

Attention: The Executive Authority of Parliament

CC: Chair of Chairs

CC: The Secretary to Parliament

Re: **CSOs call for dialogue with Parliament on public participation mechanisms**

20 May 2020

Dear Madam Speaker and Chairperson

Who we are

We are a collective of CSOs and coalitions working towards social justice, who have come together to focus on strengthening and supporting our legislatures to fulfill their constitutional functions during this period of national emergency due to the COVID-19 pandemic.

About the submission

This submission follows two previous substantive communications relating to the functioning of the legislatures during the national disaster that were sent on 25 March 2020 and on 10 April 2020. These communications, the substantive issues raised, and our offers to support Parliament in its efforts to operate as a public forum serving the interests of the people of South Africa, have been met with silence from your respective offices. At the same time, we note that Parliament has subsequently instituted various measures to function during the lockdown.

Parliament's transition to full digital public participation

The past weeks have constituted a steep learning curve and we commend the Parliamentary staff for their efforts to establish and implement systems for virtual meetings, which have resulted in Parliament meeting some of the basic constitutional requirements for openness and public access under the conditions of the lockdown. These critical measures set the groundwork for ensuring that our national legislature is able to fulfill the full scope of its constitutional mandate. We are mindful that Parliament must at this time undertake legislative and oversight work that is usually required in addition to overseeing the Executive actions related to the national disaster.

We are aware that committees have conducted a significant number of meetings since 21 April 2020. Parliament's calendar has become increasingly busy now that committees are fast adapting to new modes of conducting business. The rate of meetings is encouraging, and committees now need to be capacitated to fully meet their constitutional obligations. This communication provides detailed and practical suggestions to ensure transparency and expand the range of means to enhance public access to Parliament during and beyond the lockdown.

Findings and recommendations by the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change released in late 2017 and also those contained within the HSRC's 2019 Report on Stakeholder Satisfaction Survey for the Parliament of the Republic of South Africa resonate with various concerns, suggestions and action that we have in mind and which we would like to support and see being introduced to improve the effectiveness of Parliament.

Public involvement as a strategic priority for the Sixth Parliament

Parliament's recently tabled "Policy Priorities and the Strategic Plan of the 6th Parliament (2019 – 2024)" acknowledges upfront that *"The public demands greater involvement, more vigorous scrutiny of executive action, and consequently more open, responsive and accountable government."*

As such, the 6th Democratic Parliament *"determined its 2024 outcome goal "to increase **government's responsiveness and accountability**". The plan stresses that "**Stronger oversight will demand deeper scrutiny**. This requires better **information, analysis and insight**," and that "better information and insight **require technological renewal, specialised skills and a different structure of Parliament.**"*

[\[https://www.parliament.gov.za/what-parliament-does#strategic-plan-parliament\]](https://www.parliament.gov.za/what-parliament-does#strategic-plan-parliament)

Call for dialogue

We request and welcome an opportunity to meet with the Executive Authority, the Chair of Chairs and relevant committee chairpersons of Parliament to discuss Civil Society organisations' experiences of the recent transition of Parliament to digital, and the impact on public access and participation.

As CSOs, we would like to better understand the public participation model, the implications of virtual committees and the houses, and how CSOs can engage with oversight work in a more coherent way with committees of Parliament.

The proposed dialogue can take the form of a virtual engagement along the lines of a digital round table where the relevant Parliamentary leadership and Administration officials can engage with this collective of civil society organisations to discuss the relative merits of the practical proposals we have made and for us to better understand the limitations and challenges that Parliament may be experiencing at this time.

We would welcome the inclusion of relevant officials from the Administration who form part of the Secretary to Parliament's public participation implementing team. Parliament officials from the Committee Section, ICT, the Parliamentary Communications Services and the Legislative Sector Support office are relevant as they manage Parliament's communications and ICT systems and support the work of the houses and committees. We request that this meeting take place by no later than 1 June 2020.

What follows is an assessment of how we have experienced the recent efforts of the National Parliament in migrating to full time virtual meetings, and proposals for enhancements in the mechanisms to be used to ensure that no citizen is left behind.

Sincerely,

The undersigned,

Contact:

Letlhogonolo Letshele | My Vote Counts | letlhogonolo@myvotecounts.co.za | 074 944 8952
Tlamelelo Mothudi | Public Service Accountability Monitor | t.mothudi@ru.ac.za | 071 256 8254
Vivienne Mentor-Lalu | Dullah Omar Institute | vlalu@uwc.ac.za | 082 494 0788

Endorsed by:

1. Action 24
2. African Policing Civilian Oversight Forum
3. Democracy Development Programme
4. Democracy Works Foundation
5. Equality Collective
6. Equal Education
7. Equal Education Law Centre
8. Land Rights Organisation of South Africa
9. My Vote Counts
10. Open Secrets
11. Public Service Accountability Monitor
12. Right To Know Campaign
13. South Durban Community Environmental Alliance
14. Witzenberg Rural Development Centre
15. Women on Farms Project
16. Women and Democracy Initiative, Dullah Omar Institute

PARLIAMENT IN LOCKDOWN

Civil society collective submission on virtual public participation and recommendations for enhanced virtual public access to the work of Parliament.

Submission to Parliament / May 2020

1. The Constitutional context for Public Involvement in the work of Parliament

The Constitution clearly articulates the vision of South Africa as a democracy driven by its people, stating in the preamble that the purpose of the Constitution is to “Lay the foundations for a democratic and open society in which government is based on the will of the people ...”. In addition, the Constitution entrenches Parliament as the center of South Africa’s democracy, requiring that the National Assembly (NA) “represent the people” and “ensure government by the people under the Constitution”. As such, Parliament is mandated to provide a public forum for the consideration of issues - including law making and ensuring Executive accountability. It must conduct all of its work in an open and transparent manner (unless it is justifiable not to in an open and democratic society), and it must facilitate public involvement in all the work of its committees.

Parliament has a duty to act on behalf of the *public* and take action that is in the public interest. The Constitutional Court in UDM vs. the Speaker of the National Assembly and Others explains further: ‘Members of Parliament have to ensure that the will or interests of the people find expression through what the State and its organs do.’ The rapidly shifting regulatory and legal terrain during the national disaster has intensified the public’s interest in questions of governance and oversight.

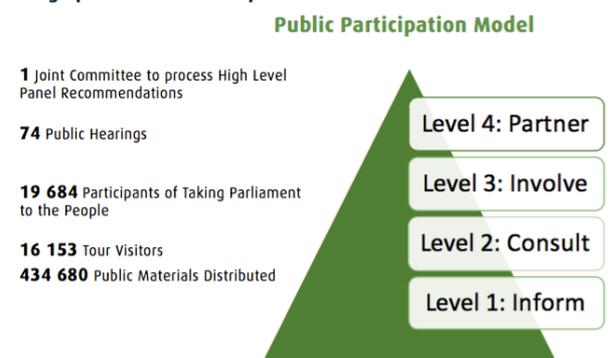
The public participation framework and model adopted by the Speakers Forum and each legislature, including the National Parliament, provides clear guidelines on how the public can be involved.

In addition to meeting the Constitutional requirements for openness, it is critical that Parliament also commits to facilitating **meaningful** public involvement in oversight and law making, and ensuring that it effectively **oversees and holds the Executive to account** on behalf of the public.

The model provides for four Levels of public participation. Organized civil society and community organisations are recognised as key to supporting the oversight capacity of committee work.

The consultative roundtable can explore the practical application of the four levels of participation and how to improve public participation at all levels through all the communications and technology platforms at the disposal of Parliament and the public.

Infographic 1: Public Participation in Numbers



2. Legislation and oversight during the national disaster

The questions of access to information, public engagement, and adequate representation of the public voice, extends from the usual lawmaking and oversight business required at this time; to the particular issues raised for oversight during the COVID19 disaster; *and* to the regulations being developed by the Executive in terms of the Disaster Management Act (DMA).

We appreciate that members of the Executive are empowered to pass regulations, under the DMA, in order to respond quickly to the state of disaster. However, this prerogative does not prevent Parliament from fulfilling its own legislative mandate. The lockdown regulations have required regular amendment, and this is a clear indication that now, more than ever, Parliament must pay attention to Executive law making, and conduct oversight as to the rationality, constitutionality and legality of the COVID19 regulations. In addition, it is necessary for Parliament to issue guidelines to the Executive, setting out how regulations that are issued must be presented to Parliament to enable it to fulfil its oversight function. It is important to ensure that this oversight function is carried out in a transparent manner, with access given to the public to any proceedings in this regard.

Parliament has a duty to ask questions of the Executive in the public interest. The Executive must continually be required to provide justifications regarding legislative decisions taken pertaining to the regulations. Parliamentary oversight requires that answers be given to the public in response to allegations and reports of human rights abuses perpetrated by members of the Executive or state agencies, while implementing or enforcing measures put in place to combat COVID19.

3. Public participation framework, model and the move to virtual parliaments

While the Constitution is clear that public involvement in the work of the legislature is mandatory, Parliament has discretion regarding *how* to conduct that public involvement. The Constitutional Court in *Doctors for Life International vs. the Speaker of the NA and others* has set a reasonableness test where the primary factors Parliament must take into account when deciding on the scope of public participation are the nature and importance of the issue under consideration, and the potential intensity of the impact of the issue on the public. While the court found that Parliament should consider questions of practicality and efficiency when deciding how to conduct public engagement, it was clear that inadequate public involvement could not be justified on the basis of practicalities and efficiencies alone. We advise that this is a critical time for Parliament to actively and meaningfully engage with the public.

The nature of the global pandemic and the impact of the measures being implemented by the Executive on the rights of millions of the most marginalised people in our society require commitment from the legislatures to ensuring that the public voice is heard, that there is public representation and that decisions taken by the Executive are in the best interest of the country. The intensity of the impact of the lockdown and related measures, as well as the potential impacts of COVID19 directly on the public, necessitate that, in addition to preventing attrition of standards that have developed, Parliament must sincerely grapple with the weaknesses that plague public participation under the best of circumstances. Every effort must be made by Parliament and elected representatives at this time to reach, listen to, engage with and respond to the public.

It is for these reasons that we are greatly encouraged by the statements of the Speaker and the Deputy Speaker in the National Assembly Programming Committee meeting on 30 April 2020. In this meeting it was clearly expressed by yourselves that public input to committees remains a priority for Parliament, and importantly you recognised the issues of limited technological capacities, meaning that the public must be provided with sufficient time to provide input and that ‘submissions will be made in whatever form is accessible’ to people. However, comments made in the Joint finance committee meeting on 23 April 2020 raised our concerns that some committees may be considering unnecessarily limiting the (already limited) measures for public participation during the crisis.

Given the functionality of the virtual platforms, there is no reason why members of the public cannot make oral submissions using platforms that are readily available and currently being used.

Furthermore, following the statements made at the abovementioned Programming Committee meeting, Committees can utilise other social media and messaging platforms to increase public inputs.

RECOMMENDATIONS

- We strongly urge that public hearing processes, using oral submissions, continue through virtual platforms so that committee members are able to engage with presenters on submissions provided.
- Committees should consider utilising committee specific twitter handles and WhatsApp and SMS channels to invite inputs from the public. These mechanisms increase the range of methods that public input can be provided to committees – allowing for voice notes and videos to be utilised.
- Where committees receive any public inputs, submissions or petitions, the standard of making them all available to the public must be safeguarded.
- Parliament should explore ‘e-participation’ platforms that can be used to gauge the views of the public. Such platforms could be used to set certain questions, record responses, and inform committee engagement. The platform should be managed and maintained by Parliament, and the format should be accessible and understandable.
- Public submissions and petitions must be discussed in committee meetings. Acknowledgement of receipt of a submission or simply passing it on the relevant member of the Executive, as was the case with the C-19 People’s Coalition submission to the Portfolio Committee on Police (dated 28 April 2020), fails the constitutional duty on Parliament to facilitate public involvement.
- Given Parliament’s statements regarding the use of constituency offices to ensure MPs are connected with the public, committees must include a regular agenda item for issues raised with MPs through constituency offices relating to the mandate of any specific committee.
- Channels to ensure that issues are escalated from constituency offices to committees must be clearly established and regularly reported upon.

4. Ensuring openness, transparency and access

Despite the numerous ministerial and departmental briefings over the past few weeks, questions have persisted regarding if Parliament has abdicated its role thus far during the disaster. Meeting the requirements for transparency and access are fundamental to achieving Parliament's function of ensuring that Executive action is aligned with the interests of the public and that checks and balances are in place. Transparency allows the public to both observe and assess the extent to which their interests are reflected through the legislatures and if our legislatures are keeping the Executive in check.

While the physical gates of Parliament have been closed to the public during the lockdown, the institution has had to rely on virtual channels to function and simulate public access. The use of the internet, broadcast, and social media as access points for the public are valuable, necessary and have the potential to expand the range of stakeholders accessing Parliamentary meetings. However, on their own they do not go far enough and they perpetuate the norm of excluding sectors of the public – in this instance those who do not have access to data or electronic devices – from accessing the legislatures.

There is no reason under the conditions of the lockdown or otherwise, for Parliament to continue to limit the access of the majority of the public as has become normalised. For example, people who live in urban-poor and rural contexts without the time and money to travel to the legislatures or access the online or broadcasting platforms have for the past 25 years been effectively excluded from accessing or participating in a democratic Parliament in practical terms. With the advancement of information technologies over the decades, these exclusions become more unreasonable and unjustifiable.

The lockdown has clearly demonstrated that Parliament has the capacity to institute mechanisms to expand public access beyond physical accessibility. Going forward, we trust that Parliament will commit to ensuring that these mechanisms are maintained so that the public is not required to physically travel in order to access information or participate.

While Parliament has achieved the basics for transparency for access during the lockdown, we contend that more can reasonably be done, and therefore must be done to increase the reach of these measures to a broader cross section of the public. The practical measures described below are relatively obvious, attainable, and can significantly improve compliance with the constitutional requirements and Parliament's own goals of being an open and accessible 'People's Parliament'.

The serious and persistent issues of exclusion and exclusivity of the legislatures have been raised above. To achieve the goals of being a public forum for all of the people in South Africa, the current dependence on platforms that require access to the Internet, data, Wi-Fi, as well as computers or smartphones exclude the majority of the public and must be broadened. The use of subscription broadcast platforms such as DStv is restrictive. DStv reported a total of only 8.2 million subscribers for 2019. Our proposals consider expanding the current reach and accessibility of the communications tools currently relied upon by Parliament such as the Website, YouTube, Facebook and Parliament's official Twitter accounts, including Committee Twitter. We call for Parliament to extend to other platforms.

The following recommendations aim to improve how multiple communications and ICT platforms are used by Parliament to inform, educate, consult, involve and partner with the public in improving public access to the work of parliament.

RECOMMENDATIONS

- **ZERO RATING VIRTUAL PLATFORMS** - Parliament must provide content on platforms that does not come at a cost to the user or 'zero-rated platforms'. Parliament's website must be 'zero-rated' (a free site) as a matter of priority.
- **BROADCASTING THE WORK OF PARLIAMENT** - The work of Parliament must be broadcast on broadcast platforms ranging from the national public broadcaster [SABC Radio and TV] as well as other free to air television channels and to community radio station network that is particularly powerful due to its combined reach.
- **YouTube platform and the website** - If Parliament cannot provide content at zero cost to the user using the YouTube platform, all committee meetings should be live-streamed directly on Parliament's zero-rated website and by the public broadcaster.
- **OTHER PLATFORMS** - Parliament should explore platforms such as bi.nu that will allow Parliament to pay the costs for a mobile platform so that the public can access the content free of charge.
- **WHATSAPP AND SMS TECHNOLOGY** - Cell phone based messaging such as WhatsApp Messenger and/or SMS messages are accessible to the majority of citizens who own cell phones. To make the most of cell phone based platforms for communications; parliament must undertake a broad campaign to inform the public of how to sign up for information broadcast through these measures.
- **LEVERAGING PARTNERSHIPS WITH CSO** - Parliament must leverage the partnerships it already has with civil society actors such as the Parliamentary Monitoring Group (PMG), who continue to act as an invaluable resource augmenting Parliament's dissemination of information.
- An instructive set of **guidelines** should be made available to inform the public about all channels through which the public can access Parliament.

4.1 Notifications of committee meetings

A necessary precursor to public access and participation, is that the public must first have information on the when, where, and what of parliamentary business. We note that the committee meeting schedule (or 'z-list') is made available on Parliament's website daily. However, according to our observations, all but a handful of CSOs are aware of this and Parliament has not sufficiently communicated this to the public.

We acknowledge that contact lists managed by some committee secretaries are an efficient means of informing key stakeholders and interested parties of planned committee meetings in a targeted manner. However, these lists are inadequate as a means of *public* notification as they prioritise the media, civil society actors, and past participants.

We also acknowledge the launch of Twitter accounts for 43 Committees of the National Assembly in July 2019. These have been inactive of late. The active use of these accounts by individual committees should allow more regular communication of upcoming meetings for members of the public and civil society interested in their work.

RECOMMENDATIONS

- In addition to publishing the z-list on the website, Parliament should commit to broadening the reach of daily information on the committee meeting schedules to the public. Including using SABC platforms and cell phone based broadcast messaging.
- All committees must create or utilise existing Twitter/social media accounts to provide regular information of meetings.
- The z-list should be more prominently displayed on the web page - a 'today in parliament' tab that is immediately visible on opening the page.
- The z-list and any other daily information must include information regarding the platform on which the meeting will be live streamed or broadcast and how the public can obtain information to participate in the virtual meeting.
- Civil society and the public at large can subscribe to a committee related databases for information and submission opportunities.
- Committees can have specific dedicated WhatsApp groups for broadcasting information about the committee and WhatsApp accounts for receiving oral submissions and feedback.

4.2 Access to Virtual Meeting platforms

Stakeholders in civil society have experienced difficulties in accessing many of these links over the past three weeks. The procedures have not been standardised, which increases confusion. Some committees have published links in media releases, while others have required stakeholders to contact committee media officers (whose contacts are generally not publicly known) or committee secretaries to obtain the links.

The recent attack on the National Assembly Programming Committee meeting that utilised the Zoom platform has emphasised the need for Parliament to utilise secure platforms. Zoom is widely known to be vulnerable to hacking; the MS Teams platform that Parliament has used thus far has proved more secure. Further, the MS Teams platform includes mechanisms to limit the active participation of some participants in a meeting; these should provide sufficient means for committees to control and remove any participant who is disruptive or abusive. While measures must be put in place to minimise and prevent disruptions in future meetings, we would urge Parliament to identify interventions that do not limit general public access.

RECOMMENDATIONS

- The Z-list must include information outlining what steps members of the public can take to obtain the link to the meeting. Standardised on the list should be confirmation that all queries should be directed to the committee secretaries.

- Information on how to obtain the link to participate in a committee meeting should be published on the Z-list at least 24 hours before a meeting is scheduled to take place.
- Should the link to meetings change, all effort must be made to inform the public of this change as soon as possible.
- Guidelines must be developed for committees on managing virtual meetings to ensure that they function more uniformly and efficiently and must be made publicly available.
- By only sharing the meeting link upon registration, security will be enhanced and this enables a register of meeting participants to be kept. This register should be available on the public record.

4.3 Live streaming and broadcasting committee meetings

The Rule on Virtual Meetings states that “wherever possible a virtual meeting must be livestreamed.” We note that it is technologically possible to live stream *all* meetings. The obligation to conduct the business of Parliament in public requires that the wording of the rule should reflect that all virtual meetings must be live streamed unless it is reasonable and justifiable not to do so in an open and democratic society. Where a decision not to livestream a meeting is taken, the reasons for the decision must be placed on the public record. This should apply to both the NA and the NCOP rules.

We commend Parliament for live streaming or subsequently uploading most committee meetings for delayed streaming to YouTube, Twitter, the DStv channel, and the Public Broadcaster. We acknowledge Parliament and the ICT team’s commitment to ensuring greater public access through these platforms. These proposals are offered in the spirit of supporting Parliament to further improve the functioning and accessibility of this system.

The areas that can be improved include that live streaming on YouTube carries data costs, that there has not been a consistent notification system to the public as to which platforms will be used to live stream meetings. Some information that has been provided has been incorrect, and some meetings were streamed live, while others have been uploaded with a delay. Despite the impressive number of meetings that have been uploaded, a number have not been uploaded at all. Given the speed with which the Executive is making decisions relating to COVID19 and the unfolding consequences of the lockdown and measures taken to enforce it on the public, it is important the public is able to observe the meetings in real time.

RECOMMENDATIONS

- All meetings must be streamed or broadcast live.
- Standards to systematise good practice for live streaming all committee meetings must be drafted and made public.
- A public notification system must be instituted to provide information on which platform and at what time meetings will be streamed or broadcast.
- All meetings must be live streamed or broadcast on a single platform, regardless of their also being made available on other platforms. The streaming or broadcast through other platforms should be to augment, not replace a central platform.

- We strongly urge for the public broadcaster to broadcast *all* meetings and recommend that the public broadcaster work alongside community radio stations in broadcasting committee meetings. Parliament has already demonstrated its capacity to do this when it hosted the “Parliament Community Radio Talk Show” on 23 April 2020. The DG Murray Trust’s partnership with the National Department of Health (NDoH) to broadcast daily radio inserts on the Covid-19 epidemic is another example of a partnership that Parliament should consider to ensure that content is made available. Meeting content can then also be uploaded to Internet based platforms to enable public access after the fact.
- The public should have the option to watch the video or an audio only live stream. This can assist to lower the cost of streaming until it is on zero-rated platforms and should stream more smoothly for people whose Internet access is limited.
- If any technological limitation prevents a meeting being live streamed on the central platform, that meeting must be *live* streamed or broadcast on another platform and notice must be provided to the public regarding this. It should then be uploaded to the central platform as soon as possible afterwards.
- All streams and broadcasts should include a description of the meeting, the agenda and the time and date the meeting is scheduled to take place.
- The streamed content must provide the public with information (such as an active link) on where any documents or presentations discussed in the meeting can be accessed, as far as possible in real time - during the meeting.
- To ensure accessibility and inclusion, we urge Parliament to employ South African Sign Language interpreters where possible and to provide subtitles/transcription of meetings in the uploads. We acknowledge that subtitles may not be possible at the time of the live stream but should be provided afterwards.

4.4 Access to presentations and documents

The requirements for open and transparent legislatures extend to documents considered by committees. We remind Parliament that any non-disclosure must be tested against the principles of transparency, and what is reasonable and justifiable in an open and democratic society. Thus far, public access to documents and presentations made during virtual meetings has been uneven. We have observed that generally when presentations are made in committee meetings, they are displayed on the screen and other documents provided to committee members via email have not been made available to the public. We commend those committee secretaries who have disseminated presentations to stakeholders before or after meetings, however measures to increase access must go beyond these curated contact lists.

‘Documents’ should be understood to include all reports, budgets, PowerPoint presentations, text-based documents, “speaking notes”, and submissions that are presented to committee members during or prior to meetings. We have also noted that in some meetings, MPs utilise the chat function on the virtual platform, but at times the public are able and unable to read these chats.

RECOMMENDATIONS:

- All documentation under consideration by committees must be made available to the public. This must be provided proactively and not be dependent on requests.
- We support the display of presentations on the screen during meetings; this must be required as a standard for all presentations made during all meetings. But on its own is not sufficient.
- Links to download documentation must be included in the description box of videos uploaded to YouTube, in the chat box of the virtual meeting platform, and via twitter.
- All documents should be made available on Parliament's website.
- If it is decided that a document cannot be disclosed to the public, reasons must be placed on the public record.
- Chats in the virtual meetings must be part of the public record. Norms must be established regarding public transparency for the content of the 'chats' on virtual meeting platforms.
- The PMG website includes a comprehensive record of committee meetings and documents, the good practice of committee secretaries providing electronic copies of documents to PMG for uploading on the internet has served the public well over the past decades, and these practices must be protected during the period of the lockdown.

5. In conclusion

The feedback and recommendations to Parliament come from the shared experience of the signatory organisations that regularly engage with Parliament and provincial legislatures.

We look forward to acknowledgement and feedback on our request for this engagement at the earliest convenience noting the ongoing urgency of the national state of disaster.