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ON

Covid 19: The Parliamentary hybrid plenary uptake, and electronic voting challenges.

By

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1. Introduction: Covid, 'New Normal' and Changing Parliamentary Business

- 1.1 Undoubtedly, Covid-19 pandemic has become one of the insidious maladies of our times. The pandemic has not only changed, in novel ways, the world as we know it, but it has also pushed the strictures of science, bureaucracy and global governance beyond limits.
- 1.2 Momentarily, the pandemic has also heralded bewildering complexity that has left national governments, decision-makers, policy makers, legislatures, technical experts and scientist across the globe drowning in the sea of what seem to be vacuous and ersatz- policy and legislative responses.
- 1.3 It is an indubitable truth that the outbreak of the COVID-19 pandemic fundamentally changed life as we know it. However, while the pandemic generally changed life in novel ways, its impact was more visible and clearly pronounced in the “governance of collective lives”- more especially in the area of bureaucracy and/or administration of public affairs.
- 1.4 Like other state institutions, the South African Parliament was not immune from the destructive effect and complexities heralded by the pandemic. For the South African Parliament as one of the state organs; the curfews and curtailing of constitutional duties of the institution did not only disrupt the parliamentary business and program, but also put to test the robustness of the institution’s administrative systems and processes.
- 1.5 On the same vein, like other nodal spheres of bureaucracy and governance, the South African Parliament had no choice but to adapt to new ways of working as seen with the introduction of hybrid plenaries and virtual committee meetings.
- 1.6 Like its counterparts elsewhere in the world, our Parliament had to adapt to the ‘new normal’ under Covid-19 and thus; the working logics of its business processes and systems ought to have remained anchored on the truism that, ‘forging the future means embracing the unknown’.
- 1.7 Both the political and administrative leadership of our institution were resolute that if the Parliamentary ship was to be kept afloat in the sea of covid-19 complexity and uncertainty, it had to be able to ride the waves of change, become more agile, adaptive and resilient.
- 1.8 But while there was a myriad of changes introduced in response to Covid-19, in this communication the focus is squarely put on the South African Parliament’s hybrid plenary uptake and electronic voting challenges in response to parliamentary-business changes heralded by Covid-19.

2. Parliamentary Hybrid Plenary Uptake

- 2.1 As colleagues might be aware, under the current Constitution of South Africa, the South African National Legislature is a bicameral Parliament that comprises two houses, namely; the National Assembly (NA) and the National Council of Provinces (NCOP).
- 2.2 Because of Covid-19, our parliament was forced to make changes to the Rules of the Two Houses of Parliament to make the institution ready for hybrid plenary uptake and transition into virtual committee meetings

3. National Council of Provinces (NCOP)

- 3.1 In the National Council of Provinces (NCOP), changes to the rules were made and can be found in the Announcements, Tablings and Committee Reports (ATC) of the National Council of Provinces (NCOP) dated 20 April 2020
- 3.2 Accordingly, the amended NCOP Rules dealt with two issues, namely; provisions for hybrid parliamentary rules and voting processes.
- 3.3 Pursuant to rule 2(1) of the Rules, the Chairperson of the Council made the Rules which apply to virtual meetings of Committees, the Sitting of the House and voting by Delegates. These Rules are referred to as Rules of Virtual Meetings and Sittings. and for the purposes of these Rules, “virtual meetings or sittings” mean meetings or sittings conducted by any form of technology.
- 3.4 In terms of rule 2(2) these Rules shall remain in force until the Rules Committee decides thereon. What is important to note is that, these rules are supplementary to the Rules of the Council and are not, by any means, replacing them.
- 3.5 In light of the new rules, the Council parliamentary business unfolds as follows:
 - The NCOP Rules apply to; amongst others, virtual meetings of committees; sittings of the House; briefings of provincial legislatures by Permanent Delegates on bills or any matter affecting provinces; the consideration of mandates or any matter affecting provinces; and facilitation of public involvement.
 - All meetings of Committees or Sittings of the House are in accordance of the Programme of the Council (the Programme) and for the purposes of a; (i) Sitting of the House, the Programme is taken as a sufficient notice of such a Sitting; and (ii) for the purpose of a Committee meeting, the chairperson of that Select Committee is responsible for the issuing of all notices of the meeting.

- All documents relating to Committee meetings and Sittings of the House are now distributed by any electronic means to which Members have access.
- In terms of chairing of meetings, the rules states that (a) The meeting shall be chaired by the chairperson of the relevant committee of that provincial legislature and (b) The chairperson shall have the powers of the chairperson of a committee as provided for in the Rules of that provincial legislature.

3.6 On the issue of **Quorum**; The quorum requirements for Committee meetings or Sittings of the House are those as determined by the Constitution and the Rules Council

3.7 On the issue of **Voting**: In a Select Committee meeting or a Sitting of the House Delegates are entitled to cast their votes either electronically or by voice. Moreover, for the purpose of voting,

3.8 In terms of **Minutes and Record keeping**, the rules provide that the provincial legislature must maintain the minutes and records of the proceedings and the minutes shall constitute the records of that provincial legislature.

3.9 In terms of **Powers, Privileges and Immunities of Members** during Hybrid Plenaries and Committee Meetings in the NCOP, the rules provide that Delegates have the same powers, privileges and immunities which they ordinarily enjoy in Committees and House proceedings.

3.10 In terms of **Facilitation of Public Involvement** in the hybrid plenaries and Virtual Committee Meetings in the NCOP, the rules provide that, subject to section 72(1)(a) of the Constitution, a Select Committee must facilitate public involvement on matters before it by electronic means determined by the Select Committee.

4. National Assembly

4.1 Like in the NCOP, National Assembly Rule 6 states that the Speaker may give a ruling or frame a rule in respect of any eventuality for which the rules or orders of the House do not provide, having due regard to the procedures, precedents, practices and conventions developed by the House and on the basis of constitutional values and principles underpinning an open, accountable and democratic society.

4.2 The Speaker accordingly framed a rule to make provision for virtual sittings of the National Assembly and meetings of portfolio and standing committees. The Speaker announced the Rule on virtual meetings in the Announcements, Tablings and Committee Reports document of 15 April 2020.

- 4.3 The National Assembly Rules Committee held a special meeting on 19 May 2020 to deliberate on the Rule framed by the Speaker for virtual sittings. The Rules of the Assembly, specifically existing rules on order during meetings and rules of debate, remained in operation during virtual meetings and were augmented by the Rule on virtual meetings.
- 4.4 In terms of the framed Rule, the role of presiding officers was affirmed, clarity was provided on how a quorum would be recorded and how voting would take place. The National Assembly agreed to the Rule on virtual meetings on 9 June 2020 and The National Assembly held its first hybrid sitting on 27 May 2020.
- 4.5 The Rules of the National Assembly remain in operation and are supplemented by the new rule in order to provide for virtual meetings. A rule framed by the Speaker remains in force until the House, based on a recommendation of the Rules Committee, has decided thereon.
- 4.6 **Application of the new NA rule:** the rule applies to; (a) sittings of the National Assembly in the event a physical sitting is not possible, as determined by the Speaker and; (b) meetings of committees in the event a physical meeting is not possible, as determined by the chairperson.
- 4.7 In terms of **Notice of meetings and venue of meetings**; the new rule provides that (a) the Speaker or chairperson of a committee shall issue a notice and agenda for a virtual meeting, which must include the date and time of the meeting; (b) all documents of the meeting shall be distributed by electronic means to which Members have access; and (c) the venue of a virtual meeting shall be deemed to be Cape Town as the seat of Parliament.
- 4.8 In terms of **Privilege and order** in meetings, the new rule provides that in a virtual meeting; (a) members shall have the same powers, privileges and immunities which they ordinarily enjoy in parliamentary proceedings; and (b) where relevant, current rules on order in public meetings and order in debate shall apply.
- 4.9 In terms of **Chairing the meetings**, the new rule states that, in a virtual meeting the Presiding Officer or Chairperson of a committee shall have all the powers as provided for in the current Rules.
- 4.10 In terms of the **Quorum**, the rule provides that, in a virtual meeting – (a) the quorum requirements shall be those as determined by the Constitution and the Rules; and (b) members who have accessed the meeting via the secure link sent to their email address shall be deemed present for the purposes of establishing a quorum, taking a decision or voting on a matter.
- 4.11 In terms of **Voting**, the new NA rule states that: In a virtual meeting; (a) members shall be entitled to cast their votes either electronically, by voice or by having

their vote recorded by their respective whips; (b) the procedure to be followed is predetermined by the Speaker and directives are announced in the meeting by the Presiding Officer or Chairperson of a committee; (c) only members who are present when a vote is called shall be permitted to vote; (d) the results of a vote are announced and, where possible, the names of members and how they voted are recorded in the Minutes of Proceedings; and (e) members must ensure that their votes are correctly recorded.

4.12 In as far as **voting in hybrid sittings is concerned**, the Assembly Rules provide for both electronic and manual voting systems to be used in the House. In both instances the procedure to be followed is to be determined by the Speaker and directives in this regard announced by the presiding officer. During the majority of voting sessions conducted wholly in the Chamber an electronic voting system is employed.

4.13 In order to establish a **quorum** in a hybrid sitting, the rules provide that the number of members in the Chamber and the number linked to the platform at any one time can be used. The Presiding Officer would, however, be required (with the assistance of procedural staff) to ensure that a quorum is present ahead of a decision being taken.

4.14 On the issue of **Public involvement**, the rule requires that access to proceedings must be facilitated in a manner consistent with participatory and representative democracy and wherever possible a virtual meeting must be livestreamed.

4.15 In terms of Process Guidelines, the rule provides that:

- The Secretary to Parliament together with authorized officials and technical teams are responsible for technical support to facilitate virtual meetings.
- The Secretariat must be given at least 3 days' notice of a meeting.
- Pre-conference testing must take place at least a day before the meeting.
- Technical support must be available during a virtual meeting.
- The Secretariat must maintain the minutes and records of the proceedings.
- The Secretariat must maintain a system that is capable of verifying the votes cast either electronically or manually.
- Political parties must provide a signed copy of the votes cast for or against a question by their members, to the Secretariat within an agreed timeframe to ensure verification of results. This record may be submitted electronically

5. ICT Support on Hybrid Plenaries and Virtual Committee Sittings

- 5.1 ICT continues to support the two Houses of Parliament during Plenaries and Mini-Plenaries. The virtual support is mainly to bolster the confidence of the Table Staff because they are actually supporting the plenaries themselves.
- 5.2 Physically in the chamber, ICT ensures that the technical integration of the systems, i.e. the broadcasting system and Zoom remain effective.
- 5.3 The one major challenge experienced is the muting of the microphones. ICT is expected to assist with the smooth running of the plenaries by muting microphones that are unmuted unwittingly and thereby causing a disturbance to the proceedings.
- 5.4 In addition, ICT must mute microphones that are deliberately unmuted with an intention to disrupt, however, in this instance, instruction to mute must be given by the Presiding Officer. ICT has to discern on its own accord which microphone was unmuted unwittingly and which is unmuted with an intention to hackle or call a point of order. The last two are valid unmutes.
- 5.5 Another challenge experienced is that Presiding Officers give rulings that are technically impossible to implement such as the instruction to mute a microphone of a particular Member permanently. This feature is not available on Zoom without removing the Member/Participant from the meeting.

6. E-Voting, Hybrid Plenaries and Virtual Committee Sittings

- 6.1 E-Voting is not currently available. ICT is in the process of developing a solution in-house that will address all of the preconditions to the tee, such as voting be enabled only for those Members that are actively participating in the House (both physically and virtually).
- 6.2 Zoom has a feature called Polling, but this is not suitable for the Parliament's Hybrid plenaries because those that are physically present at the chamber are not supposed to participate virtually, but they can establish a connection if they so wish.

7. Communication in the plenary

- 7.1 In the National Assembly Hybrid Plenaries and mini-plenaries use of the Chats feature is prohibited. Members are encouraged to use alternative non official means of communication during the sessions.

7.2 In the NCOP the Chat feature is permitted. Members are alerted at the start of each session that communication in the chats will be regarded as official communication and it may be ruled upon.

8. Challenges

8.1 Some challenges were experienced during the inception phase of the Hybrid/virtual sittings, which includes;

- Adapting to new technology (it took both staff and Members time to get systems and process together, in particular for members to get used to the challenges that technology pose)
- Connectivity problem (depending where Members connect from, we have witnessed that Members who stays in rural areas tend to experience challenges of “low bandwidth” and as such they will continuously be disconnected from the platform)
- Interjections of speakers on the floor and/ Presiding Officers (such interjections if not managed properly tend to disrupt proceedings e.g. flow of the speaker and / sometimes invite further interruptions from other members)
- Challenges on voting have been accommodated in the rules, though in practice some Members are still not familiar with the icons on their gadgets e.g. raising of hands etc., sometimes they are not sure whether their vote is being recorded and as such repeat the vote through voice voting.

9. Conclusion

9.1 In South Africa, Covid-19 has not only changed the parliamentary business, but has also put into test the resilience and adaptability of our parliamentary systems and processes.

9.2 This became more apparent when in March 2020 Parliament halted the activities of the two Houses as a precautionary measure in light of the COVID-19 pandemic. The intention was to drastically limit the numbers of people at the parliament precinct in Cape Town and at the off-site parliamentary activities.

9.3 Given the indispensable role of Parliament, even in times of disaster, we were able to put in place the necessary information and communications technology infrastructure to ensure that work continued through virtual meetings. As such, the rules were framed to make provision for virtual Hybrid House sittings and to provide for e-voting

mechanisms and the institution performed very well notwithstanding the attendant challenges brought about by the pandemic.