

# NATIONAL ASSEMBLY NARC

**Chairperson** **Committee Secretary**

Speaker of the National Assembly Razia Thinda x2623

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#### DRAFT MINUTES OF PROCEEDINGS

Tuesday, 9 March 2021, Virtual Meeting Platform, Cape Town

**Chairperson: Speaker of the National Assembly**

**Present:**

Modise, T R (Speaker); Tsenoli, L S (Deputy Speaker); Boroto, M G (House Chairperson); Frolick, C T (House Chairperson); Hill-Lewis, G (DA); Koornhof, G (Parliamentary Counsellor to the President); Kula, S M (ANC); Majodina, P C P (Chief Whip of the Majority Party); Malatji, M (ANC); Mulder, C P (FF Plus); Singh, N (IFP); Wessels, W W (FF Plus).

#### Staff in attendance:

M Xaso (Secretary to the National Assembly), N Ismail and R Thinda (NA Table) and Z Adhikarie (Chief Legal Advisor).

**1. Opening and welcome**

The Speaker opened the meeting at 11:02 and welcomed all present.

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

Apologies were tendered on behalf of the Deputy Chief Whip of the Majority Party and Mr M N Nxumalo.

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

On the proposal of Mr Singh, seconded by the Chief Whip of the Majority Party, the draft agenda was **AGREED** to.

**4. Consideration of draft minutes of 26 November 2019 and 19 May 2020 (Agenda item 3)**

On the proposal of the Chief Whip of the Majority Party, seconded by Mr Singh, the draft minutes of 26 November 2019, were **AGREED** to.

On the proposal of the Chief Whip of the Majority Party, seconded by Mr Singh, the draft minutes of 19 May 2020, were **AGREED** to.

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

The Chief Whip of the Majority Party indicated that the matters arising out of the minutes were addressed in the report of the Subcommittee on Review of Assembly Rules. Mr Singh raised the matter of replies by Ministers to questions, in terms of Rule 136, and the Deputy Speaker indicated that the matter would be covered under Item 7 of the agenda which dealt with the NARC Report of the Fifth Parliament on Monitoring Replies to Questions.

**6. Confirmation of Rule framed by the Speaker in terms of Rule 6 (Agenda item 5)**

Mr Xaso gave a report on the Rule framed by the Speaker in terms of Rule 6. He said that Rule 6 of the National Assembly Rules provided that the Speaker may give a ruling or frame a rule in respect of any eventuality for which the rules or orders of the House do not provide, having due regard to the procedures, precedents, practices and conventions developed by the House and on the basis of constitutional values and principles underpinning an open, accountable and democratic society. A rule framed by the Speaker remains in force until the House, based on a recommendation of the NARC, has decided thereon.

Mr Xaso said that the rule framed was in relation to the Independent Panel appointed by the Speaker, in terms of Assembly Rule 129R on a motion in the name of Ms N W A Mazzone, MP requesting the House to initiate a process to remove the Public Protector, Adv B Mkhwebane, from office in terms of section 194 of the Constitution. He explained that the Speaker received a submission from the Independent Panel after it was established, requesting additional time to complete their assessment. The Panel requested that the 30-day period provided in Rule 129X(1)(b) be extended to 90 days. In light of the limitations of Rule 129X(1)(b) and in accordance with Rule 6, the Speaker framed Rule 129X(3), which provided the Speaker with discretion to extend the period in which the Panel could conduct its assessment on good cause shown and discretion for the Assembly to extend the period beyond 90 days, if required. He added that the rule was published in the Announcements, Tablings and Committee Reports document on 4 December 2020, and that the determination to extend the period within which the Independent Panel must report to 90 days was done in terms of Rule 129X(3) framed by the Speaker in terms of Rule 6.

The Chief Whip of the Majority Party said that the report was straightforward and moved for its adoption. On the proposal of the Chief Whip of the Majority Party, seconded by the Deputy Speaker, Rule 129X(3) framed by the Speaker in terms of Rule 6, was **AGREED** to.

**7. Report of the Subcommittee on Review of Assembly Rules (Agenda item 6)**

Mr Xaso presented the Report of the Subcommittee on Review of Assembly Rules in the absence of the Deputy Chief Whip of the Majority Party who chairs the Subcommittee (Annexure 4). The report dealt with the following matters:

* Composition of the Chief Whips’ Forum;
* Consideration of ruling by presiding officer;
* Determination of time for declaration of vote;
* Rules related to Questions to the Deputy President;
* Opportunities for debates for smaller parties; and
* Questions to the executive not replied to.

The Subcommittee recommended an amendment to Rule 257, which dealt with the membership of the Chief Whips’ Forum. In terms of the amendment, the composition of the Chief Whips’ Forum was expanded to give representation to all parties represented in the Assembly.

The matter of the ruling by the presiding officer was based on a complaint received by Ms HO Mkhaliphi, MP after she was removed from the virtual platform based on a ruling by Mr QR Dyantyi who was presiding at the time. The EFF and IFP did not agree with the majority view of the Subcommittee on the matter; but agreement was reached on the principle that the presiding officer was responsible for maintaining the decorum of the sitting, that members were required to adhere to the directions of the presiding officer and that the presiding officer’s ruling was final and binding.

The NARC was also responsible for making a determination on time allocated per party for declaration of vote. The NARC of the Fifth Parliament had made the determination that was currently implemented. The Subcommittee discussed the option of larger parties having three minutes for declarations and smaller parties having two minutes, but this was not agreed to. Mr Xaso also explained that the Rules (9th edition) provide that no member may speak for less than three minutes. The Subcommittee recommended that the current time allocation for declaration of vote be retained, namely: ANC 7 minutes; DA 5 minutes; EFF 4 minutes and all other parties 3 minutes each.

The Subcommittee recommended an amendment to Rule 139(1) to provide that the Deputy President answer questions in the National Assembly at least once per quarter. The DA expressed their objection to the proposal.

On the matter of opportunities for debates by smaller parties, Mr Xaso said that the Subcommittee was of the view that an increase in the number of opportunities for smaller parties to sponsor subjects for discussion could be accommodated in mini-plenaries. The matter, however, was a scheduling matter that needed to be considered by the Programme Committee.

Lastly, Mr Xaso said that the Subcommittee held a view that the matter of questions to the executive not replied to should be considered by the NARC.

Mr Singh stated that the rules regarding the composition of the Chief Whips’ Forum did not recognise whips that were appointed by the Speaker, instead the rule only acknowledged members from parties. He said that the rule should recognise whips appointed before it recognised members representing their parties in the proposed draft rule. He recommended that the draft Rule 257, proposed by the Subcommittee, be amended to include whips appointed by the Speaker. The Chief Whip of the Majority Party agreed with the report as tabled, and supported the idea of no alternates to attend with designated whips. She believed that this would bring the size of the forum under control. She did not support Mr Singh’s proposal as the Inkatha Freedom Party, which he represented, had two members attending the Forum on a regular basis. House Chairperson Boroto suggested that the actual number of members to serve on the Forum should be defined. Dr Koornhof proposed that the NARC accept the proposal from the Subcommittee, as Mr Singh’s proposal was already covered by the undertaking that all parties would be represented on the Forum. Dr Mulder proposed that subsection 1(e) be amended to state that either a whip or a member of the party could attend. Mr Singh said that he agreed with what Dr Mulder had proposed, namely, the amendment to subsection 1(e) to include reference to a whip or a member.

The Speaker said that her understanding from the discussions was that all parties were to be represented on the Forum and that where parties had a recognised whip, that they would form part of the Forum’s membership. Mr Xaso indicated that it would be difficult to stipulate a defined number of members on the Forum, as it would fluctuate with every Parliament depending on the number of political parties represented. On the proposal of the Chief Whip of the Majority Party, seconded by Dr Koornhof, it was **AGREED** that the proposed draft Rule 257(1)(e), be amended to include reference to “one whip or a member from each of the other parties represented in the Assembly”. It was **FURTHER** **AGREED** that the proposed draft Rule 257, as amended be adopted.

On the matter of the ruling of the presiding officer, House Chairperson Boroto said that she had a challenge with the wording, as it referred to a ‘principle’ but that there was no rule referenced. The Speaker said that usually interjections did not disturb the speech of the person at the podium, as the microphone in the Chamber was loud enough and members did not use their microphones in the Chamber to make such interjections. Interjections on the virtual platform, however, drowned out the member at the podium. She highlighted that presiding officers had made several rulings on the matter. She sought clarification on whether the virtual rules allowed for interjections. Mr Xaso explained that the rules for virtual and hybrid sittings did not ban interjections per say, as they endorsed the current rules of the National Assembly. Although the rules were silent on whether interjections were allowed, they were not intended to drown out members speaking or disrupt proceedings. It was largely left to presiding officers to make a determination on a case by case basis. He said that the rules did not expressly state that there were to be no interjections.

The Speaker explained that the rules did not ban interjections, but that the presiding officers were meant to use their discretion when dealing with interjections. She conceded that it was difficult to manage interjections by other members on points of order when the interjections were in relation to the same point of order. The Speaker agreed with House Chairperson Boroto that the wording may be important to consider. The Chief Whip of the Majority Party agreed with the Speaker and requested that presiding officers should take points of order, as it caused disorder in the House when members were aggrieved that their points of order were being ignored. She also suggested that the Assembly consider making Committee Room E249 an ‘overflow’ venue for the Assembly during sittings, so that more members could participate in proceedings. The Speaker stated that presiding officers were obliged to hear points of order. Mr Singh highlighted that the rules should also be applied to Ministers, as some of them disrupted the proceedings with their interjections, but they were not taken to task as ordinary members of the House were. The Deputy Speaker responded that some members did not obey the presiding officers’ instructions repeatedly, which was problematic. He also responded that the members of the executive have been taken to task for their interjections. House Chairperson Boroto said that it would be important for the presiding officer to also warn members that they were being disruptive before their microphones were muted or the member removed from the sitting. It was **AGREED** that presiding officers would use their discretion and apply the rules as was required.

It was **AGREED** that the current time allocation for parties for declaration of vote be retained.

On the matter of questions to the Deputy President, Mr Hill-Lewis stated that the DA did not agree with decreasing the frequency for the Deputy President to respond to oral questions in the Assembly. He said that the DA would have preferred if the current formulation of Rule 139(1) was retained. The Chief Whip of the Majority Party agreed with the recommendation of the Subcommittee that the Deputy President should respond to oral questions on a quarterly basis. On the proposal of the Chief Whip of the Majority Party, it was **AGREED** that the draft amendment to Rule 139(1) be adopted.

The Chief Whip of the Majority Party said that mini-plenaries would be scheduled to hold debates on subjects for discussion proposed by political parties. The increased scheduling of these mini-plenaries would result in more opportunities for smaller parties to sponsor such debates. On the proposal of the Chief Whip of the Majority Party, seconded by Mr Singh, it was **AGREED** that the NARC **RECOMMEND** to the Programme Committee the scheduling of an increased number of mini-plenaries to debate subjects for discussion proposed by political parties.

**8. NARC Report of Fifth Parliament on Monitoring Replies to Questions (Rule 136) (Agenda item 7)**

The Speaker sought agreement on the last recommendation of the Subcommittee, namely that the NARC consider the matter of unanswered questions from the executive. The Deputy Speaker indicated that he had engaged members of the executive on the unanswered questions and that he would inform the House about progress made. Mr Singh said that the matter of unanswered questions arose in the previous NARC meeting. He referred to the minutes of the NARC meeting of 19 May 2020 and reminded members of the decision taken. He said that the only outstanding issue was for the committee contained in Rule 136 to be established. Mr Hill-Lewis supported the proposal by Mr Singh that the Committee be established, but proposed that the rules should strengthen the Speaker’s hand to expect a written explanation from members of the executive if they did not reply to written questions.

Mr Xaso clarified that the report under consideration was adopted in the Fifth Parliament, and not the Sixth Parliament. He explained that it was meant to be considered by the Assembly, but had lapsed. He added that Rule 136 did not identify a subcommittee to be established, but obliged the Speaker to establish a mechanism to monitor questions that were endorsed as unanswered. He gave an overview of the practice at the time of communicating with the Leader of Government Business on a quarterly basis, but that practice did not yield responses to unanswered questions. He clarified that the report recommended the establishment of a subcommittee, but since it was not adopted by the Assembly, the subcommittee was not established. He said that the NARC needed to decide whether it endorsed the report as is and then submit it to the Assembly for its decision; or whether to strengthen the Speaker’s hand in how the matter is addressed. Dr Mulder suggested that the Subcommittee on Review of Assembly Rules should consider the report and make a recommendation on what ‘strengthening the Speaker’s hand’ should entail.

The Deputy Speaker suggested that the NARC should agree in principle with the report and establish a subcommittee. He cautioned however, that the Constitution obliged the Assembly to interact with good intent and be cooperative amongst organs of state, before harsher and heavier sanctions were imposed. He said that the presiding officers reporting progress to the House in itself was a sanction on the affected members of the executive. He acknowledged Mr Hill-Lewis’ proposal, but counter proposed that the mechanisms used be retained for up to three months and that the subcommittee be established thereafter. The Deputy Speaker further proposed that ‘strengthening the Speaker’s hand’ could be considered after the subcommittee was established, if needed.

Mr Hill-Lewis said that he agreed with the Deputy Speaker’s proposal. He stated that the current practice did not make a difference, as the question paper already showed which questions were endorsed as unanswered, which could be viewed as a report to the House in itself. The endorsement was meant to make a difference, but he believed that the matter was ripe for escalation. He indicated that he had a few suggestions on the matter and would be happy to make those inputs in the proceedings of the Subcommittee on Review of Assembly Rules.

Mr Xaso clarified the proposals made on the matter, namely that:

1. the subcommittee be activated as proposed by the NARC of the Fifth Parliament;
2. the Speaker must exercise the responsibility of following up with the executive without a subcommittee; and
3. the matter be referred to the Subcommittee on Review of Assembly Rules and allow for it to recommend an appropriate mechanism.

Dr Koornhof supported the proposal made by the Deputy Speaker, namely that the Speaker follow-up with the executive and that the subcommittee be established. The Speaker suggested that the NARC takes the middle ground, in that it refers the report of the NARC of the Fifth Parliament to the Subcommittee on Review of Assembly Rules, and that the presiding officers continue to monitor and make follow-ups with the executive while the Subcommittee considers the report. She said that it was the responsibility of the presiding officers to make follow-ups with Ministers on questions they had not answered. She added that the proposal did not take away the responsibility of the presiding officers to act on behalf of the Assembly. She indicated that everything possible should be considered as the intention was to get responses to questions. She suggested that the responses provided could be referred to committees for further oversight. She cautioned however, that the mechanism created should not usurp the responsibilities of the Speaker.

On the proposal of the Speaker, it was **AGREED** that the report on Monitoring Replies to Questions of the NARC of the Fifth Parliament and proposals made by Mr Hill-Lewis be referred to the Subcommittee on Review of Assembly Rules for consideration and report. It was **FURTHER AGREED** that the presiding officers will continue to make follow-ups with the executive to solicit responses to questions.

**9. Closing (Agenda item 8)**

The Speaker thanked all the members present and adjourned the meeting at 12:27.

**Ms T R Modise, MP**

**Speaker of the National Assembly**

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