



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



MAKING YOUR FUTURE
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National Council of Provinces
Induction of Permanent Delegates
October 2019



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Public involvement



Constitutional mandate

- Facilitation of involvement of the public is a constitutional imperative
- Sections 59 and 72 of the Constitution compel the National Assembly and the National Council of Provinces to:
respectively facilitate public involvement in the legislative and other processes of the Assembly and the Council and their committees conduct their businesses in an open manner, and hold their sittings, and those of their committees, in public



Constitutional mandate cont...

- However, the Constitution permits reasonable measures to be taken to regulate public access, including access of the media to the Houses and their committees provided that the exclusion is reasonable and justifiable in an open and democratic society



Constitutional mandate cont...

- Sections 56(d) and 69(d) of the Constitution authorise the National Assembly and the National Council of Provinces or any of their committees, respectively, to receive petitions, representations or submissions from any interested persons or institutions



Defining public participation...

- The facilitation by Parliament of the involvement of the public in the law-making process and the processes of its committees has been a subject of judicial interpretation by both the Supreme Court of Appeal (SCA) and the Constitutional Court
- *The SCA in King and Others v Attorneys Fidelity Fund Board of Control and Another* said : “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.”



Defining public participation cont...

- *Constitutional Court in Doctors for Life International v Speaker of the National Assembly and Others and in Matatiele Municipality and Others v President of the RSA and Others* explains the meaning of public involvement as taking steps to ensure that the public participate in the legislative process; that legislatures have a significant measure of discretion in determining how best to fulfil their duty.



Defining public participation cont...

- The constitutional court in the *Lamosa* judgement stated that the standard to be applied in determining whether Parliament has met its obligation of facilitating public participation is one of reasonableness. The reasonableness of Parliament's conduct depends on the peculiar circumstances and facts at issue.
- The *Lamosa* practice note addresses the challenges identified by the Court judgements



Parliament's Public Participation Model...

- The Model intends to provide a shared understanding on and alignment of processes, and set minimum requirements and guidelines for the involvement of the public in the legislative and other processes of Parliament and those of its committee



Public participation standards

In terms of the model, public participation standards include:

- informing
- educating
- creating meaningful opportunity for the public to participate
- reporting
- feedback and
- monitoring and evaluation



Parliaments public participation mechanisms

- Taking Parliament to the People
- Provincial Week
- Peoples Assembly
- Sectoral Parliaments
- Public submissions (general)
- Petitions
- Oral and written submissions in the legislative process (when dealing with specific draft legislation)



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Discussion