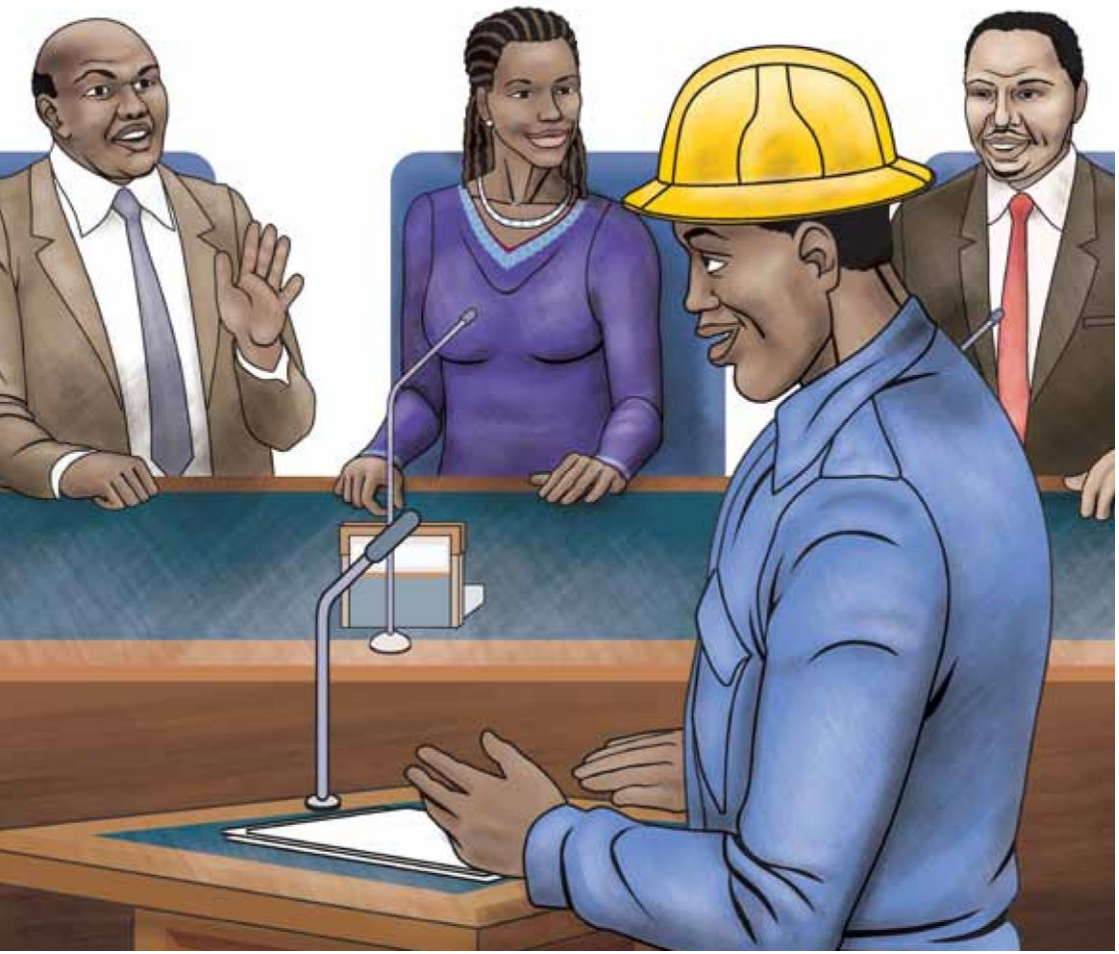




# Public Participation and the KwaZulu-Natal Legislature

KWAZULU-NATAL LEGISLATURE



# Public Participation and the KwaZulu- Natal Legislature

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## Introduction

This booklet has been produced by the KwaZulu-Natal Legislature to explain how government is made up in South Africa and the role and functions of government in the province of KwaZulu-Natal (KZN).

The KwaZulu-Natal Legislature is responsible for passing new laws and changing older laws in the province, and plays a crucial oversight role over the Executive.

The KwaZulu-Natal Legislature is also responsible for educating the public about the Legislature and how people can participate in law-making and decision-making in the province. In this booklet, we look at:

- The roles and functions of the various branches and levels of government in South Africa.
- The roles and functions of the KwaZulu-Natal Executive and Legislature.

- The law-making process in KwaZulu-Natal.
- The process of making petitions.
- Other ways in which you can participate in law-making and other processes of the KwaZulu-Natal Legislature.

We hope you find the booklet interesting and informative and look forward to your participation in future!

# Words and terms

Some of the words and terms used in this booklet might be new to you. If you come across a word or term you've not heard before, see if it is on this list:

Word or term	Definition
Amend	To change an older piece of legislation.
Bill	A draft piece of legislation that has not yet been passed into law.
Executive	This is the branch of government responsible for developing policy, developing new law (to be passed by the Legislature) and for implementing law and policy in the area under their control. There is a national Executive (made up of the President, Deputy President, Ministers and Deputy Ministers) and a provincial executive for each province (made up of the Premier and Members of the Executive Council). At the local level, the Municipality plays the role of both the Executive and Legislature.
Judiciary	The Judiciary is made up of the Courts, Judges and Magistrates. This branch of government is responsible for enforcing the law.

# How government is made up in South Africa

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Government in South Africa is made up of three branches, each with their own powers, roles and functions. The Constitution also divides power between the national, provincial and local levels of government. So, there is a legislature and an executive at all three levels, while the Courts too have national, provincial and local levels, as shown on the next pages.

Legislation	Legislation is written law passed by Parliament (Acts of Parliament), a Provincial Legislature (Provincial Acts) or a Municipality (By-Law).
Legislature	This is the branch of government responsible for passing new laws and amending or repealing old laws when necessary. It must also hold the Executive level to account and encourage and facilitate public participation in law-making. Parliament is the national legislature and there is a Provincial Legislature for each province. Municipalities play the role of both the legislature and the executive at the local level.
Petition	A petition is a formal request to government by an individual, group of people or organisation for support, relief or for changes to policy or legislation.
Repeal	To set aside or scrap an older piece of legislation.

# Branches and Levels of Government

## NATIONAL

The national level of government is responsible for issues that affect the whole country.



## PROVINCIAL

Provincial government deals with issues that affect provinces—such as health services and education in the province.



## LOCAL

Local government deals with issues that affect communities—such as parking, electricity, cemeteries and beaches.



## LEGISLATURE

**PARLIAMENT** is the national legislature and is made up of:

- The National Assembly, which has between 350 and 400 Members.
- The National Council of Provinces, which represents the provinces at the national level. It is made up of made up of 10 delegates from each province.

Laws made by Parliament (Acts of Parliament) must be followed by the whole country.

Laws written by the **PROVINCIAL GOVERNMENT** (Provincial Acts) must be followed in the province.

**MUNICIPAL COUNCILS** (Municipal By-Laws) that must be followed in their local area only.

## EXECUTIVE

The **NATIONAL**

**EXECUTIVE** is made up of the President, Deputy President and Ministers.

**PROVINCIAL EXECUTIVE COUNCILS** are made up of a Premier and between 5 and 10 Members of the Executive Council (MECs).

**MUNICIPAL COUNCILS** have a Mayor and an Executive Mayor or a Mayoral Committee to implement legislation and develop policy for their communities.

## JUDICIARY

The **HIGH COURT** is in the land and the:

- Constitutional Court (which has the final say on cases involving the Constitution).
- Supreme Court of Appeal (which is the highest court for all other cases).

**HIGH COURTS** deal with serious criminal and civil cases. They also deal with appeals from Magistrates' Courts.

**MAGISTRATES** deal with less serious criminal and civil cases.



The **Legislature** passes new laws and changes or scraps old laws.



The **Executive** develops policy and puts the laws passed by the Legislature into practice.



The **Judiciary** is the Courts, Judges and Magistrates, whose role is to interpret and enforce the law.

## The KwaZulu-Natal Executive

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The KwaZulu-Natal Provincial Executive is made up of: ○ The Premier, who is the head of the Executive; and ○ 10 Members of the Executive Council (MECs) who are appointed by the Premier to lead the government departments in the province.

The Executive's main roles and functions are to develop policy for the province, and to implement provincial laws and any national laws that give them a role in the province. Please complete the table on the following page by filling in the names of the current Premier and MECs.

## The KwaZulu-Natal

## Legislature

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member of the Executive council (mEc)	Portfolio
	Premier
	Agriculture, Rural Development and Environmental Affairs
	Arts, Culture, Sports and Recreation
	Social Development
	Education
	Human Settlements and Public Works
	Economic Development and Tourism
	Transport, Community Safety and Liaison
	Finance
	Cooperative Governance and Traditional Affairs
	Health





The KwaZulu-Natal Legislature is responsible for passing new laws for the province, amending existing laws, and for overseeing the work of the Executive and provincial departments. It also plays a key role in encouraging and facilitating public participation in law-making in the province.

**vision:**

To be a people centred, activist Legislature

**mission:**

To deepen the democracy and activism in KwaZulu-Natal through robust oversight, effective public participation and efficient lawmaking

The top 48 names on the Popular People's Party list are then sworn in as mPLs, together with those from other parties depending on their proportion of the vote.

The Legislature is made up of 80 Members of the Provincial Legislature (MPLs), elected during national and provincial elections according to a



Before the next election, the Popular People's Party draws up a list of 80 party members.



The Popular People's Party receives 60% of the vote during an election. It will be entitled to 60% of the 80 seats available – 48 seats.



These MPLs then make up the KwaZulu-Natal Legislature for the five years until the next election.



system of **proportional representation**. In terms of this system: ○ Before each election, all of the parties contesting the election draw up a list of candidates. ○ Once the votes have been counted, the MPLs are selected off this list according to the percentage of votes the party received in the election.

### **Example**

Please complete the following table by filling in the names of the parties currently making up the Legislature, and the number of seats they hold:

Name of political party	Number of seats

## Office bearers of the Legislature

### Speaker

The Speaker is an MPL, elected by the Legislature at their first sitting after an election. The Speaker is responsible for the overall management of the Legislature and chairing debates. He or she also chairs many of the Legislature's Committees.

### Deputy Speaker

The Deputy Speaker stands in for the Speaker when the Speaker is unable to attend a sitting of the Legislature. The Deputy Speaker is also an MPL, elected by the Legislature at their first sitting after an election.

### chairperson of chairpersons (chair of chairs)

The Chair of Chairs co-ordinates the work of the various committees of the Legislature and chairs sittings when neither the Speaker nor the Deputy Speaker are available. **chief Whip**

The Chief Whip is the Chief Whip of the party with the most MPLs in the Legislature (the majority party). The Chief Whip arranges the daily business of the Legislature, including the number and order of Members who wish to speak during a debate. They also determine the approximate amount of time

## Committees of the Legislature

for each debate and divide the total amount of time between all of the political parties represented in the Legislature.

### **Party Whips**

Political parties that have three or more Members in the Legislature must appoint a Whip, whose main roles are to ensure party discipline and that members of the party vote according to the party's official policy.

The Legislature has four types of Committees: ◦ Standing Committees. ◦ Portfolio Committees. ◦ Ad Hoc Committees. ◦ Management Committees.

Each committee is made up of a chairperson and a number of MPLs (usually 12). Every party represented in the Legislature has at least one seat on each committee - which means that every party has a say in the issues dealt with by every committee.

### **Standing committees**

Standing Committees deal with issues that affect all departments, such as finance, women, children and people with disabilities. There are currently three Standing Committees: ◦ Standing Committee on Public Accounts.

◦ Standing Committee on Private Members Legislation, Proposals, Petitions and Public Participation, which plays an important role in dealing with petitions (which we look at later). ◦ Standing Committee on the Quality of Life and Status of Women, Children, Youth and People with Disabilities.

### Portfolio committees

There is a Portfolio Committee for each provincial department to oversee the work of the department, assist in the development of legislation, and to provide a space for public discussion and debate.

Portfolio Committees are semi-permanent in that they are established and stay in place for the entire term of the Legislature (five years).

#### current Portfolio committees

- |  |                               |
|--|-------------------------------|
| • Cooperative Governance and Traditional Affairs | • Education                   |
| • Economic Development                           | • Health                      |
| • Transport                                      | • Social Development          |
| • Agriculture and Environment                    | • Premier and Royal Household |
| • Conservation                                   | • Human Settlement            |
| • Community Safety and Liaison                   | • Art and Culture             |
| • Public works                                   | • Sports and Recreation       |
|  | • Women's Caucus              |

### Ad Hoc Committees

Ad Hoc Committees are established to deal with specific issues as they arise. Once the issue has been dealt with and finalised, the Ad Hoc Committee is dissolved.

### Management Committees

The KwaZulu-Natal Legislature has four management committees:

### Rules committee

The Rules Committee is chaired by the Speaker or Deputy Speaker. Its main role is to develop and revise the Standing Rules that govern the proceedings of the Legislature.

### Programme committee

This Committee is chaired by the Speaker and is responsible for developing the Legislature's programme – including setting the dates of committee meetings, sittings of the Legislature, sectoral parliaments and workshops.

### committee of chairpersons

This Committee is made up of the Chairpersons of all Committees except Management Committees. It is chaired by the Chair of Chairs and its role is to ensure that Chairpersons of Portfolio and Standing Committees are performing their functions and doing their work.

### Whips' Forum

The Whips Forum sets the programme of Legislature sittings.

## The Legislature's oversight role over the Executive

The Constitution gives the Legislature a role in overseeing the Premier and the MECs to make sure they are complying with

their responsibilities, that they are ensuring delivery of services, and that they are properly allocating and managing resources. In line with this, the KwaZulu-Natal Legislature has recently (April 2012) adopted a Sector Oversight Model to guide it in its oversight role.

Members of the Executive Council (Premier and the MECs) must provide the Legislature and its Committees with regular reports on matters under their control, and must submit their Departments' budgets, annual reports, and the AuditorGeneral's report on their Departments to the Legislature and its Committees for them to study and discuss. In extreme cases, the Legislature can hold the Executive to account by passing a motion of no confidence: ◦ In the entire Executive Council, but not the Premier – in which case the Premier must choose a new Executive Council.

- In the Premier – in which case the Premier **and** the rest of the Executive Council must resign.

## Law-making in KwaZulu-Natal

The KwaZulu-Natal Legislature has the power to make laws over a broad range of issues affecting the province, but provinces also have a role to play in some legislation being considered by Parliament.

Parliament is responsible for passing new laws and making changes to existing laws that affect the entire country. It is made up of the National Assembly and the National

Council of Provinces (NCOP). The NCOP is made up of members from all provinces and represents the provinces at the national level.

### The province's role in national legislation

Where the new law does not directly affect the provinces, or where it deals with things that Provinces cannot make laws about, the NCOP can only make comments or suggestions. The National Assembly must consider these comments, but it does not have to follow them for the law to be passed.

But where the law deals with something that affects the provinces, or that provinces can also pass laws over, both the

National Assembly and the NCOP must to agree to it before it is considered as passed.

### Provincial Lawmaking

White Paper) that is circulated for comment before the law is written. Some laws start with a draft policy (known as Green Paper or

Once comments have been received (or where no draft policy is developed), the responsible MEC or their Department will draft the new law (called a Bill) or changes to an existing law.

The Bill is then sent to the State Legal Advisor to make sure that it does not conflict with the Constitution or any other law.



4 Once checked, it is put before the Executive Council for approval.

Once approved, the Bill is referred to the Speaker who publishes it in the provincial Gazette and refers it to the relevant Portfolio Committee for consideration. To ensure that the public are given an opportunity to have their say: 5 The Portfolio Committee call for public hearings to get input on the legislation from members of the public and interest groups.

A notice calling on interested people and organisations to make submissions within 21 days of publication accompanies the published Bill.

6 Once the public has had a chance to comment, the Speaker tables the Bill for debate in the Legislature.

7 The House votes on the Bill. A simple majority is required for the Bill to be passed. If there is no majority, the Bill is rejected.

Once adopted by the House, the Bill is sent to the Premier for assent.

Once assented to, the Bill becomes Provincial Act and is published in the provincial Gazette, with the original copy sent to the Constitutional Court for safekeeping.

A Provincial Act comes into force on a date set out in the Act. If no date is set in the Act, it comes into force on a date determined by the Premier. If none of these have been provided for in the Act, the Act comes into force on the date of publication.

### Money Bills

A Money Bill is a draft law that deals with money – such as a law that imposes taxes, levies or duties. Only the MEC responsible for Finance is able to introduce a Money Bill in the House. Money Bills are sent to the Finance Portfolio Committee for discussion, but the Committee may not suggest any amendments – it can only make comments and recommendations in its report.

Although the process doesn't allow for public participation in the drafting of the law, the MEC for Finance conducts road shows on the Bill before it is tabled in the Legislature to raise awareness of it amongst the public.

### Private Member Bills and Bills drawn up by Committees

MPLs can also introduce new laws, known as Private Member Bills. And more recently, Committees have been allowed to draw up Bills and to present these to the Executive Council for approval.

## Public Participation

The Constitution requires Provincial Legislatures to encourage public participation in their legislative and other processes. All sittings of the Legislature and its committees are therefore open to the public and the media unless there are very good reasons to exclude them.

As a custodian of democracy, the KwaZulu-Natal Legislature is committed to: ◦ Informing, educating and involving communities in its

policies, legislative processes and general good governance. ◦ Taking the Legislature closer to the people, so that the public is able to make a meaningful contribution towards the governance of the province. ◦ Educating communities about their elected representatives and promoting accountable and open government. ◦ Informing the public about processes and developments within the Legislature, and how they can access and participate in these. ◦ Increasing the effectiveness and efficiency of existing public participation mechanisms within the Legislature, such as public hearings and submissions procedures.

The Legislature has also established a Standing Committee on Public Participation and Petitions and a Public Participation Unit to ensure public participation and to deal with petitions (amongst other things).

## How and when can you participate?

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The process of developing new law in KwaZulu-Natal provides a number of points of entry for individuals, organisations and groups to participate, and various options when it comes to the methods to use:

Stage in the process	Possibilities for participation
Prior to any law or policy covering an issue	Lobby, advocate, demonstrate, and march to the Legislature ‘demanding’ new law or policy.
When new policy is being developed	Submit comments to the Green Paper, White Paper or both as they appear, to the relevant Department.
When there is already an existing policy or law	Submit a petition, lobby, advocate, demonstrate, and march to the Legislature ‘demanding’ changes to existing law or policy.
When a new law (Bill) is being prepared	Submit a petition, make written comments to the Bill within 21 days of publication, attend public hearings and make oral or written submissions, attend meetings of Portfolio Committee and sittings of the Legislature when the bill is being discussed or debated, demonstrate, picket, march to the Legislature ‘demanding’ changes to the Bill.

## Petitions



A group petition made up of individual or group submissions from a number of petitioners concerning the same or similar issues

A petition is a formal request to government by an individual, group of people or organisation. It could be for support, relief, or about suggested changes to policy or legislation. The right to petition is specifically included in the Bill of Rights and is covered in KwaZulu-Natal by the KwaZulu Natal Petitions Act (4 of 2003), which deals with the procedure to be followed.

According to this Act, a petition is a complaint, request, representation or submission by a petitioner to the Speaker or Public Participation and Petitions Committee of the legislature.

Petitions can be:

A single petition, which is an individual submission from a single petitioner concerning a particular complaint or request



A collective petition, which has a collection of signatures from a number of petitioners



An association petition, which is a submission from an association about a particular issue or law

#### FIRST SCHEDULE:

**Who may present a petition?** FORM OF PETITION PRESCRIBED BY THE STANDING RULES AND ORDERS OF THE

PARLIAMENT  
 ○ Anyone acting for someone who is not able to seek relief in their own name (such as a child or a person with a mental disability).  
 ○ Anyone acting on behalf of a group or class of people.

#### PETITION

○ Anyone acting in the public interest.  
 ○ An association acting in the interests of its members.

Signature of Member introducing the petition

To the Honourable Speaker and Members of the

#### What types of petitions are allowed by the Act?

The Act allows people and organisations to petition the Speaker about:

*[the group of petitioners, and place of residence or place of insert the name of the petitioner/s or a description of*

○ Changes to provincial legislation (both existing Acts and Bills that are being considered).

*business]*

respectfully submits that

○ The reconsideration of a decision affecting the petitioner (provided the petitioner has exhausted all other avenues of details of the relief sought]set out the facts and representations to be brought to the relief).

*[notice of the House and*

- Steps to be taken to grant relief to the petitioner. The petitioner/s

requests/request that the House consider his, her or their submissions favourably, and ○ Any other reasonable form of relief. grant the relief which it may deem fit.

### Form and content of petitions

Petitions must be writing and in the format set out in the Act (plus any additional pages if there is not enough space on the contain:

Petitions can be in any of the 11 official languages and must form).

Generally, all petitioners must sign their petitions. But where they cannot write, a petitioner can make their mark and have ○ The petitioner's name, physical and postal address, and the name of their district and local municipality.

two people who can write sign next to their mark as witnesses. ○ Names and addresses of witnesses (where the petitioner Both of these witnesses must also provide their names and cannot write).

addresses on the form.

- What it is they want done or the suggestions they have for changes to the law or policy.

### Which petitions will not be considered?

The Speaker may refuse a petition: ○ Which does not include the name and contact address of the petitioner – in other words, anonymous petitions are not allowed. ○ That has not been signed by the petitioner – or where the petitioner cannot write, where they have not made their mark or had their mark witnessed by two witnesses. ○ About a matter that is already before a court, commission of inquiry or similar body. ○ From a prisoner about their criminal case.





- Where it requests an amendment of provincial legislation or the reconsideration of an administrative decision, and the petitioner hasn't exhausted other avenues for relief that are available to them.
- That requests something that would conflict with the Constitution.
- Requesting something that Provincial Legislatures do not deal with.

## Submissions

A submission is less formal than a petition. Anyone can make a written submission to the Speaker, the Legislature, an MPL or one of the committees, at any time and about any matter.

Submissions can also be made about any draft legislation or policy published for public comment by sending comments and suggestions to the relevant Portfolio Committee or department dealing with the law or policy.





ote

The main difference between a submission and a petition on a specific Bill is that a submission usually has to be made by a certain date so that it may be considered as part of the law-making process. A petition, on the other hand, may be made to the Legislature at any time.

Representatives from the department responsible for the Bill will make a presentation on the contents and effects of the new law.



They may also invite individuals or representatives from organisations to make a presentation.

## Public Hearings

The Legislature and its Committees usually hold public hearings on draft legislation and other matters. This allows the public an opportunity to learn more about what the legislation means and to have a say in the process.

During public hearings:

And they will usually allow those attending an opportunity to raise questions or to make comments.



Hearings are sometimes preceded by public education workshops to allow the public to contribute meaningfully when hearings are held.

## Public Education (Community Readiness and Awareness Workshops)

Community Readiness and Awareness Workshops are conducted at local municipality level to provide education and awareness on the Constitution, human rights, the roles and functions of the KwaZulu-Natal Legislature, the petitions process and related matters.

Community Readiness and Awareness Workshops often precede a 'Taking the Legislature to the People programme' (see below).

## Multi-Party Oversight Visits

Multiparty oversight visits are undertaken by the Multiparty Delegation Committee and precede a Taking Legislature to the People Programme (TLTP). Members of the committee visit the communities

**Public Participation and the KwaZulu-Natal Legislature**  
KZN Legislature Community Education Workshops

where the TLTP is going to be held: During the morning of the visit, a session is held to consult with members of the community regarding service delivery issues. During the afternoon, the committee visits government institutions to fulfil its oversight role.

## Taking Legislature to the People (TLTP)



something to a previously identified school, community organisation or the like.

## Radio Slots

The community radio slots campaign aims to educate members of public about the main functions of the Legislature: lawmaking, public participation, and oversight. The campaign targets people in both urban and rural areas, especially those who live far away from the Legislature in Pietermaritzburg.

Community radio slots are featured on the following community radio stations:

◦ Maputaland FM ◦

Radio Newcastle ◦ Ikhwezi FM The Taking legislature to the People (TLTP) programme ◦ Icora FM brings the

Legislature closer to the people. It provides an ◦ UMngungundlovu FM opportunity for community members to get to know their

elected representatives, and for MPLs to inform the public and developments within the Legislature and ◦ Inanda FM the way in which members of the public can participate in these ◦ Izwi Lomzansi FM processes.

◦ Radio Sunny South about processes

## Sectoral Parliaments

The TLTP initiative usually takes place twice a year and is a three-day programme where the Legislature holds its sittings in Sectoral Parliaments were established to provide a space for a District municipality. Community members are invited to the debates for the youth, women, learners, religious groups and sittings, where they can meet the MPLs and MECs who attend leaders, workers, the elderly, and people with disabilities. Where and raise their questions and concerns on any issue - including possible, the dates of these coincide with the national days of service delivery. recognition of these sectors. The last day of the TLTP programme is a Speaker's Social Responsibility Programme, during which the Speaker donates

Sector parliament		Sector parliament
<b>interfaith Symposium</b> (April)	<b>Youth parliament</b> (June)	<b>peoples assembly/ peoples parliament</b> (September)
		

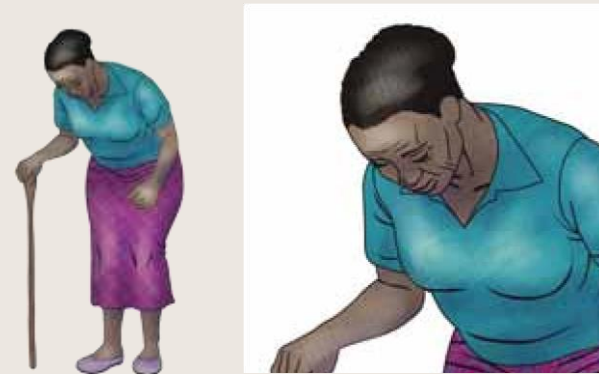
**Workers parliament**(May)



**Learner's parliament** (June)



**Senior citizens parliament**(September)



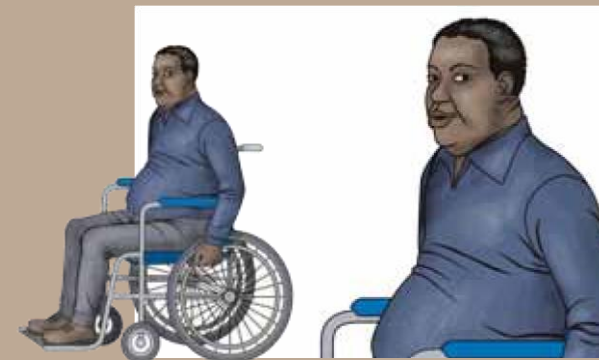
**africa day celebration**(May)



**Women's parliament** (August)



**people with disability parliament**(December)



These sessions allow representatives and structures working in the sector to run a mock parliamentary debate, where they act as MPLs to discuss important issues. Participants are asked to draw up resolutions at the end of the debates, which are then sent to relevant government departments for their inputs. MECs are also available during the sessions to respond to issues raised and to take matters forward.

### **Committee meetings**

Committee meetings are usually open to the public and the media, although there may be some occasions when these are closed - such as when a Committee is meeting with a provincial department about its performance. Members of the public can attend these to learn more about the issues under discussion, and to be able to participate more knowingly on the issue at hand.

### **Other ways of participating**

Members of the public can also attend sittings of the Legislature and its Committees, and events organised by the Public Participation and Petitions Unit.



For more copies of this booklet, for copies of the booklet *The Constitution, Human Rights and Democracy*, to find out more about the Legislature and its committees, or to arrange a visit to the Legislature, contact the Public Participation and Petitions Unit:

**By writing to:**

The Manager  
Public Participation and Petitions Unit  
Private Bag X9112  
Pietermaritzburg, 3200

**By visiting:**

244 Langalibalele Street (Formerly Longmarket Street )  
Pietermaritzburg, 3200

**By phone:**

(033) 355 7600

**By fax:**

(033) 3557011 / 7099

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