

ASSOCIATION DES SECRETAIRES
GENERAUX DES PARLEMENTS



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COMMUNICATION

by

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on

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Introduction

The Republic of South Africa became a constitutional democracy in 1994¹ when, for the first time, everyone could vote for the Government of their choice. The advent of democracy, and the election of public representatives to the National Assembly (NA)² and what would become the National Council of Provinces (NCOP)³ (previously the Senate), thus had the effect of devolving political power from a racially exclusive elite to a diverse collective – 400 members in the NA and 90 in the NCOP. The first democratically elected Speaker of the Assembly, Dr Frene Ginwala encapsulated what would be the role of the new Parliament when she said that

“A parliament is that institution which represents and keeps alive a country’s highest political achievement, that achievement that distinguishes a democratic society from a mere collection of warlords. The achievement I refer to is the contract between divergent groups to recognise one another as legitimate and composed of citizens with opposing views – as opponents with alternative policies, not as enemies.”⁴

Whereas many of the incoming members had been involved in the resistance to the Apartheid regime, and had consequently endured great personal risks, they now had constitutionally bestowed authority and responsibilities, which brought novel challenges, both for themselves and the stability of the nascent State. This was especially pertinent in the early years given

¹ The Final Constitution was adopted by Parliament in 1996.

² The Assembly is elected by proportional representation with a mandate to –

“...ensure Government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”

³ The NCOP has 90 delegates, ten delegates from each of the nine provincial legislatures, and is mandated to –

“...represent the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for the public consideration of issues affecting the provinces.”

⁴ Dr Ginwala made these remarks in the Assembly in 1998, following a brawl that erupted between members of the two largest parties in the House.

South Africa's history and the residual potential for social unrest and destabilization⁵. It was understood that members, and the parliamentary staff on whom they depended, had to be able to work in safety and without fear of persecution. At the same time, the democratic Parliament had to be open and accessible so that the public could feel invested in the institution and free to approach their representatives without risk⁶. This time of transition was succeeded by the perils of a new millennium: the Covid pandemic and the exponential expansion of technology. It is arguably true that parliamentarians now face a wider array of challenges and threats than ever before.

Statutory Privileges and Protection

The Constitution of South Africa (1996) sets out the powers and functions of Parliament as a distinct arm of State and thereby entrenched the *trias politica* and a system of checks and balances. The constitutional order demanded that parliamentarians be granted singular privileges and protections. The principal constitutional privilege was that of freedom of speech – immunity from prosecution for anything said or produced within the Legislature – as well as the right to attend parliamentary proceedings⁷. These privileges were not unfettered but could be limited by the rules and orders of the Legislature. Parliamentary staff were also afforded limited protections, particularly from obstruction and hindrance while performing their duties.

⁵ The assassination of the communist leader Chris Hani in 1993 was an example of the dangers posed to political leaders during this period. During the trial, those accused of his murder expressed their intent to disrupt the reconciliation process. Many other leaders in the resistance movement lost their lives in the Apartheid era.

⁶ A right without which the public could not participate in political activities.

⁷ Section 58(1) of the Constitution (1996) states “*that Cabinet members, Deputy Ministers and members of the National Assembly—*

(a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and

(b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for— (i) anything that they have said in, produced before or submitted to the Assembly or any of its committees; or (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees.”

Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.”

Section 71 of the Constitution (1996) provides the same protections for the NCOP as well as the nine provincial legislatures.

These powers were elaborated on in the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004) (the Powers and Privileges Act).

In accordance with the separation of powers principle, the Powers and Privileges Act conferred joint control over the precincts of Parliament to the Speaker of the NA and the Chairperson of the NCOP, as the presiding officers⁸. This meant, firstly, that the State Security Services may only enter, and remain in the premises, under the authority of the presiding officers – although provision was made to allow the security services to intervene in the event of immediate danger to a person or damage to property. Constitutionally the “*security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.*”⁹ The Powers and Privileges Act continued that a person may not serve or execute any summons, or arrest another person, within the boundaries of the Legislature without the permission of the Speaker or the Chairperson. A person who contravened the Powers and Privileges Act can be held liable and face fines or imprisonment. As is the case internationally, a considerable amount of legislative work is carried out off-site. On this point, the Powers and Privileges Act states that –

“In so far as it may be necessary for the achievement of the objects of this Act in a case where a House or committee convenes beyond the seat of Parliament, this Act applies as if the premises where the House or committee is sitting were within the precincts of Parliament.”¹⁰

The prerogative of the Legislature to control its precinct was tested during the State of the Nation Address by the President in 2015, when, without the knowledge of the presiding officers, the security services temporarily deployed a device to obstruct cell phone signals in the Chamber. Whereas the Minister of State Security subsequently explained that the device had been used in error, the Supreme Court agreed that “*action that might interfere with the*

⁸ Section 3 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004).

⁹ Section 199 of the Constitution (1996).

¹⁰ Section 2(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004).

ordinary functioning of Parliament, and which might threaten the openness of Parliament, would have to be specifically authorized by the presiding officers.”¹¹

Together with the Powers and Privileges Act, the Legislature is defined as a national key point as per the National Key Points Act (1980)¹². This Act placed a special onus on Parliament to secure its precinct, including the appointment of competent security personnel. The Critical Infrastructure Protection Act (2019) was since developed with the intent of repealing the National Key Points Act (1980) but has not yet been fully implemented. The need for Parliament to have independent security led to the establishment of the Parliamentary Protection Services (PPS). The PPS are defined as any employee authorised by the institution to perform security and protection services within the precincts.

Another constitutional defence for parliamentarians was their prerogative to vote in secret. In this regard, the Constitution (1996) determined¹³ that, in the NA, the election of the Speaker, the Deputy Speaker and the President – which take place at the commencement of every five-years (and whenever a vacancy arises thereafter) – must be by secret ballot. The NCOP must, when needed, elect the Chairperson in the same way. But there are no such provisions for other decisions. In 2017, after a legal challenge to the procedures governing voting in a motion of no confidence in the President, the Constitutional Court¹⁴ concluded that, despite the absence of specific rules, the Speaker should allow members to vote in secret in certain circumstances. However, in making any such determination, the Court agreed that the Speaker must, *inter alia*, take account of the need for transparency as well as the right of members to follow the

¹¹ Supreme Court of Appeal in *Primedia Broadcasting v Speaker* (784/2015) [2016] [ZASCA 142].

¹² Other relevant laws include the Control of Access to Public Premises and Vehicles (1985); the Protection of Personal Information Act (2013); the Disaster Management Act (2002) and the Occupational Health and Safety Act (1993).

¹³ Constitution (1996), Schedule 3(6). Schedule 3(9) adds that the Chief Justice must make rules prescribing—

“(a) *the procedure for meetings to which this Schedule applies*
(b) *the duties of any person presiding at a meeting, and of any person assisting the person presiding....*”

¹⁴ Constitutional Court in the *United Democratic Movement (UDM) and others vs the Speaker and others* [2017] [ZACC 21].

dictates of personal conscience. Notably, the Speaker must evaluate the prevailing circumstances in the country, and specifically whether they would allow members to vote in a way that would not expose them to illegitimate hardships¹⁵. The Constitutional Court commented that –

“As is the case with general elections where a secret ballot is deemed necessary to enhance the freeness and fairness of the elections, so it is with the election of the President by the National Assembly. This allows Members to exercise their vote freely and effectively, in accordance with the conscience of each, without undue influence, intimidation or fear of disapproval by others....The frustration or disappointment of the losing presidential hopeful and his or her supporters could conceivably have a wide range of prejudicial consequences for Members who are known to have contributed to the loss.....Conversely, a Member of Parliament could be exposed to a range of reasonably foreseeable prejudicial consequences when called upon to pronounce through a vote on the President’s accountability or continued suitability for the highest office....”¹⁶

Safety in the Chambers of Parliament

The proceedings and internal arrangements in the NA and NCOP – the two Houses and their committees – are regulated by the Rules of Parliament¹⁷. Some of the regulatory principles were inherited from the Westminster tradition. The NA Chamber, for example, was designed so that the governing party and opposition sat opposite each other across the floor (which may not be crossed). The Serjeant-at-Arms with his/her Mace was tasked with maintaining the safety of members and controlling access to the Chamber. The NCOP employed the Usher of the Black Rod for a similar purpose.

¹⁵ At the time, there was a vote on a motion of no confidence in the President pending in the Assembly, and there were media reports of threats against some members if they voted in a particular way.

¹⁶ *United Democratic Movement (UDM) and others vs the Speaker and others* [2017] [ZACC 21], paragraphs 73-75.

¹⁷ The Joint Rules of Parliament (7th Edition), the Rules of the National Assembly (9th Edition) and the Rules of the National Council of Provinces (10th Edition).

In the case of the public, the rules were designed to complement the constitutional injunction that the NA must, among other things, “*conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken to regulate public access....*” Furthermore, the Assembly “*may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.*”¹⁸

The rules accordingly state that the power to admit visitors to Parliament vests in the Speaker and the Chairperson of the NCOP. All visitors must be subjected to a security check or screening before entering the precincts or a venue utilised for parliamentary work¹⁹. The Serjeant-at-Arms must remove any person present in any part of the precinct without authorisation, or who disrupts the proceedings, and may call on the PPS for assistance.²⁰ In terms of legislators, the rules proclaimed that members may not, *inter alia*, bring weapons or dangerous objects of any kind into the House (nor replicas of such)²¹. Furthermore, members may not engage in disorderly conduct, including creating serious disruptions or using or threatening violence against a member or another person²².

Following the inception of the Fifth democratic Parliament in 2014, the Houses experienced several disruptions and security concerns. These involved incidents of violence when some members refused to leave after being ordered to do so by the presiding officers. The Rules Committees then adopted procedures to regulate how members could be physically removed in a manner which mitigated the potential for injury²³. These procedures stipulated that, when so instructed by a presiding officer, the Serjeant-at-Arms or Usher must remove a member from

¹⁸ Section 59 of the Constitution (1996). Section 72 has the same provision for the NCOP.

¹⁹ National Assembly Rule 58. See also Joint Rule 12 and NCOP Rule 41.

²⁰ National Assembly Rule 61. Section 11 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004) provides that a person, other than a Member of Parliament, who creates or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting, may be arrested and removed from the precincts, on the order of the Speaker or the Chairperson, or a person designated by the Speaker or Chairperson.

²¹ National Assembly Rule 64.

²² National Assembly Rule 69. Also see Joint Rule 40.

²³ National Assembly Rule 73. Also see Joint Rule 42.

the House. The PPS and, in extraordinary circumstances, the State security services, could assist, and “*may use such force as may be reasonably necessary.*”²⁴ These incidents also resulted in the employment of additional PPS personnel. While these officers received special training, they were explicitly prohibited from carrying arms into the Chambers. The decision to increase security was taken reluctantly, again cognizant that the institution should not be associated with coercion. Certain political parties nevertheless argued that what they understood as a political problem could not be resolved with forceful methods. The right of Parliament to remove members was finally upheld by the Constitutional Court which found that “*parliamentary immunities could never go as far as to give a member license to disrupt proceedings that Parliament or the House would be incapacitated from conducting its business.*”²⁵

In 2022, following disruptions in the NA, it was alleged that some female members had been subjected to gender-based violence by PPS personnel. Parliament subsequently solicited legal counsel to investigate the matter which led to a rule amendment to the effect that PPS staff of one gender should, as far as possible, only endeavour to remove members of the same gender. There is evidence to suggest that the potential for political disruptions within Parliament has declined, and there have been no serious incidents since the election of the Seventh Administration in 2024.

Parliamentary Administration and Institutional Policy

The statutes and rules described above provided the framework within which Parliament could protect its members and staff. Still, questions of detail and administration remained. These questions were addressed by way of an integrated Security Policy adopted in 2005. This policy expounded on the duties of the Secretary to Parliament²⁶ to ensure security assessments were undertaken and that the institution remained strictly compliant with security standards. The

²⁴ Following the removal of a member from the NA, a process can be undertaken to assess the circumstances of the removal and a determination made about whether the member concerned should be subject to further disciplinary action. This can include a charge of contempt of Parliament in terms of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004).

²⁵ *Democratic Alliance and the Speaker*, the Constitutional Court [2016] [ZACC 17].

²⁶ The Secretary to Parliament is responsible for the administration of both Houses of Parliament.

policy also defined the respective functions of the PPS; the State security services and policing agencies.

PPS was tasked with internal security, while the police assumed responsibility for physical safety and protecting eminent persons and office-bearers. Collaborative working relations were also reinforced with the National Defence Force, the State Security Agency and Disaster Management Control. Additionally, the policy established protocols for vetting, access control for different categories of persons, arrangements for special events such as the Annual State of the Nation Address by the President of the Republic and the management of sensitive information. PPS also assumed functions for committees and parliamentary delegations travelling and meeting outside of Cape Town.

Parliament was moreover made subject to the Occupational Health and Safety Act (1993)²⁷ which mandated State institutions to create safe working environments. This was the basis for Parliament's Safety, Health and Environment Policy of 2018. Read with other laws, the policy affirmed that the Department of Public Works and Infrastructure must maintain parliamentary infrastructure and ensure that all buildings remain free from hazards²⁸. The Legislature itself appointed a Safety, Health and Environment Manager whose functions included the implementation of all health, safety and emergency systems and protocols. The policy also mandated the Human Resources Division to provide occupational health services to all employees and parliamentarians. These services incorporate wellness, lifestyle advice and confidential counselling. An on-site nursing station aids in medical emergencies.

On the question of health and safety in the precinct, it is worth reflecting on the emergency measures that were put in place during the Covid pandemic. Soon after the outbreak, Parliament adopted the Covid Management Policy (2020) whose purpose was to minimise risks while allowing the institution to discharge its constitutional duties. Among other interventions, the

²⁷ This Act itself was premised, in part, on section 24 of the Constitution (1996), which stated that *"Everyone has the right to an environment that is not harmful to their health or wellbeing...."*

²⁸ An environmental hazard is defined as the *"potential of any machine, equipment, process, material including biological, chemical or physical factor, that may cause harm to people or damage to property or the environment"*.

policy prescribed that those with symptoms of infection should not attend the Legislature in person but instead work from home. Those at Parliament were compelled to wear protective masks and observe social distancing protocols²⁹. This meant that attendance in the Houses was inevitably limited, an eventuality assuaged by the employment of online and hybrid meetings. Covid countermeasures lapsed in 2022, albeit the system of online and hybrid meetings remain in use³⁰.

Protection of Personal Information and Data Security

The unprecedented advancements in technology have presented new risks for political office-bearers and those working with Parliament. Almost all personal and employment information is now stored in electronic databases – within Parliament and beyond – and most correspondence is by email. Members and staff are also very active and share information on social media and online platforms.

At a national level, the Protection of Personal Information Act (2013) was introduced to protect the right to privacy. This Act regulates the processing and sharing of personal information that is entered into record. Personal information encompasses, among other details, identity and contact records, financial and medical information and criminal or employment history. The Act therefore required Parliament to control access to information, both internally and for those who may correspond with the institution.³¹ A recent example of a potential breach of the Act occurred when a member posted parliamentary correspondence online which included the email addresses of staff. When the matter was raised with the Speaker, she opted, on behalf of the institution, to issue a stern caution to those concerned.

²⁹ 26 Members of the National Assembly passed away between 2019-2024.

³⁰ This is primarily due to the fire which destroyed the National Assembly in 2022. See the concluding comments below.

³¹ Although the safeguards implicit in the Act do not mean that it can be used to limit the public's access to information that is required for compliance with a public law duty as emphasised by the Constitutional Court in *Corruption Watch (RF) NPC v Speaker of the National Assembly and Others* [2025] [ZACC 15].

The South African Parliament also adopted an Information and Communication Technology (ICT) Policy in 2021. This policy was derived from best practices and standards internationally. As such, Parliament must carry out regular assessments of its ICT systems; exercises which identify infrastructure vulnerabilities and inform the development of concomitant controls. Furthermore, the policy regulated user accounts and password management, network maintenance and procedures in the event of data breaches – which must be reported to Parliament’s ICT Division without delay. Importantly, the policy envisaged systematic training for members and staff on security protocols. This was essential not least because members³² and many staff were given communication devices and portable computers as tools of trade. The use of devices is also regulated by policy, which incorporates the imperative of maintenance undertaken by the institution. It may be of interest to note that the average age of members in the current Parliament is considerably lower compared to the previous terms; and that younger members are generally more familiar with technology and are thus able to navigate potential risks.

These interventions have significantly reduced risks although they have not been a failsafe. One of the challenges has been, given the integration of technology and information systems, how to manage personal use, and the role of the administration in this regard. Another challenge for ICT will be how to manage artificial intelligence (AI). There is no doubt that the evolution of AI will require ongoing review to harness its benefits while mitigating inherent risks.

Security Incidents and Conclusions

Parliaments around the globe face a growing multiplicity of threats from different origins – individuals, protestors, co-ordinated syndicates and even international actors. These risks are not limited to physical dangers but increasingly involve other means such as the manipulation of technology, data breaches and cyber-attacks.

³² Members of the Executive may receive other devices from Government.

The South African Parliament has experienced several incidents over the preceding decades. In 2015, a crowd of students protesting about university tuition fees forced their way into the parliamentary precinct while the Houses were in session. In 2018, a member of staff committed suicide in one of the parliamentary buildings. More recently, a member of Parliament was allegedly assassinated while visiting in a province, and three members of the Portfolio Committee on Police came under attack while engaging in oversight work. In September, the Chairperson of the Standing Committee on Public Accounts raised a concern that he had been followed – a fact attributed to a pending committee inquiry. Parliament has also experienced ICT attacks of which one recent example was a hack which resulted in the unauthorized upload of dubious content to one of the institution’s streaming channels.

Perhaps the most publicized security breach arose in 2022 when an arsonist infiltrated and set fire to the National Assembly and Old Assembly buildings – an event which finally gutted the NA Chamber. In response, the Secretary deemed it appropriate to commission forensic investigators to inquire into the circumstances. This investigation identified a range of systems and maintenance failures including the poor perimeter monitoring and defective emergency equipment. The absence of a parliamentary chief of security was also highlighted as a contributing factor. Parliament has since undertaken to address all these shortcomings, a commitment supported by the employment of a Security Manager in 2023. The NA Chamber is currently being rebuilt.

In conclusion, the evolution of the parliamentary environment has necessitated ongoing statutory and administrative reforms to ensure that members and their support staff could work in safety. The South African Parliament has, over time, approached the matter of security in line with legal principles and environmental factors. Of paramountcy has been the need to harmonize security with the vibrancy of a young democracy and the constitutional imperatives of openness and transparency. Consequently, security assessments must continue to be strategic and focused. The security of Parliament also requires continuous efforts to expand cooperation across different security agencies, while not compromising the status of the Legislature as a distinct arm of the State, responsible for its own precinct. Finally, the ever-

expanding range and complexity of security threats will lend new impetus to inter-parliamentary partnerships for the purposes of sharing experiences and solutions.

Selected References

- (1) The Constitution of the Republic of South Africa (1996)
- (2) The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004)
- (3) Supreme Court of Appeal in *Primedia Broadcasting v Speaker* (784/2015) [2016] [ZASCA 142].
- (4) National Key Points Act (1980)
- (5) Critical Infrastructure Protection Act (2019)
- (6) Joint Rules of Parliament (7th Edition)
- (7) Rules of the National Assembly (9th Edition)
- (8) Rules of the National Council of Provinces (10th Edition)
- (9) Occupational Health and Safety Act (1993)
- (10) Constitutional Court in *Democratic Alliance and the Speaker* [2016] [ZACC 17]
- (11) Constitutional Court in *United Democratic Movement (UDM) and others vs the Speaker and others* [2017] (ZACC 21]
- (12) Protection of Personal Information Act (2013)
- (13) Constitutional Court in *Corruption Watch (RF) NPC v Speaker of the National Assembly and Others* [2025] [ZACC 15]

To note: All these documents are available online. Alternatively, they can be sourced from Mr M Xaso, at mxaso@parliament.gov.za or Mr P Hahndiek at phahndiek@parliament.gov.za