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Republic of South Africa

PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

First Session - Third Parliament
April to December 2004

10

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 10th issue covers the first session of the Third Parliament from April to November 2004. The commencement of a new Parliament also provided an opportunity for this publication to be given a new look.

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PRESIDING OFFICERS AND OTHER OFFICE-BEARERS

1. ELECTION OF SPEAKER

At the first sitting of the National Assembly at 10:30 on 23 April, the Chief Justice announced that the rules that he was required to make in terms of the Constitution, prescribing the procedure for the meeting, had been placed on members' benches. The Chief Justice further announced the appointment of the Secretary to Parliament as Returning Officer and other procedural staff as Assistant Returning Officers.

Mr N L Diale, seconded by Ms M A A Njobe, nominated Ms B Mbete for election as Speaker. Ms Mbete had been the Deputy Speaker in the Second Parliament. As there were no further nominations, the Chief Justice declared Ms Mbete properly elected. He congratulated her on behalf of all present and asked her to take the Chair. The Serjeant-at-Arms conducted the Speaker to the Chair and laid the mace upon the Table, whereafter the Speaker expressed her sense of the honour conferred upon her.

2. ELECTION OF DEPUTY SPEAKER

With the Speaker presiding, Prof B Turok, seconded by Ms M L Ngwenya, nominated Ms G L Mahlangu-Nkabinde for election as Deputy Speaker. As there were no further nominations, the Speaker declared Ms Mahlangu-Nkabinde properly elected. The Speaker congratulated the newly elected Deputy Speaker and afforded her an opportunity to express her sense of the honour conferred upon her.

3. ELECTION OF PRESIDENT

At the resumption of business at 14:00 on 23 April, the Speaker took the Chair and announced that the House would proceed to elect the President. She invited the Chief Justice to take the Chair, as is required in terms of section 86(2) of the Constitution.

The Chief Justice called for nominations and Ms N N Mapisa-Nqakula nominated Mr T M Mbeki for election as President of the Republic. The nomination was seconded by Mr M G P Lekota. Mr Mbeki's nomination was not opposed and the Chief Justice therefore declared him properly elected. The Chief Justice congratulated Mr Mbeki on his election as President for a second term.

The Speaker took the Chair again, thanked the Chief Justice for conducting the proceedings and gave parties and the President-Elect an opportunity to address the House.

4. SPEAKER PARTICIPATES IN DEBATE ON STATE-OF-THE-NATION ADDRESS

After the inauguration of the President on 27 April, a Joint Sitting of the National Assembly and the National Council of Provinces was

convened in terms of Joint Rule 7(1) to enable the President to deliver his annual address to the Third Parliament on 21 May 2004. The subsequent debate on the state-of-the-nation address by the President is a broad political debate in which party-political viewpoints are expounded and government policy is placed under scrutiny.

Presiding Officers do not usually participate in debates. However, as this was the first major debate after the general election, the Speaker took part in the debate on 25 May 2004, utilising Speaker's time as opposed to party or executive time. In practice, and for the purposes of the speakers' lists, a distinction is made between the speaking time allocated to parties and the time given to members of the executive in charge of a particular piece of business. If the Speaker, in her capacity as a member of the majority party, or members of the executive other than those responsible for a particular piece of business wish to participate in a debate, they utilise their party's allotted time. However, when the Speaker participates in a debate as Speaker, the speaking time is indicated as "Speaker's time".

On this occasion the Speaker took the opportunity to reflect generally on some of the challenges facing Parliament, namely strengthening the working relations and links of governance; building on the constitutional imperatives of public participation, accountability and cooperative governance; ensuring that the work of Parliament is informed by the needs of all South Africans; enhancing the capacity of ordinary people to make their voices heard in Parliament; coordinating and enhancing the effectiveness of the work of members and parliamentary committees in order to deepen democracy; and strengthening links with Parliaments in the region and Africa as a whole.

5. ROLE OF LEADER OF OPPOSITION

At the commencement of the debate on the President's state-of-the-nation address on 25 May an opposition member queried why the Leader of the Opposition had not been put down on the list of speakers as the first speaker in the debate by virtue of his role and status as Leader of the Opposition. The same point had been raised in February 2004 in the Second Parliament, in response to which the then Speaker had referred to a decision taken by all parties in 1996 confirming that the Leader of the Opposition had the right to make the first response if he so wished (see *Item 2, Issue 9*).

Speaker Mbete ruled that the matter would be referred to the Rules Committee, which was due to meet the following day (26 May), for consideration. In the meantime the debate would be conducted in accordance with the speakers' list she had before her. After a





preliminary discussion at that Rules Committee, it agreed that relevant documentation to assist the discussion should be compiled, including comparative research, and that a special meeting of the Rules Committee should then be convened specifically to discuss the role of the Leader of the Opposition with a view to formulating a policy position. The Speaker also noted that the issue was not just about the order of speakers in debate but also had implications for the appointment of members to such forums as the Pan-African Parliament and the Judicial Service Commission.

At the follow-up special Rules Committee meeting on 4 June reference was made to the constitutional requirement, in section 57(2)(d), of “recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition”. A wide-ranging discussion was held concerning the form that that recognition might take: whether reference to the largest opposition party as the “official” opposition was appropriate; what the status was of a minority party that had representation in government; what rights and privileges were to be associated with recognition of the Leader of the Opposition; and, not least, whether any special rights of representation on various forums and extra-parliamentary bodies attached to a party being the largest opposition party.

However, at a further Rules Committee meeting on 11 June, finalisation of these issues was deferred, and it remained outstanding at the end of 2004.

[For the election of members to the Pan-African Parliament and other forums, see the relevant items in this issue.]

6. MOTION OF CONFIDENCE IN SPEAKER

See “*Motion of confidence in Speaker*” under *Item 13*.

7. APPOINTMENT OF HOUSE CHAIRPERSONS

The Constitution in section 52(5) provides for the National Assembly in terms of its rules and orders to elect members as presiding officers to assist the Speaker and Deputy Speaker. Since 1994 the House has for this purpose appointed a Chairperson of Committees and a Deputy Chairperson of Committees.

Soon after the establishment of the Third Parliament in April 2004, the newly elected Speaker, Ms Baleka Mbete, at a meeting with party representatives on 4 May presented proposals to strengthen the Office of the Speaker. The meeting accordingly agreed that in the interim the House should only appoint the Chairperson of Committees who would need to assist immediately with the co-ordination of committee activities in the new Parliament. The House duly appointed Mr G Q M Doidge

as Chairperson of Committees on 6 May. Mr Doidge had held the same post in the Second Parliament.

Formal proposals were then developed for the creation of a panel of three House Chairpersons to be appointed by the House to assist the Speaker and Deputy Speaker. In presenting these proposals to the Rules Committee on 23 June, the Speaker indicated that over the past 10 years it had become clear that the workload of the Office of the Speaker needed to be spread more widely in order to provide effective leadership in this vast and complex institution. This would enable her Office to be in touch with, and monitor, all aspects of the functioning of the institution and to provide guidance where necessary before problems developed. The Speaker and Deputy Speaker would at the same time be enabled to focus more on strategic responsibilities and tasks.

The Rules Committee agreed with the proposals in principle and on the next day, 24 June, the House adopted a motion establishing three positions of House Chairperson, these office-bearers to be appointed by the House. For this purpose, all provisions in the Rules relating to the Chairperson of Committees and the Deputy Chairperson of Committees were immediately suspended. The House Chairpersons would be required to preside at sittings of the House whenever requested to do so by the Speaker. They would further be allocated functions and responsibilities by the Speaker, including any functions previously assigned to the Chairperson and Deputy Chairperson of Committees. The allocation of such functions and responsibilities would be announced from time to time. In the event of the absence of both the Speaker and the Deputy Speaker, one of the House Chairpersons would be designated to act as Speaker. The Rules Committee was instructed to present appropriate Rule amendments to the House. (*Minutes of Proceedings of the National Assembly*, 24 June).

The House immediately afterwards, on a motion by the Deputy Chief Whip of the Majority Party, unanimously appointed Mr N P Nhleko, Mr G Q M Doidge and Mrs C-S Botha as House Chairpersons. Mrs Botha is a member of the Democratic Alliance, the largest opposition party in the Assembly.

In an updated document on the role of the House Chairpersons, dated 7 July, which was distributed by the Office of the Speaker, the following operational areas, amongst others, were allocated to the individual House Chairpersons:

- Mrs Botha: Members' facilities; finalisation of policies on leave for members, artworks management, exhibitions and the library; monitoring of Household Services; chairing of quarterly meetings with caucus chairpersons/representatives.
- Mr Doidge: Implementation of policies and guidelines on the scheduling and co-ordination of committee meetings, as well as the general management of all Assembly committees and subcommittees.
- Mr Nhleko: Taking charge of the investigation currently under way in regard to Parliament's functions to oversee executive action and hold the executive to account; labour relations; information, communication and technology; public education unit.

The document further emphasized that the role of the House Chairpersons would continue to evolve over time. In general terms, although they would be required to interact with the Parliamentary Administration, the intention was not that they would take over management responsibilities. They would provide an interface between political perspectives and administrative support measures and regularly report to the Speaker and an Assembly Presiding Officers' Forum.

As the posts of House Chairperson are new posts, the remuneration and benefits attached to these posts have to be determined. For that purpose, representations have been made to the Independent Commission for the Remuneration of Public Office-Bearers with a request that it recommend an appropriate grading for these parliamentary office-bearers. The commission's recommendations had not yet been received by the close of the year.

8. APPOINTMENT OF OTHER OFFICE-BEARERS

On 6 May the Speaker announced in the House that the following office-bearers had been appointed by their respective parties: Mr N P Nhleko as Chief Whip of the Majority Party, Mr A C Nel as Deputy Chief Whip of the Majority Party and Mr D H M Gibson as Chief Whip of the Opposition.

The Speaker further announced that she had designated Mr E M Dipico as Parliamentary Counsellor to the President and Mr J H Jeffery as Parliamentary Counsellor to the Deputy President in terms of Rule 319, with effect from 29 April.

Before the commencement of the debate on the President's state-of-the-nation address on Tuesday, 25 May, the Speaker announced that she had been informed by the President that the Deputy President had been appointed as Leader of Government Business in terms of section 91(4) of the Constitution.

On 24 June the Speaker announced the replacement of Mr N P Nhleko by Mr M T

Goniwe as Chief Whip of the Majority Party with effect from that day.

9. RETIREMENT OF SECRETARY TO PARLIAMENT AND APPOINTMENT OF NEW SECRETARY

At the sitting of the House on 6 May, the Speaker announced that the Secretary to Parliament, Mr Sindiso Mfenyana, would retire from the Parliamentary Service with effect from 1 June.

On a motion of the Deputy Chief Whip of the Majority Party, on behalf of the Chief Whip of the Majority Party, the House agreed to place on record its appreciation of the distinguished service rendered by Mr Mfenyana as an officer of Parliament since 1994. Parties were then afforded an opportunity to speak to the motion.

On the same day, again on a motion of the Deputy Chief Whip of the Majority Party on behalf of the Chief Whip of the Majority Party, the House agreed to a recommendation by the Speaker and the Chairperson of the National Council of Provinces to appoint Mr Zingile Alfred Dingani as Secretary to Parliament with effect from 1 June.

10. DEATH OF A PRESIDING OFFICER WHILE IN OFFICE

On Sunday, 21 November, the Chairperson of the National Council of Provinces, Ms Joyce Lesawana Kgoali, passed away suddenly. She had been elected to the position on 4 May.

The Speaker and the Acting Chairperson of the National Council of Provinces, Mr M J Mahlangu, called a Joint Sitting of the National Assembly and the National Council of Provinces in terms of Joint Rule 7(2) in order to pay tribute to Ms Kgoali (ATC, 24 November). As both Houses were in recess at the time, members had to be recalled for the Joint Sitting.

The sitting commenced at 14:00 with a formal procession, the Serjeant-at-Arms and the Usher of the Black Rod leading the Speaker, the Acting Chairperson of the National Council of Provinces, the Deputy Speaker, the Secretary to Parliament and Deputy Secretary to Parliament into the National Assembly Chamber. The Speaker announced that she and the Acting Chairperson of the NCOP had called the Joint Sitting to pay tribute and honour the late Ms Kgoali.

The Joint Sitting was opened with prayers by Rev Stanley Scott of the African Methodist Episcopal Church, Sheikh Mohammed Moerat who represented the Muslim community, Guru Krishna for the Hindu community, and Rabbi David Hoffman who represented the Jewish community. The combined choirs of Intsika Yesizwe and Parliament also performed



(*Minutes of Proceedings of the Joint Sitting*, 24 November).

Led by the Acting Chairperson of the NCOP and the Chairperson of Committees of the NCOP, all parties paid tribute to Ms Kgoali. The tribute was concluded by Ms G N M Pandor who spoke on behalf of the executive. At the conclusion of the tributes, the Speaker asked the Joint Sitting to rise for a moment of silence in honour of Ms Kgoali before proceedings were adjourned.

The Joint Sitting was preceded by a memorial service in St George's Cathedral and the funeral service took place at 09:00 on Sunday, 28 November, at the Vista University campus in Johannesburg. By virtue of her status as a presiding officer of Parliament, Ms Kgoali was given an official funeral.

MEMBERS

11. POST-ELECTION BRIEFINGS FOR NEW AND RETURNING MEMBERS

After the general election in April 2004, a 9-day briefing programme was arranged for new and returning members of Parliament from 11 to 21 May. The programme was developed and managed by the Members' Support Office in conjunction with the Office of the Speaker and the Office of the Chairperson of the National Council of Provinces. Topics were presented by staff and external service providers.

During the first week of briefings, the topics included, *inter alia*, the Register of Members' Interests and the Code of Conduct for Members, members' benefits and support to parties, procedural matters related to House sittings and the process of law-making, and an overview of the provisions of the new Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004.

In the second week of training, in order to familiarise members with their work in committees, they were briefed on subject areas of national delivery in the various sectors of government by leading academics and the directors-general of departments. These sessions took the form of briefing sessions, followed by question-and-answer sessions. Members were therefore able to interact directly with experts on matters over which they, as public representatives, would exercise oversight. The briefings were well received and, at the request of members, further briefings with the same presenters were held in the training period from 30 August to 3 September.

Other issues covered during the induction training period were the management of racial diversity, gender awareness, information and infrastructural services, and time management. Tours of the parliamentary complex formed part of the induction programme for new

members. Throughout the training period, basic computer training (MS Office, Internet and e-mail) was offered to members on an individual basis by an external service provider.

The briefings were well attended and favourable feedback was received.

12. ALLEGED BREACHES OF CODE OF CONDUCT BY MEMBERS

The Joint Committee on Ethics and Members' Interests investigated allegations published by the *Mail & Guardian* of 3 to 9 September about the non-disclosure of directorships by members of Parliament and reported its findings to the Assembly in a report dated 8 November (ATC, 11 November).

In the newspaper article it was alleged that 13 members of Parliament had not fully disclosed their directorships as required in paragraph 8(c) of the Code of Conduct for Assembly and Council Members. In an article in the next edition of the same newspaper, it was further alleged that another member had not disclosed his directorships as required by the Code. The Code allows members to hold personal financial interests, but requires that they disclose such interests. The disclosure allows members to pursue their financial interests in an open and transparent manner.

In the cases of Mr M T Goniwe, the Chief Whip of the Majority Party; Ms N E Hangana, the Deputy Minister for Provincial and Local Government; Mr R L Padayachie, the Deputy Minister of Communications; Ms L M Xingwana, the Deputy Minister of Minerals and Energy; Rev K R J Meshoe; Mrs N B Gxowa and Mr N A Ramathlodi, the committee found that they had breached the Code in that they had not disclosed their directorships in companies. The committee recommended that they be fined amounts ranging from R1 000 to R4 000.

In the cases of Mr D A Hanekom, the Deputy Minister of Science and Technology; Ms S Shabangu, the Deputy Minister of Safety and Security; Adv S P Holomisa; Mrs M L Ngwenya, and Mrs M A A Njobe, the committee found that the members had not breached the Code.

In the case of Mr B H Holomisa, the committee noted that while there had been disclosure in the confidential section of the register, it was not satisfied that there had been complete disclosure because the member had failed to declare his personal interests in the public section of the register. The committee recommended that the member be cautioned regarding his incomplete disclosure and that he be asked to submit full details of his directorships to the Office of the Registrar.

In the case of Ms J L Kgoali, the Chairperson of the NCOP, the committee found that there had been no breach of the Code as there was

disclosure, albeit incomplete. The committee agreed that she should exercise caution regarding her disclosure.

The committee acknowledged that not a single member named in the allegation was found to have wilfully misled the committee. In addition, there was no evidence of any conflict of interests for any member. However, the committee was adamant that members should abide by the requirements of the Code. Importantly, the public must have faith in Parliament's ability to enforce its own rules and, therefore, sanctions were recommended to demonstrate Parliament's serious intent to enforce the Code.

The committee's report came before the House on 12 November. During the time for declarations of vote, Adv H C Schmidt, on behalf of the DA, stated that his party strongly disagreed with the committee's decision to exonerate Ms Kgoali, Mrs M L Ngwenya and Ms M A A Njobe. He said that Ms Kgoali's failure to disclose her interests in a certain company rendered her unfit to continue to occupy the important and prominent position of Chairperson of the NCOP. Adv M T Masutha raised a point of order, asking whether Adv Schmidt's remarks with regard to Ms Kgoali were not in violation of Rule 66 which prohibits reflections on the honour or competence of certain office-bearers.

In his ruling, House Chairperson Mr N P Nhleko reminded the House that Ms Kgoali was not a member of the NA, and that the House had always been governed and directed by the principle that it would not reflect on the conduct of members in the other House. Therefore any reflections on members of the other House were inappropriate, and the member was accordingly asked to withdraw the statement. At that point the Chief Whip of the Opposition responded that the committee was charged with investigating charges against members of both Houses and that because of Ms Kgoali's seniority it was a very serious matter. Therefore it was appropriate to say that she should not continue as Chairperson of that House.

The Chair proceeded to clarify the matter and again reiterated the principle that it was not appropriate for the House to reflect upon the conduct of members of the other House. He added that the same report was due for consideration and deliberation by the NCOP. Each House was limited to dealing with its own members.

The member thereupon withdrew the statement.

After a division, the Assembly adopted the committee's report without debate. At their request, Mr Goniwe, Mr Hanekom and Ms Xingwana, as members affected by the report, with leave, addressed the House.

13. ALLEGATIONS OF MISUSE OF MEMBERS' TRAVEL VOUCHERS

Background

A system of travel vouchers for members was introduced in Parliament some years ago to facilitate members' travel arrangements. When isolated instances of abuse of this system were detected, disciplinary steps had been taken against the members concerned and administrative controls were tightened. In this process further irregularities were identified and Parliament initiated a probe which brought to light evidence of extensive corrupt practices by various travel agents in which some members were also implicated.

In the course of 2003 Parliament commissioned a forensic audit and called in the commercial crimes unit of the SA Police Service to assist with the confiscation of relevant documents from a number of travel agents. In February 2004 the National Directorate of Public Prosecutions was approached to assist with further investigations and court action was taken against some of the travel agents.

The previous Speaker had in the meantime appraised party representatives of these events. The vouchers were valid for travel by air, train and road, and the documents confiscated from travel agents revealed that some members had received benefits that appeared to have been wrongly paid for by Parliament. The members concerned were then given an opportunity to shed light on transactions done in their name.

Debate on misuse of travel vouchers

Amidst speculation in the media of the imminent arrest of some members implicated in the travel scam, the Programme Committee agreed to a request by the DA to debate the abuse of travel vouchers in the House. The debate took place on 24 August and was introduced by the Speaker who gave an overview of developments since the probe was initially launched. Responding to demands that she release the draft forensic report she had received, the Speaker emphasised that she was not prepared to do so at that stage as it was given to her on a basis of strict confidentiality as the investigation had not yet been concluded. Members expressed concern at the amount of time the investigations were taking and at the negative impact of the allegations on the integrity of Parliament. Assurances were given by party spokespersons that stern action would be taken against any member who, when the law had taken its course, was found guilty of corrupt practices and defrauding Parliament.

Motion of confidence in Speaker

An article appeared in the press on 29 August alleging that the Speaker herself had misused travel vouchers and was one of the members being investigated. The Speaker immediately in





a press release refuted the allegations and clarified the travel arrangements referred to in the article. Shortly afterwards the National Directorate of Public Prosecutions issued a statement denying that the Speaker was under investigation, and the House on 8 September adopted the following motion without debate, the ID recording its dissent:

That the House -

- (1) notes –
 - (a) the allegations in the Sunday Times of 29 August 2004 to the effect that the Speaker of the National Assembly abused parliamentary travel facilities; and
 - (b) calls for the Speaker to recuse herself pending finalisation of the investigation into the alleged abuse of parliamentary travel facilities;
- (2) further notes –
 - (a) a statement by the Directorate of Special Operations of the National Directorate of Public Prosecutions on 2 September 2004 that: "... based on the information at our disposal, the DSO is not investigating the Speaker of Parliament. This we say because the impression is that we are and since the Office of the Speaker is the highest legislative authority in the country, we need to place things in perspective."; and
 - (b) that Parliament initiated a forensic investigation into allegations of the alleged abuse of parliamentary travel facilities;
- (3) believes that there is no basis for the Speaker of the National Assembly to recuse herself as she is not being investigated for any wrongdoing; and
- (4) resolves to express its full confidence in the Speaker.

PROCEDURAL AND RELATED ISSUES

14. DECLARATION OF ELECTION RESULTS AND DESIGNATION OF CANDIDATES

Following the country's third general election on 14 April, the Chairperson of the Electoral Commission (EC), Ms Brigalia Bam, declared the result of the election in terms of section 190 of the Constitution on Saturday, 17 April, at the EC's headquarters in Pretoria.

According to item 16(1) of Schedule 1A to the Electoral Act, Act No 73 of 1998, the Electoral Commission must, within two days of such declaration, designate from each list of candidates, the representatives of each party in the legislature. In terms of the same item, and

within two days of the declaration of the election result, if a candidate is due for designation and his or her name appears on more than one list, the party which had submitted the lists must indicate to the Commission from which list such a candidate must be designated. Once parties have indicated their preference, candidates' names are deleted from the other lists on which they appear.

Membership of the National Assembly commences on the date of designation and the periods for subsequent review of the party lists are calculated from this date. Formal confirmation of the date of designation is therefore required. On 7 May the National Assembly received written confirmation from the Electoral Commission that it had designated the representatives of each party on 18 April. The lists of designated candidates were published in the *Gazette* on 20 April.

On 1 June, the Electoral Court ruled that the ACDP was entitled to seven seats instead of six and Azapo was entitled to one seat instead of two (see *Item 17*), resulting from the 2004 election. In its judgment, the court ordered the Commission to effect the necessary changes to the designation of candidates to seats allocated to the ACDP and Azapo and to publish the correct designations. In a letter dated 11 June, the Acting Chief Electoral Officer informed the Speaker that the designations for the ACDP and Azapo had been corrected. The correct designations were published in the *Gazette* on 4 August.

15. FIRST SITTING OF ASSEMBLY

Section 51(1) of the Constitution determines that after an election, the first sitting of the National Assembly must take place at a time and on a date determined by the Chief Justice, but not more than 14 days after the election result has been declared. The first sitting after the 2004 election was convened by the Chief Justice for Friday, 23 April.

In terms of the Constitution, the Chief Justice presides over the swearing in of members and the election of the Speaker and President of the Republic (see *Items 1 and 3*).

Accordingly, Mr Justice Arthur Chaskalson, Chief Justice of South Africa, opened the proceedings at 10:30 on 23 April and presided as required in terms of the law. After the Chief Justice had taken the Chair, the Sivuyile Adult Choir sang the national anthem. The Speaker, once elected, presided over the election of the Deputy Speaker and other business (see *Item 2*).

The order of business was as follows: Swearing in of members, election of the Speaker, election of the Deputy Speaker and election of the President. After the election of the Deputy Speaker, spiritual leaders representing the Muslim, Jewish, Christian, African Traditional and Hindu faiths blessed the

House, whereafter business was suspended. The House reconvened in the afternoon for the election of the President of the Republic.

16. SWEARING-IN OF NEW MEMBERS

Section 48 of the Constitution requires members of the National Assembly to swear or affirm faithfulness to the Republic and obedience to the Constitution before they can assume their duties as members.

The swearing-in ceremony of members of the Assembly of the Third Parliament on 23 April, presided over by the Chief Justice, was conducted by having members approach the Table in groups of up to 10 members. Standing before the Table, members simultaneously made and subscribed the oath or solemn affirmation in the language of their choice, after which they returned to their seats and signed their swearing-in certificates. Special arrangements were made for disabled members who were not able to stand before the Table.

Three members who were not present for the ceremony were sworn in on 28 April in the chambers of the Chief Justice in Johannesburg, while another member was sworn in on 4 May at Parliament, also by the Chief Justice.

By the end of the annual parliamentary session, two members who had originally been designated as representatives for the ANC by the Electoral Commission had not been sworn in yet, namely Dr F N Ginwala and Mr P S Molefe.

17. ACDP CONTESTATION OF AZAPO SEAT

Following the declaration of the election result by the Electoral Commission on 17 April, the ACDP filed an objection with the Electoral Commission on 20 April in accordance with section 55(1) of the Electoral Act, Act No 73 of 1998. In terms of this provision any interested party may lodge an objection with the Commission that is material to the determination of the final result.

The ACDP contended that a mistake had been made in recording the results at a particular voting station and consequently Azapo had been allocated a seat that rightly should have been allocated to the ACDP. At that stage the ACDP had six seats in the Assembly and Azapo two. Azapo's second seat had been filled by the nomination and swearing in of Mr N D Habedi on 26 April, following the resignation of the party leader, Mr M A Mangena.

In a meeting between the Commission, the ACDP and Azapo on 22 April, the Commission acknowledged that a mistake had been made, but said that it could not deal with the objection in terms of section 55(3) of the Electoral Act, allowing the Commission to condone a late objection on good cause shown, because it had become *functus officio* after the result

of the election had been declared. The Commission said that it was up to the affected parties to approach the Electoral Court if they wished to do so, which the ACDP did.

The Electoral Court, on 1 June, ordered the Electoral Commission to correct the seat allocations, effect the necessary changes to the designation of candidates to seats allocated to the ACDP and Azapo, and to inform the Speaker accordingly. The Commission was also ordered to publish the correct designations.

In a letter dated 7 June, the Chief Electoral Officer informed the Speaker that the designation by the Commission on 18 April of the second person on the candidates' list of Azapo as a member of the National Assembly was null and void. On the same day the Secretary to the National Assembly informed Mr Mangena that Mr Habedi would relinquish the second seat of Azapo with immediate effect. The Speaker announced this in the House on 15 June.

The ACDP, having won the court application, was allocated an additional seat. The party, once again, exercised its right in terms of item 16(1) of Schedule 1A to the Electoral Act to indicate from which list their candidate had to be designated. In a letter dated 11 June, the Electoral Commission informed the Speaker that Rev M S Khumalo had been designated a member of the National Assembly with effect from that date. Rev Khumalo made and subscribed the solemn affirmation in the Assembly on 15 June.

18. INELIGIBILITY OF SERVING NCOP MEMBERS

Before the 2004 general election, the National Assembly was dissolved by the President after the adoption of a resolution by the House on 9 February. The term of the National Council of Provinces, however, only expires upon appointment of the new Council.

On 18 April, the date on which the Electoral Commission designated the representatives of each party to the Assembly, there were 18 serving members of the NCOP on the list of designated members. Constitutionally those members were not eligible at the time to become members of the Assembly. On the same day, however, letters of resignation were received from 11 of the members in question. The remaining seven were ineligible to be designated members and consequently, in terms of the law, seven vacancies existed: four ANC vacancies and one each for the DA, IFP and ACDP. Five of the affected members had already been sworn in by the Chief Justice on 23 April.

On 3 May, the Speaker informed the relevant parties in writing that certain of their members had been ineligible to be designated members of the Assembly and that consequently vacancies existed. Mr K D S Durr was subsequently



nominated to fill the vacant ACDP seat with effect from 3 May. The following day, on 4 May, Mrs C-S Botha was nominated to fill the vacant DA seat. Mr M J Bhengu was nominated on 10 May to fill the vacant IFP seat and on 11 May Mr P D N Maloyi was nominated to fill one of the ANC vacancies. All four were sworn in by the Speaker. The remaining three persons who had been ineligible to be designated - Ms J L Kgoali, Mr M J Mahlangu and Kgoshi M L Mokoena - were subsequently appointed as members of the NCOP.

19. PROPORTIONAL STRENGTH OF PARTIES

Prior to the election on 14 April, a total of 17 parties were represented in the National Assembly. Only 12 parties were returned to the Assembly. The proportional strength of parties, after the correction by the Electoral Court of the seat allocations to the ACDP and Azapo, is indicated in the following table which reflects the number of votes parties represented in the Assembly received, that number as a percentage of the total number of votes cast for parties that are represented in the National Assembly and the number of seats they obtained:

PARTIES		NUMBER OF VOTES	% OF TOTAL	SEATS
African National Congress	ANC	10 878 251	70,18%	279
Democratic Alliance	DA	1 931 201	12, 46%	50
Inkatha Freedom Party	IFP	1 088 664	7,02%	28
United Democratic Movement	UDM	355 717	2,29%	9
Independent Democrats	ID	269 765	1,74%	7
New National Party	NNP	257 824	1,66%	7
African Christian Democratic Party	ACDP	250 272	1,61%	7
Freedom Front Plus	FF Plus	139 465	0,90%	4
United Christian Democratic Party	UCDP	117 792	0,76%	3
Pan Africanist Congress of Azania	PAC	113 512	0,73%	3
Minority Front	MF	55 267	0,36%	2
Azanian People's Organisation	Azapo	41 776	0,27%	1
		15 499 506		

20. PREPARATORY MEETINGS BETWEEN PRESIDING OFFICERS AND PARTY REPRESENTATIVES PRIOR TO FIRST MEETING OF NA RULES COMMITTEE

Shortly after being elected, the Speaker arranged to meet party representatives at the Union Buildings in Pretoria on the morning of the President's inauguration on 27 April in order to discuss certain pressing issues.

Legacy reports

Prior to the meeting a document information pack was distributed to party representatives, identifying issues that would be discussed in more detail at a meeting on 4 May. The information pack included "legacy reports", ie reports containing information on the background to, and status quo of, the following issues: Briefing programme for new and returning members (see *Item 11*); composition and establishment of committees (see *Item 37*); formula for the appointment of whips (see *Item 22*); proposal for the election of office-bearers to assist the Speaker and Deputy Speaker (see *Item 7*); the order of recognition of parties for members' statements (see *Item 21*); designation of members to the Judicial Service

Commission and Magistrates Commission (see *Items 45 and 46*); appointment of members to the SADC Parliamentary Forum (see *Item 55*) and Pan-African Parliament (see *Item 53*); appointment of members to the Parmed Board; and revival of the Appropriation Bill by House resolution and other lapsed business (see *Item 24*). At the meeting on 27 April, it was agreed that the Speaker, Deputy Speaker and party representatives would meet again on 4 May to deliberate on the above-mentioned issues.

Meeting of House

It was also agreed that the National Assembly would meet in plenary on Thursday, 6 May, *inter alia* to consider resolutions on structures that would enable members to do the work required of them, for example in relation to the Budget; inviting former President Mandela to address a Joint Sitting; and appointing a new Secretary to Parliament (see *Items 37 and 23*, as well as *Item 9*).

International participation

As the House would not have an opportunity to appoint its members to the Pan-African Parliament before meetings of three ad hoc

committees of that body were due to take place in Addis Abeba, the meeting agreed that Adv Z L Madasa (ACDP) and Mr D J Sithole (ANC) would attend the Ad Hoc Committee on Rules as observers. It was further recognised that South Africa's representation in the SADC Parliamentary Forum had to be finalised as soon as possible, as that body was also due to meet in May. Members were briefed on another conference in May, hosted by the East African Legislative Assembly, on the role of regional Parliaments in the structures of the Pan-African Parliament and the African Union, and agreed to send a representative to the conference in Kenya.

21. ORDER OF RECOGNITION OF PARTIES FOR MEMBERS' STATEMENTS AND QUESTIONS

At the preparatory meeting on 4 May between the Presiding Officers and party representatives, it was agreed that parties would be recognised in the following order for the purposes of members' statements: ANC, DA, IFP, ANC, UDM, Smaller Parties Group 1, Smaller Parties Group 2, ANC, DA, Smaller Parties Group 3, whereafter the sequence would start again at the beginning until the requisite number of statements had been made.

The smaller parties were identified as the following: ID, NNP, ACDP, FF Plus, UCDP, PAC, MF and Azapo. Group 1 would then consist of the ID and NNP (opportunity every second day) with a total of 14 members. Group 2 would be the ACDP and FF Plus (opportunity every second day) with a total of 10 members. Group 3 would be the UCDP, PAC, MF and Azapo (opportunity every fourth day) with a total of 10 members. The groupings for the smaller parties were agreed before Azapo relinquished its seat to the ACDP and have not been revised subsequently.

In terms of Rule 108(9), the sequence of questions on the Question Paper rotates without interruption for the duration of an annual session according to the order in which members of the respective parties may put questions. That order is determined by the Chief Whips' Forum from time to time. During the Second Parliament, the order in which parties may put questions was the same as the sequence followed for members' statements. That practice has continued in the Third Parliament.

22. FORMULA FOR APPOINTMENT OF WHIPS

In the Second Parliament, parties were entitled to a whip for every 8,69 members. At the meeting between the Presiding Officers and party representatives on 4 May, it was agreed that the same formula could be retained. Each party's entitlement was therefore as follows:

PARTY	NO OF MPs	NO OF WHIPS	ROUNDED-OFF
ANC	279	32,10	32
DA	50	5,75	6
IFP	28	3,22	3
UDM	9	1,03	1
ID	7	0,80	1
NNP	7	0,80	1
ACDP	7	0,80	1
FF PLUS	4	0,46	–
UCDP	3	0,34	–
PAC	3	0,34	–
MF	2	0,23	–
AZAPO	1	0,16	–

It was also agreed that the FF Plus, UCDP, PAC, MF and Azapo (13 members) could be grouped together for the purpose of the allocation of whips and be allocated two whips.

23. COMMEMORATIVE JOINT SITTING PRIOR TO STATE-OF-THE-NATION ADDRESS

At the beginning of a Parliament, after new members have been sworn-in and certain office-bearers elected at a sitting convened for that purpose, the next sitting normally takes the form of a Joint Sitting of the two Houses of Parliament at which the President delivers his annual (state-of-the-nation) address. However, at the beginning of the Third Parliament the state-of-the-nation address was preceded by two sittings of the Assembly and a Joint Sitting.

Apart from addresses by the President of the Republic, the Rules only, and specifically, provide for the Presiding Officers to invite a visiting Head of State, when on a state visit, to address a Joint Sitting, or either House. In other circumstances, the House(s) may by resolution invite a non-member to address the House(s). At a sitting convened for 6 May, the National Assembly adopted a motion inviting former President Nelson Mandela to address a Joint Sitting of the Houses on 10 May, the day of his inauguration as President 10 years earlier, in order to commemorate 10 years of a democratic Parliament. The Joint Sitting was to be held at 11:00 on Monday, 10 May.

It was subsequently proposed that former President F W de Klerk also be invited to address the Joint Sitting. However, the Houses formally had to pass a resolution also to that effect prior to the Joint Sitting. In terms of the Rules, the hours of sitting from Monday to Thursday are 14:00, or such later time as the Speaker determines, to adjournment. To enable the House to sit before the stipulated time, a resolution is passed, normally at an





earlier sitting, suspending the relevant Rule. Alternatively, if there is agreement among parties, the House could condone its early start at a future sitting.

On Sunday 9 May, the Speaker convened an urgent meeting of parties to discuss the invitation to Mr De Klerk to address the Joint Sitting. The meeting failed to secure an agreement by all parties on the issue. In view of the lack of agreement among parties, the Speaker then indicated that the Assembly would be convened on Monday, 10 May at 10:00 to decide on the invitation to Mr De Klerk.

When the House met on the Monday morning, the Chief Whip of the Opposition rose on a point of order challenging the validity of the meeting at that time contrary to the Rules. In response, the Speaker outlined the circumstances that gave rise to the need for the meeting and ruled that the meeting should proceed. The House proceeded to adopt, after a division, the resolution inviting Mr De Klerk. Both former Presidents Mandela and De Klerk addressed the Joint Sitting as scheduled. A motion condoning the sitting at 10:00 on 10 May was adopted by the House on 3 June after a division.

The commemorative Joint Sitting on 10 May was first addressed by former President De Klerk and thereafter by former President Mandela. After a vote of thanks by the Minister of Agriculture and Land Affairs and an announcement by the Chairperson of the NCOP, a plaque was unveiled in honour of Mr Mandela's election as the first President of the democratic South Africa and to mark the advent of the first democratic Parliament.

The inscription on the plaque reads:

On 27 April 1994 the people of South Africa voted in their first ever democratic election.

On 9 May 1994 Mr Nelson Mandela was elected as the first President of a democratic South Africa by the National Assembly of South Africa.

This plaque commemorates that historic event.

It is unveiled by the Presiding Officers of Parliament in the presence of former President Nelson Mandela and President Thabo Mbeki.

10 May 2004

The plaque has been mounted on a plinth and is now permanently displayed adjacent to the steps that lead to the entrance to the National Assembly wing.

24. REVIVAL OF LAPSED BILLS

In terms of the Rules, all bills before the House and its committees lapse at the end of the day on which the Assembly is dissolved. In its resolution to dissolve, the Assembly of the

Second Parliament suspended those Rules. However, from polling day the Assembly was no longer competent to function and hence all business that it had before it lapsed on that day.

Appropriation Bill

The first reading debate on the Budget had taken place on 27 February, the last sitting day of the Assembly of the Second Parliament, and the bill lapsed at the end of the life of that Parliament. After the general election, and as agreed at a preparatory meeting between the Presiding Officers and party representatives earlier, on 6 May the National Assembly passed a resolution to revive the Appropriation Bill from the stage it had reached in the previous Parliament.

Bills revived in National Assembly as first House

On 15 June, on a motion of the Chief Whip of the Majority Party, the House agreed to revive the following 11 bills from the stage they reached in the Second Parliament before lapsing, namely that they were before committees of the Assembly as the House in which they had originally been introduced:

- Dental Technicians Amendment Bill [B63-2003] (National Assembly – sec 76)
- Traditional Health Practitioners Bill [B66-2003] (National Assembly – sec 76)
- Choice on Termination of Pregnancy Amendment Bill [B72-2003] (National Assembly – sec 76)
- Judicial Officers Amendment Bill [B72-2001] (National Assembly – sec 75)
- Child Justice Bill [B49-2002] (National Assembly – sec 75)
- Compulsory HIV Testing of Alleged Sexual Offenders Bill [B10-2003] (National Assembly – sec 75)
- Criminal Law (Sexual Offences) Amendment Bill [B50-2003] (National Assembly – sec 75)
- Superior Courts Bill [B52-2003] (National Assembly – sec 75)
- Road Accident Fund Amendment Bill [B64-2003] (National Assembly – sec 75)
- Children's Bill [B70-2003] (National Assembly – sec 75)
- National Environmental Management: Protected Areas Amendment Bill [B2-2004] (National Assembly – sec 75)

Bills revived in National Assembly or NCOP as second House

Subject to the concurrence of the National Council of Provinces, the House also agreed on the same day to revive the South African Citizenship Amendment Bill [B55-2003] (National Assembly – sec 75) and the Films and Publications Amendment Bill [B61B-2003] (National Assembly – sec 75) from the stage they reached in the Second Parliament, namely

that they had been passed by the National Assembly and were before committees of the NCOP. Also subject to the concurrence of the NCOP, the House agreed to revive the National Environmental Management: Air Quality Bill [B62B-2003] (National Council of Provinces – sec 76) from the stage it had reached in the Second Parliament, namely that the bill had been passed by the NCOP and was before a committee of the Assembly.

Also, on 18 June and 21 June respectively, the National Assembly and the NCOP revived the Public Audit Bill from the stage it had previously reached, namely its consideration by the NCOP as the second House (See Item 34).

Bills revived from different stage to that previously reached

The Protection of Constitutional Democracy against Terrorist and Related Activities Bill [B12-2003], originally introduced as the Anti-Terrorism Bill and the National Ports Authority Bill [B5B-2003] had also lapsed at the end of the life of the Second Parliament. On 22 June, subject to the concurrence of the NCOP, the House adopted a motion by the Chief Whip of the Majority Party that the Protection of Constitutional Democracy against Terrorist and Related Activities Bill be revived and that consideration of the bill be resumed from the stage where the bill, in the version passed by the NA [B12B- (Reprint)], be transmitted to the NCOP for its concurrence.

In the Second Parliament, the Assembly had passed the bill on 20 November 2003 and it had been transmitted to the other House for concurrence. The NCOP had passed the bill on 24 February, subject to the Assembly's approval of proposed amendments. On the same day the bill had been referred back to the Portfolio Committee on Safety and Security for consideration of the NCOP's proposed amendments and on 25 February that committee had reported that it agreed with the proposed amendments. The bill and the committee's report had been placed on the Order Paper of the National Assembly under "Further Business", but had not been considered formally by the House. (see *Item 35*)

In the Second Parliament, the National Assembly had completed its consideration of the National Ports Authority Bill and had passed it on 16 September 2003. As required, it had been referred to the NCOP for concurrence. That House had been unable to complete its consideration of the bill before the end of the Second Parliament and consequently it had lapsed. Also on 22 June, the House adopted a motion by the Chief Whip of the Majority Party that the National Ports Authority Bill be revived and that, subject to the concurrence of the Council, its consideration be resumed not from the stage it reached in the Second Parliament, but from where it stood referred to the Assembly's Portfolio Committee

on Transport for consideration and report. (*Minutes of Proceedings of the National Assembly, 22 June*)

Bills reintroduced

In the previous Parliament, the Older Persons Bill, a section 76 bill, had been introduced in the Assembly on 7 November 2003 (ATC, 22 June) and referred to the Portfolio Committee on Social Development. The committee had not completed its deliberations on the bill and it had lapsed upon the dissolution of the Assembly. In the Third Parliament, at the request of the Minister of Social Development, the bill was reintroduced in the NCOP on 18 June and referred to the Select Committee on Social Services.

25. BUDGET VOTES DEBATED IN EXTENDED PUBLIC COMMITTEES

Extended Public Committees (EPCs) are mechanisms created by the Rules to enable the Assembly to conduct more than one public debate simultaneously in order to expedite the legislative or budgetary programme. EPCs are arranged by decision of the Programme Committee.

No decision may be taken by an EPC; it is a forum for debate only. Therefore, no motion may be moved in this body, nor is it appropriate to give notice of a motion or make members' statements. The rules of debate that apply in a plenary sitting of the Assembly also apply in an EPC. Business in an EPC is conducted in the same way as in a sitting of the Assembly, beginning with a procession and a moment for silent prayer or meditation. The members of an EPC are the members of the portfolio committee relevant to the subject matter before the EPC, and all other members who attend its proceedings.

The Speaker appoints a presiding officer as chairperson of the EPC, but does not preside him- or herself. The appointed chairperson may request any member of an EPC to relieve him or her. At the conclusion of a debate, no decision is taken, but the decision of the question (where applicable) will appear on the Order Paper for the next Assembly plenary. An EPC dissolves on conclusion of its business on the same day it is appointed. Except in the Chamber of the National Assembly, members speak from the benches they occupy and not from a podium.

In order to expedite the passage of the Appropriation Bill through Parliament after it had been revived by House resolution on 6 May, the Programme Committee decided at its meeting on 13 May that EPCs would be utilised for the purpose of conducting the Budget Vote debates. In order to ensure that all Votes were treated equally, the committee also decided that no fewer than two Votes would be dealt with at a time. The aim was to avoid having some debates in the National





Assembly Chamber and others in smaller venues. The Old Assembly Chamber and Committee Room E249, and not the main Chamber, were used for the EPCs. The only exceptions to the above arrangements were the debates on Vote No 1: The Presidency and Vote No 2: Parliament, which were conducted in plenary in the National Assembly Chamber.

The EPCs took place from 8 June to 23 June and the Speaker appointed the Deputy Speaker and the Chairperson of Committees (now the House Chairperson responsible for committees) as chairpersons of the EPCs. By agreement in the Programme Committee each debate was allocated 150 minutes. Practice has been that parties are given a global time allocation for the Budget Votes and they then decide in which Budget Vote debates they want to participate and how much time they want to utilise in each of those debates. When the agreement was reached about the set time allocation of 150 minutes for each Budget Vote, opposition parties asked that the arrangement should not be regarded as a precedent for future Budget Vote debates.

The Votes and the Schedule to the Appropriation Bill were agreed to by the House on 24 June and the bill was read a second time. The NCOP passed the Appropriation Bill on 30 June and the President assented to and signed it into law on 22 July.

26. SPECIAL REPORT OF PUBLIC PROTECTOR ON INVESTIGATION INTO COMPLAINT BY DEPUTY PRESIDENT J G ZUMA

Background to complaint by Deputy President

On 23 August 2003, the National Director of Public Prosecutions issued a press statement stating that although there was a *prima facie* case of corruption against the Deputy President, he would not be prosecuted, as the prospects of success were “not strong enough”. The criminal investigation against the Deputy President related to allegations of his improper involvement in the Strategic Defence Procurement of the South African National Defence Force (“arms deal”).

Subsequently, on 30 October 2003, the Deputy President lodged a complaint with the Public Protector. In the main, the Deputy President raised concern about the manner in which the criminal investigation against him had been conducted; the leaking to the media by the National Prosecuting Authority (NPA) of confidential information relating to the criminal investigation; the failure by the NPA to inform him of the criminal investigation against him; the public statement by the National Director of Public Prosecutions that there was a *prima facie* case of corruption against him; and the apparent continuation of the criminal

investigation after it had been decided not to prosecute him.

Special report by Public Protector

Section 8(2)(b) of the Public Protector Act, Act No 23 of 1994, provides that the Public Protector shall, at any time, submit a report to the National Assembly on the findings of a particular investigation, *inter alia* if the matter requires the urgent attention of, or an intervention by, the National Assembly. The Public Protector, in terms of this statutory provision and section 182(1)(b) of the Constitution, 1996, which empowers the Public Protector to report on any conduct investigated by that Office, on 28 May submitted his special report on the investigation into the complaint by the Deputy President.

Matters relating to the NPA are generally considered by the Portfolio Committee on Justice and Constitutional Development. However, during the period of the report’s submission, the portfolio committee was inundated with other equally pressing business.

Appointment of ad hoc committee

Owing to the need for the report to be considered as a matter of urgency, the House, at a sitting specially convened for 3 June, adopted a motion establishing an ad hoc committee to consider the Public Protector’s report and report to the House by 25 June.

Findings and recommendations

In its report, published in the ATC on 23 June, the ad hoc committee reported that it had unanimously accepted the Public Protector’s key findings that the NPA is accountable to Parliament in respect of the exercising of its powers and the performance of its functions and duties, as well as for its decisions regarding the institution of prosecutions. Though acknowledging the disagreement of certain opposition parties, the committee further accepted the finding that the press statement by the National Director of Public Prosecutions on 23 August 2003 unjustifiably infringed upon Mr Zuma’s constitutional right to human dignity and caused him to be improperly prejudiced, and that the press statement was unfair and improper.

Several of the Public Protector’s key findings were only noted by the committee, *inter alia* that the “reluctance and failure by the Minister for Justice and Constitutional Development and the National Director of Public Prosecutions to cooperate with the Public Protector was improper and unconstitutional”. The committee was of the view, however, that it would serve no purpose to make any recommendations to Parliament in regard to the Minister’s conduct, as he had not returned to Parliament after the 2004 general election.

The Public Prosecutor had recommended that Parliament take urgent steps to ensure that the National Director of Public Prosecutions and the NPA are held accountable for failing to cooperate with the Public Protector in the investigation of the complaint of the Deputy President and infringing on his constitutional right to human dignity, thereby causing him to be improperly prejudiced. He also urged Parliament to ensure that the Ministerial Coordinating Committee, contemplated by section 31 of the National Prosecuting Authority Act of 1998, was convened as a matter of urgency to determine policy guidelines on the functioning of the Directorate of Special Operations that would prevent a recurrence of the improprieties mentioned in the report.

Regarding the recommendations of the Public Protector, the ad hoc committee proposed that the House expresses its disapproval of the public statement by the National Director of Public Prosecutions on 23 August 2003 (the DA and IFP did not agree with the recommendation). The committee further proposed to the House that the Minister for Justice and Constitutional Development should be called upon to ensure that the provisions of section 31 of the National Prosecuting Authority Act are implemented without delay and to report to the National Assembly within 60 days. Other recommendations by the committee included, inter alia, steps to ensure cooperative relations between all organs of state.

Assembly's consideration of committee report

On 25 June, after a debate, the Deputy Chief Whip of the Majority Party moved for the adoption of the committee's report with the following amendments: the deletion of paragraph 6(f) which called on the Minister for Provincial and Local Government to introduce legislation to establish or provide for structures and institutions to promote and facilitate inter-governmental relations and provide for appropriate mechanisms to facilitate the settlement of intergovernmental disputes; and the insertion of the following paragraph after paragraph 6(h): "The House takes no further action in this matter and regards it as closed." The House agreed to the amendments and adopted the committee's report, as amended.

27. WRITTEN DECLARATION OF VOTE

In terms of the Rules (NA Rule 81), when the presiding officer has granted political parties an opportunity to make declarations of vote on a particular question, a member addressing the Chair may read out aloud a written formulation of his or her party's viewpoint, and deliver a signed copy thereof at the Table for inclusion in the Minutes of Proceedings. The general practice has been for members to read or simply make their declarations without making a written formulation available to the

Table. However, on 19 August, during the Second Reading debate on the Choice on Termination of Pregnancy Amendment Bill [B72B-2003], when the Chair afforded parties an opportunity to make declarations as there was no debate scheduled, Dr C P Mulder, on behalf of the FF Plus, in addition to his verbal declaration, submitted a written formulation of the party's viewpoint. The written formulation was included in the Minutes of Proceedings of that day. This is the first time that this option has been employed.

28. PARLIAMENTARY PRIVILEGE: PROCESS FOR SERVING SUMMONS ON MEMBERS AND OFFICIALS

The new Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004 (see *Item 12, Issue 9* for a write-up on the legislation) came into operation on 7 June, replacing the previous Act of 1963.

The Act provides, in section 5, that a summons, subpoena or other process issued by a court may not be served within the precincts of Parliament without the express permission of the presiding officers, or other than in accordance with their directives. Concerning the giving of evidence of proceedings, the Act further provides, in section 10, that "no member or staff member may give evidence in any court or place outside Parliament regarding the contents of the journals or the evidence given before, or any document submitted to, Parliament or a House or committee, without first having obtained the leave of the Houses or the House concerned". In a recess such leave can be given by a presiding officer.

Appropriate processes for the application of such provisions (similar provisions having been contained in the 1963 Act) have been under consideration for some years. In 2002, the then Speaker had reported to the NA Programme Committee that a member had been subpoenaed to testify in criminal proceedings in court arising from that member's parliamentary responsibilities. On that occasion she indicated that the principle on which Parliament had to operate was that Parliament had to be seen to be co-operating with any investigation while at the same time it could not be said that documents that had been given to Parliament in confidence would be handed over. In essence, the genuine rights of Parliament had to be protected, but it was not above the law. A balance therefore had to be achieved (NA Programme Committee Minutes, 30 May 2002).

In the second half of 2004, on two occasions the appropriate application of the relevant provisions arose.

Members subpoenaed

On 3 October reports appeared in the press of a list of witnesses who would be called to testify in the criminal trial against Mr Schabir





Shaik – a trial relating to alleged corruption in the state’s acquisition of armaments. The published list of witnesses included two members, Dr G G Woods and Mrs P de Lille. The Speaker thereupon wrote to the Acting National Director of Public Prosecutions, bringing to his attention that in terms of the Powers and Privileges Act Parliament would have to grant permission for the two members to testify if the evidence concerned parliamentary proceedings, failing which they would be in contravention of the Act and guilty of contempt of Parliament. The Speaker’s letter was copied to the members concerned. Both members then wrote to the Speaker confirming that they had been subpoenaed and requesting the necessary permission to testify in terms of section 10 of the Act. As Parliament was in recess at the time, the Speaker, after obtaining legal advice, granted written permission to them on 14 October.

Parliamentary official summonsed

On 21 October the National Prosecuting Authority through the Directorate of Special Operations, Western Cape, attempted to serve a summons in Parliament on the Registrar of Members’ Interests to appear before the Directorate on 1 November for questioning and to produce certain documents held in the confidential part of the Members’ Register. This summons also related to the trial against Mr Shaik.

Having obtained legal advice, the Speaker on 28 October after due consideration responded in a letter addressed to the Minister for Justice and Constitutional Development, informing her that contrary to section 5 of the Powers and Privileges Act the express permission of the presiding officers had not been sought or obtained to serve a summons within the parliamentary precincts. The Speaker therefore regarded the summons as invalid.

The Speaker went on to express a more general concern at the manner in which the National Prosecuting Authority (NPA) had been approaching the exercise of its powers under the National Prosecuting Authority Act, 1998, in relation to Parliament. In this regard she noted that the serving of the summons had been assigned to a junior official of the NPA and that no account had been taken of the special standing of Parliament constitutionally, nor of the specific powers, privileges and immunities that necessarily apply to Parliament. She also referred to the disregard shown for appropriate levels of communication with Parliament in regard to the subpoenas issued previously to two members which she had learnt of through press reports.

Whilst affirming that Parliament in principle was always willing to co-operate with public entities in the exercising of governance and was indeed committed to doing so, she emphasised that the presiding officers had a

duty under the authority of Parliament to protect members’ rights and the institution’s privileges and immunities. She accordingly urged that, in the interests of co-operative government at the national level, appropriate channels of communication should be followed. If the NPA required information or documentation from Parliament, this should therefore be dealt with at the most senior level and the presiding officers should be informed of the NPA’s intention to approach Parliament in this regard. Due consideration would then be given to any such request in accordance with the Powers and Privileges Act.

Parliament was subsequently informed that compliance with the summons served on the Registrar had been “suspended until further notice”. The Acting National Director of Public Prosecutions also wrote to the Speaker attaching a memorandum he had previously submitted to the Minister in which he had responded in detail to the Speaker’s letter. In the memorandum he conveyed his regret at any inconvenience or discomfort that may have been caused as well as an assurance that there had been no intention to undermine or disrespect either Parliament or the Speaker. He conceded that the execution of the summons, procedurally, was void. He also indicated that he agreed that in future the NPA would act through the Minister’s office when assistance was to be sought from the Office of the Speaker.

Shortly afterwards, in a letter dated 24 November, the request was renewed through the proper channels for direct access by the NPA to certain specified documents. The matter had however not been finalised by the end of the year.

29. SPLITTING OF REVENUE LAWS AMENDMENT BILL

On 26 October, the Minister of Finance introduced the Revenue Laws Amendment Bill in the National Assembly as part of a package of bills relating to the Budget. The bill was introduced as a money bill, regulated by section 77 of the Constitution.

The bill was adjudged to be a mixed bill after the state law advisers and the parliamentary Legal Services Office found that it also contained section 75 provisions. The bill therefore failed the requirements for it to be a section 77 bill in the constitutional sense. In the ATC of 8 November it was announced that the Joint Tagging Mechanism (JTM) had ruled it to be constitutionally out of order and incapable of being processed, as Parliament does not have Rules to process mixed bills.

Parliament opted to allow for the separation of the section 77 and section 75 provisions and have the bills containing these provisions introduced separately. Because the bill originated from the Minister of Finance and only

he can introduce a money bill, the bill was referred back to him for splitting.

The passage of the separate bills was treated as a matter of urgency as they related to financial matters for 2004 and Parliament was about to go into recess for that year. National Treasury worked overnight to separate the section 77 from the section 75 provisions and on 9 November two bills, the Revenue Laws Amendment Bill and the Second Revenue Laws Amendment Bill, were introduced in the National Assembly. On the same day, the JTM classified the Revenue Laws Amendment Bill as a section 77 bill and the Second Revenue Laws Amendment Bill as a section 75 bill. The bills were referred to the Portfolio Committee on Finance for consideration and report.

To achieve speedy passage of the section 75 bill, the Chief Whip of the Majority Party proposed a resolution on 10 November that was agreed to on the same day, namely that for the purposes of conducting the Second Reading debate on the Second Revenue Laws Amendment Bill, the House would -

- (a) suspend any of its rules that may delay the conducting of such debate; and
- (b) subject to the concurrence of the National Council of Provinces, suspend Joint Rules 154 (allowing for a minimum of three days for comments on the classification of bills to be submitted to the JTM) and 159 (providing for the submission of bills to the Speaker and the Chairperson of the Council as soon as possible after Cabinet has approved them and prior to their formal introduction).

At the same sitting, the first reading debate on the Revenue Laws Amendment Bill took place. The second reading of this bill and of the Second Revenue Laws Amendment Bill followed without debate.

At its sitting on 16 November, on the motion of the Chief Whip of the Council, the NCOP agreed to suspend Joint Rules 154 and 159 for the purpose of considering the Second Revenue Laws Amendment Bill. On 17 November the Council considered and agreed to both bills.

30. NOTICES OF MOTION: TRIAL PERIOD

The Chief Whips' Forum agreed in a workshop held on 6 August to implement, for a trial period, a new system for programming motions of which notice had been given by members (see also *Item 1, Issue 6; Item 11, Issue 7; and Item 6, Issue 8*). In terms of the agreement, a task team comprising three members of the Chief Whips' Forum would monitor the system and report to the Forum at the end of the trial period.

In broad outline, the Forum agreed that two slots per four weeks of session would be set aside for members' motions and that debates on those motions would be at least 60 min-

utes long. Interested members of the Forum would meet weekly to select, by consensus, motions to be recommended to the full Chief Whips' Forum for final decision. The Forum's decision would then be referred to the Programme Technical Committee for scheduling proposals. In terms of the agreement, notices of motion published on the Order Paper but not programmed for debate within six working weeks, would lapse.

The agreement was implemented with effect from 25 August and will be reviewed at the beginning of 2005. The following seven motions were debated by the House as subjects for discussion:

- Black economic empowerment as a tool to bring greater numbers of South Africans into the mainstream economy. (Mr C M Lowe, DA)
- The human rights tragedies in Darfur in Sudan and the massacre of Congolese Tutsi refugees in Burundi. (Mr D H M Gibson, DA)
- The effectiveness of Sector Education and Training Authorities (Seta's) in improving the skills of both the employed and unemployed in South Africa. (Mr C M Lowe, DA)
- The funding of social services given the major challenges and obstacles facing delivery of services with particular reference to the enormous burden on non-governmental organizations in the welfare sector to do statutory work without the budget to do so. (Mrs C Dudley, ACDP)
- The retrenchment of Telkom workers, with reference to:
 - (a) the planned retrenchment of 7 600 workers at Telkom in spite of Telkom's profit of R4,5 million;
 - (b) recommendations and report of the three trade unions at Telkom to address the matter; and
 - (c) taking a stand on what the government as majority shareholder in Telkom should do to prevent these retrenchments.(Dr P W A Mulder, FF Plus)
- The restructuring of the UN and its agencies to serve and protect the poor of the world, who constitute the majority of humanity. (Mr D J Sithole, ANC)
- The introduction of a single national public service without compromising the advantages of proximity to the community and flexibility of local government in service delivery. (Mr P J Gomomo, ANC)

31. PUBLICATION OF PROCEDURAL GUIDE

With the advent of the new democratic Parliament in 1994, the majority of the members sworn in had never set foot in the South African Parliament and had little if any knowledge of the procedures that enabled the institution to function. Thus the parliamentary offi-





cials conducted intense induction workshops to orientate members around the then rules and procedures. With the rapid development and transformation of the institution subsequently, including the adoption and implementation of the new Constitution in 1996, there was not enough time for Table Staff to prepare anything more than brief guides for members in dealing with legislation and other parliamentary processes.

It was therefore with pride and a real sense of achievement that the first comprehensive Guide to Procedure was published in March 2004. The *National Assembly Guide to Procedure 2004* is an attempt to provide a structured and detailed overview of the constitutional and other statutory provisions, the Assembly and Joint Rules, and established practices and conventions which, collectively, provide the framework within which the members exercise their powers and functions. The Guide consists of 17 chapters which cover a wide range of topics such as the National Assembly and its constitutional role; the Presiding Officers and other office-bearers; sources of Assembly procedure; sessions and sittings; parliamentary committees; and the legislative procedure.

The Guide reflects the proceedings and procedures that were in place up to February 2004, ie at the close of the Second Parliament. The process of transformation is however ongoing, the fundamental issues currently under review including Parliament's oversight role; the scrutiny of delegated legislation; the financial administration of Parliament; rules to give effect to the provisions of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act of 2004; and the restructuring of the Office of the Speaker. In addition to the above transformation issues, there are rules and provisions that have not yet been subjected to practical application and in respect of which no precedents have been set or practices developed. Regular updating of the Guide will therefore be imperative because further substantive changes to the manner in which the Assembly functions can be expected in due course.

Under the guidance of the Secretary to the National Assembly, a former Undersecretary to the National Assembly, Peter Lilienfeld, was responsible for writing up the Guide, using records and resources maintained by Table staff. The Guide was distributed to all members and several national and international organisations, including African and other parliaments, NGOs, tertiary institutions, provincial legislatures and international parliamentary organisations.

LEGISLATION AND COMMITTEES

32. ELECTORAL COMMISSION AMENDMENT BILL

The Electoral Commission Amendment Bill was introduced in the National Assembly as a section 75 bill by the Minister of Home Affairs on 9 June and referred to the Ad Hoc Committee on Home Affairs.

The bill sought to amend the Electoral Commission Act, Act No 51 of 1996, to authorise the President, on the recommendation of the National Assembly, to extend the term of office of any member of the Electoral Commission for a specified period. In terms of the principal Act, the National Assembly must, by resolution, recommend for appointment by the President, candidates nominated by a committee of the House. Such nominations are made from a list of eight candidates submitted to the committee by a panel chaired by the Chief Justice.

The amendment became necessary since the term of office of the existing members of the Commission was due to expire on 30 June and the Chief Justice had indicated that the candidates' list would not be ready in time for the nomination and appointment process to be finalised by 1 July, the day on which the new commissioners were due to take office.

The ad hoc committee tabled its report on the bill on Friday, 11 June. On Tuesday, 15 June, the House resolved to suspend Rule 253(1) for the purposes of conducting the Second Reading debate on the bill before three working days had elapsed since the committee's report had been tabled. The bill was adopted by the Assembly on the same day, with the Democratic Alliance dissenting. The NCOP agreed to the bill on 21 June. The bill was assented to and came into effect on 22 June.

The Assembly immediately, by resolution on 25 June, extended the term of office of the current commissioners to 30 September in terms of the newly enacted provision (see also *Item 44*).

33. IMPLEMENTATION OF TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK ACT

On 24 September 2004, the Traditional Leadership and Governance Framework Act (Act No 41 of 2003) came into effect. The Act provides in section 18 that "Any Parliamentary Bill pertaining to customary law or customs of traditional communities must, before it is passed by the House of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House of Traditional Leaders for its comments" (see *Item 12, Issue 8*).

At the Joint Rules Committee (JRC) meeting of 18 November, the Joint Subcommittee on Review of the Joint Rules was requested to look at the rule amendments that may be necessary to implement section 18 of the Act. The Legal Services Office also advised the JRC that none of the bills that were before Parliament at the time and that had not yet been passed by any of the Houses at the time when the Act came into operation, fell under the provisions of section 18. Rule amendments were not yet in place by the end of the year.

In section 20, the Act provides that the national or provincial government, as the case may be, may provide a role for traditional councils or traditional leaders in respect of arts and culture, land administration, agriculture, health, welfare, the administration of justice, safety and security, the registration of births, deaths and customary marriages, economic development, environment, tourism, disaster management, the management of natural resources, and the dissemination of information relating to government policies and programmes.

In terms of section 20(2), when an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditions leaders in terms of the above-mentioned provision, it must -

- (a) seek the concurrence of -
 - (i) the Minister, if the organ of state making the allocation is in the national sphere of government; or
 - (ii) the Member of the Executive Council responsible for traditional affairs, if the organ of state is of that province.
- (b) consult with -
 - (i) the relevant structures of traditional leadership; and
 - (ii) the South African Local Government Association;
- (c) ensure that the allocation is consistent with the Constitution and applicable legislation;
- (d) take the customary law and customs of the respective traditional communities into account;
- (e) strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- (f) ensure, to the extent that it is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and
- (g) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions.

Subsection (3) determines that where an organ of state has allocated a role or function to traditional councils or leaders, it must monitor the implementation of the function and ensure that its implementation is consistent with the Constitution and is being performed. In terms of subsection (4), if a traditional council does not perform an allocated function as envisaged in subsection (3), any resources given to that traditional council to perform that function may be withdrawn.

Section 22 establishes a Commission on Traditional Leadership Disputes and Claims of which the President appoints the members (no more than 15), such members to be knowledgeable about customs and the institution of traditional leadership. Section 24 determines that a vacancy on the Commission occurs whenever a member of the Commission gives written notice to the President; is removed by the President on certain grounds set out in section 23(3) of the Act; or becomes a member of the National Assembly, a provincial legislature or municipal council, or a permanent delegate to the NCOP.

34. PUBLIC AUDIT BILL AND OVERSIGHT OF AUDITOR-GENERAL

Revival of bill

The Public Audit Bill was read a second time in the National Assembly on 17 February and referred to the National Council of Provinces. The National Council of Provinces was unable to complete its consideration of the bill before the end of the Second Parliament and consequently the bill lapsed. (For processes leading up to this, see *Item 27, Issue 7, Item 20, Issue 8 and Item 14, Issue 9*.)

On 18 June, the National Assembly of the Third Parliament passed a resolution to revive the bill. The resolution provided that consideration of the bill be resumed from the stage it reached in the Second Parliament. The NCOP passed a similar resolution on 21 June. Consideration of the bill therefore began in the National Council of Provinces.

Ad Hoc Committee on Auditor-General

The Audit Commission established by the Audit Arrangements Act of 1992 had not been reappointed by the President after the commencement of the new Parliament. Owing to the absence of the Audit Commission and the fact that the Public Audit Bill had not been passed into law and therefore the oversight mechanism to be established by the National Assembly, as envisaged in the bill, to replace the Audit Commission was not yet in place, the National Assembly passed a resolution on 19 October establishing an ad hoc committee consisting of 17 members of the National Assembly. The mandate of the committee was to consider and report on the annual report on the Office of the Auditor-General and to





engage with the Office of the Auditor-General on the Auditor-General's budget. The ad hoc committee was to report to the National Assembly in this regard by 19 November.

The mandate of the ad hoc committee was extended by the National Assembly on 11 November to enable the committee to maintain oversight over the Auditor-General and to continue with its functions until the oversight mechanism envisaged in the Public Audit Bill was established.

Enactment of bill

The NCOP passed the Public Audit Bill on 19 October. The bill was assented to and signed by the President on 14 December.

One of the objects of the Act, set out section 2(c)(i) and 2(c)(ii), is to provide for an oversight mechanism of the National Assembly to assist and protect the Auditor-General in order to ensure his or her independence, impartiality, dignity and effectiveness and to advise the National Assembly.

The following are some of the provisions of the Act:

Functions

In terms of section 5(1)(b) of the Public Audit Bill, the Auditor-General may also provide advice and support - at a fee - outside the scope of his or her normal audit and reporting functions to a legislature or any of its committees.

Appointment

Section 6 determines that whenever it becomes necessary to appoint a person as Auditor-General, the Speaker must initiate the process in the National Assembly for the recommendation of a person to the President for appointment as Auditor-General as set out in section 193 of the Constitution. When making an appointment, the President must determine the term for which the appointment is made, subject to section 189 of the Constitution.

Accountability

Section 10 of the Act deals with the accountability of the Auditor-General and determines that the Auditor-General, as also provided for in section 181 of the Constitution, is accountable to the National Assembly. He or she must annually submit a report to the National Assembly on his or her activities and the performance of his or her functions. In addition, the Auditor-General must annually submit the report on his or her control of the Auditor-General's administration, as required by section 30(2), and the annual report, financial statements and audit report on those statements. The National Assembly must provide for a mechanism to maintain oversight over the Auditor-General.

Code of conduct for authorised auditors

Section 12 ascribes a further function to the oversight mechanism. In terms of this provision, the Auditor-General may authorise one or more persons to perform or assist in the performance of an audit. The Auditor-General must, after consulting the oversight mechanism, issue a code of conduct for authorised auditors. Furthermore, section 47 determines that a charge of financial misconduct against the Deputy Auditor-General or another staff member must be investigated, heard and disposed of in terms of that person's conditions of employment and any applicable provisions of the code of conduct.

Submission of audit reports

The Auditor-General must, as set out in section 21 of the Act, submit an audit report in accordance with any legislation applicable to the auditee which is the subject of the audit. If there is no such legislation, the Auditor-General must submit the audit report to the relevant legislature within a reasonable time. Audit reports must be tabled in the relevant legislature in accordance with any applicable legislation or otherwise within a reasonable time. If an audit report is not tabled in a legislature within one month after its first sitting after the report has been submitted by the Auditor-General, the Auditor-General must promptly publish the report. Despite any other legislation, the Auditor-General may in the public interest submit an audit report to any legislature whether or not that legislature is a relevant legislature, or any organ of state.

Discharge of auditors

Section 26 provides that an auditee who is a public entity may discharge an auditor appointed by it (an auditor in private practice) before the expiry of that auditor's term of appointment. The Auditor-General must report the discharge of the auditor to the relevant legislature.

Special audits

If the Auditor-General issues a special report on an investigation or special audit in terms of section 29, he or she must submit the special report to the relevant legislature for tabling in that legislature.

Appointment of Deputy Auditor-General

Section 31 determines that the Auditor-General, after consulting the oversight mechanism, must appoint a person with appropriate qualifications and experience as the Deputy Auditor-General.

Budget and business plan

In terms of section 38, the budget and business plan of the Auditor-General must be submitted to the oversight mechanism at least six months before the start of a financial year. The oversight mechanism must consider the budget and business plan and, within two months of

receipt thereof, submit its recommendations to the Speaker for tabling in the National Assembly. Furthermore, at the end of a financial year, the Auditor-General may, after consultation with the National Treasury and by agreement with the oversight mechanism, retain any surplus reflected in the financial statements or a portion thereof for working capital and general reserve requirements.

Annual report and financial statements

For each financial year the Deputy Auditor-General must prepare an annual report and financial statements which fairly present the state of affairs of the Auditor-General. Section 41 determines that the financial statements have to be drawn up in accordance with the South African Statements of Generally Accepted Accounting Practice or other international best practice approved by the oversight mechanism. The Auditor-General must then submit the annual report, the financial statements and the audit report on those statements within six months after the financial year to which they relate to the oversight mechanism and to the Speaker for tabling in the National Assembly. If the Auditor-General fails to comply with this provision, he or she must promptly submit a written explanation to the National Assembly, setting out the reasons for the delay.

Regulations

In terms of section 52, the Auditor-General may make regulations - after consultation with the oversight mechanism - pertaining to any matter to facilitate the application of the Act. Any regulations made in terms of this provision, must be submitted to the Speaker for tabling in the National Assembly.

35. PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST AND RELATED ACTIVITIES ACT

Passage of the bill

The Protection of Constitutional Democracy against Terrorist and Related Activities Bill [B12-2003], originally introduced as the Anti-Terrorism Bill, lapsed at the end of the life of the Second Parliament. On 22 June, the House adopted a motion that the bill be revived and its consideration be resumed from the stage where the bill, in the version passed by the NA [B12B- (Reprint)], is transmitted to the NCOP for concurrence. (see *Item 24*)

On 4 November, the NCOP passed the bill, subject to the Assembly's approval of proposed amendments. On 5 November the Portfolio Committee on Safety and Security reported in the ATC that it had endorsed the NCOP's proposed amendments.

On 12 November, the bill and the report of the Portfolio Committee on Safety and Security were considered for approval by the House. There was no debate, but the Minister of

Safety and Security addressed the House on the amended version of the bill. In his speech, the Minister stated that the nature and topic of the bill, viewed against the backdrop of South Africa's history, was sufficient reason to be cautious and to expect some form of vigilance from the public on what should be contained in the bill. He added that when the government had embarked on a process of drafting counterterrorism legislation, it knew that it would not be an easy process, specifically in the light of South Africa's experiences with security legislation under apartheid. It was precisely for that reason that an elaborate consultation process had been followed, culminating in the discussion paper prepared by the SA Law Reform Commission, public hearings and parliamentary processes.

During the SA Law Reform Commission processes, responses to the discussion paper and draft bill were received from several institutions and 62 individuals ranging from the judiciary, the magistracy, attorneys, advocates, human rights organisations, government departments, and religious organisations. In addition, public hearings were held by the Portfolio Committees on Safety and Security, Finance, Foreign Affairs and Justice and Constitutional Development, and the Joint Standing Committee on Intelligence.

The concerns raised in respect of the bill ranged from objections against its original name (Anti-Terrorism Bill), to some political and religious concerns. The labour federation union (Cosatu), for example, argued that the bill might interfere with their exercising of constitutional rights related to industrial action. Concerns were also raised by the media that the bill might suppress their freedom. In the light of these and other concerns, attempts were made by the government and Parliament to provide opportunities to stakeholders to make inputs in the drafting of the bill to enable the Republic to comply with international and national obligations in regard to the combating of terrorism.

The bill was passed by the Assembly on 12 November. It was assented to by the President on 4 February 2005 and comes into operation on 20 May 2005.

Parliament's role

International and regional obligations arising from international instruments relating to terrorist and related activities, and especially resolutions of the Security Council of the United Nations, necessitate specific legislation to combat such activities by providing for measures in respect of jurisdiction, combating the financing of terrorism and the enactment of specific offences with penalties which reflect the seriousness of the offences. A range of related activities are made offences in terms of the Act and it provides for an extended extraterritorial



jurisdiction in respect of terrorist and related activities.

In terms of section 12 of the Act, any person who suspects that any other person intends to commit or has committed an offence or is aware of the presence at any place of any other person who is suspected of intending to commit or having committed such an offence, must report such suspicion or presence, as the case may be, to any police official. Upon receipt of such a report, the police official must take down the report in the manner directed by the National Police Commissioner, and provide the person who made the report with an acknowledgement of receipt of such report. In addition to publishing the directive in the Gazette, the National Police Commissioner must also table in Parliament any directive issued.

In terms of the Act, the President of the Republic must, by proclamation in the Gazette, and other appropriate means of publication, give notice that the Security Council 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 participates in or facilitates the commission of any terrorist and related activity; or an entity against whom member states of the United Nations must take the actions specified in resolutions of the said Security Council, in order to combat or prevent terrorist and related activities. Every proclamation issued must be tabled in Parliament for its consideration and decision and Parliament may thereupon take such steps as it may consider necessary.

36. FINANCIAL ADMINISTRATION OF PARLIAMENT BILL

In the Second Parliament, the Portfolio Committee on Finance had been instructed by the House to consider the subject of the financial administration of Parliament with a view to introducing a bill dealing with the matter and to report to the House. At the time of the dissolution of the Assembly, the committee had reported that due to its heavy legislative workload it had been unable to give due consideration to the subject. The committee accordingly recommended that the matter stand over for consideration by the new Parliament. (see *Item 10, Issue 9*)

On 18 June, the National Assembly, by resolution, mandated the Ad Hoc Committee on Finance to:

- (1) consider the subject of the financial administration of Parliament with a view to introducing a bill dealing with the matter, in accordance with the Assembly Rules;
- (2) report to the House by not later than 31 August 2004; and
- (3) subject to the concurrence of the National Council of Provinces, confer

with the Select Committee on Finance of the Council.

On 24 June, the National Assembly dissolved the subject-related ad hoc committees and the mandate given to the Ad Hoc Committee on Finance to consider the subject of the financial administration of Parliament was accordingly transferred to the Portfolio Committee on Finance with the same timeframes.

On 27 August, the Portfolio Committee on Finance reported in the ATC on the work that had been done to date. According to the report, the committee was still awaiting submissions from several key role-players. The committee expressed its intention, however, to introduce a bill on the subject in time for it to be considered by the House before the end of the year, thereby effectively asking the House for an extension of the deadline by which the committee was required to complete its work. The report of the committee had not been considered by the House by the end of the year and the committee had not yet completed its consideration of the subject.

37. ESTABLISHMENT OF COMMITTEES

The Rules provide for the establishment of various committees and joint committees. The Speaker establishes portfolio committees with the concurrence of the National Assembly Rules Committee.

Interim structures

As the Rules Committee had not yet been formally appointed, at a meeting of presiding officers and party representatives on 4 May the Speaker said that in view of developments within the Executive concerning the grouping of cabinet portfolios in clusters, a need had been identified during the previous Parliament to review and possibly rationalise the structure of portfolio committees. She therefore proposed that ad hoc committees be established in the interim, pending the review of the committee structure.

At that meeting, it was agreed that -

- subject-related ad hoc committees be established in lieu of portfolio committees;
- the ad hoc committees would consist of 17 members each, as follows: ANC 10; DA 2; IFP 1, and other parties 4;
- the establishment of all committees created by legislation and the Constitution be proceeded with;
- the Subcommittee on Rules and the Joint Subcommittee on Rules be established to deal, amongst others, with the implications of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004;

- an Ad Hoc Committee on International Affairs be established with two subcommittees under it, namely a subcommittee to conduct oversight over foreign policy (in lieu of the Portfolio Committee on Foreign Affairs) and a subcommittee on the African Union to deal with matters such as the Pan-African Parliament, Nepad, the African Peer Review Mechanism, SADC, and others; and
- a Joint Ad Hoc Forum on the Parliamentary Budget be established to prepare the parliamentary budget and report thereon to the Joint Rules Committee (this would replace the Joint Subcommittee on the Parliamentary Budget).

Consequently, on 6 May, the National Assembly, by resolution, established: -

- 25 subject-related ad hoc committees in lieu of portfolio committees – these committees were given the power to perform the functions of portfolio committees contained in Rule 201 in respect of government affairs assigned to them, and in particular to consider the budget Votes of the relevant state department;
- an ad hoc committee on International Affairs comprising of two subcommittees, namely a subcommittee on foreign affairs and a subcommittee on African Union to deal with issues emanating from the African Union and related matters; and
- a Joint Ad Hoc Forum on the Parliamentary Budget. (See below) (*Minutes of Proceedings of the National Assembly, 6 May*)

Joint Ad Hoc Forum on the Parliamentary Budget

At the meeting on 4 May, it was agreed that the structures and control of the Houses over the parliamentary administration would be reviewed. Pending the review, and because the matter was urgent, it was agreed to establish a Joint Ad Hoc Forum on the Parliamentary Budget instead of the Joint Subcommittee on the Parliamentary Budget, a subcommittee of the Joint Rules Committee. On the motion of the Chief Whip of the Majority Party, the House agreed on 6 May, subject to the concurrence of the NCOP, to appoint an Ad Hoc Forum on the Parliamentary Budget. In accordance with the resolution, the forum would consist of the following members:

- The Speaker, Deputy Speaker and Chairperson of Committees of the National Assembly;
- the Chairperson, Permanent Deputy Chairperson and Chairperson of Committees of the Council;
- the Chief Whip of the Council;
- the chief whips or senior whips of the ANC, the DA and the IFP, and one from the other parties; and

- from either House, one senior member designated by the ANC, DA and IFP, respectively, and one from the other parties.

The Speaker and Chairperson of the NCOP would co-chair the forum or, in the absence of either, the Deputy Speaker or Deputy Chairperson. The forum was required to prepare the parliamentary budget and report on it to the Joint Rules Committee. The House further resolved that the forum would be dissolved by resolution of both Houses and that the Rules applicable to joint committees generally would apply to the forum to the extent required or appropriate. The NCOP passed a similar resolution on 10 May.

Membership of Rules Committee

At the meeting on 4 May, it was further agreed that parties would have the following representation on the Rules Committee, excluding the Speaker, the Deputy Speaker, the Chairperson of Committees and the Deputy Chairperson of Committees who are ex officio members of that committee: ANC 17; DA 4; IFP 2, and other parties 1. The membership was published on the ATC of 26 May.

Reduction in size of Assembly component of Joint Committee on Ethics and Members' Interests

At the same meeting it was agreed that the Assembly component of the Joint Committee on Ethics and Members' Interests would be reduced from 45 to 18 members, as follows: ANC 10; DA 2; IFP 1; UDM 1, and 4 from the other parties.

The reduction in the size of this joint committee has not been brought to the House for approval.

Reduction in size of Assembly component of Joint Monitoring Committees

On 26 May, following a decision by the Rules Committee on the same day, the National Assembly by resolution until further notice, reduced the size of the Assembly component of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women and the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Children, Youth and Disabled Persons from 17 to 13 members, as follows: ANC 8; DA 2; IFP 1; other parties 2.

As the resolution of the National Assembly changed a joint rule and therefore needed the concurrence of the NCOP, the resolution was formally communicated to the NCOP by message in the ATC of 27 May (see p 95 of ATC). The NCOP passed a resolution concurring with the NA on 1 June.



Reduction in size of Constitutional Review Committee

On 4 August the Joint Rules Committee decided that the Constitutional Review Committee would be reduced to the size of joint monitoring committees, namely 13 Assembly and 9 Council members.

The reduction in the size of this committee has not been brought to the Houses for approval.

Appointment of members to Subcommittee on Review of the Assembly Rules

In terms of Rule 165(2) the Rules Committee appoints members of its subcommittees. It also, in respect of inter alia the Subcommittee on Review of the Assembly Rules, appoints one of the members of the subcommittee as chairperson of the subcommittee.

At the meeting of the Rules Committee on 11 June the following persons were appointed to the Subcommittee on Review of the Assembly Rules: Adv T M Masutha (ANC); Mr J Bici (UDM); Mr J H van der Merwe (IFP); Mr S N Swart (ACDP); Adv H A Schmidt (DA); Ms E Thabethe (ANC); Mr J H Jeffery (ANC); Ms S Rajbally (MF) and Ms E Ngaleka (ANC alternate member). Adv Masutha was appointed as chairperson of the subcommittee.

Finalisation of structure of portfolio committees

At the meeting of the Rules Committee on 23 June, it was decided not to rationalise portfolio committees. It was accordingly agreed that -

- portfolio committees be established to replace the subject-related ad hoc committees established by resolution of the National Assembly on 6 May. The composition of these committees would remain the same, namely 17 members, as follows: ANC 10; DA 2; IFP 1; other parties 4.
- the Ad Hoc Committee on International Affairs established by House resolution on 6 May be dissolved and the Portfolio Committee on Foreign Affairs be established consisting of two subcommittees, namely, a Subcommittee on International Affairs and a Subcommittee on African Union and Related Matters. Each subcommittee was to consist of 17 members as follows: ANC 10; DA 2; IFP 1; other parties 4. (Mr D J Sithole was subsequently appointed as chairperson of the Portfolio Committee on Foreign Affairs and of the Subcommittee on International Affairs, while Ms F Hajaig was appointed as chairperson of the Subcommittee on African Union and Related Matters.)

Consequently the Speaker established the portfolio committees and the House dissolved the subject-related ad hoc committees and referred all matters before these committees to the relevant portfolio committee. (See ATC, 23

June, pp 340-341, and *Minutes of Proceedings of the National Assembly*, 24 June]

Establishment of Joint Budget Committee

In the Second Parliament the Joint Budget Committee (JBC) was established by resolution of both Houses. On 25 June the National Assembly again established the JBC, consisting of 17 Assembly members and 9 Council members. The NCOP adopted the same motion on 30 June.

The committee was mandated to:-

- consider proposed allocations in the Medium-Term Expenditure Framework (MTEF) and the Appropriation Bill and whether these allocations are broadly in keeping with the policy directives of the government;
- make proposals regarding the processes Parliament should follow with regard to its role in the developing of budgets in accordance with constitutional requirements;
- monitor on a regular basis monthly published actual revenue and expenditure per department, and ascertain whether they are in line with the budget, and report to the Houses quarterly thereon;
- consider, when tabled, the Medium-Term Budget Policy Statement (MTBPS) with the exception of the sections dealing with the macro-economic situation and revenue, and report to the Houses thereon;
- consider and make proposals regarding the nature of its functions relative to those of other committees in respect of the budget process and conducting oversight and to submit a final report on this by not later than the end of the next budget cycle in Parliament.

Joint Standing Committee on Intelligence

The Joint Standing Committee on Intelligence (JSCI) is established by section 2 of the Intelligence Services Control Act, Act No 40 of 1994. The representation of political parties on this committee is determined according to a formula contained in this Act. In applying the formula to the composition of the Third Parliament, the following parties qualified for membership of the JSCI: ANC 10; DA 1; IFP 1; UDM 1; ID 1; NNP 1.

The membership of the committee is subject to the nominated members obtaining a security clearance from the National Intelligence Agency. The Speaker or the Chairperson of the NCOP appoints the members, depending on the House from which the member is nominated, acting with the concurrence of the President.

On 3 June, the NNP informed the Speaker that they would not be taking up their seat on the committee. The Act provides that if a political party is unwilling to serve on the committee, the seat or seats of such party on the

committee shall not be allocated to any other party, but the committee shall nevertheless be deemed to be properly constituted.

On 10 June, the Minister for Intelligence informed the Speaker that a member whose name had been submitted did not obtain a security clearance. The Speaker wrote to the party concerned and requested the party to furnish the name of another nominee for the purposes of obtaining a security clearance and appointment to the committee. The party concerned had not provided such a nomination by the end of the year.

Establishment of joint subcommittees of Joint Rules Committee

At the meeting of the Joint Rules Committee on 4 August, during discussions on the role of the Joint Rules Committee, the issue of the establishment of joint subcommittees of the Joint Rules Committee was raised. There were concerns that administrative issues were being brought to the Joint Rules Committee. It was suggested that members should look at the proposed governance model and see whether it could be linked to the work previously done by the joint subcommittees.

Joint Subcommittee on Review of the Joint Rules

This joint subcommittee was established, the members of the Subcommittee on Review of the Assembly Rules, which is a component of the joint subcommittee, having been appointed by the NA Rules Committee on 11 June.

Joint Subcommittee on the Parliamentary Budget

The establishment of the Joint Ad Hoc Forum on the Parliamentary Budget effectively replaced the Joint Subcommittee on the Parliamentary Budget (See above).

Other joint subcommittees

The other joint subcommittees of the Joint Rules Committee were not established, viz the Joint Subcommittee on Support for Members; Joint Subcommittee on Internal Arrangements; Joint Subcommittee on International Arrangements and the Joint Subcommittee on Funding of Political Parties.

38. NEW GOVERNANCE MODEL FOR PARLIAMENT

At the meeting of the Presiding Officers and party representatives on the morning of the President's inauguration on 27 April, the Speaker mentioned that before the end of the life of the Second Parliament thought had been given to the establishment of a new governance model for Parliament. It was agreed there that the matter would be explored in more detail at a meeting on 4 May between the Presiding Officers and party representatives. At the meeting on 4 May, it was agreed that the structures and control of the Houses

over the parliamentary administration would be reviewed.

Essential role of Joint Rules Committee

Before the presentation of a proposed governance model to a meeting of the Joint Rules Committee on 4 August, the Speaker explained that the essential role of the Joint Rules Committee was to focus on substantive issues linked to the core business of Parliament and not to focus on administrative issues. She added that the Joint Rules Committee had not been reporting regularly to the Houses, whereas that was where the final authority of Parliament resided.

The Joint Rules Committee was established in terms of section 45 of the Constitution to make rules and orders concerning the joint business of Parliament, particularly with regard to the passage of legislation and the establishment and regulation of joint committees. In the establishment of the Joint Rules Committee (Joint Rule 53), however, its functions and mandate broadly extend beyond Parliament's core business to include all aspects of the management and administration of Parliament. Further, a range of subcommittees are established, the majority of which focus on domestic matters related to the management and administration of Parliament.

In practice, this model gave rise to numerous difficulties. The distinction between practical, detailed management issues and policy-making became blurred and consequently the subcommittees and the Joint Rules Committee itself ended up devoting much of their time to issues of micro-management. As a result, policy issues and the core business of Parliament became largely sidelined.

The meeting agreed that the role and functions of the Joint Rules Committee would be revisited once a decision had been taken about the proposed directing authority.

First presentation of proposed governance model

Following the Speaker's briefing on the role of the Joint Rules Committee, the Secretary to Parliament presented a proposed governance model to members of the committee. After a brief discussion, the committee agreed that parties would take the proposal to their caucuses for discussion and party inputs would be considered at a special meeting of the committee.

Special Joint Rules Committee meeting

At a special meeting of the Joint Rules Committee on 14 September, parties were given an opportunity to discuss problem areas in respect of the draft governance model that had been presented at the previous meeting. After a substantive discussion, it was agreed that the presiding officers and Secretariat





would reconsider and refine the proposals before the committee, with particular emphasis on the process of policy; the role of the Chief Whips' Forum; the proposed Quarterly Consultative Forum; the Joint Forum on the Parliamentary Budget; the relationship between the directing authority and the Joint Rules Committee; representivity on the directing authority, in particular that of the smaller opposition parties; and the participation of the Secretary to Parliament in the directing authority.

Adoption of governance model

On 18 November, the Joint Rules Committee met to finalise the governance model. The Speaker reported back to the meeting on the issues the presiding officers had been required to look at in accordance with the decision of the committee on 14 September. Parties were again given an opportunity to propose adjustments to details of the governance model.

On the proposal of the Speaker, the meeting also agreed that in the absence of the chief whip, the deputy chief whip or a member duly designated by the chief whip could attend meetings of the Parliamentary Oversight Authority; the smaller parties would forward to the presiding officers the names of the members who would represent them on the Parliamentary Oversight Authority and the names of their alternate members; a designated alternate could not attend a meeting if the full member was present; and the Secretary to Parliament would serve on the Parliamentary Oversight Authority in ex officio capacity.

Finally, on the motion of Ms M P Mentor, seconded by Mr D H M Gibson, the meeting resolved that the governance model as presented was agreed, subject to the adjustment of details identified at the meeting, the Secretary to Parliament to convene the Parliamentary Oversight Authority accordingly.

The Parliamentary Oversight Authority

The agreed governance model provides for a Parliamentary Oversight Authority (POA), co-chaired by the Speaker and the Chairperson of the National Council of Provinces. The POA is responsible for formulating policy directives in respect of the various services and facilities of Parliament and ensuring and monitoring implementation of the policy by giving a broad indication of the levels and extent of the required services and facilities of Parliament. The POA is accountable directly to the two Houses of Parliament.

Composition of the POA

The POA is comprised of the Speaker and Chairperson of the NCOP; the Deputy Speaker and Deputy Chairperson of the NCOP; the Chief Whip of the Majority Party in the National Assembly; the Chief Whip of the Largest Opposition in the National Assembly; the Chief

Whip of the Second Largest Opposition Party in the National Assembly; two representatives elected by and representing the smaller opposition parties; and the Chief Whip of the Council. The Secretary to Parliament is an ex officio member of the POA. Members of the POA are appointed for the period that they hold office in above-mentioned positions. There is a provision for designated alternates.

Powers of the POA

The Parliamentary Oversight Authority may regulate its proceedings and perform its functions in the manner it deems fit. Meetings are to be held at least quarterly, or as the chairpersons determine. A quorum for a meeting shall be six members and the POA has to operate in a consensus-seeking manner. If the Authority fails to reach consensus, the Speaker and the Chairperson of the NCOP may perform all the functions and exercise all the powers conferred on the Authority.

Mandate of the POA

The mandate of the POA is to ensure an effective and efficient Parliament by putting in place an appropriate system of governance by means of which Parliament is managed and controlled in support and furtherance of its strategies and policies.

Functions and responsibilities of the POA

The POA is responsible for all governance matters such as determining, planning and directing all resource requirements and reporting on its operations. That would entail, inter alia, ensuring compliance with applicable legislation; setting the strategic direction, objectives and priorities of Parliament; determining policy parameters; agreeing Parliament's key performance indicators in terms of the Medium-Term Expenditure Framework; delegating to management the detailed planning and implementation of that policy; ensuring compliance with accounting standards and policy; receiving input from the Quarterly Forum on matters pertaining to members' facilities and interests; considering reports from committees established by it, such as the Audit Committee and the Remuneration Committee; and providing authorisation for decisions with a financial impact.

Operationalisation of the governance model

Following the Joint Rules Committee's adoption of the governance model, it has to be presented to the Houses for final approval. A range of rule changes are also required. Once the governance model has been approved by the Houses, the rules will stand referred to the Joint Subcommittee on Review of the Joint Rules for drafting.

The implementation will be phased in over two financial years, starting in January 2005, and relationships between the different bodies will be established.

MONEY BILLS AND BUDGETARY MATTERS

39. REVIVAL OF APPROPRIATION BILL

See “*Appropriation Bill*” under Item 24.

40. BUDGET VOTES DEBATED IN EXTENDED PUBLIC COMMITTEES

See *Item 25*.

41. SPLITTING OF REVENUE LAWS AMENDMENT BILL

See *Item 29*.

42. JOINT BUDGET COMMITTEE

See “*Establishment of Joint Budget Committee*” under Item 37.

STATUTORY FUNCTIONS

43. DETERMINATION OF PRESIDENT’S SALARY

In terms of section 2(1) of the Remuneration of Public Office Bearers Act, Act No 20 of 1998, the National Assembly, by resolution, determines the salary and allowances paid to the President of the Republic of South Africa, after taking into consideration the following:

- 1) recommendations of the Independent Commission for the Remuneration of Public Office-Bearers;
- 2) the role, status, duties, functions and responsibilities of the President;
- 3) the affordability of different levels of remuneration of political office-bearers;
- 4) current principles and levels of remuneration in society generally; and
- 5) inflationary increases.

On 12 November, the House, on a motion of the Chief Whip of the Majority Party, resolved that the salary and allowances payable to the President be determined at R792 339,81 and R264 113,19 per annum, respectively, with effect from 1 April 2004.

In terms of section 2(2) of the said Act, the amount of R40 000 per annum was determined, in terms of section 8(1)(d) of the Income Tax Act, Act No 58 of 1962, as an allowance granted to the President to enable him to defray expenditure incurred by him in connection with his office.

44. APPOINTMENT OF ELECTORAL COMMISSIONERS

In April 2004, the Chairperson of the Independent Electoral Commission informed Parliament that the term of office of current members of the Commission would expire on

30 June. The Commission, consisting of five members, was established on 1 July 1997, for a period of seven years. When it became clear that the process of nominating and appointing new commissioners would not be completed timeously, the National Assembly recommended on 25 June that the President extend the term of office of the current commissioners to 30 September. A bill had been passed earlier, enabling their term of office to be extended for a limited period. (See Item 32)

In terms of the Electoral Commission Act, Act 51 of 1996, the National Assembly must, by resolution, recommend for appointment by the President, candidates nominated by a committee of the House. Such nominations are made from a list of eight candidates submitted to the committee by a panel chaired by the Chief Justice.

In its report published in the ATC on 8 September, the Portfolio Committee on Home Affairs submitted the following nominations for approval by the Assembly: Dr B Bam, Ms N F T Mpumlwana, Mr T Tselane and Mr F van der Merwe. On 14 September, the House approved the nominations with the required majority.

45. APPOINTMENT OF MEMBERS TO JUDICIAL SERVICE COMMISSION

Six of the members of the Judicial Service Commission are designated by the National Assembly from among its members. In terms of section 178(1)(h) of the Constitution at least three of those designated must be members of opposition parties represented in the Assembly. Section 178(3) provides that members of the commission serve until they are replaced by those who designated or nominated them.


On 22 June, on a motion by the Chief Whip of the Majority Party, the National Assembly appointed the following members to the commission: Mr C V Burgess (ID), Mrs S M Camerer (DA), Adv J H de Lange (ANC), Ms L B Hendricks (ANC), Adv T M Masutha (ANC) and Mr J H van der Merwe (IFP).

On a motion by the Deputy Chief Whip of the Majority Party, the House, in terms of section 178(3) of the Constitution, agreed on 21 October to replace Adv J H de Lange with Mr N P Nhleko on the Judicial Service Commission with immediate effect.

46. APPOINTMENT OF MEMBERS TO MAGISTRATES COMMISSION

Section 3(1)(a)(x) of the Magistrates Commission Act, Act 90 of 1993, makes provision for four members of the National Assembly to be appointed to the Magistrates Commission by the House, “at least two of whom must be members of opposition parties represented in the Assembly”.





On 22 June the House appointed the following members to the Magistrates Commission: Ms F I Chohan-Khota (ANC), Ms N M Mahlawe (ANC) and Dr J T Delpont (DA). The House further noted that although Adv Z L Madasa's name (ACDP) had been put forward for appointment to the Commission, he was not available for appointment and that the fourth member from the National Assembly would be appointed later.

47. NOTICE FOR DESIGNATION OF UNITED KINGDOM IN TERMS OF CROSS-BORDER INSOLVENCY ACT

The Cross-Border Insolvency Act, Act No 42 of 2000, came into effect on 10 October 2003. The object of the Act is to provide for effective mechanisms for dealing with insolvency cases that will simultaneously affect the rights and obligations of debtors and creditors in South Africa and other national jurisdictions. It is also meant to strengthen the cooperation between the courts and other competent authorities of the Republic of South Africa and those of the foreign states involved in such cases of cross-border insolvency. Section 2(2)(a) of the Act provides that the Act will only apply in respect of any state designated by the Minister by notice in the Gazette. Section 2(4) requires that such notice be approved by Parliament before publication in the Gazette.

A notice by the Minister for Justice and Constitutional Development for designation of the United Kingdom in terms of the Act was tabled on 12 August and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report. The object of this designation is to enable the Government of the United Kingdom, upon application by South Africa, to provide an effective mechanism to deal with cases of cross-border insolvency. The House approved the notice on 3 November after an introductory speech by the Chairperson of the Portfolio Committee on Justice and Constitutional Development.

48. PARLIAMENTARY COMMITTEE IDENTIFIED TO RECEIVE QUARTERLY REPORTS OF NATIONAL CONVENTIONAL ARMS CONTROL COMMITTEE

The National Conventional Arms Control Bill was passed in 2002 (see *Item 25, Issue 6*). The bill was assented to by the President on 12 February 2003 and became Act No 41 of 2002. In terms of the Act, the National Conventional Arms Control Committee (NCACC) must make quarterly reports to a committee of Parliament determined by Parliament on all conventional arms exports concluded during the preceding quarter. The NCACC is thus required to report directly to an identified committee of Parliament. When the Second Parliament rose on 27 February, this particular committee had not been identified. However, the Joint Rules Committee at its meeting on 4 August resolved

that that the quarterly reports of the NCACC would be referred to the Joint Standing Committee on Defence, the committee to confer with other committees such as the Portfolio Committees on Foreign Affairs and on Trade and Industry when necessary.

49. DECLARATION OF AMNESTY IN TERMS OF FIREARMS CONTROL ACT

On 28 October, the Minister for Safety and Security tabled a declaration of amnesty in terms of section 139(2)(a) of the Firearms Control Act, Act No 60 of 2000. Section 139 provides that the Minister may, by notice in the *Gazette*, declare an amnesty if that may result in the reduction of the number of illegally possessed firearms in South Africa and it is in the public interest to do so. Such a notice will only be valid if it is approved by Parliament.

On 10 November the Portfolio Committee on Safety and Security, having considered the request for approval by Parliament of the draft notice for the declaration of an amnesty in terms of the Firearms Control Act referred to it, recommended that the House approve the said notice. The House agreed to the committee's recommendation without debate on 12 November. The NCOP approved the notice on 16 November.

50. JUDGES' AND MAGISTRATES' REMUNERATION

On 11 November, a request was received from The Presidency for the approval by Parliament of a draft notice and schedule in terms of section 12(3) of the Magistrates Act, Act No 90 of 1993, determining the rate at which salaries are payable annually to magistrates, with effect from 1 April 2004. On the same day a request was received for the approval of a draft notice and schedule in terms of section 2(4) of the Judges' Remuneration and Conditions of Employment Act, Act No 47 of 2001, determining the rate at which salaries are payable annually to Constitutional Court judges and judges, with effect from 1 April.

Both the Magistrates Act and the Judges' Remuneration and Conditions of Employment Act require Parliament, by resolution, to approve the notice, whether in whole or in part, or to disapprove the notice. In the normal course of events, the documents in question would have been tabled by the Presiding Officers and referred to the relevant committees for consideration and report. However, the following day was the last sitting day of the year for the Assembly. Copies of the draft notices and schedules were therefore sent to all parties with a request that they attend to them urgently. By agreement, resolutions for the approval of the requests were placed directly on the Order Paper and agreed by the House without debate on 12 November.

51. APPROVAL OF INTERNATIONAL PROTOCOL WITH RESERVATIONS

Section 231 of the Constitution, 1996, states that the negotiating and signing of international agreements is the responsibility of the executive. An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement of a technical, administrative or executive nature or an agreement which does not require either ratification or accession.

The Protocol to the African Charter on Human and People's Rights on The Rights of Women in Africa was tabled on 4 May and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report. In its consideration of the protocol, the portfolio committee noted that certain of its provisions were inconsistent with the South African legislative framework. The question that arose was whether Parliament could approve an international agreement, as provided in section 231 of the Constitution, with reservations.

The opinion by the parliamentary legal advisers was, *inter alia* –

The Constitution does not empower Parliament to approve a treaty if it has reservations not imposed by the executive. The power to negotiate treaties vests in the executive and Parliament would be traversing the separation of powers if it were to pass a treaty subject to its own reservations. Thus the executive may submit to Parliament for approval a treaty, with or without reservations. Parliament's power lies in refusing to approve a treaty (with or without reservations) if it has its own reservations regarding the treaty. On the other hand, if Parliament has reservations regarding a treaty but it does not view the reservations serious enough to warrant disapproving the treaty, it may approve the treaty and mention these reservations in the report it approves. Such noting of reservations in the report has no legal effect and serves only to express Parliament's view on a treaty it approved.

A further legal opinion was obtained from the legal advisers of the Department of Foreign Affairs. In the opinion was an extract from the *Manual on Executive Acts of the President of the Republic of South Africa* which reads as follows –

It should be stressed that the committees of Parliament are not in a position to negotiate or re-negotiate the terms of international agreements, especially multilateral treaties, which are negotiated in multilateral international fora. They may, however, be able to insist on a reservation or to refer the agreement back to the executive. The filing and

formulation of a reservation is the function of the executive.

The opinion went further to note that it had been the practice for many years that Parliament has the inherent authority to identify reservations as it may deem necessary to enable it to approve the international agreement. On the basis of this decision, the executive can draft the text of such a reservation and file it with the relevant depository.

In its report, tabled on 11 November, the portfolio committee recorded its reservations and interpretative declarations regarding the protocol and recommended that the protocol be approved subject to those reservations and interpretative declarations. When the report came before the House for consideration on 12 November, the chairperson of the portfolio committee, in her introductory speech, referred to legal questions and debates that had taken place on whether Parliament had the inherent right to invoke such reservations or not. The legal opinions ranged from those in favour of invoking the reservations to those against. The portfolio committee opted for the former. She said that for Parliament to approve the protocol (without reservations) would have been potentially illegal. The reservations were therefore invoked in order to ensure that no adverse legal consequences could be visited against Parliament and the executive, pertaining to the ratification of the protocol.

The Assembly adopted the report of the portfolio committee first and thereafter approved the protocol with the reservations contained in the committee's report as adopted. The National Council of Provinces followed a similar procedure on 17 November.

52. REPLACEMENT OF MINISTER'S REPORT ON PROVISIONAL SUSPENSION OF MAGISTRATE WITHOUT REMUNERATION

On 2 September, a letter was received from the Minister for Justice and Constitutional Development, requesting the withdrawal of a report that she had submitted to Parliament for tabling earlier. The report, tabled in the National Assembly on 12 August and referred to the Portfolio Committee on Justice and Constitutional Development, concerned the provisional suspension of a magistrate in terms of the Magistrates Act, Act No 90 of 1993. In terms of section 13(4A)(b) of the Act, once the Magistrates Commission has determined that the remuneration of a magistrate should be reduced or withheld, the Minister should table a report in Parliament regarding that determination and reason for it. Parliament must, as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, either with or without amendment, or set aside.





In her letter, the Minister did not state why she wanted to withdraw the report. Also, the letter was signed by the parliamentary liaison officer on behalf of the Minister. The Rules are silent on the withdrawal of instruments other than bills. However, such instruments, once tabled, are in the public domain and formally part of the parliamentary processes. Requests for their withdrawal should therefore also follow formal procedures.

The Clerk of Papers therefore advised the department to ask the Minister to write to the presiding officers, notifying Parliament of the changed circumstances in respect of the provisional suspension of the magistrate. On 23 September, the Minister wrote to the Speaker, requesting the tabling of a second report and the withdrawal of the report tabled on 12 August. The Minister, in her letter, further indicated that the report she was submitting replaced and therefore superseded the first report.

On 28 September, the second report was tabled - the ATC entry indicating that it replaced and superseded the report tabled on 12 August - and referred to the Portfolio Committee on Justice and Constitutional Development for consideration. By the end of the year, the portfolio committee had not yet completed its deliberations on the report.

INTERNATIONAL PARLIAMENTARY RELATIONS

53. ELECTION OF MEMBERS TO PAN-AFRICAN PARLIAMENT

The Third Parliament, after the elections, was required to appoint its representatives to serve on a number of forums and extra-parliamentary bodies, including the Judicial Service Commission, the Magistrates Commission, the SADC Parliamentary Forum and the Pan-African Parliament (PAP). Provision is made for representatives of opposition parties also to serve in these forums.

For purposes of electing 5 PAP representatives, the Speaker on 27 May wrote to all opposition parties, informing them that based on the current representation of political parties, opposition parties were required to nominate two members. She therefore requested the whips and party representatives of opposition parties to consult one another and to reach agreement on two members to represent them. Once agreement had been reached, the names were to be forwarded to her office so that the formal election of PAP representatives could be considered by both Houses. The members could be from either House. The majority party nominated three of the five members for appointment.

In subsequent discussions, opposition parties reached agreement on their representatives to

serve on most of the relevant forums, but could not agree on the two opposition party representatives to serve on the PAP. When the role of opposition parties and specifically the largest opposition party was considered in the Rules Committee meeting of 4 June (see also *Item 5*), the DA expressed the view that it was entitled to one of the two opposition seats in the PAP by virtue of its being the largest opposition party. Other parties disagreed, whilst the majority party ANC indicated that, although the formal election of representatives would take place in both Houses, the approach had been developing that if the opposition parties had reached consensus on their two representatives, the majority party was likely to respect that when the matter came before the Houses.

The issue of representation of opposition parties in the PAP was subsequently discussed in detail at the Rules Committee meeting of 11 June where, on the proposal of the ACDP, it was agreed that the opposition party members would meet in order for opposition party nominees to present themselves and motivate their candidatures after which the members would collectively decide on two candidates. The Secretary to the National Assembly was requested to convene the meeting. The Rules Committee confirmed further that if the opposition parties were unable to agree on two candidates, the Assembly would decide the matter by a vote.

The meeting of opposition party members took place on 14 June and, at members' request, was chaired by the Secretary to the National Assembly. Five members had been nominated, one each from the ACDP, the PAC, the MF, the DA and the IFP. A discussion ensued on the process to be followed, the main point at issue being whether "collective agreement" amongst opposition party members, as discussed previously at the Rules Committee, required consensus between all parties or whether a majority decision reached at the meeting constituted collective agreement. This issue could not be resolved, as a result of which some parties withdrew from the meeting or indicated that they would not participate further, whilst at the insistence of the majority of the members present some candidates did present themselves and a vote was taken, votes being cast for nominees of the various parties as follows: ACDP - 2; PAC - 0; MF - 0; DA - 44; IFP - 44.

The election of members to the PAP subsequently came before the Assembly on 25 June. The Chair announced that 8 nominations had been received. Apart from the 3 ANC nominations, there were nominations from the ACDP, PAC, MF, DA and IFP. The MF nomination was then withdrawn. The Chair announced further that members would be called to vote for each candidate, and the five with the largest number of supporting votes would be duly elected as members of the PAP.

The following members were accordingly elected: Ms F Hajaig (ANC); Adv Z L Madasa (ACDP); Mr M J Mahlangu (ANC – NCOP); Ms B Mbete (ANC) and Ms S C Vos (IFP). (*Minutes of Proceedings of the National Assembly*, 25 June).

Parties were subsequently given an opportunity to comment briefly on the outcome of the election. The NCOP elected the same members on 28 June.

54. SECOND ORDINARY SESSION OF THE PAN-AFRICAN PARLIAMENT

In preparation for the sitting of the Second Ordinary Session of the Pan-African Parliament, a debate was held in the National Assembly on 14 September.

The Second Ordinary Session of the Pan-African Parliament was held from 16 September to 1 October at Gallagher Estate, Midrand. The report of the South African delegation was published in the ATC on 29 October and, after a debate, was formally noted by the National Assembly on 4 November.

Among the resolutions that were adopted by the Pan-African Parliament was a resolution on conflict resolution, calling for a fact-finding mission to the Darfur region; a resolution thanking the Republic of South Africa for hosting the Pan-African Parliament; a resolution calling on the relevant committees of PAP to start working on the unequal effect of conflict on African women and children with a view to reporting to the Third Session of the Pan-African Parliament with specific recommendations; and a resolution on corruption, calling on members of the Pan-African Parliament to become members of the African Parliamentarians' Network Against Corruption (Apnac). After a presentation to the PAP Assembly, a recommendation was also adopted that all national Parliaments of member states would urge their governments to accede to the African Peer Review Mechanism (APRM) and would regularly report on progress with the implementation of Nepad.

The following are some of the issues identified by the South African delegation for follow up by the South African Parliament:

- National Parliaments must ensure that linkages and working relationships are established between the continental parliament, regional parliaments and national parliaments. Issues tabled at the Pan-African Parliament must be filtered through and followed up at the national parliament level. The Portfolio Committee on Foreign Affairs could act as a contact point and platform for the South African members.

- Portfolio and select committees of the South African Parliament should engage the national government departments with regard to their contribution to the implementation of Nepad and African development.
- The South African Parliament should endorse the APRM and encourage active participation to ensure good governance and African leadership of the democratic project.

55. APPOINTMENT OF SADC PF DELEGATION

In December 2003, the 15th meeting of SADC PF approved an amendment to article 6(3) of the Forum's constitution. While the constitution previously provided for delegations to consist of Presiding Officers and three representatives elected by member Parliaments, the amendment provided that four representatives and a Presiding Officer shall be elected by each Parliament.

On a motion by the Chief Whip of the Majority Party, the House agreed on 6 May to designate the following members to represent Parliament in the Southern African Development Community Parliamentary Forum: Ms F Hajaig (ANC); Ms B Mbete (Speaker); Ms N D Ntwanambi (ANC-NCOP); Mr W J Seremane (DA) and Mr D J Sithole (ANC). Ms Ntwanambi will represent Parliament in the Women's Forum.

NATIONAL ASSEMBLY MACE

56. INTRODUCTION OF NEW MACE

Installation of new mace

In Issue 7 it was reported that a model of a new mace had been placed on the floor of the Chamber on 25 June for viewing and comment by members and the public. Following the public consultation process, the model was adjusted and a contract entered into with manufacturers to produce a new mace for the National Assembly.

On 14 September 2004, at the start of the plenary, the Speaker announced that the new mace had been handed over to the Secretary to Parliament by the manufacturer on Friday, 10 September, and had been unveiled to members that morning. She stated that the old mace would now form part of the heritage of Parliament and be on display.

The Speaker then suspended proceedings to allow for the removal of the old mace and the installation of the new mace as the symbol of authority of the House. A procession led by the Serjeant-at-Arms, carrying the old mace, and consisting of the Speaker, Deputy Speaker, House Chairpersons, Secretary to





Parliament and Secretary to the National Assembly then proceeded to take the old mace out of the Chamber and place it in the exhibition.

The Table upon which the old mace was normally placed was removed from the Chamber. A bracket which would support the new mace was placed in the Chamber in front of the speakers' podium.

The bells were rung to indicate that proceedings of the House would resume. The Serjeant-at-Arms, carrying the new mace, entered the Chamber, followed by the Speaker, Deputy Speaker, House Chairpersons, Secretary to Parliament and Secretary to the National Assembly. The Speaker took the Chair as the Serjeant-at-Arms placed the new mace in its bracket. In a ceremonial debate, the Speaker and parties proceeded to comment on the historic event.

The origin of the parliamentary mace

From the sixteenth century onwards the mace started being used in its current ceremonial form in the House of Commons in England. When the Serjeant-at-Arms carries the mace into the debating Chamber and announces the Speaker of Parliament, it signifies that the House is formally in session and that its proceedings are official.

The first mace used in the South African Parliament was a gold-plated replica of the House of Commons' mace and was used in the House of Assembly of the Union of South Africa from 1910 to 1961. South Africa then became a republic and a stinkwood mace was used temporarily from 1961 to 1963. The mace used in Parliament until 10 years into the new democratic Republic of South Africa was given to Parliament by the Gold Producers' Committee of the Transvaal and Orange Free State Chamber of Mines in 1963. It weighs 8,5 kg, is 1,3 m long and made of gold.

A description of the mace (*see accompanying illustration*)

The new mace is 1,196 metres long and weighs 9,86 kg. Though it appears to be a single unit, it was made and fitted in sections on an aluminium core.

At the head of the mace is an 18-carat gold drum, covered with springbok skin which, in turn, is attached to the drum by 18 buttons made from South African minerals and gemstones. On top of the drum rests a book made from gold on which, in raised text, is an extract from the Preamble to the Constitution of the Republic of South Africa. The drum itself contains illustrations of South Africans going about their daily business, inter alia a miner, a saxophonist, a machinist, an architect, a builder, a soccer player, a fork-lift driver, a scientist, a teacher, a doctor, a domestic worker, a woman with a baby on her back and a

hoe in her hand, a woman driving a tractor and children reading and working.

Starting off as a simple gold disk, the drum first had to be shaped before being decorated with these figures. Reflecting the typically African wood-cut form of illustration, the picture was copied onto the gold drum and chiselled by hand to create a three-dimensional texture. The picture was then engraved for shading, texture and finer detail. This is the first time this kind of art has been transposed onto gold.

Once completed, the drum was fitted onto a yellow-gold neck containing dancing San figures, reminiscent of the national coat of arms. Three platinum disks, in decreasing size, connect the shaft of the mace to its head. The shaft is made of anodised aluminium, inlaid with cherry wood and box wood. The top of the rod is encircled by an 18-carat gold rim with six black and six white half-carat diamonds set into it.

Beneath this is the South African coat of arms, rendered in full-colour enamel, in perfect detail. About two-thirds from the top of the mace, is a beaded South African flag, containing 800 platinum or white-gold beads to represent the white on the flag, 70 yellow-gold beads representing the yellow, and red, green, blue and black glass beads. Just before the mace reaches its tapered end, there is another gold band containing six black and six white diamonds and another platinum connecting rim.

The symbolism of the new mace

The new mace was designed to reflect the history, tradition, diversity, culture and languages of South Africa. Each element has been carefully chosen to reveal the different facets of Africanness and South Africanness. It also celebrates the country's natural beauty, its plant and animal life and its rich mineral resources.

The shape of the mace recalls the knobkierie, an African symbol of defence, authority and leadership.

The drum, which forms the head of the mace, expresses the African tradition of drums calling people to gather and speak, and is a reminder that South Africa's successful transition to democracy was achieved through dialogue, with Parliament remaining the place where a myriad voices are allowed to be heard.

Gold is one of the core ingredients in the new mace. Archeological finds show that gold has been mined and used in African culture for centuries. Its use symbolises not only the country's natural wealth but also the indigenous knowledge of Africans and ancient African gold traditions.

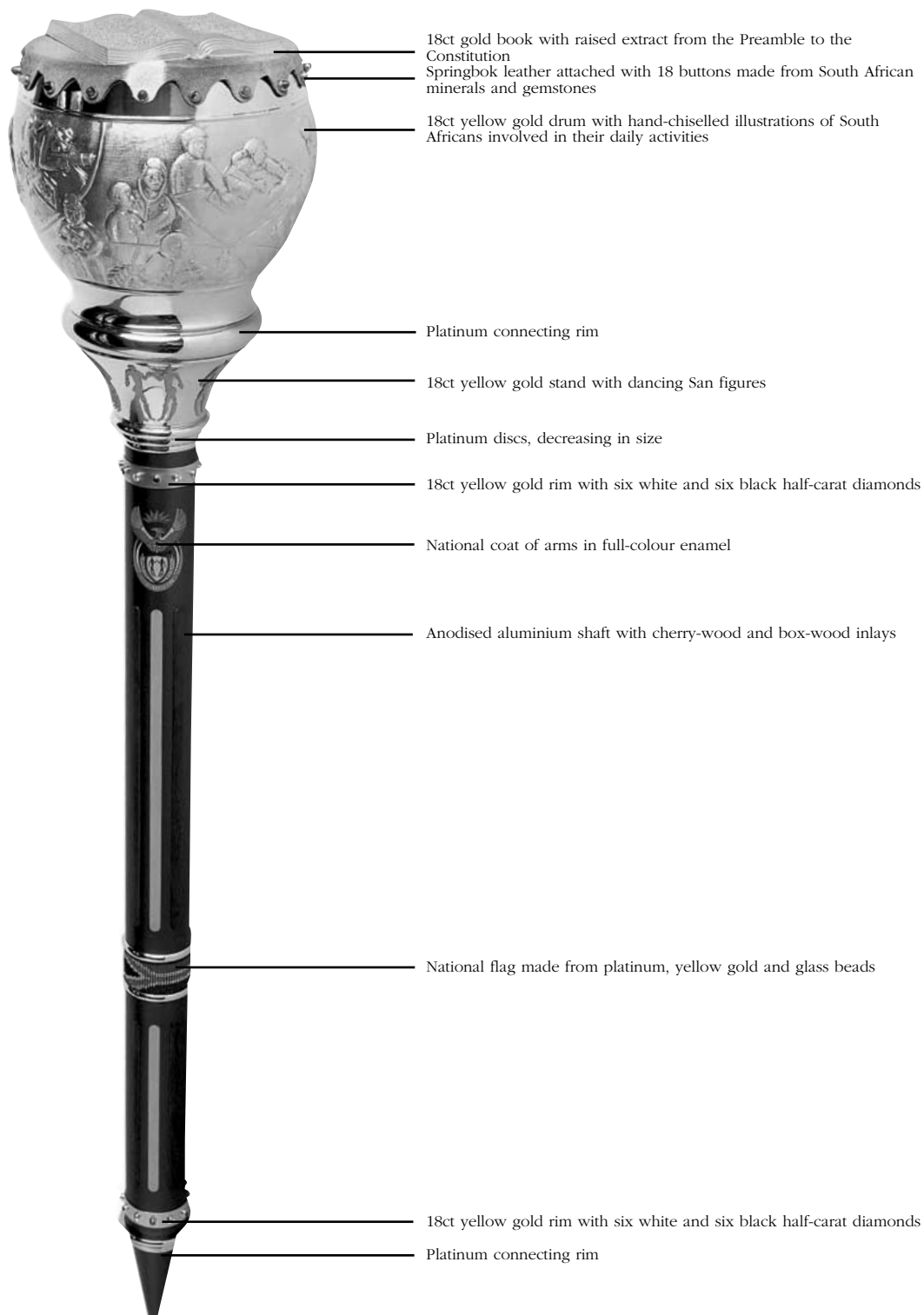
The book of gold resting on the top of the drum makes manifest the Constitution of

South Africa and the principles around which Parliament functions. The Constitution is the supreme law of the country – echoed in its position right at the top of the mace - and plays a central role in the unfolding of our new society. Each line, raised from the book, is the first line of the Preamble to the Constitution in one of the 11 official languages, plus one line from an extinct Khoisan language. The languages are presented alphabetically, starting with Afrikaans.

The platinum rings found at intervals in the shaft of the mace recall the rings worn by Ndebele women. Under the first set of plat

inum rings, at the base of the drum, is a picture taken from the Linton Stone, dating back at least 20 000 years, paying homage to the first inhabitants of our land. It shows social interaction, coherence and interdependence, elements that are needed for a country like South Africa to grow and prosper.

The use of the different materials and symbols are, in themselves, significant. The most advanced technology in the world lives harmoniously beside ancient traditional techniques. The result is a mace that recalls the past, mirrors the present and looks forward to the future.





ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
PC	Portfolio Committee
Scopa	Standing Committee on Public Accounts
PAP	Pan-African Parliament
SADC PF	Southern African Development Community Parliamentary Forum

PARTIES

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

NOTES

A series of horizontal dotted lines for writing notes.



