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Background paper on Parliamentary Petitions Procedure and Public Participation

16 November 2011

1. Background

The parliamentary Committee on Private Members' Legislative Proposals and Special Petitions in response to a request by the Petitions and Public Participation Committee of the City of Johannesburg shall host a meeting with the said Committee on the 16 November 2011. The meeting shall comprise of delegates from the City of Johannesburg, the two Parliamentary committees mandated with considering petitions (that is, the Standing Committee on Private Members' Legislative Proposals and Special Petitions and the Select Committee on Petitions and Private Members' Legislative Proposals) and the Parliamentary officials responsible for the receipt, approval, tabling and dissemination of petitions received by Parliament.

The overall objective of the meeting is to look into the following:

- a) The Role of Parliamentary Petitions in Promoting Democracy
- b) Parliament's Initiatives for Public Participation
- c) Mechanisms for Public Access to Information
- d) Taking Parliament to the People
- e) Marketing Strategy and Community Awareness

2. Introduction

This paper serves as a supporting document, elaborating on the presentation carried out on the Parliamentary Petitions Procedures as per the parliamentary rules and speaks to public participation in relation to Parliamentary petitions. The paper shall conclude with recommendations on how to enhance the current Parliamentary petitions process in a manner that will align the Parliamentary Rules Petitions Procedure with the Constitutional standards and principles requiring public participation.

What follows is a detailed discussion of the functions of the Parliamentary Committees responsible for considering petitions namely:

- The Standing Committee on Private Members' Legislative Proposals and Special Petitions established in terms of the Rules of the National Assembly (NA); and
- The Select Committee on Petitions and Members' Legislative Proposals which is accordingly established and guided by the rules of the National Council of Provinces (NCOP).

3. Petitioning Parliament in terms of the Rules of the National Assembly



3.1 Committee on Private Members' Legislative Proposals and Special Petitions

Rules 309 to 315 of the Rules of the NA make provision for petitions to be lodged by a Member of Parliament on behalf of an individual or group in a prescribed form in compliance with content requirements as sighted in the presentation document and referred to by the Speaker of the relevant Committee. The Committee considers the merits of a special petition.¹ If the petitioner's request is favourably received the Committee will report to the NA that assistance should be granted to the petitioner by the relevant government department, usually the National Treasury, by way of the enactment of specific legislation. During its consideration of the merits of a special petition, the Committee may also liaise with any other relevant department.

Relief relating to a State pension is the most common form of special petition. The other form of specific or personal relief refers to relief which would similarly impact on State-spending, for example social grants. For instance where the personal circumstances of an individual (not a group) prevent him or her from making use of a specific State-support option which usually have requirements and guidelines which are stipulated in legislation or regulations, in such a manner that it cannot be remedied by any other legal means, thus the requirement of exhaustion of all legal remedies prior to being eligible for consideration by the committee.

For example: A petitioner petitioned Parliament on behalf of his deceased wife who was a public servant employed on a part-time basis by the Department of Education and passed away whilst still in service. The deceased herein was thus a member of the Temporary Pension Fund and part of the deceased's contractual period of employment was regarded as a non-pensionable period. Following an initial probation period, upon recommendation made by the Department of National Health and Population Development the deceased was denied permanent employment which would have resulted in her admittance to a Permanent Employee Pension Fund, and ensured her eligibility for a pension pay-out as requested in the petition documentation.

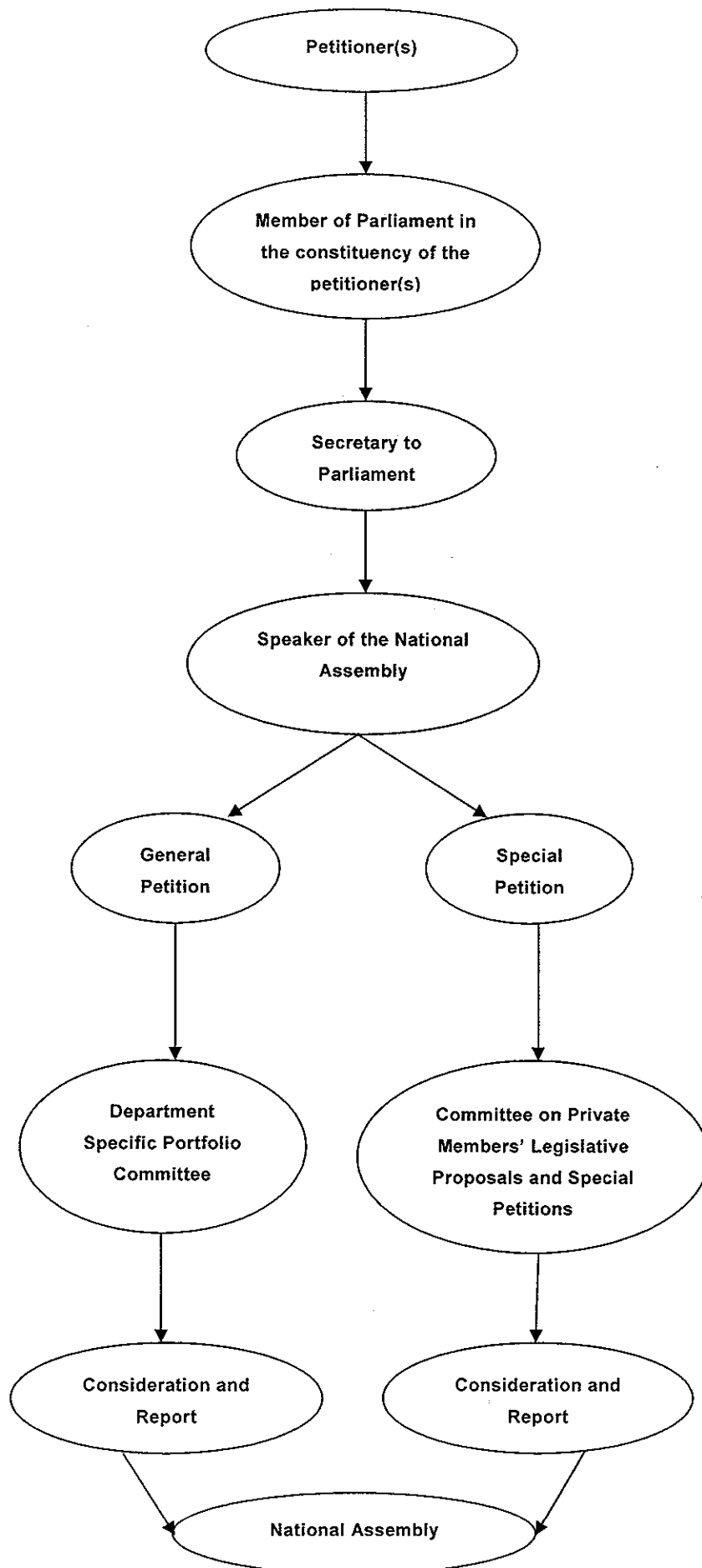
The petitioner alleged that certain public servants were being discriminated against on the basis of discriminatory practices of the former political dispensation due to restructuring of the Public Service Co-ordinating Bargaining Council (PSCBC) which resulted in non-recognition of service by public servants who were not in service on particular date². The mechanism employed by the resolutions emanating from restructuring of the PSCBC did not serve this particular petitioner's circumstances favourably in light of the cut-off date.

The legality of the PSCBC resolutions can still be challenged by the petitioner in this instance in a court of law on the basis of the arguments presented by the petitioner. Due to not having exhausted all available legal remedies, the committee was of the view that the special petition was not ripe for consideration by Parliament, as the petitioner still has legal relief authorised by law at disposal.

4. Schematic Outline of Petition Referral Process

¹ Special Petition: is from an individual requesting for specific relief, in the form of a pension, for services rendered by the State for which there is no legislation providing guidance.

² As per the resolutions set out in the Public Services Co-ordinating Bargaining Council in relation to the facts of the petition used as an example herein above. In this instance the PSCB does not recognize public servants who were not in service on the date of 2 September 2011 for purposes of being considered for Permanent Employee Pension.





5. Petitioning Parliament in terms of the Rules of the National Council of Provinces

5.1 Committee on Petitions and Members' Legislative Proposals

A Public Petition can be any other petition which seeks general relief from the State. These petitions may be submitted to the Parliament through individuals, groups or organisations serving similar interests. A Public Petition tabled by the Chairperson of the NCOP to the Council is referred to the Select Committee on Petition and Members Legislative Proposal to assess the content, form and thereafter engage in deliberations aimed at considering the most suitable manner in which to adequately deal with a referred petition's subject matter.

In terms of the Rules of the NCOP, the petition must also be deposited with the Secretary for at least one day, who must submit it to the Chairperson of the NCOP for approval before it is tabled in the Council.³ If approved the Chairperson of the Council must table the petition in the Council. ⁴The Chairperson of the NCOP must then refer the petition to the Select Committee on Petitions and Members Legislative Proposal.⁵

This Committee must consider all petitions referred to it in terms of Rule 231F.⁶ The Committee to which a petition has been referred may refer the subject matter of the petition to the Executive or a particular department or other administrative agency for further attention, subject to the approval of the Chairperson of the Council.⁷ A Committee considering a petition may recommend to the NCOP any course of action it deems fit and proper.⁸ The Committee is obliged to inform a petitioner of the decision or other courses of action regarding the petition together with reasons.⁹

5.2 Provisions of the NCOP Rules pertaining to Public Participation

The Rules of the NCOP make a provision for application of its rules in chapter 1, and make pronouncements on public participation as it relates to petitions as followings in section 5 (1) :

- Members of the public may participate in the proceedings of the Council by: -
 - (b) submitting petitions to the Council on any matter within the Council's competence;
 - (c) responding to public or specific invitations to:
 - (iii) give evidence or to make representations or recommendations before the Council committees on Bills or 'other matters', either in person or through a representative.

In interpreting section 5(1) (c) (iii) it can be deduced that the 'other matters' referred to herein pertains to petitions referred to the Council. To this end section 5(2) goes further to state that public

³ NCOP Rule 232

⁴ NCOP Rule 233

⁵ NCOP Rule 234

⁶ NCOP Rule 149

⁷ NCOP Rule 235(1)

⁸ NCOP Rule 235(2)

⁹ NCOP Rule 236



participation in terms of sub-rule (1) is subject to, and must be exercised in accordance with, the applicable provisions of these Rules.¹⁰

While Parliament is entitled to determine its own Rules, the requirement that an MP lodge the petition in the NA and the lack of clarity about the procedure in the NCOP is a hindrance to public participation in general and the right to submit petitions specifically. Some of the current Rules relating to petitions are similar to those that were in force in 1965. They have not been adapted to the prevailing Constitutional requirements relating to petitions and public participation.¹¹

The Rules do not adequately provide detailed guidelines on the types of petitions that may be considered by Parliament. Furthermore the Rules do not stipulate timeframes for dealing with petitions both in respect of eliciting a response from government departments and other bodies and informing the petitioner of the progress in the matter. Neither do the Rules do not put in place punitive mechanisms to deal with non-complying bodies.

6. The Role of Parliamentary Petitions in promoting democracy¹²

Petitions, are a good tool for participatory democracy, are an expression of public will and are a Constitutional right of all South African citizens. The Constitution of the Republic of South Africa, 1996 states in Chapter 1: Founding Provisions that "the Republic of South Africa is one sovereign democratic state founded on values ensuring accountability, responsiveness and openness."¹³ Greater substance is given in latter sections of the Constitution emphasising the importance of public participation and creating the framework to facilitate public involvement in the legislative process.

In terms of section 42(3), "the NA is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action."

Section 42(4) provides that the NCOP must ensure that provincial interests are taken into account in the national sphere of government by participation in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

Section 57 directs that the NA may make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement. Section 59 provides that "the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees". Section 72 imposes similar duties on the NCOP.

In order to realise these Constitutional provisions, Parliament must give practical effect to them. One of the methods of public involvement is the submission of petitions. The Constitution directs that the

¹⁰ NCOP Rule 5(1)

¹¹ Makani-Mansomi, B and Watson, J. New Mechanisms for Accountability and Oversight: Petitions. pg 2

¹² Extracted from Meso, SMW (2009)

¹³ The Constitution of the Republic of South Africa (Act 108 of 1996), chapter 1, section 1.



NA¹⁴ and NCOP¹⁵ may receive petitions, representations or submissions from any interested persons or institutions. The right to “canvass support for a petition and to have the petition presented and received” is protected in terms of Section 17 of the Constitution. Accordingly, Parliament must promote and educate the public on this process. Both Sections 56 and 69 in Chapter 4 of our Constitution stipulates that the NA and NCOP can “receive petitions, representation or submissions from any interested persons or institutions”. Each house (i.e. the NA and the NCOP) has a responsibility to develop its own rules and orders in line with the Constitution in terms of recognising petitions from members of the public.

7. Parliament’s Initiatives for Public Participation

Numerous initiatives have been embarked on by the South African Parliament to facilitate and promote effective, on-going public participation in its various processes. There are several ways in which civil society members can get involved in the business of Parliament. The public can participate in Parliamentary public participation initiatives in the following manner:-

- Making written submissions to the Parliamentary Committees on issues that the Committees may be discussing or even those the public may feel that they should discuss;
- Requesting permission to make formal presentations to committees;
- Petitioning Parliament seeking redress on certain issues and also;
- Making submissions at public hearings (including the taking Parliament to the People) and nominating suitable persons for appointment in vacancies of statutory bodies.

Not only can the public participate in internal Parliamentary debates; they can also get involved through external ways such as joining a political party (as per Section 19 of the Constitution)¹⁶, regularly visiting their constituency offices, talking and engaging with Members of Parliament (MPs) within their communities on some of the legislative issues and matters which may need their attention or intervention, as well as lobbying their MPs for support when petitioning Parliament.

Currently, Parliament has realigned its strategic direction to give effect to its function of public participation and in line with its vision of building an effective people’s Parliament, one of its focal areas is to devise methods to improve the involvement of the public in the business and processes of Parliament, as well as to enhance public access to information on these processes.

The enabling environment created by Parliament in the post-1994 democratic period has had a positive impact upon the effectiveness with which the public has been able to influence legislation(s), making sure that the peoples voices are heard in order to inform and shape key legislation.

8. Mechanisms for public access to information

¹⁴ The Constitution of the Republic of South Africa, (Act 108,1996), Section 56

¹⁵ The Constitution of the Republic of South Africa, (Act 108,1996), Section 69

¹⁶ Every citizen is free to make political choices, which include the right to participate in the activities of a political party.



Some of the mechanisms currently being used for public access to information and public participation in Parliamentary business and processes include the exercise of the following Constitutional rights:-

- Public's right to attend meetings of both the NA and the NCOP Committees – which is in line with the principle of transparency. Although open to the public and media, in instances where the Committees may be dealing with private matters they may meet in closed sessions.¹⁷
- In addition to the media programmes on Parliamentary affairs, there are also organisations like the Parliamentary Monitoring Group (PMG), Institute for Democracy in South Africa (IDASA) and the Democracy Development Programme (DDP), which are all interested in the work of Parliament and do attend meetings and participate in the various Parliamentary programmes and hereafter make available the information gathered during these proceedings to the public at large.

9. Taking Parliament to the People

The NCOP has in place a programme called 'Taking Parliament to the People', which on annual basis undertakes tours to various Provinces to hold public hearings and address communities on issues that may seek Parliament's intervention. The aim thereof is to try to reach as well those communities that are in the rural areas. The taking Parliament to the People project is conducted in such a manner that it does not only serve with information provision to the public, but also ensures that people get actively involved in the business of the NCOP and this facilitates effective communication between the public and their elected Parliamentary MPs.

10. Marketing Strategy and Community Awareness

In addressing accessibility and participation for petitioning Parliament, Parliament should ensure that disadvantaged communities have access to the required information for lodging petitions so that civil society members may be able to participate effectively in the petitions processes and exercise their democratic rights of petitioning Parliament as one way of getting involved in its work.

It is therefore suggested that the Select Committee could use the opportunity to encourage members of the public to lodge petitions when Parliament visits certain areas and one way to achieve this could be through the initiative of the NCOP of Taking Parliament to the People.

With the aim of providing more education and increasing public awareness about the petitions processes, pamphlets will be distributed in different communities and written in all the official languages. Each province will have available pamphlets in English and other official languages in those areas. These pamphlets will be distributed at various community centers, Provincial Legislatures, schools, prayer facilities, clinics, Departmental offices, etc. and Members will assist with awareness and distribution in their respective Constituencies.

¹⁷ Part 4 of the Rules of the National Assembly



Adverts will be placed in various newspapers (national and local) and radio adverts will also be recorded for the radio stations to play, so that community members may be made aware of the existence of these Committees, their rights to lodge petitions and procedures to follow when lodging these petitions as well as the required information for petitions.

Depending on the budgets of the Committees annually, Provinces will be identified for community awareness drives, road shows, etc to take place. The nine Provinces will be spread over the five years period and the effectiveness of the strategies will be reviewed constantly so that recommendations can be made from their evaluations and necessary amendments can be made to these awareness programmes. These media programmes will be monitored by the researcher and feedback will be given to the Committee Members at the end of each Parliamentary term. The work of the Committees, their activities and procedures to follow when lodging Petitions as well as the information to be provided for Legislative Proposals will be made available on the Parliamentary website.¹⁸

11. Conclusion

The South African Parliament complies with its Constitutional mandate on public participation, just as much as it acknowledges the public's involvement in its various processes. Several mechanisms have been developed over the years to promote, facilitate and oversee public access to information as well as public participation in the legislative processes in all the spheres of Government.

In addition to the current initiatives and other methods used by the public for their voices to be heard, the petition process could be used as an effective tool to promote public participation in Parliament. This would assist with making the Parliamentary processes more accessible while there will also be built-in monitoring mechanisms to ensure that the relevant parties co-operate with the necessary processes for effective and efficient promotion and/or facilitation of public participation – thus calling for a need to implement a National Petitions Act.

¹⁸ Standing Committee on Private Members Legislative Proposals and Special Petitions (NA) and Select Committee on Petitions and Members Legislative Proposals (NCOP), Draft 5 years work plans document (2009-2014), October 2009, Researcher S Meso.



12. References

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