140917 SC Retita



RESEARCH UNIT

PO Box 15 Cape Town 8000 Republic of South Africa Tel: 27 (21) 403 8273 Fax: 27 (21) 403 8118 www.parliament.gov.za

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SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS: A SYNOPSIS OF SOUTH AFRICA'S PETITIONS SECTOR

1. Introduction

The primary aim of this paper is to provide a synopsis of the petitions sector in South Africa. The paper will do this by discussing the legislation, rules and regulations governing the consideration and processing of petitions in the country's ten Legislatures. The paper will thereafter highlight some of the discrepancies in the consideration and processing of petitions within the country's legislatures.

South Africa adheres to the principles of participatory democracy which require that members of the public participate and are included in governance structures in an effort to ensure a functional democracy. In line with the principles of participatory democracy, the Constitution mandates the legislative sector to promote public participation in all its decision making processes by amongst others holdings public hearings; carrying out public education and outreach activities; and receiving petitions.¹

Public participation, in its truest form, takes place when the views and perceptions of those affected by Government policies and programmes are taken into account in the formulation of those policies and programmes. Petitions are a critical component or embodiment of public participation because they reflect the perceptions of those affected by Government policies and programmes.² Petitions are not only a critical component or embodiment of the public participation process but they can also assist those in governance structures to identify issues they have overlooked or omitted in policy and programme formulation and implementation. In this sense, petitions can be used to address service delivery issues and assist elected public representatives to take cognisance of public perceptions before taking decisions and formulating policies or programmes.³ Also in this sense, petitions constitute an effective barometer for assessing and evaluating governance policies and programmes and can further indicate to Government if it is on track and which issues need its attention. As such, it is often said if an effective petitions systems is in place, disruptive and sometimes violent protests will be replaced by the peaceful submission of petitions.⁴

¹ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 6 – 7. Report prepared for the Legislative Sector Unit of Parliament.

² City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience, page 6. Available from www.joburg-archive.co.za. [Accessed 9 July 2014].

³ City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience, page 6. Available from www.joburg-archive.co.za. [Accessed 9 July 2014].

⁴ City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience, page 7. Available from www.joburg-archive.co.za. [Accessed 9 July 2014].



Petitions in the South Africa are governed by numerous pieces of legislation including the Constitution, the various Petitions Acts of the Provinces and a range of Regulations and Rules. However it is important to point out that all these Acts, Regulations and Rules are guided by the Constitution, in particular the constitutional provision protecting the right to petition. This makes the Constitution the overarching piece of legislation in the South African petitions sector. Section 17 of the Constitution accords members of the public with the right to petition. The fact that the right to petition is housed with the right to assemble and picket, does not make it any lesser of a right or less entrenched than any other right contained in the Constitution. There is therefore an obligation on all spheres of Government to not only recognise this right but to also foster and promote the use and protection of the right by members of the public.

2. Legislation, regulations and rules governing petitions

What follows below is a broad discussion of how petitions are considered and processed in each of the country's 10 Legislatures. The discussion will not only outline how petitions are considered and processed but will also emphasise the strength and weakness in each Legislature around the consideration and processing of petitions.

National Parliament

Petitions within National Parliament, namely, the National Council of Provinces (NCOP) are regulated by the Rules of the NCOP. The Rules do not define a petition or the purpose of a petition. Notwithstanding this, the Rules set out the format of a petition and also provide that petitions cannot be submitted directly to Parliament but must be submitted through a Member of Parliament who will in turn lodge the petition with the Chairperson of the NCOP. After a petition has been lodged with the Chairperson of the NCOP and once the petition is approved by the Chairperson of the NCOP, it is then tabled by the office of the Chairperson of the NCOP with the NCOP. After a petition has been tabled in the NCOP, it is then referred to the Select Committee on Petitions and Executive Undertakings for consideration and processing.⁵

Gauteng

The petitions process of the Gauteng Provincial Legislature is governed by the Gauteng Petitions Act 5 of 2002. The Act defines a petition and provides the general principles pertaining to the submission of a petition to the Legislature. More importantly, the Act stipulates that a petition may be submitted in any of the official languages. The Act does not however set out the timeframes around the submission and processing of a petition by the Legislature. The Act provides that all petitions must be received and considered by a petitions specific committee, namely, the Public Participation and Petitions Standing

⁶ Section 3 of the Gauteng Petitions Act 5 of 2002.

⁵ Rule 232 of the NCOP Rules.

⁷ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 16. Report prepared for the Legislative Sector Unit of Parliament.



Committee on petitions to deal with petitions.8 In terms of section 12 the said Committee has to report to Legislature on a quarterly basis on the petitions referred to it.9 The work of the Committee in this respect is supported by the Public Participation and Petitions Unit. The Unit receives all petitions submitted within the Province and keeps a record of all petitions submitted. The Legislature through the Unit provides for submission of on-line petitions i.e. epetitions. 10 What happens in practice in the Legislature is the following - the Unit receives a petition, it conducts a preliminary investigation aimed at establishing the facts relating to a petition and obtaining a formal response from the relevant government entity. Thereafter the facts relating to the petition together with response to the petitions are submitted to the Speaker and the Speaker in turn refers these to the Committee for consideration. 11

KwaZulu Natal

The KwaZulu-Natal Petitions Act 4 of 2003 governs the petitions process in the Province of KwaZulu-Natal. The petitions process in the said Province is further regulated by the Regulations to the Act. The Act has been translated into isiZulu and Afrikaans and so too has the petitions template. 12 The Act further requires that once a petition has been lodged the Speaker of the Legislature must ensure that the petition is translated into English, isiZulu and Afrikaans within two weeks. 13 The Legislature has a petitions specific committee, namely, the Private Members' Legislative Proposals, Pensions and Petitions Standing Committee. 14 The work of the Committee is supported by the Public Participation and Petitions Division which is also responsible for petitions. The KwaZulu-Natal Petitions Act sets out what a petition is and the scope of a petition but the Act does not outline the purpose of a petition. 15 Moreover the Act requires that a petitions register be kept but fails to specify if this register should be in a manual or electronic inform. 16

North West

Petitions in the North West Province are not regulated by a Petitions Act as is the case in the Gauteng Province or the Province of KwaZulu-Natal. Petitions in the North West Province are instead governed by the Standing Rules of the North West Provincial Legislature. The stated Rules do not set out what a petition is and the scope of a petition. However the Rules enable illiterate members of the public to submit petitions by making a mark on the petition in the

Section 6 of the Gauteng Petitions Act 5 of 2002.

⁹ Section 6(f) of the Gauteng Petitions Act 5 of 2002.

Gauteng Provincial Legislature: Petitions and Submissions. Available from www.gpl.gov.za. [Accessed 9 July 2014]. 11 Report of the Committee on Private Members' Legislative Proposals and Special Petitions on its Oversight Visit to KwaZulu Natal, Gauteng and Limpopo Legislatures from 17 - 19 January 2012, dated 25 April 2012. Available from www.pmg.org.za. [Accessed 9 July 2014].

Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 15. Report prepared for the Legislative Sector Unit of Parliament.

Section 9 of the KwaZulu Natal Petitions Act 4 of 2003.

¹⁴ KwaZulu Natal Legislature. Public Participation and Petition. Available from <u>www.kznlegislature.gov.za</u> . [Accessed 9 July 2014].

See sections 1, 4 and 7 of the KwaZulu Natal Petitions Act 4 of 2003.

¹⁶ Section 16 of the KwaZulu Natal Petitions Act 4 of 2003.



presence of witnesses.¹⁷ The Rules do not establish a petitions specific committee in the Legislature and require that a petition be submitted to the petitions officer. The petitions officer will then refer the petition to Speaker for tabling and referral to the relevant Portfolio Committee.¹⁸ Although that there is no petitions specific committee in the North West Legislature there is a Public Participation and Petitions Unit which is responsible for petitions.¹⁹ Also of note, the North West Legislature is one of a handful of Legislatures that allow for the submission of e-petition via the Legislature's website.²⁰

Free State

The Free State Legislature passed a Petitions Act in 2008 (Free State Petitions Act 2 of 2008). The Act defines a petition²¹, contains general principles pertaining to the processing of petitions by the Legislature²² and further outlines the processes that are followed in submitting a petition to the Legislature.²³ Although the Act set outs the processes involved in submitting a petition, it fails to set out timelines in relation to the various processes. As is the case in the North West Province, there is no petitions specific committee in the Free State Province Legislature. The Speaker of the Legislature upon receipt and consideration of a petition refers the petition to the relevant Portfolio Committee of the Legislature. ²⁴ Moreover, in terms of sections 6 and 10 of the Act, the Portfolio Committee to which a petition had been referred to is obligated to report back to the Legislature on status of petitions referred to it.

Mpumalanga

The petitions process in Mpumalanga is regulated by the Mpumalanga Petitions Act 6 of 2000 and its Regulations. The Act is one of first Petitions Acts to be passed in the country. The Act provides for the functioning of the committee assigned to deal with petitions, namely, the Portfolio Committee on Public Participation and Petitions and the powers and functions attached to this Committee are also set out extensively in section 8 the Act. The Committee is required to prepare quarterly and annual reports on every petition it has considered and on its responsiveness, efficiency and timeousness in dealing with the petitions referred to it. Also of significance, the Act houses a turnaround time for responses to petitions by Government Departments or entities. The Committee has the power to require a response to a petition within 4 weeks of its referral to a Government Department or body. This power is

Rules 123 and 124 of the Standing Rules of the North West Provincial Legislature as amended in 2009. Available from www.nwpl.gov.za. [Accessed 9 July 2014].

²⁵ Section 15 of the Mpumalanga Petitions Act 6 of 2000.

¹⁷ Rule 121 of the Standing Rules of the North West Provincial Legislature as amended in 2009. Available from www.nwpl.gov.za. [Accessed 9 July 2014].

¹⁹ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 18 - 19. Report prepared for the Legislative Sector Unit of Parliament.

See North West Provincial Legislature website. Available from www.nwpl.gov.za/public/petitions/index.php . [Accessed 9 July 2014].

Section 1 of the Free State Petitions Act 2 of 2008.
 Section 3 of the Free State Petitions Act 2 of 2008.

Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 19. Report prepared for the Legislative Sector Unit of Parliament.
 Section 5 of the Free State Petitions Act 2 of 2008.



provided for in section 8 of the Act which sets out the powers and functions of the Committee. Where a petition raises more complex issues, the Committee has the discretion to extend the turnaround time for a response by the Government Department or entity. The Petitions Office of the Legislature provides administrative support services to the committee in ensuring that petitions referred to it are speedily and effectually resolved. The Petitions Office is part and parcel of the Public Participation and Petitions Unit of the Legislature. The website of the Legislature provides for the submission of e-petitions.²⁶

Limpopo

The Limpopo Petitions Act 4 of 2003 currently governs the petitions process of the Province of Limpopo. The Act establishes a committee on petitions to deal with petitions²⁷ and to report on back to the Legislature on a quarterly and annual basis on every petition it has considered and on its responsiveness, efficiency and timeousness in dealing with the petitions referred to it.²⁸ Interestingly, the Committee is mandated to consider every petition referred to it in terms of the Act.²⁹ This may mean that the Committee cannot (as is the case in the Mpumalanga and Gauteng Provincial Legislatures), for instance, refuse to consider a petition because it concerns a matter pending in a court of law or any other tribunal or forum. The Act defines a petition as well as provides details on the scope of a petition and the procedure in relation to the processing of petitions in the Legislature.³⁰ The Act also requires the Legislature to keep a formal register of the petitions it receives³¹ and this register allows the Province to conduct analysis of the petitions — this analysis covers the nature of the petitions received; action taken and progress made with respect to each petition; and the municipality, district or council from which the petitions emanate.³²

Northern Cape

Petitions in the Northern Cape Province are regulated by the Northern Cape Petitions Act 8 of 2009. According to the Act a petition may be submitted to the Northern Cape Legislature in all 11 official languages as well in Khoi, Nam and San languages. The Act defines a petition; describes the right to petition; sets out the scope of a petition; and the purpose of a petition.³³ This makes the Act the only Petitions Act amongst the country's Legislatures to stipulate the purpose of a petition.³⁴ The Northern Cape Petitions Act mandates the establishment of a Petitions Office for purposes of ensuring the effective administration and implementation of

Research Unit | Author Name: Dr Mimmy Gondwe

Author Contact Details: Ext: 021 403 8140

Mpumalanga Provincial Legislature. E-Petitions. Available from www.mpuleg.gov.za. [Accessed 9 July 2014].
 Section 3 of the Limpopo Petitions Act 4 of 2003.

²⁸ See section 15(1) and 15(3) of the Limpopo Petitions Act 4 of 2003.

²⁹ Section 5 of the Limpopo Petitions Act 4 of 2003.

³⁰ See sections 1, 6 and 17 of the Limpopo Petitions Act 4 of 2003.

Section 17(1)(a) of the Limpopo Petitions Act 4 of 2003.

³² Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 21. Report prepared for the Legislative Sector Unit of Parliament.

³³ See sections 1, 2 and 4 of the Northern Cape Petitions Act 8 of 2009.

³⁴ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 23. Report prepared for the Legislative Sector Unit of Parliament.



the Act. 35 The Act also sets out the role and function of the Petitions Office. The Petitions Office is responsible for amongst others registering the petition and forwarding it to the Standing Committee on Constitutional Affairs, Petitions and Public Participation (.i.e. the Committee that is responsible for considering petitions in terms of the Act).36 The Committee is in turn responsible for reviewing the petition and thereafter giving the petitioner feedback through the Petitions Officer. The Committee is further mandated to report to the Legislature on a quarterly basis on the petitions submitted to it, its activities and on the responsiveness, efficiency and timeousness within which petitions were dealt with. 37 Moreover, members of the public are able to submit petitions e-petitions via the Legislature's website. 38

Western Cape

The petitions process in the Western Cape is regulated by the Western Cape Petitions Act 3 of 2006 as well as the Regulations to the Act. The Act provides that in addition to English, a petition may be submitted in Isixhosa or Afrikaans. The Regulations to the Act provide for the submission of petitions specifically via e-petitions.39 The Act as well as its Regulations define what a petition but do not outline the purpose of a petition. Also of note the Regulations document the petitions process⁴⁰ and require that a petitions register be kept for purposes of recording the receipt of petitions. In addition, the Regulations clearly set out what a petitions file should contain (i.e. the contents of a petitions file). The consideration and processing of petitions is overseen by a Committee and the roles and responsibilities of the committee are clearly set out in both the Act and Regulations. 41 The Public Participation Unit is also charged with ensuring support to the Committee around the consideration and processing of petitions. 42 Lastly, the Regulations to the Act require the keeping of a petitions register by the Public Participation Unit but they are however silent on whether this register should be manual or electronic. 43

Eastern Cape

Similar to the North West the Eastern Cape Provincial Legislature has yet to pass a Petitions Act. In the absence of a Petitions Act, petitions in the Legislature are governed by Standing Rules of the Eastern Cape Legislature. In addition, according to the Legislature's website, the political function of handling petitions rests with the Speaker' Office, whilst the administrative

³⁵ Section 6 of the Northern Cape Petitions Act 8 of 2009.

³⁶ Northern Cape Provincial Legislature. The Petition System of the Northern Cape Provincial Legislature. Available from www.ncpleg.gov.za . [Accessed 9 July 2014].

Section 8 of the Northern Cape Petitions Act 8 of 2009.

Northern Cape Provincial Legislature. E-Petitions. Available from www.ncpleg.gov.za . [Accessed 9 July 2014].

³⁹ Section 4 of the Regulations to the Western Cape Petitions Act 3 of 2006. 40 Section 10 of the Regulations to the Western Cape Petitions Act 3 of 2006.

⁴¹ See section 5 of the Western Cape Petitions Act 3 of 2006 and section 3 of the Regulations to the Western Cape Petitions Act 3 of 2006.

Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 6 – 7. Report prepared for the Legislative Sector Unit of Parliament.

Section 7 of the Regulations to the Western Cape Petitions Act 3 of 2006.



function of handling petitions rests with the Public Participation and Petitions Unit.44 The Rules, in brief, set out the process with respect to the submission of petitions⁴⁵ and further set out the time frames attached to the referral of petitions⁴⁶. In terms of the latter, the Speaker must within 7 days of receipt of a petition from the Public Participation and Petitions Unit, the Speaker must refer the petition to the House; staff member; MEC or to Parliament if it falls outside the ambit of Schedules 4 or 5 of the Constitution. 47 The Legislature's Portfolio Committee on Public Participation and Petitions is also responsible for considering and processing petitions submitted to the Legislature and the stated Committee also oversees the public participation programmes of the Legislature including its public education programmes. 48 Out of all the Legislatures, the Eastern Cape Provincial Legislature is the only Legislature which allows for the oral submission of petitions provided they are made to a designated staff member or reduced to writing.49 The Legislature's website provides information to members of the public on the submission of a petition to the Legislature, the petitions cycle and even a sample petition. 50

3. Discrepancies around the legislation, regulations and rules governing petitions

A 2011 report on the country's petitions sector commissioned by Parliament's Legislative Sector Support revealed a number of discrepancies around the manner in which petitions were being processed (Petitions Report). The Petitions Report was commissioned by Parliament and was aimed at assisting Parliament to formulate a framework which integrates and aligns the petitions practices and approaches of all the Legislatures in an effort to ensure a more inclusive and robust petitions process for the sector.51 The Petitions Report determined that they were discrepancies in relation to certain aspects of the petitions processes and approaches of the varying Legislatures:

Scope and purpose of petition: Most of the legislation and the Rules governing petitions define what a petition is however not all of the legislation and Rules outline the scope of a petition or the purpose of a petition and this leads to interpretation problems around the scope and purpose of a petition. 52

Eastern Cape Provincial Legislature. Public Participation: Petitions. Available from www.eclegislature.gov.za. [Accessed 9 July 2014].

Rule 188 of the Standing Rules of the Eastern Cape Provincial Legislature of 2003. Available from

www.eclegislature.gov.za. [Accessed 9 July 2014].

Rule 190 of the Standing Rules of the Eastern Cape Provincial Legislature of 2003. Available from

www.eclegislature.gov.za. [Accessed 9 July 2014].

Rule 190 of the Standing Rules of the Eastern Cape Provincial Legislature of 2003. Available from

www.eclegislature.gov.za. [Accessed 9 July 2014].

Eastern Cape Provincial Legislature. Public Participation: Petitions. Available from www.eclegislature.gov.za.

[Accessed 9 July 2014].

Rule 188 of the Standing Rules of the Eastern Cape Provincial Legislature of 2003. Available from

www.eclegislature.gov.za. [Accessed 9 July 2014].

Eastern Cape Provincial Legislature. Public Participation: Petitions. Available from www.eclegislature.gov.za.

[Accessed 9 July 2014].

Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 6 - 7. Report prepared for the Legislative Sector Unit of Parliament.

Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 23. Report prepared for the Legislative Sector Unit of Parliament.



- Form of petitions: The submission of petitions across the majority of the country's Legislatures is limited to written petitions. In other words, the majority of legislatures require that petitions are submitted in the written form. Provinces, such as the Eastern Cape allowed for the submission of oral petitions but others do not expressly provide for this. This is problematic particularly seeing that illiteracy remains a challenge in our country. Moreover, such a requirement excludes those who are unable to read or write from participating in Government. ⁵³
- Submission of petitions: The process around the submission of petitions differs across Legislatures – in some Legislatures a petition is submitted to the Speaker's Office and then the Speaker's Office refers the petition to the relevant committee and in other Legislatures once a petition is submitted it is checked for compliance and then referred directly to the relevant committee.
- Timeframes around petitions process: Not all the legislation and Rules on petitions details the time frames associated with each stage of the petitions process. But those Acts that do include details around the timeframes associated with each stage of the petitions process do this in great detail and this enables the efficiency and efficacy of the process to measured or monitored. On the other hand, those Acts that fail to provide significant detail around such timeframes make it difficult for the efficiency and efficacy of the petitions process in a specified Legislature to be monitored or evaluated. 55
- Petitions database: Very few Legislature were reported in the Petitions Report to have an electronic database recording the details of the petitions it received. A petitions database is required in all Legislatures as this would allow for the effective tracking of petitions and also for the statistical analysis of the petitions processed. 56
- Principles: Some Petitions Acts detail the underpinning or guiding principles of the
 petitions process in specified Legislatures whilst others do not. ⁵⁷ It is important for
 Petitions Act and Rules to detail the principles underpinning the petitions process in
 any given Legislature as this gives credence to the process.
- Roles and responsibilities: The roles and responsibilities of the committees and the
 units charged with the consideration and processing of petitions are unclear in some
 Provinces. The authority levels, mandates and reporting structures of these
 committees and units are also not very clearly delineated in certain Provinces. ⁵⁸
 Clarity around the roles and responsibilities of structures charged with processing
 petitions is necessary for purposes of ensuring accountability on the part of these
 structures.

⁵⁴ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 24. Report prepared for the Legislative Sector Unit of Parliament.

⁵⁵ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 24. Report prepared for the Legislative Sector Unit of Parliament.

Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 25. Report prepared for the Legislative Sector Unit of Parliament.

⁵⁷ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 34. Report prepared for the Legislative Sector Unit of Parliament.

⁵⁸ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 34. Report prepared for the Legislative Sector Unit of Parliament.

⁵³ Xynergistix (2011). A Petitions Framework for the South African Legislative Sector: Final Report, page 23. Report prepared for the Legislative Sector Unit of Parliament.



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Northern Cape Provincial Legislature. The Petition System of the Northern Cape Provincial Legislature. Available from www.ncpleg.gov.za [Accessed 9 July 2014].

KwaZulu-Natal Petitions Act 4 of 2003.

Northern Cape Petitions Act 8 of 2009.

Western Cape Petitions Act 3 of 2006.

Mpumalanga Petitions Act 6 of 2000.

Research Unit | Author Name: Dr Mimmy Gondwe

Author Contact Details: Ext: 021 403 8140



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Research Unit | Author Name: Dr Mimmy Gondwe

Author Contact Details: Ext: 021 403 8140