**DISCUSSION DOCUMENT**

*Prepared by the National Assembly Table*

**REMOVAL OF OFFICE-BEARERS**

**INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY**

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1. Section 194(1) of the Constitution states that the office-bearers in the Institutions Supporting Constitutional Democracy[[1]](#footnote-1) may be removed from office only on –
2. the ground of misconduct, incapacity or incompetence;
3. a finding to that effect by a committee of the National Assembly; and
4. the adoption by the Assembly of a resolution calling for that person’s removal from office.
5. While the Constitution and the Rules[[2]](#footnote-2) do set out a broad framework for Parliament to exercise its functions in terms of Section 194, there is a view that, to ensure clarity and uniformity, specific rules are required. To this end, a number of principles require consideration so as to guide the drafting process.

(3) It is envisaged that the rules should provide four stages for a Section 194 process in Parliament –

1. the initiation of a process;
2. the preliminary assessment of evidence (*prima facie*);
3. an inquiry by a committee; and
4. a decision by the House.
5. Concerning the first stage, the rules currently provide two mechanisms for a member to initiate a process – by way of a substantive motion in the House, or by way of a written request to the Speaker. It might be preferable for there to be one mechanism – that of a motion.
6. In terms of the second stage, that of the preliminary assessment of evidence, it is anticipated that a determination of whether *prima facie* evidence exists for Parliament to proceed with an inquiry must be fact-based and rely on legal arguments, as is the case of Section 89 procedure. In this regard, clarity is required about –
7. the role of Speaker[[3]](#footnote-3),
8. the role of committee;
9. the need for an independent panel (and how such a panel must be constituted, function and report) and/or external legal advice.

The House must be informed about the findings of the Speaker/committee/ panel. In the case of the President, the panel reports to the Speaker, and through the Speaker to the House, which must then make a determination about whether to proceed with an inquiry or not[[4]](#footnote-4).

1. Concerning the third stage, that of an inquiry, should the preliminary assessment conclude that the Assembly must proceed with an inquiry (and the House concur), clarity is required about the best structure to carry out such a task. In this regard, at least three options seem possible –
2. a special committee could be constituted for the purpose (as in the case with the Section 89 procedure);
3. an ad hoc committee could be established; or
4. the matter could be referred to the relevant portfolio committee.

With respect to the inquiry, it is evident that the affected parties must be permitted to make representations[[5]](#footnote-5) but clarity is also required about whether the affected parties may be assisted by legal representatives.

1. Importantly, any such determinations should be made without undue delay given the consequences of the action against an office-bearer and the implications for the institution they serve.

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1. These include the – Public Protector; Auditor-General; South African Human Rights Commission; Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; Commission for Gender Equality; and the Electoral Commission. [↑](#footnote-ref-1)
2. These include National Assembly Rule 88, which relates to reflections on office-bearers in the House as well as substantive motions, and Rules 337 and 338, which relate to the tabling and referral of written instruments in the Assembly. Rules 129A-Q, which govern the removal of the President in terms of Section 89 of the Constitution, are also instructive in this regard. [↑](#footnote-ref-2)
3. At present, Rule 88 provides that the Speaker must determine whether there is prima facie evidence before Parliament must proceed to consider a motion. [↑](#footnote-ref-3)
4. See *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* [2017] (ZACC 47) para 178-180. [↑](#footnote-ref-4)
5. As required by the principles of natural justice. [↑](#footnote-ref-5)