



**Submission on the Rules of the National Assembly 7th edition
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7. New Women's Movement
8. Parliamentary Monitoring Group
9. Public Service Accountability Monitor
10. Teddy Bear Clinic
11. Women's Legal Centre

About us:

The **Community Law Centre** (CLC) is part of the Law Faculty at the University of the Western Cape. The CLC is founded on the belief that our constitutional order must promote good governance, socio-economic development and the protection of vulnerable and disadvantaged groups. Based on quality research, the CLC engages in policy development, advocacy and education. The CLC focuses on areas critical to the realisation of human rights and democracy in South Africa and in other African countries. One of these areas is strengthening legislatures to promote stronger democracies.

The **Heinrich Böll Foundation** (HBF) is an independent political foundation affiliated with the German Green Movement. It works around the world with local partners to promote sustainable development, gender equality and democracy. In South Africa, the organisation supports civil society capacity to engage with parliament and other democratic mechanisms.

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1. Introduction

We welcome the opportunity to provide input into the Rules of the National Assembly.

The HBF and CLC contributed to organising the *“People’s Power People’s Parliament Conference: A Civil society Conference on South Africa’s Legislatures 13 - 15 August 2012”*. A number of the proposals contained in this submission emanated from discussions in that conference.

Chapter 4 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) entrenches Parliament as the heart of our democracy by providing the framework for a National Assembly (“the Assembly”) to be elected as the institution 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.”

As the National Development Plan (NDP) suggests, this mandate assigns the National Assembly with a role that is critical to building “a capable, accountable and responsive state that works effectively for its citizens.” The way in which the Assembly deliberates, conducts its meetings and scrutinises executive action is directly linked to our ability as a nation to competently provide the public services so urgently required to address poverty and inequality, address pressing challenges such as corruption or mismanagement, and courageously address questions of social cohesion and historical injustice.

The National Assembly is exemplary in its provisions for access and public participation. Few other parliaments in the world provide their citizens with as many avenues for input and free admission. This is an achievement that must be applauded, and, in light of challenges faced by parliament, extended.

This is in line with the Assembly’s mandate to “facilitate public involvement in the legislative and other processes of the Assembly and its committees”, as well as decisive Constitutional Court and Supreme Court of Appeal judgements.¹ As the Supreme Court of Appeal noted:

The Constitution requires that Parliament function in accordance with the principles of accountability, responsiveness and openness that constitute one of its founding values. That founding value, so far as it relates to the conduct of the National Assembly, finds expression in the Constitution’s requirements that its rules and orders for the conduct of its business must be made with due regard not only to representative but also to participative democracy.²

In its *Vision for 2030*, the National Planning Commission stated that “there are serious concerns about whether Parliament is currently fulfilling its role adequately in the building of a capable, accountable and responsive state that works effectively for its citizens.” In parallel, citizens have expressed significant

¹ King and Others v Attorneys Fidelity Fund Board of Control and Minister of Justice SCA 561/04; Doctors for Life International v The Speaker of the National Assembly and Others (CCT 12/05); Matatiele Municipality and Others v President of the Republic of South Africa and Others 2006 (5) BCLR 622 (CC)

² King and Others v Attorneys Fidelity Fund Board of Control and Minister of Justice SCA 561/04

mistrust in the legislatures and in elected representatives. The perception that Parliament has at times failed to manage and consider public input fairly, indecisive action on member misconduct, as well as reluctance to robustly oversee executive action, have created the impression that Parliament stands in solidarity with political elites rather than citizens.

While the rules of the Assembly on their own cannot address the political challenges faced by Parliament, they do provide the framework for how the institution conducts itself, and as such, strongly signal the values which it seeks to embody. In other words, the rules underlie the institution's ability to reflect and realise the values of the constitution. They are also fundamental to the way in which parliament is perceived in the public sphere.

The realisation of the commitments set out in the Constitution, and the creation of a state that can better address poverty and inequality as well as realise *Vision 2030* require a Parliament that is independent, transparent, open and well resourced. The development of the Sector Oversight Model, and the deliberation on the Public Participation Strategy demonstrate the commitment and effort that Parliament has invested in building an institution that embodies these values and is equipped to face today's challenges. The review of the Rules of the National Assembly provide an opportunity to build on the positive developments made since 1994. This review also provides us with an opportunity to reflect on the extent to which the founding values of accountability, responsiveness and openness are reflected in the rules and practice of the Assembly as well as to make recommendations to strengthen the role of the Assembly to promote participatory democracy.

The recommendations set out below are made in reference to the National Development Plan: Vision 2030 [NDP]; the Report of the Independent Panel Assessment of Parliament [RIPAP]; and the Declaration of the Open Government Partnership [OGP], of which South Africa is a founding member.

Our recommendations are directed at the National Assembly, however many of these are relevant to the National Council of Provinces as well as to Provincial Legislatures.

Where we have suggested amendments to the rules we have underlined text that we think should be inserted into the rules and used [square brackets to indicate text that we think should be deleted from the rules].

2. Openness, transparency and public access

The openness of the Parliament of the Republic of South Africa (including the Assembly) is guaranteed by the Constitution.³

A number of rules expand on the public nature of the business of the Assembly and the importance of public access.

- Rule 22 states the general rule that the proceedings of the Assembly are to be conducted in public.
- Part 5 of the Rules, in particular rules 40, 41 and 42 then deal with the issue of *Public Access* - this Part specifies that the power to admit the public to the House vests with the Speaker.
- Rule 152 deals with *Admission of the public*. Sub-rule 152 (1), in relation to the business of committees of the Assembly, reiterates the provisions of the Constitution by stating that: '*Meetings of committees and subcommittees are open to the public, including the media, and the member presiding may not exclude the public, including the media, from the meeting, except ...*' The rule then provides a number of grounds on which an exception can be made to the rule.
- Sub-rule 152 (4) provides that the Speaker may regulate public access.
- The circumstances in which a member of the public may be excluded or removed from a meeting are dealt with in rules 154 and 156 respectively.

These provisions for public access are important, but they are only meaningful if the public do indeed access the institution. The fact remains that the Assembly is based in Cape Town, this has two practical implications for facilitating public access. Firstly public access of people too far from or with too few resources to attend the institution must be considered. In this case 'public access' must be interpreted to extend beyond physical presence to include more remote means of accessing information on the processes and decisions of Parliament. Secondly, for members of the public who are able to travel to the City to attend sessions or meetings of the assembly and its committees, mechanisms must be in place to ensure that people are able to find information regarding parliament's schedule, and the nature of the issues under discussion. Without this information, for many people, attendance is pointless as

³ Section 59 Constitution of the Republic of South Africa 1996 states that the business of the National Assembly must be conducted in an open and public manner. It recognises that 'reasonable measures' may be taken to regulate public access and specifies that the public may not be excluded unless it is 'reasonable and justifiable to do so in an open and democratic society.'

there is no means of ensuring that the sessions or meetings that people attend have relevance to the issues in which they are interested.

Public access is only one element of an 'open Parliament', a distinction must be made between a Parliament that is accessible to the public and the notion of Parliament as an 'open' institution. While public access promotes openness, it is most important that the notion of openness is understood within the context of transparency. Thus accessible buildings alone do not constitute an open institution. Rather it relates to the extent to which the information, processes and decisions of parliament are conducted in a public manner or behind closed doors. Transparency in decision making is critical to foster trust and confidence of citizens in Parliament and to promote a strong democracy.

The availability of information on the business, proceedings and decisions of Parliament is a critical aspect of transparency and openness, this includes ensuring access to the documents on which discussions and decisions are based.

In light of this we recognise the provisions in rule 157 which specifies that all documents '*officially before, or emanating from a committee or subcommittee are open to the public...*'⁴

However this rule does not refer to records and minutes of proceedings in committees, nor does it specify how or when information that is open to the public must be made available.

We note that rule 327 requires that "*Minutes of Proceedings shall be noted by the Secretary, and shall, after having been perused by the Speaker, be printed and supplied to members*". However it is a) unclear if this rule pertains to the proceedings of committees as it seems only to relate to the proceedings of the Assembly as a whole and b) does not address where or when these minutes of proceedings will be made available to the public.

Rule 137 which deals with the reporting of committees to the Assembly on certain matters, however reports (which we deal with in section 5 of this submission below) have a different purpose to records and minutes of proceedings. The procedures for processing and making committee records and minutes available must be distinct from procedures relating to reporting to the Assembly.

⁴ This is followed by certain exceptions to this rule relating to confidential information amongst other things.

Recommendations:

In light of the above, we recommend the following:

The insertion of a new sub-rule 157(5).

157(5)

(a) All documents officially before, or emanating from a committee or subcommittee that are open to the public must be made available. this includes:

- (i) physical copies of the document; and
- (ii) electronic copies or links to the full documents on the website of Parliament

(b) Documents referred to in sub-rule (5)(a) above include:

- (i) Information or research prepared by the research unit of the Assembly;
- (ii) Information and research prepared by an executive organ of state;
- (iii) Information and research prepared by a constitutional institution;
- (iv) Information and research prepared by any other body or institution;
- (v) Information and research prepared by a member of the public; or
- (vi) any other information or research placed before the committee.

(c) All committee meetings must be recorded, and these audio recordings must be made available on the website of Parliament;

(d) Transcripts of recordings and minutes of meetings must be made available on the website of Parliament within 21 days of the meeting taking place; and

(e) All documents, audio recordings, transcripts and minutes referred to in sub-rules 157(5)(a), (b), and (c) must be made available on the website of Parliament within 7 days of the documents being placed before the committee or the meeting taking place.

Finally, we note that in Part 5 of the Rules which deals with 'Public Access', the public are referred to as 'strangers'. We are uncertain of the origins of this terminology and recommend that the word 'strangers' be replaced with the words 'members of the public'. This will in our view will better reflect the value that should be placed on public access in a Parliament which is considered a public forum, within the context of our democracy.

3. Public participation

As with public access, participation is mandated by the Constitution, which requires ‘*public involvement in the legislative and other functions of the Assembly and its committees*’⁵. In addition, the Courts have provided further guidance to Parliament on public participation in legislative processes.⁶

The Constitutional Court has stated the importance of public participation in our democracy:

*The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, identify themselves with the institutions of government and become familiar with the laws as they are made. It enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the eyes of the people. Finally, because of its open and public character it acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.*⁷

In *King and others* the SCA notes in reference to the founding values of accountability, responsiveness and openness, that a parliament that ‘*separates itself from and excludes the public, is indifferent to their participation and interests, and conducts its business concealed from the public eye*’ is the ‘*antithesis*’ of these founding values.⁸

Since 1994, Parliament has instituted systems and programmes to promote public participation. These include systems for engaging in legislative reform, petitions, the *Taking Parliament to the People* initiative and Sectoral Parliaments such as the women’s or youth parliaments. These are valuable initiatives which set the Parliament of South Africa apart from most parliaments and reflect the relatively high value that is placed on participatory democracy by the Assembly and Parliament more generally.

⁵ Constitution of the Republic of South Africa section 59(1)(a)

⁶ *Doctors for Life International v The Speaker of the National Assembly and Others* (CCT 12/05); *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (5) BCLR 622 (CC)

⁷ *Doctors for Life International v The Speaker of the National Assembly and Others* CCT 12/05 2006

⁸ *King and Others v Attorneys Fidelity Fund Board of Control and Minister of Justice* SCA 561/04

However, there remains significant room to improve public participation in parliamentary processes in order to fully realise a vision of Parliament as an institution that promotes not only a strong representative democracy, but importantly a strong and effective participatory democracy.

Firstly, participation tends to be limited to a handful of better resourced, urban based civil society organisations and to individuals with resources.⁹ Notwithstanding the '*Taking Parliament to the People*' programme, participation in parliamentary processes remains inaccessible to most citizens and fails to promote local ownership of the process and issues raised.

Secondly, the emphasis of public participation has been on participation in legislative reform and not on the 'other' functions of Parliament - namely the oversight and accountability functions included in its mandate.¹⁰ This has resulted in stronger systems for participation in law reform established by the Assembly and its committees, but not for oversight. The limited focus on law reform is exacerbated by the lack of systems within the institution to promote public involvement in these oversight processes and cycles.

Perhaps even more so than the development of legislation, the oversight function of Parliament goes to the heart of ensuring that the rights enshrined in the Bill of Rights are realised. Failure to recognise the value of and entrench sound systems of public participation in these functions is short-sighted. It excludes the public from participating in essential processes of holding the executive to account by contributing to monitoring performance and delivery as well as addressing questions of priorities and strategy. This exclusion widens the gap between citizens and government and contributes to people's experience that the elected are out of touch with the electorate. In these ways failure to entrench participation in all functions of the legislatures threatens our democracy. We recognise the recent development of the Legislative Sector Oversight Model which incorporates public participation in parliamentary oversight cycles, however this model has yet to be implemented and its value yet to be realised.

Public participation in the work of committees is contained in rule 138 '*general powers of the committees*'. Sub-rules (a) to (d) in particular, are relevant to public participation. These deal with the power of the committee to summon people to appear before it, to receive submissions, to conduct

⁹ Muntingh L. 2012. *The state of civil society participation in Parliament*. P1; The Centre for Public Participation, 2006. *On developing a Public Participation Strategy for South Africa's legislatures*. P36

¹⁰ Muntingh L. 2012. *The state of civil society participation in Parliament*. P5

public hearings and to permit oral submissions, amongst others. Sub-rule (c) is most obviously linked to public participation.¹¹

Although participation is enabled by these rules, the rules are weak and the imperative of participation in the business of committees is not stated.

In contrast, rules 203F and 203M, which were inserted into the Rules in 2011, deal with '*Public Involvement*' in the Standing Committees on Finance and Appropriations respectively. These rules state the imperative of public participation clearly and require that: '*The committee must ensure public involvement in accordance with the provisions of the Constitution and the Money Bills Amendment Procedure and Related Matters Act, 2009.*' No similar rule on public involvement in other committees is included in the section that deals with the work of portfolio committees in general in rule 201.

Participation in relation to the legislative process is dealt with in a number of rules in Chapter 13. Rule 241 addresses the issue of prior notice and publication of draft legislation, it requires that notice of the introduction of draft legislation must be given in the Gazette along with an explanatory summary¹² and in some cases the objects of the bill.¹³ It goes further to require that the notice must include an invitation to interested persons and institutions to submit written submissions within a specified period.¹⁴

Rule 249 deals with the process of legislation in a committee and includes the following relating to public participation: where a bill has been published for public comment, the committee must '*arrange its business in such a manner that interested persons and institutions have an opportunity to comment on the bill*';¹⁵ and that a committee may invite comment on a bill that has not been published for comment.¹⁶

¹¹ Rule 138 states that: '**138: General Powers [of committees]**

For the purposes of performing its functions a committee may, subject to the Constitution, legislation, the other provisions of these Rules and resolutions of the Assembly –

- a) *Summon any person to appear it to give evidence on oath or affirmation, or to produce documents;*
- b) *Receive petitions, representations or submissions from interested persons or institutions;*
- c) *Conduce public hearings;*
- d) *Permit oral evidence on petitions, representations submissions and any other matter before the committee; ...'*

¹² Rule 241(1)(b) and (c)

¹³ Rule 241(3)

¹⁴ Rule 241(2)

¹⁵ Rule 249(1)

¹⁶ Rule 249(2)

These rules are important, however it is essential that the rules emphasise the role of public participation in the 'other' functions of Parliament in addition to the legislative function, so as to address the current blind-spot that exists in this regard. These 'other' functions are expanded on in rule 201(1).¹⁷

Recommendations

In light of the above, we recommend that a new rule 201A be inserted after rule 201 called '*Public Involvement*'.

201A. Public Involvement

(1) The committee must ensure public involvement in accordance with the provisions of the Constitution and in relation to all of the functions of portfolio committees as set out in sub-rule 201(1).

Similarly a rule on public involvement in the processes of ad-hoc committees should be inserted as rule 216A.

It is important that the Rules specify the procedures for the manner in which submissions received from interested persons and institutions must be processed and considered.

201A. Public Involvement

(1) The committee must ensure public involvement in accordance with the provisions of the Constitution and in relation to all of the functions of portfolio committees as set out in sub-rule 201(1).

(2) [Proposed subrule (2) is discussed and proposed in the following section of this submission dealing with notice of meetings]

(3) Where a committee receives submissions from interested persons or institutions on proposed legislation as contemplated in rule 249, or any other business before the committee as set out in sub-rule 201(1), the committee must:

(a) acknowledge receipt of submissions;

(b) keep a record of all submissions received; this record should include a brief summary of the content of each submission and be available to the public; and

¹⁷ Rule 201(1) sets out that a portfolio committee must deal with bills; maintain oversight over a range of public bodies and institutions; monitor, investigate, enquire into and make recommendations regarding the structure, strategies, budget and policies of these bodies and institutions; consult with the executive or an constitutional institution; and perform any other functions, tasks or duties regarding oversight of supervision of public bodies and institutions.

(c) make reports as contemplated in rules 137 and 251 publically available and ensure that any persons or institutions that have made submissions to the committee receive copies of the report.

[rules 137 and 251 are discussed further below]

In addition to these rules, a framework to articulate the values, approach and guidelines for participation is essential. Public participation in the development of this framework is essential. Importantly, the framework will have no meaning without the resources to implement participation being prioritised in the Assembly's budget and planning. In light of this we recognise the current development of the Public Participation Framework of Parliament and the call for participation in its development.

4. Notice of meetings, bills and hearings

Access to information is essential to public involvement and participation, it enables public access to the processes and physical buildings of parliament. However many citizens and citizen organisations lack knowledge regarding the role and purpose of Parliament in our democracy, on its structure and on parliamentary processes.¹⁸ As a starting point, without adequate information regarding the role and purpose of Parliament, public participation is impossible.

Rule 241¹⁹ addresses the issue of prior notice and publication of draft legislation, it requires that notice of the introduction of draft legislation must be given in the Gazette along with an explanatory summary²⁰ and in some cases the objects of the bill.²¹ It goes further to require that the notice must include an invitation to interested persons and institutions to submit written submissions within a specified period.²²

This rule thus addresses some aspects of providing notice to the public but only with regard to calling for input on draft legislation and not in respect of any of the other business of committees. (It does not even address the provision of notice of the dates, times and venue of deliberations on legislation on

¹⁸ Stakeholder meeting 8 February 2012. Community Law Centre, UWC, Heinrich Boell Foundation, UNICEF South Africa. Community workshop 7 August 2011 Khayelitsha.

¹⁹ Although we have summarised Rule 241 in the section of this submission relating to public participation above, we will repeat this summary here.

²⁰ Rule 241(1)(b) and (c)

²¹ Rule 241(3)

²² Rule 241(2)

which public input has been sought.) As we have previously stressed in this submission, public involvement should be considered in relation to all of the business of committees and not only in relation to bills. In light of this the public require access to information regarding all of the issues on committee schedules and not only on proposed legislation.

Accessible and timeous information regarding committee schedules and agendas is essential to facilitate effective public participation. Chapter 12, Part 2 of the Rules applies to committees generally and deals with a range of matters, however no reference is made in these to ensuring that notice is given regarding the content of the schedules of committees in general.

It is important to note, that for most members of the public, including many civil society organisations, it is not part of their regular function to prepare inputs for and present these to Parliament. For most citizens and organisations, this engagement takes place in addition to their regular daily responsibilities. As such a number of factors must be considered, these include: When the hearing or meeting will take place, including what day of the week and what time of day; where the hearing or meeting takes place; and linked to this the possibility of reimbursing people's transport costs to attend hearings and meetings. These matters are probably best dealt with in the proposed framework for public participation, however we recommend that the rules must address at least two other factors. The first is the timeframes for notification of hearings and meetings and the second is the manner in which information on upcoming meetings and hearings is made available.

Timeframes. In relation to time frames, although the parliamentary programme and committee schedules are made available on the parliamentary website and are regularly updated, this method of providing information still falls short of what it needed. Often the schedule on the website only contains information on a wide range of committees for the coming week or two. This then tapers off and only a very small number of committees provide their agendas for a longer period. This makes advance planning and preparation to participate in the work of those committees that do not provide adequate information of their schedule extremely difficult for some and impossible for most. Of further concern is that due to a range of factors, agendas change at short notice, these changes are seldom communicated publicly. Where members of the public and organisations have planned (and at times spent money) to attend meetings, this effort is wasted. Better planning by committees is essential to address this.

In respect of calls for public comment and participation, we are unsure of the standard that is applied to the 'specified period' described in rule 241(2), however while in a few instances we are aware of more than three weeks' notice is given, it is more common that two weeks' notice is given. At times people are provided with even less time to prepare for participation - sometimes no more than a week.

In this period interested persons and institutions must: 1) become aware of an opportunity to participate, 2) familiarise themselves with or engage in education on the bill or issue in question, 3) prepare their response, 4) await feedback on their request to make oral submissions in public hearings, 5) for some, find the funds to travel to the hearings, and 6) make the necessary arrangements in terms of their existing responsibilities and mandate to enable enough time to do all of the above and to then attend the hearings in question. Again we would like to stress that for most members of the public and organisations participation in parliamentary processes is an additional responsibility above an already full set of responsibilities.

The rules must recognise and show respect for the fact that the public participation is undertaken over and above the daily duties and responsibilities of interested persons and institutions. They must require that Parliament provide adequate time from the initial notification of an opportunity for participation to enable participation. A standard of at least four weeks' notice should be provided to enable participation. Only under certain circumstances should there be an exception to this rule.

Means of notification. As noted by the Centre for Public Participation Report, notification of opportunities for public comment and participation must '*go beyond mainstream media and make use of community print and electronic productions (especially radio)*'.²³ The report notes that through these methods a '*significantly greater population*' can be reached. In addition to this, the *People's Power, People Parliament Conference* made a strong call for the use of new social media, such as Face book, Twitter and MIXit, to promote and engage public participation.

Importantly the Centre for Public Participation Report goes further to call for media strategies to be supplemented with other mechanisms such as '*making use of local networks – such as schools, church groups, municipalities, traditional leadership structures – to ensure that diverse and marginalised*

²³ Centre for Public Participation (CPP), *On developing a Public Participation Strategy for South Africa's Legislatures*. A background paper included as part of the South African Legislative Sector *Public Participation Strategic Framework*, adopted by the Speaker's Forum in 2009. Page 42.

*communities gain access to information timeously.*²⁴ A further recommendation from the Community Workshop to the Peoples' Power, People's Parliament Conference and from the deliberations of the Conference itself was the importance of making greater use of constituency offices to provide notification of opportunities for participation and to disseminate information relating to this. Employing these strategies will expand the range of members of the public that are able to participate in parliamentary processes.

Recommendations

We recommend that a new rule should be inserted that requires committees to provide notice of the schedule of meetings and calls for public participation within four weeks. The rule must specify that only under circumstances where an issue is of an urgent nature should there be an exception to this rule.

132A Notice of Meetings

Committees must provide adequate notice of their scheduled meetings and of changes to the schedule.

(a) This notice period should not be shorter than four weeks, unless the matter must be attended to as a matter of urgency;

(b) The schedule must include information on the nature of matters under discussion at each meeting; and

(c) The schedule of meetings must be made publicly available on the parliamentary website.

Similarly we recommend that in our recommended rule 201A on public involvement (above) the a sub-rule 201A(2) be included:

201A. Public Involvement

(1) The committee must ensure public involvement in accordance with the provisions of the Constitution and in relation to all of the functions of portfolio committees as set out in sub-rule 201(1).

(2) (a) The committee must publish notification of opportunities for public involvement:

(i) in the *Gazette*;

(ii) in national, provincial and local print media;

(iii) in national, provincial and local electronic media;

²⁴ Ibid.

(iv) using new social media platforms;²⁵

(v) through constituency offices; or

(vi) in any other manner necessary

(b) The committee must provide at least four weeks' notice to the deadline for submissions on calls for public involvement unless the urgent nature of the matter precludes this.

(3) Where a committee receives submissions from interested persons or institutions on proposed legislation as contemplated in rule 249, or on any other business before the committee as set out in sub-rule 201(1), the committee must:

(a) acknowledge receipt of submissions;

(b) keep a record of all submissions received; this record should include a brief summary of the content of each submission and be available to the public; and

(c) make reports as contemplated in rules 137 and 251 publically available and ensure that any persons or institutions that have made submissions to the committee receive copies of the report.

In relation to the legislative functions of the Assembly we recommend the following amendment to sub-rule 241(2)

- 2) If the bill as it is to be introduced is published, the notice referred to in Subrule (1)(b) must contain an invitation to interested persons and institutions to submit written representations on the draft legislation to the Secretary within a specified period, which shall be no shorter than four weeks unless the urgent nature of the bill precludes this.

5. Committee reports

The provisions outlined under rule 137 articulate how, when, and by whom committee reports must be presented to the Assembly. While committees are designated as the primary spaces for in-depth deliberation, oversight and decision making in parliament, the adoption of their reports by the Assembly ensures that their resolutions are elevated to a formal status where executive compliance must be tracked.

²⁵ If this is retained 'social media platforms' must be defined in the definitions section of the Rules

The *Report of the Independent Panel Assessment of Parliament* [RIPAP] noted with concern that
“a number of reports generated by committees are never adopted by the House, but simply noted. When reports are not adopted Parliament cannot take action on the recommendations they may contain, and this report does not find further expression in Parliamentary processes....it appears that in a number of cases the reason that reports are not adopted is due to the poor quality of the report”

RIPAP, Pg 39.

As noted above, Parliament has invested considerably in enhancing its public participation processes. As the Sector Oversight Model is rolled out, and the Public Participation Strategy adopted, these investments will become more significant. Considerable financial resources are routinely devoted in study tours and oversight visits.

Not only do these measures constitute significant investment of public resources, whether their outcomes find further expression in Parliamentary processes speaks to the credibility of public participation and oversight processes, and the institution as a whole.

The matter of committee reports relates closely to deficits identified around public participation mechanisms. The Independent Panel noted:

“there is a perception among individuals and organisations that have participated in Parliament that their contributions are not taken seriously. One of the reasons cited for this is that there appears to be little feedback after the completion of the process. Participants therefore often do not see their views reflected in reports on the hearings, and consequently do not know whether their submissions have impacted on policy or legislation”.

RIPAP, Pg 57

Citing similar concerns, the *South African Legislative Sector Public Participation Strategic Framework*, adopted by the Speaker’s Forum in 2009, recommends the development of clear feedback mechanisms. These would include written feedback to stakeholders using databases; feedback to the public through public meetings and other means; the compilation of reports *“on what was accepted and what was not, giving reasons”*.²⁶

²⁶ Centre for Public Participation (CPP), *On developing a Public Participation Strategy for South Africa’s Legislatures*. A background paper included as part of the *South African Legislative Sector Public Participation Strategic Framework*, adopted by the Speaker’s Forum in 2009. Pages 7-10.

Recommendations

In light of the considerations above, we recommend amendments to rules 137(2) and 251(3)(f), as well as the introduction of rule 251(3)(ff).

137 Reporting

137(2) A committee must [report to the] present reports for adoption by the Assembly on -

(a) all other decisions taken by it, except those decisions concerning its internal business; and

[(b) its activities at least once per year]

(b) all oversight visits and study tours. These reports must include the details of

i) the rationale and outcomes of the intervention;

ii) a breakdown of the costs of the intervention; and

iii) sources of finance.

(c) all instances of public involvement. In line with rule 251 (ff)²⁷ these reports must note

i) divergent views expressed by stakeholders;

ii) the reasoning for the committee's resolutions as set out in the report; and

iii) A breakdown of costs relating to the intervention.

Concomitant with this adjustment, Rule 251(3)(f) on committee reports regarding legislation should be amended as follows:

251 Committee's report

(3)(f) must [may] specify, in a summary, [such details] information about its enquiry and [any] representations or evidence, including all public input, received or taken by it.

In addition, A rule 251(3)(ff) must be inserted:

(3)(ff) Where divergent views are raised by

i) Members;

ii) an executive organ of state;

iii) constitutional institution;

iv) any other body or institution; or

v) a member of the public.

²⁷Rule 251 (ff) is a proposed rule elaborated on below.

the committee must provide reasons for its decisions.

Apart from comprising formal communications to the executive, in conjunction with proposed rules 157(5) (discussed in section xx of this submission relating to openness, transparency and public access above) and 201A(3)(c) (discussed in section xx of this submission relating to public participation) these reports would also constitute comprehensive feedback to the public and stakeholders.

We believe that setting out rules specifying which reports must be presented for adoption, as well as providing guidance on their content, will address the public participation deficits noted above as well as ensure that committee resolutions are accorded the seriousness they deserve.

6. Chairing practices in committees and public hearings

As noted above, committees are the primary spaces for in-depth deliberation, oversight and decision making in parliament. The manner in which a committee - or a public hearing convened by it - is chaired, to a large degree determines the content of discussions and the outcomes they may have. Chairing practices are therefore decisive factors in the quality of oversight, legislation, representation and deliberation afforded by the National Assembly.

The manner in which meetings are chaired also reflect the power dynamics that underlie interactions in committees or in public hearings. With the exception of SCOPA, many of the Assembly's committees allow representatives of the executive to spend inordinate time going over presentations and documents which according to informal agreement, should have been submitted 48 hours before the meeting. This curtails the time Members have to critically engage and question executive actions. Because little time is left for Members' questions, many chairs resort to taking many questions at once, which allows representatives of the executive to evade difficult queries. In addition, this means that often there is no time for follow up questions. The manner in which committees are chaired comes to very literally embody the executive's dominance over parliament.

As noted above, while there is an agreement compelling representatives of the executive to submit their presentations to committees 48 hours prior to a committee meeting, this agreement is often ignored. As the above makes clear, the effectiveness of committee meetings and their ability to play a robust oversight role is undermined by the late submission of documents and presentations by the executive.

Similarly, power dynamics play out in public engagements convened by committees. In its report for the South African Legislative Sector (SALS) the Centre for Public Participation (CPP) noted that

*“Groups at discussion forums convened by the CPP to learn of civil society experiences of public participation spoke of mixed experiences of the policy process. Feelings of being sidelined and marginalised, excluded and disempowered overwhelmingly dominated. These were occasioned by... not being recognised as worthy of participating”.*²⁸

If allowed to play out, power dynamics can undermine the spirit and purpose of public engagement. Within the jurisdiction of the NCOP, clear examples of this have been provided by the experiences of rural women in the provincial hearings on the Traditional Courts Bill:

*“There was no discussion of the controversial aspects of the bill... People were told that they had to comment on specific provisions of the bill. Very few people knew the bill in that detail... and those conducting the hearings tried to shut people down when they spoke about their general experiences and how the bill would exacerbate these situations... comments that were not about a specific provision were overruled as being irrelevant. In most of the hearings officials strongly defended the bill... when one of our researchers tried to highlight problems with the appeals section, she was overruled - the chair just picked up the microphone and started speaking over her... At the hearings the chiefs were introduced individually... There was a great show of deference towards them... they were allowed to speak for as long as they liked, they weren't subject to the same time limits as others; at other hearings they were invited to make the closing comments”*²⁹

While the above example relates to the NCOP, we maintain that the point it makes is relevant to the Assembly. Clear guidelines are required to ensure that institution-wide chairing practices reflect Parliament's commitment to an *“open and democratic society based on human dignity, equality and freedom”*.³⁰

²⁸ Centre for Public Participation (CPP), *On developing a Public Participation Strategy for South Africa's Legislatures*. A background paper included as part of the South African Legislative Sector *Public Participation Strategic Framework*, adopted by the Speaker's Forum in 2009. Page 36.

²⁹ Dr Dee Smythe, People's Power People's Parliament conference, 14 August 2012, Cape Town

³⁰ Constitution of the Republic of South Africa s39(1)(a)

Recommendations

We recommend the development of guidelines on chairing practice for the committees of the Assembly. The development of such guidelines will require extensive deliberation by Members and must incorporate public input into the process. We note that these guidelines should not in their entirety be incorporated into the Rules, however, certain aspects of should be and we thus propose the addition of rule 138AA:

138 AA Chairing of Committees

138AA (1) Chairing of committee meetings must be in line with:

- a) The values of human dignity, the achievement of equality, and the advancements of human rights and freedoms as set out in section (1)(a) of the Constitution of the Republic of South Africa;
- b) the Assembly's Constitutional mandate to facilitate public involvement in legislative and other processes;
- c) the Assembly's Constitutional mandate to scrutinise and oversee executive action;
- d) practices that give expression to the principles of inclusivity, stewardship and open debate; and
- e) practices outlined in any guidelines³¹ for chairing that are adopted by the Assembly.

(2) where reasonable, documents and presentations should be made available to committee members and the public 48 hours prior to the meeting at which they'll be presented

As proposed sub-rule 2 above suggests, we further recommend that the Assembly identify mechanisms of enforcement and sanction regarding the failure of executive organs of state to submit documents to the committee 48 hours prior to its sitting, where it is considered reasonable for the executive organ of state to do so.

³¹ As noted, these are guidelines that we propose are introduced.

7. Online and digital availability of the Register of Members' interests

The Code of Conduct for Assembly and Permanent Council Members requires a Register of Members' interests to be opened and maintained by Parliament. Section 11 (2) of the Code calls on the Registrar to "publish the public part of the Register during April of each year in a manner determined by the Committee".

We recommend that in this register is also made available digitally and online. We recognise that this recommendation relates to the Joint Rules.

8. A complaints mechanism for the public

The Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act of 2004 provides that disciplinary action can be taken against members for contravening a range of provisions in the Act as well as the Code of Conduct. The provisions in the Act relate to interference and obstruction (s7, s26); being party to improper influence (s8); and the integrity and confidentiality of parliament's records as well as their publication (s10, s19, s21). Section 12 enables persons who are not members to complain to the secretary in the case of *personal* grievance.³² Sanctions are also applicable when members breach any provision of the Code of Conduct.

However, no mechanism exists for members of the public to lodge complaints against members for failing to adhere to the values of the constitution or give expression to parliament's mandate. Example of such conduct can be found in the narration of the Traditional Courts Bill hearing above or in the more recent case of a chairperson in NCOP arguing that 20 out of 22 submissions presented in public hearings were "irrelevant".³³ Again, while both examples relate to the NCOP rather than the National Assembly, we maintain that the points they illustrate are relevant for the National Assembly and the conduct of any elected representative who is part of parliament as a whole.

³² Section 25 (1) A person, other than a member, who is aggrieved by a statement or remark made by a member or a witness in or before a House or committee *about that person*, may submit a written request to the Secretary to have a response recorded (emphasis added).

³³ <http://mg.co.za/article/2012-10-25-parliament-draws-fire-on-traditional-courts-bill>

As noted above, such instances underline the importance of rules that safeguard the public perception of the institution.

We thus propose the introduction of a complaints mechanism, or complaints procedure for the public.

In establishing the office an 'Integrity Commissioner', the Gauteng Legislature is the only Legislature in South Africa thus far to enable such a mechanism.

Established by the Code of Conduct and Ethics of the Gauteng Legislature, the Integrity Commissioner is nominated by the public and appointed by a vote of the House (Section 17)(1)(a). The Integrity Commissioner is expected to act "independently and impartially" (Section 17)(2)(a), has powers of investigation, and is mandated to receive complaints from any "Member, or official of the government or state organ, or a Member of the public who reasonably believes that a Member of the Legislature has violated the Code of Conduct and Ethics" (section 18)(1). As the Code of Conduct and Ethics includes principles, its application can be broad.

We recommend that a similar mechanism is introduced for the National Assembly or Parliament as a whole.

9. Safeguarding the integrity and accountability of the house

The Financial Management Act of Parliament 2009 mandates the establishment of an Oversight Mechanism³⁴ to scrutinise the actions of the Executive Authority of Parliament ("the Speaker of the National Assembly and the Chairperson of the National Council Of Provinces, acting jointly"³⁵). In addition to the responsibilities of the Oversight Mechanism as specified in the Act, the Mechanism is also given the powers to perform any function as specified by the Rules of Parliament [4(d)].

Section (4)(2) of the Act specifies that "Representation on the oversight mechanism must be in accordance with the Joint Rules of Parliament", except that members of the Executive Authority — (a) may not be members of the oversight mechanism; and

³⁴ Part 1; Section 4 (1 - 4)

³⁵ Part 1, Section 5

(b) may only participate in the deliberations of the oversight mechanism at the request of the oversight mechanism.

Section (4)(3) allows The oversight mechanism to summon “the Accounting Officer and any other official of Parliament to appear before it” and Section (4)(4) gives the Mechanism “the powers that committees of Parliament have under sections 56 and 69 of the Constitution”.

The introduction of this Mechanism, and the Act as a whole, codify strong accountability into Parliament’s management. This is appropriate to the institution mandated with the safekeeping of the integrity of the state as a whole

However, despite its introduction in 2009, provisions in the Act have yet to be implemented. While there are procedures that enable the budget of Parliament to be debated, these are undermined by the lack of separation of powers within the institution. In addition, these mechanisms do not sufficiently enable Members to question and scrutinise management decisions regarding parliament.

It is our view that the rules of the National Assembly should take steps to implement the Act without delay.