South Africa’s ten legislatures were designed to build representative democracy: their role is to represent the people. The Constitution gives them four major responsibilities through which they must fulfil this role. It also provides a framework of principles and values within which the legislatures must act. This study has found that in the trying circumstances of South Africa’s new democracy they have made important progress in fulfilling their constitutional mandate, but much work still has to be done.

In chapter 1 we identify three specific challenges that South Africa’s legislatures face. The first is to become active agents in the constitutional project of transformation and not to be relegated to the sidelines. The very active role that some parliamentary committees have played in developing new legislation in crucial policy areas attests to considerable initial success in this regard, particularly in the national Parliament. But this challenge will be fully met only when the goal of transforming the country is integrated into all the work of all the legislatures and when they all succeed in their oversight responsibility. Oversight is central to the role legislatures should play in the constitutional project of transformation because legislatures themselves cannot deliver. The initiative in policy formation and implementation lies with the government. But legislatures can oversee the government and the way in which it implements policies, especially in areas of social and economic delivery. As they do this, legislatures must ensure that the constitutional rights that encapsulate the project of transformation are secured. To succeed in this area, South Africa’s legislatures need to prioritise their oversight responsibility. They need to draw on their communities to gain a full understanding of the successes and limitations of policies that are intended to bring about change and end poverty. And they need to point the government to ways in which it can speed up transformation. In doing so, they must avoid the danger of an overly partisan approach to oversight.

In the provinces in particular, much of the legislature’s task of transformation has not even been explored. The provincial law-making responsibility can help tailor policies geared to social and economic delivery to provincial needs. Most
importantly, however, the close ties that provincial legislatures should have with their communities can be used to oversee the implementation of policies on the ground and to ensure that provincial and national government responds appropriately.

But are legislatures close enough to the people that they represent? The second challenge that we identify in chapter 1 for South African legislatures is to become forums for forging adequate links between government and the people. Clearly, if South Africa wants to consolidate its democracy, public attachment to democratic institutions and procedures needs to grow. Legislatures play a crucial role in fostering a democratic culture and South African legislatures have taken many successful initiatives in this regard. The number of people visiting the national Parliament is in itself impressive and sets our institutions on the way to becoming ‘people’s parliaments’. But, public participation programmes urgently need to move beyond their emphasis on providing education about the role and functions of legislatures. They need to reach out and actively involve the public in the work of the legislatures. That means that legislative proceedings can no longer be isolated from public participation programmes. Communities, organised interests and individual members of the public need to be regarded as essential resources for active, responsive and effective legislatures. At the same time, members themselves need to engage in a more public way with the people, using the media and other resources, so that they are valued as representatives and contribute to a growing loyalty to and trust in our representative institutions.

Finally, South Africa’s legislatures must meet a third challenge. They must inject the values of co-operative government and inclusiveness into the workings of the system, thus overcoming South Africa’s legacy of division and violence. Again, this study points to some successes and some ongoing challenges. The relationship between the national government and provinces in the legislative branch of government is increasingly well-understood but practices remain uneven. Thus, the NCOP has strengthened many of its procedures but it is still often drawn away from its main constitutional role of providing a national forum for the representation of provincial interests. Instead, it is often tempted to engage with issues in national politics which falls outside the constitutional mandate of the provinces. Provincial legislatures are better equipped to engage with national legislation than they were in 1997, when the new system was adopted. There is, accordingly, an increasing number of examples of valuable – and co-operative – engagement in the national law-making process. However, in many provinces these examples are often still exceptions – they need to become the norm.

The electoral system ensures a high degree of inclusiveness in the workings of South Africa’s legislatures. Multi-party committee systems provide important forums for different interests to be represented. But, here again, much is still to be done especially to ensure that diverse voices within parties are heard. This study pays most attention to women because the legislatures themselves have made serious efforts to improve both the representation of women and the situation in which women members find themselves. These efforts have contributed significantly to the inclusiveness of our legislatures but, even so, many women still find it difficult to operate as members as well as they wish to
and there is an ongoing struggle to have women’s issues prioritised on the political agenda. Similarly, although there are no comparative statistics to prove this, it is likely that South Africa stands out amongst legislatures for its representation of other disadvantaged groups and ethnic, linguistic and religious minorities. Nevertheless, barriers to full participation remain.

Perhaps the greatest difficulty legislatures face in meeting the challenge of inclusiveness lies in establishing a political culture which encourages open debate and does not always deal with dissent and disagreement through party discipline and bland party competition. The challenge is for the political leadership in all parties to foster vigorous democratic debate and to limit posturing. Here the practice of the Constitutional Assembly and some of the legislative committees provide good examples.

The problems that face South Africa’s young legislatures today are not unique. Many are similar to those in other countries with similar political systems. All around the world, critics lament the extent of executive dominance and the tyranny of party discipline in parliament. Complaints about the lack of a truly deliberative style of decision-making and weak links between members and the people are equally common. It is important to note that these difficulties are to some extent endemic to representative democracy in a parliamentary system. It is equally important to recognise the additional challenge of South Africa’s specific circumstances. To consolidate democracy in a country with a divided and violent past, no democratic tradition and an urgent need for social and economic transformation is by no means an easy task. But it is what the Constitution demands from the government and the representative institutions of South Africa.

The Constitution seeks to retain the capacity for leadership, consistent policy and decisive action that are the virtues of a parliamentary regime, while enhancing the capacity of the legislatures to be genuine forums for debate and meaningful oversight. Clearly, the words of the Constitution were not meant to be simple rhetoric. However, to be meaningful, they need to be constantly backed up by genuine incentives that require government to be more responsive to the legislature and empower members of both the governing party and the opposition to be more effective.

The challenge for the next stage of democratic consolidation is for legislatures to translate the many individual examples identified by this study of successes in implementing the constitutional mandate into ongoing practice.