

**REPORT OF THE NATIONAL ASSEMBLY RULES COMMITTEE
PROCEDURES TO GIVE EFFECT TO SECTION 89 OF THE CONSTITUTION**

28 AUGUST 2018

A. INTRODUCTION

On 29 December 2017, the Constitutional Court, in its Judgment on the matter of *The Economic Freedom Fighters vs the Speaker and others (CT 76/17)*, (the Judgment) ruled that the National Assembly must put in place procedures to give effect to Section 89 of the Constitution (Removal of President).

Following the Judgment, the National Assembly Rules Committee (the Committee) duly met to consider the matter and initiate a process to finalize the procedures in question. This included soliciting a legal opinion from senior counsel, which served to guide deliberations. On 28 August 2018, the Committee agreed to the proposed rules, with the addition of a clause reinforcing the independence and impartiality of the Panel established to conduct preliminary enquiries on Section 89 motions. With this addition, the Committee recommends that the Assembly adopt the Rules.

**B. DRAFT RULE TO REMOVE A PRESIDENT FROM OFFICE IN TERMS OF
SECTION 89 OF THE CONSTITUTION**

Definitions

For the purpose of a section 89(1) enquiry in terms of these rules –

“an inability” includes “a permanent or temporary physical or mental condition of the President”;

“a serious misconduct” means “unlawful, dishonest or improper behaviour performed by the President in bad faith”;

“a serious violation of the Constitution or the law” means “behaviour by the President amounting to an intentional or malicious violation of the Constitution or the law performed in bad faith”; and

“**Section 89**” means Section 89 of the Constitution, 1996.

“**a section 89 enquiry**” means an enquiry initiated by the Assembly to remove the President in terms of section 89 of the Constitution and this rule.

Part 3: Procedures to give effect to Section 89 of the Constitution

Initiation of Section 89 enquiry

129A. Initiation of Section 89 enquiry

- (1) Any member of the Assembly may, by way of a substantive notice of motion in terms of Rule 124(6), initiate proceedings for a Section 89 enquiry, provided that –
 - (a) the motion must be limited to a clearly formulated and substantiated charge on the grounds specified in Section 89, which must *prima facie* show that the President:
 - (i) committed a serious violation of the Constitution or law;
 - (ii) committed a serious misconduct; or
 - (iii) suffers from an inability to perform the functions of office;
 - (b) all evidence relied upon in support of the motion must be attached to the motion;
 - (c) the charge must relate to an action or conduct performed by the President in person; and
 - (d) the motion is consistent with the Constitution, the law and these rules.
- (2) For purposes of proceedings to remove the President in terms of Section 89(1)(c), the term “charge” must be understood as the grounds for averring the President’s removal from office.

129B Compliance with criteria

Once a member has given notice of a motion to initiate proceedings in a Section 89 enquiry the Speaker may consult the member to ensure the motion is compliant with the criteria set out in Rule 129A.

129C Referral of motion

- (1) When the motion is in order, the Speaker must immediately refer the motion, and any supporting documentation provided by the member, to the independent panel established for the purposes of considering preliminary Section 89 matters.
- (2) The Speaker must inform the Assembly and the President of such referral without delay.

Independent panel to conduct preliminary inquiry into Section 89 enquiry

129D Establishment

The Assembly must, if and when required, establish an independent panel to conduct any preliminary inquiry on a motion initiated in a Section 89 enquiry.

129E Composition and appointment

- (1) The panel consists of three fit and proper, competent, experienced and respected South Africans, which may include a judge, and who collectively possess the necessary legal competence and experience.
- (2) The Speaker must appoint the panel, after giving political parties represented in the National Assembly reasonable opportunity to put forward nominees for consideration for the panel, and after the Speaker has given due consideration to all persons so nominated.
- (3) If a judge is to be appointed to the panel, the Speaker must do so in consultation with the Chief Justice.

129F Chairperson

The Speaker must appoint one of the panellists as chairperson of the panel.

129G Functions and Powers

- (1) The panel –
 - (a) must be independent and subject only to the Constitution, the law and these rules, which it must apply impartially and without fear, favour or prejudice;
 - (b) must consider any preliminary enquiry relating to a motion proposing a Section 89 enquiry, referred to it by the Speaker, and must make a recommendation to the Speaker, within 30 days, whether sufficient evidence exists to show that the President:
 - (i) committed a serious violation of the Constitution or law;
 - (ii) committed a serious misconduct; or
 - (iii) suffers from an inability to perform the functions of office; and
 - (c) in considering the matter –
 - (i) may, in its sole discretion, afford any member an opportunity to place relevant written or recorded information before it within a specific timeframe;
 - (ii) must provide the President immediately with copies of all information available to the panel relating to the inquiry;
 - (iii) must provide the President with a reasonable opportunity to respond, in writing, to all relevant allegations against him or her;

- (iv) must not hold an oral hearing and must limit its enquiry to the relevant written and recorded information placed before it by members in terms of this rule; and
 - (v) must in its report include any findings, including the reasons for such findings, upon which its recommendation is based and any minority view of any panellist must be contained in its report.
- (2) The panel may determine its own working arrangements strictly within the parameters of the procedures provided for in this rule.

129H Quorum

The panel may proceed with its business when three panellists are present and remain present.

129I Consideration and referral of panel report

- (1) Once the panel has reported the Speaker must schedule the report for consideration by the Assembly, with due urgency, given the programme of the Assembly.
- (2) The President must be informed of the scheduling and any decision on the report.
- (3) In the event the Assembly resolves that a Section 89(1) enquiry be proceeded with, the matter must be referred to the Impeachment Committee established by this rule for that purpose.

Impeachment committee for Section 89 Enquiry

129J Establishment

There is an Impeachment Committee to consider motions in terms of a Section 89 enquiry, referred to it in terms of Rule 129I(3) above.

129K Composition and appointment

- (1) The committee consists of the number of Assembly members that the Speaker may determine, subject to the provisions of Rule 154, provided that all parties in the Assembly must be represented.
- (2) Notwithstanding Rule 155(2), the members of the committee must be appointed as and when necessary.

129L Chairperson

The Committee must elect one of its members as Chairperson.

129M Functions and powers of committee

- (1) The committee must when the Assembly has approved the recommendation from the Panel to proceed with a Section 89 Enquiry, proceed to establish the veracity and, where required, the seriousness of the charges and report to the Assembly thereon.
- (2) The committee must ensure that the enquiry is conducted in a reasonable and procedurally fair manner, within a reasonable timeframe.
- (3) The committee must afford the President the right to be heard in his or her own defence and to be assisted by a legal practitioner or other expert of his or her choice.
- (4) For the purposes of performing its functions, the committee has all the powers applicable to Parliamentary committees as provided for in the Constitution, applicable law and the Rules of the Assembly.

129N Decisions

A question before the committee is decided when a quorum in terms of Rule 162(2) is present and there is agreement among the majority of the members present, provided that, when the Committee reports, all views, including minority views, expressed in the Committee must be included in its report.

129O Consideration of report

- (1) Once the committee has concluded the enquiry, it must report to the Assembly forthwith.
- (2) The report of the committee must contain findings and recommendations including the reasons for such.
- (3) The report must be scheduled for consideration and debate by the Assembly, with due urgency, given the programme of the Assembly.
- (4) If the report recommends that the President be removed from office, the question must be put to the Assembly directly for a vote in terms of the rules and if the question is supported by at least two thirds of the members of the Assembly, the President is thereby removed from office with immediate effect.

General

129P Recommendations are not binding

- (1) The Assembly will make the final and binding decision relating to any matter dealt with in this Rule.
- (2) Any recommendation made by the independent panel or the impeachment committee or any decision made by the Speaker in terms of this Rule is not final and binding on the Assembly, including on any decision the Assembly intends to make in terms of this Rule.

129Q Benefits of the President

If the President is removed from office, the benefits of the President must strictly be dealt with in terms of the relevant provisions of the Constitution.

Report to be considered.

National Council of Provinces**1. REPORT OF THE SELECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS INSPECTION IN LOCO ON NOTICE OF INTERVENTION, ISSUED IN TERMS OF SECTION 139(1)(B) OF THE CONSTITUTION (1996), IN DR NKOSAZANA DLAMINI-ZUMA LOCAL MUNICIPALITY, DATED 11 SEPTEMBER 2018****1. Background and Overview**

1.1 The Select Committee on Co-operative Governance and Traditional Affairs, having considered the request by the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked in Dr Nkosazana Dlamini-Zuma Local Municipality in terms of section 139(1)(b) of the Constitution, the Select Committee reports as follows:

1.2 In terms of NCOP Rule 101, the Office of the Chairperson of the NCOP referred the notice of intervention by the KwaZulu-Natal MEC for Cooperative Governance and Traditional Affairs (CoGTA), to the Select Committee for consideration and reporting. On 7 September 2018, the Select Committee conducted a loco inspection in Dr Nkosazana Dlamini-Zuma Local Municipality.