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**Additional Draft Rules 102B - 102K**

**Removal from office of President**

**in terms of Sec 89 of the Constitution**

**Draft Rules 102B – 102K for removal of President from office in terms of Section 89 of the Constitution**

The following draft rules are presented for further discussion in respect of a motion to refer a charge to a committee in terms of section 89 and the subsequent processes with a view to removing the President from office. [*Note:* Such Rules would still need to be inserted into the revised Rules for submission to the House for adoption.]

In discussions on these proposals in the Subcommittee, including inputs from the State Law Advisers and the Parliamentary Legal Services, it was suggested *inter alia* that the committee with reference to draft Rule 102I may be able to make use of a panel of external experts (*see par 35 of the opinion of the Chief State Law Adviser dated 5 April 2016.)* In that event, provision would need to be made in the Rules for aspects such as -

* the number of such external panellists, criteria for their appointment and manner of their appointment
* terms of reference and mandate of the panel (bearing in mind that the powers and immunities of MPs do not extend to the panellists)
* nature of the panel's interaction with the committee, and the status of its report or findings
* practical issues of remuneration for panellists and administrative support.

As indicated in the legal opinion, “the work of the panel would have to be guided by clearly circumscribed terms of reference to ensure that its mandate is clear and does not encroach on the role of the *ad hoc* committee”.

***Part 3: Motion for removal of President from office in terms of Section 89 of the Constitution***

**102B. Motion initiating proceedings for removal of President from office**

(1) A motion to remove the President from office in terms of Section 89 of the Constitution must be based on a recommendation to that effect by a committee of the House appointed to consider any relevant charges against the President.

*[****Note:*** *Such a committee would in the nature of things be an* ad hoc *committee, appointed for that purpose either by the House, or in a recess by the Speaker.]*

(2) A member may by motion propose that the Assembly initiate proceedings in accordance with these Rules to remove the President from office in terms of Section 89 of the Constitution.

**102C. Criteria with which motion to initiate proceedings must comply**

The proposed motion to initiate proceedings must comply with the following criteria:

(a) The motion must be limited to a clearly formulated and properly substantiated charge that in the opinion of the Speaker *prima facie* warrants consideration by the House;

(b) the motion must propose that the specified charge be referred to a committee of the House;

(c) the charge must be confined to a charge contemplated in section 89 of the Constitution;

(d) the charge must relate to an action or conduct by the President in person that is incompatible with the Constitution and not to an issue for which the President may be responsible only by virtue of the President's overall executive authority in terms of Section 85;

(e) the motion must be consistent with the Constitution, the law and these Rules;

(f) the motion may not contain statements, quotations, arguments or other matters not strictly necessary to make the proposed resolution intelligible; and

(g) the motion may not contain unbecoming or offensive expressions.

**102D. Non-compliance with criteria**

(1) The Speaker may disallow a proposed motion to initiate proceedings only if it does not comply with the specified criteria.

(2) If a proposed motion is disallowed, the reason for disallowing it must be provided to the relevant member, who may thereupon amend and resubmit the motion.

(3) If a proposed motion after amendment continues to be inconsistent with the specified criteria or an amended version is not submitted, the reason for disallowing the motion, or the amended motion as the case may be, must be provided to the member and the House.

**102E. Programming of motion**

A motion to initiate proceedings approved by the Speaker as complying with these Rules -

(a) must be programmed for consideration on the next sitting day of the House, or

(b) if the House is not due to sit for a period of more than 14 calendar days, the Speaker may -

1. appoint an *ad hoc* committee in terms of Rule 214 to consider the charge, or
2. convene a special meeting of the House without delay to consider the motion.

***[Option:*** *Provide for programming**as for motions of no confidence in Rule 102A:*

*The Speaker must ensure that the motion is scheduled and voted on within a reasonable period of time given the programme of the Assembly.]*

**102F. Scope of debate on motion**

The scope of the debate on a motion in terms of Rule 102B(2) must be confined to the proposed referral of the charge to a committee and related matters, and may not extend to the charge itself which will form the subject of the committee's consideration.

***[Option:*** *The motion may not be debated.]*

**102G. Invitation to President to respond in writing to charge**

When the Assembly approves the referral of a charge to a committee or the Speaker appoints an *ad hoc* committee in terms of Rule 102E(b), the Speaker must inform the President of the details of the charge and invite him or her to respond in writing within 14 calendar days.

**102H. Terms of reference of committee**

(1) Unless the House determines otherwise, the terms of reference of the committee to which the charge is referred are, in particular -

(a) to enquire into and pronounce upon the charge,

(b) if the charge is sustained as being beyond reasonable doubt, to determine its seriousness, if applicable, and

(c) to table a report on its findings and recommendations in the House in terms of section 89 of the Constitution.

***[Option:*** *Provide in (b) for the charge to be sustained on a balance of probabilities.]*

(2) The committee must be given a time frame within which to complete its work which must reasonably accommodate the 14-day period given to the President to respond to the charge.

**102I. Process in committee**

(1) The committee may exercise all the powers provided for in Rule 138 for purposes of carrying out its mandate and must, as appropriate, comply with the Rules applicable to committees generally.

(2) The committee must conduct its enquiry in accordance with a procedure that is reasonable and procedurally fair.

(3) The President has the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice.

(4) The committee may appoint one or more legal practitioners or other experts to assist it in an advisory capacity.

***[Option:*** *Provide (as in USA) that members appointed to the committee must take an oath or affirmation that they will perform their duties honestly and with due diligence]*

**102J. Consideration of committee report**

(1) When the committee's report is tabled, it must be programmed for debate and decision in the House without delay.

(2) If the committee recommends in its report that the President be removed from office in terms of Section 89, the question must be voted on in the House and if it is supported by at least two thirds of the members of the House, the President is thereby duly removed from office with immediate effect.

**102K. Removal of President from office in the case of inability to perform the functions of the office, in terms of Section 89(1)(c)**

(1) For purposes of the proceedings to remove the President from office in the case of the President's inability to perform the functions of office in terms of Section 89(1)(c) of the Constitution, the term “charge” in these Rules must be understood as the grounds for averring the President's inability to perform the functions of office.

(2) If, in relation to a charge in terms of Section 89(1)(c), the President is unable to comply fully with these Rules in person, the committee may in a preliminary report to the House recommend that another person be authorised to act for the President in these proceedings.