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Hon. Max Vuyisile Sisulu MP
Speaker of the National Assembly
Room 118, New Wing
Parliament
Cape Town

Dear Mr. Speaker:

I am writing to raise a constitutional concern, in the hope that, in the interests of smooth parliamentary proceedings, it may be addressed before it is openly aired during parliamentary work as a Point of Order.

As you know the National Assembly has followed the praxis of automatically passing from one parliament onto another the set of rules previously adopted, going back to inheriting and piecemeal amending the old *apartheid* Rules. However, this praxis is not consistent with the Constitution. After elections, each new parliament is reborn anew with no commitment, pending legislation or binding resolutions from the previous one. The Constitution clearly spells out that all pending legislation lapses and that the first meeting of Parliament needs to be held under rules specifically designed by the Chief Justice because at that time Parliament has no rules.

Consistent with this approach, the National Council of Provinces has always readopted its previous rules. In established comparative parliamentary law, what ties continuity from one parliament into another is only the body of parliamentary conventions and precedents, which are valid and relevant only for as long as they are consistent with newly adopted rules.

All this confirms that it is constitutionally incumbent on the National Assembly to adopt or readopt its rules before it can conduct any order of business. From a policy viewpoint, this is so much more relevant in consideration that 50 of the members of the current National Assembly were not members of the previous Parliament. Therefore, I would like to receive your assurance that before any business is conducted in the National Assembly, a question will be put to the House on whether the House intends to readopt its previously adopted Rules with or without amendments.

In that respect, I find myself faced with an ever graver constitutional issue which has paramount implications for our democracy. In terms of the Constitution, I, as well as my

398 colleagues in the National Assembly, have the right to introduce legislation in the National Assembly. The Constitution clearly spells out what happens when we introduce a Bill, how a member's Bill so introduced needs to be handled and what it can and cannot provide for, for instance excluding from its scope money bills. Yet the old Rules of the National Assembly deprive me and my other 398 colleagues of the right to introduce any Bill unless a number of other colleagues of ours with specific knowledge of the subject matter of the Bill, but nonetheless specifically designated for such purpose, reinstate that right onto me after an impermissible screening process of what I intend to introduce, and give me the approval to go ahead and introduce my intended Bill.

This is unconstitutional and unacceptable. If a Member exercises his right to introduce a Bill in a manner which is not consonant with public interests, the will or views of the majority, the programme of government, or any other relevant consideration, the relevant committee should make the effort to summarily reject such Bill, which may take only a few minutes of its times, rather than preventing its introduction in the first place. The sanction for futile Bills lies on political accountability and party discipline. They can be dealt with in committee with no expense of time. The difference between preventing the introduction of a bill and summarily rejecting it is obviously fundamental in point of politics and promotion of public debate. It relates directly to the set of protections and guarantees which the Constitution requires that both the "rules" and "procedures" of National Assembly extend to political minorities in Parliament.

Mr. Speaker, you will appreciate that it is not for me or any of my colleagues to concede to being expropriated of that which is not for us to give away or for the Rules Committee to take away. Our right to introduce legislation in the National Assembly is part of our parliamentary duties and follows on the obligations undertaken with our Oath of Office. Therefore, if rules are adopted which prevent us from exercising the rights and constitutional obligations of our office, one would be duty-bound to challenge this and seek to redress such a curtailing of constitutional freedoms by bringing an action in the Constitutional Court to challenge anything which prevents a Bill from being introduced in the National Assembly by one of its member and being dealt with as any other Bill so introduced.

The only approach consistent with the Constitution and internationally accepted principles of parliamentary democracy is that of allowing members to introduce a bill in their relevant subject matter portfolio or standing committee without hindrance, prior scrutiny or approval. It will be that Committee's prerogative to decide whether or not to deal with it and it is not uncommon throughout the world that Bills which receive no public or government interest are not only summarily rejected but are often not even dealt with and lie unattended to for years and years until the relevant parliament ends and they lapse.

Very truly yours,

M. G. R. Oriani-Ambrosini, MP