



NATIONAL ASSEMBLY PROGRAMME COMMITTEE

Chairperson:
Speaker of the National Assembly

Committee Secretary:
A Mbanga x 3218

DRAFT MINUTES OF PROCEEDINGS

Thursday, 26 May 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, Dr C P
Herron, B N	Papo, A H M (Parliamentary Counsellor to the Deputy President)
Jafta, S M	Shaik Emam, A M
Koornhof, Dr G W (Parliamentary Counsellor to the President)	Shivambu, N F
Kwankwa, N L S	Singh, N
Lesoma, R M M (Programming Whip)	Swart, S N
Majodina, P C P (Chief Whip of the Majority Party)	Wessels, W W

Staff in attendance:

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

1. Opening

The Speaker opened the meeting at 08:30 and welcomed all present.

2. Apologies

Apologies were tendered on behalf of House Chairperson Mr M L D Ntombela.

3. Consideration of draft agenda

The draft agenda was adopted, as proposed.

4. Consideration of minutes of meeting of 19 May 2022

On the proposal of Mr Swart, seconded by the Deputy Speaker, the minutes of 19 May were adopted.

5. Matters arising

Electoral Act, 1998 (Act No. 73 of 1998)

Mr Xaso indicated that the Constitutional Court had not yet made a determination on the request for extension by Parliament.

Motion on appointment of Secretary to Parliament

The Speaker reported that the motion, which was scheduled for consideration on 25 May, stood over. Based on the meeting that she had with leaders of opposition parties earlier that day, it seemed that some of the leaders were not aware that the motion to appoint the Secretary to Parliament was scheduled for that day. The Speaker said that she expected that members represented in meetings where these matters were discussed and programmed should brief their leaders and their caucuses on issues emanating from these structures, especially the Programme Committee. It was noted that a follow up meeting with leaders of opposition parties, together with the Chairperson of the National Council of Provinces, would be held on Tuesday 31 May and the motion could be scheduled for Wednesday, 1 June. The Chief Whip of the Opposition indicated that members had not been furnished with the salary package and other pertinent information that was provided to the panel. She said that she has been waiting on this information to brief the leader of the Democratic Alliance, as well as their caucus. The Speaker indicated that Parliament had a challenge that the institution had not had a permanent Secretary to Parliament (STP) for the past five years. She indicated that the Democratic Alliance was represented in the panel that conducted the interviews and, as a result, should have received all the necessary documents relating to the process. It was the multi-party panel that made the recommendation for the appointment of Mr Xolile George.

Dr Mulder indicated that feedback on the interview process was never tabled at the level of Chief Whips' Forum (CWF). In his view, the appointment of an STP was a sensitive matter as the post was equivalent to that of a Director-General in a government department. He added that Parliament was a separate arm of state and as such it was essential that there was buy-in from everyone involved in the process of appointment. Mr Papo said that he was surprised when the meeting with opposition parties was announced in the previous week as members were not informed what the meeting was all about. No concerns were raised on the motion to appoint the new Secretary to Parliament in the previous week. He queried whether there was a need for consensus on senior positions in the institution.

The Speaker added that she was surprised that other items were added on the agenda of their meeting with opposition parties, which she was not made aware of beforehand. Ms Gwarube argued that her understanding was that the members who were on the panel were simply told that the offer had been made and accepted, but that there was no clarity on what basis the offer was accepted by the candidate. The Speaker emphasised that the Executive Authority would act responsibly in the matter as Parliament was having a lot of serious challenges. With regard to the meeting with leaders of the opposition, the Programming Whip asserted that it was a principle matter that the Speaker should be informed beforehand of issues to be discussed in order for her to prepare herself, and suggested that members should be clear on the issues they wished to discuss. Mr Kwankwa stated that the view was that parties were going to be provided with more information and Ms Gwarube had cited that the matter could be considered at the Joint Standing Committee on Financial Management of Parliament so that parties could make an informed decision. He said that the normal approach was that members of the opposition would be apprised about every aspect, even the ones that they were not going to agree on. He suggested that a special meeting of the CWF could be convened in order to map the way forward. Ms Mkhalihi indicated that concerns from parties could be whether Parliament was going to match the salary that the incumbent was earning from his employer. Furthermore, party whips were also looking forward to an engagement with the Speaker to discuss a variety of matters in the institution.

Mr Singh clarified that an interview panel consisting of independent panellists was formed 18 months ago and unanimously appointed Mr George as well as an alternative candidate. The Executive Authority were to engage with Mr George on the salary package, but the engagements took longer than expected. Subsequently, the alternative candidate was no longer available as he was offered a post as a Director-General in one of the departments. The issue of the salary package was prescribed within set parameters. As for his party, he said that their view was that they were in agreement with the appointment of a suitable candidate, but that should be within the prescribed salary range that would be negotiated by the Executive Authority. Mr Shaik Emam said that the lack of feedback from parties that were in the multi-party panel was a testament of the plight of representation of smaller parties. He urged the Speaker to accelerate the process and bring the matter to a close.

The Chief Whip of the Majority Party said that members of the Programme Committee should be honest about issues as the matter was discussed in the CWF and went as far as agreeing that declarations would be allowed. In principle, members should try to raise their issues during the meetings and it was not the responsibility of the meeting to brief their parties. She added that the reason that the motion was scheduled for that day was that the incumbent was expected to assume duties on 1 June 2022 and therefore the matter was urgent. She appealed to members to raise their concerns in a closed session and try to seek consensus, where possible. The Programme Committee was not an appropriate forum to discuss issues of salary when a panel was put in place. On the proposal for a special meeting of the CWF, the Speaker indicated that it would be a matter for the Chairperson of the Forum to determine.

World Health Organisation Treaties

Mr Swart asked if there was a feedback on the World Health Organisation treaties. Mr Xaso replied that there were pending consultations at an international level about such treaties. The message had been conveyed to whips advising that the Portfolio Committees on Health and International Relations and Cooperation could pursue the matter with a view to obtaining more information.

The Chief Whip of the Opposition asked whether the President would be scheduled for questions for oral reply in the current term. The Speaker, however, asked if the Chief Whip of the Opposition had managed to raise the matter in the CWF as she had received a letter in that regard from Ms Gwarube. As a result, she was expecting a proposal to the Programme Committee. The Programming Whip added that the matter had been raised before, advising that the President would be in Parliament to present Vote 1: The Presidency, in the current term but would be scheduled for questions in the Third Term. Ms Gwarube pointed out that the President should answer questions once per term in terms of Assembly Rule 140, irrespective of whether he would appear for a different matter in Parliament. She said that it was the reason that she had written to the Speaker in order for the meeting to consider the matter. The Speaker indicated that she had not responded to the letter as the matter had since been raised in the CWF. As a result, she would be guided by the Programming Whip on the matter when she presented the programme.

6. Report from Committee Section

Adv Tau presented an update on matters before committees and provided an update on the following matters:

- The Portfolio Committee on Social Development would decide on a new date for finalisation of the fund-raising as it was focusing on the Children's Amendment Bill

- The Portfolio Committee on Home Affairs intended to consider the motion of desirability on the Electoral Laws Amendment Bill on 31 May
- The Standing Committee on Finance intended to finalise the Financial Sector and Deposit Insurance Levies Bill and Financial Sector and Deposit Insurance Levies (Administration) Bill on 31 May.

On other matters, the Portfolio Committees on Agriculture, Land Reform and Rural Development and Employment and Labour to conduct comprehensive oversight work on the living and working conditions of farm workers, farm dwellers and farmers would be conducting public hearings in Northern Cape and Mpumalanga on 27 – 29 May. The Portfolio Committee on Trade and Industry had finalised the processing of the Report on the request by the Minister of Trade, Industry and Competition to make recommendations on the suitability of candidates for the position of Chairperson of the Board of National Lotteries Commission.

In response to Dr Mulder on whether there was a decision on the consideration of the Report of the Zondo Commission of Inquiry into Allegations of State Capture, Mr Xaso explained that in respect of matters that would require the urgent attention of Parliament or issues that relate specifically to members, it would be referred to the Joint Standing Committee on Members' Ethics. The Research Unit would analyse all the reports that were available. Once the final report was issued with the implementation plan, the matter would be referred to the Rules Committee for it to make a determination on how the matters should be dealt with by the respective committees or ad hoc committee.

7. Report by Bills Office

Dr Mbatha presented a summary on the 2022 Legislative Programme from the perspective of the Bills Office, as follows:

It was noted that most Bills on the list still had a long way to travel before introduction in Parliament. Central to that was the interaction with the Chief State Law Adviser (CSLA). The CSLA would offer two preliminary sets of advice to Cabinet; one in respect of the publication of the draft Bill for comment as well as one for the introduction. After the latter opinion, Cabinet would take a position to approve a Bill for introduction. When a draft Bill was being prepared for introduction, there was considerable work to be done prior to it being certified for introduction, which was in the terrain of the Executive. That process could take years to be completed as all the processes should be followed in order to avoid problems at the committee stage. Even after that process, a committee could reach a stage where it deemed it proper that a particular legislation should be sent back to the department, as was the case with the State Liability Amendment Bill. It was also a possibility that some of the Bills on the list would not reach the sixth Parliament, or even the next Parliament until the CSLA had actually certified a Bill.

In total there were 69 Bills on the list which had been circulated to members, however 32 Bills had not yet been submitted to the CSLA and/or responsible department or Cabinet. Eighteen Bills had preliminary opinions from the CSLA and had been submitted to departments. A Bill that had been identified as a priority did not necessarily mean that it would indeed reach Parliament within the timeframe envisaged, or at all. For example, on the 2020 Legislative Programme an emphasis was placed on legislation addressing the issue of gender-based violence and femicide but such legislation had not all reached Parliament.

The following steps are required for introduction of legislation in Parliament:

- (a) Cabinet approval and Joint Rule 159 compliance
- (b) Gazette notice of intention to introduce in terms of Assembly Rule 276
- (c) Certification by CSLA in terms of Assembly Rule 279(2)
- (d) Editing, proofreading and consultation

When all the aforementioned steps had been followed, the Bills Office would print and publish introduction of the Bill in the Announcements, Tablings and Committee Reports.

Mr Papo advised that Parliament should engage with the Office of Leader of Government Business on any critical issues emanating from the list in order to avoid bottlenecks. Mr Singh requested the Speaker to establish who the Offices of the CSLA reported in order to determine who could be responsible for the delays in the certification of draft legislation. Ms Mkhaliphi wanted to know which were the 32 Bills that had not yet been submitted to the CSLA and/or responsible department or Cabinet as some political parties had submitted private members' legislation for processing in Parliament.

The Deputy Speaker intimated that the presentation contained important material for use in members' continuous induction and for the Public Education Office on the law-making process as well as evaluation of the impact of legislation passed by Parliament. Mr Shivambu said that there was something fundamentally wrong with the legislative process, as presented by the Bills Office. He said that the CSLA was basically the legal adviser of the Executive and he could not understand why Parliament should depend on the Executive, which he said was an anomaly that described the institution. He said that post 1999, the majority of legislation processed in Parliament had been introduced by the Executive. In that way, Parliament was useless as legislation initiated by members was delayed or frustrated most of the time. There should be far deeper discussion on how Parliament should be positioned as a law-making and autonomous body. Furthermore, he stated that his party would table a submission as to how legislation should be approached in a different manner.

Mr Papo argued that the law-making process was not a neutral process as it was informed by the governing party through its own policies that translate into legislation. Even private members' legislation was informed by a political perspective from a particular party. He, however, said it would be interesting to see what type of submission Mr Shivambu would provide, something which he said would create an incorrect impression of a fair and neutral law-making process.

The Deputy Speaker indicated that a submission from EFF would be a welcome development, but it was incorrect to assert that Parliament would simply pass bills because there was a requirement for motion of desirability in place so as to listen to the political argument on whether parties agreed with it. Furthermore, Parliament should undertake its own consultations and satisfy itself that it had met certain requirements. As a result, a number of Bills had amended various pieces of legislation to make them consistent with, among other things, the expectations of the parliamentary process which is based on the multi-party system whereby the majority makes decisions.

Mr Shivambu contended that the EFF had introduced more than 20 pieces of private members' legislation, but the administrative capacity in Parliament had been lacking as they had indicated that they relied on outside legal advice. He said that there was therefore no separation of powers between Parliament and the Executive, but would provide a deeper critique on the current framework and practices as well as manifestation of law-making in South Africa. Mr Shivambu also indicated that he would be able to present such a report in a fortnight's time and the Legal Services unit could assist with statistical data on legislation in Parliament. The Speaker suggested that there should be further engagements on the matter at the level of the CWF to be conducted in a form of a workshop.

8. Consideration of draft Parliamentary programme

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

The Second Reading on Criminal Law (Forensic Procedure) Amendment Bill was scheduled for Tuesday, 31 May.

Consideration of reports was scheduled for Wednesday, 1 June.

Reports on the National Health Amendment Bill and Disaster Management Amendment Bill, as well as committee reports, were scheduled for consideration for Thursday, 2 June.

The Programming Whip also advised that the President was not scheduled to appear in the in the term for questions as had been previously explained. She added that a request for a debate on 'the fuel price hikes' as a matter of national public importance, as requested by Mr K J Mileham, would be considered in the next term.

Ms Gwarube reiterated the point she made earlier that provision should be made for questions to the President in terms of the rules and that should have been factored in the programme for all the terms. This was part of Parliament's oversight responsibility as well as the President's responsibility to the institution irrespective of whether the matter had been raised before or not. Dr Mulder added that Ms Lesoma should not compare the different aspects of the President's parliamentary commitments under any circumstances. He proposed that provision be made by extending the term by a week or that an assurance be given that the President would appear twice in the next term. Mr Shivambu and Mr Kwankwa concurred, indicating that the President should not be held to different standards because it was convenient, as was experienced with the previous incumbent, but should appear for questions as that was not a discretion. Dr Koornhof said that it was strange for the Democratic Alliance to approach the Speaker on this matter as the programme had consistently been presented for approval since March on a weekly basis. Furthermore, it should be noted that the programme for the Second Term had already been approved in principle in line with the Framework which does not reflect questions to the President. He promised that dates for the next term would be made available.

It was AGREED that the Presidency would be consulted for an additional date for questions in the next term.

The Deputy Speaker informed the meeting that the Commonwealth Parliamentary Association meeting would be held in Canada in August. Members that would be attending the event would have to apply for visas 12 weeks beforehand and the implication was that political decisions would have to be made as early as possible. Furthermore, the individual members concerned would have to initiate the necessary arrangements with the support of staff. With regard to the Inter-Parliamentary Union (IPU), Mr Shivambu advised that if South Africa would be participating in the event, whether in a hybrid or virtual manner, committee participation should be in a hybrid manner. He pleaded that there should be permanent delegations in those forums for the sake of preserving memory as far as global and continental issues were concerned. Failure to do so could create a situation where there is no consistent participation and degree of focus thus ending up as holiday escapades. There should be a more meaningful reporting from participation in those forums in order that there was an opportunity for deliberating on those issues upon return. The Speaker replied that she had raised the matter with the Chief Whip of the Majority Party, especially in respect of consistency with participation in IPU events. She agreed that in some instances delegates would have to attend some events physically in order to advance the South African position.

9. Announcements

Mr Xaso reminded the meeting that mini-plenaries were scheduled for that afternoon and would be conducted virtually.

10. Closure

The meeting adjourned at 10:53.