



# PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

## RESEARCH UNIT

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 8273 Fax: 27 (21) 403 8118  
www.parliament.gov.za

7 July 2014

## SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS: ORIENTATION PAPER

### 1. Introduction

The aim of this paper is to familiarise Members of the Fifth Parliament with the content, work and key concepts pertaining to the Select Committee on Petitions and Executive Undertakings (Committee).

At the outset, it is important to note that during the Fourth Parliament, the Committee was known as the Select Committee on Petitions Private Members' Legislative Proposals and as recent as June 2014, the mandate of the Committee was altered to include the monitoring of executive undertakings. And because the mandate of the Committee in relation to the monitoring of executive undertakings has yet to be exhaustively defined by Parliament's Rules Committee, this paper will limit itself to discussing the mandate of the Committee *only* in relation to processing of petitions.

To this end, the paper is intended to serve as a point of reference for the work done by the Committee in the Fourth Parliament in this regard and highlight the challenges faced by the Committee during the course of the same Parliament. Lastly, the paper aims to assist and enable the Committee to carry out its core role of processing petitions in a more effective manner during the Fifth Parliament. The paper will achieve the above aims or objectives by:

- Explaining the purpose of petitions;
- Outlining the role of the Committee;
- Identifying the legislation and rules guiding the role of the Committee;
- Describing how petitions are submitted to Parliament;
- Elucidating on how petitions are currently considered and processed by the Committee;
- Discussing how many petitions have come before the Committee and how many of these petitions have been considered by the Committee;
- Setting out the challenges of the Committee;
- Detailing the key achievements of the Committee;
- Putting forward recommendations for the Committee; and
- Providing and explaining the key acronyms used in the Committee's area of focus.

### 2. The Purpose of Petitions



The notion of public participation in all spheres of Government (namely the national, provincial and local spheres) is embedded in our Constitution<sup>1</sup> so much so that the Constitution unequivocally stipulates that ours is a democracy that is build and founded upon values which are aimed at ensuring the accountability, responsiveness and openness of Government.<sup>2</sup> And public participation is one way of ensuring that Government actively accounts to the people for its actions; is responsive to the needs of the people; and is open and accessible to the people.

Parliament gives effect to the public participation requirement of our democracy in a number of ways including through receiving petitions from members of the public thus rendering petitions a critical and integral embodiment of effective public participation.<sup>3</sup> In other words, our democracy recognises that for effective public participation to really take place requests, pleas and grievances by members of the public have to be considered and resolved. But what exactly are petitions and specific purposes do they serve?

Petitions have a fascinating history that extends far beyond that of written constitutions. In fact petitions date back to ancient Roman times when citizens were entitled to bring their pleas, requests and complaints to the attention of the Roman Emperor by submitting them in writing to his representatives and the Emperor would respond to these pleas, request and complaints in writing.<sup>4</sup> Despite dating back so many years, petitions today serve more or less the same purpose because they still continue to be a formal request to an authority and such a request can take the form of a demand for a favour or redress of a particular injustice. What is more the purpose of petitions today can be summarised as follows:

- Petitions foster public participation in that they allow members of the public to directly communicate with elected public representatives and further allow them to make requests and voice their grievances in relation to Government policies, programmes or structures.
- Petitions reflect the perceptions and views of those affected by Government policies, programmes and structures.
- Petitions assist to identify issues that need special attention and issues that may have not been included or adequately addressed in Government policies, programmes and structures.
- Petitions can be used to address service delivery issues and thereby assist elected public representatives to take into account the views of members of the public in making and taking decisions.
- Petitions serve as a barometer for assessing and evaluating policy implementation and whether Government is on track.

<sup>1</sup> The Constitution of the Republic of South Africa (Act 108 of 1996).

<sup>2</sup> Section 41(1)(c) of the Constitution.

<sup>3</sup> City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience. Available from [www.gpl.gov.za](http://www.gpl.gov.za) . [Accessed 1 November 2012].

<sup>4</sup> Palmieri, SA (2007). Petition Effectiveness: Improving Citizens direct access to Parliament, at 1. Paper presented to the ASPG Conference – Parliament's Accountability to the People.



Within the Parliamentary framework, petitions serve similar purposes. Petitions ensure members of the public directly engage with Members of Parliament (MPs) and have their voices heard by those they have elected into public office. However, more importantly the submission of petitions by members of the public to Parliament assists or feeds into Parliament's broad oversight by making MPs aware of the issues of concern to members of the public. Petitions also afford members of the public more involvement in oversight of the decision making process by Government authorities. Finally, petitions enable MPs to enhance their awareness and knowledge around matters affecting members of the public.

### **✘ 3. What is the role of the Committee?**

Section 69(d) of the Constitution provides that the National Council of Provinces (NCOP) may receive petitions, representations or submissions. Rule 103 of the Rules of the NCOP entrenches this constitutional provision in providing that the one of the general powers of the various committees of the NCOP includes receiving petitions, representations or submissions. The receipt of petitions by the NCOP in this respect is enhanced by the establishment of the Committee. Rules 147 to 150 of the NCOP establish the Committee and also provide that one of the core mandates of the Committee is to consider all petitions referred to the NCOP. As such a major part of the Committee's role and business and one that currently occupies a good part of its meetings is to consider petitions. This role is strengthened by the following extensive powers and responsibilities:

- To refer the subject matter of a petition referred to it to the Executive or a particular department or another administrative agency for further attention;
- To recommend to the NCOP any course of action it deems fit and proper;
- To keep the petitioner informed of the decision or other course of action with regard to the petition and the reasons thereof.<sup>5</sup>

In sum, the Committee enables Parliament to constructively deal with petitions and enhance Parliament's role in the petitioning process.<sup>6</sup> Put in another way, the role of the Committee is to ensure that appropriate action is taken in respect of each petition accepted by Parliament and to take responsibility for ensuring the resolution of the petition. However in contrast to other Parliamentary committees, there are no specific or particular departments or entities falling within the Committee's portfolio. The Committee deals with Government Departments or entities only to the extent that it has referred the subject matter of a petition to a particular department or entity. Moreover, because the petitions referred to Committee cover issues ranging from service delivery to the reopening of inquests, the Committee is likely to deal with a spectrum of Departments or entities in the course of processing petitions.

### **4. Which legislation and rules guide the role of the Committee?**

<sup>5</sup> Rule 235 of the NCOP Rules (As approved by the NCOP), Issued March 1999, 9<sup>th</sup> Edition March 2008.

<sup>6</sup> Paimieri, SA (2007). Petition Effectiveness: Improving Citizens direct access to Parliament, at 9. Paper presented to the ASPG Conference – Parliament's Accountability to the People.



The right to petition has been described as one of the most ancient and fundamental rights of citizens.<sup>7</sup> And it is for this reason that our Constitution saw the need to include this right in our Bill of Rights. Section 17 of the Constitution<sup>8</sup> provides that members of the public have an inherent and constitutional right to prepare and present petitions to Parliament. In this sense, the Constitution recognises petitioning as one of the principal means through which members of the public can influence the manner in which they are governed and further influence policy development by raising issues of public concern with elected MPs.<sup>9</sup>

The importance of the right to petition in our democracy is further evidenced by section 69(d) of the Constitution which states that the NCOP or any of its committees may receive petitions, representations or submissions from any interested persons or institutions.

Petitioning in South Africa (particularly petitioning Parliament) is also governed by the Rules of Parliament. Rule 5(1)(b) of the Rules of the NCOP makes this constitutional right a reality in providing that members of the public may participate in the proceedings of the NCOP by submitting petitions to the NCOP on any matter within the NCOP's competence. Even though the said Rule allows members of the public to exercise this right by directly submitting a petition to the NCOP.

## **5. How are petitions submitted to Parliament?**

Petitions, within the Parliamentary framework, are classified into two categories, namely general petitions and special petitions. In terms of the Rules of Parliament general petitions are dealt with by the Committee and special petitions are to be dealt with by the Portfolio Committee on Private Members' Legislative Proposals and Special Petitions (PC Private Members' Legislative Proposals and Special Petitions).

A public petition can emanate from an individual and can even emanate from a group of individuals or organisations who share similar views on a certain complaint or request and seek general relief from government i.e. that is relief authorised by the law. In terms of Rule 232 of the NCOP Rules, general petitions are lodged with the Chairperson of the NCOP and once the petition is approved by the Chairperson of the NCOP, it is then tabled by the office of the Chairperson of the NCOP with the NCOP. After a petition has been tabled in the NCOP, it is then referred to the Committee for processing resolution.

An example of a special petition would be one in which an individual makes a specific request or asks for personal relief from the State, which is not authorised by law, such as access to a pension. Before the decision of *Ambrosini v Sisulu [2012] ZACC 27 (Ambrosini)*, special petitions were referred to the PC on Private Members' Bill and Petitions. Accordingly, special petitions were lodged in the office of the Secretary of the National Assembly (NA) and the

<sup>7</sup> Palmieri, SA (2007). Petition Effectiveness: Improving Citizens direct access to Parliament, at 1. Paper presented to the ASPG Conference – Parliament's Accountability to the People.

<sup>8</sup> Constitution of the Republic of South Africa (Act 108 of 1996).

<sup>9</sup> The Scottish Parliament. How to Submit a Public Petition. Available from [www.scottish.parliament.uk](http://www.scottish.parliament.uk) . [Accessed 12 February 2014].



Secretary of the NA referred the petition to the PC on Private Members' Legislative Proposals and Special Petitions. In *Ambrosini*, the Rule of Parliament, namely the National Assembly Rules, governing the business of the Private Members' Legislative Proposals and Special Petitions came under judicial scrutiny and this resulted in the suspension of the Private Members' Legislative Proposals and Special Petitions. In light of *Ambrosini* special petitions may well now fall within the competency of the Committee. However, at present only general petitions fall within the Committee's portfolio.

The distinction between the two types of petitions lies in the subject matter of each type of petition.

Rules 229 and 236 of the Rules of the NCOP set out the requirements of petitions:

- Must be in a form prescribed by the Chairperson of the NCOP<sup>10</sup>;
- Must be in one of the official languages<sup>11</sup>;
- Must signed by the petitioner (unless the Chairperson of the NCOP decides otherwise) or in the case of a petitioner who is unable to write, marked in the presence of two witnesses who must sign the petition in their capacity as witnesses<sup>12</sup>;
- Must be deposited with the Secretary of the NCOP for at least one day and the Secretary must in turn submit the petition to the Chairperson of the NCOP for approval<sup>13</sup>;
- Must be tabled by the Chairperson of the NCOP after approval<sup>14</sup>; and
- Must be referred to the Committee after being tabled by the Chairperson in the House<sup>15</sup>.

The Chairperson of the NCOP prescribes the following additional requirements around the submission of petitions to Parliament:

- State name and contact details of petitioner;
- Indicate the intended recipient
- State the nature of request being made and motivation for the petition
- Indicate the nature of the relief sought; and
- Not contain improper or disrespectful language.

## 6. How were petitions processed by the Committee?

The Committee was (and still is) supported by a Committee Secretary, Committee Assistant and a Parliamentary Researcher all of whom assist the Committee to process petitions.

<sup>10</sup> Rule 229 of the Rules of the NCOP.

<sup>11</sup> Rule 230 of the Rules of the NCOP.

<sup>12</sup> Rule 231 of the Rules of the NCOP.

<sup>13</sup> Rule 232 of the Rules of the NCOP.

<sup>14</sup> Rule 233 of the Rules of the NCOP.

<sup>15</sup> Rule 234 of the Rules of the NCOP.



Broadly speaking, once a petition is received by the Office of the Chairperson of the NCOP and is determined to qualify as a petition in terms of the Rules of the NCOP, the petition and any supporting documents are forwarded to the Committee Chairperson via the Committee Secretary.

The Committee Secretary then hands over copies of the petition and any supporting documents to the Researcher. The Researcher goes on to establish and condense the details surrounding the petition namely, the facts as presented by the petitioner; the relief sought by the petitioner; and reasons for the relief sought.

Subsequent to this, the Committee meets and considers the petition on the basis of the information provided by the Researcher and the Committee Secretary and then formulates a course of action for the processing of the petition.

Depending on the course of action the Committee decides upon in relation to dealing with a petition, the Committee also has the power to visit petitioners in their respective areas or in any other convenient area taking into consideration a number of factors including the subject matter of petition and where the petitioner is able to meet the Committee.

The Committee also has the power to refer the petition to a relevant Government Department or entity or even visit the area in which the petition emanates in order to get a first-hand account of the facts or details surrounding the petition.

After meeting the petitioners or visiting a specific area or receiving a report from a relevant Government Department, the Committee meets again to deliberate on its findings and decided on the best possible course of action in resolving the petition.

**7. How many petitions came before the Committee? How many of these petitions were considered by the Committee?**

From 2009 to date, the Committee has had a significant number of petitions referred to it and the issues that the petitions canvass range from service delivery issues to issues involving public administration irregularities.

Attached to this paper is an annexe which reflects the number of petitions that have been referred to the Committee. In this respect, the annexe indicates that as of 11 November 2013, 60 petitions have been referred to the Committee. By the end of the Fourth Parliament the Committee had only considered 24 of these petitions (that is approximately 40% of the petitions referred to it). It is also important to highlight that during the Fourth Parliament the Committee managed to finalise only 1 petition (namely the Mofokeng and Mokoena petition – discussed below) out of the 60 petitions referred to it.



Also of particular significance, a third of the petitions referred to the Committee in the Fourth Parliament pertained to service delivery related grievances or complaints and the majority of these service delivery related petitions emanate from the Eastern Cape Province.

#### **8. What challenges has the Committee faced?**

During the Fourth Parliament, the Committee faced a number of challenges in carrying out its functions.

One of the major challenges faced by the Committee arose from the fact that the Committee shared its committee membership with two other committees i.e. the Select Committee on Co-operative Governance and Traditional Affairs and the Select Committee on Security and Constitutional Affairs and this effectively meant that when the stated committees were holding their committee meetings, the Committee was unable to hold its meeting. The three committees explored the possibility of holding concurrent meetings however these meetings failed to materialise for various reasons including that it is difficult to accommodate the joint meetings in the broader Parliamentary programme.

Another challenge faced by the Committee was that 4 of its Committee members were also Chairpersons of other committees and this factor contributed considerably to the inability of the Committee to frequently hold meetings.

The Committee also faced a challenge in that when it did manage to schedule a meeting, the number of Members present at those meetings could not constitute a quorum. This hampered the Committee from getting any work done and taking decisive action in relation to the petitions referred to it.

#### **9. What are the key achievements of the Committee?**

A notable achievement of the Committee during the Fourth Parliament was its resolution or closing of the Mofokeng and Mokoena petition. The stated petition concerned the unlawful incarceration of Mofokeng and Mokoena by the then apartheid authorities. Interestingly, even though the Office of the Chairperson of the NCOP had determined that the petition did not fall within the scope of the Committee, the Committee went on to consider and process the petition and in so doing the Committee managed to secure the release of Mofokeng and Mokoena. Although the petition has been finalised, a statement from the Committee in relation to the petition has yet to be made in the House. The processing of the petition by the Committee in this regard reinforced the role of the Committee as final arbiter in the consideration and processing of petitions submitted to Parliament.

Another achievement of the Committee is the study tours it undertook in an endeavour to improve Parliament's petitions process and to share best practice and experiences around the petitioning with other legislatures in Africa and outside of the continent. In this respect that Committee undertook study tours to the United Kingdom, Uganda and Germany.



## 10. Recommendations for the Committee

In light of the challenges encountered by the Committee in the Fourth Parliament, it is suggested that the following recommendations be looked into with a view to better enabling the Committee to effectually carry out its mandate:

- The Committee extend its mandate to foster public participation and encourage citizens to realise and exercise their constitutional right to petition. Tied to this recommendation, is the recommendation that the Committee have as one of its objectives the popularisation of petitions as a tool for addressing grievances of members of the public and as a viable alternative to disruptive and sometimes violent protests particularly those related to service delivery.
- Because petitions are an embodiment of effective public participation the Committee has to promote the factoring in of petitions in Government policies, programmes and structures in all spheres of Government.
- The Committee formulates binding guidelines regulating its functions and the processing of petitions in an effectual and efficient manner. These guidelines should contain amongst others important aspects on the processing of petitions by the Committee such as timeframes and feedback mechanisms.
- The Committee undertake frequent petitions oversight visits aimed at verifying the issues raised in petitions.
- The Committee sits frequently to review the progress of existing petitions and consider new petitions that have been referred to it.
- The Committee membership should include dedicated Committee Members who will ensure that the Committee sits irrespective of whether the Chairperson of the Committee is present at a meeting or there is a quorum.
- The Committee focuses on working collaboratively with the various Government departments as well as with petitions offices of legislatures in an effort to ensure the speedy resolution of petitions. For instance, in an effort to ensure that departments respond speedily and effectually to petitions, the Committee could require each department to appoint an official strictly for dealing with petitions referred to them. Also as an example, the Committee could invite departments on its meetings with petitioners and other affected stakeholders.
- Petitioning has to be actively promoted by Parliament through civic education programmes and by encouraging members of the public to use petitions. This is because violent and disruptive violent protests can easily be replaced by the submission of petitions by members of the public.<sup>16</sup> The Committee should, for example, hold petitions clinics and public education exercises. In this way the Committee will deliberately set out to engage with members of the public and actively encourage them to use the Committee as a point of contact with Parliament.

<sup>16</sup> City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience. Available from [www.gpl.gov.za](http://www.gpl.gov.za) . [Accessed 1 November 2012].





- The Committee works towards building and strengthening its relations with Government Departments, particularly with heads of Departments, in order to ensure that petitions which are purely administrative are expeditiously dealt with.
- The Committee improve its feedback mechanisms especially the giving of feedback to petitioners.
- The Committee provide training to its members and administrative support staff. This training is aimed at ensuring, amongst other things, that the Committee Members and the administrative support staff understand the work of the Committee and keep abreast of developments within the petitions sector. The training may also evolve into or incorporate quarterly strategy planning sessions – sessions during which Committee Members and support staff review the work the Committee has done and plan for the work ahead.
- The Committee explores the possibility of advocating for a Petitions Office which would provide the Committee with the necessary administrative support in processing petitions referred to the Committee.

To conclude, mandate of any petitions centred committee should ideally be to foster participatory governance and to encourage members of the public to realise their right to petition. That is to say, one of the objectives of such a committee should be to popularise the use and submission of petitions by members of the public instead of resorting to disruptive and at times violent protests to express their dissatisfaction with the work of various governance structures.<sup>17</sup> Therefore all petitions submitted to the committee should be referred to the relevant governance structures for resolution in an effort to ensure political oversight and accountability by these structures.<sup>18</sup> A petitions committee should also be required to manage its petitions process in a manner that contributes to the stability of the country's democracy and the orderly resolution of the concerns or grievances raised by members of the public in the petitions referred to the committee.<sup>19</sup>

## 11. Acronyms Used by the Committee

What follows below is an explanation of some of the acronyms frequently used by the Committee in the course of its functions:

- **Petition:** Means a complaint or request or representation or submission addressed to the Committee
- **Petitioner:** Means the person who submits a petition in terms of the Rules of Parliament.

<sup>17</sup> City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience, page 9. Available from [www.gpl.gov.za](http://www.gpl.gov.za) . [Accessed 1 November 2012].

<sup>18</sup> City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience, page 9. Available from [www.gpl.gov.za](http://www.gpl.gov.za) . [Accessed 1 November 2012].

<sup>19</sup> City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience, page 7. Available from [www.gpl.gov.za](http://www.gpl.gov.za) . [Accessed 1 November 2012].



- **Consideration of a petition:** Means the deliberation by the Committee of the petition, namely of the facts surrounding the petition; the type of relief or redress sought in the petition; and the reasons why the relief or redress is sought.
- **Processing of a petition:** Means the actioning of a petition by the Committee or a Department or entity that the Committee has referred the petition to.
- **Relief sought in a petition:** Means the recourse or redress that the petitioner would like the Committee to assist it in getting. In other words, how the petitioner wishes Parliament to assist it with regards to the plea, request or grievance raised in the petition.

## 12. References

City of Johannesburg. Public Participation at Local Government Level: The City of Johannesburg Petitions System Experience. Available from [www.gpl.gov.za](http://www.gpl.gov.za) . [Accessed 1 November 2012].

Rules of the National Council of Provinces (As Approved by the National Council of Provinces), Issued: March 1999, 9<sup>th</sup> Edition: March 2008.

The Scottish Parliament. How to Submit a Public Petition. Available from [www.scottish.parliament.uk](http://www.scottish.parliament.uk) . [Accessed 12 February 2014].

Palmieri, SA (2007). Petition Effectiveness: Improving Citizens direct access to Parliament, at 1. Paper presented to the ASPG Conference – Parliament's Accountability to the People.

Constitution of the Republic of South Africa (Act 108 of 1996).