



Parliament of the  
Republic of South Africa

# PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Second Session - Third Parliament  
January to December 2005

# 11

# 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 11th issue covers the second session of the Third Parliament from January to December 2005.

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## PRESIDING OFFICERS AND OTHER OFFICE-BEARERS

### [1] TEMPORARY CHAIRPERSONS

Rule 18 of the National Assembly Rules provides for the election of a presiding officer for a day's sitting in the unavoidable absence of all elected presiding officers (see also *Item 3, Issue 7*).

On 2 March, when only one presiding officer was available, the House adopted a motion moved by the Deputy Chief Whip of the Majority Party that Mr A Mlangeni be elected to preside at the sitting when requested by the presiding officer to do so.

On 9 March, again owing to the unavoidable absence of presiding officers, the House adopted a motion moved by the Chief Whip of the Majority Party that Prof S M Mayatula be elected to preside that day if requested by a presiding officer to do so.

Mr Mlangeni and Prof Mayatula duly presided over parts of the proceedings on the respective days.

### [2] DESIGNATION OF ACTING SPEAKER AND ACTING DEPUTY SPEAKER

In 1999, the parliamentary law advisers advised that the Deputy Speaker, when acting as Speaker, had all the powers vested in the Speaker in terms of the now obsolete section 41(6) of the Interim Constitution, 1993. In terms of this provision, the Acting Speaker was allowed to perform the functions and exercise all the powers vested in the office of the Speaker while the Speaker was absent or otherwise unable to perform the functions of his or her office. This provision was excluded from the Constitution of the RSA, 1996, which replaced the Interim Constitution.

However, National Assembly Rule 16(1) provides as follows: "Whenever the Speaker is absent or unable to perform the functions of the office of the Speaker, or whenever that office is vacant, the Deputy Speaker shall act as Speaker." Rule 16(2) provides that if both the Speaker and the Deputy Speaker are absent or unable to perform the functions of the office of the Speaker, or at any time when the two offices are vacant, the Chairperson of Committees, his or her deputy shall act as Speaker. The positions of Chairperson of Committees and Deputy Chairperson of Committees have, in the meantime, been abolished and replaced by three House Chairpersons (see *Item 7, Issue 10*).

On 30 May, the Speaker announced in the ATC that both she and the Deputy Speaker would be absent from Parliament from 31 May to 5 June. In accordance with a

resolution adopted by the House on 24 June 2004, she designated House Chairperson Mr N P Nhleko to act as Speaker. As specific functions in the Speaker's office have been delegated to the Deputy Speaker, House Chairperson Mr G Q M Doidge was designated as Acting Deputy Speaker for that period.

Again, on 11 October, the Speaker announced in the ATC that she would be absent from Parliament from 11 to 24 October. She formally designated the Deputy Speaker to act as Speaker and House Chairperson Mr G Q M Doidge as Acting Deputy Speaker.

On the same date, the Speaker also announced that since both she and the Deputy Speaker would be absent from Parliament from 15 to 24 October, she had designated House Chairperson Mr Doidge to act as Speaker and House Chairperson Ms C-S Botha to act as Deputy Speaker, both designations taking place in accordance with the resolution adopted the previous year.

### [3] SUBSTANTIVE MOTION AGAINST DEPUTY SPEAKER

See "*Substantive motions on allegations against office-bearers*" under "*Procedural and related issues*".

### [4] APPOINTMENT OF LEADER OF GOVERNMENT BUSINESS

In terms of section 91(4) of the Constitution, the President must appoint a member of the Cabinet as the Leader of Government Business in the National Assembly.

On 14 June, the President released Deputy President J G Zuma from his responsibilities as Deputy President of the Republic. This also resulted in the position of Leader of Government Business becoming vacant.

The Speaker announced on 21 June that she had been informed by the President that Mr C Nqakula, the Minister of Safety and Security, had been appointed as the Leader of Government Business with effect from 15 June.

On 23 June, Ms P G Mlambo-Ngcuka, former Minister of Minerals and Energy, was sworn in as Deputy President. On 1 August, the Speaker announced in the ATC that the President had informed her that he had appointed the new Deputy President as Leader of Government Business with effect from 28 June, the Deputy President thereby replacing the Minister of Safety and Security.

The Speaker also announced the appointment of the new Leader of Government Business in the House on 23 August, the first sitting day after her appointment.





## [5] APPOINTMENT OF PARLIAMENTARY COUNSELLORS

Mr E M Dipico, who had been appointed by the Speaker as Parliamentary Counsellor to the President from 29 April 2004, resigned as a member of the National Assembly with effect from 1 August and as a result also vacated his post as Parliamentary Counsellor. On 23 August, the Speaker announced that she had, in terms of Rule 319 and with effect from 18 August, designated Mr J H Jeffery, formerly Parliamentary Counsellor to the Deputy President, as Parliamentary Counsellor to the President. Ms S D Motubate-Houkpatin was designated as Parliamentary Counsellor to the Deputy President, replacing Mr Jeffery.

## [6] REPLACEMENT OF HOUSE CHAIRPERSON

On 24 June 2004, by resolution of the House, the posts of Chairperson of Committees and Deputy Chairperson of Committees were abolished and three posts of House Chairperson established. On the same day, three members were appointed to these positions. The House Chairpersons would, *inter alia*, be required to preside over sittings of the House and attend to specific responsibilities allocated to them by the Speaker (see *Item 7, Issue 10*).

Mr N P Nhleko, the House Chairperson responsible for oversight, information, communication and technology and public education, resigned as a member of the National Assembly with effect from 1 September and consequently also vacated his position as House Chairperson.

On 31 August, the House adopted a motion moved by the Deputy Chief Whip of the Majority Party, appointing Mr K O Bapela as House Chairperson with effect from 1 September.

## [7] CASTING OF DELIBERATIVE VOTE BY CHAIR

See "*Constitution Twelfth Amendment Bill*" under "*Legislation and Committees*" below.

# MEMBERS OF THE EXECUTIVE

## [8] RESIGNATION OF DEPUTY PRESIDENT

In a court judgment against Mr Schabir Shaik, who had been financial advisor to Deputy President J G Zuma, the judge spoke of a generally corrupt relationship that had existed between Mr Shaik and the Deputy President. The trial arose from corruption charges against Mr Shaik relating to defence procurement processes.

Responding to the judgment, the President called a Joint Sitting of the two Houses of Parliament on 14 June to inform members that, while acknowledging that judicial processes had still to run their course, based on constitutional imperatives he had decided to release Mr Zuma from his responsibilities as Deputy President and a member of Cabinet (*Joint Sitting Minutes of Proceedings and Hansard*, 14 June).

As a consequence, Mr Zuma also vacated the office of Leader of Government Business. The following day, 15 June, Mr Zuma wrote to the Speaker, resigning from the National Assembly with immediate effect.

(For the appointment of replacements, see "*Appointment of Leader of Government Business*" under "*Presiding officers and other office-bearers*" above and for a substantive motion against Deputy President Zuma, see "*Substantive motions on allegations against office-bearers*" under "*Procedural and related issues*" below.)

## [9] DETERMINATION OF PRESIDENT'S SALARY

On 25 August, the National Assembly, by resolution, approved the salary and allowances to be paid to the President of the Republic (see also *Item 43, Issue 10*).

The House approved the salary and allowances in terms of section 2(1) of the Remuneration of Public Office-Bearers Act, No 20 of 1998, after it had considered -

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

On a motion by the Chief Whip of the Majority Party, the House resolved that the salary and allowances to be paid to the President of the Republic shall be R837 899,35 and R279 299,70 a year respectively. The salary and allowances were approved with effect from 1 April.

The House also resolved that in terms of section 2(2) of the Act, an amount of R40 000 a year shall be that portion of the remuneration of the President to which section 8(1)(d) of the Income Tax Act, No 58 of 1962, applies. The amount is an allowance granted to the President to defray expenditure incurred by him for purposes of his office.



In terms of the relevant Act, the NCOP does not have a role in determining the President's salary.

## MEMBERS

### [10] MEMBERS' TRAINING

Parliament usually includes a period for training of members at the start of its annual programme. In 2005, from 24 January to 26 January, the focus was on the budgeting process and parliamentary oversight. Presentations were done on the challenges facing public representatives and their role in service delivery, transformation and governance; the challenges for Parliament with regard to oversight and accountability; the budgeting and financial management framework of South Africa; the role of Parliament in the budgeting process and the requirements of the Public Finance Management Act; the role of civil society in the budgeting process; understanding departments' strategic plans and business plans; and, applying budget analysis techniques. The training was presented in conjunction with the Applied Fiscal Research Centre and the University of Cape Town, with committee chairpersons acting as discussion facilitators. The training was well attended and positive feedback was received from members.

### [11] DEVELOPMENTS REGARDING ALLEGATIONS OF ABUSE OF MEMBERS' TRAVEL FACILITIES

Allegations of abuse of the system of members' travel vouchers surfaced as far back as 2003 and were reported on in the previous issue of *Procedural Developments* (see *Item 13, Issue 10*). Amidst general concern at the amount of time it was taking to bring this matter to a conclusion and the extent to which the allegations continued to tarnish the image of Parliament, judicial proceedings and investigations by the National Directorate of Public Prosecutions were not finalised during 2005.

#### **Appointment of task team by Presiding Officers**

At a special meeting of the Joint Rules Committee on 18 February, convened by the Speaker and the Chairperson of the NCOP for that purpose, they informed parties that they had received a final report from the forensic auditors commissioned by Parliament and also a status report on the travel fraud investigation by the National Directorate of Public Prosecutions. They indicated that both reports had been submitted to them on a confidential basis. They proposed to appoint a multiparty task team to consider the findings and recommendations contained in the reports and confidentially to advise the Speaker and the

Chairperson of the NCOP on how they should proceed. The task team was to complete its work by 18 March, whereafter the Speaker and Chairperson of the NCOP would report back to the JRC on further steps to be taken by Parliament. The JRC agreed to the proposal.

The Speaker announced the members whom they had appointed onto the task team. They included 5 members from the ANC, 2 from the DA and 1 each from the IFP, the ID, Azapo and the MF. The task team was to be chaired by Ms C-S Botha, Assembly House Chairperson (a DA member). The DA, through the office of its chief whip, subsequently raised concern at the manner in which members had been selected by the presiding officers and proposed replacing their members by others specifically nominated by the party. The Speaker and the Chairperson of the NCOP were not prepared to consider replacements, indicating that the task team was not intended as a committee of party representatives but rather a group of members selected by the presiding officers to assist them. Relevant matters would in due course be brought before appropriate parliamentary forums for formal consideration. In the event, the selected DA members withdrew from the task team, except Ms Botha who had been appointed in her capacity as House Chairperson.

Recommendations of the task team were subsequently reported on by the presiding officers to a JRC meeting on 3 June. The recommendations included the following:

- A new travel system should be introduced as a matter of urgency, members to be given adequate training in the application of the system.
- Parliament should prescribe conditions with which participating travel agents would need to comply.
- Parliament should consider extending the period covered by the verification process conducted by SA Airways with a view to recouping further losses that may have been incurred.
- Presiding officers should exercise their discretion to initiate disciplinary action within Parliament in cases where, at the conclusion of criminal or civil action against members, they were found guilty or civilly liable. Relevant cases could also be referred to the Joint Committee on Ethics and Members' Interests.
- Parliament's communication strategy in respect of the abuse of travel vouchers should also be improved.

#### **New travel system for members**

After extensive discussion in various forums, including the Chief Whips' Forum and the Parliamentary Oversight Authority, a new







travel system replacing the voucher system was formally introduced on 1 September.

### **Members' resignations**

During March and early April five members appearing in the regional court of Cape Town entered into plea bargain agreements and were convicted of committing fraud against Parliament in respect of travel claims.

The Speaker immediately at the commencement of the second term convened a special meeting of the Assembly Rules Committee on 17 May to inform parties of the convictions and to seek their collective views. In the discussion it was noted that the House Rules did not provide for the termination of a member's membership. The consensus view was therefore that the Speaker should follow the disciplinary procedures available in the Rules. The affected political party could also initiate its own internal party processes.

The same afternoon, the Speaker announced in the House that she had requested the Disciplinary Committee in terms of the Rules (Rule 194) to advise her on appropriate steps to take against the five members who had been found guilty of committing fraud against Parliament. However, before the Disciplinary Committee could be convened, the five members in letters to the Speaker on 23 June announced their resignation from the National Assembly with effect from 1 August.

### **[12] MEMBERS' TRAVEL BENEFITS: REPORT BY PARLIAMENTARY OVERSIGHT AUTHORITY**

The Parliamentary Oversight Authority (POA), established in 2004 (see *Item 38, Issue 10*), is responsible for formulating policy directives in respect of the various services and facilities of Parliament. This includes considering matters pertaining to members' facilities and interests.

On 21 June, the POA presented a report proposing amendments to the facilities for members for adoption by both Houses (ATC, 21 June, p1292). The facilities for members include matters such as general conditions for the utilisation of travel facilities, relocation costs, the definition of members' dependants, telephone allocations, the use of parliamentary catering facilities, equipment and furniture, and stationery allocations. Prior to the establishment of the POA, the Joint Rules Committee was responsible for determining the facilities for members.

Both Houses adopted the report on 22 June. The Houses also noted that a range of issues still required further attention and consequently mandated the Speaker and the Chairperson of the NCOP to initiate a process in which further consideration could be given to those issues.

## **PROCEDURAL AND RELATED ISSUES**

### **[13] RULING ON USE OF CELL PHONES TO TAKE PHOTOGRAPHS DURING SITTING**

New technology requires of the House to establish new conventions and practices from time to time. The Chief Whips' Forum is engaged in reviewing practices relating to decorum in the House, also with reference to technological developments, but has not yet formally reported.

On 16 February, during the debate on the President's state-of-the-nation address, a point of order was taken by the Minister of Housing on whether members were allowed to take photographs during proceedings of the House. She contended that she had seen the Leader of the Opposition taking a photograph of the Minister of Safety and Security while the latter was at the podium, addressing the House.

The Leader of the Opposition immediately offered to delete the photograph. House Chairperson Mr G Q M Doidge was presiding at the time and ruled that the use of cell phones to take photographs during a sitting of the House was not permitted.

### **[14] COMFORT BREAKS DURING DEBATE ON STATE-OF-THE-NATION ADDRESS**

In 2005, the debate on the state-of-the-nation address by the President extended over two days. The hours of the sitting were from 14:06 to 18:49 on the first day and from 14:02 to 20:10 on the second day. Owing to the length of the sittings and because the President had indicated in the past that he would like to hear each speaker himself, it was agreed among whips to allow comfort breaks. Accordingly, the presiding officers suspended the House to allow for comfort breaks on both days of the debate. On 15 February business was suspended between 15:24 and 15:34 and on 16 February between 16:01 and 16:19. The practice was first observed in 2003 and has been applied each year since then for this particular debate.

### **[15] SUBSTANTIVE MOTIONS ON ALLEGATIONS AGAINST OFFICE-BEARERS**

In terms of the Rules and established practice, a member who wishes to bring to the attention of the House allegations of improper conduct on the part of another member or of an office-bearer (judges and others) whose removal from office is dependent on a decision of the House, may only do so by way of a separate substantive motion comprising clearly formulated and properly substantiated charges. The Speaker is required to satisfy herself that the *prima facie* evidence



presented to substantiate the allegations is sufficient to warrant the matter being placed before the House for it to take such action as it may consider appropriate.

During 2005, notice was given of a number of substantive motions in terms of this practice, including motions against the Deputy President, the Deputy Speaker and a judge. They are singled out for a brief report because of the senior status of their offices.

### **Substantive motion against Deputy President**

On 2 June, the same day on which a court delivered its judgment on corruption charges against Mr Shaik, who had been financial adviser to Deputy President Zuma (see “*Resignation of Deputy President*” under “*Members of the Executive*” above), the DA gave notice in the House of a substantive motion calling for the House to express no confidence in the Deputy President and for him to resign forthwith, failing which the President should dismiss him. The grounds for the proposal were that “in the light of... the judgment earlier today” the Deputy President had violated section 96(2) of the Constitution and had previously misled Parliament and the nation. (The full text of the motion is recorded in Hansard, 2 June)

The Speaker subsequently requested the DA in writing to provide her with the specific findings and remarks in the court judgment on which the allegations contained in the motion were based to enable her to assess whether they constituted *prima facie* evidence for the allegations and hence whether the substantive motion was in order.

On the day on which the Speaker received the requested information (8 June), Mr Shaik had applied for leave to appeal against the judgment. She then informed the DA in a private ruling that as the judgment and the remarks contained therein had become the subject of an appeal, she was unable to use them for purposes of establishing whether they constituted *prima facie* evidence. She was therefore unable to approve the motion.

Shortly thereafter, on 14 June, the President at a Joint Sitting announced that he had decided to release Mr Zuma from his responsibilities as Deputy President and on 15 June Mr Zuma resigned as a member of the National Assembly (See “*Resignation of Deputy President*” under “*Members of the Executive*” above).

### **Substantive motion against judge**

On 26 October, the Freedom Front Plus gave notice of a substantive motion for the removal from office of a judge of the High Court on the grounds of allegations of improper

remarks the judge had made. The motion indicated that “sworn affidavits confirming the (specified) allegations had been made”. The motion went on to state that “it is incumbent on Parliament to get involved and use its powers to investigate and summons witnesses in accordance with the powers conferred to it (sic) in terms of section 56 of the Constitution”.

In a written ruling, the Deputy Speaker informed the Freedom Front Plus that she would require the affidavits referred to for her to assess whether the motion was in order. Secondly, it was not clear what decision of the House was being sought. Thirdly, the legally prescribed process for removing a judge from office involved an initial investigation and finding by the Judicial Service Commission, followed by a resolution to be adopted by the Assembly with the requisite majority support. The motion was accordingly not proceeded with.

### **Substantive motion against Deputy Speaker**

During the year an opportunity arose for members to “cross the floor” and change their party allegiance without losing their seats (See “*Floor-crossing*” under “*Procedural and related issues*” below). The window period for floor-crossing ran from 1 to 15 September.

On 13 September, the DA gave notice in the House of a substantive motion alleging that the Deputy Speaker in her capacity as Acting Speaker had used confidential information made available to her by virtue of her office in order to act as a “recruiting agent” for the ANC by telephoning “one or more” DA members and encouraging them to cross the floor. The charges in the motion included that –

- she was guilty of a serious breach of trust;
- she acted deceitfully and dishonestly by seeking to mislead members;
- she demonstrated a lack of good judgement and seriously impaired the dignity and independence of the Speaker’s office;
- her conduct was dishonourable; and
- she had proved herself unfit for office as Deputy Speaker.

The motion accordingly proposed that the House declare that it had no confidence in the Deputy Speaker and that she should resign or be dismissed by the House.

In a private ruling the Speaker informed the DA that as no *prima facie* evidence had been offered for the alleged conduct of the Deputy Speaker in her capacity as presiding officer, she was unable to approve that the motion be brought before the House.







In the light of the serious nature of the allegations for which no substantiation had been offered and the fact that they were directed at an elected presiding officer, she subsequently on 16 November made the following announcement in the House:

I wish to make an announcement on a matter that had been tabled before the House. On Tuesday, 13 September 2005, the hon Chief Whip of the Opposition gave notice of a substantive motion in the House against Deputy Speaker Mahlangu-Nkabinde, making serious allegations of improper conduct on her part in her capacity as Acting Speaker during the floor-crossing period.

It is standard practice that members are not permitted to make unsubstantiated allegations against other members in this House. This practice is strictly observed. The only exception is when adequate grounds exist, which warrant that the House specifically attend to particular allegations. In that event, the allegations must be presented to the House by way of a substantive motion and the Speaker must be satisfied that there is indeed *prima facie* evidence warranting that the motion be placed before the House.

A substantive motion against the Deputy Speaker alleging improper conduct on her part as Acting Speaker is particularly serious as it affects an elected presiding officer of this House. I therefore decided that I should inform the House that, having considered the substantive motion, I have, in writing, ruled it out of order as no substantiation for the detailed allegations was offered.

There has been further correspondence between the hon Mr Gibson and myself because we do not share the same understanding regarding the use and application of substantive motions. I emphasised that the House has the right and authority to attend to allegations against any member, including office-bearers, by way of a substantive motion when that is clearly warranted. It is evident, however, that this mechanism should be used only with due caution and responsibility and should not, for instance, be resorted to for political expediency.

Good practice has yet to develop around substantive motions. I am concerned that notice of such a substantive motion can be given in the House before there is an opportunity to assess whether it is in order. I shall therefore be asking the Rules Committee to consider appropriate processes for dealing with a substantive motion. I understand that the Chief Whips' Forum has also been engaging on this issue. They could report in due course to the Rules Committee as well. That concludes that particular matter.

The Rules Committee did not meet to consider the matter before the close of the year.

## [16] ADOPTION OF VISION STATEMENT

### Background

Towards the end of the Second Parliament, the presiding officers and management of Parliament started attending to the lack of a shared vision to take the institution into the future. A broad consultative process was embarked upon to craft a common vision for the institution. In January 2003, the NA and NCOP launched a joint process, which included workshops for members and later more formal discussions at meetings of the Joint Rules Committee.

### Report of Joint Rules Committee of 21 September 2004

After much discussion at earlier meetings of the JRC of the Third Parliament, the matter again came before the committee on 21 September 2004. However, no agreement could be reached. The Speaker, noting that with the exception of some detailed wording there was broad agreement on the basic approach, appealed to parties to continue talking to one another in order to reach consensus before the matter was put to the Houses for decision.

The JRC reported to the Houses after its meeting on 21 September on the proposed vision for Parliament (ATC, 22 September 2004, p831).

In the report, the following options were presented as a proposed vision statement for Parliament:

#### Option 1

To build an effective Parliament that is responsive to the needs of the people and that is driven by the ideal of realising an improved quality of life for all the people of South Africa.

#### Option 2

To build an effective people's Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa.

### Decision of Joint Rules Committee of 18 November 2004

The matter finally served before the Joint Rules Committee at its meeting on 18 November 2004. It was noted that all parties except the DA supported the vision statement set out in Option 2 of the report of 21 September. It was therefore agreed that the preferred vision statement (Option 2) would be put before both Houses for consideration.

### Decision by Houses

On 22 February 2005, the Chief Whip of the Majority Party moved the following motion:



That the House, pursuant to a decision by the Joint Rules Committee at its meeting on 18 November 2004, adopts the following vision statement:

To build an effective people's Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa.

Mr M J Ellis (DA) moved an amendment which effectively replaced the vision statement moved by the Chief Whip of the Majority Party with the following:

To build an effective Parliament that is responsive to the needs of the citizens protected equally by law, which provides a national forum for public consideration of issues and which scrutinises and oversees executive action.

A debate followed and after a division the amendment moved by Mr Ellis was defeated and the motion moved by the Chief Whip of Majority Party agreed to. Following a debate, the NCOP adopted the same vision statement, also on 22 February.

#### **[17] POSTPONEMENT OF QUESTIONS TO DEPUTY PRESIDENT**

In terms of Rule 110 of the National Assembly Rules, questions to the Deputy President must be scheduled for a question day every second week. Before questions to the Ministers, the Deputy President answers four questions. Each reply is followed by an opportunity for members to put four supplementary questions.

The Deputy President was scheduled to answer questions in the National Assembly on Wednesday, 9 November, but the Chief Whip of the Majority Party informed parties beforehand that the Deputy President would be unable to attend the sitting of the House on that day. At the request of the Deputy President, and by agreement among parties, questions to the Deputy President were rescheduled for Wednesday, 16 November. The Speaker made an announcement to this effect at the start of the sitting on 9 November.

#### **[18] QUESTION INCORRECTLY PUT TO DEPUTY PRESIDENT**

Questions to the Deputy President, taken every second week, can be wide-ranging. In the main such questions deal with issues of national or international importance. A question that relates to the line function of a Minister has to be directed to the Minister concerned. It would therefore be procedurally out of order for a question that relates to the line function of a Minister to be directed either to the President or the Deputy President.

On 2 March, a question by an IFP member was on the Question Paper for oral reply by the Deputy President on that day. That morning it was brought to the attention of the presiding officers that the question concerned in fact related to the line function of a Minister and should therefore not have been placed on the Question Paper for reply by the Deputy President.

During interaction on the matter between House Chairperson Mr G Q M Doidge, who in the absence of both the Speaker and the Deputy Speaker dealt with the issue, and the office of the Deputy President it transpired that the Deputy President had already prepared himself to reply to the question. In the circumstances, the House Chairperson ruled that while he would allow the reply to be given, he would not entertain supplementary questions as the main question was out of order. The questioner was informed of the ruling before the sitting.

At the sitting that afternoon, before the Deputy President replied to the question, the House Chairperson gave his ruling in the House. The Chief Whip of the Opposition objected to the ruling, *inter alia* on the basis that apart from the questioner, members had not been advised beforehand that supplementary questions would not be entertained. His objection was not sustained and the House Chairperson reiterated his earlier ruling that the question related to a Minister's line function. The Deputy President proceeded to give his reply.

Subsequently, in a letter to the Speaker, the Chief Whip of the Opposition indicated that while he agreed with the ruling by the House Chairperson that the question was out of order, supplementary questions should have been entertained since a reply had in any event been allowed. He submitted that the ruling was erroneous and needed to be corrected, as failure to do so would create an "unfortunate precedent". In her response, the Speaker indicated that as it was inappropriate for a presiding officer to comment on the merits of a ruling by another presiding officer, the matter had been referred to the relevant House Chairperson for a response.

In his response, among other things, the House Chairperson explained that as the Deputy President had already prepared a reply to the question, he had decided in fairness to the questioner and to the House generally that at least the reply be given.

#### **[19] NON-MEMBER VOTING**

In terms of section 91(3)(c) of the Constitution, 1996, the President has the prerogative to appoint no more than two of his Cabinet members from outside the membership of the National Assembly. In







terms of the Constitution, a Cabinet member who is not a member of the Assembly may attend and speak in the Assembly, but may not vote. After the 2004 general election, two Ministers were appointed from outside the Assembly.

On 31 May, during the consideration of budget votes and the schedule to the Appropriation Bill, divisions were demanded on 10 budget votes. After the publication of the Minutes of Proceedings of the House the following day, the Deputy Chief Whip of the Majority Party pointed out that one of the Ministers who is not a member of the Assembly had erroneously participated in the electronic voting process on all 10 votes. His attention had been drawn to the matter by the chief whip of the IFP. As a result, the Minister's vote had been recorded in the Minutes of Proceedings of that day.

In order to correct the official records of the Assembly, a reprint of the Minutes of 31 May was ordered which excluded the vote of the Minister concerned. Furthermore, in order to prevent a similar oversight in the future, the voting devices at the seats of the non-members were deactivated. The Minister who had erroneously voted was informed in writing of the correction of the Minutes and the deactivation of the voting system.

## [20] AUDIT OF STATUTES: PUBLICATION AND INTRODUCTION TO MEMBERS

In June 2004, two consultants from the Democratic Governance and Rights Unit of the Department of Public Law, University of Cape Town, were contracted to produce an audit of statutes. The audit would capture all functions and duties that are assigned to Parliament in the Constitution and in all other laws on the Statute Book. It became necessary to obtain an audit of all such statutory provisions in order to have an overview of Parliament's responsibilities and to ensure that they are effectively attended to.

The consultants conducted an electronic scan of all statutes to identify all provisions that assign specific functions to Parliament or any of its forums. Key words used in the search included "Parliament", "National Assembly", "National Council of Provinces", "Senate", "Speaker of the National Assembly", "Chairperson of the National Council Provinces", "parliamentary committees" and "members of Parliament". Having identified all relevant provisions, the audit further required that the information obtained be categorised and arranged according to the type of function, accompanied by a brief description and analysis.

The audit has been categorised into four broad headings: Law-making, Oversight, Appointment of Office-Bearers and Forging

Links with the Public. Within each broad heading, there is further categorisation in which the relevant statute title and section heading are listed, followed by a brief summary of the relevant statutory provisions. In most instances, the wording of the statute has been retained. However, a detailed register of the obligation imposed is presented in the Source Document, which is attached as an appendix.

The audit, covering all legislation enacted up to 25 June 2004, was completed in January 2005 and presented to the presiding officers. A similar presentation was made to the Committee of Chairpersons by Table Staff. An electronic version of the audit was made available to all members and it was also placed on the parliamentary website: [http://www.parliament.gov.za/pls/portal30/docs/FOLDER/PARLIAMENTARY\\_INFORMATION/PUBLICATIONS/STATUTES/final.doc](http://www.parliament.gov.za/pls/portal30/docs/FOLDER/PARLIAMENTARY_INFORMATION/PUBLICATIONS/STATUTES/final.doc)

The audit, which is available both in print and electronically, will be updated regularly to ensure that it remains valid over time.

## [21] MOTIONS

### **Extension of trial period for notices of motion**

The Chief Whips' Forum agreed at a workshop held on 6 August 2004 to implement, for a trial period, a new system for programming motions of which notice had been given by members (see *Item 30, Issue 10*). The agreement was implemented with effect from 25 August 2004 and was scheduled to be reviewed at the beginning of 2005.

At a workshop held on 15 May, the Forum agreed to extend the trial period to the end of 2005. The conditions previously agreed upon by the Forum, including the process for the selection of subjects for discussion and lapsing of notices of motion, would apply during the extended period. Thirty-four notices of motion were given by members in the period from 1 June to 16 November. Despite the agreement to extend the trial period for notices of motion, none of the notices of motion given by members were programmed for debate in this period.

### **Alteration of motion without notice**

A practice has developed for members of the National Assembly to rise and observe a moment of silence on the adoption of a motion of condolence on the death of a sitting member. With rare exceptions, this has been the general practice.

On 11 November, the Chief Whip of the Opposition moved a motion without notice which included a request for the House to



observe a moment of silence in memory of those who had lost their lives in various wars and conflicts. The Chief Whip of the Majority Party objected to the proposal, arguing that it was contrary to House practice to observe a moment of silence on such occasions. The Chief Whip of the Opposition, with leave, moved an altered motion, omitting the request for the observance of a moment of silence. The motion was agreed to.

## [22] CEREMONIAL JOINT SITTING FOR SENIOR MEMBERS OF JUDICIARY

The Joint Rules of Parliament make provision for either the President or the Speaker and the Chairperson of the NCOP, acting jointly, to call a Joint Sitting of the Houses when necessary. And, 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). For instance, in May 2004, the Houses had 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. This invitation was subsequently amended to include an invitation to former President Mr F W de Klerk to address the Joint Sitting (see *Item 23, Issue 10*).

The presiding officers received a letter dated 3 June from the President of the Republic, requesting that a Joint Sitting of the Houses be convened on 10 June in order to bid farewell to retired Chief Justice Arthur Chaskalson and to welcome newly appointed Chief Justice Pius Langa and Deputy Chief Justice Dikgang Moseneke. Justice Chaskalson had retired as Chief Justice of South Africa on 31 May.

In his letter, the President further requested that special arrangements be made to enable retired Justice Chaskalson to participate in the debate by way of a reply. In further interaction between the presiding officers and The Presidency, it was proposed that the process of the handing over of office by a retiring Chief Justice to the new Chief Justice should henceforth be observed in the same manner.

On 7 June, the Assembly formally passed a resolution inviting Justice Chaskalson to attend and participate in the Joint Sitting.

On the day of the Joint Sitting, after the formal announcement of the sitting from the Chair by the Speaker, and as the event also involved the handing over of certificates of appointment to the new Chief Justice and Deputy Chief Justice and of the robe to the new Chief Justice, business was suspended to enable both

Justices Langa and Moseneke to be on the floor of the House for the handing-over ceremony. At the resumption of business, the President and members addressed the Joint Sitting, whereafter Justice Chaskalson responded.

## [23] PARLIAMENTARY PRIVILEGE: REQUEST TO SERVE SUBPOENA

As reported in the previous issue (see *Item 28, Issue 10*), the Acting National Director of Public Prosecutions in November 2004 renewed an earlier request in writing to the Speaker to access a specified document held in the confidential part of the Members' Register.

In a letter dated 24 January, signed by the Speaker and the Chairperson of the NCOP, the request was refused on the grounds that the document in question had been disclosed to the Joint Standing Committee on Ethics and Members' Interests on a confidential basis and was not part of the Members' Register as it did not involve disclosure of any benefit. Furthermore, the document was in any event not the original, which had been lodged elsewhere and could therefore be accessed from a different source. The presiding officers emphasised that "it is essential to our democracy that Parliament retain its integrity, and that any intrusion from the outside be permitted only as a last resort, and if it is in the interests of justice to do so".

## [24] FLOOR-CROSSING: 1-15 SEPTEMBER 2005

### Background

The floor-crossing legislation which enables public representatives at national and provincial level to change party allegiance without losing their seats was enacted in 2003. In terms of the Constitution, the floor-crossing window period is from 1 to 15 September in the second and fourth years following the date of an election of the legislature.

The Constitution stipulates that members or parties who wish to use the window period to change their status should do so within the window period, and may do so only once. A member or members may only change membership of a party without losing their seats in the National Assembly if he, she or they constitute at least 10% of the total number of seats held by the party that nominated them to the National Assembly.

The latest floor-crossing window period occurred from 1 to 15 September. On 30 August, the Deputy Speaker, by way of an announcement in the House, alerted members to the relevant legal provisions. She announced that any member or party wishing







to make any change during the window period should complete a special form, which had been prepared for that purpose and would be the only valid form. Members were advised that for purposes of informing the Speaker of any intended changes, they should personally submit the completed form to designated officials whom the Speaker had authorised as the only officials to receive such forms. The form included covering notes containing details which members and parties needed to comply with in order for the change to be valid.

### **Vacation of seats by members of the United Democratic Movement**

During the course of the afternoon on 31 August, the day before the commencement of the floor-crossing window period, the Speaker received a letter from the secretary-general of the United Democratic Movement (UDM), informing her that the party membership of two of its members, Mr M Diko and Ms M N Mdaka, both members of the Assembly, had been terminated with immediate effect.

In terms of the Constitution a person loses membership of the Assembly if, *inter alia*, that person ceases to be a member of the party that nominated him/her as a member of the Assembly, unless that person has become a member of another party as a result of floor-crossing. After the Speaker had satisfied herself of the criteria applied to ascertain that the termination was valid and effective, the members concerned were advised in writing on the same day that as a consequence of the termination of their party membership they had, by operation of the law, ceased to be members of the National Assembly.

On 1 September, the Cape High Court issued an urgent interdict on behalf of the two members against the UDM, the Speaker and others. The interdict ordered the Speaker, *inter alia*, not to swear in any persons representing the UDM to replace the two expelled members until the court processes had been finalised. On 14 September, the day before the closing of the floor-crossing window period, the decision by the UDM to expel the two members was set aside by the Cape High Court, thus effectively reinstating the Assembly membership of the two members.

The following day, 15 September, Mr Diko and Ms Mdaka left the UDM to form a new party called the United Independent Front (UIF).

### **Debate in Assembly**

In response to widespread public concern about the issue of floor-crossing, the National Assembly Programme Committee decided that a debate should be held on floor-crossing. The debate took place on 13 September.

### **Change in parties' composition**

Twenty-five members of the National Assembly used the opportunity presented by the window period to change their party membership. In this period one party, the New National Party, ceased to exist and the following five new parties were formed, increasing the number of parties in the National Assembly from 12 to 16: National Democratic Convention (Nadeco), United Party of South Africa (UPSA), Federation of Democrats (FD), Progressive Independent Movement (PIM) and United Independent Front (UIF).

### **Court challenge by Democratic Alliance**

The Democratic Alliance, which had lost five members during the floor-crossing period, launched a court challenge on 20 September on the basis that its members who had crossed the floor did not constitute 10% of the party's membership. At the commencement of the floor-crossing period, the DA had 50 members and gained two members in the window period before the five members crossed, bringing its total membership to 52. However, the DA lost the court challenge. The finding of the court was that the 10% threshold could only apply on the basis of the total membership of the party immediately before the commencement of the window period.

### **Adjustment of Assembly processes and procedures**

#### *Members' statements*

In light of the increased number of small parties, the number of members' statements was increased from 14 to 15 and the ministerial responses from five to six. The change in members' statements was later confirmed by way of provisional Rule amendments that were to apply for a trial period. The new sequence of parties for members' statements is as follows:

ANC; DA; IFP; ANC; Group 1 of smaller parties; Group 2 of smaller parties; ANC; Group 3 of smaller parties; Group 4 of smaller parties; DA; ANC; IFP; ANC; DA; ANC.

The grouping of smaller parties was decided by the parties themselves, as follows:

Group 1 – United Democratic Movement and African Christian Democratic Party

Group 2 – Independent Democrats and Freedom Front Plus

Group 3 – National Democratic Convention, United Christian Democratic Party and Pan Africanist Congress of Azania

Group 4 - Minority Front, United Independent Front, Azanian Peoples' Organisation, United Party of South Africa,



Progressive Independent Movement and Federation of Democrats

(See also “Rule amendments” under “Procedural and related issues”)

### Whips

The total number of whips remained 47, with the following adjustments: The African National Congress’s allocation increased from 32 to 34, the Democratic Alliance’s allocation decreased from 6 to 5, the Inkatha Freedom Party’s allocation remained unchanged at 3, the United Democratic Movement’s number of

whips remained unchanged at 1, the Independent Democrat’s allocation remained unchanged at 1 and the allocation for smaller parties increased from 2 to 3 whips. The New National Party, which had ceased to exist, also had a whip at the beginning of the Third Parliament.

### Reconstitution of Assembly

In compliance with the Constitution, the Speaker published a notice in the *Gazette* on 22 September, reflecting the reconstituted composition of the National Assembly, as follows:

	PARTY		SEATS BEFORE FLOOR-CROSSING	SEATS GAINED	SEATS LOST	SEATS AFTER FLOOR-CROSSING	% OF TOTAL
1	African National Congress	ANC	279	14	-	293	73,25%
2	Democratic Alliance	DA	50	2	5	47	11,75%
3	Inkatha Freedom Party	IFP	28	-	5	23	5,75%
4	United Democratic Movement	UDM	9	-	3	6	1,5%
5	Independent Democrats	ID	7	-	2	5	1,25%
6	African Christian Democratic Party	ACDP	7	-	3	4	1%
7	Freedom Front Plus	FF +	4	-	-	4	1%
8	National Democratic Convention	Nadeco	-	4	-	4	1%
9	United Christian Democratic Party	UCDP	3	-	-	3	0,75%
10	Pan Africanist Congress of Azania	PAC	3	-	-	3	0,75%
11	Minority Front	MF	2	-	-	2	0,5%
12	United Independent Front	UIF	-	2	-	2	0,5%
13	Azanian People’s Organisation	Azapo	1	-	-	1	0,25%
14	United Party of South Africa	UPSA	-	1	-	1	0,25%
15	Federation of Democrats	FD	-	1	-	1	0,25%
16	Progressive Independent Movement	PIM	-	1	-	1	0,25%
-	New National Party	NNP	7	-	7	-	-

### [25] CLASSIFICATION AND REFERRAL OF BILLS TO NATIONAL HOUSE OF TRADITIONAL LEADERS

Section 18(1)(a) of the Traditional Leadership and Governance Framework Act, No 41 of 2003, enjoins the Secretary to Parliament to refer “any parliamentary bill pertaining to customary law or customs of traditional communities” to the National House of Traditional Leaders (NHTL) for its comments. The bill must be referred to the NHTL before it is passed in the House in which it was introduced. Subsection (b) provides that the NHTL must make and submit its comments within 30 days from the date of referral of the bill. The relevant parliamentary committee may not finalise the bill within 30 days of its referral unless the comments are received within the 30 day period.

The Parliamentary Legal Services Office, in a legal opinion dated 26 October 2004,

interpreted the provision “any parliamentary bill pertaining to customary law or customs of traditional communities” as referring to bills of which the substance pertains to customary law or customs of traditional communities as opposed to bills which include some provisions pertaining to customary law or customs of traditional communities. They further said that the substance of a bill depends not only on its form, but also on its purpose and effect.

If at the time of introduction a bill did not pertain to customary law or customs of traditional communities, but it had since been amended to pertain to customary law or customs of traditional communities, it had to be referred to the NHTL if the House in which it was introduced had not yet passed the bill.

At the time of the commencement of the Act, the parliamentary Rules did not provide for a procedure for referral of bills to the NHTL,





nor did the Act provide for such a procedure. At its meeting on 18 November 2004, the Joint Rules Committee tasked the Subcommittee on Review of the Joint Rules with considering proposed Rule amendments. The subcommittee presented its report, dated 30 May, to the JRC for consideration and referral of the proposed new Rules to the Houses (see “Rule amendments” below).

The Repeal of Black Administration Act and Amendment of Certain Laws Bill was introduced in the National Assembly on 12 August. The Joint Tagging Mechanism classified the bill as falling under legislation to be referred to the NHTL for comment in accordance with section 18(1)(a) of the Traditional Leadership and Governance Framework Act (ATC, 23 August, p1677). The bill was referred to the NHTL by the Secretary to Parliament on 24 August and the return date for comments was 23 September (ATC, 24 August, p1684). However, the comments were only received on 30 September. The bill was passed by the NA on 13 October and referred to the NCOP for concurrence. The NCOP amended the bill, a section 76 bill, and debated and adopted it on 15 November. The NA agreed to the amended bill on 16 November. Both the portfolio committee and the select committee, in their reports on the bill, expressed concern about consequential matters arising from the adoption of the bill, including matters relating to traditional leaders.

On 29 August, the JTM also classified the Forestry Laws Amendment Bill, introduced in the National Assembly on 10 August, as legislation falling within the scope of section 18(1)(a) of the Traditional Leadership and Governance Framework Act. The bill was referred to the NHTL on 30 August by the Secretary to Parliament. The return date for comments by the NHTL was 29 September. The comments of the NHTL were only received on 11 November and the National Assembly had passed the bill on 13 October. However, the NCOP was still considering the bill and the comments by the NHTL were consequently tabled by the Chairperson of the NCOP on 14 November and referred to the relevant select committee. The NCOP passed the Forestry Laws Amendment Bill on 16 November.

## [26] SPLITTING OF MIXED BILLS

The Constitution determines four main legislative categories, namely ordinary bills not affecting the provinces (section 75), ordinary bills affecting the provinces (section 76), money bills (section 77) and bills amending the Constitution (section 74). These constitutional provisions also prescribe the process that each type of bill will follow through Parliament. Bills, upon introduction,

are therefore referred to the Joint Tagging Mechanism (see *Item 38, Issue 4*) for classification into one of the four categories.

Parliament does not have a procedure for dealing with mixed bills. Therefore bills found to be mixed by the JTM are withdrawn from the legislative process so that the necessary splitting can be effected by the government department concerned. In 2005, the following bills were found to be mixed section 75/76 bills:

### **Electricity Regulation Bill**

The Electricity Regulation Bill was introduced in the National Assembly as a section 75 bill on 2 September by the Minister of Minerals and Energy.

The bill sought to establish a national regulatory framework for the electricity supply industry and to provide for licenses and registration as to the manner in which the generation, transmission, distribution, trading and the import and export of electricity are regulated.

The JTM found that the bill was a mixed section 75/76 bill, since it contained provisions to which section 75 of the Constitution applies and provisions to which section 76 applies. The bill was reintroduced in the National Assembly on 19 October as a section 75 bill after the provisions that must be dealt with in terms of section 76 had been removed. A bill containing the section 76 provisions was not introduced by the end of the year.

### **Diamonds Amendment Bill and Diamonds Second Amendment Bill**

The Diamonds Amendment Bill was introduced in the National Assembly as a section 75 bill by the Minister of Minerals and Energy on 30 August and referred to the Portfolio Committee on Minerals and Energy.

The bill sought to amend the Diamonds Act of 1986, *inter alia* to establish the South African Diamond and Precious Metals Regulator, to provide for the finances of the regulator and to impose certain levies and fines.

The JTM found that the bill was a mixed bill. On 26 October, the Speaker and the Chairperson of the NCOP announced in the ATC that the bill had been returned to the executive for splitting the previous day. The Diamonds Amendment Bill, containing only the section 75 provisions, was reintroduced in the National Assembly on 26 October.

The provisions that must be dealt with in terms of section 76 of the Constitution had been removed from the Diamonds Amendment Bill, but were subsequently included in the Diamonds Second Amendment Bill which was introduced on 4 November.



## **[27] AUDITOR-GENERAL'S SPECIAL REPORT ON LATE TABLING OF ANNUAL REPORTS**

Chapter 9 of the Constitution establishes the Auditor-General as one of the institutions that supports constitutional democracy. The Auditor-General must audit and report on the accounts, financial statements and financial management of all national and provincial departments and other public entities.

The Auditor-General has additional functions defined in terms of the Public Finance Management Act, No 1 of 1999. The PFMA was passed to regulate the management of public funds. Section 65(1) of the PFMA imposes the responsibility on an executive authority responsible for a department or public entity to table in the National Assembly the annual report, financial statements and audit reports of that department or public entity. Section 65(2) of the PFMA allows the Auditor-General a discretion to issue a special report if the executive authority of a department or public entity fails to table the annual report, financial statements and audit report of that department or public entity within six months after the close of the financial year.

By the end of October, seven months after the close of the financial year, a number of annual reports, financial statements and audit reports of departments and public entities were outstanding (see also *Item 17, Issue 9*). The Auditor-General proceeded to make an assessment of the delay in tabling of annual reports, as mandated by section 65(2) of the PFMA. He published his report in November in which he noted that with regard to national departments there was an improvement in the timely tabling of reports: 81% of departmental reports were tabled within six months after the close of the financial year as opposed to 70% in the 2003-04 financial year. Constitutional institutions also showed an improvement from 67% in the 2003-2004 financial year to 78% in the 2004-05 financial year. Public entities listed in Schedule 3 also showed an improvement from 75% in the 2003-04 financial year to 79% in the 2004-05 financial year. However, public entities identified in Schedule 2 showed a drop from 93% in the 2003-04 financial year to 88% in the 2004-05 financial year.

The Auditor-General recommended that when the PFMA was amended, it should clarify when departments and public entities should submit their reports. At present some table their reports on 31 August, while others table theirs on 30 September. He further recommended that annual reports should be tabled on or before 31 August to enable parliamentary committees to prepare adequately for oversight hearings, as suggested in the *National Treasury's Guidelines for Legislative Oversight through Annual Reports and Parliament's Operational Plan*. He also

recommended that the PFMA should stipulate a deadline for the legally imposed tabling of a written explanation by an executive authority for the late tabling of annual reports.

His special report was tabled on 10 November and referred to Scopa.

## **[28] BILL DEBATED WITHOUT TRANSLATION BEING AVAILABLE**

Section 6(3)(a) of the Constitution provides that the national government must use at least two languages for the purposes of government. Draft legislation must accordingly be available in at least two official languages. Joint Rule 221 provides that when the official text of a bill is sent to the President for assent it must be accompanied by the official translation of the text. The cover page of a bill specifies which is the official text.

The Joint Rules Committee on 9 October 2001 decided that a bill should not be placed before the National Assembly for its Second Reading debate unless the translation of the bill was available.

At a meeting of the Programme Committee on 10 November, it was proposed that the Diamonds Second Amendment Bill should be scheduled for its Second Reading debate on 11 November, despite the translation of the bill not having been received by Parliament. The bill was regarded as having met the deadline for submission of legislation to be passed by the end of the fourth term. The proposal to debate the bill without a translation being available was made to allow for the bill to be passed by both Houses before Parliament adjourned.

While reluctantly agreeing to the proposal, the Speaker in response proposed that a Rule should be formulated requiring a translation of a bill to be available before the House could consider the bill. This would strengthen the decision taken by the Joint Rules Committee and formalise the requirement for a translation. The Speaker said that she would also take the matter up with the Leader of Government Business.

## **[29] PROCESSING PUBLIC SUBMISSIONS AND "PETITIONS"**

In the course of 2005, a problem was identified in regard to determining how different kinds of public submissions that are not related to a bill or another matter before Parliament or its committees (in such cases submissions are sent on to the relevant committees), and which may or may not specifically be presented as "petitions", should be dealt with and what requirements they needed to meet to be accepted for processing.







## Petitions

The Constitution, in section 56(d), provides that “the National Assembly or any of its committees may receive petitions, representations or submissions from any interested persons or institutions”. The National Assembly, in Rules 309 to 315, provides for petitions to be lodged, but both special petitions (a petition requesting a pension or other specific or personal relief from the state which is not authorised by law) and petitions of a general nature must be lodged by a member of Parliament on a prescribed form and referred by the Speaker either to the Committee on Private Members’ Legislative Proposals and Special Petitions or to the relevant portfolio committee in the case of a petition of a general nature. In 2005, the only formal petition of a general nature submitted by a member of Parliament was a petition against the proposed name change of Pretoria. The Speaker tabled the petition on 14 April and referred it to the Portfolio Committee on Arts and Culture.

## Submissions to committees

Rule 138 also provides for a committee to receive petitions, submissions and representations on any matter before that committee.

## Public submissions and memorandums

The Rules are silent, however, on unsolicited public submissions, memorandums and representations which are at times called “petitions” by their presenters and are submitted to Parliament. No formal mechanism exists for their processing.

The vision of Parliament has as one of its main tenets building a Parliament “that is responsive to the needs of the people”. The public submissions in question arrive at Parliament unsolicited, but represent the direct submission of people’s needs and views and Parliament is committed to being responsive. Establishing a mechanism to become formally responsive to such submissions is a practical way of giving effect to Parliament’s vision statement.

The following mechanism for their processing was approved by the Deputy Speaker in her capacity as Acting Speaker:

- Submissions that are received unsolicited and do not directly relate to business before Parliament could be referred directly to the relevant portfolio committee, though not by formal tabling. Committees are engaged in oversight and would do so also on the basis of public opinion, which may be obtained through constituency offices, general interaction with the public or, as in this case, written public submissions.
- Public submissions should be referred to the relevant portfolio committees if they deal with issues in general and are not about personal circumstances. It would be for the

particular committee to assess whether to include the submission in its deliberations.

- Whether a committee wants to consider the submissions and how to respond to them would be up to that particular committee. Each committee should respond to such submissions as it sees fit.

## Representations in regard to personal circumstances

Parliament receives a substantial amount of correspondence in which assistance is sought in regard to problems of a personal nature. In such cases, the members of the public are advised to approach their public representatives for assistance and the telephone numbers and addresses of constituency offices in their area are provided.

## [30] INSTALLATION OF AV SCREEN AT PODIUM

A member speaking from the podium faces the Chamber and has his/her back to the Chair. Consequently the member speaking is not aware if one presiding officer takes over from another during the course of that member’s speech. This has often resulted in a member at the podium addressing a presiding officer who has already left the Chair, for example the member addresses the Speaker when the Deputy Speaker or a House Chairperson has taken the Chair. In order to address this problem, a small video screen was installed at the podium in January. The screen enables a member at the podium to determine who is presiding at any given time.

## [31] DOG DROPPINGS IN CHAMBER

At the commencement of the sitting of the House on 26 May, dog droppings were discovered under the bench of a party leader and senior member of Parliament. The member was moved to an alternate bench for the duration of the day’s sitting and no mention was made of the matter during the House proceedings. The member, however, suspected intended insult and regarded the incident as a personal affront.

The incident was thoroughly investigated and it was discovered that an explosive detector dog of the SA Police Services Dog Unit had defecated during the routine security screening of the Chamber prior to the commencement of the sitting of the House. Most of the dog droppings had been removed immediately, but the droppings on the carpet near the member’s desk were overlooked.

An appropriate explanation, together with an apology for any inconvenience and embarrassment caused, was addressed to all concerned by the office of the Provincial Head: Protection and Security on behalf of the Divisional Commissioner of the SAPS. The Speaker and the Secretary to Parliament also



wrote to the member of Parliament concerned, apologising for the incident.

### **[32] MEMBERS SPEAKING FROM THEIR DESKS PROVIDED WITH CLOCK-TIMER**

Members taking part in debates in the National Assembly usually speak from the podium where they have a clock-timer to assist them in timing their contributions. In 2005, the Table staff received a request from Prof S M Mayatula to provide disabled members, particularly members in wheel-chairs, with a clock-timer when they speak, as they mostly participate in debates from their desks. The practice has now been established that disabled members, assisted by the Chamber service officers, receive a portable clock-timer counting up at the commencement of their speech to enable them better to time their speeches.

### **[33] POWER FAILURE AND IMPACT ON HOUSE PROCEEDINGS**

During a House sitting on 16 November, a power failure in the greater Cape Town area resulted in the lights in the Chamber not working, despite the Chamber being meant to be fully functional when a power failure occurs as emergency generators should immediately come into operation. Proceedings were accordingly suspended for 45 minutes until power was restored.

At the resumption of proceedings, the Speaker announced that the Secretary to Parliament would submit a report on the reasons why Parliament's generators had not come into operation to enable the House to continue with its business when the power failure occurred.

The suspension of proceedings meant that the House would have to sit later than planned. The planned programme already indicated that the House would sit until approximately 21:00, well beyond the normal adjournment time of 18:00. There was also the possibility that a further power failure would again disrupt proceedings. With this in mind, and as it was the last sitting day of the year, the House gave precedence to matters on the Order Paper on which the decision of the House was required that day.

### **[34] RULE AMENDMENTS**

#### **A. AMENDMENTS GIVING EFFECT TO LEGISLATION**

##### **Background**

The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (hereafter referred to as the Powers and Privileges Act) and the Traditional Leadership and Governance Framework Act (hereafter

referred to as the Traditional Leadership Act) were both enacted in 2004. (For more detailed information on these Acts, see *Item 12, Issue 9* and *Item 33, Issue 10* respectively.)

Section 12 of the Powers and Privileges Act provides that each House should establish a standing committee to deal with all inquiries relating to contempt and breach of privilege of Parliament. The Act also provides that a person summonsed to appear before a House or committee, including a joint committee, is entitled to be paid an amount for his or her expenses. The Assembly and Council Rules made provision for this, but the Joint Rules were silent. The Act removed the common law privilege of a witness not to make self-incriminating statements. Section 16 of the Act, read with section 17, provides that a witness can be held criminally liable if he or she fails to answer fully and satisfactorily all questions lawfully put to him or her, or fails to produce any document in his or her possession, custody or control.

Concerning the Traditional Leadership Act, section 18(1) provides for the referral to the National House of Traditional Leaders of all bills that pertain to customary law or customs of traditional communities by the Secretary to Parliament and for that House to reply to such a referral within 30 days.

The promulgation of these Acts therefore necessitated the adjustment of the Rules to enable the Houses to comply with them. The Joint Subcommittee on Review of the Joint Rules submitted preliminary Rule amendments on 3 June to the Joint Rules Committee to give effect to certain provisions of the Powers and Privileges Act (while others such as the establishment and mandate of the required committee in terms of section 12 received further attention) and to give effect to the Traditional Leadership Act.

#### **Adoption of First Report of Joint Rules Committee and National Assembly Supplementary Report**

Amendments giving effect to the abovementioned Acts were agreed to by the Joint Rules Committee, of which the Assembly Rules Committee is a component, and were contained in the First Report of the Joint Rules Committee which was tabled on 31 August. A National Assembly Supplementary Report which dealt with those amendments to Joint Rules which had a direct application to the National Assembly, thereby necessitating specific amendments to National Assembly Rules, was tabled by the Speaker, also on 31 August.

Both the First Report of the Joint Rules Committee and the Supplementary Report were adopted by the National Assembly without debate on 13 September, thereby giving effect to the following Rule amendments:



## Joint Rules:

### Interpretation

In Joint Rule 1(1) the following definition was inserted in the appropriate alphabetical position:

“Act” means the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004;

### General Powers (of joint committees)

In Joint Rule 32 the following new Subrules were inserted:

- 32(3) Subject to the approval of the Speaker and Chairperson, the Secretary may pay to witnesses summonsed in terms of section 14(1) of the Act or Rule 32(1)(a) of the Joint Rules a reasonable sum for travelling and attendance time and for transport expenses actually incurred.
- 32(4) Prior to a witness giving evidence before a House or committee, the member presiding shall inform the witness as follows:

“Please be informed that by law you are required to answer fully and satisfactorily all the questions lawfully put to you, or to produce any document that you are required to produce, in connection with the subject matter of the enquiry, notwithstanding the fact that the answer or the document could incriminate you or expose you to criminal or civil proceedings, or damages. You are, however, protected in that evidence given under oath or affirmation before a House or committee may not be used against you in any court or place outside Parliament, except in criminal proceedings concerning a charge of perjury or a charge relating to the evidence or documents required in these proceedings.”

### Referral of bills to JTM

In Joint Rule 160 the following new Joint Subrule was inserted:

- 160(5A) The JTM must also make a finding whether a Bill pertains to customary law or customs of traditional communities in accordance with section 18(1) of the Traditional Leadership and Governance Framework Act, 2003.

### Reclassification of bills

In Joint Rule 163 the following new Subrule was inserted:

- 163(3) The JTM may change the classification of a Bill in respect of whether the Bill pertains to customary law or customs of traditional communities in accordance with section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, and amend its finding in terms of Rule 160(5A).

### Process in committee

In Joint Rule 167 the following new provision was inserted:

- 167(3) The committee -
- (i) may report to the House in which the Bill was introduced if the Bill was classified as being subject to section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, only after 30 days have passed since the referral to the National House of Traditional Leaders in terms of Assembly Rule 332 and Council Rule 255.

### Fast-tracking

In Joint Rule 216 the following Subrule was inserted:

- 216(7) This Rule does not apply to a Bill classified as being subject to section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, which is still before the House where it was introduced for a period of 30 days since the referral to the National House of Traditional Leaders in terms of Assembly Rule 332 and Council Rule 255.

## National Assembly Rules:

### General Powers (of committees)

After Rule 138, the following new Rule 138A was inserted:

- 138A Prior to a witness giving evidence before a House or committee, the member presiding shall inform the witness as follows:

“Please be informed that by law you are required to answer fully and satisfactorily all the questions lawfully put to you, or to produce any document that you are required to produce, in connection with the subject matter of the enquiry, notwithstanding the fact that the answer or the document could incriminate you or expose you to criminal or civil proceedings, or damages. You are, however, protected in that evidence given under oath or



affirmation before a House or committee may not be used against you in any court or place outside Parliament, except in criminal proceedings concerning a charge of perjury or a charge relating to the evidence or documents required in these proceedings.”

#### **Process in committee** (of bills)

In Rule 249 the following new provision 249(3)(i) was inserted:

249(3) The committee -

- (i) may report to the Assembly on a Bill introduced in the Assembly and classified as being subject to section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, only after 30 days have passed since the referral to the National House of Traditional Leaders in terms of Rule 332.

#### **Referral of bills to National House of Traditional Leaders**

The following new Rule 332 was inserted:

332 (1) The Secretary must refer a Bill to the National House of Traditional Leaders if the JTM has made a finding that the Bill pertains to customary law or customs of traditional communities in accordance with Rule 160 of the Joint Rules.

- (2) The Secretary must inform the Speaker and the chairperson of the portfolio committee to which the Bill was referred of the date of referral, which date must be published in the relevant parliamentary paper.

#### **B. AMENDMENTS PERTAINING TO MEMBERS' STATEMENTS**

Before the amendment of the Rules pertaining to members' statements (Rule 105), the Rule provided that at the conclusion of statements by members a Minister present may be given an opportunity to respond, for not more than two minutes, to any statement directed to that Minister or made in respect of that Minister's portfolio. The Rule went further to state that in the absence of a Minister who may respond to a statement as envisaged above, the relevant Deputy Minister or a Minister from the same Cabinet cluster must be given an opportunity to respond on behalf of the absent Minister. The fact that the Cabinet clusters differ from the clusters that Parliament uses for the purposes of questions to Ministers made it increasingly difficult for the

presiding officers to ascertain which Ministers belonged in the same Cabinet cluster.

After a consultative process in the Chief Whips' Forum, on 19 May the House, on a motion moved on behalf of the Chief Whip of the Majority Party, adopted amendments to the Rule on members' statements. The amended Subrules 105(7) and 105(8) provide that in the absence of the relevant Minister or Deputy Minister, any other Minister must be given an opportunity to respond on behalf of the absent Minister.

As a result of the change in the number and composition of parties in the National Assembly after floor-crossing (see *"Floor-crossing: 1-15 September"* above), the Rules Committee on 14 October considered the sequence of members' statements. The committee proposed that the number of statements allowed on a day on which members' statements are taken be increased from a maximum of 14 to a maximum of 15 and the maximum of Ministers who may respond to members' statements be increased from five to six. As a consequence, Rule 105(5) and 105(9), dealing with the number of members' statements and the number ministerial responses respectively, were suspended (see *"Adjustment of Assembly processes and procedures"* under *"Floor-crossing: 1-15 September"* above). The report of the Rules Committee on this matter, adopted by the House on 25 October, indicated that this arrangement would be applied for a trial period.

#### **C. AMENDMENTS PERTAINING TO COMPOSITION OF PORTFOLIO COMMITTEES**

The need to reduce the size of portfolio committees was initially raised at a meeting of the Rules Committee held on 8 June. The reasons advanced were that a reduction in size would make it possible for members to belong to as few committees as possible and would minimise clashes and address quorum problems. At its meeting of 14 October, the committee decided that as a general principle the number of members on portfolio committees would be reduced from 17 to 13 members, as follows: ANC 8, DA 2, IFP 1, and other parties 2. In this regard, the committee recommended a consequential amendment to Rule 200(2), which determines that a portfolio committee must have no fewer than 15 members, to state that a portfolio committee must have no fewer than 13 members.

This amendment was contained in a report of the Rules Committee which was adopted by the House without debate on 25 October.

#### **[35] FAST-TRACKING OF BILLS**

Two bills were fast-tracked during the 2005 parliamentary session, namely the Division of Revenue Bill and the Constitutional Matters Amendment Bill.







On 23 February, the Joint Programme Subcommittee agreed, in terms of Joint Rule 216(2), to a request from the Leader of Government Business for the fast-tracking of the Division of Revenue Bill, a section 76 bill introduced in the National Assembly together with the Appropriation Bill. The decision of the subcommittee was ratified by a resolution of the National Assembly on 1 March and by the NCOP on 8 March. This decision made it possible to dispense with any relevant House Rule or Joint Rule and to shorten any period in the legislative process relating to the bill so that it could be passed by the commencement of the new financial year on 1 April. The bill was passed by the National Assembly on 1 March and by the NCOP on 17 March, and assented to by the President on 1 April.

The Joint Programme Subcommittee also agreed on 4 August to a request from the Leader of Government Business for the fast-tracking of the Constitutional Matters Amendment Bill, a section 75 bill introduced in the National Assembly on 15 July. The decision of the subcommittee was ratified by resolution of the NCOP on 4 August and on 23 August by the National Assembly. As the bill sought to regulate certain matters emanating from the “floor-crossing” legislation (see *“Constitutional Matters Amendment Bill and Amendment Regulations in terms of Public Funding of Represented Political Parties Act”* under *“Legislation and Committees”* below), and considering that the window period for floor-crossing was due to commence on 1 September, the bill had to be passed by Parliament and implemented by 31 August. The bill was passed by the National Assembly, after a division, on 23 August and by the NCOP on 25 August.

## LEGISLATION AND COMMITTEES

### [36] CITATION OF CONSTITUTION LAWS BILL

Acts amending the Constitution have been treated, for numbering purposes, like any other bill, ie such Acts received an Act number, followed by the year in which the amendment Act had been assented to.

On 15 February, the Minister for Justice and Constitutional Development introduced the Citation of Constitution Laws Bill. The Bill would -

- (a) provide that no Act number is associated with the “Constitution of the Republic of South Africa Act, 1996”...

This meant that the Constitution’s Act number, No 108 of 1996, would no longer be used. The Constitution would, in future, be referred to as the “Constitution of the Republic of South Africa, 1996”.

The bill further sought -

- (b) to change the short titles of existing laws amending the Constitution so as to provide for their consecutive numbering...

Such Acts would, in future, be referred to as the Constitution First Amendment Act, the Constitution Second Amendment Act, the Constitution Third Amendment Act, and so forth.

Lastly the bill sought to -

- (c) provide that in future no Act number be associated with or allocated to laws amending the Constitution.

In addressing the House on the bill on 17 March, the Deputy Minister for Justice and Constitutional Development said that many people, including members of the judiciary and especially the Chief Justice, had in the recent past expressed the view that the Constitution should be treated differently from other Acts of Parliament, eg by not being allocated an Act number like ordinary Acts of Parliament. He added that the view had also been expressed that the short titles of all laws amending the Constitution should, as in some other countries such as India and the United States, be numbered consecutively.

The bill was passed by the NA on 17 March and by the NCOP on 14 June.

### [37] INTERGOVERNMENTAL RELATIONS FRAMEWORK BILL

The Intergovernmental Relations Framework Bill was introduced in the National Assembly as a section 75 bill by the Minister for Provincial and Local Government on 7 February and referred to the Portfolio Committee on Provincial and Local Government.

Section 41(2) of the Constitution requires an Act of Parliament to establish or provide for structures and institutions to promote and facilitate intergovernmental relations and to provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes. The Intergovernmental Relations Framework Bill gave effect to this constitutional requirement.

The bill provides for an institutional framework for national, provincial and local government and all other organs of state in order to facilitate coherence, co-ordinate the implementation of policy and legislation, provide effective delivery of services and generally to realise national priorities in core areas of social delivery. National programmes for economic growth, reconstruction and development are implemented through the institutions of the three-sphere system of government.

National government is primarily responsible for establishing the policy and legislative framework that will ensure national



uniformity and social equity, while the provinces and municipalities are responsible for service provision and implementation. The three spheres of government enjoy a symbiotic relationship. As they are distinctive and interrelated parts of one government, they are duty-bound to co-operate with one other to provide coherent service delivery.

Furthermore, the bill aims to support and strengthen three key elements in the system of co-operative government. Firstly, by bringing predictability and stability in how the executive of the three spheres of government interacts and co-operates in the formulation and execution of policy in key areas of national priority. Secondly, by providing an opportunity for the national and provincial spheres of government to support local government through ensuring that planning and implementation are informed by the needs of communities and by the growth potential of the various localities in the country. Thirdly, by providing an opportunity to improve the spatial targeting of government programmes that cut across jurisdictional boundaries but converge in municipal spaces.

In terms of clause 43 of the bill, the Minister may, when necessary, submit a report for tabling in both Houses with regard to: -

- the general conduct of intergovernmental relations in the Republic;
- the incidence and settlement of intergovernmental disputes; and
- any other relevant matters.

The committee tabled its report and the bill with amendments on Wednesday, 13 April. On Tuesday, 24 May, the House adopted the bill, the IFP dissenting. The NCOP agreed to the bill on 22 June. The bill was assented to and came into effect on 10 August.

### [38] CONSTITUTIONAL MATTERS AMENDMENT BILL AND AMENDMENT REGULATIONS IN TERMS OF PUBLIC FUNDING OF REPRESENTED POLITICAL PARTIES ACT

#### Introduction and objects of bill

The funding of represented political parties and the allocation of money to political parties are regulated in terms of the Public Funding of Represented Political Parties Act, No 103 of 1997. On 15 July, in anticipation of the floor-crossing window period from 1 to 15 September (see *Floor crossing: 1-15 September*” under *Procedural and related issues*” above), the Constitutional Matters Amendment Bill was introduced in the National Assembly and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report.

The portfolio committee, in accordance with a joint decision by the Speaker and the

Chairperson of the NCOP in terms of Joint Rule 147(2), had to confer with the Select Committee on Security and Constitutional Development (a Council committee) on the subject of the bill.

The bill provides, among other things, that parties that lose members as a result of floor-crossing and therefore no longer qualify for the allocation of funds in terms of the Act must repay the unspent balance of money already received within a certain period. The bill also provides that parties affected by membership changes after floor-crossing though not to the extent that they cease to qualify for an allocation do not have to repay all unspent balances allocated to them. It further details the mechanisms for auditing money allocated to parties in terms of the Act and for determining any amount that is repayable to the Electoral Commission.

Also, for determining the number of permanent and special National Council of Provinces delegates to which a party represented in a provincial legislature is entitled after floor-crossing, the bill makes provision for the altered state of parties and the merging of parties to be taken into account when National Council of Provinces’ delegates are elected by the legislature after being reconstituted. These provisions had not been re-enacted after the original Membership Act of 2002 had been adjusted by Parliament following a finding by the Constitutional Court that the Act contained provisions that were inconsistent with the Constitution and hence invalid.

At the request of the Leader of Government Business, the bill was fast-tracked (see *Fast-tracking of bills*” under *Procedural and related issues*” above). After a division, the Constitutional Matters Amendment Bill was passed by the Assembly on 23 August and by the Council on 25 August. It was assented to by the President on 31 August.

#### Amendment regulations: Public Funding of Represented Political Parties Act

Section 10 of the Public Funding of Represented Political Parties Act provides that the President, acting on the recommendation of a joint committee of the National Assembly and the National Council of Provinces, may by proclamation in the *Gazette* make regulations consistent with the Act.

The Minister for Justice and Constitutional Development, on behalf of the President, tabled draft amendment regulations in terms of the Public Funding of Represented Political Parties Act on 22 July. The regulations essentially dealt with technical aspects concerning the manner in which funds have to be paid to a political party. As neither House was sitting at the time, the Speaker and the Chairperson of the Council, acting jointly, established an ad hoc joint committee on







29 July to consider the draft regulations. The ad hoc joint committee consisted of members of the Portfolio Committee on Justice and Constitutional Development of the Assembly and the Select Committee on Security and Constitutional Affairs of the Council. The terms of reference of the committee were, *inter alia*, to make recommendations to the President on the draft amendment regulations, inform the Assembly and the Council of its recommendations to the President and complete its task by not later than 19 August.

The decision by the Presiding Officers to establish the ad hoc joint committee was tabled for ratification in terms of Joint Rule 138(4) in both Houses at their first sittings. The Council ratified the decision on 4 August and the Assembly on 23 August.

The ad hoc joint committee reported on the regulations to the Houses on 19 August.

#### **[39] CO-OPERATIVES BILL AND CO-OPERATIVES ADVISORY BOARD**

The Co-operatives Bill was introduced in the National Assembly as a section 75 bill by the Minister of Trade and Industry on 15 February and referred to the Portfolio Committee on Trade and Industry.

The bill put forward a framework on how government would promote co-operatives as part of its enterprise development strategy. There are several co-operatives operating in various sectors of the economy, including community banking services, insurance and funeral services, the food industry, housing and agriculture. The framework envisaged in the bill would locate co-operatives in the South African economy so as to provide them with the necessary support to strengthen and build their technical capacity, financial support, expansion and access to markets and modernising their operations.

The bill also provides for the establishment of a Co-operatives Advisory Board to advise the Minister generally and to make recommendations, *inter alia*, about policy for the development of co-operatives; the application of the provisions of the Act; the provision of support programmes that target co-operatives; and matters referred to the board that relate to the development of co-operatives. In terms of clause 89(3) of the bill, "members of the Co-operatives Advisory Board are accountable to Parliament".

Clause 91 provides that all national departments and their agencies that provide development support programmes to co-operatives may be required by Parliament, in line with the principles contained in Chapter 3 of the Constitution, to report on the progress made regarding the design and implementation of such programmes.

The committee tabled its report and the bill with amendments on Wednesday, 20 April. On 2 June the House adopted the bill. The NCOP agreed to the bill on 22 June. The bill was assented to and came into effect on 14 August.

#### **[40] CONSTITUTION 12TH AMENDMENT BILL (INCLUDING CASTING OF DELIBERATIVE VOTE BY CHAIR)**

The Constitution Twelfth Amendment Bill had as its main objective the re-determination of the boundaries of the provinces to avoid municipalities physically located in one province from falling under the jurisdiction of another province. This bill, together with the Cross-Boundary Municipal Laws Repeal Bill which sought to repeal all laws providing for so-called cross-boundary municipalities, had to be passed before the local government elections which were due to be held early in 2006.

The Constitutional Twelfth Amendment Bill had to be passed by the National Assembly with a supporting vote of at least two thirds of its members, ie 267 members had to vote in support of the bill. When, on 15 November, the question was put that the bill be read a second time, a division was demanded. The result of the vote was that 266 members had voted in favour of the bill. One more vote was required in order for the bill to be agreed by the National Assembly.

Section 53(2)(b) of the Constitution expressly provides that "the member of the National Assembly presiding at a meeting of the Assembly has no deliberative vote, but ... may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the Assembly". The Deputy Speaker, who was presiding at the time, announced to the House that in terms of the provisions of the Constitution, she was casting her deliberative vote in favour of the bill being read a second time. The bill therefore obtained the required supporting vote of two thirds of the members of the National Assembly.

The Cross-Boundary Municipal Laws Repeal Bill was passed by the National Assembly on 13 December. Both the Constitution Twelfth Amendment Bill and the Cross-Boundary Municipal Laws Repeal Bill were passed by the NCOP on 14 December.

#### **[41] REMOVAL OF ROLE FOR NA IN APPOINTMENT AND REMOVAL FROM OFFICE OF ICASA COUNCILLORS**

In terms of section 5 of the Independent Communications Authority of South Africa Act, No 13 of 2000, the Icasa council consists of seven full-time councillors appointed by the President on the recommendation of the National Assembly according to the following principles, namely participation of the public in the nomination process; transparency and



openness; and the publication of a shortlist of candidates for appointment, with due regard to the criteria for the selection of candidates and the list of disqualifications for the post (see also “*Appointment of Icasa councillor*” under “*Statutory functions*” below).

In terms of section 8 of the Act, councillors may be removed from office only on a finding to that effect by the National Assembly and the adoption by the National Assembly of a resolution calling for the councillor’s removal from office.

On 3 November, the Assembly approved the Independent Communications Authority of South Africa Amendment Bill. In terms of clause 7 of the amending bill, the council would now consist of a chairperson and eight councillors, appointed by the Minister of Communications by notice in the *Gazette*.

The bill approved by the Assembly still envisaged a role for the National Assembly in that the Assembly would, whenever required, appoint an independent and impartial selection panel of five people who have an understanding of issues relating to the electronic communications and postal sectors. The selection panel would invite nominations, publish a shortlist, interview candidates and submit a list of suitable candidates to the Minister. The Minister would then recommend for approval to the National Assembly the persons proposed for appointment to the Icasa council. Once the National Assembly had approved the Minister’s candidates, their names would be published in the *Gazette*, whereupon the selection panel would be dissolved.

Regarding the removal of councillors, the amending bill approved by the Assembly contemplated in clause 11 that a councillor may be removed from office on the recommendation of the Minister to the National Assembly and upon approval by the National Assembly of such a recommendation.

The bill was referred to the National Council of Provinces for concurrence. The bill eventually adopted by the NCOP on 13 December included a series of proposed amendments that were published in the ATC on 23 November. The proposed amendments included the removal of the National Assembly’s role in the appointment of the selection panel and in the removal of councillors from office. Instead, the powers of the Minister and the role of the selection panel were augmented. The selection panel, appointed by the Minister, would recommend suitable candidates for appointment and the Minister would also remove councillors from office on the panel’s recommendation. In the future, the National Assembly would no longer have a role in the nomination, appointment or removal from office of Icasa councillors.

The amendments proposed by the NCOP were agreed to by the National Assembly on

14 December and the bill was sent to the President for assent. By the end of the annual parliamentary session, the bill had yet to be enacted.

*[Editorial note: The bill was later referred back to the NA by the President.]*

#### **[42] OVERSIGHT AND ACCOUNTABILITY TASK TEAM: SETTING UP FOCUS GROUPS**

The Task Team on Oversight and Accountability was established in accordance with the implementation plan adopted by the Joint Rules Committee on 19 August 2003 (see *Item 29, Issue 8*).

At a Joint Rules Committee meeting on 4 August 2004, it was agreed that the designated House Chairperson in the office of the Speaker, together with the Deputy Chairperson of Committees in the NCOP, would co-chair the task team and drive the implementation of the recommendations of the Joint Subcommittee on Oversight and Accountability, as adopted by the JRC in August 2003.

The composition of the task team, after consultation with political parties, was agreed to by the Joint Rules Committee on 18 November 2004.

The task team established the following three focus groups in accordance with the decision of the Joint Rules Committee:

- (a) Projects Focus Group, mandated to conduct constitutional landscaping and an audit of public-funded bodies, to do an analysis of institutions supporting democracy and to review Rules on oversight mechanisms;
- (b) Committees Focus Group, mandated to draft guidelines for portfolio and select committees to allow for joint planning and oversight work, to draft a best practice guide in respect of oversight practices of committees, to draft guidelines on joint planning and protocols for structured communication between the NA and the NCOP, to make recommendations for capacity development of committees, and to recommend appropriate record-keeping systems and monitoring mechanisms in the committee section; and
- (c) Budget Focus Group, mandated to research and develop draft policy on the procedure for the amendment of money bills before Parliament, and to draft proposed legislation in that regard.

#### **[43] OPERATIONALISING CONSTITUTIONAL REVIEW COMMITTEE**

In terms of section 45 of the Constitution, the NA and the NCOP must establish a joint committee to review the Constitution at least







once a year. Joint Rule 97 establishes the Constitutional Review Committee. However, the membership of the committee determined by the Joint Rules had proved impractical and the committee had experienced difficulty in scheduling regular meetings. Consequently, on 4 August 2004, the Joint Rules Committee agreed to reduce the membership of the committee to 13 NA members and 9 NCOP delegates (see *Item 37, Issue 10*). The relevant Joint Rule has not yet been adjusted.

The committee appoints a chairperson and deputy chairperson from among its members. On 8 March 2005, Dr E A Schoeman, a member of the NA, was appointed as chairperson with effect from 7 March.

In February, the JRC referred to the Constitutional Review Committee a request to consider the provisions of the interim Constitution that were still in operation. At the end of 2005, the committee was yet to report in regard to the JRC referral, but indicated that it was awaiting a report from the Department of Justice and Constitutional Development on the relevant provisions.

On 1 November the committee reported on public submissions it had received on constitutional matters, in accordance with its mandate. The committee had received submissions relating to the property clause, animal rights, the provision of old age homes and protection of the institution of marriage. The committee did not recommend constitutional amendments with regard to any of the public submissions. It did, however, recommend that the submission on animal rights be referred to the Portfolio Committee on Environmental Affairs and the relevant select committee.

On 3 November, the House adopted the report. The IFP, ACDP, UPSA and FD asked for their objection to be recorded.

#### **[44] UNSIGNED AUDIT REPORTS AND ELECTRONIC SIGNATURE OF ANNUAL REPORTS: FIRST REPORT OF COMMITTEE ON PUBLIC ACCOUNTS**

In its first report to the House in 2005, the Committee on Public Accounts (Scopa) indicated that it was concerned about the legality of unsigned audit reports submitted to Parliament for tabling by parastatals and departments and the validity of audit reports signed by means of an electronic signature or a company rubber stamp. The committee was concerned that this practice could have legal implications regarding the status of the reports.

Scopa had therefore requested a legal opinion from the parliamentary legal advisors on the validity of such unsigned audit reports and the validity of an audit report signed by means of an electronic signature or a company's rubber stamp. The legal opinion indicated that such

reports could be in contravention of the common law, South African Audit Standards (SAAS) and the Electronic Communications and Transactions Act of 2002.

In the light of the legal opinion, the committee recommended that:-

- an audit report tabled in Parliament must be signed by an authorised auditor either in his / her personal name or in the name of the company;
- in the case of an electronic signature, the report must be certified to be correct by an officer in the service of the company; and
- where a company uses a rubber stamp, an official of the company must also sign the report.

In addition, the committee recommended that departments and parastatals should comply with the above requirements, and reports which do not conform to these standards should be rejected and sent back. The Assembly adopted the committee's report on 7 June.

#### **[45] NON-ESTABLISHMENT OF JOINT COMMITTEE ON RECONSTRUCTION AND DEVELOPMENT**

Joint Rule 133 provides for the establishment of the Joint Monitoring Committee on Reconstruction and Development. According to the Rule, members of the committee are selected from the Assembly portfolio committee and NCOP select committee involved in matters directly relevant to the reconstruction and development programme; and the functions of the committee are to monitor and evaluate the implementation of the reconstruction and development programme and to make recommendations to either House or both Houses, or any joint or House committee, on matters concerning the reconstruction and development programme.

On 4 August 2004, early in the life of the Third Parliament, the JRC embarked on an overview of all joint committees in order to decide, among other things, on the operationalisation, composition and size of joint committees and subcommittees of the JRC. It was noted then that the Joint Monitoring Committee on Reconstruction and Development had not been operationalised in the Second Parliament.

In February 2005, subsequent to the overview, the JRC decided not to operationalise the Joint Monitoring Committee on Reconstruction and Development. It was agreed instead that the Task Team on Oversight and Accountability would look at a mechanism that would enable committees to monitor and oversee the implementation of reconstruction and development priorities.



#### **[46] ESTABLISHMENT OF TASK TEAM ON PARLIAMENT'S INTERNATIONAL RELATIONS POLICY**

In the Third Parliament, the JRC agreed to establish from among its range of subcommittees provided for in the Rules only the Subcommittee on Review of the Joint Rules (see *Item 37, Issue 10*). One of the subcommittee's not established was the Joint Subcommittee on International Relations. At the JRC's meeting on 4 August 2004, it had been suggested that members should look at the proposed governance model and determine whether it could be linked to the work previously done by the subcommittees.

On 4 February, at the JRC's first meeting in 2005, the Speaker explained that already in the previous Parliament the presiding officers had come to the conclusion that hardly any substantive, content work was being done by the Joint Subcommittee on International Relations. How Parliament engaged with its counterparts internationally was, however, a critical issue that required policy decisions and often there was a need to provide delegations with mandates before they attended conferences. After a substantive discussion, it was agreed that a policy document containing the core values that informed Parliament's international relations should be presented at the next meeting of the JRC for processing and refinement.

The document was presented at the JRC's meeting on 3 June, but as not all parties had received the document timeously, they were requested to consider the document and come with proposals to the next meeting.

At the meeting on 24 August, the JRC had a substantive discussion where all parties had an opportunity to express their viewpoints on how Parliament conducted its international relations. The meeting agreed that the Presiding Officers would establish a task team to develop an international relations policy for Parliament, the policy to be informed by the national foreign policy. The Presiding Officers subsequently established the task team and determined that it would consist of 8 members, as follows: ANC 4 (including at least one from the NCOP); DA 1, IFP 1 and other parties 2. The task team had to complete its work by end of October for purposes of reporting to the JRC. Mr K O Bapela, House Chairperson of the NA, was appointed as convener of the task team. The remaining members of the task team were appointed by their respective parties.

On 26 October, the task team reported to the JRC that it required more time to complete its task, but would be ready to present a report to the JRC at its first meeting in 2006. The JRC agreed to the task team's request.

#### **[47] REPORT ON PARLIAMENT BY COMMITTEE ON PUBLIC ACCOUNTS**

In terms of Rule 206, the Committee on Public Accounts (Scopa) must consider the financial statements of all executive organs of state and constitutional institutions, any audit reports on those statements and any reports by the Auditor-General on the affairs of any executive organ of state, constitutional institution or other public body. It would appear from the Rules that Scopa's mandate also covers the consideration of the audited financial statements of Parliament.

In interpreting its mandate, and of its own initiative, Scopa has considered Parliament's financial statements since 2003 and reported on its consideration to the House.

On 4 November 2004, the Speaker tabled the Annual Report of Parliament for 2004, including the financial statements for the year ending 31 March 2004 and the Report of the Auditor-General thereon.

In its 22nd report, published in the ATC on 2 August 2005, Scopa raised concerns about various matters of detail relating to the financial management of Parliament and requested a response from Parliament. The Assembly adopted Scopa's report on 13 September.

The Parliamentary Oversight Authority (POA) decided in 2005 that Scopa would no longer consider Parliament's annual report and financial statements. It is envisaged that the new Financial Administration of Parliament Bill will make provision for this matter.

#### **[48] JSCI PRESENTS REPORT OF COMMITTEE ACTIVITIES IN 2ND PARLIAMENT**

On 20 September 2004, the Joint Standing Committee on Intelligence (JSCI) tabled an annual report on the committee's activities dated 31 March 2004. As the National Assembly had been dissolved on 10 February 2004 for the general election on 14 April 2004 and the report was being tabled by a new committee in a new Parliament, an explanation was sought from the chairperson, who had also been the chairperson of the committee of the Second Parliament, as to whether the report had formally been adopted by the Third Parliament's committee after it had satisfied itself that the report's contents reflected the viewpoints of the new committee.

Subsequently, an announcement by the Speaker and the Chairperson of the NCOP in the ATC on 19 November 2004 indicated that the committee had met on 3 November and formally adopted the report. It was also indicated that the committee wanted the House formally to consider the report. As the







report had been published after the last sitting day in 2004, it did not lapse and appeared on the first Order Paper of 2005 as a matter for consideration.

In its report, the JSCI pointed out, *inter alia*, that in terms of the Intelligence Services Oversight Act, No 40 of 1994, it has to make recommendations to the Joint Rules Committee on Rules guiding the functions of the committee. The committee also indicated that it wanted to make certain proposals to Parliament about the fact that neither the Joint Rules setting up the JSCI nor the Constitution mandates it to consider legislation relating to intelligence matters. When legislation has to be considered, an ad hoc committee is usually appointed by the House though parties are free to nominate members of the JSCI to serve on the ad hoc committee.

The report also contains brief reports on the committee's interaction with each of the bodies over which it exercises oversight. It concluded by stating that though the JSCI experienced some challenges with regard to office accommodation and adequate support staff, the work ethic in the committee allowed it to enjoy the trust of the intelligence structures in the country.

After a brief introduction by the chairperson, the Assembly adopted the report on 16 November. The National Council of Provinces did not schedule the report for consideration in that House.

#### **[49] PROPOSAL FOR NA (AS 2ND HOUSE) TO REDRAFT OLDER PERSONS BILL**

In November 2003, the Older Persons Bill was introduced in the National Assembly and classified as a section 76 bill. In 2004, the bill lapsed at the end of the life of the Second Parliament. In the Third Parliament it was re-introduced in the NCOP on 18 June 2004 as a section 76(2) bill. The NCOP passed an amended version of the bill as introduced after lengthy consideration and engagement at the provincial level. Hence the bill came to the Assembly as the B-version.

The NA, as the second House, spent considerable time on the bill too. At a Programme Committee meeting on 20 October, a report from the chairperson of the Portfolio Committee on Social Development was circulated. In his report on progress with the bill, the chairperson indicated that the committee intended to present for approval a version of the bill that would have been extensively "redrafted" as a result of serious concerns raised in public hearings about the scope of the bill. Consequently House Chairperson Mr Doidge asked the Table to prepare advice on the committee's proposal,

particularly in view of the fact that the NA was the second House to consider the bill.

According to section 76(2) of the Constitution, when the Assembly receives a bill from the NCOP, it must (a) pass the bill; (b) pass an amended bill; or (c) reject the bill. If the NA passes an amended version of the bill, it must be referred back to the NCOP. The NCOP can then pass the amended version or it can refuse to do so. If the NCOP refuses to pass the NA's amended version, the bill has to go to the Mediation Committee. If the Mediation Committee is unable to agree on a version of the bill, the bill lapses.

According to the NCOP Rules, a section 76(2) bill received back from the NA in amended form may (a) be placed directly onto the Order Paper of the NCOP for debate and decision; or (b) be referred to the appropriate select committee "for a report and recommendations on the Assembly's amendments". No amendments may be proposed by the NCOP to the NA's "amended bill".

The process does not envisage the NA "redrafting" the bill. The question arose as to how the NCOP was to identify the Assembly's "amendments" to which it had to confine itself. At issue was the nature of the NA's "redrafting" and whether in particular circumstances a "redraft" was still accommodated in the NA's mandate of passing "an amended bill". "Redrafting" could imply a technical reformulation or restructuring of the bill. It could, however, also mean a substantive rewrite of the bill which could make it impossible to identify specific "amendments". In the latter case, the NCOP would be unable to comply with its procedures as prescribed in its Rules. Moreover, if it had to consider the NA's substantively rewritten version, it would need to consider the bill again in its entirety and embark on a process of provincial engagement as if it were a new bill. To the extent that the bill was substantively rewritten and introduced significant policy changes, the executive would need to be formally consulted on implications for implementation.

Several options were presented to the House Chairperson in an attempt to resolve the problem of the committee presenting a "redrafted" bill. On 10 November, it was reported in the Programme Committee that the portfolio committee had instructed the department to submit amendments to the bill, since the Rules and the Constitution did not provide for a redraft of a bill once it had been passed by one of the Houses. At the end of the parliamentary year, the bill was still before the portfolio committee.



## MONEY BILLS AND BUDGETARY MATTERS

### [50] PORTFOLIO COMMITTEE ON FINANCE GIVEN EXTRA TIME ON BUDGET

Rule 290(3) provides that “the period for the consideration of a bill and any schedule and papers so referred is limited, in the case of a main appropriation bill, to a maximum of seven consecutive Assembly working days”.

On 22 February the House agreed to a motion moved by the Chief Whip of the Majority Party that the Portfolio Committee on Finance, upon the introduction of the Budget and notwithstanding the limitation contained in Rule 290(3), reports to the House within 14 consecutive working days. The House by resolution also extended the period available to the committee to consider the Budget in 2001 (see *Item 43, Issue 4*), 2002 (see *Item 29, Issue 5*) and 2003.

The report of the committee was published on 9 March and the First Reading debate on the Appropriation Bill took place on 15 March.

### [51] BUDGET VOTES DEBATED IN EXTENDED PUBLIC COMMITTEES

The National Assembly Programme Committee decided at its meeting on 17 February, in view of the imminent local government elections, that the votes of the Appropriation Bill would be processed in Extended Public Committees (EPCs) (see *Item 25, Issue 10*) to allow members sufficient time for electioneering.

The EPCs took place over a period of 12 sitting days, from 5 April to 25 May, which included a constituency period from 18 April to 13 May. Debates on nine budget votes were held in the morning, and on three occasions EPCs were held both in the morning and in the afternoon.

The votes and schedule to the Appropriation Bill were agreed to by the House on 31 May and the bill was read a second time. The NCOP passed the Appropriation Bill on 2 June, and the President assented to the bill and signed it into law on 18 June.

### [52] REPORT OF PORTFOLIO COMMITTEE ON FINANCE ON SPECIAL PENSIONS AMENDMENT BILL

The Minister of Finance introduced the Special Pensions Amendment Bill on 31 August and the bill was referred to the Portfolio Committee on Finance for consideration.

At the request of the chairperson of the portfolio committee, Parliament’s Legal Services Office provided a legal opinion on a possible conflict of interest if any member of

the committee who was a recipient of a special pension participated in the committee’s deliberations on the bill.

In terms of Item 7 of the Code of Conduct for Members, they must register their financial interests with the Registrar of Members’ Interests, including any pensions they receive. Item 12 of the Code further provides that: “A member must: -

- (a) declare any personal or private financial or business interest that that member or any spouse, permanent companion or business partner of that member may have in a matter before a joint committee, committee or other parliamentary forum of which that member is a member; and
- (b) withdraw from the proceedings of that committee or forum when that matter is considered, unless that committee or forum decides that the member’s interest is trivial or not relevant.”

On these grounds, the committee was advised that any member of the committee who was a recipient of a special pension should declare his/her interest and then withdraw from the proceedings of the committee when it considered the Special Pensions Amendment Bill, unless the committee was of the view that the declared interest was trivial. The committee was also advised that when the matter served before the House, the member concerned should not take part in the debate or vote on the bill.

One member declared a direct interest and did not attend committee meetings during the deliberations on the bill. This was recorded in the committee’s minutes. The bill was passed by the National Assembly on 11 November and by the National Council of Provinces on 16 November.

### [53] REPORT OF JOINT BUDGET COMMITTEE: RECOMMENDATIONS ON FUNCTIONING

The Joint Budget Committee (JBC) was constituted by a resolution of Parliament in 2002 and reappointed in the Third Parliament with the same mandate on 25 June 2004 (see *Item 28, Issue 6*). The committee consists of 17 Assembly members and 9 NCOP members.

On 12 August 2005, the JBC tabled a report that mapped out its strategic plan for the duration of the current Parliament. The plan set out the JBC’s strategy for developing its role in the budget process in practice and its engagement in the current Medium-Term Expenditure Framework (MTEF) and budget cycle.

The strategic plan is set out in four main sections. Section 1 puts forward a conceptual framework for the JBC’s strategic decisions by formulating its vision, mission and core goals for 2005-07. Section 2 provides a framework







for the strategy by providing background information on the JBC's terms of reference and processes elsewhere in Parliament affecting the JBC's work. Section 3 outlines the activities that the JBC will undertake to achieve its objectives. The fourth section discusses how the JBC will organise itself to undertake those activities.

The Assembly agreed to the report of the JBC on 16 November. The NCOP had adopted the report earlier, on 14 September.

## STATUTORY FUNCTIONS

### [54] APPOINTMENT OF MEMBER TO MAGISTRATES COMMISSION

According to the Magistrates Amendment Act, No 35 of 1996, the National Assembly must designate four persons from amongst its members, at least two of whom must be members of the opposition parties, to represent it in the Magistrates Commission. At the start of the Third Parliament, on 22 June 2004, the Assembly appointed three of the requisite four members to the commission. The name of Adv Z L Madasa (ACDP) was also put forward, but the House noted that he was not available for appointment and agreed that the fourth member would be appointed later (see *Item 47, Issue 10*).

On 16 November 2004, the Minister for Justice and Constitutional Development wrote to the Speaker, requesting that the House appoint the fourth member of the commission, who had to be from the opposition. Practice had developed for opposition parties to consult one another and to nominate someone from among their members in such cases. The Deputy Speaker, then Acting Speaker, accordingly addressed a letter to opposition whips and party representatives, reminding them of the vacancy in the commission. She asked them to agree on a nomination or, alternatively, to forward nominations to her for the House to take a decision on an appointment.

Messrs SN Swart and LK Joubert were nominated by the ACDP and IFP respectively. The matter came before the House for decision on 9 March. By agreement between the parties, the IFP withdrew the name of Mr Joubert. There consequently being only one nomination, the House agreed to designate Mr Swart as a member of the Magistrates Commission.

### [55] PROVISIONAL SUSPENSIONS IN TERMS OF MAGISTRATES ACT

#### Provisions of Magistrates Act regarding provisional suspension of magistrates

In terms of section 13(3)(b) of the Magistrates Act, No 90 of 1993, as amended in 2003, the Minister for Justice and Constitutional

Development, on the advice of the Magistrates Commission, may suspend a magistrate from office, subject to certain conditions (see *Item 21, Issue 8*).

If a magistrate is provisionally suspended – with or without pay – while the allegations against him/her are being investigated, the Minister has to table a report on the provisional suspension in Parliament within seven days of such suspension if Parliament is in session or within seven days after commencement of the next session. In terms of section 13(3)(c) and (d) of the Act, Parliament, with the same sense of urgency, must “as soon as is reasonably possible”, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed. If Parliament resolves not to confirm the suspension, it lapses.

Section 13(3)(f) determines that the commission's enquiry into the allegations against the magistrate must be concluded as soon as possible and during the course of the enquiry the commission must submit progress reports to Parliament every three months.

#### Tabling of reports by Minister for Justice and Constitutional Development

At the beginning of 2005, there were reports before the Portfolio Committee on Justice and Constitutional Development in respect of three magistrates. A report on the provisional suspension of one of the magistrates that had been before the committee since September 2004 was withdrawn by the Minister on 18 April (see also *Item 52, Issue 10*). The committee reported to the House in regard to the other two magistrates on 14 April. On 7 June, the chairperson of the portfolio committee introduced the reports in the Assembly and the House adopted the recommendations of the committee, thereby confirming the suspension of the magistrates in question.

In 2005, reports from the Minister for Justice and Constitutional Development on provisional suspensions were received in respect of 10 more magistrates and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report.

#### Breakdown in intended application of the Act

From reports of the Portfolio Committee on Justice and Constitutional Development on the provisional suspension of four magistrates, published in the ATC on 21 June, it appeared that there had been a breakdown in the intended application of the Act relating to the suspension of magistrates. The committee noted that the magistrates in question had been suspended de facto by the Magistrates Commission from dates prior to the Minister's



decision in each case, thereby contravening the provisions of section 13(3)(a)(i). According to the portfolio committee's reports, it had considered condoning the de facto suspensions, but eventually decided against it, as it would have been legally tenuous and in any event would not have complied with the requirement of section 13(3)(e) in that enquiries had not been initiated by the Magistrates Commission within 60 days of the de facto suspensions. The committee therefore recommended that those particular suspensions not be confirmed. The House adopted the committee's reports on 22 June and the NCOP adopted the select committee reports containing the same recommendations on 4 August. Therefore, in terms of the Act, the provisional suspensions lapsed from the date of determination.

### Steps to ensure compliance with Act

A number of reports on the provisional suspension of magistrates were tabled on 5 February. Some were subsequently withdrawn and retabled. Because of the problems indicated earlier and subsequent correspondence between the chairperson of the portfolio committee and the chairperson of the Magistrates Commission, the committee itself did not report until June.

When further reports were received on 31 May, the Speaker, upon referring them to the committee, brought to the committee's attention that it should report to the House as soon as possible to ensure that the House can deal with the matter expeditiously, as required (ATC, 1 June, p1127)

By the end of the parliamentary year, two provisional suspensions had not been reported on by the committee.

### [56] APPROVAL OF NOTICE IN REGARD TO REMUNERATION OF MAGISTRATES

The President determines the salaries, allowances and benefits of magistrates after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-Bearers. According to section 12(3) of the Magistrates Act, No 90 of 1993, a notice by the President determining the salaries, allowances and benefits of magistrates must be submitted to Parliament for approval before it is implemented. Parliament has the discretion to approve the notice in whole or in part, or to disapprove the notice.

On 7 September, the President submitted such a draft notice and schedule to Parliament in terms of section 12(3) of the Magistrates' Act (ATC, p1758). The notice tabled in Parliament proposed two changes to the remuneration of magistrates, namely a general salary adjustment for all magistrates and the

payment of a car allowance for magistrates and senior magistrates. Magistrates and senior magistrates would effectively receive car allowances for the first time.

On the same day, the Assembly approved the draft notice on a motion without notice by the Chief Whip of the Majority Party. The draft notice was not referred to the relevant portfolio committee for consideration before being put to the House for approval (see also *Item 50, Issue 10*).

The NCOP, on 15 September, was due to consider a qualified approval of the draft notice. The Portfolio Committee on Justice and Constitutional Development had, in the interim, conferred with the Select Committee on Security and Constitutional Affairs. With a view to the two Houses adopting the same response, a draft resolution was placed on the Order Paper of the National Assembly for it to amend its resolution of 7 September in line with the Council's proposed qualified approval. The intention was that the new salary scales be approved, but that the issue of the car allowances be referred to the relevant committees for further consideration. However, in both Houses a decision on the matter was postponed.

The committees of both Houses then held joint meetings to enquire into the details and implications of the implementation of the proposed new salary scales for the magistracy and its consequences for the government, in particular if the proposed car allowances for magistrates and senior magistrates were implemented.

On 11 November, the Speaker wrote to the Leader of Government Business, highlighting the problems that were being experienced. It appeared from the Act that Parliament had to approve the notice after the President had considered the matter. Parliament was therefore, in effect, reviewing the decision of the President. She requested the executive to initiate a review of section 12 of the Magistrates Act and similar provisions in other legislation.

The portfolio committee submitted an interim report on the implications of the approval of the proposed new salary scales on 16 November. The NCOP also considered a similar report from the select committee on that day.

Both Houses approved the draft notice received from the President on 16 November in terms of section 12(3)(b)(i). The resolution approving the draft notice instructed the relevant committees to submit their final reports before the end of the year, detailing the outcomes and recommendations in relation to legislative and procedural matters relating to the determination of salary levels for magistrates; the absence of a budgetary allocation to defray the proposed new motor vehicle allowances; the







development of policy measures to deal with the implications arising from the extension of motor vehicle allowances to senior magistrates and magistrates; and any other matter relevant to or emanating from the hearings that the committee had had on the matter. The National Assembly, in its resolution, went further by rescinding its decision of 7 September.

Neither committee had submitted a report by the time the annual session ended.

#### **[57] EXTENSION OF PERIOD OF OPERATION OF SECTIONS OF CRIMINAL LAW AMENDMENT ACT**

Section 51 of the Criminal Law Amendment Act, No 105 of 1997, prescribes certain minimum sentences that a court of law may impose in relation to certain crimes. Section 52 of the same Act provides that if a regional court, before sentencing an accused, is of the opinion that the offence for which he or she has been convicted warrants punishment in excess of its jurisdiction, the regional court should stop the proceedings and commit the accused for sentencing by a High Court.

According to section 53 of the Act, the provisions in sections 51 and 52 are not permanent but their application should be extended every two years by Parliament. Therefore, according to section 53(1) the relevant sections will cease to have effect after the expiry of two years from the commencement of the Criminal Law Amendment Act. However, the President, by proclamation in the *Gazette* and with the concurrence of Parliament, may extend the application of these sections for two years at a time. Parliament has been concurring to the extension of the application of sections 51 and 52 for two-year periods since 1999 (see *Item 51, Issue 4* and *Item 36, Issue 7*).

On 8 April, the Minister for Justice and Constitutional Development wrote to the Speaker, requesting Parliament to consent to the extension of the operation of sections 51 and 52 of the Act. The last extension was given on 14 April 2003 and was due to expire at the end of April 2005.

The Minister's letter reached Parliament in the last week before the House was due to go into recess. During that week the NA would only sit twice. The Minister's request was therefore prioritised and on 12 April a resolution was adopted in the House, giving consent to the extension for two years of the operation of the said sections. The NCOP passed a similar resolution the next day.

#### **[58] DECLARATION OF AMNESTY IN TERMS OF FIREARMS CONTROL ACT**

In terms of section 139(2)(a) of the Firearms Control Act, No 60 of 2000, Parliament must

approve the notice in the *Gazette* when the Minister for Safety and Security declares an amnesty for the possession of illegal firearms or ammunition. Such a notice will only be valid if it has been approved by both Houses.

In a report published on 6 April, the Portfolio Committee on Safety and Security, after considering a request for approval of a draft notice for the declaration of an amnesty in terms of the Act, recommended that the House approve the draft notice. An amnesty period had also been approved by the House on 12 November 2004 (see *Item 49, Issue 10*).

The Assembly agreed to the committee's recommendation on 14 April and the NCOP approved the draft notice on 15 April.

#### **[59] APPOINTMENT OF DEPUTY PUBLIC PROTECTOR**

In 2003, the Public Protector Act, No 23 of 1994, was amended to provide for the appointment of a single Deputy Public Protector by the President on the recommendation of the Assembly (see *Item 37, Issue 7*). On 23 February 2005, the Deputy Minister for Justice and Constitutional Development wrote to the Speaker, requesting the National Assembly to recommend a person to the President for appointment as Deputy Public Protector and to determine the remuneration and other terms and conditions of employment of the Deputy Public Protector. Both these functions reside with the National Assembly in terms of section 2A of the Act. The National Assembly has to recommend a person nominated by a committee of the House. The resolution making the recommendation must be adopted with a supporting vote of a majority of members of the Assembly.

#### **Nomination process**

The request by the Deputy Minister was published in the ATC on 20 April and on 17 May the House agreed, in terms of Rule 214, to appoint an ad hoc committee to make a nomination to the House, the committee to consist of 17 members, as follows: ANC 10; DA 2; IFP 1; other parties 4. The resolution directed the ad hoc committee to report to the House by 17 June. On 14 June, however, the House, with reference to its earlier resolution, agreed to extend the date by which the ad hoc committee had to report to the House to 18 August.

On 19 August, the committee reported that it had invited the public to submit nominations and nominations had been received for 9 men and 1 woman candidate. The committee had come to the conclusion that there was not sufficient gender representation and undertook to invite further nominations, subject to the House approving its request for an extension of its reporting date to 20 Octo-



ber. The House adopted the committee's report on 23 August.

The committee reported on 12 October that it had received 16 nominations and had finally shortlisted and interviewed 10 candidates. The committee nominated Adv Mamiki Shai for appointment as Deputy Public Protector. The House approved the committee's nomination on 27 October with the requisite majority, ie 201 members in favour of the question.

### **Deputy Public Protector's remuneration and conditions of service**

In terms of section 2A(5) of the Public Protector Act, the remuneration and other terms and conditions of employment of the Deputy Public Protector must, from time to time, be determined by the National Assembly upon the advice of the committee.

On 20 April, the Speaker referred the request from the Deputy Minister for a committee of the House to determine the remuneration and other conditions of service of the Deputy Public Protector to the Portfolio Committee on Justice and Constitutional Development, it being the committee that exercises oversight over the functioning of the office of the Public Protector.

The Deputy Minister's original letter had been copied to the Public Protector, Adv M L Mushwana, and on 8 March, he wrote to the Speaker, providing motivation for certain proposals regarding the terms and conditions of employment of the Deputy Public Protector. The Public Protector's letter was also referred to the portfolio committee for inclusion in its deliberations.

The portfolio committee published its recommendations on 4 August and proposed that they come into operation upon the appointment of the Deputy Public Protector. The House approved the committee's recommendations on 27 October.

### **[60] REPLACEMENT OF MEMBERS ON JUDICIAL SERVICE COMMISSION**

Six members of the Judicial Service Commission are designated by the National Assembly from among its members, three of whom must be opposition members. The members of the commission serve until they are replaced by those who designated or nominated them (see *Item 45, Issue 10*).

On 13 October, the Acting Speaker, Ms G L Mahlangu-Nkabinde, announced in the House that as a result of the resignation of Mr N P Nhleko, a member of the ANC, and the fact that Mr C V Burgess, a former member of the ID, had joined the ANC, it was necessary for the House to elect a member of the majority party and a member of the opposition to

replace those members on the Judicial Service Commission.

The Acting Speaker further announced that the Chief Whip of the Majority Party had submitted a letter, nominating Mr J B Sibanyoni for election to the Judicial Services Commission. There being no further nominations, Mr Sibanyoni was elected to the Judicial Service Commission as a representative of the majority party.

Mr I S Mfundisi (UCDP), a whip for the smaller parties, nominated Dr C P Mulder (FF Plus) for election to the commission. Dr Mulder was accordingly elected as a representative of the opposition on the commission.

### **[61] APPOINTMENT OF ICASA COUNCILLOR**

The Independent Communications Authority of South Africa (Icasa) consists of seven councillors appointed by the President on the recommendation of the National Assembly after a transparent process of public participation in the nomination of candidates. The President appoints one of the councillors as chairperson for a period of five years, while other councillors serve for a period of four years.


In 2005, the term of office of the chairperson of Icasa expired at the end of June and consequently a vacancy existed. In terms of the Independent Communications Authority of South Africa Act, No 13 of 2000, the serving councillors must, in the absence of a chairperson, elect an acting chairperson from among themselves. Mr P Mashile was elected as acting chairperson by the remaining councillors.

On 14 April, the Minister of Communications informed the Speaker in writing about the imminent expiry of the term of office of the Icasa chairperson and requested that the nomination process and selection of candidates be embarked upon. On 20 April, the Speaker tabled the Minister's request and referred it to the Portfolio Committee on Communications. On 5 May, the Speaker wrote to the President, informing him about the expiry of the term of office of the Icasa chairperson and that the NA would forward its recommendation for filling the vacancy in due course (see also "*Removal of role for NA in appointment and removal from office of Icasa councillors*" under "*Procedural and related issues*" above).

After the portfolio committee had considered public nominations and interviewed a shortlist of candidates, it recommended Mr Mthobeli Zokwe to the National Assembly. On 21 June, the NA approved the portfolio committee's recommendation. The President was informed







of the decision of the House and he appointed Mr Zokwe to the Icasa council on 1 July. On the same day, he confirmed Mr Mashile's appointment as chairperson.

**[62] NON-APPROVAL OF PROTOCOL ON LEGAL AFFAIRS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY**

Section 231(2) of the Constitution stipulates that an international agreement only binds the Republic after it has been approved by both Houses of Parliament. To fulfil this requirement the national executive, which negotiates and signs international agreements on behalf of the country, tables them in Parliament for ratification.

On 12 August 2004, the Minister for Justice and Constitutional Development tabled the Protocol on Legal Affairs in the Southern African Development Community. The protocol was referred to the Portfolio Committee on Justice and Constitutional Development on 14 September 2004 and to the Select Committee on Security and Constitutional Affairs on 19 August 2004. The select committee tabled its report on 25 October 2004 and the NCOP adopted the report the following day.

The portfolio committee tabled its report on 6 April 2005. In the report, the committee expressed concern about the fact that since the initial signing of the protocol in 2000, the legal structure established in terms of the protocol had been phased out. If the protocol came into effect, none of the SADC member states would be bound by it, as the implementing structures were not in place. The committee therefore recommended to the House that the protocol not be approved. The House considered the committee's report on 2 June and agreed not to approve the protocol.

The Constitution stipulates that international agreements have to be approved by both Houses. If one of the Houses does not approve an agreement, it will not be binding on the Republic. The Assembly's non-approval of the protocol has the effect that the protocol has not been approved by Parliament and therefore is not binding on the Republic, although it remains an international agreement between South Africa and other SADC member states.

**[63] COMMISSION FOR GENDER EQUALITY**  
**Filling of vacancies in Commission for Gender Equality**

Chapter 9 of the Constitution establishes the Commission for Gender Equality (CGE) as one of the institutions supporting constitutional democracy. Section 193 provides for the President, on the recommendation of the NA, to appoint the commissioners of the CGE. The NA makes its

recommendations from candidates nominated by an Assembly committee.

In accordance with section 3 of the Commission for Gender Equality Act, No 39 of 1996, the Minister for Justice and Constitutional Development should first invite interested parties publicly to propose candidates for consideration by the NA committee. In 2004 and early 2005, four vacancies arose in the commission. The Minister called for the public nomination of candidates on 10 December 2004 and 1 July 2005 respectively.

On 13 September, the Deputy Minister for Justice and Constitutional Development wrote to the Speaker, submitting two batches of nominations received and requesting that they be referred to the relevant committee for consideration. The Deputy Minister's letter was tabled on 24 October.

Having been advised that seven vacancies would arise in the commission in the first half of 2006, and in the light of time constraints, the Speaker in her letter of acknowledgement also requested the Ministry to initiate a public nomination process for the vacancies that would arise in 2006.

Practice has been for an ad hoc committee to be appointed to make the required nominations. On 2 November, the House approved the establishment of an ad hoc committee to nominate candidates for appointment to the commission, the committee to consist of 13 members, as follows: ANC 8, DA 2, IFP 1 and other parties 2. The letter of the Deputy Minister and two batches of public nominations were formally referred to the ad hoc committee on 14 December. The ad hoc committee's mandate enables it also to consider nominations for the vacancies that will arise in 2006.

**Conditions of service of Gender Commissioners**

Earlier in the year, on 8 March, the Speaker had written to the chairperson of the Portfolio Committee on Justice and Constitutional Development, pointing out that recent correspondence with the Commission for Gender Equality indicated that the commission was experiencing management and administrative problems.

Service conditions had not yet been determined for the commissioners as contemplated in the Act governing the commission, which gave rise to several problems. For example, a particular commissioner had submitted her leave application to the Speaker, who then had to inform her that she was not authorised to consider the application.

Problems had also been experienced in the commission relating to serving commissioners



whose names, prior to the 2004 elections, appeared on party lists for designation to a legislature. A question arose whether that amounted to a conflict of interest and duties for those commissioners.

The processing of resignations from the commission had also created problems. The Act requires that notices of resignation must be submitted to Parliament. In at least two cases, resignations were submitted directly to the commission and there was a delay of months before Parliament received the required notices and the notice period of three months could take effect. The Speaker asked the portfolio committee to examine why resignations had to be submitted to Parliament, as it was not the appointing authority.

Moreover, the Auditor General, in a special report to Parliament for the 2003-04 financial year, indicated that the commission's annual report had not been received by Parliament, long after its due date, and no explanation had been provided for the commission's failure to comply with its statutory obligations.

As the commission was evidently experiencing problems, the Speaker requested the portfolio committee, by virtue of its monitoring role, to engage as soon as possible with the relevant role-players in an effort to ensure the effective functioning of the commission and in due course to report to the House. At the end of the parliamentary year, the matter was still before the portfolio committee.

### **Commissioner's ineligibility to be designated as a member of the Assembly**

On 18 October 2004, Parliament received a letter of resignation from Mrs B T Ngcobo, a member of the Commission on Gender Equality who had been appointed as a commissioner with effect from 1 May 2001 for a period of four years (until April 2005) in terms of section 3 of the Commission on Gender Equality Act of 1996.

The letter of resignation - dated 21 April 2004 - had been forwarded to the chairperson of the commission and indicated that the resignation was effective from 30 April 2004. According to section 3(8) of the Act, a member of the commission may resign from office by submitting at least three months' written notice thereof to Parliament, unless Parliament by resolution allows a shorter period in a specific case. Mrs Ngcobo's resignation was only received by Parliament on 18 October 2004, and as Parliament had not approved a shorter notice period, her resignation took effect on 18 January 2005.

After the election, on 18 April 2004, she was designated as a member of the National

Assembly by the Electoral Commission. However, in terms of section 47(1) of the Constitution, a person is ineligible to be a member of the Assembly if such a person is appointed by the state and receives remuneration for such appointment. Mrs Ngcobo's designation, by virtue of her status as a member of the Commission for Gender Equality, was therefore invalid. By operation of law, her seat had been vacant since 18 April 2004. She became eligible for appointment as a member from 18 January 2005, but had not been nominated since that date to fill a vacancy in the Assembly.

A legal opinion regarding Mrs Ngcobo's membership status was obtained from the Department of Justice, confirming the opinion of Parliament's legal advisers. The department's opinion stressed the need for the state, in the application of the law, "to lead by example". The opinion found that the resignation of Mrs Ngcobo had not complied with the relevant law and was therefore in breach of the principle of legality. It was, therefore, invalid or void. The Speaker wrote to Mrs Ngcobo on 29 August, informing her of this fact.

The vacancy that had existed owing to her ineligibility to be a member of the Assembly was filled by her nomination with effect from 15 September.

### **[64] APPOINTMENT OF MEMBERS OF MEDIA DEVELOPMENT AND DIVERSITY AGENCY BOARD**

The Media Development and Diversity Agency (MDDA) was established in terms of the Media Development and Diversity Act, No 14 of 2002. The MDDA is run by a board of nine members. In terms of section 4(1)(b) of the Act, the President must appoint six members of the MDDA board on the recommendation of the National Assembly, provided that the public had participated in the nomination process, the whole process had been transparent and open and the names of the candidates short-listed for appointment had been published. The remaining three members of the board are appointed directly by the President, but one of the appointees must be from the commercial print media and another from the commercial broadcast media. All members are appointed on a non-executive basis and the President must appoint one of them as chairperson. Section 8 of the Act provides that the term of office of board members is three years, provided that 50% of the members of the first board, who were nominated by a public process, have held office for a period of five years.

As the term of office of two members of the board was due to expire in January 2006, the Minister in the Presidency requested the







National Assembly in writing to recommend two candidates for appointment to the board. The request was tabled on 19 August and referred to the Portfolio Committee on Communications.

In 2002, when recommendations for the appointment of members of the MDDA board had to be made, the Portfolio Committee on Communications invited members of the public to nominate persons for consideration. After interviewing the prospective candidates, the committee recommended its proposed candidates to the House for approval. On 4 November 2005, the committee reported that it had invited the public by means of advertisements in the print media to nominate candidates for consideration. Interviews with the short listed candidates had taken place on 1 November.

In its report, published in the ATC on 7 November, the portfolio committee made its recommendations to the House. The House adopted the committee's report on 8 November and recommended to the President the names of Mr M K Jara and Mr C J Moerdyk for appointment to the MDDA board.

## INTERNATIONAL PARLIAMENTARY RELATIONS

### [65] ELECTION OF MEMBER TO PAN-AFRICAN PARLIAMENT

The National Assembly, after the general election in 2004, appointed Parliament's five representatives to the Pan-African Parliament on 25 June 2004. The NCOP elected the same members on 28 June (see *Item 53, Issue 10*). Provision is made for representatives of opposition parties also to serve in this forum.

During the floor-crossing period in September, Adv Z L Madasa, a member of the ACDP and also a member of the Pan-African Parliament, joined the ANC. As a result, the Assembly had to elect a member from the opposition parties to replace him as a member of the PAP.

The election of an opposition member to serve in the PAP came before the Assembly on 13 October. The Acting Speaker, Ms G L Mahlangu Nkabinde, called for nominations. The Chief Whip of the Opposition nominated Mr W J Seremane (DA), while Mr N T Godi (PAC) nominated Mr P J Nefolovhodwe (Azapo) for election.

The Acting Speaker announced that members would be called to vote for each candidate and the candidate with the largest number of supporting votes would be elected as a member of the Pan-African Parliament. Mr Nefolovhodwe was accordingly elected to

replace Adv Madasa. The NCOP elected the same member on 26 October.

### [66] PARLIAMENTARY DELEGATION TO OBSERVE ELECTIONS IN ZIMBABWE

On 1 March, the House, on a motion by the Deputy Chief Whip of the Majority Party and subject to the concurrence of the NCOP, resolved to send a delegation to observe the elections in Zimbabwe. [For reports on previous election observer missions, see *Item 41, Issue 2; Item 35, Issue 3* and *Item 31, Issue 5*.]

In accordance with the resolution, 20 members of Parliament were nominated as members of the delegation. The Chief Whip of the Majority Party in the National Assembly was designated as leader of the delegation. The NCOP adopted a similar motion on 8 March.

The delegation was instructed by the House to observe the election campaign in the run-up to the election, the casting of votes during the election and subsequently the counting of votes and, after completion, to present a full report to Parliament.

The report of the South African parliamentary observer mission was tabled on 24 June. Some of the findings were that –

- the pre-election processes were well organised and executed;
- the election campaigns were peaceful and parties and candidates had the political space to canvass support;
- parties and leaders demonstrated a commitment to peace and tolerance of divergent views;
- there were adequate and accessible polling stations which were sufficiently provided for in terms of logistics and security;
- polling stations opened and closed on time;
- there were correct voters' rolls at the polling stations;
- at the start of polling ballot boxes were empty, and were sealed correctly afterwards;
- during voting there was no intimidation and the voting process was smooth, efficient and secret;
- all persons at the polling and counting stations were accredited; and
- the electoral process was largely transparent and observed throughout by party agents, monitors and observers.

On 4 August, the report of the observer mission was referred to the Portfolio Committee on Foreign Affairs and on 31 October the committee tabled its report. The committee reported that it agreed with the findings of the observer mission report and



recommended that it be debated in the House. No opportunity was found in the parliamentary programme for 2005 to conduct the debate. As the report was still on the Order Paper under "Further Business" on the last sitting day of the annual parliamentary session, it lapsed.

## [67] PARLIAMENTARY PARTICIPATION IN AFRICAN PEER REVIEW OF SOUTH AFRICA

### Background

The decision to establish the African Peer Review Mechanism (APRM) was taken at the founding conference of the African Union held in Durban in 2002. The APRM is a voluntary self-assessment mechanism. It seeks to ensure that governance and national management conform to agreed political, economic and corporate governance values, codes and standards. It further seeks to ensure that the mutually agreed objectives for socioeconomic development detailed in the New Partnership for Africa's Development (Nepad) are achieved. A panel of eminent persons oversees the implementation of the system throughout Africa. They are supported by the Nepad Peer Review Mechanism Secretariat. Prof Adebayo Adedeji is the eminent person responsible for overseeing the APRM in South Africa.

The self-assessment process is based on an APRM questionnaire which is divided into four sections, namely Democracy and Good Political Governance, Economic Governance and Management, Corporate Governance and Socioeconomic Development.

President Mbeki formally submitted South Africa to the peer review process on 28 September and the Minister for the Public Service and Administration was appointed as South Africa's Focal Point for the process. She is responsible for the overall management of the process and chairs a National Peer Review Governing Council comprised of five Ministers and ten civil society representatives. South Africa is the eighth country to be reviewed by the APRM.

On 16 August, the Acting Minister for the Public Service and Administration, Dr E G Pahad, wrote to Parliament, inviting it participate in South Africa's self-assessment and peer review process.

### Formation of joint committees on African Peer Review Mechanism

The presiding officers held extensive discussions to determine the most suitable role for Parliament within the APRM country process. The view was held that it was important that the role of Parliament reflected and upheld the democratic principles of the

separation of powers and independence of the legislature. Furthermore, one of the primary objectives of Parliament in the APRM process is to facilitate public awareness and ensure effective public participation in the review process.

To this end, Parliament established relevant structures and mechanisms to participate in South Africa's peer review process. Although these structures were not formally established in accordance with the Rules, the formation of the Joint Coordinating Committee of the APRM, jointly chaired by the Chairperson of the National Council of Provinces and the Speaker of the National Assembly, and four joint ad hoc committees was announced at the Joint Rules Committee meeting on 26 October. The Joint Coordinating Committee would be responsible for the overall management and monitoring of Parliament's review process, while the work of the four joint ad hoc committees would be to focus on the four thematic sections of the APRM questionnaire. The ad hoc committees are: -

- Joint Ad Hoc Committee on Democracy and Good Political Governance;
- Joint Ad Hoc Committee on Economic Governance and Management;
- Joint Ad Hoc Committee on Corporate Governance; and
- Joint Ad Hoc Committee on Socioeconomic Development.

The mandate of each joint ad hoc committees, among other things, was to identify key strategic issues for a parliamentary response to the specific sections of the peer review questionnaire, to facilitate public participation activities and to draft a parliamentary response under the thematic section of the questionnaire for which that committee was established.

### Minister's statement and debate on African Peer Review Mechanism

The Minister for the Public Service and Administration made a statement on the APRM and South Africa's implementation process in the National Assembly on 13 October. This was followed by a debate on the APRM. After the debate the following motion, moved by the Chief Whip of the Majority Party, was agreed to:

That the House-

- (1) notes that-
  - a) the decision to establish the African Peer Review Mechanism (APRM) was taken at the founding conference of the African Union held in Durban in 2002; and
  - b) South Africa will be the eighth country to be reviewed by the APRM;







- (2) recognises that the mandate of the APRM is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance;
- (3) acknowledges that at a meeting at the Gallagher Estate in Midrand, Gauteng, on Wednesday, 28 September 2005, representatives of the people of South Africa conducted deliberations on the process of APRM in our country and that delegates from government, business, trade unions, academia and the entire spectrum of civil society were present;
- (4) believes that every review exercise carried out under the authority of the APRM must be technically competent, credible and free of political manipulation and that these stipulations together constitute the core guiding principles of the APRM;
- (5) observes that Parliament has set up joint committees to inform and engage the public in the process of the APRM;
- (6) congratulates the African Union and President Thabo Mbeki for ensuring that our country plays a progressive role in the reconstruction and development of the African continent; and
- (7) wishes the African Peer Review Mechanism success in its work in our country.

#### **Joint Coordinating Committee meeting with Country Focal Point and APRM Country Support Mission**

The Joint Coordinating Committee met with the Country Focal Point and the APRM Country Support Mission led by Prof Adedeji, eminent member of the APRM panel, on 9 November. Prof Adedeji was accompanied by Dr Bernard Kouassi, executive director of the APRM, officials of the Secretariat and experts from strategic partner institutions, namely Prof Achi Atsain from the African Development Bank, Ms Zemenay Lakew from the UNDP Regional Bureau for Africa and Dr Patrick Bugembe of the Economic Commission for Africa-Regional Office for Southern Africa.

The meeting exchanged views on the implementation of the APRM, particularly focusing on the approach that the South African Parliament had adopted and the parliamentary process envisaged. It was agreed that continued coordination between the parliamentary APRM structures and the National Peer Review Governing Council would be encouraged to ensure an exchange of perspectives and to heighten the quality of the outcome of the country process.

#### **First Report of Joint Coordinating Committee on African Peer Review Mechanism**

The First Report of the Joint Coordinating Committee on the African Peer Review Mechanism was published in the ATC of 11 November.

The report contained the following recommendations:

- (1) To ensure the success of Parliament's involvement in the peer review process, members of the Joint Coordinating Committee and joint ad hoc committees should, as far as possible, be temporarily relieved of their other parliamentary duties.
- (2) Chief whips, leaders of political parties, portfolio and select committee chairpersons should, as far as possible, relieve members of the Joint Coordinating Committee and joint ad hoc committees from their political and other tasks in order for them to advance their APRM programmes as much as possible before the festive season.
- (3) Where necessary, the Joint Coordinating Committee and the joint ad hoc committee members should be allowed to attend relevant meetings during the parliamentary recess. Only such an approach would enable Parliament to fulfill the APRM mandate within the limited timeframe.

On 16 November, the Speaker announced in the House that the report had been published and urged members and parties to engage with the issues raised in the report and to bring them to the attention of the communities and municipalities in their constituencies.

#### **[68] DEBATES ON IPU TOPICS**

At the first Programme Committee meeting, on 3 February, the Speaker reminded members of the committee that the Inter-Parliamentary Union (IPU) Assembly was due to take place from 3 to 8 April. At the meeting on 17 February she then requested the programme whips to obtain the topics of the items that would be discussed at the IPU Assembly and to consider whether one or two debates could be scheduled on some of those topics, as delegation members would benefit from hearing the views of parliamentarians generally before they went to the conference.

On 9 March the House debated the topic "The role of parliaments in the establishment and functioning of mechanisms to provide for the judgment and sentencing of war crimes, crimes against humanity, genocide and terrorism, with a view to avoiding impunity". On 16 March, a debate was held on "The role



of parliaments in establishing innovative international financing and trading mechanisms to address the problem of debt and achieve the Millennium Development Goals”.

Similarly, in preparation for the IPU Assembly in October, the House debated the subject of “Migration and development” on 6 September. The following day it discussed “The importance of civil society and its interplay with parliaments and other democratically elected assemblies for the nurturing and development of democracy” and on 15 September the series of IPU debates was concluded with a debate on the topic “The respective roles of Parliament and the media in providing the public with objective information, especially on armed conflicts and the struggle against terrorism”.

The report of the South African delegation to the 112th IPU Assembly in Manila in April was published on the ATC on 21 June. By the end of the annual parliamentary session, the report of the October Assembly was yet to be published.

**ABBREVIATIONS USED**

ATC	Announcements, Tablings and Committee Reports (daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
IPU	Inter-Parliamentary Union
JRC	Joint Rules Committee
JTM	Joint Tagging Mechanism

Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
PAP	Pan-African Parliament
PC	Portfolio Committee
PFMA	Public Finance Management Act
POA	Parliamentary Oversight Authority
SADC PF	Southern African Development Community Parliamentary Forum
Scopa	Standing Committee on Public Accounts

**PARTIES**

ANC	African National Congress
DA	Democratic Alliance
IFP	Inkatha Freedom Party
UDM	United Democratic Movement
ID	Independent Democrats
ACDP	African Christian Democratic Party
FF Plus	Freedom Front Plus
Nadeco	National Democratic Convention
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress of Azania
MF	Minority Front
UIF	United Independent Front
Azapo	Azanian People’s Organisation
UPSA	United Party of South Africa
FD	Federation of Democrats
PIM	Progressive Independent Movement







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# NOTES

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