

OPEN LETTER:
**Effective legislative oversight, transparency and engagement
during the national state of disaster**

10 April 2020

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Dear leaders of South Africa's legislatures

A group of civil society organisations (CSOs) working towards open and accountable legislatures, with a vested interest in promoting participatory democracy, convened a meeting on 7 April 2020 to discuss the role of legislatures during the current state of disaster and lockdown.

These discussions follow an open letter, which we have attached as Annexure A, sent by 11 CSOs on 25 March 2020, and again on 3 April 2020, to the presiding officers of the legislatures; the secretaries of the legislatures and the Chief Whips in the National Parliament. This letter, titled: Oversight and Participatory Democracy During the National State of Disaster, set out 12 specific recommendations aimed at improving, assisting and supporting the work of all legislatures during the state of disaster and resultant period of lockdown.

To date, we have had no substantive responses to our letter save for a few acknowledgements of receipts. We annex for your interest, a table of responses received thus far, which we attach as Annexure B.

We continue our efforts to engage the legislatures with this open letter due to the critical role we believe the legislatures should and could play during this period.

Overview of parliamentary response since lockdown

It is our opinion, despite the ad-hoc measures that have been undertaken by individual elected representatives and some committee chairpersons over the past three weeks that the legislatures have failed to provide structure or guidance to elected representatives or the public since the declaration of the state of disaster and the lockdown. While we appreciate action by the legislatures taken thus far, the overall impression created, is that instead of grappling with the question of how to serve and communicate with the public (as the executive, judiciary and civil society have done) during the first weeks of the disaster, the legislatures stepped back under the cover of the recess period.

Public communications released by Parliament since the state of disaster sent a message of uncritical support for the executive and a 'hands off' approach. It is important to emphasise that Parliament's role has never been to rubber stamp the actions of the executive. Instead, the role of Parliament has always been to act as a necessary means of oversight of the executive's powers and function.

We welcomed the press release from Parliament on 5 April 2020, titled the "Constitutional Obligation of Parliament During the COVID-19 Pandemic", which sought to clarify how Parliament intended to meet its constitutional mandates of oversight, lawmaking, transparency, and public engagement¹. However, we noted with deep concern, several references to the

¹ Press Release: <https://www.parliament.gov.za/press-releases/constitutional-obligations-parliament-during-covid-19-pandemic>

important work of parliament conducting its oversight function of the executive, via committees, being seen as interference in the work of the executive. Parliament confirmed the technical capabilities for virtual committee meetings but did not provide any indication of what these were.

Effective parliamentary oversight during lockdown

All three branches of the state, namely, the executive, the judiciary, and the legislatures, must continue to function in tandem with each other, maintaining adequate democratic checks and balances on exercises of power. The principle of separation of powers requires that Parliament and provincial legislatures not render themselves mere spectators to executive power during the state of disaster, but that it continues to ensure that the discretions and prerogatives afforded in terms of the Disaster Management Act² and all emanating regulations and directives are not abused, nor exceed constitutional parameters.

We believe that during this critical time committees must continue to keep a close eye on the manner in which executive action is being implemented. This should not require extraordinarily long or protracted meetings with the various Ministers. Moreover, we do not accept the suggestion that attending a committee briefing is obstructive to the management of “measures to combat the spread of Covid-19 and preserving life”. Parliament must not diminish the role it plays in helping the executive to implement its mandate for that very purpose.

The press release from Parliament dated 5 April further justifies this lack of performance by stating that the period of lockdown is a “temporary measure”, and that the “priority is to save lives, livelihoods and ensure effective recovery from the crisis”. Indeed, these are priorities, however, Parliament must continue in its oversight role due to the fact that while the lockdown may be “temporary” the potential consequences may be extensive. The period of lockdown is irrelevant to whether or not Parliament should be exercising its mandate to conduct oversight and facilitate public engagement. Furthermore, the President may exercise his prerogative to extend the lockdown.

We appreciate that the Disaster Management Act empowers the executive to pass emergency regulations while the state of disaster persists. However, this does not prevent the legislatures from conducting their oversight role or engaging with any regulations or directives, which emanate from the executive. We have already seen a responsiveness from the executive to public input, which has resulted in various amendments to regulations coming into effect. The voice of the legislatures, in its oversight capacity, must be especially prominent alongside civil society and ordinary citizens in working to improve and strengthen the regulations and directives during this period.

The work of Parliament, especially by committees, is crucial to the preservation of life as well as the effective recovery from the crisis. To imply that this is solely an executive function is incorrect, and can be perceived as the legislatures abandoning their constitutional mandate. We caution that in so far as Parliament and the legislatures absent themselves from their mandate

² Act 57 of 2002

of conducting oversight over the executive during this crisis, civil society and ordinary citizens assume this burden. Legislatures that cannot be seen to be working during this time irreparably damages public faith and confidence in the ability of the institution to represent the public interest.

The legislatures work during this time must be structured and systematic.

Legislatures have a responsibility to notify the public of their pending and planned work.

In our initial open letter, which we have attached as Annexure A, CSOs called on the legislatures to create an ad hoc committee to ensure continued oversight over the executive relating to Covid-19 responses. We note that the Deputy Speaker³ denied a similar request by the opposition's parliamentary leader stating that committees already possess the power to establish ad hoc committees, and that they are utilising information and communication technologies to engage in their oversight and monitoring role. We support all committees continuing to function in respect of their areas of oversight, however we believe that a Covid-19 specific structure would be important to facilitate coordinated oversight over the interventions of the executive generally and specifically over the Presidential National Command Centre.

The lack of public access to the record of committee work done during this time raises several questions. Several official communications issued on behalf of certain portfolio committees have been circulating during the lockdown period. If committees are releasing official statements, this implies that committee members are communicating with each other regarding committee business. However, many are issued on behalf of chairpersons and it thus raises the question of whether some chairpersons may be representing committees without the committees having met.

Transparency and openness

Parliament has a constitutional duty to the citizens of South Africa to conduct its business in an open and transparent manner, in accordance with the principles of an open democracy. Questions of transparency must be given priority during the lockdown and social distancing period. Transparency is a goal in and of itself, and is also the basis on which public engagement can take place.

The constitutional requirements on our legislatures for openness and transparency are critical to our democracy. Despite measures taken by Parliament since 1994 to give meaning to that obligation, we have witnessed with great concern over the past decade, that instead of continuing to improve on this and increase public access to the legislature, actions have been taken that undermine some of the gains made. Of concern is that over the past three and a half weeks (based on press releases from committee chairpersons), we have seen these requirements being completely bypassed and it appears that Parliament has not taken this

³ Press Release: <https://www.parliament.gov.za/press-releases/deputy-speakers-response-da-parliamentary-leader>

critical obligation into account while undertaking its work. This Covid-19 national disaster, with all of the terrible consequences on our society, has the potential to increase the systems for transparency and access to the public of both the national and provincial legislatures going forward.

Thus, engagements of committees or committee members on all mandates of the legislatures, including oversight and constituency work, must be made public. Electronic technologies to facilitate this are well established and not out of reach of the legislatures. Our open letter dated 25 March 2020 sets out specific recommendations for committees to effectively utilise information and communication channels in order to ensure that they are acting in an open and transparent manner when conducting their oversight work.

The proceedings or content of all committee meetings and interactions between elected representatives and the executive must be made available to the public.

Records or minutes of committee meetings or discussions must be publically available in accordance with principles of openness and transparency.

Constituency work

Various statements released by legislatures inform us that, at present, elected representatives are prioritising their constituency work. Assurances that MPs and MPLs are doing constituency work, without addressing the well-documented systemic problems and failures of constituency work, are, in our opinion, mere lip service. A piecemeal approach to constituency work, without also addressing the factors that have caused it to flounder and be mostly ineffective for the past two decades is not acceptable. Constituency work during this time should be structured and systematic. We are aware that not all political parties have released their full updated constituency lists to the legislatures and it is therefore not publically available. This makes it impossible for members of the public to identify and contact their relevant MP or MPL during this constituency period.

The public is entitled to a full accounting of all oversight activity undertaken in the course of fulfilling constituency mandates. Parliament must make all information relating to what elected representatives have been doing in their respective constituencies available on its official communication channels.

MPs and MPLs, in the execution of their constituency work, are well positioned to identify issues on the ground directly from the public and to ensure that these are speedily relayed for intervention. Elected representatives could be playing a vital role during the state of disaster by understanding the situation of various communities they are meant to serve. Being in a position to understand and monitor the situation at a more granular level will be an important element in developing appropriate and context specific responses.

We request that all political parties release their constituency lists, and that the contact details of MPs, MPLs and constituency offices be made easily accessible to the public.

Legislatures must put mechanisms in place to ensure that issues raised by the public through their constituency MPs or MPLs are dealt with through legislative committee structures.

Legislatures must provide official information and reports of constituency work being undertaken by elected representatives during the scheduled constituency programme.

Public engagement

The Constitution makes provisions for public participation in the National Assembly (NA), the National Council of Provinces (NCOP) and the provincial legislatures in Sections 59, 72 and 118 respectively. It provides for facilitation of public involvement in the legislative and other processes of the legislatures and their committees. The respective Houses or committees must conduct their business in an open manner.

Noting that the national parliament has multiple platforms for publishing, live-streaming and broadcasting the work of committees, the NA and the NCOP, and that the provincial legislatures can or do have the same access to platforms for the purposes of public communication;

Measures to increase constituency work as discussed above, could be extremely valuable in this regard. There is no question that the swiftness with which some decisions need to be taken will limit the scope and influence of public engagement, particularly on oversight or any law-making during this period. Nonetheless, this question also requires urgent consideration.

Parliament can utilise virtual digital platforms including YouTube, Facebook and WhatsApp to broadcast virtual committee meetings and house sittings. Parliament's website can be used to publish further evidence of meetings held, oversight activities conducted and decisions made.

Mechanisms for the public to communicate with committees using platforms such as WhatsApp are an obvious and relatively accessible means of ensuring public engagement, however this question certainly requires further interrogation – in this regard, we restate our willingness to assist, support and continue further engagement.

Legislatures must consider by what means they will invite public participation in their work during this time – we especially encourage the use of community media forums for provincial legislatures.

Recommendations

- 1) The legislatures must consider and make available public information on what measures will be taken to ensure that all constitutional obligations of the legislatures are fulfilled during the period of the national disaster.
- 2) The legislatures' work during this time must be structured and systematic.
- 3) Legislative committees must immediately resume their oversight functions over the executive through committee meetings. The committee meetings must be recorded or live streamed to allow members of the public to participate.
- 4) All business of the legislatures must be conducted with due regard for the constitutional imperative of openness and transparency.
- 5) Legislatures must meet their responsibility to notify the public of their pending and planned work.
- 6) Information channels and technological solutions must be effectively employed to allow for oversight work to continue, and to directly communicate with, and facilitate interactions with the public.
- 7) We request that all political parties release their constituency lists, and that the contact details of MPs, MPLs and constituency offices be made easily accessible to the public.
- 8) Legislatures must put mechanisms in place to ensure that issues raised by the public through their constituency MPs or MPLs are dealt with through legislative committee structures.
- 9) Legislatures must provide official information and reports of constituency work being undertaken by elected representatives during the scheduled constituency programme.
- 10) Legislatures must consider by what means they will invite public participation in their work during this time – we especially encourage the use of community media forums for provincial legislatures.

We emphasise that the measures listed above must be prioritised immediately. We invite all legislative structures to continue this engagement with us on the recommendations proposed in both of our letters. We recognise that many of these issues require new ways of operating, and that some of them may be difficult to achieve. We are here to support and assist this critical task.

Sent on behalf of the group of civil society organisations, listed below, working towards open and accountable legislatures, with a vested interest in promoting participatory democracy:

- 1) Adv. Gary Pienaar
- 2) Corruption Watch
- 3) Delegate Children and Youth Movement – Site C Khayelitsha
- 4) Dullah Omar Institute, UWC
- 5) Equal Education
- 6) Heinrich Boell Foundation, Cape Town Office

- 7) Helen Suzman Foundation
- 8) Imali Yethu
- 9) Lawyers for Human Rights
- 10) Lorna Mlofana Parents Movement – Site C Khayelitsha
- 11) My Vote Counts
- 12) Open Secrets
- 13) Parliamentary Monitoring Group
- 14) Right2Know
- 15) Social Change Assistance Trust
- 16) South African National Editors Forum
- 17) The Public Service Accountability Monitor
- 18) Women’s Legal Centre

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Annex A: [Open Letter: Oversight and Participatory Democracy During the National State of Disaster sent on 25 March 2020](#)

Link: <https://dullahomarinstitute.org.za/women-and-democracy/putting-people-in-the-peoples-parliament/resources/advocacy-documents/our-legislatures-during-the-national-disaster-final.pdf>

Annex B: Responses received to open letter sent on 25 March and resent on 3 April

WCPP Speaker Masizole Mnqasela	Acknowledged receipt
FSPL Speakers Office	Correspondence referred to the Manager in the Office of the Speaker
KZNPL Secretary Narusha Naidoo	Acknowledged receipt. KwaZulu-Natal Legislature are engaging and will revert in due course.
GPL Secretary Peter Skosana	Acknowledged receipt. A response will be provided upon the consideration of the Sector.
WCPP Chair of chairs: Beverley Schäfer	Acknowledged receipt. Will need to be discussing these measures going forward.
National Parliament Chief Whip: IFP Narend Singh	Acknowledged receipt and awaiting response from the Speaker. Chief Whips will discuss the matters raised further.