



**NATIONAL ASSEMBLY PROGRAMME COMMITTEE**

Chairperson:  
Speaker of the National Assembly

Committee Secretary:  
A Mbanga x 3218

**DRAFT MINUTES OF PROCEEDINGS**

Thursday, 22 September 2022 [Virtual]

Present:

N N Mapisa-Nqakula (Speaker)

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

Staff in attendance:

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

**1. Opening**

The Speaker opened the meeting at 08:31 and welcomed all present. She made a statement on the incident that occurred in the meeting of 8 September 2022, arising from deliberations around the scheduling of supplementary questions to the President.

The Speaker remarked that it was regrettable that members had to be reminded of their obligations as all members were elected by the people and it was for that reason that they were required to act with respect and restraint; and to treat one another honourably. Should members continue to engage in such misconduct, Parliament and by implication democracy, would deteriorate. She added that, as the Speaker, it was her duty to provide all parties a fair opportunity to participate in the Assembly. But in doing so, she should act within the ambit of the rules and, at the same time, whips had a responsibility to promote the standing and decorum of the House. In this regard, she requested the Chief Whips' Forum (CWF) to agree on how members, as a collective, can work and cooperate in the interest of the people of South Africa. She specifically requested the CWF to discuss the challenges posed by members who insist on speaking and interjecting without being recognised as it impacted on the orderly proceeding of the business of Parliament.

## **2. Apologies**

Apologies were tendered on behalf of Chief Whip of the Majority Party Ms P C P Majodina, House Chairperson Mr M L D Ntombela and Dr C P Mulder.

The Speaker, on behalf of the committee, expressed a message of condolence to the Chief Whip of the Majority Party, who had a bereavement.

## **3. Consideration of draft agenda**

The draft agenda was adopted, with the addition of 'Scheduling of debates in mini-plenaries' under the Parliamentary programme item.

## **4. Consideration of minutes of meeting of 8 September 2022**

On the proposal of Mr Singh, seconded by the Deputy Chief Whip of the Majority Party, the minutes of 8 September were adopted.

## **5. Matters arising**

Mr Xaso gave feedback on the following matters:

*Report on Socio-Economic Impact Study on Relocation of Parliament*  
Secretary to Parliament had since provided an update on the matter in the CWF.

*Scheduling of outstanding supplementary question session to the President*

The draft resolution on the supplementary questions to President had been forwarded to members in the previous week. The motion in the name of the Chief Whip of the Majority Party would be scheduled for consideration by the House on Tuesday, 27 September.

*Section 89 on motion on removal of President*

The Speaker reported that, following a careful process of consideration of 17 names of eminent people with legal background that had been submitted to her, as well as having established their availability to serve on the Panel, the following people had been approached to serve in the independent panel:

- 1) Justice Sandile Ngcobo, former Chief Justice of the Constitutional Court of South Africa, as Chairperson of the Panel;
- 2) Judge Thokozile Masipa, former Judge of the Gauteng Division of the High Court of South Africa; and
- 3) Professor Richard Calland, Associate Professor of Public Law at the University of Cape Town.

The Speaker indicated that, due to concerns that had been raised by the Democratic Alliance (DA) and Economic Freedom Front (EFF) about Professor Calland, as well as a submission of support received from Good Party for his candidacy, she had sought legal advice which she was still studying. She endeavoured to make a determination on Prof Calland's appointment based on the advice received by the next day. Such a determination would be communicated to all political parties. Mr Zungula asked whether the panel had started its work and, if necessary, the Speaker would choose a replacement from the pool of candidates that were available from the list. Mr Shaik Emam stated that it would not be ideal for the integrity of the enquiry to be questioned given the fact that Professor Calland had made repeated statements in the media in support of the President, something that would question his independence and

objectivity in the process. Ms Mkhalihi asserted that such legal opinion would also require a political decision, citing the issue of conduct of the chairperson of the Committee for the Section 194 Enquiry and the request that he recuse himself.

Mr Xaso indicated that the starting date for the panel would be decided in consultation with members of the panel as it was subject to the conclusion of a service level agreement among other things, which was delayed by the objections received. The list of people who had been nominated, as well as their availability, would be made available to parties. Prior to making the appointment, due diligence was conducted to the extent possible. House Chairperson Mr Frolick added that the Speaker was acting within the rules regarding the steps in processing the matter and if there was any gap therein; the matter should be referred to the Subcommittee on Review of Rules.

The Speaker elaborated that, during the process in question, she had observed that most of the candidates nominated did not avail themselves as they had not been approached by the political parties nominating them or were simply unavailable for a variety of reasons. She was also satisfied with the process followed by the administration which had checked their availability, thereby narrowing the pool for selection. The Speaker was convinced that the candidates appointed were credible and their integrity was unquestionable. The Speaker also indicated that the other persons on the list who had indicated their availability, would be considered should it be necessary to provide a replacement.

Due to continued interjections from Ms Ntlangwini, the Speaker ordered that she be removed from the virtual platform. House Chairperson Ms Boroto suggested that, judging from the sentiments raised earlier, it was clear that there were gaps in the rules that needed to be looked at, but the steps that had been taken by the Speaker were correct. She reaffirmed that the Programme Committee had its own mandate and suggested that its membership should be looked at in terms of who was supposed to attend, as the rules were being flouted. As a result, it was possible that there were members who were not supposed to be part of the meeting, unless if they were specifically representing a member of the committee.

In response to the complaint from Mr Papo regarding comments from Ms Ntlangwini, the Speaker indicated that she would rule on the matter in the House as the allegation emanated from proceedings in the National Assembly.

## **6. Report from Committee Section**

Adv Tau presented an update on matters before committees and advised that the Cannabis for Private Purposes Bill had been sent to the National House of Traditional and Khoi-San Leaders for comment. 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 whilst the Ad Hoc Joint Committee on Flood Disaster Relief and Recovery intended to finalise its report on 13 October.

Ms Mkhalihi enquired when the filling of the post of Section Manager: Committees would take place as the section had, had an Acting Section Manager since 2020 and this impacted on the work of the section. Mr Xaso confirmed that the post had indeed been advertised, but that there were delays in the process and that the matter was receiving attention. House Chairperson Mr Frolick indicated that the matter would have to be expedited and that he and his counterpart House Chairperson Mr A J Nyambi in the National Council of Provinces (NCOP) would appreciate a report in that regard as the previous incumbent had left the post in 2018. He added that failure to fill such a strategic post had consequences for the section, but that all the necessary prescripts would have to be followed for a permanent appointment to be made. The Programming Whip concurred with the sentiments expressed but suggested that the Joint Standing

Committee on Financial Management of Parliament could be requested to consider such matters.

## **7. Report by Bills Office**

Dr Mbatha presented a report on legislation before committees and indicated that effectively there were 13 Bills on the Order Paper for consideration and 34 before committees. She also advised that the Traditional Courts Bill had been sent to the President for assent whilst the Compensation of Occupational Injuries and Diseases Amendment Bill was also being prepared in that regard.

### *Report on Constitutional Court deadlines*

Adv Van der Merwe indicated that Legal Services was studying a judgment that had just been made on a matter between Blind South Africa versus the Minister of Trade, Industry and Competition relating to availability of copyright material for persons with disabilities. She, however, confirmed that the Copyright Amendment Bill, which was before a committee in the NCOP, was addressing the issue and Legal Services would assist in the process and provide an update on the matter. She provided a report on the outstanding Constitutional Court judgments as follows:

### **Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002**

The Department of Justice and Correctional Services had confirmed that a draft Bill to address the issues raised in the judgment was being drafted and would be consulted on with key stakeholders. The Department was considering to sever the portion of the Bill that was addressing the constitutional defects and certain other urgent amendments as the review of the Act was of a technical nature and its development time-consuming. The Bill had been placed on the draft Legislative Programme for the Department for 2022.

### **Drugs and Drug Trafficking Act 140 of 1992 —section 63 + amendments to Schedules 1 and 2**

The Drugs and Drug Trafficking Amendment Bill had been finalised and would be placed on the Order Paper in the National Assembly for consideration and the suspension of the order will lapse on 17 December 2022.

### **Correctional Services Act, 1998 (Act No. 111 of 1998)**

The Department of Justice and Correctional Services had confirmed that they would be approaching the Constitutional Court for an extension of the suspensive period and the application was being prepared. The Department was experiencing challenges in respect of setting up an independent entity as it appeared to be in conflict with a parallel process in National Treasury to integrate the administrative services of all independent entities into a joint shared service. Legal Services had requested an opportunity to brief the Chairperson on these challenges. Legal Services had also requested an opportunity to brief the portfolio committee on those challenges and alerted that suspension of the order will lapse on 3 December 2022.

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

Permission had been granted to amend other sections of the Act. The Portfolio Committee on Home Affairs had advertised the proposed new amendments on the Electoral Laws Amendment Bill and currently considering submissions received in that regard. Legal Services would be briefing the committee in the following week on the submissions received and the committee would thereafter continue to deliberate on the Bill.

Ms Mkhalihi asked why there was no progress on the South African Reserve Bank, a private member's Bill and had been revived by the House. Adv Van der Merwe replied that, as far as she was aware, the Bill was before the Standing Committee on Finance. In response to Mr Hendricks with regards to progress on the Marriage Act 25 of 1961 and Divorce Act 70 of 1979, Adv Van der Merwe explained that a report providing an update was also circulated to members. The departments of Home Affairs and Justice and Correctional Services were in a process of engaging each other on the matter. The Department of Home Affairs had developed a White Paper which had also been distributed to members. A specialist legislative drafter would be approached and the South African Law Reform Commission had been enlisted to ensure that the deadline to submit it to Parliament within half the time allowed for introduction in June 2023 would be met.

Mr Swart expressed appreciation for the inputs and mechanisms that had been put in place particularly where there is no provision for read-in measures provision, citing the implications regarding the issue of Drugs and Drug Trafficking Amendment Bill. House Chairperson Mr Frolick added that concerns had also been expressed in a meeting of Chairpersons of Committees the previous day around instances where there was no progress from departments on legislation before committees. Such a situation was creating an impression that committees were not doing their work but the matter would be followed up.

## **8.2 Consideration of draft Parliamentary programme**

The Programming Whip appealed in general that, due process as outlined in the Guide to Procedure and the Rules of the National Assembly, be followed when processing the draft programme by consulting the relevant structures in the institution. She informed the meeting that the special meeting of the CWF on Tuesday had an impact on the Programme Technical Committee as it could not meet that day for it to process some of the usual issues for consideration in the Programme Committee. She indicated that she had been informed earlier in the week that the DA had requested for a withdrawal of the motion on '*Solutions to address the crisis of the ongoing illegal land invasions in the Republic*', by Ms E L Powell, which was scheduled for debate that afternoon. She reported that the matter was presented in the CWF and concerns were raised about the late notification for parties to prepare themselves for the debate, but there was no clear position reached to take the matter forward.

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

A condolence motion for Ms A Motaung and consideration of reports from Home Affairs, Justice and Correctional Services, Standing Committee on Finance as well as Higher Education, Science and Technology and Agriculture, Rural Development and Land Reform were scheduled for Tuesday, 27 September.

Questions for oral reply to the Economics cluster and President were scheduled for 28 and 29 September, respectively.

The following Bills were also scheduled for Second Reading debate in the following week:

- Economic Regulation of Transport Bill
- National Road Traffic Amendment Bill
- Fund-raising Amendment Bill
- Expropriation Bill

The Programming Whip further advised that consideration would be given in the following week to schedule the Drugs and Drug Trafficking Amendment Bill, National Land Transport Bill and Land Courts Bill, which had been finalised. A debate on 'the negative impact of heavy duty trucks on the safety of commuters on the roads and the recent loss of lives' as a matter of

national public importance would also be considered, something that might require that 30 September be also opened up for a sitting.

The Speaker requested that the Programme Whip, due to time constraints, specifically highlight salient issues when presenting the programme.

Mr Singh, supported by Ms Mkhalihi, expressed concern that Friday, 30 September was being considered as an additional date for plenary as this was not in line with the Parliamentary Programme Framework, as approved. Mr Singh also indicated that it was rather unusual to schedule draft resolutions in mini-plenaries, instead of subjects for discussion but that it was placing other members in an awkward position in that there was no clarity on which debate was scheduled for that afternoon. He also noted that members were experiencing challenges with load shedding.

With regard to scheduling of debates in mini-plenaries, the Chief Whip of the Opposition stated that, as members and parties were allowed to place matters for discussion on the programme through mini-plenaries, the DA had written to the Office of Secretary to the National Assembly advising of a withdrawal of the motion from Ms Powell, and replaced it with a different topic which was within their right to do so. As a result, the draft resolution on the establishment of an ad hoc committee on the Phala Phala matter should be scheduled for that afternoon as the party had followed the rules in replacing the motion to be considered. The request to change the topic was made the previous Friday in order for the motion to be published as from Tuesday. Furthermore, Assembly Rule 124(7) required that a motion should at least be on the Order Paper within 24 hours. The Speaker had not declined such a request upon receipt of it. The discussions in the CWF were of a consultative nature and her apology in this forum was in the context of being courteous on the basis that some members had just learnt of it. The motion should therefore not be stifled, but should be scheduled.

The Deputy Chief Whip of the Majority Party argued that none of the parties in the CWF were aware of the requested change before it was raised by the Chief Whip of the Opposition. Parties had already prepared themselves for the initial motion as per the programme distributed in the previous week. Even if the rules allowed for this, there were also processes underway as the independent panel would make a determination on whether there was *prima facie* evidence for establishment of a committee in terms of section 89. On that basis, she was rejecting the move by the DA as it would be pre-emptive. The Order Paper had duly been approved on the basis of the programme as previously agreed to and would therefore not be changed.

Ms Mkhalihi clarified that the section 89 process on removal of President would not lead to the establishment of ad hoc committee but an impeachment process and there should be no confusion. She added that there was no dissenting voice on the scheduling of the draft resolution in the CWF as parties were expected to advise their caucuses on the change and parties had since prepared in accordance with that. Mr Zungula concurred with Ms Mkhalihi, asserting that the motion from the DA was a separate process not supplementing the work of the panel. Should the panel deem that there was *prima facie* evidence, an impeachment committee would have to be in place. Mr Hendricks suggested that the panel should be allowed to do its work unimpeded and that there should not be multiple processes in place on such an important matter as parties had placed their confidence in a panel to advise Parliament and parties would have an opportunity to register their positions before the panel. The issues at hand were therefore causing a disruption.

House Chairperson Ms Boroto clarified that her concern was that the topic was now in the form of a draft resolution, instead of the usual subjects for discussion that were normally debated in a mini-plenary. She suggested that there should be an understanding on what the mini-plenaries were designed for. Mr Papo indicated that there was no decision reached in the CWF as that structure could only make a recommendation. He said that he was in support of the previous agreement of the meeting that a subject for discussion in the name of Ms Powell

was scheduled for that afternoon. Mr Swart indicated that his party was ready to debate the motion of the DA for the establishment of an ad hoc committee. The Chief Whip of the Opposition added that she was in receipt of an email from a National Assembly Table official who had, subsequent to the meeting of the CWF on Tuesday, notified all political parties that the motion had been replaced. She said that the DA should have been informed if the matter was not compliant with the rules. According to Dr Koornhof, the draft resolution was not reflected in the initial programme presented in the CWF and when it was presented, the Chief Whip of the Majority Party had left the meeting. As far as he was concerned, no decision was made by the forum as it can only make a recommendation. The Chief Whip of the Opposition disagreed with Dr Koornhof as the Programming Whip had made it clear that the motion had been replaced. The record of that meeting indicated that 'House Chairpersons Ms Boroto and Mr Frolick expressed concern in the inclusion of such a debate in a mini-plenary as the matter was politically sensitive'. It was therefore not acceptable to learn that the CWF had reverted to the previous subject for discussion whilst the deliberations in the meeting were of a consultative nature.

Mr Xaso explained that committee reports were usually scheduled in mini-plenaries for debates. In the past, a draft resolution had been scheduled in a mini-plenary, as was the case with a resolution from Mr N S Matias proposing the establishment of an ad hoc committee on 5 November 2020. Decisions were then taken in subsequent plenaries of the National Assembly. In terms of the sequence of events, he confirmed that the draft resolution from the DA had been received on Friday, 16 September 2022 and earlier in the week a confirmation of the replacement of the motion was made and, as is custom and process, the Speaker referred the matter to the CWF for consideration. As a result, the programme officer would have understood the deliberations of that meeting in that context, hence the reference to the communication he made to political parties. As there was no consensus on scheduling of the draft resolution, Mr Xaso advised that the rules provide for a procedure to be followed which states that there should be an engagement between the Speaker, Chief Whip of the Majority Party as well as the Leader of Government Business if appropriate. He advised that if Ms Powell's motion was to be postponed, that a suitable slot could be considered in the following week in order to consider the draft resolution as issues in mini-plenaries were scheduled in terms of a sequence of rotation.

The Speaker indicated that she initially had reservations about scheduling such a debate as it should not address the issues which could be considered by the panel but from what she could gather the resolution pertained to a different process altogether. It was AGREED that the motion by Ms Powell would be removed from the Order Paper for that day and another slot for the draft resolution by the DA in the following week would be determined. As a result, only one motion would be scheduled in mini-plenary ONE on 15 September 2022.

With regards to a notion that there was poor planning as far as the programme was concerned, the Programming Whip explained that in practice matters were scheduled as and when they were published for consideration on the Order Paper, following the normal programming processes. The whips had also been alerted that the availability of items for consideration could result in late sittings as some matters were considered as urgent business.

## **9. Announcements**

There were no announcements.

## **10. Closure**

The meeting adjourned at 10:43.