

WEDNESDAY, 9 JULY 2019

PROCEEDINGS OF THE NATIONAL COUNCIL OF PROVINCES

The Council met at 14:04.

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

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS - see col 000.

NOTICES OF MOTION

Mr M I RAYI: Hon Chairperson, I give notice that at the next sitting of the Council, I shall move on behalf of the ANC:

That the Council-

- (1) notes with concern the escalating poverty and unemployment in the former apartheid homelands and that these areas are defined by an overconcentration of the rural poor in our country, the majority of whom are women;

- (2) further notes the massively underutilised industrial infrastructure in these areas and believes the only inspiration our rural poor can derive from government's commitment to radical socioeconomic transformation is through action; and
- (3) calls upon the Economics Cluster Ministries to report to the Council their integrated plans for the recapitalisation of the underutilised industrial infrastructure in line with the Constitution of the Republic, including an outline of their plans.

Mr M E NCHABELENG: Chairperson, I give notice that at the next sitting of the Council, I shall move on behalf of the ANC:

That the Council-

- (1) notes and welcomes with utmost appreciation our national soccer team, Bafana Bafana, advancing to the quarterfinal of the Africa Cup of Nations by beating tournament hosts Egypt in Cairo on Saturday night;
- (2) further notes that Bafana Bafana's sensational victory has brought jubilation at home and abroad, rejuvenating our people's spirit of patriotism, sense of hope, and love of football;

(3) congratulates the team and wishes them success; and

(4) calls upon the entire nation to rally behind our boys in the tournament as they face Nigeria on Wednesday.

The CHAIRPERSON OF THE NCOP: Hon members, I guess what we should do is note that motion for consideration as the next step because it doesn't really fit the definition of a motion in terms of the issue that we are dealing with at the moment. We are noting the congratulatory motion, but we will not deal with it now. Are there any other notices of motion?

Mr T S C DODOVU: Hon Chairperson, I give notice that at the next sitting of the Council, I shall move on behalf of the ANC:

That the Council-

(1) notes with concern the recent developments within municipalities, especially the performance audit report for municipalities, as released by the Auditor-General, that indicates only 18 municipalities out of 257 received clean audits;

(2) believes there is a correlation between the decline and the deterioration in the quality of basic services to our people;

- (3) prioritises the development of integrated systems to ensure the monitoring of the performance of municipalities in the coming period; and
- (4) calls upon the Minister of Co-operative Governance and Traditional Affairs to introduce performance management systems for all elected public office bearers in the municipalities as a matter of utmost urgency.

Mr E J NJANDU: Hon Chairperson and hon members, I hereby give notice that at the next sitting of the Council, I shall move on behalf of the ANC:

That the Council-

- (1) notes with great concern and profound sadness that 11 fatal shootings occurred in Philippi East in the Western Cape last weekend, prompting local police to initiate a 72-hour action plan;
- (2) also notes that these cold-blooded killings took place on different occasions over a period of 48 hours in the same area;
- (3) further notes that the incidents include the murder of six young women aged 18 to 26 in Marcus Garvey on Friday night

and five men between the ages of 17 and 39 in two separate shooting incidents on Saturday evening and that these shootings took place following the shooting of police officers in previous weeks in Samora Machel, a neighbouring area;

(4) pleads with the law enforcement agencies to intensify their operations to combat this termination of people's lives and bring the perpetrators to book; and

(5) conveys its deepest condolences to the bereaved families.

The CHAIRPERSON OF THE NCOP: I am not sure whether that notice falls within the same category as the notice that was raised by the hon Nchabeleng. If that's the case, we will have to defer it as well for consideration when we look at the next set of motions.

Ms C VISSER: Chairperson, I just want to know whether we are on notices of motion or motions without notice.

The CHAIRPERSON OF THE NCOP: We are dealing with notices of motion. The next set of motions we will be looking at is motions without notice. We then move to motions without notice. Does any member wish to move a motion without notice?

(Draft Resolution)

Ms H S BOSHOFF: Chair, on behalf of the DA, I move without notice:

That the Council—

- (1) notes that the Department of Home Affairs in Lydenburg is in an utter shambles;
- (2) further notes that since the building which houses the department was declared unsafe a year ago due to the collapse of the roof, service has gone from bad to worse with residents being subjected to disgraceful service delivery;
- (3) also notes that since the evacuation of this building, services for more than 38 000 residents have been rendered from a mobile truck;
- (4) recognises that applicants applying for identity documents and passports are forced to stand and wait in the sun due to a lack of seating and shade;
- (5) further recognises that a local journalist went to apply for an unabridged marriage certificate but, after sitting in a queue for more than four hours, had to leave without any assistance or an application form;

(6) also recognises that no toilet facilities are available, with people urinating against containers and toddlers defecating on the ground, coupled with staff that are rude and who refuse to be of any assistance to the public;

(7) condemns the conditions of this department and its services;
and

(8) calls on the Mpumalanga provincial government to intervene.

Motion agreed to in accordance with section 65 of the Constitution.

LAUNCH OF HISTORIC CONTINENTAL FREE-TRADE ZONE BY AFRICAN LEADERS

(Draft Resolution)

Mr K M MMOIEMANG: Chair, on behalf of the ANC, I move without notice:

That the Council—

(1) notes with great appreciation that African leaders launched a historic, landmark continental free-trade zone at the AU summit in Niger last Sunday;

- (2) further notes that the 55 African states reached a decision on the free-trade zone after four years of engagements, and it is expected to usher in a new era of development in Africa;
- (3) also notes that this historic launch is an affirmation of the commitment by African states towards Africa's Agenda 2063, for the Africa we want that is an integrated, prosperous, and peaceful Africa driven by its own citizens, representing a dynamic force in the arena of history; and
- (4) salutes and congratulates the AU on this milestone achievement.

Motion agreed to in accordance with section 65 of the Constitution.

OIL SPILLAGE IN PORT ELIZABETH

(Draft Resolution)

Ms L C BEBEE: Chair, on behalf of the ANC, I move without notice:

That the Council—

- (1) notes with concern that approximately 400 litres of oil spilled in the Port of Ngqura in Port Elizabeth while the

bunkering services company, SA Marine Fuels, was refuelling the *MV Chrysanthi S* last Saturday morning;

- (2) further notes that, even though an oil spillage control exercise to contain the oil spread was immediately activated by SA Marine Fuels, the effects that can be suffered by marine wildlife, the people who earn their living from the sea, and the local economy cannot be ruled out;
- (3) also notes and welcomes the investigation launched by the SA Maritime Safety Authority on the incident; and
- (4) calls on the authorities to put measures in place to avert any kind of spillage in future.

Motion agreed to in accordance with section 65 of the Constitution.

DEATH OF SOUTH AFRICAN ASPIRANT ASTRONAUT MANDLA MASEKO

(Draft Resolution)

Mr I NTSUBE: Chairperson, on behalf of the ANC, I move without notice:

That the Council—

- (1) notes with profound sadness that South Africa grieves the loss of aspirant astronaut Mandla Maseko who died in a motorbike accident last Saturday;
- (2) further notes that Maseko, a member of the SA Air Force, beat one million entrants to win one of 23 places at a space academy in the USA in 2013, with a chance to be the first black African in space;
- (3) also notes that Mandla, nicknamed Afronaut and Spaceboy, who was also a keen disc jockey and biker, was a typical township boy hailing from the streets of Pretoria's townships;
- (4) believes that the youth of our nation should draw lessons from him, as it was his wish to do something that would motivate and inspire young people in Africa and prove that they can achieve anything, whatever their backgrounds; and
- (5) expresses its deepest condolences to his family and friends.

May his soul rest in eternal peace.

Motion agreed to in accordance with section 65 of the Constitution.

BAFANA BAFANA TO COMPETE IN AFRICA CUP OF NATIONS QUARTERFINAL

(Draft Resolution)

Mr M E NCHABELENG: Chairperson, on behalf of the ANC, I move without notice:

That the Council—

- (1) notes and welcomes with utmost appreciation that our national soccer team, Bafana Bafana, has advanced to the quarterfinal of the Africa Cup of Nations by beating tournament hosts Egypt in Cairo on Saturday night;
- (2) further notes that Bafana Bafana's sensational victory has brought jubilation at home and abroad and has rejuvenated our people's spirit of patriotism, sense of hope, and love of football;
- (3) congratulates the team and wishes them success; and
- (4) calls upon the entire nation to rally behind our boys in the tournament as they face Nigeria on Wednesday.

Motion agreed to in accordance with section 65 of the Constitution.

FREEDOM FIGHTERS LANGUISHING IN JAIL

(Draft Resolution)

Mr K MOTSAMAI: Mr Chair, I move without notice:

That the Council—

- (1) acknowledges the freedom fighters that are still languishing in jail;
- (2) further acknowledges that the country is free because of those people but that they are still languishing in jail;
- (3) notes that I would like the country to know that we are still thinking about their release;
- (4) requests a timeline for when our people are going to be released and be free;
- (5) recalls that our people fought for the right cause, that our people fought the apartheid system; and
- (6) further recalls that apartheid was a crime against humanity.

I would like the entire committee to consider this issue. I thank you, Mr Chair.

The CHAIRPERSON OF THE NCOP: Hon members, are there any objections to the motion?

An HON MEMBER: Yes!

The CHAIRPERSON OF THE NCOP: There being an objection to the motion, the motion without notice becomes a notice of motion on the Order Paper.

**DESIGNATION OF MEMBERS TO REPRESENT PARLIAMENT IN PAN-AFRICAN
PARLIAMENT**

(Draft Resolution)

The CHIEF WHIP OF THE COUNCIL: Hon Chairperson, I move the draft resolution as printed in my name on the Order Paper, as follows:

That the Council-

(1) designates the following members to represent Parliament in the Pan-African Parliament in terms of articles 4(2) and (3) of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament:

- (a) Ms T R Modise (ANC);
- (b) Mr N A Masondo (ANC);

- (c) Ms P C P Majodina (ANC);
- (d) Mr T R Majola (DA); and
- (e) Mr J S Malema (EFF).

Question put: That the motion be agreed to.

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

AGAINST: Western Cape.

Motion agreed to in accordance with section 65 of the Constitution.

**DESIGNATION OF MEMBERS TO REPRESENT PARLIAMENT IN SOUTHERN AFRICAN
DEVELOPMENT COMMUNITY PARLIAMENTARY FORUM**

(Draft Resolution)

The CHIEF WHIP OF THE COUNCIL: Hon Chairperson, I move the draft resolution as printed in my name on the Order Paper, as follows:

That the Council-

- (1) elects the following members to represent Parliament in the Southern African Development Community Parliamentary Forum in terms of article 6(3) of the constitution of the forum:

- (a) Ms T R Modise (Speaker of the National Assembly);
- (b) Mr D L Moela (ANC);
- (c) Mr T B Matibe (ANC);
- (d) Mr D Bergman (DA);
- (e) Ms H O Mkhali (EFF); and
- (f) Chairperson of the Multiparty Women's Caucus.

Ms C LABUSCHAGNE: Chair, on a point of order: I want to amend the second motion as follows:

That the Council—

- (1) designates the following members to represent Parliament ...

We cannot ``elect'' Mr D Bergman because he is a member of the National Assembly and not the NCOP.

The CHAIRPERSON OF THE NCOP: I guess the difficulty that we have is that the objection that has been raised - unless I didn't hear properly - relates to a member of the National Assembly. What we need to do is to overcome that by addressing the entire list and finding a way, maybe through the political party concerned, to raise the issue in the National Assembly.

Ms C LABUSCHAGNE: On a point of order, please: The issue is not that. The issue is that it reads, ``That the Council elects''. We

cannot elect a member who is not here. If you refer to the first motion, we said, ``That the Council designates the following'', and the list included members of the National Assembly. Therefore, my proposal is just to amend the motion by omitting the word ``elects'' and replacing it with ``designates''. We can then vote on it.

Mr M I RAYI: Hon Chairperson, the DA is making a proposal to amend this motion. Therefore, I would suggest that we check with other provinces whether they support the motion. If it is supported, then it is carried but, if not, it falls away.

Mr M R BARA: Chairperson, the proposal doesn't talk about names, as explained, but it is more about amending the wording so that it is consistent with the one that we dealt with before. The first one talks about ``designates'', and the second one talks about ``elects''. Therefore, it is just to amend the wording in that fashion and not necessarily to amend the motion as it were.

The CHIEF WHIP OF THE COUNCIL: Chair, I do agree. This is not a matter on which to divide the House. The Table staff has a responsibility to advise on procedural matters like this. Thank you.

The CHAIRPERSON OF THE NCOP: If there is no objection to removing the word ``elects'' and replacing it with ``designates the following members to represent Parliament in the Southern African Development Community Parliamentary Forum in terms of article 6(3) of the

constitution of the forum'' and the names indicated, we should then proceed to put the motion before the House.

Question put: That the motion be agreed to.

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

Motion agreed to in accordance with section 65 of the Constitution.

APPOINTMENT OF JUDICIAL SERVICE COMMISSION MEMBERS

(Draft Resolution)

The CHIEF WHIP OF THE COUNCIL: Chairperson, I move the draft resolution as printed in my name on the Order Paper, as follows:

That in terms of section 178(1)(i) of the Constitution, the Council designates the following members to serve on the Judicial Service Commission:

- (a) Ms Sylvia Elizabeth Lucas;
- (b) Mr Archibold Jomo Nyambi;
- (c) Mr Mosimanegape Kenneth Mmoiemang; and
- (d) Mr Thamsanqa Simon China Dodovu.

Declarations of vote:

Ms C LABUSCHAGNE: Chairperson, according to today's Order Paper, the NCOP is due to nominate four members to the Judicial Service Commission in terms of section 178(1) of the Constitution.

According to the same Order Paper, section 178(1)(h) of the Constitution reads that the Judicial Service Commission should consist of—

... six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly.

Section 70(1)(b) of the Constitution reads that the National Council of Provinces may—

... make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

It further reads in section 70(2)(c) that—

... the rules and orders of the National Council of Provinces must provide for the participation in the proceedings of the Council and its committees of minority parties represented in the

Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.

The Judicial Service Commission is, according to the Constitution, part of Chapter 8: Courts and Administration of Justice, which is a section 75 function.

Therefore, I refer to the letter that I wrote to the Chairperson and the Chief Whip to request that one member of the DA should be included in this delegation, as the Rules and the Constitution say that the NCOP should have four members, but it does not indicate that all members have to be from the ANC. Therefore, that Rule should be read with the other Rules that give direction on how the NCOP should do the business. So, this is unconstitutional, and it is not in the spirit of representivity and definitely not in the spirit of democracy. I therefore call on the Chairperson to include one of the DA members in the commission. Thank you.

Mr M I RAYI: Hon Chairperson, let me start by saying that, in the fifth term, members were elected using the same procedure. In the last term, it was not challenged. Now, we are surprised as this procedure is being questioned.

With regard to the issue raised, the procedure for the appointment and the representation of the NCOP in the Judicial Service Commission is provided for in section 178(1)(i) of the Constitution.

According to this section, there are ``four permanent delegates to the National Council of Provinces designated together by the Council with a supporting vote of at least six provinces''.

Chairperson, the composition of the list was drafted on the basis of this section read together with sections 70(2)(a), (b), and (c).

This section states the following:

- (2) the rules and orders of the NCOP must provide for—
 - (a) the establishment, composition, powers, functions, procedures, and duration of its committees;
 - (b) the participation of all provinces in its proceedings in a manner consistent with democracy; and
 - (c) the participation in the proceedings of the Council and its committees of minority parties represented in the Council, in a manner consistent with democracy, whenever a matter is to be decided in accordance with section 75.

Chairperson, I must hasten to point out that democracy cannot mean equal representation for minority parties with the majority party. Therefore, as a province, we support the motion as tabled by the Chief Whip.

The CHAIRPERSON OF THE NCOP: Are there any other declarations?

Mr C F B SMIT: Chairperson, I represent a province, don't I?

[Interjections.] Of course I do!

The CHAIRPERSON OF THE NCOP: Order!

Mr A J NYAMBI: Chairperson, in terms of the Constitution, we are led by premiers of provinces, but they are special delegates, and we are permanent delegates. So, in each and every province, we have a provincial Whip who is in charge of the delegation. In terms of the very same Constitution that is guiding us, it would be out of order for the hon Smit who is from Limpopo and who is without a provincial mandate, whilst we have somebody - when we started, you asked to have the leadership of all the delegations sit in front. The hon Smit is not the rightful leader of Limpopo. If we are going to apply that, it means that we can have somebody from the Western Cape that will undermine the hon Labuschagne, and that will create unnecessary disorder, and it can be avoided. So, it is not in line with the Constitution and how we represent the interests of provinces in the NCOP. Thank you, Chair.

The CHAIRPERSON OF THE NCOP: Let's proceed and find out if there are any provinces that wish to make declarations. Are you standing up again?

Mr C F B SMIT: Yes, Chair! Hon Chair!

The CHAIRPERSON OF THE NCOP: On what point are you rising?

Mr C F B SMIT: I am standing to make a declaration on behalf of my province. [Interjections.] We don't have a Chief Whip here, and we don't have a premier here. [Interjections.]

Mr A J NYAMBI: Chairperson, with the utmost respect to the hon Smit, please assist and make a ruling to tell him that what he is doing is not in line with how we represent the interests of provinces. We do have a leader for the Limpopo delegation, and he is not the rightful leader of Limpopo.

Mr M E NCHABELENG: Chairperson, our Whip is not here, but it's all right. As Limpopo, we say that you don't win elections by debating issues in Parliament and changing numbers. The decision of who represents the province is decided by the voters. [Interjections.] We cannot hatch new elections in this House.

The CHAIRPERSON OF THE NCOP: Thank you very much. I assume there are no more declarations. That being the case, we will then proceed to voting on the question. I shall do so in alphabetical order.

Ms C LABUSCHAGNE: Chairperson, I rise on a point of order. The hon Rayi referred to the Fifth Parliament and the practice that this

committee was composed of four ANC members. I just want to remind this House again that not everything that was done in the Fifth Parliament was necessarily done according to the Rules. I can remind this House of the process of the Mineral and Petroleum Resources Development Act that was done in the same space. We will follow this up. Thank you.

The CHAIRPERSON OF THE NCOP: Unfortunately, that is not a point of order. Please, sit down. Thank you very much.

Question put: That the motion be agreed to.

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

AGAINST: Western Cape.

Motion accordingly agreed to in accordance with section 65 of the Constitution.

DESIGNATION OF NCOP MEMBERS TO SERVE ON MAGISTRATES COMMISSION

(Draft Resolution)

The CHIEF WHIP OF THE COUNCIL: Chairperson, I move the draft resolution printed in my name on the Order Paper, as follows:

That in terms of section 3(1)(a)(xi) of the Magistrate Act, Act 90 of 1993, the Council designates the following members to serve on the Magistrates Commission:

- (a) Mr Yunus Ismail Carrim (Ms Dikeledi Gladys Mahlangu: alternate);
- (b) Mr Enoch Muzi Mthethwa (Mr Thamsanqa Simon China Dodovu: alternate);
- (c) Mr Mandla Isaac Rayi (Ms Nokuzola Ndongeni: alternate); and
- (d) Mr Willem Abraham Stephanus Aucamp (Ms Cathlene Labuschagne: alternate).

Question put: That the motion be agreed to.

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

Motion agreed to in accordance with section 65 of the Constitution.

The CHAIRPERSON OF THE NCOP: Hon members, I take this opportunity to indicate that members of the Joint Rules Committee will meet at 18:30 in Committee Room E249, New Wing, National Assembly building.

The Council adjourned at 14:57.

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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