

**PUBLIC HEARINGS ON THE CHOICE OF  
TERMINATION OF PREGNANCY: A CASE OF  
LIMPOPO PROVINCIAL LEGISLATURE**

by

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## **DEDICATION**

I dedicate this dissertation to my best friend, my mother, **Edith Susan Andreas**, for all her support and encouragement to pursue my studies throughout the years. Without your constant motivation mother, this dream would not have been realised. Thank you.

## **DECLARATION**

I declare that the mini-dissertation hereby submitted to the University of Limpopo, for the degree of Master in Public Administration has not previously been submitted by me for a degree at this or any other university; that it is my work in design and in execution, and that all material contained herein has been duly acknowledged.

.....  
**Harmse J.L (Mrs)**

.....  
**Date**

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**I thank Almighty Father for helping me to accomplish this study.**

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part of my life, without you all my life would be incomplete.**

## **ABSTRACT**

The aim of the study was to determine whether Members of the Limpopo Provincial Legislature misrepresented members of the public in the policy and decision making process. The Choice on Termination of Pregnancy Amendment Act, No. 213 of 2008, when passed in Parliament, might have had good intentions, but has instead led to unintended consequences. Both qualitative and quantitative research methods were used in this study. Questionnaires were used to collect the primary data from MPLs, staff of the Limpopo Legislature and members of the public in districts of the Province while the secondary data was collected from online databases and through literature reviews.

A random sampling method was used to collect primary data for this research by using various data collection methods such as questionnaires, face to face and telephone interviews. The collected data was captured in Ms Excel 2007, and then analysed and presented using graphs and tables.

Results of this study indicate that the majority of people in Limpopo were not in favour of the bill in question. This was evident in the video recording that was taken at the public hearing held in the Vhembe District where the emotions and expressions including the language used by members of the public was witnessed. The Committee Report that was tabled in the House by the Chairperson of the Committee stated that all districts in the Province were not in favour of the bill. It also became evident that indeed MPLs did not debate the report in the House and also did not consider inputs of the masses made during public hearings before a provincial mandate was given to Permanent delegates at the National Council of Province (NCOP) to vote in favour of the bill.

It can thus be concluded that MPLs can take a decision on a bill even if the masses are against it. This clearly indicates that the voices of the people are indeed heard since public hearings are conducted, but all is merely done to comply with the Constitutional mandate.

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## **CHAPTER 1: INTRODUCTION AND BACKGROUND**

### **1.1 INTRODUCTION**

The disadvantaged participants have for many years in South Africa, been the masses of people without any say in decisions concerning them. The advent of democracy on South Africa has made it possible for people who were denied opportunities in the past to contribute to the law-making process through public hearings. Awareness has been created by legislation such as the Constitution of South Africa of 1996, particularly on public participation. The constitution addresses issues such as public access to and involvement in provincial legislatures. Chapter 6 Section 118 states that “(1) A provincial legislature must - (a) facilitate public involvement in the legislature and other processes of the legislature and its committees; and (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken”.

The Limpopo Provincial Legislature through the Public Participation and Petitions Unit addresses the above by conducting public hearings, special projects, exhibitions, petitions and educational workshops. All these activities involve people in different ways, whether it be educating them, informing and involving them or requesting inputs, comments or suggestions through a transparent process. Transparent as processes may be it should be noted that there are still challenges within legislation and its implementation. Public participation through public hearings is a means to an end and not an end in itself because quite often the inputs of participants are ignored or not taken into consideration by decision makers.

The Choice on Termination of Pregnancy Amendment Act, No. 213 of 2008, when passed in Parliament might have had good intentions, but unfortunately it added to social problems with unintended consequences such as: the high unemployment rate in Limpopo and South Africa in general (mothers solely rely on the grant and are thus reluctant to look for work), misuse of the Child Support Grant (used for personal benefit) and an increase in especially

teenage pregnancies (impregnated to apply for grant). These increasing social problems are making headlines as alluded to in a local newspaper which indicates that “Teens fall pregnant on purpose to access child support grants” (Capricorn Voice; 2011:3).

De Villiers (2001: 13) indicates that, public participation in legislative and policy-making activities is to offer poor people the opportunity to make their circumstances known and to express their needs and grievances. He further states that it is mainly those who have access to resources and who are better organised that used these processes. Although those with resources and expertise are often better able and more likely to participate in the political process, civil society has been able to influence government process in a way that benefits its most disadvantaged members. One such case is the introduction of the Child Support Grant.

According to Bekker (1993:86) in a modern democratic state, the individual voter has very little power on his/her own. It is only when voters combine their strengths into an interest group that they can develop a strong power base allowing them to exercise their power over their political representatives. The size of the power base of an interest group, as reflected by the number of voters in the group, determines the group’s power over the legislature. That is, the larger the power base of an interest group, the more important it is for the legislature to comply with the group’s wishes and demands.

This study therefore seeks to draw particular attention to public participation with special reference to public hearings regarding Choice on Termination of Pregnancy Amendment Act, No 213, of 2008. The choice to research this topic in particular was based on the fact that public hearings were conducted in all five districts of the Limpopo Province namely in Vhembe, Sekhukhune, Mopani, Capricorn and Waterberg. Furthermore, it was evident from the Committee Report on Public Participation and Petitions that all districts were not in favour of the above mentioned Bill. However, despite the public outcry against the Bill, Members of the Limpopo Provincial Legislature (MPLs) voted in favour of the Bill.

## **1.2 PROBLEM STATEMENT**

Politicians in parliament are expected to take the interests of the people in a serious and considerable manner, represent them well and take informed decisions on their behalf. It is also the expectation of members of the public that MPLs represent them as elected and mandated. However, more often than not, masses are left disappointed by their elected representatives (politicians). This is mostly witnessed when people protest on decisions made by their representatives.

It has been noted that the public hearing process has been followed, but what remains a challenge is the fact that consideration of inputs made by the public is of minor concern to MPLs. The Bill in question is not an exception in this regard, hence the need to unravel the reasons behind the lack or minimal consideration by decision makers of inputs made by members of the public during public hearings.

Much of the literature on public participation focus on its definition, principles, and reasons among others, however, the lack of poor consultation and public inputs seem to be minimally attended to. This therefore constitutes a knowledge gap which this study will address.

## **1.3 AIM OF THE STUDY**

The aim of this study is to investigate whether inputs and suggestions made by members of the public at public hearings on the said Bill were considered or debated before a decision on the Bill in question was taken and also to determine whether MPLs represented the public during the decision making process or not.

## **1.4 OBJECTIVES OF THE STUDY**

- To provide a theoretical analysis of the public hearing process as practised in South African Public Participation Processes.
- To investigate the processes of getting inputs from members of the public in the Limpopo Province.
- To investigate the degree of participation by members of the public at public hearings.
- To investigate the extent to which the practice of public participation in the Limpopo Provincial Legislature meet the constitutional requirements.
- To investigate the misrepresentation of the public by Members of the Limpopo Provincial Legislature (MPLs).
- To recommend suitable solutions to existing problem/s.

## **1.5 RESEARCH QUESTIONS**

- How are public hearings conducted in the Limpopo Legislature?
- What is the level of participation by members of the public at public hearings?
- To what extent do members of the public participate in public hearings?
- To what extent do public hearings in the Limpopo Legislature comply with the constitutional requirements?
- Why MPLs misrepresent the public when taking decisions?
- What are the recommendable solutions that could be implemented to promote a representative public hearing process?

## **1.6 DEFINITION OF CONCEPTS**

Legislature	The body of those in a state who have the power of making laws (Webster's Dictionary and Thesaurus, 2002:214).
Public participation	It is the act of taking part in the formulation of public policies and proposals pertaining to public matters, usually by groups through formal institutions (Hanekom, 1996:34).
Impact	It means an effect or influence (The Cassell Concise Oxford Dictionary, 1989:738)
Hansard	The official report of the proceedings in Parliament (The Cassel Concise Dictionary, 1997:671).
Bill	A draft of a proposed law (The Cassel Concise Dictionary, 1997:141).
Public hearing	A public hearing is a formal meeting at which people present official statements of position and assertions of fact and comments are recorded (Creighton, 2005:130).

Order Paper	Means the document that sets out the agenda of the House (Standing Rules and Orders of the Limpopo Legislature, 2008:3).
Committee	A body of more persons, elected by direction of the house to consider, investigate or take action on certain matters or subjects or to do all of these things. These include Standing Committees, Portfolio Committees & Adhoc Committees (Dictionary of General Parliamentary Language & Procedures for South Africans, 2004: 64).

## **1.7 SIGNIFICANCE OF THE STUDY**

The research will contribute to knowledge on the process of public hearings with emphasis on sufficient and proper consultation and the lack or minimal consideration of inputs by politicians in the decision making process.

The research will be of significance to the Limpopo Legislature with regard to the importance of pre- and post-public-hearings which are crucial for information sharing, submission of constructive inputs, suggestions and comments from the public which can contribute and eventually lead to rational decision making by politicians in the Limpopo Legislature and other public institutions which effect the public at large.

Public officials and politicians should use the research as a source of information to improve and if necessary change the norm of conducting public hearings, and to develop,

maintain and instil confidence and trust in government leaders since as members of the public are important stakeholders in policy development since these policies affect the lives of the people.

To advocate that public participation should not only be conducted to comply with the constitutional mandate of the country, but also for politicians to listen to the voices of the people, consider public inputs when formulating policies and taking decisions which should reflect the expectations and wishes of the people.

## **1.8 ETHICAL CONSIDERATIONS**

This study involves the collection of data from people, therefore ethics related to privacy, confidentiality and anonymity will be respected. To ensure that these ethics are implemented the questionnaire was designed without the need to disclose the respondents name. The name and contact numbers of telephonic respondents will be withheld by the researcher. Data and information used in the study are acknowledged in the text.

## **1.9 LIMITATION OF THE STUDY**

Due to various spoken languages in the province, among others, Sepedi, Xitsonga and Tshivenda, the researcher relied on assistance when interviewing members of the public in all districts of the province in order to answer questionnaires. This involved listening, interpreting and translating the videotape recording of one public hearing held in the Vhembe district where proceedings were conducted in Tshivenda. The language limitation posed a challenge to the researcher but was successfully addressed since cultural diversity is adamant in the Limpopo Legislature and assistance in this regard was easily obtainable.

## **1.10 MINI-DISSERTATION OUTLINE**

This dissertation has been arranged into five chapters:

*Chapter one* provides the general background, objectives and significance of the study.

*Chapter two* explores various literature sources and additional information relevant to the study.

*Chapter three* presents how the collected data was captured, analysed and presented.

*Chapter four* gives the results and discussion in relation to the objectives of the study.

*Chapter five* provides the general conclusion of the research findings. The chapter also provides recommendations in order to address the current challenges experienced which can be useful to practitioners in all spheres of government and can also assist in future studies.

## **CHAPTER 2: LITERATURE REVIEW**

### **2.1 INTRODUCTION**

This chapter provides a theoretical framework for public participation. This theoretical framework will be complemented by a literature review and the statutory provisions of the legal framework as provided for in terms of the South African dispensation. The study will focus on public participation in the legislative and the policy-making process with special reference to public hearings in the Limpopo Provincial Legislature.

Reference to the international context on public participation, the advantages and disadvantages of public participation, the basic prerequisites of public participation and the conventional techniques to participation are also discussed. This chapter also discusses how policy inputs are made in the legislature, the public hearing process of the legislature and the proper or improper representation of the public by Members of the Limpopo Provincial Legislature on the Bill in question.

### **2.2 PUBLIC PARTICIPATION**

The Centre for Public Participation (2011:58) states that public participation is an important aspect of a fully functioning and effective democracy. It refers to the impact and efficacy of organized and/or politicized groups of citizens on policy intervention and policy making. Public participation is therefore much more than citizens voting in the national and municipal elections every few years, but includes citizens interacting with government processes, from planning, to making input, to debating, to implementing and evaluating policy. Public participation is inextricably linked to democracy thus it is vital to determine what other authors say about public participation.

According to Bekker (1996:132), humankind is unique because of its ability to shape its destiny. Planning is therefore a structured human activity with the desire to mould the

future. Related to this view is also the concept of participation, because the latter is a human desire to influence the circumstances that determine the lives of people. Hanekom (1996:44) states that, widespread public participation has a side effect, an increase in the achieving of accountability within public administration as well as public institutions (and officials, for that matter) may see in public participation an opportunity to transfer responsibility, especially for problems that are difficult to solve. From what Hanekom says, it is evident that public participation can go only as far as providing information, serving as initiator and catalyst for change and as sounding-board for the authorities regarding public policies. Craythorne (1997:100) also indicates that it is wrong, and even dangerous, to embark on a public participation exercise, and thereafter to disregard the views expressed. Action of this sort will terminate any hope of again securing the trust of those consulted.

The researcher shares the same view especially with the last two authors in that public participation should not only go as far as providing information and thereafter disregard the views expressed by concerned citizens.

### *2.2.1 Purpose of participation*

Innes & Booher (2004:422-423) identify five purposes that encompass most of the claims usually made to justify participation. Firstly, decision makers should find out what the public's preferences are so these can play a part in their decisions. Secondly, it is good to improve decisions by incorporating citizens' local knowledge into the calculus. Thirdly, the purpose is to advance fairness and justice. Fourthly, it is important that public participation is about getting legitimacy for public decisions, and lastly, participation is something planners and public officials do because the law requires it.

The researcher agrees that the last purpose is totally fulfilled, since public participation is conducted to adhere to the constitutional mandate, but that the remaining four are only partially met based on the following reasons: Purpose one, yes public preferences are made but they seldom, if at all play a part in decisions of decision-makers. The second purpose

might improve decisions but does not necessarily incorporate what citizens say in the final documentation. Purpose three, public participation might be fair but not just since all sectors and cultures in society are not brought on board and invited to public hearings. Lastly, as long as the work is done, and people attend and say what they wanted to say then at least in theory it is democratic and legitimate. But who was there and what was said remains questionable.

### **2.3 THEORETICAL BACKGROUND**

In South Africa, prior to 1994, the government suppressed forms of public participation especially among the black communities. The opinions and socio-economic needs of the majority of the people were not considered important by the apartheid-led government. Access to information on social, economic and security matters was suppressed in an effort to stifle opposition and criticism of its policies of racial supremacy. As a result, black communities were least serviced by the government.

With the democratic transition in 1994, the new government committed itself to and embraced a people centred development approach. With this approach, public participation became a constitutional imperative where it is stated that ‘people’s needs must be responded to, and the people must be encouraged to participate in policy making’. Furthermore, the policy environment was characterised by White Papers that clearly articulated government’s intent and invited extensive consultation and public participation. In this regard, members of the public were invited to make inputs thus making the process of drafting the Constitution and the various White Papers inclusive and open to the public (Ramsingh, 2009:2).

According to Pauw, Woods, van der Linder, Fourie & Visser (2002:35-36) the strength of the legislature (for example Parliament) obviously lies in the fact that it makes laws that must be followed by everyone, including itself. These laws remain valid, even under new regimes, until repealed by Parliament or the relevant provincial or municipal legislature, or

contradicted by other valid laws that are passed. A legislature, of course, is not allowed to make laws that go against the Constitution. Given the position of theory on public participation, various legislations exist in an attempt to ensure that public participation and Human Rights are not violated. The following legislation, among others, supports why public participation should be practiced in institutions.

### *2.3.1 The Constitution of the Republic of South Africa, 1996*

The Constitution of the Republic of South Africa, 1996 is the supreme law of the country, and obligations imposed by it must be fulfilled. There are a number of sections in the Constitution that deal directly with the concept of public participation. Sections 59, 72 and 118 charge both houses of National Parliament and Provincial Legislatures with the responsibility of facilitating public participation: Thus, for example:

“The National Assembly must – (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and (b) conduct its business in an open manner, and hold its sittings and those of its committees, in public”.

In South Africa, legislatures are required to facilitate public participation through, among others, public hearings, workshops and petitions. Similarly, in Uganda, citizen participation in the planning process is guaranteed in its constitution.

Article 38 of the Ugandan Constitution states that:

- (1) Every Ugandan citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.
- (2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organizations.

Legislatures in countries like South Africa and Uganda have a constitutional obligation to facilitate public participation to among others promote transparency, accountability and democracy.

### *2.3.2 Enabling legislation*

A number of Legislatures (including the Limpopo Provincial Legislature) have adopted legislation that governs the administration of the institution thereby asserting their independence as an arm of the state such as: The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, (Act 4 of 2004) and the Petitions Act (Act 4 of 2003), in the exercise of the legislative responsibilities, legislation dealing with subordinate legislation and petitions.

It is important to note that in order to strengthen the hand of Parliament and the Legislatures the South African Legislative Sector has to ensure that its key processes are captured in legislation for the simple reason that exercising the legislative mandate is a constitutional imperative and not necessarily only a partisan issue. If law making and oversight is undertaken merely as a partisan issue it has an effect of diminishing the value inherent in the role of Parliament and Legislatures to exercise oversight over the Executive, as it will also be easily dismissed as party politics. Therefore, the legislative sector must ensure that it has effective and sufficient legislation that supports the elements of its mandate, i.e., law making, oversight and public participation.

### *2.3.3 Other legal instruments*

Each of the Legislatures has Standing Rules that are derived from Standing Rules of Parliament such as Standing Rules and Orders of the Limpopo Provincial Legislature, Adopted on 02 December 2008 ensuring the necessary synergies and complimentarily contemplated in the design of the state and its spheres, in particular the legislative arm thereof. The Standing Rules are internal regulations and rules that are adopted by each

House of Parliament in order to regulate its proceedings and the conduct of its members as provided for in the Constitution. In the South African scenario, the Standing Rules have been used as the main instruments that provides for a regulatory framework of the legislative processes. The hierarchy of legislative instruments for any constitutional state is that the Constitution is the supreme law, followed by legislation, subordinate legislation the regulations and the rules. The regulations and rules are usually based on substantive legislation, other than the Constitution, that provides the overarching principles of the issue or environment that is regulated. In this context, legislation is used not only to regulate a particular environment but it is a tool to engage and inform the citizen about the details of the processes being regulated, provides for mechanisms of participation and sanctions for non-compliance. Therefore, the choice of instrument used to regulate the Constitutional mandate of the legislative sector must correspond to and reflect on the weight given to its obligation (The Oversight Model of the Legislative Sector Report, 2010:33-37).

## **2.4 PUBLIC PARTICIPATION IN THE INTERNATIONAL CONTEXT**

The Centre for Public Participation (2006:6-7) states that a review of trends and developments in the international arena suggests that public participation has become the focal point of many democracies around the world. However, it should be noted that there are limitations to the right to participate in processes of governance. For example, in terms of Section 49 of the Danish Constitution of 1953, “the sittings of the Parliament shall be public. Provided that the President, or such number of Members as may be provided for by the Rules and Procedures, or a Minister shall be entitled to demand the removal of all unauthorized persons, whereupon it shall be decided without a debate whether the matter shall be debated at a public or secret sitting”. Similarly in Germany, the House of Representatives has the discretion to exclude the public. Article 42 (1) of the German Constitution of 2009 states that: The debates of the House of Representatives [Bundestag] are public. Upon a motion of one tenth of its members, or upon a motion of the government, the public may be excluded by a two-thirds majority. The decision on the motion is taken at a meeting not open to the public.”

Section 118 (2) of the South African Constitution states that legislatures may not exclude the public and media... “unless it is reasonable and justifiable to do so in an open and democratic society”.

Despite the exclusionary nature of some of the earlier constitutions, in practice public participation has increasingly become a feature of modern democracies like in South Africa.

## **2.5 CONVENTIONAL TECHNIQUES OF PARTICIPATION**

The following are techniques of participation which form the stock in trade of public participation in most “first-world” cities. Fagence (as cited in Mills, 1993:9-10) refers to these methods as “conventional”, since they generally have a low level of impact on the decisions taken. Such methods are largely public relations or information-gathering exercises. They are important since little intelligent input can be expected from citizens if they are not kept informed about project proposals. However, there are weaknesses associated with most of these techniques which should also be kept in mind:

### *2.5.1 Public notice columns*

The public notice columns of the local press can be used to invite the public to submit written representations on planning proposals. Great use can be made of the media, especially if it is provided with a regular flow of information. In Britain and Australia, community organizations have been invited to produce their own radio programmes to communicate their side of an issue, and some programmes have been performed before a live audience invited to put questions. Full newspaper supplements can be produced to highlight certain issues.

#### *2.5.2 Mass publicity programmes*

Mass publicity programmes on specific planning issues can be organized by the local planning authority, by means of media reports, information brochures or static exhibitions. Drop-in centres are information distribution points where a citizen can step in to ask questions, review literature, or look at displays concerning a project affecting the area in which a centre is located. It is important to develop a style of presentation which makes material acceptable to lay people: exhibitions, for example, need to be arranged at venues convenient to people's daily activities and should not be overloaded with incomprehensible technical information. It makes more sense to target different publications or exhibitions to different "publics". Information should also be disseminated at different stages of the planning process. However, mass publicity programmes run the risk of becoming little more than glossy and manipulative advertising campaigns for planners' pet projects.

#### *2.5.3 Public inquiry system*

The public inquiry system allows interested parties to submit their opinions to specially constituted tribunals. Often, however, such tribunals are used only to consider argument between people with a direct interest in a development, although they could be expanded to include participation by third parties. However, public inquiries tend to be alienating and unwieldy, and relatively few interested parties participate. Public hearings tend to be very rigidly rule-governed, and surrounded by formal legalisms, which may emphasize extreme opinions rather than create options for negotiation. Rarely do they encourage dialogue beyond stating positions and oppositions.

#### *2.5.4 Published agenda and minutes of planning committees and councils*

The published agenda and minutes of planning committees and councils should be made available to the public.

#### *2.5.5 Public meetings, lectures or discussion sessions*

Public meetings, lectures or discussion sessions can be held with interested local groups or associations. Such meetings can be arranged by the planning agencies or by community groups themselves. To be effective such meetings should afford adequate opportunity for public comment and questioning; this has the advantage of exposing local politicians and planners to their clients, of discovering possible conflicts amongst different sections of the public. However, public meetings generally draw only a minute section of the public, and the usefulness for planning purposes of the lay input from public meetings is small, so that they should be used along with other participatory methods.

#### *2.5.6 Questionnaire surveys*

Questionnaire surveys can be used to make planners aware of public preferences. This is the only technique which is statistically representative of all citizens, but planners require proper social-scientific research skills in order to make surveys fully effective. Surveys are very expensive and time-consuming to analyze. Another problem is that survey questions are usually asked in a vacuum without the input of supporting information and with little indication of what the implications of particular answers may be.

#### *2.5.7 Ideas competitions*

Ideas competitions can be held to give lay enthusiasts an opportunity to make their own proposals to public agencies.

#### *2.5.8 Referenda*

Referenda have the merit of allowing all enfranchised citizens to express an opinion; however, they are best suited to a single issue or a small number of issues.

#### *2.5.9 Open door policy*

An open door policy involves encouragement of citizens to visit a local project office at any time on a “walk-in” basis (Atkinson, 1992 cited in Mills, 1993:9-10).

#### *2.5.10 Submissions*

It is assumed that the public understands how to make submissions. Surveys indicate that more and better submissions are received if a format or set of guidelines is provided to members of the public. Open submission forms achieve lower response rates than structured forms despite both being made available.

Today public participation is increasingly considered standard practice and is regarded as an essential characteristic of and condition for a successful modern democracy. This is supported by Pimbert and Wakeford (as cited in Creighton, 2005:2) in stating that “democracy without citizen deliberation and participation is ultimately an empty and meaningless concept”.

### **2.6 BASIC ASSUMPTIONS UNDERLYING PUBLIC PARTICIPATION**

The Centre for Public Participation (2011:59) has identified six assumptions namely: Public participation is designed to promote the values of good governance and human rights; public participation acknowledges a fundamental right of all people to participate in the governance system; public participation is designed to narrow the social distance between the electorate and elected institutions; public participation requires recognizing the intrinsic value of all people, investing in their ability to contribute to governance processes; people can participate as individuals, interest groups or communities; and in South Africa, in the context of public participation, community is defined as a ward, with elected ward committees, which play a central role in linking up elected institutions with the people.

Other forums of communication reinforce these linkages with communities, such as “Izimbizos”, road shows and the “makgotla”. Appel (2009:10) states that an Izimbizo is perhaps one of the best indicators of a robust democracy at work in a country. It is a mechanism thought which government leaders, from all spheres, including the president, traverse the country, at most times travelling to some of the most remote areas, to engage citizens on issues that impact on their daily lives.

Professor Caxton Harber at the University of Witwatersrand (as cited in Appel, 2009:10) is of the view that although the Izimbizo platform is extremely interesting and a useful tool for the public, it has a few shortfalls. He believes that Izimbizos have been done “in a too controlled and structured format to allow for a genuine expression of popular feelings”. Izimbizos are well planned and implemented, but whether communities receive feedback on issues raised still remain a challenge.

## **2.7 BASIC PREREQUISITES TO PARTICIPATION**

According to Mills (1992:4-12) the four basic prerequisites to participation are: detailed information, assessment of impacts, sending information and reviewing submissions.

The major factor in public participation is detailed information. The more one understands the detail, the better one can assess any perceived loss of amenity and decide whether action is appropriate. It is inevitable that the abstract policies of plans produce less response than development. However, attention to detail and plain language in the presentation of plans, which after all are public documents, could help to redress this imbalance.

People cannot participate without information about the process and the issues. When they have both and feel that their views have been seriously considered, they will be more likely to identify with a planning outcome which they supported and to accept one which they opposed. Reviewing submissions is a largely unexplored area. Common practice is to consider the community responses and make recommendations about the final form of the proposal or plan. Given the importance of this function in determining whether community

submissions achieve a result, it is of great concern that it has been subject to little or no attention.

## 2.8 PRINCIPLES FOR PUBLIC PARTICIPATION

The Centre for Public Participation (2011:63) identifies some principles guiding public participation.

**Table 2.1: Principles for Public Participation**

PRINCIPLE	APPLICATION
Inclusivity	Identifying and recognizing existing social networks, structures organization as vehicles of communication.
Diversity	Ensuring that different groups including women, the disabled and youth are part of governance structures.
Building community capacity	Soliciting funding from external sources to train ward committees on their role in development.
Transparency	Engendering trust in the community by opening council meetings to the public and encouraging attendance.
Accessibility	Conducting public meetings in the local language, with appropriate venues and timing.
Accountability	Ensuring report-backs to community forums or ward committees at least on a quarterly basis.
Trust, commitment and respect	Ensuring that the purpose of the process is explained adequately, as well as how it will develop.
Integration	Integrating ward planning with the IDP process.

Source: CPP, 2011:63

The Public Service Commission (2008:10) identify seven core values and principles of public participation namely: Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process; public participation includes the promise that the public's contribution will influence the decision; public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers; public participation seeks inputs from participants in designing how they participate; public participation provides participants with the information they need to participate in a meaningful way and public participation communicates to participants how their inputs affect decisions.

De Villiers (2001:80) maintains that the basic principles of public participation are pro-activity, inclusiveness, shared responsibility, openness throughout the process, access, transparency and respect for public input. All these principles are vital for successful public participation but emphasise that inputs by participants should be taken seriously and that decisions that affect their lives should be transparent, accessible and be communicated to them.

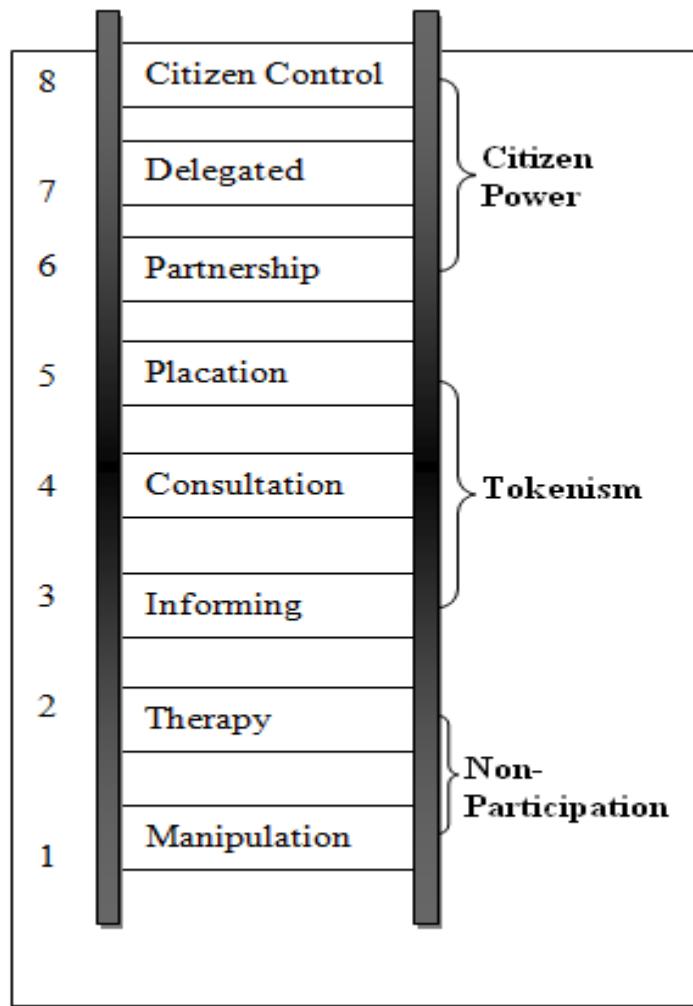
## **2.9 LEVELS OF PARTICIPATION**

According to Arnstein (1969:217) there are eight levels of participation that range from manipulation to citizen control (see Figure 2.1).

Manipulation and therapy, rung 1 and 2 describe levels of “non-participation” that have been contrived by some to substitute for genuine participation. Their real objective is not to enable people to participate in planning but to enable power holders to “educate” the participants. Rung 3 and 4 progress to levels of “tokenism” that allow the have-nots to hear and to have a voice. Information and consultation - when they are proffered by power-holders as the total extent of participation, citizens may indeed hear and be heard, but under these conditions they lack the power to insure that their views will be heeded by the powerful. Placation allow have-nots to advise, but retain the power holders the continued

right to decide. Partnership enables them to negotiate and engage in trade-offs with traditional power holders. Delegated power and citizen control the have-not citizen obtain the majority of decision-making seats or full managerial power.

**Figure 2.1: Eight rungs on a ladder of Participation**



Source: Arnstein, 1969:217

Arnstein's ladder of participation (as cited in CAG, 2009:1-2) stems from the explicit recognition that there are different levels of participation, from manipulation or therapy of citizens, through to consultation, and to what we might now view as genuine participation, i.e. the levels of partnership and citizen control. The limitations of Arnstein's framework are obvious. Each of the steps represents a very broad category, within which there are

likely to be a wide range of experiences. For example, at the level of ‘informing’ there could be significant differences in the type and quality of the information being conveyed. Realistically, therefore, levels of participation are likely to reflect a more complex continuum than a simple series of steps. Burns (as cited in CAG, 2009:2-3) modified Arnstein’s ladder of participation and proposed a ladder of citizen power. It is more elaborate than Arnstein’s ladder, with a further, more qualitative breakdown of some of the different levels. For example, a distinction is drawn between ‘cynical’ and ‘genuine’ consultation, and between ‘entrusted’ and ‘independent’ citizen control. The phenomenon of ‘civic hype’, is incorporated at the bottom of rung of the ladder. This essentially treats community participation as a marketing exercise, in which the desired end results is ‘sold’ to the community.

The Public Service Commission Report (as cited by Lefko-Everett, 2009:24) points to low levels of public participation, particularly within provincial government. Participation is *ad hoc*, capacity for engaging with the public is “sporadic and rudimentary”, and departments struggle to process and internalise public inputs.

## **2.10 IMPACT OF PARTICIPATION**

According to Hanekom (1996:44) the involvement of the public in matters affecting them may have the following results:

- a more representative, responsive and thus democratic policy-making process – especially if the participants themselves or the programmes and practices of administration generally are affected;
- improvement of planning, i.e. citizen preferences and technical consideration can be weighed against each other;
- promotion of public leadership;
- policy-makers are forced to deal with matters of equity such as electrification, health hazards in specific areas and road building;

- education of the less privileged in the political process (and thus also of the intricacies of the administrative process) and the establishment of interest groups which will participate on a continuous basis in public matters affecting them;
- promotion of a sense of fairness by producing an understanding of the views of the participants, resulting in an increase of the participants' confidence in the policy-maker,
- it can serve as a pacifier to accommodate interest groups which could otherwise be more militant in their endeavour to achieve what they believe is beneficial to society or to a societal group;
- it could serve as a client-builder, developing supporters for a new venture that is unknown to the public in general or to which the public is indifferent.

The impact of public participation on public policies depends on the official provisions made for participation and the limits set by the authorities such as identified stakeholders and number of people to be invited. The limits set may result in public participation having only a general impact on policy-making, i.e. as initiator or catalyst for change.

## **2.11 DEGREE OF PARTICIPATION**

The notion of participation presupposes that people can influence the proposals made and the planning process itself. But how much participation should be allowed and at what stage of the planning process should participation commence? The scope of participation should be broad enough to afford all people the opportunity to participate. In other words, the planning process should be as open and participatory as possible. Keeping this in mind one should, however, remember that creative acts are inevitably personal acts. Creativity does not emerge spontaneously from the crowd. Planning is a creative effort and the origin of a creative idea is usually half hidden and still unknown while the idea circulates. If the planning process at a local government is however simply too high-handed, it is surely bound to arouse public resentment. To counter this public resentment of the planning process it is important that participation starts at the beginning of the planning process, or at

least from a very early stage. Bekker (1996:136) further states that the degree of participation is therefore not a matter of information, good relations or persuasion of the people, but a matter of opening local government to the general public and encouraging interaction. The ideal is that participation should be a dialogue, a continuous two-way process between the authorities and the people. Creighton (2005:22-23) on the other hand states further that “the public is different from issue to issue. Public participation programs are always involving a subset of the public... The reality is that people participate when they perceive themselves to have significant stake in the decision being made”.

It is thus imperative to ensure that the relevant stakeholders are invited to public hearings on issues that affect them, which will in turn encourage active participation, relevant comments and questions being made and posed and constructive inputs being submitted. The degree of participation at such public hearings will be maximised since all present will have an interest in the topic discussed.

## **2.12 ADVANTAGES AND DISADVANTAGES OF PUBLIC PARTICIPATION**

Bekker (1996:135) states that irrespective of the various pieces of legislation that exist, people are reluctant to participate in government policies and decision making. It is thus crucial to determine why people do not want to participate or why they are reluctant to do so. Planning cannot be left totally to the officials and authorities. For practical as well as moral reasons, citizen participation in planning is important. Bekker indicates that there are two sides to the problem. On the one hand, people often complain that decisions have been forced upon them or that they have not been consulted in planning. On the other hand, on many occasions people do not participate actively even if they have been given the opportunity to do so. In an attempt to answer the above and to pursue the question of whether citizen participation exercises any influence on public management, consideration will be given to its advantages and disadvantages.

### *2.12.1 Advantages of participation*

In spite of continued opposition to citizen participation there have always been those who have actively committed themselves to establishing increased participation on the basis of it being the democratic right of citizens. Some of the advantages and disadvantages of citizen participation follows. Bekker (1996:75-77) identifies the following seven advantages, namely reduction of psychological suffering and apathy, positive application of citizen powers, willingness to sustain deprivation, converting opponents, information dissemination, restraining the abuse of authority and the inalienable rights of citizens.

Creighton (2005:18-19) on the other hand lists the following eight benefits of public participation, such as: improved quality of decisions, minimizing cost and delay, consensus building, increased ease of implementation, avoiding worst-case confrontations, maintaining credibility and legitimacy, anticipating public concerns and attitudes and developing civil society.

Participation has its advantages as alluded to by the above authors among others, as it involves the public in various programmes, activities and projects of government and affords them the opportunity to speak their mind on issues that affect them. But having said that, participation also has disadvantages which result from, among others, poor planning and implementation of policies.

### *2.12.2 Disadvantages of participation*

Bekker (1996:70-73:135) list 15 disadvantages intended to serve as a representative catalogue of the many disadvantages and limitations identified, namely: supporting the goals of public management, low citizen participation levels, threat to professional image of public administration, potential for conflict, lack of government responses, representativeness, time, costs and benefits, long term process, lack of information, ignorance, lack of communication, no significant effect on final plans, lack of interest on

particular issue, slow and cumbersome process in legislatures and level of interest. Pauw *et al.* (2002:35-36) indicate that practically, legislatures in South Africa lack sufficient manpower at their disposal. All this makes legislatures – especially on the national and provincial levels – unsuitable for the day-to-day execution of government functions.

De Vos, Strydom, Fouche and Delport (2005:374-375) state that even when citizens from the community attend, there is no guarantee that they represent the community at large. Sometimes certain interest groups “pack” the meeting to the extent that the opinions of dissenters are not represented. Numerically small but vocal groups can dominate meetings. And persons most in need of the proposed service (e.g. families in poverty, juvenile delinquents, teenage parents) will probably not be in attendance at all.

In addition to the views of the above authors, De Villiers (2001:14-15) identifies time, communication, transport and education as the four constraints on the participation of the poor and further states that a prerequisite for an informed and active citizenry is a literate population. Hence, illiteracy remains one of the most disempowering factors faced by a large majority of people of the country. Swanepoel (1992:9-10) on the other hand indicates that illiteracy causes an inferiority complex. People are afraid to take part, thinking that they cannot make any worthwhile contribution. They believe that innovations must come from educated people or from the rich, while community development specifically wants to involve the ordinary person.

Dukeshire and Thurlow (2002:1-2) add, among others, an important challenge, the lack of understanding the policy process. They continue by indicating that before rural communities can make attempts to impact public policy, it is important that they have an understanding of the policy-making process itself. Understanding the policy-making process can help individuals and community-based organisations decide whether they will become involved in trying to develop or change a policy and, if so, how to best go about it. The researcher is of the opinion that educating the masses should be the starting point to ensure effective and efficient public participation on policy matters. From the above it is

evident that the disadvantages and limitations of public participation are more than the advantages, however, this should not be allowed to eclipse the advantages that active citizen participation holds for both the citizens and the governing authorities.

## **2.13 PROVINCIAL LEGISLATURE'S MECHANISMS FOR PUBLIC PARTICIPATION**

According the Centre for Public Participation (2011:69-70) in the post-1994 context, all legislatures, including Limpopo Legislature, have established some form of dedicated programme encouraging public participation, even though the extent of the programmes may differ. A range of formal and informal options exists for legislatures, or more specifically, their portfolio committees, to seek public input on legislation.

### *2.13.1 Public hearings*

The most common form of public participation is holding public hearings where comments are invited from interest groups, stakeholders and individuals. Most legislatures give the public between five days' and three weeks' notice, sending invitations, placing advertisements in newspapers, public places and on the radio. Committees encourage submissions from members of the public, even those unable to attend public hearings.

Most legislatures ensure that venues for public hearings are generally accessible to rural communities, with hearings held in centres outside capital cities. In some cases, transport is provided for rural communities. The provision for public hearings enables a direct, formal input by community groups into the refining of legislation. It is interesting to note that according to Innes and Booher (2005:424) public hearings typically in the United States (US) are attended primarily, if not uniquely, by avid proponents and opponents of a measure affecting them personally, by representatives of organized interest groups and by a handful of diehard board watchers. Two- or three-minute time limits are often placed on speakers, with equal time for the highly informed or the person whose livelihood is at issue as for the rambling fellow who has little knowledge but enjoys the sound of his own voice.

Citizens have to stand below the stage where board/commission members sit. They can speak only on the topic defined in the agenda. The programme typically does not allow for interchange, although occasionally a board member may ask a question. Citizens have no entitlement to answers to their questions. It is not surprising that citizens normally speak at public hearings only when much is at stake for them or when they have a passionate belief about an issue. In South Africa, more often than not, there is no time limit on speakers at public hearings, all speak from the same podium and are entitled to answers to their questions as compared to public hearings in the United States.

#### *2.13.2 Public access to Committee Meetings and House Sittings*

Portfolio committee meetings are open to members of the public, although publicity of this fact, encouragement and ease of access vary. Records and minutes of meetings and other legislative documents are difficult to access, particularly from committee processes. Many legislatures have initiated a process of “Taking Parliament to the People”, a process whereby some committee meetings and even formal sittings of a legislature are held in community venues or towns more accessible to rural areas of the province. A shortcoming of this process is the inaccessibility of politicians. The process could be strengthened if politicians remained within these communities for a designated period after a meeting or sitting to enable members of the public to engage with them and raise issues of concern. Legislatures also make use of Sectoral Parliaments, for groups such as youth, women and other special interest groups as educational opportunities to raise the profile of issues affecting these sectors and to encourage an understanding of the role and function of legislatures among these stakeholders. These events generate huge interest and excitement and are generally marked by high levels of participation.

#### *2.13.3 Constituency offices*

Most legislatures have constituency offices to facilitate public participation through information dissemination about the work of the legislature and popularizing the petitions process.

#### *2.13.4 Petitions*

Some legislatures have passed legislation providing for the submission of petitions to the legislature by members of the public. A dedicated petition's standing committee is established to receive and deliberate petitions and make decisions on forwarding issues raised to relevant stakeholders within government. Most legislatures also facilitate committee on-site tours and visits to community sites to assist in gathering of information, deepening of committees' understanding of local issues and establishing linkages between committees and communities. As part of a public relations exercise, most legislatures also facilitate parliamentary tours by interest groups and schools.

#### *2.13.5 Outreach programmes and information dissemination*

Legislatures generally have some form of outreach programme, particularly programmes aimed at the rural communities. Strategies here include using educational workshops and information dissemination through focused media strategies, with some legislatures innovatively making use of community radio stations to reach particular communities. Because there are significant pockets of the public who do not understand how legislatures are structured and function and the significance of the work of portfolio committees, most legislatures produce pamphlets and other material and educational tools to supplement outreach programmes.

## **2.14 PUBLIC HEARINGS IN THE LIMPOPO PROVINCIAL LEGISLATURE**

The Birchwood Conference which was held in Gauteng (Boksburg) in July 2006, aimed at developing a working document which all legislatures would implement in an attempt to unify activities of public participation in all legislatures. “Public hearings” was a key topic at the conference. The conference headed by the Centre for Public Participation broke into 5 commissions of approximately 100 people in each commission, comprising of a broad spectrum of representatives from civil society and provincial legislatures. One commission dealt with public hearings with the aim of addressing two issues, namely to identify mechanisms that can be implemented to improve the current public hearing system in terms of its format, location, facilitation, advertising and processing submissions and providing feedback to the masses and secondly to determine whether any pre-hearings were undertaken to ensure understanding of the issue, participatory process etc, especially among the poor and less literate (Speakers’ Forum of South African Legislatures, 2006).

Team representatives met to discuss recommendations that emerged from the conference and to develop an implementation strategy for public hearings among others. The implementation strategy addressed 3 aspects of public hearings namely pre-public hearings (Bill interpretation, Bill simplification and translation), how to measure effective participation during the hearing (build relationship with committee secretaries and acquire committee minutes) and post-public hearings (referral of inputs and feedback). But to date, legislatures are reluctant to implement the recommendations of the conference including the Limpopo Legislature (Public Participation and Provincial Legislatures, 2006).

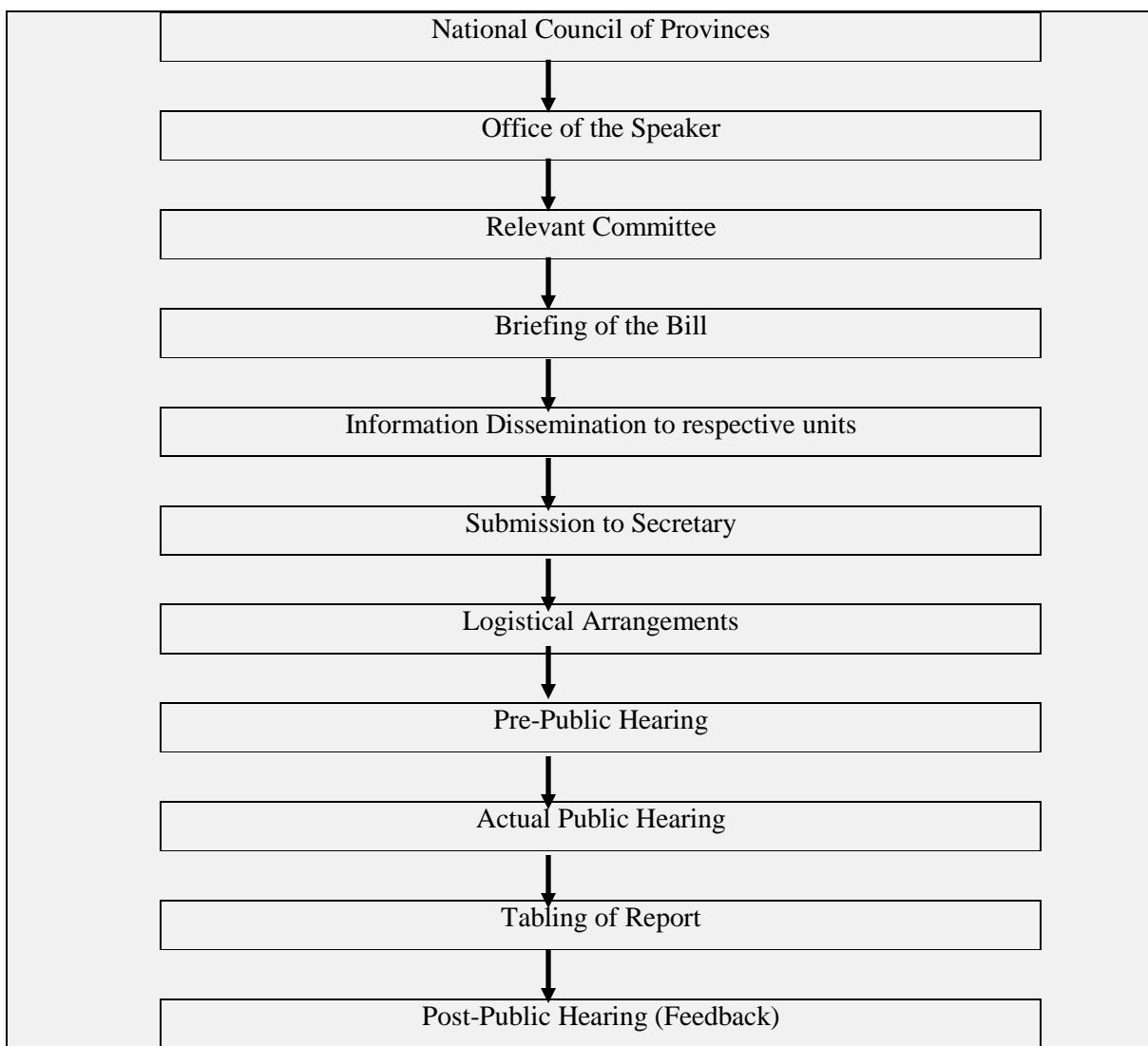
The reason for non-compliance of the Birchwood Resolutions in the Limpopo Legislature is time constraints and manpower. Given the background of the importance of public hearings, it is imperative to include how public hearings are conducted in the above legislature since it is the reason for the study. All logistical arrangements for public hearings are executed by officials in the Public Participation Unit with the assistance from

officials from other units among others Committees and Communications. Members of the Portfolio Committee on Public Participation and Petitions conduct the public hearings.

#### *2.14.1 Public hearing process in the Limpopo Legislature*

In an attempt to address the recommendations of the conference, the Public Participation and Petitions Unit of the Limpopo Legislature in August 2010, developed a Model for Public Hearings. The Model for Public Hearings can be found in the table below:

**Figure 2.2: Proposed Public Hearing Model of Limpopo Legislature**



Source: This study

Since the development of the above model, pre- and post-public hearings still remain a challenge due to inadequate resources and time constraints.

#### *2.14.2 Steps in the public hearing process*

According to De Vos *et al.*, (2005: 416-418) a public hearing is a process comprising of four steps namely introduction to the community, problem identification and statement, goals and objectives and evaluation.

Using the above four steps the researcher will outline the public hearing process.

*Introduction to the community* –The first step of the process is addressed by identifying the relevant stakeholders and determining the venue for the event in consultation with the Members of the Portfolio Committee on Public Participation and Petitions. Advertisements in local newspapers are then placed with all the relevant information. This is also done to enable the working class or other interested parties who cannot attend the public hearing to make their inputs in writing and submit or forward it to the relevant office for consideration. Local radio stations in the province such as Jacaranda FM also advertise the event to inform the public and create awareness of the Legislatures activities such as public hearings. Copies of the Bill are distributed in all districts of the province to local municipalities as they mobilise the masses to attend. More often, the Legislature does not have enough manpower to deliver Bills personally to relevant stakeholders and thus solely rely on Local Municipalities to deliver and distribute Bills.

*Problem identification and statement* – Notwithstanding the ideology behind public hearings, members of the public have their own agenda when attending public hearings. They attend such not to make constructive inputs with regard to the Bill under discussion, but to raise their own problems especially with regard to service delivery.

*Goals and objectives* – Public hearings are held to share and gathering information on a piece of legislation.

*Evaluation* – Evaluation should always be part of the process, in order to determine whether the goals have been achieved such as sharing of information and raising ones personal opinion, suggestions or input on a piece of legislation.

## **2.15 MISREPRESENTATION BY MEMBERS OF THE LIMPOPO LEGISLATURE**

Public hearings on the said Bill were held in all districts of the province on the following dates:

**Table 2.2: Areas where Public Hearings were held**

<b>DATE</b>	<b>VENUE</b>	<b>DISTRICT</b>
August 2007	Mokwakwaila Multi Purpose Centre	Mopani District
August 2007	Thohoyandou Indoor Sport Centre	Vhembe District
August 2007	Yosuf Dadoo Community Hall	Waterberg District
August 2007	Nirvana Community Hall	Capricorn District
August 2007	Jane Furse Comprehensive School Hall	Sekhukhune District

**Source:** This study

Approximately 300 people attended each public hearing. Public hearings were attended by the Members of the Limpopo Legislature and support staff. Verbal inputs were made by various members of the community, airing their views, opinions and feelings on the Bill in discussion. Concerns by members of the public were noted by the Members and recorded by Committee Coordinator who thereafter compiled a comprehensive report which was submitted to the Portfolio Committee on Health and Welfare. The input and findings of the Committee Report indicated that stakeholders in all five districts of the province were not in favour of the Bill in question since among others termination of pregnancy is against

cultural beliefs and the consent of parents should be considered (Report of the Portfolio Committee on Health and Welfare, 2007:1-3).

On 11 September 2007 the House had a Sitting and on the Order Paper of the day, among others, was the report of the Portfolio Committee on Health and Social Development on the Choice on Termination of Pregnancy Amendment, Bill [B21-2007]. The Report was considered and adopted.

A Member from the opposition party (Democratic Alliance Member) raised an objection to the adoption of the report without it being debated, but the Speaker ruled over the matter in terms of the provisions of House Rule 81 which states; “If the Presiding Officer has put a question and it is not heard or understood, he or she must put it again” (Standing Rules and Orders of the Limpopo Provincial Legislature, 2008:55). Surprisingly, Members of the Provincial Legislature mandated Permanent Delegates at the NCOP to vote in favour of the Bill to pass into law, despite the comments, inputs and concerns that were raised by members of the public.

## **2.16 POLICY INPUTS AND POLICY IMPACT**

Public participation in public hearings is encouraged to allow members of the public to express their views, raise concerns, make inputs and suggestions on a piece of legislation to assist policy makers to make informed decisions on matters that affect the lives of the people. Public opinion on policy and draft legislation in the Limpopo Legislature is obtained through the following:

- Written and verbal policy inputs submitted at public hearings.
- Submissions posted or delivered to the Legislature.
- Petitions received by the Legislature.

In addition to the above De Villiers (2001:92) states that there are other ways one can make ones voice heard such as sending a letter to the editor of the local newspaper, issuing a

press statement and asking a local radio station to host a panel discussion or phone-in programme on the issue.

Hosting a panel discussion or phone-in programme on the issue or Bill under discussion will empower all listeners with information instead of only the person who made the written submission. It will also encourage dialogue and questions will be addressed immediately by the relevant stakeholders who will be the decision makers. Once inputs have been made it is essential to determine the impact the submissions / inputs made in the law making and decision making process.

#### *2.16.1 Measuring policy impact: Types of evaluation*

Hanekom (1996:92-94) states that the maintenance, termination or adjustment of existing public policies is dependent upon the identification and quantification of the policy impacts, data which is usually obtained through the application of evaluation methods. The methods, of which the more common ones are briefly elucidated to, can be applied singly or in concert, depending on how much detail and how much expeditious information is to be made available to the policy-maker.

- Hearings, discussions and citizen complaints are probably the most common methods of determining the impacts of a particular policy.
- Feedback on policy may be in the form of oral or written testimony by officials, voluntarily submitted complaints by citizens, or questionnaires completed by citizens. Unfortunately, officials may tend to magnify the benefits of a policy by not mentioning the negative results, while on the other hand complaints by individual citizens are not necessarily representative of the views of society or a societal group. Questionnaires may test only public opinion and not real impact.

- In self-service evaluation an evaluation of a policy is undertaken to delay decisions (commissions of enquiry), to justify decisions already made, to avoid taking responsibility, or to vindicate the policy in the eyes of the public.
- Pre- and post-implementation comparison pertains to the evaluation of a situation immediately prior to the implementation of a particular policy aimed at that situation, and then again after an appropriate time after implementation. The results of the policy before and after its implementation are then compared. Because of the possibility of factors outside the scope of the policy affecting the results of the evaluation, caution must be exercised in applying this method. Evaluators should distinguish between the actual results of the policy and the effects of external factors on the changed situation. (For example, evaluators should bear in mind that the application of measures to stimulate economic growth could be adversely or positively affected by international economic conditions).
- Systematic evaluation involves an objective evaluation of the results of policies inclusive of the extent to which they achieve the objectives for which they were made and on which modifications can be made.
- Controlled Comparison is a method in which the results of a particular policy are obtained from a selected experimental group and then compared to the situation existing in a selected control group where the policy was not implemented or where an alternative policy was implemented.

The various evaluation methods referred to above have one thing in common: they provide the policy-maker with data on policy outcomes obtained from the results of the evaluation of public policies.

Verbal inputs at public hearings of the Limpopo Legislature as well as the high and increasing number of petitions received are the two most common methods of measuring policy impact. Hagendijk (2004:45) clearly states that citizens seem also to be more

inclined to accept decisions if they see consultations as ‘fair’ and ‘balanced’ even when outcomes are at odds with their preferences.

#### *2.16.2 Constraints in determining the impact of public policies*

Hanekom (1996:97-98) states that although it may appear that policy evaluation merely entails obtaining the facts, analyzing them and reaching conclusions based on these facts, it should be pointed out that the evaluation is not simple, easy or straightforward. It is rather a matter of dealing with complex issues involving diverse facts and different participants each with a specific bearing on the conclusions that are eventually reached. One of the most significant constraints in evaluating public policies is that any evaluator is naïve to expect the political office-bearer to use the results of the evaluation for policy adjustment without considering the political feasibility of the results prior to utilization. In situations where the recipient of policy evaluation results accepts the results without questioning them, or where the recipient is not familiar with research methods and is suspicious of the results obtained from evaluation, or where he is familiar with research methods and is still suspicious of the results, policy evaluation is constrained and doomed to failure.

The policy evaluator’s personality traits or attitude could constrain the acceptance of the results by the policy-maker. However, if the evaluator can anticipate obstacles to his or her findings he or she may take action to enhance the acceptability of his evaluation without negating the integrity of the results.

Because of the diversity of public policies and of activities arising from the policies, it is often difficult, if not impossible, to determine whether the intended policy inputs correspond with the actual policy impacts. In addition, some policies have only symbolic value: those at whom the policies are directed are satisfied that something is being done and they have no further interest in investigations into the actual value of the policies.

Those with vested interests would want to prove that policies are positive and would not be interested in the evaluation of policies, which they would see only as an attempt to restrict them. Subjectivity makes executive institutions, and for that matter also public officials, unwilling to concede that specific policies are unrealistic. Furthermore, evaluation of policy impact implies an investigation – meaning a possible disruption of day-to-day activities – into existing policies, an activity which requires money, time and personnel, which are often not available. Other constraints which could affect the quality of the evaluation of public policies are premature evaluation, lack of co-operation, changing political priorities, lack of clarity on what is to be evaluated, uncertainty over policy goals and official resistance. Institutions with no evaluation system in place will not be able to detect whether any impact was made on policy matters and to identify gaps in the system or process that can be corrected to avoid future repetition of mistakes since there are no tools in place such as among others evaluation forms and evaluation meetings to measure such.

### **3. CONCLUSION**

Flowing from discussions above, it should be noted that public participation should not merely be implemented in order to comply with the constitutional mandate of the country by inviting the public to attend and partake in various government programmes such as, among others public hearings and izimbizos. The public attends with the hope that its inputs, comments or suggestions will be considered and have an influence and eventual impact on the law and decision making processes in government and provincial legislature.

Lefko-Everett (2009:24) states that public participation in governance is often paltry and shallow. Critics suggest that participation rarely goes beyond “cosmetic fulfilment of constitutional rights”, or a “formality used merely to further an existing government agenda”. According to Bekker (1996:56) when government violates this inalienable democratic right of any individual to participate and exercise an influence on the issues that directly affect him or her it disqualifies itself from being called democratic.

Politicians should listen to the voices and cries of the masses before their political party and self. Despite the importance of public participation, implementation thereof is still problematic.

The next chapter will discuss the research methodology used to collect data. This will be done by indicating the research design, target population and how the data was collection and analysed.

## **CHAPTER 3: RESEARCH METHODOLOGY**

### **3.1 INTRODUCTION**

This chapter indicates the study area, research design, population and sample size used in the study. It also indicates how the data were collected and gives a synopsis of how the data were interpreted, analysed and presented in order to achieve the aims and objectives of the research.

### **3.2 STUDY AREA**

The study area covered the Limpopo Legislature which is situated in the Limpopo Province. The Limpopo Legislature is a legal political institution which makes, amends and repeals laws and comprises of politicians (MPs) and support staff. The Limpopo Legislature has one hundred and thirty three (133) support staff members and forty nine (49) politicians as of December 2011. The three main functions of the Legislature are to make laws, play oversight role over government departments and ensure public participation. Public participation in the Limpopo Legislature include, among others, conducting public hearings on pieces of legislation whereby members of the public are afforded an opportunity to comment, make inputs, raise concerns and give their opinion for consideration by politicians before any piece of legislation becomes an Act.

The Guide to the Legislature (1996:3-4) gives information on the following: the prime function of the Legislature is to pass new laws, change or repeal laws, enable government to function, subject to the provision of the Constitution of the Republic of South Africa. The Legislature discusses and approves budgets for government. It serves to cause the government and its institutions to account for its activities and use of resources. The Limpopo Legislature participates in the national legislative process through the National Council of Provinces (NCOP). Each province has ten delegates in the NCOP consisting of six permanent delegates and four special delegates headed by the Premier or his or her

substitute. Political parties attach their Members of Provincial Legislature to specific geographic areas to take charge of constituency offices. These areas are referred to as constituency offices. The role of constituency offices is to provide a mechanism through which members of the community can receive information, advice and assist in matters relating to government and legislative affairs.

### **3.3 RESEARCH DESIGN**

For this study both quantitative and qualitative research approaches were used including content analysis.

#### *3.3.1 Choice of design and rationale for design choice*

The quantitative approach was used to collect data to meet the objectives of the study in order to determine the effectiveness of the current practice when conducting public hearings in the Limpopo Legislature. Questionnaires were used to collect the primary data from the Members, staff and members of the public.

A qualitative approach was used to acquire more insight into the subject matter. Online databases, newspaper articles, Committee Reports, Hansard, literature reviews as well as a videotape recording were used to collect secondary data.

Content analysis was also used for this study, which included a video tape recording of the public hearing. Content analysis is a useful technique since it enables easy processing of large volume of data and information. It also enables easy discovery and describes the focus of individuals, groups institutional or social attention.

## **3.4 POPULATION**

To define the population, a researcher specifies the unit being sampled, the geographical location, and the temporal boundaries of populations (Neuman, 1997:203). Population for this study consist of fourteen (14) politicians comprising of ANC as the majority party and Members of the Official Opposition in the Legislature, namely two politicians from the Democratic Alliance (DA) and three politicians from the Congress of the People (COPE). The fourth Member from COPE resigned before the questionnaire was returned to the researcher and thus only three (3) Members formed part of the research instead of four (4). Fourteen (14) support staff dealing with public participation in the Limpopo Legislature were interviewed from the following sections: Public Participation and Petitions (3), Research (3), Committees (6) and the office of the National Council of Provinces (2). Forty eight (48) Community Development Workers (CDW's) were interviewed as members of the public (25 local municipalities in the province x 2 CDW's per municipality; but two CDW's could not be interviewed as their contact numbers on attendance register have changed).

### *3.4.1 Rationale for choice of sample size*

Since the majority (43) of the 49 Members of the Provincial Legislature are from the ruling party (ANC) results would be biased if all Members were part of the sample population. The researcher then decided to include six (6) Members from the two opposition parties in the Legislature to form part of the research and eight (8) from the ruling party. For this study a total of 14 Members were interviewed and requested to complete the questionnaires.

Two members of the public (CDW'S) in 24 local municipalities in the province were interviewed since public hearings were conducted in all five districts of the province (24 local municipalities x 2 = 48).

Support staff that deals directly and have experience and knowledge with regard to public hearings formed part of the sample size. From the 133 support staff component of the Legislature as at December 2011, fourteen (14) were relevant to the study and interviewed.

### **3.5 SAMPLE SIZE**

The sample size (elements of the population considered for actual inclusion in the study) of the research is 76 comprising of the following: 14 politicians (MPL's), 14 support staff members and 48 members of the public from 24 local municipalities in the province. Using attendance registers of public hearings conducted in districts of the province, it was possible to select both males and females to be interviewed telephonically which ensured a gender balance of respondents from members of the public.

### **3.6 DATA COLLECTION METHODS**

Both primary and secondary methods of data collection were used for this study.

#### *3.6.1 Interpretation of documents and records*

The analysis and interpretation of written material offers distinctive challenges which enable the qualitative researcher to collect data which would not have become available otherwise (De Vos, 1998:90). Documents such as the Minutes of Proceedings, Committee Report of the Committee on Health and Social Development and the Report to the National Council of Provinces and the Hansard were used as part of secondary data.

#### *3.6.2 Questionnaires*

Structured questionnaires were prepared for the Members, staff and members of the public (see Appendix 1). Questionnaires for the Members and the staff were personally distributed to sample audience and collected by the researcher since all were easily accessible.

Questionnaires for members of the public were conducted telephonically to save time and resources.

### *3.6.3 Face-to-face interviews*

Face-to-face interviews, using an established questionnaire with a fixed sequence of questions were conducted with only five (5) of the Members of the Provincial Legislature (MPL's), the rest of the questionnaires were completed by the Members in their own time and returned to the researcher due to their work commitments.

### *3.6.4 Telephonic interviews*

Attendance registers were used to randomly select members of the public to be interviewed telephonically based on gender and districts. Due to the vastness of the province, telephonic interviews were conducted with 48 members of the public representing 24 local municipalities in the province. This cost effective and time saving technique was used to gather information quickly and from widely dispersed populations.

### *3.6.5 Literature sources*

A literature review is based on the assumption that knowledge accumulates. What others have done can be learnt from and built upon (Neuman, 1997:89). The review of relevant literature was best suited for this study as reference was made to the Act under discussion, academic books, newspaper articles and government legislation.

### *3.6.6 Audio-visual material*

The researcher went through a videotape recording (which is one of the most common audio-visual methods in qualitative research) of the public hearing held in Vhembe district on the said Bill.

### **3.7 DATA ANALYSIS**

To analyze audio-visual material, the researcher watched, listened and compiled questions based on the recorded event and recorded inputs that members of the public made during the public hearing on the said Bill (see Appendix 2).

To analyze face-to-face interviews, answers on the structured questionnaires were compared and analysed.

To analyze interpretation of documents and records the researcher merely used general and vague hypotheses to guide the research. Once the data were generated, the researcher attempted to discover relationships or patterns through close scrutiny of the data.

The content was analysed through counting word frequency. The researcher assumed that words that are mentioned most frequently reflect the greatest concern from respondents.

Statistical analysis is about making sense of a set of data or a series of observations. The data collected were captured in an Excel spreadsheet (version 2007) and then analyzed using descriptive and inferential statistical analysis techniques. The data were then presented in the form of tables and graphs. The idea was to map the data in a way that would reflect findings by the researcher.

### **3.8 CONCLUSION**

In this chapter information was presented to justify the significance of the study. That is, the study area, research design, population, as well as the data collection methods used and the analysis and interpretation of the data. The next chapter deal with research findings and data analysis.

## **CHAPTER 4: RESULTS AND DISCUSSIONS**

### **4.1 INTRODUCTION**

This chapter presents the results and discussions in relation to the processes followed by the Limpopo Legislature when passing laws and also address the objectives of the study. It also presents the views and opinions from the members of the public ( $n = 48$ ), Officials of the Limpopo Legislature ( $n = 14$ ) and Members of the Provincial Legislature ( $n = 14$ ) that were interviewed during the study.

### **4.2 RESEARCH FINDINGS**

Telephonic interviews using structured questionnaires were used in the study to interview and record responses from forty-eight members of the public from districts of the province. Structured interview questionnaires were distributed to fourteen staff members of the Limpopo Provincial Legislature from different divisions involved in public hearings and fourteen Members of the Limpopo Provincial Legislature (MPL's) representing all political parties in the provincial legislature. A video recording of one public hearing was analysed and recorded according to the responses, inputs and concerns from members of the public to determine whether their inputs are taken seriously by MPL's when taking decisions on matters that affect the masses. The purpose of the study was to determine whether public hearings have an impact on the decision making process and to evaluate the process of conducting public hearings.

#### *4.2.1 Data gathered from members of the public*

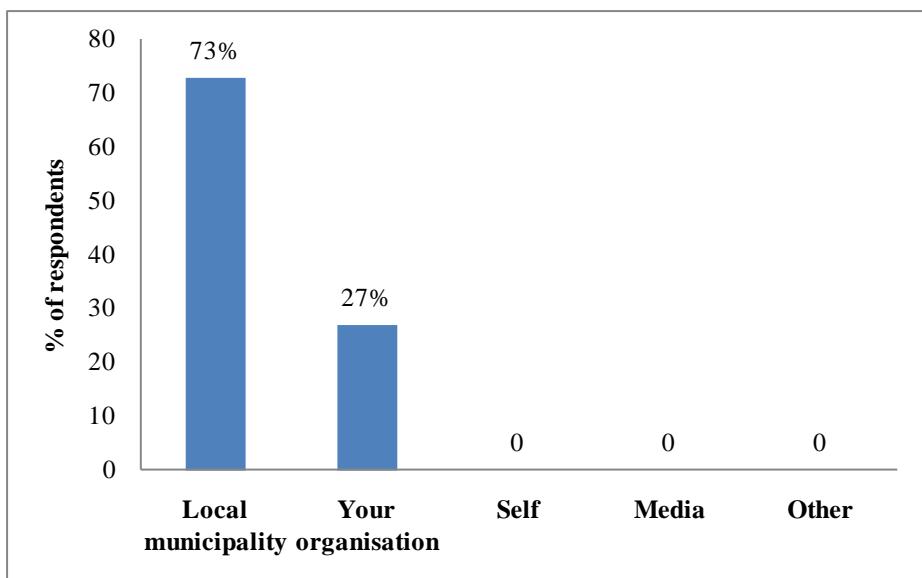
Due to the vastness of the province, telephonic structured interviews were conducted with members of the public. This was done to identify loopholes in the current public hearing process and at the same time gather public opinion as to how the situation can be remedied. The following questions were probed: the process of inviting members of the public to public hearings, the degree of participation by members of the public at public hearings,

misrepresentation of the public in decision making, whether public participation meets the constitutional mandate and lastly proposed suitable solutions to existing problems.

- Process of inviting members of the public to public hearings

The majority of members of the public are of the opinion that the local municipalities play an essential role in ensuring that the public attend public hearings. This was shown by 73% of members of the public who indicated that they are invited by local municipalities to attend public hearings. However, some members of the public (27%) indicated that their organizations invite them to attend and participate whenever there is a public hearing (Figure 4.1).

**Figure 4.1 Institutions which invite the public to public hearings (n=48)**



- Degree of participation by members of the public at public hearings

Eighty one percent (81%) of the public members interviewed agreed that public hearings are conducted in good time as compared to short notice (19%). Despite the public members responding that they are being invited in good time, it is alarming to note that 88%

responded that they only get the Bill on the day of the event. Only 13% of public members indicated that they get the Bill a day before the public hearing (Table 4.1). The process of getting the Bill on the day of the public hearing minimizes effective participation by members of the public because they won't be familiar with the issues under discussion in the Bill in question.

The Bill is also translated into local languages according to 83% of the respondents, and as a result 88% confirmed that the public understands the content of the Bill. In addition, more than 85% of the public also shows that they don't make written or verbal submissions of their inputs to the Legislature (Table 4.1). The delay in the delivery of Bills to the public, and lack of written submissions by the public, is resulting in most of the inputs from the public not being considered during the decision making process. As a result of these challenges, most of the Acts are passed with zero to little inputs from the members of the public.

**Table 4.1 Members of the public responses on the process of getting inputs during the public hearing  
(n = 48)**

Processes of getting inputs from the public		
	Inputs	% of respondents
Timing of the hearing	In good time	81.25
	At short notice	18.75
Delivery of copy of a Bill	On the day of public hearing	87.50
	Before the day	12.50
	Never	0.00
Translated to local languages	Yes	83.33
	No	16.67
Understanding of the Bill	Yes	88.50
	No	12.50
Submission of inputs	Yes	14.58
	No	85.42

- Misrepresentation of the public in decision-making

This study further investigated whether MPLs misrepresent the members of the public when taking decision in the House. In the case of the Termination of Pregnancy Bill, the majority of members of the public interviewed (63%) indicated that they were not in favour of the Bill but MPLs mandated permanent delegates to vote in favour of the Bill. However, the majority of members of the public (81%) still believe that their inputs are considered by politicians during the decision-making process irrespective of the misrepresentation by MPLs (Table 4.2).

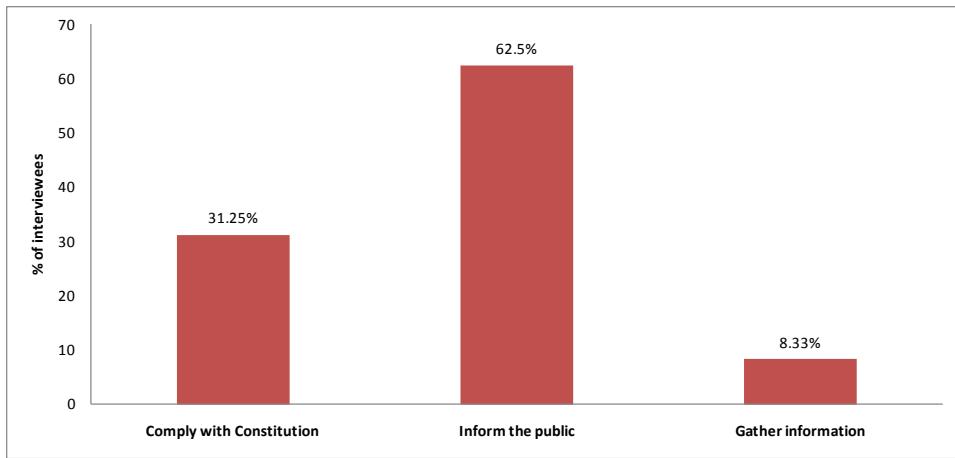
**Table 4.2 Misrepresentation of members of the public in decision making (n=48)**

Members of the public members opinions		
Inputs		% of respondents
Are you in favour of the Bill ?	Yes	37.50
	No	62.50
Are public inputs considered by MPLs?	Yes	81.25
	No	18.75

- Does public participation meet the constitutional requirements?

This study also investigated whether the practice of public participation in the Limpopo Legislature meets Constitutional requirements or not. This study revealed different views as raised by members of the public (Figure 4.2). The majority of members of the public (63%) view that public participation is conducted by the Limpopo Legislature in order to inform members of the public on new or existing legislation. Only 31% of members of the public interviewed indicated that public participation is conducted to comply with the constitutional requirement, while only 8% indicated that it is conducted to gather information and inputs from the public (Figure 4.2).

**Figure 4.2 Members of the public responses on the practice of public participation (n=48)**



- Proposed suitable solutions to existing problems

This study also found that there are various challenges, such as the timing of public hearings, which are hindering effective public participation. The solutions for effective public hearing and public participation are summarised in Table 4.3. The majority of the public members (54%) proposed that public hearings should be conducted during weekdays, while 46% of them indicated that it should be conducted over the weekend. A positive thing that emerges from this study is that all public members interviewed (100%) indicated that they will attend another public hearing whenever they are invited (Table 4.3).

However, several mechanisms were proposed by members of the public as solutions to promote effective public participation during public hearings. Most of the members of the public proposed that Bills be translated into local languages (28%), the Bills should be delivered before the actual hearing so that the public have enough time to familiarise themselves with it (28%), the inputs from the public should be considered during the finalisation of the Bill (22%), there must be a full media coverage about the public hearing using local radio stations, newspapers and posters (17%), and lastly, 6% indicated that disabled people should also be invited to public hearings (Table 4.3).

**Table 4.3 Proposed solutions to existing public participation problems**

Solutions proposed by members of the public (n=48)		
	Inputs	% of respondents
When should public hearing be conducted	During weekdays	54.17
	Over weekends	45.83
Will you attend another public hearing	Yes	100
	No	0
Mechanisms for effective public participation	Translation of Bills	27.78
	Invite disabled	5.56
	Full media coverage	16.67
	Inputs considered and feedback mechanism	22.22
	Delivery of Bills before the actual hearing	27.78

#### *4.2.2 Data gathered from staff of the Limpopo Legislature*

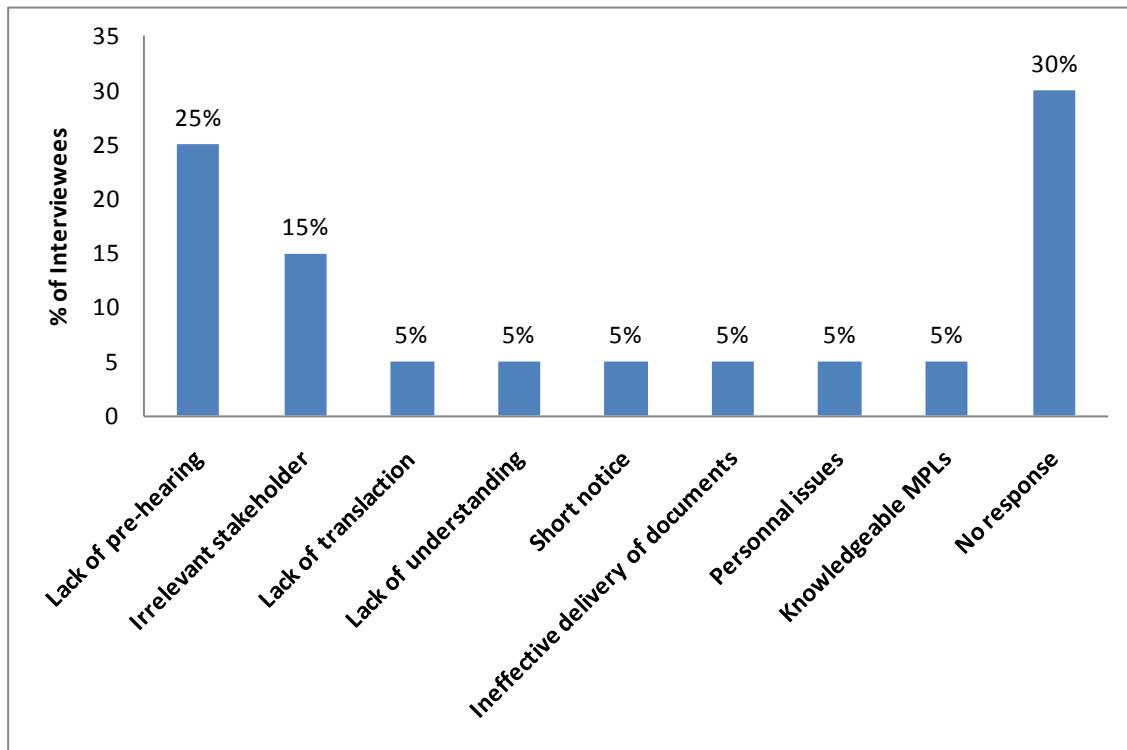
The researcher wanted to determine whether public hearings have an impact on decision making and therefore investigated the following: The process of inviting members of the public to public hearings, the degree of participation by members of the public at public hearings, whether public participation meet the constitutional requirements, misrepresentation of the public in decision making and lastly proposed suitable solutions to existing problems.

- Process of inviting members of the public to public hearings

Limpopo Legislature officials interviewed provided a balanced response on whether public hearings as conducted by the Limpopo Legislature are conducted correctly or not. From the 14 officials interviewed, 50% of them indicated that public hearings are conducted correctly, while the remaining 50% indicated that it is not conducted correctly. This is a balanced response but the study perceives the need to improve the public hearing hearings by closing the gaps such as among others the late delivery of invitations. Although most of the officials (30%) did not respond on challenges hindering the public hearing process, 25%

of those who responded indicated that the challenges to ineffective public hearings relate to lack of pre-public hearings with members of the public, invitation of irrelevant stakeholders (15%), lack of translation of Bills, lack of understanding of the Bills, short notice to the hearing, lack of delivery of documents before the public hearing, personal issues being raised during public hearings, and lack of knowledge by some MPLs (Figure 4.3). In response to what could be done to correct the situation it was indicated that the challenges can be addressed by organising pre-public hearings, inviting relevant stakeholders, conducting public education on the Bill so that people can raise relevant questions, invite the public on time, and capacitating the MPLs. The disadvantage of not addressing the hindrance to effective public hearings and participation is that irrelevant issues end-up being discussed during public hearings. Quite often, it is very difficult for decision makers to incorporate public opinion if irrelevant issues were raised.

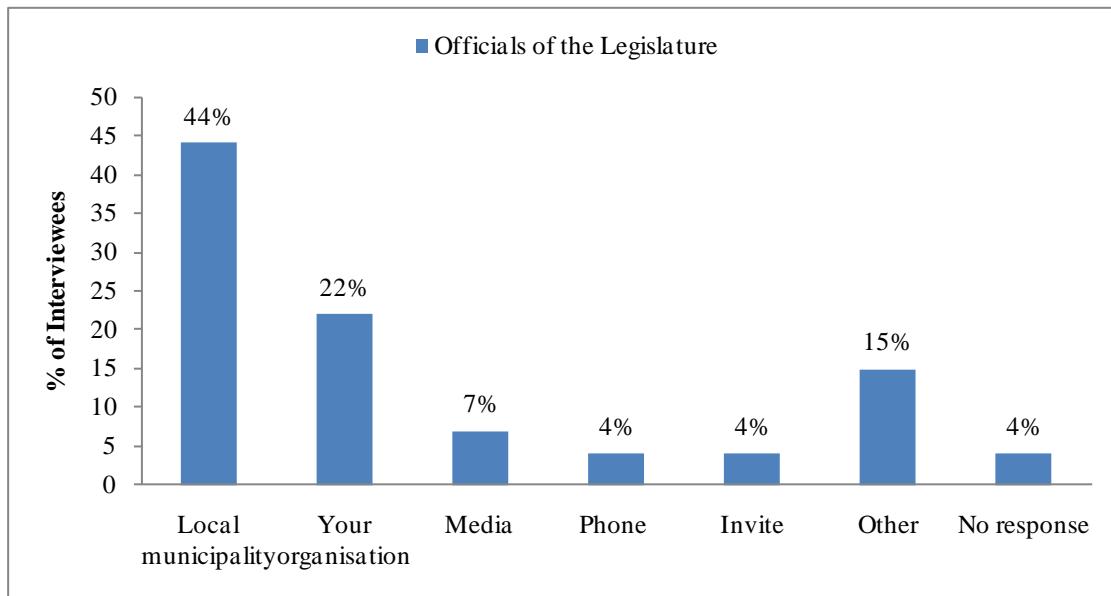
**Figure 4.3 Officials from Limpopo Legislature responses on public hearing process ( $n = 14$ )**



The majority of officials in the Limpopo Legislature (44%) are of the opinion that local municipalities play an essential role in ensuring that the public attend public hearings.

Different organisation (22%), media (7%), telephone (4%), invitation (4%) and other (15%) play insignificant role in inviting members of the public to attend public hearings (Figure 4.4).

**Figure 4.4 Views of officials on the institutions which invite the public to public hearings ( $n = 14$ )**



However, the majority of officials in the Limpopo Legislature (71%) indicated that the documents or Bills submitted to the public are not always translated to local languages (Table 4.4). Such being the case, and considering the high illiterate levels in communities, lack of translation of documents discourage the majority of the public from full participation during the public hearing as they are not able to understand the content of the Bill. The majority of the officials interviewed (56%) indicated that public hearing should be conducted over the weekend, while 44% of them indicated that it should be conducted on weekdays (Table 4.4)

It was further shown by the majority of the sampled officials (75%) in the Limpopo Legislature that all members of the public including people residing in squatter camps are invited to attend public hearings (Table 4.4). Although few officials (25%) are of the

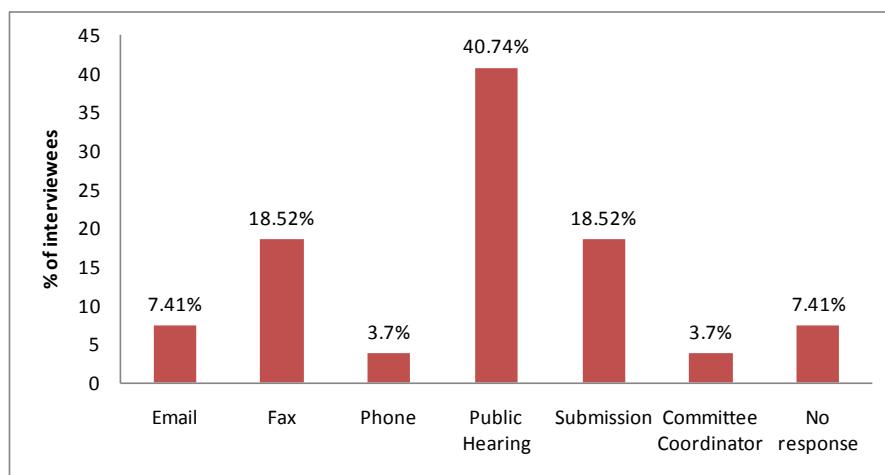
contrary view, it should be a major cause of concern if some members of the public are disadvantaged to attend public hearings (Table 4.4).

**Table 4.4 Officials responses on the process of getting inputs during the public hearing (*n* = 14)**

Officials of the Legislature: Processes of getting inputs from the public		
	Inputs	% of respondents
Are public hearing conducted correctly?	Yes	50.00
	No	50.00
Are Bills translated to local languages?	Yes	28.57
	No	0.00
	Sometimes	71.43
When should public hearing be conducted?	Weekdays	43.75
	Weekend	56.25
Are people living in squatter camps invited?	Yes	75.00
	No	25.00

Officials from the Limpopo Legislature were also asked how members of the public make inputs on pieces of legislation. The majority of respondents (41%) indicated that most members of the public make their inputs at the public hearing. Other minor mechanisms of providing inputs include submissions to the Legislature, email, fax, phone calls and contacting the Public Participation Unit or Committee Coordinator (Figure 4.5).

**Figure 4.5 Officials responses on how members of the public make inputs on legislation (*n* = 14)**



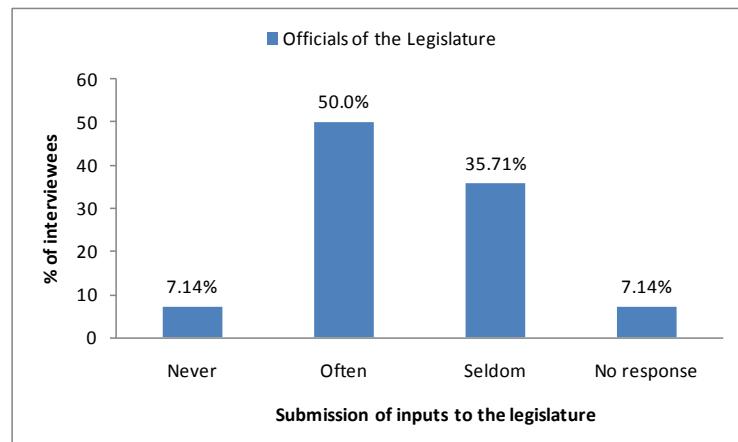
It was further indicated that inputs provided by members of the public are received by the Committee Coordinator. Such inputs are tabled before the Committee for consideration and then for debate in the House. However, the officials of the Legislature and Members of the Legislature (MPLs) provide contradictory views with regard to the submission of inputs from the members of the public to the Legislature. The majority of sampled officials in the Limpopo Legislature are of the opinion that public inputs are often received (Figure 4.6).

However, the process that unfolds after inputs are received from the public is procedurally explained as follows:

1. The Committee Coordinator receive the inputs from the public,
2. The inputs are tabled before the Committee for consideration,
3. Legal Advisor also advise on issues raised,
4. Report is then compiled and tabled by the Committee Chairperson in the House,
5. The inputs are then incorporated or excluded from the Bill,
6. The Bill is then sent to the NCOP with a voting mandate.

It was, however, indicated by the respondents that the unfortunate part is that most of the inputs from the public are rarely included in the final draft of the Bill.

**Figure 4.6 Officials responses on the submission of inputs on legislation to the Legislature ( $n = 14$ )**



- Degree of participation by members of the public at public hearings

The majority of the officials interviewed (64%) indicated that most of people who attend the public hearing do not know what is expected of them. However, 36% of them believe that people who attend the public hearing are aware of what is expected out of them. When further asked if they leave the public hearing venue with good understanding of the Bill under question, 67% of them indicated that they did not understand it, while only few (33%) indicated that they leave with good understanding of the Bill (Table 4.5). It is thus clear that most members of the public attend the public hearing in order to honour the invitation, gain knowledge, but not necessary to provide inputs on the Bill under discussion.

The majority of the officials interviewed (57%) are also of the view that the current approach to public hearing does not have any impact on decision-making. However, quite a few (43%) are of the view that there is impact in terms of decision-making through conducting public hearings (Table 4.5). The Constitution of the Republic of South Africa provides for the public to effectively participate in the law-making process, but such provision is not effectively considered because most of the inputs from the public are not considered in the drafting of laws and sometimes the inputs from the public are considered as irrelevant.

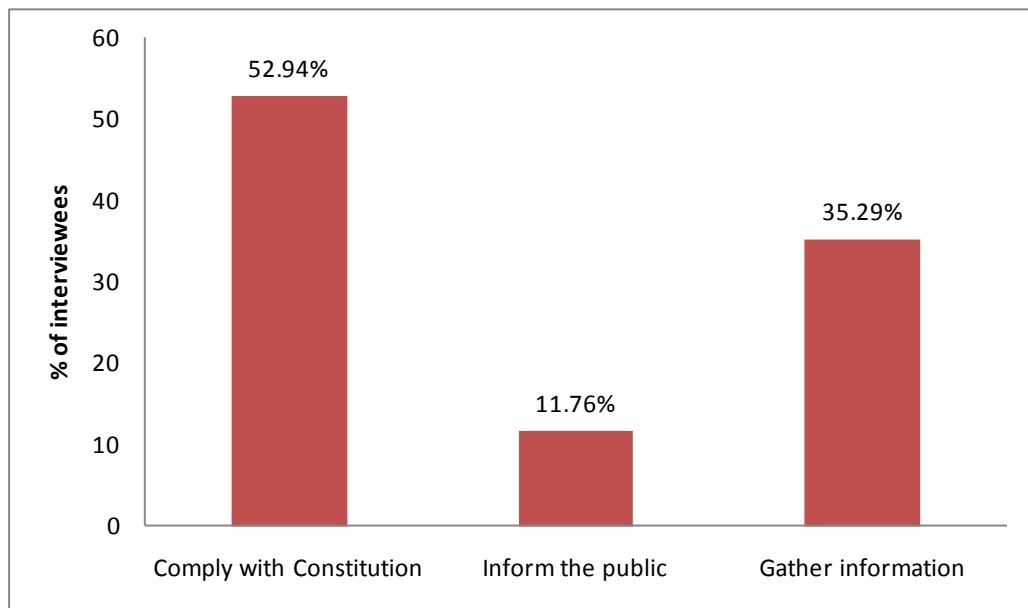
**Table 4.5 Officials from Limpopo Legislature responses on public participation during public hearings  
(n = 14)**

Officials responses on public participation during the public hearing (n = 14)		
	Inputs	% of respondents
Is public aware of the expectations	Yes	35.71
	No	64.29
Understanding of the Bill	Yes	33.33
	No	66.67
Impact of public hearing	Yes	42.86
	No	57.14

- Does public participation meet the constitutional requirements?

This study also investigated whether the practice of public participation in the Limpopo Legislature meets constitutional requirements or not. This study found different views as raised by the officials of the Legislature (Figure 4.7). The majority of the officials (53%) interviewed in the Legislature indicated that public participation is conducted only to comply with the constitutional requirements. A few officials, 35% and 12% viewed that public participation is conducted to gather information from the public and to inform members of the public on new or existing legislation respectively (Figure 4.7).

**Figure 4.7 Officials of the Limpopo Legislature responses on the practice of public participation (n=14)**



- Misrepresentation of the public in decision-making

This study further investigated whether MPLs misrepresent the public when taking decision in the House. In the case of the Termination of Pregnancy Bill, the majority of officials from the Legislature (57%) were not in favour of the Termination of Pregnancy Bill, while 43% indicated that they were in favour of the Bill. Although the majority of the officials were not in favour of the Bill, the majority of them (64%) viewed that public inputs are

considered by MPLs during the decision-making process. This was contrary to 36% of respondents who indicated that public inputs are not considered by MPLs during the decision making process (Table 4.6).

**Table 4.6 Legislature officials views on decision making**

Officials of the Legislature opinion (n = 14)		
Are you in favour of the Bill?	Yes	42.86
	No	57.14
Are public inputs considered by MPLs?	Yes	64.29
	No	35.71

- Proposed suitable solutions to existing problems

This study also found that there are various challenges, such as the timing of public hearings, which are hindering effective public participation. It was proposed by the majority of officials of the Legislature (56%) that public hearings should be conducted over the weekends so that even relevant stakeholders, which are working, could also have an opportunity to attend the hearing. Even though, 44% of respondents indicated that public hearings should be conducted during weekdays, conducting public hearing over the weekends could enhance participation by relevant stakeholders.

Most of the officials (93%) in the Legislature raised a need to conduct pre- and post-public hearings, while 7% indicated that there is no need for pre- and post-public hearings. However, the majority indicated that the pre-public hearing will serve in raising awareness about the Bill, educate the public about the Bill and thus increase understanding on the Bill. It was further indicated that post-public hearings are essential in order to provide feedback to the public on decisions which were taken. It was also proposed that relevant stakeholders need to be invited to attend the public hearing, there should be enough time for the public to understand the Bill under discussion and pre-public hearing should be conducted as key to effective public participation.

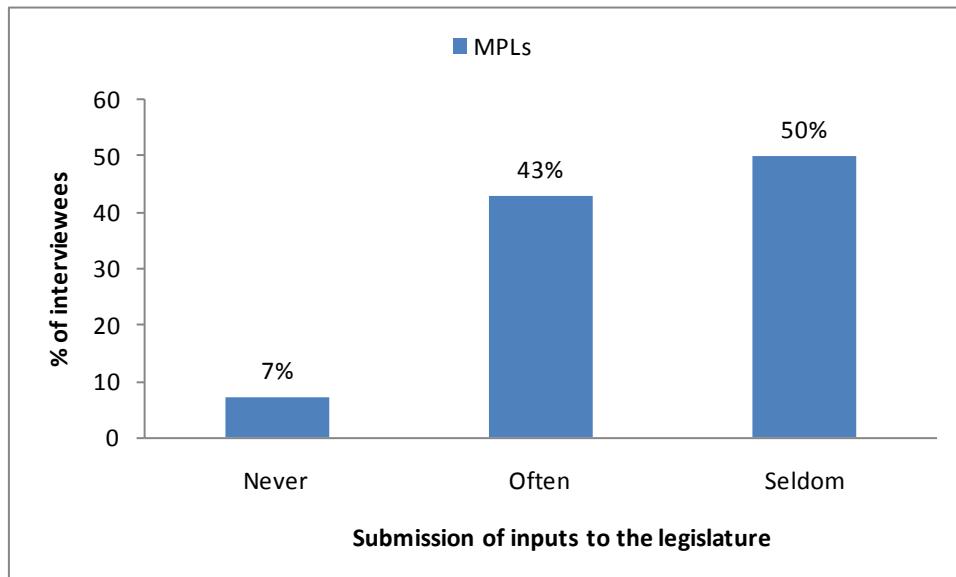
#### *4.2.3 Data gathered from Members of the Limpopo Provincial Legislature*

The purpose of the study was to determine whether public hearings are merely conducted to comply with the constitutional mandate and whether inputs from the public are considered and debated in the House before a decision is taken on a specific Bill. The following questions were probed namely, the process of inviting members of the public to public hearings, the degree of participation by members of the public at public hearings, whether public participation meet the constitutional requirements, the misrepresentation of the public in decision-making and lastly proposed suitable solutions to existing problems.

- Process of inviting members of the public to public hearings

The public hearing process and participation is not at the desired level according to MPLs. The majority of MPLs interviewed (73%) indicated that the public hearing process conducted by the Limpopo Legislature is not effective, while few (27%) believed that the process is effective. The challenges hindering an effective public hearing process include inadequate budget, ineffective coordination, invitation of irrelevant stakeholders and predetermined decisions. The MPLs were asked to respond on the frequency of inputs received after a Bill has been debated at the public hearing (Question 6 in the questionnaire). The majority of MPLs (50%) indicated that public inputs are seldom received, while 43% of the MPLs interviewed indicated that inputs from the public are often received. Only 7% of the MPLs indicated that inputs from the public are never received (Figure 4.8). The analysis of this study shows that the majority of the MPLs believed that inputs from the public are received by the relevant Committee of the Legislature.

**Figure 4.8 Officials and MPLs responses on the submission of inputs on legislation to the Legislature  
(n = 14)**

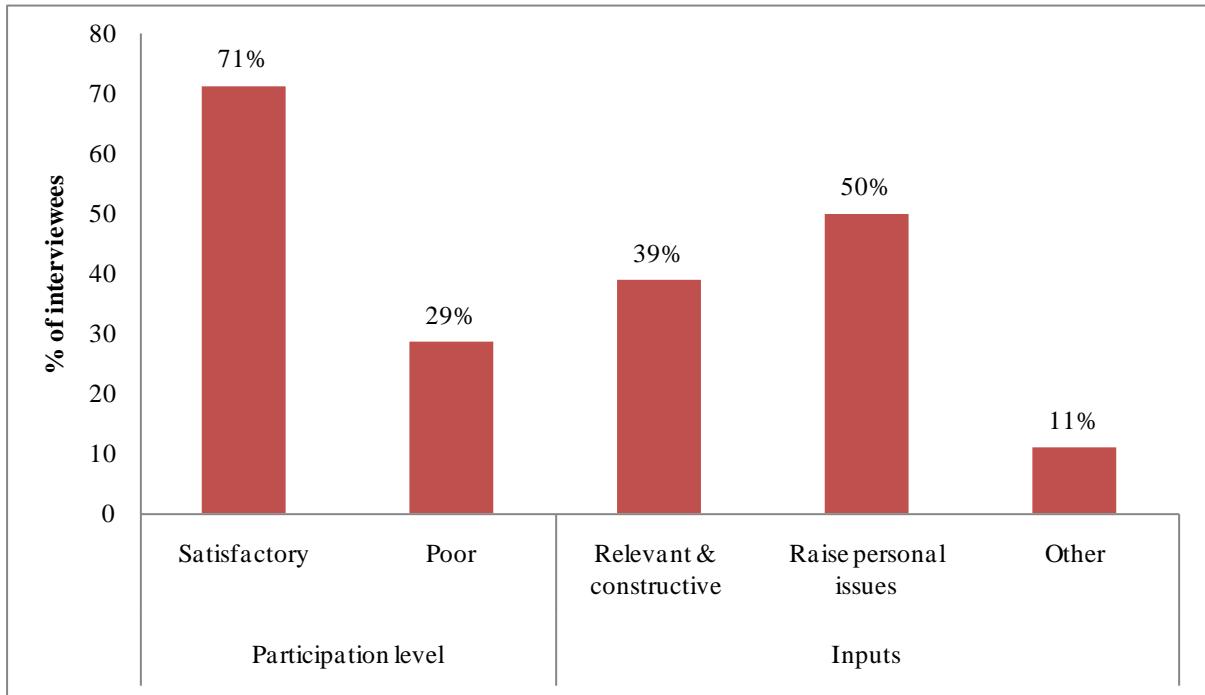


- Degree of participation by members of the public at public hearings

However, considering the highest percentage of MPLs who indicated that public hearings are not effective, this raises questions as to whether public participation during public hearings are effective. However, it can be deduced that if the process itself is not effective, one expects even participation to be minimal. This was confirmed by the MPLs perceptions towards the participation and inputs of the public during public hearings (Figure 4.9). Most of the MPLs interviewed (71%) indicated that the level of public participation during the public hearings is just satisfactory. It was further indicated by the majority of MPLs interviewed (64%) that most of the public inputs during the hearings are not relevant and constructive, but rather the members of the public raise personal issues (Figure 4.9).

The majority of the MPLs (50%) also indicated that the public raise personal issues rather than issues under discussion during the public hearing. However, only 39% of the public raise relevant and constructive issues during the public hearing (Figure 4.9).

**Figure 4.9 MPLs responses on the participation and inputs provided by the public during the hearing  
(n = 14)**



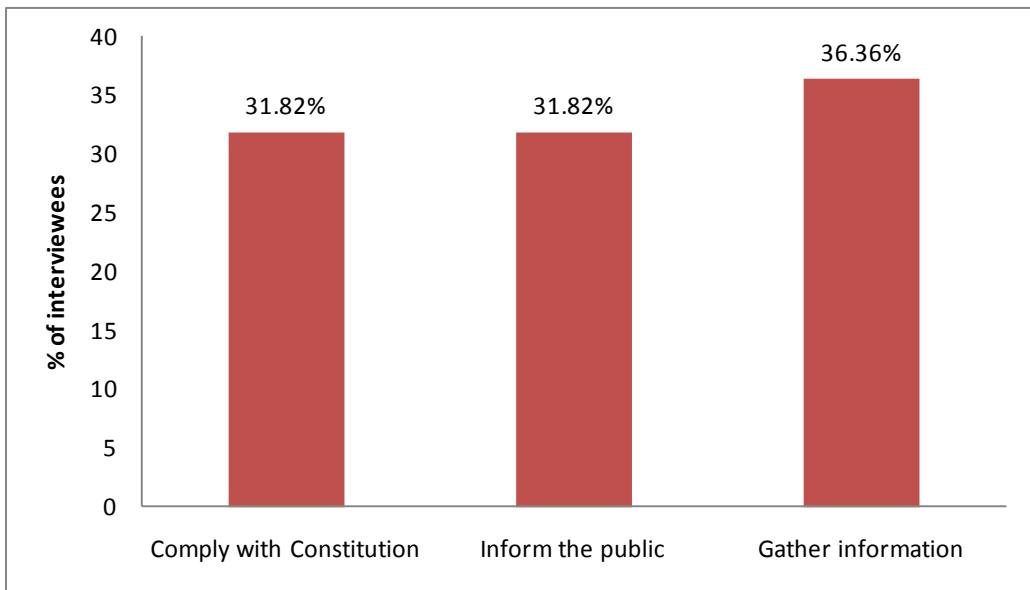
- Does public participation meet the constitutional requirements?

This study also investigated whether the practice of public participation in the Limpopo Legislature meets constitutional requirements or not. The MPLs interviewed showed a balance kind of response ( $P=0.91$ ). Most MPLs (36%) indicated that public participation is conducted in order to gather information and inputs from the public, while 32% and another 32% indicted that it is conducted to comply with the constitutional requirements and to inform the public on new or existing legislation, respectively (Figure 4.10). However, the Anova: Single Factor analysis shows that there was no significant difference in their response ( $P=0.91$ ).

It can be deduced from this study that public participation practice as conducted by the Limpopo Legislature does not meet the constitutional requirement. If the practices meet the constitutional requirement, one expects the highest percentages of responses to be under

gathering of information and inputs on the Bill under discussion, which was contrary in all cases. It is thus clear that public participation is conducted just for the sake of compliance with the constitution.

**Figure 4.10 MPLs responses on the practice of public participation ( $n = 14$ )**



- Misrepresentation of the public in decision-making

This study further investigated whether MPLs misrepresent the public when taking decision in the House. In the case of the Termination of Pregnancy Bill, the majority of the MPLs interviewed (54%) are of the opinion that public inputs are considered before decisions are taken on a Bill. However, almost close to half of them indicated that public inputs are not considered in decision-making (31%), while others (15%) indicated that sometimes such inputs are considered in decision making. This study also found that public opinion or inputs does influence political decision. This was shown by 57% of the MPLs interviewed; however, 29% of MPLs are of the opinion that public inputs do not influence political decision, while 15% of them indicated that it sometimes influence political decision (Table 4.7).

Seventy five percent (75%) of the MPLs indicated that the Bills are debated in the House before any decision is taken, but on contrary, 25% of the MPLs are of the opinion that such a process is not followed. The majority of MPLs (77%) is of the view that the public participation process (public hearings) does not lead to wastage of government resources, while few of them (23%) believe that public participation is a waste of government resources because the inputs from the public are not taken seriously in decision making. It was also alleged that politicians represent parties not the public, which compromise public inputs in decision-making. Such allegations were confirmed when 69% of the MPLs interviewed indicated that politicians can vote in favour of a Bill despite the masses opposing it. This study also found that political decision making is primarily informed by public views (43%) and political party decision (43%). Personal choice (10%) and others (5%) does not influence the political decision-making process (Table 4.7).

**Table 4.7 Misrepresentation of the public by MPLs in decision making**

Members of Parliament (MPLs) opinion (n = 14)		
	Inputs	% of respondents
Are public inputs consider in decision-making	Yes	53.85
	No	30.77
	Sometimes	15.38
Does public opinion influence political decision	Yes	57.14
	No	28.57
	Sometimes	14.29
Are Bills debated in the House before voting	Yes	75.00
	No	25.00
Are public hearing not a waste of resources	Yes	23.08
	No	76.92
Can politician vote against the public decision	Yes	69.23
	No	30.77
What informs political decision making	Personal choice	9.52
	Public views/inputs	42.86
	Political party decision	42.86
	Other	4.76

However, the audio-video analysis of the public hearing on the Termination of Pregnancy Amendment further revealed interesting results. From the video, twenty five (25) members of the public, 17 males and 8 females commented on the Bill in question. Of the twenty five members of the public eighteen (18) were against the Bill, one (1) was in favour of the Bill, three (3) asked questions on the Bill and two (2) made general comments on the Bill. Such analysis shows that the majority of the public were against the Bill, but the Members mandated the NCOP to vote in favour of the Bill. Such a decision was totally against the public views, which therefore point to the fact that the Members misrepresent public opinion when taking decisions (see Appendix 2).

- Proposed suitable solutions to existing problems

The majority of MPLs (73%) are of the opinion that public participation in the Limpopo Legislature is not effective. Qualitative analysis further shows that the ineffectiveness of public participation in the Limpopo Legislature is primarily due to lack of adequate budget to conduct pre- and post-public hearings, poor coordination, late invitations, late delivery of documents, and lack of clear strategy. It was thus proposed that adequate resources need to be budgeted for public hearings, coordination and submission of documents need to be strengthened, and that a clear and effective public participation strategy needs to be developed and implemented. All MPLs interviewed (100%) indicated that there is a need for pre-public hearing in order to educate the public about the Bill in question, and also to conduct post public hearing in order to provide feedback to public on matters discussed during the public hearing.

Table 4.8 provides the summary of the proposed solutions to address ineffective public hearing and participation processes. The solutions were proposed by the members of the public, officials of the Legislature, and the MPLs interviewed during the study (Table 4.8).

**Table 4.8 Proposed solutions to existing public participation problems**

Solutions proposed by members of the public ( <i>n</i> = 48)		
Inputs		% of respondents
When should public hearing be conducted	During weekdays	54.17
	Over weekends	45.83
Mechanisms for effective public participation	Translation of Bills	27.78
	Invite disabled	5.56
	Full media coverage	16.67
	Inputs considered and feedback mechanism	22.22
	Delivery of Bills before the actual hearing	27.78
Solutions proposed by officials of the Legislature ( <i>n</i> = 14)		
When should public hearing be conducted	During weekdays	43.75
	Over weekends	56.25
Is there a need for pre and post public hearing	Yes	92.86
	No	7.14
Solutions proposed by MPLs ( <i>n</i> = 14)		
Is public participation effective	Yes	26.67
	No	73.33
Is there a need for pre and post public hearings	Yes	100
	No	0

## 5. CONCLUSION

It can be concluded from the findings that local municipalities play an essential role in ensuring that members of the public attend public hearings. Bills are delivered and distributed on the day of the event which is a result of the low level of participation. This study found that the relevant stakeholders cannot at times attend public hearings due to work commitments, thus creating a platform for irrelevant stakeholders to use the platform to raise personal issues instead of issues relevant to the Bill in question. Members of the public make more verbal submissions during the public hearing than written ones. Written submissions are received and further processed by the respective Committee Coordinator. It was also found that the level of participation is below expectation due to a number of reasons ranging from late invitations, no documentation, no translating of the documents to no pre-public hearings. It is also evident from the findings that public hearings are mainly conducted to comply with the constitutional mandate. The Members confirmed in the

findings that politicians represent parties, not the people thus confirming that politicians can vote in favour of a Bill despite the masses opposing it.

In the chapter that follows the study focuses on presenting recommendations based on the findings of the study in an attempt to close the gaps and improve the current practise of conducting public hearings in the Limpopo Legislature.

## **CHAPTER 5: CONCLUSION AND RECOMMENDATIONS**

### **5.1 INTRODUCTION**

This chapter draws conclusions from the research findings and results. Through the analysis of the research information, a number of recommendations are highlighted in an attempt to close the identified gaps that exist before, during and after public hearings are conducted in the Limpopo Provincial Legislature.

### **5.2 RECOMMENDATIONS**

This study can safely conclude from the findings that the people of the Limpopo Province for the Bill under discussion were misrepresented by the Members of the Provincial Legislature by mandating permanent delegates in the National Council of Provinces to vote in favour of the Choice on Termination on Pregnancy Amendment Bill. It also reveals that the public hearing process was not very effective for various reasons mentioned hereunder and hence the following recommendations are proposed:

#### *5.2.1 Invitations by Local municipalities to the public*

In addition to local municipalities, manpower at Constituency Offices and Tribal Authorities can be used to invite and distribute copies of Bills to relevant stakeholders in order to enhance participation and receive relevant comments and inputs.

#### *5.2.2 Timing of public hearings*

The committee should consider conducting public hearings over the weekend when relevant stakeholders are available.

#### *5.2.3 Inputs from the public*

Since the majority of inputs is made during the public hearings, officials should distribute submission forms before the hearing and collect them thereafter to ensure that Committee Coordinators since they receive the submissions in the Legislature capture the inputs and include such in the report to the respective Committee.

#### *5.2.4 Degree of participation*

Concentrate on quality instead of quantity. Inviting smaller groups would increase participation and make a bigger impact than bigger events. Legislators and officials should arrange open office hours and meet regularly with citizen organisations to maximise participation. Distribute evaluation forms which can be used as a tool to measure performance, relevance and impact made.

#### *5.2.5 Compliance with constitutional mandate*

Public hearings should be conducted to share information and receive inputs from members of the public on pieces of legislation which will be considered in the decision making process and not only be seen as compliance to the constitutional mandate of the country.

#### *5.2.6 Misrepresentation of the public by the Members*

The Members should read reports and debate inputs made by members of the public at public hearings in the House before a decision on the Bill could be made to ensure that the public's contribution influence the final outcome.

#### *5.2.7 Pre- and post-public hearings*

The Public Participation and Petitions Unit in the Limpopo Legislature must emphasise the need for pre- and post-public hearings, budget accordingly and implement timely.

#### *5.2.8 Catering for the disabled*

Bills should be in Braille to accommodate the blind, and sign language interpreters should be at all events of the Legislature not only at selected ones such as Special Parliaments.

#### *5.2.9 Publication of public hearings*

The Bill must be published in the print media before the public hearing in order to create awareness and enhance public participation since written submissions can also be made if it is not possible to attend the actual public hearing.

#### *5.2.10 Facilitation of public hearings*

Public hearings can be better facilitated, in a more interactive participatory manner by making use of discussion groups (breaking into commissions), to enable greater deliberative dialogue on policy matters.

#### *5.2.11 Emphasis on rural areas*

It is assumed that people in urban areas especially the minority groups are kept informed and invited to public hearings yet they are the people that feel excluded from the policy making process. People in urban areas need to be informed and invited to public hearings as much as emphasis is on rural areas.

### *5.2.12 Best practice model for public hearings*

The Legislative Sector must develop and implement a model for public hearings to ensure uniformity in the sector.

## **5.3 RECOMMENDATIONS FOR FUTURE RESEARCH**

The South African Legislative Sector has in place a sound policy framework for the implementation and advancement of public participation, but there are gaps identified in the systems, processes and practices. The sector is currently in the process of developing and finalising a Public Participation Framework which will give new purpose to the meaning of public participation in the South African Legislative Sector, and also ensure that there is a coherent and co-ordinated framework for its implementation across all legislatures.

## **6. CONCLUSION**

From the study it can be concluded that inputs made by members of the public especially at public hearings, should be considered and scrutinized more seriously by MPLs, that Committee Reports should be debated in the House and the final report must be a true reflection of the voices of the people before a voting mandate can be given to delegates in the NCOP on a piece of legislation. The public hearing process in the Limpopo Legislature can be improved by implementing additional mechanisms such as conducting pre- and post-public hearings and by putting evaluation systems in place to determine the impact of public hearings in an attempt to remedy the challenges that are currently experienced. Much emphasis should be placed on public education for participants on how and why they should participate. If these major gaps can be addressed public participation will be more meaningful and will indicate a shift from what public participation in the Limpopo Legislature was to what it should be.

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## **APPENDICES**

### **APPENDIX 1: QUESTIONAIRES FOR MEMBERS OF THE PUBLIC, STAFF AND MPLs**

#### **A: MEMBERS OF THE PUBLIC**

**NB: The information will be treated confidentially**

##### **1. Process of inviting members of the public to public hearings**

- 1.1 Who invited you to attend a public hearing conducted by the Limpopo Legislature?
- a) Local municipality b) Your organization c) Self d) Media e) Other

##### **2. Degree of participation by members of the public at public hearings**

- 2.1 Where you invited to any public hearing:

- a) In good time b) at short notice

- 2.2 Was a copy of the Bill given to you :

- a) On the day of the public hearing b) before the public hearing c) never

- 2.3 Was the Bill translated in your preferred language?

- a) Yes b) No

- 2.4 Did you understand the contents of the Bill before the hearing, and what was expected of you at the public hearing?

- a) Yes b) No

- 2.5 Did you ever make a submission to the Legislature in writing or verbally?

### **3 Misrepresentation of the public in decision-making**

### 3.1 Are you in favour of the Termination of Pregnancy Act?

3.2 In your opinion, are public suggestions/inputs considered by politicians in the decision making process?

#### **4 Does public participation meet the Constitutional requirements?**

#### 4.1 Are public hearings :

- a) Conducted to comply with the constitutional mandate only
  - b) To inform members of the public on new or existing legislation
  - c) To gather information

## 5 Proposed suitable solutions to existing problems

### 5.1 When should public hearings be held?

### 5.2 Will you attend another public hearing?

### 5.3 What should be done to improve the process of public hearings in the Limpopo Legislature?

## **B: STAFF OF THE LIMPOPO LEGISLATURE**

**NB: The information will be treated confidentially.**

### **1.Process of inviting members of the public to public hearings**

1.1 Are public hearings in the Limpopo Legislature conducted correctly in your view? Yes or No. If not please indicate what is wrong and what can be done to correct the situation.

1.2 How are stakeholders invited to public hearings?

- a) Phone
- b) Organization/structure
- c) Local Municipality
- d) Other

1.3 Are Bills translated into local languages before public hearings?

- a) Yes
- b) No
- c) Sometimes

1.4 When should public hearings be conducted? Week days or over weekends.

Motivate why.

1.5. Are residents living in squatter camps invited to public hearings? Yes or No. If no, why not.

1.6 How do members of the public make inputs on pieces of legislation to the Legislature?

1.7 Who receive the inputs and what happens after inputs are received?

1.8 How often are inputs received?

- 1. Never
- 2. Often
- 3. Seldom

## **2. Degree of participation by members of the public at public hearings**

2.1 Do you think members of the public who attend public hearings know what is expected of them at the public hearing?

2.2 Do they in your view leave the venue with information and understanding of the Bill?

2.3 Do you think public hearings have an impact on decision-making? Yes or No. Please motivate.

## **3. Does public participation meet the constitutional requirements?**

3.1 Are public hearings conducted to:

- a) Comply with the constitutional mandate
- b) Inform the masses
- c) Gather public opinion
- d) Other (specify)

## **4. Misrepresentation of the public in decision-making**

4.1 Are you in favour of the Termination of Pregnancy Act?

- a) Yes
- b) No

4.2 Do you think public opinions are taken into consideration in the decision making process? Yes or No. If no, please motivate why.

## **5. Proposed suitable solutions to existing problems**

5.1 Is there a need to conduct pre and post public hearings? Yes or No. If no, please motivate why.

5.2 Suggest how feedback or post public hearings can be conducted?

5.3 Suggest possible solutions that can improve the process of public hearings in the Limpopo Legislature.

## C: MEMBERS OF LIMPOPO PROVINCIAL LEGISLATURE (MPL'S)

**NB: The information will be treated confidentially**

#### **1. Process of inviting members of the public to public hearings**

1.1 Is the public hearing process in the Legislature effective. If not please motivate why and suggest what can be done to correct the situation.

## 1.2 How often are public inputs received?



## **2. Degree of participation by members of the public at public hearings**

2.1 Rate the level of understanding and participation at public hearings?

- a) Very good              (b) Satisfactory              (c) Poor

## 2.2 Do members of the public at public hearings make:

- a) Relevant and constructive inputs      b) Raise personal issues      c) Other

### **3. Does public participation meet the constitutional requirements?**

### 3.1 Are public hearings conducted to :

- a) Comply with the constitutional mandate b) inform the masses
  - b) c) gather public opinion d) Other

#### **4. Misrepresentation of the public in decision-making**

4.1 Are public opinions or submissions considered before decisions are taken on a Bill?

If yes, how. If no, why.

4.2 Does public opinion influence political decisions? If yes, how. If no, why.

4.3 Are Bills debated in the House before voting? If yes, when. If no, why not.

4.4 Are public hearings not a waste of government resources since politicians are voted into power to take decisions on behalf of the people they represent. If no, why.

4.5 Can politicians vote in favour of a Bill despite the masses opposing it? If yes, how, if no, why.

4.6 What informs political decision making? If other, please indicate.

- a) Personal choice
- b) public views/inputs/opinions
- c) political party decision
- d) Other

## **5. Proposed suitable solutions to existing problems**

5.1 Is there a need for pre- and post-public hearings to be held? If no, why.

If yes, please suggest how feedback or post public hearings can be conducted?

**APPENDIX 2: TRANSCRIPT OF PUBLIC INPUTS AT THE PUBLIC HEARING.  
THE TRANSCRIPT IS ON THE TERMINATION OF PREGNANCY MENDMENT  
BILL HELD ON 20 AUGUST 2007 AT INDOOR SPORT CENTRE IN VHEMBE  
DISTRICT OF LIMPOPO**

Speaker 1:	“According to Tshivenda culture there is no issue of termination of pregnancy and even traditional healers do not allow it and don’t believe in it. When a woman is pregnant a baby should be born not abortion”.
Speaker 2:	“I have two concerns: Firstly which age can you abort? And secondly who is going to be licensed to do such abortions?”.
Speaker 3:	“When a woman decides to abort, does she consult with her partner?”
Speaker 4:	“The African National Congress (ANC) government said away with ....now they want abortion. Away with abortion!!”
Speaker 5:	“You singing the national anthem praising God to protect us now you talking about abortion. Human beings belong to God not to any other person”.
Speaker 6:	“Our leaders are full of love and God has love. Now leaders with love is introducing abortion why?
Speaker 7:	“God created people in his own image who are you to tell us to kill”.
Speaker 8:	“The only people to abort are adults not children. I am not happy to hear leaders telling people to abort”.
Speaker 9:	“People who abort need counselling. What did the government do for people who aborted since they are physically and mentally affected?”
Speaker 10:	“I don’t support this Bill, away with the government that supports it. My reason is if a girl goes for an abortion and end up aborting more than once she might not have babies anymore”.
Speaker 11:	“This Bill should be null and void because I don’t understand why abortion. Government was voted in by the people now the

	same government is supporting abortion. All who spoke that I listened to is against the Bill”.
Speaker 12:	“What is the religion of the doctor that can perform abortions?”
Speaker 13:	“It’s not good to talk about abortion because it’s like eating you own children. So if you doing that we are saying down with abortion down as you killing future leaders”.
Speaker 14:	“I support the Bill because when pregnant at a young age what will happen at least government is assisting” (people hauling).
Speaker 15:	“I’m against the Bill. Abortion is a sin. If you say people must abort is it not sinning?”
Speaker 16:	“I am against the Bill. We do have condoms, use it! If you don’t use condoms it means you want a baby then give birth to it. There is child grant, so there is no need to kill a baby. So away with abortion away!!”
Speaker 17:	“It is everyone’s choice whether you want the baby or not. Have statistics (records) to register those aborting and if the same person comes again the nurses should ask reasons for wanting to abort”.
Speaker 18:	“When you abort there are complications, therefore parents should know to assist. The queue at hospitals is endless of people wanting to abort because it’s their choice and right. People need to be counselled after abortion. There is a loophole in the Bill as it indicate that a child of 12 can abort it must be changed to 16 years. Traditional healers must assist with abortions to clean the woman / girl thoroughly to avoid complications later”.
Speaker 19:	“I am against the Bill. Hon. Members, when you vacate that chair do you expect a chicken to occupy your chair?” If you kill those kids what must I do because my job is to assist those very kids. To me that Bill is disgusting (very emotional) (Public clapping hands). “I say don’t kill because you’ll take away our job. Go and arrest thugs, kill us but leave the kids alone. You speak about the rights of kids yet you kill them. So the child you killing does not want to live like you? Just come clean and tell us you are here to tell us how to plan to kill the kids before they are born”.

Speaker 20:	“I want to ask the old ladies in this hall if it’s good to abort because according to my understanding a woman who have aborted does not have a label on her back. So you confront her have sex and end up dying. Abortion statistics indicate that 1 out of 50 men between 25 – 35 years are dying because of having sex with women who have aborted. People are promoting abortion and yet they do not know abortion is killing many men”.
Speaker 21:	“When people have sex they know the end product is a baby. You abort because lack of money and the government arrest you. Government should be arrested for promoting this story of abortion”.
Speaker 22:	“By 2050 there will be no people here because of this abortion issue. If we don’t ask God for forgiveness for aborting we will rot in hell! I don’t know where this issue of abortion is from” (noise in background).
Speaker 23:	“Hon. Members have been brainwashed by the whites. Whites are many but Hon. Members want them (blacks) to be few. “I feel like crying when I hear about this issue of abortion. Opposition parties are silent on the issue”. He wants everyone to vote who is in favour and against the Bill.
Speaker 24:	“In Tshivenda culture a family is happy and complete with a child. Away with traditional healers who dig for medicine to abort”.
Speaker 25:	“I am against the Bill”