

UNREVISED HANSARD
NATIONAL COUNCIL OF PROVINCES
TUESDAY, 2 MARCH 2021

Page: 1

TUESDAY, 02 MARCH 2021

PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES

The Council met at 09:05.

The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

The Chairperson announced that the virtual sitting constituted a sitting of the National Council of Provinces.

The CHAIRPERSON OF THE NCOP: Hon delegates, before we proceed, I would like to remind you of the following: The virtual sitting constitutes a sitting of the NCOP. The place of the sitting is deemed to be Cape Town where the seat of the NCOP is. Delegates in the virtual sitting enjoy the same powers and privileges that apply in a sitting of the NCOP. For the purpose of the quorum, all the delegates who are logged on to the virtual platform are deemed to be present. Delegates must always switch on their videos, delegates should ensure that the microphones on their gadgets are muted and must always

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 2

remain muted. The interpretation facility is active and that any delegate that wishes to speak must raise your hand function on the participant's gadget.

**CONSIDERATION OF ELECTORAL LAWS AMENDMENT BILL AND REPORT OF
SELECT COMMITTEE ON SECURITY AND JUSTICE THEREON**

Ms S SHAIKH: Thank you, hon Chairperson and good morning hon members, The Electoral Laws Amendment Bill, tagged as a section 75 Bill, was referred to the Select Committee on Security and Justice on 3 December 2020. The committee has agreed to the Bill with proposed amendments.

Briefly, hon Chairperson, the Electoral Laws Amendment Bill, 2020 aims to amend three pieces of legislation, namely: The Electoral Commission Act, 1996; the Electoral Act, 1998; and the Local Government: Municipal Electoral Act, 2000, in preparation for the forthcoming local government elections later this year.

The main objectives of the Electoral Laws Amendment Bill are to enhance the existing legislative mechanisms that ensure free and fair elections, in accordance with the Constitution of the Republic of South Africa, and to align the Electoral

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 3

Act with the provisions of the Protection of Personal Information Act, Act 4 of 2013, the POPI Act, regarding the protection of the personal information of voters against unreasonable disclosure.

Hon Chairperson, the committee received a briefing from the Independent Electoral Commission, IEC, on the Bill on 8th December 2020. The Bill was thereafter advertised in all 11 official languages in both national and regional newspapers. The committee received 1 550 individual submissions via the Dear South Africa website and five submissions from other stakeholders.

In the committee meeting of the 17th February 2021, the IEC responded to the submissions from stakeholders and proposed amendments to clause 8 and 20, having consulted the Information Regulator of SA regarding the protection of the personal information of voters to ensure that the Bill was in line with the provisions of the POPI Act.

At this meeting, the committee had invited the Information Regulator as well as the Minister of Home Affairs to receive their inputs on the proposed amendments made by the IEC.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 4

Hon Chair, the Information Regulator is an independent statutory body established in terms of section 39 of the POPI Act, and is accountable to the National Assembly. The purpose of the POPI Act is to give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at balancing the right to privacy against other rights, particularly the right of access to information.

The mandate of the Information Regulator is to protect personal information and ensure all public and private bodies that process personal information do so in compliance with the provisions of the POPI Act.

With regard to the proposed amendments, The Information Regulator was of the view that the amendments strike the correct balance between privacy and access to information. The Minister of Home Affairs also clarified the committee on matters in relation to the redaction of the ID number in the proposed amendments.

Hon Chairperson, section 16(2) within clause 8 of the Electoral Laws Amendment Bill, (B 22B - 2020) deletes the

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 5

provisions regarding public access to the voters' roll, furthermore, section 16(5) allows the electoral officer's discretion to redact any information on the voters' roll for the protection of personal information against unreasonable disclosure.

Based on the substantive comments received by stakeholders, the committee had detailed deliberations in respect of the amendment to clause 8. Much of the discussions was centered around the competing rights of access to information, in this case by election watchdogs or civil society organizations that monitor elections and the right to privacy of voters as well as alignment to the POPI Act.

Deliberations by the committee included, amongst others, that access to the voters' roll for legally permissible reasons, will address access to information and may assist in promoting the integrity of the election processes and that there is a significant quantity of personal information of voters in the voters' roll which includes the full names, identity numbers and address. An ID number which is a unique identifier in terms of the POPI Act, is considered sensitive personal information. Anyone who is in possession of any person's ID

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 6

number is in possession of a very important aspect of personal information.

Further considerations were that the voters' roll is needed to verify whether people on the roll are qualified to vote. In this respect, there are two broad constitutional qualifications in terms of being eligible to vote, being the age of the voter and the citizenship. The first six digits of ID number are important to determine the age of a person, that is to ensure that the person is 18 years or older to qualify to vote.

In addition, you have to be a citizen of the Republic, which the last three digits of the identity number can be used to verify this. Hence the remaining digits of the ID number can be redacted.

Furthermore, Parliament has to have laws that are not contradictory to the POPI Act. There are principles against which an assessment must be made by a public body for the legal processing of personal information to ensure that the disclosure of information is in line with the POPI Act. In this regard, section 10 of the POPI Act speaks to the principle of minimality as follows: Personal information may

only be processed if, given the purpose for which it is processed, it is adequate, relevant, and not excessive.

The IEC also clarified that exceptional circumstances may require that additional digits of an ID number would be required if there may be allegations of fraud, if two voters have the same name or initials and date of birth or if there is a *prima facie* case of fraud.

On 24th February 2021, the committee further deliberated on matters and received the final draft of amendments to clause 8 and 20 from the parliamentary legal advisor.

In order to strike a balance between the right to privacy and the right to access to information, the committee agreed that section 16(2) be reinserted in the Bill, which allows individuals to have access to the voters' roll for specific and predetermined purposes such as to monitor the voters' roll for election purposes, for statistical or research purposes or any other purpose that is prescribed and subjected to the requirements of the POPI Act to safeguard the personal information of voters. An insertion of section 16(2) (a), to ensure that any unlawful processing of personal information

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 8

would be subject to a punishable offence in terms of the subsection proposed.

Hon Chairperson, in terms of proposed amendment to section 16(3) and 16(4) the amendment removes reference to political parties and replaces the terminology with registered party. This is to align with the definition in the Electoral Act, which defines a registered party and not a political party.

Amendments to section 16(5) clarifies the personal information that must be redacted on the voters' roll. The date of birth and the citizenship will appear on the voters roll and the middle digits of the ID number will be redacted. Redaction of the ID number also addresses the principle of minimality in the POPI Act. The proposed amendment further clarifies that the chief executive officer, CEO, may disclose additional digits of the voters' roll in exceptional circumstances and on an argument made that exceptional circumstances exist and which will be determined on a case by case basis by the chief electoral officer while taking into account that doing so will not involve the unlawful processing of personal information as required by the POPI Act.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 9

Hon Chair, the final proposed amendment is to clause 20, which amends section 47 of the Local Government: Municipal Electoral Act. This is a technical drafting amendment that brings the Bill in line with section 38(8) of the Electoral Act so as to create consistency on how voters without addresses on the voters' roll cast ballots on voting day.

Hon Chair, we believe that these amendments address the delicate balance between the access to information and the protection of personal information of voters. It will further promote the integrity of election processes and will make strides to stop the abuse of processing personal information of voters, particularly the ID numbers of voters in ways that do not further enhance the electoral processes and practices.

Hon Chair, the Select Committee on Security and Justice, having considered the Electoral Laws Amendment Bill, referred to it and classified by the Joint Tagging Mechanism, JTM, as a section 75 Bill, reports the Bill, namely; the Electoral Laws Amendment Bill with the proposed amendments for the Council's consideration. I thank you very much, hon Chair.

Question put.

Declarations of Vote:

Mr I M SILEKU: Honourable Chairperson, the Electoral Laws Amendment Bill which is mostly a technical Bill, has brought into focus the importance of transparency. Transparency exists when the exercise of power and authority is made open to interrogation and oversight.

Section 1(d) of our Constitution provides for "Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness".

This is why the Democratic Alliance asked for more time for the committee to debate these amendments, to make sure that the credibility of our elections are not questioned and that there is no space for voter fraud.

Unfortunately, the ANC was clearly in a rush to push this Bill through, which is highly unfortunate as we believe that we still had time to debate on this Bill.

Clause 8 section 16(5) represents a challenge. Hiding information of parts of the ID number on the voters roll makes it impossible to pick up duplicate ID numbers. The IEC has

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 11

committed to address the issue of double voting which marred the 2019 elections, and by suppressing oversight mechanisms to detect duplicate voting, adequate oversight is compromised. This is a right to which parties and role players should be fully entitled.

Chairperson, transparency and accountability therefore cannot be guaranteed with the Bill in its current format. We need to ensure electoral methods and processes that provide mechanisms to ensure that the fundamental right of voting is protected from manipulation.

Hon Chairperson, the Democratic Alliance therefore rejects this Bill. Thank you very much.

Mr S ZANDAMELA: Chairperson, the Electoral Laws Amendment Bill aims to enhance the current legal provision to ensure that elections in South Africa are free and fair as provided for in our country's Constitution.

Through the amendment of three pieces of legislation, the Electoral Commission Act, the Electoral Act and the Local Government: Municipal Electoral Bill seeks to ensure that we

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 12

continue to strengthen the work of the Independent Electoral Commission, IEC.

By aligning the Electoral Act and the Protection of Personal Information Act 4 of 2013, the Bill aims to protect voters from unreasonable disclosure of their personal information.

We have, in the past, expressed concerns regarding the protection of voter information on the voters roll. When it comes to business of special votes the EFF has made submissions that we must legislate the specific time frame for parties to receive the list of special votes thus to ensure that all parties receive the list on time.

Secondly, we must also legislate consistent time for IEC [Inaudible.] ... strict adherence to ensure transparency. No IEC officials, under any circumstances, should be allowed to conduct home visits for special voters without party agents present.

We welcome the provision to allow for voters to vote outside their voting district but also express concerns regarding the transparency, legitimacy and credibility of the procedures

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 13

that will be put in place to ensure voters do not vote more than once.

To manage this the list of those who have applied to vote outside of their voting districts would have to be made available to political parties timeously. The IEC also needs to manage the issue of voting stations that are constituted along racial lines and are inaccessible to members of the public, officials and party agents such as voting stations on farms where the EFF has been denied access previously.

We are well aware of the abuse that some workers are subjected to by farmers who view them as their property, and as such forcing them to vote for their political parties – the farmers' political party.

While we welcome the amendment of the Electoral Law Amendment Bill, more can be done to safeguard the fairness and transparency of our electoral system to ensure that all South Africans can participate equally without fear; and also ensure that voters' personal information is protected before, during and after the elections; and any form of corruption that happens within elections should be rooted out. The EFF supports this Bill. Thank you, Chair.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 14

Mr X NGWEZI: Hon Chairperson and hon members, firstly we want to say, as the IFP, that we support this Bill but our worry is that if we must protect information of the citizens of this country, we must not only do it for election purposes by protecting only the information of voters of this country.

I think as government we have a duty to protect any information for all the citizens. Maybe government should also deal with the issue of disclosure of identity numbers when entering any building in this country since you know that even if you go to Parliament you must declare your identity numbers and all that.

Because we are going to stay with the coronavirus for more than a year – we are advised – therefore we cannot only protect it here for the purposes of elections but we must also protect it in the entire country even addressing this issue of the regulations of the COVID-19 pandemic because citizens are actually forced to disclose their identity numbers in that regard. The IFP, as I said, supports this Bill. Thank you.

Mr T S C DODOVU: Hon Chairperson, the ANC stands to support this important amendment to the Electoral Act. We think that this is very much critical because it will not only enable and

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 15

assist the IEC to facilitate free and fair elections but it will also ensure that our citizens exercise their political rights in a way that it is entrenched in the Constitution.

As the ANC we stand to salute the IEC for its sterling work since the advent of our new democratic dispensation in 1994. It has held free and fair elections, it has demonstrated its independence and it has ensured that every system and process about our elections is watertight. Therefore, this amendment to the Electoral Act is seen as a way of consolidating that victory; is seen as a way of saying that we need to ensure that as part of deepening democracy and enabling our people to exercise their right to vote freely and they must be protected in so many ways. This Bill seeks to achieve that particular objective.

I am happy from the side of the ANC that the majority of political parties here support this because it is important to enable the IEC to facilitate the elections which are coming in the next few months. Those who are opposing this are just demonstrating public spectacle, they want to [Inaudible.] to the gallery; they want to derail us; and they want to create an impression in a Chapter 9 institution such as the IEC that it is incapable to can deliver free and fair elections.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 16

We, as Members of Parliament especially from the ANC, shall do everything in our power to ensure that we protect democracy, the IEC and that we move forward in terms of ensuring that elections are indeed free and fair. It is in that sense that as the ANC we support this particular Bill.

We are looking forward to engage and confront political parties in the battlefield on the ground because we believe that our people deserve better and they need to exercise their right in that particular sense. The fight must be on the ground in terms of encouraging voters to vote and lobbying them to vote for their political parties.

As the ANC we are confident of that and those who oppose are scared of the elections. They are scared that their support is ... [Inaudible.] As I indicated, as the ANC we support this amendment to the Bill. Thank you very much.

Question put: That the Bill, subject to proposed amendments, be agreed to.

Bill, subject to proposed amendments, agreed to in accordance with section 75 of the Constitution.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 17

CONSIDERATION OF REPORT OF SELECT COMMITTEE ON HEALTH AND
SOCIAL SERVICES - APPOINTMENT OF THE NATIONAL YOUTH
DEVELOPMENT AGENCY, NYDA, BOARD MEMBERS, DATED 09 FEBRUARY
2021

Ms M N GILLION: Chairperson, Deputy Chairperson, Chief Whip, hon members and all young people of South Africa, Molweni [greetings.] On behalf of the Select committee of Health and Social Services, I am mandated to table the report on the appointment process of the board members of the National Youth Development Agency. Chairperson, this year marks 25 years since President Mandela signed the new SA Constitution into law. The new Constitution was adopted, amongst other things, to provide a way for the nation to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

The building of a democratic society, united in our diversity, is not an event. It is rather a protracted process, fraught with contradictions, and characterised by leaps forward and temporary setbacks. Those of us entrusted with leadership have a responsibility to stay the course and work with the young people of our country to pave the way to the better life for all South Africans.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 18

As background, I would like to remind the House that the sub-committee on the National Youth Development Agency, Nyda, board members considered requests by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces, to facilitate the process for the appointment of persons to serve on the board of the Nyda. The sub-committee resolved that seven candidates would be recommended by the portfolio committee and the select committee to both Houses of Parliament, to be appointed by the President to serve as board members in the Nyda for a period of three years. Both committees adopted their reports which were published in the Announcements, Tablings and Committee, ATC, of 04 August 2020.

The National Assembly then considered the report of the portfolio committee on 3 September 2020, and resolved to return the report to the portfolio committee for further consideration. Thereafter, the portfolio committee, in a letter addressed to the Speaker on 13 October 2020, requested further guidance on how to proceed with the matter. Having considered the advice and legal opinion from the Speaker, in a joint meeting of the Portfolio Committee on Women, Youth and Persons with Disabilities and the Select Committee on Health and Social Services on 9 February 2021, in line with the National Assembly Rule 167(e), the meeting resolved to start

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 19

the process afresh and present this recommendation to both Houses of Parliament.

The appointment of the board of the Nyda is an important task in order to strengthen corporate governance and stability of the agency and Parliament remains committed to ensure this happens. It is important to highlight the fact that the Nyda remains one of the best performing organs of state. For example, in the 2019-20 financial year, the Nyda under its young leadership achieved its sixth consecutive clean audit report, reinforcing the Nyda's commitment to good governance. Among the highlights of the many achievements of the agency, is that it has provided over 1 100 youth-owned enterprises in the township and rural economy with grant funding to start up their businesses through the Nyda grant programme. These youth-owned enterprises have gone on to create and sustain more than 5 000 jobs.

The ANC government remains committed to bring about radical socioeconomic transformation through providing opportunities for young people. To this end, government has prioritised youth development and the Nyda plays a crucial role in this regard. The Nyda must always be in line with the National Youth Development Agency Act 54 of 2008, and represent the

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 20

demographics and geographical population of the youth of South Africa. Hon Chairperson, I hereby request the House to consider and adopt this report. I Thank you.

Question put: That the Report be adopted.

Declarations of vote:

Ms C LABUSCHAGNE: Hon Chairperson, the DA welcomes the decision by Parliament to restart the National Youth Development Agency, NYDA, by appointing a board of trustees across the country. The NYDA carries the significant development mandate for youth people accompanied by a huge budget of almost R500 million, greater than some local municipalities in the country. It is vitally important that the agency is led by people with good vision and aptitude, inspiring confidence in the youth of this country that their interest will be protected and advanced.

Some short comments of the previous process include an absence of diversity on demographics and geographic representivity of the proposed seven names. The selection panel must be seized with these issues when the recruitment process gets back in the process once more. Transparency and openness should be central so as to sort any fears that the process is not muddled

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 21

with dishonesty. This must include fair and unbiased scoring of interview candidates which could entail introduction of scoring immediately after each interview and then depositing the score sheet with audits of the process.

It is important that the responsible parliamentary officers provide adequate leadership and information through the promised terms of reference to guide the selection panel in execution of its work. After all, it is the leadership of this House, through the Speaker, that accept the cause to restart this process.

The DA will participate in the process with the interest of ensuring that the NYDA assist young people across the country in ensuring that they become independent and fully developed individuals. We therefore support the process and hope that it will be done timeously so as to ensure that young South Africans are not left in the cold without a board at an agency carrying so great a mandate of youth development. Thank you.

Ms A D MALEKA: Hon Chairperson, hon Deputy Chairperson, hon Chief Whip, hon members, let me declare from the onset that as Mpumalanga we support the report of the Select Committee on Health and Social Services on the appointment of the NYDA

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 22

board members dated 9 February 2021. We take heed of the advice and legal opinion received from the Speaker of the National Assembly on the NYDA appointment processes and the need to ensure an inclusive process that takes into consideration the diversity of our nation.

We want to commend the members of both the Select Committee on Health and Social Services and the Portfolio Committee on Human Youth and Persons with Disabilities on the work that they put in this process of the appointment of the NYDA board members, especially on the most challenging conditions in the middle of the COVID-19 pandemic.

The NYDA process should serve as the learning curve on the proper political management of joint matters of business between the Houses. For us as the Mpumalanga province, we want to put the proposal to examine the manner in which joint business is managed between the two Houses, especially given our distinct mandates.

We are hoping that this matter will find expression as we continue to reflect on how to improve in our efforts to implement and advance the mandate of the NCOP of representing the interests of provinces. I thank you, Chair.

UNREVISED HANSARD

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 2 MARCH 2021

Page: 23

The CHAIRPERSON OF THE NCOP: Thank you very much. I see that the hon Ngwezi's hand is up and have acknowledged it even on his own. Hon Ngwezi, the problem is that you don't really represent the province. Your raised hand will not be recognised. So, you will not be able to speak. Is there any other province that would want to make a declaration? May the hon Ngwezi lower his hand, please.

Voting

Question put: That the Report be adopted.

IN FAVOUR: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape.

Report accordingly adopted in accordance with section 65 of the Constitution

The Council adjourned at 09:54.