

Civil Society and Participatory Policy Making in South Africa: gaps and opportunities

Imraan Buccus

The National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its Committees (section 59 (1) of the 1996 Constitution).

The National Council of Provinces may: make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement (section 70b).

A provincial legislature or any of its committees may: receive petitions, representations or submissions from any interested person and institutions (section 115a)

Introduction

The focus of this chapter is public participation in policymaking in South Africa, exploring how participation and deliberation can overcome the shortcomings of a purely representative democracy by connecting citizen voice with state decisionmaking, transforming thereby broader social power relations and enabling responsive policymaking. It provides an overview of policy and legislative provisions for participation, existing mechanisms and practice, and through highlighting civil society experiences of these processes, presents a case for the need to open up executive policymaking processes to engagement by affected communities.

Theoretical framework for participation

Participatory policymaking and the democratic 'deficit'

Many authors have written about the notion of a 'democracy deficit' – the failure of established, liberal notions of representative or participatory democracy to link

citizens with the institutions and processes of the state, impacting on the quality and vibrancy of democracy and resulting in reduced accountability (Gaventa 2004; Luckham et al 2000). Many democracies are characterised by a sense of disappointment as to how little elections improve government accountability and performance.

Carothers (2005) notes that political participation declines in a context where poverty, inequality and corruption increase, where citizens become increasingly sceptical and distrustful of political parties and institutions. This widening gap between citizens and state institutions results in what Skocpol (2003:11) has called a 'diminished democracy'. Where political parties focus on electoral processes to the detriment of effective representation, links between citizens and the state erode. The result is a 'weak democracy marked by poor representation' (Carothers 2005).

Around the world governance actors, analysts and activists are grappling with this issue, and exploring how best to engage citizens in government decision making, especially its policy-making processes. The reality is, however, that currently citizen participation in policy making is primarily reduced to participation by the elite, organised civil society in the form of predominantly non-governmental organisations (NGOs), business and other interest groups with access to resources. Crenson and Ginsberg refer to this monopoly of participatory processes by elite forces as 'downsized' democracy (2002).

Participation mechanisms that are established to channel citizen input are not accessible to the majority population in societies characterised by inequality, particularly marginalized communities and sectors, and typically do not 'automatically benefit poor people and groups that have long faced social exclusion' (Manor 2004: 5). The question then is how can mechanisms be developed to enable the poor and unorganised to influence policymaking, to build 'democratisation with inclusion' (Ibid: 6)?

Deepening democracy

Some authors argue that the solution to low levels of citizen participation lies in strengthening or deepening democracy: focusing on governance institutions, the capacity of civil society, and the interface between the two. This, it is argued, enables a greater level of participation by communities in government decision making, deepening the reach of marginalised groups to participate. To do so requires a strengthening of representative democracy and participatory mechanisms; building civil society as an external counter-force to government; bringing civil society into the state in a form of co-governance and service delivery; exploring deliberative policy making through such models as citizens' juries and other 'deliberative inclusionary processes' (Holmes and Scoones 2000), bypassing traditional policy formulation processes; and exploring 'empowered participatory processes through debate and consensus-based fora (Fung and Wright 2001; Cohen and Fung 2004).

Some argue that *representative democracy* is the only truly legitimate means of representing the interests of the marginalized and unorganised. While agreeing that democratic mechanisms need to promote opportunities for citizens to demonstrate 'which ideas have majority support', they argue that the 'only mechanism yet devised which is capable of doing that is representative democracy, because only it is able to establish how all citizens feel about particular ideas or interests' (Friedman 2004: 23).

But how effective is the representative democracy model in tapping into the interests and needs of the poor? In contexts of corruption and domination by elites, and political funding by wealthy interest groups, this is questionable. Critics of purely representative models of democracy argue in addition that 'in inequitable societies representative systems will inevitably reproduce social, economic and political inequities in terms of who can engage with and influence decision making'. They claim that *participatory democracy*, a term denoting citizens' participation in decision-making processes outside the structures of elected government institutions, provides an opportunity to break this mould and offers scope for 'fundamentally redressing these inequities through the participatory and deliberative process itself' (McGee et al 2003: 9-10).

A slightly deeper or expanded notion of representative democracy is that of *deliberative democracy*, replacing 'voting-centric democratic theory' with 'talk-

centric' democratic theory (Chambers 2003). With an emphasis on the quality of citizens' debate about problems, it is perceived as a 'mechanism that enriches participatory democracy' (McGee et al 2003: 10) while enhancing civic engagement (McCoy and Scully 2002).

Each of these approaches, however, is based on the assumption of the existence of a functional state and empowered civil society. Empowered participatory processes in particular require a relative equity of power between citizens, and imply 'voice and agency, a feeling of power and effectiveness, with real opportunities to have a say' (McCoy and Scully 2002: 118). This latter notion, particularly in the South African context, has to be scrutinised to assess whether meaningful, effective participation is possible and or operational

Participation or co-optation?

If we are to explore strengthening participatory mechanisms to deepen democracy, then the notion of participation must itself be examined, as this has various interpretations and application. Sisk et al posit that participation is 'intrinsic to the core meaning of democracy' (2001: 147), yet it seems sometimes governments view it as important only where it 'reduces government costs and responsibilities,... when governments can offload service delivery to...NGOs and community groups or convince local residents to donate volunteer labor or materials' (Ackerman 2004: 447). This approach fails to take cognisance of the fact that 'the opening up of the core activities of the state to societal participation is one of the most effective ways to improve accountability and governance' (Ibid: 448).

Others see citizen participation in governance as having the potential to 'reduce poverty and social injustice by strengthening citizen rights and voice, influencing policy-making, enhancing local governance, and improving the accountability and responsiveness of institutions' (Taylor and Fransman 2004: 1). It has largely been assumed that as governments develop expertise in facilitating greater levels of participation, services tend to improve and things get better for those in situations of poverty. More and more, participation is seen as critical to the goals of poverty reduction and social justice but from varying perspectives.

At one end of the spectrum - the bottom rung of the ladder - citizens are viewed as beneficiaries of development processes, involved only to a limited degree in planning and assessing pre-determined development projects, to increase the effectiveness of projects. Here, a government agency might open up a process for citizen input with the sole purpose of seeking support for its pre-planned initiatives. Similarly, it might seek legitimacy through such a process, increasing citizen ownership of or support for a pre-determined agenda. In such instances, citizens may be given the opportunity to obtain information on a proposed state intervention, and air their views, but where participation is limited to a tokenistic process, it will 'lack the power to ensure their views are heeded by the powerful' (*Arnstein 1967: 216*). Where there is no genuine empowerment of citizens, the participation process simply becomes an 'instrument for managed intervention' (*Cornwall 2002: 3*). Discussing the consequences of superficial or cosmetic processes, Manor notes that 'If ordinary people find that what at first appears to be an opportunity for greater influence turns out, in practice, to be a cosmetic exercise – if they gain little or no new leverage – then they will feel conned and betrayed' (*2004: 9*).

In the middle ground, citizens are taken on board as stakeholders to share control of development initiatives, to broaden ownership. Here, the government agency might engage its citizens in planning and implementing programmes to increase their efficiency, cost-effectiveness and sustainability. Such instances can enable citizens to 'negotiate and engage in trade-offs with traditional power-holders' (*Arnstein 1967: 217*).

The progressive end of this spectrum reflects a rights-based approach, recognising participation as a right in itself, and an entry point to realising all other rights (*Eyben 2003*). As *Cornwall (2002:16)* notes, this 'recasts' citizens as 'neither passive beneficiaries nor consumers empowered to make choices, but as agents: the "makers and shapers" of their own development'. Here, the participatory process might transform underlying social and power relations (*Gaventa 2003a*), and grant citizens 'full managerial power' (*Arnstein 1967: 217*).

Innovations and approaches to participation

The extensive literature on participatory policy making reveal an array of models and designs, such as: elected multi-purpose councils, user or stakeholder committees, joint management of development programmes, participatory auditing town hall gatherings, citizens' juries, deliberative workshops, citizens' forums, deliberative polling, consensus conferences ; sample surveys, preference polling, participatory research, citizen monitoring programmes and participatory appraisals, citizen advisory councils, community budgeting and many more. Smith has classified these into six design types: electoral innovations; consultation innovations; deliberative innovations; co-governance innovations; direct democracy innovations; and E-democracy innovations (2005: 8-10).

THE SOUTH AFRICAN CONTEXT

Legislative and Constitutional framework for participation

As the quotes at the head of this paper suggest, there are a number of sections in South Africa's Constitution, which deal directly with the concept of public participation, charging both houses of the national Parliament and all provincial legislature with the responsibility of facilitating public participation.

Additional to those sections cited above, section 118 (1) makes provision for the public to have access to provincial legislatures and to be involved in legislative processes. It states that provincial legislatures must facilitate such public involvement. It also maintains that legislatures must conduct their business in an open manner and may only block access on reasonable grounds. Finally, Section 59 (2) provides that legislatures may not exclude the public and media "unless it is reasonable and justifiable to do so in an open and democratic society."

However, having rules for public participation in the legislative process does not by itself guarantee that people will either use or be able to exercise that right.

Significantly, the obligations at local government level to consult are more developed. Section 152(1) of the Constitution states that ‘local government must encourage the involvement of communities and community organizations in the matters of local government.’ This implies going beyond just consulting communities as an aid to deliberation. In this regard the Municipal Systems Act, 2000, section 16, obliges municipalities to ‘develop a culture of municipal governance that complements formal representative government with a system of participatory governance, and must for this purpose (a) encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in—(i) integrated development planning; (ii) the performance management system; (iii) performance, (iv) the budget (v) and strategic decisions relating to services. If this were vigorously employed, this could lead to highly engaged communities such as evident in Porto Alegre and other situations where democracy and planning are closely linked.

In addition to requiring that local councils consult communities on key municipal processes, the Municipal Structures Act of 1998 establishes ward committees. Consisting of ten people and chaired by the ward councilor, ward committees are intended to act as the main means of communication between the council and local communities. Notably, however, as with the national and provincial spheres, legislation makes it clear that decision-making powers rest with council alone, and that public participation around key council processes or through ward committees really only means community consultation to aid the deliberations of municipal councils.

We turn now to the reality on the ground in South Africa.

1. Existing mechanisms for participation in policy-making

The National and Provincial levels

Since 1994, all legislatures have established some form of programme or plan of action to encourage public participation. These include:

Public hearings

The most common form is where written and oral comments are invited from interest groups, stakeholders and individuals. Legislatures usually give the public between five days' and three weeks' notice, sending invitations, placing advertisements in newspapers, public places and on radio. Even so, the complexity of the issue often means that this notice period is too short for effective preparation. The venues for public hearings are generally accessible to rural communities, with hearings often held in centres other than capital cities. In some cases, transport is provided for rural communities. Some legislatures do undertake pre-hearing work in the form of community briefing sessions where bills and policy documents are simplified and explained (The Free State, Northern Cape and Gauteng provincial legislatures are examples). The Free State legislature also claims that it organises community-briefing sessions when the legislature is considering new legislation. These sessions are chaired by the chairperson of the relevant committee, who explains the process for making submissions, and the impact that the proposed legislation would have on the community. In addition the Gauteng legislature claims to provide information on how to prepare submissions. All legislatures also claim that they make provision for public hearings to take place in the local language.¹

The provision for public hearings should enable direct, formal input by community groups into the refining of legislation, and many groups have indeed taken advantage of making submissions and have seen their recommendations taken up in legislation. On the other hand, the turn out at hearings is often disappointing, there is often a lack of relevance of submissions to the subject matter at hand, exposing the lack of interest and capacity of civil society to engage at this level. The reality is that much more needs to be done by both legislatures and civil society for the public- hearings process to become truly effective and productive in promoting participation the national governance process.

Public access to portfolio committee meetings

All portfolio committee meetings at both national and provincial levels are open to members of the public, although publicity of this fact, its encouragement and ease of

¹ Buccus, I 2008, 'Towards developing a public participation strategy for SA's legislatures', *Critical Dialogue: Public Participation in Review*, Vol 3 No 2

access varies. Records and minutes of meetings and other legislative documents are often difficult to access, particularly from committee processes. Some legislatures have initiated a process of “Taking Parliament to the People”, a process whereby some committee meetings and even formal sittings of a legislature are held in towns in the more rural parts of their provinces. The problem is that these are often quick-fire, dash in-and-out gatherings and staff organisers have told the authors that such processes would be strengthened if politicians remained within the community for a designated period after the meeting to enable members of the public to engage with them and raise issues of concern. They are also high-cost events and it would be far-fetched to suggest that the return justifies the expense.

Legislatures do also at times convene sectoral parliaments for youth, women and other special interest groups. These are seen as educational opportunities to raise the profile of issues, including policy issues, affecting these sectors, and of facilitating an understanding of the role and function of legislatures among these stakeholders. While these events generate huge interest and excitement, and are generally marked by high levels of participation, legislative stakeholders and others have commented that better use could be made of this format through better selection and preparation of participants, and in follow-up on the very serious issues raised by them in their mock parliamentary debates.

Most legislatures also facilitate committee on-site tours and visits to community sites to assist in the gathering of information, deepening of committees’ understanding of community issues and establish linkages between committees and communities. As part of a public relations exercise, most legislatures also facilitate parliamentary tours by interest groups and schools.

Outreach programmes and information dissemination

Legislatures in South Africa generally have some form of outreach programme, with rural communities being particularly targeted. Strategies here include using educational workshops and information dissemination through focused media

strategies, with some legislatures innovatively making use of community radio stations to reach particular communities.

Some legislatures have also developed programmes to target people who do not belong to organized civil-society structures, although organized structures and groups are more likely to be included in workshops and discussions and far more likely to be successful in making submissions. In the context that significant pockets of the public do not understand how legislatures are structured and function, and the significance of the work of portfolio committees, most legislatures produce pamphlets and other materials and educational tools to supplement outreach programmes. Such interventions have the potential to radically increase interest in and awareness of legislative processes, strengthen relationships between legislatures and communities, and build capacity of community groups to understand and engage with legislative processes.

Petitions

Some legislatures (can you cite some examples) have passed legislation providing for the submission of petitions to the legislature by members of the public And established dedicated petition standing committees to receive and deliberate on them. It is also their responsibility to make decisions on forwarding issues raised to relevant stakeholders within government.

Izimbizo

Although this form of public gathering was an instrument much favoured by former President Mbeki in particularly his first term (1999-2004), its frequency has declined in recent years and where such gatherings have been convened, they have usually been at the provincial level. These gatherings often draw thousands of community members together to raise issues of concern in the presence of the Premier and departmental representatives, who are expected to respond to and address the issues and problems raised to the satisfaction of the Premier. While not without its uses, limitations to this format include the sheer size of the gatherings, which make the forum often unsuitable for deliberation on issues and possible solutions. They are also often unfocused, resulting in a catch-all process for all community problems.

Green/white paper processes

Policy making in South Africa often takes the form of the publishing in Government Gazettes of a “green paper” which outlines a set of policy intention, and a “white paper” which is an actual policy proposal. To each paper, public comment is invited. In some instances, these papers are also circulated among interest groups for feedback, or consultative processes are facilitated to engage stakeholders on the proposals. However, critiques of these processes allege significant shortcomings, such as the reach and depth of consultation, limited to existing networks of sectoral stakeholders, as opposed to representative groups of affected communities, and consultant-driven “workshops” which fall short of a truly deliberative forum, where stakeholders develop and negotiate policy alternatives. Further, the failure to engage with affected community groups at the outset of the policy process, in the identification of objectives and approaches, to make policy documents available in plain and local languages, and distribute these widely for input, raise questions on the participatory nature of these processes, which as a result tend toward co-optation. These challenges are evident in the overview of civil society experiences of such processes discussed later in this paper

The local government level

Two main participatory mechanisms operate at the local government level. They are

Integrated development planning (IDP) and the Budget process

Research reveals that there is no standard approach to the IDP process, with municipalities developing varying approaches to development planning and to the drawing of community stakeholders into these processes. All municipalities do report an adherence to the requirement of consultation in planning, although the substance of that consultation can be questionable. For example, all municipalities claim to have had at least some *izimbizo* on the IDP and budget at both district and local levels.

Ward committees

Mostly, however, the participatory process at the local levels take place at the ward level. Ward committees are set out in legislation and policy as the institution to link communities and local politicians. Chaired by ward councilors, they are the foundation stones for community participation in development processes and municipal decision-making, but despite their promise, ward committees often function poorly and appear vulnerable to political manipulation. YOU COULD FLESH THIS OUT WITH SOME MORE DETAIL

Overall, there appears to be no common understanding of how ward committees can feed into municipal development planning and decision making. There are also no resources made available for the functioning of ward committees, nor any stipend made available or travel or administration costs covered for ward committee members, many of whom lack meaningful understanding of municipal processes and how best to asset community needs into the development planning process.

Civil Society Perceptions of Policy Making in South Africa

So what does civil society make of the public's role in policy making in South Africa? Research which we conducted in 2007 (Buccus and Hicks 2007) suggests that the predominant view is critical with the policy-making process being seen as elite driven, functioning largely to the exclusion and demobilisation of the public. Part of the problem is seen as deriving from a view that those who drafted the post-apartheid constitution conceptualised South Africa as in income terms a middle-class society, populated by those with time and space to engage in the public domain. The reality is very different with the result that

Attempts to facilitate community input are largely superficial, and do not tap into the real power-base where decisions are made. Most processes present pre-determined positions and programmes for limited feedback or information sharing only, or create only limited opportunities for communities to raise concerns, and therefore in fact, make very little substantive difference to policy decisions.

Our research also indicates that even amongst those largely middle-class elements who populate the civil-society sector there is an increasing perception of being sidelined and marginalised, excluded and disempowered. This is occasioned by such factors as not receiving feedback on inputs made in processes, not seeing recommendations being taken up or of having had any noticeable impact from having participated and made input. There is a sense that often the civil-society sector is often co-opted into participating in a process with a pre-determined outcome and of being excluded from an 'inner circle' enjoying privileged access to decision makers. .

Our research also revealed a widespread concern at government's tendency to call for community input only in the advanced stages of policy formulation, largely done in an attempt to acquire political buy-in and implementation, rather than at the outset when problems and solutions were being developed. The use of primarily print media in government communication and information dissemination was also considered to exclude certain groups and communities. Also, language used in those processes further alienated communities and that notice of opportunities to make submissions tended to 'come late' and as a result, community-based organisations (CBOs) were largely excluded from decision making. Across the sectors surveyed, representatives stated that CBOs needed to be involved from the outset of the policy process.

Also revealed was the fact that discussion forum participants were particularly struck by power relationships at play in the policy process, both among policy makers themselves, and between policy makers and civil society. These were typified by unequal power relationships between politicians and bureaucrats, government and civil society representatives, those with access to information and resources and those without, those belonging to organized structures and those not, those who are viewed as educated and those not, urban and rural residents, men and women, and people with different abilities.

Participants reflected that these unequal power relationships played themselves out in the policy arena, resulting in some issues not making it onto the agenda, the exclusion of some stakeholders, the rendering invisible of others, and the exclusion of many from that critical juncture where decisions are made. Participants noted that unless these power issues were addressed through careful planning, collaboration and

facilitation, they would continue to undermine participatory initiatives seeking to gain civil society input and buy-in.

An examination of power in the policy-making arena itself reveals a complex territory, characterised by contestation. Policy has been defined as constituting the ‘decisions taken by those with responsibility for a given policy area, and these decisions usually take the form of statements or formal positions on an issue, which are then executed by the bureaucracy’. It is a political, ‘ongoing process of negotiation and bargaining between multiple actors over time’ (Keeley and Scoones undated: 4), and reflects ‘conflicts and alliances between economic interest groups’ (Robinson 2003: 7). Participants from a group working in the children and women’s sector noted in addition, that as a starting point, power resides with political parties. There is power in the process of setting the agenda for discussion itself, and participants questioned how issues get onto the political agenda, and attract sufficient support and attention. When it comes to the implementation of policies and programmes, power devolved to government agencies, and was not monitored by or made accountable to civil society.

Participants from the HIV/AIDS discussion group which we interviewed in the late Mbeki era distinguished between the power base of political and bureaucratic actors, and national government actors as opposed to provincial and local actors. While politicians deliberated ideas and made decisions, bureaucrats had the final power of implementation. Likewise, most policy processes were seen as being formulated at national level, perceived as being far removed from communities and difficult to access, with provincial and local governments then tasked with implementing these policies.

These experiences and reflections from civil society stakeholders suggest to us that although there is legislative provision for participatory mechanisms, and many such provisions are in place, this is not enabling civil society to participate meaningfully. The existing mechanisms are inadequate, inaccessible and disempowering, and that new approaches to participatory policy making are required.

Writing on the policy-making process in Brazil, Shankland (2005:2) used a term which we believe could equally be applied to South Africa, namely, ‘representation dressed up as participation’, a flawed notion of political representation of citizens’ interests through civil society organisations, which ‘ignores the fact that debates in “new democratic spaces” occur in the absence of some (indeed most) citizens and with the presence of others who may be speaking in their name’..

In looking at the South African policy arena, it is important to assess who participates in it, whose voice is heard? Our view is that the relative inaccessibility of information on government decision making and the resources and abilities required to engage in participatory processes, results in the domination of such spaces by a middle-class elite with access to resources who organise themselves into NGOs, business and other similar interest groups. For the sake of convenience, we refer to this vast network of middle-class group as civil society organisations or CSOs who tend to ignore, bypass or fail to connect with a much smaller, more grassroots sector of community-based organisations (CBOs).

Between these two sectors, our research suggested something of a class divide with CBO groups articulating a view that organized CSOs dominated policy processes where there were spaces for civil society to engage with government. CBO groups characterised by a lack of resources found it difficult to influence, although they did have a voice that they could use but often to little effect.

We found that children and women’s groups added a gender dimension to the critique, noting that participatory processes at community level tend to be dominated by men, and stressed the importance of questioning which stakeholders are present at these processes, and whom they represent. CBO participants concurred, stating that men tend to set the agenda and dominate discussions and processes, with women excluded from certain discussions, and that other group representing the marginalized, like people with disabilities, also had limited opportunities to express their concerns. They noted that those who have access to power tend to retain power and information.

Tensions were particularly apparent between organized network bodies such as the South African National Civics Organisation (SANCO), the South African NGO Coalition (SANGOCO), CBO network bodies and the CSOs and communities they claim as membership bases. There is a perceived level of competition and struggle for dominance between these structures, which have diverse identities, yet shared membership base. CBOs at a discussion forum we observed challenged network representatives, claiming that they were not accountable to them or representative of their needs and interests, yet had access to information, recognition and resources, all in the name of the membership interests they claimed to represent. They appeared wary of networks' agenda, and suspicious of their perceived and sometimes outright political affiliation, which they stated discouraged many CBOs from identifying and engaging with them.

Clearly the question arises: How can these tensions and power imbalances be surfaced and addressed so that these issues do not play themselves out in the new democratic spaces created thereby rendering them ineffective? It is more than apparent that CSOs and representative umbrella bodies need to be challenged on issues of mandate and representation. Likewise, consideration needs to be given to

How marginalised groups enter the policy arena motivated, empowered and equipped to engage with a greater sense of equity with government and other civil society actors. But these are important issues beyond the scope of this paper.).

Lest, however, we create the impression that the public participation process in post-apartheid South Africa has been a sham, much fuss and indignation achieving nothing, we turn to a case study where the public voice was effective to the point of turning government's intentions around.

The Public versus the Protection of Constitutional Democracy against the Terrorism Act of 2004

The case study of the mobilisation of opposition to the above legislation, initially referred to as the "Anti-Terrorism Bill" (ATB), illuminates several useful strategies in engaging with a policy process. The South African civil society response to the bill illustrates that public participation in resisting a controversial bill appearing before parliament for consideration can be effective. A vast cross cutting section of South

African society participated in numerous ways in resisting the bill. Resistance to the bill came from two distinct categories: the Muslim community; and a loose coalition of journalists, unionists, NGOs and activists. The participation here was unprecedented in the post- apartheid context as never before had there been such a concerted effort by civil society to reform or reject a particular piece of legislation, with relative success.

Attacks on the United States on 11 September 11 2001 served as a catalyst for many countries, particularly the US and the United Kingdom, and South Africa at a later stage, to consider introducing additional legislation to deal with terrorism. In the case of South Africa, the government's argument that the then ATB would bring our country in line with similar international legislation was met with public anger and discontent from the time of the introduction of the draft bill in 2002. The resistance stemmed primarily from the fact that draconian powers would be given to our law-enforcement agencies to investigate and deal with acts of terror. The vague description of 'terrorism' further fanned fears that the ATB would seriously impact on civil liberties such as the freedom of association, expression, assembly and demonstration. The experiences of the Muslim and other minority communities in the US, in the wake of such legislation being introduced, further illustrated the dangers of these laws being effected and the South African public was understandably nervous about having its own civil liberties curtailed yet again, after years of such treatment under apartheid.

These incidences in the US and elsewhere clearly provided sufficient motivation for those groups feeling potentially most affected, to act. As a result, South African muslims, together with a range of interest groups like COSATU were propelled to undertake a sustained campaign to challenge and engage the government on this bill. What followed was a rare and intriguing partnership forged between faith-based and other non-governmental interest groups, to tackle an issue of common interest.

In September 2002, the Department of Safety and Security introduced the draft ATB for comment and scrutiny. At this point, a number of human rights organisations opposed the bill, arguing that it was fundamentally flawed. What was at issue were the many archaic provisions that would significantly curtail civil liberties guaranteed

in the Bill of Rights. The initial demand by some, including the Muslim community, was that the bill be completely shelved, which the government did not deem feasible. A revised bill, with shortened content and a removal of some problematic clauses, was then placed before Parliament in March 2003. This version was also not viewed favourably by civil society.

A number of organisations challenged the need for new legislation, arguing that the State already had twenty-two pieces of legislation to cover crimes and activities covered by the ATB. This argument effectively informed and shaped the foundation of the objections to the introduction of the bill. In the face of it, it seemed in the latter part of 2003, that government, obviously under severe US government pressure, would fast-track the bill through parliament. However, COSATU's intervention disrupted the process by arguing that even run-of-the mill strike action would be "terrorist" in terms of the bill's then provisions. The April 2004 elections halted any progress on the bill, but thereafter it was once again revised, taking into account COSATU's concerns, and reintroduced to parliament. A compromise was reached with COSATU, and the bill was renamed and passed unanimously in November 2004. The most prominent faith-based group in the coalition was the muslim community. The horror of the experiences of the muslim community in the US and in other parts of the world was an indication to South African-based muslims that they could not allow such legislation to be passed without challenging its draconian measures. The South African muslim initiative managed to draw in a broad network spectrum of the muslim community so that it could present a united front across the ideological spectrum in its submissions in support of the national initiative around the bill.

In addition, a number of progressive interest groups undertook to resist the bill. While some of the resistance involved public meetings and protests to a limited extent, oral and written submissions to the relevant parliamentary portfolio committee were the more notable forms of resistance. For example, in its submission to Parliament, the Institute for Democracy in South Africa (IDASA) supported the "intention of the bill" and acknowledged the need for legislation to deal with terrorism in South Africa and internationally, but was concerned that "in an attempt to address the problems of terrorism, there is potential to make provisions which may be in contravention with

the provisions of the constitution.”ⁱ (NOTE: Not a footnote. Put it in the bibliography)

The Law Society of the Cape of Good Hope (LSCGH) also voiced resistance to the bill, arguing in its submission that existing legislation was more than adequate in dealing with the threat of terrorism and that the proposed bill’s provisions were unconstitutional. The South African Human Rights Commission (SAHRC) was also not convinced of the need for the bill. In its submission, the SAHRC proposed a number of technical changes to the bill and expressed concern at limitations on the right to silence. The SAHRC did, however, explain that it understood that the international environment was difficult and South Africa had obligations to meet.

Another notable submission was that made by the Unemployed and Social Activists Committee (USAC) who rejected the bill as “unconstitutional and a tool of imperialist oppression.” In a number of statements, the Freedom of Expression Institute (FXI) argued that the bill would seriously impact on individual civil and political liberties. Moreover, the FXI was also concerned about the impact the bill would have on progressive formations in the country, particularly the social movements. Journalists were also among those who resisted the introduction of the ATB. The South African National Editors Forum (SANEF) in January 2003 called for the withdrawal of the ATB saying it was “a serious threat to media freedom because the legislation could be used against journalists.”ⁱⁱ (DITTO)

In the face of this concerted onslaught, the government backtracked; the bill was revised, and renamed the Protection of Constitutional Democracy against Terrorist and Related Activities Bill. A compromise was reached primarily with the trade union movement, with the significant change being that the bill now stipulated, “A struggle waged by peoples... in furtherance of their legitimate right to national liberation, self-determination and against colonialism shall not be considered as terrorist activity.”

While the submissions from the muslim community played a very significant role in resisting the bill in its original state, it was the intervention by COSATU that likely swung the balance of power. The point however, to be noted is that in the face of a

broad front, government wavered. That is the lesson to be learned. Such anti-coalitions in post-apartheid South Africa have been rare. Nonetheless, it indicates when such coalitions mature, it reflects well on the project of democratic consolidation and participatory democracy.

2. *Conclusion and recommendations*

Participatory policy making is realistic, desirable and achievable – it works for citizens and government alike. There is, however, a significant gap at policy level relating to public participation in policy and decision-making processes themselves within the realm of South Africa’s executive. While the Constitution provides a framework for an open and participatory democracy, it provides specific references and creates particular obligations in this regard only within the realms of national and provincial legislatures, and local government.

Likewise, the ensuing policy and legislative framework relating to public participation is silent on the issue of opening up decision-making processes at executive policy level to citizen participation. When one considers the fact that not all policy processes result in legislation that would come before the scrutiny of legislatures – and be open to public debate and input - it is apparent that legislative processes provide citizens with a limited vehicle to engage with policy processes themselves, and then perhaps only marginally through oversight powers exercised by legislatures. This, coupled with the significant impact, for instance, of the formulating of national economic policy and poverty reduction strategies, and the absence of opportunities for public deliberation and engagement on these topics, reveals the significance of this lacuna within our democratic architecture and processes. Executive policy-making processes need to be made more accessible – and accountable – to affected communities.

Further, a fundamental issue emerging is the need to critically assess how participation and deliberative democracy design and process interventions can fundamentally transform inherently unequal social power relations, so that marginalised and vulnerable groups are brought into governance processes in a meaningful,

empowering way. This requires careful design and facilitation of participatory mechanisms, drawing on comparative experiences and examples from the international community and local experiments, coupled with capacity-building and support for government institutions tasked with driving these processes, and the civil society structures seeking to engage with these.

Above all, the focus needs to be placed on enabling the voices and interests of marginalised communities to influence policy making, from the framing of policy issues to the deliberation of policy options. Without such significant and meaningful opportunities, civil society and marginalised communities and groupings will disown the processes for engagement, and remain active within the ‘invented spaces’ reflecting greater legitimacy and expression of power.

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ⁱ IDASA's submission on the ATB, June 2003

ⁱⁱ Press statement issued by SANEF, January 03, 2004