



NATIONAL ASSEMBLY PROGRAMME COMMITTEE

Chairperson:
Speaker of the National Assembly

Committee Secretary:
A Mbanga x 3218

DRAFT MINUTES OF PROCEEDINGS

Thursday, 31 March 2022 [Virtual]

Present:

N N Mapisa-Nqakula (Speaker)

S L Tsenoli (Deputy Speaker)

Boroto, M G (House Chairperson)	Mazzone, N W A (Chief Whip of the Opposition)
Frolick, C T (House Chairperson)	Mkhaliphi, H O
Gwarube, S	Mulder, C P
Hendricks, M G E	Ntlangwini, E N
Herron, B N	Ntombela, M L D (House Chairperson)
Jafta, S M	Papo, A H M (Parliamentary Counsellor to the Deputy President)
Koornhof, Dr G W (Parliamentary Counsellor to the President)	Singh, N
Kwankwa, N L S	Shaik Emam, A M
Lesoma, R M M (Programming Whip)	Swart, S N
Majodina, P C P (Chief Whip of the Majority Party)	Zungula, V

Staff in attendance:

Acting Secretary to Parliament Ms P N Tyawa, Secretary to the National Assembly Mr M Xaso, Dr T Mbatha and Mr N Bell (Constitutional and Legal Services Office) and Adv M Tau (Committees).

1. Opening

The Speaker opened the meeting at 08:32 and welcomed everyone present. She thanked all political parties for their cooperation during the sitting the previous day when the motion of no confidence was considered and although it had been a long process the House was able to carry out its constitutional functions. It was stated that members should nevertheless reflect on issues of decorum during proceedings. Secondly, as a matter arising, the Speaker indicated that she would like the meeting to reflect on the notice of motion of the African Transformation Movement (ATM) that was not moved during the sitting. In the House, she had ruled that the detail of what should happen next with the motion would be finalised by the Programme Committee.

2. Apologies

No apologies were received.

3. Consideration of draft agenda

The draft agenda was adopted as proposed, with the addition of 'reflections on the voice/roll call voting' as part of matters arising.

4. Consideration of minutes of meeting of 24 March 2022

On the proposal of the Chief Whip of the Opposition, seconded by Mr Papo, the minutes of 24 March were adopted.

5. Matters arising

Motion of no confidence in the President

The Speaker indicated that she did not wish to open the previous day's debate but in terms of Assembly Rule 208(e) the Programme Committee may "make decisions and issue directives and guidelines to prioritise or postpone any business of the Assembly...". Against that background, she requested the Programme Committee to reflect on what should happen with the motion of no confidence which had not been moved by Mr Zungula in the House despite being called upon to do so.

Mr Papo indicated that in his view the motion should be removed from the Order Paper. The ATM could pursue further legal action to resolve its dispute on the secret ballot, without this impacting on the right of other parties to bring a motion of no confidence in the President, should they wish to do so. The Deputy Speaker added that the blocking effect this motion had on other similar motions was possibly not what Mr Zungula himself would like to happen if the matter remained on the Order Paper. House Chairperson Mr Frolick stated that a similar case had been experienced in the Fifth Parliament whereby a motion from a member of Agang fell away when he refused to move it. The practice should be consistent and any party or member was at liberty to reintroduce a motion at any other time should they wish to do so. As far as the question of *sub judice* was concerned, House Chairperson Mr Frolick said that it did not apply because the matter had been struck off the court roll. That matter was not even considered by the court, thus there was no judicial matter pending. Furthermore, Parliament had the right to determine its internal proceedings.

Mr Zungula, however, argued that there was an ongoing court process as only the urgency of the matter was struck off the roll, but the merits of the case were neither considered nor dismissed. As a result, he was in possession of a case number which was clearly proving that there was an ongoing court case. Furthermore, he was in possession of papers from the state attorney representing the Speaker which clearly indicated that there was ongoing litigation. Mr Zungula also stated that the meeting could not pre-empt the tabling of similar motions based on Assembly Rule 90. It was also documented that previously motions were either withdrawn or postponed and therefore the ATM should not be 'cornered' to withdraw its motion as a suitable solution. He proposed that the matter should remain on the Order Paper until the court had made a final determination.

Mr Singh appealed that a decision on the matter should not be rushed and suggested that a period of seven days be given for members to also look at the legal opinion provided to the Speaker and, at the same time, if the ATM had an alternative opinion that the matter was *sub judice*, they should provide it to the Speaker. If necessary, the Programme Committee could be convened in order to consider it, failing this, the motion should be removed from the programme.

Ms Mkhalihi advised that the matter should be postponed and the ATM should not be pressured to withdraw the motion, this would be unfair to them as they were waiting for a court outcome. She said that it would take time for the matter to be rescheduled in an

event that the court ruled in their favour as that opportunity could have been given to another party. Mr Herron said the Speaker had made a ruling which should be respected, subject to the review of the matter in court. Dr Mulder clarified that when an application had been struck off the roll even though there was a case number, one had to lodge an action again in the court for the normal roll which could be heard in a year's time or longer. The effect of that was that no one else could move a similar motion. He, however, said that the issue of *sub judice* needed to be relooked at as he believed that it was irrelevant and not being applied anymore and the provision of it in the rules was unconstitutional and a legal opinion should be sought on that matter.

Mr Kwankwa reminded the meeting that when the United Democratic Party (UDM) took the Speaker to court previously, it was able to rely on the *sub judice* rule and had managed to postpone the matter. Even so, there was a time when it had to withdraw the motion and allow court processes to unfold and the matter was not left open-ended. As a result, he concurred that the ATM should not be pressurised to withdraw the motion but it could be properly reconsidered in the next term in order to look at its implications and a way forward. He added that he could not understand why the motion was scheduled though the matter was *sub judice*. Mr Hendricks described the issue of a motion of no confidence as a sword unfairly hanging over one's neck year-after-year and that it should be dealt with speedily. House Chairperson Ms Boroto said that, as Mr Zungula did not want to participate in his motion, it fell off and he would therefore have to resubmit it for consideration. She disagreed with Mr Kwankwa that the matter was already *sub judice* as it was scheduled some time prior to the matter being taken to court. The Programme Committee met weekly and should not be held to ransom and prevented from performing its functions. Mr Shaik Emam also said that there was no issue of *sub judice* anymore as the matter had been struck off the court roll and suggested that members should be workshopped on the matter of *sub judice* in order to avoid its misinterpretation.

Adv Swart said the essence was whether the ATM's attorneys had applied for a date on a normal roll. He, however, said that he was concerned about the application of the *sub judice* rule and it should be reconsidered as he had been extremely frustrated over the years on its usage as the work of Parliament could not be done. Dr Koornhof indicated that, if consensus could not be reached as espoused in Assembly Rule 210(2), a decision on the question may be taken, at the meeting or subsequently, by the Chief Whip with the concurrence of the Speaker and the Leader of Government Business, who was represented in the meeting by the Parliamentary Counsellor. He urged that the situation be resolved as all the role-players were present in the meeting.

Mr Kwankwa clarified that in the previous week the matter was *sub judice* but the meeting decided to schedule it anyway, subject to final determination by the Speaker, even though some members objected to that. Mr Xaso advised the meeting that Assembly Rule 120, provided that no matter may be proposed for discussion in the House which was the same in substance as a matter which had been discussed in the same annual session. However, in the instance of motions of no confidence this rule was specifically excluded which meant that should the motion in question be withdrawn or lapse it would still be possible for the ATM to reintroduce it. Furthermore, in terms of procedures regarding motions that had not been moved, the practice was that a notice of motion remained the property of that member until he or she decided to move it in the House. In an event that the member chose not to move the motion on the day it was scheduled, the motion lapsed. This was in terms of the National Assembly Guide to Procedure. Mr Zungula said the critical issue was whether there was an existing case before the court or not. Due to the case in question, he said that was the reason the ATM could not proceed with the motion in the House. He undertook to forward the court documents to the Speaker, by Friday 1 April, which confirmed that there was an ongoing court process with a date and a case number.

The Speaker indicated that in terms of Parliamentary processes, if a member chose not to move a motion at the time it had been scheduled, the motion lapsed. Given that the

Programme Committee had not postponed it; the member could resubmit it when he believed that he was ready to do so. The Speaker also indicated that the two motions of no confidence in the President and the Cabinet, respectively, had been scheduled as far back as two weeks past, she was therefore surprised to learn that Mr Zungula had taken the matter to court on 28 March, two days before the motion would be considered in the House. She said that she could not understand why the matter was not taken to court immediately when a decision was made to schedule it on 30 March and that an open voting system would be used.

Reflections on the voice/roll call voting

Mr Xaso informed the meeting that rules made provision for three types of voting, namely electronic, voice/roll call and the pronouncement of voting through party whips. He welcomed feedback from members on the implementation of the voice/roll call voting which was conducted the previous day as well as how it could be improved. Mr Singh stated that the process was extremely cumbersome and that the system needed to be relooked at.

House Chairperson Mr Frolick said that members of the Chief Whips' Forum might recall a presentation made by the Information, Communications and Technology section (ICT) on the matter of an electronic voting system. ICT had considered about 15 different voting systems as a solution ever since Parliament had embarked on the hybrid and virtual system. Three options were considered by the ICT Focus Group, which comprised representatives from political parties. He indicated that the preferred solution should be demonstrated to political parties for their inputs. The proposed solution was used in the United States senate as well as the European Parliament. It was envisaged that in the Second Term, the system would be tested once consultations with parties had taken place. House Chairperson Mr Frolick also indicated that he was confident that it was a workable solution that could be used for an open vote as well as a secret ballot and the information that would be derived from those processes would only be available to certain people that had been identified.

The Chief Whip of the Opposition stated that it took only 11 minutes for all the members of the Democratic Alliance (DA) to vote and that this was based on prior arrangements that their whippers put in place. She, however, indicated that she found it appalling how the votes were cast by African National Congress (ANC) members who were gathered at the Cape Sun hotel. In her opinion they were making light of the proceedings and wasted a lot of time on what was a serious matter. The presiding officer kept requesting them to turn on their devices and she found it hard to believe that Members of Parliament who were relatively knowledgeable on the use of the Zoom platform, had so many issues. The Chief Whip of the Opposition also said that it was worrying that, even though the results were not close, the process was still not clear as to how many members voted without switching their cameras on or who could have voted on their behalf. She said that she was unhappy about the process as it was a shambles as it did not make sense that other members were experiencing difficulties when they could have made preparations beforehand in accessing the platform. As a result, the process could be subjected to legal scrutiny should anyone wish to conduct an audit on it.

The Chief Whip of the Majority Party indicated that it should be understandable that there would be all sorts of challenges as the process was undertaken for the first time. Members had not been taken on a dry-run beforehand as they were used to vote through their whips and therefore other parties should refrain from making comparison with the ANC, which had 230 members in the National Assembly as opposed to the 84 of the DA. The Chief Whip of the Majority Party indicating that she would not respond to the attacks from the Chief Whip of the Opposition. She said that no one could control the challenges with devices and when some members used other people's gadgets, they showed that they were actually in attendance, but could not connect on their own devices. The reflection should rather focus on how the system could be improved. It should also be noted that there were members of the ANC who were in hospital who could not display

their faces and the administration was alerted to this beforehand. Mr Papo added that some members of the ANC were based in far flung areas which were rural in nature hence the reason to have some members assembled in one place in order to avoid experiencing challenges with network and other things. He said that the comments from the Chief Whip of the Opposition were remarkable as it was the DA which in 2016 allowed one of their coalition members to show how they voted on their ballot paper, but never made a statement about flagrant violation of secret ballot procedures. The utterances by the Chief Whip of the Opposition were therefore provocative and should be rejected with contempt as the ANC was a party that was over 100 years old and understood democracy, as such it was preposterous to suggest that their members were controlled.

Ms Gwarube said that no one could dispute that the voting process undertaken was chaotic due to the hybrid setup. As a way forward, she said that it would be necessary for members to express themselves individually when casting their votes on constitutional motions as the Speaker had acceded to an open voting system. She expressed support for the trial run for a new procedure in the next term as mooted by House Chairperson Mr Frolick earlier. Mr Kwankwa said that it was expected that teething problems could be experienced with a new system, but suggested that both systems should rather be perfected as they served a purpose in cases where there was a technical glitch with the electronic system, for a fall-back position. Adv Swart said it was unfortunate that the proceedings, as broadcast live, did not portray a dignified institution. Mr Hendricks said that he was taken aback that members used the opportunity to insult others and instead of merely voting chose to reflect on members in a negative manner. House Chairperson Ms Boroto added that the meeting was not meant to deliberate on how parties 'drilled' their members other than programming-related matters. She stated that the initial rules as received on the voting process during the meeting of the CWF did not indicate that members were required to show their faces but only stated by voice, but that these procedures should be tightened. The Programming Whip said that the Chief Whip of the Opposition was out of order for raising the issue of possible litigation as she should have registered her concerns immediately after the voting procedure. She added that the Rules Committee could assist further by capacitating members in some areas as it was difficult to pre-empt some scenarios. Dr Mulder intimated that it was not correct to have allowed members to make brief statements whilst voting as that was normally done only through a debate or declarations and that matter should be revisited.

House Chairperson Mr Ntombela indicated that one had to wonder what the proponents of the voice/roll call method wanted to achieve or put into practice judging by the comments from the Chief Whip of the Opposition earlier. Furthermore, the method was cumbersome and should only be used in exceptional circumstances. Ms Ntlangwini expressed concern with the length of the process and the need to unbar the doors for a comfort break. She commended Table staff as well as ICT who assisted in the process as her party experienced cooperation throughout the voting. With regards to the challenges experienced, she said that it should be understandable for members to make mistakes especially when using a particular system for the first time.

The Speaker indicated that the roll call vote had been coordinated in a very short space of time and was done due to the request for such a system by the Leader of the Opposition, this request could have been made earlier in order to allow sufficient time for preparation and a dry run with members.

Readiness of venues for mini-plenaries

Mr Xaso indicated that the administration was asked to explore the possibility of enabling mini-plenaries to meet physically in Parliament as well as identifying possible venues for that. The venues that could be use were the Committee Rooms M46, S12A in the National Council of Provinces wing and the Good Hope Chamber (GHC). He said that the limitation was that M46 and S12A did not have broadcasting facilities and would

therefore not be available for mini-plenaries during May. It was AGREED that mini-plenaries would be fully conducted virtually.

Mr Xaso also reported that there had been some work on the options presented on finding an alternative venue for the National Assembly. Various options had been presented to the CWF on whether the Cape Town City Hall could be hired, continue to use the GHC or to establish capacities in the parliamentary villages by linking them up with the chamber. Other presentations were made on a possible modular structure. More information was, however, required on this type of structure which could be constructed across the road in the Nieuwmeester parking area within a particular period of time but that independent specialists would be consulted on how long it could take to construct it. Ultimately, the presentation would be made to the Executive Authority. With regard to numbers in the GHC, the Chief Whip of the Majority Party explained that the CWF had agreed that a report should be presented in the next term on whether the capacity in the venue could be increased which would be informed by the applicable national regulations. In response to Dr Mulder, the Acting Secretary to Parliament explained that the Old Assembly Chamber was not available as it was damaged due to the fire.

The Speaker advised that she had received a preliminary report on the assessment of the fire damage in Parliament from the Department of Public Works and Infrastructure which would be considered by the Joint Standing Committee on Financial Management of Parliament (JSCFMP), which was scheduled to meet on Friday, 1 April. The Chief Whip of the Majority Party indicated that the deliberations in the CWF on the long term planning with regard to the rebuilding were frustrated as it was not clear when would the report be available. She said that she was of the view that the parliamentary building should be given priority. The information would assist the whippers in finalising their decision on an alternative venue. The Speaker replied that such a report would lead the institution on a comprehensive discussion on the way forward as it would be made available after the meeting of the JSCFMP.

6. Report from Committee Section

Adv Tau presented an update on matters before committees and indicated that the Portfolio Committee on Social Development had adopted a report on the motion of desirability on the Children's Amendment Bill. The Committee intended to conduct deliberations on 1, 5, 6 and 8 April. The Standing Committee on Finance also intended to adopt reports on motions of desirability on two Public Finance Management Amendment Bills on 7 June, which were private members' bills. He also reported that the Committee on Section 194 Enquiry received a briefing by the Legal Services unit on 29 March on litigation relating to the enquiry as well as on the appointment of evidence leader.

7. Report by Bills Office

Dr Mbatha presented legislation before committees and indicated that the report on the Local Government: Municipal Systems Amendment Bill was on the Order Paper for consideration.

8. Consideration of draft Parliamentary programme

The Programming Whip presented the Parliamentary Programme for the First Term indicating that the statement by the Minister of Finance on 'emergency fuel price interventions' as well as consideration of the interim report on request for permission to inquire into extending the subject of Cannabis for Private Purposes Bill would also be scheduled after questions to the Deputy President that afternoon. She advised that there

would be no declarations on the interim report as the matter would still be considered once finalised at a later stage.

The Programming Whip also presented the Parliamentary Programme for the Second Term and highlighted the following:

The week of 19 – 22 and 25 – 29 April was set aside for committees/oversight and Leave Period, respectively.

Plenaries were scheduled to commence on 3 – 5 May and mini-plenaries on Budget Votes on 10 May.

Mr Singh suggested that consideration be given in rescheduling the debate on Africa Day, which was proposed for Wednesday 25 May, instead of members having to fly for a sitting in between mini-plenaries which were virtual.

The Parliamentary Programme for the Second Term was accordingly adopted.

9. Announcements

There were no announcements.

10. Closure

The meeting adjourned at 10:47.