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**DRAFT RULES TO REMOVE THE PRESIDENT IN TERMS OF SECTION 89 OF THE CONSTITUTION**

(Draft 1 – 16 January 2018)

**Definitions**

For the purpose of a section 89(1) enquiry in terms of these rules –

“**inability**” means “a permanent or temporary physical or mental condition of the President”

“**misconduct**” means “unacceptable, improper or unprofessional behaviour by the President”;

“**serious**” means “an intentional, malicious or reckless act or omission performed by the President otherwise than in good faith”

**Initiation of Section 89 procedure**

1. Any member of the National Assembly may by way of a motion initiate proceedings to remove the President in terms of Section 89of the Constitution provided that –
2. the motion must be limited to a clearly formulated and substantiated charge on the grounds specified in Section 89;
3. the charge must relate to an action or conduct by the President in person and not an issue for which the President may be responsible by virtue of his/her Executive authority in terms of Section 85 of the Constitution; and
4. the motion is consistent with the Constitution, the law and these Rules.
5. For purposes of proceedings to remove the President in terms of Section 89(1)(c), the term “charge” must be understood as the grounds for averring the President’s inability to perform the functions of office.

**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.

**Referral of motion**

1. If a motion is in order, the Speaker must refer the motion, and any supporting documentation provided by the Member, to the Committee/Panel established for the purposes of considering Section 89 matters.
2. The Speaker must inform the House and the President of such referral without delay.

**Consideration of preliminary report by the house**

1. Once the Committee/Panel has reported on the motion referred to it by the Speaker, the report must be scheduled for House decision with due urgency given the programme of the Assembly.
2. The President must be informed of the scheduling and any decision on the motion.

**Consideration of final report by the house**

1. Once the Committee/Panel has tabled is final report, the report must be scheduled for House debate and decision without delay.
2. If the report recommends that the President be removed from office, the question must be put to the House directly for a vote in terms of the Rules and if the question is supported by at least two thirds of the members, the President is thereby removed from office with immediate effect.

**Mechanism to inquire into matters related to Section 89 of the Constitution**

**OPTION1: COMMITTEE**

**1. Establishment**

There is a Committee to consider motions in terms of Section 89 of the Constitution.

**2. Composition**

The Committee consists of the number of Assembly members that the Speaker may

determine with the concurrence of the Rules Committee, subject to the provisions of

Rule 154[[1]](#footnote-2).

**3. Chairperson**

The Committee must elect one of its members as Chairperson and another as Deputy Chairperson.

**4. Functions and powers**

1. The Committeemust –
2. consider any motion proposing to remove the President in terms of Section 89 of the Constitution, referred to it by the Speaker, and make a recommendation to the House whether sufficient grounds exist for the Assembly to proceed to inquire into the removal of the President;
3. in considering the matter, affordthe member in whose name the motion standsan opportunity to substantiate the charge(s); and
4. when the House has approved the recommendation to proceed with an inquiry, proceed to establish the veracity and, where required, the seriousness of the charges and report to the House thereon.
5. The Committee may/must[[2]](#footnote-3), before conducting the inquiry, appoint certain appropriately qualified persons to assist it with the inquiry provided that –
6. the appointment must be based on specific terms and conditions; and
7. the views of such persons are duly considered and included in its final report.
8. The Committee must ensure that the inquiryis conducted in a reasonable and procedurally fair manner.
9. The Committee must afford the President 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.
10. For the purposes of performing its functions, the Committee has all the powers applicable to Parliamentary committees as provided for in the Constitution, applicable law and the Rules of the National Assembly.

**5. Decisions**

A question before the Committee is decided when a quorum in terms of Rule

162(2) is present and there is agreement among the majority of the members present, provided that when the Committee reports, all views expressed in the Committee must be included in its report.

**6. Subcommittee**

1. The Committee may appoint a subcommittee to consist of the number of members and party representation as determined by the Committee.
2. A subcommittee appointed by the Committee has those functions and powers as provided for in Rule 172.

**OPTION 2: PANEL[[3]](#footnote-4)**

1. **Establishment**

The National Assembly must establish a panel to consider motions in terms of Section 89 of the Constitution.

1. **Composition**

The Panel consists of five retired judges proposed by the Speaker, provided that the Panel is gender balanced.

1. **Chairperson**

The National Assembly must appoint, on the recommendation of the Speaker, one of the judges as Chairperson of the Panel.

1. **Decisions**

A question before the Panel is decided by a majority of panellists provided that at least three panellists are present.

1. **Functions and powers**
2. The Panel must:
3. consider any motion proposing to remove the President in terms of Section 89 of the Constitution, referred to it by the Speaker, and make a recommendation to the House whether sufficient grounds exist for the Assembly to proceed to inquire into the removal of the President;
4. afford the President 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
5. when the House has approved the recommendation to proceed with an inquiry, proceed to establish the veracity and, where required, the seriousness of the charges set out in the inquiry and report to the House thereon; and
6. conduct its proceedings in public in a manner that is reasonable, impartial and procedurally fair.
7. The Panel may –
8. appoint a legal practitioner to lead evidence; and
9. also afford parties in the National Assembly an opportunity to lead evidence.
10. The Panel has the powers given to it by the Assembly including the power to subpoena witnesses[[4]](#footnote-5).

1. Another option may be to provide that the Committee should be comprised of one member from each party (i.e. the Committee would not be proportional) although this may give rise to issues regarding decision-making. [↑](#footnote-ref-2)
2. The terms “may” or “must,” reflect the options presented in the notes. [↑](#footnote-ref-3)
3. These draft rules are derived from the submission by the EFF as attached. [↑](#footnote-ref-4)
4. The legal implication of this must be considered. [↑](#footnote-ref-5)