



SPECIAL NATIONAL ASSEMBLY PROGRAMME COMMITTEE

Chairperson:
Speaker of the National Assembly

Committee Secretary:
A Mbanga x 3218

DRAFT MINUTES OF PROCEEDINGS

Monday, 5 December 2022 [Virtual]

Present:

N N Mapisa-Nqakula (Speaker)

Boroto, M G (House Chairperson)	Lotriet, Dr A
Dlakude, D E (Deputy Chief Whip of the Majority Party)	Maotwe, O M C
Dyantyi, Q R	Mulder, Dr C P
Frolick, C T (House Chairperson)	Ndlozi, Dr M Q
Gwarube, S (Chief Whip of the Opposition)	Ntombela, M L D (House Chairperson)
Hendricks, M G E	Papo, A H M (Parliamentary Counsellor to the Deputy President)
Herron, B N	Radebe, B A
Hunsinger, C H H	Shivambu, N F
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:

Secretary to Parliament Mr X George, Secretary to the National Assembly Mr M Xaso and Adv Z Adhikarie (Constitutional and Legal Services Office).

1. Opening

The Speaker opened the meeting at 21:00 and welcomed everyone present.

2. Apologies

Apologies were received from the Deputy Speaker Mr S L Tsenoli, Chief Whip of the Majority Party Ms P C P Majodina and Mr A M Shaik Emam.

3. Preparations for the National Assembly Sitting of 6 December

The Speaker indicated that she had received a briefing from the Chief Whip of the Majority Party on the discussions that took place in the meeting of the Chief Whips' Forum (CWF), which was held earlier that morning. The CWF had recommended that the Speaker should convene the special meeting of the Programme Committee in order to consider the scheduling of the Report of the Independent Panel established in accordance with Rule 129A-Q. She

said that the meeting would also have to specifically consider the issue of a physical sitting and manual or roll-call voting as she was initially disinclined to grant the two requests, based on the reasons that she had advanced. She had, however, agreed to reconsider her position based on the motivations that had since been provided and therefore parties were being afforded parties an opportunity to motivate their requests to assist in reaching an informed decision on the way forward.

Mr Shivambu indicated that he had previously expressed concern on the nature and character of the sitting on 6 December in a previous meeting of the Programme Committee when the matter was initially raised. Furthermore, the Economic Freedom Fighters (EFF) had written to the Speaker requesting that consideration be given for a physical sitting in order that all members were protected, instead of the situation wherein members of the African National Congress (ANC) were gathered into one venue and directed to vote in a specific manner, without being able to exercise their vote based on their conscience. He asserted that the Constitutional Court had in a case of the EFF versus the Speaker, previously ruled that, despite the fact that members belonged to respective political parties, they were primarily representing the overall interests of people, specifically on critical decisions. As the adoption of the report had the potential to remove the president whose party was divided on the matter, it was not safe to conduct the sitting in a hybrid manner as they could be 'frogmarched' again in order to vote in a particular manner. As a result, Mr Shivambu suggested that a physical sitting should be scheduled as soon as possible in order to enable members to exercise their constitutional right to vote on the motion. He said that a herd voting system that was conducted through a hybrid sitting was problematic although it was acceptable during lockdown.

The Chief Whip of the Opposition indicated that the view that the manual voting procedure would take long did not hold water as there was a precedent on its application, the length of time it would take should therefore not deter Parliament from doing what was right, considering the gravity of the matter at hand. Secondly, the reasons that were advanced when the Democratic Alliance requested for that type of voting was that it was important for members of Parliament to pronounce their vote publicly for record purposes. She said that it was even important during a hybrid session that members should be able to record their individual votes. The Chief Whip of the Opposition implored the Speaker to consider using a manual (roll-call) voting system, arguing that the reality of the matter was that members had a constitutional obligation before being members of political parties.

In response to the remarks earlier that members of the ANC had been 'frogmarched' into a venue, the Deputy Chief Whip of the Majority Party maintained that most of their members were affected by load shedding as they were based in the deep rural areas where they were experiencing network challenges. As a result, the ANC had to put measures in place in order to ensure that their members could be part of the plenary in Cape Town. Given the views made earlier in the meeting and logistical challenges, she proposed that the report be rescheduled for Tuesday, 13 December and that a manual (roll-call) voting system be applied. If agreed, the sitting of 6 December would continue as planned with the addition of First Report of National Assembly Rules Committee for 2022 on Rule amendments, guidelines and principle of ruling; which was initially considered for scheduling that day.

It was AGREED that a sitting would be scheduled for 13 December at 14:00, at a venue to be determined, in order to consider the Report of the Independent Panel on Section 89. The sitting would be conducted physically in order to accommodate all members and the necessary arrangements by the administration would be underway to secure a suitable venue immediately after the meeting. The Speaker appealed that proper logistical arrangements should be in place and that members should book their flights as early as possible.

Mr Singh requested that clarity be provided on the differences between manual/roll call voting and secret ballot. Dr Mulder cautioned that decisions should not be made if they might not be implementable, as it was not yet clear if a suitable venue would be available for a sitting on

that day. He also asked if the Speaker was maintaining her position that a secret ballot would not be employed. Mr Jafta suggested that a meeting of the Programme Committee could also be considered in order to finalise the issue of the venue and time for the sitting.

Voting system

Mr Zungula indicated that, whilst noting that the Speaker had rejected his party's request for a secret ballot, he pleaded that the method of roll call could be followed, as requested by the Democratic Alliance. Dr Ndlozi reiterated that the matter was unprecedented and there should not be a herd voting situation, but that every member should record his/her vote from their allocated seating.

Mr Xaso advised that an open voting system would be followed wherein all members would be called to called and they would indicate how they were voting. He said that, in terms of Assembly Rule 104, *'where no electronic voting is in operation, a manual voting system may be used in accordance with a procedure determined by the Speaker and directives to be announced by the presiding officer'*. Furthermore, *"when members' votes have been counted, the presiding officer must immediately announce the result of the division"*.

In terms of rules for virtual/hybrid sittings, Mr Xaso advised that there was a provision that members could vote by voice or have their voice recorded by their respective whips. It was indicated that when the voting was conducted during the motion of no confidence in the Cabinet in March 2022 when a manual voting/roll call, each member was called upon to indicate their position and that would be recorded.

In response to Mr Zungula, the Speaker indicated that the issue of a secret ballot, as requested by the African Transformation Movement, had also been considered. She said that the reasons given did not enable her to take an informed decision. A secret ballot would only be granted in extraordinary circumstances.

Implications of the review of the Panel's Report

The Chief Whip of the Opposition asked whether the papers filed by the President's legal team at the Constitutional Court would technically not have a bearing on the parliamentary processes regarding the matter.

Adv Adhikarie advised that, in a nutshell as per her presentation in the CWF that morning, there were competing arguments as to whether the *sub judice* rule could be invoked in the circumstance where of the report being taken on review. She said that she had advised that the matter was potentially a matter where the same question might be before the court as the one that should be decided by the House. The *sub judice* rule would therefore have to be approached with the narrowest of possible interpretations and indicated that, even though that was a classic case of relevance for the rules, she was of the view that an automatic and complete bar to the National Assembly from carrying its constitutional mandate was not permissible, especially in cases where Parliament had to hold the Executive into account. In conclusion, Adv Adhikarie advised that the matter of *sub judice* rule, as espoused in Rule 89, would therefore have an impact when the matter would be considered by the House. A written legal opinion on the *sub judice* rule would be made available in due course.

Mr Zungula asked what would be the position of Parliament on the application filed by the President as the Speaker had been cited as a fourth respondent. The Speaker replied that Parliament was studying the application and Legal Services unit were in the process of assisting her with an opinion. Mr Shivambu indicated that he was of the view that Parliament should approach the court and oppose the application. Mr Papo, however, said that whatever decision the House would take, would carry the day and any other views were immaterial as parties would vote on the report.

Dr Ndlozi argued that it was rational that, logistically, it would assist if the Speaker could enlighten the meeting if she would oppose the application as the report from the independent panel had been sanctioned by Parliament. He said that he was of the view that Parliament should oppose the application and the Rules Committee and Programme Committee were the relevant bodies that should guide the Speaker in making a determination on the validity of the report. The Speaker ruled that she could not be pressured into declaring what route she would take on the matter, but that such a decision would be communicated to all political parties. Furthermore, she said that it was important to emphasise the sovereignty of Parliament as it could not be stifled by another arm of state.

4. Closure

The meeting adjourned at 22:09.