



## PEOPLE'S VOICES

# PARTICIPATORY JUSTICE FOR A JUST TRANSITION IN SOUTH AFRICA

## **People's Voices: Participatory justice for a just transition in South Africa**

November 2022

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This report was authored by Gaylor Montmasson-Clair (TIPS), Muhammed Patel (TIPS) and Peta Wolpe (Independent). The opinions expressed in this publication are those of the authors. They do not purport to reflect the opinions or views of the project organisations or their funders.

### **Cover image:**

All shall be equal before the law: justice graffiti in Cape Town, South Africa. Ben Sutherland, 2013, <https://www.flickr.com/photos/bensutherland/8496877807>



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**PARTICIPATORY JUSTICE  
FOR A JUST TRANSITION  
IN SOUTH AFRICA**

Gaylor Montmasson-Clair

Muhammed Patel

Peta Wolpe

# ABBREVIATIONS

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<b>ANC</b>	African National Congress
<b>AsgiSA</b>	Accelerated and Shared Growth Initiative for South Africa
<b>BBBEE</b>	Broad-based Black Economic Empowerment
<b>CCMA</b>	Commission for Conciliation, Mediation and Arbitration
<b>CEPPWAWU</b>	Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union
<b>CONTRALES</b>	Congress of Traditional Leaders South Africa
<b>COP</b>	Congress of the People
<b>EIA</b>	Environmental Impact Assessment
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GEAR</b>	Growth, Employment and Redistribution
<b>GIWUSA</b>	General Industries Workers Union of South Africa
<b>IDP</b>	Integrated Development Plan
<b>LRA</b>	Labour Relations Act
<b>NCOP</b>	National Council of Provinces
<b>NDP</b>	National Development Plan
<b>Nedlac</b>	National Economic Development and Labour Council
<b>NEMA</b>	National Environmental Management Act No. 107 of 1998
<b>NGP</b>	New Growth Path
<b>NUM</b>	National Union of Mineworkers
<b>NUMSA</b>	National Union of Metalworkers of South Africa
<b>PCC</b>	Presidential Climate Commission
<b>RDP</b>	Reconstruction and Development Programme
<b>REIPPPP</b>	Renewable Energy Independent Power Producer Procurement Programme
<b>SATAWU</b>	South African Transport and Allied Workers Union
<b>SLPs</b>	Social and Labour Plans

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Words from the declaration of the 1956 Women's March inscribed on the steps of the Union Building amphitheatre

Photo: Media Club South Africa



# INTRODUCTION

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**D**emocracy or, in Ancient Greek, “rule of the people” is a political idea dating back millennia. The term originates from the 5th century BC in Greek city-states. Early democratic societies reportedly emerged around the same time in various parts of the world. Direct democracy (for those considered citizens) found roots in Athens while representative decision-making has foundations in Rome and Vaishali (India).

Modern democratic systems of government are much younger – around 200 years old – but are an expression of these early experiments. Representative democracy now forms the backbone of most government systems, but many include elements of direct democracy, such as referenda. Furthermore, cornerstones of democracy include civil rights and liberties, such as the freedom of expression, assembly and association, and minority rights. Democracy has also permeated other areas of public and private life, from trade unions, to corporations, to cooperatives to citizen assemblies.

In South Africa, democracy is still fresh. Primarily anchored in a parliamentary system, South Africa's government system also incorporates aspects of traditional leadership and direct democracy. This is built into the country's Constitution (1996), which not only stipulates the right to political participation (through voting) but also enshrines the concept of direct participation through various forms of engagement – a people's government. The Constitution has both representative and participatory elements that transcend the spheres of government, and regards participation as a measure for citizens to agree on a democratic social contract, institutions and rules (Gumede, 2018). The culture of consensus between social partners, i.e. government, organised labour, organised business and civil society, is designed to be at the core of governance. Whether people truly have a voice (directly or indirectly) on key decisions, however, remains a bone of contention in the country.

As South Africa embarks on an economy- and society-wide transition to a more sustainable model of development (including a strong focus on shifting away from fossil fuel-based activities), the question of democratic power in political processes rises once more to the fore. The transition is set to be highly disruptive, with deep impacts on the socioeconomic structure of South Africa. Most value chains will be transformed, some will be phased out, and new ones will emerge. Some people, communities and companies will benefit, while others are set to lose. Many have very low levels of resilience and are vulnerable to impacts. This is compounded by some of the highest levels of poverty, inequality and unemployment in the world, as well as deep-seated socio-environmental degradation.

This context has given rise to the imperative of a “just transition”. While a wide spectrum of views exists (with varying levels of ambition), at its core, the just transition agenda aims at ensuring that vulnerable stakeholders are not negatively impacted by the transition, but are better off through it (Montmasson-Clair, 2021a). Three key principles underpin the just transition agenda in South Africa (PCC, 2022). Distributive justice aims to address the direct impacts of the transition, such as the loss of employment and livelihood. Restorative justice considers the imposed costs of historical circumstances, with the goal of rectifying or ameliorating the circumstances of harmed or disenfranchised communities. Procedural justice focuses on the process and the extent to which inclusivity is a feature of it. It embodies the very idea of democratic governance and is based on a key underlying assumption: a just outcome can only emerge out of an inclusive process. It focuses on facilitating an inclusive decision-making and implementation process, with particular attention on enabling and empowering vulnerable and oft-neglected stakeholders to participate. This justice principle is often lacking in decision-making processes, and where it does appear, it tends to be insufficient or misaligned.

This paper investigates this gap with the aim of formulating concrete steps towards enhancing true, concerted participatory justice.<sup>1</sup> Chapter 1 highlights the key principles underpinning participatory justice. Chapters 2 and 3 discuss representative and direct democratic mechanisms. Chapter 4 delves into participatory justice within the business sector. Chapter 5 concludes.

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1 While in some contexts, “procedural justice” and “participatory justice” may differ in meaning, in this paper, they are used interchangeably.





## CHAPTER 1

# THE KEY PRINCIPLES OF PARTICIPATORY JUSTICE

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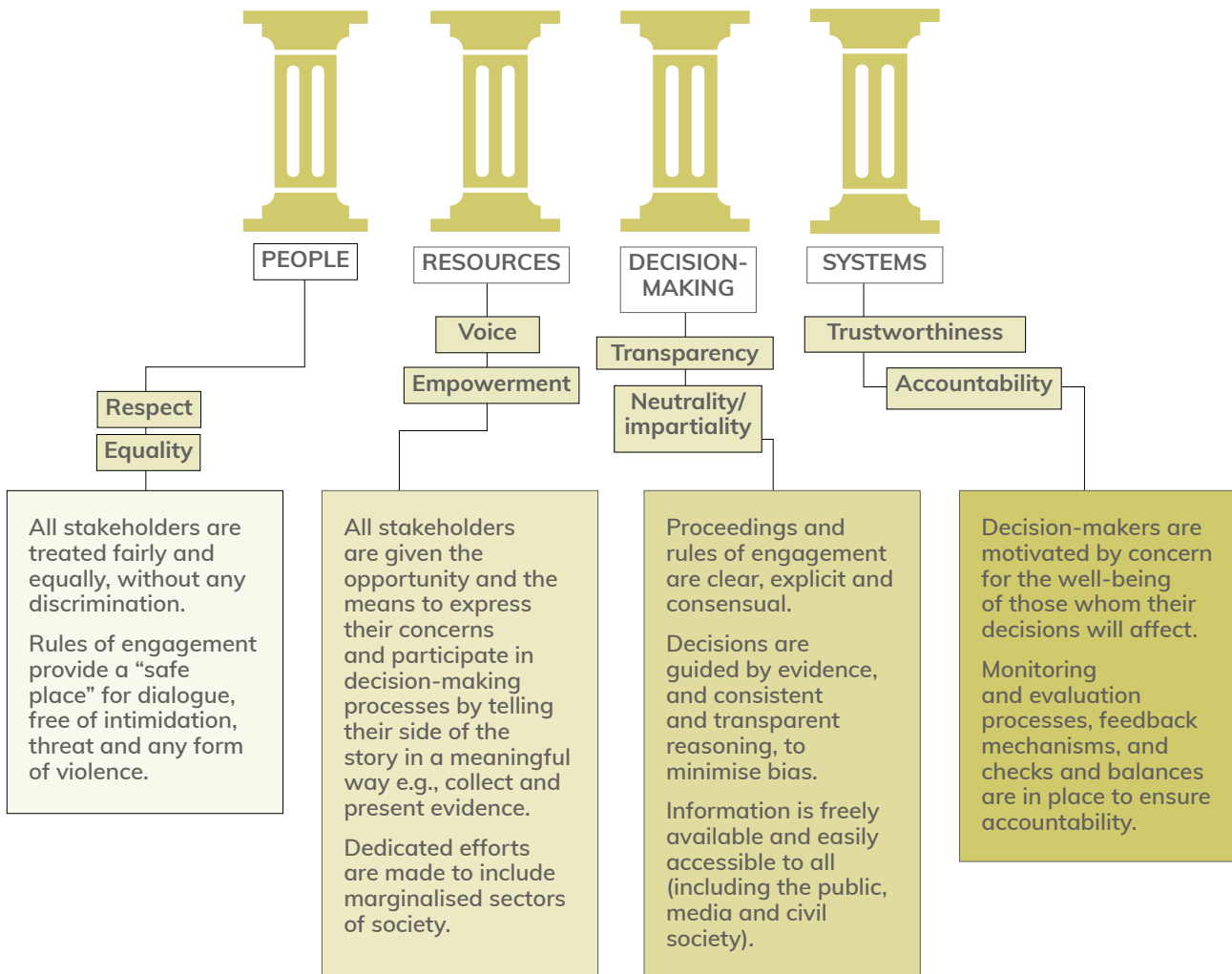
**Delivering participatory justice is in essence a democratic process. It is embodied by a set of key ethical principles that any decision-making process should follow, as illustrated in Figure 1.**

- It starts, at the base, with treating all stakeholders with respect and equality. This is critical to ensure that people feel safe to engage and take part in proceedings, free of discrimination, intimidation and threats.
- Then, stakeholders should have the space and resources to express themselves and bring their evidence forward (including lived experiences). People should be given the platform and required support to exercise their agency. This is crucial to level the playing field, as stakeholders do not have the same resources and ability to take part in decision-making processes. Efforts should be made to make the engagements as inclusive as possible, with due consideration for language and translation.
- Building on the first two sets of principles, decision-making processes should, as far as possible, be based on evidence (which, importantly, may take different forms, from models to testimonies). Furthermore, information should flow freely (and be available in advance of engagements), be easily accessible by all and easy to understand by all. This forms the basis of a transparent and impartial process.
- Last, systems must enable accountability and trust. For decisions to be upheld and implemented, stakeholders must have trust (and effectively vested interests) in their success.



**Nelson Mandela Bridge linking Braamfontein and Newtown. Johannesburg.**

*Photo: Media Club South Africa*



**FIGURE 1: KEY PRINCIPLES UNDERPINNING PROCEDURAL JUSTICE**

Source: Authors, building on Montmasson-Clair, 2021a

Important considerations for implementing procedural justice emerge from these ethical tenets. Participation (be it direct or indirect) is not an end in itself but a means to an end. The principle of "national ownership" goes beyond people-led processes and also provides civil society and the broader public with opportunities to "own" both the process and the outcomes (Legislative Sector South Africa, 2013:24). The type of engagements, their structure and their facilitation all have an impact on the final goals.

As a start, both the format of participation – representative and direct democracy – should be used in parallel and in such a way that they build on each other. This is at the core of South Africa's democracy and Constitution. Only a combination of both approaches can offer the opportunity to deliver on multiple fronts and enact participatory justice. A central difficulty is always to balance the power of organised constituencies, the desire for participatory and open procedures, and the need to bring in expertise to test diagnostics and proposals against the evidence, and to identify the necessary resources (Makgetla, 2019). The multiplicity of platforms is also fundamental to build trust both between stakeholders and in the transition process itself, particularly in contexts in which mistrust and conflicts are high – a common feature across communities in mining-dependent communities, such as Mpumalanga's coalfields.

In addition, procedural justice calls for ongoing, rather than ad hoc, public engagement between stakeholders (i.e. social dialogue). Public engagement processes are too often tick-box exercises conducted within the spectrum of one single decision (such as a new law or facility). Ad hoc processes do not provide the platform for meaningful, long-term engagement and for procedural justice. They are by definition short term and do not enable any processes of trust building, capacity building, experience learning, consensus building and co-creation/co-development. Short-term processes tend to also be extractive (i.e. one-way) in nature, rather than mutually beneficial for stakeholders. Meaningful participation requires taking the time and moving towards consensus. Any meaningful process should start well before critical decisions have to be made, to foster co-development and the emergence of a community of practice – and then carry on to ensure joint monitoring of implementation and, if needed, course correction. This calls for establishing permanent forums (for example at the ward and firm levels) gathering all relevant stakeholders, animated by skilled and trusted liaison officers.

Then, the participation process itself should foster inclusion, awareness, consensus building and empowerment. Some stakeholders do not have the resources, such as access to finance, mobility or knowledge, to meaningfully participate, as well as collect and bring forward evidence. Processes should be put in place to support such stakeholders. Information asymmetry is another key stumbling block, resulting in unfair negotiations and decision-making processes. Despite the abundance of material available, information rarely reaches many stakeholders, especially in an easily accessible and understandable format.<sup>2</sup> Importantly, communities should be supported to “organise for themselves”, so that they can meaningfully participate in and engage with other fora and processes.

Dedicated efforts should be made to include and empower marginalised sectors of society, including women, youth, people with disabilities, ethnic/religious minorities and indigenous groups, the elderly, poorer socioeconomic and disadvantaged groups, LGBTQIA+ communities, and migrants and non-citizens formally resident in the country (Legislative Sector South Africa, 2013). To date, this support function has largely been the sole ambit of grassroots non-governmental organisations and should be enhanced, for example, through solidarity funds (for financial issues) and through capacity building and knowledge platforms (for information issues). Space, time, education and resources to develop the capacity of inexperienced actors to participate, consult, manage and implement the process effectively should be provided to engender a sense of “national ownership” (Legislative Sector South Africa, 2013:24). Once again, this is only truly possible through longstanding social engagement processes.

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2 Communities are generally best placed to advise which communication platforms are more suitable, including local community radio, newspapers, and information pamphlets in libraries and clinics.

# SOUTH AFRICA'S JOURNEY TO PARTICIPATORY JUSTICE

## A HISTORICAL PERSPECTIVE

Participatory justice is not a new concept in South Africa. The emphasis on democratic participation was born in the struggle against injustices and is strongly reflected in South Africa's democratic Constitution, which entrenches public participation in Parliament and the legislatures (DFL, 2006). Taking a historical perspective gives an insight into what is possible to achieve.

### THE DEFIANCE CAMPAIGN

In 1952-1953, the Defiance Campaign was formed in opposition to unjust laws of the apartheid regime. It was a significant unifier of the various struggle strands in the country at the time: the African National Congress, the Congress of Democrats (white South Africans), the South African Indian Congress and the South African Coloured People's Organisation. The Defiance Campaign culminated in the formation of the Congress Movement and was described as a "giant wheel supported by four spokes, one for each national group of the country's population" (Levy, 2011). A national consultative committee was formed which had representatives from each congress. The Committee made recommendations which would be adopted by each congress.

The Defiance Campaign led to mass action and had an impact on inclusivity. It united the voices of citizens across the country in towns, cities and rural areas and led to a series of protests and demonstrations. From this, the Congress of the People (COP) Campaign emerged. It then drove the development of the Freedom Charter, which would demand civil rights for all South Africans. The COP campaign, through its inclusive origins, was representative of the needs of diverse groups.

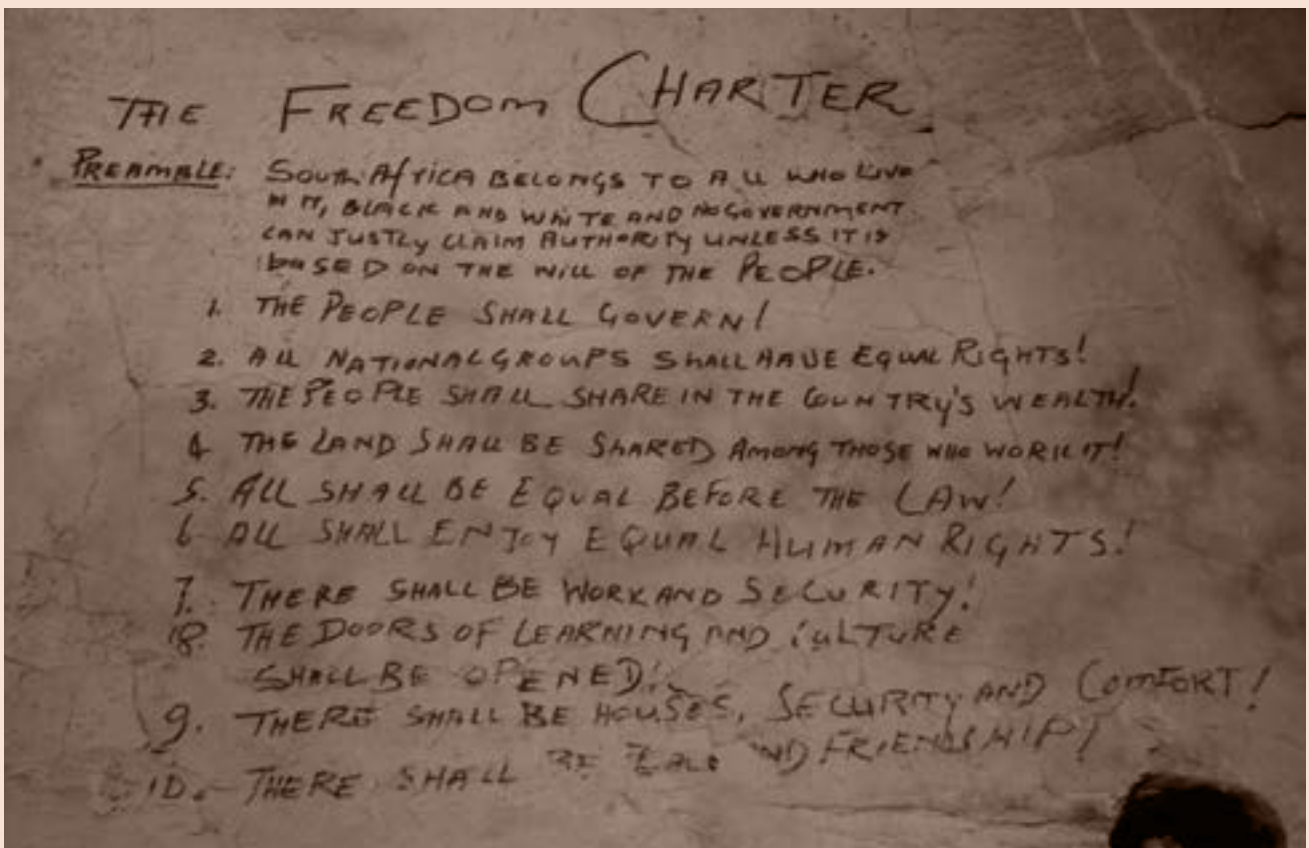
### THE FREEDOM CHARTER

The Freedom Charter was adopted on 26 June 1955, born out of mass meetings, localised grassroots meetings and representatives who carried the ideas and wishes of the people. Their demands were not simply reproduced as a shopping list of grievances – the Freedom Charter captured what was needed to transform the country whereby all citizens would be treated equally (The Freedom Charter, 1955). The document has been acknowledged as reflecting a particular order of social transformation that represented all groups in the country (Levy, 2011). Voices of vulnerable stakeholders were represented by those in leadership positions.

## THE CONSTITUTION AND THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME (RDP)

The very principle of participation is at the cornerstone of South Africa's history and culture and is at the core of the country's democracy. In the early years of democracy, this level of engagement continued successfully. The 1996 Constitution and the Reconstruction and Development Programme (RDP) are particularly significant (Parliament of South Africa, 1994). They were developed through consultation with alliance partners and mass meetings organised through civil society across the country. The drafting of the Constitution is hailed as one of South Africa's largest public participation processes (SAHO, 2011).

The Constitution embodied these elements of participatory justice and enshrined in law the requirement for public participation in government processes. This concerns how laws and regulations are developed and passed. It also paved the way for the establishment of national organisations, such as the National Economic Development and Labour Council (Nedlac), which was set up to ensure public participation takes place and is formalised at the highest level of decision-making. Of particular importance was the creation of an enabling space for the most marginalised communities to be heard, so that they are encouraged to participate in decisions that affect their lives. In this sense, the democratic process was viewed as active, enabling everyone to contribute to reconstruction and development (Wolpe, 1995).



The Freedom Charter inscribed on the wall of the Palace of Justice, Church Square, Pretoria

Photo: Wikimedia



## CHAPTER 2

# REPRESENTATIVE DEMOCRACY FOR A JUST TRANSITION

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Like in every modern society, representative democratic channels are the primary mechanism used to involve citizens in government and decision-making processes. Indeed, given that people cannot realistically always participate directly in all government processes, representation becomes a crucial tool. This includes a wide array of elected and non-elected political representatives, officials, community organisations, community and religious leaders, liaison workers, traditional leaders and civil society organisations engaging and working with citizens.

Within this context, it is important to consider how representative democracy is understood in relation to public participation and how it can be further developed to enhance and build the just transition process. Accordingly, the extent to which people's voices are represented in the participatory space is increasingly in question.

South Africa's democracy is relatively young and dates back to 1996 when the Constitution was promulgated by President Nelson Mandela. The Constitution is underpinned by the values of equality, political rights, access to housing, health care and information, among others. Prior to 1994, most South Africans were excluded from voting based on race, and introducing the right to vote was essential to building the new democratic disposition. In 1994, the first democratic election saw many people previously denied this basic right standing in queues for hours to cast their first ever vote – 86.7% of the population voted, giving the African National Congress (ANC) a clear majority.

South Africa is known as a parliamentary representative democratic republic whereby all citizens over the age of 18 are eligible to vote (every five years) for the political party that they believe will best represent the needs of the country and/or their own needs, and will govern in a manner they see fit. The Constitution sets out the system of government defined both as a presidential and a parliamentary hybrid system. It also outlines the responsibilities, powers and duties of the three spheres of government – national, provincial and local.

At the national level, people vote for the legislative branch of Parliament, which consists of the National Assembly (known as the lower house) and the National Council of Provinces (NCOP) (known as the upper house). The National Assembly appoints the President who is both the head of government and the head of state. The National Assembly controls the composition of government and approves laws in the country. It is elected by party proportional representation.

Local government elections also take place every five years, although not in the same year as national elections. There are three categories of municipalities, namely: metropolitan, district and local. They govern their affairs through local councils and their work is undertaken by a municipal administration, officials and municipal managers. Citizens vote for a political party and local government politicians are elected based on proportional representation. As with national and provincial government, once in power, local government politicians choose a speaker and mayor who then appoints council members to form the mayoral committee. Therefore, while people vote for political parties, the system of government is such that not all officials and politicians are elected through voting mechanisms

**LEFT: Apartheid Museum, Johannesburg**

Photo: Media Club

and can be appointed by the president or mayor or other councils. As such, avenues of participation avenues are of paramount importance.

Importantly, since 1994, there has been a steady decline in the number of people voting at all levels, in part due to a lack of trust. At the national level, in 2004, 2009 and 2014, the percentage of votes was 77%, 77% and 73% of registered voters. In 2019, this dropped to 66%. At the municipal level, 88% of registered voters cast their votes in 1995, 77% in 2009 and 43% in 2021 (Mkhize et al, 2021; Mbithi wa Kivilu, 2005).<sup>3</sup> Furthermore, an increasing share of the population is not registered to vote. In 2021, more than 13 million South Africans who were eligible to vote had not registered to vote in the municipal elections, about one in three eligible voters (Haffajee, 2021).

Alongside the decline in voter turnout has been a continual decline in the ANC's overall majority votes. For this reason, and to also strengthen weak opposition parties' power, there has been a growth in coalition governments particularly at the local level. This too raises the question of citizens having a say in who is in power. It also raises questions of the extent to which power relations are at play as political parties rally for power (Booyesen, 2021; De Vos, 2021).

To foster the emergence of a decentralised government and democratic governance built on cooperation and participation, and effectively bring government closer to people, the 1998 White Paper on Local Government (Department for Provincial Affairs and Constitutional Development 1998) set out a framework and programme for the radical transformation of the entire local government system. It also recognised that communities are not homogenous groups and so participation would need to take that into account. In line with this spirit, the Municipal Systems Act No. 32 of 2000 compelled municipalities to develop systems of participatory governance. The Municipal Finance Management Act No. 56 of 2003 also recognises community participation and outlines how resources should be used to this end.

In 2001, ward committees and ward councillors were introduced as a means of supporting participatory governance and bridging the gap between communities and the administrative structures of local government. Ward councillors are elected (often around party lines) by local citizens. The ward is the level of government closest to citizens and ward councillors are, in theory, closer to the community than local government, and better placed to understand and harness the views of their constituents. Ward committees are seen as a mechanism to facilitate people-centred democratic representative governance. However, ward councillors and their committees have not succeeded in bridging the gap intended. In part, this relates to how representation is managed. A study undertaken by Smith and De Visser in 2005 found evidence that ward councillors had a role in choosing members of the ward committees based on political affiliation rather than a democratic election process. Smith and De Visser (2005) also highlighted that ward committees have little impact on decisions taken by the municipal council and in reality have limited powers.

A number of government strategies, such as the 2009 Local Government Turnaround Strategy and 2014 Back to Basics strategy,<sup>4</sup> have been developed to bring government closer to people and

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<sup>3</sup> See <https://www.elections.org.za> for detailed data on elections.

<sup>4</sup> The 2009 Local Government Turnaround Strategy aimed to restore the confidence of citizens in municipalities. The 2014 Back to Basics strategy advocated putting people and their concerns first and supporting the delivery of municipal services, among others.



strengthen the developmental role of local government (Good Governance Learning Network, 2018; Buccus et al, 2008). These have had limited success. Some of the key intentions, such as putting people first, improving service delivery and good governance, continue to be a challenge. Many government participatory processes are mainly of a compliance nature and lack transparency. In practice, citizens are not able to meaningfully influence policy decisions. While it is evident that not every citizen's wishes can be satisfied, a balance has to be struck between compliance, consensus and being heard. From a legislature perspective, participation generally occurs without true engagement taking place. Participatory processes have predominantly been platforms to share information rather than open spaces for genuine consultation (Nijzink and Piombo, 2004). Furthermore, since citizens vote only for a political party, internal political parties' structures (i.e. politicians, not citizens) decide on government positions and appointments. Thus, citizens, through representative democracy and voting rights, only elect one layer of the system. Citizens do not choose elected officials individually, with the exception of ward councillors. In national government, there are portfolio committees for each of the ministries to deal with some of the more granular issues. Some of the meetings and platforms in place are open to the public but not all.

Since the democratic dispensation, many other structures aimed at representing citizens have been established. Of these, three spaces are particularly relevant to the just transition discussion. Nedlac was established in 1995 to provide equal representation for South Africa's various constituencies. As a platform for social dialogue, it is set up as a unique body to bring together representatives from government, organised labour, organised business and the community to consider all socioeconomic and labour policy and legislation. The extent of representation and effectiveness of Nedlac has, however, been questioned over the years, calling for a recommitment to institutionalised social dialogue (Montmasson-Clair, 2021a).

The Presidential Climate Commission (PCC) was established in 2020 to inform the country's just transition to a climate-resilient, low-carbon economy and society. The PCC commissioners are representative of all constituencies as well as national government ministers. The PCC has held a few engagements since its formation in an attempt to capture the views of the country's citizens on the transition to a low-carbon and climate-resilient path. In 2022, it ran a series of community engagements in some provinces across the country. They were successful in bringing many community members into the room. However, challenges arose around language, which the PCC did try to address. However, the workshops became a space for communities to voice their day-to-day living challenges which, while relevant, did not succeed in engaging with the draft just transition framework as was the intention – an indication of the level of frustration that sits with poor and vulnerable communities, pointing to the level of their exclusion.

Traditional leaders are another avenue used in the country to affect representation. Yet, the role of traditional leaders has been a complex one, dating back to South Africa's colonial history. Under apartheid, some traditional leaders became functionaries to the nationalist government. They had the power to allow people to hold meetings or not in the homeland areas, which meant that communities would meet secretly particularly during the struggle. In the 1980s, the ANC established the Congress of Traditional Leaders South Africa (CONTRALESAs) to assist in defining their role in the new dispensation, which would align with democratic principles (Mashele, 2004). Under the Constitution, traditional leaders are recognised and a National House of Traditional Leaders was created at both provincial and national levels. The 1998 White Paper on Local Government sets out a policy framework for the role of traditional leaders (Tlou, 2020). However, their powers are primarily

advisory, particularly around issues of custom and culture. In addition, traditional leaders are not voted into their positions. In general, they are born into their roles, which begs the question of the degree of representivity that they offer in the new democracy.

Representative democracy is fundamentally about electing a government that represents the views and wishes of citizens. However, the Constitution makes it clear that representative democracy is not in and of itself the cornerstone of South Africa's democratic principles. South African representative democracy is the primary mechanism for public participation for voting but equally significant is enabling and giving voice to people through various government participatory mechanisms. At its heart, representative democracy must include elements of direct democracy – specifically participatory processes. It is only through direct engagement with citizens that those elected to represent them can genuinely claim to represent their constituencies, that laws and policies can represent the views of all, and that citizens can take part in law-making processes (DFL, n.d.). In 2006, the Doctors for Life International case heard in the Constitutional Court found that two pieces of legislation<sup>5</sup> passed by Parliament were unlawful, as the NCOP had failed to engage in public participation as per its constitutional obligation. The Doctors for Life International case made it clear that proportional representation alone is not sufficient for South Africa's democracy, it requires participation. This is explored in the next section.

## THE JUST TRANSITION AGENDA IN SOUTH AFRICA

### Three key principles

- **Distributive justice** aims to address the direct impacts of the transition, such as the loss of employment and livelihood.
- **Restorative justice** considers the imposed costs of historical circumstances, with the goal of rectifying or ameliorating the circumstances of harmed or disenfranchised communities.
- **Procedural justice** focuses on the process and the extent to which inclusivity is a feature of it. It embodies the very idea of democratic governance and is based on a key underlying assumption: a just outcome can only emerge out of an inclusive process.

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5 The two laws in question were the Choice on Termination of Pregnancy Amendment Act of 2004 and the Traditional Health Practitioners Act of 2004.

## CHAPTER 3

# DIRECT DEMOCRACY FOR A JUST TRANSITION

In South Africa, the notion of all people having a voice can be traced back to the struggle against apartheid. Important guiding documents, such as the Freedom Charter (1956), the 1994 Reconstruction and Development Programme, and the 1996 Constitution, were all born out of grassroots engagements, bringing the voices of the people to the debate and ultimately influencing key decisions. As such, public participation has been integrated into many of the democratic government processes and policy development. However, faced with implementation issues, established structures and mechanisms have not proved to be effective and credible vehicles of participatory democracy. In effect, public participation is enshrined in law but does not happen in a way that is conducive to participatory justice.

The disparity between participation in law versus practice is exemplified by examining Arnstein's ladder of citizen participation (Figure 2), and assessing where South Africa stands. Existing official channels are mostly tokenistic in practice. Grassroots mobilisation is vibrant but weaker than during the anti-Apartheid era and often disconnected from decision-making processes.

CITIZEN POWER	Citizen control	Participants or residents can govern a programme or an institution, be in full charge of policy and managerial aspects, and be able to negotiate the conditions under which 'outsiders' may change them
	Delegated power	Public institutions, officials, or administrators give up at least some degree of control, management, decision-making authority, or funding to citizens.
	Partnership	Public institutions, officials, or administrators allow citizens to negotiate better deals, veto decisions, share funding, or put forward requests that are at least partially fulfilled.
TOKENISM	Placation	Citizens are granted a limited degree of influence in a process, but their participation is largely or entirely tokenistic: citizens are merely involved only to demonstrate that they were involved.
	Consultation	Citizens are invited to voice their opinions. They "participate in participation" but no assurance is offered that citizen concerns and ideas will be taken into account.
	Informing	One-way flow of information, from officials to citizens, with no channel provided for feedback and no power for negotiation.
NON-PARTICIPATION	Therapy	Public officials and administrators create pseudo-participatory programmes that attempt to convince citizens that they are the problem when in fact it is established institutions and policies that are creating the problems for citizens.
	Manipulation	An "illusory" form of participation: public institutions, officials, or administrators mislead citizens into believing they are being given power in a process that has been intentionally manufactured to deny them power.

**FIGURE 2: ARNSTEIN'S LADDER OF CITIZEN PARTICIPATION**

Source: Authors, based on Arnstein, 1969

Legally, as described in Chapter 1, many obligations are placed on various spheres of government to enact participatory democracy within a predominantly representative system. South Africa's 1996 Constitution encourages public participation in policymaking (Chapter 10, Section 195 [e]). The Constitution lays the foundation for a representative and participatory democracy at all levels of government.

**The legislative sector must conduct its business with due regard not only to representative democracy but also to participatory democracy. “The National Assembly must: (a) facilitate public involvement [...]; and (b) conduct its business in an open manner” (Chapter 4, Section 59-1).**

**Furthermore, “[t]he National Assembly or any of its committees may receive petitions, representations or submissions from any interested persons or institutions” (Chapter 4, Section 56 (d)). Similar rules apply to the NCOP and provincial legislatures.**

**Additionally, this is not a passive duty. Jurisprudence has gone further and provided that the duty of the legislative sector to facilitate public involvement requires it to take actions to achieve public participation (Legislative Sector South Africa, 2013).**

In a similar fashion, Section 152 of the Constitution asserts that municipalities should “provide democratic and accountable government for local communities”. The Municipal Systems Act No. 32 of 2000 outlines in its Chapter 4 the tenets of “community participation”. It states that municipalities must “develop a culture of municipal governance that complements the formal representative government with a system of participatory governance, and must for this purpose encourage and create conditions for the local community to participate in the affairs of the municipality”, including decision-making on integrated development plans (IDPs), performance management, budget preparation and the provision of municipal services. To that purpose, regulations (2001) direct that a municipality-wide forum for community participation has to be established.<sup>6</sup> A set of other structures also enables community involvement. Ward committees are representative in function (as discussed in Chapter 2) but can call “constituency meetings” involving local residents (DPLG and GTZ, 2005). School Governing Bodies, clinic committees and Community Policing Forums are other structures providing citizens with the opportunity to influence the community’s daily operations.

Participatory policymaking in South Africa has, however, taken a downturn in the past decades, at the expense of grassroots, citizen-led decision-making, with a shift towards managerialist and technocratic interpretations in the implementation of policies and legislation (Kariuki, 2018). Faced with implementation issues, established structures have not proved to be effective and credible vehicles of participatory democracy (DPME, 2014).

Another instrument of direct democracy is the use of referenda. While referenda are complex tools which can lead to populism and other biases, they can be a powerful avenue of direct democracy, particularly when originated through popular initiatives. The South African Constitution provides

<sup>6</sup> This generally takes the form of an IDP Representative Forum.

for the organisation of national (in Section 84(2)) and provincial (in Section 127(2)) referenda, by the President and the Premiers respectively.<sup>7</sup> No such powers are contemplated by the Constitution for local government. Referenda are understood to be consultative (i.e. non-binding), rather than imperative (i.e. binding), although in practice little difference exists between the two. It would be politically difficult for a government to ignore the result of a referendum (Van der Schyff, 2006). The possibility for people to trigger a referendum (known as a popular vote or popular initiative) is not catered for in the Constitution (whereas this was the case, for some matters, in the interim 1993 Constitution). Although the possibility exists, no referendum has ever been called since the advent of democracy in South Africa.

Public participation, through consultation and public hearings,<sup>8</sup> is also embedded in numerous policy processes in the country.<sup>9</sup> One such example is the requirement of public participation in the Environmental Impact Assessment (EIA) process. As per the National Environmental Management Act 107 of 1998 (NEMA), public participation is an integral part of the EIA process, with the aim of providing an opportunity for interested and affected parties to participate in the decision-making process. This objective aims to ensure that all people, including vulnerable and disadvantaged people, have the opportunity to develop the understanding, skills and capacity necessary to achieve equitable and effective participation. Public participation is also mandatory when companies apply for a mining right. They are required by the Mineral and Petroleum Resources Development Act 28 of 2002 to consult affected communities on the application as a whole. As per the published guidelines, mining companies must consult with the public before finalising their Social and Labour Plans (SLPs).

Such public participation processes are often conducted as tick-box exercises and marred with implementation problems, rendering them tokenistic. Corruption, clientelism, selection bias (i.e. only consulting some stakeholders or certain leaders), lack of access to information (due, for instance, to language or technology barriers), and lack of due consideration of expressed views are some of the typical issues undermining public participation processes (Leonard, 2017; Maphanga et al., 2022; Montmasson-Clair, 2015; Montmasson-Clair et al., 2015). For instance, the SLPs are meant to stimulate the local economy, provide for reskilling ahead of transitioning and, overall, ensure that mine-affected communities are left better off throughout and after the mining process. Rehabilitation plans require mining companies to set aside funds at the onset of a project for the rehabilitation of the local area once the mine has reached the end of its life. Yet, neither system has proved able to promote meaningful social and economic advancement of communities (CALS, 2018). The SLP process remains highly undemocratic, exclusive and largely shrouded in secrecy. Implementation also appears to be failing, due to lack of consultation, monitoring and alignment with existing structures and the needs of communities (SAHRC, 2018).

Correspondingly, this speaks directly to the application of the principle of “free, prior and informed consent” (FPIC) in the country. Even though the principle has not been formally adopted by South Africa, many domestic policies and strategies (GEAR – Growth, Employment and Redistribution),

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7 The only legislation to deal with the topic is the Referendums Act No. 108 of 1983. It is, however, outdated and would have to be revised to be in line with the 1996 Constitution.

8 Although both generally tokenistic in practice, mandatory consultative processes are understood to be more comprehensive and inclusive than public hearings, such as those held on decisions from Nersa.

9 Presidential Imbizos have also been hosted in various parts of the country as a way to engage with citizens. An imbizo is seen by government as a “two-way unmediated, direct and interactive information sharing platform that promotes active involvement of citizens in the implementation of government programmes” (The Presidency, 2022). However, these appear to be largely tokenistic and organised on an ad hoc basis around certain key issues.

AsgjSA - Accelerated and Shared Growth Initiative for South Africa, the NGP – New Growth Path and the NDP – National Development Plan), as well as the Constitution and laws on governance, land use, mining, water and environmental management have included, to various degrees, elements of FPIC, at least in spirit. The NEMA and the Interim Protection of Informal Land Rights Act No. 31 of 1996 even explicitly require community consent when dealing with development on communal or indigenous land. This has been reinforced by the jurisprudence in at least two emblematic cases (Mukwevho, 2022). Yet, the level of implementation of the existing provisions that speak to the elements of FPIC is extremely weak (LRC, 2018), leading regularly to open, violent conflicts between community members, project proponents and government.

Complementarily, a diverse and wide set of grassroots engagements aims to foster a bottom-up procedural justice approach. For instance, in 2019, groundWork and the Vukani Environmental Justice Movement, represented by the Centre for Environmental Rights, took the Minister of Forestry, Fisheries and the Environment to court over the constitutional right to clean air, demanding that government clean up the toxic air in the Mpumalanga Highveld. In 2022, the Pretoria High Court ruled in favour of the civil society organisations, ordering government to pass regulations to implement and enforce the Highveld Priority Area Air Quality Management Plan, which is aimed at cleaning up the air on the Highveld to meet health-based air quality standards.<sup>10</sup>

Government-appointed commissions have attempted to stimulate participatory justice. For instance, South Africa's National Planning Commission led in 2018-2019 an extensive public process of consultation at provincial and national levels, which culminated with the compilation of a draft national vision for the country's just transition (NPC, 2019). In 2021-2022, as discussed in Chapter 2, the PCC also ran a series of local-level engagement on the theme of just transition.

In effect, local non-governmental and community-based organisations play a much more central role in stimulating engagements at the grassroots level. Even though local government is mandated (by the Municipal Systems Act No. 32 of 2000) to contribute to building the capacity of the local community to enable it to participate in municipal affairs, support to vulnerable stakeholders, such as communities, is often the sole ambit of grassroots non-governmental organisations, such as groundWork and Earthlife Africa.

Community-level capacity and capability have, however, materially eroded, as historical community leaders took new responsibilities, and vocal but not necessarily civic-minded individuals entered grassroots structures. The democratic transition also led to a recomposition of the civil society landscape, weakening grassroots ties of many civil society organisations (as many disappeared, joined government or turned into member-less advocacy groups) (DPME, 2014). While this "disintegration" process has started to be reversed in recent years, with a burgeoning of new community organisations and renewed dynamics in favour of increased community capacity and participation, more structure and coordination is required. In addition, problematically, no structured channels exist to feed such engagements (directly or indirectly) into more formal engagement and decision-making processes, or to empower stakeholders to meaningfully take part in ongoing discussions.

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10 See <https://cer.org.za> for the judgement and more information about the Deadly Air case.

## CHAPTER 4

# FURTHERING FIRM-LEVEL PARTICIPATION FOR A JUST TRANSITION

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**T**he success of a just transition requires all stakeholders in society to participate and encourage participation in an inclusive manner. Both state-owned and private businesses have a vital role to play in the transition, including directly participating in inclusive processes and co-creating the platforms for greater inclusion of vulnerable groups, including the people that work for them. While businesses reconfigure their business models to achieve climate change mitigation and adaptation goals, it is important that the “just” element is also prioritised in the process.

Engaging in this process holds numerous benefits for businesses. Through engaging workers and their unions in the transition process, businesses increase the chances of equipping their workforce and local communities with the skills, investments, and capabilities required to succeed with the transition. Furthermore, encouraging participation through an inclusive process allows companies to plan for, manage and optimise the operational and reputational impacts of mitigation pathways, and increase resource productivity with minimal disruption. This improves oversight of transition benefits and costs, increases social support for climate action and sustainability, and ensures good labour and community relations (ITUC Just Transition Centre, 2018). Through this form of engagement and support, firms can also contribute to fostering restorative justice. They can use the clout of their organisation to channel resources towards understanding and acknowledging the harms that vulnerable stakeholders have suffered and contribute to compensating these harms.

The appropriate manner in which firms should participate in the just transition is not currently clear and is being crafted. Detailed multi-stakeholder transition approaches have been developed for the coal value chain and other related value chains in Mpumalanga. In addition, a number of policies attempts to create processes for ensuring the long-term sustainability of mining-dependent communities beyond mining activities. The Department of Mineral Resources and Energy’s 2010 guidelines on SLPs outlines mechanisms that firms have to follow to mitigate the impacts of downsizing mining operations on workers and communities. These include plans to save jobs with measurable indicators and timeframes, the outlining of processes to manage retrenchments humanely in consultation with organised labour, and the definition of processes to ameliorate the social and economic impact on individuals, regions and economies (DMR, 2010). The extent of participation and the resources that are devoted towards engaging with the just transition are naturally dependent on the industry within which a firm operates and the extent to which transition issues impact that firm.

The freedom of association and right to collective bargaining are core to South Africa’s labour law and human rights to allow for participation of non-state actors in economic and social policy. South Africa’s Labour Relations Act No. 66 of 1995 (LRA) refers to a duty to bargain collectively and the Constitution refers to a right to engage in collective bargaining (Molusi, 2010). Ensuring worker participation is essential for the effective functioning not only of labour markets but also of overall governance structures in a country (ILO, n.d.). The tool of collective bargaining allows for a balance of power in the workplace, as employers tend to enjoy greater social and economic power than individual

workers do. Collective bargaining then represents a countervailing force that balances the inequality in employee–employer bargaining (Molusi, 2010). Trade unions represent the interests of workers and are a conduit for participation in that issues can be raised to trade unions, which then negotiate on behalf of workers. Collective bargaining has been acknowledged by researchers as a leveraging tool to further the just transition process and pathways (Wilgosh et al., 2022). Firms should leverage the collective bargaining process laid out in South Africa as a platform to listen to the needs of workers and to gain their insight into solutions and options. This process can unfold at a number of levels: the plant or company level,<sup>11</sup> centralised sector-level bargaining (bargaining councils),<sup>12</sup> administered wages and conditions at sector level (sectoral determinations),<sup>13</sup> and informal economy forums.<sup>14</sup>

The primary conduit for collective bargaining are the shop steward committees which emerged in the 1980s as the key communication channel between workers and management (Bischoff et al., 2018). The shop steward is employed at a plant or facility and represents unionised workers at the facility in interactions with management, and also relays information from unions to members. They play the key role of identifying issues and aiding in resolving them. Based on the available data, union membership between the period 2010 and 2022 has remained fairly consistent at around 30% of workers in the formal economy (Quantec, 2022). Disaggregating by sector, however, reveals patterns of union membership that vary within the formal economy. For example, unionisation tends to be low in agriculture (7%), while relatively higher in manufacturing (34%) and significantly higher in mining (80%).<sup>15</sup> These levels of unionisation have tended to remain fairly stable over the period.

In the early 1990s, many companies began to separate collective bargaining issues related to wages, grievances and disputes, from issues pertaining to information sharing, joint decision-making and collective problem solving,<sup>16</sup> through the creation of workplace forums for the latter (Bischoff et al., 2018). This created a second channel for industrial relations, allied with the shop steward system, and was reflected in the Labour Relations Act No. 66 of 1995. At the time, the creation of these forums was widely regarded as an important supportive participatory mechanism<sup>17</sup> to foster good relations between workers and employers in anticipation of increased international market access for South African goods and services, which would require production restructuring. A workplace forum as determined in the LRA has the right to be consulted by the employer on issues such as restructuring and new work methods, partial or total plant closure, mergers and ownership transfers, retrenching workers, job grading, criteria for merits and bonuses, education and training, product development

11 The plant level may involve bargaining at a particular site of a larger enterprise or may take place at the company level. For instance, this may be the case for large firms in the coal value chain, such as Eskom or Sasol. This process may involve more than one trade union but is restricted to one firm or employer.

12 A bargaining council may be formed by one or more trade unions and one or more registered employers' organisations in a sector. Some bargaining councils are national, while others are regional. (See LRS, 2022).

13 At this level, wages and conditions of employment are regulated for vulnerable workers, where working conditions tend to be poor and/or where unions are absent. Here, a commission is established which conducts research and convenes public hearings to collect proposals from workers and employers. The commission then makes recommendations to the Minister of Labour, after which a sectoral determination containing wage rates and conditions of employment is published and applies to all employers and all workers in the sector. Since 2019, this function falls under the National Minimum Wage Act No. 9 of 2018. (See LRS, 2022).

14 This applies to informal sectors, such as street traders and waste reclaimers, where many of the conditions that exist for bargaining in the formal workplace do not yet exist. Bargaining levels may range from very localised levels to bargaining with municipalities and with national government. (See LRS, 2022).

15 Data based on historical averages over the period Q3 2010–Q2 2022 from the Statistics South Africa's Quarterly Labour Force Survey. For the entire formal economy, the patterns of unionisation within sectors have remained fairly stable over the period.

16 These workplace forums covered issues related to strategic business plans, investment decisions, corporate structures, product development plans, and mergers. (See Bischoff et al., 2018).

17 In countries where workplace restructuring has been regarded as successful, such as Japan, Germany and Sweden, enhanced participatory mechanisms such as these workplace forums have been a key feature.



plans, export promotions and health and safety measures (Bischoff et al., 2018). Workplace forums, while ambitious in intent have not developed deep roots in South African industrial culture. This has been driven in part by union scepticism which limits the proliferation of workplace forums since forums do not incur membership fees and are open to all employees. Further, as per the Labour Relations Act No. 66 of 1995, only trade unions can trigger these forums by applying to the Commission for Conciliation, Mediation and Arbitration (CCMA). To add confidence to the democratic element of workplace forums, trust can be increased by connecting workplace forums with shop steward committees, such that union fears are abated (Bischoff et al, 2018).

Given these existing platforms for increasing worker participation, firms should engage their respective trade union counterparts to anticipate discussions that pertain to workers impacted by the transition – this can take place through the existing shop steward committees or through encouraging unions to trigger workplace forums, where there may be an appetite for them. For instance, firms such as mining houses, Eskom and Sasol can engage with the National Union of Mineworkers (NUM) and the National Union of Metalworkers of South Africa (NUMSA) (coal mining and power generation), the South African Transport and Allied Workers Union (SATAWU) (coal truckers), and the Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union (CEPPWAWU) and General Industries Workers Union of South Africa (GIWUSA) (petrochemicals) in advance of value chain impacts. This would help assess worker needs, build skills profiles of the existing workforce and identify value chains for redeployment of displaced workers.

Firms can also increase inclusivity and participation through novel and innovative corporate policies that seek to engender participative management principles or worker representation on boards. While not a legal requirement to have employee representation, companies can elect to foster greater worker participation through such policies.<sup>18</sup> In 2021, Coca-Cola announced a Broad-based Black Economic Empowerment (BBBEE) policy to increase employee ownership and participation within the firm for the domestic market (Bloomberg, 2021; Mthethwa, 2021). The company fostered participation by increasing employee ownership shares from 5% to 15% at its local Port Elizabeth bottling plant, and allowing employee representation on the board, giving employees the opportunity to participate in key decision-making meetings. In 2022, PepsiCo launched Bašumi Trust, which is a R1.6 billion BBBEE employee share ownership plan, that lists 11 000 Pepsico employees as beneficiaries of the trust, and which is governed by a board that includes three union-appointed trustees (Mashego, 2022). Further, PepsiCo has also appointed an employee representative from the trustees to represent employees at the board level. These innovative models could be applied within the coal value chain to include employee participation in decision-making, particularly as they relate to new investments, new job roles, and training and skills requirements, to name a few factors.

Businesses also have a key role in moving beyond workers and supporting the communities within which they reside. While firms have easy access to their workers and established channels for communication, accessing communities to engender participation is more complicated. Drawing on insights from South Africa's Renewable Energy Independent Power Producer Procurement Programme (REIPPPP), identifying which individuals constitute "impacted communities" and identifying community leaders is difficult (Project 90 by 2030, 2018). This is further complicated by community engagement

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<sup>18</sup> It should be noted that there are national debates surrounding the modalities for improved representation of worker interests in company decision-making and boards through the Companies Amendment Bill 2021. While mechanisms for greater representation may be absorbed into law in the future, for now these mechanisms are voluntary for companies.

viewed as a once-off activity whereas meaningful engagement, participation and trust building is achieved through consistent interaction through a process, as exemplified by the SLP process (see Chapter 3). Here, civil society and advocacy organisations that are embedded within relevant locales, such as groundWork in Mpumalanga's coalfields, can aid community groups that want or need to engage firms.

Socially-owned infrastructure represents an additional form of investment that can increase participation among workers and communities. The Saltuba Cooperative in Gqeberha is an example of a pilot project that illustrates how such a model might work. The cooperative operates on the premise that existing municipal land and infrastructure can be used by residents to generate income and sustainable livelihoods. This includes using households for water capture, agricultural activities, and solar PV activities for self-generation and resale in a distributed solar array (Brennan and Cherry, 2021). These households are organised into a primary cooperative, where all households are equal members and decide democratically on the distribution of income from the sale of electricity. While the cooperative places ownership exclusively among households, other models<sup>19</sup> of shared ownership (both for-profit and not-for-profit) exist and could be tested.

The nature of the participation is multifaceted and has to also be defined. Participation by workers and communities can occur at different stages or activities. For example, participation can focus on mining rehabilitation and the successive economic activities that materialise on rehabilitated land. Participation can occur before new investments, such as the construction of renewable energy generation plants, to assess the impacts that such investments can have on workers and communities. This type of consultation is already a feature of existing legislation through EIA processes and the NEMA (see Chapter 3). A more active form of participation can be fostered through socially-owned infrastructure models, where workers and communities move beyond participating in assessing impacts but also share ownership of infrastructure. Furthermore, workers and communities would need to be provided with the appropriate skills and information to contribute meaningfully. Businesses can engender participation through the support of evidence-based information sharing and knowledge development among workers and communities.

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19 See Project 90 by 2030, 2018 for examples of different model types.



## CHAPTER 5

# THE WAY FORWARD

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**E**nsuring a just transition in South Africa requires a number of supporting policy tools and participatory mechanisms that shield vulnerable stakeholders from value chain impacts and ideally leave them better off after the transition. A just transition cannot be achieved without paying due attention to participatory justice elements as they relate to representative and direct democracy. South Africa has a rich history of attempts at fostering representative and direct democracy principles into policymaking. Numerous mechanisms, platforms and policies are present, on paper, to foster participatory justice in South Africa, from national to community levels, and at the firm level.

Yet many challenges remain. The lack of (inclusive) implementation has failed to deliver participatory justice. This is aptly reflected in Frene Ginwala's critique that the powerful voices of a minority are typically heard, while the majority are ignored given the perpetuation of their historical neglect (De Villiers, 2001).

Looking ahead, direct democracy and representative democracy are closely related and are intertwined and mutually reinforcing, both in law and in practice. One does not meaningfully occur without the other. Judge Sachs eloquently put it: "[a] vibrant democracy has a qualitative and not just a quantitative dimension. Dialogue and deliberation go hand in hand. This is part of the tolerance and civility that characterise the respect for diversity the Constitution demands" (DFT, 2006).

A set of interventions could be implemented to foster participatory justice on just transition issues in the country. Such interventions could then be leveraged to broaden procedural justice in the country overall. Figure 3 provides a non-exhaustive list of possible, complementary interventions, structured in a series of increasingly ambitious building blocks. The focus is on fostering social dialogue on key national and local just transition issues, complementing existing representative democracy processes, and empowering vulnerable stakeholders to meaningfully exercise their agency. This implies that proposed interventions must not be conducted as a tick-box exercise and are meaningfully implemented to support participatory justice.

**PHOTO: Northern Cape Legislature, Kimberley**

*Photo: Graeme Williams, Media Club*



## INCREASED LEVEL OF AMBITION >>>

Make decisions inclusive >>>		
<p>Conduct open and public engagement processes on key national just transition decisions (e.g. sector strategies and plans) through Parliament, NCOP and Nedlac</p>	<p>Conduct open and public engagement processes on key national as well as local (e.g. site closure, new mine/plant, support package) just transition decisions, through a public dialogue and consultation process with relevant stakeholders, with a focus on vulnerable groups</p>	<ul style="list-style-type: none"> <li>Co-develop just transition plans with vulnerable stakeholders in affected value chains and/or regions</li> <li>Foster employee representation at board level in affected value chains (and beyond)</li> </ul>
Set up multi-tier governance >>>		
<ul style="list-style-type: none"> <li>Recognise and leverage existing local-level structures (e.g. municipal forums)</li> <li>Recognise and integrate indigenous and traditional governance and knowledge systems into just transition processes</li> </ul>	<ul style="list-style-type: none"> <li>Establish/reignite community/grassroots structures in affected areas (e.g. climate change champions), including clear feedback loops with representative democracy processes</li> <li>Establish structured firm- and sector-level social dialogue in new value chains (e.g. renewable energy)</li> </ul>	<ul style="list-style-type: none"> <li>Publicly and transparently monitor, report and evaluate implementation progress on just transition interventions</li> <li>Set mechanisms for accountability and regular, collaborative update of just transition plans</li> </ul>
Share knowledge >>>		
<p>Set up and maintain public knowledge platform for open access to information on just transition (e.g. official documents, public announcements, research)</p>	<p>Provide publicly and transparently underlying assumptions and information/data leading to decision-making (e.g. impact assessments, modelling data, socioeconomic analysis)</p>	<p>Provide all materials (including technical documents) publicly into accessible, reader-friendly formats and language</p>
Build local capacity >>>		
<ul style="list-style-type: none"> <li>Develop stakeholder capacity through collaborations with local universities and colleges, and through support for non-governmental organisations</li> <li>Encourage unionisation, particularly in under-represented/new sectors</li> <li>Expand/strengthen local chambers of commerce and industry in affected areas</li> </ul>	<ul style="list-style-type: none"> <li>Introduce programmes in schools and higher education institutions on active citizenship</li> <li>Develop collaborative learning, experience sharing and trust between stakeholders</li> </ul>	<p>Provide active support for participation of vulnerable stakeholders (capacity building, knowledge and awareness development, financial and technical assistance)</p>

FIGURE 3: CONTINUUM OF POSSIBLE INTERVENTIONS TO ENACT PARTICIPATORY JUSTICE

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*Source: Authors, adapted from Montmasson-Clair (2021b)*

Practically, a first step towards participatory justice would be, simply, to implement (i.e. in some cases enforce) existing mechanisms. This would require enacting monitoring, evaluation and accountability processes to avoid tick-box exercises, the bypassing of legal requirements and, at times, plain disregard of legal obligations. At the firm level, much greater emphasis on inclusive governance and ownership is needed, notably by including workers in decision-making structures. Where relevant, additional structures may also be necessary to set up adequate channels for participatory justice. In addition, effective checks and balances are also needed to avoid public decision-making being capture by special interests.

Furthermore, trust between politicians, officials and the communities they serve must be significantly strengthened. Building trust is, however, not a quick endeavour. Much more transparency and accountability in decision-making processes would facilitate this. This means providing stakeholders and citizens with adequate time to be aware of, and present at, meetings and to see documents well in advance. Providing access (to documents and meetings) is necessary but still insufficient. Participatory justice also involves a much greater focus on education, empowerment and capacity building of all, i.e. not only communities and workers but also politicians and government officials. Dedicated programmes for stakeholders are necessary to build capacity. Similarly, schools could also include courses on democracy, citizenship and how to engage in decision-making processes as an active citizen. Financial obstacles, such as access to transport and communication technologies, should also be addressed.

Reflecting on the Freedom Charter's development and success combined with the democratic imperative to elevate vulnerable voices, enshrining direct democracy within the framework of representative democracy is not functioning optimally in South Africa. Yet it is not an impossible task. Even though most people were excluded from voting under apartheid, the underground movements found mechanisms to include the majority and marginalised voices. Unfortunately, this motivation and intensity did not persist under the new democratic dispensation.

Why did non-governmental participation work during apartheid? Perhaps, it was to do with the urgency around the issues and clarity about the cause that was being fought. There was consensus that being denied basic human rights was not acceptable. People were united in their needs, in their beliefs and their rights – there was clarity and conviction. The messages were clear. This is not the case today. In fact, impacted stakeholders do not feel heard. Often violence and service delivery protests have become the channels through which people attempt to be heard after much disappointment and desperation. With the arrival of democracy, many activists and community leaders were absorbed into government, resulting in a gap in the leadership that had existed before. Given years of corruption and continued levels of poverty and inequality, people have progressively lost trust in government. This has also affected the way in which participation unfolds and has led to a rupture in the connection between citizens and their representatives. In many ways, it is time to mend the broken chains of leadership and recognise the voices of all.

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