



NATIONAL ASSEMBLY PROGRAMME COMMITTEE

Chairperson:
Speaker of the National Assembly

Committee Secretary:
A Mbanga x 3218

DRAFT MINUTES OF PROCEEDINGS

Thursday, 1 September 2022 [Virtual]

Present:

N N Mapisa-Nqakula (Speaker)

Boroto, M G (House Chairperson)	Mkhaliphi, H O
Diakude, D E (Deputy Chief Whip of the Majority Party)	Mulder, Dr C P
Frolick, C T (House Chairperson)	Ntombela, M L D (House Chairperson)
Gwarube, S (Chief Whip of the Opposition)	Nyhontso, M
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
Lotriet, Dr A	Wessels, W W
Majodina, P C P (Chief Whip of the Majority Party)	Zungula, V
Mente, N V	

Staff in attendance:

Secretary to Parliament Mr X C George, 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 the Deputy Speaker Mr S L Tsenoli.

3. Consideration of draft agenda

The draft agenda was adopted as proposed, with the addition of an item on the 'Scheduling of question session to the President on outstanding supplementary questions'.

4. Consideration of minutes of meeting of 25 August 2022

On the proposal of Mr Singh, seconded by Mr Shaik Emam, the minutes of 25 August were adopted.

5. Matters arising

Mr Xaso gave feedback on the following matters:

Section 89 motion on removal of President

Eleven parties had submitted names of persons to serve on the independent panel and the deadline for submissions was that afternoon at 16:00.

First Reading debate

The First Reading debate on the Maintenance Amendment Bill was scheduled for 22 September in a mini-plenary.

White Paper

The White Paper on Marriages in South Africa had been circulated to members.

Ms Mkhalihi asked if there was feedback on her request for intervention in the Portfolio Committee on Cooperative Governance and Traditional Affairs (Cogta) which was not meeting and did not apply to meet during the recess period even though it was expected to conduct oversight on municipalities that were deemed to be dysfunctional. House Chairperson Mr Frolick reiterated that the committee was operating on a schedule based on the programme as approved by the Programme Committee and, during the constituency period, there were specific committees that were identified and permitted to undertake oversight activities. House Chairperson Mr Frolick added that he was consulting with the chairperson of Cogta on a proposal that would require members of the committee to request permission from their respective whips to undergo oversight visits in September and October as this could be within plenary periods. This matter would be referred to the whippers for consideration by the Chief Whips' Forum (CWF).

6. Report from Committee Section

Adv Tau presented an update on matters before committees and advised that the Portfolio Committee on Home Affairs had adopted an interim report requesting the House's permission to inquire into amending other provisions of the Electoral Act, 1998 together with the Electoral Laws Amendment Bill before it.

The Bills intended to be finalised were:

- Compensation for Occupational Injuries and Diseases Amendment Bill on 31 August
- The National Health Insurance Bill on 7 September
- The Fundraising Amendment Bill on 14 September

The Portfolio Committee on Women, Youth and Persons with Disabilities intended to finalise its report on Filling of vacancies on the Commission for Gender Equality on 27 September.

7. Report by Bills Office

Dr Mbatha presented a report on legislation before committees and indicated that the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, Drugs and Drug Trafficking Amendment Bill and Maintenance Amendment Bill, which is a private member's Bill, had recently been introduced.

With regard to the Relocation of Seat of Parliament Bill, a private member's Bill, Ms Mkhalihi indicated that the previous Speaker had appointed a company to conduct a feasibility study on the relocation of Parliament to Gauteng, following consensus among parties. It was, however, later learnt that Pamoja Capital Group had been appointed to conduct such a study. She said that the Economic Freedom Front (EFF) had requested from the then Acting Secretary to Parliament for a copy of the report which had been handed over in January 2022, but she only responded three months later stating that she was not in a position to hand over the report. Ms Mkhalihi said that the EFF had subsequently written to the Speaker with the same request in preparation for finalisation of the private member's Bill. To that end, she enquired around the secrecy surrounding the report and whether they should be concerned that the company had been appointed fraudulently; or that it could not deliver on what it should have done. The Secretary to Parliament (STP) requested that he be afforded an opportunity to gather facts around the matter and report back. Mr Shivambu contended that there should be context in deferring the matter to a later meeting as the request was simply that the report be made available as it formed an essential part to the draft legislation which was in the process of introduction.

The Speaker said that she was aware of the study conducted and asked the STP to look into the matter as soon as possible as the Minister of Public Works and Infrastructure had also been demanding the same report in order to present the issue to Cabinet so that it attended to the financial implications thereof. Mr Xaso, however, proposed that, given that the Chief Whips' Forum (CWF) would be meeting physically on 7 September, that consideration be given to discussing the matter in that meeting instead of the Programme Committee. The meeting of the CWF would also be attended by the Speaker and the matter of an alternative venue for sittings of the National Assembly would also be discussed. Mr Shivambu insisted that a copy of the report should be forwarded to members prior to that meeting in order for them to be able to frame their thinking around some of the options that would be considered. The Speaker said that she would consult with the relevant people who might have the report and revert to Mr Shivambu in due course as the STP had not yet been briefed on the report.

8. Scheduling of questions sessions to the President on the outstanding supplementary questions

The Deputy Chief Whip of the Majority Party informed the meeting that the matter was discussed in the CWF the previous day, but parties could not reach consensus. She stated that the majority party was of the view that proceedings of the House should be followed in terms of the rules as Assembly Rule 140 stipulated that three hours were allocated for a question session to the President, and that should be adhered to. Furthermore, Rule 143 provided that questions that were unanswered during a session should be responded to in writing and that had been done. The Deputy Chief Whip of the Majority Party therefore argued that, in the absence of any rule relating to the outstanding supplementary questions, their view was that this matter could be resolved by tabling a motion in the House, instructing that the supplementary questions should be rescheduled for the next question session for oral reply by the President on 29 September. She said that the National Assembly was guided by the availability of the President. It would therefore not be easy to dictate to the President that he should come for an additional session in the following week as his diary might not allow for that. Mr Singh appealed that the matter be dealt with in good faith and parties should not be disingenuous about it. When the session was adjourned on the day, there was no

emphasis relating to time allocation, but the issues of concern had to do with the manner in which the session unfolded. It was therefore unnecessary for parties to go through the trauma that was experienced in the meeting of the CWF. He proposed that the Speaker should write to the President to check when the President would be available prior to 29 September, instead of assuming that he might not be available. Furthermore, the nation was expecting the President to provide some response to the issues raised. Mr Singh also indicated that if one were to listen to the unedited Hansard recording, the President did state that he would not answer the question.

The Chief Whip of the Opposition asserted that the reality of the matter was that the Speaker suspended proceedings in order to seek counsel. Furthermore, the ruling that the Speaker made was outside of the rules. She added that, in terms of Rule 143, the President had already begun to answer the question and, as a result, the National Assembly was operating in a “no man’s” land. In order to rectify the situation, the proceedings should be restarted at the point where the matter was and allow supplementary questions to be posed. Mr Kwankwa added that should such a defect not be remedied, the meeting would be pushing itself further into wilderness, as far as rules were concerned. The question session was live and during proceedings, a proposal was made to reschedule the session which seemed at the time to be gaining support amongst members. He said that, ironically, the ruling made after the suspension was to adjourn the sitting for further consultation, notwithstanding the discussions held in good faith earlier. Mr Shivambu stated that Mr Kwankwa had provided context to the matter which was the reason that parties did not object to the adjournment on the basis that the session would be rescheduled for another time as early as possible, subject to approval by the Programme Committee. When the matter was raised in the CWF some members of the ANC used the rules in a senseless and irrational manner. It was possible to consider a special motion that would waive some of the provisions that would ultimately enable the session in the following week. Mr Shivambu proposed that the National Assembly should be the one to request the President to come for an oral session, not the other way round. In her ruling, the Speaker gave a legitimate expectation for an urgent session earlier than 29 September.

Mr Zungula indicated that, during his supplementary question, one of the first things he raised in the sitting was that the President had not replied to his question and the Speaker should rule if his question had been answered or not as it was his view that the question had not been answered, largely based on the submission by the President that he had been advised not to answer. Consequently, Assembly Rule 143 did not count in the matter and the issue of written replies did not apply. He added that there was no opposition to the proposal provided by Mr Shivambu that the matter be rescheduled as early as possible in order to accommodate the remaining questions. Dr Koornhof stated that he was in agreement that members should adhere to the rules by agreeing on a motion to address the matter. Furthermore, the President had responded to the question, as was indicated in a statement from the Presidency, on 31 August. He reiterated that the disruptions and delays in the House had been caused by individual members and the rescheduling of supplementary questions should be based on the availability of the President. The President had written to the Speaker advising of his availability on 30 August and 29 September, in compliance with the rules. Any other matter could be considered for addition at the later date as parties would have another opportunity to do so. Mr Papo said that it was clear that there was an attempt for parties to come to a solution since the meeting of the CWF in order to accommodate the outstanding issue of supplementary questions. Question six was not an issue as it could be attended to by written replies as it had also been affected by expiry of time. Normally there were consultations around the President’s schedule and therefore the motions mooted should only be specific to his availability on 29 September.

Mr Swart said that it would assist if it could be established if the President could be scheduled for an earlier date, noting that parties differed on their interpretation on whether the President had answered. The President had given a response that was not

an answer to the question posed to him, and that was the essence of what resulted in the unprecedented situation where the question was still live. He cautioned against the motion as he said it should not only be about the supplementary questions, but also related to the President answering the question. Furthermore, it was also during deliberations in the CWF that the resultant lacuna in the rules should also be referred for consideration by the Rules Committee in due course, which was a separate matter. Ms Mkhaliphi urged Dr Koornhof, as the parliamentary counsellor to the President, to not be intent on defending the President, but rather advising on his diary, from the legislature's point of view.

Following deliberations on the matter, Mr Xaso provided the following context to the issues:

It was not the first time that a session of that nature was adjourned and rescheduled for a later date. On 21 August 2014, the National Assembly could not complete its Question and Answer session and the House adjourned while dealing with the third question. In order to deal with the remaining three questions, the Programme Committee subsequently met and resolved to schedule another session in April 2015 to process supplementary questions, as replies to the three questions had been provided. The matter was enabled by a motion in the House.

In an event that there was a lacuna, Assembly Rule 4(1) and (5) provided among other things that the National Assembly may, by resolution, suspend and make an order supplementing the rules in accordance with section 57 of the Constitution. Further, in an event that there was no consensus regarding a matter in the Programme Committee, in terms of Rule 210(2), provision was made that:

'If consensus cannot be reached on a question before the Programme Committee, 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'.

With regard to the drafting of the motion, Mr Xaso indicated that there should be guidance on whether there should be any reference to the last question on the Question Paper for that day. Ms Mente suggested that the motion should also make provision for supplementary questions on the replies as they had only been provided to the members who had asked questions. Other members were therefore not privileged to the responses, as responses normally trigger questions. The Speaker replied that she had hoped that parties would confine themselves on a solution for supplementary questions as it was a convention that questions that had not been replied to orally were converted into written replies. In response, the Chief Whip of the Opposition shared similar sentiments with the Speaker indicating that the proposed motion should focus on the supplementary questions to the question at hand and not the last question which had been responded to in writing. The Committee agreed that the last question would be dealt with in terms of the existing rules.

Mr Zungula was of the view that the advice from Mr Xaso was not taking into account the initial issue of the unanswered question. The statement issued by the President post the sitting could not be regarded as a guide but only what was recorded in Hansard, as referred to by Dr Koornhof earlier. He added that opposition parties were concerned about the President's response that he had been advised not to answer questions relating to the Phala-Phala game farm matter until law enforcement agencies had completed their investigations, which he said was a clear refusal to answer the question even though the issue of *sub judice* did not exist. To that end, Mr Zungula proposed that a ruling be made on whether the President had answered or not, based on Hansard recording. The motion should therefore take into account that ruling in the name of the Chief Whip of the Majority Party. According to Mr Shivambu, the most useful guidance was the precedent on the rescheduling of a separate question session for the questions that could not be concluded in 2014, hence the request for an earlier date prior to 29

September. In his response, the President had acknowledged that the matter was of urgent interest to all parties. As a result, the Speaker should consider invoking Rule 4 or 6 which were taking into account the issue of unforeseen circumstances.

For a way forward on the matter, the Speaker indicated that she had taken note of the reference around application of Assembly Rule 6. She encouraged members to use the attendance of the President optimally during the sessions as espoused in the rules, and she expressed her disappointment in the turn of events in that sitting as well as the fact that CWF could not reach consensus and provide guidance to the meeting. The Speaker also said that the National Assembly and herself, in particular, should never create the impression that there was an unwillingness to hold the Executive to account as that was never her intention. She had allowed whips to express themselves on the matter so that they could come to a proper solution. In moving forward, the Speaker would be meeting with the Chief Whip of the Majority Party and the Leader of Government Business as soon as possible and would also write to the President to request a date regarding his availability.

9. Consideration of draft Parliamentary programme

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

Due to a meeting of the Cabinet Lekgotla on 5 – 6 September, on Tuesday, 6 September, only items that were not requiring the attendance of members of the Executive were scheduled. On that day, consideration of reports from Standing Committee on Finance on Request for Approval by Parliament of ‘Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting’ and ‘Oversight visit to Financial and Fiscal Commission (FFC)’ as well as reports from Portfolio Committee on Higher Education and Training were scheduled.

Questions to the Social Services cluster and Second Reading debate on Children’s Amendment Bill as well as the debate on ‘Persistent illegal mining activities and concomitant crimes’ as an urgent matter of national public importance were scheduled for Wednesday, 7 September.

On Thursday, 8 September, consideration of report on Traditional Court Bill as well as consideration of requests for approval of ‘Revised African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA) Agreement’ and ‘International Convention on the Civil Liability for Bunkers Oil Pollution Damage, 2001’ were scheduled for that day. Consideration of reports of Committee on Public Accounts on ‘Oversight visit to South African Post Office (SAPO) in Johannesburg and Pretoria from 2 to 3 December 2021’ and ‘Oversight visit to ESKOM and its infrastructure projects of Medupi and Kusile, from 20 to 22 April 2022’ were also scheduled for that day.

Mr Xaso advised that parties were not expected to make declarations on the request for permission for the Portfolio Committee on Home Affairs to inquire into amending other provisions of the Electoral Act, 1998. He also advised that the report of Portfolio Committee on ‘Recommendation of candidates to fill two vacancies on Media Development and Diversity Agency (MDDA) Board’ would be scheduled for consideration in the following week as had previously been indicated by the Programming Whip.

10. Announcements

There were no announcements.

11. Closure

The meeting adjourned at 10:18.