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Proposed Guidelines for Petitions

1. Introduction:

The South African Parliament has a responsibility to facilitate public participation as stated in Section 56 and 69 of Chapter 4 of the South African Constitution (Act 108 of 1996)¹. The National Assembly and the National Council of Provinces (NCOP) guided by rules and orders from each House have a role to play in facilitating public participation. Public members are able to engage with Parliament through different mechanisms such as demonstrations, picketing and petitions. This paper however focuses on the petition form of participation as cited in the Constitution².

The Constitution³, stipulates that the NA and the NCOP can "receive petitions, representation or submissions from any interested person or institutions". Notwithstanding, this each house has a responsibility to develop its own rules and orders in line with the Constitution in terms of recognising petitions from public members. Even though, the NCOP has its own rules in dealing with petitions these are vague and unclear. Since there are no guidelines, the Committee finds it challenging to deal with petitions. Hence the purpose of this paper is to unpack and propose guidelines for the Select Committee on Members Legislative Proposals to deal with all kinds of petitions.

2. Definition of Petition

*The Guide to Procedure of the National Assembly*⁴ cites that "any person, group of persons or organisation has the right to petition Parliament, seeking redress or relief of some kind". A petition is basically a formal request to an authority for action. To ensure accuracy and transparency, a petition has to reflect whom and where it is addressed to as well as the request with a motivation including the name of the petitioner (s). The following section provides more information on special and public petitions and a description of how public and special petitions differ from one other.

The National Assembly, as stipulated in the Guide to Procedure (2004), classified petitions in two ways; namely, special petition and public or general petition. A special petition involves an individual request to the State for a specific or personal relief, which is not authorised by law such as pension. A public petition involves a group of citizens requesting a general relief with a similar interest, which may include any other petition⁵. Hence, more information on classified petitions (special and public petitions) is of crucial importance to Public members and Members of Parliament.

¹ Constitution of the Republic of South Africa (Act 108, 1996)

² Constitution of the Republic of South Africa (Act 108, 1996), Section 7 of Chapter 2.

³ Constitution of the Republic of South Africa (Act 108, 1996), Section 56 and 69 of Chapter 4.

⁴ *National Assembly: Guide to Procedure 2004*. Parliament of South Africa: Cape Town.

⁵ Parliament of the Republic of South Africa (2007) *Petitions, Participate in Parliament* [Internet], Available from: <<http://www.parliament.gov.za>> [2007/09/18].



2.1 Special Petition:

A special petition deals with matters that pray for personal relief from the State. For example, when an individual requests a pension from the State that is not authorised by law. Special Petitions are submitted via the office of the Secretary of the National Assembly to the Standing Committee on Members Legislative Proposals and Special Petitions. The Committee that deals with Special Petitions has a right to request for any relevant information from a Department or witnesses depending on the matter at hand.

2.2 Public Petitions:

A Public Petition can be any other petition that seeks general relief from the State. These petitions may be submitted to the State through individuals, groups or organisations serving similar interests. A Public Petition tabled by the Chairperson of the National Council of Province (NCOP) to the Council. The chairperson refers the petition to the Select Committee on Petition and Members Legislative Proposal to assess the content and form and deal with it. The above-mentioned Committee has a right to refer the matter or invite any relevant Department for more information in making well-informed decision on the matter. The above process however, depends on the approval of the Chairperson of the Council. A committee considering a petition may recommend to the House any course of action it deems fit and proper.

2.3 Types of Petitions:

The Gauteng Petitions Act⁶ and the Rules of Procedure of the German Bundestag⁷, provide different types of petitions with definitions. The following are types of petitions, namely, multiple, collective and mass or group and single petitions that in most cases are considered by the NCOP, which deals directly with public or general petitions. Herewith the definitions:

- 2.3.1 Multiple petitions include several individually written submissions concerning the same matter.
- 2.3.2 Collective petitions include a collection of signatures from a number of petitioners, concerning the same matter.
- 2.3.3 Mass or group petitions are a large number of submissions concerning the same matter or include an individual or group from a number of petitioners concerning the same matter.
- 2.3.4 A single petition is an individual submission from a single petitioner, concerning a particular matter.

⁶ Gauteng Petitions Act (Act 5 of 2002) Pretoria, Government Printer.

⁷ Rules of Procedure of the German Bundestag & Mediation Committee 2003



2.3.5 An association petition is an individual submission from an association or a petition written by a single person or petitioner but mandated by an association to submit that petition on their behalf concerning a particular matter or request.

However, certain procedures have to be followed in developing petition to the NCOP guided by the rules. The procedures described below are based on the Rules of the NCOP on petitions and will be unpacked so as to propose some guidelines. These guidelines are very important to assist Public and Parliament members to have a better understanding on how to deal with petitions as the rules from the NCOP are not specific.

3. Proposed Procedure to Petition the NCOP (NCOP Rules on Petitions⁸)

These are the proposed procedures towards the development of the guidelines for the Committee on petitions. Procedure will entail all the details needed for a petition to be admissible by the NCOP members. The format of this paper on the procedure will be informed by the NCOP Rules on Petitions supported by the Constitution of the Republic of South Africa.

3.1 Form and Content (Rule 229)

3.1.1 Care must be taken in the wording of petitions as NCOP imposes certain rules on their form and content.

- The content of a petition must not be insulting (or discriminatory) and to avoid such a provision has to be made by Parliament to assist public members with their petitions before the final submission to the NCOP.

3.1.2 The rules on the form and content of petitions must be clear and concise for the public members (Petitioners), see Gauteng Petition Act (2002). According to the rules of the NCOP a petition must be in a form prescribed by the Chairperson of the NCOP, however, this rules raises many concerns because they do not stipulates where the NCOP Chairperson gets the prescription as there are no guidelines in the form and content of petitions. Hence, the proposal for the content and form of petition may include the following information:

- The correct name and contact details of the petitioner (s);
- The person who develops a petition referred to as a Principal, his/her name and contact details
which should be on the actual pages of the petitions?
- A list of the petitioners (South African Citizen);
- Supporting documents namely; letters, affidavits must be attached on the Petition (where applicable);
- An outline of the issues - be specific in terms of what you asking from Parliament.

3.2 Language of Petitions (Rule 230)

- A petition must be in one of the eleven (11) official languages.
- The petition must not contain irrelevant statements.

⁸ Parliament of the Republic of South Africa (2007) *Rules of the National Council of Provinces* (8th Edition) City, Publisher, pg 90-91



3.3 Signing of Petitions (Rule 231)

A petition must:

- Be signed by the petitioner (s) himself (unless the Chairperson decides otherwise);
- Persons unable to write must make their mark on the petition in the presence of two witnesses, who must sign the petition in that capacity;
- Signatures must not be copied, pasted or transferred on to the petition nor should they be placed on the blank side or on the reverse side of a sheet containing the terms of the petition;
- The signature of the person who wrote the petition must be written on a page bearing the terms of the petition, or the action asked for by the petition;
- A petition must contain the signature and address of at least one person on the sheet on which it is written;
- Other petitioners can sign on a separate blank page and all those copies must be attached on the petition as originals (No photocopies);
- A corresponding address is required next to each petitioner's signature.

3.2. Lodging and approval by Chairperson of the Council (Rule 232)

- Each petition must be deposited for at least one day with the Secretary, who must submit it to the Chairperson of the Council for the Approval before it is tabled in the Council.
- However, petitioners are allowed to lodge their petitions to the NCOP⁹ even though, the Rules of the NCOP do not provide clear understanding to members of the public
- Furthermore, for an individual submission, a single petitioner may lodge his/her petition to the NCOP without having a sponsor from either Parliament or the NCOP.
- In a collective or group petition, a representative (leader of a group) has to be identified by the petitioners to lodge a petition to Parliament, as they share similar views on a certain complaints or request.

3.3. Tabling Petition (s) (Rule 233)

- If the petition is approved, the Chairperson of the NCOP must table it in the Council and thereafter, do the referral to the relevant committee.

3.4 Referral of Petitions to Committees (Rule 234)

- The Chairperson must refer petitions to the relevant committee or to an appropriate committee (Committee on Petitions and Member's Legislative Proposal).
- The Committee has a right to refer a petition to a certain Department for information to deal with the matter and consider the report of the Department in order to take a decision.

⁹ Constitution of the Republic of South Africa (Act 108, of 1996) Section 69 of Chapter 4



- In the case of a general petition, if the relevant Committee finds merit in the petition, it may recommend that a Bill be introduced granting relief, for example granting land to a certain group (petitioners) for housing.

3.5 Powers of the Committee (Rule 235)

- 3.5.1 A Committee to which a petition has been referred may refer the subject matter of the Petition to the Executive or a particular Department or another administrative agency for further attention, subject to the approval of the Chairperson of the Council.
- 3.5.2 A Committee considering a petition may recommend to the NCOP any course of action it deems fit and proper.
- 3.5.3 A Committee may invite a petitioner to supplement his or her petition with an additional oral or written submissions;
- 3.5.4 A Committee may call any witnesses to present oral or written evidence to the Committee;
- 3.5.5 A Committee can refuse to consider a petition if:
 - it is not in the correct form and content;
 - it is illegible;
 - it does not state the correct address and contact details of the petitioner (partly lacking);
 - it has not been signed by a petitioner (except in the case a petitioner who is unable to write (3));
 - the content is insulting (discriminatory) or the purpose is blackmail or coercion;
 - it demands an outcome which is a criminal offence, a breach of an administrative regulation or a measure in contravention of the Constitutional order;
 - it concerns a matter that is pending in a court of law or tribunal or forum contemplated in the Constitution;
 - A matter has already submitted, on which a decision has been taken, and no new facts or evidence of relevance has been presented.

3.5.6 Functions of the NCOP Committee on Petitions

The Committee may:

- (1) Consider all petitions referred to it in terms of rule 231F.
- (2) Identify an area where the petition comes from and assess the situation to visit such an area to address the matter in the petition.
- (3) While the Committee is still processing the petition, petitioners must be informed formally by the Committee, stating clearly the action that is to be taken.
- (4) The Committee also monitors the action taken in respect of all petitions submitted to Parliament and referred to it.
- (5) With regard to the submission of petitions:
 - The Committee may identify any member from its Committee to present the petition on behalf of the petitioner in an event where the petitioner cannot present his or her petition to Parliament.
 - Members may present any petition when requested by the member of the public to be his or her sponsor.



3.7 Petitioners and others to be informed (Rule 236)

- The Committee shall inform a petitioner of the decision and course of action with regard to a particular petition and the reasons therefore.
- A petitioner has to be informed regularly and accordingly in writing with any steps taken regarding to the petition, whether that will be in his or her favour or not.

4. Conclusions

The information added to each NCOP rule has been developed by unpacking the rules guided by the Constitution of the Republic of South Africa as proposed guidelines. However, the proposed guidelines are developed specifically for the NCOP Committee that deals with petition provided that the Parliament allows members of the public to petition the NCOP direct. Furthermore, this proposal will not be applicable if the Parliament only allows one entry to receive all the petitions from public members and that entry point is responsible to decide whether the petition belongs to NA or NCOP. Since the rules are vague and unclear a comparison from other countries namely Germany, Scotland, and Canada has been considered for benchmarking in addition to the NCOP rules on petition.

5. Recommendations:

This paper makes the following recommendations:

- Two weeks may be recommended for petitioners to get assistance from Parliament in terms of form and content of their petition including the approval to table it to the NCOP.
- One month may be recommended if suitable for the Committee as the time frame for the engagement with the petition including an investigation process.
- The Committee may perhaps develop a strategy in compiling an Annual Report concerning all the petitions forwarded to it and publicise this in so doing facilitate public awareness.
- The Committee can also use the Post Office and the E-Petitions System as part of the tools to submit petitions and to speed up the process.

REFERENCES



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