

Legislative frameworks to facilitate social/public accountability in the fulfilment of fundamental rights

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This paper has been prepared in order to provide a background and outline for a presentation to be delivered at the abovementioned conference. It seeks only to introduce some of the main points of discussion to be elaborated on during the presentation. The presentation will broadly cover the following themes:

- Social Accountability, in a democratic society, is necessary for the protection and advancement of fundamental rights; and in promoting the development of the state’s capacity to discharge its obligations; the role and functioning of the state and civil society,
- key features of legislative frameworks which promote social/public accountability,
- Case study regarding the provision of school infrastructure in South Africa – Equal Education’s Campaign for Regulations for National Minimum Norms and Standards for School Infrastructure.

i) Social (Public) Accountability as necessary for the protection and advancement of fundamental rights and to develop the state’s capacity:

The state as primarily responsible for the protection and advancement of human rights (and the provision of public/social services). Fundamental principles of democracy require that the state fulfils this role and functions in a manner which promotes public accountability and participation. This requires mechanisms to maintain accountability between the different organs of state (checks and balances) as well as processes aimed at facilitating constructive and accountable interaction between state organs and civil society. The legislative framework is central to promoting accountability throughout these interactions. It is instructive to also note that an organised civil society is essential to ensuring that legislative (and other) mechanisms are properly accessed and utilised in order to promote effective social accountability. While the state is primarily responsible for the provision of basic services and the protection and advancement of fundamental rights, it must do so with limited resources and capacity at its disposal. Under such circumstances, effective social accountability is crucial in promoting the most efficient use of the (limited) resources available to it, and in driving the development of its own capacity.

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ii) **Key features of legislative frameworks which promote social/public accountability**

The legislative framework provides for the rules of engagement (between different organs of the state, and in the state's engagement with civil society). South Africa's founding values of a system of democratic government, which seeks to ensure 'accountability, responsiveness and openness.' Legislative frameworks must seek to provide for and ensure the following: checks and balances between different organs of state; specific content of rights and corresponding obligations; and the promotion of access to information and public participation in democratic governance (including planning, decision making, implementation and reporting) processes.

iii) **Case study: the provision of school infrastructure in South Africa – Equal Education's campaign for Regulations for National Minimum Norms and Standards for School Infrastructure.**

This case study will reflect on the reasons behind Equal Education's campaign which aims to compel the Department of Basic Education (in South Africa) to adopt legislation stipulating the minimum infrastructure standards to be applied to all schools. The primary objective of the campaign is to force the establishment of a legislative mechanism which would promote public accountability around the state's provision of school infrastructure by providing for, inter alia, specific infrastructure standards and timelines (to be met by the state) and that these standards are legally binding. Together, these elements of the legislation would promote accountability between the different organs of state, as well as mechanisms to empower civil society actors to hold the state accountable to achieving the objectives (relating to the provision of school infrastructure) outline in the legislation. The case study provides a good example of the way in which *organised* civil society to be able to make use of democratic principles, and a rights based perspective to compel the adoption of a legislative framework that facilitates social/public accountability.²

² See: www.equaleducation.org.za