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Parliamentary Submission

To: The Parliament of the Republic of South Africa

Re: Invitation for public comment on a review of the National Assembly Rules

Att: Adv. T.M Masutha
Chairperson: Subcommittee on Review of the Assembly Rules

C/O Mr. Perran Hahndiek
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1. Background

ETHICORE is a preeminent and highly respected pan-African political consultancy, specializing in all aspects of parliamentary, governmental and political advocacy, lobbying, intelligence and communications. We are South Africa's premier political consultancy, specializing in the following core, niche practice areas:

- Lobbying, Government Relations and Political Communications
- Political Research, Risk and Intelligence
- Strengthening parliamentary, legislative sector and governmental practice, including training, capacity building, technical support, project services, organisational development, research and analysis.

Our strategic associations and alliances, includes the Africa Programme of the Canadian Parliamentary Centre – a non-profit, non-partisan organisation that support parliaments around the world, with over four decades of experience in parliamentary strengthening and capacity building, The Parliamentary Centre has developed a wide-ranging expertise in helping legislatures around the world serve their people better, having implemented over 80 projects in 45 countries, with an increasing focus on the South African and Southern African legislative sector.

2. Introduction

2.1 We extend our thanks and appreciation to Parliament for the opportunity submit commentary on the review of the National Assembly Rules to the Subcommittee on Review of the Assembly Rules.

2.2 We commend Parliament on the initiative taken to review the rules of the National Assembly.

2.3 Whilst the Rules of the National Assembly are well established and entrenched, it is important that Parliament is not complacent, especially in such a dynamic political, social and economic environment that Parliament has to be responsive and attendant to.

2.4 As such it is important that Parliament constantly reviews its efficacy and sharpens the tools at its disposal that enable it to continuously enhance its performance in pursuit of its Constitutional mandate and strategic objectives.

3. Purpose

3.1 This submission is focused on three aspects affecting and affected by the rules of the National Assembly, namely:

- a) Regular review of the Rules of the National Assembly
- b) Parliament's mandate to serve as a forum for public consideration of issues
- c) Public access to Parliament
- d) Private members legislative proposals

3.2 Our submission is informed by:

- a) Our practical and lived experience of engaging with and observing proceedings of the National Assembly as a central aspect of our core business and activities, including with parliamentary committees.
- b) A process of thorough research and analysis we have undertaken in the areas covered in this submission.
- c) The Constitutional mandate of Parliament as provided in Chapter 4 of the

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

d) The Report of the Independent Panel Assessment of Parliament (2008)

4. Rational and Context

- 4.1 Parliament and the National Assembly in particular is a pillar of society, as well as being a mirror on society.
- 4.2 The Constitution of the Republic of South Africa (Act 108 of 1996) specifies that the National Assembly is to serve as a “national forum for public consideration of issues”.
- 4.3 This Constitutional requirement is also reflected in Parliament’s vision to serve as an effective people’s Parliament.
- 4.4 It is therefore a cause for great concern that over a period of time we have witnessed and observed the deterioration and degeneration of Parliamentary conduct, especially in heated moments of debate and discussion between political parties on highly contentious, politicised and divisive issues.
- 4.5 This has resulted in a decline of tolerance, mutual respect and common decency in Parliamentary proceedings and the resultant disorderliness and chaos negatively affecting sittings of the National Assembly and its ability to conduct its business in a professional manner that inspires public confidence and positive perceptions.
- 4.6 We have also noticed other related practices and tendencies which any review of the Rules of the National Assembly must effectively address at the present moment, in order to ensure that Parliament remains a public institution and true “People’s Parliament” with integrity and which cannot be abused and misused for narrow political and self-interest.

5. Regular review of the Rules of the National Assembly

- 5.1 We note, recognise and respect that the current review of the Rules of the National Assembly may have been brought about (and rightly so, as the Parliamentary Rules must dynamic and responsive to the various social, economic and political factors impacting on its ability to ensure that Parliament fulfills its Constitutional mandate) by recent developments relating to:
 - 5.1.1 The judgment handed down by the Constitutional Court of the Republic of South Africa on 9 October 2012 in the matter of Oriani-Ambrosini vs Sisulu (Case CCT 16/12 [2012] ZACC 27), pertaining to the Constitutional right of Members of Parliament to introduce legislation in Parliament.
 - 5.1.2 Concerns over decorum, etiquette, mutual respect, tolerance, orderliness and common decency in the deliberation and debates of Parliament.
- 5.2 Between 1999 and 2001, the Rules of the National Assembly have been amended and updated on seven occasions, namely:

Issued	June 1999
2 nd Edition	January 2000
3 rd Edition	October 2002
4 th Edition	January 2004
5 th Edition	January 2007 (including a reprint in April 2008)
6 th Edition	November 2008
7 th Edition	June 2012

- 5.3 In a dynamic political and democratic environment such as that within which the Parliament of the Republic of South Africa prevails, it must be considered with a more system review of the Rules of the National Assembly are initiated at predetermined and planned points during the five-year term of each Parliament.
- 5.4 This is in addition to reactive reviews as a result of certain developments that are unplanned.
- 5.5 Such coordinated reviews would have the added benefit of ensuring that there is a sufficient lead time to realign parliamentary systems, procedures, protocols, capacity and resources in line with review periods, where significant changes are anticipated or being planned for.

6. Parliament's mandate to serve as a forum for public consideration of issues

6.1 Parliamentary plenaries

- 6.1.1 Chapter 4 of the Report of the Independent Panel Assessment of Parliament (2008) emphasises that Parliament should serve as the premier forum for public consideration of issues.
- 6.1.2 It further emphasises that this Constitutional requirement is also reflected in Parliament's vision to serve as an effective people's Parliament that is responsive to the needs of the people.
- 6.1.3 Despite this, it appears that there remains cynicism and disregard for the effectiveness of Parliamentary plenaries as a forum for effective public dialogue and debate.
- 6.1.4 As Parliamentary plenaries are generally televised and increasingly receiving close media coverage and reportage, combined with the pace of information flow as a result of advances modern information and communications technology, public perception and reputation of Parliamentary plenaries is significantly influenced by the conduct of Members of Parliament participating in such plenaries and debates.
- 6.1.5 Unparliamentary conduct by Members of Parliament that demonstrates a poor lack of understanding and respect of Parliamentary rules and procedures; rulings of the Speaker and Presiding Officers; intolerance; disorderliness and common decency does little to encourage positive public perception and confidence in Parliament as a forum for serious reflection, dialogue and debate on matters of national importance and concern.

6.2 Committees

- 6.2.1 As the engine rooms of Parliament, parliamentary committees fulfill a critical role in ensuring Parliament's ability to deliver on its Constitutional mandate and the vision of a 'People's Parliament'.
- 6.2.3 We note and appreciate the significant and continued strides being made in enhancing the quality, efficiency and effectiveness of committees.
- 6.2.4 However some committees function more efficiently and effectively than others, especially at an administrative level. As a result, there is great inconsistency across the efficiency of committees.

- 6.2.5 Whilst this may be the result of personality factors on the part of committee support and secretarial staff, certain committees – some of them key committees in terms of current national priorities that they perform oversight on and legislate over, are characterised by a general unfriendliness to citizen requests and engagement, leaving one with a sense of the committee not being approachable.
- 6.2.6 This also translates into the manner in which these committees openly and proactively share important information, such as committee programming info. For example, certain committee staffers require repeated reminders and requests when seeking information. This often involved multiple telephone calls and written correspondence, often over a period as a result of the procrastination on the part of the staffer.
- 6.2.7 This is a serious indictment of the Batho Pele principles and the notion of a “Peoples Parliament”.
- 6.2.8 Furthermore, Committees can do more to increase the level of expertise at their disposal to enhance the quality and impact of their work and deliberations through drawing on external subject matter experts as trusted, independent and impartial sounding boards and voices of reason, to enrich and inform Committee deliberations. This may prove to be particularly useful in Committees who have legislative and oversight responsibility in highly technical and specialised areas. (This is dealt with and elaborated on upon more comprehensively in our recommendations).

7. Public access

- 7.1 As a forum for public participation and public consultation, the Parliamentary precinct and the National Assembly in particular (including associated committee meeting rooms, offices of Parliamentary staffers and Presiding Officers, as well as government and political party offices) is a public institution increasingly frequented and visited by external stakeholders and members of the public, for the purposes of attending, participating in and monitoring relevant meetings, public hearings and events.
- 7.2 These external stakeholders include public policy, political consulting, government relations, parliamentary liaison and monitoring, advocacy and lobbying consultants such as ETHICORE, as well as other performing similar functions (excluding the media, state owned enterprises and public entities).
- 7.3 These stakeholders are meant to and in most instances do, enter the Parliamentary precinct through the visitors entrance, including undergoing the various security screenings and identification checks.
- 7.4 ETHICORE however has it on good record and is aware of certain instances and external parties who have obtained official parliamentary access cards.
- 7.5 We do not believe that these access cards have been granted in a transparent and equitable manner, as we have it on good record that these parties are linked to and associated with certain political parties which has enabled their access to these cards.
- 7.6 This effectively and unfairly places other parties who do enjoy these political associations and linkages at an unfair disadvantage. Thus resulting in an unequal playing field between external parliamentary stakeholders, effectively undermining the

notion of a “People’s Parliament” by concentrating ‘privileged’ access to certain players at the expense and exclusion of others.

- 7.7 This also undermines and contravenes the Constitutional provisions for public access to and involvement in the National Assembly.
- 7.8 Various external parliamentary stakeholders with an active and frequent Parliamentary presence (sometimes daily with multiple entrances) and whom enjoy sound, positive and reputable parliamentary relations - including ETHICORE, have for a number of years attempted (without much success) to secure in an open and transparent manner such parliamentary access cards for the purposes of convenience and ease of access in the case of multiple daily and weekly entries.
- 7.9 It is unclear on what basis a select few external stakeholders have been granted access cards of this nature and on what basis others have been excluded from similar privileges.
- 7.10 We do believe that the manner in which these access cards have been issued is highly questionable and is not consistent with the provisions of Part 5 (Public Access) of the Rules of the National Assembly (7th Edition, June 2011) and the Section 59 of the Constitution of the Republic of South Africa (Act 108 of 1996) dealing with the provisions for public access and involvement in the National Assembly.
- 7.11 We believe that this is a serious indictment of Parliament’s constitutional mandate and vision and requires urgent attention and treatment in order for it to not place Parliament’s integrity at risk and to reduce the abuse of Parliament by narrow self-interest.

8. Private members legislative proposals

- 8.1 We welcome the ruling of the Constitutional Court of the Republic of South Africa, in the judgements handed down on 9 October 2012 by the Court, in the matter of Mario Oriani-Ambrosini (MP: Inkatha Freedom Party) VS. Maxwell Vuyisile Sisulu (MP: Speaker of the National Assembly), on the right of Members of Parliament to introduce legislation in the National Assembly.
- 8.2 We have long contended that the matter if ruled upon favourably by the Court would have a fundamental impact on the Parliamentary environment.
- 8.3 We have previously looked into how the matter could be dealt with at a Parliamentary level, while the Court considered and deliberated on the matter.
- 8.4 We believe that the ruling has the potential for fundamental implications on the business of Parliament, especially as it relates to public participation, the accountability of Members of Parliament and parliamentary advocacy and lobbying.
- 8.5 We believe that in addition to undertaking the necessary reviews and assessment of compliance with the Court’s ruling by Parliament on Parliament’s resources, capacity, procedures, processes and protocols; Parliament must consider how best to ensure that such compliance assists Parliament’s in further entrenching its legislative mandate and advancing its vision and Constitutional mandate.

9. Recommendations

9.1 Regular review of the Rules of the National Assembly

9.1.1 It is worthwhile to consider reviewing the Rules of the National Assembly on a more systematic and predetermined basis between general elections, including relevant public and stakeholder consultation and comment thereon.

9.1.2 The benefits accrued herefrom will include:

- a) Ensuring that Parliament moves in line with international best practice of Parliaments who review and assess their rules on a systematic and frequent basis.
- b) The ability to adapt the Rules to be responsive to changing environmental circumstances and factors, including the practical and lived experience of key external parliamentary stakeholders and the general public and citizenry.
- c) To ensure that the Rules remain relevant to the realities of the parliamentary environment at any given point in time.

9.1.2 This certainly should not preclude Parliament from reviewing the Rules on an adhoc and unplanned basis to immediate respond to critical factors and changes in the external environment, requiring urgent attention between planned systematic review periods.

9.2 Parliamentary plenaries

9.2.1 All political parties represented in the National Assembly should over and above the solemn oath of office, committ to some form of compact to the nation affirming respect for:

- a) The Rules of the National Assembly.
- b) The Authority of the presiding officers afforded to them by the Rules of Parliament and the Constitution.
- c) Decisions of the presiding officers and their finality.
- d) A level of discipline to challenge decisions of presiding officers which they are not satisfied with through appropriate channels for appeal and objection, thereby reducing sittings of the National Assembly from degenerating into political chaos and confrontation.

9.2.2 It is our observation and contention that while the level of focus varies, the manner in which political parties and Members of Parliament relate to each other in Parliamentary Committees compared to Plenaries differs significantly. In Committees, conduct is far more polite, reconciliatory, respectful, professional, non-confrontational and personal across party lines. In Plenaries, there appears to be a far confrontation and politicised environment, as well as grandstanding at the cost of substantive content.

9.3 Committees

9.3.1 In keeping with the principle of active citizenship called for in Government's National Development Plan, Parliamentary Committees would be well served to be able to call on the participation and input of subject matter experts during its deliberations on complex and specialised topics as part of oversight with government departments and public hearings with external stakeholders, interested and affected parties.

9.3.2 Chapter 12 of the Rules of the National Assembly (7th Edition, June 2011) pertaining to the committee system should be amended to include such a provision so that these subject matter experts can make inputs during Committee deliberations and meetings

where they are not participating as presenters before public hearings, so as to guide and inform the understanding of committee members on complex topics before them, thereby enriching the Committee's deliberations and considerations, as and when determined by the Committee.

- 9.3.2 Under this amendment subject matter experts should be identified and called for through public nomination by Parliament and the Committees concerned, perhaps on an annual basis. Committees should then maintain and publish their database of subject matter experts.
- 9.3.3 Parliament should consider whether it is best to engage subject matter experts on this basis on a voluntary basis or with some form of remuneration or honorarium.
- 9.3.4 Where these subject matter experts are engaged by Committees during Committee meetings and deliberations, they should not enjoy the same parliamentary privileges as Members of Parliament in meetings of the Committee. Instead they should speak in the Committee on topics being deliberated on by the Committee when their input and advice is called for by the Chairperson and by individual committee members, through the Chairperson.
- 9.3.5 Chapter 12 of the Rules of the National Assembly (7th Edition, June 2011) pertaining to the committee system should also explicitly make a provision for external parliamentary stakeholders to submit memorandum and correspondence, suggestions, advice, motivations and evidence to committees on topics of national and public importance either receiving or which should receive the attention of the Committee, outside of public hearings processes and calls for comment on these matters.
- 9.3.6 These considerations and amendments will assist in further strengthening and modernising the performance and capacity of Parliamentary Committees in pursuit of the vision and Constitutional mandate of Parliament.

9.4 Public Access

- 9.4.1 Access to Parliament by external parliamentary stakeholders (both individuals and organisations) accessing the Parliamentary precinct on a regular and frequent basis for the purposes of conducting business and engaging with Parliament and its activities and events, required strengthened regulation.
- 9.4.2 This should entail a thorough review of current processes, protocols, procedures and qualification criteria under which issuing access cards of this nature to external parliamentary stakeholders has taken place.
- 9.4.3 Addressing this matter requires a broader approach to regulating and governing privileged access to external parliamentary stakeholders and may represent the beginning of steps towards governing the relationship between Parliament and external parliamentary advocacy, lobbying, monitoring and liaison organisations and practitioners.
- 9.4.4 This should entail moving in line with international practice through establishing register for parliamentary monitoring, research, advocacy, lobbying and liaison organisations and practitioners.

- 9.4.5 Registration of all organisations and their associated individuals (i.e. staffers), as well as individual practitioners falling into this category should be undertaken on an annual basis to register and verify their credential on this register.
- 9.4.6 On the basis of successful registration, external stakeholders should be able to apply for a special category of access card.
- 9.4.7 Parliament should develop in line with international best practice and taking into account the unique nuances, characteristics and dynamics of the South Africa environment, an appropriate qualifying and assessment criteria for applying for and issuing such a special category of access card.
- 9.4.8 Parliament may want to consider a system for the renewal of access cards issued on this basis annually, so as to ensure alignment with the updating of the register of external parliamentary monitoring, advocacy, lobbying, liaison, research and information organisations and practitioners; as well as to ensure the avoidance of discrepancies of information between the register and cards issued. This should ensure that all cards not renewed are deemed invalid and curtail access based on the use of a non-renewed card. All cards not renewed should be returned to Parliament by the individuals and/or organisations concerned.
- 9.4.9 Other benefits to be derived from this systems includes:
- a) Easy identification.
 - b) Ability to timeously attend parliamentary engagements and meetings at short notice and as a result of unanticipated changes in the parliamentary schedule and programme.
 - c) Easing the load on and congestion the Parliamentary Visitors Entrance.
 - d) Reducing the manipulation of the current paper based access pass system, which is possible for people who and organisations making multiple entries and the security risk that this poses.

9.5 Private Members Legislative Proposals

- 9.5.1 The Committee on Private Members Legislative Proposals and Special Petitions must not be scapped. Instead its mandate and terms of reference in terms of the Rules of the National Assembly must be reviewed, reformed and reformulated. This should in the future include:
- a) Responsibility for maintaining the highest standards of practice for private members legislative proposals and special petitions, including international benchmarking and reviews.
 - b) Providing training and capacity on effective private members legislative proposal drafting.
 - c) Maintaining an accurate record and database of all private members legislative proposal activities, their output and impact.
 - d) Assist members of the public in understanding how to engage their public representatives on private members legislative proposals and special petitions.
- 9.5.2 The Committee on Private Members Legislative Proposals and Special Petitions must continue to play a vital oversight, coordinating, guiding and supportive role to assist Members of Parliament in submitting, motivating and formulating draft private members legislative proposals in the most effective and efficient manner.

- 9.5.3 This must commence with the private member wishing to introduce legislative proposals, notifying the Committee on Private Members Legislative Proposals and Special Petitions in advance of his/her intention to introduce draft private members bills. This must be done in order for the Committee to ensure that:
- a) The Committee is able to support the member to formulate the draft legislative proposal in the required format.
 - b) The Committee can facilitate the necessary arrangements and processes for the draft private members' legislative proposal to the Speaker of Parliament as a memorandum, consistent with the prevailing provisions of Rule 234 (1) of the Rules of the National Assembly (7th Edition, June 2011).
- 9.5.4 Rule 234 (2) of the Rules of the National Assembly (7th Edition, June 2011) should be amended to include an additional provision for the private member in question to formally introduce the proposed private members' legislative proposal in the National Assembly, upon tabling of the members' memorandum in the Assembly by the Speaker of Parliament (as opposed to introduction by the Speaker of Parliament). The formal introduction of the private members' legislative proposal by the member him/herself directly, will further underscore the credibility of the system of private members's legislative proposal and allow the member concerned to introduce the draft proposal in a manner that does justice to the members' belief in the rational, reason and motivation for the draft legislative, as well as his/her passion and interest in the subject matter and familiarity with the facts concerned and connected therewith.
- 9.5.5 Once introduced in the National Assembly, the Assembly should refer the draft legislative proposal to the relevant Portfolio Committee, Standing Committee or Adhoc Committee.
- 9.5.6 The criteria for assessing private members legislative proposals should no longer reside with the Committee on Private Members Legislative Proposal and Special Petitions. Instead it should be the criteria utilised by all Portfolio Committees, Standing Committees and Adhoc Committees to which private members legislatives are assigned and referred to by the National Assembly. Because of their subject and specific nature in relation to the business of the various portfolios to which they relate, the committees to which draft private members legislative proposals are assigned would by their very nature be more equipped and best positioned to assess these proposals against the existing criteria provided for by Rule 235A of the Rules of the National Assembly (7th Edition, June 2011). This is as opposed to the current Committee on Private Members Legislative Proposals and Special Petitions, which has limited and constrained portfolio and sector specific subject matter expertise.
- 9.5.7 The Committee on Private Members Legislative Proposals and Special Petitions must continue to take responsibility for monitoring all private members legislative before Portfolio Committees, Standing Committees or Adhoc Committee and to ensure that they are dealt with in accordance with the amended Rules of the National Assembly governing private members legislative proposals.
- 9.5.8 The Rules of the National Assembly governing private members legislative proposals and the criteria for assessing it should include provisions for draft private members

legislative proposals to be proposals countering current legislation proposed by the Executive before the National Assembly and the reasons as to why the private members' legislative proposal is a more viable alternative to that being proposed by the Executive.

- 9.5.9 The Rules of the National Assembly governing private members legislative proposals and the criteria for assessing it should include provisions for draft private members legislative proposals to be:
- a) Proposals co-sponsored by one or member of a political party or across political parties represented in the National Assembly.
 - b) Proposal amending existing legislation already enacted by Parliament and assented to by the President, as well as for their repeal.
- 9.5.10 The amended Rules of the National Assembly should entail a provision to assign the responsibility and duty to the Committee on Private Members Legislative Proposals and Special Petitions to develop the format for memorandum and draft private members legislative proposals.
- 9.5.11 The amended Rules of the National Assembly should entail a provision to assign the responsibility and duty to the Committee on Private Members Legislative Proposals and Special Petitions to develop the criteria and format for naming private members legislatures and the manner in which this criteria is to be applied the Committee itself in naming such proposals. This must include provision for both the subject matter and sponsors of the legislation to be utilised together or individually in naming private members legislative proposals.
- 9.5.12 The amended Rules of the National Assembly must adequate provision for the manner in which the assigned Committee and/or Member of Parliament sponsoring private members legislative proposals can solicit the assistance and expertise of subject matter expertise in draft such proposals.

10. Conclusion

- 10.1 We trust that our submissions will receive your due consideration and assist in contributing to a positive and meaningful review of the Rules of the National Assembly.
- 10.2 We welcome the opportunity present these as an oral submission as well and to engage Parliament and the Subcommittee on Review of the Assembly Rules, with regards to it.
- 10.3 We note that a number of the issues raised in this submission are the subject of previous processes of enquiry and reviews conducted and undertaken by Parliament. This includes the Report of the Independent Panel Assessment of Parliament (2008), which was finalised and released on the eve of the 2009 General Elections prior to the current Parliament being ushered in.
- 10.4 We therefore implore the Subcommittee on the Review of the Assembly Rules to revisit these findings and recommendations, so as to determine their validity, veracity and applicability to Parliament in the present-day and in the future and to avoid duplicating previous findings of good standing in this regard.

- 10.5 We wish the Subcommittee well in its deliberations and look forward to the outcome of its processes and work.
- 10.6 We remain at the Subcommittee's disposal to provide any additional information in writing or through leading oral presentation, evidence and/or submission.

References

1. Constitution of the Republic of South Africa (Act 108 of 1996)
2. Rules of the National Assembly (7th Edition, June 2011)
3. Report of the Independent Panel Assessment of Parliament