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**ANC Submission to the Subcommittee on Review of Rules of the NA**

9th September, 2015

In the main the ANC discussed the report of the Subcommittee on the Review of Rules of National Assembly (from henceforth the Subcommittee) with relative restraint from entering the province of technical drafting of Rules. The general method adopted was to politically amend Rules with the understanding that technical support staff of the Rules Committee would codify the stated political intent. Members who wished to contribute to the improvement of language of proposed Rules and amendments thereof were invited to do so with the proviso that they would not alter the essence.

In the main the ANC agrees with the thrust of the Subcommittee proposals and has to this effect proposed necessary Rule amendments. Below are specific proposals on the 15 chapters of the National Assembly Rule Book as proposed to be amended by the Subcommittee, and the general position the ANC holds on each.

**CHAPTER 1** *(Rules 1 – 6)*

**SOURCES OF AUTHORITY OF ASSEMBLY AND THEIR APPLICATION**

**General position**

Bar amendments below the thrust of the chapter is accepted.

**Specific amendments**

***Part 1: Definitions***

 **“parliamentary protection services”-** new Rule 53A defines parliamentary protection services.

Proposal: adopt the thrust of the definition above and change what is necessary to be changed.

**“privilege”-** the Rules in their current form do not define privilege. Rules of debate exclude a point of privilege, therefore the definition should confine privilege to a specific meaning that excludes the rules of debate.

Proposal: define privilege outside the realm of the rules of debate.

**“secretary of the National Assembly”-** the Rules in the current form define the secretary as the secretary of Parliament. The secretary of the National Assembly is distinct from that of Parliament. However Rules do not define the secretary of the National Assembly.

Proposal: define the secretary of the National Assembly.

**“substantive motion”-** the purpose of the motion is to ensure that any allegations levelled against any member are substantiated. The provision should in this regard curb the tendency to make negative reflections on members without basis for such.

However the definition in its current form does not clearly disclose the purpose of the motion.

Recommendation: the definition should be reworked to clarify the rationale behind the motion.

**“working day” –** in order to meet tight deadlines, committees sometimes sit over weekends and/or public holidays. On the one hand literal interpretation of the definition could prevent committees from sitting outside working days or if committees sit despite the definition in its current form, decisions such meetings take could be invalidated by literal interpretation of the definition.

On the other hand if the definition is extended to include weekends and public holidays, memos could be sent out during those days and members be deemed to have received them. It could also be that members who are suspended for specific number of days also include weekends and public holidays when counting their days of suspension.

Recommendation: provide for exceptional circumstances while obviating possible abuse of the provision by suspended members.

***Part 2: Sources of Authority of National Assembly***

**5. Unforeseen eventualities**

(1) – the Rule should empower the Speaker to rule with a view to protect the dignity and decorum of the House in the event of unforeseen eventualities. This is to empower the Speaker to stop any unforeseen attempt at impairing the dignity and/or undermining the decorum of the House.

Recommendation – insert the following words after the word “eventuality “in the first line: “including protecting the dignity and decorum of the House”.

It is tautology to restate the provisions of the Constitution.

Recommendation – delete every word after the word “House “in the third line.

**CHAPTER 2** *(Rules 7 – 12)*

**PROCEEDINGS IN CONNECTION WITH COMMENCEMENT OF SESSION**

**General position**

The proposal that the President should formally ópen’ each new Parliament once immediately after every general election, is accepted.

**CHAPTER 3** *(Rules 13 – 21CG)*

**PRESIDING OFFICERS AND MEMBERS**

**General position**

* Rule 18A process **to remove the Speaker or Deputy Speaker from office** is accepted.
* Rule 19B formal process for **raising a question of privilege** is accepted.
* Rule 21A provision for **appointment of party whips** is accepted.
* Rules covering **members’ attendance** are accepted.

**Specific amendments**

***Part 1: Presiding Officers***

**17A. General Authority and responsibility of Speaker**

(b) – the Rule casts an unreasonably onerous burden on the Speaker in respect of participation of political parties.

Recommendation:

* Delete the word **[“all”]** after the words “ensure that”.
* Delete the words **[“effectively and efficiently “]** after the words “National Assembly participate”.

(d) – similar to (b) above, the Rule unnecessarily compounds the Speaker’s responsibility by adding words which if interpreted literally by the courts would expose the Speaker to allegations of failure to fulfil her/his responsibility.

Recommendation:

* Insert the word “may” after the word “possible”.
* Delete all the words after the word “office-bearers”.

***Part 2: Members***

**21CC. Absence from sittings of the House**

(1)- It is noted that the Rule does not make provision for leave granted on production of a medical certificate. It is further noted that all leave matters are comprehensively provided for in the leave policy.

Recommendation:

* If the leave policy provides adequately for the requirement for a medical certificate to be produced before leave is granted, cross-reference the Rule to the leave policy; or
* If the leave policy does not adequately provide for the above, include the requirement for a medical certificate to be produced, and subsequently effect consequential amendments in the leave policy to align it to Rules.

**21CE. Absence from meetings of a committee**

The general principle that all members of parliament should effectively participate in committee work irrespective of the size of the political party they belong to is noted. Pursuant to the aforementioned principle is believed that chairpersons of committees should be vested with a reasonable amount of authority in relation to absence of members from meetings instead of such authority being the sole preserve of political parties. In this regard each member should commit to full-time membership of two portfolio committees. It is further noted that some parties often do not attend to portfolio committee business and as a consequence debate from an uninformed position in the House.

However another general principle is also noted that members should spend more time in constituencies than in Parliament. As a corollary, delegating management of attendance to parties ensures deployment of members to do political work per permission of party Chief Whips. In this regard it is believed that micromanaging political parties regarding participation in portfolio committees is not only undesirable but cumbersome as well as some members would depending on political interests at times prefer to shuttle between portfolio committees.

Recommendation: revisit the provision.

**CHAPTER 4** *(Rules 22-43)*

**SITTINGS OF THE ASSEMBLY**

**General position**

* *Rule 24A* on **programming** as the prerogative of the majority party is accepted.
* Adjustments to *Rule 29* on **sequence of proceedings** to ensure that the intended business for the day is prioritized over other routine business are accepted.
* **Mini plenary sessions** are in the main accepted with the proviso that method of participating in debate and time allocations per speaker are revisited.
* Rules on **managing public access** are generally accepted subject to the proposal below.

**Specific amendments**

***Part 4: Public Access***

**40B. Conduct of visitors**

It is noted that there has been an increase in the quantity of visitors hostile to and intolerant of ruling party members. It is believed these visitors can not only disrupt proceedings but if and when frustrated by proceedings can cause bodily harm to ruling party members.

It is further noted that the high number of hostile visitors does not reflect the outcome of national election results. To this effect Rules should provide for proportional allocation of gallery seats.,

However it is believed that causing proportional allocation of gallery seats would be to take representative democracy too far and that Rules should remain silent on allocation of gallery seats. Accordingly filling gallery seats is a political responsibility, therefore parties should strengthen their capacity to consistently fill most gallery seats.

Recommendation: explore the option of proportional allocation of gallery seats while recognizing political responsibility to fill gallery seats.

**CHAPTER 5** *(Rules 44-74)*

**ORDER IN PUBLIC MEETINGS AND**

**RULES OF DEBATE**

**General Position**

* Reworked *Rule 45* on the **conduct of members** is broadly accepted. The dress guidelines are accepted albeit with adjustments below.
* New *Rule 53A* on **removal of member from Chamber** is accepted.
* *Rule 54* on **period and consequences of suspension** is accepted.
* *Rules 58 – 74* on **Rules of Debate** are accepted subject to the proposals below.

**Specific amendments**

***Part 1: Order in Meetings***

**45. Conduct of members**

(3)(f) –The dress guidelines are supported with proposed deletion of unnecessary clauses.

Recommendation: delete all clauses after clause 2.

**47. Member not to be interrupted**

(b) – It is noted that though the provision to request permission to put a question to a member speaking is a potent tactical tool, it however is open to abuse and that it is offensive and inappropriate for the President to be interrupted by invoking the Rule.

It is further noted that there is a risk that the provision could be invoked with a view to disrupt a visiting Head of State causing diplomatic challenges for the government in particular and South Africans in general.

Recommendation:

* Without creating a special Rules regime for the President, Rules must prohibit any interruption of the President during the SONA and similar proceedings.
* Rules should prohibit any interruption of any visiting Head of State.

**CHAPTER 6** *(Rules 74A – 93)*

**DECISION OF QUESTIONS**

**General position**

Amended *Rule 81* on **declarations of vote** providing forallocating the time to each party to be determined by the Rules Committee is accepted

**Specific amendments**

**74B. Absence of Quorum**

Recommendation: consider dropping the provision as quorum is only necessary for decision making.

**88. Member calling for division to vote against question:**

It is believed that abuse of provision through amongst others walk-outs by those calling for the division should be averted.

Recommendations:

* Division should only be called to register a strong point of disagreement or when there is a reasonable prospect of the position held by the party calling for a division to succeed, to avoid unnecessary calling of divisions;
* Parties should choose whether or not to participate in a debate on condition that those thst participate must vote while those that do not must be excluded from voting.

**CHAPTER 7** *(Rules 94 – 102A)*

**MOTIONS**

**General Position**

* Revised *Rules 96 and 96A* on **amendments to draft resolutions** are accepted.
* Controls in terms *Rule 97(2)* on **motions without notice** are accepted.
* Controls regarding **notices of motion** are accepted.
* Revision of *Rule 100* on **amending notices** in order to provide certainty and protect the Speaker is accepted.
* *Rule 102A* on **no confidence motions** is accepted.

**CHAPTER 8** *(Rules 103 – 104)*

**DISCUSSION OF MATTERS OF PUBLIC IMPORTANCE**

**General position**

Added criteria to be applied when considering requests for **debates on matters of public importance and urgent public importance** are accepted.

**CHAPTER 9** *(Rules 105 – 106)*

**MEMBERS’ STATEMENTS AND EXECUTIVE STATEMENTS**

**General position**

* Controls on **members’ statements** in terms of *Rules 24A and 29* are accepted.
* Provision that party responses to an **executive statement** may be postponed and further that the responsible Minister will be given the opportunity to reply to party responses is accepted.

**Specific amendments**

**105. Statements by members**

(5) – It is noted that two minutes are not sufficient for a Minister to fully respond to a member’s statement. Be that as it may it is further noted that Rule 105(6) empowers the Rules Committee to determine the number of permissible responses to members’ statements.

Recommendations:

* Consider increasing time for ministerial responses.
* The Rules Committee should ensure that the number of ministerial responses corresponds to that of members’ statements to be responded to.

 **CHAPTER 10** *(Rules 107 – 117)*

**QUESTIONS**

**General position**

* *Rule 107(6)* providing for **guidelines for permissible questions** to be approved by the Rules Committee is accepted.
* Approach to **monitoring of replies** is accepted.
* Shortening of **questions for oral reply** as per *Rule 108(2)* is accepted.
* As appears below, **questions without notice for oral reply** are rejected.
* *Rule 109(2A)* providing for a **Deputy Minister or other Minister to answer questions if so authorized by the responsible Minister** is accepted.
* As appears below, the new procedure for **questions to the Deputy President** should be revisited.
* *Rules 110(6) and 111(3)* providing that **guidelines with which questions to the Deputy President and President** must comply must be approved by the Rules Committee are accepted.
* *Rules 115(3) and 116(5)* providing for procedure in relation to **unanswered questions** are accepted.
* The shortening of **questions for written reply** as per *Rule 116(2)* is accepted.
* Note after *Rule 117* providing for **sanctioning of a Minister** is rejected.

**Specific amendments**

***107C. Failure to answer questions***

It is noted that considering failure to answer questions as contempt of Parliament could open the flood gates of unfair litigation against Ministers.

Recommendation: reject the prosed amendment.

**109. Questions to Ministers**

It is noted that members tend to ask concurrent competency questions, best placed to be responded to by other spheres of government. It is further noted that responding to such questions requires a Minister to receive responses from a relevant sphere. Such members indirectly request Ministries to conduct research on their behalf on matters ng outside the purview of the national sphere of government. It is therefore believed that such questions should either be rejected or re-directed to relevant government spheres.

However it is also noted that such questions not only present the national sphere with opportunity to respond to issues affecting the people in all spheres of government but also alert it to matters which need urgent attention across the length and breadth of the country and by extension sharpen its focus on concurrent competencies.

Recommendation:

* Either re-direct questions relevant to other spheres to such spheres or increase the time allocated for Ministers to respond to such concurrent competency questions.

**Note after Rule 117.*****Questions without notice (option)***

It is noted that questions without notice for oral reply must be fully responded to despite the fact that Ministers only become aware of them when they are orally put to them. It is believed that some members can be more interested in political point scoring than in Ministers’ responses to questions put. It is further believed that some members can unfairly to rely on such questions as basis for claims that some Ministers do not master the content of their area of deployment.

Recommendation: reject the option.

**110. Questions to the Deputy President**

It is noted that the proposed requirement for monthly question days subject to session time could inadvertently cause scheduling of a question day during a month in which only one session day has been scheduled. It is believed that this eventuality is not in accordance with the purpose of the provision.

Recommendation: Revisit the proposal on monthly question days.

**CHAPTER 11** *(Rules 118 – 120)*

**MESSAGES**

**General position**

The provisions on **messages to Council,** and **to and from the President** are accepted.

**CHAPTER 12** *(Rules 121 – 228)*

**COMMITTEE SYSTEM**

**General position**

* Proposed requirement for presence of at least a **third of members of a committee** for the committee to conduct its business is rejected.
* Proposal on functions of the **Rules Committee** is accepted.
* Adjustments to the **Programme Committee** are accepted.
* As appears below exclusion of disciplinary matters from the **Powers and Privileges Committee** is accepted subject to pending clarity on jurisdiction, scope and procedure relating to the proposed **Disciplinary Committee.**
* Renaming the **Committee of Chairpersons** is accepted.

**Specific amendments**

***Part 2: Rules applicable to committees in general***

**132. Meetings**

(3) – It is believed that rendering it mandatory for a committee chairperson to call a meeting if and when requested to do so by a third of committee members is tantamount to delegating the powers of calling a committee meeting to a minority of committee members. It is further believed that it is improper to compel the chairperson to call a meeting against the views of the majority of members.

Recommendation: reject the proposed provision.

**133. Quorum requirements**

It is noted that some committees comprise a high number of members in general while in most committees the majority party enjoys a quantitative majority of one. The Rules Committee for instance is composed of fifty members plus three Presiding Officers thus making compliance with quorum requirements quantitatively onerous. In the same vein portfolio committees require a specific number of members for quorum purposes. However according to the current proposal committee meetings may only commence when a quorum has been reached.

It is believed that while it is undesirable for committee meeting to proceed with only a few members present, the requirement that only quorate meetings may commence can lead to unintended operational and financial consequences. In this regard the ANC proposes to resolve this challenge by a weighted vote.

It is further believed that introduction of a weighted vote proportionally between political parties and between political party members in accordance with order of authority will facilitate lowering the number of members per committee. It is further believed that a proportionately weighted vote will invariably obviate weighted vote abuse by an un-mandated party member.

Recommendations:

* Reject proposed requirement for presence of at least a third of members of a committee for the committee to conduct its business.
* Introduce a proportionately weighted vote between parties and also between political party members according to order of authority.

**134. Co-option when members and alternates not available**

It is believed that members should only vote in support of or against a position they fully comprehend. However it is also believed that while the desirable is that members should vote against or in support of positions they comprehend the possible is that those who comprehend a position may not all be available for quorum purposes during decision making time.

Recommendation: reject the proposal to repeal the Rule.

***Part 7: Powers and Privileges Committee***

It is believed that disciplinary functions should be removed from the Powers and Privileges Committee to limit its mandate to considering charges of contempt of Parliament. To this effect a Disciplinary Committee should be established to deal with pure disciplinary matters.

It is noted that the Powers and Privileges Committee procedure involves several steps and takes a long period of time, whereas some matters need urgent attention. However it is also noted that it does not follow that the Disciplinary Committee procedure will be less lengthy as rules of natural justice must be observed. It is believed that a separate Mediation Mechanism comprising Presiding Officers and senior whips of political parties should also be established to resolve minor disciplinary matters.

It is further noted that some Parliament staff and members are not trained to handle disciplinary matters. It is to this effect believed that a Senior Advocate who is not a Member of Parliament should chair the Disciplinary Committee. However it is also believed that it is inappropriate for members of the public to adjudicate over disciplinary matters involving members and arising from members’ work in Parliament.

Recommendation: rework the Disciplinary Committee proposal to address inter alia, the following:

* rationale for removing disciplinary functions from the Powers and Privileges Committee;
* schedule of matters to be considered by the Disciplinary Committee as well as those to be considered by the Powers and Privileges Committee;
* determining whether there is a need for a mediation mechanism and if there is, indicate matters it may consider;
* determining the composition of the Disciplinary Committee; and
* determining the procedure to be followed by the Disciplinary Committee.

**CHAPTER 13** *(Rules 229 – 300)*

**LEGISLATIVE PROCESS**

**General position**

* Provision for **private members’ bills** is accepted.
* *Rules 246 – 248A* providing for **First Reading debate** to be routinely held for all Bills is accepted.
* *Rule 253* providing for **Second Reading debate** to take place as a matter of course after the relevant committee has completed its work, is accepted.
* *Rules 249 and 251* providing for procedure for **processing of a Bill in committee** and for the **committee’s subsequent report on a Bill** are accepted.

**Specific amendments**

***Part 3: Introduction of bills and first and second readings***

***Introduction and related matters***

**243. Introduction of Bills in Assembly**

(1)(c)(iv) – It is believed that the requirement for Cabinet members to consult in preparing a Bill is not necessary. To this effect it is noted that public consultation by a Cabinet member requires pre-publication of a draft Bill. It is further noted that practical effects of public consultation by a Cabinet member are a long process and delay of tabling of Bills to Parliament as incorporation of public comments in a redrafted Bill invariably involves a long wait for gazzetting a Bill. Further there is no constitutional obligation it is noted, for Cabinet members to consult the public on a Bill before tabling it before Parliament. It is further noted that in reality and as a common occurrence more or less the same natural and juristic persons who participate in Cabinet members’ consultative processes also participate in Parliament’s public hearings in both Houses without fail and still holding their initial positions despite evidence presented to the contrary.

However it is also noted that consulting the public before a Bill is tabled before Parliament presents an opportunity for the public to air views. This it is believed assists the Cabinet member in gauging public support for the objects of the Bill and its other provisions which invariably would limit or extend rights of legal subjects. Pursuant to securing public comments, the Cabinet member may cause the Bill to be redrafted accordingly before it being approved by Cabinet for tabling in Parliament. It is therefore believed that this process is necessary not only to enhance the quality of Bills but to also limit chances of arising of avoidable tensions in the public domain, and anticipating unavoidable disaffection of particular stakeholders.

Recommendation: consider Cabinet members’ views before finalizing the matter.

**244. Classification of Bills**

It is believed that the Joint Tagging Mechanism (JTM)’s decisions on classification of Bills are strongly influenced by legal opinions of Parliament legal advisors. It is noted that the said legal advisors seldom classify Bills under section 75 of the Constitution. It is therefore believed that since several section 75 classified pieces of legislation were struck down by the Constitutional Court on the basis of incorrect tagging, Parliament legal advisors tend when in doubt to classify a Bill under section 76 of the Constitution. To this effect it is noted that there is no mechanism to consult a relevant portfolio committee before taking a decision on tagging, and further that there is no requirement for the JTM to give reasons for its decision to the Portfolio Committee.

On the other hand it is noted that the JTM comprises the Speaker, Deputy Speaker, Chairperson and permanent Deputy Chairperson of the NCOP who are senior leaders of the institution. The JTM therefore cannot be expected, it is believed to account to a committee of Parliament. Further the JTM does not take a decision on tagging without consulting the initiator of the Bill on the same matter. It is therefore believed that it is incorrect to attribute reasons for decision of the JTM solely to the content of legal opinions of Parliamentary legal advisors.

Recommendation: retain current JTM processes as the JTM strengthens its consultation with Bill initiators.

**Conclusion**

The ANC commends the work done by the Subcommittee and notes that more still needs to be done to finalize the Rules review process.

The above proposed amendments and general positions will serve before the Subcommittee on Review of NA Rules for consideration. The report of the Subcommittee will then be tabled for consideration before the Rules Committee, whose report will subsequently serve before the NA House for adoption.

The following outstanding processes should be finalized by the Subcommittee:

* The dress guidelines for members should be reworked;
* Cabinet should be afforded opportunity to comment; and
* Disciplinary procedure proposal should be finalized.