



Wes-Kaapse Provinsiale Parlement Western Cape Provincial Parliament IPalamente yePhondo leNtshona Koloni

MINUTES OF PROCEEDINGS

AD HOC COMMITTEE ON COVID-19

Wednesday, 3 June 2020 (13h00), Virtual Meeting via Microsoft Teams

THEME: Citizen Surveillance

ATTENDANCE

Members:

Democratic Alliance

Allen, R
America, D
Baartman, D
Bosman, G
Mitchell, D
Philander, W
Van der Westhuizen, A
Wenger, M (Chairperson)

African National Congress

Dugmore, C
Lekker, P
Windvogel, R

GOOD

Herron, B

Freedom Front Plus

Marais, P

Alternate Members

MacKenzie, R (DA)
Maseko, M (DA)

Nkondlo, N (ANC)
Sayed, K (ANC)

Apologies

Botha, L (DA)(Alternate)
Christians, F (ACDP)

Absent

Xego, M (EFF)

The following persons were in attendance:

Members of the Public

Ms J Kassen, Journalist: EWN

Western Cape Provincial Parliament

Ms Z Adams, Procedural Officer
Ms L Cloete, Senior Procedural Officer
Ms W Moosa, Procedural Officer
Ms S Fouche, Director: Public Engagement
Mr T Keswa, Manager: Public Education and Outreach
Mr J Retief, Manager: Knowledge Management and Information Services

1. Welcome and Update on the Departmental Briefings

The Chairperson welcomed the Members and officials, and noted apologies from Hon L Botha (DA)(Alternate) and Hon F Christians (ACDP).

The Chairperson informed Members that the Committee was scheduled to be briefed by the National Department of Health (DoH) and the National Department of Home Affairs (DHA) on matters related to "Citizen Surveillance" in relation to the COVID-19 pandemic. However, the Committee had received an apology from the Minister of Health. The DoH had also sent correspondence stating that their new Director-General had only resumed work on 1 June 2020, and therefore was unable to brief the Committee.

The Director-General for the DHA had also informed the Chairperson that the DHA had no role to play in the maintenance of the database for contact tracing and therefore it was not necessary for them to brief the Committee.

The Chairperson proposed that a third letter of invitation be issued to the Minister of Health and the DoH to brief the Committee on the return from the constituency period, on 15 July 2020.

Hon Philander supported the Chairperson's proposal. Hon Baartman seconded the support.

Hon Marais stated that 15 July 2020 was very late. The Chairperson explained that there was one week left for meetings, and thereafter, Members would be working in their constituencies.

Hon Marais stated that the ruling of the Gauteng High Court on the validity and unconstitutionality of the regulations administered by Ministers, who did not have the right to do so, had massive implications for all the ministries. This had to be treated as a matter of urgency. Therefore, it was imperative to get clarity from the Minister of Health as soon as possible.

The Chairperson explained that the Committee had been trying to get the Minister of Health to attend the meeting, and the High Court ruling meant that additional questions would need to be posed in terms of what the ruling meant for citizen surveillance, if these regulations are deemed to be unconstitutional.

Hon Nkondlo proposed that the Committee seek legal guidance from the Western Cape Provincial Parliament's (WCPP) legal advisers on what the implications are in relation to the High Court ruling, as the country waits for the 14 business days to pass as given by the judgment.

Hon Mitchell reiterated Hon Nkondlo's suggestion and proposed that the Committee convene once the 14 business days have passed for national government to review/amend the regulations, and invite national government to brief the Committee on how they have dealt with the court ruling and the regulations. Member Mitchell further proposed that the Committee meet on the "Citizen Surveillance" theme after the constituency period.

The Chairperson put forward the proposal that legal guidance be requested from WCPP's legal advisers on the implications of the Gauteng High Court judgment and what this means for the Province going forward.

The proposal was agreed to.

The Chairperson put forward the proposal that a meeting be convened once the 14 business days (as given by the High Court ruling) have lapsed.

The proposal was agreed to.

The Chairperson put forward the proposal that the meeting on "Citizen Surveillance" be convened after the constituency period.

The proposal was agreed to.

Hon Herron requested that the Provincial Department of Health also brief the Committee on contact tracing when the DoH briefs the Committee on the matter of citizen surveillance.

The Chairperson explained that the Provincial Department of Health will be briefing the Committee on 10 June 2020, which would also include contact tracing. The Provincial Department of Health will also be called to brief the Committee after the constituency period.

Hon Marais reminded the Committee that the High Court judgment also stated that the Minister was not supposed to have interfered in the duties of the provincial and local government spheres. He proposed that the legal guidance also speak to how the Minister's regulations interfered with the powers and functions belonging to provinces and municipalities under level 5 and 4 of the restrictions.

Hon Marais added that the Constitution stated that if there are any laws or regulations that affect provinces, it must be passed by the National Council of Provinces (NCOP) first. The COVID-19 regulations were not passed by the NCOP even though it affected the provincial sphere.

The Chairperson agreed that the legal guidance should look at the role of the NCOP in the regulations.

Hon Nkondlo added that the Committee should consider looking at the impact that the pandemic has had on governance across the three spheres of government. This could be considered once the Committee receives the legal guidance.

The Chairperson stated that Members are welcome and encouraged to submit proposals to the Procedural Officers for the committee programme and consideration, at any point. Member Nkondlo requested that the Provincial Department of Health also brief the Committee on the announcement that testing will not be done on persons aged 55 years and younger.

The Chairperson proposed that a follow-up letter be sent to the Provincial Department of Health to include in its briefing on 10 June 2020 more information on the new testing regime.

The proposal was agreed to.

2. Deliberations on the Draft Citizen Engagement Programme

The Chairperson informed the Committee that the idea for the citizen engagement programme was to speak to various stakeholders that the Committee has not had a chance to engage with to date. Secondly, that a draft Committee Report would be published for comments with key questions of citizens' experience of the pandemic.

The Chairperson proposed that the Committee invite umbrella bodies/formations/federations that represent many voices in that particular area of interest in order to gain a broad understanding of the subject matter.

Hon Dugmore noted that there were many individuals, Non-Governmental Organisations (NGOs) that Community-Based Organisations (CBOs) that could make valuable contributions to the Committee.

Hon Nkondlo asked that, in addition to verbal submissions, the Committee also allow for written submissions for citizens that could not be in the meetings.

The Chairperson confirmed that the public participation process would be two-fold. The first process would be through a series of engagements in committee based on the themes. The second process would be to publish the draft report on the work of the committee for comment. This draft report will also be forwarded to citizens and

organisations. The Chairperson asked that Members submit the names of NGOs, CBOs and individuals to the Procedural Officer, if they would like those individuals and organisations to be added to the Committee's database. Members of the public will also be allowed to submit voice notes and messages via WhatsApp.

The Chairperson requested that the Committee agree to the original proposal that the Committee invite umbrella bodies/formations/federations to brief the Committee, however, if Members have specific individuals or NGOs that they would like to invite to the engagements, that Members submit those names in writing with a brief description of what the individual or organisation has been doing, so that they can be added into the programme.

The Committee agreed to the proposal.

Hon van der Westhuizen proposed that the Committee write to the Minister of Cooperative Governance and Traditional Affairs (COGTA) to request that the Minister submit a report to the Committee on opportunities created for public participation for drafting the regulations for key sectors in the Western Cape economy, such as the tourism, wine and fishing industries.

The Chairperson stated that this response could be included in the Committee's report later.

The Committee agreed to the proposal.

The Chairperson informed Members that there had been a proposal from Member Sayed to include the Representative Council of Learners (RCLs) in the programme under the "Schooling an Education" meeting on the programme. The Chairperson stated that this would be covered by School Governing Bodies (SGBs) which included learners.

The Chairperson also informed the Committee that Member Botha proposed that the Committee include an engagement with the umbrella body for organisations that assist with bereavement and counselling.

The Committee agreed to the proposal.

3. Consideration and Adoption of Draft Committee Minutes

The Committee considered and adopted the draft minutes of 20 May 2020.

The Chairperson asked that the draft minutes of 22 May 2020 be amended to include the theme under the heading. The draft minutes of 22 May 2020 was considered and adopted with an amendment.

4. Resolutions/Actions

The Committee RESOLVED to:

- 4.1 Request legal guidance from WCPP's legal advisers on the implications of the Gauteng High Court judgment and what this means for the Province going forward, whether the Minister's regulations interfered with the powers and functions belonging to provinces and municipalities, and the the role of the NCOP in the regulations;

- 4.2 Convene a meeting once the 14 business days have passed for national government to review/amend the regulations.;
- 4.3 Invite the Minister and National Department of Health to brief the Committee on "Citizen Surveillance", in relation to COVID-19, after the constituency period;
- 4.4 Write a follow-up letter to the Provincial Department of Health to include in its briefing on 10 June 2020 more information about the new COVID-19 testing regime;
- 4.5 Invite umbrella bodies/formations/federations to brief the Committee, however, if Members have specific individuals or NGOs that they would like to invite to the engagements, that Members submit those names in writing with a brief description of what the individual or organisation has been doing;
- 4.6 Write to the Minister of Cooperative Governance and Traditional Affairs to request that the Minister submit a report to the Committee on opportunities created for public participation for drafting the regulations for key sectors in the Western Cape economy; and
- 4.7 Include in the Citizen Engagement Programme an engagement with the umbrella body for organisations that assist with bereavement and counselling.

The meeting adjourned at 14h30.



MS M WENGER, MPP
CHAIRPERSON: AD HOC COMMITTEE ON COVID-19
DATE: 10 June 2020