

Development Bank  
of Southern Africa



# Forums as statutory bodies?

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# Preface

The advent of a democratically elected government in South Africa has not provided the country with a single mechanism through which all decisions affecting the public interest can be taken. There is currently intense interest in exploring means of enhancing democracy to include the wide variety of voluntary organisations outside government which are together termed 'civil society'. Parties, organisations and interest groups outside government have for some years made their influence felt through the policy and development forums which were originally convened to overcome the restrictiveness of previous government structures and provide a basis of legitimacy for decisions. These forums have contributed greatly to smooth political transition, so much so that they are being put forward as worthwhile permanent additions to the formal institutions of a complex society.

DBSA has an interest in institutional matters, in particular because it needs to ensure that there is adequate capacity to implement development projects and programmes, that development needs are articulated by representatives of the intended beneficiaries, and that communities participate actively in development efforts which then become more effective and sustainable. DBSA has therefore instituted a programme on civil society as one of its policy programmes.

This paper was prepared by Chris Heymans, Manager for Policy Coordination in the Centre for Policy and Information, and manager of the Civil Society policy programme. An earlier version was presented at a Centre for Policy Studies conference on *Forums and the Future*, held at Johannesburg in March 1994. The paper is a document for discussion and does not necessarily represent formal DBSA policy.

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## 1. Introduction

Apartheid has taught many South Africans that decision making should not simply be the business of government. As a result, much attention is now focused on enhancing the democratic quality of a new system through institutionalising the participation of civil society in decision making. Multiparty policy and development forums – set up to overcome the limitations of the old order's illegitimate structures – represent tangible institutional innovations. The value this has added to our understanding of institutions should be thoroughly utilised as we enter a new institutional era.

To capitalise fully on these changes might require that existing forums be restructured, refocused or even replaced. It would be premature to conclude at this stage that they should become fully-fledged statutory bodies. Forums do, however, provide a useful starting point for institutionalising the roles of civil society and technical experts in decision-making processes.

In considering the future of forums, it is perhaps more useful to look at the 'forum experience' rather than at specific forums. This would avoid endless debates about the future of existing structures and allow exploration of the types of structures which should be seen in a future system. With such perspectives on desirable types of structures it would then be possible to ask whether structures of the past – statutory and non-statutory – fit the bill for survival in some form or another. This approach, moreover, offers greater scope for institutional innovation beyond old structures.

The important lesson to learn from forums is, arguably, that although the

democratisation of formal state structures marks an important step in the move away from authoritarian rule, a genuinely participative democratic political system requires more than this. Forums could be part of these additional institutional arrangements, provided that they are inclusive and that they are able to make a real impact on decisions. Most of the forums in South Africa secured influence because they made it politically difficult for government – then on the defensive – to ignore them. Forums could, however, have a more formally institutionalised role in decision making – an option which has received some support lately. Proponents of this view argue that such institutionalised forums would ensure continuous input from members of civil society. They also say that it would enhance the quality of democracy because it would extend the accountability of politicians beyond the electoral process.

The prospect of institutionalised forums does, however, raise questions. Is becoming statutory the only option available if forums are to become more formally institutionalised within the decision-making framework? Should all forums necessarily follow the same route and, if not, what are the options? Should institutionalised forums exist at all levels of government? Should forums be sector specific or should they focus on spatial areas? What should happen to the existing non-statutory forums which are voluntary stakeholder-based initiatives? Will securing institutionalised inputs not jeopardise the independence of civil society? Will politicians allow such other structures which might, in their view, undermine the mandate they received from the electorate?

Arguing for institutionalised, but not necessarily statutory, links between state and civil society, this paper addresses these



questions. It also draws on the experiences of forums in South Africa in recent years. It does not represent a formal DBSA policy position but is a contribution to the ongoing debate about institutional restructuring in South Africa. The paper is concerned with exploring some options which could support the principle of institutionalised links between the state and society rather than conclusively arguing the case for statutory forums.

## 2. Forums and good governance

There are both normative and pragmatic arguments for ensuring that participation and accountability are not merely determined through elections.

### 2.1 The normative case

Normatively, public participation should be encouraged, even institutionalised, because it can enhance the ability of government to address the needs of the public continuously, sensitively and appropriately.

Good governance centres around openness and accountability. Political representatives and officials should be politically accountable through carefully designed procedures as well as open, transparent organisational and political cultures.

This accountability needs to be ongoing and the electoral process offers an important means to ensure that. Representative democracy means that political representatives are elected for fixed periods and politically oversee the administrative aspects of government. It is essential that the principles underpinning this be part and parcel of a new system in which all South Africans have the vote.

When role players mould institutional frameworks for a democratic South Africa, however, they need to explore all possible ways of overcoming the exclusive approaches of the past. If they seek to facilitate effective participatory democracy which permeates all levels and sectors of society, the notion of institutionalised forums should at least receive serious attention. If adopted, it could ensure the ability of citizens and interest groups to influence government – a principle likely to narrow the gap between government and the citizenry.

Of course, influence is not merely a function of formal institutional arrangements. Forums, like other interest groups, could still exert considerable influence if they strategise and act with the necessary skill and if a particular situation offers them opportunities to have more power. Moreover, if the conscious or – even more significantly – unconscious belief systems of a government and society grant processes like forums special status, forums could be very influential whether they are statutory or not.

### 2.2 The pragmatic argument

Pragmatically, the populism which emerged during the period of resistance against apartheid will have an effect on future political culture and expectations.

Throughout the 1980s, populism underpinned much of the political process in South Africa. The government, development agencies and other role players all experienced the impact of this in some way or another. This, it seems, has had a lasting impact on the style of interaction surrounding decision making – and most certainly on the expectations people have about how decisions should be made. At one stage the pendulum seemed to be swinging away from notions of

representative democracy. A more balanced approach seems to prevail at the moment, but there is good reason to question whether electoral politics and representative democracy will sufficiently incorporate many people's expectations about participative processes.

In recent years, national sectoral forums and regional and local development and negotiating forums have added to the political landscape (Shubane & Shaw, 1974). Here, interest groups became part and parcel of ongoing policy and prioritisation debates. Their motives varied. Government often sought legitimisation of policies. Many of those previously excluded from formal decision-making processes saw the forums as avenues to enhance their influence. Others saw these processes as essential components of South Africa's capacity building to facilitate democratisation and development. Regardless of the motives and interpretations, however, it would seem that the experiences in forums are likely to have a lasting impact on what South Africans expect from decision-making processes.

### 3. Some institutional options

Even if the need for an institutionalised interface between state and civil society is accepted, two issues immediately spring to mind:

- Does institutionalising forums mean that statutory forums should become the order of the day?
- Which forums should operate at the different levels of government and within what parameters should they function at the different levels?

This section explores some options.

### 3.1 What type of forums?

Apart from terminating forums entirely, in the belief that elected representative government addresses the issues which first led to their emergence, there appear to be three major options.

#### 3.1.1 Independent forums

Existing forums could continue as independent platforms for interaction between different role players. In some cases, like the National Economic Forum (NEF), the forums would become the major interface between government and relevant interests such as organised business and labour. In other cases, like the National Housing Forum (NHF), the forum would continue to provide a context within which a wide spectrum of civil society could investigate issues and formulate positions for joint interactions with government. As in the past, this would broaden discussion and debate and it could also strengthen the lobbying power of the participants as they often tackle government jointly rather than lobbying it on their own. The independence of civil society will presumably be protected if forums maintain some distance from government and particularly if they do not depend on state funding.

Funding is, however, likely to become an issue if it is to be obtained from non-state sources. Thus far, funding for forums has come from development agencies like DBSA and the Independent Development Trust (IDT), a few foreign donors, some business and commercial interests with a stake in a particular sectoral or regional forum, or in a few cases, government departments such as the Department of Regional and Land Affairs. If forums are entirely independent of the state, a government could decide that it does not have to take much cognisance of the forums, since formal political institutions might (conveniently) be deemed sufficiently



legitimate. If state funding for forums is not formalised and systematised, forums may be expected to be considerably more vulnerable to withdrawal of state support, especially if relationships between the state and forums become more hostile.

### 3.1.2 State-funded independent forums

Existing or new forums could be institutionally independent of the state, but funded by the government. This would be similar to arrangements applying to the current national, regional and subregional development advisory committees. Formed after the 1984 Good Hope summit, these structures were supposed to include the business community at local, regional and national level in advising government on economic development issues. The government still funds these structures through the Department of Regional and Land Affairs. They supposedly maintain their non-governmental status (although, like so many structures in the South African institutional framework, their independence has always been questioned by critics of the formal system).

The principle underpinning their funding and operations nonetheless is an option for forums in the future. This would allow non-state interests to nominate representatives on a state-funded forum which scrutinises policy and other relevant issues and which could advise government on key issues. This option is very similar to the first one, but is based on the assumption that the state has an obligation to facilitate inclusive processes to secure wide consultation and deliberation about major issues, especially at the policy level. Naturally, the independence of forums as organs of civil society might be compromised through such an arrangement. The advantage would be, however, that forums become financially less vulnerable. Moreover, if the state funds forums, the latter would be less open to manipulation by powerful interests and

perhaps better placed to perform a more balanced advisory role.

A government could, of course, decide at any stage to terminate its support of a forum, but the formalised support would make it somewhat more difficult to do so than in the case of the first option. It is important to note, however, that one of the key implications of not being a statutory body is that it is legally easier, if not necessarily politically, for the government to abolish a non-statutory forum or to withdraw support from it. It would merely require executive action by a minister and cabinet to abolish such a forum or to terminate state support for it. To abolish a statutory body, a minister would, in contrast, have to receive parliamentary approval to legislate the forum out of existence or amend an act to relieve itself from funding responsibilities.

### 3.1.3 State-funded statutory forums

Government could have an ongoing formalised relationship with state-funded statutory forums. Such forums would advise the relevant ministers either on request or proactively. It might also be an option to enable parliament to canvass the opinion of such forums on key issues within its sphere of activity.

The structuring of such forums would require particularly considered attention. To make them functional as avenues for civil society to influence and advise government, they would have to be based on participation by the key interest groups in any particular sector. In addition, a number of technical experts, nominated by the minister concerned or perhaps by key interests, could also be included. It would generally, however, be important to ensure that the members, with the possible exception of some of the technical experts, are not nominated by the minister concerned, but that they represent the sector. Legislation in this regard should be



the product of extensive interaction between the state and major interest groups to ensure that legitimate and fair criteria for membership underpin forums. This could also prove vital to prevent forums from being cooptive exercises, manipulated by the government.

As indicated above, it would be more difficult to abolish or alter statutory forums because such changes would require legislative action and, hence, the support of parliament. Naturally, a majority-based cabinet determined to abolish or change a forum would probably be able to enforce such action with parliamentary support. The need, however, to address the statutory aspects would make this a little more difficult and could inhibit politicians somewhat. On the positive side it would mean that the institutionalised inputs of civil society have some protection against unilateral political intervention. On the negative side it could also inhibit the state from getting rid of institutions which become dysfunctional.

It is important to emphasise that the latter two options do not intrinsically negate the first. Whatever the state does with regard to funding or legislation, civil society interests would, it is hoped, be free to organise and mobilise in order to promote their interests. This could include forming forums with other related interest groups in order to influence policies and to lobby government. Of course, if the government already supports a forum in the same sphere, it might not sufficiently consider the inputs of a fully independent structure. Further, if the state funds a statutory or other forum, it might not, and is likely not to, fund independent structures. This could cut off the lifeblood of independent forums. It could be argued, however, that formalised forums will secure civil society influence to an extent which no forum outside the system would ever be able to achieve.

### 3.2 At what levels?

One of the vexing questions about the future of forums concerns the role and place of regional and local metropolitan forums and their relationship with each other and national structures.

The forums at these levels are not sufficiently similar to warrant a uniform approach. Thus far, regional forums have tended to focus on economic and development issues and were shaped by regional dynamics. Local and metropolitan forums have focused primarily on either one or both of the challenges of negotiating service delivery and cost recovery, and local level institutional restructuring. Recently, the Local Government Transition Act prescribed a process for the constitutional transformation of local government through first, local and metropolitan forums and later, transitional authorities at those levels.

The Interim Constitution and the unfolding constitutional process grant provincial governments considerable policy powers. This suggests that if forums become institutionalised in the decision-making landscape, the structure and role of forums at provincial level will require considerable attention.

They could, presumably, be constituted in a way similar to national forums. Forums at regional level, however, have thus far tended to be multi-sectoral, rather than issue-specific like their national counterparts. The introduction of sectoral advisory structures at provincial level will, therefore, require considerable institutional reshuffling. One option would be to continue with multi-sectoral structures, supported by specialised working groups dealing with specific matters such as housing, electricity and local government. Forums could then address broader socio-economic matters in an integrated manner



while specific matters would receive attention in the working groups. Separate sectoral forums at provincial level might, nonetheless, indicate that this level has become critical in the policy process. Sectoral forums at the provincial level, however, will also result in institutional proliferation which, in turn, might be costly or create a situation of 'over-government'. If the country's constitutional evolution enhances the role of provincial government, it might be inappropriate to limit forums at provincial level in favour of those at the national level.

It is doubtful whether all metropolitan and especially local areas will be able to support statutory forums. It might, therefore, be more appropriate to encourage social compacts at national and provincial level and to leave local and metropolitan authorities with a range of options for institutionalising forums. The closeness of these levels to the implementation level, nonetheless, makes multi-stakeholder forums responsible for integrated development policies and programmes more appropriate. Local levels vary so much, however, that the management of this process simply cannot be uniformly approached. Local level structures have to respond sensitively to local conditions, provided that the principle of structured civil society participation is part and parcel of governance at this level.

#### 4. Some questions

While institutionalised participation might in some respects enhance the quality of democracy, a number of questions arise both about its feasibility and its potential impact on other democratic values. This section briefly reflects on these issues.

#### 4.1 Will demands for intensive popular involvement decrease?

At one level it seems likely that continued forum-based decision making will decrease as formal political structures have become more legitimate. Forums have thus far essentially been transitional vehicles. They first ensured the participation of more stakeholders in decision making where apartheid structures failed to do so. Later, many forums became the platforms for joint decision making once the apartheid state became largely unable to make and implement decisions on its own.

Although many of these processes have primarily been transitional, the culture of participation which marked most of them has become deeply entrenched. Of course, some forums became elitist or were at least not nearly as inclusive and participatory as many of their supporters have suggested. Yet they epitomise a new understanding of politics and decision making in general. This new perspective centres around inclusiveness, interest-group based processes, greater scepticism towards politicians and, generally, a new appreciation of the interface between technical and political issues.

The challenge now is to capitalise on the potential contributions this experience could make in the long term. Forums, if they continue to exist, albeit in a new form, will probably continue to perform a transitional role for some time. One would expect them, at some point, either to disappear or refocus their activities in line with changing demands. The tensions between state and civil society which they may bring to the fore are not detrimental to democracy and development. These tensions should not be avoided by safely assuming that formal political democracy resolves the dilemmas around accountability and transparency. It would



be more appropriate to facilitate processes, such as those in forums, that enhance these values.

Forums have to a considerable degree been formed alongside older advisory structures and statutory bodies. Examples include the NEF alongside the Economic Advisory Council; the Electrification Forum alongside the Electricity Board; the NHF alongside the National Housing Board; the Local Government Negotiating Forum alongside the Council for Coordination of Local Government Affairs; and the regional forums alongside the RDACs. This suggests that, while the spectrum of participants and the *modus operandi* might have to change, the need for broader inputs around some sectoral issues could well remain. The functional parameters of forums correspond closely to those defined earlier when the government, parastatals and mainstream interest groups developed advisory bodies and statutory bodies. Whether the older structures will simply be replaced by forums in a new institutional environment is uncertain, but the way they correspond to traditional areas of focus is interesting. It points to a possible need for additional structures comprising technical experts and representatives of civil society able to assist the government over and above its normal functioning within constitutional structures.

#### 4.2 Will politicians allow forums this role?

The argument that the coming of representative democracy will alleviate the need for forums also has a *realpolitik* dimension. The point is often made that politicians will simply not be prepared to allow forums to dictate to them. It is argued that, while the politicians might well not be able to prevent voluntary forums from mobilising and lobbying, they would certainly not be keen to support forums

financially or, more critically, to grant them statutory status.

This is not an unrealistic prospect and it would be presumptuous to dismiss it. But it is also not necessarily accurate to argue that the new institutional environment would simply be subject to the likes and dislikes of politicians.

The points made earlier about the possible lasting impact of the rise of populism in the 1980s and the momentum at which forums have developed in recent years are relevant here. Even if politicians are tempted to reduce the role of forums, the pressures from key interest groups could be sufficiently powerful to ensure that the politicians do not succeed. Many participants in forums have developed a strong interest in forums and politicians might find it more difficult to get rid of them than many people anticipate. Moreover, many of the key politicians in the new cabinet and parliament have travelled the route of forums. They could, of course, turn their backs on this route or simply argue that changing circumstances require changing approaches. The depth of political culture which has emerged in recent years makes such a sweeping *realpolitik* argument rather simplistic. If representative democracy proves, in the longer run, sufficient to address the needs and interest of people, forums could well become redundant. This is unlikely to happen for some time.

The question is whether politicians will approve of statutory or state-funded forums. Once again, there is no clear answer. The nature, quality and intensity of lobbying efforts could have an impact on this matter. Furthermore, many forum participants are also not clear about whether they want such formal status. These issues are, therefore, closely linked with how the questions around the



independence of civil society and the overall political culture are resolved.

One should bear in mind, however, that politicians might regard forums as potential allies in the task of governing. It is unlikely that they will easily surrender decision-making power to forums, but, amidst the challenges of transition, change and generally coming to terms with the actual task of governing, politicians might find formally recognised forums to be sources of support, rather than adversaries. Whatever roles and structures forums are accorded, they will in all likelihood not become final decision makers. Their roles will be to advise and direct: the understanding in this paper is certainly not that they will become government. The task of governing will still firmly rest with the executive and legislative arms of government. Forums will at most be complementary to that process, enhancing societal input into decision making but perhaps bringing important broader long-term perspectives rather than short-term political ones.

Finally, even if politicians in the new system are tempted to get rid of or reduce the role of forums, the normative case for institutionalised forums still remains worth consideration (see point 2 of this paper). There are enough people who support this case to ensure that it will not simply be dismissed as the debate unfolds about more effective and development-friendly inclusive institutions in a democratic South Africa.

#### **4.3 Will institutionalised (and especially statutory) forums cause society to be over-governed?**

The origins of this question are rooted in past experience. There has consistently been an argument that the large number of statutory boards (for example in the

agricultural and marketing sectors) has simply increased the institutional and bureaucratic burden facing South Africans. Now, with broader political structures about to be introduced, the size of government is set to increase even further. While statutory boards might not operate exactly like government departments, they hold within themselves the seeds of further bureaucratisation.

These concerns are valid and should be directly addressed when the question of forums is debated. There is no inevitable causal relationship, however, between statutory or state supported bodies and excessive government. First, if structured along the lines suggested in this paper, the forums would be interfaces between government and civil society. They would function, *inter alia*, to support or pressurise the government to streamline state actions and policies in tune with what key interests society proposes. This is more likely to counter bureaucratisation than enhance it. There can be no guarantees, but the mandates of forums and the spirit within which they are set up will be important factors shaping their magnitude and their implications for the process of government.

An issue of particular importance here would be the type and scale of state support for forums. While some capacity would inevitably be required to enable forums to research matters, develop positions and perform other operational duties, deliberate steps should be taken to limit their organisational structures. This should also assist in countering the potential of statutory forums to stimulate bureaucratisation.

#### 4.4 Will institutionalised forums lead to undue protection of special interests?

Many of the old statutory boards were often accused of protecting special interests and thereby effectively obstructing sound government policies and acting contrary to consumer interests. Some critics say that forums are corporatist structures, centred around a limited group of key interests and, possibly, the state. As such, forums seriously threaten the interests of the broad public and especially the powerless disadvantaged. This is also a valid concern requiring particular attention when the prospect of institutionalised forums is under review.

The best way to prevent forums from becoming exclusive and excessively powerful is to define their structures, criteria for membership and functions very clearly. It should always be possible to broaden the base of a forum and to facilitate wider inputs by expanding its membership. There should also be avenues available for individuals, interest groups and, above all, parliament to challenge a forum if it has statutory status or if it is supported by the state.

Non-statutory forums and other lobby groups, too, could have an impact on the processes of decision making, and therefore also on forums. The democratic quality of the decision-making culture will become vital in determining these matters. The greater the space for diversity and challenge in the overall political process, the more likely are forums to function in ways conducive to democratic, accountable and open governance. This does not only depend on formal institutional arrangements, but also on the informal social contracts underpinning the entire institutional framework.

#### 4.5 Will institutionalised forums jeopardise the independence of civil society?

This is one of the greatest concerns of people who have participated in the recent forum processes in South Africa and others concerned with the importance of a facilitating environment for dynamic civil society activity.

Some members of the NHF contend that their role is to champion the interests of civil society and that if this were in any way to be usurped by the state they would lose this strength. Many people are sceptical of the state, viewing it as intrinsically threatening to civil society. Some fear that the emphasis on the role of civil society thus far has largely been due to the illegitimacy of the apartheid state. There is, therefore, a concern that when former activists occupy political or other positions in government, they might be as inclined to abuse power against civil society elements as many believe most politicians would be.

Once again, the political culture in a democratic South Africa could prove critical. If this culture is authoritarian, most institutions outside the state will have an uphill to maintain genuinely effective voices in the decision-making process. In contrast, a participative democratic political culture will unlock the resources of diversity, different interests and the range of perspectives pertinent to the issues facing decision making generally and government in particular.

Institutional interventions to bolster or protect the independence and rigour of civil society are also possible. Civil society representatives on a statutory or state-funded forum could be nominated by and accountable to their own constituencies, rather than owing the government something for their membership. This



would automatically make them less susceptible to manipulation by the government.

As pointed out earlier, nothing prevents role players in civil society from mobilising in their own right outside the formally institutionalised structures. It is not an either/or situation: institutionalised forums merely mean that a systematic civil society role in policy and other strategic decision-making processes is ensured. It should in no way inhibit other activities of interest groups outside the state. In fact, such institutionalised opportunities could well encourage civil society role players to pursue their goals with even greater determination. If anything, civil society could become more vibrant, with a more significant impact, that if it operates only outside state-related forums.

## 5. Concluding comments

Forums offer South Africans important means to build a genuinely participative democratic political culture which transcends representative democracy. If more institutionalised in the decision-making process, forums could ensure continuous input by elements of civil society. By extending the accountability of politicians beyond the electoral process, such forums could also enhance the quality of democracy. This will not merely benefit the political process, but will also streamline the opportunities for multi-stakeholder participation in decision making about the many development challenges facing South Africa.

The paper has avoided taking a firm position about whether forums should become statutory bodies, pointing out that a formal role is really the key issue. For this, several options are available, some of which stop short of actually governing

forums in terms of legislation. It was also pointed out that all forums would not necessarily have to follow the same route. Great sensitivity to different circumstances should characterise the establishment and institutionalisation of forums at different levels and within different sectors

A number of problems related to the impact of institutionalised forums on civil society, were highlighted. Politicians might well be uncomfortable with the existence of structures which they perceive to be undermining the mandate they received from the electorate. Furthermore, institutionalised forums could indeed jeopardise the independence of civil society.

The democratic quality of the political culture and specific institutional steps to protect civil society, however, could counteract such negative forces. It was also pointed out that the institutionalisation of forums in state decision-making processes does not mean that non-statutory voluntary forums and other organs of civil society would cease to function. In fact, institutionalised opportunities could well facilitate the development of a more vibrant civil society, confident of its ability to influence government and the policy environment.

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