

# NATIONAL ASSEMBLY RULES COMMITTEE

**Chairperson** **Committee Secretary**

Speaker of the National Assembly Francois Basson x3899

 fbasson@parliament.gov.za

 Cell 0828477196

#### DRAFT MINUTES OF PROCEEDINGS

Tuesday, 6 September 2016, Good Hope Chamber

**Chairperson: Speaker of the National Assembly**

**Present:**

Bhengu, F (ANC – Alternate); Booi, M S (ANC); Dlakude, D E (Deputy Chief Whip of the Majority Party); Jafta, S (AIC – Alternate); Mahlalela, A F (ANC); Mazzone N W A (DA); Mbete, B (Speaker of the National Assembly); Mdakane, M R (ANC); Mthembu, J M (Chief Whip of the Majority Party), Radebe, B A (ANC – Alternate); Steenhuisen, J H (Chief Whip of the Opposition); Tsenoli, S L (Deputy Speaker) and Waters, M (DA).

**Absent:**

Dudley, C (ACDP – Alternate); Kilian, J D (ANC); Mente, N V (EFF); Ndaba, C N (ANC); Ndlozi, M Q (EFF) and Shope-Sithole, S C N (ANC).

**Other Members in attendance:**

Boroto, M G (House Chairperson); Didiza, A T (House Chairperson); Frolick, C T (House Chairperson); Khubisa, N M (NFP); Koornhof, G W (ANC); Kwankwa, N L S (UDM); Shivambu, N F (EFF) and Van der Merwe, L L (IFP).

#### Staff in attendance:

M Xaso (Secretary to the National Assembly), F Basson, V Ngaleka (NA Table) and K Hahndiek (Consultant).

**1. Opening and welcome**

The Speaker opened the meeting at 10:15.

**2. Apologies (Agenda item 1)**

Apologies were tendered on behalf of Dr CP Mulder (FF Plus), Mr B A D Martins (ANC), Mr N Singh (IFP) and Ms M T Kubayi (ANC).

**3. Consideration of draft agenda (Agenda item 2)**

The draft agenda was adopted without discussion.

**4. Discussion on procedures for Motions without Notice (Agenda item 3.1.)**

The Secretary to the National Assembly, Mr M Xaso, briefed the committee on a proposal for the number and sequence of moving motions without notice in the House (see attached Annexure A).

On the proposal of the Chairperson, the following number (22) and sequence for moving motions without notice in the House was **AGREED** to:

**ANC, DA, EFF, ANC, IFP, NFP, ANC, EFF, UDM, FF Plus, DA, ANC, Cope, ACDP, ANC, AIC, Agang SA, ANC, APC, PAC, DA and ANC.**

Mr Xaso also briefed the committee on the challenges being experienced in the House with motions without notice and offered a possible solution using a new standing order (see attached Annexure B).

Mr Steenhuisen said that two challenges currently existed for motions without notice. The first was to obtain permission from parties to read the motion in the House, but that did not mean that it could not be objected to. If a division was called for on an objectionable motion without notice, it took away the reason for the motion as the point was to obtain non-partisan support for the motion so that the House could take a unanimous decision.

Mr Shivambu said that a motion without notice should be read out in the House if five parties did not object to it. In the event that there were objections to the motion, these could be noted and a division would not be required.

Mr Mthembu stated that the possibility of the House dividing on 22 motions without notice was not desirable and that motions without notice should seek the consensus of all parties. He suggested that this matter “go back to the drawing board as the current challenges were pulling the House apart and the essence of motions without notice was being lost”. Mr Mthembu added that motions without notice should be suspended for the time being and that all parties should submit their ideas to overcome the challenges.

Mr Kwankwa agreed that the current rule did not solve the challenges being experienced. He further agreed that it be re-looked at without losing the underlying principles. Mr Waters also agreed that the new rule be re-opened for discussion as the intention was never to create the opportunity for the House dividing on 22 motions without notice.

Mr Hahndiek said that the first hurdle to be cleared was the agreement of five parties that the motion could be read out in the House, but that the rules were silent about the House dividing on motions without notice although it was the constitutional right of members to ask for a division when the House is expected to take a decision. He suggested that Rule 99 may offer assistance as the Speaker or presiding officer could postpone the decision on a motion without notice to a later time. He also added that a division would not be necessary if a motion without notice had met the rule requirements for it to be read in the House.

Mr Mdakane said that the challenge was how to deal with objections to motions without notice in the House after they had been moved. He added that the rule could be improved, but that the underlying principles should not be lost. Mr Booi agreed that the rule could be revisited but added that the rights of members to move a motion without notice should not be lost.

Mr Steenhuisen was in favour of a hybrid system where the requirements for reading the motion without notice were retained but if a party objected, the motion fell away. He added that if such a system was followed, the rights of all members would be covered.

The Chairperson agreed that the rule required further work. She added that motions without notice should cover non-controversial issues behind which the House could unite and that it was not desirable to disagree on motions without notice.

On the Chairperson’s proposal, it was **AGREED** that Rule 123 (Motions without notice) be referred to the Subcommittee on Review of Assembly Rules for further consideration and report to the Rules Committee at the beginning of the fourth term.

Mr Shivambu requested that the committee also look at the sequence for members’ statements and for providing the EFF with an additional opportunity to make a statement. Mr Mthembu pointed out that the Chief Whips’ Forum had agreed to the EFF’s request for an additional opportunity which would take the total number of members’ statements to 16.

On the Chairperson’s proposal, it was **AGREED** that the EFF would receive an additional opportunity and that the sequence for making members’ statements would be as follows:

**ANC, DA, EFF, ANC, IFP, Group 1, ANC, Group 2, ANC, DA, EFF, ANC, Group 3, ANC, DA, and ANC.**

**5. Discussion on Questions to the Executive (Agenda item 3.2.)**

Mr Xaso pointed out that Rule 136 required the Speaker, in consultation with the Rules Committee, to establish a system for monitoring and reporting regularly to the House on questions that have been endorsed as unanswered on the Question Paper. He proposed that the Subcommittee on Review of the Assembly Rules consider the monitoring system referred to in Rule 136 and report to the Rules Committee after the upcoming recess.

Mr Steenhuisen said that problems were being experienced with questions provided for in Rules 137, 146(1), 138(5) and written questions that were not answered in the 10-day period stipulated in the rules. In the latter case, Ministers simply did not answer or did not appear in the House to answer these questions.

Mr Mthembu concurred that challenges were being experienced with questions to the Executive, but he argued that a system had to be in place before this matter could be resolved. He added that the issues mentioned by Mr Steenhuisen should also be referred to the Subcommittee on Review of the Assembly for consideration.

The Deputy Speaker said that he supported the prioritisation of the monitoring system by the subcommittee and that the Parliamentary Counsellor to the Leader of Government Business (LOGB), Dr G W Koornhof, be asked to assist in the discussions. Dr Koornhof agreed to the refinement of the rules, but reminded members that the Deputy President had given a commitment in the House the previous week that members of the Executive would improve their performance on questions.

Mr Steenhuisen said that Ministers could not simply ignore Parliament and that, while the Deputy President could make promises of improved performance, there was no accountability from Ministers. He added that members of the Executive had to comply with the rules.

The Chairperson said that it was important to correct the situation and that all members of the Executive had to be aware of the revised rules. She added that the Office of the LOGB should assist in familiarising the Executive with the rules.

On the proposal of the Chairperson, it was **AGREED** that the monitoring system required by Rule 136 would be referred to the Subcommittee on Review of Assembly Rules for consideration and report to the Rules Committee.

**6. Discussion on declarations of vote (Agenda item 3.3.)**

Mr Xaso briefed the committee on two options for the allocation of time to parties to make declarations of vote (see Annexure A). Ms van der Merwe said that the proposal to give the `other parties’ two minutes to make declarations was not acceptable and that her party preferred reverting to the previous dispensation where smaller parties had three minutes for declarations.

Mr Mthembu said that the principle of providing fair opportunities to smaller parties had been discussed in the Chief Whips’ Forum but the principle of proportionality should remain. He agreed to providing smaller parties with three minutes each on condition that the time allocation to bigger parties should then be adjusted accordingly.

On the proposal of the Chairperson, it was **AGREED** that the time allocation for making declarations of vote would be as follows:

**ANC – 7; DA – 5; EFF – 4 and all other parties 3 minutes.**

**7. Closing (Agenda item 4)**

The meeting adjourned at 11:45.

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**B Mbete MP**

**Speaker of the National Assembly**

**APPROVED ON:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Annexure A**

**NATIONAL ASSEMBLY RULES COMMITTEE**

**PROPOSALS FOR CONSIDERATION**

**6 SEPTEMBER 2016**

**1. Motions without notice (Rule 123)**

It is proposed that the sequence for putting motions without notice to the House be amended as follows:

**ANC, DA, EFF, ANC, IFP, NFP, ANC, EFF, UDM, FF Plus, DA, ANC, Cope, ACDP, ANC, AIC, Agang SA, ANC, APC, PAC, DA and ANC.**

The effect of this proposal is that all parties will have at least one opportunity for a motion without notice, similar to notices of motion, while the EFF will receive an additional opportunity. A total of 22 motions without notice is then provided for.

**2. Declarations of vote (Rule 108)**

It is proposed that the time allocation for declarations of vote be amended as follows:

**ANC – 6; DA – 4; EFF – 3 and all other parties two minutes each.**

A further option that may be considered is as follows:

**ANC – 7; DA – 5; EFF – 3 and all other parties two minutes each.**

**3. Questions to the Executive**

Rule 136 requires the Speaker, in consultation with the Rules Committee, to establish a system for monitoring and reporting regularly to the House on questions that have been endorsed as unanswered on the Question Paper.

The Subcommittee on Review of the Assembly Rules is scheduled to meet on Friday, 9 September 2016, and it is proposed that that committee consider the monitoring system referred to in Rule 136 and report to the Rules Committee after the upcoming recess.

**Annexure B**

4 September 2016

**Motions without notice**

(Briefing Document)

**Fundamental principles**

Some fundamental principles common to any democratic dispensation underlie the mechanism of motions without notice. The following apply in particular:

1. No ambushes: Every proposal brought before the House for decision requires advance notice (with the exception of a few technical issues). The notice period enables members and parties to consider the proposal in detail and whether or not it can be supported. In the process they may want to caucus on the matter, engage in consultation and prepare discussion points and possibly amendments.
2. All members have the right to exercise their vote on any issue brought to the House for a decision.

The mechanism of putting a motion to the House without prior notice is created to enable the House in certain circumstances to dispense with notice when the House wishes to respond immediately to an event that was unforeseen and has suddenly arisen. For instance, if there has been a major occurrence in the country, the House may want to set aside party-political differences and respond with one voice to the event in order to express solidarity. In such a case the notice requirement is by common consent dispensed with.

The mechanism therefore introduces the necessary procedural flexibility in case of need.

**2. Developed practices**

Practices have developed in the National Assembly in terms of which motions without notice have come to serve a different need and function. The new Rule 123 has been devised to accommodate that different understanding and use of the mechanism. In the application of the new Rule, further challenges have been experienced that need resolution.

One such challenge is that, whereas five parties including the two largest parties are meant to notify the Secretary in the course of the morning whether they have no objection to notice being dispensed with in respect of a certain motion, as circulated, being moved in the House that afternoon, they sometimes are unable to do so within the specified timeframes. The question is how such failure to notify the Secretary is to be interpreted for purposes of the Rule. An ordinary interpretation of the Rule means that if no parties, or less than five parties, or either the majority or the largest opposition party does not to notify the Secretary that they have no objection to notice being dispensed with, then the motion may not be read out and moved in the House. The Rule therefore places a burden on the parties and some parties accordingly proposed that the wording should read that ‘they have an objection’ not that ‘they have no objection’.

If there are no objections to notice being dispensed with in respect of a certain motion, as circulated, then the party/member to whom the motion belongs, has earned the right to read out and move the motion in the House.

A second challenge is that a member or members may demand a division on such a motion after it has been moved in the House. Given the number of such motions that may be accommodated on selected days, divisions may take up a great deal of additional time. A call for a division is perhaps a clear indication that that matter should not have come before the House without notice and without an opportunity for an exchange of views.

**3. Possible solutions**

The practices and Rules that have developed can be maintained, but only with the co-operation of all parties. In other words, the solution to the challenges being experienced lies in the domain of political management of the mechanism.

An extreme and perhaps undesirable alternative would be to scrap this mechanism as unworkable. However, in the process a valuable mechanism for a flexible response from the House as a collective when needed would be lost. For this reason, a standing order to clarify and supplement the Rules may be the preferred route.

**4. Proposed standing order**

1. **Introduction**

Following the adoption of the revised Rules of the National Assembly on 26 May 2016, it has become apparent that the application of Rule 123, which relates to motions without notice, requires clarification and supplementation.

1. **Standing order**
2. Notwithstanding Rule 123(2)(d)(iv), a motion may not be read out and moved without notice in the House if at least five parties, including the majority party and the largest minority party have notified the Secretary to the National Assembly at least 30 minutes before the sitting of the House commences that they have an objection to the proposed motion being moved without notice.
3. When motions without notice are called for, the presiding officer will allow a member to read out and move a motion according to the agreed sequence, where after the motion will be put to the House for decision.
4. This standing order remains in force until amended or repealed by the House.