

Towards a more activist parliament more engaged with civil society

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Editorial note: What follows is the edited text of a speech delivered by Yunis Carrim at the launch of the Community Law Centre’s Parliamentary Programme in Cape Town on 20 October 2010. It is reproduced here because of its relevance to the topic of *LDD*’s Special Collection for 2011/2012, “Civil society participation in Parliamentary oversight”, as well as the importance of the issues it addresses in the context of South Africa’s evolving democratic practice.

I start with an apology. I was approached to speak some weeks ago. The topic suggested was around making Parliament more effective and strengthening its interaction with civil society. I explained that I now serve on the Executive, and it might be more useful to have a senior parliamentary committee chairperson speak on the topic – but the organisers wanted me to speak about my experiences of chairing three parliamentary committees between 1998 and 2009 and how these attempted to encourage civil society participation. I said that would be fine,

as long as it is understood that I cannot be seen to be speaking on behalf of Parliament in this context, and will basically offer a brief overview of some aspects of our experiences in the portfolio committees I served in from 1994 to 2009.

Let me start then with congratulations to the Community Law Centre on organising the seminar and launch of your Parliamentary Programme. Let me also express appreciation for all the other good work you do, not least in local government and the cooperative governance system in general. Your regular publication of 'The Local Government Bulletin' is most welcome. You were certainly taken seriously by the parliamentary committees I served in, and currently the Department of Cooperative Governance and Traditional Affairs (CoGTA) values the work you do. I think it is especially useful, given the main focus of your Parliamentary Programme, that this event is being organised on the eve of Africa Human Rights Day. So congratulations!

With the permission of the organisers, the title of my input is "Towards a More Activist Parliament More Engaged with Civil Society."

Activist Parliament in Activist Society

An activist Parliament cannot be sustained without an activist people and activist society. So, yes, Parliament is not as active as it should be. The fault for that lies mainly with Parliament. However civil society must also take its share of the blame for Parliament's inadequacies. Ultimately ordinary people must too. We are all, in our different ways, to blame. And so we must all, working in our different ways, contribute to making ours a truly effective, powerful Parliament of the people.

We are, in fact, meant to be a People's Parliament. That is clearly the position of the African National Congress (ANC), whatever the practice. In the notion of the National Democratic transformation to which the ANC is committed, Parliament is an organ of People's Power, and as the ANC we are meant to reach people through Parliament to advance our national democratic goals. These goals certainly cannot be achieved without an active, mobilised public that takes a significant measure of responsibility for shaping its own life. So it's not in the ANC interests to have an aloof, sluggish, inane Parliament that is distant from the

masses and servile to the executive. It simply undermines everything the ANC stands for and want to achieve.

At its recent National General Council, the ANC stressed the need for an activist parliament. I quote from a discussion document: *'...the Legislatures and the entire legislative arm of the state are to be treated as an activist's forum. The ANC has committed itself to an activist Parliament and Legislatures that put the interests of all South Africans first, especially the poor, as it performs its constitutional responsibilities as a National Liberation Movement and governing party..... The Legislatures must be felt by the people. It (They) must be visible through its (their) representatives and have a meaningful impact upon the lives of the people so that they can practically feel and see in practice the concept of "the People shall Govern" that the Freedom Charter spoke of in 1955. To achieve this we must have a "Peoples Parliament" and Parliamentary Constituency Offices that are used as springboards for community outreach work. These offices must be the hubs for advice, the engine rooms for discussion and centres where communities can receive literature and information become informed and politicised and be prepared to go back into the community to serve the people qualitatively better prepared.'*

Elsewhere in the document: *'A Legislature(s) must act as the voice of the people. It [is] a central institution in the advancement of both representative and participatory democracy...'*

The first clause in the Freedom Charter is 'The people shall govern.' The ANC believes that promoting that principle of the Charter has to be fundamental for parliamentarians. One of the defining features of an activist Parliament is that it should seek to involve all citizens in issues of governance for better service delivery and development. As a key institution of democracy it does not only hold government accountable, but is itself accountable to the citizens.

The ANC believes that an activist Parliament should have members who are rooted in their communities, and who use Parliamentary Constituency Offices as catalysts for community outreach work. Constituency work is crucial to an activist Parliament, and it needs to be significantly strengthened.

I stress all this because I know a significant number of you here today have become increasingly skeptical of Parliament's role. I say, yes, I understand how you feel, yes, you are right in parts, but, no, Parliament is not a lost cause. It can

never be, not in a democracy! It is your Parliament anyway. And that you are here signals that you have not given up hope. Certainly the Community Law Centre has not. It is just launching a new pressure group focusing on Parliament. Good! And here I am – a member of the executive – speaking on the need for a strong people-based parliament.

It is simple really. For us in the executive to effectively fulfill our role we need a strong, active Parliament. Fundamentally, it is in the interests of the executive to have an effective Parliament that holds it to account.

It is the ANC that mainly drove the key provisions in the Constitution that provide for our Parliament to be one of the most effective, transparent, democratic, powerful parliaments in the world. The Constitution is very clear. Parliament has considerable power, as set out, in sections 55 and 56 of the Constitution. It must, for example, provide mechanisms to *'ensure that all executive organs of state in the national sphere of government are accountable to it'*. Parliament or any of its committees may *'receive petitions, representations or submissions from any interested persons or institutions'* and may *'summon any person to appear before it to give evidence on oath or affirmation or to produce documents'*. But with these powers also go responsibilities. Parliament must be rooted in the people and act on their behalf. Note, for example, section 59:

1. *The National Assembly must:*

(a) *facilitate public involvement in the legislature 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, but reasonable measures may be taken –*

(i) *to regulate public access, including access of the media, to the Assembly and its committees; and*

(ii) *to provide for the searching of any person, and where appropriate, the refusal of entry to, or removal of, any person.*

2 *The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.*

Of course, the same provisions apply to the National Council of Provinces (NCOP).

In terms of the Rules of Parliament, committees have major oversight responsibilities over the executive. Note, for example, in terms of Rule 201(c) of the National Assembly, committees may:

'monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, rationalization, restructuring, functioning, organization, structure, personnel, policy formulation or any other matter it may consider relevant, of the government department or departments falling within the category of affairs assigned to the committee...and may for that purpose consult with such department or departments.'

Part of parliament's role as defined by itself is: *'Its mission as the freely elected representatives of the people of South Africa is to represent and act as the voice of the people in fulfilling its constitutional functions of passing laws and overseeing executive action.'*

So clearly in terms of the Constitution, other legislation, the Rules of Parliament and various policies, Parliament is very powerful. It derives its legitimacy fundamentally because its members are elected by the people in regular elections. And the more it is rooted in the people the more powerful it can become.

So both Parliament and civil society need each other. The one should not seek to substitute for the other. They need to cooperate more effectively while recognising their specific roles. Inevitably there will be tensions, but if they cooperate effectively, these will be constructive tensions.

Parliament Needs to Encourage more Public Participation

One area in which effective relations between Parliament and civil society organisations can be forged is through parliamentary public hearings. In the parliamentary committees I served in, we sought to involve the public as much as possible, and we certainly benefitted hugely from this. The quality of the policies and Bills we finalised were so much the better for this participation. Within budgetary constraints, we sought to advertise the hearings widely, including through radio and in several languages. We tried, where possible, to arrange funding for organisations to send representatives to hearings who might not have

been able to participate otherwise. This was not always easy, but it was certainly tried.

Instead of a 10-minute per input convey-belt system of public submissions, we encouraged participants to stay for as long as they could, and had discussion periods regularly during the hearings in which the representatives of organisations did not simply take questions from Members of Parliament (MPs), but engaged with each other, so encouraging a dialogue between civil society organisations, not just between MPs and representatives of civil society organisations. With some Bills, like the Municipal Systems Bill, Property Rates Bill, Child Justice Bill and others we allowed a representative group of civil society organisations to constantly confer with us as we processed the Bill. They were often asked to sit in committee meetings, and within limits, participate. Where possible, not always, but often enough, a week or so before voting on a Bill, we sent the final draft to key stakeholders to comment on without re-opening all the earlier debates.

Here is an extract from a piece written on the processing of the Property Rates Bill for *The Natal Witness* in March 2004:

'So three years before the Bill was officially introduced in parliament it had become mired in controversy. We should have seen what was coming! It turned out to be the most politically and technically challenging Bill we had ever to deal with. We received a flood of applications for the public hearings. We decided to allow everybody to be heard. To defuse some of the heat, we organized a special two-day workshop before the hearings with all the key stakeholders to see if we could arrive at a clear sense of the issues of agreement and disagreement and a framework to address our differences. It helped, but not enough.

At the hearings, most people began with something like "This is a good bill, but....", and then spent the next 20 minutes on a litany of complaints. The language was often very emotive. The sense was that if we did not do what they wanted, the skies would fall down. Ratepayer bodies of the rich said "people would be forced out of their homes" and that the Bill "undermined constitutional rights to private property". Estate agents said there "will be chaos in the property market". Developers said "there would be an economic crisis". The land-only rates lobby said there would "be job losses and economic decline". Public utilities said it would lead to inflation. Independent schools said they would suffer. Farmers said "land values

would decline and food security would be threatened". Traditional leaders said the Bill "was to ghastly to contemplate!"

It was clear that nobody wanted to pay rates, and everybody wanted to heap the burden on somebody else. What to do in these circumstances? Set up sub-committees, that's what. And invite all these stakeholders to prove their case. Also, get the services of independent technical advisors to assess their claims. Anybody who made a noise about the Bill was promptly invited to serve on one or more sub-committees. A long and strenuous process of negotiations ensued. We spent more than 320 hours in formal deliberations on the Bill and over 100 hours in informal meetings. More than half of this was in sub-committee meetings with stakeholders.

"Negotiations by attrition", is how one colleague put it. Stakeholders seemed bemused by our willingness to negotiate with them. Some even tired of it and withdrew. It seemed almost as if all they wanted was to be heard. Others were suspicious. But others took full advantage, submitting lengthy academic studies and even whole books. We received over 4000 pages of submissions. Between the researchers and MPs we read every comma and fullstop and everything in between. Want to know whether you should use the high water mark or low water mark in valuing harbours? Ask us. Want to know why TELKOM's towers were to be valued and not masts? Please ask. And why are we excluding the valuing of annual crops and growing timber in the case of agricultural land? We can answer.

The Freedom Charter, sadly, doesn't address these issues. So we had to acquire the technical knowledge, and use our political values and commonsense. We drew on the support of academic and other experts, from South Africa and elsewhere. The Department had spent four years on the Bill, consulting widely, but we could not, of course, uncritically accept their arguments. We asked them to go back to the drawing board and undertake further empirical studies. Initially they groaned, but they soon accepted that we were simply doing our jobs, and they had to do theirs. And they certainly shone.

Through constantly engaging with stakeholders we began to arrive at consensus. Initially, we exposed their wild claims at the hearings for what they were. Then we began to scrutinize the sound aspects of each case, and found much of value. So we made major amendments to the Bill...'

Not all Bills were processed fully in the way suggested here. The last major Bill I can remember that was to a large extent processed in this way was the Child Justice Bill. Obviously, the extent of public participation in the processing of Bills differed according to their importance, budgetary considerations, deadlines, and other criteria. But clearly Parliament needs to amend its rules to encourage more effective public participation in public hearings.

Of course, the National Council of Provinces (NCOP) has a crucial role to play in encouraging people to take part in public hearings and other aspects of Parliament's work as it deals directly with the provinces.

The 'Taking Parliament to the People' programmes in which Parliament, mainly the NCOP, convenes in different parts of the country, especially rural areas, and listens to people's concerns needs to be strengthened. In particular, there needs to be a much more active response to the issues people raise with Parliament. This also means that the Executive has to be more responsive as well.

Parliament has a major Public Education and Information programme. This may need to be improved. Parliament commissioned a major review of its performance by a group of prominent activists, including former MPs and the current Speaker (At the time of delivering this speech it was the Honourable Max Sisulu). Among their findings was that a significant challenge remains for Parliament to realise its vision of becoming a People's Parliament. This relates specifically to the link between the electorate and Parliament. The report noted that surveys show that there is generally a very poor understanding among the public of parliamentary procedures and opportunities for participation in parliamentary processes. So Parliament's political education and outreach programmes, as with much else, needs to improve.

The ANC also has to put more pressure on MPs and the ANC political structures in Parliament to ensure that Parliament becomes in fact the People's Parliament it is set out as in ANC policies.

Civil Society Needs to Get its Act Together More

Of course, Parliament can do much more to strengthen its link with civil society. But civil society organisations also have to do much more to build their legitimacy and engage more astutely with Parliament. Civil society organisations differ from large trade unions to small groups of specialists. They are not easy to

bring together in an overall umbrella organisation. Many of them have found it difficult to adjust to the new post-apartheid terrain. But civil society organisations need to have some effective overall structure and at least a measure of cohesion. What has happened to SANGOCO (South African National Non-Government Organisations' Coalition)? If there was a strong umbrella organisation of civil society organisations, civil society structures are likely to be taken more seriously by Parliament. Such a national body could also give support to small organisations engaging with Parliament.

One cannot easily generalise about civil society organisations. But a significant number of them suffer from the same problems they accuse politicians of – power struggles, factionalism, dogmatism, mismanagement of funds, distance from the masses, being media-seeking and so on. The leaders of a significant number of them treat politicians with a sort of skepticism, if not disdain, and present themselves as more legitimate representatives of the people than MPs. Yet the causes that civil society organisations take up are usually on behalf of constituencies that have voted these very MPs or at least their parties into office.

Often civil society organisations can be very narrowly focused and quite dogmatic. It is sometimes surprisingly difficult to get civil society organisations to see their demands in the context of the whole terrain in which there are other competing demands and for them to accept a “give-and-take” approach. Some of these attitudes are understandable given the very specific causes many civil society organisations invest considerable energy in. But then if MPs are to be more understanding of the nature of civil society organisations, civil society organisations also need to be more understanding about the nature of MPs. Sometimes civil society organisations can be seen as threatening by some MPs. They can also come across as bullying. This often does not help to win MPs over.

Besides formal presentations to parliamentary committees, civil society organisations also need to more astutely engage with individual MPs. Representatives of civil society organisations have to develop “thick skins” and not retreat if dismissed by MPs. Much has been said earlier about how the ANC sees the activist role of Parliament. Civil society organisations need to effectively hoist us by our own petard and put pressure on Parliament to fulfill the role set out for it by the majority party. The leadership of the organisations should, as far as possible, be demographically representative. It might also help to get to know the political and personal histories of the relevant MPs, who the “movers and

shakers” of the relevant committees are, and how they might be reached not just by civil society organisations, but also influential members of their political party. For example, how many civil society organisations know that more recently the ANC Whips of Committees are playing an increasingly important role?

If there are members of the civil society organisations that are active in the structures of the relevant political party, they must take up the issues within the party structures and seek to put pressure on the MPs through these structures. Civil society organisations might also want to seek to meet with the Study Groups of political parties. Civil society organisations might want to reach MPs through their Constituency Offices, especially if the issues being raised affect the specific constituencies of MPs. Organisations might also want to mobilise the constituents to raise the issues with MPs.

Civil society organisations need to better understand the challenges parliament faces. It may be possible that some civil society organisations could, with a mandate from the appropriate parliamentary structures, and without eroding the independence of Parliament or their own independence, contribute to strengthening Parliament. Civil society organisations also need to better understand the challenges that MPs face in ensuring a more effective Parliament. Among these, to mention a few:

- Limited resources.
- Inadequate technical and research support.
- The nature of the relationship between MPs on a Proportional List System and party political structures.
- Managing parliamentary and political party responsibilities.

Civil society organisations often tend to bank too much on the morality or justice of their specific causes to win their case rather than creatively engaging in the complex political terrain in which there are many other competing interests. There are a variety of ways in which civil society organisations can more effectively engage with Parliament. They are not doing this well enough.

But Parliament also needs to take civil society organisations more seriously and engage with them more creatively.

Better Opportunities?

Ultimately, neither Parliament nor civil society organisations are sufficiently recognising the value of effective engagement between them. Yet if they worked creatively together they would be able to put the executive under more pressure to deliver more effectively. We certainly need that!

We should have more dialogue on how Parliament and civil society organisations can engage more effectively. And we need to find better answers. There's no reason why we can't. We simply have to.

The chances are better now. The state alone cannot ensure a significant improvement in service delivery and development. We have been much more open about this than before. So new opportunities are opening up for a more active role for civil society organisations. Let us make creative use of this. It's over as much to you as it is to Parliament to do so. Are you up to it?