



BRAZIL STUDY TOUR REPORT

INTRODUCTION:

The Standing Committee on Private Members' Legislative Proposals and Special Petitions undertook a study tour to Brazil as part of a comparative study on private members legislative proposals and special petitions, floor crossing and building national pride. Specific focus was placed on Brazil as it served as part of the IBSA trilateral and bilateral relations.

Like South Africa, Brazil presented itself as an ideal country from which to view the operation of private members bills and special petitions within the Brazilian Parliamentary context, floor crossing within the broader political context of Brazil and the building of national pride.

The Standing Committee visited the Brazilian Chamber of Deputies, which is the Parliament of Brazil, as well as two Commissions (Committees) and plenary sessions. The Standing Committee also visited various institutions in Brasilia (which is the administrative capital of the country) and Sao Paulo (which is the Industrial and Trade capital of the country).

Delegation

1.	Ms M P Mentor (Chairperson)	ANC
2.	Mr S A Mshudulu	ANC
3.	Mr G B Magwanishe	ANC
4.	Mr H J Bekker	IFP
5.	Mrs I Mars	IFP
6.	Ms S Rajbally	MF
7.	Ms Z Mohapa	Committee Secretary
8.	Mr G Rhoda	Researcher

1. EXECUTIVE SUMMARY:

2. THE OBJECTIVE OF THE VISIT:

The purposes and key focal points of the visit to Brazil were the following:

- To exchange information with the two sister Committees of the Chamber of Deputies (Brazilian Parliament) that have similar roles as the Standing Committee on Private Members' Legislative Proposals and Special Petitions. Moreover, this information was also shared with other institutions that the Committee visited.
- To exchange information with Brazilian Legislature and institutions:
 - The right of ordinary Members of Parliament (Deputies) of the Brazilian Parliament in processing legislation, amendments hereof, etc.



- The process of dealing with proposals of ordinary Members (Deputies).
- Public Participation and Public involvement in (a) petitioning Parliament and (b) the legislative process:
 - The space and rights of citizens of Brazil to petition Parliament (The Chamber of Deputies).
 - The process of citizen's participation and involvement in legislative processes.
- The history of floor crossing in Brazil and the contemporary issues pertaining to the practice of floor crossing, with specific focus on the recent ruling of the Supreme Electoral Court of Brazil on floor crossing.
- The relationship between the electoral system and floor crossing on Brazil and South Africa.
- The Separation of Powers between the different arms of the government: The Parliament/Chamber of Deputies (Congress and Senate); The Judiciary and; The Executive (Government).
- The cooperation between the different spheres of governance i.e. (i) Municipalities; (ii) States/Provinces and (iii) The Federal State (National Government) in Brazil and South Africa.
- Adherence to the Constitution/Constitutionalism by the different arms of spheres of Brazil.
- The facilitation of access to Social Justice and Service Delivery to ALL citizens (especially poor and marginalized groups) by the Parliament/Chamber of Deputies of Brazil (and South Africa).
- Building National Pride and Patriotism in Brazil.
- The role and involvement of Parliaments/Legislatures of Brazil and South Africa in Brazil-South Africa Bilateral relations and IBSA trilateral relations.

3. LIST OF INSTITUTIONS VISITED (INCLUDING GEOGRAPHICAL LOCATIONS AND DATES):

Brasilia:

- Visit to the South African Embassy in Brasilia on the 26 November 2007.
- Visit to the Deputy President Alberto Zacharias Toron of the Brazilian Order of Attorneys on the 26 November 2007 in Brasilia.
- Meeting with the Professor Menelick de Carvalho Netto of the Law Faculty of the University of Brasilia, Campus Universitario Darcy Ribeiro Asa Norte on the 27 November 2007.



- Meeting with Deputy Eduardo Amorim, President of the Commission on Public Participation at the Brazilian Chamber of Deputies, Anexo II on the 28 November 2007.
- Meeting with the Deputy Leonardo Pacciani, President of the Commission on Constitutionalism, Justice and Citizenship at the Brazilian Chamber of Deputies, Anexo II on the 29 November 2007.
- Visit to the Flavelas (local township), Brasilia.

Sao Paulo:

- Visit to the Monastery of Sao Paulo for traditional mass on the 2 December 2007.
- Visit to Community Centre and Arts Theatre on the 2 December 2007.

4. THE APPROACH TO THE VARIOUS MEETINGS AND VISITS IN BRAZIL:

- The approach of the Standing Committee on Private Members' Legislative Proposals and Special Petitions was such that first the host at the various meetings would submit their inputs, which would then be followed by inputs from the Chairperson of the South African Standing Committee.
- This in turn would be followed by discussion, interactions, questions and answers by both parties.
- Proposals and discussions on the way forward, as well as recommendations.

5. KEY QUESTIONS ASKED AND ISSUES RAISED IN MEETINGS:

Key Questions:

- Does Brazilian Parliament have a Legislative Committee that can initiate legislation and petitions? If so, it is constitutionally entrenched?
- How many private members bills have been considered and passed in 2007?
- What happens after the legislation has been 'approved'?
- How does Parliament endorse the proposals?
- What happens to rejected proposals?
- Are rejected proposals discussed in Parliament?
- How does the Brazilian Parliament follow up on recommendations made by the Committee? Historically, the Standing Committee on Private Members' Legislative Proposals was not considered an important committee within the South African Parliament.



- Assuming that the Brazilian Parliament has a committee which deals with Private Members Bills, what are the experiences of the committee in terms of recognition within Parliament?
- Does the Brazilian Parliament have a system for the receiving petitions from the public? If so, what is this system?
- Once the petition is received, what is the procedure that follows?
- Does a different committee consider petitions, as opposed to the committee who decides on Private Members' Bills?
- If a petition is rejected, are these petitions debated in the Chamber of Deputies?
- Has the Chamber of Deputies received any petitions on service delivery?
- Are there any challenges with the present electoral system employed in Brazil?
- What are the benefits of the present electoral system?
- What are the disadvantages of the present electoral system?
- Are there any challenges with the employment of the Presidential system as opposed to a Parliamentary system?
- Is there any legislative framework in Brazil that allows for the practice of floor crossing?
- Has floor crossing entrenched democracy in Brazil?
- What are the experiences of floor crossing in Brazil?
- Recently, the Supreme Federal Court of Brazil struck down floor crossing, what were the reasons for the striking down of floor crossing?
- How does the Brazilian Parliament elicit public opinion?
- Has the Brazilian Parliament ever used a public opinion survey through which to test public opinion on any issue?
- Does the Brazilian Parliament monitor international relations between other countries and Brazil?
- How does the Brazilian Parliament maintain oversight over international relations between other countries and Brazil?

Key Issues:

- The process and frequency of Constitutional Review in Brazil.
- Adherence to the Constitution.
- Separation of powers.
- Cooperation between Parliament, Government and the Judiciary.
- Access to social justice by ALL citizens.



- Equality of citizens before the law (as well as accessing socio-political, as well as economic rights).
- The Building of national pride.
- The poor people of Brazil, as well as the socially marginalized.
- The Brazilian electoral system and floor crossing.
- Involvement of the Judiciary in elections.
- Citizenship Rights Charter. Does Brazil have such a charter, and how is it monitored?
- Does Brazil have 'Chapter 9' institutions? And if so, what are they? What are the important institutions?
- Given the diversity of the Brazilian people, does Brazil have a commission similar to the South African Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities? And if so, how does it operate?
- What is the relationship of the Commission of Constitution, Justice and Citizenship and the Commission of Public Participation?
- Does the Brazilian Parliament have a monitoring mechanism for the institutional arrangements?
- Does the Brazilian Parliament have a Constitutional Review Committee?
- Does Brazil have an act similar to that of the South African Promotion of Equality and Prevention of Unfair Discrimination Act?
- Does the Brazilian Parliament view the HIV/AIDS pandemic as a human rights issue? And if so, to what extent do the people of Brazil have access to treatment?

6. OVERALL KEY RECOMMENDATIONS BASED ON KEY OBSERVATIONS:

7. OTHER MATTERS RELATING TO THE TRIP:

8.1. VISIT TO THE SOUTH AFRICAN EMBASSY AND THE SOUTH AFRICAN AMBASSADOR TO BRAZIL MS LINDIWE ZULU AND COUNCILLOR MR KHUELE:

The South African Embassy in Brazil

The South African Embassy in Brazil is 30 years old and thus the embassy was currently busy with renovations. The South African Embassy are not only focussing on renovating buildings but also developing and increasing the number of their staff.

The Embassy building is currently utilised by various departments, such as the South African Security Services, the South African Police Services and the South African Defence Force. Currently the Embassy is installing a communications centre. Moreover, the South African Embassy's trade mission is based in Sao Paulo.



South Africa and Brazil have had political relations since the Apartheid Regime. But in 1994 the relations changed as the former President Nelson Mandela visited the country, and the Brazilian President also visited South Africa's Presidential inauguration.

Since then, the relation between Brazil and South Africa was expanded to various government departments. These include Gender, Arts and Culture, Agriculture, Education and Science and Technology. The Ambassador however believes that relations between South Africa Brazil can further be strengthened to accommodate more departments. Moreover, bilateral relations have been established to benefit both countries.

The Ambassador then expanded on challenges faced by Brazilian communities. The Ambassador then highlighted:

- Smaller businesses are being overpowered by businesses thus creating monopolies.
- Poverty is still highly prevalent and as a result, there are many people living on the streets.

8.2.PERSONELL AND LOGISTICAL MATTERS PERTAINING TO THE TRIP:

9. MEETING CONTENTS:

9.1.MEETING WITH THE BRAZILIAN ORDER OF ATTORNEYS (AOB):

The South African delegation met with the Deputy President of the AOB, as the President of the organisation had to attend a funeral of a lawyer that had been killed by the Brazilian police.

After the Introduction of Committee Members to the Deputy President of the Lawyers Association of Brazil, the Chairperson highlighted the reasons for the visit to the AOB:

- Characteristics of the Brazilian electoral system and floor crossing; and
- Private Members Legislative Proposals and Special Petitions in the Brazilian context.

The Deputy President of the AOB then expounded on these thematic areas

With regard to Floor Crossing:

Until 1988 Brazil was under a military dictatorship. Under the dictatorship, crossing the floor was not allowed and there were only two political parties present. After the return of democracy and the new constitution of 1988, constitutional framework was created that provided for a broad freedom in terms of membership of parties. Under democracy, usually the ruling party would add several members of parliament from opposition parties, to strengthen their position. And this was the situation in Brazil. However, the issue of floor crossing soon arose and the Supreme Federal Court of Brazil had to decide whether seats in the Brazilian Chamber of Deputies belong to the party or the public representative. The Supreme Court ruled that the seat belongs to the party and not the individual and that floor crossing is not admissible.



A further problem was that floor crossing should be the subject of a law and not a ruling of a Supreme Court. Brazil has a strict division amongst the three spheres of government. And even though the ruling of the Supreme Court is healthy (in the opinion of the Deputy President) Brazil does indeed recognise that the judiciary has invaded the authority of the legislature.

With regard to the challenges of the Brazilian electoral system:

The political system in Brazil at the various levels consists of Mayors, Governors and Senator. Size of the states is problematic, but is addressed through this system. Each state, irrespective of the population, is allowed to elect three senators to the higher chamber (the Senate). The senators represent their states and not the general population. However, this is problematic as it hampers the principle of one man one vote and the Senate serves as a revising house for decisions taken in the Chamber of Deputies. The Deputy President highlighted that the Chamber of Deputies were currently busy with two proposals. One is more radical as it deals with the fact that there should be no Senate.

The second proposal is that legislative tasks of the Senate be restricted and that Senate no longer act as revising chamber. In that case, the Senate would be responsible for Ambassadors and international arrangements only with no legislative power.

Another challenge for the Brazilian electoral system is the creation of a district based vote or a mixed district vote. Essentially, instead of being elected by a state, the representative would be elected by a district and therefore have a closer link with the electorate. This would be a purely district vote whilst a mixed district vote is currently employed.

The Deputy President highlighted that in Brazil, there exists a possibility of a representative being recalled, if she does not fulfil her agenda or mandate. This is not a simple issue as there exists split opinions, even in the Bar. This could jeopardise the role of the public representative and could open the door for black mailing. It requires major considerations because of the dangers.

If a member of parliament is found guilty of a criminal offence in Brazil, that person automatically loses his or her seat.

On the issue of Separation of Powers:

The Deputy President stated that the three branches of government are completely separate and independent of each other. A recent example highlights this fact. Recently, Supreme Court Judges are appointed by the President and are suing members of Parliament.

Judges have similar benefits as members of Parliament with regard to immunity and salary. Moreover, the Judiciary has been able to act freely and without pressure from the executive. The Judiciary also consists of two levels of Judiciary: Federal and State level.

On the issue of the independence of the Judiciary:



A question was raised as to the judiciary's view that for the Judiciary to be independent, they should be able to deal with their own budget. The Deputy President highlighted that the issue of independence with regard to the budget and revenues is a central issue for the Brazilian judiciary. At the state and federal level they submit a proposal for budget to the President and there are often difficulties. The Deputy President could not say whether this would go as far as jeopardising the independence of the judiciary.

On the issue of Appointment of Judges:

Judges are only appointed after completing an exam and not purely appointed by the President as this ensures independence.

The first levels of Judges are highly professional and whilst this is not full proof system, some mistakes are made. This is problematic in that some judges are very young and do not have much life experience.

After 20 years experience, a judge can move onto a court of appeal. At the state level of appeals, the judiciary is not only made up of professional judges. One fifth of its members are lawyers or members of the public prosecutors office. And how are the lawyers selected? Very interesting. The Deputy President of the AOB then explained the process through which a Judge is appointed.

With regard to the law making process, the laws passed by Parliament which are found to be unconstitutional

A law that has been approved and enacted by President and it may happen that the citizen finds the law unconstitutional or the lawyers association can find that the law is unconstitutional. Two paths are followed in Brazil. Either the Lawyers Bar or the Attorney General may submit a suit to the Supreme Court for unconstitutionality and request that it be struck down. When the Supreme Court does so, it will send the law back to the Senate to change. The Senate will not be allowed to pass the same law again.

Citizen can go to the first level judge and the judge can declare the law unconstitutional. However, in that case the declaration of unconstitutionality exists only for that case.

9.2.MEETING WITH THE COMMISSION FOR PUBLIC PARTICIPATION, BRAZILIAN CHAMBER OF DEPUTIES:

The South African delegation met with a Commission of the Brazilian Chamber of Deputies. This Commission dealt with issues of public participation, specifically public petitions. The chairperson of such a Commission is known as a President, and should not be confused with the President of the country.

The President of the Commission highlighted various issues that fall within the concern of its mandate.



The Commission on Public Participation is one of 20 Commissions that are active in the Chamber of Deputies and receives petitions from the public and turns it into a bill as a way for society to add to the work of the Chamber. The President felt that this was an ancient form of democracy.

At the state and municipal level, these Commissions also exist. In this way, citizens are allowed to add to the legislative processes of Brazil. The President also highlighted that the Commission and the petition system still needs to be used more by the population, and the Commission could receive more suggestions and petitions. The President also stated that these numbers have been increasing positively due to greater awareness amongst Brazilians.

Moreover, there are ombudsman services present in the government. In addition to the House of Representatives, with a toll free number through which any citizen can complain about service delivery. This agency will then try to address this complaint. There are also ombudsman services that serve the citizens at agencies in a more formal manner.

Civil society also participates in the legislative process by sending suggestions requesting the Commission to transform a bill and makes various inputs. These suggestions will then be discussed by other committees, and once approved will be submitted to the plenary. If the petitions are not approved, they will be filed at the Chamber of Deputies. In this regard, the President stated that around 50% of petitions received are transformed into bills.

Members of the South African delegation then asked certain questions to ensure clarity.

The President was asked how the Commission, and more specifically the Chamber of Deputies, cultivates patriotism?

The President mentioned that Brazilians do love their country even though there exists no institutional measure to encourage patriotism. He expounded that patriotism is mostly at a high during sports competitions, especially during major soccer events.

In the opinion of the President of the Commission, the lack of patriotism is a direct reaction to the military regimes, when children were obliged to sing the national anthem. There are however programmes in place to address the lingering effects of the military regime. Have proudly moved from a regime where the symbols are forced and highlighted.

On issues of constitutional adherence in the legislature, the President noted that Constitutionalism is very strong in the country and there are parliamentary institutions that are there to enforce and inspect compliance with the Constitution. These institutions are separate and autonomous.

Even though the Legislature also administers and judges itself, its main task is to legislate. The judiciary also has to administer itself, but also adjudicate cases that come before it. The Executive



however, carries out instructions, but interferes with the legislative process. Brazil has a very strong executive that interferes in both the legislature and the judiciary.

When asked about the representation of women and disabled persons in the parliament and the enforceability of their rights, the President of the Commission explained that access to Parliament by women and disabled persons has greatly improved at all levels. A company or private business with over 100 workers is required by law to employ disabled workers. There is also an attempt to address this through affirmative action, such as access to universities.

With regard to women, it was noted that there are very few women in the legislature. All parties are legally obliged to submit party lists with at least 30% female representation. However, at present, there exists only 12% representation of women in Parliament.

On the issue of digital elections, the President of the Commission noted that digital elections significantly reduce election corruption. The election watchdog body is situated in the legislature, to monitor elections within each region. A referendum was held to consult with the electorate to check whether they preferred a presidential system or a parliamentary system or a monarchy. As a result of that referendum, a presidential system was decided on. The President also explained that there various advantages and disadvantages of either system, but that one of the major disadvantages of a Presidential system is that the President interferes considerably in the work of the Legislature.

The fact that the Judiciary, in terms of the electoral court, is responsible for the administration of the elections was a particularly important issue for the South African delegation. The delegation then enquired from the President whether the fact that the election watchdog boy exists within the Judiciary does not compromise the roles of the judiciary (i.e. magistrates and judges)? The President answered that the Legislature did not find this problematic and that they believed that there was very little such interference in the Legislature.

In dealing with public participation, issues of public participation within rural populations were also discussed. The President answered that presently, between 70% and 80% of the Brazilian population lives in urban areas. The change occurred in the 1970's when there was a balance. At the beginning of the 20th century, there was an inversion which could not be explained. In this way, public participation is relatively easy.

Labour unions also provide for reduced amounts of inputs to the Commission. Professional associations provide for the largest amount of input to the Commission. Moreover, the Commission has also undertaken an awareness drive and have been travelling the country in a caravan to make the rural communities aware of the existence of the Commission. To this end the Commission encourages the establishment of such committees at the municipal and federal levels.

On the issue of funding of political parties and floor crossing, the President noted that the issue of floor crossing is very recent in the parliamentary agenda. Currently, the Chamber of Deputies is drafting law on party funding and floor crossing. It is envisaged in terms of the draft legislation that



anyone who crosses the floor will lose his or her mandate, unless such a member provides a special reason. At present, the bill is being discussed with a more encompassing framework.

10. CONCLUDING REMARKS:

11. GLOSSARY: