

**Open letter to presiding officers of South Africa's Legislatures:
*Oversight and participatory democracy during the National State of Disaster***

25 March 2020

For attention:

- 1. Hon. Thandi Ruth Modise**
Speaker of the National Assembly | email: framosana@parliament.gov.za
- 2. Hon. Amos Masondo**
Chairperson of the National Council of Provinces | email: nmasondo@parliament.gov.za
- 3. Hon. Helen Mercedes Sauls-August**
Speaker of the Eastern Cape Provincial Legislature | email: speaker@ecleg.gov.za
- 4. Hon. Ntombizanele Sifuba**
Speaker of the Free State Provincial Legislature | email: lazziem@fsl.gov.za
- 5. Hon. Lentheng Mekgwe**
Speaker of the Gauteng Provincial Legislature | email: sditshego@gpl.gov.za
- 6. Hon. Ntobeko Boyce**
Speaker of the KwaZulu-Natal Provincial Legislature | email: boycen@kznlegislature.gov.za
- 7. Hon. Mavhungu Lerule-Ramakhanya**
Speaker of the Limpopo Provincial Legislature | email: mabelat@limpopoleg.gov.za
- 8. Hon. Busisiwe Shiba**
Speaker of the Mpumalanga Provincial Legislature | email: nosisin@mpuleg.gov.za
- 9. Hon. Sussana Dantjie**
Speaker of the North West Provincial Legislature | email: yolanda@nwpl.gov.za
- 10. Hon. Newrene Klaaste**
Speaker of the Northern Cape Provincial Legislature | email: ematolweni@ncpg.gov.za
- 11. Hon. Masizole Mnqasela**
Speaker of the Western Cape Provincial Parliament | email: mmnqasela@wcpp.gov.za

Dear leaders of South Africa's legislatures,

On Sunday 15 March 2020, the President declared a national State of Disaster owing to the severity of the Covid-19 outbreak.¹ Regulations pertaining to the Disaster Management Act (2002) were gazetted on 18

¹ Covid-19 refers to the Novel Coronavirus (2019-nCov); an infectious disease caused by a virus previously not scientifically identified in humans, which was initially reported in 2019 and was declared a global pandemic by the World Health Organisation (WHO) in 2020.

March and unless terminated by the Minister of Cooperative Governance sooner, will be in place until mid-April. On 23 March the President announced further actions in an effort to reduce the spread of the virus, including a nationwide 'lock-down', restricting domestic travel and movement between 26 March and 16 April. While current measures will be in place until mid-April, there is uncertainty regarding the precise end date, or how long these measures may need to be in place for.

We are mindful of the fundamental shifts in all aspects of public affairs which will in turn have wide-ranging impacts including on the physical and mental wellness of the public generally, but also on leaders and healthcare practitioners tasked with leading the country's response to the pandemic.

We therefore hope, with this communication, to support the legislatures to create some basic expectation for how these will function for the duration of the national disaster.

The publics' voice

While there are indications that the private sector, and structures such as NEDLAC are being consulted, no indication has been provided by the executive of how the public are able to engage with or influence the plans. Sectors of the public likely to face the greatest repercussions of this disaster as it unfolds and subsequently are poor, working class people, women, and people who are in informal and insecure employment. By what means are these people able to express their experiences and needs and ensure that this perspective is responded to with the correct weight rather than being drowned out by the bigger players who are at the tables?

The announcement of the lock down, while addressing many important questions, failed to address a range of concerns being voiced by more marginalised groups of people. For example, the measures outlined in the President's speech did not consider women restricted to abusive homes during the lockdown in a country that recognises the urgency of addressing gender-based violence. Nor did the speech stipulate how vulnerable workers like casual workers' and informal sector workers' incomes will be protected.

Measures need to be put in place to ensure that all people are taken into account as the planning and implementation continues.

The role of the legislatures during a national disaster?

The Constitution establishes the legislatures as the site for representative and direct democratic engagement with law making and oversight. While the Disaster Management Act (2002) provides that decision-making related to the National Disaster is undertaken by the national executive once it has been declared, this does not automatically mean that the legislatures have no role or function during this period. Indeed, in an unprecedented situation such as this, we believe that the legislatures and our elected representatives have an important role to play that can contribute to social cohesion and solidarity among the public.

We commend the President's regular meetings with all political parties represented in Parliament. We believe that during a national disaster, the importance of elected representatives and the legislatures maintaining their oversight functions in particular is even greater. This includes promoting transparency and public engagement regarding the situation.

We appreciate the prompt actions taken by some legislatures to inform the public of meeting postponements and responses to the pandemic. For instance, the dissemination of Whatsapp-friendly messages by the Eastern Cape Legislature is a welcome effort under the circumstances.

The Disaster Management Act requires the establishment of a National Centre which, via Section 16 of the Act, obliges the creation of a directory of disaster management role-players including relevant experts and non-government actors. Unfortunately the Act and the gazetted regulations fail to include the important role that elected representatives can play, both in advisory and/or communications between the public and the decision-making structures.

We also note that the Disaster Management Act does not place any specific obligations on the executive to report on the disaster management efforts to the legislatures **during** the period of the disaster. Despite this, we are of the view that this does not prevent the legislatures from requiring information and reporting from the executive in this regard. Given the role of the legislatures to provide a public forum for holding the executive to account, we would recommend the inclusion of reporting mechanisms to the legislatures on measures taken and progress and challenges regarding implementation within reason, under the circumstances.

Specifically, in relation to the workings of the legislatures, we recommend the following:

- 1. Ensure the inclusion of elected representatives from different political parties on Provincial Response Task Teams, and on national structures.**
- 2. We propose that the legislatures deliberate on what may be reasonable in regard to requesting reports on the national state of disaster from the executive. Having regard for 1) the fact that the executive is under extreme pressure to respond to the disaster and should not be unnecessarily diverted from its task and 2) the importance of transparency, oversight and ensuring reasonable public input.**
- 3. We also propose that the legislatures consider establishing ad-hoc committees on the COVID-19 disaster.**

We acknowledge that the COVID-19 state of national disaster cannot reasonably mean that the legislatures should continue to function in a 'business as usual' manner, both due to the fact that the situation requires actions to respond to COVID-19, and because the nature of the disaster requires measures to limit contact between groups of people. The legislatures responded to the outbreak in South Africa by announcing that the scheduled recess would start a week earlier and end in mid-April, however at this time, besides extending the recess, there is no information on how the legislatures will operate, should the period be extended, creating some uncertainty regarding important work that was currently on the agendas of committees' in the legislatures.

- 4. We propose that committees should submit a list of their current and planned work as at mid-March 2020. This document, per committee, should provide information on how these scheduled matters will be dealt with during the period of the disaster, what additional matters the committee may need to pay attention to as a result of the disaster, and which matters will be postponed to a later date.**

We note that some functions of the legislatures are required by law, for example money bills must be processed within certain timeframes by the legislatures. For instance, following the passing of the Division of Revenue Bill by the National Assembly and referral to the National Council of Provinces (NCOP), the Bill must be referred to the committee on appropriations of the National Council of Provinces no later than 35 days after the adoption of the fiscal framework by Parliament.² This would also have inevitable impacts on the related public hearings and public engagement processes.

² Section 9 of the amended Money Bills Amendment Procedures and Related Procedures Amendment Act of 2018

The current recess period includes **constituency** work for elected representatives, but leaves the question of how constituency work will be carried out in the following weeks, during the lock down. It raises further questions regarding what the legislatures propose to do in the event that the period of the disaster management extends beyond mid-April.

- 5. We propose that elected representatives, through their constituency work, are in a position to act as channels for communication from the public to the executive.**

Can the legislatures function remotely?

The nature of the COVID-19 disaster requires limitation on contact between people. We do not believe that physical presence should be a requirement for the legislatures to perform some of their functions. The current extraordinary circumstances present an opportunity for legislatures to utilise technology to do so. While by no means exhaustive - we hope the recommendations below will meaningfully contribute to a more comprehensive exploration by the legislatures.

Recommendations

- 6. Allow committees of the legislatures to meet using electronic media technologies – noting that many platforms (Skype, Zoom, Google Hangouts etc) allow for video connections which can also be recorded and made public. The recording and publishing of any online meetings must be mandatory. If necessary, the Rules of the legislatures may need to be temporarily amended to allow for such remote committee meetings. When time allows, these temporary measures should be more thoroughly debated as potential longer-term solutions to improving the functionality of committees.***
- 7. Members of the Executive can ‘appear’ before committees (and the public) via these remote conferencing platforms.***
- 8. Increase electronic mechanisms for the public to communicate with committees, including utilising remote conferencing platforms Also the creation and monitoring by designated committee staff of Twitter handles per committee can increase communications between the public and committees. If using tools such as Twitter, committees should consider protocols for responding to the public in a reasonable, but regular manner.***
- 9. Linked to our recommendations 6,7, and 8 above, we urge elected representatives to provide leadership and direction to increase the public’s access to data to facilitate the public’s engagement through these electronic forms. For a start, the public should be able to access Parliament’s website and Youtube channels free of charge.***
- 10. Produce and disseminate key information pertaining to the legislature and Covid-19 via more widely accessible, ‘low-tech’ social media such as Whatsapp.***
- 11. Utilise remote and electronic measures for voting where this is essential during the period of the Disaster, again including a temporary change to the rules if this is required.***

Most importantly, any measure that is taken must adhere to the Constitutional requirements that legislatures conduct their business in an open and transparent manner.

While some of these proposals are made specifically due to the current context and should only be in place during the period of the disaster, some of these measures could address the severe limitations on public access to the business of the legislatures, especially committees, that existed prior to the disaster and will continue to exist subsequently.

Conclusion

We urge our legislatures to do everything possible to respond to and mitigate the impacts of COVID-19 on our country – including strengthening social-cohesion by playing a stronger role in linking the voices of marginalised groups of people to decision-making structures.

This communication is made in the absence of information at this time of what is being done by the legislative sector collectively to put measures in place to contribute to the national efforts and safeguard the critical functions of legislatures at the same time.

12. We thus, finally recommend, that a task team of stakeholders from the National and provincial legislatures, including CSOs, be convened (remotely) to discuss the questions raised in this correspondence.

Sent on behalf of the ‘*Putting the People in People’s Parliament*’ and *Parliament Watch* projects:

1. Dullah Omar Institute
2. Equal Education Law Centre
3. Heinrich Boell Foundation, Cape Town Office
4. Parliamentary Monitoring Group
5. Public Service Accountability Monitor
6. Right 2 Know Campaign
7. Social Change Assistance Trust
8. Social Justice Coalition
9. Witzenberg Rural Development Centre
10. Women on Farms Project
11. Dr Seán Muller (Public and Environmental Economic Research Centre)

Contact

Sam Waterhouse | Dullah Omar Institute | swaterhouse@uwc.ac.za | 084 522 9649 | Skype: samanthawaterhouse

Zukiswa Kota | the Public Service Accountability Monitor | z.kota@ru.ac.za | 064 870 5700 | Skype: Zukiswa.Kota

The Dullah Omar Institute, UWC (DOI); Heinrich Boell Foundation (HBF); the Parliamentary Monitoring Group (PMG); the Public and Environmental Economics Research Centre (PEERC); and the Public Service Accountability Monitor (PSAM) implement the Putting People in People’s Parliament Project (PPIPP), in collaboration with a number of CSOs in the Eastern and Western Cape. The PPIPP is supported by funding from the European Union, Heinrich Boell Foundation, and the Open Society Foundation - South Africa. The views expressed in this open letter are those of the undersigned organisations and don’t necessarily reflect those of the funding organisations.