

Proposal For Inclusion of Opposition Committee Chairpersons into the Rules April, 2015

Background

This proposal deals with Chapter 12 of the Rules of the National Assembly titled "Committee Systems". It proceeds from two basic assumptions about the process of the review of the rules, one is to develop the rules to reflect, as much as possible, the democratic ethos of the constitution of the Republic of South Africa in as far as its principles of a multiparty system of democracy is concerned. Two, is that the successive democratic parliaments have had practices, norms, traditions or conventions that have to be elevated and reflected in the rules as they are currently not.

In light of these broad assumptions, the proposal is therefore to integrate into the rules the provision to have some of the committees of parliament chaired by opposition members in as far as Rule 121 (1) which deals with a list of committees of parliament, Rule 129 on the election of chairpersons is concerned, and Rule 195 in Part 8 which deals with Committee of Chairpersons. The paper details a systemic way in which this can be achieved and provides two options; one is that after each parliament determines its total number of committees, it could allocate the chairs in accordance with the constitutional system of proportional representation in accordance with section 46 (1) (d). The second option is to simply give one committee in ten, to be chaired by a member of the opposition.

The idea of opposition members chairing parliament committees is in itself not new, in fact it is a long standing practice with regards to the committee on Public Accounts established in terms of Rule 204. However, in accordance with section 57 (2) (b) of the Constitution which reads:

The rules and orders of the National Assembly must provide for - the participation in the proceedings of the National Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy.

This clause is consistent with the founding value as reflected in section 1 (d) of the constitution which says "the Republic of South Africa is one, sovereign, democratic state founded on the ... Universal adult suffrage, a national common voters roll regular elections and a multi-party system of democratic government to ensure to ensure accountability, responsiveness and openness." To make a provision in the rules for some committees to be chaired by opposition chairpersons embraces this founding principle, as well as ensure that Rule 195 and 196 of committee of chairpersons itself, since it is composed of chairs of all committees reflects a multiparty system.

Principles, Function of Parliament and Options for the Provision

In order to appreciate the proposal to have some of the committees of parliament chaired by opposition members, one needs first to embrace the spirit of the constitutional provision for multiparty system. This principle is not inconsistent with democracy, particularly defined simply as "majority rule". After each election, the party with the highest number of votes obviously will be the decider, in as far as final decisions are concerned. Multiparty system only achieves, as the constitution states, "accountability, responsiveness and openness". This means the majority must rule, but do so in an open, accountable and responsive way and one of the means our constitution envisages to achieve this, is to have in the functioning of the majority, a way of doing so in the presence and working together with those it opposes or who oppose it.

The emphasis is to keep the eye on the “majority rule”. Even if the house can be presided over by a member of the opposition, it would not mean the number of votes allocated to a party changes as this is not determined by parliament itself, but by the voters. Thus, the ruling party will always be able to exercise its majority to produce the outcome it wishes.

Thus the principle of “majority rule” as well as that of “multi-party system” is held together even at the level of committees and who chairs them. In the short history of South Africa’s democratic parliament and government this has been the practice thus far. In fact, the first deputy president of South Africa was a member of the biggest opposition in 1994. In addition, the ANC cabinet has always appointed one, or two of its cabinet members, from members of the opposition (e.g. Hon Zanele Magwaza Msibi, leader of National Freedom Party) or members of the public who are not members of the ANC, as with the finance minister of 1994 (Ferro Liebenberg who was simply a captain of finance industry). In parliament itself, the committee of Public Accounts is currently chaired by a member of the opposition and this has been the practice for sometime.

This system has a political dividend which makes parliament a body that parties represented in it can collectively own up to. It allows for collective ownership of its processes, functions and outcome since there is equal openness and its diversity reflected at all times.

As things stand it is qualified to argue that the Committee of Chairpersons, as a committee itself established in Part 8, encompassing Rules 195, 196, 197 and 198, can be composed without opposition members if a provision proposed here is not integrated. In addition, it means it can be exempted from Rule 125 on the composition of committees. Rule 125 (1) itself only exempt committee composition, not from reflecting a multiparty system, but how allocation can change from time to time.

The Rule says *“Parties are entitled to be represented in committees in substantially the same proportion as the proportion in which they are represented in the Assembly, except where -*

- a) these rules prescribe the composition of the committee; or*
- b) the number of members in the committee does not allow for all parties to be represented”*

Thus, the rule does not exempt any committee of parliament, in terms of its composition, from the multiparty representation principle because such a committee can just be a one party composed, reducing it to a mere caucus. Committees that take decisions that represent parliament must always be representative of the diversity of parliament itself.

This is regardless of the benevolence of the majority party. Let us say a different party from the ANC takes majority in parliament and thus stops voting to an opposition member to chair the Committee of Public Accounts, then you will not have any opposition member in the Committee of Chairpersons because there is no provision in the first place, forcing this committee by nature of its composition, to be representative.

There are two ways of approaching the proposal:

Option 1:

That as soon as parliament confirms the total number of standing committees in terms of 121, inclusive of all portfolio committees it must then determine the number which will be reserved for opposition in a manner consistent with democracy. This means a resolution will be brought to the house from the rules committee tabling the number of committees that will be reserved for opposition members in terms of this new rule, as well as which of the names of those committees.

There will still be nomination and voting by members belong to a committees, only that members of the ruling party will, in terms of rules, not be eligible for chairperson nomination.

Option 2:

The second way in which the number of committees can be determined is by simple system of 1 is to 10 (1:10); that is, in every ten committees, one must be chaired by a member of the opposition. The rationale is that proportionality is not the only way composition is envisaged in terms of the rules as seen for instance in Rule 125 (b) which states:

“Subject to these Rules, the Joint Rules and decisions of the Rules Committee, and where practically possible, each party is entitled to one representative in a committee.”

This means there are instances where proportionality may not be applicable for instance where the opposition is composed of smaller parties only, with each having no more than six members. If the total number of parliament committees is 50 it means some committees might never have opposition members on permanent basis.

However, this ratio of 1:10 also appreciates the political context of gaining a majority and thus needing to use parliament in the best interest of your party priorities or mandates. This is critical because it works to allow this, whilst at the same time providing the space to do it under the watch or with full test of the multi-party system principle.

Provision for Chairperson who is not a member of the majority party

The provision for a committee chairperson who is not a member of the ruling party must be understood with the background above and the discussion on principles and functions of parliament above. The proposal is therefore to make the provision under Rule 129 of the Rules of the National Assembly, and integrate it as subsection 2.

In terms of Option 1, the rule will read as follows:

2. Taken the total number of parliament committees in terms of Rule 121, with the exemption of ad hoc committees and the Chief Whips' Forum, the Rules Committee shall determine the number of committees that must be chaired by members belonging to the opposition parties in a manner consistent with democracy.

In terms of Option 2, the Rule will read as follows:

2. Upon determining the total number of parliament committees, with the exemption of ad hoc committees and the Chief Whips' Forum, and using the ratio of 1 is to 10, the Rules Committee shall determine which committees must elect as chairperson, members belonging to the opposition parties in accordance with the principle of multiparty system

As indicated in Rule 129, responsibilities and functions of chairpersons are at all times subject to the collective members at all times.

Conclusion

A parliament where opposition parties can chair some of the committees of the house can work better and builds trust that processes are open and honest. It also reflects true democracy based on the diversity of the people and their political afflictions, views and ideals.