
15 August 2017

Attention: National Assembly of South Africa

RE: PUBLIC PETITION TO PARLIAMENT TO AMEND CHAPTER 13 OF THE RULES OF THE NATIONAL ASSEMBLY

1. We refer to the above.
2. The Organization Undoing Tax Abuse (“OUTA”) is a proudly South African non-profit civil action organization, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers’ money in South Africa.
3. For some time, proposed legislation has been published in the Government Gazette which called for the required public participation period to take place over the December – January holiday period.
4. Perhaps the most important example of this is the New Energy Efficiency Gazette (Notice 948 of 2016) (“NEES”). The NEES was published at 23h00 on Friday the 23rd of December 2016 and the public was given thirty days to comment. The public were given a further thirty days to comment after OUTA, and other parties, raised their concern with the Minister of Energy.
5. The application of this gazette would have affected every citizen in the country, yet the public participation process would have occurred whilst many people, Members of Parliament included, would have been on holiday. Furthermore, there are less courts available over the holiday period and the public’s ability to challenge any unlawful or prejudicial legislation is prejudiced.

6. Furthermore, if one considers the highly technical nature of many proposed pieces of legislation, such as those mentioned above, it becomes clear that public participation is not a simple process. It is for this reason that the public participation period is of such importance.
7. It is important to remember that the public participation process is enshrined in Constitution itself. Section 59(1)(a) states that the National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committee, and sections 72(1)(a) and 118(1)(a) make identical provisions for the National Council of Provinces and the provincial legislature.
8. By allowing the public participation process to occur over the holiday period, the National Assembly has failed to facilitate public involvement in terms of section 59(1)(a).
9. With the above in mind, we request that the National Assembly amend Chapter 13 of the Rules of the National Assembly, which details the legislative process, to include a provision prohibiting the public participation period for any legislation, rules or notices that requires such participation, from occurring during the period between the 15th of December and the 15nd of January.
10. For the sake of clarity, we note that the aforementioned period of time would be excluded in the calculation of calendar days in regards to public participation and that any public participation that would have occurred over this period would instead resume on the 15th of January.
11. We further note that a precedent for such a provision exists in the Public Participation Guideline for the National Environmental Management Act 107 of 1998, which includes a provision prohibiting public participation between the 15th of December and the 2nd of January.

12. A useful reference in regards to fair public participation may be found in the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”), though it concerns administrative action it was designed to give effect to one’s constitutional rights. In terms of section 3 of PAJA:

“(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

(2)(a) A fair administrative procedure depends on the circumstances of each case.

13. If one were to apply the principles of this section to the matter at hand, it is clear that a public participation period that occurs over the December – January holiday period cannot be considered procedurally fair, especially when the legislation in question is either of national importance or very technical.

14. We would emphasise that when public participation is called for over the December – January holiday period, the rights of both the public and Members of Parliament to participate in the legislative process is prejudiced as both may be on holiday at the time.

15. We greatly appreciate your consideration of this matter.

Kind Regards,

Julius Kleynhans

Portfolio Director: Water and Environmental Affairs

On behalf of the Members of OUTA