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DEMOCRATIC DEVOLUTION: STRUCTURING CITIZEN PARTICIPATION IN SUB-NATIONAL GOVERNANCE

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ABSTRACT

Public participation has become a central concern of modern democratic politics. It is increasingly recognised that citizens have the right to ongoing involvement in their own governance, and that systems to facilitate it need to be put in place. Concurrently, countries around the world are undertaking decentralisation initiatives, moving political responsibilities downwards to bring them 'closer' to ordinary people. Conceptually, decentralisation presents major opportunities for enhancing citizens' capacity to engage in governance.

The role of regional governments – provinces, states and so on – in participatory processes has not been explored in much detail. This poses a particular challenge where regional government is being introduced and constructed from scratch.

This paper argues that the basic methods of participation are consistent across different levels of government. However, looking at the experiences of South Africa, a key problem at the regional level is a lack of clarity in respect of the overall institutional design. A clear division of responsibilities between different levels of government, paired with avenues for citizen entry, is essential for robust and meaningful public participation. To this must be added the commitment of governments to involve their citizens and the capacity of citizens to mobilise towards this end. Finally, modern technology offers exciting opportunities to expand the frontiers of participation, and should be enthusiastically embraced.

ABOUT THE AUTHOR

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The author draws on his own experiences of working in the Gauteng Provincial Legislature. During the research process, attempts were made to seek insights from stakeholders in South Africa's provincial governance system, aside from those referenced here. This proved difficult within the time frame of the project.

ABBREVIATIONS AND ACRONYMS

APRM	African Peer Review Mechanism
IFP	Inkatha Freedom Party
OUTA	Organisation Undoing Tax Abuse

INTRODUCTION

Democracy, it is often said, is more than simply the right to vote. As important as the franchise is, contemporary thinking recognises that for the foundational ideals of democracy to be realised – the vesting of power in societies' citizens at large, or popular sovereignty – ordinary people need to be involved in their own governance. It is this recognition that has brought public participation into the centre of the debate on governance.

Opportunities for citizen participation have expanded greatly over the past few decades, as a result of changes in people's views on governance and advances in technology. Perhaps no development has had greater potential for public participation than decentralisation. Bringing government 'closer to the people' should, in theory, make government more responsive to them. Partly for this reason, decentralisation has been aggressively pursued and promoted around the world. But what has it actually meant for public participation?

This paper looks at the possibilities for successful public participation in relation to sub-national governments, ie, 'provincial' rather than national or local levels of government. It is at these subsidiary levels of government, on which countries are conferring greater responsibilities, that engaged citizens will increasingly need to pitch their advocacy, whether for policy change or for redress of grievances. The analysis looks first at the conceptual issues surrounding public participation and decentralisation. It then examines some empirical evidence germane to these themes, focusing on some experiences of public participation, particularly in South Africa's provincial legislatures. In conclusion, it reflects on what the evidence suggests about the elements of a robust public participation system.

UNDERSTANDING PUBLIC PARTICIPATION

Arriving at a definition

Public participation is, at face value, a simple idea: people need to be able to interact with policymakers and governance processes. But what does this mean in practice? The European Urban Knowledge Network puts it in these terms:[1]

> Public participation can be described as a deliberative process by which interested or affected citizens, civil society organisations, and government actors are involved in policymaking before a political decision is taken … a core component of genuine participation is the possibility for involved actors/stakeholders to change their mind, which enables people to come to a shared understanding of issues and solutions instead of just exchanging views.

1 European Urban Knowledge Network, 'What is public participation: different levels, added value and challenges?', European Urban Knowledge Network, undated, http://www.eukn.eu/eukn-research/policy-labs/public-participation-in-the-development-process/general-introduction/what-is-public-participation -different-levels-added-value-and-challenges.

In South Africa, an official public participation framework defines the concept thus:[2]

> Public participation is the process by which Parliament and provincial legislatures consult with the people and interested or affected individuals, organisations and government entities before making a decision. Public participation is a two-way communication and collaborative problem-solving mechanism with the goal of achieving representative and more acceptable decisions.

The American digital citizen engagement consultancy, Intellitics, provides the following definition of public participation on its website:[3]

> Public participation is the process by which an organization consults with interested or affected individuals, organizations, and government entities before making a decision. Public participation is two-way communication and collaborative problem solving with the goal of achieving better and more acceptable decisions. Public participation prevents or minimizes disputes by creating a process for resolving issues before they become polarized.

These definitions – just two from the myriad that could be sourced – demonstrate some common features. They emphasise that the process is one of two-way engagement, with information flowing from citizens to government, and vice versa. They also underline the ability of interested citizens, both individually and in organisations, to engage in governance and policy issues: public deliberation, in other words. Citizens should be able to influence government decisions, and even the overall thrust of policy. Public participation must, in other words, be meaningful as far as people's political fate is concerned.

As part of efforts to promote deeper democratisation, public participation has increasingly been built into political systems. Professor Laurence Piper of the Department of Political Studies at the University of the Western Cape notes that public participation has become attractive for political interests on both the 'left' and the 'right'.[4] Initially a predominantly leftist notion, it was intended to expand the scope for marginalised and poorly-resourced groups to gain a voice in politics. However, governments on the 'right' have seen its virtues as a means to bolster the quality and professionalism of government.[5] In the UK, for example, the past two decades have seen a rapid rise in opportunities available to citizens

2 Legislative Sector South Africa, *Public Participation Framework for the South African Legislative Sector*, Legislative Sector South Africa, June 2013, p. 7, http://www.sals.gov.za/docs/pubs/ppf.pdf.

3 Intellitics, 'What is public participation?' intellitics.com, 24 March 2008, http://www.intellitics.com/blog/2008/03/24/what-is-public-participation/.

4 The left–right spectrum is a frequently used but ephemeral concept, which depends on context and on one's personal interpretation. Politics on either wing may invoke such concepts as freedom. Generally, left-wing politics might be described as stressing change to existing conditions and emphasising measures to benefit groups that are perceived to be marginalised in society. Right-wing politics might be viewed as more committed to order and stability, prizing a mix of tradition and personal merit.

5 Skype interview with Professor Laurence Piper, Department of Political Studies, University of the Western Cape, 5 May 2017.

for their input, as a result of government policy. Elsewhere, such as in Kenya and South Africa, public participation is constitutionally mandated. It is regarded as a contributor to countries' democratic fortunes: 'Public participation promotes legitimacy and public support for legislation and government policies, and thereby ensures democratic stability.'[6]

Public participation: truths and misconceptions

The existence of a stated intent or a framework for public participation does not in itself produce meaningful public participation. In the late 1960s Sherry Arnstein, an academic and citizen activist, published an influential paper arguing that participation by citizens is foundational to their political power. She delineated an eight-tier 'ladder of participation', describing a progression through various forms of 'non-participation', through tokenism, to citizen power.

LADDER OF PARTICIPATION		
8	Citizen control	Degrees of citizen power
7	Delegated power	
6	Partnership	
5	Placation	Degrees of tokenism
4	Consultation	
3	Informing	
2	Therapy	Non-participation
1	Manipulation	

Source: Arnstein SR, 'A ladder of citizen participation', *Journal of the American Institute of Planners*, 35, 4, 1969, p. 217

Non-participation encompasses the first two tiers: manipulation and therapy. Tokenism takes in the next three: informing, consultation and placation. Citizen power is articulated in the top tiers: partnership, delegated power and citizen control. Essentially, these tiers describe a continuum from substitutes for real involvement, through limited engagement, to the real exertion of citizen influence.[7]

If one accepts that public participation is desirable, particularly from a normative perspective, then one should aspire to the higher tiers. But how to craft optimal strategies to attain these lofty heights remains contested. How can the institutions of governance

6 Houston G, Liebenberg I & W Dichaba, 'The social dynamics of public participation in legislative processes in South Africa', in Houston G (ed), *Public Participation in Democratic Governance in South Africa*. Pretoria: Human Sciences Research Council, 2001, p. 148.

7 Arnstein SR, 'A ladder of citizen participation', *Journal of the American Institute of Planners*, 35, 4, 1969, pp. 216–224.

be opened up to citizens so that they can play a meaningful, rather than a token, role? Can the scope of participation be expanded without compromising the quality of public debate? How can citizens' preferences and priorities meaningfully inform policy, while at the same time not subjecting governance processes to interminable gridlock?

In looking at these questions, one should consider some valuable observations made by Intellitics CEO, Tim Bonneman. He argues that public participation is subject to a number of misconceptions that, when not acknowledged, can undermine its effectiveness.[8]

- **Public participation does not refer to all interactions between citizens and government, but primarily to those interactions that influence decision-making and policymaking.** It is fundamentally a political issue. Making information available to the public, for example, is necessary for citizen participation, but it is not in itself proper public participation. The same applies to channels for reporting everyday problems, such as electricity outages or broken water pipes. But exactly where such pedestrian communication ends and where true participation begins is often unclear. Policy may emerge from implementation, and providing avenues to raise such issues may spark wider debates.
- **The public is not a limitless concept.** 'Public' in this context tends to refer to those who have a proper interest in or are affected by the matter at hand. It generally does not refer to 'everyone', although in an open democracy considerable latitude should be allowed to give citizens an opportunity to express themselves on issues that they believe concern them. The 'public' is usually a difficult concept to define in any given situation. It may suggest something large or small. It varies according to the particular circumstances as they arise, and may even be confined to the internal stakeholders of an organisation. Effective public participation may also at times take place behind closed doors.
- **Public participation does not guarantee a particular result; rather it produces a spectrum of results.** While public participation promises citizens a meaningful say in governance, sometimes circumstances are such that public sentiment will not hold sway. For example, expenditures on the military instead of social services may be strongly opposed, but will nevertheless be approved. Governments, after all, will govern and leaders will lead. In some cases, public participation may amount to little more than consultation.
- **Public participation is not a bottom-up, but rather a top-down, process.** Public participation is fundamentally dependent on the willingness of those in power to facilitate it and to take it seriously. This does not mean that demand side pressure is not important, but without the cooperation of governments it will be stillborn. That being said, initiatives of this nature are unlikely to succeed without energy and effort going into either demanding them when they are absent or engaging with them when they are available. For citizens seeking 'change', their own efforts are indispensable.

8 Bonneman T, 'Public participation: four common misconceptions', intellitics.com, 25 September 2010, http://www.intellitics.com/blog/2010/09/25/public-participation-four-common-misconceptions/.

DECENTRALISATION IN PERSPECTIVE

In terms of governance, a corresponding devolution–decentralisation dynamic has also been gaining traction in recent decades. It seeks to make governance more responsive and accountable, and thus more efficient and effective, by relocating state functions from the central or national level to subsidiary tiers at the regional and/or local level. As one analyst studying this phenomenon noted: 'Decentralisation is one of the most important reforms of the past generation, both in terms of the number of countries affected and the potentially deep implications for the nature and quality of governance.'[9] It is taking place 'essentially everywhere'.

How decentralisation paves the way for public participation

Decentralisation has also featured prominently on the agendas of governance reform strategies. Indeed, a chapter was devoted to this theme in the 1999/2000 edition of the *World Development Report*, which pondered the challenges and opportunities of the approaching new century.[10] The basic theoretical arguments for decentralisation (which, it should be noted, are not uncontested) can be summed up as follows:[11]

- **Improved efficiency:** Where government is closer to the people, it can respond better to their specific and sometimes distinct regional needs.
- **Improved governance:** Smaller governments are more intimately connected to the people and are more susceptible to influence and engagement; people are empowered, and government is more willing to listen.
- **Improved equity:** With government being closer to the population and more sensitive to their dynamics, the distribution of resources may be handled more equitably.
- **Improved development:** A better understanding of local conditions can be an important asset in promoting development.

Decentralisation has also been a feature of African governance reform initiatives, such as the African Peer Review Mechanism (APRM). The thrust of this thinking is captured in the APRM report on Uganda: 'Decentralisation of power is widely recognised as a useful mechanism for devolving decision-making and improving service delivery to local populations.'[12]

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9 Faguet J-P, 'Decentralization and governance', Economic Organisation and Public Policy Discussion Papers, EOPP 02, London: London School of Economics and Political Science, 2011,
p. 1.

10 World Bank, 'Decentralisation: rethinking government', in *World Development Report 1999/2000: Entering the 21st century*. New York: Oxford University Press, 1999, pp. 107–125.

11 Smoke P, 'Decentralisation in Africa: Goals, dimensions, myths and challenges', *Public Administration and Development*, 23, 2003, pp. 9–10.

12 Panel of Eminent Persons, APRM, *Country Review Report of the Republic of Uganda*, APRM Secretariat, January 2009, p. 42.

In no small way, decentralisation has important implications for public participation. Government located closer to citizens and responsible for a limited geographical constituency, or for certain defined functions should be more amenable to a system of interaction and ongoing oversight than one in which responsibilities are concentrated at the centre. In principle, decentralisation presents an opportunity for enhanced public participation.

The special case of regional governments

Decentralisation can take various forms. Much of the published work on decentralisation has focused on devolution to the local or municipal level – ie, moving functions to towns and cities. Rather less seems to have been said (perhaps surprisingly) about decentralisation to regional governments (provinces, states and so on).

Regional decentralisation requires a particular set of considerations. While the optimal limits of municipal boundaries may be open to debate, they are usually constituted around existing towns or settlements. Thus, they are organised around concentrations of population and economic activity. Creating regional units from scratch (as in the formation of counties in Kenya) is likely to be more complex. This is because forming regional geographical divisions that are coherent and viable from the standpoint of governance and the economy is very challenging. It is notable that the more 'successful' examples of long-standing decentralised states – including the US, Canada, Australia and Germany – tend to have arrived at their arrangements after a long period of evolution. Federal states have often emerged by bringing together what had been self-governing units. In the US, for example, the original constituent states started out as individual colonies, and some later additions (Texas, Hawaii, Vermont and California) once functioned as separate countries.

Nevertheless, decentralisation to regional governments can play an important political role. It may, for example, give recognition to certain geographically concentrated minority groups, providing a political structure in which they are able to express their aspirations more readily. In Spain, decentralisation has been implemented partly in response to ethnic demands for autonomy. And while the state remains technically unitary, it agrees to share power with regional governments.

South Africa underwent a decentralisation process of sorts in the early 1990s. This saw the state significantly reconfigured. Prior to the introduction of a democratic dispensation, South Africa was a unitary state, divided into four provinces for administrative purposes. In addition, there was a patchwork of autonomous and 'independent' homelands – a relic of the apartheid plan to set up separate states for each of the country's African ethnic groups, although these were largely dependent on the central government for their funding and were never recognised as independent by any state other than South Africa. The changeover to a democracy meant consolidating these into one state and then dividing that state again into nine new provinces. This process had as much to do with the imperatives of politics as it did with efficiency or accountability in governance.

In political terms, the arrangement represented a compromise. The ANC, never a great proponent of provincial government, was eager to prevent provinces from becoming

too significant in their own right. The other major political players at the time of the transition, the New National Party and the Inkatha Freedom Party (IFP), were determined to secure some provincial autonomy, for both ideological and practical reasons, with each having sufficient regionally concentrated support to enable them to emerge as dominant players in parts of the country.

The result was a system that devolved some powers to the newly created provinces, but limited their autonomy. Professor David Welsh, in his authoritative study of South Africa's apartheid era, *The Rise and Fall of Apartheid*, presents the system that emerged from South Africa's transitional negotiations as profoundly ambivalent, allowing different interests to claim victory:[13]

> When the Multiparty Negotiating Platform ratified the final draft of the [interim] constitution on 18 November, [Communist Party leader Joe] Slovo had crowed that it would not be 'remotely a federation … We've managed to give them devolution, without losing control.' [National Party negotiator Roelf] Meyer, on the other hand, had claimed, optimistically, that 'we have a regional dispensation which has all the hallmarks of federalism'. Meyer probably believed that it was at least a proto-federal constitution, and that once provinces were established they would use the political space accorded to them, however limited, to press for more powers. But the reverse would occur.

The 'reverse' manifested itself because of the phenomenon of single party dominance. The ANC came to govern all provinces in the country, with the exception of KwaZulu-Natal (at least initially, until 2004) and the Western Cape (although it managed to take control of the provincial government between 2004 and 2009). Political loyalties proved more powerful than regional interests, and so the provinces generally did not assert themselves. The most notable attempt to do so, by IFP-led KwaZulu-Natal in 1996 (which attempted to introduce a provincial constitution), was rejected by the Constitutional Court. The latter held that the province had exceeded its authority and that 'a province cannot by means of the bootstraps of its own constitution confer on its legislature greater powers than those granted it by the interim Constitution. The same principle must apply, *mutatis mutandis*, to all other powers, of whatever nature, asserted by a province in the provisions of its constitution.'[14]

The Constitution specified 'spheres' rather than 'tiers' of government, and tried to structure a relationship of cooperation between them. (As if to underline this, the state department responsible for intergovernmental matters is called the Department of Cooperative Governance and Traditional Affairs.) The Constitution also denied provinces significant revenue-raising powers and kept functions such as policing firmly out of their hands. It did, however, establish legislatures, introducing some political decision-making functions at this level. Furthermore, it accorded some duties of oversight to the provinces, and made them responsible for the provision of education and healthcare within their borders.

13 Welsh D, *The Rise and Fall of Apartheid*. Johannesburg and Cape Town: Jonathan Ball, 2009, pp. 507–508.

14 Constitutional Court of South Africa, *Certification of the Constitution of the Province of KwaZulu-Natal*. CCT, 15/96, para 8.

For the most part, policy emanates from the national government, and while provincial parliaments are able to pass their own legislation, this has not been common practice.

This governance system has had some important implications for public participation. Local government in South Africa has clearly defined responsibilities and its institutional design provides clear points of entry for citizens, including ward committees and Integrated Development Plan processes. The incentives to participate at this level and the channels through which to do so are clear. Provincial governments, by contrast, typically share responsibility with the national sphere. Their ability to deal with citizen demands is highly constrained. This in turn raises questions as to whether citizens are being appropriately advised to direct their lobbying efforts towards this level of government.

PUBLIC PARTICIPATION IN ACTION

Effective public participation is an expression of an open, democratic system. If it is to be worthwhile, it must be underpinned by a political commitment and an enabling environment. It presupposes sufficient transparency, access to information, and widespread acceptance (at least in theory) that citizens have a moral and political right to demand and to effect change. Where these are absent, public participation becomes very difficult and a culture of 'non-participation' takes hold. Indeed, such participation that is possible can be described as 'non-participation' on the Arnstein ladder.

Different participation strategies

Part of the enabling environment is found in the governance system of the country concerned: what is the basis in the constitution, law or convention for public participation? This may take many forms and typically responds to national specificities. As has been noted above, broadening public participation is frequently an explicit objective of decentralisation. This is clear in Kenya's Constitution of 2010, for example, which requires that county assemblies shall 'facilitate public participation and involvement in the legislative and other business of the assembly and its committees',[15] and that 'there shall be openness and accountability, including public participation in financial matters'.[16] It also makes provision for people to be involved in the process of policymaking.[17] This has been bolstered by several pieces of legislation, such as the Transition to Devolved Government Act No. 1 of 2012, which requires the authorities to 'be accountable to the people of Kenya and ensure their participation in the transition process'.[18] In South Africa, public participation is likewise built into the Constitution. Referring specifically to provincial legislatures, Section 118 states that they must 'facilitate public involvement in the

15 Republic of Kenya, Constitution of Kenya, 2010, 196 (1) (b).
16 *Ibid*, 201 (a).
17 *Ibid*, 232 (1) (d).
18 Republic of Kenya, Transition to Devolved Government Act, No. 1 of 2012, 14 (b).

legislative and other processes of the legislature and its committees'.[19] The public is to be 'encouraged to participate in policymaking'.[20] Public participation has become an integral part of South Africa's governance processes, with the country's Constitutional Court having emphasised that the very validity of acts is dependent on public participation.[21]

In the US, by contrast, there is no constitutional requirement for public participation in policymaking – despite ample opportunities to elect candidates to various offices and a constitutional right to petition for redress of grievances. Direct participation in policy discussions is rather a function of convention and policy. As one analysis pointed out:[22]

> While the right to petition the Congress is well-established, as is the Congressional duty to maintain a public journal of its activities and its custom of open hearings, no authority exists for a requirement that a member, committee or a house of Congress must solicit input, much less facilitate its delivery.

Public hearing

One of the most recognisable forms of public participation is the public hearing. This is a universal practice in legislative bodies, at all levels, that seek participation. It involves inviting citizens to express themselves on a given matter and is frequently done when reviewing a bill or policy. In principle, there is an open exchange between citizens and the state, in which perspectives can be shared with a view to suggesting changes.

Public hearings frequently form part of consultation processes and are typically required (as in South Africa and Kenya) as a precondition for legislative and administrative interventions. The views and inputs from the public, particularly those who stand to be affected by the proposed action, must be gathered and considered. Consultations often involve explaining to stakeholders what is proposed and soliciting their inputs. This may take the form of a verbal and off-the-cuff exchange between members of the audience at public hearings. Alternatively, it may involve formal and fairly extended presentations by stakeholders. Written or recorded inputs (and possibly audio and video presentations) may also be accepted.

Commission

Another forum for participation is the commission. A particular type of commission – typically associated with the US – is the citizen-based commission. Such a body operates

19 Republic of South Africa, Constitution of the Republic of South Africa, Act No. 108 of 1996, 118 (1)(a).

20 *Ibid.*

21 Psykas AE, 'Revitalizing the "liberty of the ancients" through citizen participation in the legislative process', Student Scholarship Papers, Paper 125, 2010.

22 Czapanskiy KS & R Manjoo, 'The right of public participation in the law-making process and the role of legislature in the promotion of this right', *Duke Journal of Comparative and International Law*, 19, 1, 2008, p. 2, footnote 2.

on a more or less permanent basis, and is staffed by citizens who are typically tasked with overseeing government functions, such as ensuring a reliable water supply. The website of Washington Country[23] in the state of Oregon in the US phrases it thus:[24]

> Serving on an appointed board, committee or commission is a great way to participate in decisions that affect you and to learn more about how your local government works. The County's boards and commissions play a variety of important roles in advising the Board of Commissioners on service priorities, how to distribute available resources, and how to improve our collaboration with other parts of the community.

Commission of enquiry

A different type of commission is the commission of enquiry. This would be called by the political authorities to investigate a particular issue, and would typically involve experts from outside government inviting or soliciting input from the public. An example of this is the Advisory Panel on e-Tolls (the highly controversial system of tolling that was introduced on upgraded roads in Gauteng province in South Africa). Appointed by the provincial premier, David Makhura, in 2014, it explicitly sought public comment in relation to the widespread dissatisfaction with the e-Toll system.[25]

Public survey

A public survey represents another form (albeit an attenuated one) of public participation. It can be used to gauge public sentiment on various issues, in both qualitative and quantitative terms. As such it can help policymakers understand citizens' opinions and preferences. A survey has the advantage of being able to capture and aggregate the perspectives of people who are not necessarily moved to express themselves on issues – as would those who participate in public hearings – but who, as citizens, will nonetheless experience the consequences.

Petitioning

A more personal, issue-directed form of participation is petitioning. This involves making a special request to a legislative body to attend to a problem or to consider some sort of policy reform. It may be orchestrated by an individual or a group, and may be the culmination of a campaign to rally support (hence, signing a petition). Petitioning can take on a largely symbolic character, such as when citizen groups collect signatures and deliver

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23 A county in the US is an intermediate level of government between the state and the municipality.

24 Washington Country Oregon, 'Citizen Boards and Commissions', undated, http://www.co.washing ton.or.us/CAO/BoardsCommissions/.

25 Mailoane L, 'Premier Makhura announces advisory panel on e-Tolls', Gauteng Province, Department of Roads and Transport, 7 November 2014, http://www.roadsandtransport.gpg.gov.za/Pages/Premier-Makhura-announces-advisory-panel-on-e-tolls.aspx.

them to the site of political power. Whether petitioning induces the changes for which it is agitating is to some extent secondary to the visible demonstration of the demand. It is for this reason that the 1956 Women's March on the Union Buildings – in protest against South Africa's 'pass laws' at the time – is so vividly remembered. But petitioning can also ensure that a demand is channelled to where it can be addressed. South Africa's provincial legislatures have established formal structures, known as petitions committees, which accept submissions from the public. Where possible, petitions are referred to the relevant departments or agencies for action.

Participatory budgeting

One of the more intensive forms of public participation is participatory budgeting. Developed in Brazil in the late 1980s, and applied mostly in the context of municipal budgets, it offers citizens the chance to make direct inputs into the allocation of resources in public budgets. Assemblies of citizens meet to decide on their priorities and then choose delegates to represent them in the process of compiling the budget.[26] This practice has been used to complement many other strategies (an analysis by the World Bank linked participatory budgeting to poverty alleviation and the expansion of access to services[27]) and has been widely emulated.[28]

Negotiated rule-making

A similar methodology is negotiated rule-making. Developed in the US, it allows stakeholders to work with officials to design regulations that address their regulatory concerns. 'Together the parties explore their shared interests as well as differences of opinion, collaborate in gathering and analysing technical information, generate options, and bargain and trade across these options according to their differing priorities.'[29]

Legislative constituency

The legislative constituency offers another important avenue for participation. Professor Piper argues that a false dichotomy tends to be observed between participation and

26 Wagle S & P Shah, 'Case Study 2 – Porto Alegre, Brazil: Participatory Approaches in Budgeting and Public Expenditure Management', *Social Development Notes*, Note No 71, March 2003, http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/873204-1111663181192/20488152/sdn71.pdf.

27 World Bank, *Brazil: Toward a More Inclusive and Effective Participatory Budget in Porto Alegre, Volume 1. Main Report*. Washington, DC: World Bank, 2008.

28 Spada P & HR Gilman, 'Budgets for the people: Brazil's democratic innovations', *Foreign Affairs*, 11 March 2015, https://www.foreignaffairs.com/articles/united-states/2015-03-11/budgets-people.

29 Susskind L & G McMahon, 'The theory and practice of negotiated rulemaking', *Yale Journal on Regulation*, 3, 1, 1985, p. 137.

representation. By linking a group of citizens to a specific representative, they not only open a channel for accountability but also one for participation. Constituency representation creates a space for citizens to interact directly with a designated individual who can channel their demands.[30]

Efforts of citizens

Finally, while opportunities can be provided for public participation, the efforts of citizens to involve themselves in governance matters should not be ignored. Either individually or collectively (such as through non-governmental organisations), citizens in democracies devote a great deal of effort to persuading other people and policymakers to agree to revise current policies or adopt new ones. Engaging with legislatures is an intrinsic part of this.

Assessing public participation strategies

In principle, each of these participatory strategies can have an impact. But in evaluating how they work in the sub-national context, it is critical to bear in mind that what they can accomplish is limited by the responsibilities accorded by the prevailing system of governance. This is especially important in newly decentralising countries, where the relationships between the various levels of government remain unsettled. Evidence from Senegal and Ghana, for example, points to competitive, if not hostile, relationships between officials at different levels of government.[31] One study states bluntly: 'Central governments often seem unwilling to provide a significant degree of real revenue autonomy to sub-national governments.'[32]

Thus, even with genuine goodwill and willingness, the effectiveness of public participation can be short-circuited by a simple lack of authority to address demands. This is well illustrated by the Advisory Panel on e-Tolls. John Clarke, a social activist now affiliated with the Organisation Undoing Tax Abuse (OUTA),[33] describes his experience with the panel. While the consultations were technically well organised and open to diverse interests, and while cordial and cooperative relationships were formed with officials in the Gauteng government (including the provincial premier), relatively little was achieved.

30 Skype interview with Professor Laurence Piper, *op. cit*.

31 Ndegwa SN & B Levy, 'The Politics of Decentralisation in Africa: A Comparative Analysis'. Washington DC: The World Bank, 2003, p. 17; Fjeldstad O-H & K Heggstad, 'Local Government Mobilisation in Anglophone Africa'. Bergen: CMI (Chr. Michelsen Institute), Working Paper, WP 2012:6, October 2012, p. 7.

32 Osae EO, 'Local Government Finances and Fiscal Decentralisation in Ghana', presentation at Revenue Management Master Class: *Managing City Revenues in the Twenty First Century*, Municipal Institute of Learning, Accra, 27 November 2012.

33 While OUTA now concerns itself with accountability in relation to the use of public resources, its origins were in the opposition to e-Tolls.

The provincial government was not in a position to reverse the decisions made by national government and the South African National Roads Agency Limited.[34]

> The issue was that there hadn't been proper cooperative governance, and there was a disjuncture between the national and provincial governments. This was clearly a problem. The consultation process was intended to regain a sense of authority as the provincial government. Our concerns were on the agenda. But while we could argue for scrapping e-Tolls, they had no authority to do so. You can't deal with a problem like this retrospectively – you need proper consultation from the start.

In the Arnstein ladder, this would count as therapy: offering the public an opportunity to express their dissatisfaction, but without any meaningful possibility of redress.

However, the division of responsibilities between different levels and agencies of the state can be managed. In South Africa, the official term for this is 'cooperative governance' among the various 'spheres'. Provincial legislatures are expected to cooperate with their national counterpart in conducting consultations relating to a number of national initiatives, such as the Budget. They may also cooperate with municipal institutions, such as ward committees (structures intended to promote community participation at a municipal level).[35]

Beyond these, building systems of public participation requires resources that may be difficult to find. Public participation is neither cheap nor simple. It may be recognised as a part of a legislature's responsibility, but this will count for little if it is not properly resourced and capacitated. An analysis of public participation in South Africa's legislatures (published in 2009, so a little dated but nonetheless revealing) strongly suggested that it was a problem. Although the situation differed from one legislature to the next, representatives of public participation units reported deficiencies in staff training, financial allocations, and available facilities and equipment.[36] This would naturally pose difficulties for managing participation in socially complex and often geographically extensive polities.

Added to this is the question of how much consultation is sufficient in any given case. It is never possible to reach every person, and there is always the temptation to 'consult' with a consistent group of stakeholders who might be politically sympathetic or simply conveniently accessible.[37] These realities, though, can sour relationships with other groups, and less well-resourced entities may well infer that their participation is effectively blocked.

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34 Personal interview with John Clarke, Organisation Undoing Tax Abuse, 5 May 2017.

35 Skype interview with Chris Ferndale, Manager of Public Education and Outreach, Western Cape Provincial Parliament Public Participation Unit, 10 May 2017.

36 Scott R, An analysis of public participation in the South African legislative sector, Thesis in Master of Public Administration, University of Stellenbosch: Stellenbosch, 2009, pp. 73–81.

37 The author recalls attending the launch of the Gauteng Provincial Legislature's Petitions Committee, at which the question of accessibility was discussed in detail. The organisers had tried to trace as many organisations as possible (by faxing invitations), but admitted that there were certainly many that had been overlooked.

It should be borne in mind that weaknesses can be found in each of the participation strategies outlined above. Public hearings, probably the most common form of participation, have been termed 'the most ineffective technique'.[38] They do not always offer a medium for detailed analysis and engagement. Comments one analyst:[39]

> Two- or three-minute time limits are often placed on speakers, with the same amount of time allocated for the highly informed or the person whose livelihood is at issue as that for the rambling fellow who has little knowledge but enjoys the sound of his own voice.'

Other voices echo this. Mike Moriarty, senior member of the opposition Democratic Alliance in the Gauteng Provincial Legislature, argues that in his experience on the legislature's finance committee, members of the public often lack the technical understanding to properly engage with the committee's work. Frequently, people attend hearings to raise issues that are neither the responsibility of the finance department nor the province. 'All we can do is refer them to the correct agency.'[40]

Moriarty also argues that one of the legislature's signature initiatives, ie, 'taking Parliament to the people' – which involves holding committee meetings away from the legislature, in community halls and the like – is ineffective. It may draw attention to the legislature's work, but it does not provide much opportunity for citizens to get involved. In this respect the legislature is arguably confusing visibility with participation. A similar criticism could be levelled at *imbizos*, which are large public gatherings to discuss policy issues. Here the size of the audience may be too large and the issues too wide-ranging or technically complex for the event to be an effective means of interaction.

Hearings can also become very demotivating for participants if they do not provide feedback; participants raising concerns need to know that they have been taken seriously. The lack of a mechanism to allow this can undermine the sense that participation in these fora has value. Indeed, research has identified this as a problem in public hearings across South Africa's whole legislative sector.[41]

Petitioning meanwhile is a potentially valuable avenue for citizens wanting to raise specific issues. The petitions committees established by legislatures in, for example, Germany and South Africa make an impressive contribution to global participation practice. They allow specific issues to be raised directly by citizens. Where they are designed to be used by individuals with specific concerns (such as acquiring access to social housing or a place in a school), they can be very useful. But this model holds limited potential for altering policy. The Gauteng Provincial Legislature's petitions committee has been petitioned to

38 King SM, Feltey KM & BO Susel, 'The question of participation: toward authentic public participation in public administration', *Public Administration Review*, July–August 1998.

39 Innes, JE & DE Booher, 'Reframing Public Participation: Strategies for the 21st Century', in *Planning Theory & Practice*, 5, 4, 2004, p. 424.

40 Telephone interview with Mike Moriarty, Democratic Alliance Member of the Gauteng Provincial Legislature, Johannesburg, 4 May 2017.

41 Scott R, *op. cit.*, p. 85.

legalise prostitution, but this would require some changes to the country's legal framework (and not just that of Gauteng). It is a diluted form of participation, which the Arnstein ladder might describe as placation.

Other petitioning systems may offer more scope for influence on political matters. In Germany and the UK, petitions can be placed online and then signed by supporters. This is essentially a high-tech version of the traditional paper petition. They would not compel a course of action, but could be instructive as to the extent of feeling about an issue. The UK Parliament's online petitions service, for example, promises a 'response' if a petition garners 10 000 signatures, and to consider an item for debate in Parliament if it achieves 100 000. A petition for a second referendum on Britain's exit from the EU in 2016 generated well over four million signatures and was debated in Parliament – although it did not achieve the result it intended to.[42] The site has also attracted a number of frivolous, odd and sardonic petitions. These include requests for a television show to drop a storyline and apologise for it, to reintroduce the serving of fish and chips in newspaper wrapping, to 'lift the veil of secrecy' on extra-terrestrial life and for the result of the Battle of Hastings to be reversed. These will typically be rejected on the grounds that they fail to secure enough support, that the issue falls outside the scope of government action, or that it is unclear what action government is being requested to take.[43]

Participatory budgeting and negotiated rule-making are clearly deeper forms of participation, designed to enhance citizen influence. They can, in principle, be seen as partnerships, part of Arnstein's citizen power concept. Negotiated rule-making offers the prospect of real, observable changes in administration as a result of intense interaction between government and a small group of stakeholders. Participatory processes need not include every conceivable interest or concern. But unless a balanced representation of stakeholders is included, and unless observers understand that 'public' is not synonymous with 'comprehensive', the participation initiative risks being regarded by outsiders as a collusive arrangement.

Participatory budgeting is widely praised. While the practice is growing, it still appears to be suited to smaller, more cohesive governance units, such as municipalities. There appears to be little evidence of participatory budgeting at the larger regional level, but intuitively, it seems clear that organising the consultations and selecting community representatives would become increasingly complex as the definition of the community expands. Besides, evidence from Germany (at the municipal level) suggests that some serious problems have emerged vis-à-vis participatory budgeting, centred largely on the

42 'EU referendum rules triggering a 2nd EU referendum', Petitions, UK Government and Parliament, Closed 25 November 2016, https://petition.parliament.uk/petitions/131215#debate-threshold.

43 Bateman T, 'The e-petitions sent to government that got rejected', BBC, 8 November 2016, http://www.bbc.com/news/uk-politics-37870930; 'Demand that the Battle of Hastings petition be reversed', Petitions, UK Government and Parliament, http://www.thepetitionsite.com/357/088/094/demand-that-the-battle-of-hastings-result-be-reversed./.

issue of low participation.[44] An argument may be made, though, that the stakes would be higher in less-developed societies, and thus participation would be incentivised.

Political parties and their public representatives have an extremely important role to play. However, in some instances, party politics can undermine efforts at public participation. In South Africa, legislators (including members of provincial legislatures) are elected purely on party lists: candidates are selected by political parties and voters are offered choices of parties, not individual candidates; thus, MPs' careers are primarily dependent on the assent of their party rather than the voters whom they nominally represent. This has attracted a great deal of criticism on the grounds that it directs accountability 'upwards' to party leaders rather than to the voters. To try and compensate for this, resources are made available to support constituency offices – although these are 'constituencies' defined by the parties themselves, and are essentially part of the party network. While they might make governance structures more accessible, they do not affect the basic party-centred relationships in the country's politics. Indeed, Professor Piper warns that the dominance of party structures in South African politics risks turning public participation efforts into a 'waste of time'. Where party politics dominates, it can impair independent initiatives and the ability of citizens to articulate their own issues.[45]

Lastly, what of the efforts of citizens? While civil society can be presented with opportunities to participate in governance, its willingness and capacity to take advantage of such opportunities has a large bearing on the nature of the participation that develops. Participation takes time and money, and often assumes the ability to research and analyse information and present or submit it in a convincing manner. These factors can place significant constraints on citizen participation. The socio-economic realities of developing countries (such as South Africa) mean that large parts of the population may effectively be excluded from meaningful participation. Key factors, as outlined in a review of South Africa's national Parliament, are time, access to the media, transport and education.[46] Less affluent people can ill afford to take time off work, or to pay for transport to attend events that may be far from their homes. They are also less likely than their more affluent counterparts to have access to the media (and hence will often not know of opportunities for engagement) and often lack the educational background that facilitates well-researched, articulate submissions. The situation is unlikely to be substantively different in regional legislatures, or indeed in other developing countries. Where such exclusion exists, policymaking can be 'captured' by better-capacitated interest groups.[47]

44 Masser K, 'Participatory budgeting as its critics see it', *Bürgerhaushalt*, 30 April 2014, https://www.buergerhaushalt.org/en/article/participatory-budgeting-its-criticspo-see-it.

45 Skype interview with Professor Laurence Piper, *op. cit*.

46 Independent panel on the assessment of Parliament, *Report of the independent panel assessment of Parliament*. Cape Town: Parliament of the Republic of South Africa, 2009, pp. 54–55.

47 Scott R, *op. cit*, p. 32.

In principle, legislatures and other government institutions can take action to make participation more accessible. Holding public hearings in communities, for example, can help reduce the transport barriers – although the question then arises as to which communities should be chosen, thus raising a new set of problems. Citizen education plays a role too. Chris Ferndale, head of the public participation unit at the Western Cape Provincial Parliament,[48] describes with some pride the 'curriculum' that his institution has developed over the past decade. With modules geared at younger and older schoolchildren, as well as adults (municipal ward committees are important partners), the goal is to equip the province's population with the skills to participate in the provincial parliament's work. Political parties and other sectoral interest groups are also invited to cooperate with the unit to strengthen the capacity for participation within their constituencies.[49]

In addition, an academic dissertation on the Gauteng Provincial Legislature argued that citizens' efforts at engagement tended to be overshadowed by the interests of the dominant party in the legislature. Citizens were 'constantly' invited to participatory events. The author contended:[50]

> This research found that the level of participation, the participants, the nature of the engagement and its location is representative of the constituency of the majority party of the Legislature. So it would seem that such discriminatory 'distributive' policymaking and resource allocation as a means of entrenching party-specific interests is not an uncommon feature of legislatures' functioning.

Taken as a whole, then, each of the strategies typically employed by governments to draw in citizen participation has potential drawbacks. This is not to say, though, that they are without merit. They are important tools whose use must be managed to ensure that they achieve the meaningful participation that citizens hope for.

Over the past few decades, the growth of information technology has helped to enhance the existing modes of participation. As the experience of e-Petitions shows, technology can be bolted onto conventional mechanisms, making them quicker and enabling them to reach a wider audience than their predecessors. With the spread of affordable, accessible mobile devices, possibilities abound for new, innovative forms of citizen participation in governance. Yet one of the great limitations of participatory systems is the logistical challenges of managing mass participation. How is it possible to accommodate and listen to thousands of people expressing themselves on one issue? But technology is making it increasingly feasible to achieve this, without even requiring citizens to leave their homes. Enthusiasm about this potential does, however, need to be tempered by the recognition of the limitations imposed by access to this technology: older citizens may not be comfortable using it, while the less affluent may not be able to afford devices or connectivity, or to 'upgrade' as rapidly advancing technology renders particular systems

48 This is the term used by the provincial legislature.

49 Skype interview with Chris Ferndale, *op. cit.*

50 GH de Bruyn, Citizen participation in the Gauteng Provincial Legislature: a theoretical and case study, Thesis in Master of Management in the field of Public Policy, University of the Witwatersrand, Johannesburg, July 2013, p. 101.

obsolete. From this has emerged the idea of 'data' as a human right, which alludes to the importance of information and communication technology for engagement with modern society.

It must be emphasised that this is not only the preserve of the developed world. The prospects for technology to contribute to democratic processes in the developing world – not least in the context of newly established or newly empowered sub-national governments – are even more pronounced. As one analyst put it: 'In developing countries, e-democracy has emerged as a major alternative process to the established democratic system to enable citizen participation in policy debates.'[51]

Taking it forward

Public participation at a regional level is an underexplored topic, but as decentralisation proceeds it is likely to become an increasingly important one. The experiences outlined above suggest a number of considerations and interventions that could make a positive difference to the effectiveness of public participation.

Ensure high-quality institutional design

The first, foundational, consideration is to promote high-quality institutional design. Regional governments often sit in a difficult and imperfectly defined relationship between national and municipal governments. A logical and clear allocation of responsibilities between the various levels of government is a great asset to a strong participatory system. Access points for public participation (petitions committees in legislatures, public information desks in government departments, regular public hearings, etc.) should be established.

Design and capacitate the participatory mechanisms

The second consideration is to effectively design and capacitate the participatory mechanisms. The overall strategies for participation may be commonly known and constant between regional and other levels of government, but how they are executed could make a substantial difference to their effectiveness. For example, giving thought to the specific strategies to be employed to make participation possible should be a priority. By way of illustration, while the general principle of holding public hearings is sound, their impact and utility can be enhanced through proper information management. This, in turn, means keeping proper databases of relevant stakeholders (and being open to including others as they emerge), and making provision for meaningful feedback. These are formidable administrative tasks, but necessary ones.

51 Chakrabarty A, 'Technology and governance; enabling participatory democracy', MPRA Paper No 65231, June 2015, p. 9, https://mpra.ub.uni-muenchen.de/65231/1/MPRA_paper_65231.pdf.

Similarly, ensuring that participation is adequately resourced is crucial. Organising and managing participation can take both money and skills. These may not be available in abundance, and choosing to commit these to the creation of participatory mechanisms is a choice to be made. Where this is done without sufficient means, it is likely to become a tokenistic ('non-participatory') exercise.

Promote responsive representation

The third consideration is to promote responsive representation. Representation and participation are frequently seen as different processes. In truth, they are intimately linked. Public representatives can and should play a major role in bringing citizens into governance processes. However, the extent to which they do so will likely follow the extent to which the representative systems incentivise it. Political parties have an important role to play in encouraging and facilitating participation, but their representative potential is not sufficient for society as a whole.

The cause of participation is best served by a system that formally links representatives to defined groups of citizens. This makes their interactions with ordinary people (and not just with those engaged through party structures) an intrinsic part of their work. Thus, the South African system of party-based proportional representation and the assignment of constituencies with no statutory recognition provide a weak basis for participation – and has been a controversial subject since the 1990s. It would be far better to revisit proposals for multi-member geographical constituencies.[52]

Optimise technology

The fourth consideration is to use technology in an optimal manner. Rapidly advancing and expanding information technology holds enormous potential for facilitating and mediating public participation – particularly in overcoming the limitations of time and distance – and is a major resource for gathering opinions. Provided it is accessible and well managed, the possibilities it offers in this field are both extensive and exciting. In this regard the technological infrastructure – both hardware and software – must be continually maintained, and citizens' inputs must be received and acted upon.

Educate citizens in public participation

The fifth consideration is to educate citizens in public participation. This is a multi-faceted task, combining the ideological with the practical. Explaining to citizens the importance, and perhaps even the civic duty, of participating in governance is one part of it. Communicating the opportunities for engagement and imparting the skills to do so is another.

52 See Electoral Task Team, *Report of the Electoral Task Team*, Cape Town, 2003, http://www.sahistory.org.za/archive/van-zyl-slabbert-commission-report-electoral-reform-january-2003.

Understand the constraints

The sixth consideration, closely tied to the fifth, is to understand the possible constraints. As has been indicated, these processes allow citizens to be engaged with governance, but do not promise them a desired outcome. Professor Piper defines a best case scenario for public participation as 'incremental change over a long period of time'.[53] Valuable though it is, public participation offers no guarantee of any specific outcome. Yet sometimes it is the process rather than the outcome that must be cherished.

Similarly, it is important to understand the difficulties that citizens encounter when entering governance processes. Challenges in relation to resources, time and the necessary skills to advocate effectively for their positions may discourage citizens from getting involved. Assistance from the authorities can make a difference in this respect, whether it is as elemental as ensuring transport to a public meeting, or more innovative, such as adopting new forms of petitioning.

IN CONCLUSION

Public participation is more than a citizen demand. Properly understood and implemented, it is a methodology for improved governance – especially as ever more countries devolve state power and democratic opportunities to subsidiary levels of the state. Posing both opportunities and challenges, decentralisation provides citizens with a number of possibilities for direct engagement in governance.

But how it all works in practice in any given context is uncertain. The broad strategies for public participation are well known and well understood, while the added potential of technology has opened up opportunities for unprecedented numbers of people to take part in such initiatives. Yet crafting a system and managing it such that it produces meaningful results are daunting tasks – particularly as they stretch beyond the technical dimensions of public participation into the political domain.

Perhaps more than anything, public participation requires a positive commitment from all stakeholders. From government, it requires a willingness to contemplate partnerships with civil society, to negotiate rather than prescribe, and to be prepared to revise its plans when there are well-founded arguments for alternatives. For citizens and their organisations, it means remaining engaged and being proactive, as well as appreciating the real complexities of governance. For each, it implies finding a measure of respect and trust in the other. Given the nature of politics this is unlikely to be an easy task. But the gains that robust public participation processes bring to governance and policymaking systems make it a necessary one.

53 Skype interview with Professor Laurence Piper, *op. cit*.

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