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Our Ref: DEM16/0889/ELZANNE JONKER/ks | **Your Ref:** | **Date:** 6 February 2023

THE SPEAKER OF THE NATIONAL ASSEMBLY
PER EMAIL: speaker@parliament.gov.za

THE CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES
PER EMAIL: lijyane@parliament.gov.za; mphindela@parliament.gov.za;
chairpersonsoffice@parliament.gov.za

Dear Speaker and Chairperson,

PARLIAMENT - SITINGS

1. I write to you on behalf of the Democratic Alliance, and its members in the National Assembly and the National Council of Provinces.
2. The NA and the NCOP have not operated as the Constitution intends since March 2020. The combination of Covid-19 restrictions, and the destruction of the Assembly Chamber have meant that Parliament has had to adapt to operating online.
3. Parliament faced unprecedented challenges caused by both Covid-19 restrictions and the loss of the Assembly Chamber. The DA appreciates the work you, your predecessors, and all members, have done to ensure that Parliament can continue to operate under these conditions.
4. However, the drastic changes that Parliament has had to make to the way it operates have come at a serious cost to its ability to perform its constitutional

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Vat registration number: 4580257428 | *At Greenacres, Gqeberha (previously Port Elizabeth)



function. I focus on the current situation.

5. The National Assembly (NA) is currently operating in the Good Hope Chamber, which can accommodate only 120 out of 400 members of the NA. As a result, for the vast majority of plenary hearings, 70% of the NA's members have to attend virtually. It is only for particularly important events, such as the State of the Nation Address and Budget Address, that Parliament is willing to rent the Cape Town City Hall which can accommodate all the NA's members.
6. The vast majority of committees are also operating either virtually, or in a hybrid fashion as Parliament has not rented sufficient space for them to operate in person.
7. While virtual or hybrid proceedings were an unfortunate necessity during Covid-19 restrictions and in the immediate aftermath of the fire, they have always had serious negative consequences for the operation of the NA, the NCOP and its committees.
8. First, members joining a meeting virtually are often unable to participate because they cannot connect to the meetings at all. Other members could connect, but were not able to deliver speeches, declarations or ask questions due to poor connections. Some Members live in far-flung, rural areas of the Republic, where there is little to no internet reception. Ongoing loadshedding has made it extremely difficult for all members, even those with ordinarily reliable internet, to participate properly in proceedings.

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9. Second, even when members are able to connect, virtual meetings have not been consistent with ordinary standards for parliamentary proceedings. Members have found it challenging to participate fully in the virtual and hybrid proceedings. Members who attempt to raise points of order are often ignored. By contrast, members who managed to unmute their microphones have often caused the proceedings to descend into grave disorder with continual disruptions. The use of virtual proceedings has made it particularly difficult to hold the executive to account. Not only have members struggled to use virtual platforms, Members of the Executive have also been unable or unwilling to participate properly on the virtual platform.
10. Third, in plenary sessions, members' votes have not been individually recorded. Instead, the rules now provide for each party's whip to report their party's votes. It is questionable whether this practice is constitutional. Even if it is, it denies the public knowledge about how individual members vote. That knowledge is vital for people to hold their representatives to account, and to meaningfully exercise their right to vote in future elections.
11. Fourth, members of the public have not been able to attend any committee or plenary meetings in person since March 2020. While they have been able to watch meetings on virtual platforms, that is not possible for some people without internet access, and those meetings suffer all the flaws identified above. Physical meetings streamed online would allow the reach of virtual meetings, and the benefits of



physical meetings.

12. While these limitations may have been justifiable when the alternative was to have no meetings at all, they can no longer be justified.
13. The DA understands that the current estimate is that it will take four more years until the Parliament precinct is rebuilt and the National Assembly can return to ordinary sittings in its own building. The question is how the National Assembly will operate for those four years.
14. In the DA's view, it is unconstitutional for Parliament to continue to operate under the current conditions for the next four years:
 - 14.1. The seat of Parliament is Cape Town. Sittings are allowed outside of Cape Town "*only on the grounds of public interest, security or convenience, and if provided for in the rules and orders*" (ss 51(3) and 63(3)). These provisions create a strong default presumption that sittings must occur physically, in Cape Town. A fully virtual sitting is not a sitting in Cape Town. It has no location. It can only be permitted in the public interest, or if convenient. The option of convenience cannot be used to depart permanently from the default rule of physical sittings for four years.
 - 14.2. Parliament is a deliberative and representative body. It must meaningfully debate laws. It must adopt rules and practices that enable it to properly perform that role. Virtual and hybrid meetings are simply not as effective as



physical meetings for Parliament's primary task of debating and making laws. Members cannot deliberate as effectively on virtual platforms. They cannot perform their role to represent their constituents as effectively. And members of the public cannot participate as effectively on virtual platforms.

- 14.3. Section 55(2) of the Constitution requires the National Assembly to “provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it”. The NA must also maintain oversight of the national executive authority and any organ of state. The measures it takes to achieve those goals must be reasonable. Virtual meetings are less effective at achieving those goals. They can only be reasonable when it is not reasonably possible to hold physical meetings.
- 14.4. Section 53(1)(a) of the Constitution requires that a majority of members must be present to vote on a Bill, and 53(1)(b) that a third must be present to decide any other question. In the DA's view virtual presence is only sufficient to meet this requirement where there is a justifiable reason not to require physical presence. Parliament has an obligation to ensure physical presence insofar as reasonably possible.
- 14.5. It is highly questionable whether the current practice of not recording the votes of individual members is constitutional. Section 53(1)(c) provides that “*all questions before the Assembly are decided by a majority of the votes*”

cast." Each member is entitled to cast a vote, and is not bound to vote in line with the position adopted by their political party. The public has a right to know not only how political parties vote, but how individual members vote. It is also not clear what mechanisms are in place to ensure that whips accurately convey the votes of their party's members.

14.6. Parliament has the power to determine its own arrangements, and make its own rules and orders (Constitution ss 57 and 70). But it must do so "*with due regard to representative and participatory democracy, accountability, transparency and public involvement.*" Moreover, both houses must "*conduct its business in an open manner, and hold its sittings, and those of its committees, in public*" (ss 59(1)(b) and 72(1)(b)). Purely meetings fall short of this standard. Members are not fully able to participate virtually due various connection issues especially caused by the ongoing power crisis.

15. It is constitutionally untenable for the National Assembly to continue with the current arrangements for the next four years. It must make an alternative arrangement to allow the return to physical meetings while a new parliament building is constructed.

16. The DA therefore respectfully demands that the Speaker and the Chairperson:

16.1. Confirm whether they intend to take the necessary steps to return to full physical sittings.



16.2. If so, please provide a plan, including a timetable for the return to physical sitting.

16.3. If not, kindly provide full reasons for why the Speaker and the Chairperson do not intend to comply with their constitutional obligations.

17. Kindly let us have your response within 14 days.

Yours faithfully

MINDE SCHAPIRO & SMITH INC.

per: 