

# NATIONAL ASSEMBLY RULES COMMITTEE

**Chairperson** **Committee Secretary**

Speaker of the National Assembly Francois Basson x3899

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#### DRAFT MINUTES OF PROCEEDINGS

Wednesday, 16 November 2016, Room S12A

**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); Kilian, J D (ANC); Mahlalela, A F (ANC); Martins, B A D (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); Singh, N (IFP); Steenhuisen, J H (Chief Whip of the Opposition) and Waters, M (DA).

**Absent:**

Dudley, C (ACDP – Alternate); Jafta, S (AIC – Alternate); Mente, N V (EFF); Ndaba, C N (ANC); Ndlozi, M Q (EFF); Mulder, C P (FF Plus); Radebe, B A (ANC – Alternate); Shope-Sithole, S C N (ANC) and Tsenoli, S L (Deputy Speaker)

**Other Members in attendance:**

Boroto, M G (House Chairperson); Didiza, A T (House Chairperson); Khubisa, N M (NFP) and Koornhof, G W (ANC).

#### Staff in attendance:

M Xaso (Secretary to the National Assembly), Z Adhikarie (Legal Services), F Basson, V Ngaleka and N Ismail (NA Table).

**1. Opening and welcome**

The Speaker opened the meeting at 11:45.

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

An apology was tendered on behalf of Ms M T Kubayi (ANC).

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

The draft agenda was adopted without discussion.

**4. Consideration of draft minutes of 6 September 2016 (Agenda item 3)**

The draft minutes were **AGREED** to on the proposal of Ms Dlakude, seconded by Mr Mdakane.

**5. Matters arising (Agenda item 4)**

There were no matters arising.

**6. Report by Subcommittee on Review of Assembly Rules (Agenda item 5)**

Mr Mdakane, the chairperson of the subcommittee, introduced the subcommittee’s report (Report attached in full as Annexure A). He dealt with proposals for a standing order on motions without notice and outstanding guidelines and determinations.

Mr Steenhuisen said that regarding electronic voting, the wording of Rule 115 should be inserted to make it clear that all members present in the Chamber must vote or record an abstention. He added that consideration should also be given to inserting wording in this section to the effect that members’ names must be printed in the Minutes of Proceedings after voting.

Ms Mazzone said that regarding editing of questions, it must be stressed that any editing of a member’s questions must be done in consultation with that member. She added that the prohibition on criticising decisions of the Houses took away members’ rights to freedom of speech. She also said that members should have the right to question public statements by Deputy Ministers during questions to the President.

Mr Waters said that regarding the removal of the Speaker or Deputy Speaker, voting by secret ballot was not provided for and suggested its inclusion in the guidelines. He also questioned how the proposed standing order on motions without notice would be implemented successfully.

Ms Dlakude stated that if five parties objected to a proposed motion without notice, the motion would not be read in the House. She added that the Constitution did not provide for voting by secret ballot. Ms Boroto pointed out that some parties have in the past changed their motions without notice after vetting by the Table and they then included unparliamentary language in the version that was read out in the House.

Mr Singh raised a concern about the practicality of the system proposed for motions without notice and suggested that the system should make things easy for members. As far as the allocation of whips was concerned, he said that the principle of rotation of whips representing the smaller parties should be considered. He added that manual voting should only take place in cases where the electronic voting system was not available. He also questioned the meaning of “semi-state bodies” for the purposes of asking questions.

Mr Mthembu stated that the process for motions without notice required further reflection and that it may become a problem for the presiding officers if all parties did not cooperate fully with the proposed system. He added that consideration should be given to reducing the formula for whips from 1 for every 6 members to 1 for every 4 members if it was financially viable. Mr Mthembu agreed that wording must be inserted in Rule 115 to reflect that all members present in the Chamber must vote and that he agreed that decisions of the Houses could be criticised.

Mr Singh said that instead of changing the formula for the allocation of whips, smaller parties ideally wanted more support staff if that was financially possible.

Ms Kilian questioned if it was necessary to include Rule 115 in the guidelines as the rule was very clear that members had to vote when present in the Chamber. She added that previous Parliaments did not experience problems with motions without notice because if one party objected, the motion fell away. She proposed that the 5th Parliament should go back to this system. She indicated that the idea behind prohibiting criticism of the decisions of the Houses was because those decisions reflected the democratic will of the House in question.

Mr Waters said that the guidelines should not suppress freedom of speech and thought and that criticism of the decisions of the Houses must be allowed. He agreed that motions without notice were abused currently and that he supported the principle of not allowing a motion to be read out in the House if five parties objected. On the issue of the secret ballot, he pointed out that the Constitution also did not rule out the use of a secret ballot and that Parliament thus had discretion to decide. Mr Steenhuisen reminded members that the court had said that Parliament could by itself determine whether to use a secret ballot or not and he requested further discussion on this matter.

Mr Mdakane said that motions without notice presented difficult challenges and that parties must get pre-approval before reading out such motions in the House. He added that the party that did not cooperate in this regard was not present at the meeting. He said that the rule can be done away with but parties wanted the opportunity to express themselves using motions without notice. Mr Mdakane added that decisions of the Houses should not be criticised but that substantive motions could be used to challenge those decisions.

The Chairperson said that members sounded helpless regarding the challenges being experienced with motions without notice. She added that members should insist on their right to bring non-controversial issues to the House if sufficient consensus existed.

On the proposal of the Speaker, the committee **AGREED** to the proposed standing order on motions without notice. It further **AGREED** that the wording of Rule 115 would be incorporated into the guidelines dealing with electronic voting.

**7. Correspondence from Chief Whip of the Majority Party regarding application of Rules (Agenda item 6)**

The Chairperson stated that unbecoming and offensive exchanges in the House should be avoided when the President answered questions. Mr Steenhuisen said that politics was a robust process but that respect should be shown for other members. He asked that members’ freedom of speech be respected while ensuring that they followed the rulings of the presiding officers.

Ms Didiza said that the existing rules were sufficient to maintain order in the House and must be applied by the presiding officers. She added that the spirit of Ubuntu should prevail and that, while members may disagree, they should do so in a respectful manner and not demean each other.

Ms Dlakude said that dignified criticism of the President was in order when he answered questions in the House, but that insulting behaviour may lead to the President electing not to answer questions in future. Mr Mdakane said that the party that caused the challenges was not present in this meeting and that it could be expected that they would again engage in disrespectful acts when the President next answered questions in the House. He added that the rules had to be implemented and that misbehaving members should be evicted from the House if needed.

Mr Singh said that the presiding officers should apply the rules and that their rulings in the House are final and binding. Mr Waters stated that the rules have to be applied consistently for all parties. He added that the President was obliged by the Constitution to answer questions in the House, and that while he was a controversial figure, insulting behaviour should not be accepted. Mr Steenhuisen said that the rules must be applied consistently for all parties and that robust engagement should be allowed without personal mudslinging.

The Chairperson said that the airing of concerns in this meeting was valuable and that it must be recognised that there is a difference between robust engagement and offensive and insulting behaviour.

**8. Discussion on mini-plenaries (Agenda item 7)**

On the proposal of the Speaker, it was **AGREED** that this item be referred to the Subcommittee on Review of the Assembly Rules for consideration.

**9. Discussion on order of proceedings (Members’ Statements) (Agenda item 8)**

Mr Steenhuisen said that because Members’ Statements have been moved to the end of proceedings, not enough members of the Executive were in the House and therefore members did not get adequate responses to their statements. He requested that consideration be given to moving Members’ Statements to the start of proceedings.

On the proposal of the Speaker, it was **AGREED** that this matter would be referred to the Subcommittee on Review of Assembly Rules.

**10. Closing (Agenda item 9)**

The meeting adjourned at 13:55.

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**B Mbete MP**

**Speaker of the National Assembly**

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

**Annexure A**



**Report of the Subcommittee on Review of Assembly Rules**

**(**14 October 2016)

**A. Background**

(1) The National Assembly Rules Committee (NARC) met on 6 September 2016 when it agreed to certain determinations and guidelines required by the rules for the operation of the House. The NARC also agreed to refer the procedure for motions without notice and other outstanding guidelines and determinations to the Subcommittee on the Review of the National Assembly Rules (the Subcommittee) for further consideration.

(2) The Subcommittee met on 14 October 2016 and agreed to a procedure for motions without notice and the outstanding guidelines for consideration and adoption by the NARC. The proposals follow below.

**B. Procedure for Motions without Notice**

(1) In terms of a procedure for motions without notice, the Subcommittee proposes the following standing order for adoption by the NARC and the House -

 **Standing Order**: That the National Assembly:

(a)In terms of Rule 4 suspend Rule 123 (2) (d) (iv), which provides for a procedure whereby notice of a motion may be dispensed with; and

(b) Agrees to the following standing order for the duration of the Fifth Parliament: That -

(i) subject to the other provisions of Rule 123, a member may be given an opportunity to read out and move a motion without notice in the House unless 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 motion being moved without notice; and

(ii) subject to the conditions for a notice to be read, once a motion is read in the House, any member may then object to the motion being proceeded with without notice in which case such a motion will not be put for decision but will be considered to be a notice and submitted as such.

 **C. Guidelines and Determinations required in terms of the Rules**

(1) The Subcommittee, having considered the outstanding guidelines and determinations required by the rules, recommends that the NARC adopt the following:

**Chapter 3: Presiding Officers and Members**

**(1) Removal from office of Speaker or Deputy Speaker (Rule 28)**

1. A notice of a motion to remove the Speaker or Deputy Speaker, as the case may be, must be given in the House or in writing on any other parliamentary working day;
2. The notice of motion to remove the Speaker or Deputy Speaker must comply with the rules generally and those on notices of motion and may not contain statements, arguments or other matters not strictly necessary to make the proposed resolution intelligible;
3. If the notice of motion relates to the removal of the Speaker or Deputy Speaker for alleged improper or unethical conduct, the motion must comply with Rule 85;
4. A notice of motion given in the House to remove the Speaker or Deputy Speaker must be delivered during the time allocated to parties by the Programme Committee for members of political parties to give notices of motion;

(5) A member may propose an amendment to a motion to remove the Speaker or Deputy Speaker provided it complies with the rules for amendments to motions generally;

(6) The Speaker may not preside in the House when a motion to remove the Speaker is debated or voted on; and the Deputy Speaker may not preside when a motion to remove the Deputy Speaker is debated or voted on.

**(2) Appointment and responsibilities of whips (Rule 33(3)(a))**

1. A joint request to the Speaker by political parties which do not qualify for a whip to have one or more whips appointed to represent them or to alter a previous appointment in terms of Rule 33(3)(a) must –

 (a) contain the name(s) of the member(s) nominated for appointment as a whip; and

 (b) be endorsed [signed] by the leaders or duly authorised persons of the relevant parties affected by such request/nomination.

1. In considering a request to appoint a whip or to alter an appointment previously made in terms of Rule 33(3)(a), the Speaker must ensure that –

the member nominated for appointment as a whip is a member of one of the relevant parties affected by such nomination;

the parties jointly are entitled to the number of whips nominated for appointment, in line with the formula agreed to by the Rules Committee in terms of Rule 33(1); and

the request and nomination have been endorsed [signed] by the leaders or duly authorised persons of the parties affected by such request/nomination.

1. Once the Speaker is satisfied that the request and nomination complies with the rules and guidelines of the House, the Speaker must appoint the whip(s) and thereafter publish the name(s) of the appointed whip(s) in the ATC in terms of Rule 33.

**(3) Rule 33(1)**: **Determination of the number of whips to be allocated to parties represented in the House.**

(1) The current formula of 1 whip to 6 members is retained. The NA Rules Committee will determine the formula for appointing whips for each Parliament.

**Chapter 6: Decision of Questions**

**Rules 103 and 104 require predetermined procedures by the Speaker to be followed for electronic voting and manual voting respectively.**

**(1) Electronic Voting**

1. The presiding officer will request members to be in their allocated seats before voting can commence.
2. Once the electronic system has been activated, the Presiding officer will direct members to indicate whether they are ‘for’, ‘against’ or ‘abstain from’ the question by pressing the relevant button on the electronic system.
3. Members press the yes, no or abstain button on the electronic consoles at their seats when directed by the Presiding officer.
4. The Presiding officer announces when the voting is closed. If a member has experienced problems with the recording of their vote, they must draw the attention of the Chair and may in person or through a whip of his or her party inform the Secretary at the table of his or her vote.

**(2) Manual Voting Procedure**

1. When a question is put to the House and a member calls for a Division, the presiding officer may determine that a manual vote will take place.
2. The Presiding officer will announce that the bells will be rung for a five minutes in order to alert members to a call for a division being made.
3. After the five minutes have elapsed, the doors of the Chamber will be barred.
4. The presiding officer will request members to be in their allocated seats before voting can commence.
5. The presiding officer will request members in favour of the question to raise their hands.
6. The presiding officer appoints party whips as tellers and directs them to count the number of members that are in favour of the question before the House.
7. Thereafter the same procedure is followed with members against the question and members abstaining, in that order.
8. Whips are directed to submit the results of the manual vote to the Secretary at the Table.
9. A member who wishes to vote against the party vote may inform the Table staff accordingly in person.

1. The Minutes of Proceedings will only indicate how parties voted and members’ names would not be reflected as is done when an electronic voting system is used.

**Chapter 10: Guidelines for Questions** (**Rule 134(4) and (6)**)

**(1) Editing of Questions (Rule 134(6))**

(a) Whenever questions are edited this is done under the authority of the Speaker and in accordance with the guidelines as approved by the Rules Committee.

(b) When a question is edited in terms of rules and guidelines, the member who submitted the question, or the party to which the member belongs, must be consulted before the edited question is published.

**(2) Object of Questions**

(1) The purpose of parliamentary questions is to:

(a) obtain information; and/or

(b) press for action on matters related to the official responsibility of Cabinet members.

**(3) General Form and Content of Questions**

(1) A question must:

(a) deal with only one substantive matter;

(b) comply with the Constitution, the law and the Rules;

(d) be subject to the rule of anticipation; and

(e) not contain unbecoming or offensive expressions.

(2) A question is not permissible which –

(a) contains offensive expressions;

(b) casts a reflection on the conduct or character of persons whose conduct may only be challenged in a substantive motion;

(c) anticipates discussion of matters on the Order Paper or that is scheduled to be placed on the Order Paper within a reasonable time;

(d) request details or deal with the merits of any matter on which a judicial decision in a court of law is pending;

(e) repeats, in substance, questions already answered in that annual session, or that is awaiting an answer, or that the Minister has refused to answer or that is a class of question substantively the same as another. However, a similar question different in some respects may be asked and the same question may be put to different members of the Cabinet to the extent that they have a responsibility in terms of their portfolios;

(f) criticises decisions of either House of Parliament;

(g) publishes any name or statement not strictly necessary to make the question intelligible, unless the Cabinet member has used the name or statement or it has been cited in a charge before a court; and

(h) is of a statistical nature when put as a question for oral reply by asking for more than two figures (dates are not regarded as statistical).

 (3) Questions may not –

(a) express an opinion or seek the expression of one;

(b) contain arguments, inferences or imputations;

(c) contain unnecessary descriptive words or phrases added to or substituted for a person’s name (epithets);

(d) contain rhetorical, controversial, ironical or offensive expressions; and

(e) contain extracts from newspapers or books, or paraphrases or quotations from speeches. The facts on which a question is based may be set out briefly, but the questioner is responsible for ascertaining the accuracy of the facts.

 (4) In addition, Questions may not –

(a) only provide information;

(b) convey a particular point of view;

(c) constitute a speech, or be excessively long;

(d) refer to communications between an individual member (other than the questioner) and a Cabinet member;

(e) be based on a hypothetical proposition;

(f) seek an opinion on a question of law, such as an interpretation of a statute, an international document or a Cabinet member’s own powers. However, it is in order to ask under what statutory authority a Cabinet member acted in a particular instance;

(g) seek a solution to a legal question;

(h) raise questions which would require an impractically extensive answer;

(i) seek information on matters of past history for the purposes of argument;

(j) be trivial, vague or meaningless; or

(l) be a repeat of other questions with some trivial variations.

(5) While it is the basic tenet of all questions that a question should be related to a Cabinet member’s official responsibility, the following criteria are applied:

(a) Requests for information are not usually accommodated in respect of matters falling under local or other statutory authorities;

(b) It is not in order to ask for information about matters that are the responsibility of bodies or persons not responsible to the Government, such as banks, the Stock Exchange, employers’ organizations and trade unions;

(c) Questions relating to semi-state bodies are restricted to matters for which Cabinet members are responsible by statute or other legislation. However, questions on national statistics in relation to these bodies are in order;

(d) Questions may not refer to matters under consideration of a parliamentary committee or deal with matters within the jurisdiction of the chairperson of a parliamentary committee or a House of Parliament;

(e) Questions may not be asked about the action of a Cabinet member for which he or she is not responsible to Parliament;

(f) It is not in order to put a question to a Cabinet member for which another Cabinet member is more directly responsible, or to ask a Cabinet member to influence a colleague;

(g) Questions suggesting amendments to a Bill before the Assembly or in Committee are inadmissible unless such amendments may only be moved by a Cabinet member;

(h) It is inadmissible to ask a Cabinet member whether statements in the press or by private persons or unofficial bodies are accurate, or to call for comment on statements by persons in other countries (unless the statement is contained in a message from another government);

(i) Questions may not seek information about the internal affairs of other independent countries, unless such countries form part of a common organisation through which the information is obtainable;

(j) It is permissible to ask questions calling on Cabinet members to grant relief to South African citizens in foreign countries who are under arrest or to protect persons or companies from discrimination in foreign countries; but questions on the actions of foreign states in refusing entry to South African citizens have not been allowed;

(k) Questions that require information that is readily accessible are not allowed; and

(l) It is in order to ask for a Cabinet member’s intentions with regard to matters for which that Cabinet member is officially responsible and to ask for administrative or legislative action in regard to such matters.

(6) The form and content recorded herein may be further developed by Rulings of the Speaker with regard to any matter not recorded herein.

**(4) Form and Content of Questions to the President**

(1) While the above criteria on form and content apply to questions generally, some additional specific criteria have been established in respect of questions to the President.

(2) The President represents the executive authority of the Republic, and while delegating these responsibilities to members of the Cabinet, he or she does not abdicate overall responsibility. The President performs the powers and functions and the executive authority within a unitary state.

(3) Questions to the President may relate to –

(a) Matters in respect of the powers and functions of the President and the executive authority of the Republic that he represents;

(b) Matters for which the Government is responsible – this may include line function responsibilities of Ministers where they give rise to issues of national or international concern;

(c) Broad matters of national or international importance that are topical;

(d) Matters of provincial or local concern to the extent that such questions give effect to the unitary nature of the Constitution of the RSA, 1996, that provides for intervention in the affairs of provincial and local spheres of government;

(e) The granting of honours;

(f) The dissolution of Parliament;

(g) The definition of the responsibilities of Cabinet members;

(h) Statements made by Cabinet members (not Deputy Ministers, who are not members of the Cabinet) on public occasions and whether such statements represent the policy of the Government; and

(i) A speech made by the President on a public occasion outside Parliament and whether it represents Government policy.

**(5) Guidelines on Criteria for Questions to the Deputy President**

(1) While the President is assisted by the Deputy President in the execution of the functions of government, the President allocates responsibilities to the Deputy President from time to time. Questions to the Deputy President must relate to these responsibilities, and a list of these responsibilities must be maintained for each Parliament, in accordance with information officially received from the Leader of Government Business in terms of the Rules.

**(6) An Authorised Representative Rule 137(7)**

(a) The person designated by a party to deal with its questions is deemed to be the authorised representative;

(b) The party must advise the Speaker in writing of its authorised representative at the beginning of each Parliament;

(c) Such a person liaises with the Speaker with regard to all matters related to the questions of the members of its party; and

(d) The Speaker must also liaise with the relevant representative in the event that any matters arise with regard to the questions of the members of the relevant party.

**(7)** **Party order for questions (Rule 134(4))**

(1) The current practice is retained.

**(8) Ministerial clusters for questions (Rule 138 (1))**

(1) The current practice remains unchanged until further notice.

**(9) System to monitor questions (Rule 136(1))**

1. Rule 136 provides that the Speaker, in consultation with the Rules Committee, must establish a system to monitor and report regularly to the House on questions that have been endorsed as unanswered on the Question Paper in terms of Rules 143(2), 144(5) and 146(3).
2. The following system to monitor and report on questions that have been endorsed as unanswered is proposed:

 (a) The Speaker submits a written report every quarter to the Rules Committee on questions endorsed on the Question Paper as “Unanswered” in terms of the Rules, the period of time over which they have appeared as endorsed, the responsible Ministers and any communication sent or received by the Speaker in that regard.

 (b) The Rules Committee must set up a permanent subcommittee which must meet at least quarterly to receive and consider the Speaker's reports.

 (c) The subcommittee would be composed of the number of members and party representation as determined by the Rules Committee.

 (d) The subcommittee would be chaired by the Deputy Speaker or other designated presiding officer and also include, in its membership, the Leader of Government Business or a designated representative.

 (e) The subcommittee would receive and engage with the Speaker's report and invite relevant Ministers to respond on why questions to them have been endorsed as “Unanswered”.

 (f) The subcommittee would then be report within a specified time to the Rules Committee on its findings in each case and any recommendations to address identified challenges or concerns. The subcommittee's report should specifically include information on responses it has received from the executive.

 (g) The Rules Committee would then consider the subcommittee's report and it would, in accordance with Rule 136, report to the House on the outcome of the monitoring process, including any findings and recommendations with a view to strengthening effective executive accountability to the Assembly. Appropriate recommendations could be developed by the Rules Committee, responding to the circumstances in any particular case.

**Chapter 12: Committee System**

1. The Subcommittee agreed that the guidelines required for committee programmes and meetings in terms of the Rules should be deferred for purposes of further consultation and discussion.