contrary, no modern state could hope to regulate all of its affairs through legislation passed in the national, provincial and local spheres of government and therefore courts should, according to O'Regan J, 'be cautious to avoid adopting unduly restrictive rules in this area which will limit the possibility of effective ordering of our society by organisations which may not form part of government' (paras 122–3).

This approach is consistent with the court's previous jurisprudence on the delegation of legislative power which has repeatedly stressed both the importance and validity of delegating legislative power, provided that it is done within appropriate limits (*Executive Council, Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC) paras 51, 62–3 and 148; and *Executive Council, Western Cape v Minister of Provincial Affairs and Constitutional Development* 2000 (1) SA 661 (CC) paras 122–124). This is, however, the first time that the Court has extended its approach on legislative delegation to a body such as the Council which falls outside the three spheres of government.

PUBLIC INVOLVEMENT IN LEGISLATIVE DRAFTING

In the case of *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC), 2006 (12) BCLR 1399 (also dis-

cussed under 'Jurisdiction' and 'Standing') Ngcobo J dealt extensively with the nature and scope of the duty to facilitate public involvement in the legislative processes imposed on the NCoP and the provincial legislatures by ss 72(1)(a) and 118(1)(a) of the Constitution respectively (para 75).

According to Ngcobo J, the duty to facilitate public involvement in the legislative process is an aspect of the right to political participation (para 89). The link which Ngcobo J forged between the obligation to facilitate public involvement and the right to political participation is a defining feature of his judgment, and the feature which produces the crux of the disagreement between him and the minority of the court (see, in this regard, Yacoob J's judgment at para 308). It is therefore useful to unpack this proposition.

Ngcobo J held that the Constitution's commitment to principles of accountability, responsiveness and openness shows that our constitutional democracy is not only representative, but also contains participatory elements. According to Ngcobo J, this is a defining feature of the democracy that is contemplated in the Constitution. It is apparent from the preamble of the Constitution that one of the basic objectives of our constitutional enterprise is the establishment of a democratic and open government in which the people will participate to some degree in the law-making process (para 111). Therefore our democracy includes, as one of its basic and fundamental principles, the principle of participatory democracy. The democratic government that is contemplated is partly representative and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law-making processes. Parliament must therefore function in accordance with the principles of participatory democracy (para 116).

Although Ngcobo J accepted that Parliament and the provincial legislatures must be given a significant measure of discretion in determining how best to fulfil their duty to facilitate public involvement, he nevertheless held that 'courts can, and in appropriate cases will, determine whether there has been the degree of public involvement that is required by the Constitution' (para 124). Although what will be required to facilitate public involvement will vary from case to case, Ngcobo J set the standard of reasonableness as the measure against which the particular facts of each case ought to be assessed (para 125).

The factors relevant to determining the reasonableness of the legislature's conduct in a given case include the nature and importance of the legislation and the intensity of its impact on the public.

Reasonableness also requires that appropriate account be paid to practicalities such as time and expense, which relate to the efficiency of the law-making process. The Constitutional Court will also have regard to what Parliament itself considered to be appropriate public involvement in the light of the legislation's content, importance and urgency (para 128). According to Ngcobo J:

'[W]hat is ultimately important is that the legislature has taken steps to afford the public a reasonable opportunity to participate effectively in the law-making process. Thus construed, there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.' (para 129)

Applying these factors to the facts of the case, Ngcobo J concluded that the requests for public hearings in relation to the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act were evidence of the extensive public interest generated by these Acts. In the light of these requests, the NCoP had decided that public hearings would be held in the provinces and had advised the interested groups of this fact. Despite this, however, a majority of the provinces did not hold hearings on the Bills because of insufficient time. Furthermore, this fact was drawn to the attention of the NCoP, but despite this, the NCoP did not hold public hearings. This, according to Ngcobo J, was unreasonable in the circumstances and thus the NCoP had not complied with its obligation to facilitate public involvement in relation to these two Acts as contemplated by s 72(1)(a) of the Constitution.

In relation to the Dental Technicians Amendment Act, Ngcobo J found that when the Bill was first published for public comment, it did not generate any public interest. Having regard to this and the nature of the Bill, Ngcobo J held that the NCoP did not act unreasonably in not inviting written representations or holding public hearings on the statute. He concluded that the NCoP did not breach its duty to facilitate public involvement in relation to this statute and accordingly dismissed the challenge relating to it.

Yacoob J provided a detailed dissent in the case (Skweyiya J concurred in the dissenting judgment of Yacoob J and Van der Westhuizen J wrote a separate concurrence with this dissent). The crux of his disagreement with the majority was his view that the Constitution does not require the public involvement provision to be complied with as a pre-requisite to any legislation being validly passed (para 339). According to Yacoob J, to infer such a require-

ment when it is not expressly provided impermissibly undermines the legislature and the right to vote (ibid). Despite acknowledging that the failure to give the public an opportunity to comment in the NCoP and in most of the provinces was regrettable, Yacoob J concluded that such failure is of 'no constitutional moment in relation either to whether the [NCoP] or the provincial legislatures have complied with their constitutional obligations or to whether the health Bills have been validly passed' (ibid).

In *Matatiele Municipality & others v President of the Republic of South Africa & others* 2007 (6) SA 477 (CC), 2007 (1) BCLR 47 (CC) (*Matatiele 2*) (also discussed under 'Inconsistent conduct and constitutional invalidity below'),² Ngcobo J again wrote for the majority. The decision in *Matatiele 2* arose out of the Constitutional Court's decision in *Matatiele Municipality v President of the RSA* 2006 (5) SA 47 (CC), 2006 (5) BCLR 622 (*Matatiele 1*), in which the Constitutional court had, of its own motion, raised the question whether the Constitution Twelfth Amendment Act of 2005 ('the Twelfth Amendment') had been adopted in accordance with the provisions of the Constitution. In the light of the importance of this issue, the Court called for further argument on the matter, despite the fact that the question of procedural compliance had been conceded by the applicants. The court's consideration of that further argument produced the decision in *Matatiele 2*.

The result in *Matatiele 2* was significantly informed by the precedent set, a day earlier, in the *Doctors for Life* decision (discussed further above). The issue in relation to which the Constitutional Court required argument from the parties in *Matatiele 2* was whether the provisions of s 74(8) of the Constitution applied to the passing of the Twelfth Amendment. The Kwa-Zulu Natal legislature contended that s 74(8) did not apply to the Twelfth Amendment because the amendment affect but affected all nine provinces and not only a specific province or provinces.

Section 74(8) of the Constitution reads as follows:

'If a Bill referred to in subsection 3(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved by the legislature or legislatures of the province or provinces concerned.'

Section 74(3) (b), in turn, provides:

² Although this decision was reported in 2007, I have chosen to review it here because of its relevance to the discussion of the first *Matatiele* decision, which was reported during 2006, and its inextricable link to *Doctors for Life*.

'Any other provision of the Constitution may be amended by a Bill passed —

- (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and
- (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment —
 - (i) relates to a matter that affects the Council;
 - (ii) alters the provincial boundaries, powers, functions or institutions; or
 - (iii) amends a provision that deals specifically with a provincial matter.'

The core of the Kwa-Zulu Natal legislature's argument was that the amendment was of general application because it altered the nature of the boundaries of all provinces by delimiting them on the basis of municipalities rather than magisterial districts. The amendment did not, therefore, concern a specific province or provinces as required by s 74(8) (*Matatiele 2* para 18).

In response to this contention, Ngcobo J emphasised that for the purposes of s 74(8) it mattered not that some of the proposed amendment's provisions dealt with all the provinces; what mattered was that there were parts of the amendment which dealt only with specific provinces and not other provinces (para 21). For example, that part of the amendment, which redrew the boundaries of KwaZulu-Natal and the Eastern Cape by relocating the area previously known as Matatiele Municipality from a district in KwaZulu-Natal and incorporating it into one in the Eastern Cape concerned only the provinces of KwaZulu-Natal and the Eastern Cape and no other province. From this, Ngcobo J concluded that 'only those provinces whose boundaries were altered [by the proposed amendment] were required to approve the parts of the amendment that concerned them specifically in terms of s 74(8)' (para 26). This, it seems, flows from the terms of s 74(8) itself.

However, Ngcobo J did not end his discussion of this matter there. Four paragraphs later he changed what had earlier been taken to be a conditional application of s 74(8) into a mandatory injunction. Ngcobo J held as follows:

'It follows therefore that *whenever* a proposed constitutional amendment alters provincial boundaries, the provisions of section 74(8) are engaged. To hold that the applicability of section 74(8) depends on the precise number of provinces specifically affected by the amendment would therefore be contrary to the basic structure of government. Indeed this would be inconsistent with the very purpose of section 74(8), which is aimed at protecting the territorial integrity of each of the nine provinces.' (para 30, my emphasis)

The first sentence of the quoted section above seems to be too broadly stated. Until para 30 of the judgment, Ngcobo J maintained that it was only if the proposed amendment concerned a specific province or provinces that it ought to be approved by the relevant legislature or legislatures of the province or provinces concerned (para 27). However, in paragraph 30, the claim broadens to the following: *Whenever* a proposed constitutional amendment alters provincial boundaries, the provisions of s 74(8) are engaged. However, on Ngcobo J's previous holding, 'section 74(8) does not require the provinces to approve a general provision that defines the new criterion for delimiting provincial boundaries on the basis of municipalities' (para 25).

But what if this had been the only provision in the proposed amendment? Or, indeed, what if the relevant provision had re-determined the provincial boundaries by stipulating that all such boundaries were to move 2 kilometres to the west, for example? In other words, what if the amendment was crafted in such a way that it altered the provincial boundaries by way of a general provision and did not make any specific reference to any of the provinces (either individually or collectively)? On the strength of Ngcobo J's reasoning, at least until para 30, s 74(8) ought not to apply.

To ensure consistency, the breadth of the first proposition in para 30 should be read subject to the qualifications preceding it and should not be taken to hold that *any* proposed constitutional amendment which alters provincial boundaries must satisfy the requirements of s 74(8).

I am mindful of the fact that this point may have little practical significance as it will be an unusual case in which the provincial boundaries of all the provinces are altered by the operation of only a general provision such as the one discussed above. However, to the extent that this is possible, such a case ought not to engage s 74(8).

Having determined that s 74(8) applied to the amendment in respect of seven of the nine provinces, Ngcobo J then turned to the question whether, in considering a proposed constitutional amendment which alters its boundary, a provincial legislature is obliged to facilitate public involvement as required by s 118(1)(a) (para 32).

Section 118(1)(a) provides that '[a] provincial legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees.' In construing the meaning of this section, Ngcobo J referred to what he termed the 'structural approach' to interpretation (para 37). This 'structural approach' would appear to be a new term for the combination of the purpo-

sive, contextual and historical approaches which have previously been adopted by the Court in construing sections of the Constitution (ibid). Applying this approach to s 118(1)(a), Ngcobo J concluded that when provincial legislatures consider a proposed constitutional amendment that alters their provincial boundaries, they are involved in a law-making process and must, therefore, facilitate public participation in making their decision (paras 45–8).

According to Ngcobo J, in facilitating public involvement, a provincial legislature must act reasonably (para 67). In addition to the factors identified in *Doctors for Life* which ought to inform the reasonableness enquiry, Ngcobo J drew attention to the fact that the more discreet and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to ensure that the potentially affected section of the population is given a proper opportunity to have a say (para 68).

In applying these factors to the circumstances of the case, Ngcobo J found that the proposed constitutional amendment would have had the effect of relocating a whole community from one province to another (para 79). Moreover, it had a direct impact on a discreet and identifiable section of the population. It threatened an important and not easily reversible change to the provincial status of a clearly defined section of the population. The consequences of the amendment were, therefore, far-reaching (para 81). In these circumstances, Ngcobo J held that in deciding whether to approve the constitutional amendment altering its boundary, the KwaZulu-Natal provincial legislature was required to involve the public. In the light of that duty, the KwaZulu-Natal provincial legislature's failure to hold any public hearings or to invite any written submissions was unreasonable (para 84).

In summary therefore, Ngcobo J held that, in terms of s 74(8) of the Constitution, the legislature of KwaZulu-Natal was required to approve that part of the Twelfth Amendment which concerned the province of KwaZulu-Natal. As this approval should have been given by the KwaZulu-Natal legislature after complying with the provisions of s 118(1)(a) of the Constitution, the failure by that legislature to comply with the provisions of s 118(1)(a) rendered the purported approval of that part of the amendment invalid. According to Ngcobo J, it followed, therefore, that that part of the Twelfth Amendment which concerned Matatiele was invalid (para 89).

PARLIAMENTARY PRIVILEGE

In *Dikoko v Mokhatla* 2006 (6) SA 235 (CC), 2007 (1) BCLR 1 the Constitutional Court was faced with two legal questions: Firstly, to determine whether the privilege afforded to municipal councillors in terms of s 28 of the Local Government: Municipal Structures Act 117 of 1998 ('the Structures Act') extended beyond the proceedings of the municipal council itself. This was because the defamatory statements made by the applicant had not been made in the municipal council itself but rather before the Standing Committee of the North West Provincial Legislature. Secondly, whether the privilege afforded in terms of s 28 extended not only to legislative functions of councillors but also to their executive functions.

This case is discussed more fully in the chapters on Bill of Rights Jurisprudence and the Law of Delict. For this chapter it is sufficient to note that the court rejected the contention that the statements by Dikoko had been privileged, but in a classic example of judicial avoidance, determined that it did not need to answer either of these questions. The court held that even if s 28 of the Structures Act extended to the business of the council outside of the council or its sub-committees, the statements by Dikoko could in no way be viewed as constituting the real and legitimate business of the council. Rather, the statements made by the applicant concerned only his personal finances and his indebtedness to the council (para 40).

This holding may have significant implications for parliamentary privilege not only in municipal councils but also in Parliament and the provincial legislatures. This is because s 28 of the Structures Act confers an identical level of protection on councillors as ss 58(1) and 117(1) of the Constitution confer on members of Parliament and members of a provincial legislature respectively. Each of the relevant provisions confer immunity from civil or criminal proceedings on members of the legislature for 'anything they have said in, produced before or submitted to the [legislature] or any of its sub-committees' and 'anything revealed as a result of anything they have said in, adduced before or submitted to the [legislature] or any of its committees.'

Thus on their own terms these provisions do not appear to exclude protection for purely personal statements. Notwithstanding this, the Constitutional Court's decision in *Dikoko* makes it clear that purely personal statements will not be covered by the immunity. This decision thus constitutes a development of the dicta of the Constitutional Court in its previous decision of *Swartboo v Brink* 2006 (1) SA 203 (CC) (para 12) where it appeared to confine the

ambit of s 28(1) of the Structures Act to conduct that was integral to the 'legitimate business' of the council.

The purpose for which parliamentary privilege and immunity is granted is to promote freedom of expression and to encourage democracy and full and effective deliberation (*Dikoko* para 39). In keeping with this purpose, it is appropriate that where a councillor participates in the genuine and legitimate functions or business of council, the privilege afforded by s 28 ought to extend to her or him in order to remove the fear of repercussions for what is said. However, when what is said, produced or submitted is of a purely personal nature, the rationale for the immunity does not attach to such speech. It is thus fitting to restrict the reach of parliamentary privilege to exclude purely personal matters.

REMEDIAL POWER OF COURTS

Effect of a declaration of invalidity not covered by section 172(2)(a) of the Constitution

In what the Constitutional Court refers to as its 'declarator judgment' in the case of *Minister of Health & another v New Clicks South Africa (Pty) Ltd; In re: Application for Declaratory Relief* 2006 (8) BCLR 872 (CC) (also discussed under 'Inherent powers of courts to regulate their own processes' above, the Minister of Health and the Pricing Committee sought a declaration from the Constitutional Court that the judgment and order of the Supreme Court of Appeal (which was appealed against in the main application to the Constitutional Court) setting aside the regulations relating to a transparent pricing system for medicines and scheduled substances published by the Minister of Health was automatically suspended upon the bringing of the application for leave to appeal to the Constitutional Court.

The essence of the Constitutional Court's dismissal of this application was the distinction it drew between declarations of invalidity made in terms of s 172(2)(a) of the Constitution and those which are not made in terms of s 172(2)(a). According to the Constitutional Court, declarations of constitutional invalidity, which do not fall within the ambit of s 172(2)(a), made by courts other than the Constitutional Court, in the absence of any appeal against those orders, have effect without the need to be confirmed by the Constitutional Court (para 19). Given that the subject-matter of the judgment and order of the Supreme Court of Appeal which was appealed to the Constitutional Court dealt with regulations passed by the Minister of Health, the provisions of s 172(2)(a) did not

apply and hence the order was not subject to the confirmation requirement of that section in order to have force and effect.

In addition to this, the Constitutional Court emphasised that when the Supreme Court of Appeal made such orders it was empowered, in terms of s 172(1) of the Constitution, to suspend them on terms that were just and equitable (*ibid*). According to the Constitutional Court, s 172(1) effectively enables a court to regulate the effect of an order of invalidity pending an appeal. A litigant who considers that it would be just and equitable for an order of invalidity to be suspended pending an appeal, should, therefore, make a timely and appropriate application to the court considering the application for a declaration of constitutional invalidity and draw the court's attention to the relevant considerations of justice and equity (para 20).

Drawing on this analysis, the Constitutional Court determined that although the applicants' application was not expressed in such terms, it was, effectively, an application for an order suspending the declaration of invalidity made by the Supreme Court of Appeal pending appeal (para 22). According to the Constitutional Court, the application should therefore have been made to the Supreme Court of Appeal which was best placed to determine what was just and equitable in the circumstances and whether an order suspending the declaration of invalidity ought to have been made pending the appeal or any other event or period of time (*ibid*). In the absence of such an application to the Supreme Court of Appeal, its declaration of invalidity would have had immediate effect and not be suspended by the mere noting of an appeal to the Constitutional Court.

As the Constitutional Court pointed out in its judgment, the common law rule that execution of a judgment is suspended pending an appeal has no application to declarations of constitutional invalidity of legislation (para 16). This is certainly correct, in so far as declarations of constitutional invalidity of legislation covered by s 172(2)(a) are concerned, because such orders, until they are confirmed by the Constitutional Court, have no force or effect and therefore there simply is no *effect to suspend* until the Constitutional Court has made the final determination on constitutional validity.

However, in relation to declarations of constitutional invalidity which are not governed by s 172(2)(a), it is not as readily apparent why the common law rules of suspension pending appeal do not apply. On this score, the Constitutional Court held as follows:

'If a law is objectively invalid, a declaration of invalidity made by a competent court that is subsequently set aside on appeal does not

validate the law. For the same reason, an appeal against a declaration of constitutional invalidity of a law does not breathe life into that law. The objective validity or invalidity of a law will ultimately be determined at the end of the appeal process. That does not mean, however, that courts have no power to temper the effect of orders of constitutional invalidity made pending the finalisation of the appeal process.’ (ibid)

The four propositions contained in the above extract are offered as the consequence of the doctrine of objective invalidity which has long been adopted by the Constitutional Court (see *Ferreira v Levin NO*; *Vryenhoek v Powell NO* 1996 (1) SA 984 (CC) paras 27–30), and in terms of which a law’s invalidity flows from its inconsistency with the Constitution and not from the court’s order (*New Clicks* para 15).

However, the implications of objective invalidity have to accommodate a system of appellate review in which the highest court in the hierarchy finally makes the determination of consistency or inconsistency. That the highest court makes the final determination of inconsistency does not entail that the invalidity flows from the court’s order, but rather that the highest court has the final say on what flows from the Constitution.

With this in mind, it seems that the first and third of the sentences in the quoted passage above may be inconsistent. If the objective validity or invalidity of a law will ultimately be determined at the end of the appeal process, how can it be that a declaration of invalidity which is set aside on appeal by the last court in that process, namely the Constitutional Court, does not confirm the validity of the law? If the first sentence is intended to convey that even the last court in the appeal process may be wrong and to reinforce the notion that invalidity flows from inconsistency with the Constitution and not from the court’s order, then it must be correct. However, it is difficult to square such a statement of the immateriality of the court’s pronouncement on the issue with the claim, in the third sentence, that validity or invalidity will ultimately be determined at the end of the appeal process; in other words, by the highest court in that process.

It seems, furthermore, that the above quoted passage may confuse the distinction between the effect of noting an appeal and a successful appeal. While the second sentence of the quoted passage may be correct in so far as the effect of noting an appeal is concerned; in other words, that the noting of an appeal against an order of invalidity would not breathe life into the provision, it cannot be correct in so far as the outcome of a successful appeal is concerned. The consequence of a successful appeal against an

order of invalidity is to confirm the validity of the relevant law and hence to breathe life into it.

For example, when the majority of the Constitutional Court determined in the main application in *New Clicks* that regulations 22 and 23 were constitutionally consistent, it reversed the declaration of invalidity granted by the Supreme Court of Appeal. The consequence of holding that the two regulations were constitutionally consistent was to confirm, as valid, the conferral of power on the Director-General to determine whether a specific single exit price was reasonable. In other words, the setting aside of the Supreme Court of Appeal's declaration of invalidity in relation to regulations 22 and 23 confirmed the validity of the conferral of power to the Director General under those regulations.

To the extent that the quoted passage is taken to be an expression of the principle that an order of constitutional invalidity granted by a court other than the Constitutional Court and which does not fall within the ambit of s 172(2)(a) has immediate effect and is only capable of suspension on application to the court which granted the order, and not the court to which an appeal has been made, it is to be supported. However, if the passage is taken to suggest that the effect of a successful appeal against such a declaration of invalidity is not to pronounce on the validity of the law, it must be incorrect, as the facts of the main application in *New Clicks* bears out in relation to regulations 22 and 23.

Suspension of declarations of invalidity and the computation of court days

The case of *Ex parte Minister of Social Development & others* 2006 (4) SA 309 (CC) dealt with the technical question of the method of calculation to be applied to Constitutional Court orders and the issue whether the Constitutional Court has the power to revive legislation which has been declared invalid as a result of the expiration of a period of suspension of such a declaration.

Ex parte Minister of Social Development was, in fact, the next chapter in a case decided by the Constitutional Court in 2004: *Mashava v President of the Republic of South Africa* 2005 (2) SA 476 (CC). In *Mashava*, the Constitutional Court had confirmed the High Court's order that a presidential proclamation, which sought to assign the administration of almost the whole of the Social Assistance Act 59 of 1992 to provincial governments, was invalid. Paragraph 2 of the Constitutional Court's order, of 6 September 2004, stipulated that 'the order of invalidity is suspended for a period of 18 months from the date of this order.'

On Saturday 4 March 2006, the applicants in *Ex parte Minister of Social Development* lodged an application with the court requesting that the court vary that earlier order by extending the period of suspension of the declaration of invalidity. The applicants requested that the matter be heard on Monday 6 March 2006, as one of urgency. It was set down for hearing at 15h00 on that day.

The applicants contended that paragraph 2 of the order of 6 September 2004 meant that the period of suspension expired on 6 March 2006. Van der Westhuizen J, writing for the majority, held that this was incorrect. On his reasoning, because the order of invalidity necessarily came into force on the day the order was made, namely, 6 September 2004 and the suspension order too came into force on that day, the period of suspension ended on the last day of the eighteen months, namely, at midnight on 5 March 2006. Accordingly, 6 March 2006 fell outside the period of 18 months (para 24).

In reaching this conclusion, Van der Westhuizen J relied on the long line of cases which have established that the commencement of a period of time in curial calculation is governed by the ordinary civilian method where any unit of time other than days is used. According to the civil computation method, a period of time expressed in months expires at the end of the day preceding the corresponding calendar day in the subsequent month.

Because the application for an extension of the period of suspension was only heard on 6 March 2006, the period of suspension had already expired when the Constitutional Court heard the application. Given this fact, the applicants could no longer, according to Van der Westhuizen J, apply for an extension of the period of suspension but rather had to seek a revival of an expired suspension order and a temporary reversal of the declaration of invalidity. Relying on the authority of *Minister of Justice v Ntuli* 1997 (3) SA 772 (CC) and *Zondi v MEC, Traditional and Local Government Affairs* 2006 (3) SA 1 (CC) Van der Westhuizen J held that a court does not have the power to grant such an application.

The effect of the combination of the *Ex parte Minister of Social Development* judgment with that of *Ntuli* and *Zondi* is as follows: Before the expiration of a suspension order, the relevant provision is not yet invalid and a court retains its power under s 172(1)(b)(ii) to make a just and equitable order extending an existing suspension. However, once a suspension period lapses, the provision is invalid and a court's suspension power under s 172(1)(b)(ii) has ended.

Punitive Costs Orders

In the case of *Swartbooi & others v Brink* 2006 (1) SA 203 (CC) the Constitutional Court set aside a costs order awarded by the High Court on the basis that it violated the separation of powers. *Swartbooi* involved an application by two members of the Nala Local Municipality for orders a) setting aside certain decisions made by the council of Nala Local Municipality which affected their rights and b) directing the council to pay the costs of the suit on the scale as between attorney and client (para 1).

The High Court set aside the relevant decisions and concluded that a special costs order was appropriate. It took the view that it was fair in the circumstances for the members of the council to be required personally to pay the costs and issued a rule *nisi* calling upon the appellants and other members of the council who supported the decisions which had been set aside to show cause why they should not be ordered to pay the costs of the proceedings on the scale as between attorney and own client. The High Court was not persuaded by the appellants' showing on the return day and ordered them to pay the costs of the application on the scale as between attorney and own client *de bonis propriis* (ibid).

According to the Constitutional Court, it was wrong for the High Court to use the costs order 'to ensure that members of the council would consider their decisions more carefully in the future' and thereby to 'teach them a lesson' (para 25). Not only did the Constitutional Court regard this as an improper approach to costs orders, but it was also, according to the Court, motivated by an improper purpose (ibid). The impropriety of the measure lay in its implications for the separation of powers. Implicit in the Constitutional Court's reasoning on this matter is the assumption that it is through the vehicle of declarations of invalidity that courts are empowered to keep the legislature and the executive in check. However, courts may not, through their orders, attempt to punish the members of the other branches of the state and in so doing influence their future conduct.

Thus it seems that the ambit of the 'just and equitable' orders which courts are empowered to grant in terms of s 172(1) (b) does not extend to punitive costs orders which are designed to teach the members of the other arms of government a lesson. Because of their implications for the separation of powers, it seems that such orders would be neither just nor equitable.

The precise contours of the 'just and equitable' orders which a court may grant in the face of unconstitutional conduct of the other

branches of the state raises serious separation of powers considerations and provided the *leitmotif* to three decisions of the Durban and Coast Local Division which are discussed below.

Structural interdicts and non-compliance by the government

In the case of *N & others v Government of Republic of South Africa & others (No 1)* 2006 (6) SA 543 (D) (*N (No 1)*) a number of prisoners incarcerated at the Westville Correctional Centre (WCC) who had HIV/Aids and who needed antiretroviral (ARV) treatment instituted proceedings seeking orders against the respondents that they must: (1) Immediately remove the restrictions preventing the applicants and other HIV/Aids-infected prisoners at WCC who qualified for ARVs under the Department of Health's operational plan, from accessing ARVs at an accredited public health facility; (2) immediately provide ARVs to the applicants and to any other HIV/Aids-infected prisoners at WCC who qualified for ARVs under the Department of Health's operational plan at an accredited public health facility; and (3) within one week of the grant of the order furnish the court with an affidavit setting out the manner in which it intended complying with order (2).

They brought the application in both their individual capacities and in their capacities as representatives of the class of prisoners incarcerated at WCC who had HIV/Aids and who needed or would need ARVs. The applicants based their request for relief on two grounds: First, that the respondents had failed to fulfil their constitutional obligation to the applicants to take reasonable legislative and other measures within their available resources to provide access to health care services as articulated in s 27 of the Constitution; and secondly, that the respondents had violated the right of every detained person, including every sentenced prisoner, to conditions of detention that are consistent with dignity, including at least exercise, and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment as entrenched in s 35(2) (e) of the Constitution.

The respondents opposed the application on the ground that they were not in breach of their constitutional obligations since they were taking reasonable steps to ensure that the applicants and other HIV/Aids-infected prisoners incarcerated at WCC received adequate medical treatment.

It was not at issue in the case that the applicants had the aforementioned rights and that the respondents bore a corresponding obligation to fulfil those rights. Furthermore, the respondents did

not allege resource constraints as an explanation for any failure on their part to fulfil their obligations in question. According to the respondents, they *were* fulfilling their obligations. Thus the essence of the dispute was whether the plans and guidelines which the respondents had put in place to meet these obligations and their implementation were sufficient.

It is beyond the scope of this chapter to engage with the rights' analysis which led Pillay J to conclude that the respondents' implementation of the relevant policies was unreasonable. However, the remedial issues which followed from this conclusion will be addressed in detail.

Having resolved the merits issue in favour of the applicants, Pillay J turned to the question of remedy and expressed his initial scepticism about the structural relief sought (para 32). He made reference to the separation of powers' implications of structural relief but ultimately took the view that such relief was justified on the basis that there had been nothing workable or rational forthcoming from the respondents in relation to the matter. Moreover, the steps that had been taken by the respondents were characterised by delays, obstacles and restrictions which had seriously compromised the health of the applicants. Accordingly, Pillay J made an order which, in its first part, removed the restrictions on the applicants and similarly placed prisoners at WCC, who met the criteria as set out in the National Department of Health's operational plan for comprehensive HIV and Aids care, management and treatment for South Africa, from accessing anti-retroviral treatment at an accredited public health facility (para 35). The second paragraph of the order took the form of a *mandamus* ordering the respondents with immediate effect, 'to provide antiretroviral treatment in accordance with the operational plan to the first, second, third, fifth, sixth, seventh, ninth, tenth, eleventh, twelfth and fifteenth applicants and all other similarly situated prisoners at WCC at an accredited public health facility' (*ibid*). The third paragraph of the order contained the structural relief: It required the respondents to serve on the applicants' attorney and the court an affidavit setting out the manner in which it proposed to comply with paragraph 2 of the order. This, the respondents were required to do on or before 7 July 2006 — effectively two weeks from the date of judgment (*ibid*).

This brings us to the second of the cases in the trilogy. In *N & others v Government of Republic of South Africa & others (No 2)* 2006 (6) SA 568 (D) (*N(No 2)*), two applications were before Pillay J. The first of these was an application by the respondents for leave to appeal to

the full bench of the Natal Provincial Division or the Supreme Court of Appeal against the judgment in *N (No 1)*. The second application was one in terms of rule 49(11) of the Uniform Rules of Court in which the applicants requested that the order of the court in *N (No 1)* be implemented pending the final determination of the appeal. Both applications were opposed.

After granting leave to appeal on the merits (at 571A), Pillay J then considered the applicants' application in terms of rule 49(11). Pillay emphasised the fact that when a court considers a rule 49(11) application it has a wide general discretion which should be exercised taking into account a number of factors. These include: (a) The potential of irreparable harm being sustained by the respondents if leave to execute were to be granted and to the applicants if leave were to be refused; (b) the prospects of success on appeal; and (c) where there is potential of irreparable harm or prejudice to both applicants and respondents, the balance of hardship or inconvenience, as the case may be (at 572A).

In assessing these factors, Pillay J took the view that the prejudice to the respondents, if any, paled into insignificance when compared to the potential for prejudice to the applicants and other similarly situated prisoners (at 572B–C). According to Pillay J, for the applicants, it was a matter of life and death. For the respondents, it involved no more than the conduct of an exercise and thereafter the setting out in affidavit form how it intended to carry out its obligations in terms of its operational plan and guidelines. With the resources at their disposal, it would be a matter of relative ease for them to comply with the order. Furthermore, Pillay J was of the view that even if the respondents were eventually to succeed on appeal, complying with the order would constitute more of an inconvenience to them than real prejudice. In so far as the question of irreparable harm was concerned, Pillay J held that it did not even arise in the case of the respondents (at 572D–E). In Pillay J's view, the balance of convenience manifestly favoured the applicants (at 572F).

In reaching the conclusion to grant the rule 49(11) application, Pillay J referred (at 574C), with approval, to the dicta of Botha J in *Minister of Health v Treatment Action Campaign* (TPD case no 21182/2001, unreported) dealing with a similar application. In that case, Botha J had held as follows:

'If the order is suspended and the appeal were to fail, it is manifest that it will result in the loss of lives that could have been saved. It would be odious to calculate the number of lives one could consider affordable in

order to save the respondents the sort of inconvenience they foreshadow. I find myself unable to formulate a motivation for tolerating preventable deaths for the sake of sparing the respondents prejudice that cannot amount to much more than organisational inconvenience.'

Thus Pillay J granted both applications: The application for leave to appeal to a full bench of the Natal Provincial Division, and the Rule 49(11) application to implement the order in *N (No 1)* pending the final determination of the appeal. In relation to the latter, Pillay J held that the order in *N (No 1)* should be implemented pending the outcome of the appeal subject to the date in paragraph 3 of the order being amended to read '14 August 2006' (at 574H).

However, the date of 14 August 2006 came and went without the respondents serving an affidavit on the applicants and the court as was required in terms of paragraph 3 of the original order.

This failure and the various procedural steps taken next were dealt with together in the third judgment in the trilogy: *N & others v Government of Republic of South Africa & others* 2006 (6) SA 575 (D) (*N (No 3)*).

Instead of complying with the order in *N (No 2)*, the respondents applied for leave to appeal against the rule 49(11) order on 15 August 2006 ('the rule 49(11) leave to appeal'). In response, the applicants filed an application on 18 August 2006, the main thrust of which was a declaration that the rule 49(11) leave to appeal did not suspend the operation of the earlier rule 49(11) order; allied to that was an application for an order that the rule 49(11) order be carried out forthwith unless and until set aside on appeal ('the second implementation application'). The date for the filing of the affidavit in paragraph 3 of the *N (No 1)* order was to be 25 August 2006.

In response to the second implementation application, the respondents filed a notice in terms of rule 30(1) on 18 August 2006 to the effect that the second implementation application was an irregular step for a number of reasons ('the rule 30(1) application'). First, that no reasons were given which rendered the matter urgent. Secondly, it constituted an improper duplication of rule 49(11) proceedings. Thirdly, the application was premature as the rule 49(11) leave to appeal application had not been set down. In addition to this, the respondents argued that Pillay J ought to have heard the matter and not, as was to be the case, Nicholson J.

In dealing with the rule 49(11) leave to appeal application, Nicholson J held that

'[T]he authorities do not view with particular favour appeals from implementation orders. These have taken place . . . on extremely rare

occasions. It is somewhat ironic and sad that both occasions relate to the government seeking to avoid the effect of court orders for the provision of ARVs.' (para 15)

Nicholson J relied on the dicta of the Constitutional Court, in this regard, in the case of *Minister of Health v Treatment Action Campaign (No 1)* 2002 (5) SA 703 (CC). There, the Constitutional Court explained the basis for courts' reluctance to grant such orders in the following terms: Before making an order to execute pending appeal, a court will have regard to the possibility of irreparable harm and to the balance of convenience of the parties. Having granted leave to execute, permitting an aggrieved litigant to appeal that execution order pending the final appeal would generally result not only in the piecemeal determination of the appeal, but would stultify the very order made (para 10). Moreover, the Constitutional Court held that ordinarily, for an applicant to succeed in such an application, the applicant would have to show that irreparable harm would result if the interim appeal were not to be granted — a matter which would, by definition, have been considered by the court below in deciding whether or not to grant the execution order. If irreparable harm cannot be shown, an application for leave to appeal will generally fail. If the applicant can show irreparable harm, that irreparable harm would have to be weighed against any irreparable harm that the respondent (in the application for leave to appeal) may suffer were the interim execution order to be overturned (para 15).

Applying this reasoning to the case before him, Nicholson J held that, in terms of the *N (No 2)* order, the respondents' affidavit had to be filed by 14 August 2006. Noting an appeal after that date could not, according to Nicholson J, have stayed the effect of that order. Moreover, the respondents were aware of the difficulty in appealing against a rule 49(11) order from their earlier experience at the hands of the Constitutional Court. In addition, no affidavit had yet been forthcoming from the respondents. This led Nicholson J to the conclusion that the respondents were in contempt of the *N (No 2)* order (*N (No 3)* para 29).

A finding of contempt against organs of state highlights, in the starkest relief, some of the fault lines in a system of government which observes the separation of powers. Given the statutory restraint placed on the courts by s 3 of the State Liability Act 20 of 1957, which provides that 'no execution, attachment or like process shall be issued against the defendant or respondent in any such proceedings or against any property of the State . . .', it is unclear

what options may be available to courts in the face of non-compliance by organs of the state.

Despite the fact that the matter of non-compliance by organs of state has been addressed by the High Courts, particularly those in the Eastern Cape Division (see *Mjeni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (Tk) and *East London Transitional Local Council v Member of the Executive Council of the Province of the Eastern Cape for Health* [2000] 4 All SA 443 (Ck)) and, on two occasions, the Supreme Court of Appeal (*Jayiya v Member of The Executive Council for Welfare, Eastern Cape* 2004 (2) SA 611 (SCA) and *MEC, Department of Welfare, Eastern Cape v Kate* 2006 (4) SA 478 (SCA)), there are a number of issues which remain unresolved. One of these is the implications of a number of comments by Conradie JA in the case of *Jayiya* and the Supreme Court of Appeal's avoidance of those issues in the later case of *Kate* on the likely outcome of a direct attack on the constitutionality of s 3 of the State Liability Act (*N (No 3)* paras 18–19).

The present case grappled with these problems in a new context. Here, the *N (No 2)* order did not require the payment of money by the respondents but rather the issuing of an affidavit to instruct the applicants and the court as to the steps taken to ensure the immediate provision of ARVs to prisoners who qualified for such treatment at WCC.

It is interesting to consider the implications of s 3 of the State Liability Act in this context given that Nicholson J's judgment proceeds on the assumption that the section precludes a court from finding the state in contempt of court and accordingly incarcerating the relevant official responsible for ensuring compliance with the order (para 23).

In the case of *Minister of Finance v Barberton* 1914 AD 335, which was cited with approval in the later decision of the Appellate Division in *Schierhout v Minister of Justice* 1926 AD 99, Innes JA held that the words 'attachment or process in the nature thereof' which appeared in s 4 of the Crown Liabilities Act 1 of 1910 (which preceded the State Liability Act of 1957) referred to proceedings against the person of the defendant for non-compliance with a declaratory or mandatory order (*Barberton* at 354). On this reading of the section, it was clear to Innes JA that the courts could exercise jurisdiction, in proceedings against the Crown, not only in respect of claims for damages but also in respect of claims for declaratory or mandatory orders (at 355). However, he was equally clear that 'no decree granted, whether sounding in money or not, can be

enforced against the Crown' (ibid). According to Innes JA, by imposing this restriction on the efficacy of orders against the Crown, the legislature had been content to rely on the moral obligation which such decrees were bound to exercise over all concerned (ibid).

This is the point which drove Nicholson J in *N (No 3)* to conclude that until the s 3 of the State Liabilities Act is challenged on constitutional grounds, an order granted against the state has the potential to become a *brutum fulmen* (a useless thunderbolt) (*N (No 3)* para 32).

Without a constitutional challenge to the legislation before him, Nicholson J resolved the issue of the respondents' contempt by relying, in essence, on counsel for the respondents' indication that 'the respondents would never neglect or refuse to comply with a court order' (para 34). Given this undertaking, Nicholson J was persuaded to provide a further extension, until 8 September 2006, to the respondents to comply with paragraph 3 of the initial order in *N (No 1)*. Nicholson J seemed additionally inclined towards this result given that, despite the absence of proper compliance with the initial order, there had been some progress made (ibid).

It should be noted that Nicholson J's willingness to accept the respondents' undertaking, together with his indication that some progress had been made towards complying with the order in *N (No 2)* may undercut his initial finding of contempt against the respondents. Given that the crime of contempt of court is only committed in the face of deliberate and *mala fide* ignorance of an order of court (*Jayiya* para 18), the conclusion Nicholson J seems ultimately to have reached, without expressly indicating as much, was the absence of contempt on the part of the government.

Even if the actions of the respondents in this case are painted with the gloss of technical lawyering and did not in fact achieve the status of contempt, it is not possible to overlook the fact that at each turn the respondents sought to impede the implementation of the orders against them, with dire consequences for their opponents. If anything, the recalcitrance on the part of the respondents in this case highlights the need for structural relief in some cases and for a supervisory role to be adopted by the courts. However, it also points to the perilous position of the courts when they elect to take on such a role and are met with severe resistance on the part of the respondents. In the end, the approach adopted by Nicholson J was probably the most practical in the circumstances. In the face of further resistance, however, the applicants would, it seems, need to chal-

lunge the constitutionality of s 3 of the State Liability Act in order to ensure that their order is not a *brutum fulmen*.

Inconsistent conduct and constitutional invalidity

One of the most interesting aspects of the decision of the Constitutional Court in both *Doctors for Life International v Speaker of the National Assembly & others* 2006 (6) SA 416 (CC), 2006 (12) BCLR 1399 and *Matatiele Municipality & others v President of the Republic of South Africa & others* 2007 (6) SA 477 (CC), 2007 (1) BCLR 47 (CC) (*Matatiele 2*) (both cases are discussed further above) from a remedial point of view was the question whether, consequent upon a declaration that the NCoP or a provincial legislature's *conduct* in relation to the passing of legislation was inconsistent with the Constitution and therefore invalid, *the Acts themselves* ought to be declared invalid. In *Doctors for Life*, the respondents contended that the court had no power to declare the resulting statutes invalid. To do so, it was submitted, would infringe upon the doctrine of separation of powers (para 198). In response to this contention, Ngcobo J reasoned that the requirement to facilitate public involvement in the law-making process was a 'requirement of manner and form' and failure to comply with such an obligation rendered the resulting legislation invalid (para 209). Moreover, according to Ngcobo J, while the Constitutional Court has an obligation to be sensitive to and respect the separation of powers, such respect does not entail that courts cannot or should not make orders that have an impact on the other branches of government (para 199).

Ngcobo J therefore declared, in *Doctors for Life*, the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act and, in *Matatiele*, that part of the Twelfth Amendment that transferred the area of Matatiele Local Municipality, invalid and further ordered that the declarations of invalidity be suspended for a period of 18 months to enable Parliament to enact the statutes and amendment afresh in a manner that was consistent with the provisions of the Constitution (para 214).

It is interesting to speculate whether an order of invalidity without an accompanying suspension thereof would ever be appropriate in such cases. The option of mediating the effect of an order of invalidity by suspending its operation is specifically provided for in s 172(1)(b)(ii) of the Constitution. The courts are granted a discretion in this regard. However, given that the defect which renders the statutes at issue unconstitutional and invalid is procedural in nature, it seems that suspension may always be the appropriate

remedy. An order of immediate invalidity would not, I suspect, be sufficiently sensitive to the cause of the unconstitutionality in the case to be appropriate. Where the defect is procedural, justice and equity probably require that its architect be given an opportunity to remedy it before the product of that defective process is rendered void. Process related defects should, it seems, be met with process facilitating remedies.

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IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO. : CCT 12/05

In the matter between:

DOCTORS FOR LIFE INTERNATIONAL

Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**THE CHAIRPERSON OF THE NATIONAL
COUNCIL OF PROVINCES**

Second Respondent

THE NATIONAL MINISTER OF HEALTH

Third Respondent

**WRITTEN SUBMISSIONS OF THE APPLICANT PURSUANT TO THE
CHIEF JUSTICE'S DIRECTIONS OF 2 JUNE 2005**

1.

The argument deals exclusively with issues identified in the Directives of this Honourable Court dated 2 June 2005 under the heading identified. All references to sections are to sections of the Constitution Act 108 of 1996.

2.

NON-JOINDER AS A FATAL DEFECT

- 1.1 In the directions the parties identified as those which should be joined, are the speakers of the provisional legislature (without limiting such range of interested parties).
- 1.2. In order to determine whether the provincial legislatures need be joined the subject matter of the dispute and the effect of the order sought need be considered. Whilst reliance is placed in the papers on the breach of section 118(1), such breach as such, cannot found an application under section 167(4)(e) (see *infra*). The manner of treatment of the Bills by the Provincial Legislatures is thus relied upon only for its evidentiary value *vis-à-vis* the NCOP's overall conduct.
- 1.3. The NCOP is alleged to have acted in breach of section 72(1). This body has with respect been properly cited and is before the court.

- 1.4. It is submitted that the order sought can not relate to the Provincial Legislatures as such - they are not part of the Parliament and the declarator is sought is too wide. At the hearing leave shall be sought to amend the wording so as to omit the words "and 118(1)(a)" as well as "and the nine Provincial Legislatures" from the declarator sought in the notice of motion. It is conceded that as phrased the initial declarator was too wide and should, given the gist of the factual averments not have included the nine provincial legislatures; at least not without joining them.
- 1.5. The Applicant thus contends that these parties mentioned in 1.1 need not be joined any longer. It is the Applicant's contention that on the facts, the provincial legislatures were not given sufficient time to comply with public participation requirements by Parliament. The complaint lies especially against the National Council of the Provinces (the NCOP). Whilst the speakers of the various provincial legislature may be able to provide valuable testimony as the factual averments underlying the complaint of a breach of section 72(1)(a), it is the Applicant's contention that they are not entities to be cited as Respondents and to be put to the time and costs of considering their positions as such given the amended relief. Given the number of

speakers involved, this consideration assumed considerable importance.

16. In terms of Rule 6 of the Constitutional Court Rules, the party to be cited is the “authority” responsible for the executive or administrative act or “conduct” complained of. Whilst the speakers of the provincial legislatures and numerous other entities were obviously involved in the course of conduct complained of, it is the Applicant’s contention that they were not the entities ultimately responsible for this. Applicant’s case is that the parties before the court are the ones ultimately responsible for both the inadequate time given to the provincial legislatures and thus placing them under pressure to act and the acceptance of such inadequate compliance as sufficient as well as itself failing to ensure public participation. The NCOP is the organ responsible for the Bill once it leaves the National Assembly until it refers the same back and it is in this period that it is obligated to act in accordance with section 72(1)(a) and ensure compliance therewith.

3.

Should this Honourable Court not be persuaded that the said parties are not necessary parties to the application, this in submission should not result in the dismissal of the application. This court has an inherent discretion to order the joinder of the parties it considers necessary, at this stage. It is respectfully submitted that such an order will be appropriate in the circumstances of the case. The issue of compulsory joinder depends on a value judgment which is not always easy to predict; to non suit the Applicant will simply be counter productive.

4.

FAILURE TO FULFIL A CONSTITUTIONAL OBLIGATION

The question posed is whether the conduct alleged in the application can constitute a failure to “fulfil a constitutional obligation” by Parliament within the meaning of that phrase in section 167(4)(e).

5.

It is accepted that the conduct of the Provincial Legislatures as such does not qualify for they fall outside the concept of Parliament as defined in section 42(1) of the Constitution.

6.

The conduct of the NCOP is clearly that of Parliament. The essential complaint is that the NCOP passed the bills without there being any meaningful opportunity for public involvement in the processes of the NCOP.

7.

The importance of the constitutional obligations provided by sections 72 and 118 is underlined by section 42(4) of the Constitution which reads:

The NCOP represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

8.

In terms of section 72(1)(a) the "*The National Council of Provinces must - facilitate public involvement in the legislative and other processes of the Council and its committees...*"

9.

It is respectfully submitted that "must" denotes in context an obligation connected with the procedures to be adopted in respect of the considering of legislation by the NCOP. It is not one of those instances where "must" can be interpreted.

10.

It is accordingly submitted that the failure alleged amounts to a failure to fulfil a constitutional obligation within the meaning of section 167(4)(e) and that the jurisdictional requirements for direct access are accordingly met.

11.

THE TIMING OF THE CHALLENGE

Section 79 provides for a review of a Bill at the instance of the President after it has been passed in terms of chapter 4. Section 80 provides for such review by members of the National Assembly after the President has assented to it (a 30 day period).

12.

There does not appear to be any specific provision expressly allowing a constitutional challenge to the legislative process prior to the stage in section 79. In this instance challenge lies at the behest of a party whose interest in the legislation via the provisions of section 27, is evident as all the Bills relate to Health issues.

13.

It is submitted that where the challenge relates to a procedural issue, declaratory relief can be granted if and when the alleged grievance arises at any stage of the

legislative process. It is accepted that when the challenge is directed at the consent of a Bill, it can only be lodged after the President has signed it for till then its content is mutable.

14.

It is submitted that in respect of a challenge to the manner of law making, the right arises as soon as the alleged breach arises. Such a breach cannot as a rule be remedied by a change in content.

15.

This can be exemplified:

Why can the Constitutional Court not be approached if a dispute arises whether a Bill must be dealt with in terms of section 74, section 75 or section 76?

16.

Why should the passing of a Bill not be attacked by a party on the basis that there was no quorum present due to two persons who were not members of the Assembly being counted as such?

17.

It seems totally irrational for an entire process to be followed only so that the end result can be declared null and void so as to be able to start anew.

18.

It is respectfully submitted that the decision of this Honourable Court in *Ex Parte President of the Republic of South Africa : In re Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)* does not detract from the propositions advanced on behalf of an interested extra parliamentary party where these relate to a procedural defect. Once the alleged incorrect procedure harming the party's interests has occurred, that party must be entitled to seek relief there and then. It may even be that the party's contention is that if the correct procedure was adopted, the Bill would have become legislation. If enactment in terms of section 81 is the first time that a complaint can be raised, it means that no redress may be sought in respect of incorrect procedures which prevent Bills from being enacted. Such a limitation does not seem to be spelt out nor does it have a rational purpose.

19.

It is accordingly submitted that the application cannot be non-suited on this basis.

K.J. KEMP SC
Chambers, Durban

23 June 2005



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case no: 561/04
Reportable

In the matter between:

MARY PATRICIA KING & 92 OTHERS
COLLEEN JUDITH VAN STRAATEN & 6 OTHERS
NAMCOAST (Pty) Ltd
C M TAPSON & 2 OTHERS

Appellants

and

ATTORNEYS FIDELITY FUND BOARD OF CONTROL First respondent
MINISTER OF JUSTICE Second respondent

BEFORE: **HARMS, CAMERON, MTHIYANE, NUGENT**
 and JAFTA JJA

HEARD: **12 SEPTEMBER 2005**

DELIVERED: **29 SEPTEMBER 2005**

Constitution – alleged failure by National Assembly to fulfil a constitutional obligation – power to declare legislation invalid – different forms of statutory invalidity – invalidity alleged to derive from breach of constitutional obligation to facilitate public involvement in legislative process – section 167(4)(e) of Constitution precludes SCA and high courts from making order or entertaining application

JUDGMENT

CAMERON AND NUGENT JJA:

[1] The appellants challenge the validity of a statute of Parliament.

They base their challenge on s 59 of the Constitution, which says amongst other things that the National Assembly must ‘facilitate public involvement in the legislative and other processes of the Assembly and its committees’.¹ They admit there was public consultation about the statute they challenge. But they say there was not enough. This they say renders the statute invalid. In the Grahamstown High Court, Chetty J dismissed their challenge. Though he considered that it was not the function of the courts to prescribe to Parliament the procedure it must follow in passing

¹ Constitution s 59 [s 72 is identical in respect of the National Council of Provinces]:

Public access to and involvement in the National Assembly

- (1) 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, in public, but reasonable measures may be taken –
 - (i) to regulate public access, including access of the media, to the Assembly and its committees; and
 - (ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.
- (2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

legislation, he found that in fact there had been due compliance with the requirement of public involvement.

[2] This appeal is with his leave. It requires us to consider the nature of the obligation the Constitution imposes on Parliament to ‘facilitate public involvement’ in its processes. It also requires us to decide whether the Constitution empowers this court and the high courts to grant the appellants the order of constitutional invalidity they seek.

[3] The appellants – individuals, corporations and trustees numbering over 100, in four consolidated actions – claimed compensation from the first respondent, the Attorneys Fidelity Fund (‘the Fund’) for substantial losses they suffered after depositing monies in the trust account of a Port Elizabeth firm of attorneys, van Schalkwyks. They say the monies were to be used in a factoring scheme from which they were promised high returns. The scheme involved discounting bank guarantees relating to estate agents’ commissions and

proceeds on property sales. They say that instead of holding the monies in trust for use in the scheme, the attorneys stole their money, entitling them to compensation from the Fund in terms of the Attorneys Act 53 of 1979.² But in 1998 Parliament amended this Act to preclude recovery of moneys deposited with an attorney not in the usual course of practice, but to invest on behalf of a client.³ Most of the deposits took place after the amendment was enacted, and the Fund pleaded it in defence. The appellants countered by pleading the invalidity of the amendment Act for failure to comply with the constitutional requirement of public involvement.

[4] The Minister of Justice was joined as second defendant, and the parties agreed on a stated case, on the basis of which Chetty J separated the inquiry as to the Fund's liability from the other

² In terms of s 26, the Fund must be applied inter alia for reimbursing persons who may suffer pecuniary loss as a result of 'theft committed by a practising practitioner ... of any money or other property entrusted to him ... in the course of his practice'.

³ Attorneys and Matters relating to Rules of Court Amendment Act 115 of 1998 s 1 and s 2, inserting s 47(1)(g), s 47(4)-(10) and s 47A into Attorneys Act 53 of 1979.

questions in the action, ruling as already mentioned in favour of the Fund and the Minister (who both in this court and in the court below made common cause with the Fund).

[5] According to the stated case, the Minister of Justice introduced the relevant Bill in the National Assembly on 30 January 1998 together with a memorandum on its objects, a clause by clause analysis, and a statement that the Department of Justice had consulted with a wide range of professional bodies representing attorneys and advocates. (These all supported the Bill.) The Bill was then referred to the National Assembly's Portfolio Committee on Justice. On 26 February 1998 the committee's chairman issued a media statement inviting 'any person or organisation' to make written representations on the Bill before 27 March 1998, or to indicate by that date whether they wished to give oral evidence.

[6] The Portfolio Committee held public hearings on 20 April and on 4 May 1998, after which it agreed to amendments to the Bill. In this form the Bill had its second reading on 30 July 1998, proceeded to the National Council of Provinces and thence back to the Assembly's Portfolio Committee, which considered the Council's amendments, whereafter the National Assembly on 6 November assented to it.

[7] The stated case records that articles relevant to the Bill were published in seven out of seventeen daily newspapers in South Africa. These could have reached just under half of the country's total daily newspaper readers of 4.6 million. There was no publication in weekly newspapers, or in the government or provincial gazettes. The government website in September and November 1998 did however carry versions of the Bill.

[8] In June 1995, the National Assembly adopted standing rules. These empowered its portfolio committees to summon persons to appear

and produce documents, and to receive representations from interested persons or parties and to permit oral evidence or representations. But it is common cause that when the amendment Act was passed, there was no general requirement that prior notice of the introduction of a Bill had to be published with an explanatory memorandum. This was introduced only later, when the National Assembly adopted more extensive and explicit rules.⁴

[9] These rules are still in force. They require that the memorandum accompanying a Bill at its introduction must contain a list of persons and institutions the executive consulted in preparing the Bill. In addition, a Bill may be introduced in the National Assembly only if prior notice of its intended introduction is published in the Government Gazette along with an explanatory summary (unless the Bill as it is to be introduced has itself been published there). And if

⁴ In a letter included in the stated case, the Secretary to the National Assembly records that on 25 November 1999, the National Assembly adopted a report of the National Assembly Rules Committee dated 23 March 1999, which contained a comprehensive set of revised rules.

the draft Bill is published, the notice must contain an invitation to interested persons and institutions to submit written representations on it to the secretary to Parliament within a specified period. If the Bill has not been published for public comment, and the portfolio committee to which it is referred considers public comment necessary, it may through invitations, media statements, advertisements or other means invite the public to comment.

[10] Although these more extensive requirements were not in force when the amendment Act was adopted, the appellants expressly disclaimed any attack on the validity of the parliamentary rules that applied at the time, and made no claim that they were not complied with. They invoke the Constitution itself, and their complaint is that the National Assembly failed to do enough to fulfil its obligation to facilitate public involvement. They complain that though bodies who supported the legislation were informed and consulted, including the

organised legal profession, those whose interests the amendment detrimentally affected – investors like themselves who entrusted money for investment to attorneys – were, as counsel put it during argument, ‘left out in the cold’. This, they say, makes the legislation invalid. Parliament, they contend, must take ‘reasonable measures’ to ensure that all members of the public with an interest in legislation become aware that it is contemplated, and that they have a right to ‘say their say’ about it. If it fails to do this, its enactments lack the force of law.

[11] This case therefore does not raise questions concerning the content of or oversight over the rules that s 57 of the Constitution empowers Parliament to adopt. It focuses only on statutory invalidity alleged to arise from breach of a constitutional obligation. We are thus not asked to consider any questions concerning breach of a constitutional obligation falling short of this consequence.

[12] The main question is whether this court is precluded from pronouncing on the appellants' complaint. Though an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court, this court and the high courts have jurisdiction to 'make an order concerning the constitutional validity of an Act of Parliament' (s 172(2)(a)).⁵ Section 167(4)(e) however allows only the Constitutional Court to 'decide that Parliament or the President has failed to fulfil a constitutional obligation'.⁶ Since the appellants claim that the amendment Act is invalid because Parliament failed to fulfil an obligation in s 59 of the Constitution, the question is whether

⁵ Constitution s 172(2)(a):

'The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.'

⁶ Constitution s 167(4):

'Only the Constitutional Court may –

- (a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;
- (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in section 79 or 121;
- (c) decide applications envisaged in section 80 or 122 [by at least one third of the members of National Assembly or 20% of the members of a provincial legislature for an order declaring all or part of an Act unconstitutional];
- (d) decide on the constitutionality of any amendment to the Constitution;
- (e) decide that Parliament or the President has failed to fulfil a constitutional obligation;
- (f) certify a provincial constitution in terms of section 144.'

we are precluded from hearing their complaint on the ground that only the Constitutional Court can address the failure they allege.

[13] Before the hearing, this court invited the parties to make submissions on this issue, which was not argued before Chetty J. Both sides rightly submitted that the words ‘constitutional obligation’ in s 167(4)(e) must bear a restricted meaning. The Constitutional Court has said as much. In *President of the Republic of South Africa v South African Rugby Football Union*,⁷ a case concerning the conduct of the President, the court pointed out that if s 167(4)(e) were construed as applying to all questions concerning constitutional validity of conduct of the President, it would conflict with s 172(2)(a). It therefore considered that when the two sections are read together a ‘narrow meaning’ should be given to ‘fulfil a constitutional

⁷ 1999 (2) SA 14 (CC).

obligation' in s 167(4)(e), though it found it unnecessary to decide what that meaning should be.⁸

[14] The purpose of the constitutional provisions giving exclusive jurisdiction to the Constitutional Court is –

'to preserve the comity between the judicial branch of government, on the one hand, and the legislative and executive branches of government, on the other, by ensuring that only the highest Court in constitutional matters intrudes into the domain of the principal legislative and executive organs of State.'⁹

Since the Constitutional Court bears 'the responsibility of being the ultimate guardian of the Constitution and its values', s 167(4) vests it with exclusive jurisdiction in 'crucial political areas',¹⁰ and it bears the

8 1999 (2) SA 14 (CC) para 25.

9 *President of the Republic of South Africa v SARFU* 1999 (2) SA 14 (CC) para 29, dealing with s 172(2), but endorsed more broadly in relation to 'provisions of the Constitution which confer exclusive jurisdiction upon [the Constitutional Court] to decide certain constitutional matters' in *President of the Republic of South Africa v United Democratic Movement* 2003 (1) SA 472 (CC) para 20.

10 *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC) para 72.

duty 'to adjudicate finally in respect of issues which would inevitably have important political consequences'.¹¹

[15] These are the clear premises. The question is whether they leave space for this court and the high courts to grant an order of statutory invalidity when the defect is alleged to arise from breach of a constitutional obligation. Though their approaches differed in the details, counsel on both sides contended that this court retained jurisdiction under s 172(2) to 'make an order' concerning the constitutional validity of the amendment Act, even when the source of the challenge was breach of a constitutional obligation. Appellants' counsel contended that the failure to fulfil a constitutional obligation was 'ancillary' to the question whether the statute was invalid. Counsel for the Fund contended that the jurisdiction conferred by s 172(2) prevails even when failure to fulfil a constitutional obligation is

¹¹ *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC) paras 72 and 73.

the source of the alleged invalidity: it is enough for jurisdiction that a statute is attacked for constitutional inconsistency.

[16] In our view these approaches impermissibly attenuate the jurisdictional exclusion in s 167(4). Although s 172(2) grants power to this court and the high courts 'to make an order concerning the constitutional validity of an Act of Parliament' the co-existence of the two provisions requires that we distinguish between different ways in which the Constitution envisages that statutes may be invalid. One case is where, even though a statute is validly adopted by Parliament, its provisions fall outside the scope of Parliament's legislative authority as defined in the Constitution, most notably by the Bill of Rights.¹² In such a case s 172(2) clearly empowers this court and the high courts to make an order of constitutional invalidity.

¹² Constitution s 8(1):
'The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.'

[17] A purported statute may also be invalid because Parliament fails to enact it properly at all. This would happen if Parliament omits to observe the stipulations the Constitution prescribes concerning the manner and form in which legislation is to be adopted. Provisions of this kind include s 53, which requires that a majority of the members of the National Assembly must be present before a vote is taken on a Bill, and that all questions before the Assembly are decided by a majority of votes cast.¹³ Although counsel for the appellants suggested that these provisions impose ‘obligations’ on Parliament in the sense envisaged in s 167(4)(e), this seems to us misconceived. Procedural requirements that are prerequisites to validity do not impose obligations. This is because constitutional limitations on legislative authority generally – albeit not invariably – derive from

¹³ Constitution s 53(1):

‘Except where the Constitution provides otherwise –

- (a) a majority of the members of the National Assembly must be present before a vote may be taken on a Bill or an amendment to a Bill;
- (b) at least one third of the members must be present before a vote may be taken on any other question before the Assembly; and
- (c) all questions before the Assembly are decided by a majority of the votes cast.’

disabilities contained in rules that qualify the way in which the legislature may act: and it is a mistake to confuse legal limitations that arise from procedural prerequisites and from other limitations of legislative power with those that derive from the imposition of duties:

'A constitution which effectively restricts the legislative powers of the supreme legislature in the system does not do so by imposing (or at any rate need not impose) duties on the legislature not to attempt to legislate in certain ways; instead it provides that any such purported legislation shall be void. It imposes not legal duties but legal disabilities. "Limits" here implies not the presence of *duty* but the absence of legal power.'¹⁴

[18] A requirement as to form and manner for adopting legislation may however arise from an obligation that is imposed on the legislature. But the distinction between an obligation-derived prerequisite to validity and a purely capacity-defining formality should not be ignored, since this would be to overlook the variety and complexity of

¹⁴ HLA Hart, *The Concept of Law* (Clarendon Press, Oxford, 1961) pages 68, 69 and 242, drawing on Wesley Newcombe Hohfeld *Fundamental Legal Conceptions* (1923).

the differing forms of disability and duty that the Constitution itself imposes. Should Parliament purport to adopt a Bill that fails to receive a majority of votes cast, it does not act in breach of a constitutional obligation, but fails to legislate at all. This court and the high courts thus have jurisdiction under s 172(2) to make an order of constitutional invalidity.¹⁵ They decide not that Parliament has failed in its duty to fulfil an obligation (a 'crucial political' question), but only the more formal question that by omitting to observe the Constitution's prerequisites as to form and manner, Parliament has failed to produce a constitutionally valid statute.

[19] We accept that a third route might also lead to invalidity, where Parliament so completely fails to fulfil the positive obligations the Constitution imposes on it that its purported legislative acts are invalid. For while the legislative authority of the State in the national

¹⁵ See *Harris v Minister of the Interior* 1952 (2) SA 428 (A), *Minister of the Interior v Harris* 1952 (4) SA 769 (A).

sphere of government is vested in Parliament, the exercise of this authority requires more than merely an assemblage of the members for the time being of those bodies debating and voting on proposed legislation. The Constitution requires that Parliament function in accordance with the principles of accountability, responsiveness and openness that constitute one of its founding values.¹⁶ That founding value, so far as it relates to the conduct of the National Assembly, finds expression in the Constitution's requirement that its rules and orders for the conduct of its business must be made with due regard not only to representative democracy but also to participative democracy.¹⁷ It also finds expression in the National Assembly's power to receive petitions, representations or submissions from any

¹⁶ Constitution s 1(d) establishes as a founding value of the Republic of South Africa – 'Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.'

¹⁷ Constitution s 57(1)(b) provides that the National Assembly may make rules and orders concerning its business, 'with due regard to representative and participatory democracy, accountability, transparency and public involvement'.

interested persons or institutions,¹⁸ its duty to facilitate public involvement in its legislative and other processes and of those of its committees,¹⁹ its duty generally to conduct its business in an open manner and hold its sittings and those of its committees in public,²⁰ and its duty generally not to exclude the public or the media from sittings of its committees.²¹

[20] Those are all facets of a National Assembly that belongs to the people, although its formal business is conducted through their representatives, and it is to an Assembly functioning in this way that the Constitution entrusts the power to legislate.²² Its antithesis is a body that separates itself from and excludes the public, is indifferent

18 Constitution s 56(d) provides that the National Assembly or any of its committees may 'receive petitions, representations or submissions from any interested persons or institutions'.

19 Constitution s 59(1)(a) provides that the National Assembly must 'facilitate public involvement in the legislative and other processes of the Assembly and its committees'.

20 Constitution s 59(1)(b) provides that the National Assembly must 'conduct its business in an open manner, and hold its sittings in public' but that reasonable measures may be taken to regulate public access and to provide for searching of persons.

21 Constitution s 59(2):

'The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.'

22 Constitution s 42 (3):

'The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.'

to their participation and interests, and conducts its business concealed from the public eye. Were that ever to occur it would negate one of the essential pillars of the Constitution, with fundamental implications not only for Parliament's legitimacy, but for its legislative capacity. These consequences would follow, not because Parliament has failed to fulfil a capacity-defining procedural formality, but because it has disavowed the obligations the Constitution imposes on it.

[21] If, in violation of the constitutional obligation to conduct business in an inclusive and open manner, and to hold sittings in public, members of the National Assembly were to convene in secret or at an undisclosed venue, it is not hard to imagine that it might be held that this was not Parliament functioning as contemplated in the Constitution at all, and that consequently 'legislation' the persons so assembled purported to adopt lacked constitutional validity.

[22] The present case falls very far short of that. 'Public involvement' is necessarily an inexact concept, with many possible facets, and the duty to 'facilitate' it can be fulfilled not in one, but in many different ways. Public involvement might include public participation through the submission of commentary and representations: but that is neither definitive nor exhaustive of its content. The public may become 'involved' in the business of the National Assembly as much by understanding and being informed of what it is doing as by participating directly in those processes. It is plain that by imposing on Parliament the obligation to facilitate public involvement in its processes the Constitution sets a base standard, but then leaves Parliament significant leeway in fulfilling it. Whether or not the National Assembly has fulfilled its obligation cannot be assessed by examining only one aspect of 'public involvement' in isolation of others, as the appellants have sought to do here. Nor are the

various obligations s 59(1) imposes to be viewed as if they are independent of one another, with the result that the failure of one necessarily divests the National Assembly of its legislative authority.

[23] In our view it is only at that extreme – where Parliament has so renounced its constitutional obligations that it ceases to be or to act as the body the Constitution envisages and thus ceases to have legislative authority – that its purported enactments will not be valid. And the question whether that extreme has been reached – which is the prerequisite for the appellants' claim to succeed – is not one that this court or the High Courts are able to decide. That it would result in the invalidity of the National Assembly's purported acts is not sufficient in itself to vest this court with jurisdiction under s 172(2) because the invalidity in such a case is predicated upon the anterior question. Given the implications such a decision would entail, that

would be pre-eminently a 'crucial political' question, and s 167(4)(e) reserves it for only the Constitutional Court to make.

[24] It follows that the appropriate course for Chetty J, had the jurisdictional question been raised before him, would have been to strike the application from the roll because of the high court's lack of competence to hear the application. His order dismissing the application has in substance the same effect.

[25] In this court the appeal stands to be struck from the roll. The appellants asked that in that event they be spared the burden of the respondents' costs, but that cannot be. Although this court now applies the Constitutional Court's flexible principle that bona fide and reasonable litigants who raise genuine constitutional issues of broad concern should not be inhibited from asserting their rights by having

to pay the costs of governmental adversaries,²³ that principle cannot apply here. This was in essence a claim for private compensation, brought by disappointed investors who found that a statute obstructed their path to recompense. Their challenge to the validity of the statute involves the assertion of no essentially constitutional entitlement, and the normal rule as to costs must therefore apply.

Although the Fund and the Minister were represented by two sets of two counsel, they requested the costs of only two.

[26] The appeal is struck from the roll with costs, including the costs of two counsel.

**E CAMERON & RW NUGENT
JUDGES OF APPEAL**

**CONCUR:
HARMS JA
MTHIYANE JA
JAFTA JA**

²³ See *De Kock v Van Rooyen* 2005 (1) SA 1 (SCA) para 30.

PARLIAMENT AND THE BUDGET: A SHORT INTRODUCTION FROM A CIVIL SOCIETY PERSPECTIVE

Joachim Wehner
15 April 2003

1. Introduction: parliament and the budget cycle

'The Budget is the most important economic policy tool of the Government and provides a comprehensive statement of the priorities of the nation. As the representative of the people, Parliament is the appropriate place to ensure that the Budget best matches needs with available resources.'

Warren Krafchik and Joachim Wehner
The Role of Parliament in the Budgetary Process

Budgets are crucial tools in stabilising the economy, distributing income and allocating scarce fiscal resources to address competing needs. Without budgets, even the best policy will amount to very little in practice. Although many economists and international financial institutions have in the past preferred parliaments¹ not to play a significant role in the budget process, more recently there has been a growing recognition that meaningful checks and balances are crucial for what is often summarised under the label 'good governance'. Only effective oversight can ensure that money is prioritised in line with policy and that funds are not siphoned off or diverted during budget implementation. Emerging recognition of the importance of fiscal oversight is reflected in various codes or surveys on budget transparency, such as the Best Practices on Budget Transparency developed by the Organisation for Economic Cooperation and Development (OECD), budget transparency and participation surveys conducted by civil society organisations, and also, perhaps to a lesser extent, the Code of Good Practices on Fiscal Transparency by the International Monetary Fund (IMF).

But when and how does parliament engage with the budget process? The budget cycle is commonly separated into four different stages: (1) drafting, (2) legislating, (3) execution, and (4) audit. This basic process is applicable for many if not most countries with democratic governments. But across countries there are important differences in emphasis, timing, and institutional setup, among others, and parliament's role varies across these four stages. In addition, the demands of budgeting are a lot more complex than this timeline suggests. Budget cycles are 'scrambled' - at any one time, for example, parliament might have to deal with one budget that has to be approved, monitor the implementation of a previously approved budget, and consider an audit report on a budget that has already been implemented. The maintenance of fiscal oversight is therefore a complex challenge.

¹ For the purpose of this paper no distinction is made between 'parliaments' and 'legislatures'. Legislatures are responsible for passing legislation and granting government the right to levy taxation. This contrasts with the role of the executive, whose primary function, as the term suggests, is to execute or implement policy.

The drafting stage is largely internal to the executive. It usually involves departments submitting budget proposals to a central budget authority, such as a Ministry of Finance, in order to come to an agreement within the executive on how the funds available for the upcoming year, and sometimes beyond, should be allocated between different departments.

Once a comprehensive budget has been drafted, it has to be approved by parliament to become effective. Parliament's role is arguably most obvious during this second or legislative stage, when parliament scrutinises the expenditure and revenue proposals of the executive and decides whether to approve, reject or amend them. In some countries, parliament passes separate legislation for appropriations and changes to the tax code, in others there is a unified budget bill. The exact form of approval is less important than the fact that it must be comprehensive. The principle of legislative authorisation of all public spending and taxation has also been called the 'rule of law' in public finance.

Once approved, the third or execution stage of the budget process is mainly in the hands of the executive. A central budget office usually plays a leading role in assuring that funds are apportioned to spending departments in line with the relevant approved budget. However, this is not always the case. Sometimes, in particular in many developing countries, funds might be shifted to purposes other than those that were previously approved. Frequent and ad hoc adjustments to budgets can reflect the uncertainties that are characteristic of the macroeconomic and fiscal environment in many developing countries, but 'continuous budgeting' is also a symptom of a weak and ill-disciplined budgeting system. To ensure that its authority is not undermined by excessive adjustments, parliament might find it useful to keep a close eye on implementation through scrutiny of information on actual spending during the execution stage. Under normal circumstances, any significant adjustments to the budget passed by parliament should be approved in adjustment appropriations.

Following the implementation of the budget, government accounts and financial statements are audited by an independent audit institution. This is in some countries an Auditor General, for instance in most of anglophone Africa. In other countries this involves an audit court, as in most of lusophone and francophone Africa. Usually, this process is followed with the presentation of the results of the audit to parliament and their consideration by one of its committees, such as a Public Accounts Committee.

2. Why should civil society care?

Why should civil society budget activists and researchers care about the role of parliament in the budget process? Budgets are key tools to implement policy, and any organisation that attempts to influence policy cannot ignore the budget. In several poor countries that are taking part in the Poverty Reduction Strategy Paper (PRSP) process, the budget also is or will be the main implementation channel for the poverty reduction strategy, and therefore deserves detailed scrutiny.

For civil society organisations, one of the prime opportunities to engage with policy and budgetary debates is when the budget is presented to parliament for approval. Usually, this is the first time that the budget proposal is made public, and there are

opportunities for civil society interventions through public hearings, and by using the public attention for advocacy and media campaigns. This means that it is in the interest of civil society budget activists to strengthen parliament's role in the process. If parliament's role in the budget process is not effective, the input of civil society organisations during the legislative stage is likely not to be effective either.

At the same time, if budget execution is weak, and distorts spending priorities, this undermines the meaning of budgets. Civil society therefore also has an interest that parliament can exercise oversight over execution and scrutinises audit results to ensure compliance, and the efficiency and effectiveness of spending.

3. Some negative myths about parliamentary involvement²

Many people are sceptical about whether parliament should have a role in the budget process. They cite a number of concerns. For example, it has long been thought that executive secrecy is essential to budgeting, because the information involved was said to be highly sensitive in terms of its impact on the economy and markets. We have little, if any, concrete evidence that this is indeed the case. Also, experience tells us that secrecy too often hides poor budgeting practices, and provides a dangerous breeding ground for corruption and inefficiency.

Another objection is that parliamentary involvement can generate such a large number of proposals for changes to the budget that the budget process collapses. Admittedly, the United States came close to this situation in the 1980s. For instance, the number of changes that Congress made during the course of considering the defence budget alone totalled more than a staggering 1800 in 1985. But this has remained in many ways a unique experience that was due to a particularly complex set of factors rather than congressional involvement in budgeting in and by itself. Perhaps it is the fact that the biggest international financial organisations have their headquarters in Washington, where congressional budget wars are widely reported, that has given rise to some scepticism within these organisations of legislative budget activism per se.

But comparative experience tells a very different story. Most parliaments make a contribution to budgeting through a modest number of amendments that are far from undermining the stability of the process. international examples where parliamentary amendment activity overloads the system are very rare indeed - 63 per cent of national legislatures recently surveyed by the OECD report that they approve the budget with 'minor changes', and 22 per cent with 'no changes'. Only 15 per cent reported that they approve the budget with 'significant changes'. The survey is proof that a modest level of amendments is considered normal in most countries, and that any hysterics about how amendment power could derail the budget process are inappropriate.

Third, some suggest that the budget is too complex and technically loaded for parliamentarians to fathom. But, apart from the fact that many legislatures routinely demonstrate the contrary through their active and purposeful engagement, we are surely called upon to ensure that politicians are empowered to make the decisions they are required to in the most wise and prudent manner.

² These paragraphs draw freely on work by Warren Krafchik of the International Budget Project.

A fourth and prominent argument is that parliamentary involvement will increase deficits, due to pork barrel politics, logrolling and the multiplication of claims on the budget. True, sometimes parliaments can bust the bank. But this need not be the case. Many countries with inactive parliaments have some of the most perilously high deficits, and some countries with active parliaments deliver some very prudent deficits. This implies that we can control the effect of parliamentary involvement through careful institutional design, for instance of amendment powers or the structure of the decision making process. Rather than multiplying claims on the budget, one of the benefits of more open debate within the constraints of a carefully designed budget process, can be greater consensus with regard to difficult trade-offs.

In short, while there is reason to carefully monitor increased parliamentary activity, many of the arguments against involvement are negative myths or prejudices.

4. Considering parliamentary capacity

The aim of this section is to outline some factors that are central in determining the role of parliament in the budget process. With this knowledge, it is possible to identify strengths and weaknesses of legislative budgeting in a particular case. From a civil society perspective, this is important to judge whether advocacy interventions through parliament are likely to have an effect, or to make recommendations to strengthen parliament's role so that this intervention point becomes more significant. One way of looking at the issue of parliamentary ability to engage with the budget is to differentiate between three sets of variables - legal constraints, party political dynamics, and analysis capacity.

4.1. Legal frameworks and their constraints

The legal framework, such as a constitution and organic budget laws, shape and constrain the way in which parliament can engage with the budget. Two key variables here are the system of government³ established by the constitution, and the nature of amendment powers granted to parliament with regard to the budget.

Variance in the relative budgetary influence of parliament vis-à-vis the executive is to a large extent a function of the system of government a constitution puts in place. Parliamentary systems tend to be, by virtue of their design, conducive to co-operative legislative-executive relations. In parliamentary systems, the executive is elected by parliament. This means that the executive is directly dependent on majority support in the legislature. As a result, the composition of parliament and the executive are inherently intertwined, as are their electoral fortunes. This tends to constrain the political space necessary for parliament to fundamentally rewrite executive spending proposals during the approval or legislative stage, often leaving the more technical and perhaps less politicised *ex post* engagement via a Public Accounts Committee as the focus of financial scrutiny. In parliamentary systems, to fundamentally rewrite the

³ Presidential systems vest executive authority in a directly elected head of government, usually called a president, for example in the United States, the Philippines and Nigeria. In parliamentary systems, the executive authority is elected indirectly by parliament, for instance in Britain, South Africa and India.

entire executive budget proposal would be tantamount to a vote of no confidence in the executive.

On the other hand, the separation of powers in presidential systems can lead to great antagonism between parliament and the president. In the latter case, the legislature is likely to be more critical of budgets and policy proposals tabled by an executive with whom it may have little in common. It is thus not surprising that some of the most bitter conflicts between parliament and the executive over budgetary matters can be found in countries with presidential systems of government, such as the United States or recently Nigeria, and that some of the most docile and ineffective legislatures, in budgetary terms, can be found in parliamentary systems of government, and in particular the United Kingdom and other Westminster inspired systems such as India or Canada.

A second legal variable is parliament's powers to amend the budget. Sometimes, amendment powers are spelled out in a country's written constitution, but they can also be based on convention, determined by ordinary legislation, or spelled out in parliamentary rules. The less amendment powers are circumscribed, the less control over budget outcomes is left to the executive alone.

Broadly speaking, in parliamentary systems of government legislative powers of amendment are usually more restrictive than in presidential systems. The underlying variable is the separation of powers in pure presidential systems, which gives rise to deliberate checks and balances. The classic example is the Constitution of the United States, dating back to 1787, which establishes no legal limits on parliament's budgetary powers (although Congress has self-imposed limits from time to time).

To the contrary, in the Westminster tradition of parliamentary government, 'reductions only' restrictions apply, where parliament may only reduce existing items (i.e. those items included in the budget proposed by the executive), but it may not include new ones or increase existing ones. This configuration evolved during the early days of the House of Commons, when it met to consider demands for subsidies made by the Crown. Its task was to decide whether and to what extent it would comply with the demand and, if so, within what limits and by what means. Many countries in the Commonwealth have copied this configuration.

A third set of amendment provisions constrain parliament's budgetary powers so as to promote the maintenance of the deficit, or the 'budget balance' between revenues and expenditures suggested by the executive, which is popular in some francophone countries, for instance.

It is possible to consider amendment powers on a scale of declining influence. Unfettered powers allow parliament, in theory, to rewrite the entire budget proposed by the executive. Balance budget amendment powers are more protective of the executive's fiscal policy, but still allow substantial legal space for parliament to shape budgets, for instance by reprioritising expenditures. The Westminster tradition of amendment powers is at the opposite end of the scale. It allows parliament very little opportunity to shape budgets other than to cut items. This precludes a creative role for parliament through the amendment process, as any amount from an expenditure item that is cut, for example, cannot be shifted to increase spending on a different

item elsewhere in the budget. The latter category of powers is not conducive to parliamentary amendment activity.⁴

4.2 Party political dynamics

Budgeting takes place in a broader political context - it is an expression of the power relations of political actors that participate in the process. How much influence parliament actually has, the *de facto* rather than theoretical extent of its budgetary action space, is to a large extent determined by party politics. While legal frameworks and the constraints they establish tend to be relatively long lasting, party political dynamics are far more fluent and can change substantially from election to election, and even in between elections, for instance due to defections of parliamentarians from one political party to another. The following paragraphs discuss two particularly important variables that shape the party political balance of power in the context of which parliament exercises its budgetary functions, viz. party political majorities and party cohesion.

Party political majorities have been shown to have an important effect on the role of parliament in the budget process. The point is that stable majorities ensure the predictability of voting outcomes. However, if the legislature features several parties without one of them having an outright majority of seats, the executive will have to assemble the support of a number of political parties to have its budget passed. It is likely to have to bargain and make concessions during this process. In this case the executive is faced with substantial strategic uncertainty as to whether it will be able to 'get through' its original budget proposal without significant changes.

A second and related variable is party cohesion, or party discipline. As Von Hagen has summarised, 'party discipline entails voting to support the executive, even if the outcome does not fully match the preferences of the individual member of parliament.' The point is that party majorities only ensure the predictability of parliamentary behaviour when they are matched with tight party discipline. The ability of party leaders to ensure party discipline varies substantially across political systems. In the United States Senate, for example, over the past three decades the extent to which members of each party vote with their party colleagues has been as low as 66 per cent in the case of Republicans. Consistently low levels of party cohesion are usually associated with candidate centred electoral systems, where party affiliation is not a strong factor in the election of candidates.

On the opposite end of the spectrum are legislatures in which the electoral fortunes of their members are highly correlated with party affiliation, notably when party headquarters have a strong voice in choosing candidates and the electorate chooses mainly or exclusively according to party preference. For instance, in the British House of Commons or the South African Parliament there are at most minimal deviations from party aligned voting patterns that are stringently enforced by party whips. Here, the

⁴ The issue is complicated in bicameral parliaments, where two different chambers may have equal or asymmetrical powers, which are usually defined in the constitution. Federal countries have some form of regional representation in a second chamber of the national legislature, and some unitary states have similar arrangements or other forms of an upper house of parliament. A detailed discussion is not possible here. For more on this, refer to the excellent overview of Patterson & Mughan (2001) and, focusing on budgets, the interesting analysis of Heller (1997).

primary role of members is that of party loyalists, and apart from a few prominent mavericks who can afford occasions of rebellious behaviour, voting against one's own party is highly damaging to one's future political career.

4.3 Analysis capacity

Parliamentarians have to be empowered to understand and independently analyse the contents of the budget if they are to play a meaningful role in the process. However, analysis capacity is unlikely to make much of a difference if parliament has little legal and political space to make its voice heard. In short, legal and political capacity as discussed above is a necessary condition for parliament to shape budgets. But, crucially, this is not sufficient. Even when parliament has the legal and political space to shape budgets, analysis capacity is necessary to make full use of this opportunity, and to make sound budgetary choices in doing so. Some of the key variables that combine to determine this ability to analyse are research capacity, information availability, the strength of parliamentary committees, as well as time availability and the timing of the budget process.

First, parliaments need access to research capacity to effectively make budgetary decisions. How can legislators independently assess the integrity of the figures in the draft budget, decide whether changes to the budget might be desirable, or determine and evaluate the budgetary implications of their proposed changes? The ability to make changes to budgets depends on detailed scrutiny that is only possible with detailed analysis. The only possibility for parliament to access independent information and analysis on the budget is through its own research service. Given the size and technical nature of the budget, effective budget research services require dedicated and specialised personnel.

Some of the more activist parliaments, in budgetary terms, have substantial own budget research capacity. For instance, the Congressional Budget Office (CBO) of the United States has highly trained staff numbering in excess of 200, and there are almost 50 employees the Congressional Planning and Budget Office (CPBO) of the Philippines. Some parliaments have smaller research units that specialise in budget analysis, for example in Poland, and yet others have general research units that can deliver some budget analysis when needed, such as the Research Service of the House of Commons Library in the United Kingdom. However, parliamentary research capacity is often negligible or non-existent, perhaps due to lack of resources or skills. There are, for instance, no dedicated budget researchers attached to the parliaments of many African countries, such as South Africa, Zambia or Namibia.

Second, parliamentary decision making needs to be based on comprehensive, accurate, appropriate and timely information supplied by the executive. Crucial in this is the amount of supporting documentation that accompanies the budget figures. In many countries, the budget document itself contains little narrative that outlines the policies underlying tax and spending proposals. Often the only source of narrative information is the budget speech. This makes it difficult for parliamentarians and their staff (as well as civil society researchers) to understand the policy basis for the budget, and to evaluate whether the budget adequately reflects stated government

policy. Also needed are in-year actual spending information⁵ and timely, thorough and well-presented audit reports, so that parliament can determine the extent of implementation of the budget. The latter is a crucial issue in many developing countries, where unauthorised expenditures and budget variance, that is the difference between approved and actual numbers, routinely run into double percentage figures. Budgetary decisions should be made in the knowledge of actual spending information, as much as possible, rather than on the basis of budgeted figures that might be little more than fiction.

Third, parliaments need strong committees to be effective. Parliamentary committees are the 'engine room' of parliament. It is here that in-depth and more technical debate can take place, away from the political grandstanding that often characterises proceedings on the floor of the house. The stronger the emphasis on parliamentary committees in the budget process, the greater is parliament's ability to engage with the budget. Where the committee stage is underdeveloped, and discussion takes place mainly on the floor of the house, the budgetary role of parliament is weak. In South Africa, for example, the effectiveness of committees is undercut because the Rules of the National Assembly currently restrict the time for committee consideration of the budget to a mere seven working days.

Internationally committee involvement in the budget process appears to be growing. For instance, the Australian Senate introduced a departmental committee stage for the budget process in 1970, India in 1994, and in Africa the parliaments of Uganda and Zambia have recently created new committees that consider budget issues. Although these initiatives may have been implemented with varying degrees of success, they give an indication that parliaments themselves have realised the value of committee involvement in strengthening approval and oversight capacity.

In many countries a budget or finance committee accepts overall responsibility for the process, sometimes alone or as a co-ordinating body for other relevant committees. In the latter group is the interesting two-tier decision making process in the Swedish Parliament, where reforms in the 1990s made the Finance Committee instrumental in approving ceilings for expenditure areas within aggregate revenue and expenditure levels, whereas sectoral committees shape individual appropriations. It would seem that such a two-tier system is especially useful in ensuring prioritisation within a hard budget constraint. Parliament should also establish committees, such as a Public Accounts Committee, to consider the audit report, in order to ensure that the budget it passed was reasonably well implemented.

Fourth, parliaments require both sufficient time as well as a properly timed budget process to facilitate meaningful decision making. International experience suggests that a minimum of three to four months is required for the approval of the budget by parliament on the basis of meaningful analysis and scrutiny. However, sufficient time by itself is not enough. The budget should also be tabled sufficiently in advance of the fiscal year to which it relates in order to make decisions that matter. This is because interim spending, for instances through 'votes on account', continuing resolutions or interim executive spending authority based on constitutional or legal formulae too often distort budget priorities.

⁵ This refers to regular actual expenditure and revenue updates supplied during the execution stage as the budget is progressively implemented.

Historically, the British Parliament devised a tactic of voting appropriations near the end of the session as a means of forcing the Crown to utilise its own resources before relying on tax revenue raised from the public. In a modern context, this century-old tradition weakens parliament through complicating an approval process that should aim at advance scrutiny. Regrettably, many countries in the Commonwealth have copied this poor practice, for instance in much of anglophone Africa. Elsewhere, most budget processes are geared to ensure timely passage under normal circumstances.

4.4 Other factors

There are quite certainly other possible factors that can, temporarily or permanently, alter the budgetary balance of powers between parliament and the executive. New and urgent issues, coupled with diverse and strong public opinion, might give parliament increased action space to shape budget policy. Also, some legislatures face constraints of their room to manoeuvre due to their countries' high levels of foreign debt. When international financial institutions have attached stringent conditionalities to loans, parliament's role might be severely diminished to rubberstamping budgets that reflect prior agreements between lenders and the executive which constrain the range of possible budget choices. This discussion of factors is therefore not exhaustive, although it points to some very important variables that affect parliamentary capacity to engage with the budget. However, different parliaments will find themselves in different contexts with varying challenges. Full understanding of a specific case requires thorough analysis of the particular factors that are relevant.

5. Concluding remarks: strategic decisions facing civil society

'If the present budgetary process rightly or wrongly is deemed unsatisfactory, then one must alter in some respect the political system of which the budget is but an expression. It makes no sense to speak as if one could make drastic changes in budgeting without also altering the distribution of influence.'

Aaron Wildavsky and Naomi Caiden
The New Politics of the Budgetary Process

The role of parliament in the budget process is an important strategic consideration for civil society organisations that attempt to exert influence on the budget. If the parliamentary process, through public hearings and debate, is the prime channel for inputs, budget organisations have an interest in 'making parliament matter'. However, in assessing how to possibly strengthen parliament's role, we need to be cognisant of the factors that can constrain its ability to engage with the budget. Where legal or party political constraints are overwhelming, reforms that deliver improvements such as better information, research capacity or more time to consider the budget are unlikely to have much effect.

This is not to deny the possibility and indeed the probability of a dynamic interplay between the sets of variables discussed in the previous section. Nonetheless, without political will, institutional tinkering is highly unlikely to change the outcomes of the budgeting game, which is, after all, an expression of political power relations. In the latter case, civil society organisations would have to reconsider their intervention

points into the budget process, for example to see whether engagement directly with the executive might not be a more promising strategy to achieve policy impacts. A middle position might be to lobby for reforms to strengthen the role of parliament, while simultaneously diversifying intervention points along the different stages of the budget process.

Ask yourself: in your country...

- At what stage(s) does parliament engage with the budget?
- Which committees in parliament deal with public finance issues?
- What powers does parliament have to amend the budget?
- In practice, does parliament amend the budget?
- If it amends the budget, what is the extent and effect of amendments?
- Does parliament consider audit results, and how?
- Are you satisfied with this role for parliament?
- If not, what should change, and why?
- Does civil society engage with parliament on budget issues?
- If yes, in what way?
- Should civil society work more closely with parliament on budget issues?
- How exactly could civil society and parliament co-operate more closely?
- What is necessary to do achieve such increased co-operation?

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7. Useful internet sites

Association of Western European Parliaments for Africa:
<http://www.awepa.org>

Commonwealth Parliamentary Association (CPA):
<http://www.cpahq.org>

Institute for Democracy in South Africa (Idasa):
<http://www.idasa.org.za>

International Budget Project (IBP):
<http://www.internationalbudget.org>

Inter-Parliamentary Union (IPU):
<http://www.ipu.org>

Organisation for Economic Co-operation and Development (OECD):
<http://www.oecd.org>

Parliamentary Centre:
<http://www.parlcent.ca>

Southern African Development Community (SADC) Parliamentary Forum:
<http://www.sadcpf.org>

World Bank Institute (WBI) Parliamentary Program:
<http://www.worldbank.org/wbi/governance/parliament/>

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Foreword

In Western democracies, systems of checks and balances built into government structures have formed the core of good governance and have helped empower citizens for more than two hundred years. The incentives that motivate public servants and policy makers—the rewards and sanctions linked to results that help shape public sector performance—are rooted in a country’s accountability frameworks. Sound public sector management and government spending help determine the course of economic development and social equity, especially for the poor and other disadvantaged groups, such as women and the elderly.

Many developing countries, however, continue to suffer from unsatisfactory and often dysfunctional governance systems that include rent seeking and malfeasance, inappropriate allocation of resources, inefficient revenue systems, and weak delivery of vital public services. Such poor governance leads to unwelcome outcomes for access to public services by the poor and other disadvantaged members of society, such as women, children, and minorities. In dealing with these concerns, the development assistance community in general and the World Bank in particular are continuously striving to learn lessons from practices around the world to achieve a better understanding of what works and what does not work in improving public sector governance, especially with respect to combating corruption and making services work for poor people.

The Public Sector Governance and Accountability Series advances our knowledge by providing tools and lessons from practices in improving the efficiency and equity of public services provision and strengthening institutions of accountability in governance. The series

highlights frameworks to create incentive environments and pressures for good governance from within and beyond governments. It outlines institutional mechanisms to empower citizens to demand accountability for results from their governments. It provides practical guidance on managing for results and prudent fiscal management. It outlines approaches to dealing with corruption and malfeasance. It provides conceptual and practical guidance on alternative service delivery frameworks for extending the reach and access of public services. The series also covers safeguards for the protection of the poor, women, minorities, and other disadvantaged groups; ways of strengthening institutional arrangements for voice and exit; methods of evaluating public sector programs; frameworks for responsive and accountable governance; and fiscal federalism and local governance.

This series will be of interest to public officials, development practitioners, students of development, and those interested in public governance in developing countries.

Frannie A. Léautier
Vice President
World Bank Institute



Preface

Participatory budgeting has been advanced by budget practitioners and academics as an important tool for inclusive and accountable governance and has been implemented in various forms in many developing countries around the globe. Through participatory budgeting, citizens have the opportunity to gain firsthand knowledge of government operations, influence government policies, and hold government to account. However, participatory processes also run the risk of capture by interest groups. Captured processes may continue to promote elitism in government decision making.

This book provides an overview of the principles underlying participatory budgeting. It analyzes the merits and demerits of participatory budgeting practices around the world with a view to guiding policy makers and practitioners on improving such practices in the interest of inclusive governance. This publication includes five regional surveys, and seven country case studies can be found on the accompanying CD ROM.

Participatory Budgeting advances the World Bank Institute agenda on knowledge sharing and learning from cross-country experiences in reforming public governance. It is intended to assist policy makers and practitioners in developing countries in making more-informed choices.

Roumeen Islam
Manager, Poverty Reduction and Economic Management
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Abbreviations and Acronyms

CBO	community-based organization
CCAGG	Concerned Citizens of Abra for Good Governance (the Philippines)
CSO	civil society organization
DISHA	Development Initiatives for Social and Human Action (India)
ESCWA	United Nations Economic and Social Commission for Western Asia
FSLN	Sandinista National Liberation Front (Nicaragua) (Frente Sandinista de Liberación Nacional)
HIPC	Heavily Indebted Poor Countries (Initiative)
IDASA	Institute for Democracy in South Africa
KDP	Kecamatan Development Program (Indonesia)
LASDAP	Local Authority Service Delivery Action Plan (Kenya)
MKSS	Mazdoor Kisan Shakti Sangathan (India)
NGO	nongovernmental organization
PAC	Public Affairs Centre (India)
PROOF	Public Record of Operations and Finance (India)
PRSP	Poverty Reduction Strategy Paper
TAO	Tambon (subdistrict) Administrative Organization (Thailand)
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development



Overview

A N W A R S H A H

Participatory budgeting represents a direct-democracy approach to budgeting. It offers citizens at large an opportunity to learn about government operations and to deliberate, debate, and influence the allocation of public resources. It is a tool for educating, engaging, and empowering citizens and strengthening demand for good governance. The enhanced transparency and accountability that participatory budgeting creates can help reduce government inefficiency and curb clientelism, patronage, and corruption.

Participatory budgeting also strengthens inclusive governance by giving marginalized and excluded groups the opportunity to have their voices heard and to influence public decision making vital to their interests. Done right, it has the potential to make governments more responsive to citizens' needs and preferences and more accountable to them for performance in resource allocation and service delivery. In doing so, participatory budgeting can improve government performance and enhance the quality of democratic participation.

Participatory budgeting comes with significant risks. Participatory processes can be captured by interest groups. Such processes can mask the undemocratic, exclusive, or elite nature of public decision making, giving the appearance of broader participation and inclusive governance while using public funds to advance the interests of powerful elites. Participatory processes can conceal and

reinforce existing injustices. Participatory budgeting can be abused to facilitate the illegitimate and unjust exercise of power. It can be used to deprive marginalized and excluded groups of having a say in public affairs. It can do so by unleashing the “tyranny of decision making and control” by overriding existing legitimate decision-making processes—by limiting the role of elected local councils in budgetary decisions, for example. The “tyranny of group dynamics” can allow manipulative facilitators to preserve and protect the interests of the governing elites. The “tyranny of method” can be used to exclude more inclusive methods of democratic voice and exit, such as parental choice in school finance, under which both government and nongovernment schools are publicly financed based on enrollments (Cooke and Kothari 2001). To prevent these abuses, participatory process must fully recognize local politics and formal and informal power relations, so that the processes yield outcomes desired by the median voter.

This book examines the potential and perils of participatory budgeting, as observed from practices around the globe. It is divided into three parts. Part I presents the nuts and bolts of participatory budgeting. Part II surveys experiences with participatory budgeting in various regions of the world. Part III is on the CD ROM accompanying this book, and it examines case studies of practices in seven countries.

Part I: Introduction to Participatory Budgeting

Two chapters introduce the concept and the processes of participatory budgeting and assess the feasibility of implementing them in developing countries. In chapter 1 Brian Wampler provides a guide to the practice of participatory budgeting. He stresses that a combination of four factors makes it more likely that participatory budgeting programs will be adopted: strong mayoral support, a civil society willing and able to contribute to ongoing policy debates, a generally supportive political environment that insulates participatory budgeting from legislators’ attacks, and the financial resources to fund the projects selected by citizens.

While the rules of the game in a representative participatory budgeting program vary from city to city and from state to state, Wampler identifies the guiding tenets of participatory budgeting programs:

- The municipality is divided into regions to facilitate meetings and the distribution of resources.
- Government-sponsored meetings are held throughout the year, covering different aspects of the budgeting and policy-making cycles: distribution

- of information, policy proposals, debates on proposals, selection of policies, election of delegates, and oversight.
- A “Quality of Life Index” is created by the government to serve as the basis for the distribution of resources. Regions with higher poverty rates, denser populations, and less infrastructure or government services receive a higher proportion of resources than better-off and wealthier neighborhoods. Each municipality devises its own formula to guarantee the equitable distribution of resources.
 - Public deliberation and negotiation over resources and policies take place among participants and between participants and the government.
 - A “bus caravan of priorities” is conducted, in which elected representatives visit all preapproved project sites before the final vote. The visits allow delegates to evaluate the social needs of proposed projects.
 - Elected representatives vote on all final projects. Voting can be done by secret ballot or through a public showing of hands. The results become part of the public record.
 - A municipalwide council is elected. All regions elect two representatives to this council, which oversees participatory budgeting and makes final budget recommendations. The council meets regularly with the municipal government to monitor the program.
 - After final approval of the annual budget by participatory budgeting delegates, the mayor sends it to the municipal legislative chambers to be approved. The legislative branch can block specific projects.
 - A year-end report is published detailing implementation of public works and programs.
 - Regional or neighborhood committees are established that monitor the implementation of projects.

Wampler argues that political and social actors have different motivations for promoting and participating in participatory budgeting. Local governments implement participatory budgeting programs in order to build a base of political support, achieve a more equitable distribution of scarce resources, foster public learning, and promote transparency in government. Citizens participate in participatory budgeting programs in order to increase access to public decision-making activities, gain access to information, and improve the quality of services provided under a participatory budgeting system. Civil society organizations (CSOs) participate in order to build broader networks of supporters and enhance their ability to influence policies.

Several factors limit the impact of participatory budgeting programs on social justice, public learning, and administrative reform. These include the

primary focus on specific public works, the dependence of the participants on the mayor's office, the role of long-term planning within participatory budgeting, the emphasis on local issues and local public policies, and the danger that participatory budgeting programs may be manipulated due to the central role played by the mayor's office. Participatory budgeting programs are, in Wampler's words, "an important step toward political inclusion and greater social justice, but they are by no means a magic bullet."

In chapter 2 Donald Moynihan examines the prospects for citizen participation in developing countries, with a focus on participation in the budget process. Citizen participation refers to citizens or citizen representatives (who are not elected officials) interacting with and providing feedback to government at the policy formulation or implementation stages of governance. Four interrelated arguments support the rise of public participation: postmodern discourse theory, disillusionment with bureaucracy, the search for a democratic ideal, and the particular need for participation in a developing-country context. From these arguments, Moynihan gleans two basic criteria for participation forums: participation should be broadly representative of the population, and it should involve meaningful dialogue that affects public decision making. Based on a review of participation in Poverty Reduction Strategy Processes, he concludes that participation in developing countries often fails to meet these criteria.

The cases reviewed in chapter 2 demonstrate a variety of ways in which participation can shape resource allocation, budget execution, and performance evaluation. One of the lessons is the importance of civil society in developing-country settings. In most of the cases, a nongovernmental organization (NGO) or group of NGOs undertook analysis of the budget. These NGOs seek to represent the poor and disseminate their views to the government. They do not offer direct citizen participation, but without their involvement, the prospects for any type of participation would be reduced. Even in Porto Alegre, Brazil, where citizen involvement is most direct, an active civil society aided the process of citizen involvement. Organizing citizen involvement, or simply analyzing public budgets, depends a good deal on NGOs and their capacity.

Another major lesson is the importance of government attitudes toward participation. If the goal of participation is to have an impact on public sector decisions, then pro-participation arguments must understand the perspective of government and how it influences whether they are supportive of participation and willing to listen to public feedback. Understanding the administrative perspective raises the question of how participation can be fostered when the government is hostile to it. The cases discussed

in chapter 2 suggest that certain types of participation can influence government actions even if government has not embraced direct citizen involvement in decision making. Much depends on the ability of NGOs to communicate their analyses of spending choices, budget execution, and the performance of public services to the media, the public, and elected officials, who can then use the information to affect public policy.

Part II: Regional Surveys

Chapters 3–7 survey the practice of participatory budgeting in each of the five regions of the developing world. In chapter 3 Benjamin Goldfrank notes that within a relatively short period, from 1990 to 2005, participatory budgeting expanded from about a dozen cities, most of them in Brazil, to hundreds or perhaps thousands of locales (depending on how strictly participatory budgeting is defined) in Latin America alone. Through a broad comparison of national experiences in Bolivia, Brazil, Guatemala, Nicaragua, and Peru and an analysis of case studies in 14 non-Brazilian municipalities, he tests the hypothesis that the design and results of participatory budgeting depend on both the designers' intentions and preexisting local conditions. He asserts that introducing participatory budgeting is never a neutral political act but always a form of "competitive institution building."

Several lessons can be drawn from the Latin American case studies. First, national legal mandates for participatory budgeting have not created widespread local success in encouraging citizen participation, fiscal transparency, or effective municipal government. This is partly because designers of national laws had other goals in mind and partly because of local obstacles, including reluctant mayors or opposition parties, the weak fiscal and administrative capacity of municipal governments, and fragmented, conflict-ridden civic associations.

Second, despite these problems, participatory budgeting has succeeded in some remarkably diverse locales, from small, poverty-stricken, indigenous rural villages to large, ethnically diverse cities. While carefully identifying necessary and sufficient conditions will require further study, success seems correlated with several factors:

- The mayor is indigenous, from a party on the left, or both.
- Opposition from local political elites is weak or nonexistent.
- Project funding, technical assistance, or both are provided by national or international aid organizations.

- The municipality has sufficient revenues to make significant investments in public works or programs.
- There is a tradition of participation and cooperation within and among local civic associations, indigenous customary organizations, or both that has not been destroyed by guerrilla warfare or clientelist politics.

Third, even where participatory budgeting succeeds on some dimensions, it does not dramatically reduce poverty (especially in terms of income) on its own. For this to occur in the future, fundamental principles of participatory budgeting as originally conceived—transparency and direct participation—need to be applied to all public spending.

Chapter 3 highlights four main points regarding the future direction of participatory budgeting in Latin America. First, none of the normative approaches to participatory budgeting accurately describes its results, which vary extensively across cases. Participatory budgeting does not always strengthen the state with respect to the market or insulate pro-market reforms.

Second, the ideological contests surrounding participatory budgeting continue and are likely to persist. Development agencies are advocating and local governments are adopting participatory budgeting from Albania to Zambia. Participatory budgeting also has old and new champions in the recently ascendant Latin American left.

Third, within the struggle to define, propose, and implement participatory budgeting, the formal approaches are gaining currency. The open, informal, deliberative design pioneered by Porto Alegre seems to be out of fashion. In its place are more regulated, formal, consultative designs focused on preexisting CSOs, such as those implemented in Bolivia, Nicaragua, and Peru.

Fourth, to strengthen the future chances of successful participatory budgeting at the local level, its original principles should be applied to higher levels of national and international governance. Even in the relatively small number of municipalities that succeeded in improving local service provision with participatory budgeting, low incomes and joblessness remain serious problems. Applying participatory budgeting principles of transparency, participation, and redistribution to decision-making spheres where larger sums of money are at stake may have two positive effects on encouraging local participatory budgeting efforts. First, it may produce more universal, egalitarian social policies, strengthening local social capital and allowing citizens in desperately poor countries to think beyond their next meal. Second, it may convince mayors and citizens that participatory budgeting is indeed about these principles—and not a politically motivated subterfuge—and perhaps worth trying.

Chapter 4, by Alta Fölscher, discusses selected examples of citizen participation in resource decisions in local, municipal, and submunicipal areas in Central and Eastern Europe. She examines experiences in Albania, Armenia, Bulgaria, Moldova, Poland, Romania, the Russian Federation, and Ukraine, countries with very different dynamics despite a shared history as communist states.

Participatory budgeting techniques have been introduced at the local level in several localities in this region within enabling legal frameworks. Many countries in the region have introduced additional legislation that makes provisions—albeit usually at a fairly high level—for direct citizen engagement with public resource decisions. However, legislation, while perhaps necessary, is not sufficient to increase participation. Participation in the region remains weak for a variety of reasons:

- Historically, citizens in this region have been detached from decisions that affect them. They are mistrustful of collective action and passive receivers of public services.
- Collective forms of political and social organization, such as political parties and CSOs, are relatively new, as is an elected, independent, and autonomous local government.
- Intergovernmental fiscal systems are still in development; roles and responsibilities are weakly and ambiguously assigned to local levels.
- Local governments' expenditure responsibilities do not match their revenue capacity, and transfers from upper levels are nontransparent and unreliable.
- Local governments have insufficient authority to make decisions and often are still developing the practical capacity to use resources effectively and efficiently to solve local problems.
- Citizens are dissatisfied with local services, but they do not believe they can affect them or that local governments can do anything about the problems they face.

With few exceptions, development agencies or international NGOs were the initiators of participatory budgeting mechanisms in this region. Even where initiatives resulted from local action, international organizations fund key organizations, and contact with networks of CSOs worldwide preceded local action. Although this does not necessarily detract from the value of the initiatives, it may have implications for sustainability.

Local government autonomy, local resource availability, citizen organization and interest, and developed political party systems are often seen as

prerequisites for successful participatory budgeting. In Central and Eastern Europe, these mechanisms are proposed as an entry point to overcome governance weaknesses: participatory budgeting initiatives are often introduced precisely to help establish the kinds of institutions and arrangements that are often seen as a prerequisite for them to function. In other regions of the world, successful engagement by citizens with local resource decisions has catalyzed or occurred in a virtuous circle of governance: good governance demands good local capacity, which in turn supports and is supported by participation.

Several conclusions on the potential value of participatory budgeting initiatives emerge from the case studies in this chapter:

- Participatory budgeting increases opportunities for participation. Questions remain regarding whether the quality of participation is sufficient to ensure lasting interest in participating and whether it is sufficiently broad based.
- Participatory budgeting can break down barriers between citizens and government, improving mutual understanding and communication.
- Participatory budgeting strengthens local CSOs, which may improve local governance in the long term. However, the organizations that gain access to decision making and partnership with local government may themselves become arms of local government.
- Participatory budgeting can help make infrastructure and services more relevant to the communities they serve.
- Participatory budgeting can result in additional revenue for local development.

The case studies suggest that certain conditions facilitate effective participation. Initiatives may need to establish these conditions before introducing participatory budgeting. They also identify certain factors that may improve results:

- Better information produces better results.
- Single participation mechanisms are less effective than combinations of mechanisms.
- Awareness raising and education of stakeholders are necessary.
- Incentive structures count.
- Clear rules for participation and decision making are required.
- Partnerships contribute to more effective arrangements.
- Localities learn by doing.

- Ownership by local leadership is critical.
- CSOs and local government officials need specific skills.
- Public relations campaigns and media involvement are needed.
- Coalition building among local NGOs strengthens initiatives.
- External catalysts play a key role in initiating and developing participatory practices in the region.

Alta Fölscher surveys the Asian experience in chapter 5, where she examines participatory budgeting mechanisms in Bangladesh, India, Indonesia, the Philippines, and Thailand. The case studies offer evidence that civic participation mechanisms can improve development outcomes while improving the quality of the citizen/state relationship, particularly in terms of local-level responsiveness to citizen preferences, improved accountability of public officials and elected representatives, better democracy, and more trust in government.

From the Asian experience, the author draws useful conclusions about necessary and supporting factors for successful replication elsewhere. Whether initiatives are successful depends on both factors in the environment in which an initiative develops and the design and implementation of the initiative itself. Initiatives in which public actors are willing to listen to citizen voice (supported by a local political culture that is driven by issues of public policy) and where well-designed mechanisms allow civil society direct access and participation to public decision making have the greatest impact on policy decisiveness, accountability, democratic practice, and trust in government. Implementation details of projects remain important in determining how successful they are.

The greatest risk facing initiatives is that they draw citizens into the state action space when the political culture is not policy based and local officials and office holders have no real interest in aligning policy and spending with citizen preferences. In such cases, participation can be counterproductive. Although risks can be managed by providing external funding and bypassing state structures, doing so may yield short-term benefits at the expense of the sustainability of such initiatives. Long-term engagement can be effective only if sufficient local taste and capacity for participation are built to create an environment in which state actors engage substantively.

Citizens' own initiatives to improve public transparency and the accountability of state actors can yield successful results even in environments where their voice may not have an immediate effect. Three case studies in this chapter illustrate how citizens who are thoroughly prepared and work through coalitions can push their way into space and demand a hearing.

Such initiatives can transform the participatory environment from one in which state actors are unwilling to engage with citizens into one in which they have little choice but to do so. Success depends largely on selecting the correct entry point and designing and implementing projects that maximize citizen participation.

In chapter 6 Adrienne Shall reviews the experience of participatory budgeting by subnational governments in Kenya, Mozambique, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe, where local governments manage their own fiscal revenues and expenditures. Although participation is not legislated in all of these countries, all recognize that participation is an important tool for improving service delivery to communities. To allow for more inclusiveness in the planning and budgetary processes at the local level, countries have therefore put in place a variety of mechanisms, including ward committee structures, participatory planning processes, public meetings, budget conferences, consultative sessions, budget campaigns, monthly newsletters, a participatory poverty assessment project, and various forms of media intervention.

In each country the budget preparation process includes a stage that allows for civic participation in identifying needs and priorities. In some cases participation occurs only at the beginning of the process; in other cases once the draft budget is finalized, citizens are given another opportunity to provide input regarding the allocation of resources. In many instances citizen input is limited and the allocation of resources is still determined largely by officials and councillors within the local authorities. Moreover, citizens are usually allowed to provide input only with regard to the capital budget, which represents a small proportion of the total budget. In some cases citizens are not given adequate time to analyze and discuss their input into the process.

Despite these impediments, most countries believe that civic participation has increased the number and range of local projects that have a direct impact on communities that are involved in the participation process. Participation has also improved relations between citizens and local authorities, as citizens feel that local authorities have become more transparent and trustworthy.

Local authorities face challenges in implementing participatory budgeting. These challenges include lack of capacity, limited understanding of the roles and responsibilities of all actors, limited scope of participation, legislative constraints, inadequate monitoring and evaluation systems, lack of transparency and trust, breakdown in communication, insufficient resources, and political and social differences.

In overcoming these challenges, some local authorities have learned valuable lessons:

- Enabling legislation and commitment by leadership with strong political will are critical.
- Extensive and continuous capacity building of councillors, officials, and citizens is necessary.
- The process must be initiated well in advance of the budget presentation to enable serious discussion and evaluation of priorities and resource allocation.
- All key stakeholders need to be identified, in order to ensure broad-based representation of all sections of society.
- Joint commitment by both elected and appointed local officials is necessary.

In chapter 7 Alta Fölscher considers participatory budgeting in the Middle East and North Africa. She shows that many of the factors that facilitate citizen initiatives are absent in this region. These include the openness and democratic depth of political and governance systems; the existence of enabling legal frameworks, including guarantees of basic freedoms; the capacity for participation both inside and outside of government; the existence of functional and free media institutions; and the willingness and capacity of the state to make available budget information. Political contestability in this region is very low. Power is based on traditional networks; elections are often within the control of the ruling elite; and freedom of opinion, speech, association, and the media is not guaranteed. Although many countries in the region have committed themselves to decentralizing and empowering local authorities, real decision-making power has not been devolved nor resources decentralized. Given the political and sociocultural systems in the region and its weak decentralization frameworks and practice, citizen budgeting initiatives are unlikely to succeed, unless local leadership is interested in participation, efforts are supported by external development partner funding, or both.

One of the hopes for participatory budgeting initiatives is that with careful design and targeted support they can initiate positive change in the political and governance environment, particularly by whetting citizens' appetite for positive, empowered engagement with the state and contestable government. This notion is borne out by some examples of successful initiatives in the region. The question remains, however, whether even successful initiatives will be able to overcome the systemic barriers identified and support a regional shift toward better governance. Fölscher argues

that this is possible only if the underlying social, cultural, and religious norms in the region are not incompatible with notions of representivity, consultation, and democracy. This suggests that the design of participatory budgeting initiatives must take account of the local political, cultural, and social environment.

In an appendix, Fölscher provides an overview of basic concepts and approaches to participatory budgeting.

Part III (on CD ROM): Country Case Studies on Civic Participation in Subnational Budgeting

Part III presents seven country case studies on participatory budgeting on the accompanying CD ROM. The countries include Bangladesh, India, the Philippines, Russia, South Africa, Thailand, and Ukraine.

First, Atiur Rahman, Mahfuz Kabir, and Mohammad A. Razzaque examine Bangladesh, where no formal government regulations promote civic participation in subnational budgeting and planning processes, and local government institutions possess little autonomy. As a result, some locally elected governments have created informal mechanisms to engage civic participation, primarily with the assistance of international organizations and local NGOs. There is little evidence indicating significant change. Local government institutions in Bangladesh are organized at several levels. In rural areas these include the *zila parishad* (district), *upazila parishad* (subdistrict), and union *parishad* (the lowest tier). In urban areas they include the *paurasabha* (town) and the city corporation. The authors examine subnational budgeting and planning processes at the level of the union parishad.

An example of an informal mechanism designed to engage civic participation is the Sarajganj project, the product of a joint effort by the United Nations Development Programme, the United Nations Capital Development Fund, and the government of Bangladesh. The project first divided the union *parishad* into smaller communities, called wards, and established four committees to gather citizen input. The ward development committees, which coordinate citizen participation, are the most significant players in this process. They are responsible for holding participatory planning sessions through public forums, the last step before budget approval at the union *parishad* level. A separate committee is responsible for monitoring the implementation of the budget at the local level.

Despite this project, the level of civic participation in local budgeting and planning processes in Sarajganj is minimal at best. Certain institutional factors continue to hamper participation. At the municipal and union

parishad levels, only selected individuals are invited to discuss the proposed budgets before they are approved. These individuals often include supporters and members of the ruling political party. Low levels of citizen education and the lack of transportation to and from the final budget meeting also inhibit greater civic participation. Bangladesh's male-dominated culture minimizes the active role of women in the budgetary process. The Sarajganj project attempts to counter this cultural norm by ensuring female participation in the ward development committees.

The authors argue in favor of widespread capacity-building reforms to strengthen the role of civil society in subnational budgeting and planning processes. Local government institutions lack training and training manuals designed to teach civic participation strategies, especially the targeting of marginalized groups. Local government institutions also need to be provided with tools with which to effectively monitor the implementation of local programs following budget approval.

Second, Samuel Paul describes two case studies on the role of CSOs in India's subnational budgetary process. The first describes the role of the Development Initiative for Social and Human Action (DISHA), a local CSO in the state of Gujarat, that conducts budget analyses and advocacy campaigns on behalf of the poor at the state level. The second examines the Public Record of Operations and Finance (PROOF) consortium, which conducts budget analyses and facilitates public discussion at the local level.

DISHA developed a program to promote citizen participation in the state budgetary process. Pathey, the unit responsible for this program, conducts budget analysis, dialogue with policy makers, and education of and advocacy on behalf of the public. It examines overall estimated revenue and expenditures across departments, sectors, and programs targeting the poor. It also verifies expenditures through field research. It disseminates "briefs" to legislators and members of the media and holds training sessions with coalitions of volunteer groups. These sessions serve as a conduit to reach the targeted population—the poor—and encourage local leaders and organizations to meet with district-level authorities. Pathey also interacts with senior public officials on behalf of all the groups and individuals it represents. According to Pathey's own reports, legislators welcome their briefs and public awareness has improved. The impact of its work on policy making is difficult to assess.

PROOF is a campaign for citizens to participate in the budgetary process in the city of Bangalore. Unlike DISHA, PROOF focuses on the entire budget. Its strategy is based on creating a public forum to review the city budget, its performance, and its problems and to educate citizens about

the budget process. PROOF comprises four primary civic organizations, each of which plays a separate and integral role in its citizen campaign. Although this program has improved citizen participation in Bangalore and increased dissemination of financial statements to the public, it continues to face a variety of challenges.

Given the diversity of country contexts and political systems, case-specific strategies are needed. Strengthening the capacity for citizen participation in the budget process requires the development of a close working relationship with policy makers, budget analysts, civic organizations, and citizens at large.

Third, Alex Brillantes, Jr., discusses civil society's role in subnational planning and budgeting process in the Philippines. In 1991 the government approved the Local Government Code, a constitutional amendment that decentralized power to local governments. While civil society participation in subnational planning is effective, challenges remain.

Traditionally, the notion of governance in the Philippines was limited to government as the only institution involved in the budgetary process. Once the Local Government Code became law, the concept of governance included alternative mechanisms and institutions. This legitimized the role of NGOs in this process and increased citizen involvement in subnational budgeting. After the Local Government Code was implemented, NGOs were allocated a minimum of one-fourth of the seats on the local development council—the primary policy-making and budgetary planning body at the community level. Before adoption of the new code, NGOs were allocated a maximum of one-fourth of the seats. The change in the code has institutionalized civil society participation in local budgeting and planning processes, supported by law.

Several participatory mechanisms were established in Naga City. These mechanisms included continued accreditation of NGOs, multilevel consultations to identify citizen priorities, citywide referenda on development issues, and the establishment of the Naga City People's Council. This council, which is made up of accredited businesses and NGOs, serves as the peoples' representative. It plays an active role in the legislative budget process.

Despite the success of Naga City and the recent amendments to the constitution, civic participation in subnational budgeting and planning process is not widespread in the Philippines. Brillantes argues that there is a need to implement new strategies to engage the wider public. Local governments need to identify both formal and informal mechanisms for civil society to play a more active role in this process. Whether or not they can do so depends on policy changes, capacity building, formal systems of accountability, and efforts to eliminate resource duplication.

Fourth, Elena Krylova examines the Transparent Budgeting Program implemented by Centre Strategiya, a St. Petersburg–based NGO. The objective of the program was to establish mechanisms for public budget hearings and independent budget analyses. Krylova’s analysis focuses on the experiences in Murmansk, Novosibirsk, Petrazavodsk, Pskov, St. Petersburg, Samara, Velikiye Luki, and Yuzno-Sakhalinsk.

Russian budgeting at the regional and local levels operates according to a four-step process: planning and preparation of a draft budget, review and approval of the budget by a regional or local body, implementation of the budget, and review of budget reports by regional or local bodies. At any point in this process, civil society and the general public have the right to influence local decision-making and budgeting processes through a variety of mechanisms, including organizing local referenda, participating in public hearings, conducting public opinion polls, and organizing public debates.

The transparent budgeting program grew out of a civil society initiative in 1998 based on the principles that budget activities should be open to the public and that regular interaction should take place between authorities and civil society. The first objective of the program was to establish local budget analyses by independent experts in order to determine if budgeting policies took the interests of all citizens into account. The second objective was to establish public hearings. These hearings are organized by special committees composed of representatives of groups and organizations that initiate the hearings. The committees are responsible for all preparatory work and for appointing a moderator for the hearing. All hearings are concluded with a vote by all those present and a final recommendation to local authorities. Summaries of the hearings are published and placed on file in public libraries.

Several factors are impeding the success of these programs, according to program officials. Low levels of civic participation in public budget hearings are attributed to the lack of a clear division of responsibilities between regional and local governments, the lack of organizational development among NGOs, widespread illiteracy, weak local media, nontransparent mechanisms of interaction between government and civil society, and the misconception of participation by government officials. The lack of trust between authorities and civil society is also problematic. Independent budget analyses have been hindered by difficulties. In some locations program officials were unable to find local independent experts capable of conducting the analyses. In other locations local experts were apprehensive about criticizing the local authorities.

Krylova offers several recommendations for improving civic participation in subnational budgeting in Russia. Resources must be directed to educating local government officials and legislative representatives about the advantages of budget transparency and the role civic society can play in the budgeting process. Equally important is the need to increase political will among local officials and to build awareness among citizens about the role they can play in the budget process. Strengthening the capacity of local media as well as the academic and NGO communities to serve as independent budget experts is also important.

Fifth, Adrienne Shall describes the impact of the transformation of local governments in South Africa on civic participation in policy-making and budgetary processes by looking at two municipalities, Mangaung and Ekurhuleni. As a result of South Africa's 1993 constitution as well as the adoption of several new laws in the mid-1990s, new participatory laws were created and municipalities formed. Despite these changes, civic participation processes in South Africa's 284 municipalities vary widely.

South Africa's Constitution of 1993, the Municipal Structures Act of 1998, the Municipal Systems Act of 2000, the Municipal Finance Management Act of 2003, and the Municipal Property Rates Act of 2004 all contain provisions promoting two primary forms of participation at the local government level. The first mechanism, the ward committee system, is designed to provide a forum in which communities can play an active role in their municipality. Each ward directly elects a ward councillor, who represents the ward's interests as a member of the municipal council. The second mechanism, the subcouncil, comprises ward councillors as well as other councillors appointed by the council to ensure equal political party representation. Additional participatory mechanisms are available to each municipality.

The municipalities of Ekurhuleni and Mangaung have similar mechanisms for participation. Both have implemented the ward committee system as the primary vehicle for civic participation. The objective is to obtain feedback from the community for the Integrated Development Plan, which establishes the strategic goals of a municipality over a five-year period. Each municipality has also established additional mechanisms for civic participation that cater to the specific needs of its communities. In Ekurhuleni several consultative structures are in place to ensure stakeholder input into policy-making and budget processes from different sectors. The planning approach adopted in Mangaung is called community-based planning. It allows the ward committees to identify different social groups and meet with each group separately to assess its needs.

The South African legal framework establishes mechanisms for public participation in the planning, policy-making, and budgetary processes of municipalities. It is too early to determine the extent to which these mechanisms have been fully implemented with the desired results. In Ekurhuleni and Manguang, government officials implemented several consultative processes. Several challenges remain, however, including the low level of capacity, language barriers, the lack of communication between councillors and other officials, and a lack of resources.

Sixth, Charas Suwanmala reviews Thailand's experience with participatory budgeting. Local government in Thailand comprises five units: the provincial administrative organization, the municipality, the subdistrict administrative organization (TAO), and two special forms of local government, which include the Bangkok Metropolitan Administration and Pattaya City. Suwanmala examines civic participation at the municipal and subdistrict administrative levels, referred to as "communal tiers." These levels of government are governed directly by locally elected councils and chief executives.

Suwanmala examines the mechanisms for civic participation in Suan Mon TAO, Huai Kapi TAO, Khon Kan City, and Rayong City. Suan Mon TAO and Huai Kapi TAO have established similar mechanisms for civic participation in the local government budgeting process. In both locales, civic forums have been adopted at the village and subdistrict levels. At the village level, civic forums are composed of the village leader and other community representatives. The members of the village civic forum are responsible for discussing and submitting a proposed list of budget priorities to the subdistrict, which is composed of representatives of village civic forums. The members of the subdistrict civic forum then discuss each of the proposed budget priorities and produce a final proposal for the chair of the subdistrict administration. Huai Kapi TAO has also implemented household surveys to assess public opinion of local services and to increase civic participation.

Khon Kan and Rayong cities have adopted different tools for civic engagement to elicit wider participation. In Khon Kan City, officials use focus groups and town hall meetings as their primary mechanisms. The focus groups help generate visions, policy directions, and strategic actions for local budgeting and planning. Town hall meetings are designed to facilitate dialogue between the public and local officials. Rayong City has created a civic town hall development commission and a civic fiscal policy commission. It also conducts focus groups and has developed a manual for participatory planning.

Focus group consultations, the most widely used mechanism, have proven especially successful in Thailand because of the flexibility to adopt formal and informal approaches. Town hall meetings and civic forums have

proven successful in building consensus and increasing trust of local government. Assessing the impact of civic committees and citizen surveys is more difficult. Suwanmala argues for the need to continue strengthening the capacity of civic organizations and training local officials and residents to fully understand their roles.

Seventh, Elena Krylova surveys Ukraine's experience with participatory budgeting. Ukraine's 1996 constitution and the adoption of several subsequent laws created government regulations designed to increase civic engagement in local budgeting and planning. The overall framework for local governance, however, is largely the result of the 1997 Law on Local Self-Government and the 2001 Budget Code. According to the 1997 law, local self-government is established through direct elections of local councils (*radas*) every four years. Local councils are responsible for establishing their own executive committees and assume responsibility for local development programs and budgets. Krylova discusses the impact of these laws on the town of Kamyanyts-Podilski and its process of subnational budgeting.

Public budget hearings are the primary vehicle for civic participation in local budgeting processes in Kamyanyts-Podilski. The objective of these hearings is to provide a forum in which citizens and officials can engage in dialogue regarding local budget issues. Public budget hearings are initiated by a group of residents, the town council, or the mayor or by an executive committee. They involve the establishment of special hearing committees to conduct public surveys and opinion polls addressing specific budget and planning issues. Actual hearings, which may involve voting, are then held and the results published. Since national laws in Ukraine do not provide clear guidance on procedures for public budget hearings, local authorities may adopt municipal statutes to govern the implementation of civic participation mechanisms.

Krylova concludes that the success of civic participation in budgeting and planning processes in Ukraine is contingent on three factors: the leadership of the mayor, the extent to which local NGOs play active roles in promoting citizen engagement, and public knowledge of budget processes. Other, less significant factors include the presence of a local ombudsman and the adoption of a program performance approach to budgeting in place of line-item budgeting. Poor government capacity to mobilize citizens, the lack of diverse training materials, and the lack of general information available to the public continue to hinder civic participation in subnational budgeting processes.

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P A R T *One*

Introduction to
Participatory Budgeting

A Guide to Participatory Budgeting

BRIAN WAMPLER

Participatory budgeting is a decision-making process through which citizens deliberate and negotiate over the distribution of public resources. Participatory budgeting programs are implemented at the behest of governments, citizens, nongovernmental organizations (NGOs), and civil society organizations (CSOs) to allow citizens to play a direct role in deciding how and where resources should be spent. These programs create opportunities for engaging, educating, and empowering citizens, which can foster a more vibrant civil society. Participatory budgeting also helps promote transparency, which has the potential to reduce government inefficiencies and corruption. Because most citizens who participate have low incomes and low levels of formal education, participatory budgeting offers citizens from historically excluded groups the opportunity to make choices that will affect how their government acts. Put simply, participatory budgeting programs provide poor and historically excluded citizens with access to important decision-making venues.

Participatory budgeting is noteworthy because it addresses two distinct but interconnected needs: improving state performance and enhancing the quality of democracy. It helps improve state performance through a series of institutional rules that constrain and check the prerogatives of the municipal government while creating increased opportunities for citizens to engage in public policy debates. It helps enhance the quality of democracy by encouraging

the direct participation of citizens in open and public debates, which helps increase their knowledge of public affairs.

Improving state performance and enhancing the quality of democracy are desired goals, but they are not necessarily produced by participatory budgeting programs. Participatory budgeting programs have produced results that run the gamut from highly successful to very weak.

Participatory budgeting was initially implemented in 1990, in 12 Brazilian cities. By 2005 it had been expanded to more than 300 municipalities worldwide (Cabannes n.d.; Wampler 2004a; Wampler and Avritzer 2005).

There is broad variation in how participatory budgeting programs function, which means that the effects of participatory budgeting on accountability, the decentralization of decision-making authority, and empowerment are conditioned by the local social, political, and economic environment. Participatory budgeting opens up obscure budgetary procedures to ordinary citizens and helps create a broader public forum in which citizens and governments discuss spending, taxation, and implementation. It is simultaneously a policy process that focuses on the distribution of resources and a democratic institution that enhances accountability, transfers decision-making authority to citizens, and empowers citizens.

Participatory budgeting programs confront social and political legacies of clientelism, social exclusion, and corruption by making the budgetary process transparent and public. Social and political exclusion are challenged, as low-income and traditionally excluded political actors are given the opportunity to make policy decisions. By moving the locus of decision making from the private offices of politicians and technocrats to public forums, public meetings help foster transparency.

Participatory budgeting programs also serve as “citizenship schools,” as engagement empowers citizens to better understand their rights and duties as citizens as well as the responsibilities of government. Citizens learn to negotiate among themselves and with the government over the distribution of scarce resources and public policy priorities.

When participatory budgeting programs function poorly in terms of policy outputs, there is still the potential for participants to enhance their knowledge of governmental responsibilities and citizens’ rights, which can enhance their capacity to negotiate with and place demands on state officials. However, when participatory budgeting programs function poorly, increased cynicism about democracy, decentralization, and participation may be generated, as participants become disillusioned with an ill-performing institution.

There is no precise model for participatory budgeting programs. While there are similar tenets and institutional mechanisms, participatory budgeting

programs are structured in response to the particular political, social, and economic environment of each city or state. While alluding to the differences, this chapter presents a synthesis of the most representative cases.

The assumption of this chapter is that the tools and institutional means developed to date are, in small or large part, transferable to other locales. Cities, municipalities, states, and regional governments in diverse parts of the world should be able to draw on the experiences described here to develop tools that link budgeting, policy making, and citizen participation. NGOs and local political activists can draw on these experiences to promote formal participatory budgeting programs or informal monitoring programs inspired by the participatory budgeting example.

History of Participatory Budgeting

Participatory budgeting programs are part of a larger effort in Brazil to extend and deepen actual, existing democracy (Abers 2000; Avritzer 2002; Baiocchi 2001; Wampler and Avritzer 2004). Since the reestablishment of democracy in 1985, Brazilian politics has continued to be dominated by traditional patronage practices, social exclusion, and corruption. Numerous governments, NGOs, social movements, and political parties have turned to the ideas, values, and rules associated with participatory budgeting in an effort to improve policy outcomes and enrich Brazil's young democracy. One of the reasons why participatory budgeting is transferable to other locations, especially in developing countries, is that clientelism and social exclusion are everyday realities in many parts of the developing world.

Participatory budgeting began in 1989 in the municipality of Porto Alegre, the capital of Brazil's southernmost state, Rio Grande do Sul. Porto Alegre has more than 1 million inhabitants and is wealthy by Brazilian standards. In 1988 the Workers' Party, a progressive political party founded during the waning years of the 1964–85 military dictatorship, won the mayoral election. Its campaign was based on democratic participation and the "inversion of spending priorities"—that is, the reversal of a decades-long trend in which public resources were spent in middle- and upper-class neighborhoods. Participatory budgeting was intended to help poorer citizens and neighborhoods receive larger shares of public spending.

When the Workers' Party won the mayor's office in Porto Alegre, it inherited a bankrupt municipality and a disorganized bureaucracy. During its first two years in office, the new administration experimented with different mechanisms to tackle financial constraints, provide citizens with a direct role in the government's activities, and invert the social spending priorities of

previous administrations. Participatory budgeting was born through this experimental process. In 1989 and 1990, the first two years of participatory budgeting, fewer than 1,000 citizens participated in the participatory budgeting process; by 1992 the number of participants had jumped to nearly 8,000. After the Workers' Party was reelected in 1992, the program took on a life of its own, with participation increasing to more than 20,000 people a year. Participation grew as citizens realized that participatory budgeting was an important decision-making venue.

How and Where Does Participatory Budgeting Work?

What are the basic conditions associated with the establishment of a participatory budgeting program? Why do governments, NGOs, CSOs, and citizens choose to adopt participatory budgeting? What basic financial issues must be considered?

Conditions Conducive to Participatory Budgeting

A combination of four factors makes it more likely that participatory budgeting programs will be adopted: strong mayoral support, a civil society willing and able to contribute to ongoing policy debates, a generally supportive political environment that insulates participatory budgeting from legislators' attacks, and financial resources to fund the projects selected by citizens.

It is generally municipal-level governments that implement participatory budgeting programs, although there are some participatory budgeting programs at the state and provincial levels.

Governments that are willing to implement participatory budgeting generally have a reformist tinge—the political leadership tends to include political entrepreneurs willing to experiment with a new institutional format or political reformists willing to adopt parts of a program that have proven successful elsewhere. Government support is vital, because government officials must make the decision to delegate authority. After they do so, they must build the necessary logistical, informational, and financial support needed for participatory budgeting to function.

Governments that enjoy strong bases of support from social movements, unions, and NGOs are more likely to initiate participatory budgeting, because doing so involves reaching out to a constituency they already know. Participatory budgeting programs have been most successful in municipalities with deep civil society roots. Preexisting networks of social movements, community organizations, and other voluntary associations provide important

support for experimental programs. Programs depend on the active participation of citizens not only to select new policies but also to legitimize the government's reform efforts. Higher rates of participation will help legitimize a government's policies.

Although participatory budgeting is implemented at the behest of the mayor, the municipal legislature can be involved in the process. Because participatory budgeting offers the potential to undermine traditional patronage networks, many legislators will resist fully implementing it. If the legislative branch is weak relative to the mayoral administration, legislators may be able to act as spoilers, trying to undermine the process if they feel it threatens their interests. If the mayor and the legislative branch are at odds, it is possible that the mayor will be unable to delegate authority to participatory budgeting because of the need to expend political energy on working with legislators.

While many participatory budgeting programs address the overall financial health of the municipality, the principal focus remains discretionary spending. Having discretionary funding available is important because it increases the likelihood that citizens can directly select policy outcomes. The more financial flexibility a government enjoys, the greater the influence citizens can exercise on the selection of new public works. Governments must have the resources to implement the projects that participants select.

If a financially strapped municipality decides to implement a participatory budgeting program, the focus shifts from the selection of specific public works projects to a more general discussion of debt, taxes, and the efficient use of limited resources. The municipal government must first dedicate considerable time and energy to explaining to participants the dire financial situation of the municipality. Participants must then vote on the general policy priorities of the government. Participants will not select specific public works to be implemented but will indicate in a broad fashion how the government should spend available resources.

The Rules of the Game

What are the rules of the game in a representative participatory budgeting program? What are the specific ways that citizens are incorporated into policy- and budget-making arenas?

The rules of the game are similar but not identical in the majority of participatory budgeting programs. They tend to be designed by the elected government with input from citizens. Participants generally must approve the rules and any subsequent changes to them.

While the rules vary from city to city and from state to state, it is possible to identify the guiding tenets of participatory budgeting programs. For the sake of parsimony, the discussion focuses on the municipal level of government. The basic tenets of participatory budgeting include the following:

- The municipality is divided into regions to facilitate meetings and the distribution of resources.
- Government-sponsored meetings are held throughout the year, covering different aspects of the budgeting and policy-making cycles: distribution of information, policy proposals, debates on proposals, selection of policies, election of delegates, and oversight.
- A “Quality of Life Index” is created by the government to serve as the basis for the distribution of resources. Regions with higher poverty rates, denser populations, and less infrastructure or government services receive a higher proportion of resources than better-off and wealthier neighborhoods. Each municipality devises its own formula to guarantee the equitable distribution of resources.
- Public deliberation and negotiation take place among participants and between participants and the government over resources and policies.
- A “bus caravan of priorities” is conducted, in which elected representatives visit all preapproved project sites before the final vote. The visits allow delegates to evaluate the social needs of proposed projects.
- Elected representatives vote on all final projects. Voting can be done by secret ballot or through a public showing of hands. The results become part of the public record.
- A municipalwide council is elected. All regions elect two representatives to this council, which oversees participatory budgeting and makes final budget recommendations. The council meets regularly with the municipal government to monitor the program.
- After final approval of the annual budget by participatory budgeting delegates, the mayor sends it to the municipal legislative chambers to be approved. The legislative branch can block specific projects.
- A year-end report is published detailing implementation of public works and programs.
- Regional or neighborhood committees are established to monitor the design and implementation of policy projects.

The rules of participatory budgeting were designed to produce specific outcomes, such as engaged deliberation, social justice, and active citizens.

New institutions and policies often produce unintended consequences that have the potential to pervert the institution's original intent, however, as the political science and public administration literature documents (table 1.1).

The participatory budgeting defines the division of responsibilities between government and citizens (figure 1.1). It also includes lists of tasks that need to be accomplished at each phase of the process.

TABLE 1.1 Desired Outcomes and Unintended Consequences of Participatory Budgeting

Rule	Desired outcome	Undesirable potential consequence
Establish district boundaries.	Improved efficiency, accountability, and decentralization; intradistrict competition over resources	Meetings at the district level may limit the formation of citywide CSO networks. Small groups within the district may be unable to mobilize sufficient numbers to secure projects.
Conduct year-long series of meetings.	Higher level of participation, which produces greater deliberation and potential for empowering citizens	Mobilization becomes an end in itself to secure resources; participation becomes inattentive, as people attend meetings with the sole purpose of voting for specific policy proposals.
Create Quality of Life Index.	Increased allocation of resources to low-income districts; increased participation as citizens compete within each region	Poor neighborhoods are not uniformly distributed, so small, marginalized populations may not receive benefits. Well-organized groups benefit at the expense of poorly organized and small groups, discouraging participation among citizens unlikely to receive funding.
Conduct "bus caravan of priorities."	Increased solidarity and knowledge about proposed projects	Delegates lack basic skills to evaluate need and may be swayed by passionate appeals.
Have elected representatives vote on final projects.	Smaller number of projects allows qualified participants to directly participate in decision making	Process can become dominated by community leaders rather than citizens.

(continued)

TABLE 1.1 *(continued)*

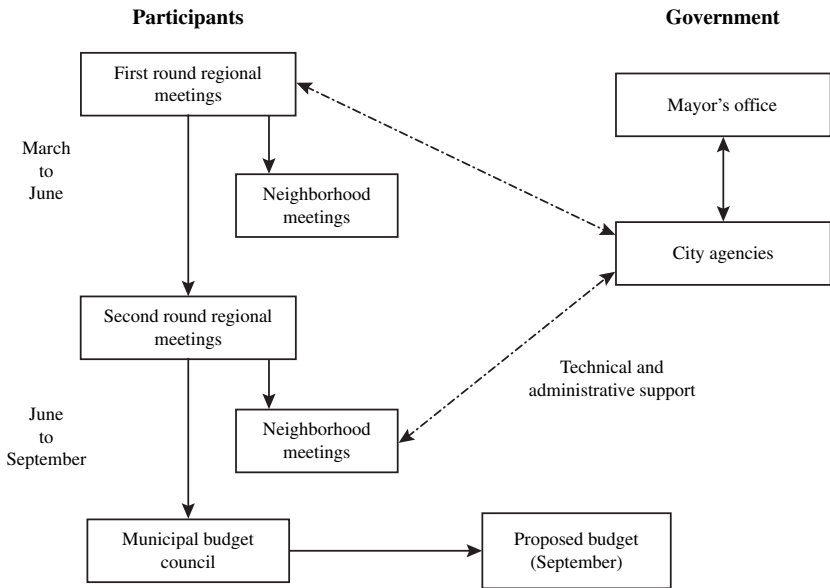
Rule	Desired outcome	Undesirable potential consequence
Elect municipalwide council.	Direct negotiation between small body of citizens and government officials/legislators, to reduce inefficiencies, enhance quality of debate, and make difficult decisions	Small group of community leaders may use their access to government officials to promote their own interests, creating a new type of political actor who may not be accountable to base of support.
Have government provide participants with detailed financial information.	Education of public on financial information	Participants are dependent on government for information.
Form neighborhood committees to monitor participatory budgeting.	Transparency, accountability	Participants are dependent on government for information.

Source: Author.

Selecting projects

The first round of participatory budgeting, which typically runs from March to June, involves the distribution of information, the initial discussion of policies, and the determination of the number of elected representatives (table 1.2). Mobilization in neighborhood meetings is high, because turnout determines the number of elected representatives from each neighborhood to the regional meetings. Because final votes are taken at the regional level, a larger number of elected representatives (citizen-delegates) from a neighborhood increases its likelihood of having a project selected.

Meetings at the regional and neighborhood levels tend to be about two hours long. The first part of the meeting provides an opportunity for participants to inform their colleagues of upcoming events and issues of concern. The second part of the meeting is a formal presentation of participatory budgeting–related information by government officials. The last part of the meeting is dedicated to a question and answer session, in which participants ask government representatives to clarify their concerns. Participants are generally limited to three minutes to speak or ask questions. The three-minute



Source: Wampler 2000.

FIGURE 1.1 Annual Participatory Budgeting Cycle

TABLE 1.2 Roles of Government and Participants during the First Round of the Participatory Budgeting Process (March–June)

Government's role	Participants' role
<p>Regional meetings Draw district and subdistrict boundaries. Prepare Quality of Life Index. Distribute financial information. Present projects it wants participants to approve.</p>	<p>Mobilize citizens. Hold capacity-building meetings. Analyze financial information. Hold preliminary discussions of available resources.</p>
<p>Neighborhood meetings Provide detailed technical information. Provide administrative support to participants (access to telephones, photocopiers). Establish meeting places and times.</p>	<p>Discuss priorities for municipality. Discuss specific public works. Preselect public works.</p>

Source: Author.

time limits help to keep the meeting moving along. Deliberation over priorities and projects occurs informally, as participants analyze the probable level of resources for their region and begin negotiating with one another over proposed projects. Citizen delegates are not paid for their participation, although some municipalities provide bus fare to offset the transportation costs.

The second round of the process defines the policies and projects that the government will implement in the coming fiscal year (or even two years) (table 1.3). By this stage, participants should have acquired sufficient information to promote the priorities of their communities and to make decisions at the regional meetings. Final decisions on specific public works projects or the definition of general social priorities are made at the regional meetings.

Distribution of resources is based on two criteria. The first is the Quality of Life Index. Each region receives a specific percentage of the budget depending on its overall need. Wealthier regions with more advanced infrastructure receive a smaller percentage than poorer regions with less formal infrastructure. The goal is to ensure that the limited resources available are spent in the poorest neighborhoods and on the most vulnerable sections of the population. Democracies tend to favor organized groups, with middle- and upper-income groups having the greatest advantages. Participatory

TABLE 1.3 Roles of Government and Participants during the Second Round of the Participatory Budgeting Process (July–November)

Government’s role	Participants’ role
Regional meetings	
Draft initial cost estimates for proposed projects.	Debate proposed policies or public works.
Distribute information and arrange a “bus caravan of priorities” in each district.	Visit proposed public works projects.
Monitor vote.	Vote on policies or public works to be implemented.
Oversee Municipal Budget Council.	Elect two representatives from each region to Municipal Budget Council.
Neighborhood meetings	
Have technical staff work closely with oversight committees.	Continue to mobilize citizens on behalf of projects and policies.
Draft technical plans.	Elect oversight committees; approve technical plans.

Source: Author.

budgeting allows individuals and groups to compete against other groups that have similar means.

The mobilization and deliberation processes within the region represent the second criterion for the distribution of resources. Organized groups compete, mobilize, negotiate, and deliberate within their own regions over available resources. Because all projects cannot be supported, groups form alliances to promote particular projects. The “bus caravan of priorities” is a key part of this process, as participants must visit the sites of proposed projects in order to personally evaluate the level of need.

Implementing projects

While most attention focuses on the selection of policies, an important aspect of participatory budgeting is the implementation of the selected projects. Implementation is an ongoing process. Some projects can be implemented during the subsequent year; larger projects may take several years to implement.

One of the important reforms associated with successful participatory budgeting programs is that participatory budgeting projects are implemented through a regularized, bureaucratic process. Administrative procedures are followed, replacing the direct intervention of politicians into bureaucracies. Participants have a reduced role in this process, although they do take part in oversight meetings to ensure that the policies are being implemented according to previously established criteria (table 1.4).

In Belo Horizonte, for example, regional committees must approve all technical plans. These committees also oversee that the public works are implemented according to the approved technical plans. Neighborhood

TABLE 1.4 Roles of Government and Participants during Project Implementation

Government's role	Participants' role
Prepare technical plans, contracts, and so forth.	Approve technical plans.
Integrate administrative agencies.	Monitor order of project implementation.
Have technical staff work closely with oversight committees.	Monitor project implementation (on site).
Oversee Municipal Budget Council.	Have delegates attend weekly meeting of Municipal Budget Council.

Source: Author.

committees monitor on-site construction projects, helping to ensure that public works are implemented according to the established criteria. This is a crucial part of the process, as it diminishes the likelihood of overt corruption. It is telling that in the city of Recife, where participatory budgeting has had moderate successes, the oversight committees are weak. Effective and independent monitoring committees have not been supported by the government, restricting the ability of citizens to monitor the quality of the work.

State of the Debate

The attention of scholars on participatory budgeting programs has been associated largely with two broad areas of analysis: the factors that lead to the initiation of participatory budgeting programs and the effects participatory budgeting has generated. The debate on initiation of participatory budgeting programs has focused on the innovation (1989–96) and diffusion (1997–2004) phases.

The innovation phase has been studied most intensely in Porto Alegre, Brazil. Abers (1998, 2000) argues that synergy between government officials and civil society leaders in Porto Alegre allowed them to create an institution that served both of their interests (see also Baierle 1998; Torres and Grazia 2003). Baiocchi (2003a, 2003b) places greater emphasis on the role of the leftist Workers' Party as the "instigator" of the program, but he recognizes that CSOs played a fundamental role. A third line of analysis suggests that the formation of a broader civil society during the 1980s led to the formation of new strategies and tactics by CSOs (Wampler and Avritzer 2004). Through the formation of "participatory publics," citizens learned to deliberate and press for new institutional formats, which were most likely to be implemented when the CSOs aligned themselves with elected governments (Baierle 1998; Wampler and Avritzer 2004). The differences among scholars relate largely to the weight and importance they place on CSOs and government actors.

While there is broad consensus on the reasons for adoption during the first phase of participatory budgeting programs, the debate on the diffusion of participatory budgeting programs is at a preliminary stage, due to the paucity of data and the relatively recent need for this type of analysis. The 2003 study by Torres and Grazia represents the first effort to collect similar sets of data on cases in Brazil. The evidence demonstrates that the basic social and political characteristics of municipalities that implement participatory budgeting have changed since the original set of 12 cases in 1990. Centrist and conservative political parties now implement more than 40 percent of participatory budgeting cases in Brazil, up from less than

10 percent in 1990. Participatory budgeting is now implemented in all five of Brazil's regions, although it is still concentrated in the south and southeast. While the original cases of participatory budgeting were in municipalities with above-average Human Development Index (HDI) scores, municipalities that had participatory budgeting in 2004 had HDI scores similar to the majority of large Brazilian municipalities.

The second major line of analysis has been to establish the effects of participatory budgeting on participation rates, citizens' and governments' attitudes and behaviors, policy-making outcomes, and social justice. Participation in participatory budgeting meetings gradually increased over time in Belo Horizonte, Ipatinga, Porto Alegre, Recife, and São Paulo, although just 1–4 percent of the population participates (www.ibge.gov.br). Over time, programs have drawn larger numbers of citizens into formalized policy-making venues (table 1.5).

There are several reasonable explanations for the increase in participation rates. One is that citizens affiliated with the governing party participate in higher numbers to support their party. There is some evidence in support of this explanation. In two small Brazilian municipalities, Betim and João de Monlevade, many of the most active leaders were affiliated with or at least sympathetic to the Workers' Party, the party that implemented participatory

TABLE 1.5 Number of Participants in Participatory Budgeting Processes in Selected Cities in Brazil, 1990–2003

Year	Belo Horizonte	Ipatinga	Recife	Porto Alegre	São Paulo
1990	n.a.	630	n.a.	976	n.a.
1991	n.a.	470	n.a.	3,694	n.a.
1992	n.a.	483	n.a.	7,610	n.a.
1993	n.a.	563	n.a.	10,735	n.a.
1994	15,216	572	n.a.	9,638	n.a.
1995	26,823	681	n.a.	11,821	n.a.
1996	36,508	604	30,000	10,148	n.a.
1997	31,795	683	n.a.	11,908	n.a.
1998	19,418	1,533	30,000	13,687	n.a.
1999	21,175	2,136	n.a.	14,776	n.a.
2000	31,369	2,018	30,000	14,408	n.a.
2001	n.a.	5,015	42,800	16,612	34,000
2002	28,124	981	67,100	28,549	55,000
2003	n.a.	2,374	69,500	26,807	80,000

Source: Wampler 2007b; Wampler and Avritzer 2004.
n.a. Not applicable.

budgeting in both municipalities (Nylen 2003b). However, this evidence tells us little about the larger numbers of ordinary participants who do not assume leadership roles. Evidence from Belo Horizonte, Ipatinga, Porto Alegre, Recife, and São Paulo suggests that most participatory budgeting delegates were supportive of leftist political parties (Wampler 2007a).

A second explanation is that participatory budgeting provides new opportunities for the already politically active (Nylen 2002). About half of participants in Belo Horizonte and Betim are single-time participants (table 1.6). If these data are representative of other participatory budgeting programs, the empowerment capacity of the process may be dampened.

Nearly 75 percent of respondents participated only one or two times. This finding is troublesome, because little public learning is likely to occur where few participants remain involved in the process. Wampler's survey of eight participatory budgeting programs indicates that first-time participation rates are higher in more recently established programs (Wampler 2007b). In municipalities in which participatory budgeting has been used since the 1990s, such as Ipatinga or Porto Alegre, participation is high, but a core group of activists participates every year. In places where participatory budgeting has been in place for many years, restrictions are placed on participation by activists, who are allowed to run for office only every second or third year, in order to allow a broader number of people to hold elected office. However, it may be that a small group of activists rotates the positions among themselves.

TABLE 1.6 Frequency of Participation in Participatory Budgeting in Belo Horizonte and Betim, Brazil

Number of times respondent participated	Belo Horizonte		Betim	
	Number of respondents	Percentage of respondents	Number of respondents	Percentage of respondents
Once	526	54.5	92	49.5
Twice	168	17.4	32	17.2
Three times	78	8.1	19	10.2
Four times	70	7.2	13	7.0
More than four times	64	6.6	14	7.5
No response	60	6.2	16	8.6
Total	966	100.0	186	100.0

Source: Nylen 2002.

Demonstration effects, based on deliberation, negotiation, and implementation, may also account for the rise in participation (Wampler and Avritzer 2004). If individual citizens have positive experiences (because their demands are heard or their proposals selected for implementation), they will have incentives to participate again. These incentives are short term, immediate (policy changes), and long term (deliberation and accountability), but they depend, in large part, on the ability of the government to implement projects selected by participants.

Very few eligible citizens participate in participatory budgeting processes. Getting citizens to attend meetings remains difficult, for reasons that plague participation in any public setting. These include the time and financial cost of attending meetings, general apathy, the lack of awareness of participatory budgeting, and the perception of partisanship within the participatory budgeting process. Participatory budgeting has been successful at encouraging participation when municipalities have been able to produce outputs that reflect the decisions made through the process. Citizens are willing to give their time to this process if they believe that the outcomes will benefit them.

Most participatory budgeting programs allow citizens to have a say only on new capital investment expenditures. (Many participatory budgeting programs claim that participants make decisions on the entire budget, but there is little evidence that participants make meaningful decisions outside of discretionary funding.) When analyzing participatory budgeting, it is important to distinguish between proposed spending and actual spending.

Porto Alegre had the lowest annual budget but allocated the largest amount to participatory budgeting—\$201 per capita in 1996–98. This figure far exceeded per capita spending in Belo Horizonte (\$42) or Recife (\$11). Differences in spending are attributable to the financial health of the municipalities, especially debt commitments and personnel expenditures. Porto Alegre cleaned up its finances, allowing more resources to be dedicated to investment spending. Belo Horizonte and Recife spent more on debt and personnel and on investment projects selected outside the participatory budgeting framework.

Spending outcomes are important indicators of the success or failure of a program, because they link the demands of participants to the municipal government's commitment to implementation. Governments that are able to follow through on spending decisions send clear signals to participatory budgeting participants and the larger community that they value the choices made within the participatory budgeting process. Porto Alegre's government was able to meet nearly 100 percent of its commitments (projects are often backlogged, but they are generally completed). In contrast, Recife completed

few projects and spent less than 10 percent of the proposed resources. Thus, there are positive demonstration effects in Porto Alegre but few in Recife.

Since participatory budgeting programs are geared toward redistributing public resources, evaluations of participatory budgeting should include an analysis of where resources are spent within the municipality. Such an analysis requires that similar data be produced over a number of years to allow plausible inferences to be made about spending patterns.

Only one study, of Porto Alegre, has measured the distribution of resources within a municipality (Marquetti 2002). This study combines 10 years of participatory budgeting data and 1991 census data to determine if there is a relationship between participatory budgeting investments and lower social indicators.

The results show that participatory budgeting spending in Porto Alegre has indeed been concentrated in the poorer regions of the municipality. Poor regions receive more spending per capita than wealthier regions. This is the most compelling evidence that participatory budgeting is promoting social justice by increasing the investment of municipal resources in lower-income neighborhoods. Marquetti (2002) claims participatory budgeting has had a distributive effect, because Porto Alegre's municipality spent the majority of its investment resources during the 1970s and 1980s in middle-class neighborhoods. He thus infers that participatory budgeting has had a significant redistributive effect.

Types of Participatory Budgeting Programs

Participatory budgeting programs have two main tracks. One track, "participatory budgeting public works," focuses on specific public works projects, which range from the paving of specific streets to the building of day care centers. This track garners the lion's share of citizens' interest, because it involves the distribution of resources to specific projects.

The second track, "participatory budgeting thematics," focuses on general spending policies. These policies focus on more general trends, such as allocating increased spending to a particular type of health care program. These meetings tend to draw better-informed activists, who are more likely to be part of an issue-oriented social movement.

Public Works Programs

Most participatory budgeting programs initially focus on public works; over time discussions broaden to include general social policies. There are several

pragmatic reasons why governments initially dedicate their time and energy to specific projects.

First, the focus on specific public works establishes a direct connection between participation and outcomes. When participants select a specific project, an expectation is created that the government will implement it. When the government successfully implements selected projects, it reinforces the notion that participation in participatory budgeting is a valuable tool for promoting change (Wampler 2004b; Wampler and Avritzer 2004). The government of Porto Alegre, for example, has established a track record of implementing participatory budgeting projects within two to three years. Participants know that decisions they make will result in government action. The government's efforts have helped stimulate accountability in Porto Alegre because participants believe the government will fulfill its promises.

Second, the focus on specific public works represents an effort to allow communities to define their own development. The underlying assumption is that citizens understand their own problems better than government officials and will therefore be able to match proposed public works to their needs. By giving citizens the power to select public works, participatory budgeting programs contribute to the decentralization of the decision-making process. Many neighborhood groups first propose small projects and then expand the range and size of their demands over time. For example, a neighborhood association might initially work for street paving but later make demands for housing projects or the establishment of health centers. Public learning occurs, especially when the government successfully implements participatory budgeting projects, as delegates begin to strategize about how to receive additional (and often larger) projects.

Third, local governments are often responsible for small infrastructure projects (in wealthier cities, governments can sometimes also tackle major infrastructure projects, such as housing). In countries where state or provincial governments provide these services, it may be more appropriate to adopt participatory budgeting at these higher levels of government. Public works have long been a key source of patronage between governments and community leaders. By placing public works at the center of participatory budgeting, it is hoped that the cycle of patronage politics can be broken. Breaking the cycle of patronage entails public discussions of public works, access to technical information, and the eventual implementation of projects. By removing public works from the clientelistic exchange, governments and community leaders hope to generate a new type of politics.

Fourth, focusing on specific public works allows participants to gain a better understanding of what authority and responsibility the municipal

level of government actually has. Participants learn to understand the division of authority, which should aid them in directing their demands to the appropriate level of government. This educates the population and benefits the government, as community leaders gain a better understanding of the government's limited powers. In the municipality of Santo Andre, Brazil, many participants initially raised concerns about violence and police corruption. The government, however, did not have jurisdiction over the police. As participants grew to understand this, they shifted their focus to issues on which the municipal government had the authority and resources to act.

Thematic Programs

The purpose of participatory budgeting thematics is to further democratize the policy-making process by letting citizens establish the general priorities of the municipal government. This encourages participants to analyze and understand the city as a whole rather than concentrate on problems specific to their neighborhood. This process is part of the larger empowerment or "citizenship school" component of participatory budgeting, in which citizens are encouraged to envision and work for broader social change.

Participatory budgeting thematic meetings allow participants to set broad priorities for public policies. The first stage of this process requires that the government provide detailed information on current policies and spending priorities. The second stage is a series of discussions in which participants evaluate the government's priorities. The last stage is the ordering of priorities by participants. To date, participants do not propose and debate their own policies but focus on the government's preexisting policies. For example, participants prioritize the level of spending that should be dedicated to prenatal care or to the eradication of infectious diseases. They do not, for the most part, independently propose new policies. This suggests that citizens work closely with government officials to determine the best ways to spend resources. Governments bring their expertise, and participants signal their policy preferences. When government officials believe strongly in a policy program, they strongly argue its merits to convince participants to support it. There is a fine line between providing information and coercing participants, which governments must tread carefully. Often they cross this line. If there is complicity between government officials and citizens (especially leaders), participatory budgeting runs the risk that participants simply rubberstamp the government's policy positions.

The quality of the meetings and debates varies. Some participants are longtime advocates of particular issues. Their knowledge of other policy

issues may be limited. One of the most complicated parts of participatory budgeting as a policy-making process is that citizen participants have low levels of information and knowledge about most policy arenas. Broad policy decisions may be largely acts of rubberstamping, as most participants follow the lead of the most experienced policy advocates or adopt the positions of the government. The fact that citizens with low levels of information and expertise are involved in making important public policy decisions is a clear drawback of participatory budgeting programs.

The key tension within participatory budgeting thematics concerns whether the best-informed political activists try to lead or dominate political discussions. This tension is most acute during the initial years. As a program is consolidated, the average participant's political knowledge should expand.

Is public learning actually occurring? This question lies at the heart of the controversies over participatory budgeting programs. It is not clear whether participants are gaining the information and knowledge necessary to become full-fledged policy advocates or whether their participation is being used to legitimize the policy choices of the government.

Another problem with participatory budgeting is that uninformed citizens may select policies that do not conform to the constraints placed on the government (that is, they may vote to spend more resources than are available). There is a danger that uninformed citizens will make decisions that derail a program (by demanding spending far beyond the capacity of the government, for example). However, most participants seem to be aware that the overall impact of participatory budgeting programs is limited by the revenue and authority constraints the government faces.

Actors and Motivations for Embracing Participatory Budgeting

Political and social actors have different motivations for promoting and participating in participatory budgeting. Motivations range from wanting to have one's own street paved to wanting to create a deliberative public sphere. Both self-interested behavior and community-building behavior (behavior that creates solidarity) can find rewards in participatory budgeting.

Local Governments

Local governments implement participatory budgeting programs to accomplish a variety of aims. These include building a base of political support,

achieving a more equitable distribution of scarce resources, fostering public learning, and promoting transparency in government.

By its nature, participatory budgeting is a collaborative effort between citizen participants and government. This makes a strengthened base of popular political support a natural consequence of effective participatory budgeting programs. A reformist government is the most likely to successfully implement participatory budgeting, because of the high level of government support needed. Participatory budgeting programs subvert clientelism by providing open, transparent policy-making processes. Reformist governments gamble that by delegating decision making to citizen participants, they will weaken old clientelistic politics and strengthen their own positions. As participatory budgeting takes place outside government itself, its activities largely bypass the legislature and the multiple patronage networks embedded therein. This is one of the most controversial aspects of participatory budgeting programs: legislators have virtually no role in the policy-making processes.

A second reason why governments adopt participatory budgeting is to try to increase the distribution of resources to low-income neighborhoods. The rules of participatory budgeting promote social justice; the emphasis on participation helps the government build support for redistributing resources among low-income and middle-class groups. Low-income citizens have access to greater levels of resources in participatory budgeting, which allows the government to provide a specific forum to address their needs. Low-income citizens are not competing against middle- and upper-income citizens and groups in their efforts to secure desperately needed services and public works.

A third reason why governments adopt participatory budgeting is that mobilizing citizens provides opportunities to change their political and social consciousness. The lack of political knowledge about government, policy making, and rights among most low-income Brazilians is an obstacle that reformist governments believe limits social change. Governments will implement participatory budgeting if they believe that improving the quality of citizens' political knowledge is an integral part of a more expansive effort to reform political, social, and economic structures. Many citizens in the developing world lack basic information on the responsibilities and authority of different levels of government; governments use participatory budgeting as a means to provide them with these basic tools.

A fourth reason why governments adopt participatory budgeting is to promote transparency, in the hope of reducing corruption and bureaucratic inefficiencies. Participatory budgeting may reduce corruption by increasing

the number of citizens that monitor the distribution of resources. Where corruption is rampant, reformist governments use multiple public meetings and oversight committees to reduce the likelihood of corruption. In Ipatinga and Porto Alegre, all participatory budgeting projects are assigned tracking numbers. Any interested citizen can use a computer terminal at a municipal government office to check the status of a project and verify if resources have been spent as promised.

Individual Citizens

Citizens have many incentives to participate in participatory budgeting programs. First, participatory budgeting increases their access to public decision-making activities. Public meetings and decision-making processes reduce the likelihood that overt, clientelistic means will be used to distribute goods. This is an obvious benefit to citizens who did not gain from clientelism under previous government regimes. The public nature of meetings empowers some citizens to speak out for the first time. This general sense of empowerment is strengthened even further if citizens can draw a direct connection between their participation efforts and policy outcomes.

A second important incentive for citizens is that they gain access to information. Informational meetings provide citizens with a broader understanding of government, governmental responsibility, policy, and policy making. Budgets and policy making are often viewed as “black boxes” in which inputs and outputs are unknown to all but a handful of government officials. Participatory budgeting programs provide a structure for citizens to gain the necessary information to develop a better understanding of their political and administrative environments. In addition to budgetary information, citizens gain access to technical information about subjects such as zoning and land-use laws. The complex sets of rules involved in these issues are often beyond the reach of the average citizen. Participatory budgeting programs offer the opportunity for citizens to work with officials in the bureaucracy to resolve legal and technical problems.

A third benefit of participatory budgeting for citizens is the direct relationship between participation and the quality of services provided. Citizens select public works, directly shaping their neighborhoods. They approve technical plans, for the installation of sewer systems or the construction of new housing units, as well as oversee project implementation. In Belo Horizonte all technical plans must be presented to neighborhood forums. After discussion and clarifications, which may require the plan to be redrawn, the neighborhood forum must approve the plan. This helps ensure

that contractors provide the goods and services they promised. This process is widely believed to improve the quality of services, because it reduces the likelihood that contractors will try to cheat on their contracts.

Civil Society Organizations

The primary incentive for CSOs, such as social movements or neighborhood groups, to participate in participatory budgeting is indirect. Since one of the criteria for the distribution of goods is the number of citizens who attend meetings, the more citizens CSOs are able to mobilize, the more goods and resources their neighborhood is likely to receive. A relationship between mobilization and outcomes is established, strengthening the importance of CSOs.

A second reason why CSOs participate is that participatory budgeting programs provide them with the opportunity to build broader networks of supporters. Participation provides CSOs with contact with potential allies, increasing opportunities to build broader social and political coalitions. Since many of the specific demands negotiated within participatory budgeting originated from associations around basic issues (housing or sewage problems), it is incumbent upon the associations to negotiate with other associations. One of the drawbacks of participatory budgeting, discussed below, is that there is an increased potential for competition among CSOs. Rather than create bonds of solidarity, contact can heighten conflict.

A third reason why CSOs participate is to influence policies. Neighborhood associations shape the neighborhood's infrastructure. Associations work with government technocrats and NGO specialists to design development plans. Issue-oriented social movements participate in participatory budgeting to shape broader public policy. The process gives them the opportunity to work with government officials to influence short-term funding as well as long-term planning. The close working relationship provides issue-based social movements with many opportunities to influence policy outcomes. Of course, this relationship may not be wholly positive for the CSOs. Closer ties to the state have the potential to drastically alter the character and goals of the social movements. This is a tension that government officials and CSOs are continually forced to address.

Nongovernmental Organizations

Participatory budgeting programs provide a mechanism for NGOs to work with citizens and government to tackle pressing social problems. In some municipalities, NGOs play a direct role, sitting on a governing or oversight

board or acting as mediator between the government and participants. When NGOs play a direct role in the process, they tend to promote citizen empowerment and transparency in government.

In other municipalities, NGOs act in an advisory role, providing support to participants. Many NGOs have staffs of professionals with strong technical and administrative skills. Architects, accountants, social workers, and other specialists are able to understand policy proposals and their implications more easily than the average citizen. The NGOs' distance from government gives them the opportunity to promote the general values of participatory budgeting while keeping an eye on government to guarantee that it is working for the citizens. One NGO in Porto Alegre, Cidade, publishes a monthly report on participatory budgeting for citizen-delegates and citizens in general. It monitors spending and policy decisions, acting as a watchdog as well as an advocate of the participatory budgeting program.

NGOs also play a prominent role in the initial empowerment or learning meeting. Because of their skill and experience in public education, NGOs are often contracted by government to provide this service. This can create a certain tension between NGOs and participants, because it blurs the role of the NGO.

Business Community

The business community may support participatory budgeting programs because these programs promote transparency, reduce corruption, and increase efficiency. While participatory budgeting programs do not inherently or necessarily involve fiscal reform, the increased attention on the budget often leads the government to take better care of the city's financial health. Better financial health is an indirect consequence of participatory budgeting programs.

Within the business community, some contractors and builders benefit directly. The selection of projects and the systematic ordering of the projects' implementation allow contractors to bid in an open and fair system. Small contractors benefit, because many of the projects selected through the participatory budgeting process tend to be small. Contractors no longer pay kickbacks and bribes to ensure that their projects will actually be funded and implemented. Instead, the timing and ordering of the projects become part of the public record. Of course, businesses that benefited from closed and corrupt practices are not enthusiastic about participatory budgeting.

When participatory budgeting programs are consolidated as the principal policy-making method, business associations must participate in order

to secure funding for projects. A neighborhood business association that wants to have streets paved or lighting installed, for example, would have to organize its members to attend meetings to press their demands.

Administrative Reform

While the reform of bureaucracy was not initially considered to be a vital element of participatory budgeting programs, it has emerged as an unintended consequence that strongly influences the success of the process. Participatory budgeting contributes to administrative reform in three ways.

The first is by decentralizing the administration. This tends to start with the physical decentralization of the municipal administration, as branch or regional offices are established. Branch offices provide citizens direct and easy access to government and administrative officials. This is especially important in outlying neighborhoods, where the poorest residents tend to live. Meetings are held at the neighborhood level rather than in the city center, which makes it easier for citizens to overcome time and financial costs long identified as barriers to participation.

The decentralization of decision-making venues is also an important step. Decisions are no longer made by a small group of political and technical elites located within the confines of the city government but in public forums at the local level. This provides citizens with unprecedented access to professional and technocratic bureaucrats. Citizens are able to work with these bureaucrats to navigate the complex world of policy making.

Decentralization allows for targeted information to be provided to relevant groups. Through the branch offices, technocrats develop better ideas of the types of information participants need to make informed choices. For example, citizens who live in a mountainous region may need information about drainage and water flows; citizens in the urban center may require information about the costs and complexities of overhauling decaying infrastructure.

The second way in which participatory budgeting contributes to administrative reform is by integrating different bureaucratic units into the policy-making and implementation processes. Administrative agencies, such as the departments of health or education, cannot operate as isolated units within the participatory budgeting process. They must work closely with the planning agency and with participatory budgeting participants to define their policy agendas. New investments cannot generally be undertaken without the explicit approval of participatory budgeting participants. This requires different departments to work with community leaders to

design projects. City agencies must work together to coordinate the timing of projects to ensure that they are completed in the most efficient method possible. This requires coordination over a number of years to ensure that drainage, paving, housing, and other projects are implemented according to the plans designed by urban planners and participatory budgeting participants.

Within the government there must be a concerted effort by politicians and bureaucrats to implement the selected projects. Government officials must gain control of the bureaucracy to ensure, for example, that technical plans are drafted, contracts are prepared, and implementation occurs according to established schedules. This intensive, hands-on process was not anticipated by participatory budgeting's founders, but it has helped revitalize and reform existing bureaucratic structures.

The third important component of administrative reform is the creation of a more transparent relationship between the business community and the government. Participatory budgeting establishes projects that will be implemented over a two- or three-year period. Contractors and builders know which projects will be implemented and are able to plan more efficiently. The fact that bribes no longer have to be paid to have a project implemented reduces the cost of business, increases profit margins, and fosters governmental credibility.

Limitations of Participatory Budgeting

Several limitations to participatory budgeting programs reduce its overall impact on social justice, public learning, and administrative reform. While there are important differences in how participatory budgeting programs function in different municipalities and states, the limitations discussed below appear to be present in most cases. These limitations suggest that participatory budgeting programs have a moderate capacity to challenge social and political exclusion while promoting social justice. Participatory budgeting programs are an important step toward political inclusion and greater social justice, but they are by no means a magic bullet.

The first limitation stems from the focus on specific public works, which diminishes the impact of the public learning or empowerment sessions. Many participants are less interested in learning about rights, the fiscal responsibility of the government, or broader social policies than they are in obtaining a small infrastructure project.

This is the principal Catch-22 of participatory budgeting. Participatory budgeting programs flourish when citizens discover that the specific decisions they make in regional meetings will be implemented. The message is clear: the

government values your time and energy. While this seems to be a necessary first step to encourage participation, it associates participatory budgeting programs with the distribution of specific goods. After improvements are made, the community organization stops participating. The community receives the desired public good, which was the reason they originally organized. Participants immediately exit the program and demonstrate little interest in working with it. In such a case, public learning is low and participation is geared toward short-term and instrumental ends; participants are not engaged in public learning processes but focused on how they can secure specific resources for their community.

A second limitation is the dependence of participants on the mayor's office. While participatory budgeting programs directly incorporate civil society actors in the policy-making process, the government remains the principal actor. It organizes meetings, provides information, ensures that bureaucrats meet with citizens, and guarantees that selected policies will be implemented. The influence of the mayor and the governing coalition is substantial.

The lack of a strong commitment to participatory budgeting by government leaders makes it difficult for participatory budgeting programs to succeed. In Recife, for example, the mayor began to use participatory budgeting as a means to distribute public monies for the yearly carnival. Instead of holding open, transparent meetings, he manipulated the release of funds so that "friendly" participants would benefit. Nonparticipating citizens and "unfriendly" citizen-delegates did not have access to the public resources. Participatory budgeting participants expressed concern that if they did not act a certain way they would be "boycotted" by the government. This does little to empower citizens and may just be a new form of clientelism.

A third limitation concerns the role of long-term planning. Many participatory budgeting participants are interested in securing short- to medium-term public works projects. The focus on specific public works makes it more difficult to generate discussions on planning for the future of the city. Several municipal governments have tried to stimulate discussions and develop long-term plans, but the results have been limited. The complexity of the issues involved requires that citizens have substantial technical and analytical skills to weigh different arguments. Participatory budgeting programs slowly build these skills, but it may take years for participants to develop a grasp of the complexities of the proposed solutions.

A fourth limitation is the emphasis on local issues and local public policies. Many participants, including experienced political and social activists, spend their time and energy on the intricacies of local public policies. This reduces the amount of time they are able to dedicate to regional, national, or global

problems. While participants dedicate their efforts to securing changes in local public policies, the principal problems their communities face are often related to unemployment, violence, or the lack of educational opportunities. Participatory budgeting does not provide the opportunity for participants to challenge the underlying reasons for their social and economic exclusion. In Recife many active participatory budgeting participants devoted 5–10 hours a week to participatory budgeting. But when asked what the major problem in their neighborhood was, they responded “unemployment.” The participants, mainly women, worked in participatory budgeting in the hope that they could improve the day-to-day conditions of their neighborhoods, but their greatest concerns focused on broader socioeconomic change that was far beyond the scope of participatory budgeting.

Citizens and governments hope that a participatory budgeting program will increase awareness of the broader, global social problems that affect Brazil’s urban poor. There are, however, no guarantees that participants will make the leap from addressing their communities’ lack of basic infrastructure to understanding and challenging the broader socioeconomic forces that shape their lives. While this is obviously much to ask of participatory budgeting participants, it is clearly the goal of the governments and the most active participants.

Finally, there is the danger that participatory budgeting programs may be manipulated due to the central role played by the mayor’s office. If city agencies, bureaucrats, or elected officials wish, they may try to use participatory budgeting programs to advance their own agendas. Nondisclosure of key information, the lack of implementation of selected public policies, or the weakening of citizen oversight committees are all potential ways that the program can be manipulated. Some participatory budgeting programs in Brazil at the municipal and state levels have been rejected by social movements and NGOs due to the government’s interference.

How and Where Can Participatory Budgeting Be Implemented?

Can participatory budgeting programs be implemented by governments in other countries? Can the idea be adopted in other regions of the world? Government officials contemplating adopting participatory budgeting should ask themselves a few questions:

- Is there sufficient discretionary funding to allow citizens to select specific public works?
- Can participatory budgeting programs be used to increase tax collection?
- Is the government prepared to delegate authority to citizens?

- Will participatory budgeting programs subvert traditional patronage networks? Does the government want to do so?
- Can participatory budgeting help the government establish new bases of political support?
- Is the government willing to try to reform the local bureaucracy?
- How viable is delegating decision-making authority along political and administrative lines?

At the heart of any consideration must be the viability of the delegation of decision-making authority along political and administrative lines. Participatory budgeting is a cumbersome process that often takes several years to run relatively smoothly. If a government faces intense political pressures from other political parties or the media, the cumbersome and public nature of participatory budgeting may exacerbate governability problems. Governments must have sufficient political flexibility to engage citizens in an innovative policy-making process. Furthermore, the government must have the resources and capacity to reform the bureaucracy so that the program will actually be implemented according to the established rules.

Financial flexibility and independence is a second issue to be considered. For example, do Mexican municipalities or Indian states have enough independent financial resources to incorporate citizens directly into the policy-making process? If a government has few financial resources or little flexibility, it should consider how a focus on financial and budgetary issues will affect its overall political agenda. If the government lacks financial autonomy, can it use a type of participatory budgeting to have citizens help prioritize some types of social spending? In this case, a participatory budgeting program could be used as an educational tool rather than as a means to allocate scarce resources.

When governments are unable or unwilling to implement participatory budgeting programs, NGOs can play a vital role, by disseminating information and monitoring government spending. NGOs have played an important role in promoting participatory budgeting programs throughout Brazil. They can work with governments to implement participatory budgeting programs, or they can set up parallel monitoring programs.

One initial challenge is to engage social movements and NGOs on seemingly arcane issues of taxation, representation, and more efficient policy making. Before the implementation of a participatory budgeting program, it would be helpful if civil society activists begin to question how public resources are being used and how they could be used. The first step would be to focus on the budget and social spending.

While there is no set or minimum level of civil society activism necessary to establish a participatory budgeting program, the program is more likely to flourish if there are networks of citizens and CSOs that will strongly support it. During the founding phase, many of the initial participants tend to be political activists. Higher levels of participation help legitimize a government's reform efforts. Preexisting networks often lay the foundations for progressive governments and citizens to support innovative policy-making forums.

Previous experiences with decentralization may make bureaucrats more amenable to accepting administrative reforms. Governments must be able to reform the bureaucracy so that it will be open, transparent, and oriented toward citizens. When citizens participate in the policy-making process, bureaucrats lose some of their power. If local government has discretionary resources available, it is more likely that it can embark on a participatory budgeting program. Local governments need to have control over their own finances in order to implement a reform policy of this type.

Policy Implications

The results of participatory budgeting programs vary widely. While many participatory budgeting programs, especially those in initial stages of development, have had mixed results, programs that have endured for more than five years have spawned important changes. To examine the most significant policy implications, it is necessary to return to the three central tenets of participatory budgeting: public learning and active citizenship, social justice, and administrative reform.

Participatory Budgeting Increases Public Learning and Promotes Active Citizenship

Participation in participatory budgeting programs tends to increase over time. Citizen participation steadily rises, with significant jumps often occurring after the third year. Participation rises more quickly when the government commits significant support and resources to participatory budgeting. Participation appears to rise because citizens realize that there is a direct connection between the time they dedicate to participatory budgeting and changes in policy outcomes. Citizens who did not initially participate are drawn into the process as it becomes clear that the principal way to secure public works or changes in broader social policies is through participatory budgeting. In Belo Horizonte and Porto Alegre, participatory budgeting was

expanded to include projects and programs that would attract the middle class. In Belo Horizonte political activists who had long favored clientelism had to retool their political strategies to provide resources for their neighborhoods. Traditional political organizers could no longer rely on clientelism but had to mobilize and deliberate in new ways.

Participatory budgeting programs act as “citizenship schools.” The first stage of the participatory budgeting process, at the beginning of the yearly budgetary cycle, consists mainly of information meetings. These meetings provide governments, NGOs, and the most well-informed activists the opportunity to discuss matters pertaining to the budget, government authority and responsibility, taxation, and citizenship rights (social, political, and civil). New citizens are inundated with information, while longtime participants sharpen their own understandings. This is where NGOs play a large role, working with longtime participants to improve their political strategies while providing help to new participants.

Citizenship rights play an important role because participatory budgeting participants address issues of government authority and citizens’ duties. Participants, especially citizens with a long history of political activism, draw on the rights guaranteed by the 1988 Brazilian Constitution to support their arguments during the negotiation stages. During the initial “empowerment” meetings, participants are taught about their rights, their duties as citizens, and the responsibility of the government. The extension of citizenship rights, governments and participants assert, depends on the strengthening of community ties and the dismantling of the entrenched social, political, and economic positions that separate individuals in many developing countries. Participatory budgeting programs provide an opportunity for citizens to forge solidarity bonds based on the similarity of their demands. Community ties, between groups and individuals, may be strengthened as the programs enable them to address their problems and look for collective solutions. If citizen demands for rights are one of the bedrocks of democracy, then participatory budgeting is helping strengthen the consolidation of democracy.

The “bus caravan trip” is one of the best examples of this effort. Representatives from each neighborhood visit all proposed public works within their region so that they can personally evaluate the social need for a proposed project. Participatory budgeting delegates are known to change their positions when they visit a project site where social needs appear much greater than at sites of other proposed projects. When the bonds of solidarity are emphasized and promoted, the participatory budgeting program fosters a stronger sense of community.

Participatory budgeting gives traditionally excluded citizens the opportunity to voice their demands in a formal public sphere. The legitimization of their demands and the ability (right) to raise contentious issues in a public arena are important steps forward in breaking down rigid social hierarchies.

Participatory Budgeting Promotes Social Justice

The resources allocated through the participatory budgeting program tend to be implemented in low-income areas. Neighborhoods or subregions with lower levels of infrastructure and higher poverty rates receive more resources than better-off subregions. The Quality of Life Index, based on income, education, physical infrastructure, and social services provided, forms the basis for the distribution of resources. It guarantees that the poorer regions of a city receive more resources than better-off neighborhoods. The division of resources along regional and subregional lines is an effective instrument for redistributing resources to low-income and underserved neighborhoods. Participatory budgeting helps distribute wealth to poorer areas of a municipality, and it allows the poorest members of the community to decide how to spend resources in their community.

Between 1996 and 2003, the participatory budgeting program in Porto Alegre spent \$400 million on projects selected by participants (Wampler 2007b). The vast majority of these resources went to underserved and poorer districts. While it is impossible to establish precisely the volume of resources allocated to low-income areas, it is possible to document that the poorest regions of Porto Alegre received funding that had not been previously available. It is also possible to confirm that low-income neighborhoods in Belo Horizonte received more resources than did middle- and upper-income neighborhoods. Low-income neighborhoods also received more than they had traditionally received. The policy implication is clear: when participatory budgeting programs function well, they affect the lives of lower-income individuals and communities.

A second way in which participatory budgeting programs promote social justice is through the development of thematic decision-making bodies. Citizens concerned with the lack of health care services or poor quality education can express their demands in participatory budgeting forums. The debates may lead the government to allocate more resources to the underserved areas.

Evidence suggests that governments that are already dedicated to spending more resources in poorer neighborhoods implement participatory budgeting

programs. It is not clear whether the increase in social spending stems from the participatory budgeting program or the political ideology of the progressive government. While it is impossible to separate the political agenda of a reformist government from the workings of participatory budgeting, participatory budgeting programs tend to co-exist with significant changes in social spending. Participatory budgeting helps the government make better allocation decisions in substantive policy areas.

Social justice is also achieved by means of more efficient and community-oriented policies. Less corruption, fostered by transparent processes, helps ensure that public resources will be used more effectively. More efficient use of public resources most directly affects poor and low-income citizens, as a greater number of projects can be implemented. These projects often have an immediate impact on the quality of life for a neighborhood or an underserved policy arena. The policy implication is clear: participatory budgeting helps promote transparent processes that reduce government corruption and waste. Highlighting budgetary issues within participatory budgeting creates a spillover effect, as parts of the budget that fall outside the purview of participatory budgeting also come under increased scrutiny.

Finally, social justice is advanced through the entrance of traditionally excluded groups and citizens into vital decision-making venues. While this is not a material benefit directly linked to social justice, the creation of this institutional sphere provides low-income citizens with the opportunity to address their political and social demands in a formal environment. Traditionally excluded citizens have the opportunity and right to participate in new decision-making venues. Their decisions and their votes result in specific changes in their communities. Being granted the opportunity to make decisions that shape their lives and the lives of their fellow citizens is an extraordinarily empowering process for low-income and previously excluded citizens.

Participatory Budgeting Spurs Administrative Reform

Implementing new decision-making processes requires changes to the bureaucracy so that implementation conforms to the new criteria. In successful participatory budgeting programs, considerable time and effort are dedicated to decentralizing the government. Officials are appointed to aid the administration of each district. The reorganization of local administrative processes facilitates contact between the government and the population. These officials act as intermediaries between citizens and the technical staff.

In all successful participatory budgeting programs, a substantial effort has been made to develop close contacts between participants and bureaucrats.

Technical information, vital to the implementation of any public works projects, becomes part of the public debate. Citizens need to understand the specific requirements for building a road or installing drainage. This information, traditionally available only to bureaucrats, is provided to citizens so that they can make informed decisions. Clear, rational, and systematic rules for the implementation of projects are also established. This reduces the power of the most powerful or well-entrenched bureaucrats, who are no longer able to manipulate the allocation of public monies. The establishment of a clear set of rules provides all interested parties—citizens, government officials, bureaucrats, businesspeople—with the knowledge that policy decisions made in participatory budgeting’s public forums will be translated into actual policy outputs. The implementation process, while not 100 percent transparent, is generally open to any interested citizen. Any citizen can check on the status of a project (planning, bidding, and implementation).

Participatory budgeting encourages government officials to reform local government. Government officials have a vested interest in doing so when they gain positive responses from the voting public, members of their political parties, or national politicians. Instituting a successful participatory budgeting program requires that bureaucrats work with citizens in new ways. There is an incentive to reduce waste and corruption so that additional resources are available for participatory budgeting projects. Governments that are heavily invested in participatory budgeting will also reform their administrative units.

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Citizen Participation in Budgeting: Prospects for Developing Countries

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This chapter examines the potential of citizen participation as part of the budgeting process in developing countries. The first section examines why participation is important and assesses the prospects for participation in a developing-country setting. The second section identifies ways of fostering broad and meaningful participation in developing countries, providing examples of participation during different stages of the budget process. The third section examines the perspective that governments have toward participation. The last section summarizes the chapter's main conclusions.

Why Is Participation Important?

To understand the role and importance of participation in budgeting, it is important to understand why participation itself is important. Most arguments in support of participation portray it as a means of improving both the performance and accountability of a bureaucracy that is outdated, unrepresentative, and underperforming (Barber 1986; King, Feltey, and Susel 1998).¹ These arguments appear particularly relevant for developing countries.

Calls for governments to overturn exclusionary bureaucratic conventions rest largely on a normative perspective (Olivo 1998). The democratic ideals celebrated in the normative approach are often vague or implicit, creating “mandates that do not always specify what the participation is intended to achieve” (Kweit and Kweit 1981, p. 8). Such ambiguity prevents the creation of clear standards by which to judge participation efforts and careful reform prescriptions. This section seeks to add some clarity to the normative perspective by presenting a typology of participation goals based on normative values that allow participation efforts to be categorized. This framework is applied to developing countries, using examples of participation during the development of Poverty Reduction Strategy Papers.

Arguments for Participation

The literature on participation catalogues the virtues of civil society and public deliberation of issues (Cooper 1984; Crosby, Kelly, and Schafer 1986; Fox and Miller 1996; Frederickson 1982; Habermas 1989, 1996; Putnam 1993; Stivers 1994). A result is an increased call for direct citizen participation in public decision making (King, Feltey, and Susel 1998). Citizen participation occurs when citizens or their representatives (who are not elected officials) interact with and provide feedback to government at the policy formulation or implementation stage of governance. Four interrelated arguments support the rise of public participation: postmodern discourse theory, disillusionment with bureaucracy, the search for a democratic ideal, and the need for participation in developing countries.

The postmodern argument

Citizen participation is frequently characterized as an inevitable outcome of a logical movement from insulated, bureaucratic modes of governance to more open, transparent, and participatory approaches. Democratic theorists propose that current societal conditions and an understanding of the dynamics of individuals in relation to their governments in liberal democracies make it ever more likely that citizens will seek to involve themselves in public decisions through discourse (Fox and Miller 1996; Maier 1994; Wamsley and Wolf 1996).

One broad rationale underlying such a movement is a shift in citizen values in a “postmodern” age. Cross-time and cross-country surveys provide evidence of a worldwide shift to “postmodern values,” including a distrust of formal institutions such as government and political parties and a desire

for more participatory democracies (Inglehart 1997). Proposed reasons for the value shift include the increased mobility of individuals, the weakening of the traditional family structure, and the erosion of values that structure produced, including a benevolent view of authority (Kweit and Kweit 1981). Societal change, particularly increased education, leads to greater demand for involvement and access to information (Thomas 1995). Access to information is facilitated by new technologies. Citizens therefore enjoy both the will and the means to break the monopoly and centralized control over public information enjoyed by the government (Cleveland 1985). Given these changes, the isolated hierarchical structures of the traditional bureaucratic form appear increasingly out of step with the societies they serve. Many of these societal changes are more clearly apparent in richer countries, but there are additional rationales for looking to participation in the developing setting as well.

Disillusionment with bureaucracy

Disillusionment with the traditional governance model of hierarchical bureaucracies and insulated public servants and a belief that participation checks administrative power have spurred interest in participatory processes. For many years the Weberian hierarchical-bureaucratic model has been attacked from various sides as lacking responsiveness. Bureaucratic organizations have proved unable to create an inclusive relationship with the citizenry (Zajac and Bruhn 1999). The value of bureaucracy stems from its expertise, which puts it in conflict with the democratic or representative values that underpin the idea of participation.

Popular unease with the perceived growth in government and acknowledgment of the discretionary authority of bureaucracies gave rise to a search for alternative modes of democratic accountability and bureaucratic control. One of the main alternative models of governance is the participatory model, which involves the “search for more political, democratic, and collective mechanisms for sending signals to government” (Peters 1996, p. 47).

Public participation operates as an external check on bureaucracies, whose power grew in the twentieth century. Recent proposals for participation appear equally distrustful of bureaucrats and elected officials, both of which are part of the “representative bureaucracy” (Barber 1986). According to this view, “representative bureaucracy” undermines individual responsibility for beliefs, values, and actions and is incompatible with freedom, because it delegates and alienates political will. In place of

“representative bureaucracy,” advocates of participation support the development of “strong democracy,” characterized by increased citizen participation (Barber 1986). Local governments are particularly suited to this model. As Peters (1996, p. 58) notes, “Local governments, by their very size, make participation more meaningful. Moreover, local governments tend to use more mechanisms that permit direct citizen involvement than do national or regional governments . . . in ways that would probably be impractical for national governments.”

The search for the democratic ideal

The idealistic nature of the goals of participation, particularly the yearning for the democratic ideal, explains much of its appeal. Minimalist treatments of participation (for example, Easton 1990) emphasize the importance of participation in preventing popular alienation from government and maintaining the stability of the political system. A more active approach, typical of normative theory, shows greater concern for participation that produces benefits to citizens and offers them the chance to fulfill the “democratic wish” to exert real influence on the governing process (Morone 1998). These ideals are closely associated with the fulfillment of citizen rights in a democratic society.

Support for democratic ideals appears to have grown with the rise of postmodern values. Such ideals are often considered in abstract terms and tend to evoke affective rather than cognitive responses from individuals. Any form of citizenship beyond simple legal status requires active citizen involvement in public matters and the community (Cooper 1984). Participation serves to establish the worth of individual citizens, allowing them to feel a sense of ownership and take an active part in controlling their surroundings and developing their capacity to act as citizens (King and Stivers 1998; Kweit and Kweit 1981). The process of public deliberation is expected to generate benefits not only to individuals but also to society, in terms of democratic legitimacy and a deliberative political culture (Habermas 1996).

The needs of developing countries

Many of the arguments presented so far are abstract. But in developing countries the need for participation is very real. Participation is particularly important because it fosters good governance, promotes transparency, increases social justice by involving the poor and excluded, and helps individuals become better citizens.

PARTICIPATION FOSTERS GOOD GOVERNANCE. Poorer countries desperately need accountability and competent performance; participation is one way to achieve these goals. Proponents of participation in richer countries share a disappointment with representative government. In poorer countries criticism of the status quo is more pertinent. Proponents of participation in poorer countries point to corruption, opaque resource allocation, the failure to deliver basic services, and a power structure that offers nonelites little opportunity to have their views heard. The criticism of representative government in many poor countries is not so much that it has failed to promote citizen involvement but that it has failed to meet its basic responsibilities. A failure to govern in an open, competent, and predictable fashion has also stymied economic development.

Some scholars (such as Lynn 2002) argue that participation undermines institutions of representative government. Such claims are less convincing in the developing-country context, where citizen involvement can force comparison between clientelist or corrupt representatives and participatory forums (Heimans 2002). Political systems that have a record of poor governance may decide to foster participatory forums in order to increase the government's legitimacy (Moynihan 2003; Olivo 1998). The more representative the budget process appears to be, the more credible it will be in the eyes of citizens and external stakeholders.

In addition, some forms of participation can strengthen the ability of the legislative branch and external parties, such as the media and interest groups, to check the centralization of power in the executive branch. Where legislators have little experience, little understanding of the budget process, or inadequate information upon which to make judgments, NGOs that provide budget analysis can strengthen the ability of one branch of government to require accountability of the other.

Another argument for participation in a developing-country context is that it is a desired and natural outgrowth of trends toward fiscal decentralization (Robinson 2004). Fiscal decentralization is intended to reduce central control in favor of local preferences that foster allocative efficiency. The promise of fiscal decentralization is therefore also a promise of participation, and the success of one depends on the other. The good governance argument also links directly to overarching economic development concerns. Top-down investment strategies and public policies that fail to incorporate the preferences and oversight of those they serve will struggle.

PARTICIPATION PROMOTES TRANSPARENCY. Related to the good governance argument is the view that participation provides additional sources of information not available through traditional political institutions. Participation is particularly useful in developing countries because it not only provides information to the government on citizen preferences but can also provide an alternative guide to external stakeholders who normally deal directly with government.

Participation and transparency may go hand in hand in developing-country governments. Fölscher, Krafchik, and Shapiro (2000, p. 43) note that in South Africa “a closed budget drafting process and lack of legislature amendment powers severely restrict legislature and civil society participation in the budget process. Whereas some legislatures have carved a space for themselves in monitoring the implementation of the budget, they are also largely unable to effectively scrutinize budget plans before passing the budget. In turn this restricts civil society input into the budget.”

PARTICIPATION INCREASES SOCIAL JUSTICE. Many of the arguments for participation rest on the normative claim that citizens have a right to a say in decisions that affect their future in any democratic system. The exclusion of the poor has been so extreme in developing countries that some deliberate form of empowerment is needed.

PARTICIPATION HELPS INDIVIDUALS BECOME BETTER CITIZENS. Participation can benefit citizens and society more broadly by providing “citizenship schools” for people who have had limited involvement in civic life (Wampler 2000). Participation helps citizens learn about their rights, express their views to representatives, and see these views affect policy and action. Through participation citizens learn the basic language and practices of governance. NGOs and governments can play a vital role in offering advice to citizens on how to understand what government policies mean for them, how to present their views, and how to assess government services. As citizens become skilled in the art of democracy and social capital builds, their ability to hold their governments accountable and to foster high performance should increase (Putnam 1993).

The Need for Real Participation

The arguments for participation overlap and complement one another to some degree. The literature on participation also suggests that not all modes of

participation are created equal. Some are better able to foster accountability and represent the views of the public than others. A typology of the goals of participation must be developed to evaluate its different forms.

Pro-participation arguments portray participation as a channel for direct democratic voice in decision making. These arguments call for direct and open involvement of citizens in decisions that affect them. A primary goal of this approach is to increase the direct representation of all citizens. All citizens, not just those who are qualified by election, position, expertise, influence, or money, should be able to provide input.

According to Habermas (1989), participation processes must include all affected by a decision and disregard the social status of the participants. The first element of the typology, therefore, is the range of citizen involvement (the extent of representative participation). The range of involvement is narrow when only a handful of citizens or a particular socioeconomic group dominates decision making. The range becomes broader with the involvement of interest groups. It is broadest when large numbers of citizens representing different socioeconomic groups are directly involved. The involvement of more citizens helps reduce the uncertainty inherent in any effort to make decisions about the future (Hellström 1997).

A second primary goal of participation is that government provides for genuine discourse with its citizens and takes their input seriously, which Pateman (1989) labels full participation. Participation should be authentic and have a genuine impact on public decisions (Fox and Miller 1996); the use of participatory budgeting forums is of little benefit if the government does not listen. Such forums may be attractive to government for the symbolic value they provide. As Wampler (2000, p. 3) notes, among local governments in Brazil that have adopted Porto Alegre's model of participatory budgeting, "there is wide variation in the success, as some administrations only play lip service to the programs."

Under full participation each member of a decision-making body has an equal say in the outcome of decisions. The second aspect of the typology is, therefore, the level of citizen involvement, measuring the extent to which full participation occurs (Arnstein 1969; Pateman 1989). Three levels of participation can be distinguished (table 2.1). Pseudo participation suggests a token effort at fostering public involvement. Partial participation suggests that citizens are consulted but have limited impact on public policy. Full participation indicates that citizens have an authentic discourse with government, and their views are taken into account.

TABLE 2.1 Typology of Citizen Participation

Level	Representativeness	
	Broad	Narrow
Full		
Decisions	Public officials make decisions, but citizens have strong influence.	Public officials and selected interest groups make decisions.
Participation	Large, diverse groups of citizens engage in meaningful discourse with government.	Interest groups exert significant influence; most citizens lack opportunities to participate.
Partial		
Decisions	Public officials make decisions; citizens have limited influence.	Government elite make decisions; interest groups have limited influence.
Participation	Large, diverse groups of citizens engage in limited discourse with government.	Interest groups exert influence; most citizens lack opportunities to participate.
Pseudo		
Decisions	Public officials make decisions.	Public officials make decisions in nontransparent manner.
Participation	Participation is symbolic but involves large, diverse groups of citizens.	Participation is symbolic, involving only a small number of citizens.

Source: Adapted from Moynihan 2003.

Fostering Broad and Meaningful Participation in Developing Countries

Fostering broad and meaningful participation in developing countries is particularly difficult because governments are not inclined to share decision-making power with the public. The limited capacity of many of the actors also limits participation. The poor generally have limited education, a low level of literacy, and little familiarity with the policy process. Governments often cite this lack of capacity as the reason why they resist participation by the poor.

These concerns may be overstated. The quality of participation depends a great deal on how participation is organized, how citizens are asked to express their views, and how they are presented with information about topics such as resource limits and tradeoffs. Even in developed countries, where participants' education and their knowledge of government are presumably higher, there is wide variation in the quality of participation.

This variation can be explained chiefly by how the participation forum is organized (Moynihan 2003). Organizers of participation processes need to consider the capacity of citizens and design a system that maximizes the quality of involvement (as they did in the case studies discussed in the next section).

If low citizen capacity is indeed a problem, it must be addressed before the participation process gets started. If capacity cannot be improved, another solution must be found. One capacity-improving task is to provide citizens with basic information: what participation hopes to achieve, what is at stake, and how participation contributes to the decision-making process. An alternative to capacity building of citizens is for NGOs to provide technical analysis of budgets and policy proposals. NGO staff tend to be among the best educated among the population and therefore may be classified as elite. Without their help, however, citizen views may go unrepresented or be represented in a very limited fashion. Given the capacity limitations of the public, it is reasonable to expect that NGOs will play an important role and that it may not always be possible to achieve the goal of broad participation. Donors can help by investing in the capacity of local NGOs (Heimans 2002).

Even where participation is fostered, citizens may focus only on narrow issues that affect them directly. They may be unwilling to make tradeoffs and determined to exclude some groups. (Higher-income individuals, for example, were more likely to participate in Porto Alegre's participatory budget processes [Navarro 1998].) A basic function of organizing participation is fostering a process that discourages these tendencies. This involves encouraging citizens to think about their interests broadly, to make tradeoffs, to recognize the limits on resources, and to avoid sectionalism.

While participation forums rest on the assumption of civic duty, they are more likely to succeed if they can tap into motivations of self-interest. At the same time, such forums must limit the downsides of self-interest. The traditional budget process also faces this danger, as agencies compete for scarce resources. Some of the lessons from the traditional budget process may be helpful. Hard and explicit budget constraints can help identify the limits on resources available and prompt citizens to make tradeoffs.

Another danger is unrealistic expectations. Citizens may assume that once they have a voice in making decisions, dramatic changes will occur immediately—unemployment will disappear, poverty and inequality will be reduced. Such expectations are unrealistic, especially if participation is occurring chiefly at the local level. Part of the challenge to organizers is communicating the limits on available resources.

Participation in Poverty Reduction Strategy Papers

One way of assessing participation in developing countries is to assess participation in the development of Poverty Reduction Strategy Papers (PRSPs). As the World Bank sought to establish a program of debt forgiveness for heavily indebted poor countries, it asked governments to develop PRSPs based on an open and participatory process (McGee and Norton 2000). The initiative created something of a natural experiment in participation, testing the willingness and ability of governments to engage in broad and meaningful participation when tangible rewards are at stake. The studies that have examined these efforts suggest that fostering participation in developing countries is difficult.

In their analysis of PRSP participation in 10 African countries, McGee, Levene, and Hughes (2000) suggest that governments conceived of participation as requiring consultations rather than broad citizen involvement. Among the weaknesses they observed were “poorly conceived, rushed, exclusive, and badly organized consultation procedures, failure to provide essential information to participants, inadequate time allowed for participants to analyze drafts before commenting on them, and lack of transparency in selecting participants” (p. 7).

Andrews (2004) finds that officials in Mozambique claimed that participation efforts were consistent with a tradition of public consultation but were actually characterized by a bias toward including groups with technical or financial backgrounds and strong connections to government. Broader civil society, NGOs, local governments, and citizens were poorly represented. Government departments defended their approach by pointing to the difficulty of interacting with civil society within a limited time line. NGOs that were consulted complained that they were included only to rubberstamp decisions that had already been made. This suggests that the involvement of some participants was for symbolic purposes only. Another indicator of the symbolic approach was the very limited time for consultation, which provided little room for actual dialogue.

Andrews also notes a bias in favor of the national capital. The government was more likely to involve citizens who could easily reach the capital. Local leaders had little sense of the purpose of the planning and little possibility to access resources. They were therefore not motivated to hold the government accountable for the way resources were allocated. “Citizens have no idea that these funds even exist, or that a plan to improve their lives is in place, and thus they have no expectations or demands of government. Their relationship with the authorities can best be described as a ‘hope and pray’

approach” (Andrews 2004, p. 27). “There is a distinct lack of any kind of meaningful participation in the ongoing development or implementation of PARPA [the Action Plan for the Reduction of Absolute Poverty] or in the monitoring and evaluation of the strategy” (p. 29).

A similar pattern is evident in Honduras. “The major obstacle for civil society participation in the PRSP process is that the central government will not enter into a dialogue with NGOs,” writes Forner (2002, p. 117). “Without the direct input from the municipalities and localities, governments lack the capacity to develop a realistic poverty-reduction plan, and their current PRSPs reflect the absence of input.” An analysis of PRSP participation in Bolivia, Malawi, and Rwanda concludes that the process was rushed, poorly organized, and dominated by elite groups (Painter 2002).

These reviews suggest that participation has fallen well short of its goals. Participation appears relatively narrow, excluding large sections of society based on geography or income. It also appears to be consultative at best, characterized by rushed processes that allow little prospect for meaningful dialogue.

Participation in Budgeting

There is no agreement on what *participatory budgeting* means or how to go about it: the study and dissemination of the idea of participatory budgeting are following practice rather than the other way around. In developing countries around the world, innovative ways are being found to increase public involvement in the budgeting process. As these examples and others become better known, their influence can be expected to grow.

Participatory budgeting aims to infuse the values of citizen involvement into the most basic and frequently the most formal procedure of governance—the distribution of resources through the budgeting process. Citizen involvement can foster accountability, transparency, and more effective distribution of resources. Proponents of participatory budgeting also see it as a way of challenging the exclusion of nonelite groups from the process. Wampler (2000, p. 1) describes the ambitious and multiple goals of participatory budgeting:

These programs are designed to incorporate citizens into the policy-making process, spur administrative reform, and distribute public resources to low-income neighborhoods. Social and political exclusion is challenged, as low-income and traditionally excluded political actors are given the opportunity to make policy decisions. Governments and citizens initiate these programs to

promote public learning and active citizenship, achieve social justice through improved policies and resources allocation, and reform the administrative apparatus.

This section examines the potential for participation at each of the four different stages of the budget process: budget preparation and budget approval (or resource allocation), budget execution, and audit and performance evaluation. The approach provides lessons from a series of case studies on how participation might be organized at each stage of the budget process.

Participation in resource allocation

The preparation and approval stages of the budget process are traditionally bottom up in nature, driven by agencies with some basic guidance on budget constraints and priorities from elected officials. Agencies tend to budget based on previous allocations. This maintains rigidity in the distribution of resources. Agencies usually submit their proposed budget to a central budget office, which amends the budget before forwarding it to the legislature. Once the budget reaches the legislature, the budget approval process begins. It is still possible for participation to occur at this stage, but the basic procedures of approval are centralized in legislative committees. The modes of participation that can have an effect at this stage (committee hearings, lobbying of members, providing analysis of the executive budget proposal) do not lend themselves to direct citizen involvement. In political systems in which the executive branch is dominant, it is unlikely that the legislature will radically change the proposed budget. For these reasons there is greater opportunity for the active participation of citizens during the budget preparation stage than during the budget approval stage.

PARTICIPATORY BUDGETING IN PORTO ALEGRE. An example of participation in setting priorities and proposing allocations can be seen in the participatory budgeting processes in more than 100 municipalities in Brazil. The prototype is Porto Alegre, the capital of the Brazilian state Rio Grande do Sul, which began using participatory budgeting in 1989. Before the introduction of participatory budgeting, the city government was dominated by a clientelistic approach, in which public resources were used to maintain a political machine (Fung and Wright 2001).

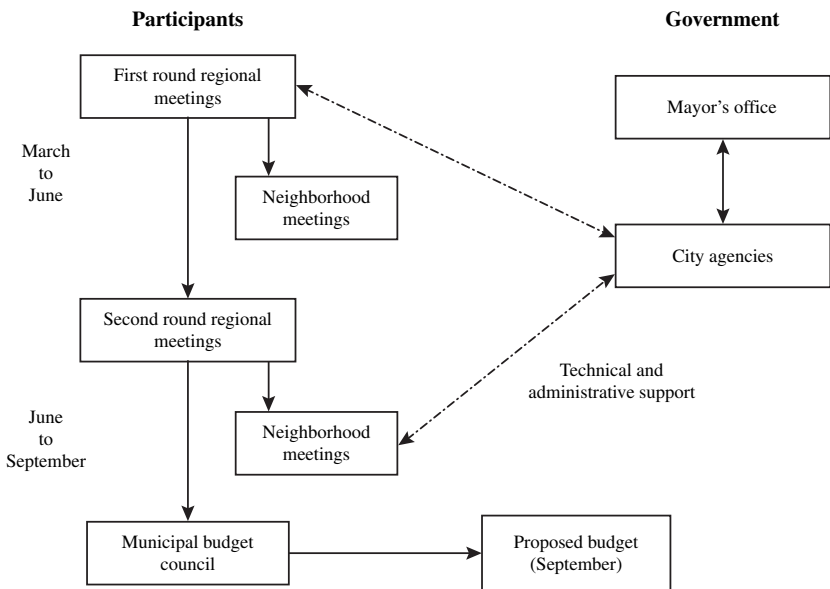
A key event leading to the use of participatory budgeting was the election of the Worker's Party candidate as mayor. The party had campaigned on the issue of democratic participation and redistribution of public spending

toward the poor. When it assumed power, it faced a bankrupt municipality and a disorganized bureaucracy (Wampler 2000).

In Porto Alegre the mayor's office is responsible for initiating the budget bill (figure 2.1). The municipal government then organizes a series of public meetings by region. The schedule of meetings is made publicly available. Additional information is distributed to the public, often in the form of a Quality of Life Index, which provides measures of basic indicators of well-being.

Two meetings a year occur in each of 16 regions. The meetings include broad representation. "City executives, administrators, representatives of community entities such as neighborhood associations, youth and health clubs, and any interested inhabitant of the city attend these assemblies, but only residents of the region can vote in them. They are jointly coordinated by members of municipal government and by community delegates" (Fung and Wright 2001, p. 13).

The first meeting includes a discussion of how the previous budget was spent. Meeting attendees choose citizen-delegates, who are responsible for articulating regional priorities. The number of delegates chosen by each region in the municipality is determined by turnout at the meetings. This motivates



Source: Adapted from Wampler 2000.

FIGURE 2.1 Participatory Budgeting Process in Porto Alegre, Brazil

mobilization and turnout at the regional level. Citizen-delegates hold neighborhood meetings, usually weekly, to assess the region's spending priorities.

At the second set of regional meetings, citizen-delegates report their findings from neighborhood meetings. Two delegates and a substitute are selected to represent each region at the municipal budget council, called the Participatory Budgeting Council. This council also includes 10 delegates elected to represent the city as a whole on specific thematic issues, a union representative, a representative from the union of neighborhood associations, and two representatives of central municipal agencies. The council, which meets at least once a week from July to September, develops a set of proposals that it delivers to the mayor on September 30.

The mayor can accept the budget or ask the council for revisions (a request that the council can override with a two-thirds majority). The mayor's office incorporates the proposals (which usually deal with public works) in its proposed budget. The mayor presents the budget to the local legislature, which usually approves it.

Throughout the process the municipal government works as a partner with the Budgeting Council. Bureaucrats offer logistical and technical support, and the municipal government sets and publicizes meeting times. City agencies provide seminars on budgeting to Budgeting Council members and other interested delegates.

The multiple steps in the process allow for very broad participation. The municipality estimates that more than 100,000 people—8 percent of the population—were involved in the 1996 budget process (Fung and Wright 2001). Citizen participation appears to have had measurable benefits, including the expansion of access to basic public services such as sewerage systems, water, and paved roads. Wagle and Shah (2002) argue that the increased transparency of the budget process has reduced the motivation to avoid taxes, increasing municipal revenues.

CITIZEN SUMMITS IN WASHINGTON, D.C. Governance problems in Washington, D.C., were so severe in the 1990s that the city was dubbed "America's worst-run city" (Elliott 1995). Nearly three-quarters of residents viewed their municipal government as corrupt (Riley 1989).

The use of citizen summits in Washington, D.C., illustrates the potential for citizen participation in the context of strategic planning and budgeting. The case also offers insight into the use of technology to facilitate participation. Technological innovations may not be feasible in poorer regions in developing countries, but they are becoming more affordable and are a useful example of a way to foster dialogue.

In 1999 the city's mayor, Anthony Williams, established a series of citizen summits to involve the public in the strategic planning and budget process. The Office of Neighborhood Action was created to organize citizen participation that would link to district strategic planning. It initiated a goal-setting process with the mayor's office and developed a four-page tabloid version of the strategic plan, which it presented to citizens before and during the summit. The document informed citizens of the basic issues in order to improve the quality of the dialogue.

The citizen summit lasted more than seven hours and included the development of city-level and neighborhood vision statements, discussion of city-wide priorities and the draft strategic plan, and identification of action items for each neighborhood.² Efforts were made to ensure that all elements of Washington's diverse citizenry were reached. The summit was open to all comers, and summit literature and translations of the proceedings were available in Chinese, Korean, Spanish, and Vietnamese. Demographic surveys found the summit to be racially representative of the city's population.

The nearly 3,000 people who attended the summit were divided into tables of 10. Trained facilitators sat with each group to facilitate meaningful dialogue. The messages developed at each table were recorded using networked laptop computers, which fostered discussion among the individuals in each group and consensus about those messages. The computers also allowed the mayor to receive and respond to the messages during the forum, thus providing greater interaction. Polling keypads allowed the mayor to ask citizens to vote on any question at any time during the summit. The instantaneous results were displayed on large screens at the front of the room. Citizens prioritized citywide goals and ranked them according to level of support. The data collected from the keypads were cross-referenced with demographic data collected at the beginning of the program, when participants completed a short survey.

Input from the meeting helped shape the format of the budget and the allocation of resources. In preparing budget requests, each department asked for resources to pursue the strategic issues raised at the summit and codified in the strategic plan. The meeting also pushed for suggestions on how to solve problems at a more local level. Residents from different wards were encouraged to express their opinions on neighborhood issues. The summit became the first step for more localized district and citizen planning and action efforts through a series of Strategic Neighborhood Action Plans. These plans were designed to link to actual resource provision and operations at the micro level. Management teams made up of agency officials were appointed for each ward and tasked with addressing persistent neighborhood problems raised

in these local plans. Goals from the district plan were linked to performance standards for senior officials. Each department head was given a performance contract and a public performance scorecard, consisting of a one-page list of key performance targets and measurements of success or failure in achieving those targets. Targets incorporated goals that had been raised at the summit and were of relevance to the particular department.

Following the summit, a revised strategic plan was presented to citizens at a second summit. About 1,500 citizens (60 percent of whom had participated in the first summit) attended. They had the opportunity to hold the mayor accountable for the revisions and offer comments before the plan was completed. The final version of the strategic plan bore the clear imprint of the meetings. The front section of each issue-driven chapter identified specific citizen concerns and priorities and the resulting strategic goals. Each goal was tied to a specific action item that described what implementation steps were taking place to achieve the goal. A performance target accompanied each action item. The plan identified the agency responsible for the target and the date by which the target would be achieved.

BUDGET MONITORING BY AN NGO IN SOUTH AFRICA.

By analyzing allocations in a budget, stakeholders can see where government spends money. They can also determine if allocations match stated goals and how specific groups are affected.

Such an approach is exemplified by the Institute for Democracy in South Africa (IDASA), an NGO that combines advocacy, training, and research. IDASA specializes in budget analysis, providing detailed policy analyses of proposed resource allocation choices. In a country where legislative institutions are poorly staffed, such expertise ensures that policy capacity is not the monopoly of the executive branch of government. IDASA recognized that “one of the fundamental obstacles to democratic consolidation was the flow of critical, timely and accessible information from citizens to the legislature and back again” (Krafchik 1999). To meet this need, it took upon itself the task of providing this information.

IDASA started by helping train the wave of inexperienced legislators who came to power in the first post-apartheid elections of 1994. In 1995 IDASA began analyzing the budget from the perspective of women (the Women’s Budget) and children (the Children’s Budget), an idea inspired by the United Nations conventions on the rights of women and children. The purpose is to assess whether expenditure and taxation policies are in line with the goals of these conventions. IDASA uses researchers from other NGOs who specialize in women’s and children’s issues. It gives them

budget training and puts them in contact with a source (usually from the government or legislature) who can provide access to information and advice on how to use expert analysis effectively (Budlender 1999). For the Women's Budget, IDASA partnered with the Community Agency for Social Enquiry and other groups.

IDASA strengthens its advocacy efforts through research and training on gender-sensitive budgeting. Its research looks at the extent to which budgets and associated policies are gender sensitive. Its training builds the capacity of organizations, legislatures, and government agencies to conduct gender-sensitive budget analysis. Training fosters the sharing of research information and empowers others to undertake research themselves. Knowledge of advocacy is passed along through training sessions.

Research conducted by IDASA generates a range of products. The Women's Budget analyzes how allocations affect gender issues. It suggests how reorganizing spending priorities could improve gender equity and general welfare. IDASA has also examined the relationship between gender and revenues, finding that despite progress toward removing discriminatory aspects in the tax code "there are still significant elements of discrimination against women in South Africa's taxation policy" (Smith 2000, p. 1). IDASA has published a series of working papers that examine how different national government departments use resources in ways that affect women (see, for example, Sadan 2005).

IDASA makes frequent use of the media. It responds to every budget with a press release. IDASA members make themselves available for interviews with the media, targeting newspapers with broad circulation and those likely to be read by policy makers (Krafchik 1999). They record a radio program to reach a still wider audience. IDASA also actively uses the Internet (<http://www.idasa.org.za/>) to disseminate its analyses. In all public relations efforts, IDASA attempts to tailor its message to the audience. It prepares the Women's Budget and Children's Budget in two forms (a longer, more complex version and a simpler version) so that information is accessible to a broad range of the public.

Participation in budget execution

Budget execution involves the disbursement and spending of resources. In theory, the intent of the budget approved by the legislative branch is carried out. In practice, this does not always occur, for two main reasons.

First, governments tend to provide bureaucrats with some measure of discretion in the allocation of resources. The degree of discretion depends very much on the nature of the budgeting system. One extreme is a pure

line-item budget system, in which the legislature identifies spending items in great detail, specifying every machine to be purchased, every employee to be hired, every well to be dug. At the opposite end of the spectrum is a program budget, in which legislatures specify general goals but let bureaucrats decide how to spend the resources allocated to reach those goals. Most governments fall somewhere in between, specifying major items to be purchased but leaving the details to bureaucrats.

Regardless of the approach, participation matters. Where bureaucrats face a strict line-item approach, citizens can track exactly what should be provided and assess whether resources were actually spent as promised. Where bureaucrats have a high measure of discretion, citizens become more important players. They may undertake lobbying activities and form partnerships to influence the shape of disbursement decisions.

Second, actual spending is often at odds with the stated intent of the government. Sometimes this may be due to spending cuts as a result of declines in revenue. In this case, money previously allocated is simply not available (World Bank 1998). In other cases, money allocated to service providers is siphoned off as it goes through various administrative levels.

TRACKING SPENDING IN UGANDA. Despite a doubling of spending on primary education between 1992 and 1995 (mostly on salaries), student enrollment appeared to remain stagnant in Uganda (Reinikka and Svensson 2001). One explanation was that the schools were not actually receiving the money allocated.

To determine where spending on education was going, the World Bank, in collaboration with the Ugandan government, the local Economic Policy Research Centre, and an independent Ugandan consulting firm, MSE Consultants, surveyed 250 government schools, randomly selected from 19 of Uganda's 39 districts. The survey compared allocations to schools by the central government with the individual schools' records of funding received.

The results showed that between 1991 and 1995, only 13 percent of non-salary spending on education reached the schools that the funds were intended to help (Reinikka and Svensson 2004). Most schools received no capitation grants at all. Education offices at the district level had been keeping most of the nonsalary funding—as well as the bulk of the tuition fees paid by parents.

Although the problem was widespread, some schools were more likely than others to suffer the effects of leakage. Smaller schools, schools serving children from poorer families, and schools with less qualified teachers received

less capitation funding (Reinikka and Svensson 2001). This suggested that leakage was less likely to affect schools that actively mobilized and used their political resources.

As a result of the survey findings, changes were made. The government reported amounts of school transfers to local media. Schools and districts were required to make public the amount of government money they received. The expectation was that the provision of this information to local parents would discourage the leakage of funds for noneducation purposes. With this information, parents and teachers were more likely to mobilize and demand the full funding that government had allocated.

Schools were also given more direct control over resources. Allocations were deposited directly into individual school accounts, and schools became responsible for buying their own goods rather than relying on central purchasing at the district level. A 1998 survey by the government found that these measures were effective in increasing the flow of funding to schools. By 2001, 80 percent of budgeted funds were reaching the schools, as intended (Reinikka and Svensson 2001).

DEMYSTIFYING THE BUDGET AND TRACKING SPENDING IN INDIA. In the western state of Gujarat, India, the NGO Development Initiative for Social and Human Action (DISHA) created a relatively simple yet effective way to monitor implementation of budgeted allocations. The state budget provides very specific line-item detail on where public resources will be spent and what resources will be spent on. For DISHA this provided an opportunity to hold the government accountable and to demystify what appeared to be an arcane budget process to all but a few government officials.

DISHA is an NGO with very broad membership. Its more than 80,000 members include tribespeople, miners, and forest, agricultural, and construction workers. Tribal and other indigenous groups, who live in the hilly regions in Gujarat, make up about 15 percent of the state's population (Mistry 2000).

Since the early 1980s, India's national government has sought to target spending toward tribal regions through a Tribal Area Sub-Plan. While spending increased, the level of economic development and infrastructure spending remained low. DISHA sought to understand where the resources were going.

DISHA examined the budget for allocations to specific projects, such as the construction of roads and the digging of village wells. (The state budget details allocations for all sectors, schemes, and programs to the village level.) It then surveyed village authorities and asked them whether and to what

extent the project had actually been implemented. M. D. Mistry of DISHA (1999) summed up the approach as follows:

One can really find out, which we do in our office, that the money that was put in was spent. We write to the village saying that this money, the 10,000 rupees, was spent in constructing a road from your village to the main road linking your village to the main road. Please let us know whether this road is built or not. And you get an answer from them. . . . So it is easy to find out whether the money is spent or not, and if not, then raise it a) in assembly b) you write and c) give it to the press and raise it, thereby holding them accountable.

By surveying villages, DISHA raises awareness of political promises and provides village authorities with valuable information about what resources they should have received. DISHA is then able to incorporate the village's political support in efforts to lobby for these resources (World Bank 2001).

DISHA has also cultivated the support of local officials by offering budget training to village representatives (*sarpanches*). Some 300 current and former *sarpanches* from about 140 different villages took part in a budget workshop in 2000. They learned skills such as how to read and understand budgets, identify allocations for their villages, recognize and discuss local investment needs, and plan lobbying and protest efforts.

DISHA has complemented budget execution analysis with other types of analyses that contribute to the approval stage. In analyzing a budget, DISHA identifies what spending will benefit the poor, points out any errors in calculations or in fiscal discipline, and looks at the relationship between public statements by the finance minister and proposed allocations. Some of the information DISHA develops is very basic and would be taken for granted in most budget systems. For example, DISHA lists resources allocated for each department and how they compare with previous allocations. It also identifies major areas of new spending or spending cuts. These analyses are converted into short budget briefs that aim to equip legislative members, the media, and civil society with basic facts and questions about resource allocation priorities (World Bank 2001). This information, written in local languages and tailored to local interests, is also disseminated to the public, usually through schools in remote areas.

DISHA disseminated its analysis to members of the state legislature and the media. It found that many legislative members were sympathetic to their claims but had trouble understanding the budget. The information DISHA provided gave legislators facts and figures they could use to assess the efficacy of disbursements. As M. D. Mistry of DISHA notes, "The elected members of the party at various levels felt 'empowered' with handy

information and began to participate in the debate on public expenditure. [Provision of this information] shifted the debate on public expenditure from the selected few to a majority of members, thus improving governance through improved/enlightened debates” (Mistry 2000). DISHA’s analysis of the execution process in one budget cycle thus influenced the approval process in the next cycle.

DISHA’s activities have raised the quality of debate on the budget and grounded it in facts and research. Media coverage is better informed. The finance minister takes greater care to ensure that statements match allocations and that allocations reach intended projects. The demystification process that DISHA fostered has improved basic communication about spending and priorities and enhanced the transparency of the budget process.

Participation in audit and performance evaluation

The final phase of the budget process is its evaluation. Traditionally, this meant that spending was audited to ensure consistency with intended spending. More recently, the audit function has come to incorporate assessment of the outputs generated by spending and suggestions for improving performance (Barzelay 1997). There is scope for citizen participation at this stage, particularly in evaluating performance.

A basic performance benchmark is the satisfaction of citizens and the quality of their interaction with the public sector. By administering surveys on access and satisfaction, NGOs can gauge the success of policies.

In Bangalore, the capital of the state of Karnataka, India, such information is presented in the form of performance report cards (Paul 1998). Citizen surveys in Bangalore were first undertaken in 1993 by an individual, Samuel Paul, with help from a private sector marketing firm. The following year Paul formed the Public Affairs Centre (PAC), an NGO dedicated to improving the quality of governance in India. PAC created report cards in Bangalore in 1999 and 2003. The report cards are based on citizen surveys that examine satisfaction with government services in urban areas in Bangalore. Paul (1998, p. 3) describes the basic logic and validity involved in using report cards that draw on the experience of the users of a service:

A report card represents an assessment of the public services of the city from the perspective of its citizens. The latter are the users of these services and can provide authentic feedback on the quality, efficiency, and adequacy of the services and the problems they face in their interactions with the service providers. They may not be able to comment on the technical features and standards of the services or to evaluate the overall performance of a provider. But they are eminently qualified to say whether the service meets their needs, and whether

the agency is responsive, corrupt, reliable, etc. When customers rate an agency on different dimensions of the service, it provides a basis for judging its performance as a service provider.

The first round of surveys selected a random sample of homes in each of six regions of the city. It classified respondents as middle or upper income (807 households) or lower income (327 households). Respondents were asked to describe the quality of the services they had received in the past six months: their overall satisfaction, staff behavior, how many visits were required to solve a problem, and whether the problem was actually solved. The 1999 round of surveys expanded the number of participants to 1,339 middle-income households and 839 households from slum areas.

The surveys covered basic services, such as water supply, electricity, garbage removal, hospitals, and police services. The 1993 and 1999 surveys found low overall levels of satisfaction with services. Relative to middle-income households, the poor had to visit agencies more often to solve a problem, were more likely to have to pay a bribe (usually to police), and were less likely to have their problems solved. Despite these problems, the poor tended to show similar levels of satisfaction with services, presumably due to lower expectations.

Upon completion of the 1999 survey, PAC sought a way to increase the impact of the survey results. It developed the report card format and aggressively promoted the report cards to the media. The cards were unveiled at a press conference that generated significant media coverage. All the major newspapers in Bangalore published the findings, and the high-profile *Times* of India ran a weekly feature for two months on issues raised by the cards (PAC 2003). PAC appreciates the importance of the media, which “has become an active stakeholder in making Bangalore citizens more aware and putting the spotlight on issues that need to be addressed. The big change has been the wide involvement of resident associations and civic groups in engaging with city agencies in campaigns and initiatives for improving service delivery” (PAC 2003, p. 9). Paul (1998, p. 17) describes how a reporter from the *Times* of India used report card information to put the spotlight on service quality and corruption in hospitals:

Armed with the information provided by the report card, the reporter concerned went to the public hospitals and interviewed senior officials and doctors to get their side of the story. She then went on to talk to patients to get a confirmation on the report card findings. Her report on the subject in the newspaper was on the front page and generated a public debate ... that went on for several days. The message was loud and clear that the abuses and extortion being practiced in the city’s public hospitals should not be tolerated. Within a few weeks, some nurses in one of the public hospitals were arrested on charges of corruption and negligence in a child delivery case.

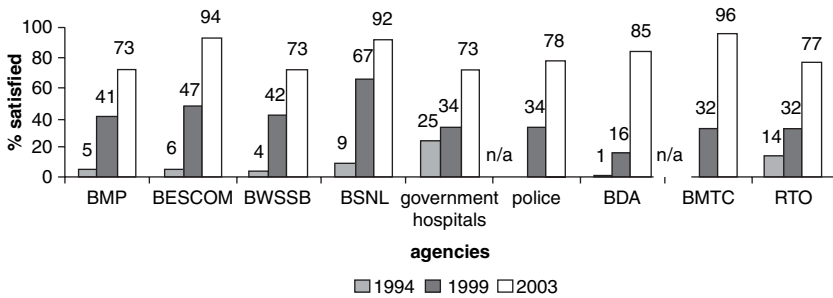
The report cards also generated a response from the government. "The responses from agency heads and senior government officials were polite but lukewarm except for a few agencies," according to Paul (1998, p. 13). But according to Wagle and Shah (2002), four of the eight agencies responsible for the services attempted to reform themselves or expand citizen feedback mechanisms.

PAC tried to foster both improvement and openness by interacting with agency officials. It briefed the agencies on the survey results and organized workshops. In one session public officials met with one another to discuss the efforts they were making to address criticisms. In another session representatives from the agencies met with the public and discussed the problems raised by the report cards. The chief minister of Karnataka created a "Bangalore Agenda Task Force" that included prominent city residents in an effort to offer responses to the problems identified. The Bangalore City Corporation also promoted an informal network of NGOs and city officials called Swabhimana (self-esteem) (Paul 1998). The network discussed ways of solving problems and identified new problems as they emerged. PAC played a coordinating role in this network. It also advised the corporation on how to establish a system by which citizens can bring their grievances directly to the government and see them redressed. This led to training officials on how to provide citizens with feedback. After a day-long collaboration with PAC, hospitals in Bangalore agreed to establish help desks to provide better customer service to patients.

The 2003 round of report cards surveyed more than 1,700 households. These surveys found increased satisfaction with almost all agencies, a lower incidence of problems, and less corruption (figure 2.2). "The performance of these agencies over the last 10 years is a picture of significant improvement in satisfaction of users of services. Of the nine agencies on which citizens of Bangalore provided feedback, all have received satisfaction ratings above 70 percent this time in contrast to less than 40 percent in 1999" (PAC 2003, p. 3).

PAC argues that the oversight it provided helped matters but that political response to the problems was also important. "It is clear that without the kind of political leadership and vision displayed by the Chief Minister [of Karnataka] in the past four years, this outcome would not have been easy to achieve" (PAC 2003, p. 8).

The report card approach has been expanded to the state level, to other Indian cities, and to other countries, including Bangladesh, the Philippines, Ukraine, the United States, and Vietnam. In the United States, university professors and journalists investigate and grade the capacity of government in a variety of management settings, including financial management, information management, and human resources (Ingraham, Joyce, and Donahue 2003).



Source: PAC 2003.

Note: Table represents overall satisfaction across three report cards in general households. BMP = Bangalore Municipal Corporation, BESCOM = Bangalore Electric Company, BWSSB = Bangalore Water Supply and Sewerage Board, BSNL = Bharat Sanchar Nigam Limited, BDA = Bangalore Development Authority, BMTC = Bangalore Metropolitan Transport Corporation, n/a = not available, and RTO = Road and Transport Authority.

FIGURE 2.2 Citizen Satisfaction with Government Services in Bangalore, 1994–2003

The Government’s Perspective on Public Participation

The normative literature on participation fails to acknowledge the practical aspects of participation and tends to overlook the importance of government administration in implementing participation (Moynihan 2003). This section examines the government viewpoint. It proposes that public officials are less attuned to normative goals of representative and meaningful citizen involvement than to concerns about perceived costs and benefits. They therefore take an instrumental perspective on participation. Efforts to increase public participation need to take into account the factors that shape governmental attitudes toward participation. The government perspective is crucial, as the degree to which public officials either create barriers or promote access to participation forums and public decisions shapes the costs and benefits that citizens consider when deciding whether to participate.

Why Government Matters

Government administrators, even when mandated to implement participation, have a great degree of control over how participatory activities are structured and the impact of the input collected from participation. As Thomas (1995, p. 11) observes:

Even when they accept the imperative [of participation], public managers and policy planners must still choose when, how often, and to what extent to involve

the public. Despite frequent managerial complaints about the constraining effects of requirements for public participation, these requirements have usually been limited to directing managers to involve the public, leaving the form and extent of that involvement to the discretion of the administrators.

Administrators have substantial power in determining how much influence to share (the level of participation) and which groups or individual citizens to involve (the range of participation). All parties in the participation process—citizens and public officials—are likely to make some judgments as to the relative costs and benefits of participation (Kweit and Kweit 1981). Any individual citizen's choice to participate (or not to participate) is likely to affect only that person. But the decisions of public managers affect the opportunity and nature of participation by all citizens.

The attitude of governments is a major predictor of whether participation will be undertaken and whether it will be meaningful. With respect to participation in PRSPs, Painter (2002) argues that the main determinant of successful participation was the role of government: "Government will and expectations strongly determine the quality of the process. An active, capable, and experienced civil society is helpful in influencing the quality of the participatory process, but not determinative." Governments limited public involvement in developing PRSPs; it is not clear that consultation shaped planning in any way.

Sometimes governmental actors are hostile to participation, viewing it as a threat to their institutional rights and privileges. In other cases governments may not be opposed to participation, but they are skeptical of it, unsure how it works and what benefits it provides beyond symbolic ones.

A more common perspective among developing-country governments sees participation in the budget process as being politically obligatory, or even politically advantageous, but of little practical significance. Governments use participatory rhetoric and limited gestures toward increased budget transparency and community budget consultations to assuage donors and reduce tensions with civil society, but they may not meaningfully engage with the process—at least initially. (Heimans 2002, p. 15)

In Porto Alegre, Brazil, governments not only welcomed but promoted participatory budgeting. An election platform based on spending changes and enhancing citizen involvement created favorable political conditions. The fact that the government was bankrupt increased the willingness to experiment with new forums, and the disorganization of the bureaucracy weakened resistance to change. The government was also willing to increase revenues that could be applied toward proposals from participation forums, which immediately made participation significant. The Workers' Party

changed the municipal revenue system by indexing property taxes, “widening the fiscal space that was a necessary precondition for participatory budgeting” (Robinson 2004, p. 9).

Other Brazilian municipalities that have followed the Porto Alegre model have also tended to be progressive governments that emphasize citizen participation and social justice. The emphasis on citizen involvement is partly a reaction to the military dictatorship that ruled Brazil from 1964 to 1985. While progressive governments initiated participatory budgeting practices, such budgeting practices have been maintained by more conservative governments. They have often been maintained for symbolic purposes and become more prone to “manipulation and mismanagement” (Wampler 2000, p. 7). The Porto Alegre experience points to the importance of political parties in prompting adoption of participation. The parties most likely to adopt participation goals in their platforms are (a) long-term opposition parties reacting to authoritarian regimes or (b) political parties that represent the poor or a social justice agenda.

The success of participation depends in part on administrative capacity. In Porto Alegre the bureaucracy played a positive role in organizing meetings, providing necessary information to citizens about their choices, and offering technical analyses for project proposals. To provide support at the neighborhood level, more government offices were opened in new areas of the city. The decentralization of physical locations was a very visible indicator of government accessibility. Meetings were decentralized and easily accessible to all who wanted to attend.

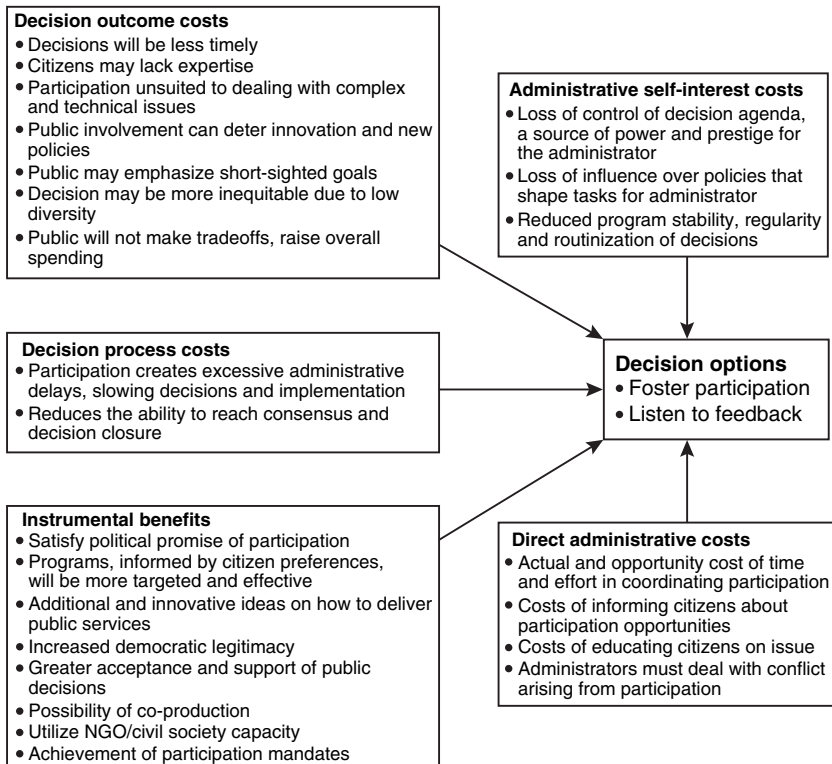
Wampler (2000) argues that the nature of citizen proposals forces bureaucracies to think more collaboratively. A proposal on health or education requires the departments concerned to work with the planning agency and with community leaders. Technical plans and new investments usually require the approval of participants and foster an ongoing relationship based on open communication.

Shaping the Administrative View: The Instrumental Assessment of Participation

The instrumental perspective suggests that administrators are likely to be concerned mainly with the strain that public participation places on the decision process and the costs it imposes on the administrator. The costs of participation may be classified as direct administrative costs, self-interested administrative costs, and decision process and outcome costs (figure 2.3). Government decision making is characterized by a series of limited opportunities

to come to closure within a restricted time period. Increased participation endangers this (Pressman and Wildavsky 1973).

Direct administrative costs refer to the costs of coordinating participation (Kweit and Kweit 1981). Government requirements for participation in Uganda went unheeded because administrators “didn’t have the time” to organize participation (Heimans 2002). Administrative self-interest costs arise from the public manager’s potential loss of control over the decision agenda, which reduces administrative power and authority over day-to-day activities. Managers who wish to maintain program stability or are concerned with shaping bureaucratic activities and carving out an interesting policy-making role are likely to resist participatory processes that determine the policy agenda



Source: Adapted from Moynihan 2003.

FIGURE 2.3 Administrative Costs and Instrumental Benefits of Participation

(Dunleavy 1991; McNair, Caldwell, and Pollane 1983). Decision process costs are the variable costs involved in making decisions. Administrators view participation as slowing the process of decision making and reducing the potential for reaching consensus (Nelkin 1984). Governments in developing countries may argue that they have limited administrative capacity and cannot afford to create participatory forums.

Administrators may argue that participation reduces the quality of the decision outcome, that poor decisions are made because of lack of knowledge or expertise on the part of the public (Cleveland 1985). A frequently cited explanation for governments' resistance to participatory budgeting is that it will make tough choices on the distribution of resources even more difficult. As governments interact with the public, NGOs, and interest groups, they will have to face explicit demands that cannot be met. "A typical complaint is that participatory budgeting processes or public consultations simply result in 'shopping lists' of demands from communities that do not reflect the scarce resources available" (Heimans 2002, p. 18). Governments may also worry that because participation cannot be made truly representative, important groups may be excluded, distorting policy. In fact, the greater the degree of participation, the more likely it is to be representative. The more limited the range of participation, the more likely that elite interests will gain influence over the budget process in a nontransparent way.

Fölscher, Krafchik, and Shapiro (2000) tracked participation in parliamentary budget hearings during the 1990s in South Africa. They observed broadened involvement beyond a small number of private interests to a relatively high number of presentations from NGOs on poverty and macroeconomic policy. The argument that budgeting can never be made truly representative can also be used as a ploy to question the legitimacy and deflect the input of NGOs—a criticism faced by IDASA in South Africa.

Participation can yield several benefits. Public input can provide managers with information that improves allocative or technical efficiency. Public input may offer innovative solutions that would not have emerged from traditional modes of decision making. Because many public programs require some level of cooperation from citizens, involvement of the public is likely to help government develop more practical goals, raise acceptance of programs, and perhaps even allow citizens to work together with the administration to implement programs (Thomas 1995).

Participation also increases public support of administrators and programs (Brinkerhoff and Goldsmith 2000). Unpopular agencies can use participation to improve their image (Kweit and Kweit 1981; McNair, Caldwell, and Pollane 1983). Participatory forums may be designed to

increase the perception that public organizations are more consultative, lending an air of democratic legitimacy to the government's activities (Frederickson 1982).

Conclusions

Participation in developing countries is inadequate. It tends not to be broadly representative of the population, and it fails to involve meaningful dialogue that affects public decision making.

Civil society can play an important role in improving participation. In most of the cases presented in this chapter, an NGO or a team of NGOs effected real change in government decision making by using the budget process. Even in Porto Alegre, where citizen involvement is most direct, an active civil society aided the process of citizen participation. At the same time, NGOs must take into account the government's attitude toward participation and find ways to reduce the perceived costs and increase the perceived benefits of participation.

Notes

1. This section draws on Moynihan (2003).
2. AmericaSpeaks, an NGO, organized the format and handled the logistics of the summit.

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P A R T *Two*

Regional Surveys

Lessons from Latin America's Experience with Participatory Budgeting

BENJAMIN GOLDFRANK

Within a relatively short period (1990–2005), participatory budgeting has evolved from an obscure process of popular participation championed by a few leftist parties in South America to a “best practice” for reducing poverty and improving governance. Depending on how strictly participatory budgeting is defined, it has expanded from about a dozen cities, most of them in Brazil, to 250–2,500 locales in Latin America alone.¹

Whether this diffusion of participatory budgeting is seen as cause for celebration or alarm depends on both how participatory budgeting is interpreted and how it is implemented. Interpretations of participatory budgeting, especially as practiced in Porto Alegre, the Brazilian city that named and publicized it, abound. Yet studies of how participatory budgeting is practiced, especially outside of Brazil, are only beginning to appear. Systematic comparisons of the ways in which participatory budgeting is designed and implemented are rare.

This chapter analyzes recent efforts to introduce participatory mechanisms into local government budget processes in Latin America. After defining participatory budgeting and outlining its history, it presents the major normative perspectives on participatory budgeting as well as a number of analytical perspectives. The broad

hypothesis advanced is that the design and results of participatory budgeting depend on both the designers' intentions and local conditions. This hypothesis is first tested at the national level by comparing experiences in Bolivia, Brazil, Guatemala, Nicaragua, and Peru. The chapter then presents case studies of 14 municipalities outside Brazil. The last section draws conclusions from the case studies and identifies future directions for participatory budgeting in Latin America.

History of Participatory Budgeting

A broad definition of participatory budgeting usually describes it as a process through which citizens can contribute to decision making over at least part of a governmental budget.² Narrow definitions usually derive from particular experiences of participatory budgeting, especially that of Porto Alegre. According to these definitions, participatory budgeting is a process that is open to any citizen who wants to participate, combines direct and representative democracy, involves deliberation (not merely consultation), redistributes resources toward the poor, and is self-regulating, such that participants help define the rules governing the process, including the criteria by which resources are allocated (see, for example, Avritzer 2002, Genro and Souza 1997, and Santos 1998).

Neither the broad nor the narrow definitions are ideal for constructing a history of participatory budgeting. The broad definition would include too many cases, such as lobbying, general town hall meetings, and special public hearings or referendums on specific budget items; the narrow definition would include too few examples. A more wieldy definition might be that participatory budgeting is a process by which citizens, either as individuals or through civic associations, can voluntarily and regularly contribute to decision making over at least part of a public budget through an annual series of scheduled meetings with government authorities.

Much of the literature on participatory budgeting credits the Workers' Party with having created it in Porto Alegre in 1989. Its origins are actually more complicated and disputed. During the late 1970s and early 1980s, municipal governments in Lages (Lesbaupin 2000), Boa Esperança (Baiocchi 2001b), and Pelotas (Goldfrank and Schneider 2006), all controlled by the Party of the Brazilian Democratic Movement, submitted their budgets for public discussion (a former mayor of Pelotas claims to have invented participatory budgeting). For its part, the Workers' Party experimented with citizen budget councils not only in Porto Alegre but in several of the 36 municipalities it won in the 1988 elections, including Ipatinga, João Monlevarde, Piracicaba, Santo André, and Santos (Abers 1996).

The design of participatory budgeting in Porto Alegre was developed by both community associations and the Workers' Party municipal administration (Baierle 1998; Baiocchi 2002). Both sides were aware of earlier experiments by the Brazilian Democratic Movement Party. Before the implementation of participatory budgeting, Porto Alegre's Union of Neighborhood Associations produced a report demanding participation in formulating the budget. That report described eight municipalities in which participatory budgeting had been attempted in the past (Goldfrank 2005). Workers' Party publications such as *Teoria & Debate* published discussions of various forms of participatory governance in the run-up to the 1988 municipal elections. At least two other political parties on the left—the Radical Cause in Ciudad Guayana, Venezuela (and shortly after in Caracas) and the Broad Front in Montevideo, Uruguay—were implementing very similar participation programs at roughly the same time as the Workers' Party in Brazil.³

It was not until 1990 that the process in Porto Alegre was dubbed “participatory budgeting.” Both the label and the practice (albeit in modified forms) began to be adopted in other cities under the Workers' Party in the early 1990s.⁴ Local governments throughout Latin America began using participatory budgeting shortly thereafter, especially after 1996, when the United Nations Habitat II Conference in Istanbul recognized Porto Alegre's participatory budgeting as one of 42 best practices in urban governance.

All of the early experiences of participatory budgeting were implemented by parties that opposed the party in power at the national level. Experiments first occurred in Brazil largely because Brazil was the only authoritarian country—and one of the only countries in the region—that simultaneously allowed an opposition party to exist, gave significant spending responsibilities to municipalities, and held relatively fair mayoral elections (except in strategic cities such as state capitals and major ports). The twin waves of decentralization and democratization that swept Latin America in the 1980s and 1990s encouraged similar experimentation within and beyond Brazil, especially where political parties similar to the Workers' Party were allied with social movements demanding both democracy and improved urban services.

In contrast, many of the later experiences of participatory budgeting (which generally do not adopt the participatory budgeting label) were legislated into existence by national power-holders on the center or right of the political spectrum. Examples include the 1994 Popular Participation Law in Bolivia, sponsored by President Gonzalo Sánchez de Lozada; Nicaragua's municipal reforms in the late 1990s, under President Arnoldo Alemán; and the decentralizing reforms in Guatemala outlined in the 1996 Peace Accords

under President Alvaro Arzú and codified in 2002 under President Alvaro Portillo. In all three cases, the requirements of citizen participation in order to receive debt relief funds from the Heavily Indebted Poor Countries (HIPC II) program starting in 2000 seem to have stimulated increased efforts to ensure that municipalities were implementing national laws.

Peru's 2003 Participatory Budgeting Law appears to be somewhat different, both because it uses the participatory budgeting label and because an ostensibly center-left president, Alejandro Toledo, pushed it forward. Within Brazil, while the majority of recent participatory budgeting experiences continue to be under leftist administrations, primarily the Workers' Party, parties of all political stripes have now used participatory budgeting, including the Party of the Liberal Front, an outgrowth of the official party of the military dictatorship. Participatory budgeting is thus no longer exclusively a leftist project.

Normative and Analytical Approaches to Participatory Budgeting

The early ideological motivations for adopting participatory budgeting represent only one of four distinct normative approaches to the subject (a radical democratic approach). The others might be termed orthodox leftist, liberal, and conservative. The radical democratic and liberal perspectives derive from the foremost proponents of participatory budgeting, that odd combination of leftist parties and international development agencies. These views are more evident in the debate surrounding participatory budgeting and in academic analyses than are conservative and orthodox leftist critiques of participatory budgeting, which come mostly from parties on the center and the right and from Leninist factions or parties. Conservative and orthodox leftist critiques should not be ignored, however, because these actors can play important roles in weakening or defeating participatory budgeting experiments.

The original normative reasons for implementing participatory budgeting given by the Workers' Party in Porto Alegre—as well as by the Radical Cause Party in Caracas and the Broad Front Party in Montevideo—were closely tied to the general transformation that much of the Latin American left sought in the 1970s and 1980s.⁵ The new, “renovated,” or postauthoritarian left that emerged out of failed guerrilla movements and repressive military dictatorships discarded the traditional teleological view of socialism along with traditional instrumental or dismissive views of democracy. Socialism was no longer seen as inevitable but as an open-ended process to be constructed; democracy was no longer seen as a way station

along the path to true socialism or a formula for bourgeois domination but as fundamental to any socialist project. The guiding construct became “radical democracy” (also called “deepening democracy” and “democratizing democracy”). In the campaign proposals and government documents of the Workers’ Party, Radical Cause Party, and Broad Front Party, four key elements guide their approach to participatory budgeting: direct citizen participation in government decision-making processes and oversight; administrative and fiscal transparency to prevent corruption; concrete improvements in urban infrastructure and services, with an emphasis on aiding the poor; and changing political culture, conceived as the transformation of urban residents into citizens, from political objects of clientelist practices into political subjects aware of their democratic rights (Goldfrank 2002).

In calling for a new participatory state, those guided by this radical democratic vision rejected both the Soviet-style all-powerful centralized state and what they called the neoliberal or minimal state advocated by international financial institutions and by most national governments in the region (Dutra 2002). Participatory budgeting, in this view, would help relegitimate the state by showing that it could be effective, redistributive, and transparent. The more Gramscian-inspired proponents believed that participatory budgeting would be an arena in which empowered citizens could construct an alternative “hegemony” (Dutra 2002; Sader 2002).⁶ Olívio Dutra (2002), the former mayor of Porto Alegre, who first introduced participatory budgeting there (later extending it to Rio Grande de Sul after being elected governor of that state), describes the process as revolutionary and links it to socialism:⁷

we are fully conscious that this revolutionary process is situated in a context of heightened struggle between two distinct projects. The traditional elites know perfectly well that this practice gives real content to democracy, ending privileges, clientelism, and ultimately the power of capital over society. This is a political struggle with a clear class (or class bloc) content which will continue to develop for a long time. That is why if anyone claims, and some do, that participatory budgeting is just a more organized form for the poor to fight over the crumbs of capitalism, or at best, that it is a slight democratic improvement totally unrelated to socialism, they would be completely mistaken. Besides deepening and radicalizing democracy, participatory budgeting also is constituted by a vigorous socialist impulse, if we conceive socialism as a process in which direct, participatory democracy is an essential element, because it facilitates critical consciousness and ties of solidarity among the exploited and oppressed, opening the way for the public appropriation of the State and the construction of a new society.

In this statement, Dutra alludes to the critique of participatory budgeting by the orthodox left.⁸ From this perspective, participatory budgeting is at best insignificant because of its excessively local focus; its multiclass character (that is, the fact that it is not an instrument solely of workers); and its inability to transform the fundamental structures of capitalism or harm bourgeois interests. At worst participatory budgeting helps the bourgeoisie cope with the “crisis of capitalism” by taming popular movements and teaching them to cooperate with elites rather than engage in direct action to destroy the bourgeois state. A crucial complaint of these critics is that national issues such as debt repayment are not discussed within the participatory budgeting process. Most of these critics point to the support given participatory budgeting by “imperialist organizations” such as the United Nations and the Inter-American Development Bank as evidence that the process is a Trojan horse used to undermine revolutionary aspirations.

Indeed, the United Nations (through its Habitat division), the Inter-American Development Bank, and numerous other international development agencies have promoted participatory budgeting in various ways, ranging from publishing books and articles to financing workshops and studies to requiring participation as a condition for aid and providing assistance to individual participatory budgeting projects.⁹ Although much of the discourse used by the development agencies closely resembles the radical democratic language and many of the goals—reducing poverty and extending service provision, ending corruption and clientelism, promoting transparency and accountability, improving government efficiency and legitimacy—are similar, the agencies’ liberal approach to participatory budgeting differs from the radical democratic approach in several ways. While the leftist parties initially behind participatory budgeting view the process as contributing to the reconceptualization of socialism, development agencies see it as one among several tools for reconceptualizing development.

Two factors appear to have contributed to the adoption of participatory budgeting by the development community in the 1990s. One was the rising influence of the notion of participation in development; the other was the notion of good institutions, or good governance, as necessary for economic growth.¹⁰ For many proponents of the liberal perspective, participatory budgeting is a potential institutional remedy within a second round of market-oriented economic and administrative reforms in Latin America, following the failure of the first round to reduce poverty or increase growth rates despite bringing down inflation. As Campbell (2003, p. 8) argues, “The next stage of reforms in the region was shifted to the local level, where new models of governance were being invented. These models were marked by

innovation in the governance contract, by widespread participation, and by new forms of accountability in spending.”

From this perspective, participatory budgeting exists alongside and in support of other public sector reforms, such as privatization and streamlining state employment.¹¹ Whereas the radical democratic approach views participatory budgeting as legitimating the state's role to protect it against privatization, the liberal approach sees it as co-existing with strategies for reducing the state's role. Whereas the radical democratic approach views participatory budgeting as involving citizens in participating in budgetary decision making and monitoring results, the liberal approach views participation more broadly, to include consultations between governments and citizens; provision of information to citizens; use of labor, materials, and money contributed by citizens to implement projects; and payment of taxes.

In some ways the liberal and orthodox leftist approaches to participatory budgeting coincide. Both see participatory budgeting as facilitating market-oriented, or capitalist, development by encouraging citizens to trust government (and therefore stabilizing democracy). Both ignore or dismiss what radical democrats see as participatory budgeting's potential as a counterhegemonic or socialist project. This is precisely the danger that the conservative approach to participatory budgeting highlights. When participatory budgeting experiments were initiated in Porto Alegre, Montevideo, and Caracas, they were criticized as dangerous for the stability and even persistence of representative democracy by established political parties, particularly in Montevideo and Caracas (see Goldfrank 2002).¹² From the conservative perspective, rather than deepening democracy and promoting government efficiency, participatory budgeting is antidemocratic and unstable. Two somewhat contradictory positions can be found within this view. One is that unrepresentative volunteer participants are given greater power than democratically elected (and therefore representative) municipal council members and technically trained professional municipal employees. Participatory budgeting thus undermines the legitimacy of the municipal legislature and leads to poor service provision and urban planning. The other position is that participatory budgeting participants are politically manipulated by the local ruling party and deceived into thinking that they have decision-making power. In both cases many within the conservative perspective explicitly link participatory budgeting to totalitarianism. They see participatory budgeting as the creation of a parallel power aimed at replacing representative, multiparty democracy and capitalism with single-party socialist domination, effected through a direct relationship between the executive branch and the masses.

Participatory budgeting is not a neutral, technical instrument—notwithstanding development agencies' inclusion of it as part of a “toolkit” for development. Much of the now extensive academic literature on participatory budgeting, while often influenced by one of these normative approaches, either ignores the ideological and political battle surrounding it or fails to incorporate this battle into the analysis. Many scholars have focused on showing that participatory budgeting embodies concepts such as participatory publics (Wampler and Avritzer 2004), co-governance for accountability (Ackerman 2004), progressive pragmatism (Rhodes 2003), deliberative development (Evans 2004), or empowered participatory governance (Baiocchi 2001b; Fung and Wright 2001; Miños Chavez 2004b).¹³ They and other scholars have produced rich analyses of participatory budgeting, focused almost entirely on Brazilian experiences, especially Porto Alegre. They have shown that participatory budgeting can achieve many of the goals envisioned by both the radical democratic and liberal perspectives, especially in terms of redirecting public resources toward poor neighborhoods (Marquetti 2002; Serageldin and others 2003); extending service provision (Navarro 2004; Santos 1998); democratizing existing and spurring the creation of new civic associations (Abers 2000; Baierle 1998; Baiocchi 2001a, 2001b; Wampler and Avritzer 2004); and increasing transparency and accountability (Ackerman 2004; Fedozzi 1997; Wampler 2004), while reducing clientelism (Abers 2000) and enhancing democratic representation for the formerly excluded (Nylen 2003; Souza 2001). They show that these outcomes are by no means guaranteed by participatory budgeting and that even well-regarded cases show some contradictory results (Baierle 2003; Nylen 2003; Souza 2001; Wampler 2004).

Preconditions and Design Features

To explain the success and failure of different participatory budgeting experiments, scholars propose a long list of potentially important design features and enabling conditions. Navarro (2004) provides one of the most comprehensive inventories, which he divides into political, administrative, economic, legal, geographical, and “controversial” issues.¹⁴

Most scholars agree that political will, sufficient resources, and political decentralization are necessary for successful participatory budgeting; many believe that preexisting societal organization is also necessary. Other conditions cited below can be helpful but are not considered preconditions.

- *Political will:* The incumbent party and especially the mayor should have a commitment to opening channels of citizen participation in order to share decision-making power.

- *Sufficient resources*: The municipal government should control revenues sufficient to enable investments in public works projects and social programs.
- *Political decentralization*: Municipal officeholders should be democratically elected.
- *Social capital*: The locale should possess civil society associations, preferably disposed to participate in municipal affairs, organized in networks, and relatively autonomous.
- *Bureaucratic competence*: The municipal administration should be staffed by a substantial number of technically qualified employees.
- *Small size*: The locale, or at least the decision-making units of participatory budgeting (which might be considered a design feature), should not be so large as to discourage collective action.
- *Legal foundation*: Existing laws should allow and preferably promote citizen participation in budget decisions.

There is less consensus on which features of institutional design are most important and even whether certain features facilitate or weaken participatory budgeting. Features that have been discussed include the following:

- *Deliberation*: Participants should engage in face-to-face discussion and debate and be given at least some decision-making power over at least some part of the budgetary process, usually the establishment of investment priorities.
- *Centralized supervision*: The mayor's office should be directly involved in coordinating the participatory budgeting process.
- *Accessible rules and information*: The rules governing the process, including the criteria used to allocate resources across neighborhoods and make decisions, as well as all the budgetary and planning information necessary to make informed decisions and monitor results, should be publicly available and provided in an accessible format.
- *Focus on immediate versus long-term planning*: Some scholars argue that focusing on immediate, practical needs is key to stimulating participation. Others argue that a narrow focus undermines discussion of broader, long-term issues and weakens urban planning.
- *Informal versus formal structure*: Some scholars argue in favor of an informal structure for participation that is open to individuals and groups without privileging existing organizations and that is capable of being modified by the participants themselves. Others suggest that in order to avoid political manipulation of participatory budgeting by incumbents and ensure representation of important political and social actors, the process should be regulated by law.

Gaps in the Literature

Despite the growing attention given to participatory budgeting, at least three gaps remain in the literature. First, no rigorous, cross-national analytical testing of which design features and preconditions are most important for producing the desired outcomes has been conducted. Cabannes (2004) provides a valuable review of participatory budgeting experiences in 25 cities across 10 countries. Torres Ribeiro and de Grazia (2003) present useful data on more than 100 cases of participatory budgeting in Brazilian cities. Both studies are based on self-reporting by municipal officials, however, and neither conducts causal analysis.

Second, the design of participatory budgeting and the conditions under which it is introduced have not been linked theoretically. Though many scholars suggest generically that the design of participatory budgeting should be adapted to local circumstances, there is little theorizing about how context affects designs.¹⁵

Third, the competitive, or nonneutral, aspect of participatory budgeting has not been thoroughly examined.¹⁶ Insufficient attention has been devoted to opposition parties.

I addressed these lacunae in previous research (Goldfrank 2002, 2005) with a structured comparison of participatory budgeting in Caracas, Montevideo, and Porto Alegre. That work led me to conclude that “the design features that ultimately aided the deepening of democracy in Porto Alegre—a high degree of participant decision-making power, a wide range of issues under debate, and an informal structure—were contingent upon a decentralized national state that afforded resources and responsibilities to the municipal government and a set of weakly institutionalized local opposition parties that failed to resist the participation program forcefully” (Goldfrank 2005, p. 9). In this chapter I examine 14 case studies to determine whether they support this statement.

Participatory budgeting is a political institution that is part of normal partisan competition (Goldfrank and Schneider 2006). Political leaders strategically introduce and attempt to design participatory budgeting to serve multiple ends, including gaining electoral support, weakening opponents, forming or consolidating alliances, and fulfilling ideological commitments. The results are not necessarily as originally intended. Outcomes depend not only on the designers’ intentions and the local contexts but on the intentions and strategies of other actors, including opponents. This point is especially important when examining the national cases, where the political projects and ambitions of power-holders at different levels of government come into direct conflict.¹⁷

National Case Studies

The recent expansion of citizen participation in subnational budget processes across Latin America—driven in Bolivia, Guatemala, Nicaragua, and Peru by mandates from the national government—provides an excellent opportunity to examine the full range of hypotheses about preconditions, design features, and strategic objectives.¹⁸ Before these countries are examined individually, some broad comparisons based on the preceding discussion can be made with the locally driven cases in Brazil.

All five countries are politically decentralized, in the sense that municipal executives are directly elected.¹⁹ However, regional governors are elected in Brazil and Peru (at the provincial and regional levels) but appointed in Bolivia, Guatemala (at the regional and departmental levels), and Nicaragua. In Bolivia, Guatemala, and Nicaragua, some national administrations have concentrated “decentralized” resources in the regional governments in order to avoid supporting municipalities held by the opposition.

No national law requires participatory budgeting in Brazil. As a result, in the few hundred cities where it exists, mayors are more likely to be at least somewhat committed to citizen participation than their counterparts in countries that mandate participatory budgeting. In 1997–2000, 73 of the 140 Brazilian cities using participatory budgeting had Workers' Party mayors and 33 had mayors from other parties on the left. In many of the remaining cities, the deputy mayor belonged to the Workers' Party and was often in charge of participatory budgeting (Paiva 2001).

Because Brazil is both wealthier and more fiscally decentralized than the other countries, its municipalities generally have more revenues to spend. Most Brazilian cities spend \$240–\$400 per resident (Cabannes 2004). In the Central American and Andean cases studied here, most municipalities spent orders of magnitude less (as little as \$11 per capita in Nandaime, Nicaragua [WBI 2004f]). Brazilian municipalities are also more likely to have civil society organizations that can work together than are municipalities in Guatemala, Nicaragua, and Peru, where recent civil wars have polarized the population.

The only precondition that might benefit the non-Brazilian cases is the legal foundation. While Brazilian laws require large cities to create municipal administrative councils for health, education, and other social sectors in order to receive federal transfers, they do not require budget councils. In contrast, national laws in the other four countries require development or oversight councils with responsibilities for contributing to municipal budgets and monitoring implementation. Peru's laws go furthest. Guatemala's laws on participation are contradictory: the Development Councils Law requires

budgetary proposals from community development councils, the Municipal Code does not.

The two remaining preconditions—bureaucratic competence and small size—vary within and across countries. They may help balance each other because larger cities, which tend to have lower participation rates in various local civic activities, also tend to have larger, more professional bureaucracies, although in general, municipal employees in Latin America do not have a reputation for efficiency (Nickson 1995).

The institutional design of Brazil's participatory budgeting differs from that of other countries in several important ways. First, its programs tend to focus more on immediate needs.²⁰ Indeed, in the four other countries, the participatory budgeting processes either grew out of or are linked to more long-term municipal development planning.

Second, participatory budgeting is generally less formally structured in Brazil. Individuals rather than representatives of organizations are more likely to participate (Cabannes 2004).²¹ In most Brazilian cities participatory budgeting is internally regulated; outside Brazil “participatory budgeting has been regulated and institutionalized by municipal resolution, decrees, laws or constitutions” (Cabannes 2004, p. 40).²²

Third, participatory budgeting is more deliberative in Brazil than in other countries. Community assemblies debate and set investment priorities on an annual basis; regional and sectoral forums of delegates from these assemblies and a municipal council of delegates meet throughout the year to negotiate budget details with city officials before the budget is sent to the municipal legislature for approval. In other countries the deliberative character of participatory budgeting is often difficult to perceive.²³ The laws in Bolivia, Guatemala, and Nicaragua suggest more consultative roles for the development councils. The Peruvian participatory budgeting law requires that 60 percent of participatory budgeting coordination council members be government officials.²⁴ Roughly half of the members on the development councils in Guatemala and Nicaragua are also from the government.

Fourth, municipalities in Brazil do a better job of disseminating information than municipalities in other countries, partly because they have greater resources, which allows them to print and distribute rulebooks and pamphlets and to advertise meeting times and places. In Porto Alegre city buses serve as mobile calendars for announcing participatory budgeting assemblies, which are also advertised in newspapers and on a government-produced television program. Even in poor municipalities, information is made accessible: in the impoverished Brazilian fishing village of Icapuí, for example, the mayor painted monthly budget figures—both revenues and expenditures—on the side of his house.

How have the contrasting designs and preconditions affected the results of participatory budgeting? Outside Brazil implementation of national laws on citizen participation in subnational budgeting has been slow and uneven. This seems to reflect the indifference or hostility toward participatory budgeting by many mayors and the lack of bureaucratic competence of many municipal governments, especially the smaller ones. Regional and local authorities have often used undemocratic procedures in composing the development councils, feeding the view that clientelism and corruption persist. The lack of clear criteria for distributing resources has led to an urban bias in many cases, even in predominantly rural areas, undermining poverty reduction efforts. Actual citizen participation rates have been low, not only in decision-making processes but even in consultation exercises. As a World Bank Institute summary report notes, "The lack of information, interest, capacity, time, and financial resources constrains direct participation" (WBI n.d.-a, p. 40).

Some observers have expressed concern that participatory budgeting in Brazil fails to integrate into effective long-term urban planning, generates antagonisms with municipal legislatures, and is not legally required of all 5,507 municipalities, which means that even in cities that have tried participatory budgeting, it may not continue in future administrations. Indeed, a study of 103 Brazilian cities with participatory budgeting during the 1997–2000 period shows that in 28 percent of the cases, participatory budgeting was discontinued by the initiating or the subsequent administration (Chaves Teixeira n.d.).

What features account for the diverging results across countries? Political will, bureaucratic competence, sufficient resources, and an informal, deliberative, and needs- and rules-based design appear to increase the chance that participatory budgeting will be successful.

Preconditions, strategic objectives, and institutional design seem to be linked. Where national governments try to legislate participation rather than design public, deliberative processes, they tend to create overly formal institutions that privilege existing political and social organizations.²⁵ Determining which organizations are privileged depends on the goals of power-holders at both the national and subnational levels of government.

Locally driven participatory budgeting processes tend to be more informal and deliberative, for two possible reasons. One is that mayors who implement participatory budgeting are often responding to demands by social movements for deliberative public spaces. The other is that open formats potentially allow mayors to attract new constituents. It is probably not a coincidence that most cases of successful participatory budgeting in Peru exhibit more informal and deliberative designs and were started by mayors before the 2003 law went into effect.²⁶

Bolivia

Institutions designed at the national level have been modified (or rejected) by local authorities in Bolivia, based on local conditions, with widely varying results. President Gonzalo Sánchez de Lozada introduced decentralization measures and the Popular Participation Law in 1994. Since then the experience of citizen participation in subnational budgeting in Bolivia has been mixed.

Most observers find fault with both the design and the implementation of the participatory institutions, although some believe living standards in rural communities have improved.²⁷ It seems likely, however, that any improvements were due more to the increased funds made available to municipalities than to increased citizen participation. Revenue transfers to all local governments more than tripled between 1993 and 1997; allocations for noncapital expenses jumped from about \$4 million a year to roughly \$112 million (Altman 2003). In addition, HIPC II funds became available in 2000.

President Sánchez de Lozada's motivations for implementing the Popular Participation Law are a source of debate. Many analysts suggest that in addition to seeking to strengthen democracy, reduce poverty, and reinforce the structural adjustment program adopted in the 1980s, Sánchez de Lozada sought to design the law strategically so as to reap political benefits. First, his party was weakest in departmental capitals, and he feared that the elite's desire for autonomy in Santa Cruz would sow national disunity. For this reason, the participation and decentralization laws emphasized the municipal rather than the departmental levels of government. Sánchez de Lozada's successor, Hugo Banzer, whose party dominated the departmental capitals, reversed this trend (Altman 2003).

Second, participatory institutions under Sánchez de Lozada seemed intended to break the power of leftist labor and peasant unions, elitist "civic committees," and political parties and perhaps construct a new alliance with indigenous movements. On the one hand, he appointed an indigenous leader as his vice president. On the other hand, the Popular Participation Law gave municipal planning and budgeting participation rights only to territorial-based organizations, which were conceived as traditional indigenous and peasant community organizations in rural areas and neighborhood associations in urban areas. The territorial-based organizations were supposed to use customary practices to elect an oversight committee to monitor budget implementation in each municipality. The Popular Participation Law thus ignored the unions and civic committees, creating a competitor for the party representatives in the municipal legislature.

It is not surprising, then, that the major union confederations (the Bolivian Labor Central [COB], linked to Evo Morales, and the United Union Confederation of Bolivian Peasant Workers [CSUTCB], linked to Felipe Quispe); the civic committees; departmental elites; and opposition parties all opposed the Popular Participation Law (Altman 2003). The unions referred to it as the *ley maldita* (damned law) and called on indigenous peasants not to participate (their call was not always heeded) (WBI 2004b).

The Popular Participation Law appears to have functioned most effectively in small, homogeneous, indigenous communities with strong traditional organizations. In many municipalities, opponents of the law obstructed, delayed, and tried to subvert the new participatory institutions. In the first years after the law went into effect, local party elites manipulated it to adapt it to their own use, designating oversight committee members from the top down rather than through participatory processes and sometimes creating fictitious territorial-based organizations rather than work with existing organizations. Although the law stipulates that municipal governments should hold workshops and consultations to hear community demands, this has not occurred systematically or democratically across the 327 municipalities. In rural areas the "culture of consultation" is "not exempt from the political system's behavior patterns, nor from those of social movements, which, like the parties, maintain authoritarian traits" (WBI 2002, p. 12). The situation is even worse in urban areas, where implementation of the law has been delayed and the consultation processes co-opted. As Bartholdson, Rudqvist, and Widmark (2002, p. 28) argue, political parties "divide indigenous and local community members" using traditional clientelist tactics: "Particularly in the Bolivian lowlands, municipalities have been controlled by elites in the urban centres, and the needs of the rural indigenous population have been marginalized."

The political manipulation of the new ostensibly participatory institutions has had negative effects on the practice of citizen participation in municipal budgeting. In many municipalities, territorial-based organizations and oversight committees either do not function at all or are not effective at transmitting community demands into budgets or monitoring budget implementation in order to reduce corruption (Altman 2003; Bartholdson, Rudqvist, and Widmark 2002; Krekeler, Quezada, and Rea 2003). Channels for direct participation by community members appear to be lacking, and the representativeness of the territorial-based organizations has been questioned. According to Krekeler, Quezada, and Rea (2003, p. 25), the annual budget process "has been reduced to a mere listing of needs of each neighborhood or community expressed by the presidents of the neighborhood associations or territorial-based organizations, which generally do not coincide with the

demands of the majority of the residents because, often, the territorial-based organization leaders do not consult the residents; on the contrary, they prioritize the demands using personal criteria.”

Nonetheless, at least one aspect of the Popular Participation Law seems unambiguously to have enhanced democracy. In one of the only majority-indigenous countries in Latin America, a country with a long history of the exclusion of this majority, the law has increased the number of indigenous mayors, municipal councillors, and, in turn, national representatives. It is ironic that while Sánchez de Lozada may have pushed the law as a way of winning indigenous support, the indigenous union leaders who vilified the law ended up benefiting most from it, eventually using their strength to force Sánchez de Lozada from office.

Guatemala

Less political controversy has accompanied decentralization and participation laws in Guatemala. Reform was linked to the mid-1990s peace process, agreed to on a more consensual basis, and strongly encouraged by international organizations.²⁸

Despite these advantages, of the five countries studied here, Guatemala has probably seen the least success with participatory budgeting. According to a study by the World Bank Institute (2004a, p. 56), “the concept of community participation in the municipal budget . . . is just a discourse raised as an initiative, not a process.” This view is supported by other studies, which find that the municipal development councils appear “to have been created mainly to cover administrative obligations and not as a forum for participation” and that they only rarely overcome a “merely formal scope” (Puente Alcaraz and Linares López 2004, p. 249). A number of problems prevent the effective functioning of participatory budgeting in Guatemala, starting with the apparent lack of genuine commitment on the part of national leaders, who seem to have adopted participation laws largely under pressure from international organizations.

Although fiscal decentralization has increased in recent years, Guatemalan municipalities remain relatively poor, dependent on less than transparent national transfers, and heavily indebted. Transfers have increased since 2000, with the availability of HIPC II funds. Departmental governments, whose leaders are appointed, receive the largest share of these investment funds; they can—and often do—withhold funding from municipalities in which the elected mayor is from a different political party (Puente Alcaraz and Linares López 2004). Mayors must produce three separate budgets to obtain transfers

for public investments, and political criteria determine the distribution of funds for two of these transfer sources (Miños Chavez 2001). In addition to lacking sufficient funds, municipal governments generally lack qualified personnel; both factors undermine participatory budgeting processes (Centro Pluricultural para la Democracia 2005). Observers have noted a lack of citizen interest in the community and municipal development councils; civil society organizations are either absent or unwilling to work together (Centro Pluricultural para la Democracia 2005). One study argues that the weak and fragmented nature of civic participation in Guatemala stems from “the survival of authoritarian traits, the internal armed conflict, and the introduction and application of policies that encourage individualism and social atomization” (WBI 2004e, p. 3).

Perhaps the most important reason for the general failure of participatory budgeting in Guatemala is the dearth of mayors committed to sharing power with citizens. Since 1999 between a third and almost half of all mayors have belonged to the Guatemalan Republican Front, the party of ex-military dictator Efraín Ríos Montt; they have not been considered committed to participatory ideals. Where community and municipal development councils are more than fictive, mayors have often shaped them for political benefit. The community councils have not generally been composed of representatives elected in open public assemblies, as they are supposed to be. The municipal development councils are open only to sector representatives summoned by the mayor (WBI n.d.-a). Municipalities with mayors from locally based, nonpartisan civic committees (which are often headed by indigenous leaders) appear more committed to participatory budgeting. A notable case was Quetzaltenango, one of the four largest cities in Guatemala, during the 2000–03 term (Selee 2004). These civic committees won in 25 municipalities in 2003 (though a traditional party took back Quetzaltenango), less than 10 percent of the total and the same number they won in 1999. Future success for participatory budgeting in Guatemala may depend partly on whether civic committees gain popularity in more municipalities.

Nicaragua

At first glance Nicaragua in the late 1990s might appear to have been an auspicious arena for introducing participatory budgeting reforms.²⁹ A leftist party with a rhetorical commitment to participatory democracy and a history of alliances with social organizations—the Sandinista Front for National Liberation (FSLN)—controlled a third of all municipalities; the

new president, Arnaldo Alemán, had been mayor of the capital city; and international agencies committed large sums of aid after Hurricane Mitch, followed by HIPC II funding in 2000. Building partly on the FSLN's municipal autonomy laws of the late 1980s and encouraged by international donors, Alemán introduced further decentralization and participation reforms in 1997, 2000, and 2001. The laws compel municipal governments to consult with citizens in the budget process through town hall meetings and neighborhood and municipal development committees. In practice, the major political actors' will to share decision-making power, use international funds transparently, and implement the reforms is questionable.³⁰

Even some sympathetic observers do not consider the FSLN to have reformed along the lines of other Latin American parties on the left. Scholars highlight the FSLN's continued tendencies to co-opt and control social movement allies and to close off spaces for dissenting opinions instead of promoting meaningful participation processes (Hoyt 1997; LaRamée and Polakoff 1999).

Legal reforms, which were meant to strengthen municipal government and were agreed to by the FSLN as part of a governing pact, also faced problems. One was that they included measures to strengthen the dominance of the two-party system under the FSLN and Alemán's Liberal Alliance. Another was that the reforms were not accompanied by adequate resources. Between 1997 and 2003, central government transfers to municipalities represented about 1 percent of the central government's budget. Transfers increased to 4 percent in 2004 and should increase annually by 1 percent over the next six years, depending in part on the country's economic performance (Pineda Gadea 2003). It is unclear whether these incremental increases will be sufficient. Municipal governments in Nicaragua are vastly underfunded, with some receiving less than \$9,000 a year in central transfers in 2003 and many forced into bankruptcy (Grigsby 2003). Furthermore, central transfers were biased based on political criteria, as were investment funds allocated through a separate government entity, the Nicaraguan Institute of Municipal Promotion (Grigsby 2003; Howard 2002; Ortega Hegg 2001).

The climate of political polarization and the weakness of municipal bureaucracies also worked against participatory budgeting. As in Guatemala, failure to achieve successful participatory budgeting practices in Nicaragua seems overdetermined. While the laws requiring participation seem worthy, "in practice, the attendance and dialogue in the town hall meetings have been neither constant nor massive, like the use of the other established procedures" (Pineda Gadea 2003, p. 17). Open town hall meetings are sparsely attended,

chaotic, and unproductive (Ortega Hegg 2003). Development committees tend to be convened by the mayor and are thus often exclusionary, favoring only the mayor's social allies (Howard 2002).

Peru

As national policy, participatory budgeting is still nascent in Peru, though a number of local governments implemented participatory budgeting reforms before passage of national laws in 2003. These laws obligate all regional, provincial, and district governments to promote citizen participation in the formulation, debate, and "concertation" (or agreement) of their development plans and budgets through the creation of coordination councils and through public assemblies.

While Peru shares a top-down model of participatory budgeting with the other countries examined here, the designers of its laws did take local experiences into account. This may be because some members of the ruling party, *Perú Posible*, came from the United Left, with its history of municipal participation programs in the 1980s before Alberto Fujimori's decade of centralized and clientelist authoritarian rule.³¹ A desire for decentralization as part of democratization emerged on the part of party representatives and civil society organizations in opposition to Fujimori; decentralization was also supported by international agencies, such as the U.S. Agency for International Development. Most decentralizing reforms were thus fairly consensual. However, the related citizen participation laws were contested by many congressional representatives and nearly failed to pass (Chirinos Segura 2004). Echoing the conservative approach to participatory budgeting, many traditional parties, especially the Aprista Party (the second-largest party in Congress), argued that citizen planning and budget councils undermined representative democracy. It is perhaps not surprising that the Apristas had the largest share of power at the subnational level, controlling nearly half of the 25 regions. Faced with opposition resistance, the government passed a compromise hybrid bill in mid-2003 that gave local authorities 60 percent of the seats on the councils.

The first two years of participatory budgeting are not considered to have succeeded in promoting participation, transparency, effective planning, or improvements in public infrastructure and service provision (Chirinos Segura 2004; Díaz Palacios 2004; Monge 2004; Ricci López and Bravo 2004). A host of factors have undermined participatory budgeting, from problems in design to resistance and manipulation by the opposition, insufficient resources, and lack of civil society initiative.

Unlike Bolivia, in Peru all legally registered social organizations (not just territorial organizations) with at least three years of proven existence are allowed to participate in elections for the regional and local councils meant to coordinate the development plan and budget. The restrictions were meant to avoid the top-down creation of phantom organizations; in practice, they excluded many organizations of the poor, which lacked legal standing. Civil society representatives hold only 40 percent of the seats on the coordination councils, and a third of those are slated for business representatives, reducing participation by the poor.

The participation laws contradict the guidelines from the Ministry of the Economy and Finance, which allowed individuals to participate and reduced the importance of the coordination councils. This contradiction caused confusion, and, as in other countries that nationally legislated participatory budgeting, many local and regional leaders chose to ignore the rules.

As of mid-2004, only about a third of the 1,821 district municipalities had created local coordination councils (Díaz Palacios 2004). In his study of more than 30 provincial and district participatory budgeting experiences, Díaz Palacios (2004, pp. 233–34) finds that mayors seemed to be complying “with constituting the local coordination council more for formal reasons than out of democratic conviction,” given that the local coordination council were not taking on the planning and budgeting roles allowed for in the law. Chirinos Segura (2004) reports that the Congress had to pass additional laws in order to force the regional governments to establish their coordination councils, which even then were rarely convened. In some cases they were convened but could not reach a quorum. Elections for the coordination councils were either never held or not very democratic (Chirinos Segura 2004; Díaz Palacios 2004; Ventura Egoávil 2003). In place of a general election process, the mayor or regional presidents often invited certain organizations to assemblies in order to select representatives. At the other extreme, many local authorities ignored the rules about legal registration and being in existence for three years in order to allow more social organizations to participate.

Problems remain even where mayors are committed to participatory budgeting and try to work around the restrictions in national laws. Local governments remain dependent on unreliable and stingy central government transfers; civil society is weak and fragmented, with little interest in institutionalized participation; and little information is disseminated about the recent laws. Municipal governments in Peru have the authority to create local taxes, but only those in larger, wealthier cities have the capacity to do so. On the whole, then, municipalities depend on transfers, which represented about

4 percent of the national government's budget in 2004 and have risen since then (Schneider and Zuniga-Hamlin 2005). Divided among 2,000 municipal budgets, however, funding is low. Of the six municipalities examined below, four had investment budgets of \$4–\$13 per capita. Moreover, to receive transfers of investment funds, municipalities have to follow strict but little publicized budgeting guidelines set by the national Ministry of Economy and Finance. Several regional and local governments had to return revenues to the central government for failing to comply with these rules (Monge 2004).

At the same time, interest in participation appears to have declined. According to Chirinos Segura (2004, p. 200), in “post-Fujimori Peru . . . the demand for participation has reached its lowest levels in modern history.” According to Díaz Palacios (2004), citizens are not well organized, organizations that do exist lack formal structures, and organizational representatives are unrepresentative, poorly qualified, and divided.

One bright spot in Peru is that the Ministry of Economy and Finance has revised the participatory budgeting guidelines every year, seemingly in response to criticisms of the original laws formulated by mayors, governors, and civil society organizations. In 2004, for example, the criteria for municipal spending were relaxed, so that mayors are no longer forced to allocate 70 percent of funding to capital spending. Changes in 2005 seem to have corrected other design problems as well (see Sánchez Velarde 2005). The new guidelines are guidelines rather than legal norms, thus allowing for local adaptations. They emphasize that the budgets agreed to by the coordination councils should be respected by the municipal authorities; more clearly establish the links between the multiyear development plans and the annual budgets, as well as between the regional and local coordination councils; and give greater powers to the coordination councils in terms of organizing the participatory budgeting process. Perhaps most important, the 2005 guidelines stress that the participatory budgeting process be open to all who want to participate and that the participating organizations consult with their members about budget priorities.

Local Case Studies

While national outcomes appear not to have lived up to expectations, there are a number of remarkably successful local cases. Some of the success stories, particularly the Peruvian cities of Ilo and Villa El Salvador, could have been expected, given that the efforts were locally initiated, United Left administrations were in power, and highly organized civic associations with a tradition of local participation were active. Others, such as Curahuara de

Carangas in Bolivia and Huaccana in Peru, are more surprising. In Curahuara de Carangas, an isolated and extremely poor Aymara village in the Andean highlands, participatory budgeting has not only reinvigorated traditional indigenous organizations, it has helped transform them to be more inclusive of women, more engaged with broader indigenous movements, and more focused on long-term sustainable development. In Huaccana, another rural indigenous town, the Shining Path guerrilla movement had destroyed traditional customs and divided the community. Despite very limited resources, the Quechua mayor stimulated high rates of participation in participatory budgeting, helped revitalize civic associations, and redistributed public works and programs in favor of the poor.

This section compares participatory budgeting in 14 municipalities in an attempt to tease out which combinations of preconditions, institutional design, and political competition generate successful experiences like these. Given the variation in the precision of the case study data, these are necessarily rough categorizations.

All of the municipalities suffer from deficiencies in public services. These are especially pronounced in rural areas, where even basic services such as water and electricity are scarce. Resources available for municipal capital spending vary tremendously, from about \$5 to \$50 per capita.

The municipalities were governed by a wide spectrum of parties, from ideologically motivated parties on the left, particularly the United Left in Peru, to Nicaragua's Liberal Party on the right. The degree of opposition from traditionally powerful political parties or elites varied from virtually none (often in rural villages) to relatively strong, especially where old ethnic divisions were rekindled by the rise to power of indigenous leaders.

Successful participatory budgeting has occurred under a variety of conditions (table 3.1). Highly successful participatory budgeting emerged even where resources were minimal, opposition from rival political parties was relatively strong, and outside NGOs played no role. Certain conditions appear to be especially advantageous, particularly a reasonably high level of resources, a weak opposition, a high level of social capital, a very strong NGO presence, and a mayor from a leftist, indigenous, or union background. Levels of social capital are categorized based on the number of associations, whether they work cooperatively with one another, and whether they engage in clientelist exchanges. Huaccana is rated as having "weak+" social capital because it had few civic associations following years of guerrilla warfare but some land was communally held, which created trust and collaboration. Tarabuco and Limatambo are rated "medium+" rather than "high" because, although each has a long tradition of peasant organizing, even longer

TABLE 3.1 Characteristics of Case Study Municipalities in Bolivia, Guatemala, Nicaragua, and Peru

Level of success/location	Population	Ethnicity	Level of financial resources	Incumbent party	Opposition party	Level of social capital	NGO presence
High level of success							
Curahuara de Carangas, Bolivia	5,937	Aymara	High	Indigenous	None	Strong	Very strong ^a
Huaccana, Peru	11,289	Quechua	Low	Indigenous	None	Weak+	Very strong ^a
Ilo, Peru	60,053	Mixed	High	Left	Weak	Strong	Weak
Limatambo, Peru	9,264	Quechua	Low	Indigenous/left	Medium+	Medium+	None
Santo Domingo, Peru	10,209	Quechua/mixed	Medium	Peasant Union	None	Strong	Strong
Villa El Salvador, Peru	344,657	Mixed	Very low	Left	Weak	Strong	Strong
Moderate level of success							
El Alto, Bolivia	632,372	Aymara/mixed	Medium?	Center	Medium	Medium	Weak
Tarabuco, Bolivia	20,000	Quechua	Medium	Peasant Union	Strong	Medium+	Medium
Estelí, Nicaragua	110,000	Mixed	Low	Left	Weak	Medium	Strong
Santo Tomás, Nicaragua	19,778	Mixed	Low	Right	Weak?	Weak	Weak
Independencia, Peru	210,807	Mixed	Very low	Center	Weak?	Medium	Weak
Low level of success							
La Union, Guatemala	24,213	Ladino	Low	Center	Medium	Weak	Weak?
Panajachel, Guatemala	10,919	Maya/mixed	Medium	Nonpartisan civic committee	Medium	Weak	Weak?
Nandaime, Nicaragua	38,800	Mixed	Very low	Right	Weak	Weak	Strong

Source: Bolivia: WBI (2002, 2003, 2004b, 2004c, n.d.-b); Guatemala: Fundemos (2003), WBI (2004a, 2004d, 2004e); Nicaragua: Pineda Gadea (2003, 2004), WBI (2004f, 2004g); Peru: Ventura Egoávil (2003, 2004a, 2004b, 2004c, 2004d, 2004e, 2004f).

a. Internationally and nationally based NGOs provided extensive funding and technical aid and encouraged the mayor to implement participatory budgeting.

traditions of animosity between indigenous peasants and the nonindigenous population persist.

The high success rate in Peru contrasts with the relative lack of success in Guatemala. While these cases are only illustrative and do not constitute a representative sample, this difference probably stems from two related issues. The highly successful Peruvian experiences began because of local initiative (except in Huaccana, where Care-Peru chose the town as a pilot project and Oxfam and the Department for International Development supported it). These efforts began before the national participatory budgeting law was passed. In contrast, the Guatemalan experiences followed the national laws and are much more recent, having begun only in 2003.

Table 3.2 lists key aspects of the institutional design and various measures of success. The formality of the structure refers to how open the participatory budgeting process is to individual citizens and how much it privileges existing organizations and local authorities. The two cases assessed to have formal structures relied exclusively on existing organizations and authorities. The cases rated “formal—” also included spaces for individuals to participate.³²

Municipalities rated “informal” had open public processes that did not privilege preexisting groups. Decision-making power refers to whether the participants debate and decide on spending priorities, how much of the budget is affected by these decisions, and whether authorities respect the decisions. The participation rate includes the number of individuals participating and the number of organizations participating through representatives.

Table 3.2 provides some support for the assertion that outcomes tend to be better where participatory budgeting is less formalized and more deliberative. In the two purely formal cases of participatory budgeting (Tarabuco, Bolivia, and Nandaime, Nicaragua), achievements were meager. In Tarabuco there were ongoing claims of corruption and clientelism, and the quality of these services did not improve (although some investments were made in education and health care). In Nandaime, where the criteria for determining spending allocations are opaque, an extreme urban bias persists. While a little less than half the population lives in the urbanized area, which has relatively good basic services, 89 percent of municipal investments were made there.

In Peru and in Curahuara de Carangas, Bolivia, where the structures were less formal, participants had more decision-making power, participation rates were higher, policies were more redistributive, and government was more transparent. Even the most prosperous city using participatory budgeting in Peru (Ilo) used highly redistributive criteria that allocated nearly twice as much investment funding to the largest and poorest area as it did to the smaller, wealthier zone.

TABLE 3.2 Key Aspects of Institutional Design and Measures of Success of Participatory Budgeting in Case Study Municipalities

Country/ municipality	Formality of structure	Decision-making power	Participation rate	Expansion/redistribution of services	Transparency
Bolivia					
Curahuara de Carangas	Formal –	High	High	High	High
El Alto	Formal –	Medium	High	Some	Improved
Tarabuco	Formal	Medium	High	Some	Low
Guatemala					
La Union	Informal	Medium	Low?	Some	Improved
Panajachel	Formal –	Medium	Low?	Some	Improved
Nicaragua					
Estelí	Formal –	Medium	High	Some	Improved
Nandaime	Formal	Low	Low/medium?	Low	Low
Santo Tomás	Formal –	Medium	High?	Some	Improved
Peru					
Huaccana	Informal	High	Very high	High	High
Ilo	Informal	High	Very high	High	High
Independencia	Formal –	High	Medium	Some	Improved
Limatambo	Informal	High	High	High	High
Santo Domingo	Formal –	High	High	High	High
Villa El Salvador	Informal	Medium	Very high	High	High

Source: Bolivia: WBI (2002, 2003, 2004b, 2004c, n.d.-b); Guatemala: Fundemos (2003), WBI (2004a, 2004d, 2004e); Nicaragua: Pineda Gadea (2003, 2004), WBI (2004f, 2004g); Peru: Ventura Egoávil (2003, 2004a, 2004b, 2004c, 2004d, 2004e, 2004f).

This analysis of local cases reinforces the notion that preconditions, competitive contexts, and design features are important to successful participatory budgeting. It also suggests that no particular combination of these factors seems necessary.

Conclusions

The conclusions that can be drawn from these case studies are necessarily preliminary because the precision, type, and quality of data in the studies vary; the studies were not randomly selected; and many of the experiences lasted only a year or two. Nonetheless, several general lessons and indications about future directions of participatory budgeting are apparent.

First, national legal mandates for participatory budgeting have not created widespread local success in encouraging citizen participation, fiscal transparency, or effective municipal government. This is partly because designers of national laws had other goals in mind (possibly in addition to these goals) and partly because of local obstacles, including reluctant mayors or opposition parties, the weak fiscal and administrative capacity of municipal governments, and fragmented, conflict-ridden civic associations.

Second, despite problems, participatory budgeting has succeeded in some remarkably diverse locales—from small, poverty-stricken, indigenous, rural villages to large cities—with residents with various ethnic and class identities. While carefully identifying necessary or sufficient conditions will require further study, success seems correlated with several factors, in varying combinations:

- the mayor is indigenous, from a party on the left, or both;
- opposition from local political elites is weak or nonexistent;
- national or international aid organizations provide project funding, technical assistance, or both;
- the municipality has sufficient revenues to make significant investments in public works or programs;
- there is a tradition of participation and cooperation within and among local civic associations or indigenous customary organizations that has not been destroyed by guerrilla warfare or clientelist politics.

Third, even where participatory budgeting succeeds on some dimensions, it does not dramatically reduce poverty (especially income poverty) on its own. For poverty reduction to occur, fundamental principles of participatory budgeting as originally conceived (transparency, direct participation, redistribution toward the poor) need to be applied not only to national levels of government but to international policy-making institutions as well, under conditions

similar to those associated with the local success cases. While at first glance these conditions seem unlikely to be in place in the near future, the current wave of left-leaning presidents in much of Latin America, the democratizing pressure from social movements organizing in venues such as the World Social Forum, and the recent moves toward rethinking on the part of international financial institutions and aid agencies are positive signs.

Fourth, none of the normative approaches to participatory budgeting accurately captures its results, which vary extensively across cases. Participatory budgeting does not always strengthen the state with respect to the market, as radical democrats hope and conservatives fear, nor does it necessarily insulate pro-market reforms, as liberals hope and the orthodox left fears. Recent adoption of participatory budgeting by pro-market parties of the center and the right both inside and outside Brazil challenges the assumption about weakening the market, while recurring anti-privatization protests in countries requiring subnational participatory budgeting—Bolivia, Nicaragua, and Peru—undercut the assumption about insulating the market.

Fifth, the ideological contests surrounding participatory budgeting continue and are likely to persist. On the one hand, certain international development agencies with a liberal approach are promoting participatory budgeting more emphatically and more broadly than ever. Development agencies are advocating and local governments adopting participatory budgeting from Albania to Zambia. On the other hand, participatory budgeting has old and new champions in the recently ascendant Latin American left. Uruguay's Tabaré Vázquez, the former mayor of Montevideo who introduced participatory budgeting reforms there with a radical democratic approach, was elected president in 2004; at least one current within the governing alliance there is pushing for a national participatory budgeting process.³³

In Venezuela citizen participation in local budgeting and planning councils is enshrined in articles 168, 182, and 184 of the new "Bolivarian" Constitution (Nunes 2004). Most of the planning councils in Venezuela seem not to be functioning as envisioned by the law and may be operating in a politically biased manner (as in many of the other cases of nationally mandated subnational participatory budgeting). Still, after a 10-year hiatus, participatory budgeting has returned to Caracas (Harnecker 2005), and Hugo Chávez recently began advocating participatory budgeting as well, which will surely evoke protests from conservative traditional parties.

Sixth, the liberal approach to participatory budgeting is currently dominant: the open, informal, deliberative design pioneered by Porto Alegre's radical democrats seems to be out of fashion. In Bolivia, Nicaragua, and Peru parties with a more liberal perspective have implemented more

regulated, formal, consultative designs that work with preexisting civil society organizations. This trend is evident even within Brazil, where some had hoped that President Luiz Inácio da Silva would implement national-level participatory budgeting. Instead, Silva's major participatory endeavor was the series of meetings for the multiyear federal budget that took place across Brazil's 27 states in 2003. The government invited 70 NGOs to participate in each meeting. The process, as well as Silva's government more generally, has been criticized by Brazil's largest NGO confederations for not providing open, deliberative spaces of participation.³⁴

In Porto Alegre itself, after four consecutive victories the Workers' Party lost the 2004 municipal election. Though the new mayor promised to maintain participatory budgeting, his administration seems to be deemphasizing it. Unlike his predecessors, he has not attended participatory budgeting assemblies, and he has announced a new model, Solidarity Local Governance, based on government and civil society organizations. As the Secretary of Political Coordination and Local Governance notes, "Local governance is a nondeliberative executive forum; it is a networked articulation that seeks to create co-responsibility pacts. In this space, there is no dispute, no voting, and no delegates" (CIDADE 2005, p. 1).

Last, to strengthen the future chances of successful participatory budgeting at the local level, its original principles should be applied to higher levels of national and international governance. Even in the small number of municipalities that improved local service provision with participatory budgeting, low incomes and joblessness remain serious problems. This is also true of cities with longer traditions of participatory budgeting, such as Porto Alegre. One of the earliest and most insightful observers of participatory budgeting, Sérgio Baierle, cites a municipal study comparing the 1981–85 period in Porto Alegre (before participatory budgeting) with the 1995–99 period (after several years of participatory budgeting) (Baierle 2003). While education and health care improved, the unemployment rate shot up 78 percent, the number of poor people increased almost 20 percent, and income inequality rose by 16 percent. Local participatory budgeting is not untouched by national economic policies. As Baierle (2003, pp. 303–04) notes, "It is impossible to avoid the consequences of macro-politics of adjustment imposed at the federal level. No matter how fiercely the deconstruction of the public sector is fought at the local level . . . cities still control only a thin slice of the national public budget."

Applying participatory budgeting principles of transparency, participation, and redistribution to decision-making spheres where larger sums of money are at stake, may encourage local participatory budgeting efforts in two ways. First, by producing more universal, egalitarian social policies,

it may strengthen local social capital, allowing citizens in very poor countries to think beyond their next meal. Second, by convincing mayors and citizens that participatory budgeting is indeed about these principles—and not politically motivated subterfuge—it may persuade them that it is worth trying.

Notes

1. The lower figure includes cities in which participatory budgeting began as a local government initiative; the higher figure includes all municipal governments required by national laws to consult civil society organizations on budget priorities. It includes Bolivia's 327 municipalities, Nicaragua's 153 municipalities, and Peru's 1,821 districts, 194 provinces, and 25 regions.
2. This formulation borrows from the definition of UN-Habitat (2004).
3. Both parties were elected in 1989 and started their participation programs in 1990. For a comparison of the two Venezuelan cases, see Maya López (1999). For a comparison of Porto Alegre and Montevideo, see Miños Chavez (2004b). For comparisons of Caracas, Montevideo, and Porto Alegre, see Goldfrank (2001, 2002, 2005). The United Left in Peru experimented with similar participation programs in the mid- to late 1980s (see Schönwälder 2002).
4. In Brazil participatory budgeting spread gradually, from 12 cities in 1989–92 to 36 in 1993–96, 140 in 1997–2000, and about 300 in 2001–04. The figures correspond only roughly to the increase in the number of Workers' Party mayors (36 in 1989–92, 53 in 1993–96, 115 in 1997–2000, and 187 in 2001–04).
5. The most thorough account of the left's rethinking is in Roberts (1998).
6. Ruckert (2005) claims that international development agencies promote participatory planning in order to defend "neoliberal hegemony" by co-opting "counterhegemonic" ideas.
7. Other Workers' Party leaders also link local-level participatory democracy and participatory budgeting to socialism (Daniel and others 2002).
8. This view is promoted by the Unified Socialist Workers' Party as well as some minority factions within the Workers' Party in Brazil and by a few key peasant and labor leaders, such as Felipe Quispe, in some Andean countries. For an example of this approach, see Fontana and Flores (2001). For Quispe's view of Bolivia's Popular Participation Law, see Altman (2003).
9. For examples, see UN-Habitat (2004), UN-Habitat and Transparency International (2004), Schneider (2004) on USAID, and Drosdoff (2000) on the Inter-American Development Bank.
10. The notion of good institutions is related to that of effective state institutions. As the *World Development Report 1997* notes, structural reforms in the 1980s and 1990s were an "overzealous rejection of government. . . . Development without an effective state is impossible" (World Bank 1996, p. 25).
11. The UN-Habitat division, which vigorously critiqued the structural adjustment programs of the 1980s and 1990s and the "retreat of the state," is an exception (UN-Habitat 2003).
12. Coordinated attacks on participatory budgeting in Porto Alegre did not occur until the late 1990s, after participatory budgeting was adopted at the state level,

where it was subjected to much greater criticism (Goldfrank and Schneider 2006). For details on the arguments summarized here, see Goldfrank (2002), Nylén (2003), and the sources cited in Goldfrank and Schneider (2006).

13. Space does not allow all of the relevant works on participatory budgeting to be cited here. The literature in Portuguese is especially vast. For a review of the literature on participatory budgeting in Brazil, see Souza (2001). For a compendium of studies of Workers' Party subnational administrations using participatory budgeting, see Baiocchi (2003).
14. See also Cabannes (2004), Miños Chavez (2001), and UN-Habitat (2004). In my view, the discussion of the Peruvian participatory budgeting experience by Chirinos Segura (2004) provides the best conceptualization of the most important factors affecting participation programs.
15. The UN-Habitat (2004) guide does suggest conditions under which implementing participatory budgeting is not advisable.
16. Many scholars cite the conflict between the executive and legislative branches that participatory budgeting sometimes produces; Wampler (2004) focuses on this conflict. Observers of citizen participation programs in Peru have made the same point about the nonneutral character of participation programs and the likely backlash against them from existing power-holders (Chirinos Segura 2004).
17. Chirinos Segura (2004) makes a similar point about nationally legislated participation programs. He argues that the most common problem with top-down models is the resistance they tend to produce from lower levels of government, which see their authority diminished.
18. Unless otherwise noted, the discussion of the national and local cases is based on the following sources: Bolivia: WBI (2002, 2003, 2004b, 2004c, n.d.-b); Guatemala: Fundemos (2003), WBI (2004a, 2004d, 2004e); Nicaragua: Pineda Gadea (2003, 2004), WBI (2004f, 2004g); and Peru: Ventura Egoávil (2003, 2004a, 2004b, 2004c, 2004d, 2004e, 2004f). The discussion of Brazil is based on the literature cited above as well as Villas-Boas (2003) and my own field research on various occasions from 1997 to 2005.
19. In Bolivia if no party wins a majority of the votes, the city council chooses between the top two lists, which is similar to the rule for electing the national executive.
20. One notable exception in Brazil is Santo André.
21. In Belo Horizonte, as well as in a few other Brazilian cities, individual participation and organizational participation are combined.
22. Santo André and Icapuí are exceptions. Both have municipal statutes governing participatory budgeting.
23. Cabannes also finds more deliberative types of participation in Brazil than in the non-Brazilian cases.
24. In Santo André, Brazil, half of all participatory budgeting council members are from the municipal executive branch, and the mayor presides.
25. Some local governments do this as well, with similarly disappointing results in terms of citizen participation (Peterson 1997).
26. More generally, Chirinos Segura (2004) argues that the most successful experiences of citizen participation in Peru have been designed and carried out by local governments.
27. Bartholdson, Rudqvist, and Widmark (2002, p. 47) claim that "no real progress has been reported with respect to poverty and exclusion, which continue being as

- ubiquitous as ever." For an excellent, balanced review of the literature on the Popular Participation Law, as well as interesting original research, see Altman (2003).
28. Input from a wide range of actors was important to the peace process, but Mayan organizations complained of being excluded (Warren 1998).
 29. The author thanks Yann Kerevel for providing several of the sources for this section.
 30. President Alemán had a reputation for corruption while mayor of Managua. In 2003 he was convicted of money laundering and misappropriation of funds, among other charges, after allegedly stealing more than \$100 million from the national government. For Nicaragua's struggles with corruption, see the Global Integrity Web site (<http://www.globalintegrity.org/2004/country.aspx?cc=ni&act=notebook>).
 31. Henry Pease García, for example, who was active in the United Left's administration of Lima in the 1980s, became president of the Congress for Perú Posible and was a strong supporter of participatory budgeting.
 32. One exception is Curahuara de Carangas, where the structure of participation is based on all 10 preexisting indigenous organizations (ayllus) and the one neighborhood association, which included everyone in the central village. These organizations cover the entire population and are thus representative, unlike many of the organizations in other municipalities.
 33. For a discussion of the national participatory budgeting proposal, see Miños Chavez (2004a).
 34. For examples, see the critique by the coordinator of IBASE (Dantas 2004) and the summary of the NGOs' reaction in Goldfrank and Schneider (2006).

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Participatory Budgeting in Central and Eastern Europe

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In a democratic context and from a human rights perspective, civic engagement in public affairs is a desirable end, valued for itself. Civic engagement is also seen as instrumental to state effectiveness. When citizens have the opportunity to make their needs known and hold public institutions to account, public resources are likely to be used more efficiently to deliver public goods and services that are better aligned with citizens' needs.

Recognition of the potential of civic engagement in public affairs is widely shared. There is less consensus on what level of engagement is desirable and what form it should take. Increasingly, it is argued that participation in public affairs through elected representatives is insufficient, that the aims of social accountability, functional democracy, and optimization of public resources are best served if citizens also engage with public processes between elections and do so directly.

Participatory budgeting in the broad sense refers to citizens' engagement with public budgets, including such mechanisms as analysis by civil society of spending policies as an input to public debate. A narrower use of the term denotes instances in which citizens provide direct input into decisions about public resource use, usually at the local level of government.

In addition to electing representatives to local councils, citizens in some local municipal and submunicipal areas of Central and Eastern Europe are participating in public resource decisions. This chapter discusses selected examples of such participation. It focuses on the environments within and the mechanisms through which citizens engage with the allocation and use of public resources and on the impact such initiatives have had. The chapter draws on studies on the Russian Federation and Ukraine undertaken for this volume, as well as other studies.

Because of their shared history during much of the 20th century, the countries of Central and Eastern Europe share many similarities. These countries also differ in important ways, as a result of local economic, social, cultural, and political dynamics, both before and after the collapse of the Soviet Union.

All accessible and reasonably well-developed examples from Albania, Armenia, Bulgaria, Moldova, Poland, Romania, the Russian Federation, and Ukraine were included in the analysis. A range of countries and case studies allows preliminary conclusions to be drawn about how differences in the environment may affect the impact and sustainability of participatory budgeting.

The use of case studies is limiting in several ways, however. First, relying solely on cases that are in the public domain means that other instances of citizen participation are not examined. Second, the literature focuses on cases in which citizen participation resulted from an initiative funded by donors or international nongovernmental organizations (NGOs). Third, the source material for some cases (Albania and Romania) was prepared by project staff, which may bias findings. Fourth, the selection of case studies may be biased in favor of initiatives that achieved some success: there are no assessments of initiatives that failed.

The chapter is organized as follows. The next section examines common features in the environment that affect the nature and impact of participatory budgeting practices in the region. The second section groups examples by the nature of participation, examining the relations among environmental factors, initiative features, and impact. The last section distills lessons from the examples. An annex provides details on participatory budgeting from each case study.

The Central and Eastern European Context

Until the early 1990s, power in most of the states in the region was centralized, with little formal discretionary power at the local level. For several generations central governments kept tight control over most aspects of public life: citizens'

economic, social, cultural, and political lives were largely directed from the center, with implementation through local offices of the central state. The role of the state was pervasive and prescriptive, and freedom of association and access to information were limited. The state provided citizens with a range of goods and services, but citizens had little control over which services were provided and at what level and quality. Ordinary people were passive receivers of public goods. This affected the local government environment, citizen attitudes toward the state and service provision, and the size, nature, and depth of organized civil society.

With the collapse of the Soviet Union, the structure of central-local inter-governmental relations and state-citizen relationships changed. States passed new constitutions providing for autonomous local governments. Constitutional change was often followed by development of the legislative framework at the national, state, and local levels of decision making to provide for an independent level of local government and for citizen participation. At the same time, Western countries, multilateral institutions, and international NGOs extended development aid and undertook democratization activities in the region. These activities influenced the development discourse.

The history of the region means that participatory budgeting initiatives operate in contexts characterized by the following conditions:

- Citizens have historically been detached from decisions that affect them, are mistrustful of collective action, and are passive receivers of public services.
- Collective forms of political and social organization, such as political parties and civil society organizations (CSOs), are relatively new, as is an elected, independent, and autonomous local level of government.
- Intergovernmental fiscal relations systems are still being developed; roles and responsibilities are weakly and ambiguously assigned to local levels.
- The expenditure responsibilities of local governments do not match their revenue capacity, and transfers from upper levels are nontransparent and unreliable.
- Local governments have insufficient authority to make decisions and often are still developing the capacity to use resources effectively and efficiently to solve local problems.
- Citizens are dissatisfied with local services but do not believe that they can affect them or that local governments are able to do anything to alleviate or solve problems.

The literature on participatory budgeting highlights the need for capacity on both sides of the equation (governments and citizens) in order to achieve

positive and sustainable impact (Abers 2003; Goetz and Gaventa 2001). What institutional environment do local governments in the region face? What capacity do citizens and nonstate actors in the region have to participate in participatory budgeting?

The Institutional Environment of Local Governments

Despite an improving legislative environment for local government, in most of the case study countries, policy implementation occurs within an ambiguous legal framework in which roles and responsibilities are unclear. Local governments have limited authority over and limited discretion in their expenditure responsibilities, both because of their weak fiscal capacity and because of the intergovernmental system. In some countries the roles of local governments are not clarified through the further development at lower levels of the national framework legislation. Most countries also lack legislated mechanisms for participation (a notable exception is Bulgaria [box 4.1], where national legislation elaborates the mechanisms for participation). Conflicting provisions in different legislative instruments are also common. This results in ambiguous legal frameworks in Albania (Banks and Pigez 1998; Urban Institute 2004); Armenia (Doane, Simpson, and Rabenhorst 2000); Bulgaria (Novkirishka-Stoyanova 2001); Moldova (Viitorul 2004); Poland (Levitas 1999); the Russian Federation (Krylova 2005a; Savranskaya 2003); and Ukraine (Krylova 2005b).

In all countries in the region, the principle of local self-government is a driving factor in the framework legislation. Many countries are signatories to the European Charter of Local Self-Government, which envisages local governments as independent, autonomous local organs of government elected through equal universal suffrage and with meaningful provision for citizen participation in decision making.

In practice, local governments remain constrained in carrying out their public service delivery functions. Expenditure responsibilities are not matched with revenue capacity. Local governments are assigned very few taxes, and even then the rates are often set by a different level of government. Local taxes, particularly land and property taxes, are often difficult to assess and collect. The transfers from shared revenue sources, such as income tax, are not transparently assigned or reliable.

In many countries the first (municipal or village) or second (typically *rayon* [regional]) levels of local government have delegated expenditure functions for which they are accountable to state or national functional departments of expenditure. Local government budgets are reviewed or

BOX 4.1 The Bulgarian Legal Framework for Citizen Participation in Local Self-Government

Like many other countries in the region, Bulgaria is a signatory to the European Charter of Local Self-Government. Unlike other countries, its Constitution and national legislation set out mechanisms for citizen participation in local self-government, including referendums, community meetings, subscription mechanisms, and regulated contact with the mayor. Bulgarians also have the right to demonstrate, to attend meetings of standing committees of the municipal council, and to attend open municipal council meetings.

The Bulgarian Constitution provides for indirect and direct participation in local referendums and community meetings. Referendums can be called by one-quarter of registered voters in a locality or by at least one-quarter of councillors. The outcomes of referendums are binding on local government.

Local meetings can be called on issues of local importance, such as sanitation, public works, use of municipal property, and protection of the environment. These meetings can be initiated by the city council, by the mayor, or by one-quarter of voters. Decisions are legitimate if more than half of all voters attend the meetings and the majority of participants vote in favor of a proposal. The municipal council can reform or revoke the decisions of meetings on request of the mayor, but only after deliberation and voting.

The subscription mechanism can be used to bring decisions to the attention of the municipal council. A subscription can be initiated by 100 or one-fifth of all voters, whichever is smaller. A steering committee must be set up to manage the process. The framework allows the initiators of a subscription one month to collect signatures; the subscription is recognized if at least one-quarter of voters support it. The municipal council has one month to consider the subscription; the final decision rests in its hands.

Source: Novkirishka-Stoyanova 2001.

approved at higher levels. This is the case in Albania and Ukraine. The authority and discretion to make expenditure decisions in line with local needs are therefore limited. Roles and responsibilities are opaque, reducing accountability.

As relatively recent structures operating in a murky intergovernmental environment, local governments have little capacity to plan, budget, or implement expenditure responsibilities or to motivate higher levels of government to increase the level of resources. Local governments in some countries have been restructured more than once in an effort to create viable

units or to adjust the emerging power balances between central and territorial governments. Restructuring destroys the emerging capacity to design viable budgets, advocate for funds at higher levels, raise financing, and manage and evaluate budget implementation.

These factors reduce citizens' belief that local government can solve their problems, and they diminish their interest in participating in decisions (Doane, Simpson, and Rabenhorst 2000; Urban Institute 2004). Citizen participation is further discouraged by limited access to information and lack of knowledge of local government responsibilities and citizen rights. Local own revenues are usually the least significant portion of local government revenues and the least significant portion of taxes paid. This undermines the development of citizen interest to track how their tax contributions are used locally. Citizens are generally dissatisfied with services, but they mistrust local governments and are unwilling to pay taxes, adding momentum to the vicious cycle. Local governments lack the support of local citizens when advocating for more resources at higher levels of government or claiming their right to autonomy.

Citizens and Organized Civil Society

Several factors make citizen participation in government difficult in the region. First, governments developed in a context in which government was traditionally opaque and harshly discouraged citizen participation in public affairs. Second, in rural areas, citizens are often poor, disempowered, and involved in a daily struggle for basic household survival, limiting their interest in communal affairs. Third, many urban residents have little access to power and resources and are excluded from key decisions affecting them. Fourth, fixed attitudes within government and citizens' beliefs about government often hinder enabling environmental factors from developing. Citizens do not perceive social infrastructure to be their responsibility. Indeed, in Moldova and the Russian Federation, citizens are suspicious of activities that are collective and contribute to the public good (see, for example, Ovchintseva 2003, Tiurin 2003, USAID 2001).

The literature on governance and social development suggests that intermediary organizations, such as NGOs (or nonstate organizations) and community-based organizations (CBOs), have a key role to play in encouraging socioeconomic development, improving state effectiveness, and spurring the growth of meaningful democracy (Azfar and others 1999; Dongier and others 2002; Krishna 2003; Malena, Forster, and Singh 2004). Organized civil society provides citizens and governments with information, acts as a conduit for voice, holds government actors to account, and organizes

collective action. It can mitigate citizens' own weak capacity for meaningful participation and help develop that capacity.

Organized civil society started emerging in the case study countries only after the collapse of communism. Several patterns are evident (Karatnycky, Motyl, and Schnetzer 2001; Krylova 2005a; Kuts 2001; Ovchintseva 2003; Preci 2002; Urban Institute 2004; USAID 2001; World Bank 2003):

- Civil society has developed more rapidly and is better able to play a meaningful role in decision making in countries that faced a range of transition issues and were not focused on independence from the Soviet Union (Albania, Bulgaria, Poland, Romania).
- In all countries, national CSOs have more sophisticated organizational structures, better infrastructure, and better capacity in larger cities than in smaller cities, towns, or villages.
- The role of organized civil society is still often viewed as replacing government in the delivery of services.
- CSOs face major obstacles to financial sustainability. In countries where civil society development is still low (such as Moldova), the lack of funding is acute.
- Many countries (such as Ukraine) lack enabling legal frameworks for citizen participation. In others the existing frameworks hinder the development of civil society.
- Competition for scarce resources strains relationships among local CSOs, preventing them from forming coalitions.
- Not all CSOs adhere to standards of ethics, transparency, and good governance, hindering the development of trust between citizens and organized civil society and between local government institutions and organized civil society.
- The development of organized civil society benefits from cross-border exchanges and exposure to international successful practice.

The Political Context

According to Goetz and Gaventa (2001), the nature and organization of the political system help determine the level and quality of participation of citizen groups or lobbies (the civil society environment) and the nature and power of the state (the local government environment). An interest group may be equipped with all the preconditions for effective engagement (social organization, relationships with powerful actors, sympathy in the broad population, and "even a crisis event to concentrate public concern on the

group's needs"), but the political environment may frustrate success if "the group does not contribute to prevailing political agendas or patronage systems" (p. 11). Informal political systems affect the incentive structure for citizen engagement: if citizens perceive that participation is likely to be ineffective given the nature of power and the distribution of power in society, they are unlikely to engage. Fox (2000) claims that the political system can also undermine public accountability.

The regional case study literature rarely provides an assessment of the impact of local or national political institutions on the level and quality of citizen participation. It does, however, indicate the importance of a functional multiparty system. In many of the case study countries, political party institutions are still weak. When parties are still based on "personalism and clientelism," lack policy platforms, and rely instead on the politics of identity, civil society groups are less likely to gain an effective voice (Goetz and Gaventa 2001, p. 11). Development partners and international NGOs often initiate participatory budgeting practices in the region in the hope that improving citizen participation at the local level will improve service delivery and contribute to accelerated democratization of these societies. An assessment of the political dimension is therefore important.

The negative institutional and political context of local government—together with the absence of countervailing forces of citizen interest and capability to act and the lack of vibrant organizations able to mobilize and support citizen action—should have hindered the development of participatory budgeting practices in the region. Yet as the case studies show, citizens are participating in resource decisions of local governments across the region.

Case Studies of Participatory Budgeting

Very different types and levels of citizen engagement with public resource decisions are called participatory budgeting. McGee (2003) distinguishes four types of participation: information sharing, consultation, joint decision making, and initiation and control by stakeholders. As participatory practices move up this ladder, the argument goes, they become more effective instruments of participation.

This chapter uses this typology of participation, with one addition, information generation. In some countries in the region, CSOs have used applied budget analysis as a policy advocacy tool and disseminated their findings publicly. These activities typically generate information on public policy and services outside the state in order to influence state actions. This

form of participation represents a first level of participation, which can be positioned on the ladder one level below shared information.

These five types of participation in the budget process can be grouped into two broad categories: initiatives that are dependent on the state's providing information and space for engagement (information sharing, consultation, and joint decision making) and initiatives that can survive more independently from local government administrations (information generation and direct initiation and control). As the case studies show, sustainable and effective participatory budgeting is contingent on some willingness on the side of local governments to provide information and to engage.

Information Generation

CSOs around the world have gained voice in the public arena by analyzing public policy, budgets, and service delivery (see Falk 2001 for examples). The results are made available to decision makers and stakeholders either directly or through the media, in an effort to influence decision making and build capacity elsewhere for engagement with public policies. The public policy and service benefits include enrichment of the public debate and improved accountability for policy making and implementation. Such work can serve as a catalyst for public participation and collective action.

Many of the case studies discussed in the next section (on information sharing, consultation, and joint decision making) include information-generation activities by civil society as an input into joint local government-citizen activities. The two case studies described in this section are unique in that they originated locally within strong CSOs, without consultation with or negotiation space provided by local government. In both cases such spaces were eventually created, perhaps suggesting that CSOs faced with poor local governance practices could initiate participatory processes through applied budget work.

These two cases described here employed three different types of information generation activities that can be used to make room for space for engagement in the public arena: analysis of the quality of policy and budgeting institutions at the local level, analysis of public policy and budgeting decisions, and research on the quality of public service delivery. In both cases the organizations made efforts to:

- ensure the legitimacy of the work by using rigorous methods and generating good-quality information;
- build local coalitions with other CSOs;

- raise public awareness and support by using local media channels;
- build understanding and capacity in the cities and media through seminars;
- ensure successful dissemination of the results, through the media, special events, and other means.

Both of the organizations had contact with international NGOs that facilitated the adaptation of successful practices from elsewhere. Both also had access to external funding (from the Ford Foundation in the case of *Strategiya*, from the World Bank and the Canadian International Development Agency in the case of the *People's Voice Project*). Both CSOs increased the public space for engagement and built a functional partnership with local municipalities.

Access to this space is not broad based, however. A common criticism of public participation initiatives is that because of the need for specialized capacity to undertake technical work, such initiatives tend to limit participation to those who already have access to power and resources. While the development of partnerships between local government organizations and local citizen organizations should be seen as a positive development, and the more diverse analysis of public policy issues may improve the quality of outcomes, there is a risk of co-option by the state of scarce civil society capacity when the public space for participation is not meaningfully extended to a broader base.

Tsentr Strategiya's activities in the Russian Federation

In 1998 the NGO *Tsentr Strategiya* initiated its program in St. Petersburg and eight other Russian cities (Krylova 2005a). At first the project, which drew on successful practices used elsewhere in the world, focused on research on budget transparency at the city level and mechanisms for citizen participation. The logic was that without good information and some access to decision processes and decision makers, engaging with the allocation and use of public funds would be of limited value. The initial research drew on international assessment frameworks and built support among local NGOs, academic communities, and the mass media to advocate for improved transparency. *Tsentr Strategiya* and its partners in other cities built capacity to engage with budgets and shed light on how municipal governments were using resources. In 2002 the project achieved enough legitimacy that it expanded its activities, working with local municipalities to develop joint mechanisms for participation.

The People's Voice Project in Ukraine

The *People's Voice Project*, a local NGO, initiated analysis and policy advocacy on women's issues, education, and public budget and economic issues in two

Ukrainian cities, Ternopil and Ivano-Frankivsk, in coalition with local partners. It started its work by raising public awareness and educating local municipalities on citizens' rights, the need for responsiveness, and the benefits of building local voice (Zakharchenko 2002). In partnership with other local NGOs, in 2000 it created a program of citizen report cards, which measure citizens' attitudes toward public service delivery and specific services. The project organized a national conference to discuss the results of the report cards. The findings of the survey have been used extensively in public debate on municipal resources and public service issues as well as in subsequent budget and policy formulation (Holdar 2002). Building on this earlier work, the People's Voice Project and its partners are now developing local strategic plans.

Information Sharing, Consultation, and Joint Decision Making

In the case studies discussed in this section, information sharing, consultation, and joint decision making often occur together. Budget hearings take place in localities where municipalities provide better information on their resource use. The hearings are frequently accompanied by other mechanisms that draw citizens into decision making, such as capital investment planning committees. Efforts are initiated by local governments. However, different localities use very different mechanisms to achieve these three aims, and localities focus on different aspects of public resource decisions.

The cases in this section describe two mechanisms for soliciting citizen input in a systematic way, both of which increased participation. In Armenia the project was initiated by a third party and encountered resistance from city officials. The high expectations of citizens were difficult to manage, particularly given local governments' lack of administrative and fiscal capacity. In contrast, in Zwolen, Poland, the mayor initiated the program, reducing resistance by city officials, who participated in the initiative. Care was taken to ensure that resources were available, giving citizens an incentive to participate. In both cases the information-gathering effort was largely one-directional: citizens provided information on preferences but did not necessarily engage in dialogue with the local government.

Participatory urban assessment in Armenia

Save the Children and the Urban Institute undertook a pilot project of participatory urban assessment in nine cities in Armenia. The aim of the assessment was to bring more citizen voice into capital planning. A team of consultants initiated the project by conducting research on each of the cities

to generate a preliminary list of problems that could be addressed in the capital budget. The cities were divided into districts, each representing a community. A series of meetings was then held with each of the districts. At the first meeting, the initiative was explained. Citizen action groups were elected in each community through direct voting at the meetings. Representatives from these groups were subsequently elected to serve on the city capital planning committee. In a second meeting, participants were asked to rank problems. The results from all meetings were submitted to the city capital planning committee for consideration for the capital plan. The process resulted in 277 proposals to the committee, putting significant pressure on city officials. The initiative involved more than 10,000 citizens, out of a population of about 500,000, in the nine cities.

Capital investment cards in Zwolen, Poland

Zwolen is a small city in eastern Poland. Its 17,000 inhabitants are represented by 22 city councillors. Both the local authorities and citizens are open to new ideas and new management tools. On the mayor's initiative, in 1998 they developed a multiyear capital investment plan that involves citizens at all stages of the process. The city distributed capital investment cards widely to citizens, inviting them to express their development priorities.

At the outset, the city made the rules of the process known, setting out a detailed schedule for implementation and a method for prioritizing and ranking proposed projects. Three criteria were emphasized: improving the city's economy, creating work, and increasing city revenues. The city also appointed an implementation committee to oversee the process and mediate the decisions. The implementation committee worked closely with the city treasurer to ensure that expectations for resources were realistic. Existing projects were also emphasized and considered. The final draft of the budget was approved by the implementation committee, the city board, and the city council (Natkaniec 2002).

Advisory Groups, Bodies, and Committees

Local governments sometimes engage citizens on their priorities and needs indirectly, through some form of representation. Citizen advisory groups offer local governments a mechanism with which to "bring some of the technical expertise and opinions of communities to bear on solving local government problems" and "enhance the dialogue on relevant issues in order to resolve conflicts" (Serban 2002, p. 4). Advisory groups also demonstrate local governments' commitment to transparent and democratic government. They are, however, more exclusive than initiatives that combine information

gathering with more intensive efforts at engagement to collect information on citizens' opinions.

In the Gatchina Rayon, in the Russian Federation, the municipality appointed local leaders to provide them with advice. In the Maikop Rayon, nine villages were pro-active in making their affairs more transparent and inviting citizen participation. In some Russian cities, budget roundtables have been held at which selected expert members of civil society have met with municipalities on specific issues. Citizen groups have also been successful in Albania and Romania.

Participatory budgeting councils in Albania

A World Bank-funded project in Albania, implemented through the Urban Institute in partnership with local NGOs, used participatory budgeting councils and a redesigned budget process to improve citizen participation in budgeting. The project selected municipalities in which the local governments were willing to include participatory mechanisms in the budget process, development partners were already active, and a minimum base of organized civil society groups existed.

The project began with an awareness campaign on citizen and local government rights and responsibilities. It then divided each locality into zones. At a first public meeting in each locality, local government officials presented budget forecasts and information on the implementation of the current budget. At a second meeting, representatives to the participatory budgeting council for the locality were elected. This meeting also identified priorities for the neighborhood. The council and local government staff subsequently conducted field visits (a "bus caravan") in order to evaluate priorities, constraints, and possible solutions with citizens. The caravan process exposed officials and citizens to each other's pressing issues and problems. The council then underwent intense training on priority setting and financial planning before proposing plans to the city councils, which made the final decision.

One of the shortcomings of the project was the difficulty of getting broad-based participation. Participation of women was uneven, and outlying localities were difficult to reach effectively (Urban Institute 2004).

Citizen advisory groups in Brazov, Romania

Brazov is a city with 350,000 inhabitants. In 2000 it held its first budget hearings, attracting fewer than 50 people. The following year participation increased to 600 participants; advisory groups (on transport, education, and general issues) were established; and the Brazov Citizen Information Center was created.

The main purpose of the transport committee is to assist the transport authority in developing city transport modalities and to provide input into budgeting for transport. The committee is made up of citizens from various user groups, who were elected. The education committee is tasked with assessing the infrastructure needs of schools, making recommendations on priorities, and monitoring the transfer of education functions from central to local government. The Citizen Information Center supports the committees by explaining the capital budget and providing technical support. It operates as the hub of a network of 35 neighborhood committees, which monitor the use of the capital budget against neighborhood needs. Brazov learned and developed expertise by doing, and the quality of participation improved every year (Serban 2002).

Public Meetings and Budget Hearings

Several countries have legal frameworks that provide for public meetings and budget hearings as mechanisms for operationalizing local self-government. These mechanisms have increased participation in Bulgaria and Ukraine.

The literature on social investment funds includes many examples of development benefits accruing from competition among communities for resources, particularly if the rules of competition are transparent and enforced and the program includes community-level education and capacity building. The Svishtov case study described below is not unlike a social investment fund, except that communities compete for public resources within the city budget.

Capital investment planning in Svishtov, Bulgaria

Svishtov, a port city of 49,000 on the Danube River, is a fishing and agricultural center. In the early 2000s the city created a capital investment plan that distinguished between large infrastructure projects, which are financed externally, and smaller, community-specific projects, which are funded by the city budget through a participative process. This two-part investment planning is now an institutionalized part of budgeting in the city (Driscoll 2002).

Svishtov has also implemented other strategic budgeting mechanisms. It has a forward planning horizon on its capital budget, enabling tradeoffs to be made over time, and it has moved planning from a project-by-project to a programmatic basis. Citizen inputs are used to determine which programs receive attention in the budget (upgrading sidewalks, improving city parks, maintaining child care centers). Citizen applications for funding under the budget, within the selected programs, are invited through a series of community-based public hearings. Clear criteria and procedures have

been set for selecting projects, and communities can offer co-financing. A steering committee, with municipality and civil society representation, decides which projects within the programs will be proposed to the council. Criteria include the participative nature of the project, the level of co-financing, the economic and social benefits, the maintenance costs and responsibilities, and technical considerations. The steering committee prepares the plan for approval by the city council.

Svishtov applied good budgeting principles (resource-constrained, forward-horizon, programmatic planning; rationality in decision making and transparent rules; and sustainability of forward recurrent costs) to ensure that participation is engaged on real issues and provides real payoffs to citizens who participate. The fact that participation has been growing suggests that its efforts to involve citizens have been successful. Additional resources for capital investment have been provided within the city budget, and citizen interest in maintaining the resulting infrastructure has grown, adding to sustainability and reducing city costs in future years. This is the only case study that provides concrete evidence that the initiative had any impact beyond improving participation.

Public budget hearings in Kemyanets-Podilski, Ukraine

Kemyanets-Podilski (population 99,000) was the first city in Ukraine to adopt public budget hearings as an integral part of the budget process. This mechanism is part of the legal framework for local self-government in Ukraine. The mechanism is mandatory, but compliance is low.

The first hearings were initiated by a CSO, in partnership with the local government. Clear rules govern the initiation and management of hearings: public hearings can be initiated by a group of residents (1 percent of the entire population or 5 percent of a neighborhood's population), by the town council, or by the mayor. A written initiative is registered and then announced in the media. Within five days the preparation plan needs to be approved. This includes establishing a hearing committee, forming expert groups, and setting the schedule. Government officials and members of the initiating group serve on the hearing committee, together with municipal council members and representatives of NGOs. The hearing is advertised through local media. Budget hearings are often supported by research conducted by local academics. Surveys (that include the most vulnerable populations) are conducted on citizens' priorities for local budget allocations.

Within a month of initiation, the public meeting is conducted. The budget hearing is held in December, before the local council meets to decide the budget. The meeting is chaired by the head of the hearing committee and is attended by representatives of the municipal council and executive,

lower-level (village or neighborhood) self-government organizations, and NGOs.¹ Budget hearings start with a report on the previous year's budget and presentation of the following year's plan. Local officials then explain different aspects of the plan before fielding questions. If disagreement occurs, organizers attempt consensus. The minutes of the meeting register all opinions. Within three days, copies of the minutes are sent to the municipal council secretariat and the initiating group and are posted on the municipal information board. The secretary of the council summarizes the outcomes and submits them for consideration at the next council assembly for budget planning (this assembly is open to the public). The outcomes of the supporting polls and surveys are also reported to council members. The results of the meeting are published in the official municipal newspaper.

Initiation and Control by Stakeholders

Following capacity building and technical assistance from development professionals, some communities have actually initiated public projects, raised the funds to finance them, and managed implementation.

Village responsibility for finances in Maikop Rayon, Russia

Villagers in the municipality of the Maikop Rayon are responsible for their own finances. They identify priorities, raise and allocate funds, and operate the village bank account. Villages in the rayon are now more active in local public infrastructure development as a result of community efforts, seven of the original nine villages in the project now have a gas supply, trade has been reorganized, and working phones have been installed.

Community solutions to problems in Zaozerie, Russia

Zaozerie is an impoverished village in the Mezen Rayon, Arkhangelsk Oblast. After the local collective farm was closed, the village of about 25 homesteads faced high unemployment, the collapse of social services, and ongoing emigration.

A participative project was implemented by the Institute for Public and Humanitarian Initiatives, the Mezen Rayon administration, and the Arkhangelsk Oblast government. The institute started with a series of seminars with the rayon administration on the principles of rural self-government. This was followed by meetings, speeches, and discussions with village residents to educate them on their rights and responsibilities. Villagers were at first unwilling to take any action. They got involved when the institute acted in cooperation with village leaders and raised funds for small infrastructure

projects (repairing the village well and renovating the local clinic). As citizens' interest and confidence grew, villagers decided to provide a center for the elderly. Completion of this center was an important turning point for the villagers, who have since hired a midwife, repaired the local school, and improved the clinic. The project has changed the village mindset about who is responsible for solving the village's problems.

Conclusions and Lessons Learned

With few exceptions, development agencies or international NGOs were the initiators of participatory budgeting mechanisms in Central and Eastern Europe. Even where initiatives resulted from local action, international organizations funded the key organizations and contact with networks of CSOs worldwide preceded local action. While this does not necessarily detract from the value of the initiatives, it may have implications for sustainability.

Local government autonomy and resource availability, citizen organization and interest, and developed political party systems are often seen as prerequisites for successful participatory budgeting. In Central and Eastern Europe, these mechanisms are proposed as entry points to overcome governance weaknesses.

Three sets of questions are relevant when assessing the value of participatory budgeting mechanisms in the case study settings:

- Did the initiatives improve the ability of citizens to participate in government decision making? Did they improve citizens' capacity? Did they expand public space for engagement?
- Did the initiatives improve the effectiveness of local government? Did they increase the investment and the quality of public services? Did the initiatives lead to more equitable investments? Were better and more relevant decisions about resource use made?
- Can participatory budgeting initiatives function as an effective entry point to catalyze national change and build good governance systems? Did the reviewed initiatives bring about more and better participation?

In all cases, the introduction of participatory mechanisms increased participation. Even where citizens were passive providers of information about their preferences, the initiatives signaled a changed mindset and offered more opportunity for participation than existed before. It is not clear, however, whether the nature of participation was sufficient to ensure its sustainability: if participation does not result in real change, it discourages future participation.

It is also not clear that the mechanisms in place ensure inclusiveness: while participation by those who already have the capability to engage is perhaps better than no participation at all, it is inferior to mechanisms that draw in those who have traditionally been excluded. The case studies suggest that inclusive participation is difficult to achieve: women, vulnerable groups, and people living in remote areas are easily excluded. Interestingly, cases toward the upper end of the participatory scale seem to have provided more opportunity for good-quality, broad-based participation.

Did the reviewed initiatives result in more effective local government? The evidence is not clear. As Krylova (2005a, 2005b) notes, it is difficult to assess the degree to which citizen participation contributes to changes in resource allocations, as the counterfactual is not readily available.

Where information on citizens' preferences is collected at the local level and the activity was initiated by the local government, the results are included in future plans. The extent of this inclusion is not clear, but it seems to be contingent on subsequent decision-making mechanisms (such as implementation committees). Whether narrower interests determine which citizens' preferences are included when decisions are finally made is not clear.

There is some evidence that advisory groups produced real effects. In Brazov, Romania, the advisory group on education had real input into decisions on which schools were upgraded and in which sequence. Whether limited participation (only a few citizens can be elected to committees) leads to better resource decisions is not clear. The value of advisory groups depends on the incentives in place for citizens who get to participate. If members of citizen advisory groups are likely to be held to account by their fellow citizens for the outcomes of their participation, they may be more likely to provide good-quality, nonpartisan inputs. In the absence of such accountability—which may be likely, given citizen apathy—the value of such participation mechanisms may be limited. Members of participatory structures will be absorbed easily into the existing power structures. This may mean that these mechanisms' usefulness in addressing broader governance weaknesses depends on a robust citizen-state governance environment.

The extent to which public budget hearings and meetings increase local government effectiveness (measured as improved service delivery that better reflects citizen preferences) seems to depend on the institutional arrangements accompanying the hearings. In Svishtov, Bulgaria, outcomes were good: citizens competed for real resources and exercised real choice, and co-financing resulted. In Ukraine, where the hearings were more general, the outcomes seemed to be more indirect: participation was greater, and there was more engagement with local government decisions, which may lead to improved accountability and better service delivery in the longer term.

Where citizens initiate and control outcomes, infrastructure and services are provided that would not otherwise have been available. In three of the cases—Svishtov (Bulgaria), Zaozerie (Russia), and Maikop Rayon (Russia)—the opportunity for citizens to initiate projects led to an increase in the volume of resources available for local development.

Can these initiatives improve governance? Evidence from the case studies is weak. In *Strategiya*, Russia, advocacy on governance issues resulted in institutional changes. Elsewhere both local government officials and citizens became better informed of their rights and responsibilities as a result of participatory efforts.

Are these initiatives scalable? Can there be a shift from isolated initiatives, often introduced or supported by development agencies and international partners, to overarching programs that are a defining element of public action for citizens in the region? More important, can these initiatives produce results if capacity in government is low, the citizen-state relationship is not rooted in state accountability, and the center of government is weak? There is no evidence in the case studies that this is possible. In fact, at least in countries that are homogeneous and the center holds the balance of power but has weak governance, there may be an opportunity cost of investing in local-level governance and a real cost in terms of citizens' disillusionment in trying to engage government.

The following conclusions can be drawn from the case studies:

- Initiatives create opportunities for participation. Questions remain about whether the quality of participation is sufficient to ensure lasting interest and whether participation is sufficiently broad based.
- Initiatives can break down barriers between citizens and government, improving mutual understanding and communication.
- Initiatives strengthen local CSOs, which may improve local governance over the long term. However, it is not clear that the organizations that gain access to decision making and forge partnerships with local government do not themselves become arms of local government.
- Initiatives can direct resources to more relevant infrastructure and services.
- Initiatives can increase additional revenue for local development.

These benefits do not result automatically. Certain conditions facilitate effective participation. NGOs, local governments, and development agencies may need to establish these conditions before attempting to introduce participatory budgeting.

Several lessons can be drawn from the case studies: *Better information produces better results*. It is an axiom of participation that citizens need access

to information to participate. The case studies provide concrete examples of the fact that good information not only precedes participation but enhances its effectiveness. In the Bulgarian case, good information on future resource flows enhanced the realism and therefore the effectiveness of participatory planning. In Ternopil and Ivano-Frankivsk, Ukraine, the generation of good information on citizens' attitudes to local government and specific services added weight to participatory practices in decision-making forums.

Single participation mechanisms are less effective than combinations of mechanisms. Combining budget hearings with information-generation activities, for example, makes it more difficult for municipal governments to ignore citizen inputs, which in turn gives citizens reasons to participate. Similarly, setting up citizen advisory groups as an extension of budget hearings may create minimum accountability of advisory group members. Consultation is also likely to be more meaningful when combined with some measure of joint decision making.

Awareness raising and education of stakeholders are necessary. Almost all the case studies cite the need to raise awareness of citizens and local government officials, to increase their capacity as part of a participatory budgeting initiative, or both. Some note that such activities enhanced the quality of decision making.

Incentive structures count. Citizens participate in budgeting only if they expect some results to flow from their efforts. Clear resource ceilings must be set, so that real choices have to be made and wish-list planning does not lead to disillusionment down the line. A medium-term budgeting framework is needed, so that multiyear capital projects can be included and tradeoffs made among projects over time. Real participation and results were evident in Svishtov, Bulgaria, where some of these rules were put in place.

Clear rules for participation and decision making are required. The more successful case studies all include references to the clear articulation of the rules of engagement at the outset. (In Zwolen, Poland, for example, the municipal council agreed to the rules and made them public before commencing the consultation process.) These rules must cover who may initiate participatory events and how, what the roles and responsibilities of different actors are, how the government needs to respond to the results of decision making, and what the criteria are for choosing among priorities following consultation. The time frame of participatory processes also needs to be determined and publicized up front.

Partnerships contribute to more effective arrangements. Partnerships between local governments and key CSOs help make participation work. In many cases, particularly where budget hearings and public meetings are used as key mechanisms, the institutional arrangements themselves call for

partnerships. In other cases, such as the participatory assessment in Armenia, where local government involvement was low, mistrust by local government officials limited the effectiveness of the initiative.

Localities learn by doing. Learning by doing can occur only where real benefits flow from participation, so that the initiative is continued. The sustainability of participatory activities, which depend on funding from CSOs, is still in question. Only when citizens demand participatory mechanisms as a right and local governments have less discretion over their continuation will participatory mechanisms be institutionalized. Participation, even in the form of information generation by CSOs, can catalyze further participatory practices, such as consultation or some form of joint decisions.

Ownership by local leadership is critical. Success requires strong local leadership by the government (many initiatives were initiated by progressive mayors) and civil society organizers (whose organizational capacities are required).

Leading CSOs and local government officials need specific skills. They need to be adept at facilitation, conflict resolution, and technical budgeting.

Public relations campaigns and media involvement are vital. In all of the case studies, either the local government or CSOs identified the need for informing citizens about the initiative and used the media to elicit participation and publish the results of the process. Independent, robust media institutions are needed to fulfill this function and build trust in the initiatives.

Coalition building by local NGOs strengthens initiatives. In the Strategiya initiative, the People's Voice Project, and the other Ukraine initiatives, participatory initiatives depended on building coalitions with local NGOs. Working together increased their influence with local authorities and brought together various types of expertise. In Ivano-Frankivsk, Ukraine, for example, the local academic community conducted surveys of citizens' priorities, providing credible and legitimate information that was much harder for local governments to ignore.

External catalysts play a key role in initiating and developing participatory practices. All but two of the initiatives studied were initiated by external development agencies or CSOs.

Participatory budgeting initiatives offer the potential not only to change citizen attitudes about their rights and responsibilities and their views of local government but also to improve the effectiveness of local government. Ideally, over time such developments contribute to more robust governance practices, as citizens' understanding of their voice and how to make it heard grows. The initiatives studied are still fragile, however, and they are limited to locations where strong CSOs were able to take the lead or progressive local governments were already in place.

Annex: Achievements, Challenges, and Lessons from Participatory Budgeting Processes in Case Study Countries

TABLE 4A.1 Achievements of and Lessons from Citizen Participation in Central and Eastern Europe

Case study	Achievements and challenges	Lessons
Albania	<p>Achievements Local governments' understanding of citizens increased. Citizens' understanding of tradeoffs increased. Citizens' interest in results of spending rose, and accountability improved.</p> <p>Challenges Local governments have little financial autonomy. All local government budgets are approved by the Ministry of Finance, and local officers of the ministry exercise significant control. Development of organized civil society is relatively new, and capacity remains low. Information at the local level is not easily obtainable.</p>	<p>Citizens need good information. Participative budgeting needs to be aligned to local fiscal realities. A conflict resolution process must be in place, and rules must be clear from the outset. Public understanding needs to be built. Participation of women and residents of remote areas is difficult to achieve.</p> <p>Generation of sustainable results takes time.</p>
Armenia	<p>Achievements Ten thousand citizens got involved in identifying priorities.</p>	<p>A high level of technical input is required. Building capacity of local governments, CSOs, and communities to make the initiative sustainable is critical.</p>

Challenges

City officials resisted participation.
Sustainability is difficult to achieve.

Svishtov,
Bulgaria

Achievements

Learning through doing took place.
Citizen awareness of government duties grew.
Participation improved.
Co-financing emerged.
Sustainability of capital projects increased.

Planning should focus only on what is possible.
Incentives are needed to induce citizen interest.
Local leaders and interest groups must advocate, initiate actions, organize funding, and manage the process.
Education of citizens on rights and responsibilities and the workings of the intergovernmental system is critical.
Participation develops as capacity builds.
Participation attracts co-financing and increases sustainability.

Challenges

Risk remains that elites may capture process.

Zwolen, Poland

Achievements

Participation increased local government's sense of citizen priorities.
A transparent process with transparent rules was adopted to allocate capital resources to priorities.

Media campaigns to inform citizens about initiative are very important.

Challenges

Involvement of local communities and private sector in local development is low. Citizens do not see getting involved as their responsibility.

(continued)

TABLE 4A.1 (continued)

Case study	Achievements and challenges	Lessons
Brazov, Romania	<p>Achievements Budget hearing process resulted in the formation of smaller, more effective and more involved committees. Neighborhood committees were active in monitoring neighborhood needs and implementing small infrastructure projects.</p> <p>Challenges Building citizen trust in the meaningfulness of the mechanisms of engagement was difficult.</p>	Sustaining efforts over the first few years is critical, as the participation process takes a long time to institutionalize.
Russian Federation Zaozerie, Mezen Rayon, Archangelsk Oblast	<p>Achievements Social services in village improved. More resources were available. Capacity of villagers to plan, raise funds, and implement solutions to their own problems increased. Mindset regarding where solutions should originate changed.</p> <p>Challenges Rural local authorities have insufficient resources to undertake local development. Local citizens are not informed about changes in local government structures and opportunities for participation. Local citizens are initially distrustful about collective efforts.</p>	Local leadership by the teacher can be important. Building the capacity of villagers to understand their rights to seek their own solutions is important.

Nine villages
in Maikop
Rayon,
Krasnodar Kray

Achievements

Villages planned, financed, and developed their own infrastructure, in line with their own priorities. Seven villages now have gas pipes, trade has been organized, phone communication has been installed in some villages, and transport infrastructure has improved.

Empowered participation processes facilitate the generation of additional revenue to use at the local level.

Legal framework that allows for public meetings to make binding legal decisions of self-government in small villages facilitates innovative solutions.

Challenges

Building trust between local government and citizens is difficult.

Gatchina
Rayon, Leningrad
Oblast

Achievements

Expenditures are controlled closer to beneficiaries. Local administrators are more involved in budgeting and revenue calculation.

Capacity building in local administrations is vital.

Challenges

Local administrators initially saw their role as mainly controlling expenditures and not managing local development.

St. Petersburg

Achievements

Capacity and confidence of local NGOs were built. Participation increased modestly over time. Interactive mechanisms were established among NGOs, the expert community, and local authorities that may yield fruit in the future. Joint programs were developed; joint budgeting mechanisms are being institutionalized in some cities. Joint reviews of policies were conducted in some cities. Civil society capacity supplemented the low capacity of local authorities. Participation increased.

Involvement by academics resulted in strong conceptualization and ability to communicate at a sophisticated level.

Independent budget analysis contributed to the success of hearings.

Hearings and other transparency institutions evolved as mutually reinforcing mechanisms.

Murky roles and responsibilities in intergovernmental relations negatively affected participation.

(continued)

TABLE 4A.1 (continued)

Case study	Achievements and challenges	Lessons
	<p>Challenges</p> <p>Access to information remains deficient; demand for information remains low.</p> <p>The regulatory basis for public involvement in decision making is not clear.</p> <p>The divide between NGOs funded from the budget and others was difficult to bridge.</p> <p>Local government perceived participation as consisting only of information sharing and consultation.</p> <p>Mutual distrust detracted from hearings.</p>	<p>Low level of capacity in local NGOs, lack of NGO coalitions, and low level of consolidation hindered local organization and effective participation.</p> <p>Other mechanisms of influence and interaction that exist between local elites and authorities resisted the introduction of transparent public hearings.</p> <p>Illiteracy and a low level of awareness among the public, NGOs, and elected council members hindered participation.</p> <p>Low level of transparency and weak media limited impact.</p> <p>Analysis by NGOs was more useful than analysis by academics.</p> <p>Poor communication about hearings limited impact.</p> <p>History affects how citizens respond to participatory initiatives.</p> <p>The quality of moderation is important.</p>

Low level of capacity in local NGOs, lack of NGO coalitions, and low level of consolidation hindered local organization and effective participation.

Actors who benefited from existing nontransparent mechanisms of influence and access resisted open public hearings.

Low level of expertise or apprehension of local experts created a high level of mutual distrust.

Ukraine

Kemyanets-Podilski, Khmel'nitsk Oblast, and 31 other cities

Achievements

Participation in hearings to set local budget priorities grew to 600 people, with many representing entire communities.

Hearings offered an avenue for groups working with vulnerable groups to bring their concerns into budget deliberations.

Trust between citizens and government increased.

Citizens' priorities and opinions were integrated into the budget process.

Local government was able to draw on citizens' support to advocate at higher levels of government.

An initiative was launched to approach oblast and national governments to secure local budget revenue from income taxes.

As a result of introducing public hearings, municipal spending patterns changed.

Projects' experience has been disseminated to other cities through the Internet.

Participatory processes developed with experience.

Technical capacity in town (local university) facilitated the use of more sophisticated instruments, such as opinion surveys.

Leadership by the local mayor and the dynamism of town leadership with values of pluralism and political activism were important.

More transparency on budget issues preceded participation practices.

Better background information (budget and budget execution information on the Web site, for example) enabled participation.

Surveys and opinion polls supporting budget hearings made it more difficult for council to ignore citizens' priorities.

Public hearings need to be backed with other mechanisms of engagement, such as public planning committees.

(continued)

TABLE 4A.1 *(continued)*

Case study	Achievements and challenges	Lessons
	<p>Challenges Quality of participation was not ideal, with women underrepresented. Mechanisms were captured by elites. Although the legal framework makes hearings obligatory, not all cities have statutes in place. Capacity remains low in both local governments and civil society in some cities.</p>	<p>The switch to program budgeting was effective, changing the nature of questions asked in the budget process. Significant capacity building support is needed before successful mechanisms can be replicated elsewhere.</p>

Note

1. The legal framework includes provisions under which citizens can organize themselves into units of local self-government.

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Participatory Budgeting in Asia

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The chapter examines the use of participatory budgeting by subnational governments in Bangladesh, India, Indonesia, the Philippines, and Thailand.¹ In some of these countries, participatory budgeting was initiated by the government. In others, local nongovernmental organizations (NGOs) or third parties initiated the process. Some of the efforts described aim to improve transparency and accountability, others seek to provide citizens with direct participation in public decision making. Some operate in the formulation phase of the budget cycle, others engage in participative monitoring and even auditing.

Do the case studies provide evidence of benefits from participation? If so, can useful conclusions be drawn about necessary and supporting factors for replicating such initiatives elsewhere?

To answer these questions, the chapter begins by showing how participatory budgeting can enhance development. It then reviews the Asian context, examining how broad trends of democratization, decentralization, and participatory practices have played out in the five case study countries. The third section describes the types of participatory budgeting initiatives and examines how well they performed in each of the five countries. The fourth section draws lessons from the Asian experience. The last section draws conclusions about participatory budgeting based on the case studies.

How Can Citizen Participation Enhance Development?

Citizen participation in the allocation and use of local public funds can enhance development outcomes, for several reasons. First, citizens have the best knowledge of their needs, their preferences, and local conditions. Their participation in decision making makes it more likely that available funds will be used to deliver the goods and services most needed, thereby improving government effectiveness. Participation contributes to better public policy and better policy implementation.²

Second, citizen participation improves vertical, or social, accountability. When citizens are engaged in planning, funding, delivering, and monitoring public goods and services, the incentives and pressures on public officials and officeholders change. Officials become more accountable for the choices they make on behalf of citizens; as a result corruption is less likely and effectiveness and efficiency increase. Citizens' perceptions change as they learn to see themselves as the clients of government. Development partners emphasize these changes as objectives of participatory programs, particularly in countries with poor governance environments, such as Bangladesh and Indonesia. As Edstrom (2002, p. 2) notes, the aim is to "institute transparency and democracy from the bottom up in a country [Indonesia] where serious abuse of office and top-down planning have been endemic. [Participatory governance] calls on villagers to demand accountability from both the government and their neighbors, and to take responsibility for the investments they deem important." Participatory governance systems "embody the aspiration of making government at local levels more responsive to citizens and more effective in service delivery through building in participation and accountability" (McGee 2003, p. 6).³

Third, participatory budgeting has the potential to improve the quality of democracy. Participation in public decision making is a form of direct democracy that allows for a more meaningful democratic relationship between citizens and government than that provided by representative democracy (McGee 2003). Participation can also provide marginalized groups with access to policy makers. In any political system, already powerful and economically advantaged groups have easier access to the state than marginalized groups. Purely representative democracies are unlikely to address this imbalance, particularly if they are already highly unequal. When participatory elements are introduced into governance systems, the opportunities for redress increase, as institutionalized participatory mechanisms lower the entry barriers for engagement with the state and

allow disadvantaged groups a voice in policy making. This is in contrast to purely representative democracy, which presupposes absolute bureaucratic efficiency. A combination of direct and representative democratic governance institutions is likely to be the most functional. As Edwards notes, “Without sustained public pressure (as in participatory democracy), governments rarely fulfill the promises they make on election day. But without elections, it is difficult to reconcile the different interests and agendas that exist in civil society” (2002, cited in McGee 2003, p. 9).

Effective participatory democracy depends on the quality of deliberation in the process. Deliberation emphasizes “eliciting broad public participation in a process which provides citizens an opportunity to consider the issues, weigh alternatives, and express a judgment about which policy or candidate is preferred It is distinguished from ordinary, thin modes of public involvement by the breadth and quality of participation” (Weeks 2000, cited in McGee 2003, p. 10).

Participatory democracy is not tokenistic. It presupposes decision-making processes that are not dictated primarily by interest group politics but by rationality. If participative practices are to deliver on the promise of improving the quality of democratic governance, enabling conditions for good-quality deliberative processes should be in place. These include the incentives citizens face, their skill levels, and the quality of information available in the process.

Meaningful and effective citizen participation in public choices also improves trust in government and commitment to the tradeoffs made. Together with improved budget transparency, participation can build social cohesion, which can lead to the very tangible benefit of increased tax collection.

The Asian Context

Russell-Einhorn (forthcoming) distinguishes between background factors affecting the effectiveness of citizen voice initiatives and factors that have to do with institutional design, resource availability, and capacity. The first set of constraints is usually embedded in the social and political environment and includes sociocultural, political, and administrative traditions, legacies, and reforms. In this regard, the Asian context is marked by supportive legal frameworks, active civil societies, and a relatively recent history of citizen-led constitutional change, often set against a longer history of political patrimony and elitism.

Political, Constitutional, and Legislative Contexts for Participation

All the countries in the sample are democracies. Two (Bangladesh and India) were founded as a result of secession and independence movements; three (Indonesia, the Philippines, and Thailand) recently underwent constitutional change after civil society uprisings against authoritarian rule. All have legal provisions for direct democracy, although they are not always embodied in governance practice (table 5.1). In all five countries, traditional social structures coexist with liberal democracy and provisions for participation

TABLE 5.1 Constitutional and Legal Provisions for Decentralization and Participation in Bangladesh, India, Indonesia, the Philippines, and Thailand

Country	Political and constitutional context	Constitutional and legal provisions for decentralization and participation
Bangladesh	Democracy since 1971, following secession of East Pakistan from West Pakistan. The constitution includes a bill of rights and “pledges ownership of the republic to the people.”	A recent government review recommended a four-tier system of local government, including village-level councils, but the recommendation has not been implemented. The legal framework for assigning roles and responsibilities across levels of government is weak, as is the fiscal capacity of local governments.
India	Federal democratic republic since 1947, born out of the Gandhian independence movement. The constitution has a strong focus on fundamental rights. The 73rd and 74th amendments introduced village-level autonomy to promote democracy at the grassroots level.	The constitution assigns clear roles and responsibilities to local government. Local governments are largely dependent on transfers from national government: their own revenue sources are limited to property and professional taxes and a limited set of license fees. Transfer criteria for recurrent spending are determined by the Finance Commission; the national Planning Commission allocates funds to major capital investment projects. The financial autonomy of local governments to initiate new programs and projects remains limited.

(continued)

TABLE 5.1 (continued)

Country	Political and constitutional context	Constitutional and legal provisions for decentralization and participation
Indonesia	Demonstrations and riots in 1998 led to the resignation of Suharto after 32 years of dictatorship. The constitution was enacted in 1945. Since then piecemeal change has been made toward making it more progressive.	Indonesia has passed two decentralization laws since 1999. In 2001 it passed implementation legislation. Bureaucratic opposition has succeeded in rolling back many of the gains made in the legislation.
Philippines	The Marcos regime fell in 1987, following mass demonstrations. The constitution is progressive, containing a strong bill of rights and recognition of civil society.	The Local Government Code of 1991 embodies a comprehensive decentralization program. In accordance with the constitutional provisions, the code institutionalizes the participation of civil society at the local level, envisaging a partnership between NGOs and local administrations, in terms of both joint planning and partnering in service provision. The code creates local development councils, with guaranteed seats for NGOs.
Thailand	Demonstrations in 1992 ended 60 years of military rule. The constitution is progressive, containing a strong bill of rights, enacted with support from a broad civil society coalition.	The constitution provides for decentralization. The Local Government Code places strong emphasis on participation.

Sources: Brillantes 2005; McGee 2003; Paul 2005b; Rahman, Kabir, and Razzaque 2004; Suwanmala 2004.

and accountability to the larger population. In practice this means that meaningful participation is not the norm; access to political power and the organs of state is still largely elitist.

Experience around the world suggests that legal provisions for decentralization and participation are necessary to create an enabling environment for these institutions. Legal frameworks regulate the terms of actors' engagement and their scope for influencing behavior in the arenas of other actors (McGee 2003). This holds both for how subnational governments influence national governments and how civil society influences government. Experience also suggests that legal frameworks are not sufficient to ensure

that effective decentralization and participation mechanisms develop. Despite numerous constitutional and legal provisions for direct democracy and accountability, restrictions to democracy are in place in the case study countries, where undemocratic traditional social norms underpin the political systems (McGee 2003). Decentralization will be effective only if it is supported by a clear assignment of roles and responsibilities in a legal framework, but such a framework alone is not enough.

This mismatch between the legal framework and practice plays out in various ways in the case study countries. In Bangladesh local government elections are hotly contested and draw high voter turnout, but the roles and responsibilities of local governments are not well defined and implementation capacity is very weak. Fiscal capacity is also limited, with local governments largely dependent on transfers from the center. A weak framework for local government, coupled with a strong national nexus between politicians, bureaucrats, and business, results in a government that remains highly centralized (Rahman, Kabir, and Razzaque 2004). As a result, local government institutions are ill equipped to provide basic services. At the national level, vulnerable groups are largely excluded from access to budget decision makers. The state is not entirely closed to participation, however. Organized and well-resourced interest groups have direct access to political power and bureaucracy, and they lobby for their interests. In contrast, the poor have virtually no control over policy changes, with profound implications for their livelihoods (Rahman, Kabir, and Razzaque 2004). The Bangladesh case study describes an instance in which development partners are joining forces with other stakeholders to create demand from citizens for better local government.

In India the assignment of roles and responsibilities to local government is clear, but local governments have only limited financial autonomy to initiate new programs and projects. The financial (and therefore policy) autonomy of local governments is nominal rather than real (Paul 2005b). In addition, traditional social norms hinder effective broad-based participation. It is therefore interesting that in the case studies from India, all initiatives except one were initiated by civil society, with at least two cases involving groups representing the lowest tiers of society.

In Indonesia implementation of the decentralization legislation is slow and has met with bureaucratic resistance, rolling back many of the gains made in the legislation (McGee 2003). In the Indonesian case study of participatory decision making at the local level, government is a key partner. According to Edstrom (2002), choosing to work with local rather than national government reflects the recognition that radical interventions are needed to improve state effectiveness in an environment of severe corruption.

In the Philippines implementation of the local government framework is uneven: the case of Naga City suggests that national legal provisions for participation may need to be supplemented with more-detailed legal instruments to regulate the direct participation interface between citizens and the state. Politics has not favored strong accountability or local constraints on central power (Azfar, Kähkönen, and Meagher 2001). The traditional system has been described as neopatrimonial, combining the decentralized power of families and clans with a centralized bureaucracy that coordinates the implementation of policy. These dynamics put civic participation in local government at risk. Still, several social changes have facilitated effective democratization and decentralization, including civic participation in local government.

In Thailand the implementation of the Local Government Code, with its provisions for participation, has been uneven (Suwanmala 2004). The Thai case nevertheless illustrates how enactment of a national framework can stimulate change at the local level.

State of Civil Society

Civil society has been successful in bringing about large-scale political change in some Asian countries by deploying conflict-driven mechanisms of protest and mass action. The region is also characterized by large national NGOs that deliver services parallel to those provided by the state. This phenomenon developed in reaction to the state's failure to deliver basic services on the ground. In Bangladesh, for example, the strength of civil society delivery organizations is a feature of national life.

Citizen participation in a cooperative relationship with government in local-level public decision making is relatively new. However, there is some evidence in the case studies that a history of exercising public voice may have left citizens with some capacity to take up a meaningful role.

This is perhaps best illustrated if the case studies in this chapter are contrasted with those from Central and Eastern Europe (see chapter 4). The first striking difference is that the Asian case studies illustrate activities that are almost exclusively initiated and carried out by domestic actors (the local government or local civil society). International actors play a much smaller role as initiators and managers of initiatives than they do in Eastern Europe, where almost all initiatives have been sponsored by development partners or international NGOs. This difference may relate to Asia's longer traditions of accountable governance and civic engagement, which have given citizens and (local) governments a different view of the relationship between citizens

and the state. Civic engagement in local decision making occurs in a context in which citizens already have an understanding of their roles in local governance. In contrast, years of centrist communist rule in Central and Eastern Europe disempowered civil societies. An important contribution of participatory budgeting in that region may be building citizens' awareness of their rights and obligations. In Asia this "platform" of awareness was already in place.

The Philippines offers a good example of a country in which civil society's role has developed along two mutually reinforcing paths. Before 1986 increasing centralization, graft, and lack of resources left a vacuum in local service delivery, which civil society filled (Brillantes 2005). The overthrow of the Marcos regime in 1986 resulted in a constitution that provides a strong framework for civil society participation in the process of governance. The constitution tasks the state to encourage NGOs that promote the welfare of the nation. It guarantees the right of people's organizations to effective participation at all levels of social, political, and economic decision making. The Local Government Code provision translates this provision into explicit mechanisms for participation. NGOs are allocated a minimum of one-quarter of the seats on local development councils, as well as seats on local pre-bid and awards committees, local health and school boards, and the local peace and order councils.

Governments in the Asian case study countries may also be better equipped to maximize the benefit from citizen-state partnerships than their counterparts in other regions. In Rajasthan, India, the state government has recognized the role communities can play in ensuring that public funds are used effectively: it is replicating the social audit methodology initiated by a CSO in other districts in the state. In the Thai cases and in Naga City in the Philippines, local governments have seen the potential in the national legal frameworks for participation and initiated participatory practices.

Types of Participatory Budgeting Initiatives

Very different types and levels of citizen engagement with public resource decisions and service delivery are referred to as "participatory budgeting." Two broad types of citizen engagement can be distinguished based on the degree to which citizens enter the action space of the state in planning, allocating, and monitoring the use of public resources.

In the first set of participatory budgeting initiatives, citizens do not attempt to take over or partner with the state in these phases of the budget process. They undertake activities in the broader public domain that are

aimed primarily at improving the transparency of governments' actions and the accountability of state actors. This type of participation occurs within the boundaries of representative democracy: making public decisions is still the purview of government agencies and elected office holders. However, citizens do not take the bureaucratic effectiveness of these institutions for granted but undertake activities to bolster transparency and accountability. Put differently, these activities typically generate information on public policy and services outside of the state in order to influence what happens in the state. Activities in this broad category are usually initiated by NGOs.

In the second set of initiatives, citizens engage in the decision-making processes of public agencies. Examples of this type, which could be seen as a form of direct democracy, can be observed throughout the budget process. In addition, the mechanisms deployed represent different intensities of participation, because governments have discretion over the degree of access to traditional state-controlled action spaces they provide in setting up or taking over participatory mechanisms. McGee (2003) sets out four types of participation: information sharing, consultation, joint decision making, and initiation and control by stakeholders. As participatory practices move up this ladder, the argument goes, they become more effective instruments of participation: direct initiation and control by stakeholders are more powerful than joint decision making, which in turn is more powerful than consultation and information sharing.

Initiatives that Improve Transparency and Accountability

Civil society achieves the first level of engagement with the budget when it attempts to bring information on citizens' opinions and preferences to the attention of subnational governments or to initiate dialogue and influence public decision making through budget analysis. This level of participation relies on the quality of the information needed to persuade decision makers to change development and funding priorities and to improve the quality of services. However, as Paul (2005a) argues, budget analysis and dissemination by skilled professionals are often aided when broad-based movements, or "people power," get behind it. Paul emphasizes the need for coalitions of different types of NGOs, including organizations that have broad-based membership.

Getting ordinary citizens involved requires that the analysis be easy to understand and relevant to the concerns of average citizens. Participation can occur in a variety of ways, such as involving citizens in publicity campaigns and events or inviting them to express their preferences by voting on policy and service delivery issues. The involvement of ordinary citizens

also strengthens civil society groups' efforts at monitoring and auditing public projects and services in a systematic way.

In all five case studies presented below, the NGOs use mechanisms for transparency and accountability to influence what happens within the state. They often bring important new information on public services into the public domain. They bring "people power" to bear on the accountability of elected representatives and public officials by drawing in ordinary citizens and coalitions of NGOs. To do so, they make effective use of the media to reach citizens, legislators, and officials. They know how to capitalize on the aversion of public figures to exposure. The organizations are inventive when it comes to translating technical information into ordinary terms and making what may seem distant relevant to people's ordinary lives.

Paul (2005a) argues that programs like these can be successful only in societies that adhere to democratic governance, are open to public debate and criticism of those in authority, have relatively free media, and have independent NGOs in place. One could take this argument further to add that the quality of democratic governance counts. Goetz and Gaventa (2001) emphasize the importance of the nature and organization of the political system in determining the level and quality of participation. A CSO should be equipped with the expertise and resources to initiate a program to improve government effectiveness through various transparency and accountability mechanisms. Its efforts will not yield significant benefits, however, if the political system is rooted in the politics of identity, personality, and patronage. When issues of public policy get more play in voter preferences, politicians have less leeway to perpetuate behaviors that invite voter dissatisfaction.

In order to bring about change (or prevent deterioration of services), initiatives need to convey to state actors the implicit threat of "public accountability discomfort." The more vibrant a country's democratic governance and the more real the contest for political power, the more options there are for effective civil society participation. Electoral volatility and the degree to which the contest for political power is policy based are also enabling factors. Initiatives that work on the policy and allocation side of the budget process will find it much harder to deliver results in environments in which politics are not rooted in citizens' preferences for public goods and services. In such environments, initiatives that focus first on the implementation and service delivery side may have a greater chance of stirring voter dissatisfaction and therefore a higher chance of impact. An example is Bangladesh, where local government elections draw large voter turnouts and are hotly contested but local governments remain weak and unequal to the task of delivering effective services efficiently.

Of the four cases presented below, the participative auditing and score card methodologies deliver the most tangible results: redress and improved implementation of services and projects. Tangible impact is much harder to achieve in initiatives that focus on influencing the allocation of funds against priorities. Of course, the voices of citizens and citizen groups compete with many others in policy and resource allocation processes. Even if citizens' voices are heard in policy decisions, many linkages must occur through the budgeting and spending cycle for citizens' preferences to effect changes in spending. While analyses that expose such gaps may pressure officials, accountability is much harder to establish, particularly in an intergovernmental fiscal environment, and it occurs only over a long time. Moreover, governments (and citizens) are more likely to recognize citizens' right to hold government to account in implementing projects or programs than they are to allow them to have a say in policy and budgeting processes. That said, the dynamics of "accountability discomfort" should not be disregarded when trying to understand differences in effectiveness across locations in different political environments.

The Development Initiative for Social and Human Action (DISHA) in Gujarat State, India

The Development Initiative for Social and Human Action (DISHA) is a local voluntary organization. Founded in 1985 as a trade union and a tribal welfare organization, DISHA aims to improve the living conditions of the large tribal populations in Gujarat. It created a unit, Pathey, to undertake budgetary analysis and advocacy work as a complement to its more activist campaigns. The strong membership base of Pathey's parent organization lends weight to its engagement with public officials and elected representatives. Pathey also has access to outside economic and financial specialists.

Pathey analyzes issues in the state budget of special relevance to poor tribal people. Comprehensive analysis is kept to a minimum and used to frame specific analyses, including analysis of budget allocations to the most relevant sectors (health, education) and the tracking of specific schemes that affect local people. Pathey also tracks expenditures on programs of high relevance to its client population, through records in the field and interviews with beneficiaries. For example, Pathey tracks expenditures on critical programs through district budgets in order to determine whether specific purpose grants are used as required.

Pathey distributes its findings simultaneously to legislators and target population groups. At the outset, Pathey realized that ordinary people were not equipped to understand or use its rather technical analyses. It therefore

built a network of nongovernmental groups, including trade unions, to create a coalition for dialogue with the government. DISHA/Pathey also launched campaigns to inform and educate state legislators and officials on budget findings. Disseminating findings to the media helps reinforce DISHA/Pathey's voice in the legislature and with officials. Pathey uses its district analyses to motivate local citizen groups and NGOs to meet with local authorities.

Surveys conducted by Pathey to measure its impact show that the target audiences welcome the organization's work. In fact, a third of the people who receive material about the budget undertake follow-up action. Many of Pathey's nongovernmental partners use the analysis to draw the government's attention to specific issues. They see long-term value in the information. Members of the state legislature, political parties, and senior public servants make significant use of Pathey's findings and suggestions (Paul 2005a; Wagle and Shah 2003).

Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan, India

Mazdoor Kisan Shakti Sangathan (MKSS), a union of peasants and workers in the Indian state of Rajasthan, uses another approach to stimulate citizen participation in budget processes. MKSS holds public hearings—or “social audits”—at which citizens discuss government expenditures on development in their communities. Citizens then hold public officials accountable for these funding decisions.

Typically, a social audit public hearing includes five stages. In the first stage, MKSS gathers all public agency documents, including cash books, wage rolls, and expenditure voucher files; project engineers' measurement books; and utilization certificates on development projects. Some of these documents are used to verify expenditures.

In the second stage, the information is organized into matrices that present technical information in terms that villagers are familiar with. (For example, volumes are expressed in terms of camel or bullock cartloads rather than tons.)

In the third stage, project staff members go house to house, distributing the information to villagers. Residents who have worked on sites provide feedback on whether the records appear accurate. In some cases, workers may identify discrepancies between information provided on wage rolls and what they actually earned. Villagers notice when wage rolls are inflated with the names of fictitious or deceased people. This process can take as little as one week or as long as a few months.

The fourth stage of the process is the public hearing itself. Anticipation runs high. Public officials, local elected representatives, local media, and citizens attend the hearing, which is held in an open area in the village.

A panel of respected citizens oversees the proceedings, which are facilitated by MKSS project team members. Citizens are called to give testimony that may point to inefficient spending, poor planning, or corruption. The public officials responsible are given a chance to defend the projects. In some cases officials have admitted wrongdoing and paid back illegally obtained funds on the spot (Ramkumar and Krafchik 2005). In the last stage, MKSS prepares an official report, which is circulated to senior state officials, the media, and other civil society groups.

The initiative has had a significant impact. At the most basic level, it has mitigated corruption. But the full impact has been broader: the state government now requires that a social audit be held in every village every year. As part of the audit, all village residents must be given an opportunity to vote on a resolution verifying that the projects in their village were successfully completed. The state has passed a law on access to information. While this process has limitations, it represents a radical change in the institutional space provided to citizens to audit public funds (Ramkumar and Krafchik 2005).

Public Record of Operations and Finance (PROOF) in Bangalore, India

Public Record of Operations and Finance (PROOF) is a local civil society coalition initiative to improve civic participation in budgetary processes at the city level in Bangalore, a city of 6 million people and a hub of India's high-tech industries. PROOF aims to demystify the budget process and make budgets more accessible to citizens. It conducts periodic dialogues between the government and citizens on budget allocations, priorities, and performance.

The PROOF initiative occurred against the background of the modernization of Bangalore's municipal financial management system, which resulted in reformed budget formats and timely reports on revenues and expenditures. The availability of timely budget information was a major factor that stimulated the promoters of PROOF to launch their campaign. Partners in the PROOF campaign brought complementary skills to the table: budget analysis, civic organization, capacity to establish state-civil society dialogues and communication, and community awareness building.

PROOF created a public forum for discussing the city budget on a quarterly basis, preceded and followed by more detailed investigations into specific aspects of the budget. Preparation for the first forum began with an information campaign to educate citizens about budgets in general. This exercise was necessary to encourage ordinary citizens to attend the public meeting. In the effort to increase citizens' economic literacy, PROOF held training seminars for citizens by qualified accountants and financial analysts.

The initial focus of PROOF's interventions was on the budget as a whole; this focus later narrowed to specific expenditure or revenue issues. It also moved from an analysis of input and expenditure trends to looking at what is achieved with funds. PROOF is now in the process of developing performance indicators.

In addition, it uses the citizen report card surveys conducted by the Public Affairs Centre, a founding member, to inform its dialogue. These report cards use public opinion surveying techniques to generate robust information about citizens' satisfaction with core government services, such as provision of electricity. The cards thus represent an assessment of the city's public services from the perspective of its citizens. They provide useful feedback on the quality, efficiency, and adequacy of the services and problems citizens face in their interactions with service providers. Where multiple service providers exist, it is possible to compare their ratings across services. The cards also collect information about private expenses incurred as a result of poor services and analyze the economic costs to households and the city of inefficient public services. The report cards have had a real impact on the level, quality, and efficiency of public services.

With this analytical background, attendance at the quarterly PROOF meetings has grown over the three years since the initiative began, and citizens' awareness and understanding of local budgetary issues have increased. The city is more open to sharing budgetary information, and initial tensions between the city and civil society groups have eased, allowing a sense of partnership to develop. The mayor, the municipal commissioner, and senior officials participate in the meetings and respond to the PROOF analysis and citizens' questions.

Despite attempts to make participation more broad based, PROOF has been criticized as being dominated by professionals. Critics charge that the concerns raised in the public forum are elitist and that meetings have failed to address certain key issues, such as corruption. Another frequent criticism is that the budget discussions are so technical that ordinary citizens can follow only up to a point. Some critics believe the process would be more worthwhile if ward-level budgets were examined (Paul 2005b; Vijayalakshmi 2004).

Concerned Citizens of Abra for Good Governance (CCAGG) in the Philippines

The Concerned Citizens of Abra for Good Governance (CCAGG) was founded in 1986, when new opportunities were created for NGOs to participate in development programs in the Philippines. CCAGG members signed a

memorandum of understanding with the National Economic Development Authority and received training from the agency in project monitoring.

When the Ministry of Public Works and Highways falsely declared in a public advertisement that it had successfully completed 27 projects in Abra province, CCAGG members decided to take action. CCAGG gathered evidence of the actual state of the projects, including photographs and statements by residents in the project areas, which it submitted to the national government. An official audit followed, and several officials were charged with corruption. When there was danger that punishment would be minimal, with officials receiving mere reprimands, CCAGG mobilized public opinion. As a result, the officials were suspended.

Since then CCAGG members have developed a unique technique for monitoring road construction projects. Investigations look for a variety of types of corruption. The method is straightforward. Volunteers—primarily housewives, students, and other young people—observe work sites and report findings to specialist colleagues, such as engineers and accountants, who conduct detailed investigations on the project sites.

Common malfeasance includes the use of substandard materials (cement mixtures), substandard construction techniques, and fraudulent contracting procedures (rigged contracts). In one project CCAGG members found that contractors had embezzled project funds. In response to CCAGG's findings, the government forced the contractor to pay for a road expansion. A sign of the group's effectiveness is that the supreme audit institution of the Philippines has entered into a partnership with CCAGG to provide audit information on projects in the Abra region (Ramkumar and Krafchik 2005).

Initiatives that Involve Citizens in Consultation and Joint Decision Making

Paul (2005a) argues that programmatic shifts in budget allocations are far less likely to result from arm's length participation than they are from direct citizen involvement in funding decisions. The next set of case studies investigates what happens when civil society—both organized civil society and citizens at large—steps into what was traditionally the state's action space to join hands with government in making public resource decisions.

Indirect participation in the budgeting process

Citizens are indirectly involved in the budgeting processes in three cases, where participation is limited to consultation. The local government decides

if and when consultation will take place, sets the agenda for consultation, and, to a degree, determines who will be consulted. It is unclear from these case studies that any of the benefits expected from participation—improved policy decisiveness and public accountability, better quality democracy, social consensus and trust in government—are better served through public consultation than through civil society–led activities aimed at improving transparency and accountability. In fact, several risks attach to consultation of this nature, particularly if initiated and controlled by the state. In particular, citizens may be consulted only on “safe” public policy issues that are not sensitive or resource consuming.

The demarcation of the public policy participatory space in the three case studies is simultaneously too vague and too precise to be meaningful. Consultation may actually be divisive: governments may use it as a way to manage the government–civil society interface. Reuben (2003) describes such strategies as developing harmonious relationships with some civil society groups and organizations while confronting others, thereby creating factions in civil society. Participation may also be elitist: citizens selected to participate may be people who are already influential and well resourced. Participation may be meaningless and therefore shunned by citizens, as it was in Rayong City, Thailand, where the participatory commissions operated outside of policy and budget processes and soon were dormant. Overall, consultation may detract from civil society’s ability to be critical of the state and hold it to account, without much benefit in terms of policy appropriateness or increased trust in government.

This is not to say that consultation is always an ineffective participatory mechanism. Whether it is effective depends largely on the intention of the local government and the institutional arrangements—the rules, structures, processes, and information management—of the consultative process. Local governments that are sincere about soliciting citizens’ views can form focus groups and pay attention to the views that participants express. This type of consultation can enhance the quality of democracy, improve policy decisiveness, and build trust in government.

Allowing citizens the right to initiate consultation—as they can in some Eastern European countries, where citizens can call meetings or initiate referendums on public policy issues of their choice—would mitigate the risk of empty processes. The provision by the local government of good, accessible information in a timely manner also enhances citizen participation. Transparent and impartial selection of participants helps ensure good representation. If citizens’ groups must be accredited by the government before they can participate, as is the case in Naga City, or the

government selects participants, the risk of co-option, patronage, and elitism is high.

LEGAL PROVISIONS FOR PARTICIPATION IN NAGA CITY, THE PHILIPPINES. Local government officials in Naga City, the Philippines, complemented national enabling legislation with specific legal provisions for participation at the local level. Its 1995 Empowerment Ordinance attempts to translate the participatory spirit of national legislation into a concrete reality. The ordinance states that the city government of Naga should recognize that “the will of the people shall always reign supreme” and that the primary duty of the government is to ensure that this will is carried out. The people should therefore organize themselves to address common or sectoral concerns. Recognizing that governance is best carried out when responsibilities are shared with the people, the ordinance proposes a partnership between the local government and citizens such that sovereignty effectively resides with the people. The ordinance proposes a partnership with NGOs and people’s organizations for the conception, implementation, and evaluation of all government activities and functions.

In addition to having local civil society and citizen representation on several city bodies (as required by national legislation), Naga City introduced two specific mechanisms to create an enabling environment for participation of citizens and NGOs in local decision making. First, the city created the Naga City People’s Council, made up of businesspeople, citizens, and NGOs. Members of the council have to be accredited by the city. The People’s Council has representation on other bodies, such as the local legislation council and the local decision board. It also has the right to observe, vote, and participate in local planning; propose legislation; and act as the people’s representative on governance issues, such as access to official records and documents.

Second, the city conducts multilevel consultations on priorities for development and holds citywide referendums on local issues. These issues have included concerns about the development of a golf course, the creation of a shelter program, the establishment of a bus terminal, and the color coding of three-wheel vehicles (Brillantes 2005; McGee 2003).

FOCUS GROUPS AND TOWN HALL MEETINGS IN KHON KAN CITY, THAILAND. Khon Kan City, with a population of 130,000, is the rapidly growing, dynamic center of northeastern Thailand. The municipality provides city infrastructure, primary education, community

health and sanitation, social welfare, law and order, and disaster management and prevention services.

Local demand for civic participation grew out of the active participation of local residents in the constitution-drafting process in the late 1990s. The city first contracted the local university to conduct a series of focus groups at the community level; the sessions provided valuable information concerning problems, needs, and priorities. The activity also generated suggestions for policy directions and strategic projects for development planning. Thirty-eight new development programs were put into the city development plan as a result of the meetings. The city has now extended the focus group meeting program to include specific meetings to discuss education, health and sanitation, income promotion, social welfare, and other important concerns. More than 50 meetings were held in 2003.

In 1998, a year after the focus group meetings began, the city introduced town hall meetings, which are held every three months, with additional special purpose meetings held as necessary. A new practice evolved: town hall meetings, with full discussion, are now required whenever a policy issue has potential significance for the general public. Public consent is needed before any such policy can be implemented. Local experts are invited to make presentations, after which the mayor, officials, the general public, and the experts debate the policy. In 2003 more than 140 civic organizations and as many as 150 public participants were active in these meetings.

Before a meeting is held, the event is widely announced. The city sets the meeting agenda. Town hall meetings are conducted in the evenings to allow most citizens to attend. The chair is an experienced person, such as the governor of the province. The mayor's leadership was a major factor in making the meetings successful. Surveys show that citizens are satisfied with the civic participation measures (Suwanmala 2004).

CIVIC COMMISSIONS AND FOCUS GROUPS IN RAYONG CITY, THAILAND. Rayong is a metropolitan municipality in Rayong Province, in eastern Thailand. Its population of more than 60,000 is growing due to high migration into the area.

The city identified increased tax collection efficiency as a priority. To counter negative feelings about the tax collection program, it introduced citizen participation in budgetary processes. In initial efforts Rayong City twinned with the city of Portland, Oregon, and used international expertise to develop a program centered on establishing civic commissions, one for development planning and another for fiscal policy. The commissions included

representatives of civic organizations, business leaders, and trade leaders. The city also conducted focus groups to monitor project implementation.

Of the two interventions, only the project-level focus groups were successful, with citizens providing input into the design and feedback on the implementation of a city park. The civic commissions were never fully functional: only the fiscal policy commission ever produced policy proposals. Both commissions stopped meeting in 2003. Rayong City then fine-tuned focus group mechanisms, tested earlier with the construction of the city park, to develop its local development plan. A local NGO was contracted to manage the consultation process. At the time of this writing, the project was under way, and the first round had been completed (Suwanmala 2004).

Direct participation in the budgeting process

Citizens are directly involved in the budget process in Bangladesh and Thailand, where initiatives have achieved significant success. Local development projects are better aligned with citizen preferences; accountability has been enhanced through oversight of implementation; infrastructure development is more sustainable, with citizens taking an interest in maintaining village assets; trust in government has been enhanced; revenue collection is up; and villagers have a direct say in local development expenditure.

CAPACITY BUILDING OF UNION PARISHADS IN SRAJGANJ DISTRICT, BANGLADESH. In 2000 the government of Bangladesh, the United Nations Development Programme (UNDP), and the United Nations Capital Development Fund (UNCDF) jointly initiated the Srajganj local government development project, aimed at developing capacity for participatory processes at the lowest tier of local government, the union *parishads*. The project consists of two interventions: provision of annual block grants of about \$6,000 to each union for allocation to projects in wards and the institutionalization of open budget sessions to establish citizen engagement with the local budget.

For the block grants, each union forms development committees at the ward and union levels. Scheme supervision committees oversee the implementation of projects. The ward development committees conduct participatory planning sessions. One of their critical responsibilities is to ensure broad participation in the planning sessions. Sessions are chaired by the ward union parishad member and facilitated by the union facilitation team.

At the outset a tour of the ward is undertaken to identify problems. The ward-level process that follows can take up to three days and involve

up to 500 people. Participants are divided into groups; separate women's groups prioritize gender-sensitive schemes. After the participatory process, members of the ward development committee visit proposed schemes to assess feasibility and make preliminary cost estimates.

Deciding between competing projects ultimately rests with the union development committee. In the final stages of selection, the committee uses a screening matrix to assess criteria such as poverty alleviation, environmental impact, and gender impact. The union development committee then recommends which projects should be implemented. However, the ultimate decision rests with the union parishad.

The scheme supervision committees monitor the pace and quality of work during project implementation. They hold the power to stop payments to contractors. Communities are highly involved in project implementation, often providing additional resources, such as labor and money.

The second project intervention seeks to establish open budget sessions aimed at improving budget literacy at the ward level. The union budget proposal is posted on a notice board before the session. During the session, participants review the budget against the investment plan that was produced from the ward-level participatory exercises. Community representatives ask for clarification of revenues and expenditure, and they provide comments for inclusion in the final document. After these discussions, changes may be made to the budget proposals before the entire budget is approved by the union parishad. The final budget is made public when it is posted on the notice board.

According to Rahman, Kabir, and Razzaque (2004), the open sessions create an opportunity for real needs to be addressed. The sessions also create scope for the union parishads to raise resources, as citizens are motivated to pay their local taxes. The sessions tend to encourage more local support for implementing projects.

The quality of participation remains a challenge. Despite several design interventions (colored cards to identify women's issues, women-only groups in planning meetings, and women's representation on committees), the voices of women are still not being heard, and men dominate most meetings.

Another weakness is the quality of deliberation in the open budget sessions, which is determined by the local government leaders' relationships to the ruling party. If local leaders are in opposition, the meetings tend to be highly critical of proposals in the budget. If the local leader is from the ruling party, the session is overly supportive of the budget (Rahman, Kabir, and Razzaque 2004).

CIVIC FORUMS AND EFFORTS TO IMPROVE TAXATION IN HUAI-KAPI TAO, THAILAND. Huai-Kapi is a mixed urban/rural subdistrict in Chonburee Province, Thailand, with more than 11,000 residents. In 1999 the subdistrict level, called tambon administrative organization (TAO), initiated an overhaul of its public finance management systems (including budgeting, taxation, and financial management) with the introduction of participatory budgeting. The change followed the introduction of legislation supporting participatory budgeting by the Ministry of the Interior. Huai-Kapi created civic forums at the village level, culminating in a subdistrict forum.

The civic forum process in Huai-Kapi is supported by annual household surveys, aimed at improving the quality of information on citizen needs and preferences. The surveys include general questions about households (size, age structure, access to services), as well as questions on urgent household needs and the prioritization of community problems and needs. The survey results are fed into the civic forums.

Huai-Kapi also adopted three measures to use citizen participation to improve local tax collection—creating a civic tax committee, providing civic tax education, and improving the tax collection process. The civic tax committee includes TAO officials, village heads, and local business representatives. It is tasked with conducting a field survey, meeting with taxpayers, and recommending measures to improve tax collection. Tax committee members also play a significant role in finding, bargaining with, and bringing new taxpayers into the tax system.

The Huai-Kapi program improved both expenditure quality and tax collection. Survey results reveal that citizen satisfaction with the local development plan, with the allocation of funds, and with services has grown. Local tax revenues increased by 48 percent in the three years following the introduction of the tax committee (Suwanmala 2004).

CIVIC FORUMS IN SUAN MON TAO, THAILAND. Suan Mon TAO, Thailand, comprises 14 villages, with a total population of 7,881 citizens. The majority of taxpayers are poor farmers, which means that the TAO depends on transfers from the central government.

The TAO has a long history of civic activism. Inability under the old system to resolve conflicts between interest groups and between villages led to a budget that was “pork-barreled”: more and more projects were loaded onto the budget, and prioritization was weak. In 1998 the Ministry of the Interior’s regulation on participation at local levels created the opportunity for the TAO to establish civic forums (made up of local leaders, interest

groups, and government officials) in all villages. Their purpose was to identify local problems, suggest remedies, and provide a prioritized list of projects to the subdistrict or TAO civic forum committee.

The TAO-level civic forum committee includes 100 members, including representatives of the village forums. Its task is to make tradeoffs between the projects that villages propose and submit its recommendations to the chair of the Suan Mon TAO. The TAO provides a standardized planning framework and formats to all village civic forum committees. Meetings are held in the evening, so that most villagers can attend. The villages' civic culture facilitates the quality of deliberation (Suwanmala 2004).

The regular budget preparation process starts after the civic forum processes: the civic forum's proposals are included in the local annual budget plan and adopted unchanged by the TAO council. The final budget and development plan is then sent back to the village civic forum committees so that they can monitor project implementation.

In the first years, the TAO undertook capacity-building programs in the 14 villages. It took some time for villages to learn to trust one another and allow tradeoffs to be made between villages. This effort was supported by the TAO chief officer, who played a key mediating role and kept promises to roll over priorities to subsequent years.

In addition to solving the long-term negative impact of pork-barreled budgeting and increasing participation in a meaningful way, the revised budget process has had a positive impact on own revenues, as village leaders now take an active interest in tax collection, finding defaulters and convincing them to pay taxes in order to increase revenue available for projects. Village leaders and citizens also take an active interest in project implementation, making the TAO more accountable (Suwanmala 2004).

Initiatives that Give Local Communities Control over Funds

In Indonesia local communities have established village councils and development forums that exercise full control over the allocation and use of the block grant to the village. The Kecamatan Development Program (KDP) targets the poorest *kecamatan*s (subdistricts) in Indonesia. It aims to foster more democratic and participatory forms of local governance by strengthening kecamatan and village capacities and improving community participation in development projects. The project covers 30 percent of villages at this level, touching the lives of 10 million people. It is supported by facilitators and consultants at both the village and national levels who provide technical support and training.

In many respects, KDP operates like a social fund. However, rather than a central fund for which communities compete through project proposals, the project allocates block grants of about \$43,000–\$125,000 a year directly to all participating kecamatans and villages. Through village councils and development forums, villagers determine how the funds are aligned with their priorities. The “open menu” approach is a critical part of ensuring that decisions are truly community driven and that communities have full ownership over them. Under the project, funds flow directly from a central project account to a joint village account at a local subdistrict bank. Although a branch office of the national Treasury processes transfers, at no stage do funds pass through a government ministry.

An impressive feature of the KDP is its rapid rollout. In the first year of implementation, the program reached 501 kecamatans; it added 271 kecamatans in the second year and 257 in the third year. Key to success was a four-to-six-month-long facilitation process in each village leading to project selection. After this process was completed, funds were transferred to the village accounts. Edstrom (2002, p. 5) argues that this “ready-aim-fire” approach of rapid implementation “avoided the pitfalls inherent in ‘boutique’ operations, with their heavy, often expatriate, technical assistance, their unrealistic cost structure, and their rarefied implementation environment.” Rapid rollout is important to test a project’s replicability within a country, to retain simplicity, and to gain the credibility and enthusiasm necessary to garner villagers’ confidence.

The KDP project cycle has several stages: information dissemination, planning, proposal preparation and verification, decision making, implementation, and follow-up. A high degree of community participation and transparency is sought throughout the process (Edstrom 2002).

Lessons from the Asian Experience

The case studies provide an array of examples of citizen and citizen group participation in local-level public decision making. Several lessons can be drawn from these experiences.

Outcomes of Participation Initiatives

At the outset of this chapter, four possible benefits from participation were identified: improved policy decisiveness, improved accountability, better quality democracy through direct and broader participation, and improved

trust in government. This section evaluates how well participatory initiatives in Asia succeeded in achieving these objectives.

Improved policy decisiveness

There is some evidence that participation can improve local responsiveness to citizen preferences. This is the critical assumption behind promoting participatory exercises and decentralization as a route to improved state effectiveness. The case study evidence suggests that mechanisms that deliver on meaningful joint decision making and citizen initiation and control offer the greatest benefit. In Thailand village residents determine the array of projects for implementation through the local public budget; citizen development forums at the district level make the final decisions. In Bangladesh and Indonesia, citizens have full control over spending a development grant provided to each village. Assuming that the deliberation process is functionally democratic and not dominated by elite interests, these processes will yield the selection of projects that are aligned with citizen needs and preferences.

None of the cases shows how such participation could be extended to cover broader public policies or the delivery of public services. How, for example, can citizens have an effective say in the type of education their children receive, in their public health care modalities and facilities, in measures for public safety and security? Public consultation exercises and policy advocacy efforts by civil society offer more possibilities in this regard. However, it is not clear from the case studies that consultation exercises can be as effective at improving policy responsiveness. Moreover, the risks of ineffective, meaningless, divisive, and co-opted consultation and continuing systems of patronage are significant.

Citizen-initiated public advocacy exercises can be effective in bringing citizens' concerns about spending priorities to the attention of local officials, office holders, and representatives. The work of DISHA/Pathey in Gujarat State, India, has "substantially enhanced the quality of debate on the budget, both inside the (state) assembly and outside, serving as an effective channel of feedback to the government" (Wagle and Shah 2003, p. 2). However, the impact of such initiatives depends on the degree to which policies drive local politics and the CSO can combine "people power" with rigorous analyses that have immediate validity in public debates.

Increased accountability of public officials and elected representatives

The most powerful examples of how participation can improve vertical accountability are the citizen report cards in Bangalore, India; the MKSS

social audits in Rajasthan, India; and the CCAGG initiative in the Abra region of the Philippines. All these initiatives operate on the execution and audit side of the budget process. These initiatives yield much more decisive results than initiatives aimed at improving government accountability for policies and budget decisions, and they achieve results more quickly. In the MKSS and CCAGG cases, the support that such improved vertical accountability provides to the quality of horizontal accountability is clear: in both cases oversight institutions have forged partnerships with citizen organizations to improve accountability. Improved accountability of public structures also results in cases where joint decision making in development planning is backed by the oversight of citizen committees during implementation.

It is not clear from the case study material that consultation increases public accountability. In fact, if consultation divides civil society and co-opts scarce civil society capacity, it may actually reduce citizens' ability to hold public structures to account.

Better democracy

The demands of democracy are complex. In addition to voting and respect for election results, democracy also requires the protection of liberties and freedoms, respect for legal entitlements, and the guarantee of free discussion and uncensored distribution of news and fair comment. Democracy is “a demanding system, and not just a mechanical condition (like majority rule) taken in isolation” (Sen 1999, p. 9).

Insofar as their activities provide increased opportunities for citizens to engage their representatives directly in the public arena, not only at the ballot box, all of the initiatives described in this chapter can contribute to making democracy substantive. However, if McGee's caution that access should be broad based and the resulting deliberation meaningful is valid, increased participation alone is not sufficient.

Several obstacles prevent participation from being broad based and meaningful. Efforts by NGOs to engage the state in a public dialogue run the risk of being elitist, as do government-initiated exercises of consultation and joint decision making. The level of dialogue easily deteriorates when there is a lack of incentives—when citizens do not believe the consultation is likely to achieve results or the political environment places little value on issues of policy and service delivery as political currency.

These obstacles can be overcome. NGOs that are successful in making budgets relevant to local communities are more effective in building broad-based democratic practice. Government-initiated participatory exercises can offer broad-based, meaningful opportunities for engagement. The

quality of deliberation depends on the “rules of the game.” Meaningful deliberation is an outcome of citizens’ capacity to learn how to deliberate and to trust the process. This is illustrated well in the Suan Mon TAO case, where positive outcomes from district civic forums took some time to emerge, as participants learned to trust one another and the local government. However, it is clear from both the Bangladeshi and Indonesian cases that ensuring meaningful participation by marginalized groups in such exercises is not a quick-win exercise. Despite mechanisms to ensure that their voices are heard, women are still dominated by men in village decision-making forums.

Greater trust in government

Building trust in government through participation is a double-edged sword. In Thailand trust in government was sufficiently strong to improve tax collection. Where participation was initiated in the right circumstances and in the right way, state effectiveness increased, social cohesion rose, and democracy was strengthened.

Participation alone does not yield benefits, however. If participation fails to deliver real benefits, trust in government can decline. If participation represents mere process without substance, it can entrench poor governance practice and deteriorate the citizen-state relationship.

Success Factors

How do the context and nature of participation affect the effectiveness of initiatives? Two sets of factors play a role. The first belong to the environment in which the participation initiative is launched. The second concern how the initiative is designed and implemented.

The environment in which the participation initiative is launched

Several factors in the environment surrounding a participatory exercise have a decisive impact on outcomes. The unwillingness of state actors to listen is a “kill factor” for consultation and joint decision-making initiatives. The unclear division of roles and responsibilities and the lack of policy or fiscal autonomy at the local level render civil society initiatives meaningless in influencing policy making and budgeting. An array of factors in the environment may be more or less disabling, but a successful participation initiative can create its own reinforcing enabling conditions over time.

FACTOR 1: THE NATURE OF THE FORMAL AND INFORMAL POLITICAL SYSTEM. What drives politics in a country is an important enabling/disabling factor in determining the scope for civil society–driven policy and budget initiatives. If policy issues have little currency, initiatives that focus on influencing policy and resource allocation decisions may have less scope than initiatives that track expenditures and service delivery quality.

If the political system is based on patronage and the politics of identity, the risk of government-based participation systems becoming instruments within that system is great. If politics are more closely related to policy issues, there is a greater likelihood the state will be interested in genuine participation.

FACTOR 2: THE WILLINGNESS OF STATE AND LOCAL GOVERNMENT OFFICIALS TO LISTEN. If state actors are willing to listen to citizens' needs and preferences and to take their opinions about service delivery seriously, the scope for meaningful civil society initiatives that operate outside of government is much larger. If state actors are unwilling to listen, initiatives that focus on policy and budget decisions *ex ante* may be less effective than initiatives that highlight delivery inefficiency and wastage.

In government-initiated participatory exercises, the intention of state actors is critical. If they are truly willing to engage with citizens, as in the Thai case studies, tangible results can emerge. If their willingness is unclear or absent, efforts may not only be futile but counterproductive.

FACTOR 3: LEGAL, INSTITUTIONAL, AND POLICY FRAMEWORKS FOR PARTICIPATION. If the national constitutional context or formal legal and policy frameworks encourage citizens' voice, civil society–initiated exercises are more able to find effective access to public institutions. The absence of these legal and policy conditions does not disable initiatives, however. The two audit-type examples show that successful civil society initiatives can lead to a more conducive policy framework.

Establishing national legal and policy frameworks for participatory measures can stimulate successful practice at the local level, as illustrated by the case studies from the Philippines and from Thailand, all of which emerged from a national policy directive. Local participation can still occur if the national framework is weak, however, as it did in Bangladesh and Indonesia. In both cases, however, participation was predicated on grants that bypassed local government structures and budgets. Access to funds is therefore an enabling factor. The lack of legal and policy frameworks is likely to be disabling only if the local government is dependent on nationally generated or collected revenues.

FACTOR 4: CLEAR AND FUNCTIONAL DECENTRALIZATION FRAMEWORK. Lack of clarity of the government's roles and responsibilities and lack of policy and fiscal autonomy are limiting factors: there is little point in holding subnational governments to account for service delivery if they do not have the fiscal capacity to provide adequate services. Lack of clarity and autonomy could therefore be seen as a kill factor for policy advocacy initiatives but not necessarily for initiatives that focus on accountability for delivery.

If subnational governments have little policy or fiscal autonomy, participation initiatives are unlikely to take hold unless the government has access to external sources of funding (as in Bangladesh and Indonesia) or uses the participatory mechanism to generate more of their own resources for greater autonomy (as in Thailand). Lack of clarity and autonomy is therefore an enabling/disabling factor but not necessarily a kill factor.

FACTOR 5: THE BUDGETING ENVIRONMENT, INCLUDING LINKAGES BETWEEN PLANNING AND BUDGETING. Citizen involvement in the budget process often involves identifying priorities rather than allocating resources to those priorities; budgeting is still the domain of government officials. Where strong mechanisms link planning and budgeting, this is of little consequence. Where planning and budgeting are separated, however, the impact of citizen participation is much less evident.

In the Philippines, for example, planning and budgeting at the local level are still separated. This may mean that the impact of participation mechanisms on entrenched systems of patronage and on corruption and abuse of power is limited, because it is through the budget process that these factors come into play (Brillantes 2005). In contrast, in Thailand deliberative civic forums, coupled with commitment by local officials and elected office holders to the outcomes of the participative process, have narrowed the gap between planning and budgeting. The budgeting environment is therefore an enabling/disabling factor for both initiatives that effect change through activities outside the state and those that increase civil society participation in the public action space. In Bangalore the city financial management improvement program provided an enabling information environment for the activities of PROOF.

FACTOR 6: THE CIVIC CULTURE AND CIVIC CAPACITY FOR PARTICIPATION. While the presence of a civic culture and capacity for participation are enabling factors for quicker results, a successful process provides incentives for the development of such capacity, as the Suan

Mon TAO case study illustrates. The DISHA and MKSS cases provide convincing evidence that, if other enabling factors are present, the technical nature of policy making and budgeting need not be a barrier to participation. The civic culture and civic capacity for participation are therefore enabling/disabling factors for both initiatives that effect change through activities outside the state and those that increase civil society participation in the public action space.

The design and implementation of participatory initiatives

Several factors affect how participatory initiatives can best capitalize on enabling environments or overcome disabling ones. These include the quality of leadership and the level of facilitation skills employed in public forums; the extent to which the initiative balances between including traditional community leaders and ensuring broad-based participation; the application of universal rules of good budgeting to participatory processes; the use of multiple mechanisms; and the provision of accessible, relevant, and timely information to citizens.

Suwanmala (2005) singles out the quality of mayoral leadership as a significant factor in ensuring that participatory practices are embedded in local budgetary practice. Leadership of civic forums in Thailand and of social audit hearings in India was critical in ensuring that participatory mechanisms led to substantive outcomes. Mechanisms for reconciling different interests also depend on the level and quality of facilitation. In Bangladesh, India, and Thailand, external facilitation has made civic development forums and development committees functional.

The Thai case studies demonstrate the tension between including traditional community leaders and ensuring broad-based participation. Village-level civic development committees were functional from an early stage in the Huai-Kapi and Suan Mon TAOs because the project design incorporated traditional local leaders into the structures. Doing so created cohesive local support for the initiative. When inclusion of traditional leaders is not counterbalanced with mechanisms to ensure broad-based participation, however, such an arrangement can perpetuate the power base of local elites. Mechanisms to ensure broad support include holding meetings in the evenings so that most people can attend, inviting new groups onto civic committees, and putting in place process rules that favor marginalized groups.

The civil society initiative in Gujarat, India, illustrates how the balance between expert (and perhaps more elite) inputs and broad-based participation can be facilitated by careful translation of information so that ordinary

citizens can access and identify with the campaigns. However, broad-based participation can remain elusive and should be a constant monitoring point for project managers.

The Indonesian case points to the importance of building the necessary capacity for participation in civil society before deciding on which projects will be undertaken within the grant envelope. In India, DISHA/Pathey devoted much attention to building the capacity of state legislators and local client groups to engage with the Pathey analysis and to understand the local budgeting system. MKSS project staff members put considerable effort into building local capacity by engaging citizens in discussion and information-gathering. In contrast, in Thailand less time was spent on preparation and capacity building, possibly because a platform for civic participation already existed.

Participatory initiatives that follow the basic principles of good budgeting are more effective in producing desired outcomes. In the Suan Mon TAO in Thailand, for example, village civic forums, development committees, and district committees operated within a financial constraint; the processes were predictable; and clear rules were established and enforced regarding when decisions are made. This approach facilitated the development of trust between citizens and the state and among different interest groups and villages. Such trust is essential if the ubiquitous budgeting problems of weak prioritization, pork barreling in the face of competing interests, uneven access to information, and counterproductive conflict are to be avoided.

In contrast, initiatives that operate outside of the budgeting system without a clear process and decision-rule framework flounder easily. An example is the civic policy commissions in Rayong City, Thailand.

Participatory projects will fail to achieve broad-based, meaningful participation unless they ensure that ordinary citizens have timely access to information in formats that make the issues relevant and understandable. Both the MKSS project and the DISHA/Pathey initiative were mindful of the necessity to translate information into forms citizens could understand.

The impact of civic participation is enhanced if NGOs and state actors deploy an array of mechanisms that reduce the risk of participation failing and enhance the quality of the measures. DISHA deploys analysis of budget allocations together with tracking expenditures and surveying beneficiaries. The TAO of Huai-Kapi uses household surveys to improve the quality of discussion and decision making in civic forums. Naga City uses several mechanisms, including referendums, committees, consultations, and information provision to enhance participation.

Conclusions

The Asian case studies suggest that civic participation mechanisms can improve development outcomes while improving the quality of the citizen-state relationship. Whether initiatives are successful depends both on factors in the environment in which an initiative develops and on the design and implementation of the initiative itself. The maturity of the political system and the nature of the political culture in a country or local area are a determining environmental factor for the type of participation initiative that is likely to be effective.

In settings where public actors are willing to listen to citizen voice and the local political culture is driven by public policy issues, well-designed mechanisms that allow civil society direct access to and participation in public decision making have the greatest impact on policy decisiveness, accountability, democratic practice, and trust in government. The case studies of Suan Mon and Huai-Kapi TAOs in Thailand belong in this category. Program initiators have more scope for selecting the type and level of participation than initiators who face different conditions.

Conditions of greatest risk in terms of participation occur where initiatives draw citizens into the state action space when the political culture is not policy based and local officials and office holders have no real interest or incentive to align policy and spending with citizen preferences. In these contexts such types of participation can be counterproductive. The Bangladeshi and Indonesian case studies operate in this area. They manage these risks by providing external funding and bypassing state structures where it matters—in managing the money. Village-level participation structures in both cases have authority over project funds. While this may yield short-term benefits, the sustainability of such initiatives is not certain. Effective long-term engagement can occur only if sufficient local taste and capacity for participation are built to change the overall environment so that the political and governance context forces state actors to engage substantively.

Citizens' own initiatives to improve public transparency and the accountability of state actors can yield successful results, even in environments in which citizens may not have immediate effect. The MKSS, CCAGG, and DISHA/Pathey case studies illustrate how citizens who are thoroughly prepared and work through coalitions can push their way into the public space and demand a hearing. Such initiatives can also transform the participatory environment from one in which state actors are unwilling to engage with citizens to one in which they have little choice but to do so. Success depends largely on selecting the correct entry point and carefully designing and implementing projects in order to maximize citizen participation.

Notes

1. Participatory budgeting in the broad sense refers to citizens' engagement with public budgets, including such mechanisms as civil society analysis of spending policies (as an input into public debate) and public audits. A narrower use of the term denotes instances in which citizens have direct input into decisions about public resource use, usually at the local level of government.
2. Reuben (2003) refers to this dimension of governance—the ability of governments to fulfill citizen expectations—as decisiveness.
3. In Reuben's (2003) model of governance, this dimension of improved conditions is referred to as accountability.

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Sub-Saharan Africa's Experience with Participatory Budgeting

ADRIENNE SHALL

This chapter reviews the experience of participatory budgeting by subnational governments in Kenya, Mozambique, South Africa, Tanzania, Uganda, Zambia, and Zimbabwe.¹ It is based on a series of case studies commissioned by the World Bank Institute on the experience of participatory budgeting in each of these countries.

The focus is on subnational governments because they are best able to reach communities. These governments are diverse, each facing a unique context in terms of settlement patterns, service needs, revenue access, and capacities. Every local authority must approach community participation in its own way, taking into account the cultural backgrounds, capacities, and needs of its citizens.

The starting point for any participatory process is the legal framework within which it is situated. The ability of subnational governments to determine their own fiscal arrangements within the legal framework also plays an important role in identifying how civic participation is organized. Specific mechanisms have been identified for encouraging participation in the budget process, and in theory each country has allowed for participation that is accommodated in the budget cycle. In practice, the impact of participation on planning, budgeting, and implementing projects and programs has not always been as great as intended.

The first section of this chapter describes the legal and fiscal framework for civic participation in policy making and budgeting at the subnational level in each country. It outlines the mechanisms available for participation in each country and how they operate in practice, examines how civic participation is handled in the budget process, and assesses the impact participation has had on policies and budgets in terms of meeting community needs. The second section describes the challenges countries face in implementing participatory budgeting and the lessons learned during this process. The chapter concludes with recommendations relevant for Africa.

Legal Framework, Mechanisms for Participation, and Impact of Participatory Budgeting

Every country examined in this chapter uses some form of citizen participation in the budgetary process. This section describes the different approaches they have adopted and examines the impact participatory processes are having on increasing the allocation of scarce resources where they are needed most.

Legal Framework for Civic Participation in Policy-Making and Budgeting Decisions

Specific legislation governs subnational governments in all of the countries reviewed in this chapter. Except in Kenya and Zimbabwe, the constitution recognizes local government and in some cases prescribes the need for civic participation in local matters.

Kenya

Local authorities in Kenya are not enshrined in the current constitution. The new draft constitution—which addresses the current constitution’s shortcomings and allows for a more democratic and transparent state—sets out the need to give powers of self-governance to the people at all levels and to enhance public participation in the exercise of the powers of the state.

The Local Government Act sets out the requirements for the composition of local authorities, which consist of elected and appointed councillors. There are three types of local authorities: municipal councils, county councils, and town councils. Each council exercises legal powers and duties; the mayor plays a largely ceremonial role, with no executive powers. Most council business is carried out through committees established under the Local Government Act. However, the full council must approve all recommendations made by committees.

The Local Authorities Transfer Fund Act, implemented in 1999, provides the mechanism for transferring funds from the central government to local authorities. The act provides some certainty about the level of funding, enhancing the predictability of intergovernmental fiscal transfers.

Mozambique

The Constitution of Mozambique defines the legal framework for decentralization and the ways in which municipalities are set up. It enshrines civic participation as one of the national values for local development.

The legal and institutional framework for local authorities is set out in the Municipal Law. According to this law, municipal assemblies are to establish civic participation, promote accountability, and improve coordination between the central and local governments. The participatory development approach is not mandatory.

South Africa

Local government in South Africa is to a large extent governed by the Constitution of South Africa and four national acts related to local government. The constitution promotes the idea of developmental local government, with each municipality giving priority to the basic needs of the community and promoting its socioeconomic development. It encourages the involvement of communities and community organizations in local government.

The Municipal Structures Act of 1998 entrenches community participation by stating that the executive committee must report on the involvement of communities in municipal affairs, ensure public participation and consultation, and report the effects of such participation and consultation on decisions made by local councils. Chapter IV of the Municipal Systems Act of 2000 deals with community participation. Municipalities are required to develop a culture of municipal governance that complements formal representative government with a system of participatory governance. Community participation is required in the integrated development planning process, the performance management system, the budget process, and strategic decisions around service delivery.

Tanzania

The Constitution of Tanzania establishes local authorities in every region, district, urban area, and village of the country. It states that the purpose of these local authorities is to transfer authority to the people, and it gives local authorities the power to involve citizens in the planning and implementation of development programs within their areas. Local Government Acts 7 and 8

require local authorities to foster cooperation with civil society, promoting and ensuring democratic participation and control of decision making by the people. Local authorities are required to consult with local communities as part of their planning processes.

Uganda

The Ugandan Constitution and the Local Government Act of 1997 outline the principles, structures, and functions of the local government system. Local government in Uganda consists of a five-tier hierarchical structure, with specific legislative, financial, and administrative roles assigned to each tier. The constitution guarantees civic participation in the budget process by requiring government to take the necessary steps to involve citizens in formulating and implementing development plans and programs that affect them. The Local Government Act also provides for popular participation as a policy objective. The act requires district councils to prepare comprehensive and integrated development plans that incorporate the plans of lower-level local governments for submission to the National Planning Authority. It also requires lower-level local governments to prepare plans that incorporate the plans of lower-level councils in their areas of jurisdiction. Although local authorities can formulate bylaws, they appear reluctant to do so, especially with regard to civic participation.

Zambia

The Local Government Act of 1991 establishes local authorities in Zambia and sets out their functions and responsibilities. The mayor of a local authority has no executive powers; all decisions are made by the full council, unless such authority is delegated to a committee. The Local Government Act allows local governments to formulate their own bylaws as long as they adhere to certain prerequisites set out by the central government.

The act contains some provisions that promote civic participation and others that deny participation. It states, for example, that all council meetings shall be open to the public, but the council may, by resolution, exclude the public from a meeting whenever confidential matters are to be discussed and publicity may be prejudicial to the matter. A copy of any bylaw must be deposited at the offices of the council and be open to inspection. The fact that anyone may lodge a written objection to the bylaw allows for a degree of community participation in decision making. In practice, however, participation is limited, as viewing the bylaw requires citizens to travel to the council offices, which is costly and in some cases unaffordable.

Zimbabwe

Local government in Zimbabwe is governed by the Rural District Councils Act and the Urban Council Act. In addition to carrying out the functions and powers detailed in these acts, local authorities can make policy through bylaws, regulations, and resolutions dealing with local planning and development. Bylaws of councils cannot, however, become law unless the minister of local government approves them.

The Constitution of Zimbabwe does not recognize local government. The enabling legislation in Zimbabwe advocates for consultation rather than participation. Citizens are not included in the decision-making process but are permitted to make public objections after decisions have been made.

The Subnational Government Fiscal Framework

In all seven countries, local government has the power to manage its own fiscal revenues and expenditures, subject to national framework conditions. In Mozambique and South Africa, specific acts spell out how local finances are organized. In the other countries, financial arrangements form part of the general local government legislation.

Kenya

The financial arrangements for local authorities in Kenya are specified in the Local Government Act. These include the need to prepare annual budgets, raise revenues, and incur expenditures according to the approved estimates. The budget is produced under the guidance of the minister of local government. Revenue sources include user fees and charges, income from trading activities, rents, permits, and property taxes. Local authorities may also borrow and issue bonds or stock, subject to conditions laid out by the minister of local government. Local authorities also receive grants from the central government.

Mozambique

The Municipal Finance Act specifies how local finances are organized in Mozambique. Subnational governments are expected to prepare, approve, and control their own budgets, observing the general rules and principles of the national budgeting system. Revenue sources include taxes, levies, user charges, and transfers from the central government. Transfers from central government are calculated according to a formula based on population size, area, revenues collected by the local authority from the community, and level of development. These transfers are unconditional. The Municipal Finance Act

allows subnational governments to borrow from banks and other financial institutions to finance capital expenditure. In practice this has not happened; instead the central government has borrowed on behalf of local governments.

South Africa

The Municipal Finance Management Act of 2003 determines the management of fiscal and financial affairs of municipalities and municipal entities in South Africa. The act extends community participation by requiring that the accounting officer of the municipality make public the budget and all supporting documentation and invite the local community to submit comments on the budget. The municipal council is obliged to consider the views of the local community regarding the budget.

Municipalities have the ability to raise their own revenue through taxes and user charges. The Municipal Property Rates Act of 2004 regulates the power of a municipality to set rates on property. The act has a direct impact on communities and allows for community participation. Funds are allocated to local governments from both the national and provincial governments through three major funding sources: an unconditional equitable share, conditional grants, and grants-in-kind. Municipalities may also raise debt, within strict guidelines set out in the Municipal Finance Management Act.

Tanzania

The Local Government Finance Act defines financial arrangements for local authorities in Tanzania. It allows local authorities to incur expenditures necessary for functioning and gives authorities the power to raise their own revenue by imposing taxes. Other revenue sources include conditional central government transfers for education, health, water, roads, and agriculture.

The current allocation system is inefficient, cumbersome, and non-transparent. Allocations are not based on objective criteria or formulae but on the lobbying ability of local authorities. The system thus perpetuates existing inequalities and inhibits civil society from participating in the prioritization, planning, and budgeting processes.

Uganda

Local authorities in Uganda have three sources of revenue: government grants, locally generated revenue, and donor funds. The vast majority of grants from the central government are conditional grants earmarked for primary service delivery. These grants account for as much as 80 percent of local revenue. Other grants include unconditional or block grants, mainly to fund administrative costs, and equalization grants for local authorities

whose service delivery is below the national average standard for particular services. A Local Government Finance Commission recommends the amounts for the various grants to be allocated to each local authority. It also advises local government on appropriate tax levels.

Zambia

The Local Government Act gives local authorities in Zambia the power to define, collect, and manage their own fiscal revenue from own local sources and spend it in the best possible manner. Revenue comes from local taxes, including property taxes, personal tax (levies), and licenses; fees and charges, including fees for meat inspections, permits, and building plans; and specific and general grants from the central government. Local governments may also borrow from the central government or from private sector institutions.

Zimbabwe

Local governments in Zimbabwe determine their own operating and capital budgets. They also have the power to raise revenue by means of property taxes, permits, levies, license fees, and user charges. Local authorities may also borrow, subject to certain conditions. Long-term borrowing is permitted only for capital expenditure or for eliminating outstanding long-term debt. A ministerial directive requires that local authorities prove that residents were consulted in the formulation of annual budgets.

Mechanisms for Participation

In all countries except Mozambique and Zambia, participation is mandatory and the mechanisms for participation are spelled out in national legislation governing the local sphere. Most countries use a participatory planning process to prioritize community needs and feed those needs into the budget process.

Although each country has its own mechanisms for participation, all divide the local authority into wards. Each ward has a ward committee, consisting of an elected councillor and community representatives.

Kenya

Under the Local Government Act, citizens in Kenya cannot attend council committee meetings at which important issues are discussed; they are permitted to attend only full council meetings, where proceedings are largely a formality. Citizens can participate in local government decision making only if the mayor calls a public meeting of the residents of an area to solicit their input—something that few mayors have done.

The Local Authority Transfer Fund (LATF) provides funds and incentives to local authorities to improve service delivery and strengthen financial management. One of the conditions for receiving funding is that local authorities submit a Local Authority Service Delivery Action Plan (LASDAP) documenting that the local authority conducted a participatory planning process and identified a three-year rolling program of projects and activities linked to the budget. Before the LASDAP process was established, no forum existed for citizens to voice their demands. The LASDAP affords citizens the opportunity to make proposals on the basis of their local priorities. All stakeholders—including formal and informal community-based groups, religious, women's, non-governmental organizations (NGOs), citizens, and any other groups registered for participating in the process—are encouraged to participate in the process by identifying their priority needs and participating in implementing and monitoring the projects. As part of the LASDAP process, ward representatives are elected to follow up on project matters on behalf of all stakeholders. Evidence from the case studies suggests that citizen participation has been more extensive than originally expected and has come from a wide cross-section of society.

Ministerial circulars from the Ministry of Local Government describe elaborate procedures for convening LASDAP consultative meetings. In Nairobi consultative meetings are first held in each of the city's eight constituencies. At these meetings ward representatives are invited to make presentations. All people attending the meetings together decide on priorities. The priorities from all constituencies are then harmonized in a citywide consultative forum attended by three representatives from each ward, the ward councillor, and city officials. The citywide meeting is not always harmonious, with disagreements sometimes arising between the ward representatives and the ward councillors.

The resource envelope for the capital budget (which constitutes 10–15 percent of the entire budget) must be publicized before the meeting. The LATF also prescribes strict criteria for disseminating information, including legal notices, newspaper advertisements, and government circulars detailing the allocation of funds and criteria for these allocations. Citizens are encouraged to demand regular process reports from councils to determine and monitor the use of funding.

Other participation mechanisms in Kenya include *barazas* and *harambee* meetings. *Barazas* are public meetings called by traditional chiefs to educate citizens about government policies and mobilize them for development. Ward councillors use these meetings to reach out to constituents. *Harambee* committees are self-help groups that identify priority projects and then raise funds to finance them through personal and well-wishers' contributions.

Mozambique

Participatory budgeting is not mandatory in Mozambique, although local authorities are free to embrace this approach if they wish. Dynamic mayors who appreciate the value of citizen participation have done so; others have not.

Community participation in Mozambique originates through *bairro* (ward) development committees made up of residents from each ward. The committee convenes meetings to discuss communal needs, forwarding a list of needs to the municipality. The *bairro* development committees agree on a program and its budget, which are then incorporated into the local authority's plans. The local authority then budgets for the community financial shortfall.

In Dondo municipality the local authority mobilizes the community through civic groups. Working together, municipal officials and civic groups identify areas of need and agree on the interventions required. The local authority calls the civic groups to meetings and determines the agenda. Together the authority and civic groups then determine the budget requirements and find funding, which is usually external if it is for capital projects.

The local authority begins the civic participation program by conducting research and consulting communities on demographic and infrastructural issues. It also administers a survey on civil society organizations (CSOs). With the assistance of the municipality, the *bairro* development committee identifies three priority projects. A two-day participatory workshop attended by community representatives is then held, at which participants agree on the top three priority projects, which are subsequently integrated into the municipal budget.

In Manhica municipality the community did not understand the role of the newly formed municipal council or their role in community participation. To increase their capacity, civic awareness meetings were established for 100 people from each *bairro*. The meetings covered the role of municipalities in local development, civic participation in municipal issues, democracy, and the effect of floods (the major problem in the area) on the community. The municipality provided a transport allowance and snacks for meeting participants as well as technical input. Twenty meetings were held, covering 29 *bairros*, with a 90 percent turnout of invitees. One of the main outputs of this process was a shared vision of how the municipality should cooperate with its community.

South Africa

Civic participation in South Africa takes place mainly through a ward committee system or a subcouncil participatory system for large cities. Ward

committees consist of a ward councillor and 10 members elected by the community. Participation of ward committee members is voluntary, and they receive no remuneration. Ward committees remain largely advisory committees, making recommendations on any matter affecting the ward to the ward councillor, who takes them to the council. Subcouncils consist of councillors representing each ward as well as other councillors, to ensure that each political party is represented according to the proportion of votes received in a ward. Other mechanisms for enhancing community participation include public meetings, public hearings, consultative sessions, report-back meetings, advisory committees, focus or interest groups, announcements in the newspaper, community radio, and e-government.

In Mangaung municipality the major mechanism for participation in policy-making and budgetary processes is the ward committee system. The ward committees use a community-based planning approach that aims to empower local communities to play a role in the planning process. This approach allows the ward committee to identify and meet with different social groups separately. Each group identifies its priority outcomes and main vulnerabilities.

Ward committees focus on “on the ground” participation. In contrast, the Integrated Development Planning Representative Forum allows broader participation in the discussion of municipal issues.² The Forum includes government, civil society, the private sector, and academic institutions. In 2004 a budget conference was held for the first time in order to deepen democracy by involving stakeholders in the process of defining the development priorities, programs, and projects of the municipality and aligning Integrated Development Planning priorities with the budget.

The Ekurhuleni municipality uses the ward committee system as well as other participation mechanisms. These include:

- an Integrated Development Planning campaign targeting the broader community in order to strengthen participation in the Integrated Development Planning process. Mass meetings have been held using theatrical performances explaining the planning process and describing the various actors and their responsibilities;
- a “Budget Tips” campaign encouraging the public to provide feedback and suggestions on priorities for the budget by means of e-mail, notes deposited in boxes at libraries, and letters to the mayor;
- a mayoral road show at which the mayor and members of the mayoral committee travel to the three regions, inviting citizens to attend meetings where questions from the community are answered;

- the Mayoral Business Initiative, which invites selected groups, such as labor movements, the business community, and the mining sector, to ask questions and contribute to discussions;
- a monthly newsletter produced by the municipality, which is distributed to the community.

Tanzania

The Local Government Reform Project was initiated to build the capacity of local authorities, increase their financial autonomy and decision-making authority, foster good governance, and improve access to and the quality of service delivery. One of the objectives of the project is to ensure democratic and participatory decision making, transparency, and accountability. The reform manual that guides local authorities in the implementation of the project mandates stakeholder consultations at various stages of the reform process. All local authorities have formed council reform teams, consisting of councillors, management staff, and civil society, to supervise the reform process and advise the local authority on various issues.

Consultation is required for the annual budget and development planning processes. Guidelines have been issued that require local government authorities to use the Obstacles and Opportunities to Development planning tool for participatory budgeting. The tool is a simplified model for a SWOT (identifying Strengths, Weaknesses, Opportunities, and Threats) analysis that identifies ways in which a community can overcome major constraints to local development in service delivery, infrastructure, or economic development deficiencies. Using the tool, communities prioritize their problems for budget allocation by the local authority and identify resources that can contribute to the solutions. Only a few local authorities have fully implemented these consultations, as the guidelines have only recently been issued.

In the Singida District Council, many institutions—including community-based organizations at the ward and village levels, theme- and sector-based CSOs, political parties, and the private sector—play important roles in the participatory development process. These institutions help create public awareness, mobilize citizens, develop training in participatory and technical skills for planning and budgeting, and provide administrative and financial support to the process. The annual participatory planning and budgeting process involves direct participation of citizens in grassroots meetings of the village assembly. Communities rank and prioritize their

problems and submit project proposals for discussion and approval of the ward development committee. The proposals are forwarded to the Singida District Council, which consolidates them into the district annual budget and development plan.

Medium-term decisions at the district level are developed from two stakeholder consultations. Participants to these consultations are carefully selected from the institutions mentioned above. Medium-term decisions at the village level are reached through participatory rural appraisal processes that allow all residents to participate directly in approving village plans and budgets.

The Ilala Municipal Council developed a tailored training program on urban participatory planning and budgeting, in collaboration with the Institute of Regional Development Planning. In 2002 residential and field training sessions were conducted for council staff, ward councillors, and representatives of NGOs and community-based organizations (CBOs) from each ward. The training focused on planning, budgeting, advocacy skills, and roles and responsibilities of all stakeholders. In 2003 the Ilala Municipal Council established 22 community-level planning and budgeting support teams in each ward to empower communities with participatory planning and budgeting skills. Each team consists of 10 members. An effort was made to ensure that teams were apolitical, gender balanced, and inclusive of vulnerable groups. Team members were trained in participatory mechanisms, technical planning, and budgeting, skills that they could then pass on to communities.

Uganda

Several mechanisms are in place to involve citizens in the budgetary process in Uganda. The budget conference allows key stakeholders to reach consensus. According to Ministry of Local Government guidelines on participatory planning by lower councils, annual planning and budget conferences to review performance and agree on priorities should be held by November 15. A wide spectrum of stakeholders agrees on local government priorities at these conferences. Citizens submit their needs and priorities through elected councillors. Citizens and representatives of CSOs may also attend the budget conference.

Community needs are raised at village- and ward-level planning meetings in Soroti municipality. In Entebbe municipality the council has run outreach programs to educate and inform citizens about budget processes (although some citizens complain that the dates for the budget conference are not communicated in time). Once the draft budget has been finalized,

citizens may obtain copies from the council, although their inputs are rarely considered at this stage.

Another mechanism for participation is the Participatory Poverty Assessment Project, established in Uganda in 1997. A Participatory Poverty Assessment aims to solicit the views of poor people and incorporate them into policy planning and the allocation of resources. The information derived from the project has been incorporated into the Poverty Eradication Action Plan, the framework for Uganda's budgetary policy formulation. Budget reference groups were established in 2000, with the mandate to simplify the language of budget documents and demystify budget figures in order to make them more accessible to the general public.

The media play an important role in enhancing civic participation in the planning and budgeting processes in Soroti municipality. Announcements to attend the budgetary conference are made on the radio and in the newspaper, creating awareness and educating citizens on municipal affairs. Local radio stations host phone-in talk shows where citizens may ask questions and comment on municipal procedures. The council also maintains a database of all registered NGOs and CBOs based in its jurisdiction. The leaders of these organizations play an influential role during the budget conference, as they represent the needs of their community.

In contrast, the media do not play an important role in the participatory process in Entebbe municipality. As a result, communication between the council and citizens is not very effective. To improve communication, in 2000 the mayor, his technical team, and civic leaders launched an outreach program, during which members of the community were informed of and educated about the budget process and consulted on their priorities. The program gave councillors and council officials an opportunity to become acquainted with the situation on the ground. It also gave citizens the opportunity to question councillors and officials about various aspects of the council's functions. Although the outreach program was successful, it was very expensive and could not be repeated.

Zambia

Zambia has no formalized participation mechanisms, no local structures for raising awareness and educating citizens about council business, and no mechanisms for sharing information or building consensus. Councillors do not appear to consult members of their constituency, and members of the public are not aware of their rights to attend council meetings or to inspect council accounts or proposed bylaws. As a result there is no civic participation in policy and budget decision-making processes.

On its own initiative, the Kabwe Municipal Council has embarked on a program to involve its residents in decision making, planning, and implementation of developmental projects to improve living conditions. It created subdistrict structures called residents development committees, made up of a group of residents living in an area or ward. Through the committees, citizens have the opportunity to provide input regarding desirable improvements, set and prioritize goals, evaluate work done by the local authority, redefine needs, and lobby and negotiate with the council and the Ministry of Local Government. Recommendations from the committees are passed on to the ward councillor and the council's departmental heads, who together present them to the full council. To establish a link between the council, the residents development committees, and other stakeholders, the Kabwe Municipal Council created a Settlement Improvement Unit in the Public Health and Social Service Department, charged with promoting civic participation. The local Chamber of Commerce is supportive of increasing civic participation and is campaigning for a more formalized participatory process. The Municipal Development Partnership for Eastern and Southern Africa together with the Kabwe Municipal Council initiated a pilot project to strengthen civic participation in municipal governance by mainstreaming civic input into the strategic planning process in Kabwe.

Zimbabwe

Subnational governments in Zimbabwe use a variety of instruments for public consultation. They include the government gazette; notices calling for objections in more than one issue of the newspaper; public notices at the subnational government office; ministerial commissions; ministerial investigations; consultation with the local authority; councillor input; ward development committees; the right of the community to attend council meetings; the right of citizens to make copies of bylaws, budgets, resolutions, and voter rolls; and council subcommittees. These mechanisms assume a high degree of literacy and interest in civic matters and are consistent with a top-down approach. Although Zimbabwe has a high literacy rate, it appears that these mechanisms are not as widely used as initially envisaged.

With the introduction of the 1984 Rural District Act, a more grassroots approach to civic participation emerged. Participation is now based on a bottom-up approach, beginning with development committees at the village, ward, district, and provincial levels. Each ward development committee is

chaired by the ward councillor and consists of chairs and secretaries of village development committees, neighborhood development committees, or both. The main function of the ward development committees is to prepare and submit an annual ward development plan to the district development committees, which then recommend to the council matters to be included in annual and long-term development plans.

In the city of Gweru, civic participation occurs through ward committees. Partisan cells (political structures) and village committees contribute issues to the ward development committee meeting agenda, setting out and prioritizing needs. Councillors bring the minutes of these meetings to the town clerk, who puts the issues raised on the council agenda for discussion. The ward development committee meeting is also used by councillors to give feedback to ward members. Through representative attendance in budget formulation workshops, civic groups in Gweru have played a role in identifying needs, participating in strategic planning, and formulating budgets. They have also helped determine tariff levels and capital expenditure priorities through budget formulating committees.

The Mutoko Rural District Council encourages civic participation through workshops, ward meetings, village development committee meetings, joint meetings with traditional leaders, and meetings with political bodies in the community. Civic society organizations hold workshops every quarter at which they review the local authority budget performance and agree on modifications and actions required to keep plans on course. After these quarterly reviews, feedback meetings are organized at the ward and village levels to disseminate information and generate debate.

Civic Participation and the Budget Process

In theory all countries provide for some form of consultation or participation during the budget process. This occurs mainly at the beginning of the process. In only a few countries is public input solicited after the final budget is put together.

Although the budget process allows for participation, it is not always clear that input from citizens is taken seriously. In many cases the budget still appears to be driven by officials and to a lesser extent councillors.

Kenya

Participation in the budget process started with the preparation of the 2001/02 budget. Local authorities are required to prepare a Local Authority

TABLE 6.1 Budget Cycle for Subnational Governments in Kenya

Month	Activity
September	Ministerial circular is issued explaining procedures for preparing the budget for the LASDP.
December	Appointed council representatives analyze performance of current budget.
January	Appointed council representatives prepare the LASDP envelop, based on previous performance plus 10 percent. Information is published in local newspapers and posted on local notice boards in all wards. Stakeholders are invited to attend ward-level participatory budget meetings at which capital projects are prioritized.
February	Stakeholders suggest projects and agree on priority lists. Citywide consultative meeting is held at city hall. Wards negotiate on projects with cross-border implications and agree on citywide projects. Council meets to adopt recommendations from citywide meeting. Budget is submitted to Ministry of Local Government and Finance Ministry.
March	Appointed council representatives prepare departmental budgets (capital and recurrent).
April	Departmental budgets are submitted to relevant committees for discussion and recommendations.
May	Finance Committee considers consolidated budget (LASDP and departmental budgets).
June	Special full council adopts budget submitted by Finance Committee. Council submits budget to Ministry of Local Government, with copy sent to Finance Ministry for approval.

Source: Adapted from Wamwangi 2004c.
Note: LASDP = Local Authority Service Delivery Plan.

Service Delivery Plan using a participatory process that includes local residents and stakeholder groups (table 6.1).

Although citizens participate in the process, the budget is still driven by municipal officials. Citizens participate only in the prioritization of capital projects; they have no opportunity to provide input once the consolidated budget is produced. Furthermore, the consolidated budget presented to the council is a technical document that councillors find difficult to understand. Councillors’ intervention is thus limited and generally occurs only in cases where they may derive personal benefits or political mileage.

Mozambique

Participation in the budget process occurs at the bairro level in Mozambique, where citizens are given an opportunity to prioritize needs within

their communities. Preparatory research into community needs is done through a participatory planning approach. Councillors then meet with bairro development committees to set priorities. Stakeholder meetings are held to set global priorities. Community priorities are incorporated into council budgets and plans and approved by the council before the budget is sent to the Ministry of State Administration for approval. The budget is then implemented and monitored. It is not clear from the case studies whether citizens have the opportunity to provide input into both the capital and recurrent budgets.

South Africa

Mayors in South Africa are responsible for coordinating the processes for preparing the budget and for reviewing the municipality's integrated development plan and budget-related policies. At least 10 months before the start of the financial year, the mayor must table in council a time schedule outlining key deadlines, including deadlines for consultative or participatory processes. Immediately after the annual budget is tabled at a municipal council meeting (at least 90 days before the start of the financial year), the municipality must make public the annual budget together with any supporting documentation and invite submissions to the council on the budget from the community. The council must then consider any views put forward by community representatives or any other organs of state and, if necessary, revise the budget and table amendments for consideration by the council. Each municipality may prepare its own budget process within this framework. The budget preparation process for Mangaung municipality is typical (table 6.2).

For the 2004/05 budget cycle in Mangaung, communities were asked to comment and provide input only on the capital budget. The city manager has acknowledged the need to strengthen participation and expressed his intention to solicit input on the operational as well as the capital budget. He has also agreed to provide the clusters with more information on project backlogs, service levels in different areas, trends and patterns of expenditure, and growth projections.

Tanzania

Tanzania's annual planning and budgeting process involves direct participation of citizens in grassroots meetings of subward and village governing councils (table 6.3). Communities rank their problems and submit project proposals to the ward development committee for discussion and approval.

TABLE 6.2 Budget Process in Mangaung, South Africa

Stage	Activity
1: External and internal environment consultation	Budget parameters are established to make revenue projections. Municipality is divided into clusters of wards. Wards are notified of the dates of cluster meetings well in advance of the meetings. Cluster meetings are held, at which development priorities and projects are discussed and prioritized for each cluster. Refined community proposals are presented to the broader stakeholder forum to solicit additional input.
2: Screening of projects and programs	All submissions from the clusters and stakeholder forums are submitted to the mayor, the mayoral committee, and the executive management team, which discusses them and prepares the budget bill. Budget bill is publicized, so that stakeholders and the public can prepare for the budget conference, which provides another opportunity to provide input into the budget. After the budget conference, the draft budget is submitted to the National Treasury for input and comments. Budget committee finalizes the budget.
3: Approval and reporting	Final budget is tabled and approved by the council. Final budget is submitted to the auditor-general and the national and provincial governments. Stakeholders are informed of the budget cycle for the forthcoming budget year.

Source: Adapted from Mangaung Local Municipality 2004.

Uganda

The budgetary process for local authorities in Uganda consists of seven steps (table 6.4).

Citizen participation is limited to identifying needs and priorities for submission to the budget conference. Citizens may obtain copies of the draft budget once it has been finalized, but at this stage it is too late to consider any changes that citizens may suggest.

Zambia

Citizen participation is not mandatory in Zambia, but some municipalities, such as Kabwe, have nevertheless accommodated it in the budget cycle

TABLE 6.3 Budget Process for Subnational Governments in Tanzania

Stage	Activity
1: Preparation of budget guidelines	The President's Office, the regional administration, and the local government issue budget policies, guidelines, and ceilings. The regional secretariat advises the municipal council on policy, guidelines, and instructions. The municipal council prepares local guidelines and policies for wards.
2: Public consultation and identification of priorities	Ward extension staff are trained, and the ward development committees issue guidelines to community-level planning and budgeting support teams. Community-level planning and budgeting support teams conduct participatory poverty assessment budgeting. Public meetings are held to rank priorities. Ward development committees approve priorities.
3: Compilation of draft budget	The council management team compiles and synthesizes budget proposals. The council management team consults with CSOs. The council management team compiles the final draft budget, which is then discussed by council committees.
4: Approval and adoption of budget	The full council approves and adopts the budget. Citizens have the opportunity to provide input both during the initial discussion of priorities and after the draft budget has been put together.

Source: Adapted from Lubuva 2004b.

(table 6.5). Citizens in Kabwe participate through ward-level residents development committees.

Recommendations by the committees are passed on to the ward councillor and to council department heads. Participation occurs only in the first stage of the process and is limited to identifying needs and priorities.

Zimbabwe

Formal budget cycle processes in Zimbabwe are established by law and by informal processes adopted by local authorities that build on experience developed from wider participatory practices. An example is the budget

TABLE 6.4 Budget Process for Subnational Governments in Uganda

Stage	Activity
1: Budget conference held (January–February)	Citizens’ needs and priorities are raised at village- and ward-level planning meetings. Needs and priorities are submitted through elected councillors to the budget conference. During the conference, which citizens and representatives of CSOs can attend, the council agrees on a list of priorities and on guidelines for sectoral allocation.
2: Sectoral priorities identified (March–April)	The chief executive as well as members of the standing committees (including heads of departments) set sectoral policy guidelines and agree on costed sectoral priorities. Citizens are not directly involved in this stage, but the needs they raised at the budget conference are considered.
3: Costed sectoral priorities reviewed (April–May)	Members of the standing committee for finance, together with heads of department, review the proposals made and try to establish sectoral linkages. The output of this stage is a draft budget proposal for the council.
4: Final draft budget considered (May)	The standing committee for finance, the technical planning committee, and the chairs of the standing committees meet to consider the draft budget. The financial allocations and prioritization are reviewed and the draft is taken to the local council executive.
5: Draft budget finalized (June)	The executive meets to consider the draft budget as well as comments from the previous stage. He or she makes final changes and approves the final draft. Citizens may obtain copies of the final budget from the council, but their input at this stage is rarely considered.
6: Council hearing held (by June 15)	The chief executive, through the secretary for finance, tables the budget and seeks council approval.
7: Budget implemented and monitored	The chief executive, cabinet, standing committees, and heads of departments develop detailed implementation plans and performance reports. Monitoring is done by council officials, councillors, and civil society representatives.

Source: Adapted from Kundishora 2004d.

cycle in Gweru City, which includes both formal and informal approaches (see table 6.6).

TABLE 6.5 Budget Process in Kabwe, Zambia

Stage	Activity
1: Consultation with residents	Consultation with residents through residents development committees. Field teams, consisting of representatives of the four departmental heads, meet with residents to solicit suggestions, ideas, and opinions and learn of problems and needs. Residents development committees, with the assistance of field teams, list and prioritize their needs and draw up annual work plans based on an agreed set of priorities. The field teams then prepare their annual departmental budget estimates and submit them to the council.
2: Preparation of departmental budgets	Departmental budgets are prepared and consolidated. Each departmental budget estimate should be able to fund priority activities for the coming year.
3: Consolidation of the budget	Departmental budget estimates are submitted to standing committees for debate and necessary changes. The finance department then consolidates the departmental budgets into the council's annual budget.
4: Submission of the budget to the council for adoption	The director of finance submits the proposed annual budget to the council for adoption. During this meeting councillors and other interested parties, including department heads, can bring in more project proposals and resident needs, which may be incorporated into the budget if they are deemed important and resources are available.
5: Final approval	Once the full council meeting approves the consolidated annual budget, it is submitted to the Ministry of Local Government and Housing for final approval.
6: Budget implementation	The budget is implemented, and prioritized projects are monitored and evaluated.

Source: Adapted from Mumvuma 2004.

Stakeholder participation occurs informally at three stages in the process. First, citizens are involved in identifying needs and priorities, which feed into the strategic development plan. Second, consultations with stakeholders are held to discuss the implications of their input on the budget and to vote on the preferred scenarios. Third, citizens are involved in monitoring and evaluating implementation of the budget.

TABLE 6.6 Budget Process in Gweru, Zimbabwe

Stage	Formal activity	Informal participation
1: Identification of needs and priorities	<p>Five-year strategic development plan with annual priorities used to determine and adjust year’s priorities.</p> <p>National guidelines received and incorporated into local budget.</p> <p>Executive committee issues budget guidelines for Council adoption.</p>	<p>Stakeholders review guidelines with SNG and agree on impacts to be incorporated into SNG budget.</p>
2: Costing and determination of global funding requirements	<p>Manpower committee negotiates with labor unions on level of wages and salaries.</p> <p>Finance committee meetings held to determine global funding requirements and set level of charges as well as capital programs and their financing.</p>	<p>Broad stakeholder committee delegates detailed budgeting to a stakeholder budget committee it elects. Committee works closely with treasurer and finance committee.</p>
3: Budget finalization	<p>Council meeting adopts recommendations of finance committee, advertises budget in two issues of the newspaper in order to allow for public objections. Council considers objections before finalizing budget.</p> <p>Budget sent to Ministry of Local Government for approval of high-density area charges (poor areas).</p>	
4: Budget implementation	<p>Budget is implemented, monitored, and evaluated.</p>	<p>Councillors hold regular ward meetings to consult on budget with stakeholder budget committee.</p>

Source: Adapted from Mika 2004.
 Note: SNG = subnational government.

The Impact of Participation

Participation in budgetary processes is still relatively new in most of the countries reviewed here. Already, however, it has increased the number of projects that directly benefit communities and correspond to the priorities identified through the participation process. Relationships between citizens and local authorities have improved, and citizens have a more positive attitude toward and better understanding of the local authority.

Kenya

Citizens have participated in the budget process in Nairobi since 2003. The result has been a large increase in the number of projects suggested and implemented. Project ideas originate with residents, based on their perceived needs. As a result of resident involvement, there is a strong sense of ownership. Through improved dialogue, good rapport has developed between the council and residents, which did not exist in the past. The Local Authority Service Delivery Action Plan process provides a good opportunity for meaningful dialogue and the identification of service delivery activities that respond directly to the needs of local residents. Of 154 projects identified in 2002/03, 106 were shortlisted for funding and implementation. Council staff have also made themselves more accessible to all stakeholders.

Mozambique

Civic participation is still in its infancy in Mozambique. However, in both Manhica and Dondo municipalities, interaction between the local authority and civic groups has increased and relations have improved. The local authorities have a better idea of the composition of society. Community members now participate jointly with the local authority in planning, programming, implementing, and monitoring and evaluating local projects. In Manhica a multistakeholder management committee was established in 2000 that raises funds and deals with a local flooding problem. Civic awareness meetings were held in 29 bairros, resulting in cleaning and reconstruction campaigns and the building of two boats to overcome flooding problems. Village committees in Dondo are active in local economic development, with local women maintaining community facilities such as water pumps and refuse removal.

South Africa

In Mangaung municipality the use of community-based planning in ward committees has seen the focus of budget funding shift from infrastructure development to local economic development, a higher priority for citizens.

The community also perceives the municipality as being more transparent. More people are informed about what is happening in the municipality and can now demand accountability by regularly asking questions regarding issues raised at meetings. There is constant participation through the ward committees, which provide the municipality with regular feedback and input. Submissions received from the budget conference on various budgetary issues are seriously considered and taken into account when finalizing the budget.

In Ekurhuleni municipality the major impact from the participation process has been a change in funding priorities rather than an increase in spending. Through the participation process, the municipality has taken a closer look at the lives of pensioners and increased the concessions given to them. There has also been an influence on the indigent policy and the allocation to free basic services. Policies have been modified in ways that benefit the poor, and budget allocations to free basic services have increased.

Tanzania

Civic participation has had a positive impact on the structure and effectiveness of budget and development plans in Tanzania. Staff of the Singida District Council solicited community participation in preparing and approving village budgets for 2004/05. The logical framework approach was applied to medium-term plans and budgets in four villages for the rehabilitation of the water scheme, the rehabilitation and construction of shallow wells, and the construction of a cattle dam.³ The Ilala Municipal Council now directly involves citizens in meetings to discuss and prioritize community problems and propose projects for budgetary resource allocation. In both councils the number of projects implemented jointly by the council and communities has increased. Participation has fostered a more positive attitude among citizens, resulting in greater acceptability of cost-sharing, user charges, and other cost-recovery mechanisms. The effectiveness of budgets and development plans in addressing community concerns has improved. Equity and transparency in the allocation of resources across communities have increased, especially with regard to resources allocated to the previously neglected inner city and periphery. Relations between the council and citizens have improved, as has the ability to analyze and prioritize problems and issues. The level of community involvement in designing, executing, and monitoring and evaluating projects has increased. Official recognition of private and public contributions from the center to community projects, which are now incorporated into plans and budgets, has encouraged nonpublic contributions and given hope to citizens for improved service delivery.

Uganda

Through the participatory process, citizens in Entebbe municipality are now involved in drafting the city's three-year strategic plan, which guides development activities in the municipality. An attempt has been made to establish a good working relationship between councillors, officials, and citizens. The council has a list of all registered civic organizations and invites at least some of their leaders to attend its meetings.

Civic organizations and NGOs in Soroti municipality have a positive attitude toward attending council meetings, where they present the priorities and interests of the community. Through the participatory process, a network of NGOs and civic groups has been formed to ensure that the interests of citizens are articulated before the council. Civic groups have learned and internalized the procedures of the council in preparing the budget. The resource base of the municipality has increased as people who previously refused to pay taxes now do so, because they have a better understanding of the use to which council resources are put.

Zambia

Thirty-six residents development committees have been established in Kabwe municipality. Three health centers have been established, and piped water has been provided for two of the centers. New markets have been constructed and improvements made to existing markets.

To ensure that cross-cutting issues are mainstreamed in community projects, members of residents development committees have been trained to deal with problems of HIV/AIDS, gender mainstreaming, the environment, and infrastructure maintenance. District officials, residents development committees, and neighborhood committees formed a task force to deal with these issues. As a result, funding was allocated to a home-based care project in Chowa; a project for the care of terminally ill people with HIV/AIDS; expansion of the Ngungu health center, which cares for the chronically ill; and expansion of a school, the clearing of its storm drains, and the planting of trees around the school.

Zimbabwe

Civic participation in the Mutoko Rural District Council has given residents there a new sense of belonging and ownership. Linkages have been strengthened between the local authority and stakeholders, and cooperation between government departments, traditional leaders, and civic society organizations has increased. A common and shared vision has developed to guide future community development and annual budgets.

The result has been less conflict and more eagerness to use dialogue to solve differences. Marches have not occurred protesting local budgets (as they did in the past), suggesting that citizens now accept and feel ownership of funding. This has allowed speedier approval of the budget and more timely implementation. Citizens have a better appreciation of what the council does and how services are costed. As a result, they are more willing to pay for services.

In Gweru participatory processes have resulted in a more simplified budget format that is easier for citizens to understand. Citizens have been involved in developing a strategic plan that shapes the city's future and guides the budget process. There is also an increased sense of ownership and belonging regarding the budget process and a reduction in suspicions of abuse of funds and lack of transparency. As citizens are more involved, budgets are produced more quickly and implemented on time.

Challenges and Lessons Learned

Participatory budgeting has already met with successes in Africa, but challenges remain. Important lessons have been learned as subnational governments try to deal with these challenges.

Challenges

Many of the countries reviewed face similar challenges, including a lack of capacity, a limited understanding of the roles and responsibilities of all actors, the limited scope of participation, legislative constraints, inadequate monitoring and evaluation systems, a lack of transparency and trust, a breakdown in communication, insufficient resources, and political and social differences. Not all the countries reviewed have experienced all of these challenges, but many are common to all.

Every country reviewed cited the lack of capacity of councillors, municipal officials, and citizens as the most serious impediment to civic participation in planning and budgetary processes. Citizens are often not aware of their right to participate, and they lack an understanding and awareness of policy-making and budgetary processes. The low level of literacy hampers participation. Citizens with very low levels of education tend to participate less, because they lack access to information and do not understand municipal procedures. As a result, the budget-making process involves mainly the elite. The language used in discussing policy and budgets is often technical and introduces unfamiliar concepts. The discussion is therefore beyond

the comprehension of both councillors and the people they represent. This means that residents and councillors are often excluded from participating effectively in the policy and budgetary decision-making processes. In some countries, residents in a given area may speak different languages, making it difficult for them to fully participate in discussions.

Some councillors, especially those from rural areas, have not had adequate training and are therefore unable to impart the relevant information and inform their constituents on council activities. This makes it difficult for them to articulate the problems and needs of their constituencies during council debates. Municipal officials themselves may lack the necessary technical capacity.

In most of the countries under review, the roles and responsibilities of the different actors were not clearly understood. This resulted in certain actors assuming responsibilities that were inappropriate. In particular, the distinction between the roles of officials and the roles of councillors was not always clearly defined. In some instances, officials made decisions that should have been made by the political body. In doing so, they manipulated the budgeting and planning processes, using councillors as rubber stamps. Some countries also experienced misunderstandings over state departments' role in the budgeting process.

In some countries citizens participate in decision making only with regard to the capital budget, which represents a small part of the entire budget. They are not included in discussions of revenue sources or the setting of rates and tariffs.

The monitoring and evaluation of projects is weak, and the process does not involve citizen participation. Improving the monitoring and evaluation process would enhance the accountability of councillors and the administration to the community.

In Mozambique, Uganda, Zambia, and Zimbabwe, legislative constraints limit civic participation. There are no specific provisions for direct public participation in decision making at the municipal level. Instead, it is assumed that participation will happen indirectly.

Civic participation is also hampered by a lack of transparency in the use of public funds. In Uganda, for example, provisions in the law ensure transparent and accountable use of financial resources at the local level, but many of these provisions have not been acted on because of lack of capacity. Subnational governments lack the capacity to prepare the necessary books of accounts and enforce strict financial discipline; central government institutions lack the capacity to follow up on audit recommendations in a timely and comprehensive manner.

In Zambia fiscal transfers from the central government are unpredictable. Councils do not have information about funding policies, the amounts available for distribution from various sources, the criteria or formula adopted in disbursing grants, or the reasons for delays in releasing funds. This uncertainty makes it difficult if not impossible to plan for and use resources effectively.

Lack of resources, both financial and physical, has had a negative impact on citizen participation. In some instances, dependence on donor funding to run participatory processes makes the participation process tenuous. The large size of the population in some towns and cities puts pressure on the resources available for participatory activities, as more meetings need to be held and more people require transport. In rural areas, where large distances must be covered, the council has to pay transport and subsistence costs in order to make it possible for citizens to attend meetings and participate in decision making.

Councillors often lack institutional and resource bases to meaningfully consult with the people they represent. They lack the physical infrastructure, such as information management systems, as well as the human resource capacity necessary for encouraging participation among their constituencies.

Participation is still viewed with suspicion in some of the countries under review, sometimes with reason. Some councillors have ignored what has come up through the participatory process, instead putting forward issues that suit them. Issues raised by individuals or groups have sometimes been lost in the communication process from village to ward to municipal council.

In Uganda the relationship between the council and citizens has improved greatly, but suspicion between the two still exists. Invitation letters are reportedly sent to some civic groups after meetings have been held. Some councils still deliberately exclude civic groups from council meetings. In Zambia even where citizens are aware of their right to attend council meetings and are informed about the schedules of these meetings, most will not attend, mainly because they have lost confidence in local authorities. In Zimbabwe elected officials view civic groups with suspicion.

In all the countries reviewed, ineffective communication between the sub-national government and citizens has a negative impact on civic participation. In South Africa communication among councillors, ward committees, and departments within the administration is not as good as it should be. There is also a lack of communication between the representatives of organizations who attend the major stakeholder meetings and their constituencies. Members of the community often complain that their representatives do not provide feedback from the meetings they attend. In Uganda logistical and financial limitations hamper council efforts to inform citizens about

procedures and policies. Most poor people also lack resources to buy newspapers and radios, which provide information about council procedures.

In many countries the budgetary participation process does not start early enough, limiting the amount of time available for consultation. In some cases people feel that meetings are merely informational rather than participatory. Often these meetings are held at times when people are at work or at venues that require them to travel long distances.

Political and social differences also affect participation. Political differences in Tanzania diminished the solidarity and cohesiveness of communities, reducing the level of participation in planning and budgeting or stalling the process in affected areas. In the Kabwe Municipal Council in Zambia, inclusion of political appointees in the form of a deputy minister and permanent secretary in the governance structure of the council reduced the level of civic participation. Local stakeholders pull in different directions due to conflicting instructions from the provincial political leadership on the one hand and the principal officers of the council on the other hand.

In South Africa social and cultural differences between areas that were once all white and areas that were once all black remain. The participation process must be able to meet the needs of the diverse communities that municipalities in South Africa serve. In Zimbabwe populations in cities tend to be more diverse. Reconciling different cultures poses tremendous challenges, because different needs surface as priorities.

Lessons Learned

Important lessons have been learned in implementing participatory mechanisms. The main lessons learned from the experiences of the countries reviewed are described below.

Garner political will and create an appropriate legislative framework

Successful civic participation requires the political will to engage with citizens: in countries in which participatory processes have been successful, political support for civic involvement has been consistent. Such support creates an atmosphere of trust and allows citizens to feel that they are playing a role in determining how local government structures spend their resources and how such spending will affect their lives.

The constitution as well as all legislation relating to local government should recognize autonomous local government and enshrine the value of participation. Countries in which participatory budgeting has been successful have put in place an institutional and regulatory environment that allows for

local autonomy and direct participation of citizens in decision making that has an impact on local communities.

Build the capacity of local actors

Extensive and continuous capacity building of councillors, officials, and citizens is key to successful budgetary participation. In every country reviewed, empowering communities with knowledge of the budget process and technical skills to analyze budgets enabled more direct participation. Capacity building increases understanding of the municipal planning and budget cycle and how resource allocation occurs, allowing communities to provide more meaningful input into the process. Experience shows that councillors and local officials who have received training are better able to engage with citizens and encourage them to participate in planning and budgeting processes.

Continuing civic education and capacity building is a top priority in dealing with the challenges of participatory budgeting. Communities that have provided ongoing training workshops have seen significant improvement in the quality and quantity of the input received by citizens. For example, in Ilala municipality, Tanzania, where training was provided to all stakeholders, the participatory budget became more realistic and priorities were much more clearly identified. In Singida district municipality, Tanzania, extensive and continuous awareness building and public education improved the effectiveness of participation, allowing specific problems to be addressed through the budget process.

Training of officials and councillors also improves interaction and understanding among all actors. The training workshops should have a strong practical component and cover issues such as the following:

- Why do tradeoffs need to be made in using scarce resources to address unlimited needs?
- How do local authorities function?
- What is the relationship between strategic planning and budgeting?
- What is the difference between a capital and an operating budget? Is the proportion of capital to current spending appropriate? Within current spending, is the proportion of salaries to maintenance spending appropriate?

Where communication between the local authority and citizens is an issue, it is also important to include the development of a communication strategy in any capacity-building program. It may also be useful to form learning networks so that groups can learn from the experiences of others. These networks could include local authorities within a country or local authorities from different countries.

Ensure commitment by local authorities

Commitment by both elected and appointed officials of the local authority is vital to the success of participatory practices. In countries in which both councillors and officials are committed to involving all stakeholders in the decision-making processes of the local authority (Mozambique, Tanzania, and Uganda), citizen participation in municipal governance issues has been enhanced and the participation process is more sustainable and meaningful. Traditional leaders, as custodians of community values, also need to be taken on board and factored into participatory processes.

Central government support for participatory approaches is also necessary, as it lends legitimacy to the process. Its support is manifested in legal provisions for participation, government policies, and facilitative institutions.

Include all stakeholders and accommodate diversity

Careful identification of all key stakeholders to ensure broad-based representation of all segments of society, including disadvantaged and vulnerable groups, is essential in facilitating the participatory process. Countries that have adopted a systematic approach that includes all sectors of the community have enhanced ownership of the process by the community. The community must be part of driving the process if it is to be sustainable. In order to accommodate diversity, it may be necessary to adopt different strategies for the various groupings so that each may participate in the way that is most appropriate.

Give citizens plenty of time to prepare

Consultation with civil society must occur well in advance of meetings, so that citizens have the opportunity to discuss their needs and priorities. Citizens need time to be able to provide meaningful input into the budget.

Citizens need to be notified of meetings well in advance, so that they have plenty of time to make their travel plans. Meetings should be scheduled at times that are convenient for people who work during the day.

Conclusions

In all the countries reviewed here, local government is recognized as a sphere of government in its own right, with powers to manage its own fiscal revenues and expenditures. Each country has legislation governing the local sphere. Some have made civic participation mandatory, requiring local authorities to cooperate with citizens and give them the opportunity to be part of decision-making processes.

Even in countries that have not legislated participatory processes, participation is recognized as an important tool for improving service delivery to communities. Countries have therefore put in place mechanisms to allow for more inclusiveness in the planning and budgetary processes. These mechanisms include ward committee structures, participatory planning processes, public meetings, budget conferences, consultative sessions, budget campaigns, monthly newsletters, a participatory poverty assessment project, and various forms of media intervention.

In each country the budget preparation process includes a stage that allows for civic participation in identifying needs and priorities. In some cases participation occurs only at the beginning of the process; in others citizens are given another opportunity to provide input regarding the allocation of resources once the draft budget is finalized.

Citizens have opportunities to provide input, but in many instances their input is limited and the allocation of resources is still determined largely by local officials and councillors. In many cases citizens are not given adequate time to analyze and discuss their input. Moreover, citizen input is solicited only with regard to the capital budget, which represents only a small proportion of the total budget.

Despite these problems, civic participation has increased the number and range of projects implemented by local authorities that have a direct impact on communities involved in the participation process. Participation has also improved relations between citizens and local authorities, as citizens feel that local authorities have become more transparent and trustworthy.

Notes

1. *Subnational government, local government, local authority, and municipality* are used interchangeably in this chapter. All refer to governance at the local level.
2. Integrated Development Planning is the planning methodology that identifies priorities and plans.
3. The logical framework approach is a management tool used mainly in the design, monitoring, and evaluation of development projects.

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Participatory Budgeting in the Middle East and North Africa

ALTA FÖLSCHER

Participatory budgeting does not occur in a vacuum: environmental and design factors facilitate citizen engagement in public affairs. This chapter discusses necessary and enabling factors that help participatory mechanisms take root, assesses whether they are present in the Middle East and North Africa, and examines whether participatory mechanisms can catalyze or contribute to societal changes in terms of governance, development, and democracy in the region. It also explores whether participatory processes are consistent with Islamic rules and values.

Potential for Participatory Budgeting

An extensive body of literature associates participatory budgeting with good governance outcomes (McGee 2003; Reuben 2003; Wampler 2000). Civic engagement in public affairs is seen as instrumental to state effectiveness. It also leads to better public decisions by increasing vertical, or social, accountability. When citizens are engaged in processes of planning, funding, delivering, and monitoring public goods and services, the incentives of public officials and office holders change.

In addition to improving state effectiveness, participatory approaches promise two additional benefits that are relevant to the Middle East and North Africa. First, institutions supporting wider citizen involvement are instrumental to human development—the continuous expansion of human capabilities, opportunities, and freedoms. Second, participation offers opportunities for meaningful participation, an end (or a human right) in itself.

Recent work by the United Nations Economic and Social Commission for Western Asia (ESCWA) (Fawaz 2002), the World Bank (2003), and the United Nations Development Programme (2005) has identified poor governance as a significant contributing factor to poor growth and underdevelopment in the Middle East and North Africa. Could participatory processes help improve governance in the region?

The political, governance, and social conditions in the region appear to limit the scope for participatory budgeting initiatives. The 2004 *Arab Human Development Report* (UNDP 2005, p. 9) notes that despite several recent regional and country-specific reform initiatives, reforms have been “embryonic and fragmentary.” Although the gains are “undoubtedly real and promising . . . they do not add up to a serious effort to dispel the prevailing environment of oppression.” The report identifies the prevalence of autocratic regimes combined with traditionalism and tribalism as major impediments to such political and civil liberties as the right to information, participation, growth, and human development. Other reports, including Abootalebi (1999), Al-Masmoudi (2004), Fawaz (2002), Gilbraith (1996), and World Bank (2003), mirror these findings.

Citizen Budget Initiatives

State exercise of power in the region does not bode well for the successful implementation of citizen budget initiatives. Autocratic rule combined with restrictions on freedom of speech, media, and association and political practices that pay little heed to principles of contestability, equality, and accountability may impede the robust growth of such initiatives. A World Bank review of governance and development in the region (World Bank 2003, p. 4) noted that “nepotism, tribal affinity, patronage, or money determines who gets public services and who does not.”

Contestability and representivity are largely absent in the region. Even when the formal system of government includes procedural democracy, these features are lacking in the informal system. Instead, without the majority of people behind them, most regimes have resorted to other sources of legitimacy, including religion, tribal affiliation, and an emphasis on the

authority of powerful elites—often family based—to rule (Abootalebi 1999, 2004; UNDP 2005; World Bank 2003). The survival of these regimes “has become more dependent on control and propaganda; on marginalizing the elites through scare-and-promise tactics, on striking bargains with dominant global or regional powers; and on mutually supportive regional blocs” (UNDP 2005, p. 16).

This lack of contestability in the political culture—a problematic environment for citizen budget initiatives—manifests itself at many levels in the formal system. Within the region, only Algeria, Egypt, the Palestinian Authority, Sudan, and Yemen elect their president through direct elections in which more than one candidate runs. Presidential term limits are not imposed (UNDP 2005). While totally or partially elected parliaments now exist in all countries in the region except Saudi Arabia and the United Arab Emirates, political participation through parliamentary representation is often little more than a ritual: parliaments are largely without power, and elections have not taken power out of the hands of ruling elites (UNDP 2005). In fact, elections are often designed or executed to limit parliamentary power. In Iran, for example, where the election of a reformist president brought hope for further democratic reforms, reformist-minded candidates were disqualified from standing for the February 2004 parliamentary elections, leaving power in the hands of the ruling elite (Abootalebi 2004). According to a World Bank report on governance in the region, “the independence of . . . parliaments is generally limited, as is their constitutional or actual power to hold the typically strong executive accountable” (2003, p. 46). In most countries in the region, parliaments lack oversight over the head of state and cannot initiate or control legislation or the budget.

Several authors point to a long-term trend of democratization (Abootalebi 2004; Ibrahim 2004) that reflects both pressure from within countries in the region and gradual social, economic, and political liberalization. There are also significant signs of recent reform. In May 2004 an Arab summit issued a Declaration on the Process of Reform and Modernization, calling for the continuation and intensification of political, economic, social, and educational change initiatives that reflect the will and aspirations of Arabs. It called for a deepening of the foundations of democracy and consultation and a broadening of participation in political life and decision making, in tandem with the rule of law, equality among citizens, and freedom of expression (UNDP 2005). The elections in Iraq and the Palestinian Authority, domestic political mobilization in Lebanon, municipal elections in Saudi Arabia, and presidential election reforms in Egypt are all recent indicators of a shift in response to mounting internal pressure for more freedoms and increased democracy.

Abootalebi (1999) does not view these changes as indicative of a fundamental move toward democracy by state or society. Greater space for and growth of political parties may be signs of a minimum adjustment to pressure from reformist groups rather than a genuine political groundshift. He argues that political parties in the region play a largely ceremonial role that serves to legitimate the state and its policies. "Although the formalities of a democratic state are in place (for example, elections and debates), the people remain politically and economically without much functional power." The real basis of state power in Middle Eastern countries is largely informal, not institutional, for it is personal, family, and group ties that help sustain the executive power of the ruling elites.

This is not equally true for all countries in the region; the extent of the ruling elites' autocratic power varies. Kuwait and the Persian Gulf sheikdoms, along with Oman and Saudi Arabia, are highly autocratic. In other countries, such as Egypt, Lebanon, and Morocco, there are stronger grounds for arguing that a shift in the balance of state-society relations in favor of society is occurring.

In some countries, the slow gains achieved in the 20th century were rolled back in the aftermath of September 11, 2001. Early in 2003, Arab interior ministers agreed to an antiterrorism strategy that led to further restrictions on personal freedoms. Unprecedented numbers of arrests have occurred, according to UNDP (2005), and legal safeguards against mistreatment in prisons, camps, and detention centers have been violated. Citizens in some Arab countries live under threat of having their citizenship withdrawn on the basis of administrative decisions by lower-level government officials. Journalists, political activists, and human rights advocates often face prosecution or outright attack (UNDP 2005). Freedom of opinion and expression is curtailed through official censorship.

Basic civil and political liberties, such as freedom of thought, peaceful association, belief, and opinion, are guaranteed by national constitutions. However, under the banner of national security, either the constitutions themselves or lower-order legislation restricts these freedoms, particularly freedom of association (UNDP 2005). Political parties are permitted in 14 Arab countries; they are banned in Libya and the Gulf states. However, in many countries where constitutions allow the formation of political parties, legislative restrictions limit this right (by, for example, requiring prior authorization from committees with heavy government representation, restricting party activities, or assigning the right to dissolve a party to the state). Other examples of restrictions on the right to associate include provisions prohibiting or restricting the right to strike, demonstrate, hold mass gatherings, or assemble peacefully.

Most countries in the region place restrictions on the formation of civil society organizations (CSOs), whose activities are highly constrained (exceptions are Lebanon and Morocco). In some countries, organizations are dissolved if found to be too critical of the state. Most restrictions have been directed against grassroots human rights organizations (UNDP 2005), typically those calling for higher levels of participation and transparency within a human rights framework.

Despite the barriers, organized civil society is not absent from the region. There are many voluntary organizations, trade unions, human rights groups, women's associations, minority rights groups, and various other social movements (Gilbraith 1996). Despite constraints on the media, independent views are heard from growing numbers of independent research organizations and think tanks. However, across the region civil society remains constrained by the state; in some countries it is totally oppressed or co-opted. In Egypt, for example, where civil society is relatively free and vibrant, a 1964 law requires that CSOs refrain from "political" activity and empowers the state to replace the governing councils of CSOs if they do.

Ibrahim (2004) provides evidence of how think tanks in Egypt and elsewhere have succeeded in broadening the political, social, and economic reform agenda in the Arab world despite these constraints.¹ He emphasizes their ability to provide timely information and change the way in which leaders and intellectuals conceive of politics and policy making. These groups have been particularly successful in introducing a new "discourse that is more concerned with gathering facts and research than just with abstract concepts of ideology, law and philosophy. This new discourse is largely in line with the policy and financial analysis provided by successful budget (or public policy and finance) nongovernmental organizations elsewhere in the world" (Ibrahim 2004, p. 5).

The Al-Ahram Centre for Political and Strategic Studies in Egypt was the first Arab-state think tank to be established. It "opened the door for individuals and groups to create new foundations for promoting democracy, fighting illiteracy and poverty, projecting civil society advancements, and empowering women" (p. 1). Its establishment, supported by gradual economic, political, and social liberalization, led to a boom in think tanks (box 7.1).

A major impediment to broad-based participation initiatives is the high level of illiteracy throughout the region. The ability of CSOs to get "people power" behind their analyses and the potential for direct participation in decisions about resource allocation and use may be circumscribed by citizens' capacity to engage with technical issues. About one-third of Arab men and half of Arab women are illiterate. Although there have been significant

BOX 7.1 Think Tanks in the Arab World

The first think tank in an Arab country was established in Cairo in 1967. The Al-Ahram Center, which was linked to the government, was designed to provide Egypt and the rest of the Arab world with information about Israel. Today the center is the largest and most influential research institution in Egypt, focusing on international politics and the political, economic, and social aspects of Arab and Egyptian society. The center disseminates its analysis through an array of publications, including a strategic report, weekly articles, and discussion papers. The development of the center served as a blueprint that has since been duplicated by many other institutions in the country.

Egypt's Ibn Khaldun Centre can be viewed as the first truly independent think tank. Founded in 1988, this center has a more directly public policy-oriented agenda: it applies contemporary social science research methodologies to serve the developmental goals of Egypt and the Arab world. It was founded with private resources. In June 2000 the Egyptian government closed down the center, arresting its founder and 27 center associates. Since then the center has reopened, and its founder has been released. The center publishes and organizes seminars on a wide range of political and socioeconomic issues, including religion and politics, history, civil society, and democratic transformation and development.

Egypt's first independent nonprofit economic-oriented research institute, the Egyptian Centre for Economic Studies (ECES), was established in 1992. It conducts economic research in support of an open market system and a larger role for the private sector. The center was initially funded by Egypt's private sector and the U.S. Agency for International Development (USAID), together with other development partners. It conducts research on topics such as trade liberalization, the role of the state, and deregulation.

Since its founding, several other think tanks have been established. Ibrahim (2004) identifies two trends. First, think tanks make increasing use of information and communication technology to disseminate their own information. Some are virtual research centers only, with no brick and mortar infrastructure. Second, many think tanks are affiliated with universities. Many of the university-based centers are staffed with scholars who have studied abroad. Cairo University and the American University in Cairo recruit talented young scholars who use their expertise to develop Western-style research centers. These trends are reflected elsewhere in the region.

Three constraints face think tanks. The first is their control by the state. Regimes often frame think tank agendas or define the institutions from their founding. In Egypt, Jordan, Lebanon, and Morocco, conditions are more hospitable for establishing semi- or fully independent research centers, although their agenda is still influenced by their relationship with the government. Other countries, such as Libya, Syria, and many of the Gulf states, provide very little opportunity for the creation of independent think tanks.

(Box continues on the following page.)

The second challenge is the lack of financial and human resources. The “overall weak state of the social sciences in the Arab world has hindered the development of qualified indigenous researchers to staff the region’s think tanks” (Ibrahim 2004, p. 11). According to Ibrahim, just 5,000 Arab researchers are working on social and political trends in the Middle East. This shortage is exacerbated by a severe lack of funding; most funding for CSOs in the region goes to radical organizations. The largest financial support come from Western (or Northern) development partners.

The third challenge is the lack of credibility. Liberal-oriented think tanks face enormous difficulties in translating their messages in such a way that the wider—often illiterate—public can connect to them. Think tanks are often discredited for their “foreign style, outside connections and lack of authenticity” (Ibrahim 2004, p. 12).

Despite these limitations and challenges, Ibrahim points to the success of think tanks in introducing new ideas into public debates and introducing new, more rational, forms of research on policy issues. He cautions against overemphasizing the role of Arab civil society as a force for change, however: the role of traditional forces and the dismissal of independent think tanks as puppets of the West, together with the co-opting of other institutions by power structures, hamper their capacity to take this role forward.

Source: Ibrahim 2004.

recent gains in access to education across the region, the quality of education remains low (UNDP 2005).

Low literacy levels in themselves do not necessarily impede participation. The peasant- and worker-based initiatives of the Development Initiative for Social and Human Action (DISHA) and Mazdoor Kisan Shakti Sangathan in India illustrate how ordinary and often illiterate citizens make significant contributions to public resource management once public budgets and public service delivery are made relevant to their lives (see chapter 5 in this volume). However, in both cases, as in almost all initiatives in Eastern Europe (see chapter 4 in this volume), popular citizen participation in the programs was predicated on educating citizens about their rights. These activities have occurred in environments in which threats against rights-based activities and activists did not exist or were far less pronounced than they are in the Middle East and North Africa, however.

Low levels of knowledge about citizen-state relationships also impede active participation by citizens. Like citizens in Eastern Europe, citizens in this region perceive themselves as passive recipients of government services,

as fortunate beneficiaries of resources that belong to the state. The large contribution of oil revenues to public coffers and the relatively low levels of taxation contribute to this perception. Citizens are unlikely to perceive themselves as clients of government or as the principal holders of power in the relationship.

Citizens' lack of knowledge of their rights and their perception of the state as all powerful may limit the likelihood that participatory budgeting will take root in the Middle East and North Africa in the short to medium term. Given the political, social, and cultural norms in the region, more limited forms of citizen participation—by think tanks, for example—may be more plausible. Of course, this type of participation would be open to the criticism that participation continues to involve the elite rather than a broader group of citizens. Such a criticism is particularly relevant in this region, where poverty levels in some countries are high despite high per capita income rates and women and minority groups are excluded from political processes.

Even initiatives aimed at influencing the intellectual and policy-making elite remain dependent on a free media to disseminate their findings. According to the World Bank governance study (2003), countries in the region have “limited and reluctant” transparency. In no country is the right to information guaranteed. In Egypt, despite a vibrant civil society, the budget is not published outside of parliament, limiting public discussion of it. In contrast, in Iran the national budget is published and parliamentary debates are televised. In Algeria, Iran, and Lebanon the media participate in public debates on government.

Kadhim (2004) believes that traditional or nontraditional social forces block transparency. There is a “deliberate absence of knowledge and an attempt to intervene in the details of knowledge.” The lack of access to information and communication technology is the most obvious example. It “stems from a fear of the spread of knowledge and of the raising of awareness” (Kadhim, 2004, p. 1). Regulations in 11 countries in the region allow *ex ante* or *ex post* (after printing) censorship of the press, severely truncating press freedom. Laws are also in place that require publishers to have a license, leaving the media under constant threat and leading to self-censorship. Only five countries—Algeria, Egypt, Jordan, Sudan, and Yemen—ensure journalists the legal right to obtain information (UNDP 2005).

Despite these restrictions, media freedom has made its appearance in the Arab world through satellite television and the Internet. Governments still impose their control on written media (books, textbooks, newspapers, and magazines), however (Al-Masmoudi 2004). In some countries—notably

Algeria, Egypt, Lebanon, and Morocco—journalists have freedom on paper. However, “even in these countries, the media know that there are ‘red lines’ that they cannot cross” (p. 3). In particular, they cannot explore corruption, transparency, nepotism, or favoritism.

The overall picture of an enabling environment for civil society budget initiatives in the region is mixed, but on balance it is not encouraging. On the positive side, there are signs that societies in the region are undergoing systemic change—albeit uneven and halting—toward an underlying political culture that is more conducive to participation. This change often triggers backlashes that close down political space for participation. The outcome of this process is thus not at all certain.

Participation in Resource Decisions

Many countries in the region have committed themselves to decentralizing power and empowering local authorities. Some have also put on the agenda partnerships with CSOs and the private sector at the local level as a means of empowering local governance. In Iran, Jordan, Lebanon, and Syria, local elections have taken place, local authority legislation has been reviewed, or new regulations have been adopted. In some cases central governments have also invested in strengthening local government capacity, in terms of both human resources and technical systems. These steps have not been accompanied by the devolution of real decision-making power, however, or the decentralization of resources. According to Fawaz (2002, p. 3), Arab states are going through a “mixed de-concentration/delegation process in which most administrative, financial and political decisions still happen at the top.” Overall, while responsibilities have often been shifted downward, the shift has not been accompanied by the necessary changes in power. This has caused municipalities to be overwhelmed by their daily responsibilities without the necessary capacity or resources to act on them (Fawaz 2002).

Fawaz (2002) is skeptical that local governments will be able to change the underlying power structures prevalent in many of the countries. She notes that municipal boards of elected local governments have rallied constituencies largely on a sectarian, tribal, regional, or religious basis, and they have depended on their political and social networks to survive. The ability of local authorities to enable better representation, participation, and empowerment is therefore contentious. The World Bank governance study (2003) contends that local elections have improved local governance and created a proving ground for future national political leaders, but it concedes that power in the region is still highly centralized, not only toward

the central level of government but also within the executive. This weakens checks and balances and limits the opportunities for participation.

Sarrouh (2003) identifies the “militarization of administrative functions” at the local level (the appointment of former military personnel to decision-making and leadership positions) as a challenge to effective local government. This practice deters public participation, delegation of authorities to local actors, and responsiveness to local needs. Resistance to change or devolution of powers is a serious challenge. Without the support of top leadership and the involvement of elected members, reforms will not occur.

Inequality between individuals and groups is great in the Middle East and North Africa. Given that trust seems to act as an enabler of meaningful and broad-based direct participation in decision making, this is likely to act as a silent barrier to such participation. Experience elsewhere where deep divisions exist—in Bangladesh, for example, where women’s issues remained excluded from a community-driven development program despite specific design interventions—shows that an uneven distribution of power is very difficult to overcome.

Alvi (2005) draws attention to the urgency of addressing the barriers faced by women, particularly given trends of “regressive social transformation.” She notes two reinforcing factors that contribute to these trends. The first is the strengthening of attitudes and social policies in some countries that deny women their fundamental rights and freedoms. The second is weaker social indicators—such as educational level and social status—which make it difficult for women to challenge these attitudes. If local governments are not operating on principles of inclusivity and equality, it is unlikely that mechanisms allowing direct participation by citizens will overcome the governance gap affecting women.

Despite these challenges, some communities have participated successfully in decision-making processes that have had a real impact on their lives. Fawaz (2002) points out that local government initiatives often succeed in states that are in or have recently emerged from conflict, citing several examples that are included in the UN-Habitat good practice database. According to her, the weakening of the central state that occurs in these conditions allows space for local governments to assume their mandates. Participation has also occurred in states where the balance of power has shifted away from totalitarian regimes toward society. External funders have played an important role in some countries in the region, as they have in Eastern Europe (see chapter 4).

Rehabilitating and upgrading the Manshiet Nasser informal settlement in Cairo

In 1997 more than 500,000 inhabitants of an informal settlement in Cairo, Egypt, were relocated to a nearby planned settlement equipped with all services (UN-Habitat 2001). The new settlement is equipped with piped water and sanitation, a road network, open space, training and health care centers, libraries, schools, telecommunications, and artisan workshops. In short, it has the infrastructure to be a human settlement rather than a housing project. The site of the old slum was redeveloped and renewed.

Infrastructure is necessary but not sufficient for turning housing projects into human settlements. The participation of those affected is required, too. The project was therefore based on a participatory socioeconomic survey and supported by mechanisms of transparent dialogue. The poor were provided with affordable housing options, financed by soft loans to the inhabitants of the new housing units. The project empowered civic engagement at the early stages of decision making, reducing the scope for conflict and aiding the mobilization of citizens' own resources for effective implementation. The success of this project suggests that coordination among government agencies, CSOs, and development partners, though challenging, is necessary for effective and sustainable urban development.

Effecting change through quartier associations in Tunisia

Quartier (neighborhood) associations and committees—local nongovernmental groups that can mobilize the population in support of particular issues, such as combating environmental degradation—are a relatively new feature of decentralization in Tunisia (Ben Salem and Vengroff 1992). The associations operate at the lowest level of government, that of the municipal councils. These unelected councils are charged with certain key functions, mainly in the area of service delivery, especially at the municipal level. They also levy and collect a variety of local taxes. The mayor (the president of the council) is selected by members of the council from among themselves. Decision making in the municipal councils is relatively open. Committee hearings and council meetings are open to the public. The potential for access by nongovernmental organizations (NGOs) and association groups is relatively high. The quartier associations are especially important in this regard.

A typical quartier association is structured around a 10-member bureau, which has a diverse, highly motivated, and potentially very powerful set of

members. The leaders are relatively mature in age and are drawn from the upper economic class of society. Their function is similar to that of local interest groups that build and create alliances with other groups, such as the local mosque, political party cells, local officials, and environmental groups. Members also use their connections at the central level to gain some advantages. In some cases, quartiers mobilize modest amounts of resources to support local projects and engage in neighborhood clean-up and self-help programs.

The quartiers concentrate mainly on environmental and community issues. Their status as local and community-based organizations is key for attracting popular support and participation. If these groups prove to be successful, it is likely that their impact will expand to the municipal, regional, and even central levels. Despite limitations, the quartier associations increase opportunities for citizens to provide input into policy-making processes at the municipal and regional levels.

Rehabilitating a neighborhood in Baghdad

The Neighborhood Rehabilitation Project was initiated in 1999 in response to the appalling living conditions of families in areas where public services had collapsed, leading to sewage overflows, disruption of health services, inadequate garbage collection, and scarcity of drinking water (UN-Habitat 2006a). The project was implemented with the participation of the beneficiary low-income families. For the first time in Iraq, a community-based approach to public management was used to ensure that the services would be sustainable. The project was first piloted in two neighborhoods and then extended in 2000 to two more areas. It was implemented by UN-Habitat, in partnership with the municipality of Baghdad, NGOs, and other UN agencies. In 2002 the project was selected as an example of best practice by the Dubai International Awards for Best Practices in Improving the Environment. The lessons from this program are being applied in the postwar UN-Habitat Urban Development and Housing Programme, where large-scale rehabilitation of urban areas is being undertaken with a commitment to participation.

Reducing urban poverty in Lebanon

In 1998 the city of Ghobeiri, Lebanon (population 200,000), held its first local elections in 35 years (UN-Habitat 2006b). Most of the elected council members had backgrounds in the private or nonprofit sector. Managing the city was subsequently undertaken through partnership with all actors—citizen groups, NGOs, the private sector, the central government, and international agencies.

The Ghobeiri municipal council coordinates directly with 16 social NGOs and community-based organizations and indirectly with another 10.

The city has connected 18,000 households to the sewerage system, put up lights and signs on all city streets, and planted more than 4,000 trees. It has expanded a social service network, offering vocational training to more than 100 children and social assistance to more than 30,000 orphans, widows, people with disabilities, and other vulnerable groups through local NGOs. It also offers literacy and skill training to vulnerable women. The municipality receives support from the United Nations Development Programme's LIFE (Local Initiative Facility for Urban Environment) Programme and from UNICEF.

Participatory Budgeting as an Entry Point for Better Governance

Citizens' ability and willingness to engage with the state are predicated on a number of factors, including knowledge and capacity, freedom from fear of prosecution, political space for open debate on public decisions, and the ability to access a free media. Most of these factors are largely absent in the region. However, one of the hopes for participatory budgeting initiatives is that with careful design and targeted support, the initiatives would be able to start the process of effecting positive change in the political and governance environment, particularly by whetting citizens' appetite for contestable government and positive, empowered engagement with the state.

Even successful initiatives face a challenge overcoming the systemic barriers identified and supporting a regional shift toward better governance. Participatory processes will be able to do so only if the underlying social, cultural, and religious norms in the region are compatible with notions of representivity, consultation, and democracy. There should be acceptance of the idea that political and civil rights, including participation, are not contingent on social and cultural norms but are something that any person should be able to recognize as his or her own. If either of these situations is the case, tailored participatory budgeting initiatives should be able to develop and grow in principle.

Democracy and Islamic Rules and Values

Are notions of democracy compatible with Muslim norms?² According to Al-Masmoudi, president of the Center of the Study of Islam and Democracy in Washington, D.C., the *sharia* is designed to protect the individual and society (Al-Masmoudi 2004). A well-established process known as *ijtihad* is used to deal with changing needs of Muslim societies over time.³ For example, in 2000 the Council of Muslim Clerics in Europe and the United States

issued a *fatwa* (religious ruling) permitting Muslims residing in the West to purchase homes by taking out mortgages and paying interest. This practice clearly contradicts the Koran's prohibition on interest. Ijtihad "allowed Muslims and Muslim societies to adapt and evolve with changing circumstances and new discoveries" (Al Masmoudi 2004, p. 8). Al-Masmoudi (2004), Abootalebi (2004), and others argue that current regimes and fundamentalist movements force a choice between Islam and modernity or between Islam and democracy but that no choice actually needs to be made; many principles in Islam, including freedom, equality, and justice, are compatible with the values that drive democracy.

One such value is that of *al-shura*, or consultation. According to Al Ansari (2004), in many modern Muslim states this principle has been reduced to a narrow, traditional notion that consultation is good for the ruler if he wishes to adopt it but that otherwise he is free to do as he pleases. This notion contributed to the formation in many Muslim countries of consultative councils without full legislative and supervisory authority over the head of state. Al Ansari argues that Qatar's constitution and Oman's experience point toward political developments in the Gulf countries that are challenging the narrow interpretation. The Islamic notion of consultation is synonymous with democracy in many aspects, including the right of people to govern themselves and the right of individuals to select representatives. The only point of difference "lies in the extent of society's authority to legislate" (Al Ansari 2004, p. 3). Democracy grants society extensive power. The Islamic understanding of consultation, by contrast, "confines society's authority to legislate within the fixed teachings of the Qu'ran and the Sunna" (Al Ansari 2004, p. 3).⁴

Are individual citizens in Muslim countries in the region likely to respond to the idea that as citizens they have the right to elect their representatives and hold them to account for their use of public resources? The *Arab Human Development Report* (UNDP 2005) asserts that the failure of democracy in several countries in the region is not cultural in origin. "It lies in the convergence of political, social and economic structures that have suppressed or eliminated organized social and political actors capable of turning the crisis of authoritarian and totalitarian regimes to their advantage" (UNDP 2005, p. 11). Abootalebi (2004) raises similar arguments with respect to Iran, where the regime deliberately confuses the issue of secularization with popular sovereignty and political democracy by tagging reformists as threats to the survival of Islamic religious values.

Two attitudinal surveys conducted in the region suggest that citizens value governance, democracy, and certain freedoms. The first, conducted in

five countries in late 2003 for the *Arab Human Development Report*, found that freedom from foreign occupation, freedom of thought and expression, independent media, and freedom of movement are critical to respondents. Some 89 percent believed that their choice of central and local government leaders through free and fair elections was critical for good governance.

A second survey, the World Values Survey (conducted between 2000 and 2002), found that respondents in Arab countries topped the list of those agreeing that democracy is better than any other form of governance. A high percentage of respondents also rejected authoritarian rule, defined as rule by a strong ruler who disregards parliament or elections (Pettersson 2003).

Some citizen groups advocating human rights and political freedom in the region have been successful in bringing about change. Human rights and political organizations in Morocco persuaded the government to acknowledge violations of human rights and to pass a new family law that met the demands of the women's movement to safeguard women's rights. CSOs in Syria asked for the state of emergency to be lifted and freedoms expanded. In Saudi Arabia documents and petitions on minority rights, religious freedom, civil rights, equality, and political openness were submitted to the crown prince. One petition went as far as to call for constitutional reform, including guaranteeing fundamental political freedoms and democratic reforms, including elections and popular control through representative institutions of public funds (UNDP 2005).

Religious debate and political dialogue in the region are promising for improving governance and development outcomes in the long run. Abootalebi (2004) argues, however, that democratic elections in the region will not succeed without addressing the underlying problem of uneven distribution of socioeconomic and political resources. Meaningfully engaging with issues of public resources allocations could be valuable in initiating such a redistribution of resources. However, countries in the region will not easily—and, as Fawaz (2002) argues, perhaps should not—adopt governance systems and mechanisms that parrot models from the secular world.

None of the factors identified in this chapter as critical to participatory processes—enabling political systems, including mature political parties; fundamental freedoms; civil society capacity; citizen knowledge and capacity; enabling legal frameworks; local government capacity; availability of information—is present in the Middle East and North Africa. Given the political and sociocultural environment in the region, citizen budgeting initiatives are unlikely to succeed, unless they are launched in locales where the leadership is open to citizen input or the initiative is supported by external development partner funding.

Notes

1. Israel has the largest number of think tanks and think-tank activities in the region, followed by Turkey (Ibrahim 2004).
2. The evidence presented in this section may be biased by the fact that it is restricted to literature published in English. A review that includes texts written in Arabic might yield different conclusions.
3. *Ijtihad* is an independent and authoritative interpretation of Islamic law. The process was once practiced by legal scholars to deduce secondary divine laws for regulating human life from their sources and to explain and articulate the law of God in a given situation based on expertise in jurisprudence. *Ijtihad* was abandoned centuries ago in Sunni practice (Al Masmoudi 2004).
4. The *Sunna* are the statements and actions of the Prophet, later established as legally binding precedents in addition to the law established by the Koran (Al Ansari 2004).

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Appendix A Primer on Effective Participation

ALTA FÖLSCHER

Civic engagement in public affairs can increase state effectiveness. When citizens have the opportunity to make their needs known and hold public institutions to account, it is argued, public resources are likely to be used more efficiently and to deliver public goods and services that are better aligned with citizens' needs. Local communities have the best knowledge of their needs and preferences and of local conditions. Public policy and advocacy organizations outside of the state often give voice to needs and preferences that are not heard in closed budget processes. Citizen participation in decision making reduces the information gap between citizens and the state and makes it more likely that funds will be used to deliver the most-needed goods and services, improving government effectiveness.

Citizen Participation and State Effectiveness

Reuben (2003) refers to this dimension of governance—the ability of governments to fulfill citizen expectations—as *decisiveness*. Participatory systems have the potential to incorporate local knowledge at all levels of decision making: determination of citizen expectations, selection of public policy objectives, and the means of achieving

those objectives. Participation therefore results in better public policy and better public policy implementation. This is true for participatory budgeting mechanisms that involve citizens only indirectly (initiatives in which information on citizens' needs, interests, and opinions is put into the public domain), as well as for initiatives in which citizens participate directly in public resource decisions at the local level.

Participation also indirectly leads to better public decisions by increasing vertical, or social, accountability. When citizens are engaged in processes of planning, funding, delivering, and monitoring public goods and services, the incentives of public officials and office holders change. They become more accountable for the choices they make, reducing corruption and increasing effectiveness and efficiency. When supported by broader democratic political and social changes, citizens learn that not only are they the clients of government (rather than the recipients of government-granted goods and services), they are also the principals, with governments as their agents. This recognition inverts more autocratic systems of public power distribution, reinforcing citizen demand for accountable government. Reuben (2003) refers to this dimension of improved conditions for governance as *accountability* in holding public power under the control of those represented by the state.

The argument is that effective public participation in resource decisions builds social capital. Public participation increases the capacity of individuals and local communities for collective action, strengthening ties between individuals, households, and groups. This leads to more economic and social opportunities and to greater potential for improving the quality and coverage of developmental inputs such as public education, health, and social development services. Successful participatory mechanisms strengthen citizens' access to information by creating a framework that creates incentives for citizens to demand more and better information and puts pressure on state structures to provide information. Meaningful and effective citizen participation in public choices also improves trust in government and commitment to tradeoffs made. Together with improved budget transparency, participation can build social cohesion.

Insofar as democracy and participation are ends in themselves, participation in public decision making is a form of direct democracy that allows for a more meaningful democratic relationship between citizens and government than representative democracy (McGee 2003). It can also provide marginalized groups with access to policy makers.

This is in contrast to purely representative democracy, which presupposes absolute bureaucratic efficiency. However, effective participatory

democracy is dependent on the quality of deliberation in the process. Deliberation emphasizes “eliciting broad public participation in a process which provides citizens an opportunity to consider the issues, weigh alternatives, and express a judgment about which policy or candidate is preferred. . . . It is distinguished from ordinary, thin modes of public involvement by the breadth and quality of participation” (Weeks 2000, cited in McGee 2003, p. 10). It is therefore not tokenistic. Participatory processes also presuppose decision-making processes that are dictated not by interest group politics but by rationality. If participative practices are to improve the quality of democratic governance, enabling conditions for quality deliberative processes should be in place. These include the incentives citizens face, their skill levels, and the quality of information available in the process.

The World Bank’s 2003 MENA Development Report on governance puts forward a framework for good governance in the Middle East and North Africa that includes the aspects highlighted above (World Bank 2003). It is based on two core “universal” values of inclusiveness and accountability. If governance systems offer mechanisms to embody and protect these values, they support state effectiveness and human development.

The framework links inclusive governance to equality: inclusive governance means that all those who have a stake in governance processes and who want to participate in them have equal opportunities to do so. It contains mechanisms to define and protect all people’s basic rights, and it provides remedies and recourse for those who are excluded, guaranteed by a rule of law. The need for accountability is legitimized in the notion of representation, which in governance terms means that those selected to act in the name of the people are answerable to the people for their successes and failures. Accountability in turn rests on knowledge and information—transparency—and on institutional arrangements that create incentives for public officials to act faithfully, efficiently, and honestly in carrying out the will of the people. The framework highlights contestability in the selection of public officials and the fostering of an ethic of public service as key ingredients in support of accountability.

Viewing participatory budgeting mechanisms against this framework illustrates significant conceptual congruence: successful participatory budgeting requires institutional arrangements that allow citizens to participate in public resource decisions on an equal platform and ensure the availability of good information. Selection of public officials should be contestable; if it is not, the incentives facing those in power work against meaningful public participation. Participatory budgeting (including mechanisms that facilitate horizontal accountability) fosters a system in which public officials are

accountable and public policies become contestable. In short, participatory budgeting mechanisms operate at the core of a good governance system, embodying and reinforcing values that, it is argued, could help some regions of the world, including the Middle East and North Africa, narrow significant growth and human development gaps.

Types of Participation

Very different types and levels of citizen engagement with public resource decisions and service delivery are referred to as *participatory budgeting*. One can differentiate two broad types of citizen engagement, distinguished by the degree to which citizens enter the action space of the state in planning for, allocating, using, and monitoring the use of public resources. In the first set of participatory budgeting initiatives, citizens do not attempt to take over or partner with the state in the budget process but instead undertake activities in the broader public domain that are aimed primarily at improving the transparency of governments' actions and the accountability of state actors. This type of participation is within the boundaries of both representative democracy and more autocratic forms of government (provided that such activities are tolerated). Making public decisions is still the purview of government agencies and elected officeholders. However, citizens do not take the bureaucratic effectiveness of these institutions for granted but undertake activities to bolster transparency and accountability. These activities typically generate information on public policy and services outside of the state in order to influence what happens in the state. Activities in this broad category are usually initiated by CSOs. This type of participation relies on the quality of the information to persuade decision makers to change development and funding priorities or improve the quality of services.

Budget analysis and dissemination by skilled professionals are often aided by garnering the support of broad-based movements, by having "people power" behind it, as Paul (2005) argues. He emphasizes the need for coalitions of different types of CSOs. These coalitions need to use the media to reach citizens, forge ties with officials and members of oversight bodies, and be able to translate dry, technical material into information that ordinary people will understand and find relevant. These campaigns are strengthened if there is true representative democracy and citizens cast their votes on the basis of policy and service delivery issues. However, the success of such initiatives is not necessarily dependent on a democratic environment.

In the second set of initiatives, citizens engage or are engaged in the decision-making processes of public agencies. Examples of this participation,

which can be seen as a form of direct democracy, can be found throughout the budget process. The mechanisms deployed represent different intensities of participation, because governments have discretion over the degree of access to traditional state-controlled action spaces they provide in setting up or taking over participatory mechanisms.

McGee (2003) distinguishes four types of participation:

- information sharing (the state puts budget and public policy information into the public domain);
- consultation (the state sets up mechanisms such as forums, councils, and referendums or surveys to gather information on citizen preferences);
- joint decision making (citizens not only provide information on their needs and preferences but are active in real decision making);
- initiation and control by stakeholders (citizens have direct control over the full process of developing, raising funds for, and implementing projects or policy, as in social fund and community-driven development projects).

As participatory practices move up this ladder, the argument goes, they become more effective instruments of participation: direct initiation and control by stakeholders is more powerful than joint decision making, which in turn is more effective than consultation and information sharing.

Preconditions and Enabling Factors for Citizen Engagement with Public Decisions

The capacity of citizens to engage the state on the allocation and use of public resources—and the likelihood of their actually doing so—depend on several factors. These include the openness and democratic depth of political and governance systems; the existence of enabling legal frameworks, including guarantees of basic freedoms; the capacity for participation both inside and outside of government; the existence of functional and free media institutions; and the willingness and capacity of the state to make budget information available.

Formal and Informal Political Systems

Paul (2005) contends that initiatives that encourage citizen participation in public decision making are more successful in societies that adhere to democratic governance, are open to public debate and criticism of those in authority, have relatively free media, and allow independent CSOs to take

root. Goetz and Gaventa (2001) emphasize the importance of the nature and organization of the political system in determining the level and quality of participation. The argument is that even if a civil society group is well equipped with expertise and resources to initiate participation, its efforts will not yield significant benefits unless election to power is contestable. Contestability refers not only to the existence of real competition in the election of candidates but also to the requirement that the attractiveness of one candidate over another should be driven less by the politics of identity, personality, and patronage and more by issues of public policy. When issues of public policy and service delivery get more play in voter preferences, politicians have less leeway to ignore events or behave in ways that invite voter dissatisfaction.

Spahn (1998, p. 2) emphasizes that while good governance needs to be rooted in local norms and values, the legitimacy of governments remains an important element. Legitimate government “is essential to form consensus within a society and thus to foster political stability and social cohesion.” Governments are legitimate when they are representative and their political and bureaucratic power is limited. A free media and effective opposition parties are important elements of a legitimate system of government.

Bringing a concept of legitimacy to good governance in the context of participatory budgeting is important in two ways. First, meaningful space for participation in government processes contributes to legitimacy and trust in government. Second, some degree of legitimacy is necessary before citizens will engage with government, particularly directly. Goetz and Gaventa (2001) emphasize the role of a mature political party system in legitimizing government and enabling participation.

Fawaz (2002, p. 11) refers to these aspects as an “environment of political pluralism and inclusiveness” and notes that notions of empowerment of local authorities, good governance, partnership, and accountable and transparent management carry implicit assumptions about the existence of media freedom, high levels of devolution of authority, equal power relations among actors, and civil society with sufficient capacity to participate. When these features are not in place, they act as “silent barriers” to change.

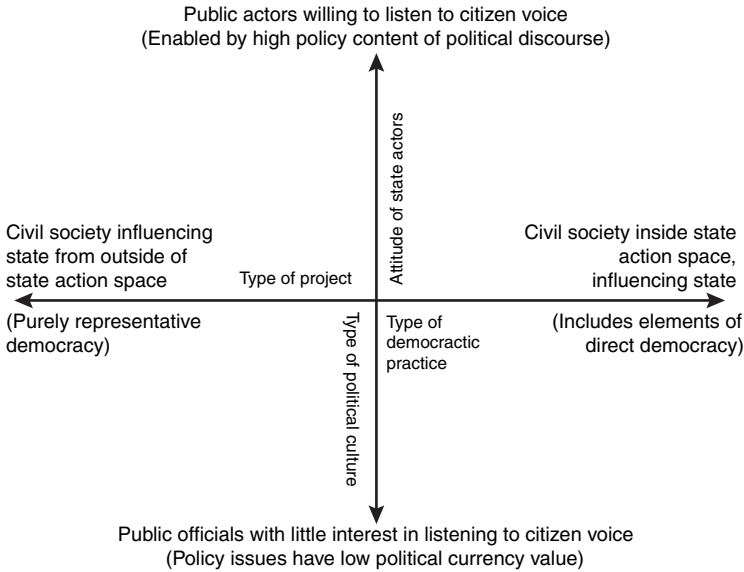
While participatory budgeting initiatives can build trust and social capital, they also depend on some already existing degree of trust (between citizens and the state as well as among citizens). Some of the most successful case studies in Asia have occurred in Thailand: within a nationally set policy and legal framework, several local area authorities have initiated sophisticated participatory budget processes in which hierarchies of civil committees make the tradeoffs between different interests within a

community and between communities. The existence of trust that over time resources will be distributed equitably across interest groups has enabled the groups to agree on funding. The high level of trust may in part be supported by underlying social cohesiveness: Thai society is relatively homogeneous. Fawaz (2002) argues that the promotion of good governance based on notions of representivity, transparency, accountability, and participation often fails to take account of the reality of ethnic and religious divisions in some states.

The type of society, the type of political system, the legitimacy of the government, and attitudes toward governance also determine which types of participatory initiatives can be introduced successfully. The effectiveness of initiatives of all kinds depends on the likelihood of state actors experiencing “public accountability discomfort” when initiatives and their outcomes are ignored. The more vibrant a country’s democratic governance and the more real the contest for political power, the more options are open for effective civil society participation. If the media are not free, access to information is repressed, societies do not allow public debate on issues of public interest, and freedom of association is constrained, civil society cannot conduct public policy and advocacy work.

The attitude of state actors to citizen voice is related in principle to systems of accountability, which in turn is related to contestability and representivity, as set out in the World Bank framework for governance discussed above. The importance of the relation between these issues correlates well with the case study evidence presented in this volume that participatory initiatives bringing citizens into the public sphere to make decisions about resource use are critically dependent on the willingness of local government representatives to pay attention to citizens’ expressed preferences. This in turn is dependent on the nature of the political system. Where local civil society or third parties, such as development partners, initiate a direct participation initiative without having first secured real commitment from public officials, the impact remains questionable.

Figure A.1 provides a schematic representation of these relationships. The shaded area denotes instances of participatory mechanisms that are unlikely to yield results—mechanisms that bring citizens into the public sphere to make decisions within an environment in which local government officials have little interest in citizen participation and policy issues have low political currency. The risk of participation being counterproductive in such cases is real, because citizens soon learn that participation has no or very few real benefits, making them less interested in initiatives under more favorable conditions later.



Source: Author.

FIGURE A.1 State Attitude toward Citizen Voice and Effective Participation

One way of bypassing such constraints is to set up programs in which community-level participation structures have real authority over development funds that are not channeled through the state. While this may yield short-term benefits, the sustainability of such initiatives is not certain: this type of mechanism can lead to long-term effective engagement only if sufficient local taste and capacity ensue for participation and demand builds. In this case, the environment is transformed into one in which the political and governance context forces state actors to engage substantively.

Initiatives in the top right-hand corner have the greatest impact. Here, public actors are willing to listen to citizen voice (and are supported by a local political culture that is driven by issues of public policy), and well-designed mechanisms allow civil society direct access to and participation in public decision making. Program initiators operating in this type of environment have the most scope for selecting the type and level of participation.

On the left-hand side of figure A.1, citizens' own initiatives to improve public transparency and the accountability of state actors can yield successful results even in environments in which citizens' voice may not have immediate effect: in Africa, Asia, Eastern Europe, and Latin America, citizens have

elbowed open space and demanded that their voices be heard. Doing so takes time, capacity, and careful strategizing, including coalition building. DISHA in India, the St. Petersburg Strategiya Centre in Russia, IDASA in South Africa, and CIDE (Centro de Investigacion y Docencia Economicas) in Mexico have succeeded in building credible voices on public resource matters (International Budget Project 2000). Initiatives like these can move the participatory environment from one in which state actors are unwilling to engage to one in which they have little choice but to engage with citizen voice, opening up the options for effective participation. To succeed, such initiatives must choose the correct entry point and carefully design and implement projects to maximize citizen participation. Perceptions of citizen-state relationships, power distribution, governance systems, and degrees of individual and press freedom, as well as perceptions of trust among citizens and between citizens and the state, are therefore important environmental determinants of whether and which types of participatory budgeting initiatives will bring benefits.

Supportive Legal and Policy Frameworks

A supportive legal framework is an enabling, even necessary, condition for citizens to participate in and contribute to processes in the public sphere. Legal frameworks regulate the terms of actors' engagement and the scope they have for influencing behavior in the arena of the other (McGee 2003), albeit the arena between central and subnational governments or between government and civil society actors. Such frameworks are never sufficient, however: government practices, the overall incentive framework, and action by citizens or the state are required to initiate and sustain participation.

For all types of citizen engagement, the most important feature of the legal framework is the guarantee of certain freedoms and human rights. If no provisions guarantee citizens' rights to freely associate, to express themselves, and to participate in a relationship with the state (or if provisions of the law limit these rights), the space for participatory initiatives is severely limited. CSOs or individual citizens who attempt to form associations to review public services and influence public resource decisions will have no legal basis for asserting their right to do so. If CSOs are to be able to put information in the public domain to influence what happens in the state, the legal framework must allow—or at least not prohibit or constrain—civic organization, freedom of speech, and access to information.

For direct citizen involvement in participatory budgeting, the legal framework requirements are greater. A review of community-driven development initiatives suggests that a higher level of decentralization of political,

administrative, and fiscal competency to local levels of government is necessary for local communities to engage effectively in local resource decisions (ESCWA 2004). This makes sense: citizens will engage in local processes only if they believe that local governments have a real chance of determining which public goods and services will be delivered locally. This means that a legal framework for decentralization needs to be in place. Such a framework is not sufficient, however: attempts to decentralize, including the creation of a political apparatus, often occur at the administrative level but are not followed by sufficient fiscal autonomy for local governments, limiting the level of resources over which local governments have control and constraining participation.

An enabling framework for participation at the local level is also desirable, although it is arguably not necessary. A national enabling framework catalyzed the development of local level participatory practices in Thailand, where a national requirement for participation in local government practices prompted several local authorities to develop institutions to implement the requirement. Experience, particularly in Eastern Europe and the former Soviet republics, where participatory local governance is a standard feature of constitutional and national legal frameworks, has shown that national-level legislation may not be sufficient, however, particularly if it lack details on the institutions that may be deployed. One of the more successful examples of community-driven development is Romania, where the legislative framework includes detailed provisions. Examples from elsewhere (such as Naga City in the Philippines) show that local-level development of national constitutional and legal frameworks institutionalizes participation.

Local Capacity and Knowledge

The assessment of community-driven development by the Economic and Social Commission for Western Asia (ESCWA 2004) singles out the need for continuous support to develop capacity for participatory practices if initiatives are to be successful. This finding echoes the results of other studies that point to the importance of local capacity for participatory success, including the capacity of local governments and local civil society and the capacity of third-party facilitating organizations.

The capacity of local governments—in terms of both human resources and systems—to plan, budget, and manage the delivery of public goods and services and participatory processes is critical. Transparency and an institutional environment conducive to citizen participation are also critical. This is particularly true for mechanisms that involve direct participation of citizens in decision making. Case study evidence points to the important role that

clear, predictable, and enforced decision-making rules play in providing confidence to citizens that their participation will lead to direct results. More subtle incentives relate to good budgeting principles, such as having clear resource ceilings, so that real choices have to be made; avoiding wish-list planning, with the inevitable loss of trust in participation when proposed projects are not implemented, is critical. Strong local capacity also supports the development of civil society advocacy-type initiatives that do not involve direct participation in decision making. In India, for example, the development of a civil society advocacy network was possible only after financial management practices improved the level and quality of information available.

The existence of CSOs with capacity is also critical. Because of the technical nature of public budgets and public service delivery, significant depth of organization and some sophisticated capacity within organizations are required to engage with these issues. Putting good-quality information into the public domain requires expertise, the forming of coalitions (among CSOs and between CSOs and academic institutions), or both. The case study evidence indicates that coalition building among nongovernmental structures is important, both to bring on board needed skills and to build a wider front of support, making it more difficult for state actors to ignore campaigns. Civil society capacity is also required for successful citizen participation in local resource allocation decisions. In Eastern Europe, where societies emerged from a long period of limited citizen engagement, partnerships between local governments and key CSOs appear to have made an important contribution to making participation work.

In most of the mechanisms that allow citizens a direct say in local resource decisions, organizational, facilitation, and conflict-resolution skills are also required. Where development partners are involved in initiating and sustaining participatory budgeting initiatives, these skills are often provided by contracted third parties. In some municipalities, such as Porte Alegre, the quality of facilitation has been an important factor in widening participation.

Finally, the capacity of citizens themselves is important. Educational attainment is less important a determinant of participation than citizens' grasp of their right to engage in individual and collective action and to hold state actors to account.

Free Media Institutions

Strong local media institutions that can disseminate information to citizens—informing them of events on the budget calendar, discussing issues pertinent to the resource decisions, communicating the outcomes of processes—are

critical to participatory programs that involve direct citizen involvement. This is particularly clear in the Eastern European case studies, where local media institutions have been important players linking local governments and citizens in processes allowing direct participation in public resource decisions.

For participatory budgeting initiatives that involve the introduction of budget information into the public domain, a free media is a precondition. Reaching as many citizens as possible is an essential part of ensuring the effectiveness of civil society analyses of public budgets and service delivery. Without free and functional media institutions, the reach of organizations will be limited to stakeholders whom CSOs can contact directly. A review of successful applied budget initiatives across the world reveals the importance of good relations with a free press. The Institute for Economic Affairs in Kenya; the Centre for Budget and Policy Priorities in Washington, D.C.; and IDASA in South Africa could not have been effective had they not been able to disseminate their findings widely through a free and responsive media.

Availability of Information

It is an axiom of participation that citizens need access to information to participate—this relationship is recognized in the international human rights framework (OHCHR 2004). The requirement of a minimum level of transparency about the allocation and use of public funds for citizen participation holds for both types of participatory budgeting initiatives. CSOs cannot engage with public resource decisions if they do not know what those decisions are. Similarly, citizens' ability to be involved directly with public decision-making processes in a meaningful way depends on what information they receive, when they receive it, and whether they are informed about the outcomes of the processes.

The availability of information on public funds is a function of governments' willingness and capacity. Fiscal transparency is not merely about the availability of information. Specific types of information must be provided regularly. The information must be provided in accessible formats in a timely manner. Legal frameworks that make provision for fiscal and budget transparency along these dimensions support participatory budgeting, as does legislation guaranteeing citizens' rights to access information. However, even if such legislation exists, providing full information requires sophisticated financial management capacity. Such capacity is often as much the result of demand for accountability—both internally and externally—as a prerequisite for it.

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In the past three or four decades, public finance theorists and practitioners have struggled to identify and design institutional arrangements to help close the gap between the preferences of voters and the mix of public services actually delivered. Participatory budgeting is potentially a good approach.

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— Humberto Petrei, *Professor of Public Finance, National University of Cordoba, Argentina; former Executive Director, Inter-American Development Bank, Washington, DC, and Cabinet Adviser, Ministry of the Economy, Argentina*

This is an excellent and timely work that articulates participatory budgeting and the devolution of fiscal powers in developing countries. Congratulations to Anwar Shah, who is an internationally renowned economist and authority on federal and provincial–local fiscal relations, for taking this commendable initiative.

— George Mathew, *Director, Institute of Social Sciences, New Delhi, India*



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How can we, individually and collectively, strengthen parliamentary democracy in SADC countries? This Handbook is one product of a SAIIA four-year research, publication, conference and workshop programme designed to assist in this process.

Young and relatively fragile, most SADC parliamentary democracies exhibit the formal, constitutional and institutional architecture of western democracies, but often lack the 'inner stuffing' of long-established democracies. Yet encouragingly, with the assistance of the international donor community, many SADC parliaments are conducting modernisation and reform programmes, while others established stronger committee systems and are even showing signs of conducting greater oversight of their executive branches. Despite such initiatives, the political, programmatic and communication gulf between parliament and the electorate, which is only temporarily bridged during election campaigns, is vast. This is exacerbated by generally weak civil society and parliament often ad hoc or pro forma. The first section of the Handbook makes a number of suggestions, emerging from the findings of the SAIIA research programme, to improve the performance of SADC parliaments in their deliberative, legislative, oversight and public engagement practices. The second section is adapted directly from the excellent *Guide to Advocacy* produced by the Legal Assistance Centre in Windhoek, Namibia. We are grateful to LAC Director Dianne Hubbard for permission to reproduce parts of the guide. The third section of the Handbook is a useful compilation of contact data for anybody involved in democracy, governance and development work in each of the 14 SADC countries.

THE VALUE OF CIVIL SOCIETY PARTICIPATION IN GOVERNANCE

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ABSTRACT

Public participation in the life of a government and parliament is not just a moral obligation on the part of parliament and legislators, but is also a constitutional obligation. Good governance must include initiatives to strengthen the institutions of government and civil society, with a view to making government transparent, democratic and accountable to the public. Participation in the governance and administration of a country by legislators together with civil society are indispensable if the state is to function effectively. This prevents the abuse or misuse of administrative authority and political power. It also serves as a check on the activities of the administrators and rulers, and allows a diversity of viewpoints to be aired. The aim of this article is to get the views of citizens regarding the role they can play in governance. Questionnaires with open and close-ended questions were administered to members of the civil society. The results indicate that civil society, like other stakeholders, want to make a contribution on issues of governance.

INTRODUCTION

Participation in governance by both men and women is a key cornerstone of good governance (UNESCAP, 2002: Online). Participation could be either direct or through legitimate intermediate institutions or representatives.

It is important to point out that representative democracy does not necessarily mean that the concerns of the most vulnerable in society would be taken into consideration in decision-making. Participation needs to be informed and organised. This means freedom of association and expression on the one hand and an organised civil society on the other hand.

According to Clarke (1996: 60) serious attention needs to be given to ways in which representative democracy can be strengthened by bringing a wider range of views, knowledge and judgement into the process and also to ways in which power can be shared, with particular interests or in the management of services and institutions.

This article discusses the role of citizens in governance; highlights the rules and strategies for citizen participation in governance; and considers the rationale for citizen participation in governance.

CONCEPTUALISING CIVIL SOCIETY

Civil society is the realm of organised social life that are voluntary, self-generating, self-supporting and autonomous from the state. It is distinct from *society* in general as it involves citizens acting collectively in a public sphere to express their interests and ideas, achieve mutual goals, make demands on the state, and hold public officials accountable (Diamond *in* Giliomee *et al.*, 1994: 55).

According to Cloete (1995: 20) civil society includes non-political parts or aspects of society consisting of numerous private institutions, also referred to as non-governmental organisations, which range from private businesses, religious or church groups, sport and welfare associations, employers and workers' unions.

Civil society organisations are distinct from other groups in society in several respects (Diamond *in* Giliomee *et al.*, 1994: 56-57):

- *Firstly*, civil society is concerned with public rather than private ends. Civil organisations relate to the community, the collectivity, or some portion of the public, rather than being centred around the individual, the family, or the private, inward-looking needs of group members.
- *Secondly*, civil society relates to the state in some way, but does not seek to win formal control over or position within the state. Rather, civil society organisations pursue from the state concessions, benefits, policy changes, relief, redress, or accountability.
- A *thirdly* civil society encompasses pluralism and diversity.
- The *fourth* distinction is partiality in the sense that no group in civil society seeks to represent the whole of a person's or a community's interests.

CITIZEN PARTICIPATION IN GOVERNANCE

Participation is an active process in which participants take the initiative and action stimulated by their own thinking and deliberation and over which they can exert effective control. Citizen participation could be described as the involvement of citizens in a wide range of administrative policy-making activities, including the determination of levels of service, budget priorities, and the acceptability of physical construction projects, in order to orient government programmes towards community needs, build public support, and encourage a sense of cohesiveness within society (Fox & Meyer, 1996: 20).

Article

Participation in governance

Since the inception of a democratic dispensation in South Africa in 1994, the new government has set out in earnest to ensure that South African citizens have the opportunity of contributing input into the policy-making and decision-making processes (Hilliard & Kemp, 1999: 41).

Cloete (*quoted by Hilliard and Kemp, 1999: 42*) state that the citizens have an indispensable role to play in exacting accountability. This implies that public functionaries have to provide explanations to justify positive or negative results obtained in their performance of their daily activities. The citizen thus has a surveillance role to play to ensure that public functionaries comply with the mandate granted to them.

Public access to governing bodies

One of the most significant constitutional provisions in the *national sphere of government* is public access to, and involvement in, the National Assembly. Section 59(1) of the Constitution, 1996 states that the National Assembly must:

- facilitate public involvement in the legislative and other processes of the Assembly; and
- conduct its business in an open manner, and hold its sittings and those of its committees, in public.

With regard to the *provincial sphere of governance*, section 118 of the Constitution, 1996 provides for public access to, and involvement in, the provincial legislatures in South Africa. A provincial legislature must:

- facilitate public involvement in the legislative and other processes of the legislature and its committees; and
- conduct its business in an open manner, and hold its sittings, and those of its committees, in public.

Section 118(2) of the constitution, 1996 explicitly states that a provincial legislature may not exclude the public, including the media, from a sitting of a committee.

Even in the *local sphere of government* community involvement is encouraged in South Africa. For example, section 152(e) of the Constitution encourages the involvement of communities and community organisations in local government matters.

From this expose, Hilliard and Kemp (1999: 43) maintain it is clear that the current South African government is serious about involving citizens in all spheres in the governance of the country.

Public accountability

For purposes of government another significant aspect of the Constitution [section 92(2)] is that members of the Cabinet are accountable collectively and individually to

Parliament for the exercise of their powers and the performance of their functions. Public accountability has thus become an integral part of parliamentary processes in South Africa, and according to Coetzee (1991: 23) public accountability (and public scrutiny) is one of the most important characteristics of public administration.

Public accountability is the obligation resting on each public functionary to act in the public interest and in accordance with his/her conscience, with solutions for any matter based on professionalism and participation, and divulgement as a safety measure (Fox & Meyer, 1996: 105).

According to Hilliard and Kemp (1999: 43) some of the ways in which ministerial accountability can be exacted are through debates, questions, and enquiries. Matters can be debated intensively in the national legislature. This assists the public and opposition political parties to hold the ruling party accountable for any action, inaction or wrongdoing.

Rules and strategies for citizen participation in governance

According to Kroukamp (2002: 50) the participation of citizens in government activities and governance structures should always be well organised. Endeavours to establish sound relationships between the various participants should be preceded by negotiations to determine the rules that are to be followed in the process of participation. Mathur (*quoted by* Kroukamp, 2002: 50-51) suggests the following six guiding rules when participation takes place:

- Participation must begin at the lowest level within the community. People at grassroots level must be aware of the opportunities to participate and they must understand what the advantages of such participation are.
- Participation must take place at all stages of a particular project. From the earliest pre-preparing exercises, to the development of plans, the design of mechanisms for implementation and the final stage of implementation, participants from the community must be taken on board.
- Participation is much more than casting a vote or an isolated activity. It requires from the concerned community members to *get right into the middle of the fight*, to care about matters of concern and not to allow others to take all the decisions.
- Participative processes must deal with the allocation and control of goods and services needed to achieve the goals.
- Participation must deal with existing loyalties. It should not focus exclusively on the strengthening of leadership.
- Participants must be cautioned about the possibility of conflict in some form. In communities where citizens participate in activities of government, decisions may favour one group at the cost of another. All the participants involved, and not only the relevant government institution, must deal with the consequences of a situation.

Once the *rules of the game* have been set, a strategy or plan of action should be developed in order to ensure that the process of participation proceeds efficiently. Kisby

and Kisby (*quoted by* Kroukamp, 2002:51-52) are of the opinion that such a process involves the following seven basic steps:

- Form a group of interested people. Identify other people in the community who might be interested in becoming involved in the planning and development processes of the organisation. Individuals and groups who ultimately want to become actively involved in the future activities of such an organisation will be valuable participants. A planning group should then be formed to prepare an action plan.
- Get to know and involve the targeted community or part of a community. It is of importance to learn about the nature of the community with regard to aspects such as size, economics, existing organisations and major current issues. Get an understanding of the needs of the community and have them identify the challenges to be overcome. Identify the existing resources available in the community such as leaders, facilities and financial support that may exist.
- Choose initial activities or programmes that have a large appeal and a reasonable chance of success.
- Develop a plan of action. Establish goals that meet the 'SMART' requirements, that are goals that are specific, measurable, agreed upon, realistic and trackable.
- Evaluate the proposed components with potential support to make sure they agree with planned actions.
- Implement the plan of action. Identify problems during implementation and adjust or create strategies to correct them. Publicise successes as soon and as much as possible. Acknowledge volunteers frequently.
- Evaluate on an ongoing basis. Regularly monitor what is being achieved. Determine how close the organisation is to accomplishing its original objectives. Note areas with poor successes and determine why operations or actions went wrong. Finally, build on this experience and evaluation, develop new plans of action.

Preconditions for citizen participation and effective governance

In the process of participation in governance, citizens should be sensitised about the factors that may affect the efficiency of government activities. These factors should be understood and serve as guiding principles for citizens in order to ensure that the concept of governance will succeed. These factors, according to Kroukamp (2002: 54-55), are *inter alia* the:

- Determination of goals. The effects of economic, social, constitutional and other factors on the identification and prioritisation of goals for service delivery are well known. Before useful input by citizens can be made, an understanding of the complexities caused by these factors is required. Contributions by the public cannot be made in isolation. Therefore, it is essential for citizens to have access to relevant information to broaden their vision.
- Misconception that the national and provincial spheres of government have unlimited financial resources that have to be reallocated to address the basic needs of the people. Based on this fallacy, uninformed citizens often contend that the so-called

non-delivery of services is attributed to ineffectiveness, when in reality, it is a result of insufficient funds. What citizens should understand, is the fact that government is continuously under pressure to do more with less. If they show an awareness of and sensitivity for this situation, it is more likely that their participation will be focused on the quality of service delivery rather than setting unreasonable demands.

- Human factor. The differences in opinion of individuals could become so serious that it may negatively affect service delivery. It is possible that within the tripartite system, the needs in a specific area that may be in conflict with the general interest could be a cause for the weakening of the relationships. Of importance, is that the participants in governance should promote common goals rather than impose their personal value considerations or minority views on others (Bekker quoted by Kroukamp, 2002: 55).
- Apart from the citizens, public managers should also take cognisance of the following issues (Kroukamp, 2002: 56):
- Cultural diversities should be acknowledged as public administration and management, specifically in South Africa, require knowledge of and sensitivity to intercultural relations pertaining to the diversity of cultures that exist. In adopting this approach, changing attitudes and behaviour of public managers are priorities for success. No one could respect the value systems, cultures and other unique characteristics of others, unless such a person is personally committed to being sensitive to such characteristics. The immediate challenge, therefore, lies in orienting and re-orienting public managers, not only to let them understand their fellow citizens, but primarily to understand themselves.
- The introduction of a participative style of management as a new style may imply deliberate interventions to change the structures and procedures of institutions. It may even lead to the changing of goals of administrative institutions. The accessibility of members of society to management may result in administrative delays. Public managers should be innovative in inventing acceptable and workable ways by which government structures can be made accessible for citizen participation without lowering the quality of service delivery. The question, however, is whether and to what extent, public managers will be able, prepared and willing to bring about these changes.
- To equalise the divergent approaches to citizen participation and disadvantaged groups in South Africa, education can be used as a mechanism to facilitate this process. Public managers can also be expected to play a crucial role in educating the members of a community for their roles in the post election era. This, however, is not the task of public managers alone. In itself such a task needs the participation of leaders in the community as well as community-based and other non-governmental organisations.

Citizen participation and change

According to Vil-Nkomo (*in* Wessels & Pauw, 1999: 96) in the field of governance, one of the areas which is least understood is the impact of citizens on public service and public sector reform.

After the end of the Cold War, most nations purport to be democratic and encourage citizens to operationalise their citizenship in all aspects of society. The traditional democratic approaches to citizen participation continue to dominate. These approaches include the following (Vil-Nkomo *in* Wessels & Pauw, 1999: 97)

- individuals exercising their right to vote;
- establishing pressure and interest groups;
- using mechanisms such as recall and referenda to ensure the accountability of elected officials; and
- the use of exit (i.e. voting with your feet) and voice (i.e. protest and mass action)

Other modes of communication intended to express operational citizenship include uprisings and riots as well as revolutions that could last over a period of time.

Rationale for citizen participation in governance

A variety of authors, mainly from development studies, politics and philosophy have motivated a rationale for citizen participation in governance. The following rationale, according to Meyer *et al.*, (*in* Van der Molen *et al.* 2002:62-63), serve as examples:

- participation is a way of receiving information about local issues, needs and attitudes;
- participation provides affected communities an opportunity to express their views before policy decisions are taken;
- participation is a powerful tool to inform and educate citizens;
- participation enhances the democratisation process;
- participation promotes equality, fairness and reasonableness in the allocation and distribution of public resources;
- participation balances the tension between democracy and bureaucracy.

The Ohio State University Fact Sheet (Meyer *et al.*, *in* Van der Molen *et al.*, 2002: 62) cites the following advantage participation in community affairs:

- the citizen can bring about desired changes by expressing individual or collective views on issues of public interest;
- it promotes citizenship and teach citizens to understand the needs and desires of other citizen groups in society;
- it teaches citizens how to resolve conflict and how to promote collective welfare;
- citizens begin to understand group dynamics; and
- it provides checks and balances for the political machinery of the state.

The following are additional reasons for citizen participation in governance (Meyer *et al.*, *in* Van der Molen *et al.* 2002: 63):

- it promotes dignity and self-sufficiency within the individual;
- it taps the energy of individual citizens within the community;
- it provides a source of special insight, information and knowledge that adds to the soundness of government policies;
- it ensures that citizens have access to the tools of democracy; and

- it creates national dialogue on issues, particularly for previously disadvantaged citizens.

Meyer *et al.* (in Van der Molen *et al.* 2002: 63) reason that from the above-mentioned motivations it can be argued that citizen participation:

- is a tool to promote democracy;
- empowers citizens and builds citizenship;
- balances the power of the elite and the poor; and
- facilitates local, regional, national, subnational, continental and global dialogue on issues of concern.

HOW CIVIL SOCIETY CONTRIBUTES TO DEMOCRACY AND GOOD GOVERNANCE

According to Diamond (*in* Giliomee *et al.*, 1994: 58-62) it is now virtually beyond dispute that to fully comprehend democratic change in Africa and the developing world, one must study civil society for the following reasons:

Firstly, because independent associations and media are important to democracy because they provide the basis for the limitation of state power, hence for the control of the state by society, and hence for democratic political institutions as the most effective means of exercising that control.

Secondly, a rich associational life supplements the role of political parties in stimulating political participation; increasing the political efficacy and skills of democratic citizens; and promoting an appreciation of the obligations as well as rights of democratic citizenship.

A *third* way in which civil society may serve democracy and promote good governance is by structuring multiple channels, beyond the political party, for the articulation and representation of interests. This is related to the participatory function by civil society. Diamond (*in* Giliomee *et al.* 1994: 60) maintains that civil society provides an especially strong foundation for democracy and good governance as it generates opportunities for participation at all levels of governance, thus deepening democracy and promoting political efficacy and legitimacy.

A *fourth* function of a democratic civil society is recruiting and training new political leaders. Civil society leaders and activists can acquire a range of leadership and advocacy skills for service in government and party politics. They learn how to organise and motivate people, debate issues, raise money, canvass for staff, negotiate compromises and build coalitions.

Fifthly, a strong civil society widely disseminates information and empower citizens in the collective pursuit and defence of their interests in values.

Finally, the function of civil society is derived in part from the success of the above. By enhancing the accountability, responsiveness, inclusiveness, effectiveness and hence legitimacy of the political system, a strong civil society gives citizens respect for the state and positive engagement with it.

POSITIVE SPIN-OFFS OF PARTICIPATORY DEMOCRACY

Participatory democracy, according to Fox and Meyer (1996: 93), is an ideal of democratic government which emphasises the importance of maximum direct participation in governmental affairs and decision-making by individual citizens. As in any democracy, citizen participation may have some shortcomings. But it is always necessary to consider the positive spin-offs as opposed to shortcomings. Public participation in the governance and administration of a country is indispensable if the state is to function effectively, for the following reasons (Hilliard & Kemp, 1999: 44) it:

- prevents the abuse and/or misuse of administrative authority and political power;
- stops the government from dominating its subjects;
- allows a diversity of viewpoints to be aired;
- permits citizens to challenge, refute and oppose unsubstantiated claims made by particular parties or groups;
- serves as a check on the activities of the administrators and rulers;
- helps ordinary citizens to grasp the nuts and bolts of government and administration;
- generates a sense of civic pride when citizens eventually see that their inputs have been implemented; and
- creates a sense of *ownership* when citizens are afforded the opportunity to have their say.

Clearly, citizens develop a sense of patriotism and purpose when they are allowed to make a contribution to civic affairs, no matter how insignificant their inputs may seem. Thus, citizen participation is crucial not only to promote but also to sustain democracy.

Goals of citizen participation

The fundamental question, according to Meyer *et al.*, (in Van der Molen *et al.*, 2002: 63-64), is: "Why do citizens participate?" They maintain that different authors have, over the years, tried to answer this question in the following manner:

- some argue that participation is at the expense of the poor and they will invest their participation as a free good, desirable in unlimited quantities. The citizens will invest in it when they believe it will secure them valuable benefits, not otherwise available at comparable cost, time and risk;
- citizen participation can be used as a strategy to reform governments;
- it is a worldwide movement away from centralised state control to regional and local governance;
- it provides information to citizens;
- it improves the public-policy process;
- it supplements public-sector work;
- it refocuses political power and community dynamics;

- it refines the societal context in which policies are formulated;
- it increases but cannot guarantee, the chances that programmes and projects will receive acceptability;
- it brings about disequilibrium in the way bureaucrats think and act.
- it disturbs bureaucratic incrementalism and linear problem-solving strategies, thus introducing a lateral approach to problem-solving; and
- it interferes with the function of government.

Enhancing efficiency and effectiveness through increased co-operative government

Co-operative government is a unique and bold concept developed by South Africa's constitutional negotiators to establish a new framework for governance in a democratic South Africa. Its uniqueness lies in the fact that few constitutions in the world, if any, explicitly place moral, operational or political obligations to co-operate in different governing organs in their interactions with each other (Gordhan *in* Maharaj, 1999: 199).

Co-operative government assumes the integrity of each sphere of government. But it also recognises the complex nature of government in modern society. No country today, in Gordhan's view (*in* Maharaj, 1999: 204-205), can effectively meet its challenges unless the various parts of the government:

- co-ordinate their activities to avoid wasteful competition and costly duplication;
- develop a multi-sectoral perspective on the interests of the country as a whole, and respect the discipline of national goals, policies and operating principles;
- settle disputes constructively without resorting to costly and time-consuming litigation;
- collectively harness all public resources within a framework of mutual support; and
- rationally and clearly divide among themselves the roles and responsibilities of government, to minimise confusion and maximise effectivity.

According to Doyle *in* Van der Waldt *et al.* (2002:197) *effectiveness* refers to whether a given alternative results in the achievement of a valued outcome; thus an objective is achieved. *Efficiency* refers to the amount of effort required to achieve a specific level of effectiveness. Policies in the public sector are considered efficient if they are, amongst other things, cost-effective (Doyle *in* Van der Waldt *et al.*, 2002: 197).

Vil-Nkomo (*quoted by* Hilliard & Kemp, 1999: 50) envisages the role of the citizen in terms of a system of interlocking co-operative government in the three spheres of government. While the three spheres are interlocked, the role of each must be clearly identifiable in the whole system of government.

The entire process of citizen participation is usually facilitated, strengthened and supported by co-operative government. In terms of Chapter 3 of the Constitution all spheres of government are compelled to co-operate on both vertical and horizontal levels.

Any large organisation must promote co-operative governance if it is to function with limited impediments. Prerequisites for *healthy* co-operative governance include the following (Hilliard & Kemp, 1999: 50-51):

- clear, concise and unambiguous communication channels traversing structures and persons;
- mutual trust, respect and cordial human relations right from the organisational apex down to grassroots level;
- adequate devolution, delegation and decentralisation to public functionaries to submit completed work;
- unity of purpose and command throughout the organisational set-up; and
- a genuine desire to uphold the work ethic and do a fair day's work.

It is the duty of the citizens to report to the authorities any breakdowns in communication in the public service. According to Hilliard and Kemp (1999: 51) covering up problems in the public service will not promote the ideals of co-operative governance. Furthermore, all the organs of state should synchronise their activities for co-operative governance to work properly.

If co-operative governance does not occur, misgovernance could become commonplace. Interaction, networking and exchanging information to maintain public service efficiency should eventually ensure that public functionaries first and foremost serve the general welfare of the population. The governmental machinery must remain well-lubricated and public institutions must act in unison to attain their governmental and administrative goals. Thus, good co-operative governance ensures efficiency, effectiveness and economy.

The value of citizen participation in governance

King (*quoted by* Kroukamp, 2002: 52-54) states that citizen participation is costly, time consuming and frustrating, but it cannot be dispensed of due to the following reasons:

Firstly, participation, in and of itself, constitutes affirmative activity – an exercise of the very initiative, the creativity, the self-reliance, the faith that specific programmes such as education and others seek to instil. Participation is, in fact, the necessary concomitant of faith in the dignity and worth of the individual. It implies that citizens wrestle with the meaning of such normative and practical concerns as social equity, citizenship, social conflict, co-operation, democratic theory and the public interest. The denial of effective participation, including the opportunity to choose, to be heard, to discuss, to criticise, to protest and to challenge decisions regarding the most fundamental conditions of existence is a denial of the worth of the individual.

Secondly, citizen participation, properly utilised, is a means of mobilising the resources and energies of the poor. In the South African situation, those in squatter settlements surrounding many cities and towns are living example of passive consumers of the services to producers of those services. Citizen participation thus exerts pressure to increase mass production for mass consumption.

Thirdly, citizen participation constitutes a source of special insight, of information, of knowledge and experience that cannot be ignored by those concerned, their efforts should fulfill their aims. Comprehensive action programmes, devised by professionals and accepted by the dominant social, political, education, and economic institutions represent consensus of the majority on how to solve social problems.

Fourthly, vigorous, continued participation is indispensable to consolidating democracy. When the future of the very regime espousing democracy is at stake because it is a new and uncertain experience, the basic objective is to ensure that democracy survives. The value of democracy is ensured through experiencing it at first hand. This might be in a procedural, formal sense when participation for many is confined to electing their representatives periodically and regularly.

Finally, citizen participation in governance has an instrumental purpose too. If by participating, citizens are able to satisfy their needs, and even their demands, by observing the rules of the game of democracy, then there is all the more reason to support the game, and indeed nurture it. Lawrence and Stanton (*quoted by* Kroukamp, 2002: 54) argue the emphasis in this instance falls on tangible opportunities and resources – having recourse to the former and acquiring the latter.

Citizen participation is essential to sustaining democracy and promoting good governance. If citizen participation is widespread, it will keep the rulers accountable to the people, and will prevent politicians from making policies which are detrimental to the general welfare of society. Put differently, citizen participation is crucial to ensure that the *voice* of the people is heard and the needs and wishes of the citizens duly acted upon (Hilliard & Kemp, 1999:57).

LIMITATIONS OF CITIZEN PARTICIPATION IN GOVERNANCE

The more obvious limitations of citizen participation present themselves in the current dilemmas outlined by Meyer *et al.* (in Van der Molen *et al.* 2002: 64-66):

- Although participatory democracy encourages popular participation, reality shows that not every citizen is interested, or has the capacity, to participate in public affairs.
- A diversity of languages in a community can cause problems if, for example, interpreters communicate a wrong interpretation.
- In the event that the needs and requests of citizens are not being addressed, reluctance to participate may result.
- Bureaucracies in developing countries are not structured to facilitate citizen participation, which hampers constructive citizen-input.
- In conflict-ridden societies, citizen participation may be limited due to fear.
- Some activities of government are technical and may be in conflict with community values and preferences.

Even if there are limitations for participation in governance by civil society, a democratic state must ensure that it consolidates and maintains democracy by encouraging civil society participation.

Consolidation and maintenance of democracy and good governance

According to Diamond (*in* Giliomee *et al.*, 1994: 63) several internal characteristics of civil society, in addition to the autonomy of the state, mediate and enhance the contribution it can make to the consolidation and maintenance of democracy and good governance. These factors are particularly important in determining the degree to which civil society will contribute to the development of a democratic culture.

Firstly, the goals and methods of groups in civil society must be compatible with the practice of democratic politics. The chances for stable democracy significantly improve if civil society does not contain uncompromising interest groups, or groups with antidemocratic goals and methods.

A *second* important feature of civil society is its level of organisational institutionalisation. Institutionalised interest groups, like institutionalised political parties, contribute to the stability, predictability and governability of a democratic regime.

Thirdly, the degree of democracy of civil society itself affects the degree to which it can socialise participants into democratic forms of behaviour. If civil society organisations are to promote democracy, they must function democratically in their internal processes of decision-making and leadership selection.

Fourth, the more pluralistic civil society is, the more it benefits democracy. Pluralism helps groups in civil society to survive and encourages them to learn to co-operate and negotiate with one another.

Finally, civil society serves democracy best when affording individuals opportunities to participate in multiple associations and informal networks at multiple levels of society. If there are more associations in civil society, they will develop specialised agendas and purposes of consolidating democracy and good governance.

STRENGTHENING CIVIL SOCIETY ORGANISATIONS

The Economic Commission for Africa (ECA) has recognised the importance of strong and assertive civil society to sustain democracy and good governance. Thus the ECA, in collaboration with the African civil society community, has established the African Centre for Civil Society. The Centre provides support services and capacity building assistance for indigenous civil society organisations (ECA Report, 1999: 6).

A civil society centre in any country, including South Africa, should perform activities to:

- provide training for civil society organisations in managing development projects;
- facilitate dialogue between states, and civil society organisations with a view to creating an enabling environment for the work of civil society organisations; and
- strengthen and broaden civil society organisations' understanding of the policy environment and process, including analytic and social skills to add value and influence national priorities.

Conditions for democracy and economic and social development to flourish have been created in South Africa. In KwaZulu-Natal a new government was installed – after the

April 14, 2004 elections – and a new legislature, formed on the basis of the proportional representation electoral system. They are now grappling with how to make itself more responsive and relevant to the needs of its citizens.

The roles of the organs of civil society, non-governmental organisations and civic movements are crucial to achieve much-needed interaction among the governing structures. The Speaker of the KwaZulu-Natal Legislature, Willis Mchunu, and Premier Sbusiso Ndebele have, on the side of provincial legislature and government, publicly declared that the doors of the institutions they head are open to receive opinions from leaders of all sectors of civil society on how to best deal with the issues facing the people of KwaZulu-Natal (The Mercury, Thursday, 10 June 2004).

Parliamentary institutions, such as portfolio committees, must be open to members of the public. The same applies to constituency offices, which are also supposed to be open on a non-party political basis. Ordinary citizens must be empowered with the ability to lobby effectively and productively. Various groups in civil society need to work with each other. Together with other civil society formations, communities can use their comparative advantage to influence policies across all spheres of government.

In Africa a Pan African Parliament has been formed. The concept behind this Parliament was to get citizens to participate in their governance and to interact with the state. It also strives to empower the people to interact with or lobby those who take the decisions. The challenge, in short, is how to make the government and, indeed, Parliament accountable to the people, given our current electoral system, which creates only a flimsy link between members of Parliament (legislators) and the electorate.

SUMMARY

This article has highlighted the need for participation by citizens in governance. Results of the survey indicate that civil society prefers to make a contribution on governance issues. Participation is a way of receiving information about local issues, needs and attitudes. This provides affected communities with an opportunity to express their views before policy decisions are taken. When promoting good governance, participation by all is a powerful tool to inform and educate citizens. Also, participation promotes equality, fairness and reasonableness in the allocation and distribution of public resources. Civil society participation in governance can make a contribution in promoting good governance.

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