

**DRAFT SECTOR POLICY  
FOR  
THE SOUTH AFRICAN  
LEGISLATURES**

**July 2007**

## **FOREWORD**

Since the advent of democracy, the South African legislative sector has been focused on repealing unconstitutional laws, passing transformatory laws, building democratic and transparent legislatures responsive to the demands of the transformation agenda and overseeing the establishment on new institutions to promote democracy and human rights. In the second decade of democracy, the focus has shifted to the effective implementation of policies and laws and overseeing delivery on the ground.

The Speakers' Forum developed various institution-specific strategies aimed at implementing modalities in various critical areas of legislative business. These include strategies and frameworks aimed at improving the capacity of members and staff, development of national strategies for enhancing public participation, oversight practices and other processes within the legislative sector.

South Africa continues to battle against the effects of the past racial, gender and socio-economic inequalities. The Speakers' Forum has developed strategic frameworks aimed at effecting gender mainstreaming and addressing disability needs in the Legislatures. These frameworks will be adapted and implemented by all Legislatures.

Some of the initiatives mentioned above have been developed with the assistance of the European Union funded Legislature Support Programme (EULSP). The Speakers' Forum set up the Secretariat for the Speakers' Forum to implement and co-ordinate all its programmes and decisions. This will ensure that there is sustainability and co-ordination of the legislative sector is strengthened.

The South African Legislatures are involved in a number of international bodies as a sector. These exchanges are valued and offer an exchange of experiences. They broaden understanding of a range of matters resulting in enrichment of the content of work in the Legislatures.

The Speakers' Forum appreciates the assistance of the European Union and is looking forward to continuing this strategic partnership.

**B Mbete**

**Chairperson of the Speakers' Forum of South Africa**

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## 1. INTRODUCTION

This Sectoral Policy of the South African legislative sector is presented to the European Union delegation following a decision of the Speakers' Forum to renew and strengthen its strategic partnership with the European Union (EU). The intention is to continue developing the capacity of the legislative sector to efficiently and effectively execute its primary mandates in respect to the Constitution of the Republic of South Africa.

From 1996 until 2007 the European Union (EU) has been providing financial assistance to Parliament and Provincial Legislatures through two programmes namely the European Union Parliamentary Support Programme (EUPSP) and the European Union Legislature Support Programme (EULSP). These two programmes were specifically designed to supplement the efforts of the National Parliament and nine Provincial Legislatures. The current EULSP focused on these following result areas:

- Result Area 1- Law making systems and processes, policy development, assessment of implementation capacity, oversight and accountability improved
- Result Area 2: Public participation in decision-making enhanced and education in democracy developed
- Result Area 3: Improved equality on gender and disability in the Legislatures
- Result Area 4: Skills in Legislatures improved
- Result Area 5: Enhance Information and Communication Technology in Legislatures

The Speakers' Forum agreed that there is a need for another programme to assist the legislative sector to build on the achievements of the previous two programmes, as well as the achievements of the ten institutions. There is, however, consensus that the funding models of the PSP and the LSP presented

challenges related to procurement. Consequently, an alternative design and approach to the new programme should be explored. The EU's Sector Policy Support Programme (SPSP) with Budget Support as its operating modality was found to offset many of the weaknesses of the Project Support used in the previous two programmes. Budget Support utilises the recipient's financial systems and procedures.

## **2. THE SOUTH AFRICAN LEGISLATIVE SECTOR**

This Chapter is written to demonstrate a clear constitutionally demarcated functional area of Parliament and the nine Provincial Legislatures. The work of these ten institutions is essentially similar and complementary. However, Parliament has more responsibilities of national competence. The National Council of Provinces is a unique house that weaves all ten institutions together into a people-centred network designed for a common ultimate purpose.

### **2.1 Common Constitutional Powers of the Sector**

The Constitution provides for a democratic system of government characterised by the principle of the separation of powers among the three arms of government – the executive, legislative and judiciary. The Parliament of South Africa and the nine Provincial Legislatures (“the Legislatures”) form part of the legislative arm of government at the national and provincial spheres respectively.

#### **2.1.1 Legislative Authority**

Section 43 of the Constitution provides that legislative authority of the national, provincial and local sphere of government is vested in Parliament [National Assembly (NA) and the National Council of Provinces (NCOP)], the Provincial Legislatures and Municipal Councils respectively.

In terms of Section 44 (1) (a), the NA the power to:

- amend the Constitution;
- pass legislation with regard to any matter within the functional areas of concurrent national and provincial legislative competence (Schedule 4 of the Constitution), but excluding, subject to subsection 2, a matter falling within the functional areas of exclusive provincial legislative competence (Schedule 5 of the Constitution); and
- assign any of its legislative powers, except the power to amend the Constitution, to any legislative body in another sphere of government.

In terms of Section 44 (1) (b), the national legislative authority vested in Parliament confers on the NCOP the power to:

- participate in amending the Constitution in accordance with Section 74;
- pass Ordinary Bills affecting the provinces (Section 76 of Constitution); and
- consider Ordinary Bills not affecting the provinces (Section 75 of the Constitution) passed by the National Assembly;

Parliament may intervene and pass legislation that falls within the functional areas of exclusive provincial legislative competence, only when it is necessary to:

- maintain national security;
- maintain economic unity;
- maintain essential national standards;
- establish minimum standards required for the rendering of services; or
- prevent unreasonable action taken by a province, which is prejudicial to the interests of another province or to the country as a whole.

The NCOP has the role of representing provinces by ensuring that provincial interests are taken into account in the national sphere of government. It consists of nine delegations of ten members from each of the Provincial Legislatures, six of whom are permanent members (for a five-year period) based at Parliament. Four are special delegates based in Provincial Legislatures and travel to

Parliament when necessary. Each delegation is headed by the Premier of a province or a person designated by the Premier.

In accordance with Section 42 (4) the NCOP represents the provinces to ensure that provincial interests are taken into account in the national legislative process. It does this mainly by participating in the national legislative process by providing a national forum for the public consideration of issues affecting the provinces. Local government can, through organised formations, participate in proceedings of the NCOP although they may not vote.

The national and provincial spheres of government have concurrent legislative competence in accordance with schedule 4 of the Constitution. In terms of section 155(6) (a) Provincial Legislatures have an obligation to provide for the monitoring and support of local government in their respective provinces; furthermore in terms of section 155 (7) the Legislatures have legislative and executive authority to see to the effective performance of municipalities in respect of those competencies. However, national government's authority is subject to section (44) (2).

### **2.1.2 Oversight Authority**

Section 55(2) of the Constitution requires the NA to provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it and to maintain oversight of the exercise of national executive authority, including the implementation of legislation and oversight over any organ of state. Similarly, in terms of section 114 (2), Provincial Legislatures must also provide for mechanisms for oversight. Provincial oversight authority is exercised in respect of areas of concurrent and exclusive provincial legislative competence.

In terms of sections 92(2) and 133(2) of the Constitution, members of Cabinet and Members of the Executive Councils are collectively and individually



accountable to Parliament and Provincial Legislatures respectively. Cabinet Ministers and the Members of the Executive Councils must act in accordance with the Constitution to provide Parliament and the Provincial Legislatures with full and regular reports concerning matters under their control.

The oversight role of the NCOP is indicated in sections 100, 92, 139, 125(4), 66(2), 203, and 201(3) of the Constitution.

### **2.1.3 Public Participation**

The Constitution makes similar provisions with regards to public participation in the NA, the NCOP and the Provincial Legislatures in sections 59, 72 and 118 respectively. It provides for facilitation of public involvement in the legislative and other processes of the Legislatures and their committees. The respective Houses or Committees must conduct their business in an open manner. Reasonable measures may be taken:

- i) to regulate public access, including access of the media, to the House and committees; and
- ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

The NA, NCOP and Provincial Legislatures may only exclude the public, including the media, from a sitting of a committee where it is reasonable and justifiable to do so in an open and democratic society.

## **2.2 Co-operation of the Legislatures**

The Constitution created legislative bodies that are independent, but are also interrelated and interdependent. In discharging their constitutional mandates, all organs of state within each sphere of government must advance the principles of

co-operative governance. Therefore, the Legislatures may co-operate with each other in mutual trust and good faith.

Parliament and the nine Provincial Legislatures (the Legislatures) co-operate and engage in a number of structures on a co-ordinated basis. The following political and administrative forums have been established:

### **2.2.1 The Speakers' Forum of South Africa (SFSA)**

Speakers' Forum of South Africa (SFSA) is a voluntary association that has full capacity as a separate legal person distinct from its members. It is composed of Speaker and Deputy Speaker of the NA, Chairperson and the Deputy Chairperson of the NCOP and Speakers and Deputy Speakers of all nine Provincial Legislatures.

The SFSA is chaired by the Speaker of the NA supported by the Secretariat of the Speakers' Forum. The main objectives of the Speakers' Forum are to:

- a) develop a common understanding from shared experience from which a legislative sector evolves;
- b) co-ordinate work in areas of common interest;
- c) manage and develop sector-wide programmes

A Memorandum of Understanding (MoU) has been presented and discussed which, when adopted, will form the basis of formalisation of the SFSA as a body that will take decisions that are binding on its members. Membership of the MoU-based Speaker's Forum will be voluntary.

The SFSA has, over the years, embarked on a number of joint programmes which they jointly identified as priority challenges in the sector. The aim has always been to develop policy guidelines and operational frameworks for the individual legislatures. Sectoral framework documents were developed on public

participation, gender, disability and discussions are underway towards developing an oversight model.

The SFSA has, with the Speaker of the National Assembly being the contracting authority, been overseeing the management and co-ordination of EC donor-funded programmes (LSP and PSP) for the past ten years. The ongoing management of these programmes was effected through a Programme Steering Committee, nominated by and reporting to the SFSA.

### **2.2.2 The South African Legislatures' Secretaries' Association (SALSA)**

The South African Legislatures' Secretaries' Association was established as a information-sharing association of Secretaries only, but was later extended to include Deputy Secretaries or persons in similar positions. The scope and nature of its activities changed from a mere information-sharing mechanism to proactively searching for best practice in the running of the administration in the Legislatures, providing technical input and support to the Speakers' Forum of South Africa and making recommendations to the Speakers' Forum on matters of common interest and sector-wide programmes. SALSA also liaises and co-ordinates involvement of Secretaries and Deputies in their interaction with other institutions and organisations at provincial, national and international levels.

SALSA works with various fora (composed of employees of the Legislatures) in the different functional areas to facilitate the work of the Legislatures. The Fora meet on a regular basis to share information, knowledge and experience, arrange inter-legislature visits, and share best practices as well as to carry out specific projects and assignments allocated to them by the SFSA and SALSA and other identified topics on their own initiative. The following Fora have been established:

- a) The Legal Advisors' Forum
- b) The Human Resource Management Practitioners' Forum
- c) The Public Participation and Communication Forum

- d) The Knowledge Management Forum
- e) The Information Systems Forum
- f) The Table Staff Forum
- g) The Finance Forum
- h) The Committee's Forum

### **3. PARTICIPATION IN INTERNATIONAL FORA**

A sectoral policy for the Legislatures should be informed by the reality that South Africa has become a member of the international legislative community albeit a relatively small one. It is informed by increasing regionalisation in world politics and the increasing importance of multilateralism in world affairs and the consequent national drive to expand our participation in regional, continental and global multilateral organisations.

The legislative sector has to perform its role in the international arena in line with its constitutional responsibilities. In the normal interactions with counterparts the sector influences its counterparts just as much as they are influenced. The South African Legislatures' policy perspectives are conveyed and factored into foreign policies as the sector engages with other countries.

Parliament and Legislatures therefore participate in unison in international engagements led by Parliament. The Legislatures recognise that the South African delegation with representatives of all Legislatures is one delegation from a unitary country. Its engagements at international level are co-ordinated with a view to collectively identifying a niche to determine participation strategies and administrative arrangements.

## **3.2 Participation in the Region**

### **3.2.1 Southern African Development Community Parliamentary Forum (SADCPF)**

The SADCPF is an autonomous institution of the South African Development Community. It is a regional inter-parliamentary body composed of thirteen national parliaments. The objectives of the Forum include the promotion of regional integration and harmonisation of policy on multiparty democracy, good governance, gender equality and political stability in the region as well as respect of the rule of law, human rights and fundamental freedoms. Current members are Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe and the Democratic Republic of Congo.

## **3.2 Participation in the Continent**

### **3.2.1 Commonwealth Parliamentary Association (CPA) - Africa Region**

The Commonwealth Parliamentary Association (CPA) - Africa Region is the regional chapter of the CPA. All South African Legislatures are members of the Association. South Africa has hosted two Commonwealth Africa Region Conferences. South Africa holds the position of Deputy Chairperson of the Association since 2006 and now holds the position of Chairperson until 2008 when the next conference is held in Zambia.

The objectives of the CPA will be dealt with under 3.3.2 CPA International.

### 3.2.3 Pan-African Parliament

The Pan-African Parliament (PAP) was established in March 2004, by Article 17 of the Constitutive Act of the African Union. The Constitutive Act provides for many more organs. A protocol document for the PAP was developed noting that the stated <sup>1</sup>objectives of the Pan-African parliament are to:

- facilitate the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, of the African Union;
- promote the principles of human rights and democracy in Africa;
- encourage good governance, transparency and accountability in Member States;
- familiarize the peoples of Africa with the objectives and policies aimed at integrating the African continent within the framework of the establishment of the African Union;
- promote peace, security and stability;
- contribute to a more prosperous future for the people of Africa by promoting collective self-reliance and economic recovery;
- facilitate cooperation and development in Africa
- strengthen Continental solidarity and build a sense of common destiny among the peoples of Africa; and
- facilitate cooperation among Regional Economic Communities and their Parliamentary fora

The PAP is based in Johannesburg, South Africa. The South African Legislatures were instrumental in setting up the PAP by seconding personnel and assisting with set-up of systems and processes. Currently, South Africa is one of the main contributors to the financial sustenance of the PAP.

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<sup>1</sup> [www.pan-african-parliament.org](http://www.pan-african-parliament.org)

### **3.3. Participation in Global Bodies**

#### **3.3.1 Commonwealth Parliamentary Association (CPA) – International**

The Commonwealth Parliamentary Association is an organisation that exists to promote knowledge of constitutional, legislative, economic, social and cultural aspects of parliamentary democracy throughout the commonwealth and the rest of the world. It also works to support good governance, democracy and human rights.

The South African Legislatures are members of the CPA. The South African delegation is part of the Southern African sub-region and co-ordinates its participation in this organisation with delegations of countries in the sub-region. A member of a South African Legislature has held the position of Chairperson of the Commonwealth Women Parliamentarians for over five years.

The PAP is based in Johannesburg, South Africa. The South African Legislatures were instrumental in setting up the PAP by seconding personnel and assisted with setting up systems and processes. Currently, South Africa is one of the main contributors to the financial sustenance of the PAP.

#### **3.3.2 African Caribbean Pacific - European Union Parliamentary Assembly**

The ACP-EU Joint Parliamentary Assembly was created out of a common desire to bring together the elected representatives of the European Community, the Members of the European Parliament and the elected representatives of the African, Caribbean and Pacific states ("ACP countries"). These countries have signed the Cotonou Agreement to sit together regularly with the aim of promoting the interdependence of North and South. South Africa could play a much more strategic role in this Assembly.

### **3.3.3 Inter-Parliamentary Union (IPU)**

The Parliament of South Africa is one of more than hundred and forty national parliaments that are members of the IPU. The IPU promotes democracy and inter-parliamentary dialogue. It is the focal point for world-wide parliamentary dialogue and works for peace and co-operation among peoples and for the firm establishment of representative democracy.

It does this by fostering contacts, co-ordination, and the exchange of experience among parliaments and parliamentarians of all countries. It also considers questions of international interest and expresses its views on such issues in order to bring about action by parliaments and parliamentarians.

The IPU supports the efforts of the United Nations, whose objectives it shares, and works in close co-operation with it. It also co-operates with regional inter-parliamentary organisations, as well as with international intergovernmental and non-governmental organizations, which are motivated by the same ideals.

The Parliament of South Africa will host the meeting of the Inter-Parliamentary Union in Cape Town in April 2008. The gathering is expected to be attended by between 1300-1500 parliamentarians.

## **4. POLICY PRIORITIES**

### **4.1 Nation Building**

The South African legislative sector recognises that, having just emerged from a divided past based on racial and gender inequality and oppression of the majority of the population and being a country of diverse cultures, religions, political persuasions and differences in social conditions among its people, the Legislatures are, by their very nature, nation building institutions.

The Legislatures stand in the place of violent conflict among these various forces in the inevitable contestation for space to exist and power to control the scarce



national resources. It is the democratic process by which such contestation is managed. Through the people the Legislatures represent, they have the power to elect a government, allocate resources to it and oversee the government's performance of the delegated task of directing the resources, developing and implementing policies to which all South Africans (in their diversity) are subject.

The Legislatures must therefore provide a meaningful platform for representation of this plurality and must exercise their constitutional powers to ensure that government is responsive thereto.

The legislative sector is the arena for discourse on the evolution of the South African society. All significant role players (be it the media, academia, commentators, etc) in the development of ideas that shape opinion in the South African society must be mobilised to converge at the Legislatures, either to find space to express their views or to listen to the views of others. The Legislatures are established in the psyche of the South African population as institutions where free contestation should occur, limited only by democratic principles. Without compromising the traditional structures and methodologies through which the Legislatures carry out their constitutional mandate in an effective and orderly manner, the Legislatures should project themselves as a platform for policy development. The environment in the Legislatures should allow constant rigorous discussion and debate not only by members and a few resourced institutions, but also by the large number of ordinary people that the Legislatures represent, and whose views should be carried into policies and laws. It is important that the number of voices as well as the number and diversity of views expressed in the Legislatures' processes must increase significantly. This is a task beyond merely securing more public participation on Bills and other matters before the Legislature. It is about deepening substantive debate beyond what is on the Order Paper, with a view to sharing, exploring and shaping ideas about a future South Africa in an inclusive movement.

#### **4.1.1 Strategies for Nation Building**

This involvement (mentioned above) should be realised not only through increased and intensified official parliamentary debates but also through deliberative forums and other initiatives such as conferences, workshops, symposia, seminars etc on policy and other matters of public interest. The Legislatures should engage academic and institutions involved in research including those involved in specific areas that the legislative sector would be interested in exploring on a once off or regular bases. These institutions can be local and international, such as the Commonwealth Parliamentary Association, United Nations, institutions supporting democracy, the Human Sciences Research Council, universities, business, etc.

The sector will also take deliberate action to emphasise the nation-building role of the Legislatures in the conscience of members, employees, stakeholders and civil society. Specific programmes aimed at identifying and promoting the development of a coherent South African nation will be developed. The existing Parliamentary Millennium Project is an example of one such initiative. The People's Assembly and the sectoral parliaments also contribute towards this endeavour.

#### **4.2 Building a Strong Legislature**

While South Africa is largely regarded as a successful democracy in Africa, there is a constant need to strengthen the Legislatures so that they continue to be the backbone of the successful representative democracy.

The South African Constitution provides for separation of powers among the three arms of state as in many countries. The concept of separation of powers in any country is only meaningful to the extent that it is respected and observed in practice. Although there is respect for the constitutional responsibilities delimited to the Legislatures, there is a need for the sector to fortify its domain and to

continuously assert itself against potential or actual threats to its independence. This should be done with due regard to the interdependence and interrelationship between the various arms in the interest of sustaining democracy.

The extent to which there is success in building democracy will also depend on strong Legislatures that have more equal and independent relationships with executive and the judiciary. South Africa must always take a long-term view of the practical configuration of the balance of power among the three centres of power. Good governance and the realisation of development goals depends on Legislatures that are strong and successful in playing an effective oversight role and in effectively <sup>2</sup>“identifying the needs of the people, articulating their experiences and views and thus determining the national political agenda”.

It is the policy of the Legislatures to continuously seek to revitalise and reaffirm the role of the Legislature by identifying, so as to prevent, any tendencies to fuse or collapse into each other, processes of the executive, the legislature and the judiciary.

In many parliamentary systems there is a tendency for the internal workings of Legislatures to be subordinated to the requirements of the governments including executive members taking over even the internal arrangements of the Legislatures’ business and resource strangulation of the Legislature.

The Legislatures’ law-making power alone means that it takes decisions that have fundamental effects on the lives of the people. It is therefore critical that the general population not only knows about the legislature, but also understands, trusts and attaches significance to it and its processes. It should always be borne in mind that apart from the formal and constitutional role the Legislatures play, it also has far-reaching symbolic significance that contribute to and should be nurtured in the interest of societal coherence.

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<sup>2</sup> Good Governance needs and effective Parliament – Firoz Cachalia (Former Speaker and Former Leader of Government Business , Gauteng Provincial Legislature)

The executive, in its response to the Legislature's requirement for it to account when declaring the national order of precedence must respect the Legislature. The judiciary, when it adjudicates on constitutionality of laws, must respect and take due cognisance of this role.

The legislative sector will constantly evaluate and review itself as to its effectiveness in keeping the government in check and in representing the needs and aspirations of the people as well as the adequacy and relevance of its systems and modus operandi. The project that was initiated to evaluate the impact of equality legislation by Parliament (marking the centenary of the adoption of the South African Constitution) is an example of an evaluation exercise. More programmes of this nature will be conceptualised.

### **4.3 Developing Parliamentary Democracy**

Participatory democracy is critical for the realisation of the Millennium Development Goals. The South African legislative sector sees a role for itself in the promotion of democracy, especially parliamentary democracy in this country, in the region, the continent and in the world. Parliamentary representative Democracy is critical to the existence of peace, security, public welfare and economic growth. These are phenomena that cannot be taken for granted.

Although Africa has made some progress in recent years in terms of moving towards democratic rule and regular elections, many of the underlying causes of the weakness of democracy in the region are still prevalent. It is therefore in South Africa's own interest and in the interests of the people of the continent that the country takes part in all efforts aimed at consolidating and promoting parliamentary democracy in the region.

The South African legislative sector must however ensure that the advent of democracy does not end only with the creation of political institutions and processes based on principles of democratic control over public decisions, but moves forward in delivering progress in the lives of people.

#### **4.3.1 Strategies for deepening Parliamentary Democracy**

The South African Legislatures' participation in international parliamentary organisations such as the Inter-Parliamentary Union (IPU), the Commonwealth Parliamentary Association (CPA), and African Caribbean Pacific (ACPEU) is guided by the appreciation that the security South African democracy is inextricably linked to the prosperity of democracy in the region and in the world.

South African Legislatures' involvement in parliamentary election observer missions in Africa and other parts of the world should also be seen in this context. It is envisaged that this involvement be extended to include support to other countries in terms of voter education and other processes connected to running effective democratic elections.

#### **4.4 Developing Representative Democracy**

South Africa's choice of proportional representation is a deliberate strategy to allow the representation of as many views as possible in the Legislatures. It supports South Africa's nation building effort referred to above. It is critical that the sector sees political parties as a critical element of representative democracy. Political parties are the key intermediaries between state and society, which articulate and advocate public views and preferences in South Africa's proportional representative system. They are also the main mechanism for citizen representation in the Legislatures and generate the necessary interest in politics and present the plurality of ideas needed to sustain a robust system of parliamentary representation. Political parties are also training institutions for

future leadership of the country in addition to other formal training that representatives receive. It is for this reason that the Legislatures make budgets available to political party caucuses in the institutions to pay for their party support staff and related expenses.

The development of strong constituencies and awareness of constituency work by the electorate goes a long way towards ensuring the effective performance of this key aspect of parliamentary work by members and those who support them. In an environment of a proportional representation system, it is challenging to establish a system of constituency service, especially from the point of view of the electorate. However political parties allocate members to specific constituencies and constituencies are not only in geographic areas.

The Legislatures synchronise their programmes such that constituency and leave periods in all ten institutions are at the same times. This ensures political parties operate in a manner that does not interfere with their attendance to the House or its committees and can attend congresses and other political activities that involve large numbers of members. The Legislatures make transfers of funds to political parties to specifically set up and maintain constituency offices. Developing a strong culture of representation of constituencies entails development of capacity for political representation of all categories of the population, specific sectors, such as business, the religious sector, labour etc. It should be borne in mind in the Legislatures' efforts to improve the sector's ability to effectively perform constituency work. It is to this end, also critical that obstacles faced by women, youth, people with disabilities, rural people in their participation in politics are identified and challenged by the sector itself. These are found in prevailing social and economic regimes, as well as in existing political structures. The work of an individual member is further complicated by the increasing policy workload and the highly technical nature of policy and legislation which in a predominantly rural and poor country may negatively

influence a member's ability to make a substantive influence on policy development or to scrutinise the executive effectively.

#### **4.4.1 Strategies for developing Representative Democracy**

The Legislatures must take keen interest in the sustenance and strengthening of political parties by mobilising resources to enable the parties to do their work successfully, especially the development of their own capacity to generate policy alternatives. The sector must review the effectiveness of the current extent and modalities of provision of political party support, as it should regularly.

The Legislatures must also conduct assessment of the role they play in developing representative democracy as well as arrangements in respect of the service of constituencies in the country. This involves examining the strategies for development of members and constituency office personnel in conducting constituency work as well as ensuring that constituency offices are well resourced to meet their challenges, especially in South Africa and the rest of the continent.

The sector should provide resources to individual members that enable them to cope with the load and technicality of work they face. Minimum standards should be set across all ten institutions as to the basic level of support to be provided to a member. This work has already begun and should be completed.

#### **4.5 Specific Constitutional Mandates**

The Constitutional mandate of the Legislatures has been dealt with under item 2.1.1 of this document. A substantial part of the policy for this sector will obviously derive from the Constitution. This section presents all constitutional powers and functions of Parliament on the one hand, and those of the Legislatures on the other hand, as well as specific powers and duties of the

Provincial Legislatures. The idea is to state these as well as point out some strategies in respect of some issues connected thereto.

#### **4.5.1 Oversight and Accountability**

##### **4.5.1.1 Oversight Context and Principles**

As stated above, in terms of the Constitution, the Legislatures must provide mechanisms to ensure the executive accountability and to maintain oversight of the exercise of executive authority, including the implementation of legislation.

There are several bodies that, in terms of Chapter 9 of the Constitution, support democracy and therefore have specific oversight mandates. These are the South African Human Rights Commission, the Commission for Gender Equality, the Auditor General, the Public Protector, the Commission for Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Electoral Commission, which are accountable to and required to report to the NA.

The Legislatures' oversight function involves holding the executive accountable for its actions. To ensure that this is done effectively, the Legislatures have the power to summon any person to appear before it, or require any person or institution to report to it.

Oversight entails the informal and formal, watchful, strategic and structured scrutiny in respect of the implementation of laws, the use of the budget, the strict observance of statutes and the Constitution, and the effective management of departments by each member of Cabinet or member of the Executive Council in pursuit of improved service delivery for the achievement of a better quality of life for all citizens whilst taking cognizance of separation of powers and co-operative governance as required by the Constitution.



In exercising oversight the Legislatures are informed by the following principles:

- A Legislature that is responsive to the needs of the people and improving the quality of life for all;
- A Legislature that is driven by the ideal of realising a better quality of life for all the people of South Africa.

#### **4.5.1.2 Challenges**

The challenges faced by the Legislatures in conducting its oversight functions are:

- The administrative capacity to assist committees and members.
- The limited number of members, more specifically in Provincial Legislatures, which requires that individual members have to belong to a number of committees.
- The unwillingness of Ministers and Members of the Executive Council to subject themselves to account to committees the Legislatures.
- The limited funding available to the legislative sector to enhance capacity.

#### **4.5.1.3 Strategic Interventions**

In pursuit of the oversight objectives, the Legislatures will determine oversight goals for five years to coincide with the term of the government. The setting of long-term oversight goals will assist the legislative sector to monitor government delivery in terms of long-term commitments, instead of focusing exclusively on annual commitments, annual planning and performance assessments. The national government and the provincial governments have developed national and provincial growth and development strategies. The role of the Legislatures in this respect is to monitor the implementation of the growth and development strategies.

The South African legislative sector continuously seeks ways of improving its ability to gather, process and use information in the pursuit of the oversight responsibility. It is therefore critical that the Legislatures build the capacity to conduct their own research and are able to gather sufficient information that enables them to independently identify informed policy and strategy choices other than only working on the basis of what is presented by the Executive.

The sector should also build the capacity to continuously conduct its own analysis of the myriad of information presented to it from all quarters in order to make incisive independent observations and decisions. The Legislatures will provide government with meaningful feedback (constructive criticism where necessary) and input in the governance and service delivery processes to improve quality, lest it becomes a simple process obstacle that ministers and bureaucrats routinely go through without expecting much engagement and value-adding.

Special attention will be given to strengthening Legislatures' oversight capacity over sensitive areas such as defence and intelligence.

The South African legislative sector, in keeping with the national principle of creating an open and transparent society, integrates public participation in the oversight processes. This ensures that the public is informed about and influences policy implementation.

All these require training and development of members of the Legislatures to effectively carry out the oversight function. The sector needs to develop a training and development system that continually ensures that core groups of members specialise in various disciplines from one parliamentary term to another.

The Legislatures also needs to develop critical partnerships with civil society, academia, industry, etc to ensure that we have access to high level expertise desired to support in-depth engagement with technical subjects.

The sector requires sophisticated information management systems that will allow for effective document management, content management, access to on-line information, resources, and to enhance and strengthen information-sharing and dissemination, etc.

## **4.5.2 Law-making**

### **4.5.2.1 Background**

Between 1994 and 2004 there was a sustained focus on repealing discriminatory legislation and laying the foundations for a democratic and open society based on the new Constitution and laws of the new order. Over 700 transformatory laws were passed in the first decade. The focus of Parliament has since shifted to its oversight function to ensure the ideal of realising a better quality of life for all the people of South Africa.

The Constitutional basis and framework for the legislative authority of the Legislatures is dealt with under 4.5 above.

Much of the focus of Parliament in the first decade of democracy was on ensuring the transformation of South Africa's legislative landscape in line with the Constitution. There is, however, still work to be done in terms of legislation, especially at provincial level. South Africa's transformation still continues and there is even more legislation that must be examined for possible conflicts with the Constitution.

#### **4.5.2.2 Challenges**

While law-making was the predominant activity at a national level, there has not been an even and concerted effort on changing the policy framework with regard to matters within the area of exclusive and some concurrent areas of national and provincial legislative competence. There is still the challenge of replacing any of the old order ordinances and by-laws with transformative laws that take into account the many interests represented among provincial constituencies and local communities. Provincial Legislatures have generally produced very few and mostly mandatory legislation.

There is not sufficient capacity to develop legislation among members and employees in the sector, especially at a provincial level. Questions are also being asked about the quality of legislation being generated.

Drafting legislation and regulations is principally about drafting policy into legal language, the small number of provincial laws point to lack of policy development capacity at a provincial level. A poor grasp of policy-making at provincial level has contributed to the poor quality of the legislation that is passed as this is largely dependent on the quality of the instructions received by the drafter from the sponsoring department.

#### **4.5.2.3 Strategic Interventions**

Even though Provincial Legislatures would have to pay attention to the considerable legislative gaps in the provinces, the primary focus of the sector in the coming period would be largely on oversight of the implementation of legislation and the creation of awareness of the new rights conferred and opportunities presented by the laws that were passed by the Legislatures.

The Legislatures would over time conduct assessments of the impact of certain legislation and produce reports thereon for further policy development or improvement of implementation.

A sector-wide programme of development of policy-making and legislative drafting capacity would be embarked on to empower members and functionaries on ways to improve the definition of problem areas that require legislative intervention and to improve the quality of legislation.

The Legislatures would review and confirm the appropriateness of its rules and practice in connection with the legislative process in order to ensure that it is streamlined and effective.

### **4.5.3 Public participation**

#### **4.5.3.1 Background**

When South Africa's first democratic Parliament was elected in 1994, it faced the enormous, and often daunting, challenge of transforming the way in which the country's elected leaders fulfilled their contract with those who had elected them to power. The challenge was to transform Parliament from an unrepresentative and largely executive dominated institution into a vibrant centre for dialogue between the people of South Africa and their elected representatives. Democracy requires that those who are elected make policy and laws on behalf of the people fulfil their mandate in continuous consultation and dialogue with the citizens on whose behalf they act.

In South Africa, the gap between those with the resources to influence government and those whose influence (for historical reasons) is limited by poverty is deep and wide. Thus there is a very real danger that, while the voices of the powerful may be heard, the majority remain imprisoned in the silence to which their history and circumstances have condemned them.

This means there must be an effort to reach into the rural areas and access the views of the poor and particularly women. The Legislatures must find ways to open the doors of their institutions to those who may struggle to enter because of

disability, age or poverty so that they may speak frankly and openly about the issues that concern them.

Improving public participation in the legislative activities of this country would serve as an impetus to empowering those affected by poverty to influence the policy agenda and its implementation.

Since 1994 Parliament has devised a number of mechanisms to facilitate public involvement in law-making. These include public access to committee meetings and plenaries, notice of new bills in parliamentary papers and newspapers and invitations for written and oral comments, all of which aim to broaden the legislation process.

From 2004, the focus of the legislative sector started to shift toward increased and non-conventional public participation initiatives. Parliament and Legislatures started with initiatives to “Take Parliament/the Legislature to the People”, holding of Sittings and Committee meetings outside the normal precinct of the institutions and holding sectoral mock parliaments - the biggest of these events so far being the People’s Assembly.

Since 2005 People's Assemblies have been held where thousands of people gathered to speak directly to members of Parliament on various issues around a specific theme. Similar events take place in provinces (organized by Provincial Legislatures) and are linked to the main event via satellite. The discussions are transcribed, reports produced, debated in Parliament and communicated to the Executive. Follow-up activities are being planned.

Parliament has started establishing Parliamentary Democracy Offices (PDO) in all provinces. The purpose is:

- to increase the points of contact where people can access Parliament and inform its work and direction;

- to create an immediate parliamentary presence in the provinces; and
- to ensure a greater level of efficiency in accessing communities and providing ground support for parliamentary programmes.

These Parliamentary Democracy Offices will be established in all nine provinces and they will eventually be supported by a fleet of mobile offices that will be equipped to take Parliament even further into rural areas. Some Legislatures are also establishing regional offices in order to achieve the same purpose.

The SFSA agreed on the need for the sector to develop a national strategic framework for public participation. The framework was adopted at a national summit that was attended by people representing civil society organisations, and the parliamentarians. The idea was to set out the minimum institutional arrangements and strategies to guide the collective and individual efforts of the Legislatures in carrying out the public education and participation work.

Other public education and participation activities in the Legislatures range from tours of precincts, calls for oral and written submissions on matters on the agenda of committees, petitions, meetings with specific stakeholders or communities, educational workshops on the workings of the Legislatures, Women’s Parliament, Youth Parliament, etc.

#### **4.5.3.2 Challenges**

The key challenge facing the sector is to inspire public confidence and maximize participation while taking into consideration the disparities in wealth and access to resources which South Africans face.

<sup>3</sup>The following are some of the specific challenges:

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1. <sup>3</sup> Centre for Public Participation, 2006, “*National Strategy for Public Participation*”

- The lack of technological infrastructure and access to information technology by most of our people limits their ability to access information at the disposal of the Legislature as much as it limits the Legislature's distribution of information.
- A large number of people are illiterate which means that the Legislature has a further limitation in terms of using print material to reach ordinary people. This means that other means of communication, (predominantly direct communication methods) must be used.
- South Africa has eleven official languages and a few other languages spoken by some sections of the population. It is difficult for the Legislatures, given scarce financial resources, to produce material in languages spoken in specific communities as well as in Braille.
- The levels of poverty in the country means that the Legislatures must provide transport to some of our public education and participation events or even to the precincts to make their input. Once again, the limited financial resources prevent the sector from embarking on this on a consistent basis.

#### **4.5.3.3 Strategic Interventions**

The Legislatures must invest in information technologies that will facilitate the ability to reach the greatest number of people in terms of information provision and interaction in law-making and oversight. Specific consideration is being given to the use of television to improve our reach to the people.



It is also important that the sector focuses on creating awareness on the part of the voter about the laws that were passed and the rights and benefits that are vested on them by these laws.

Political parties in and out of the Legislatures are important conduits for the mobilisation of citizen interest in politics and specifically in the work of the Legislatures.

#### **4.5.4 Power to Remove President or Cabinet from Office**

The Constitution provides in sections 89 and 130 that the National Assembly and Provincial Legislatures respectively by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President or Premier from office only on the grounds of:

- a. a serious violation of the Constitution or the law;
- b. serious misconduct; or
- c. inability to perform the functions of office.

It further prevents anyone who has been removed from the office of President or Premier in this manner from receiving any benefits of that office, and serving in any public office.

The NA, being the house from which a president is elected, has the very important power to ensure that a person only remains in that office for as long as the representatives of the people are satisfied that her or his conduct is consistent with the constitution and the law and that he or she is a credible person whose conduct is beyond reproach.

The Constitution further provides in sections 102 and 141 respectively that if the Legislatures, by a vote supported by a majority of members, passes a motion of no confidence in the Cabinet or Executive Council excluding the President or Premier, the President or Premier must reconstitute the Cabinet or Executive

Council, and if the motion of no confidence is in the President or Premier, the President or Premier and the other members of the Cabinet or Executive Council and any Deputy Ministers must resign.

While these are not powers to be invoked lightly, the notion that the Legislatures lack the power of sanction when it comes to non-compliance with their decisions is clearly incorrect.

#### **4.5.5 Power to Remove Judges**

As indicated earlier, the Constitution provides for separation of powers and checks and balances. Although it is recognised that judges must be subject to some oversight, there is a competing and more important need to preserve public confidence in the judiciary. Respect for the principle of judicial independence requires that the basis on which a member of the judiciary can be removed from office be clearly stated and carefully regulated. The interference of the Legislature with the judiciary begins and ends with the appointment of a judicial officer, and only occurs again in the rare instance of a parliamentary vote to remove a judge from office.

In keeping with this principle, the constitution provides as follows:

- 1) A judge may be removed from office only if:
  - a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
  - b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members.
- 2) The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.
- 3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of a procedure in terms of subsection (1).

It is interesting to note that a higher majority vote is required in order to make it a lot less easy for the legislature to implement this.

#### **4.5.6 Political Control of Armed Forces**

Command of the South African National Defence Force is vested with the President of the Republic. His or her powers are however subject to parliamentary review where he or she deploys the armed forces. Section 201 of the Constitution requires the President to promptly inform Parliament in detail as to:

- a) the reasons for the employment of the defence force;
- b) any place where the force is being employed;
- c) the number of people involved; and
- d) the period for which the force is expected to be employed.

Where the defence force is deployed during a state of national defence, the President must include the reasons for the declaration. If Parliament is not sitting when a state of national defence is declared, the President must summon Parliament to an extraordinary sitting within seven days of the declaration. A declaration of a state of national defence lapses unless it is approved by Parliament within seven days of the declaration.

It is Parliament's goal to ensure that civilian views find expression in the nation's security policy and action. It is therefore important that the oversight function of Parliament over the defence portfolio is constantly reviewed so that it can be improved. Of critical importance is reasonable access to information held by the defence force as well as access to their facilities by members of Parliament.

Parliament is mindful of the role that the South African Defence Force played in the region in the past and stands vigilant to ensure that we contribute towards

peace, stability, democracy and the general creation of conditions conducive to human development. Parliament is also aware of the changing environment in which the South African National Defence Force is operating given South Africa's new role in the new dispensation in terms of peace-keeping responsibilities, especially in Africa.

#### **4.5.7 Control of Treasury's Decision to Stop Funds to a Province**

National and Provincial Treasuries have been created to manage state monies in the national and provincial revenue funds. Treasuries must introduce generally recognised accounting practice, uniform expenditure classifications and uniform treasury norms and standards in each sphere of government. The Public Finance Management Act, 1999 (Act 1 of 1999) was passed to expand on the constitutional stipulations aimed at proper financial management in the country.

Where there has been failure to comply with established control measures or where an organ of state commits a serious or persistent material breach of those measures the National Treasury may stop the transfer of funds to an organ of state for up to 120 days. Although the decision to stop the transfer of funds may be enforced immediately, it will lapse retrospectively unless Parliament approves it following a process substantially the same as that established in terms of section 76(1) (involving provinces through the NCOP) and prescribed by the joint rules and orders of Parliament. This process must be completed within 30 days of the decision by the National Treasury. Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time after the Auditor General has considered the case and reported to Parliament and the province has been given an opportunity to answer the allegations against it, and to state its case, before a committee.

Section 139 of the Constitution that empowers a provincial government to intervene in the running of a municipality by issuing directives or taking control of the municipality when the municipality fails to fulfil its executive obligation

requires such Executive Council to submit a written notice of such an intervention to the relevant Legislature and the National Council of Provinces.

These provisions are obviously meant to control the power that one sphere of government may exercise over another with far-reaching consequences. The idea is to give meaning to the notion of co-operative governance which requires the various spheres to respect one another's integrity and not encroach on one another's territory.

#### **4.5.8 Ratification of International Agreements**

The negotiating and signing of all international agreements is the responsibility of the national executive.

Section 231 of the South African Constitution makes an international agreement binding on the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession. An agreement that does not require the approval of the National Assembly and the National Council of Provinces must still be tabled in the NA and the NCOP within a reasonable time.

Since these agreements form part of our domestic law, they should therefore, as it is the case with all bills, be subjected to the same level of scrutiny. Therefore it is important that the State Law Advisors give their opinion as to whether it is an agreement in terms of section 231(2) or 231(3) of the Constitution, 1996, and whether the agreement is consistent with the Constitution and other law of our country. An opinion of the State Law Advisor (International Law) of the Department of Foreign Affairs is also required as to whether the agreement is consistent with the international obligations of the Republic and with international law. This information forms part of the documents presented for tabling at Parliament.

The challenge that Parliament faces is to build the necessary capacity among a greater number of members to interact with international agreements in order to ensure that they are in the best interest of South Africa taking all the relevant factors into account including the role that South Africa should play in its relations with other nations while pursuing its interests internationally.

The role played by Parliament in the ratification process needs to be probed further to determine whether it is enough for Parliament to be only involved in considering an international agreement when it is a finished product. The question is whether members of Parliament should not take interest during the negotiations and influence the basis on which the negotiations are being conducted. This is an important matter for elected representatives to apply themselves in moving forward.

#### **4.6 Building a Strong Parliamentary Support Service**

A condition for the success of all the above is the existence of a strong administration to effectively support the attainment of the objectives stated in this document. A key ingredient to the building of a strong parliamentary support service is a sound funding model. The current funding system is characterised by domination by the Treasury, which always has the potential to compromise the autonomy of the Legislatures in terms of determination of its own budget and controlling spending. The Legislatures should develop a corps of competent and professional support staff to enable the sector to meet its constitutional functions, but also do so with the highest possible skill and expertise.

A Legislature is an information and communication intensive institution. It therefore requires the best possible information and communication technology.

#### **4.6.1 Strategies**

The Speakers' Forum has embarked on a process to develop the role of the Speaker as Treasury of the Legislature as provided for in the Public Finance Management Act. Another process underway is the finalisation of an Act of Parliament that provides for the management of the finances of Parliament and the Legislatures, independent from the Public Finance Management Act.

### **5. SOCIAL TRANSFORMATION PROJECTS**

There is key legislation that reinforces equality in the Constitution. Given the extent to which South African society continues to battle against the effects of past racial, gender and socio-economic inequalities, this remains a key area of challenge. Legislation that helps to deal with this area includes the following:

- The Promotion of Equality and Prevention of Unfair Discrimination Act, 2002 (Act 52 of 2002)
- The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002
- The Employment Equity Act No, 1998 ( Act 55 of 1998)
- Regulations promulgated in terms of these Acts.

#### **5.1 Gender**

The Constitution of South Africa is founded on and articulates the values of human dignity, the achievement of equality, the advancement of human rights and freedoms, non-racialism and non-sexism. In the founding provisions in Chapter 1 of the Constitution it is stated that,

“[t]he Republic of South Africa is one sovereign, democratic state founded on the following values;

- Human dignity, the achievement of equality and the advancement of human right and freedoms.
- Non-racialism and non-sexism”

It further goes on to say in Chapter 2, the Bill of Rights that:

“Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken”

It is from the above-mentioned Acts and Regulations that the Legislatures derive the mandate to reinforce and embark on practical measures so that women may experience the “full and equal enjoyment of all rights and freedoms”, a position, which hitherto, to a certain extent, has been “less full” and “more unequal” for women in South Africa and on the continent. It is in this regard that the legislative sector developed and is in the process of implementing a Gender Mainstreaming Framework and Strategy.

Gender mainstreaming is defined as <sup>4</sup>“a process that is goal oriented, it recognises that most institutions consciously and unconsciously serve the interests of men. It encourages institutions to adopt a gender perspective in transforming themselves. It promotes the full participation of women in decision-making so that women’s needs move from the margins to the centre of development planning and resource allocation.”

What is important about gender mainstreaming is that it considers both sexes, not just women. It considers the developmental and equity needs of both men and women. It is a conscious strategy in which given methods and instruments

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2. <sup>4</sup> Legislature Support Programme, 2005, “*Towards A Strategic Framework for Gender Mainstreaming in the Legislative Sector*”



are applied systematically. In the Legislatures, autonomous structures have been created to promote and implement the agenda of gender mainstreaming.

On a regional and continental level, South Africa has ratified the SADC Declaration on Gender and Development (SDGD), the African Union Protocol on the Rights of Women and Children, The Beijing Platform for Action and the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), as well as the Millennium Development Goals.

The mainstreaming of gender issues and women's empowerment has been identified as one of the programmes of the Speakers' Forum. In order to expedite the programme of gender mainstreaming in the Legislatures and to monitor government performance on this important matter there is a need to allocate resources to committees to monitor and implement gender mainstreaming programmes.

The following are some of the challenges experienced in implementing gender empowerment programmes:

- The focus was on gender equality within institutions and not really on empowering the legislators to deal with issues of gender equality.
- Though training sessions were offered on gender mainstreaming and engendering the budget, attendance was poor and follow up funding to implement findings was not easily accessed.
- Institutional arrangements and terms of reference for handling gender are varied. Legislatures operate as autonomous institutions and in the most part handle gender programmes and gender issues through different institutional mechanisms with different degrees of success.
- In order to deal with the challenges mentioned above there is a need to empower both men and women in dealing with gender issues.

The Speakers' Forum is in the process of developing an Implementation Model for Gender Mainstreaming in the Legislatures. The process of the development of the model is based on the results and recommendation of the Gender Framework Strategic document developed in 2005. The model will be adapted and implemented by the Legislatures to ensure that there is a uniform manner in which gender mainstreaming is implemented in the Legislatures.

## **5.2 Disability**

On the transformation agenda for the country is the implementation of a disability policy and strategy. The Legislatures are playing a central role in ensuring that the strategic goals on disability are achieved. In this regard they are in the process of finalising a Disability Framework and Strategy for the legislative sector.

The policy framework is premised on the human rights approach to disability and was designed with the active involvement of persons with disabilities, legislatures and other stakeholders.<sup>5</sup> Its strength lies in its:

- Recognition of disability as a cross-cutting issue located in all sectors of government and the legislative sector;
- Articulation of a strong vision and principles;
- Recognition of the principles of mainstreaming, inclusion and equal rights;
- Specification of concrete policy measures with clear indication of the need to formulate funded plans of action within the legislative sector;
- Active promotion of the principles outlined in the U.N. and other policy instruments;
- Location within the core business of the legislative sector with implementation, oversight and coordination strategies;

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<sup>5</sup> Samaita Maita, 2007, "*A Framework Strategy and Implementation Plan for Dealing with Disability in the Legislative Sector*" (Draft)

- Promotion of the active involvement and participation of persons with disabilities within the legislative environment, as employees and active role players;
- Emphasis on the improvement in human resources and employment of persons with disabilities as part of enforcement and implementation of policies and legislation.

The following are <sup>6</sup>challenges that face people with disabilities in achieving equality, inclusion and empowerment:

- **Employment:** there is serious lack of employment opportunities for people with disabilities and high level of discrimination
- **Transport:** there is lack of accessible public transport for physical and visual and hearing people with disability and hence make it extremely difficult to travel to places of employment and health facilities.
- **Housing:** houses are often not accessible to people with disabilities which means that they have to be institutionalized.
- **Accessibility:** public and private buildings are not designed to cater for the needs of people with disabilities.
- **Public schools:** are often not designed in ways which are accessible for people with disabilities. Children whose parents have some form of a disability are often excluded from education opportunities due to financial constraints.
- **Social security:** there is still a problem in people accessing disability grants.
- **Assistive devices:** inadequate access to other devices, e.g. spectacles, white canes, Braille machines, etc.

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3. <sup>6</sup> Legislature Support Programme, 2005, *“Towards A Strategic Framework for Gender Mainstreaming in the Legislative Sector”*

- **Advocacy:** there is lack of awareness programmes to curb attitude against people with disabilities and enhance the concept of self-representation.

The general <sup>7</sup>principles that underpin the disability policy are:

- Equality and non-discrimination.
- The need to promote and protect the needs and interests of women with disabilities and children with disabilities.
- Prioritising awareness-raising.
- Access, on an equal basis with others, to the physical environment, transportation, information and communications.
- Using existing laws and policies within South Africa, and within the Legislatures' oversight role, ensure the protection and safety of persons with disabilities in situations of risk/ vulnerability, including humanitarian emergencies and the occurrence of natural disasters.
- As Legislatures, to protect, through oversight and law enforcement, the equal right of all persons with disabilities to live in the community, with choices equal to others, and the need for effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.
- Through law enforcement and oversight, ensure that the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others is protected.
- Protection of the right of persons with disabilities to education and the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.
- Protecting and enforcing the right of persons with disabilities to work, on an equal basis with others.

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<sup>7</sup> Samaita Maita, 2007, "A Framework Strategy and Implementation Plan for Dealing with Disability in the Legislative Sector" (Draft)

- Enforcing and providing oversight to ensure the protection of the right of persons with disabilities to take part on an equal basis with others in cultural life, recreational, leisure and sporting activities.
- Calling on the collection of appropriate information, including statistical and research data, to facilitate formulation and implementation of policies and legislation by the legislative sector and government.
- The establishment or designation of select committees with mandates on disability and a coordination mechanism within each legislature to facilitate disability-related action in different sectors and at different levels.

## **6. CONCLUSION**

The Legislatures play a highly significant role in the governance of South Africa. However, the effectiveness of the legislative sector in exercising its authority and fulfilling its mandate is dependant on how the sector asserts its role in governance. It is therefore critical that the sector co-ordinates its efforts to exert maximum results as set out by this document.

South Africa occupies a strategic position in Africa and takes its responsibilities seriously together with other nations on the continent and globally. The South African legislative sector believes in its ability to add value in the international community in order to be of continuous relevance in the ongoing efforts to create a better world in which poverty is history.

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