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PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

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(Contains subject index for Issues 1-17)

Issue **17**



PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

A record of recent events and developments of a procedural nature in the National Assembly of the Parliament of the Republic of South Africa. The 17th issue covers the third session of the Fourth Parliament from January to December 2011. Where no year appears next to a particular month in the text, the reference is made to 2011.

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PRESIDING OFFICERS AND OTHER OFFICE-BEARERS

[1] NEW LEADER OF THE OPPOSITION

Section 57(2)(d) of the *Constitution of the Republic of South Africa, 1996*, provides for the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition. National Assembly (NA) Rule 21 also provides that the leader of the largest opposition party in the Assembly must be recognised as the Leader of the Opposition.

The Speaker received a letter dated 27 October from Mr J Selfe, the Federal Chairperson of the Democratic Alliance (DA), advising him that Ms L D Mazibuko had been elected by the DA as its parliamentary leader, thereby becoming the Leader of the Opposition in terms of the Constitution and NA rules. The Speaker announced the new Leader of the Opposition at a sitting of the Assembly the same day.

Ms Mazibuko replaced Mr R A P Trollip, who was the Leader of the Opposition from the beginning of the Fourth Parliament in 2009 until 26 October.

[2] APPOINTMENT OF CHIEF WHIP OF THE OPPOSITION

The Leader of the Opposition, Ms L D Mazibuko, informed the Speaker on 3 November that Mr A Watson had been appointed Chief Whip of the DA with effect from 8 November. Before this, Mr Watson had been a member of the National Council of Provinces (NCOP). His nomination as a member of the NA took effect the same day he was appointed Chief Whip by his party. He was subsequently sworn in as a member of the NA on 9 November during a sitting. In the same sitting, the Speaker announced his appointment, with immediate effect, as Chief Whip of the Opposition.

Mr Watson replaced Mr I O Davidson, who was the Chief Whip of the Opposition from 24 May 2008 to 14 April 2009 (the end of the Third Parliament), and again from 7 May 2009 until 7 November.

MEMBERS

[3] MEMBERSHIP OF THE ASSEMBLY

See Annexure 1.

[4] APPOINTMENT OF NEW MINISTERS AND DEPUTY MINISTERS

See Annexure 2.

[5] CONDOLENCE MOTIONS AND TRIBUTES TO FORMER MEMBERS

See Annexure 3

PROCEDURAL AND RELATED ISSUES

[6] NA RULE CHANGES IN 2011

The NA Rules Committee met on 1 November and agreed to three substantial changes to the Assembly rules. These were:

Size and composition of portfolio committees

A reduction in the size of portfolio committees from 14 to 12 members with the following composition: ANC - 7; DA - 2; Cope - 1; IFP - 1 and other parties 1.

As this reduction was outside the existing provisions of the rules, the Assembly agreed on 3 November that Rule 200(2), which provides *inter alia* that a portfolio committee must have no fewer than 13 and no more than 40 members, be suspended for the remainder of the 4th Parliament for the purpose of reducing the membership of portfolio committees to 12 members.

On 7 November, the Speaker announced in the ATC that all portfolio committees, including the Standing Committee on Finance and the Standing Committee on Appropriations, would consist, in terms of Rule 200(1), of 12 members for the remainder of the Fourth Parliament.

Portfolio of government affairs assigned to committee

A new budget vote for the Department of Performance Monitoring and Evaluation was created in 2011. Funding for this department was previously sourced through the Presidency, and discussed in the President's budget vote debate.

As there is no portfolio committee to oversee the Department of Performance Monitoring and Evaluation, the Rules Committee decided to utilise the Standing Committee on Appropriations as the committee responsible for oversight over the department.

Name change for portfolio committee

The decision that oversight over the Department of Performance Monitoring and Evaluation be done by the Standing Committee on Appropriations also implied that oversight over youth matters, which falls under this department, be overseen by the same committee. The Rules Committee therefore decided that the name of the Portfolio Committee on Women, Youth, Children and People with Disabilities be changed to the Portfolio Committee on Women, Children and People with Disabilities as youth

matters would in future resort under the Standing Committee on Appropriations.

[7] SELECTED RULINGS

Unsubstantiated allegations against other members

On 15 February, Mr I O Davidson raised a point of order during a debate on the President's State-of-the-nation address (SONA) objecting to remarks made by the Minister of International Relations and Cooperation in relation to Mr M Mqasela. In a considered ruling given on 16 February, the Speaker ruled the Minister's remarks out of order and asked her to withdraw them. The Speaker stated that:

"Aspersions were cast on the character of a member of this House. It has been ruled often enough in this House, including on 17 November 2010, that members may not make unsubstantiated allegations against or cast reflections on other members. Members have a duty not to make insinuations or accusations of improper conduct on the part of their fellow members without the matter complained of being clearly stated or properly substantiated through a substantive motion. I call upon all honourable members not to allege improper actions by other members unless they seriously wish to have such actions investigated by a committee of the House."

Replies by the Executive to members' statements

On 10 March, during a response by the Minister of Transport to members' statements, two similar points of order were raised about ministerial responses to members' statements.

Mr M J Ellis asked whether it was in order for the Deputy Minister of Transport to respond to a statement that had already been responded to by the Minister of International Relations and Cooperation. He contended that the rules prohibited two members of the Executive from responding to the same statement.

Mrs J D Kilian asked for clarity on the application of Rule 105(6) which provides that a Minister who is present may be given an opportunity to respond to any statement directed to that Minister or in respect of that Minister's portfolio.

In a considered ruling given on 24 March, the Speaker ruled that Rule 105 that governs members' statements and ministerial responses was clear and detailed and that it sets out the manner and time of members' statements and then proceeds to set out, with the same attention to detail, the manner and time of ministerial responses.

The Speaker confirmed that the rule also made provision for instances where a Minister may not be present to respond and even determined in which order of preference a colleague may respond on behalf of an absent Minister.

The Speaker ruled that:

"Rule 105(6) says that if a particular Minister was present in the House and the member's statement was directed at

that Minister or to that Minister's portfolio, then that Minister may respond to that statement. If the Minister at whom the statement is directed or in respect of whose portfolio the statement is made is not in the House, then in terms of the rules the relevant Deputy Minister may respond to that statement; alternatively if the relevant Deputy Minister is also not in the House then any other Minister may respond to that statement on behalf of an absent colleague."

The Speaker advised that prior to 2005, the guidelines for members' statements and ministerial responses provided that only a Minister from a particular Cabinet cluster could respond on behalf of his or her colleague from the same cluster but that the rule had since been adjusted to provide that any Minister may now respond on behalf of an absent colleague if the relevant Deputy Minister does not respond.

The Speaker further ruled that the rules should ensure that a member's statement dealing with a single matter is not responded to twice, as it would either have been directed at a particular Minister or it would have been made in respect of a particular Minister's portfolio.

The Speaker appealed to members of the Cabinet to assist the Chair by adhering to the prescriptions of the rules and to respond only to those statements as he had indicated. The Speaker then referred the matter to the NA Rules Committee for further discussion.

Members' statements when the attendance of the Executive is poor

On 9 June, during members' statements, Mr I O Davidson raised a point of order requesting the House Chairperson (Mr M B Skosana) to make a ruling whether, in view of the purpose of statements to the House which was to allow members to raise and ventilate current issues and to get responses from the Executive, it was worth making statements to the House when only two Ministers were present.

The House Chairperson ruled that there was nothing in the rules which suggested that members' statements may not proceed if the attendance of members of the Executive was poor. The House Chairperson further ruled that the absence of members of the Executive however meant that the Executive was unable to present its side on the issues raised in members' statements thereby depriving members of essential information that they needed to exercise effective oversight.

The House Chairperson undertook to raise the matter with the Speaker but ruled that the House proceed with members' statements as there were no rules that prevented it from doing so.

Unparliamentary Language (1)

On 15 February, three points of order were raised during a speech by the Minister of Higher Education and Training.

Firstly, Ms L D Mazibuko raised a point of order regarding whether the use of the word "darkies" by the Minister was parliamentary.

The Deputy Speaker on 16 February advised that when considering whether a word was parliamentary or not, the Chair's judgment depends on the nature of the word, the context in which the word was used and also the way or the tone in which the remark was made, which can also make a difference.

The Deputy Speaker emphasised that good temper and moderation are the characteristics of parliamentary language and that offensive and inflammatory language should be avoided.

The Deputy Speaker indicated that she did not immediately consider the term offensive, but agreed, in the view of the conversation of the House, that the word might be seen as a racial label and could easily be considered derogatory by some people. She also agreed that certain sections of society may not necessarily view the label as racist and derogatory, especially when used in a particular context.

The Deputy Speaker confirmed that the rulings by the Chair should always seek to uphold the decorum of the House and urged members generally to avoid language that could be construed as offensive and provocative by others. The Minister was not asked to retract his statement.

Secondly, Mr M G P Lekota asked the Deputy Speaker to rule whether a member who criticised the Government could be justifiably called a racist.

The Deputy Speaker on 16 February stated that while she could not rule on hypothetical questions, regardless of their context, she would confirm a previous ruling that it was always unparliamentary for a member of the House to accuse another of being racist. The Deputy Speaker ruled that in this instance, there was no record that the Minister had made such an accusation against a member.

Lastly, Mr M J Ellis raised a point of order objecting to another remark by the Minister, namely:

"You actually launched security to go and shoot innocent workers in Hout Bay because they are too close to a whole range of areas."

Mr Ellis alleged that the Minister was deliberately inciting them (the DA) by referring to them (the DA) as shooting people in the townships and that the remark by the Minister was unparliamentary.

The Deputy Speaker on 16 February ruled that the Chair's determination of whether the remark was unparliamentary or not centered around the interpretation of the word "you" and whether the Minister was referring to the DA as a party or whether he was referring to the DA members of the House. The Deputy Speaker ruled that in this instance the Minister's remark could be interpreted as both, and that given the ambiguity and the context provided by the preceding and subsequent statements, she would grant the Minister the benefit of the doubt. The Minister was therefore not asked to withdraw the remark.

Unparliamentary Language (2)

On 16 February, during a debate on the SONA, Mr M J Ellis raised a point of order objecting to the use of the word

"hatred" that was used in a remark made by the Minister of Science and Technology when she said:

"Now, can you imagine, hon members, if we were to accept the situation where we appointed members of the DA to serve us in government? I'm sure, given the hatred that is spouted forth here, that they certainly have not appointed ANC appointees in the government of the Western Cape that they have referred to."

On 24 March, the Speaker ruled that the remark by the Minister was not unparliamentary and that it was an expression of how the Minister viewed political discourse in the House.

Unparliamentary language (3)

On 25 August, during members' statements, Mr M J Ellis raised a point of order contending that a statement by Mr K B Manamela that the DA allegedly "uses black faces to garner votes" was unparliamentary and asked the Speaker to make a ruling.

In a considered ruling on 14 September, the Speaker ruled that Rule 63 that deals with offensive language or "unparliamentary" language was a broadly framed rule that allows a presiding officer to take into consideration, *inter alia*, the context and tone of a particular remark or inference. The Speaker further confirmed that in its interpretation, this rule was further elucidated by years of established practice and convention.

The Speaker ruled that Mr Manamela's statement reflected on a political party and not on any particular member of the House and that a reflection on the actions of a political party, as perceived by an opposing party's members, was not out of order, as long as that member did not cast aspersions on the character of members of the House.

The Speaker confirmed that this approach was consistent with previous rulings by presiding officers and that reference to a political party in this manner was not out of order. The Speaker accordingly ruled that the statement made by Mr Manamela was not unparliamentary.

Wearing of party symbols in the House and in the public gallery

On 9 March, during a debate on International Women's Day, Adv A Gaum raised two points of order and asked the House Chairperson (Mrs F Hajaig) to make a ruling regarding firstly, whether party symbols were allowed to be displayed in the Chamber and that the public gallery formed part of the Chamber, and secondly, whether members of the public in the gallery were allowed to participate in the proceedings of the House.

The House Chairperson ruled that members of the House were not allowed to wear party symbols in the House; however, members of the public in the gallery were allowed to do so. The House Chairperson further confirmed that members of the public in the gallery were not allowed to participate in the proceedings of the House and appealed to the members of the public in the gallery to neither voice their approval nor disapproval of what was said on the floor of the House.

The practice of speaking time being given to members of the Executive when time has been saved

During debate in an Extended Public Committee (EPC) on 13 April on Budget Vote 15 – Basic Education, Mr M J Ellis raised a point of order in which he objected to the practice of ANC speaking time being given to members of the Executive when time has been saved by ANC speakers.

The House Chairperson (Mrs F Hajaig) requested that Mrs G M Borman gives the ruling as she was presiding at the time of the point of order. Mrs Borman ruled that it was a long-established practice that the ANC gave time that it saved to Ministers during budget vote debates and that such changes to the speakers' list are communicated to the other parties timeously.

Mrs Borman further ruled that the allocation of speaking time was a matter that was attended to by the whips of the various parties and appealed to the whips to find a mutually acceptable position on the matter and to ensure that it was communicated to all the role-players concerned.

Taking photographs in the House

On 23 June, during the process of voting on the Appropriation Bill and when technical problems were being experienced with the electronic voting system in the Chamber, Ms M T Kubayi raised a point of order regarding Ms L D Mazibuko taking photographs in the House.

Ms Mazibuko advised that she was an avid user of social media and wanted to tweet a picture of the House's broken-down electronic voting system so that the public could share in the proceedings of the House.

The Deputy Speaker ruled that the member was not allowed to take photographs in the House and directed that the photographs should not be sent anywhere and that they be deleted.

Rule 67 - Matters *sub judice*

On 26 October, during questions to the Executive, the Deputy Minister of International Relations and Cooperation advised the Speaker that the Minister was not in a position to reply to questions pertaining to the visa application of the Dalai Lama as the matter was *sub judice* after the IFP and Cope instituted court proceedings in the Cape High Court on 18 October.

The Chief Whip of the Opposition raised a point of order and contended that the *sub judice* rule could only be of effect if the proceedings in the House had a direct effect on the proceedings of that court. He further contended that the proceedings in the House could not have an effect on the court because it was an independent institution and thus the matter could not be *sub judice* in that context.

The Speaker confirmed that Rule 67 provided that no member shall refer to any matter on which a judicial decision was pending. The Speaker advised that in accordance with the rules and in view of the undertaking given by the Deputy Minister that the matter was indeed before a court, the Speaker was obliged to rule that questions pertaining to the matter could not be proceeded with.

The Speaker further cautioned the Deputy Minister that he could be acting in contempt of Parliament should he have given the House incorrect information.

[8] FIRST REPORT OF JOINT RULES COMMITTEE, 2011

The NA adopted the First Report of the Joint Rules Committee 2011 on 22 June. The report contained the following amendments to the Joint Rules as agreed to by the committee on 23 March:

- Establishment of Joint Committee on HIV and AIDS
- Composition of Joint Committee on HIV and AIDS in the 4th Parliament.
- Consequential numbering changes
- Consequential changes referring to the portfolio and select committees charged with oversight of women's issues, instead of the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women.

[9] REPORT OF THE NA RULES COMMITTEE, 2010

The NA adopted the Report of the Rules Committee of the National Assembly 2010 on 22 June. The report contained the following amendments to the NA Rules as agreed to by the committee on 17 November 2010:

- Rules on establishing the Standing Committee on Finance and Standing Committee on Appropriations; and
- guidelines to the Committee on Private Members' Legislative Proposals and Special Petitions.

[10] PERMISSION TO INQUIRE INTO AMENDING PROVISIONS OF THE COMPANIES ACT

The Companies Amendment Bill [B40-2010] was tabled on 9 November 2010 and referred to the Portfolio Committee on Trade and Industry for consideration and report in terms of NA Rule 247(5)(a).

On 2 March, the committee published an interim report on the bill in which it sought the permission of the NA in terms of NA Rule 249(3)(b), which provides that if a committee is considering an amendment bill, the committee may seek the permission of the Assembly to inquire into amending other provisions of that legislation.

After considering the interim report on 9 March, the Assembly agreed to a motion giving permission to the committee to inquire into amending other provisions of the principal Act, the *Companies Act (Act 71 of 2008)*.

The committee identified the omission of a framework for domestication of external companies in the 2008 Companies Act, while section 335 of the 1973 Companies Act provided for a scheme for domestication of foreign companies wishing to transfer their registration to the Republic of South Africa.

The committee therefore decided that the severity of the impact of non-inclusion of a domestication clause should be looked at. An investigation of the number of domesticated foreign companies revealed that only 10 or less companies were domesticated per year. The committee concluded that even though the number of domestications per year was very low, the risk that it posed to potential investors in the country was very high.

Clause 8 of the bill proposed a framework through which a foreign company may apply to transfer its registration from a foreign jurisdiction in which it was registered to South Africa. In terms of the bill, a foreign company may transfer its registration if certain conditions stipulated in the amendment are satisfied.

The committee reported on the bill as amended on 10 March and the Assembly passed it on 15 March – the DA, Cope, FF Plus and IFP dissented. The bill was assented to by the President on 26 April as the *Companies Amendment Act* (Act 3 of 2011).

[11] CORRECTION OF VOTE RESULTS AND CHAIRPERSON COUNTED TOWARDS QUORUM

Section 53(1)(a) of the Constitution provides that except where it provides otherwise, a majority (201) of the members of the Assembly must be present before a vote may be taken on a bill. This provision is echoed in NA Rule 25(2)(a). On 27 October, the House divided on the Intellectual Property Laws Amendment Bill [B8-2010] and 201 members were present. The result of the division was as follows: 156 in favour, 37 against and 8 abstentions. Therefore, the question was agreed to.

Shortly before the Assembly adjourned, the presiding officer announced that after scrutinising the voting results, it had been established that a member's name was recorded twice. As a result, the total number of members in the House, excluding the presiding officer, was not sufficient for the bill to be passed. However, given that the presiding officer counted as part of the quorum, a quorum had indeed been present at the time of the voting in terms of section 53 of the Constitution. Except where the presiding officer had to cast a deliberative vote in instances where a question had to be decided by at least two-thirds of the members of the NA, this was the first time since 1994 that the presiding officer was counted towards the quorum.

[12] NON-ATTENDANCE OF MINISTERS AT NA SITTING

Section 92 of the Constitution provides that members of the Cabinet are individually and collectively accountable to Parliament for the exercise of their powers and the performance of their functions.

On 17 November 2010, the Votes and Schedule to the Adjustment Appropriation Bill were considered and it was apparent that a number of Ministers were not present to reply to members' questions on their adjusted departmental budgets.

In a letter to the Deputy President, in his capacity as the Leader of Government Business, on 10 March, the Speaker brought the matter to his attention and appealed that the relevant members of the Executive should be present when their budgets, strategic plans and annual reports are discussed or when questions are put to them for oral reply in the House, and when possible during members' statements.

[13] SUSPENSION OF RULES

Rule 253(1) provides *inter alia* that the debate on the second reading of a bill may not commence before at least three working days have elapsed since the committee's report was tabled. On 10, 22 and 24 March, and 24 November, this rule was suspended in respect of the Division of Revenue Bill, the Merchant Shipping (Safe Containers Convention) Bill, the Local Government: Municipal Systems Amendment Bill and the Skills Development Amendment Bill.

Notwithstanding NA Rule 29, which provides for the sequence of proceedings in the House, precedence was given to a statement by the Minister in the Presidency: National Planning Commission (NPC) on the launch of a diagnostic document by the NPC before members' statements on 9 June after Rule 29 had been suspended by resolution for that day's sitting.

[14] TIME ALLOCATION FOR PARTY RESPONSES TO AN EXECUTIVE STATEMENT

In terms of a House resolution adopted on 20 August 2009, the time allocated for party responses to Executive statements for the remainder of the Fourth Parliament was as follows: ANC - 9 minutes; DA - 4 minutes; Cope - 2 minutes; IFP - 1 minute; and all other parties 1 minute each.

However, notwithstanding that resolution, the House, on 9 June, adopted a resolution which substantially increased, for that day only, the time allocation applicable to Executive statements both for the Minister and parties, as follows: Cabinet member: 40 minutes; ANC - 15 minutes; DA - 9 minutes; Cope - 5 minutes; IFP - 3 minutes and all other parties 2 minutes each. Ordinarily, Ministers have up to 20 minutes to make a statement and that allocation can only be changed with the consent of the NA.

The statement by the Minister in the Presidency: National Planning Commission was on the launch of a diagnostic document by the NPC.

[15] JOINT SITTINGS

On 27 October, the President of the Republic of South Africa, in terms of the Constitution and the Joint Rules, called a Joint Sitting of the two Houses for Tuesday, 1 November, to bid farewell to Justice Sandile Ngcobo, the former Chief Justice of the Republic of South Africa, and to welcome Chief Justice Mogoeng Mogoeng as his replacement.

Other Joint Sittings held during 2011 were on the State of the Nation Address on 10 February, Africa Day on 25 May, and National Women's Day on 23 August.

[16] SITTING HOURS OF THE HOUSE

Notwithstanding Rule 23(2), which provides for the hours of sitting on a Tuesday from 14:00 to adjournment, the House resolved that the hours of sitting for Tuesday, 20 September, would be 10:00 to adjournment. This was as a result of it being the last plenary of the NA for the third term of the annual session and urgent business had to be concluded before the recess period.

[17] SITTING HOURS OF EXTENDED PUBLIC COMMITTEES (EPCs)

NA Rule 23(2) states that the business of the Assembly may be considered by it on Mondays to Thursdays at 14:00 and on Fridays at 09:00, or at such later time as the Speaker determines, to adjournment.

In order to expedite the budget vote debate programme, the Assembly conducts more than one public debate simultaneously. This is done through the mechanism of Extended Public Committees (EPCs).

On 24 March, the NA agreed to a motion by the Chief Whip of the Majority Party proposing that the EPCs sit as agreed to by the NA Programme Committee (NAPC).

The EPC meetings are normally scheduled for 14:00 on Tuesdays to Thursdays and for 09:00 on Fridays, until adjournment. However, on Tuesday 12 April, an EPC was scheduled for 10:00 with the agreement of the NAPC.

[18] REVIVAL OF LAPSED BUSINESS

Assembly Rule 316 provides that all motions and all other business on the Order Paper, except bills, on the last sitting day of an annual session of the Assembly, or when the Assembly is dissolved, lapse at the end of that day. Lapsed business can only be revived by resolution of the House.

The Report of the Joint Committee on Ethics and Members' Interests on the Auditor-General's Report on Alleged Non-disclosure of Members' Interests was published in the ATC of 17 November 2010 and appeared on the Order Paper of 18 November 2010 under further business, until the end of the 2010 annual session. Since the annual session ended without the report being considered by the House, the report lapsed. On 9 June, on a motion moved by the Chief Whip of the Majority Party, the House revived the report which was subsequently adopted by the NA on 22 June.

[19] QUESTIONS NOT HAVING PRECEDENCE

The rules of the NA (29(8) and 113(1)) provide for parliamentary questions for oral reply to have precedence over other business on a question day (Wednesday).

However, the rules also provide the NA with the power to suspend the rules, relating to the business or proceedings at its meetings, by a resolution of the House (Rule 3(1)). Such

a suspension of any provision of the rules must be limited to the particular purpose for which the House has approved the suspension.

In accordance with the rules therefore, the NA agreed to a resolution moved by the Chief Whip of the Majority Party on 24 August and again on 15 November, suspending the rules providing for questions for oral reply to have precedence on a question day. Accordingly, on 24 August questions were preceded by a debate on a motion of condolence and on 16 November by the debate that launched the campaign against violence against women and children.

In both instances the suspension of the provision giving questions precedence on a question day was specific for the purpose for which the House approved the suspension.

[20] QUESTIONS TO THE DEPUTY PRESIDENT

The NA rules provide for questions to the Deputy President to be scheduled once every second week on a question day in the NA (Rule 110(1)).

However, the rules also establish conditions or exceptions under which questions for oral reply to the Deputy President may not be scheduled every second week (Rule 110(2)). In this regard questions to the Deputy President may not be scheduled within a week in which:

- questions have been scheduled for the President in the NA; and
- he has been scheduled to reply to questions in the NCOP.

On 24 August, therefore, the Chief Whip of the Majority Party moved a resolution to suspend the exception that provides for the Deputy President not to reply to questions in the NA within the same week that he has been scheduled to reply to questions in the NCOP. The Assembly agreed to the suspension of the exception which therefore enabled the Deputy President to reply to questions in both Houses within the same week, i.e. 24 August in the NA and 25 August in the NCOP.

[21] DETERMINATION OF PRESIDENT'S SALARY

On 20 September, the NA, by resolution, approved the salary payable to the President in terms of section 2(1) of the *Remuneration of Public Office Bearers Act* (Act 20 of 1998).

With due regard to the criteria listed in the above-mentioned subsection, the House resolved that the President's salary would be R2,485,839,00 with effect from 1 April and that an amount of R120 000 per annum would be that portion of the remuneration of the President to which section 8(1)(d) of the *Income Tax Act* (Act 58 of 1962), would apply.

[22] DETERMINATION OF DEPUTY PRESIDENT'S PENSION

On 20 September, the NA by resolution, determined that the current Deputy President, Mr K P Motlanthe, would

receive the pension benefits as determined by a resolution of the NA on 26 September 2008. In terms of the resolution, the current Deputy President, who was the President of the Republic from 25 September 2008 to 9 May 2009, would receive a taxable pension benefit equal to 100% of his total annual remuneration (salary and allowances) paid to him while he was the President.

The House further resolved that the current Deputy President would receive no salary for his services as Deputy President, except those benefits and privileges which are necessary to enable the Deputy President to carry out his functions.

The resolution, which became effective from 9 May 2009, was taken by the House after it had taken into consideration—

- the recommendations contained in the report of the Independent Commission for the Remuneration of Public Office-Bearers of 11 November 2010 on the pension and other pension benefits of the former President, Mr K P Motlanthe;
- that the time of retirement of a President is when the term of office of a President ends upon a vacancy occurring or when the person next elected President by the NA assumes office; and
- that the resolution which the House adopted on 26 September 2008, in respect of pension and other benefits of Presidents and former Presidents, applied to all retired Presidents including former President Motlanthe.

[23] ELECTION OF MEMBERS OF PAN- AFRICAN PARLIAMENT

Parliament has five representatives on the Pan-African Parliament (PAP), of which three are nominated from the majority party and two from the opposition parties. Members of the PAP must be elected by both Houses separately. On 14 September, the Speaker announced in the House that Mr S J Njikelana and Ms F Hajaig, both from the majority party, had resigned as members of the PAP, leaving two vacancies in the PAP. The Speaker indicated that he had received the nominations of Mr J D Thibedi and Ms A F Muthambi from the majority party. These members were accordingly elected to the PAP unopposed. On 20 September, the NCOP, by resolution, also elected these members.

[24] AMENDMENT OF RESOLUTION ON PARLIAMENTARY MILLENNIUM PROJECT (PMP)

NA Rule 96 provides that no amendment to a draft resolution may be moved, except an amendment to a draft resolution on a question of privilege; to substitute the name of another member for the name of a member in a draft resolution, or which is allowed by the presiding officer.

On 11 November 2010, the NA adopted a resolution, replacing the Parliamentary Millennium Project (PMP) with a Committee on Nation-Building and Heritage (*see Issue 16, item 18*). On 17 November, the NA amended its resolution of 11 November 2010, subject to the concurrence

of the NCOP, and re-launched the Parliamentary Millennium Project but replaced the governance structure with a multi-party Parliamentary Millennium Council.

The draft resolution as printed on the Order Paper of 17 November had provided among other things that the Council would be co-chaired by the Speaker of the NA and the Chairperson of the NCOP. When the Chief Whip of the Majority Party was called upon to move the motion, he proposed that the motion be amended to exclude the chairpersonship of the Council. The presiding officer allowed the amendment and the motion was accordingly adopted as amended.

However, during the last sitting of the year, on 24 November, the Chief Whip of the Majority Party, with leave, moved a motion now amending the resolution of 17 November. The amendment effectively replaced the amended motion of 17 November with the original motion printed on the Order Paper which provided that the Council would be co-chaired by the Speaker of the NA and the Chairperson of the NCOP. The NCOP passed a similar motion on the same day.

[25] REPORTS BY THE PUBLIC PROTECTOR

In terms of section 8(2) of the *Public Protector Act* (Act 23 of 1994), the Public Protector regularly submits reports on its investigations and findings to Parliament. A summary of the reports tabled during 2011 follows below.

Leasing of office accommodation in Pretoria and Durban

The Speaker tabled Public Protector Report No 33 of 2010-11 on 1 March after an investigation into complaints and allegations of maladministration, improper and unlawful conduct by the Department of Public Works and the South African Police Service (SAPS) relating to the leasing of office accommodation in Pretoria. This report was referred to the Portfolio Committee on Police and the Portfolio Committee on Public Works for consideration on 9 March. A further report dealing with another investigation of this nature, but relating to SAPS office accommodation in Durban, was tabled by the Speaker on 27 July.

On 8 August, the Speaker tabled a letter, dated 4 August, from the President informing the NA of the action he had taken to that point in response to the recommendations of the Public Protector relating to the leasing of office accommodation for the SAPS in Pretoria and Durban.

Soliciting donations for the ANC

Public Protector Report No 8 of 2011-12 was tabled on 27 July. It concerned an investigation into the alleged improper soliciting of businesses for donations to the ANC by Mr C Taute, Executive Mayor of the Hessequa Municipality. The report was referred to the Portfolio Committee on Cooperative Governance and Traditional Affairs on 16 August for consideration.

Complaint of conflict of interest against Mr J Manyi

Public Protector Report No 9 of 2011-12 on an investigation into a complaint of conflict of interest against

Mr J Manyi was tabled on 10 October. The complaint alleged that Mr Manyi had a conflict of interest in his duties as Director-General of the Department of Labour and being the President of the Black Management Forum (BMF). The report was referred to the Portfolio Committee on Labour for consideration on 19 October.

Alleged breach of Executive Ethics Code by Minister of Cooperative Governance and Traditional Affairs

Public Protector Report No 11 of 2011-12 on an investigation into allegations that Minister S Shiceka had breached the Executive Ethics Code was tabled on 13 October and referred to the Joint Committee on Ethics and Members' Interests and the Portfolio Committee on Cooperative Governance and Traditional Affairs on 19 October. The Public Protector found that the Minister had breached the Executive Ethics Code and the Constitution in a number of instances.

On 4 November, the Speaker tabled a letter from the President, dated 26 October, informing the Assembly that he had relieved Mr Shiceka of his duties as Minister of Cooperative Governance and Traditional Affairs after taking into consideration the Public Protector's Report.

Alleged breach of Executive Ethics Code by Minister of Police

Public Protector Report No 7 of 2011-12 on an investigation into an alleged breach of the Code by the Minister of Police was tabled on 10 November. The report was referred to the Portfolio Committee on Police for consideration and to the Joint Committee on Ethics and Members' Interests on 17 November. However, the President had already written to the Speaker on 1 November informing the Assembly that the Public Protector had found that the Minister had not breached the Code and that no action was therefore required against the Minister.

[26] WITHDRAWAL OF CODE OF GOOD ADMINISTRATIVE CONDUCT

Section 10(6) of the *Promotion of Administrative Justice Act* (Act 3 of 2000) empowers the Minister of Justice and Constitutional Development to make regulations in terms of the Act. These regulations must be approved by Cabinet and must be made within two years of the Act coming into force. In addition, section 10(1)(e) of the Act states that "The Minister must make regulations relating to a code of good administrative conduct in order to provide administrators with practical guidelines and information aimed at the promotion of an efficient administration and the achievement of the objects of this Act."

The Code of Good Administrative Conduct was tabled and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report on 27 August 2009. In a letter dated 17 August, the Minister withdrew the Code tabled in 2009 in order to consider recommendations by the committee, although the committee did not formally report on the Code.

[27] ANNUAL REPORT AND QUARTERLY REPORTS OF THE NATIONAL CONVENTIONAL ARMS CONTROL COMMITTEE (NCACC)

The National Conventional Arms Control Committee (NCACC) consists of Ministers and Deputy Ministers, and administers the *National Conventional Arms Control Act* (Act 41 of 2002). Section 23(1) of the Act requires the NCACC to:

- ensure compliance with the annual reporting requirements of the United Nations Register of Conventional Arms and simultaneously present to Parliament a copy of South Africa's annual report to the United Nations;
- make quarterly reports to the Cabinet and a committee of Parliament on all conventional arms exports concluded during the preceding quarter; and
- at the end of the first quarter of each year, present to Parliament and release to the public an annual report on all conventional arms exports concluded during the preceding calendar year.

Since the Act came into effect in 2003, only one NCACC report had been formally tabled in Parliament. Some reports were submitted informally to the respective defence committees of Parliament, but since the reports were not formally tabled, there was no record of it being submitted to Parliament, as required by the Act.

The Speaker wrote to the Leader of Government Business on 23 February, requesting that the NCACC submit the reports as required by the Act, as Parliament was unable to fulfil its oversight function with regards to the export of conventional arms, the Act and the NCACC.

The Minister of Justice and Constitutional Development, the chairperson of the NCACC, subsequently submitted the following reports to Parliament:

- The NCACC annual report for the year ended 2010 on 8 April;
- 2010 Annual Report submitted to the United Nations on 19 May;
- 2011 First Quarterly Report on 19 May;
- 2011 Second Quarterly Report on 17 August; and
- 2011 Third Quarterly Report 9 November.

On 5 November, the Minister tabled the following NCACC reports in terms of section 23(1)(b) of the Act:

- 2010 Second Quarterly Report;
- 2010 Third Quarterly Report ; and
- 2010 Fourth Quarterly Report.

All the reports were referred to the Joint Standing Committee on Defence on the date they were tabled.

[28] NATIONAL PLANNING COMMISSION: PROCEDURES FOR HANDLING OF DIAGNOSTIC REPORT AND NATIONAL DEVELOPMENT PLAN

On 30 April 2010, the President appointed 25 members of the National Planning Commission (NPC) from civil

society to work with the Minister in the Presidency: National Planning Commission, Mr T A Manuel, to develop a national development plan and development vision statement for the country. The mandate of the NPC would be “to take a broad, cross-cutting, independent and critical view of South Africa, to help define the South Africa we seek to achieve in 20 years’ time and to map out a path to achieve those objectives”. The commission was expected to put forward solid research, sound evidence and clear recommendations for government.

To this end, on 9 June, the Minister released a Vision Statement and a diagnostic report, titled “Diagnostic Overview by the National Planning Commission”, analysing the key challenges that confronted the country and its people. The vision and diagnostic report lay the basis for a national conversation about the country to be achieved by 2030, the key challenges in achieving the vision, and how they could be remedied. The report was tabled in the ATC of 9 June, but was not referred to any committee.

On 11 November, a draft of the National Development Plan: Overview and Vision Statement was handed over to the President. On 23 November, the Minister made a presentation on the draft plan to the Committee of Chairpersons where a process for its consideration was agreed upon. In terms of this agreement, the plan would be referred to all portfolio committees, the Standing Committee on Finance and the Standing Committee on Appropriations for consideration and report in accordance with a programme agreed to by the Committee of Chairpersons. The draft plan was tabled in the ATC of 25 November.

LEGISLATION AND COMMITTEES

[29] PROCESSING OF THE PROTECTION OF STATE INFORMATION BILL

See Issue 16, Item 23

The Protection of Information Bill [B6-2010], introduced by the Minister of State Security, was tabled on 9 March 2010 and referred to the Ad Hoc Committee on Protection of Information Legislation on 18 March 2010, the same day that the Ad Hoc Committee was established in terms of a resolution adopted by the NA. The committee was required to report by 7 May 2010. It consisted of 17 members as follows: ANC - 10; DA - 2; Cope - 1; IFP - 1; and other parties 3. Mr C V Burgess was elected chairperson of the Ad Hoc Committee at its first meeting on 4 May 2010.

The bill sought, *inter alia*, to ensure a coherent approach to protection of State information and the classification and declassification of State information and to create a legislative framework for the State to respond to espionage and other associated hostile activities. Further, the bill set out procedures on how classified documents were to be handled during court proceedings, and required courts to prevent public disclosure of classified documents that form part of court records.

On 11 May 2010, three days after the Ad Hoc Committee’s term had expired, the NA adopted a motion condoning its

continued existence and extending the deadline by which it had to report to 30 September 2010. On 28 October 2010, the NA again condoned the continued existence of the Ad Hoc Committee and further extended the deadline by which it had to report to 16 November 2010. When the Ad Hoc Committee could not report on the new date, its term was further extended to 28 January 2011.

In January, in a letter addressed to the Speaker of the NA, the Ad Hoc Committee requested that its deadline for reporting be extended to 31 March to enable it to fulfill its mandate. Under normal circumstances, such decisions can only be taken by the House. However, the House was not scheduled to sit before the expiry of the reporting deadline and no provision exists in the Assembly Rules for extending the term of an Ad Hoc Committee under these circumstances. Assembly Rule 2, however, provides that “the Speaker may give a ruling or frame a rule in respect of any eventuality for which these rules do not provide.” On 8 February, the Deputy Speaker as Acting Speaker ruled, in terms of Assembly Rule 2, that the deadline by which the committee must report be extended to 31 March and further that this decision be subject to ratification by the House.

The House would have had to ratify the decision of the Acting Speaker and effectively condone the work done by the Ad Hoc Committee after the expiry of its term. After extensive discussions on the procedural correctness of the application of Rule 2 in this instance, the NA, on 17 March, adopted a resolution re-establishing the Ad Hoc Committee on Protection of Information Bill with the same membership and mandate as its predecessor and instructed the committee to incorporate in its work the proceedings and all the work of the previous committee and to report by 24 June. This development, a clear departure from previous practice, effectively established a new procedure for dealing with Ad Hoc Committees whose term expired when the House was not sitting.

On 23 June, the day before the new committee’s term was to expire, the deadline by which it had to report was further extended by House resolution to 23 September.

On 13 September, the Ad Hoc Committee tabled its report and presented the Protection of State Information Bill [B6B – 2010]. According to the committee’s report the bill had been redrafted and the establishment of a Classification Review Panel introduced in the redrafted bill. The committee further reported on a number of amendments that had been proposed and rejected while the bill was being finalised. These proposed amendments included proposals to add public domain and public interest defences to the bill, although these were not accepted. The word ‘State’ was included in the title and preamble of the redrafted bill in order to limit its initial broad scope of application to only certain ‘state’ information.

The NAPC scheduled the bill for second reading on 20 September. However, on 19 September, the Speaker received a list of proposed amendments to the bill that was submitted in terms of Assembly Rule 254 in the names of Dr M G R Oriani-Ambrosini, Mr J H van der Merwe and Adv A de Waal Alberts. Rule 254 provides that a member may place amendments to clauses of a bill on the Order Paper after the bill has been placed on the Order Paper for second reading but before the Assembly decides on the

second reading. Rules 254(3) and 254(4) further provide that a proposed amendment may not be published on the Order Paper if it affects the principle of the bill, if it changes the classification of the bill, if it renders the bill constitutionally and procedurally out of order and if it has the same effect as an amendment that was previously rejected by the committee.

As the rules do not envisage a joint submission of amendments by members, the members concerned were advised to submit the amendments separately. While they complied with this request, they submitted three identical sets of amendments. Because the House could not deal with three sets of identical amendments, the set that was received first, Dr Oriani-Ambrosini's, blocked the others. Given the extensive nature of the proposed amendments and the need to conduct a proper technical assessment of the amendments, the second reading debate on the bill did not take place on 20 September.

Rule 254(5) provides that the Speaker may deal with the amendments in one of two ways after the amendments had been placed on the Order Paper and the debate on the second reading had been concluded; i. e.

- (a) The Speaker may recommit the bill for reconsideration to the committee which considered it; or
- (b) The Speaker may put the amendments for decision by the Assembly and thereafter the second reading of the bill as a whole, including any approved amendment.

As Dr Oriani-Ambrosini's proposed amendments complied with the provisions of Rule 254, they were accordingly published on the Order Paper of 15 November, the day before the bill was scheduled for second reading debate. On 16 November, after the debate on the bill was concluded, the Deputy Speaker announced, in her capacity as Acting Speaker, that in terms of Rule 254(5) she had decided to recommit the bill, together with the proposed amendments to the committee which had considered it originally, subject to the re-establishment of that committee. The NA immediately adopted a resolution re-establishing the Ad Hoc Committee on Protection of Information Bill with the same composition, membership, chairperson and powers and instructed the committee to take into account the earlier work and proceedings of the committee when considering the bill in terms of Rule 255. The resolution further instructed the Ad Hoc Committee to report to the NA by 21 November.

On 18 November, the committee reported that all the proposed amendments were considered and voted upon individually and that they were all rejected by the members of the committee, save for Dr Oriani-Ambrosini. It accordingly reported the bill without amendments.

On 22 November, the Ad Hoc Committee's Report and the Decision of Question on Second Reading were scheduled for consideration by the NA. On this day, the Chief Whip of the Opposition moved a motion without notice to the effect that the House postpones both the consideration of the Ad Hoc Committee's Report and the Decision of Question on the Second Reading in terms of Assembly Rule 97(c). Ordinarily, a motion without notice requires the unanimous concurrence of all the members present in order

for it to be moved. However, Rule 97 makes an exception for a motion for the postponement or discharge of, or giving precedence to, an order of the day. The motion was therefore put to the House and a division demanded. The House divided as follows: Ayes – 107, Noes - 221 and Abstain – 2. The motion was not agreed to and accordingly negated.

Immediately thereafter the chairperson of the Ad Hoc Committee introduced its report. There was no debate and the Chief Whip of the Majority Party moved that the Report be adopted. The question was put to the House and a division was demanded. The House was divided as follows: Ayes – 259, Noes – 41 and Abstain – 31. The question was agreed to and the report accordingly adopted.

As the debate on the bill had already taken place on 16 November, declarations of vote were allowed and made on behalf of the DA, ACDP, FF Plus, Cope, ID, PAC, APO, IFP, UDM and the ANC. A division was demanded and the House divided as follows: Ayes – 229, Noes – 107 and Abstain – 2. The bill was accordingly passed by the NA and transmitted to the NCOP for concurrence. On 24 November, the NCOP established an Ad Hoc Committee to consider the bill and to report by no later than 8 April 2012.

[30] MEDIATION ON POLICE BILLS

The Independent Police Investigative Directorate Bill [B15-2010] and the Civilian Secretariat for Police Service Bill [B16-2010], both section 76(1) bills, were introduced in the NA on 5 July 2010 and referred to the Portfolio Committee on Police for consideration and report.

The committee reported on the Independent Police Investigative Directorate Bill and the Civilian Secretariat for Police Service Bill on 25 August 2010 and 7 September 2010 respectively. The Independent Police Investigative Directorate Bill was considered and passed by the NA on 8 September 2010 and sent to the NCOP for concurrence, while the Civilian Secretariat for Police Service Bill was passed by the NA on 14 September 2010 and sent for concurrence to the NCOP.

In terms of section 76(1)(c) of the Constitution, if the NCOP passes a bill referred to it by the Assembly with amendments, the bill must be referred back to the Assembly and if the latter refuses to pass it, the bill must be referred to a Mediation Committee which may agree on the bill as passed by the Assembly, or agree to the amended bill as passed by the NCOP or agree to another version of the bill. Both bills were amended by the NCOP and returned to the Assembly for concurrence on 23 November 2010.

On 15 February, the Portfolio Committee on Police, having considered the Civilian Secretariat for Police Service Bill, as amended, reported that it rejected clauses 12, 18 and 21, but agreed to clause 26. Similarly, in relation to the Independent Police Investigative Directorate Bill, the committee rejected clause 7 and agreed to clauses 1, 21 and 29.

The NA considered the NCOP amendments on 22 February, but rejected them. Subsequent to that decision, the Chief Whip of the Majority Party, with leave, moved

without notice that the House elect nine members to serve on the Mediation Committee in terms of section 78 of the Constitution read with NA Rule 226.

The Mediation Committees on both bills reported on 9 March that they had agreed on new versions of the bills and the bills were passed by the Assembly on 10 March and by the NCOP on 24 March.

[31] RE-ESTABLISHMENT OF AD HOC JOINT COMMITTEE ON THE CODE OF JUDICIAL CONDUCT AND REGULATIONS ON JUDGES' DISCLOSURE OF REGISTRABLE INTERESTS

The Code of Judicial Conduct was submitted to Parliament on 30 September 2010 in terms of section 12(2) of the *Judicial Service Commission Act* (Act 9 of 1994), and tabled in the ATC on 20 October 2010. An Ad Hoc Joint Committee on the Code of Judicial Conduct and Regulations on Judges' Disclosure of Registrable Interests was established on 28 October 2010 with a final date to report to the Houses by 28 January. (*See Issue 16, Item 27*).

On 25 January, the Minister of Justice and Constitutional Development requested Parliament to postpone consideration of the Regulations on Judges' Disclosure of Registrable Interests. The request was referred to the Joint Ad Hoc Committee for consideration and report on 4 February. However, the committee did not report by its deadline and therefore ceased to exist in terms of Joint Rule 138(5).

On 14 September, the NA agreed to a motion to re-establish the Ad Hoc Joint Committee on the Code of Judicial Conduct and Regulations on Judges' Disclosure of Registrable Interests, and set the deadline by which the committee had to report to 24 November. On 16 November, the Assembly passed a motion to extend the date by which the committee had to report to the House to 21 February 2012.

[32] APPROVAL OF DRAFT REGULATIONS MADE IN TERMS OF THE CORRECTIONAL SERVICES ACT

On 15 August, the Minister of Correctional Services tabled draft regulations made in terms of the *Correctional Services Act* (Act 111 of 1998), which the Speaker referred to the Portfolio Committee on Correctional Services on 24 August. The draft regulations sought to align the Correctional Services Regulations of 2004 with the *Correctional Services Amendment Act* (Act 25 of 2008) and the *Correctional Matters Amendment Act* (Act 5 of 2011).

Section 79(8) of the Act requires the Minister to submit regulations made in terms of the section to Parliament for approval. However, section 134(5) provides that regulations made in terms of that section be merely referred to the relevant parliamentary committees. It does not specifically require Parliament to approve them.

On 25 October, the committee recommended that the House approve Draft Regulations 29A and 29B which were made in terms of section 79(8) of the Act. The draft regulations dealt with the administration and consideration of medical parole, and the establishment of the Medical Advisory Board. With regards to draft regulations made in accordance with section 134(5), the committee stated that it had no serious reservations regarding the proposed amendments.

The Assembly approved the draft regulations on 17 November.

[33] RE-ESTABLISHMENT OF AD HOC COMMITTEE ON THE COMMISSION FOR GENDER EQUALITY FORENSIC INVESTIGATION

(*See also Issue 16, Item 26*)

The Ad Hoc Committee on the Commission for Gender Equality Forensic Investigation was due to report to the NA by 28 January. However, the committee requested that the deadline to report be extended to 31 March to enable it to complete its task. The NA would normally be required to take a decision on such a request. The House was, however, not scheduled to sit before the expiry of the deadline by which the committee was expected to report and no provision exists in the rules to extend the term of the committee under these circumstances. The Deputy Speaker (as Acting Speaker) therefore, in terms of Assembly Rule 2, ruled that the deadline by which the committee had to report be extended to 31 March. She further ruled that that decision was subject to ratification by the House. This ruling was, however, not ratified by the House. Unaware that the ruling had not been ratified, the committee convened meetings between 29 January and 1 March.

In terms of Assembly Rule 214(6)(c) an ad hoc committee ceases to exist if it has not completed its task by the date set for the completion of its task.

On 17 March, the Assembly passed a resolution to re-establish the Ad Hoc Committee with the same membership and mandate as its predecessor. The Assembly further instructed the committee to incorporate in its work the proceedings and all the work of the previous committee up to and including 28 January. The resolution set the deadline by which the committee was to report to 24 June.

In its meeting of 28 March, the committee noted that it had compiled a report of its meetings between 29 January and 1 March, and that this report would be *ultra vires* unless this period was also covered in a House resolution. On 12 April, the House adopted a resolution in which it instructed the committee to incorporate in its work the proceedings and all its work from 29 January up to and including 1 March.

The report of the committee, dated 19 April, was announced in the ATC of 20 April, and considered by the House on 23 June. The report was adopted subject to the omission of Recommendation 10.8, namely: "That the Public Protector affords Ms Gasa another opportunity to be heard, and thereafter reports to the NA."

[34] ESTABLISHMENT OF AD HOC COMMITTEE ON NOMINATION OF ELECTORAL COMMISSIONERS

Section 6(3) of the *Electoral Commission Act* (Act 51 of 1996) establishes a panel consisting of the Chief Justice (Chairperson), the Chairperson of the South African Human Rights Commission (SAHRC), the Acting Chairperson of the Commission for Gender Equality (CGE) and the Public Protector to compile a shortlist of candidates for appointment to the Electoral Commission. Section 6(4) of the Act provides that the panel must submit a list of no fewer than eight recommended candidates to the NA for consideration.

The Chief Justice submitted a list of candidates and their abbreviated curricula vitae on 28 September and requested the Assembly to recommend four candidates to the President for appointment to the Electoral Commission. The NA resolved on 14 September to establish an Ad Hoc Committee to nominate persons for appointment as Electoral Commissioners.

The Ad Hoc Committee reported on 12 October and recommended Adv Pansy Tlakula, Mr Terry Ismael Tselane, Rev Bongani Blessings Finca and Ms Raenette Taljaard for appointment as Electoral Commissioners.

The Assembly approved the recommendations on 25 October with a majority of 300 members in support. Section 193(5)(b)(ii) of the Constitution, read with section 6(2)(c) of the *Electoral Commission Act*, require that the House approves the appointment of commissioners through a resolution which is supported by a majority of the members of the Assembly.

In a letter dated 17 November, the President informed members of the Assembly that he had appointed Adv Tlakula, Mr Tselane and Rev Finca as full-time commissioners and Ms Taljaard as a part-time commissioner for a period of seven years with effect from 4 November. The President designated Adv Tlakula as chairperson and Mr Tselane as vice chairperson of the Electoral Commission.

[35] ESTABLISHMENT OF AD HOC COMMITTEE ON THE GENERAL INTELLIGENCE LAWS AMENDMENT BILL

In September 2009, the President, by proclamation, had abolished the National Intelligence Agency and the South African Secret Service, and created the State Security Agency as a state department. The proclamation was also intended to consolidate intelligence structures and thereby address the proliferation of such structures. The large number of intelligence structures had the unintended consequence of duplicating support services and negatively affecting service delivery by the intelligence community. The General Intelligence Laws Amendment Bill [B25-2011] was drafted to complete the consolidation process.

As the Joint Standing Committee on Intelligence (JSCI) has no legislative function or power, and no Portfolio Committee on Intelligence exists, the House decided by

resolution on 24 November to create an ad hoc committee to consider and report on the bill. The committee consisted of twelve members as follows: ANC – 7, DA – 2, Cope – 1, IFP – 1 and other parties 1. The resolution empowered the committee to exercise the functions listed in Rule 201(1)(a) and gave it the powers listed in Rule 138. The deadline to report was set for 29 February 2012.

[36] ESTABLISHMENT OF INTERIM JOINT COMMITTEE ON SCRUTINY OF DELEGATED LEGISLATION

The JRC had established a Subcommittee on Delegated Legislation to consider the implementation of Parliament's constitutional mandate to exercise oversight over delegated legislation. In 2002, this subcommittee made a number of recommendations which included a proposal to create an interim mechanism for the scrutiny of delegated legislation. This proposal was, however, not carried forward at the time. In 2006, the JRC agreed that the Houses establish an interim mechanism with prescribed rules – drafted by the Joint Subcommittee on the Review of the Joint Rules. The draft rules had not been completed by 2009 and the matter stood over for the Fourth Parliament.

The NA on 22 June, and the NCOP on 20 September, agreed to the establishment of an Interim Scrutiny Mechanism and associated draft rules. This mechanism was mandated to scrutinise:

- delegated legislation which required approval by Parliament for it to enter into force;
- delegated legislation that required consultation with Parliament;
- delegating provisions in legislation before its formal consideration by the House; and
- any other delegated legislation agreed upon by the Committee.

Criteria for the Interim Mechanism to scrutinise delegated legislation included:

- whether delegated legislation imposed levies, taxes or duties;
- whether they complied with procedural aspects pertaining to delegated legislation;
- whether they impinged on the jurisdiction of the courts;
- whether they were retrospective in nature;
- whether they conformed with the objects of the parent Act;
- whether they appeared to make unusual use of powers conferred by the parent Act;
- whether they had been properly drafted;
- whether they trespassed on personal rights and liberties, including those set out in the Constitution; or
- whether they amounted to substantive legislation.

Upon completion of the scrutiny process, the Mechanism would –

- report its findings to the House for the information of the relevant portfolio or select committee and other members; and

- in view of the provisions of section 146 of the Constitution, specifically report to the National Council of Provinces on delegated instruments relating to matters contained in Schedule 4 of the Constitution.

The Interim Mechanism did not commence scrutiny of delegated legislation during the 2011 parliamentary session.

[37] JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS: INVESTIGATION INTO MS Y BOTHA

In February, the Joint Committee on Ethics and Members' Interests, acting in terms of paragraph 17(1) of the Code of Conduct for Members of Parliament (the Code), instructed the Registrar of Members' Interests to conduct an investigation into allegations made against Ms Y Botha, an Assembly member, in a newspaper article to the effect that she had received personal benefits from a company that had benefitted from tenders issued by her when an official in the Northern Cape.

After the investigation, Ms Botha was charged with the non-disclosure of benefits received as required by the Code and for willfully misleading the committee about the value of the benefits received by submitting a sworn statement that was false and misleading.

The committee conducted a hearing into the charges on 4 August and reported in the ATC of 25 August that it had found Ms Botha guilty on both charges. The committee, noting that Ms Botha had lied under oath, submitted false and misleading evidence and had shown no remorse, recommended the following penalties to the Assembly:

- a reprimand; and
- a fine of 30 days' salary; the maximum allowed in terms of paragraph 19(1) of the Code.

The committee further recommended that Ms Botha be investigated by the South African Police Service (SAPS), the South African Revenue Service (SARS) and the Public Service Commission (PSC). It also recommended that the NA Disciplinary Committee investigate Ms Botha for providing false and misleading evidence to the Committee.

The Assembly considered the committee's report on 9 November, but decided to refer it back to the committee for reconsideration. The committee reported in the ATC of 16 November that it had agreed to remove its further recommendations from the report, but that its findings and recommended penalties remained unchanged.

The Assembly adopted the report on 24 November, after which the Speaker administered the reprimand to Ms Botha with the member standing.

[38] COMMITTEE ON THE AUDITOR-GENERAL: REVIEW OF AUDITOR-GENERAL'S REMUNERATION

In terms of section 10(3) of the *Public Audit Act* (Act 25 of 2004), the NA is required to provide for a mechanism to

maintain oversight over the Auditor-General and accordingly established the Committee on the Auditor-General.

The committee's mandate, set out in NA Rule 208C, is to ensure the independence, impartiality, dignity and effectiveness of the Auditor-General and to make recommendations to the President regarding the conditions of employment, salary, allowances and benefits of the Auditor-General.

Mr T A Nombembe was appointed by the President, on the recommendation of the NA, for a fixed term of seven years with effect from 1 December 2006. (*See Issue 12, Item 49*).

During 2011, the committee reviewed the salary and benefits of the Auditor-General and made recommendations to the President in terms of section 7(1) of the Public Audit Act in its report dated 9 June and tabled in the ATC of 8 July.

The committee recommended to the President in terms of section 7(1) of the Public Audit Act that:

- the Auditor-General's annual salary be increased from R1, 708, 600 to R2, 650, 00, with effect from 1 December 2006;
- the Auditor-General's termination benefit be increased from 10% of the average compensation for each year of service to 50% of the average compensation for each year of service; and
- payment of back pay amounts be effected in accordance with the parameters and guidelines applicable to the Office of the Auditor-General.

The committee's reasons for these recommendations were that the allowances and other benefits of a person appointed as Auditor-General must be "substantially the same as those of the top echelon of the judiciary" in terms of section 7(2)(b) of the Public Audit Act; and that, whilst the remuneration dispensation of the Chief Justice had been reviewed, that of the Auditor-General had not been reviewed.

The committee further advised that the increase in the termination benefit from 10% to 50% of the average compensation for each year of service would compensate for the differences in the remuneration package of the Auditor-General as compared to the remuneration package of the Chief Justice.

The President had not responded to the committee's recommendations by the end of the 2011 parliamentary session.

MONEY BILLS AND RELATED MATTERS

[39] PROGRESS WITH IMPLEMENTATION OF MONEY ACT

The *Money Bills Amendment Procedure and Related Matters Act* (Act 9 of 2009) was promulgated in April 2009. The Act provides for a procedure to amend money bills before Parliament and for norms and standards for

amending money bills before provincial legislatures. In particular, the Act requires Parliament to create a new agency, a Budget Office, with a mandate to undertake research and analysis of all budget proposals and provide independent advice.

To ensure that the Budget Office would operate efficiently and meet the expectations of members and the public, it was recognised that the work of the office had to be underpinned by a common understanding between different actors within Parliament. Consequently, as part of the strategy to implement the Act, the Presiding Officers initiated two multi-party study tours to identified countries, namely Kenya, Sweden and Germany, and Japan and Korea Republic in order to explore the role and capacity of legislatures in the budget processes. These study tours were undertaken during December 2010 and January 2011. Thereafter, the Presiding Officers convened a workshop to discuss the outcomes of the study tours. Based on these study tours and subsequent discussions, a consolidated report was produced, titled "*The Parliamentary Budget Office: A South African Model*" to guide implementation.

The model identified challenges with the establishment of the Office, including the mandate and the interpretation of its independence, the role of the Office relative to other research services in Parliament, the appointment and accountability of the Director, and the prescribed funding arrangements. The model made a number of proposals on each of these matters. At the time of writing, the model was receiving political consideration.

[40] RECOMMITTAL OF TAX ADMINISTRATION BILL

The Tax Administration Bill [B11-2011] was introduced on 22 June with a first reading debate taking place on 23 June. It was classified on 3 August by the Joint Tagging Mechanism (JTM) as a 'Section 75' bill, which means that the bill should follow the process set out in Section 75 of the Constitution.

The Standing Committee on Finance reported the bill, with amendments, on 9 November. The second reading debate was scheduled for 17 November. The version of the bill that was published in the ATC was found to contain a clause that was not consistent with the Constitution, beyond what is prescribed in Joint Rule 161.

Joint Rule 161(1) and (2) deal with bills that are constitutionally and procedurally out of order. Joint Rule 161(3) states, however, that except where provided for in subrule (1) the JTM may not make a finding on the constitutional validity of the contents of a bill.

The options available to the NA to rectify the clause in the bill that was rendered unconstitutional were as follows:

- 1) A member of the NA could place amendments to the bill on the Order Paper in terms of NA Rule 254, before a decision on the second reading was scheduled. If this route was followed, the Speaker could recommit the bill to the committee, but then the bill may not be recommitted again, as per NA Rule 254(7).
- 2) Alternatively, the Speaker could put the amendment for decision to the Assembly, and then the second

reading as a whole, including any approved amendment.

- 3) A motion could be moved in terms of NA Rule 253 to refer the bill back to a committee for further consideration.

On 17 November, the day the bill was scheduled for second reading debate, the Assembly referred it back to the Standing Committee on Finance for reconsideration.

The committee's report on the bill was published in the ATC of 18 November. The second reading debate on the bill took place on 24 November, after which it was passed and sent to the NCOP for concurrence.

STATUTORY FUNCTIONS

[41] ELECTORAL COMMISSION: RECOMMENDATION FOR APPOINTMENT OF A JUDGE

On 20 April, the Chief Justice of the Republic of South Africa wrote to the Speaker to inform him of the existence of a vacancy in the Electoral Commission as a result of the passing away of Judge President H Q Msimang on 7 April. In the same letter, the Chief Justice submitted a list of nominees as required by the *Electoral Commission Act* (Act 51 of 1996). On 21 April, the request from the Chief Justice was tabled and referred to the Portfolio Committee on Home Affairs for consideration and report.

Section 6(1) of the Act provides that the Electoral Commission shall consist of five members, one of whom shall be a judge, appointed by the President. The Act requires that a list of names be submitted to the Assembly by a panel headed by the Chief Justice. A multi-party committee of the Assembly must recommend a nominee to the Assembly from the list submitted by the panel. In terms of section 6(2)(c) of the Act, the Assembly is required, by a resolution adopted by a majority of its members, to recommend a candidate for appointment by the President.

On 28 April, the committee tabled its report for consideration by the Assembly. On 3 May, the Assembly recommended Judge G M Makhanya for appointment to the Electoral Commission and the nomination was therefore accordingly agreed to in accordance with section 6 of the Act.

[42] COMMISSION FOR GENDER EQUALITY (CGE): RECOMMENDATION FOR APPOINTMENT OF COMMISSIONERS

On 23 September, the Minister for Women, Children and People with Disabilities wrote to the Deputy Speaker to -

- submit an assessment of the current status of vacancies in the Commission for Gender Equality (CGE); and
- propose, for consideration, an interim measure to address the matter.

In her letter, the Minister indicated that the existing vacancies resulted in the CGE being unable to constitute a meeting due to lack of a quorum. Further, the terms of office of three commissioners would expire in November and the terms of the remaining commissioners in May 2012. The Minister added that the above factors impacted on the CGE's functioning.

Section 3(1) of the *Commission on Gender Equality Act* (Act 39 of 1996) provides that the CGE shall consist of no fewer than seven and no more than 11 commissioners. In terms of section 3(2) of the Act, the President appoints commissioners.

The Minister explained that the report of the Ad Hoc Committee on the Commission for Gender Equality Forensic Investigation, which was tabled on 20 April and adopted by the Assembly on 23 June, made several recommendations of which two were particularly relevant to the matter of vacancies in the CGE (*See Item 33 above*). First, the committee recommended that the Act be revised to bring it in line with the Constitution and the *Public Finance Management Act* (Act 1 of 1999). Second, the committee recommended that the Assembly facilitates the process of filling vacancies within the CGE. In terms of the recommendation, the appointment of new commissioners must be in line with the revised Act. The Minister acknowledged, however, that it was a practical impossibility to effect the amendments to the Act before the expiry of the terms of office of the serving commissioners in November and May 2012, respectively.

As a way forward and with the view to enable the CGE to function whilst the amending legislation was being processed, the Minister proposed that the Assembly should facilitate the appointment of commissioners to fill the vacancies for the next five years, or until the amended legislation comes into operation, whichever event comes first.

On 7 November, the Minister wrote to the Speaker to request that the Assembly recommend, from the list of nominees and curricula vitae submitted for consideration, suitable candidates to fill the existing and upcoming vacancies in the CGE in accordance with section 193(5) of the Constitution and relevant provisions of the Act.

On 17 November, the Assembly adopted a resolution in which it noted a previous resolution adopted on 23 June that the appointment of new commissioners would be in accordance with the Act once it had been revised to bring it in line with the Constitution and the *Public Finance Management Act*. The resolution of 17 November recognised that the process of revisiting the Act was taking longer than anticipated and therefore an ad hoc committee was established to identify suitable candidates to fill the vacancies in the CGE. In terms of the Assembly resolution, the committee had to report by no later than 21 February 2012.

[43] APPROVAL OF ANTI-TERROR PROCLAMATIONS

Section 25 of the *Protection of Constitutional Democracy Against Terrorist and Related Activities Act* (Act 33 of

2004), states that the President must, by proclamation in the *Gazette* and other appropriate means of publication, give notice that the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations, has identified a specific entity as being –

- an entity who commits, or attempts to commit, any terrorist and related activity or participated in or facilitate the commission of any terrorist and related activity; or
- an entity against whom member states of the United Nations must take actions specified in resolutions of the Security Council in order to combat or prevent terrorist and related activities.

Section 26 of the Act gives Parliament a supervisory role as it provides that every proclamation issued under section 25 must be tabled in Parliament for its consideration and decision.

On 23 November 2010, Proclamations 4, 5, 18, 22, 28, 29, 30 and 32 were tabled and referred to the Portfolio Committee on Police for consideration and report.

The committee, in its report of 24 May, recommended that the House approve the proclamations. The House did so on 9 June.

[44] VACANCIES IN THE MEDIA DEVELOPMENT AND DIVERSITY AGENCY (MDDA)

On 3 August, the Speaker tabled and referred to the Portfolio Committee on Communications for consideration and report, a letter from the Minister in the Presidency: Performance Monitoring and Evaluation as well as Administration, informing the Assembly that the terms of office of two members of the MDDA Board would expire on 31 December. The outgoing members were Ms P Nzimande and Dr T Bosch. The Minister requested the Assembly to initiate the process of nominating two candidates in terms of section 4(1)(b) of the *Media Development and Diversity Agency Act* (Act 14 of 2002) to replace the outgoing members of the board.

The committee received 35 nominations and shortlisted 9 candidates for interviews. The candidates were publicly interviewed on 9 November. The committee reported on 15 November and on 24 November, the Assembly agreed to its recommendation for the appointment of Mr P Nonqane and Ms R A Smith to the MDDA Board.

[45] INVITATION TO NOMINATE CANDIDATES TO SERVE ON THE NATIONAL AGRICULTURAL MARKETING COUNCIL (NAMC)

A letter dated 16 February was received from the Minister of Agriculture, Forestry and Fisheries, inviting the relevant parliamentary committees in terms of section 4(4)(a) of the *Marketing of Agricultural Products Act* (Act 47 of 1996) to nominate candidates to serve on the NAMC.

The matter was referred to the Portfolio Committee on Agriculture, Forestry and Fisheries for consideration. As

the committee was not required to report to the House, it communicated its recommended candidates to the Speaker on 20 April for onward communication to the Minister of Agriculture, Forestry and Fisheries.

[46] VACANCIES IN THE NATIONAL RESEARCH FOUNDATION (NRF)

The Minister of Science and Technology submitted a shortlist of candidates for appointment to the board of the NRF, as well as abridged curricula vitae and a full list of nominees in terms of section 6(2)(c) of the *National Research Foundation Act* (Act 23 of 1998) to Parliament on 3 June. The shortlist of candidates and other documentation were referred to the Portfolio Committee on Science and Technology for consideration on 9 June.

The committee reported on the matter in the ATC of 4 August. As the report was published for information, it was not scheduled for consideration by the Assembly.

[47] PERFORMANCE MANAGEMENT SYSTEM FOR INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (Icasa)

Section 6A of the *Independent Communications Authority of South Africa Act* (Act 13 of 2000), requires the Minister of Communications, in consultation with the NA, to establish a performance management system to monitor and evaluate the performance of the chairperson and councillors of Icasa. The Minister tabled the performance management system on 17 August which the Speaker referred to the Portfolio Committee on Communications for consideration and report on 24 August. The committee did not deal with this matter in the reporting year.

[48] EXTENSION OF THE CHIEF JUSTICE'S TERM OF OFFICE

Before its amendment in 2001, section 176 of the Constitution provided that a Constitutional Court judge was appointed for a non-renewable term of 12 years but had to retire at the age of 70. The 2001 amendment did not alter the term of appointment of a Constitutional Court judge but gave Parliament the power to extend the term of office.

Section 8(a) of the *Judges' Remuneration and Conditions of Employment Act* (Act 47 of 2001) provides that the further extension of the term of office of the Chief Justice may be determined by the President. This section allows the Chief Justice, whose 12-year term in the Constitutional Court was about to expire and who would have completed 15 years' active service, to remain the Chief Justice of South Africa at the request of and for a period determined by the President. The 12-year term of office of Chief Justice S S Ngcobo was to expire on 14 August.

On 11 April, the President requested the Chief Justice, in writing, to remain in office for an additional period of five years. In his letter, the President indicated that his request was made in terms of section 8(a) of the *Judges' Remuneration and Conditions of Employment Act*. In his

reply to the President's letter dated 2 June, the Chief Justice accepted the President's request to remain in office for an additional period of five years. On 3 June the President effected the extension of the term of office of the Chief Justice by Presidential Minute No. 139. This decision was communicated to the Judicial Service Commission (JSC) and to the leaders of the political parties represented in the NA.

After the President's decision to extend the term of office of the Chief Justice was taken, a case was brought before the Constitutional Court in which the constitutional validity of section 8(a), upon which the President relied, was contested. This constitutional court challenge was brought by the Council for the Advancement of the South African Constitution, Freedom under Law, the Justice Alliance of South Africa and the Centre for Applied Legal Studies. The argument that was raised against this statutory provision was that it gave the President the powers that should, in terms of the Constitution, be exercised exclusively by Parliament.

On 23 June, the NA passed an amended resolution to support, in principle, the extension of the term of Chief Justice Ngcobo. The Inkatha Freedom Party dissented.

The Judges' Remuneration and Conditions of Employment Amendment Bill [B12-2011], submitted by the Minister of Justice and Constitutional Development, was tabled in Parliament and published in the ATC of 8 July. This bill sought to amend section 8 of the *Judges' Remuneration and Conditions of Employment Act*.

On 27 July, the Minister of Justice and Constitutional Development announced that the Chief Justice had declined the extension of his term of office, citing as his reason that it was undesirable for a Chief Justice to be a party in litigation involving the question of whether or not he should continue to hold office as that would negatively affect the esteem in which the office of Chief Justice is held.

In a judgment delivered on 29 July, the Constitutional Court declared that section 8(a) of the *Judges' Remuneration and Conditions of Employment Act* was inconsistent with the Constitution and therefore invalid.

The Constitutional Court further declared that the decision of the President to request the Chief Justice of South Africa to continue performing active service as Chief Justice in terms of section 8(a) of the Act was inconsistent with the Constitution and invalid and that the consequent extension of the term of office of the Chief Justice was of no force and effect. The Portfolio Committee on Justice and Constitutional Development did not finalise the Judges' Remuneration and Conditions of Employment Amendment Bill during the reporting year.

[49] APPROVAL OF LEGAL AID GUIDE

Section 3A(2) of the *Legal Aid Act* (Act 22 of 1969) provides that the Legal Aid Board must, in addition to submitting its annual report, submit the Legal Aid Guide at least once every year to the Minister of Justice and Constitutional Development. The Minister must forthwith

table the guide in the NA and the Senate, which was replaced by the NCOP, for ratification. In compliance with this statutory provision, the Legal Aid Guide 2011 (12th edition), including proposed amendments approved by the Board of Legal Aid South Africa, was tabled and referred to the Portfolio Committee on Justice and Constitutional Development for consideration on 16 August.

The report of the committee, which recommended the approval of the guide, including proposed amendments approved by the Board of Legal Aid South Africa, was considered and approved by the House on 20 September.

[50] VACANCIES IN THE JUDICIAL SERVICE COMMISSION (JSC)

See also Issue 15, Item 31

On 24 March, the House noted a vacancy at the JSC caused by the resignation of Ms P de Lille from the NA and designated Mr N J J Koornhof to serve on the Commission.

On 20 September, the House designated Mr J B Sibanyoni to replace Mr C V Burgess as member of the Commission.

[51] LAND BANK: RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBERS

Section 4(1) of the *Land and Agricultural Development Act* (Act 15 of 2002), directs the Minister of Agriculture, Forestry and Fisheries to appoint a Board of Directors to manage the business of the bank by calling for nominations in the *Gazette*, the media and, by written invitation, to the relevant parliamentary committees. The candidates to form the Board of Directors are required to have a strong credit risk background and experience.

The administrative powers of the bank had been transferred to the Minister of Finance on 14 July 2008 in terms of section 97 of the Constitution [see *Notice No 48, GG 31246*]. Section 8(1) of the Act provides that the board should consist of no fewer than seven and no more than 12 members. Although the bank was being administered by National Treasury, oversight of the bank remained the responsibility of the Portfolio Committee on Agriculture, Forestry and Fisheries.

The Minister of Finance wrote to the Speaker on 18 March, inviting nominations from the relevant parliamentary committees to nominate candidates to fill three vacancies on the board of the Land Bank. The deadline for the relevant parliamentary committees to nominate candidates for appointment to the Board of the Land Bank was 11 April. The Portfolio Committee on Agriculture, Forestry and Fisheries nominated five persons for appointment to the Board: Dr Edwin Conroy, Ms Zola Tshetu, Mr Neils Ferreira, Dr John Purchase and Mr Andile Mazwai. The list of names was transmitted to the Minister by the Speaker as the House is not required to take a decision on the matter.

The Act does not oblige the Minister to appoint directors of the bank from the list provided by the Assembly.

[52] APPROVAL OF COMPOSITION OF NATIONAL COUNCIL FOR LIBRARY AND INFORMATION SERVICES (NCLIS) APPOINTMENT PANEL

Section 7(2)(a) of the *National Council for Library and Information Services Act* (Act 6 of 2001) provides that the Minister of Arts and Culture must appoint an advisory panel, after its composition was approved by the Portfolio Committee on Arts and Culture to compile a shortlist of not more than 15 candidates for appointment to the NCLIS.

The Minister's request for parliamentary approval of the panel, dated 7 February, was referred to the Portfolio Committee on Arts and Culture on 6 July for consideration. The committee reported on 7 September and provided the Minister with a list of six persons to comprise the advisory panel as well as three persons on a reserve list. The committee's recommendations were transmitted to the Minister by the Speaker as the House was not required to take a decision on the matter.

[53] VACANCY IN THE COUNCIL OF ICASA

See also Issue 16, Item 34

A letter, dated 22 October 2010, was received from the Minister of Communications, informing the Assembly that the term of office of Dr M Socikwa on the council would expire on 31 March. The Minister requested the Assembly to commence with the process of filling the vacancy in terms of section 5 of the *Independent Communications Authority of South Africa Act* (Act 13 of 2000). The request was referred to the Portfolio Committee on Communications on 4 November for consideration and report.

In its report on 22 February, the committee recommended, in order of preference, that the House, in terms of section 7 of the Act submits to the Minister a list of suitable candidates at least one and a half times the number of councillors to be appointed, namely Dr M Socikwa and Ms N P Gongxeka. The two recommended candidates were approved by the Assembly on 9 March. On 29 March, the Minister of Communications wrote to the Speaker proposing the appointment of Dr M Socikwa. The Minister's recommendation was considered and approved by the Assembly on 12 April.

[54] VACANCY IN THE BOARD OF THE SOUTH AFRICAN BROADCASTING CORPORATION (SABC)

In terms of section 13 of the *Broadcasting Act* (Act 4 of 1999), the President appoints 12 non-executive members to serve on the South African Broadcasting Corporation (SABC) Board, on the advice of the NA.

The Minister of Communications wrote to the Speaker on 30 August indicating the resignation of Mr P Harris from the board with immediate effect. The Minister further requested that the process of appointing a new candidate to the board be initiated during the 2011 parliamentary session.

The Minister's letter was tabled in the ATC of 31 August and referred to the Portfolio Committee on Communications on the same date for consideration and report. The committee reported on 10 November and recommended Mr T Ka-Plaatjie for appointment as non-executive member to the SABC Board. The Assembly approved this recommendation on 24 November.

[55] VACANCIES IN THE PUBLIC SERVICE COMMISSION (PSC)

On 28 February, the President informed the Speaker of two vacancies in the PSC and requested the initiation of a process for the recommendation by the Assembly of two fit and proper persons to fill the vacancies in accordance with section 196(8)(a) of the Constitution. On 1 April, the President informed the Speaker of a further vacancy in the PSC as a result of the passing away of a commissioner and requested the Assembly to fill the vacancy. Both requests were referred to the Portfolio Committee on Public Service and Administration for consideration and report.

On 15 June, the committee tabled its report for consideration by the Assembly. On 23 June, the Assembly approved the nomination of Adv R K Sizani, Ms C Nzimande and Mrs R Issel to fill the positions of commissioners on the PSC and also approved the recommendation of Mrs L Sizani and Mr G Mokate as supplementary nominations in the event that these candidates were not available.

[56] VACANCIES IN BOARD OF HUMAN SCIENCES RESEARCH COUNCIL (HSRC)

The Minister of Science and Technology, on 19 October, informed the NA that Prof A Sawyerr had resigned from the HSRC Board and that Mr P Masobe had been removed from office for failing to attend board meetings in terms of section 5(6)(e) of the *Human Sciences Research Council Act* (Act 17 of 2008). The Minister signaled her intention to fill the two vacancies as quickly as possible to improve the functioning of the board.

Section 5(3) of the Act requires the Minister to submit a shortlist of candidates to the Assembly for consideration, after which the Assembly has to submit an approved shortlist to the Minister to make the necessary appointments. The Minister submitted a shortlist of four candidates to the NA, viz. Prof A Olukoshi, Mr H Mathabathe, Dr E Sall and Prof E Ulana.

The Minister's request and the shortlist were referred to the Portfolio Committee on Science and Technology for consideration and report on 1 November. The committee reported on 23 November that it recommended that the House approve the Minister's shortlist of candidates. The House did so on 24 November.

[57] VACANCIES IN THE NATIONAL YOUTH DEVELOPMENT AGENCY (NYDA)

The Minister in the Presidency: Performance Monitoring, Evaluation as well as Administration in the Presidency requested Parliament, i.e. both Houses, on 2 November to

recommend seven candidates for appointment to the board of the NYDA in terms of the *National Youth Development Agency Act* (Act 54 of 2008) as the term of office of the board would expire on 30 April 2012.

As the recommendation of candidates had to be done by both Houses and needed to include youth participation, the Speaker of the NA and the Chairperson of the NCOP decided that it would be more economic and less time-consuming if an ad hoc joint committee was created to make the necessary recommendations.

The NA adopted a resolution on 24 November that created the ad hoc joint committee in terms of Joint Rule 138 with the concurrence of the NCOP to consider the Minister's request. The committee consisted of nine members of the NCOP and twelve of the NA, as follows: ANC – 7, DA – 2, Cope – 1, IFP – 1 and other parties 1. The committee was instructed to exercise the powers listed in Joint Rule 32 and given a deadline to report by 29 February 2012.

THE CHAMBER

[58] APPOINTMENT OF SERJEANT-AT-ARMS

Mr G E Cleinwerck, Serjeant-at-Arms of the NA, retired with effect from 1 February after serving as the first Serjeant-at-Arms of the new democratic NA from 1994. On 15 February, the Speaker announced in the House that Ms R M Mohlomi had been appointed as Serjeant-at-Arms of the NA with effect from 10 February. Ms Mohlomi is the first African and female person to hold the position.

[59] ABSENCE OF MACE AT START OF JOINT SITTING

The Mace is the ceremonial symbol of authority of the Speaker of the NA, and when the Serjeant-at-Arms carries it into the Chamber and announces the Speaker, it signifies that the House is formally in session. The same applies to the Black Rod, its equivalent in the NCOP.

The Joint Sitting of Parliament on 1 November to bid farewell to former Chief Justice Sandile Ngcobo and welcome the new Chief Justice Mogoeng Mogoeng, commenced without the Mace and the Black Rod being in place due to the unavailability of the Mace at the time the sitting commenced.

At the commencement of the proceedings the Speaker announced that the co-ordination system for the safe in which the Mace was kept had jammed and that the Mace would be brought in as soon as that matter was resolved.

The Mace and the Black Rod were subsequently brought into the Chamber and their absence did not nullify the proceedings.

The Serjeant-at-Arms, who is responsible for the safe-keeping of the Mace, was requested to provide a detailed written explanation for this incident which was unprecedented in our parliamentary history. In her explanation, the Serjeant-at-Arms indicated that there had been a technical problem with the locking mechanism of the safe in which the Mace was stored.

UNPARLIAMENTARY EXPRESSIONS

[60] EXPRESSION RULED UNPARLIAMENTARY DURING 2011

“blood on his hands, member has”

[61] EXPRESSIONS CHALLENGED BUT NOT RULED UNPARLIAMENTARY DURING 2011

“darkies”

“You actually launched security to go and shoot innocent workers in Hout Bay”

“hatred that is spouted forth here, by a member”

“uses black faces to garner votes” (directed at a party)

“this man”

ABBREVIATIONS

ARC	Agricultural Research Council
ATC	Announcements, Tablings and Committee Reports (a daily paper which is effectively an appendix to the Minutes of Proceedings)
CGE	Commission for Gender Equality
EPC	Extended Public Committee (a mechanism that enables the NA to conduct more than one public debate simultaneously)
HSRC	Human Sciences Research Council
Icasa	Independent Communications Authority of South Africa
JPC	Joint Programme Committee
JRC	Joint Rules Committee
JSCI	Joint Standing Committee on Intelligence
LoGB	Leader of Government Business
MDDA	Media Development and Diversity Agency
Minutes	Minutes of Proceedings of the National Assembly
NA	National Assembly
NAPC	National Assembly Programme Committee
NARC	National Assembly Rules Committee
NCOP	National Council of Provinces
NPC	National Planning Commission

PAP	Pan-African Parliament
PIFC	Parliamentary Inter-Faith Council
PMP	Parliamentary Millennium Programme
PSC	Public Service Commission
SABC	South African Broadcasting Corporation
SAPS	South African Police Service
SARS	South African Revenue Service
SONA	State of the Nation Address

PARTIES

ANC	African National Congress
DA	Democratic Alliance
Cope	Congress of the People
IFP	Inkatha Freedom Party
ID	Independent Democrats
UDM	United Democratic Movement
FF Plus	Freedom Front Plus
ACDP	African Christian Democratic Party
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress of Azania
MF	Minority Front
Azapo	Azanian People's Organisation
APC	African People's Convention

Annexure 1

MEMBERSHIP OF THE ASSEMBLY

In the 2011 annual session, several vacancies occurred in the NA. Some were due to resignations and others as a result of members passing away. Also, certain vacancies had occurred in 2010, but were only filled in 2011. At the time of reporting, some of the vacancies had still not been filled.

In terms of Item 23 of Schedule 1A to the *Electoral Act* (Act 73 of 1998), casual vacancies have to be filled by parties nominating the next qualified and available member from the same candidates' list from which the member vacating the seat had originally been nominated.

The following vacancies occurred and were filled in 2011:

- On 26 January, Ms R M Motsepe replaced Mr M M S Mdladlana (ANC – National) who had resigned with effect from 1 November 2010.
- On 19 October, Ms G Khoza replaced Ms B P Sonjica (ANC – National) who had resigned with effect from 1 November 2010. The member was not sworn in during 2011.
- On 26 January, Ms P N Daniels replaced Ms N B Gxowa (ANC – Gauteng) who had passed away on 19 November 2010.
- On 19 October, Mr F Bhengu replaced Mr H P Chauke (ANC – National) who had resigned with effect from 17 November 2010.
- On 19 October, Mr D L Ximbi replaced Ms T J Tshivhase (ANC – National) who had resigned with effect from 1 January.
- Mr M S Shilowa (COPE - National) ceased to be a member of the NA in terms of section 47(3)(c) of the Constitution with effect from 9 February. This vacancy was not filled in the reporting year.
- On 19 October, Ms J Tshabalala replaced Ms N A Mayende-Sibiya (ANC – National) who had resigned with effect from 9 February.
- On 19 August, Mr G G Hill-Lewis replaced Mr W P Doman (DA – Western Cape) who had resigned with effect from 12 April.
- On 20 September, Ms D Sibiya replaced Dr A N Luthuli (ANC - KwaZulu-Natal) who had resigned with effect from 1 May.
- On 26 May, Mr G B D McIntosh replaced Ms A Mda (COPE – National) who had resigned with effect from 11 May.
- On 19 October Ms M M Mohorosi replaced Mr B M Komphela (ANC - Free State) who had resigned with effect from 14 June.
- Ms N Y Vukuza-Linda (COPE – Gauteng) resigned with effect from 1 July. This vacancy was not filled in the reporting year.
- On 19 July, Mr J H Steenhuisen replaced Mr M H Steele (DA – KwaZulu-Natal) who had resigned with effect from 19 July.
- Mr D K Mataboge (ANC – North West) resigned with effect from 1 July. This vacancy was not filled in the reporting year.
- On 1 December, Mr B M Bhanga replaced Mr L J Tolo (COPE – National) who had passed away on 22 August.
- Mr M J Ellis (DA - KwaZulu-Natal) resigned with effect from 24 September. This vacancy was not filled in the reporting year.
- Ms G L Mahlangu-Nkabinde (ANC – National) resigned with effect from 24 October. This vacancy was not filled in the reporting year.
- On 28 October, Mr T Bonhomme replaced Ms N N Sibhidla (ANC - KwaZulu-Natal) who had resigned with effect from 28 October.
- On 8 November, Mr A Watson replaced Mr S J Masango (DA - Mpumalanga) who had resigned with effect from 8 November.
- Ms N M Magazi (ANC – Gauteng) passed away on 11 November. This vacancy was not filled in the reporting year.
- Ms M N Matladi (UCDP – National) passed away on 2 December. This vacancy was not filled in the reporting year.

Annexure 2

APPOINTMENT OF NEW MINISTERS AND DEPUTY MINISTERS

On 26 October, the President informed the NA of appointments made to Cabinet in terms of sections 91(2), 91(3) and 93(1) of the Constitution.

The following appointments were announced by the President, effective from 24 October:

- Ms D D Pule was appointed Minister of Communications. She replaced Mr R L Padayachie who held the office since 31 October 2010.
- Ms S T Ndabeni was appointed Deputy Minister of Communications. She replaced Mr K O Bapela who held the office since 31 October 2010.
- Mr M R Baloyi was appointed the Minister of Co-operative Governance and Traditional Affairs. He replaced Mr S Shiceka who held the office since 10 May 2009.
- Mr K O Bapela was appointed Deputy Minister in the Presidency for Performance Monitoring, Evaluation as well as Administration in the Presidency. He replaced Ms D D Pule who held the office since 31 October 2010.
- Mr R L Padayachie was appointed Minister of Public Service and Administration. He replaced Mr M R Baloyi who held the office since 10 May 2009.
- Mr T W Nxesi was appointed as Minister of Public Works. He replaced Ms G L Mahlangu-Nkabinde who held the office since 31 October 2010.
- Mr S L Tsenoli was appointed Deputy Minister of Rural Development and Land Reform. He replaced Mr T W Nxesi who held the office since 31 October 2010.
- Ms H I Bogopane-Zulu was appointed Deputy Minister of Women, Children and People with Disabilities.

Annexure 3

LIST OF CONDOLENCE MOTIONS AND TRIBUTES TO FORMER MEMBERS

- Ms B Gxowa was a member of the Assembly from 1994 to 2009. The motion on her passing away was debated and agreed by the Assembly on 22 February.
- Mr J H Momberg represented the ANC in the Assembly from 1994. In 2001 he was appointed as ambassador to Greece, Bulgaria, Serbia-Montenegro, Bosnia-Herzegovina and Cyprus. His condolence motion was also debated and agreed on 22 February.
- Adv M J Malahlela joined Parliament in 2002 as a member of the ANC. At the time of his passing away he was no longer a member. The Assembly debated and agreed his condolence motion on 8 March.
- Prof K A Asmal was elected to Parliament in 1994 and appointed Minister of Water Affairs and Forestry. He was re-elected in 1999 and appointed Minister of Education. He retired from active politics in 2008 while a member of the NA. The debate on the condolence motion for Prof Asmal was held on 23 June. It was agreed to, members standing.
- Mr H Fazzie was a member of the Assembly representing the ANC from 1994 to 2009. The Assembly debated and agreed his condolence motion on 18 August.
- Bishop L J Tolo firstly represented the ANC in the Assembly from 1994, and from 2009 became a member of COPE. The Assembly debated his condolence motion on 24 August and it was agreed to, members standing.
- Mr P H K Ditshetelo was a founding member of the UCDP and represented it in the Assembly during the period 1999 to 2009. The motion on his passing away was debated and agreed by the House on 27 October.
- Ms M M Magazi, was a sitting member of the ANC, having joined Parliament in 1999. The motion on her death was debated on 17 November. It was agreed to, members standing.

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PROCEDURAL DEVELOPMENTS
IN THE NATIONAL ASSEMBLY
SECOND PARLIAMENT (1999 – 2004)
THIRD PARLIAMENT (APRIL 2004 – MARCH 2009)
FOURTH PARLIAMENT (MAY 2009 –DECEMBER 2011)

- Key** : The number references are to the Issue and Item within the Issue, respectively. The Issue number appears in italics.
- Note** : In this index, related subjects have been grouped together into a number of broad categories in order at the same time to provide an overview of the range of subjects within each category.

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