

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 12th issue covers the third session of the Third Parliament from January to December 2006.

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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. On 17 May, the House agreed to a motion to elect Mr A Mlangeni to preside during the sittings scheduled for 17 and 18 May when requested by a Presiding Officer to do so, as only one Presiding Officer was available on those days.

Rule 33 provides that the Speaker shall appoint the chairperson of an extended public committee from the ranks of the elected Presiding Officers of this House. As the House was due to meet in two extended public committees on 19 May, the House on 17 May also agreed to elect Mr Mlangeni as a temporary Presiding Officer to enable the Speaker, in terms of the Rules, to appoint him as chairperson of an extended public committee scheduled for 19 May.

On 31 August, the House adopted a motion moved in terms of Rule 18 by the Deputy Chief Whip of the Majority Party to elect Mr M R Sikakane and Ms N J Ngele to preside on that day when requested to do so.

On 17 October, Mr Mlangeni was again elected by the House to preside at the sittings of 17, 18 and 19 October when requested to do so by the Presiding Officer.

The members elected as temporary Presiding Officers duly presided over parts of proceedings on the days in question.

[2] DESIGNATION OF ACTING SPEAKER AND ACTING DEPUTY SPEAKER

Whenever the Speaker is absent or unable to perform the functions of Speaker, the Deputy Speaker is empowered by the Rules to act as Speaker. Should both the Speaker and Deputy Speaker be absent, the Speaker appoints one of the House Chairpersons to act as Speaker and another to act as Deputy Speaker. This is done in terms of a resolution adopted by the House on 24 June 2004 (see *Item 2, Issue 11*).

On 15 August, the Speaker announced in the ATC that she would be absent from Parliament from 11 to 18 August and the Deputy Speaker from 11 to 15 August. For the latter period, she designated House Chairperson G Q M Doidge to act as Speaker and House Chairperson C-S Botha to act as Deputy Speaker. The Speaker further announced that the Deputy Speaker, upon her return, would be Acting Speaker from 16 to 18 August and House Chairperson Doidge would act as Deputy Speaker for that period.

The Speaker was again absent from Parliament from 16 to 27 October and designated House Chairperson Doidge to act as Speaker for that period. The designation was announced in the ATC of 16 October. During the period 16 October to 3 November, the Deputy Speaker was on study leave.

[3] RETIREMENT OF HOUSE SECRETARY AND APPOINTMENT OF NEW SECRETARY

At the sitting of the House on 1 November, the Speaker announced that the Secretary to the National Assembly, Mr K Hahndiek, would retire from the Parliamentary Service with effect from 30 November. The Speaker further indicated that parties would be given an opportunity to express themselves on the service rendered by the outgoing Secretary at an appropriate time.

On the same day, on a motion moved by the Chief Whip of the Majority Party, the House agreed to a recommendation by the Speaker to appoint Mr M K Mansura, Under Secretary, as Secretary to the National Assembly with effect from 1 December.

On 15 November, parties were afforded an opportunity to express themselves on the service rendered by Mr Hahndiek and also to say farewell. As the President was answering questions in the House that day, he also used the opportunity to pay tribute to Mr Hahndiek.

PARLIAMENT AND THE EXECUTIVE

[4] MEETING BETWEEN SPEAKER AND LEADER OF GOVERNMENT BUSINESS

The Speaker met with the Leader of Government Business on 23 May to discuss a range of issues that affected the National Assembly and its interaction with the Executive, including the following: timely provision of the translations of bills, the legislative programme of the Executive, the withdrawal of bills from the parliamentary process, the submission of departments' strategic plans and annual reports to the National Assembly, delayed replies to questions, the quality of Ministers' replies to questions, Executive compliance with House resolutions, the co-ordination of the parliamentary programme, visiting delegations and Ministers requesting individual members to accompany them on overseas journeys.

At the meeting, it was agreed that quarterly meetings between the Speaker and the Leader of Government Business warranted consideration. The Speaker presented a report on her meeting with the Leader of Government Business to the Joint Programme Committee at its meeting on 21 June.

[5] COMMUNICATION OF HOUSE RESOLUTIONS TO EXECUTIVE

In terms of Rule 317, resolutions of the House affecting the Executive are communicated to the President by the Secretary to Parliament. However, over the years a practice has developed whereby, in addition to the Secretary's communication, the Speaker communicates House resolutions affecting the Executive to the relevant Minister. The Speaker's letter is copied to the relevant Director-General, the House Chairperson: Committees and the relevant committee chairperson.

House resolutions are communicated to the Executive, informing the relevant structure what decision the House has taken and what response is needed. Formal communications between the House and the Executive require that all responses to House resolutions are directed to the Speaker and not to the line committees.

Although all House resolutions affecting the Executive are communicated to the Executive, currently no formal procedure is in place to monitor the compliance of the Executive with the resolutions of the Assembly.

RELATIONS WITH PARLIAMENTS AND OTHER BODIES

[6] INTERNATIONAL RELATIONS POLICY AGREED

In the course of 2005, the Presiding Officers established a task team to develop an international relations policy for Parliament, the policy to be informed by the national foreign policy. In October, the Joint Rules Committee (JRC) agreed to extend the task team's deadline for submitting its final report to early in 2006.

At the first meeting of the JRC on 22 March 2006, the task team presented a report identifying the policy perspectives and operational guidelines for Parliament's involvement and engagement in international relations. In addition to recommending the approval of the policy guidelines, the task team proposed the appointment of a multiparty joint working group of no more than 13 members to facilitate the establishment within three months of the Joint Subcommittee on International Relations, for which provision is made in the rules; to develop proposals on consequential rule amendments; to propose terms of reference for an executive committee; to develop proposals on how Parliament's international relations could be included as a component of members' training; and to attend, in the interim, to urgent international relations matters that may be referred to it.

The Speaker expressed reservations about establishing the Joint Subcommittee on International Relations, particularly as the subcommittee had previously failed to engage in substantive content work (see *Item 46, Issue 11*). Her view was echoed by other members of the JRC and consequently the matter was referred back to the task team for further work. Parties were requested to consider the task team's proposals and to give their input, if any, to the task team.

The task team presented an adjusted report to the JRC at its next meeting on 21 June. It had reconsidered the establishment of the Joint Subcommittee on International Relations and instead proposed the establishment of a Parliamentary Group on International Relations (PGIR) to be co-chaired by the Speaker and the Chairperson of the NCOP. The PGIR would meet twice annually to deal with policy and strategic issues relating to Parliament's involvement in international relations. It further proposed the creation of a working group, a multiparty body of not more than seven members, chaired by the House Chairperson designated by the Speaker, to serve as the implementation agency of the larger body. It was proposed that the working group should meet bi-weekly.

After a substantive discussion, the JRC decided to return the report to the task team to revisit, once again, the structure of the proposed parliamentary group while also focusing on the relationship between the group and the JRC.

On 11 November, the JRC finally adopted the policy perspectives and operational guidelines on Parliament's engagement and involvement in international relations. In terms of the agreed policy guidelines, key priority areas would be the consolidation of the African agenda, encouraging South-South co-operation, promoting North-South dialogue and, in regard to global governance, favourably positioning South Africa in the regional and world economy. Parliament's programme of action would therefore, *inter alia*, focus on developing and strengthening partnerships in Africa, advancing multilateralism, and building bilateral relations through friendship societies.

In order to accommodate its expanding role in international relations, a Parliamentary Group on International Relations (PGIR) would be established. The group would consist of the number of Assembly and Council members determined by the JRC. The JRC agreed to establish the PGIR for the remainder of the term of the Third Parliament, the PGIR to consist of 14 members, namely a House Chairperson designated by the Speaker, as chairperson; a House Chairperson designated by the Chairperson of the Council, as deputy chairperson; 4 ANC members; 2 DA members; 1 IFP member; 2 members representing the smaller parties; and 3 NCOP members.

The PGIR must implement the international relations policy agreed by the Joint Rules Committee by providing policy and strategic direction on Parliament's international engagements; co-ordinating Parliament's international engagements, including its relations with other Parliaments and membership of, and participation in, international parliamentary organisations; receiving reports from parliamentary delegations and submitting proposals on their tabling, referral and scheduling for debate to the Presiding Officers or relevant parliamentary structures; and meeting bi-annually with members appointed by the Houses to serve in international parliamentary bodies and members of all substructures of the PGIR, as well as the chairpersons of the parliamentary committees dealing with foreign affairs and trade and industry to determine strategy and evaluate the international relations of Parliament.

The PGIR must report regularly on its activities to the JRC and may also, in accordance with its mandate, submit substantive reports and proposals to relevant parliamentary forums.

Furthermore, the PGIR, with the concurrence of the JRC and according to agreed guidelines, may establish multiparty, programme-driven focus groups consisting of core members of delegations to international parliamentary organisations to pursue and lend continuity to Parliament's multilateral

relations; friendship groups informally to pursue non-strategic bilateral relations; and any substructures that may be required to assist with the implementation of international relations policy.

Following the adoption of the international relations policy by the JRC, the Joint Subcommittee on Review of the Joint Rules was instructed to proceed with drafting the required Rule amendments. In effect, the PGIR would replace the now defunct Joint Subcommittee on International Relations of the JRC.

[7] MEMORANDUM OF UNDERSTANDING WITH NATIONAL PEOPLE'S CONGRESS OF PEOPLE'S REPUBLIC OF CHINA

On 20 September, the House, by resolution, mandated the Speaker to enter into an agreement on behalf of the National Assembly to establish a regular exchange mechanism with the National People's Congress (NPC) of the People's Republic of China. The Speaker and a multiparty delegation of Assembly members were due to leave on an official visit to that country the following day.

Prior to the departure of the delegation, a draft memorandum of understanding establishing the exchange mechanism had been drawn up and discussed by members of the National People's Congress and the Task Team on Parliament's International Relations Policy.

The House requested the Speaker upon her return to table any agreement entered into and to refer it to the Assembly Rules Committee and the Parliamentary Oversight Authority for consideration of issues arising from the establishment of such an exchange mechanism. The Speaker and the Chairman of the Standing Committee of the NPC met in Beijing on 25 September and signed the Memorandum of Understanding on the Establishment of a Regular Exchange Mechanism. The Speaker tabled the memorandum on 6 October and, in accordance with the House resolution of 20 September, the agreement was referred to the National Assembly Rules Committee and the Parliamentary Oversight Authority for consideration of issues arising from the establishment of a regular exchange mechanism in terms of their respective mandates.

In terms of the agreement, the exchange mechanism consists of two delegations individually decided upon by each party to the agreement. The Assembly delegation is chaired by the Deputy Speaker and the NPC delegation by a Vice Chairman. A member of Parliament responsible for international

relations or foreign affairs, appointed by the Assembly and the NPC respectively, has to liaise and maintain contact between the NA and NPC.

The exchange mechanism must meet annually on an alternate basis in the respective capitals to exchange views on bilateral relations and important international and regional issues of mutual or respective concern. However, by agreement more meetings may take place and it may also decide to meet in another city. The agenda for the annual meeting has to be determined at least one month before the meeting takes place. Unless otherwise agreed, the memorandum of understanding must be assessed and reviewed every five years at the official meeting of the exchange mechanism.

[8] AFRICAN PEER REVIEW MECHANISM (APRM) PROCESS

Joint Sitting on the Report from the Parliamentary Process of the African Peer Review Mechanism

The decision to establish the African Peer Review Mechanism 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. 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 Socio-Economic Development. President Mbeki formally submitted South Africa to the peer review process on 28 September 2005 and the Minister for the Public Service and Administration was appointed as South Africa's "focal point" for the process. The Acting Minister for the Public Service and Administration, Dr E G Pahad, invited Parliament to participate in South Africa's self-assessment and peer review process (see *Item 67, Issue 11*).

Parliament established the necessary structures to participate in South Africa's review process, namely a Joint Coordinating Committee and four *ad hoc* joint committees in accordance with the four thematic sections of the APRM. The work of the four *ad hoc* joint committees contributed to the report on the parliamentary process on the APRM, which was tabled by the Joint Coordinating Committee on 10 February 2006.

The Presiding Officers called a Joint Sitting of the Houses to debate the Report from the Parliamentary Process of the African Peer Review Mechanism, which took place on 14 February. After the conclusion of the debate, the Joint Sitting was adjourned and both Houses then adopted the report separately. It

was agreed by both Houses that the report be forwarded to South Africa's focal point on the APRM to be incorporated into South Africa's self-assessment country report and programme of action.

In adopting the report a number of recommendations were also adopted by the Houses. The most significant being the following: "The effectiveness and efficiency of Parliament as a democratic institution in South Africa was considered as an important dimension of the review. To this end Parliament will still embark on a comprehensive self-assessment to be conducted by an independent panel during 2006."

Retention of Ad Hoc Joint Committees on African Peer Review Mechanism

The section of the APRM questionnaire on democracy and good political governance required an assessment of Parliament. Parliament's Joint Coordinating Committee on the APRM considered it most appropriate that an independent panel conduct such an assessment. Unfortunately, due to time constraints and the unavailability of identified panelists at short notice, this assessment was unable to be conducted during Parliament's involvement in the country's self-assessment process.

On 22 March, the Joint Rules Committee decided to retain the Joint Coordinating Committee on the APRM and the *ad hoc* joint committees on the four thematic areas of the APRM questionnaire. The scope of work of the committees was to propose and develop plans to implement the recommendations contained in the report which are specific to Parliament; to monitor the national APRM process and the Country Programme of Action; to document the parliamentary experience and process during the first APRM self-assessment; and to develop terms of reference and recommend panelists for the independent assessment of Parliament.

The panel was composed of the following persons: Ms P Govender (chairperson), Adv S Baqwa, Mr C W Eglin, Ms J February, Mr J Kane-Berman, Mr P R Malavi, Ms M R K Mashigo, Mr A Matshiqi, Prof S Seepe, Mr M Sisulu and Dr F van Zyl Slabbert. The first meeting of the panel was convened by the Presiding Officers on 5 December.

[9] ELECTION OBSERVER MISSION TO DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

On 21 June, the Chief Whip of the Majority Party moved a motion in the National Assembly in regard to the holding of elections on 30 July 2006 in the DRC. The motion contained details of the composition of the delegation and principles and rules governing observer missions.

As a number of parties objected to the proposed principles and rules, the motion was subsequently withdrawn with leave of the House.

Immediately thereafter the Chief Whip of the Majority Party moved an amended motion which did not contain the principles and rules governing observer missions. According to the motion, the parliamentary delegation consisted of members of the ANC, DA, IFP, UIF, PAC and UPSA. The motion was subsequently agreed to by the National Assembly. On the same day the National Council of Provinces agreed to a similar motion to send a parliamentary delegation to observe the elections in the DRC. In terms of the motion agreed to by the Houses, the parliamentary delegation formed part of South Africa's National Observer Mission to the DRC. The Final Report of the South African Observer Mission to the DRC was tabled in Parliament on 23 October.

On 12 October, the Chief Whip of the Majority Party moved a motion in regard to the holding of a second round of presidential and provincial elections on 29 October in the DRC.

The Assembly agreed, subject to the concurrence of the National Council of Provinces, that Parliament sends a 30-member multiparty delegation to observe the elections; that the delegation forms part of the South African National Observer Mission; that the delegation observes the campaign in the run-up to the elections, the casting of votes and the counting of the votes; and that the delegation tables the report of the National Observer Mission in Parliament for consideration and debate. The National Council of Provinces concurred with the National Assembly resolution on 17 October.

By the end of the parliamentary session the report on the second round of elections had yet to be tabled.

MEMBERS

[10] DISCIPLINARY MEASURES AGAINST MEMBERS RE: ABUSE OF TRAVEL VOUCHERS

On 17 October, the Acting Speaker, Mr G Q M Doidge, informed the House that in the light of media reports about members entering into plea bargains relating to the abuse of travel vouchers, he had consulted the Speaker and had urgently requested the relevant court documents to enable the Presiding Officers to consider the terms of the court judgment (see also *Item 11, Issue 11*).

Once the relevant documents had been received, the Presiding Officers would make an announcement on the steps they proposed taking. The Acting Speaker appealed to members to afford the Presiding Officers an opportunity to follow the procedure which he had outlined before raising matters pertaining to the court judgment in any other context.

On 1 November, the Speaker announced in the House that all the relevant documents pertaining to the charges, plea bargains and court orders against a number of members had been obtained. She indicated that on a previous occasion, in similar circumstances, the Rules Committee had agreed that the Speaker should follow the disciplinary procedures available in the Rules. Following that precedent, the Speaker formally requested the Deputy Speaker to convene the Disciplinary Committee without delay to advise her on appropriate action to take against the members in respect of whom judicial processes had been concluded.

The Speaker further informed the House that the National Prosecuting Authority (NPA) had identified another 12 members as having utilised their travel vouchers for vehicle hire in contravention of the parliamentary rules and regulations. However, after preliminary enquiries, the NPA had decided not to prosecute those members. The Speaker also referred the available information in respect of the 12 members to the Disciplinary Committee for advice. The Speaker informed parties that they would be approached to designate members to serve on the committee.

Once all parties had submitted the names of their representatives to serve on the committee, the Speaker, in terms of Rule 191(1)(c), which empowers the Speaker to designate “any other Assembly member or members” to serve on the committee, designated a further three members to serve on the committee. The names of the members of the Disciplinary Committee were published in the ATC on 16 November.

On 17 November, the committee held its first meeting to discuss its mandate and terms of reference and to plan its programme for the following year. The committee issued a media release on the same day in

which it outlined, among other things, its mandate and membership. It also emphasised that it regarded its task as urgent and would aim to complete its work without delay.

PROCEDURAL AND RELATED ISSUES

[11] NEW RULES AND RULE AMENDMENTS

During 2006, a number of new rules and rule amendments were adopted.

A. RULES GIVING EFFECT TO LEGISLATION

Establishment of Committee on the Auditor-General

In terms of the Public Audit Act, No 25 of 2004, the NA has to provide for an oversight mechanism to assist and protect the Auditor-General in order to ensure his or her independence, impartiality, dignity and effectiveness and to advise the NA (see *Item 34, Issue 10*).

It was agreed that such a mechanism would be in the form of a committee. After agreement was reached in the Rules Committee in 2005 on the size and terms of reference of the committee, the Subcommittee on Review of the NA Rules was tasked with drafting the required rules to establish the oversight mechanism. On 14 October 2005, the Rules Committee adopted a set of rules to establish the committee.

On 27 March 2006, the report of the Rules Committee containing the proposed new rules was published in the ATC. The House adopted the report on 31 March, thereby agreeing to the establishment of the oversight mechanism (see NA Rules 208A – 208D).

Definition of “money bill” extended

The Constitution was amended on 26 April 2002, by, amongst others, extending the definition of a money bill to include bills which abolish, reduce or grant exemptions from national taxes and other charges or those which authorise the withdrawal of money from the National Revenue Fund.

To bring the Joint Rules in line with the Constitution, the definition of a money bill in the Joint Rules was amended by the JRC on 24 March and agreed to by the Houses on 16 November.

B. AMENDMENTS PERTAINING TO HOUSE CHAIRPERSONS

On 11 October, the First Report of the NA Rules Committee was published in the ATC. The report contained a set of rule amendments resulting from the appointment of House Chairpersons (see *Item 7, Issue 10*). The report was adopted by the House on 2 November. The rule amendments substituted the term “House Chairperson” for the terms “Chairperson of Committees” or “Deputy Chairperson of Committees” where they occurred in the rules.

[12] ADDRESS BY PRESIDENT OF PALESTINE

Rule 43 provides that the Speaker, after consultation with the Leader of Government Business, may invite a Head of State, when on a State visit to the Republic, to address the National Assembly. Established practice, however, has been that visiting Heads of State address a Joint Sitting of both Houses by invitation of the Speaker and the Chairperson of the NCOP.

During the State visit of Mr Mahmoud Abbas, President of Palestine and head of the Palestinian National Authority, the NCOP was in the Northern Cape with its programme “Taking Parliament to the People”. Since a Joint Sitting was not possible, the Speaker invited Mr Abbas to address a meeting of the Assembly on Friday, 31 March. He was welcomed by Mr G Solomon and after his speech a vote of thanks was delivered by Ms N B Gxowa.

[13] JOINT SITTINGS AND JOINT DEBATES

In terms of Joint Rule 7(2), the Speaker and the Chairperson of the NCOP may call for a joint sitting of Parliament when necessary. The practice is that only Heads of State on official visits to the country may address sittings of Parliament.

Address by Secretary-General of United Nations

On 8 March, both Houses passed a resolution agreeing to invite Mr Kofi Annan, Secretary-General of the United Nations, to address a Joint Sitting of Parliament on 14 March while on an official visit to South Africa. In accordance with the resolutions, and in terms of Joint Rule 7(2), the Speaker and

Chairperson of the NCOP convened the Joint Sitting. As required by Joint Rule 9(c), members were officially informed by way of a notice in the ATC of 13 March. On the day, Mr D J Sithole expressed a word of welcome on behalf of the NA, while Ms M P Themba of the NCOP proposed a vote of thanks at the conclusion of Mr Annan's address.

Joint debates

Compared to previous years, the number of joint debates increased significantly in 2006. The Speaker and the Chairperson of the NCOP called a total of four Joint Sitzings in order to conduct joint debates.

The first was called for 14 February to enable members of both Houses to debate the report that emanated from the parliamentary process on the African Peer Review Mechanism. As no decisions can be taken at a Joint Sitting, the Houses subsequently adopted the report in separate sittings (See *Items 8 and 53*).

The next Joint Sitting was called for Wednesday, 8 March, for a debate entitled "South African Women: Yesterday, today and tomorrow" to commemorate International Women's Day.

The Speaker and the Chairperson of the NCOP again convened a Joint Sitting on 8 May for a debate to celebrate the 10th anniversary of the adoption of the Constitution. Though the participation of all parties in the debate was envisaged during initial discussions in the Programme Committee, it was later decided that only the President would address the Joint Sitting.

On 25 May, both Houses met in a Joint Sitting to debate the topic "Perspectives on and of Africa" in commemoration of Africa Day. On the same day the Houses separately adopted motions calling for unity in Africa, the strengthening of African institutions and the eradication of poverty on the continent.

[14] INTERIM RULES FOR JOINT DEBATES

Before calling the Joint Sitting for the debate on the report on the parliamentary process on the African Peer Review Mechanism (see *Item 8* above), and in view of the fact that there appeared to be an increased need for joint debates, the Speaker and Chairperson of the NCOP framed interim Joint Rules to govern joint debates covering the use of offensive language, the calling of members and the

application of time limits, charges against members and addressing the sitting from the podium during Joint Sittings.

This was done in terms of Joint Rule 2(1) which allows the Presiding Officers to give a ruling or frame a rule in respect of any matter that the Joint Rules do not provide for. Such rules then remain in force until a meeting of the Joint Rules Committee has decided on whether to retain them or not. The interim Joint Rules were published in the ATC of 13 February and presented to the Joint Rules Committee on 22 March for consideration.

The JRC agreed to refer the interim rules to the Subcommittee on Review of the Joint Rules for processing. In its progress report to the JRC on 21 June, the subcommittee indicated that it had not yet completed its deliberations on the matter. It had, however, identified a *lacuna* in the Constitution regarding the attendance of, and participation in, Joint Sittings by the South African Local Government Association (Salga). The Constitution refers only to the participation of Salga in the NCOP. This view was supported by a legal opinion sought by the subcommittee. However, a practice had developed for Salga also to attend Joint Sittings. As this was not a matter that fell within the mandate of the subcommittee, it asked the JRC for a policy decision. The subcommittee reported further that it was also giving consideration to areas of incompatibility with regard to the rules of order in debate between the NA Rules and NCOP Rules and would aim to address this in drafting the rules for joint debate.

By the end of the parliamentary year, the subcommittee had not yet presented its final report on the interim Joint Rules to the JRC and a decision on Salga's participation in Joint Sittings was postponed for the purpose of further consultation.

[15] DEBATE INTERRUPTED FOR FURTHER CONSULTATION

On 8 August, the Programme Committee agreed that a 75-minute debate would take place on Thursday, 17 August, on the situation in the Middle East. A draft resolution in the name of the Chief Whip of the Majority Party was placed on the Order Paper for consideration and debate.

During the course of the debate, it became clear that much controversy existed about the exact wording of the resolution that was being considered by the House. Both the Chief Whip of the Opposition, Mr D H M Gibson, and Mr M B Skosana on behalf of the IFP, moved amendments to the original motion.

At the completion of the speakers' list, House Chairperson C-S Botha who was presiding at the time interrupted the debate at the request of the Chief Whip of the Majority Party, who had indicated that parties wanted to consult further before the House formally considered the motion.

However, over subsequent weeks parties failed to reach agreement and the original motion and the two amendments to the motion were scheduled for consideration on 20 September. At the conclusion of the debate, the House divided on the amendments and on the original motion. The amendments were defeated and the original motion by the Chief Whip of the Majority Party was agreed to.

[16] FAST-TRACKING OF BILLS

Two bills were fast-tracked during the 2006 parliamentary year, namely the Division of Revenue Bill and the 2010 FIFA World Cup South Africa Special Measures Bill.

On 15 February, the Joint Subcommittee of the Joint Programme Committee 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* [B 3–2006], a section 76 bill introduced in the National Assembly on the same day as part of a package together with the Appropriation Bill. The decision of the subcommittee was ratified by resolution of the NCOP on 16 February and by the National Assembly on 17 February. This made it possible for Parliament to dispense with any relevant House Rule or Joint Rule and to shorten any period in the legislative process relating to the finalisation of the bill, so that it could be enacted by 31 March. The bill was passed with amendments by the NCOP on 28 March, and by the National Assembly in the amended form on 30 March, and assented to by the President on 1 April.

The Joint Subcommittee of the Joint Programme Committee also agreed on 20 June to a request from the Leader of Government Business for the fast-tracking of the 2010 FIFA World Cup South Africa Special Measures Bill [B 13–2006], a bill introduced on 6 June in the National Assembly as a section 75 bill. The request was submitted in view of South Africa's international commitment to adopt special legislative measures regarding the 2010 FIFA World Cup within specified timeframes. The Joint Subcommittee further noted that the bill, as introduced, was to be split into separate section 75 and section 76 bills, and agreed that the two bills, upon receipt, be fast-tracked, in order for them to be passed by both Houses before 31 August. In order to meet the deadline, the relevant NA and NCOP

committees were instructed to confer on the bills. The Subcommittee further set timeframes for the committees of the National Assembly and the National Council of Provinces within which the bills were to be finalised. The decision of the Subcommittee was ratified by both the NA and the NCOP on 21 June.

On 20 June, the 2010 Fifa World Cup South Africa Special Measures Bill [B 13–2006] was reintroduced, and the Second 2010 Fifa World Cup South Africa Special Measures Bill [B 16–2006] was also introduced.

The bills were passed by the Assembly on 15 August and by the Council on 25 August.

[17] ESTABLISHMENT OF TASK TEAM ON PARLIAMENTARY PROGRAMME FRAMEWORK

Towards the end of each year, the Joint Programme Committee, comprising the National Assembly Programme Committee and the National Council of Provinces Programme Committee, agrees on a programme framework for the next year. The Programme Committee of each House then separately determines its respective programme based on this framework.

In her address at the Chief Whips' Forum workshop on 15 March, the Speaker mentioned that the activities of Parliament needed to be programmed in a way that allowed members more time for constituency work. At the JRC meeting on 22 March, the Chief Whip of the Majority Party, as chairperson of the Chief Whips' Forum, placed before the JRC the need for a task team to generally review the structure of the parliamentary programme framework. The JRC agreed to the establishment of a task team of the Chief Whips' Forum to consider the parliamentary programme framework, with a view to making proposals to the JRC for modification of the programme. The Speaker and the Chairperson of the National Council of Provinces were co-opted members to the task team.

The Assembly Panel of House Chairpersons also considered the parliamentary programme framework at its meeting of 23 March. While not provided for in the NA Rules, the Panel of House Chairpersons is a working arrangement between the three House Chairpersons to facilitate the sharing of information on matters pertaining to their offices. The Panel identified challenges that necessitated the review of the parliamentary programme. These included reducing the frequent changes to the parliamentary programme, anchoring of the parliamentary programme in terms of the new oversight model,

considering public participation needs for oversight work of members, considering the work of committees, providing regular constituency and committee periods which are predictable, and aligning the programme of Parliament and the programme of the Executive. They further identified principles that need to inform the programme framework. The discussions of the Panel were fed into the Chief Whips' Forum.

On 29 March, the Chief Whips' Forum agreed that Ms E Ngaleka and Mr J H Van der Merwe would be members of the task team. Messrs T M Masutha, J H Jeffery, L J Modisenyane and M J Ellis were later added. The task team looked at international practices on programming from Canada, Sudan, Ethiopia, Australia and the United Kingdom.

On 21 June, the JRC agreed that the task team of the Chief Whips' Forum should continue with its work and that the Presiding Officers should consider whether it was necessary to co-opt other members onto that task team. Requirements of both Houses would have to be taken into account when developing the framework.

In addition, the National Council of Provinces organised a workshop on parliamentary programming. The workshop included participants from provincial legislatures and members of the South African Local Government Association (Salga). The workshop looked at the co-ordination, synchronisation and harmonisation of the programmes of the NCOP, provincial legislatures and Salga.

[18] EARLY START OF SITTINGS

Rule 23(2) of the Assembly Rules provides that the Assembly may conduct its business on Mondays to Thursdays from 14:00, or such later time as the Speaker determines, to adjournment, and on Fridays from 09:00, or such later time as the Speaker determines, to adjournment.

On 23 March, the House, notwithstanding the hours of sitting of the House as provided for in Rule 23(2), unanimously adopted a resolution to sit on Tuesday mornings from 10:00 on 28 March, 16, 23 and 30 May and on 6 June. This arrangement was agreed to after the Speaker made a request in the National Assembly Programme Committee (NAPC) that alternative programming means be considered to avoid late night sittings in order to limit financial costs that could be incurred as a result. It was anticipated that the House would have late sittings on the above days owing to the scheduled Budget Votes debates.

At the conclusion of the Budget Votes debates, the House reverted back to the normal sitting hours as prescribed in the Rules.

[19] QUESTIONS FOR ONE HOUR

In terms of Rule 113(2) of the National Assembly Rules, questions to the Executive are scheduled for two hours every Wednesday when Parliament is in session. NA Rule 3 however provides that any provision of the Assembly Rules relating to the business or proceedings at a meeting of the House or committee of the Assembly may be suspended by resolution of the House.

On 31 March, the House adopted a resolution moved by the Deputy Chief Whip of the Majority Party that, notwithstanding any Rule to the contrary, questions be taken for only one hour on the following Tuesdays: 16, 23 and 30 May and on 6 June rather than on the Wednesdays in those weeks, in accordance with the programme as agreed to by the National Assembly Programme Committee.

This arrangement was meant to allocate more time to deliberations on the Budget Votes scheduled for the above days. At the conclusion of the deliberations on the Budget Votes, the House reverted back to the normal practice of having two hours allocated for questions to the Executive every Wednesday as prescribed in the Rules.

[20] FIRST READING DEBATES

The practice has been that a bill as introduced is regarded as having been read a first time. The referral of the bill to the relevant portfolio committee is usually announced in the same ATC that announces the introduction of the bill. The bill comes before all Members and the House for the first time at the end of the National Assembly process, that is, for Second Reading debate and decision.

The National Assembly rules provide for First Reading procedures in Rule 246(1). It reads: All bills introduced in the Assembly have a First Reading and a Second Reading in the Assembly after the introduction, and all bills introduced in and as passed by the Council have a First Reading and Second Reading in the Assembly after their referral to the Assembly.

The Rules further provide that if the person in charge of a bill wishes to make an introductory speech, that person must submit to the Secretary a notice of First Reading of a bill together with a request for an opportunity to make an introductory speech on the bill. If no request has been made to make an introductory speech, or if the request has not been granted, then, in terms of Rule 247(4), the bill as tabled is regarded as having been read a first time.

In August, the Speaker announced in the National Assembly Programme Committee (NAPC) that the NA Forum (Speaker, Deputy Speaker and House Chairpersons, assisted by the Secretary to the National Assembly) had agreed that a process of having debates on the first reading of bills should be introduced. This process would give members an opportunity to discuss the broad aspects of a bill before the relevant committee begins its deliberations, and would facilitate earlier House ownership and members' awareness of cross-cutting issues and interests.

The proposal was that the first reading debates would be spontaneous and have no speakers' lists. This type of debate would ensure that by the time the committee discusses the bill they would have a sense of what Members' position is on the subject matter.

The proposed new format of the first reading debates was discussed at the NAPC meeting of 7 September. On 12 September, the House adopted a motion to implement the provisions in Rule 246(1) for First Reading debates on bills in accordance with certain guidelines for a trial period until the end of 2006.

The following guidelines were adopted:

- (a) A First Reading debate may be conducted on bills introduced in the Assembly.
- (b) There shall be no speakers' list for a First Reading debate.
- (c) The member in charge of a bill, be it a Minister, a member or a representative of a portfolio committee, must be allocated fifteen minutes to make an introductory speech on the background to, reasons for and objects of the bill, and to reply to the debate.
- (d) In the case of a bill introduced by the Executive, a Deputy Minister may participate in the First Reading debate on behalf of a Minister.
- (e) Members may speak on the bill for no longer than three minutes each.
- (f) With the exception of the member in charge of the bill, or a Deputy Minister participating on behalf of the Minister, a member granted an opportunity to speak would not be given a second opportunity in the same debate.

- (g) Members intending to participate in the debate must press the “to speak” button on their desks.
- (h) Decisions regarding the scheduling of First Reading debates are taken by the Programme Committee.
- (i) If a bill is introduced in the Assembly during a non-plenary period, it may be scheduled for a First Reading debate as soon as possible upon the resumption of plenaries.
- (j) Once the speeches have been made, a bill is regarded as having been read a first time.
- (k) No amendment to a bill is allowed on its First Reading and no decisions will be taken by the House after a First Reading debate.

It was also agreed that the NAPC would review the measures after the expiry of the trial period and, if required, would recommend specific rule adjustments to the Rules Committee.

The first First Reading debate in this format took place on Tuesday, 24 October, on the Transnet Pension Fund Amendment Bill.

[21] INTERIM MECHANISM FOR SCRUTINY OF DELEGATED LEGISLATION

Both the Interim Constitution of 1993 and the Constitution of the Republic of South Africa, 1996, grant Parliament, as the legislature of the country, the authority to delegate subordinate regulatory authority to other bodies, including the Executive. This is regarded as necessary for effective law-making. The constitutional imperatives for the scrutiny of delegated legislation are contained in sections 101 and 140 of the Constitution.

In October 2002, the Joint Subcommittee on Delegated Legislation, a subcommittee of the Joint Rules Committee established by the Joint Rules to give effect to the above-mentioned constitutional imperatives, presented a report containing various recommendations to the JRC in regard to the establishment of a scrutiny mechanism for delegated legislation.

The report was referred to parties for perusal and feedback to the JRC. However, the matter was not taken further in the Second Parliament. At the first meeting of the JRC of the Third Parliament, on 4 August 2004, the report was presented to the new members of the committee as a legacy issue. The JRC agreed to accommodate a presentation on the report at a special meeting at the end of that month. However, owing to time constraints, this special JRC meeting only took place on 25 May 2005. At that

meeting, the co-chairperson of the joint subcommittee of the Second Parliament, Adv T M Masutha, gave a detailed presentation, highlighting the recommendations of the joint subcommittee, whereafter members of the committee engaged with the contents of the report. The Speaker then proposed that members go through the recommendations and return to the JRC with specific responses so that the committee would be in a position to issue instructions on what was needed to follow up on agreed positions.

Formal consideration of the matter was resumed at a meeting of the JRC on 22 March 2006. During the discussion, it was pointed out that there was a need for Parliament to engage the Executive in regard to the recommendations outlined in the report, as the Executive was usually responsible for drafting subordinate instruments such as regulations. The meeting agreed on the need for an interim structure to deal with delegated legislation. It also instructed that ways should be found to engage with the Executive without immobilising the process of establishing the interim structure.

At a further meeting on 21 June, the JRC agreed to the following:

- (i) That an interim scrutiny committee be established, the committee to –
 - act in an advisory capacity to portfolio and select committees with regard to the scrutiny of delegating provisions in enabling statutes referred to it;
 - scrutinise any delegated instruments requiring approval by Parliament; and
 - be provided with the necessary capacity and legal expertise;
- (ii) That the establishment of the interim scrutiny mechanism be referred to the Joint Subcommittee on the Review of the Joint Rules for formulation of the necessary rules;
- (iii) That the subcommittee also investigate the criteria to be used by the interim scrutiny mechanism; and
- (iv) That the Speaker consult the Executive on the issue.

The Speaker had indicated at an earlier meeting of the JRC that the matter of the scrutiny of delegated legislation was on the agenda of her next meeting with the Leader of Government Business. On 21 December, the Speaker also wrote to the Leader of Government Business, informing her about Parliament's intention of establishing an interim scrutiny committee and inviting members of the Executive to engage with Parliament on the establishment of the committee or any other matter in the report.

By the end of 2006, the Joint Subcommittee on Review of the Joint Rules had not yet completed its deliberations on draft rules for the establishment of the scrutiny committee.

[22] PROTOCOL RATIFIED TOGETHER WITH INTERPRETATIVE DECLARATION

The Protocol to the Organisation of African Unity (OAU) Convention on the Prevention and Combating of Terrorism ('the Protocol'), which was adopted by the African Union on 8 July 2004, was tabled on 18 July 2006 and referred to the Portfolio Committee on Safety and Security for consideration and report.

The main purpose of the Protocol is to enhance the effective implementation of the OAU Convention on the Prevention and Combating of Terrorism as originally adopted by the 35th OAU Summit in July 1999 and to give effect to Article 3(d) of the Protocol relating to the establishment of the Peace and Security Council of the African Union, the need to co-ordinate and harmonise continental efforts in the prevention and combating of terrorism, as well as the implementation of other relevant international instruments.

In its consideration of the Protocol, the committee expressed itself specifically on Articles 3(1)(e) and 8. In terms of Article 3(1)(e), signatories to the Protocol must undertake to take appropriate actions against the perpetrators of "mercenarism" as defined in the OAU Convention for the Elimination of Mercenarism in Africa, and other applicable international instruments. Article 8 of the Protocol deals with extradition matters.

In its report the committee recommended that the Assembly approve the Protocol, and adopt the following interpretative declarations:

- "That the Government of the Republic of South Africa is not a Party to the African Union Convention for the Elimination of Mercenarism in Africa and notes that this is a Convention that has been identified by the Assembly of the African Union as being suitable for review. In the interim the Government of the Republic of South Africa will interpret and apply Article 3(1)(e) in accordance with legislation of the Republic of South Africa applicable to mercenarism, which prohibits the recruitment, use, training of, or engagement in, any mercenary activity".
- "The Government of the Republic of South Africa shall apply the provisions of Article 8 of the Protocol in accordance with the obligations imposed upon States Parties in Article 8 of the OAU

(now African Union) Convention on the Prevention and Combating of Terrorism” (ATC, 26 September 2006, p2102).

On 25 October, the Assembly approved the Protocol together with the additional interpretative declarations as recommended by the committee. The NCOP adopted the report of the Select Committee on Security and Constitutional Affairs which recommended that the Protocol be ratified together with a similarly worded interpretative declaration.

[23] “BUGGING SCANDAL” DEBATE REQUESTED

In the first quarter of the year, reports surfaced in the media that telephone lines of certain prominent politicians, including members of the opposition, had been bugged illegally by the National Intelligence Agency. These reports coincided with an investigation by the Inspector-General of Intelligence into broader allegations of involvement by members of the National Intelligence Agency (NIA) in illegal information gathering. The report by the Inspector-General was submitted to the Joint Standing Committee on Intelligence to consider in terms of its mandate.

While the Joint Standing Committee was still considering the matter, the Chief Whip of the Opposition, Mr D H M Gibson, on 27 March requested a debate as a matter of urgent public importance on the allegations that members of the intelligence community intercepted parliamentary telephone calls of his party and the Chief Whip of the Majority Party in contravention of both the Constitution and the Interception and Monitoring Prohibition Act, No 127 of 1992.

Rule 104 of the Assembly Rules provides for a request for a debate on a matter of urgent public importance to be submitted in writing and for this request to be received before 12:00 on a sitting day when the House sits at 14:00 or at least one hour prior to an earlier or later time appointed for a sitting. The rule further states that a question of privilege may not be discussed, the rule of anticipation shall not apply during such a debate and not more than one matter shall be discussed under this rule on the same day.

The matter referred to by Mr Gibson in his letter complied with all the guidelines for a request for a debate on a matter of urgent public importance and was considered as being of a serious nature, not only in relation to specific individuals, but also for the country as a whole. However, on the proposal of

the Speaker the National Assembly Programme Committee decided that the House debate the matter only once the joint standing committee had reported on it.

On 21 August, the joint standing committee published a special report on the Report of the Inspector-General of Intelligence submitted to it in terms of section 6(2) of the Intelligence Services Oversight Act, No 40 of 1994 (see ATC, 21 August, p1790). In its report the committee recommended that the NIA immediately revise its policies regarding the internal manner in which applications for interceptions are dealt with and how officials are instructed to do the actual task. The necessity to comply with policy and the law when “bugging” the telephones of citizens must be taken very seriously. There must be proper compliance with the Regulation of Interception of Communications and Provision of Communication-related Information Act, No 70 of 2002.

The National Assembly debated the report on 21 September and on a motion by the Deputy Chief Whip of the Majority Party the report was noted by the House.

[24] FLEXIBLE TIME FOR PRESIDENT’S REPLIES TO QUESTIONS

In terms of Rule 113 of the Assembly Rules, the reply to questions is limited to three minutes. However if the Presiding Officer is of the opinion that the matter is of sufficient importance, an additional two minutes may be allowed. The reply to a supplementary question is limited to two minutes. The practice, based on an agreement, has been to allocate to the President five minutes for his initial reply and two minutes for his reply to a supplementary question.

In response to a request by the President’s Parliamentary Counsellor to revise the time limits for the President to reply to questions, the Task Team on the Review of the Parliamentary Programme made a proposal to the Chief Whips’ Forum that Rule 113(3) be amended to allow the President five minutes to reply to a question, but if the Presiding Officer is of the opinion that the matter is of sufficient importance additional time may be allowed. The Chief Whips’ Forum agreed to the proposed amendment and referred the matter to the NA Rules Committee for consideration. At the time of writing the matter had not yet been considered by the Rules Committee.

On 10 October, the Assembly agreed to a motion moved by the Deputy Chief Whip of the Majority Party granting the Presiding Officer the discretion to determine the time allocated for the President’s replies to questions for the rest of the term.

In order to assist the President and the Presiding Officer to keep track of time, the clock in the Chamber was still set at five minutes.

[25] MOTIONS OF CENSURE

A motion of censure, unlike a substantive motion, has as its aim an expression of disapproval or condemnation on political grounds for a particular behaviour or action. The intent is therefore not that it should give rise to a disciplinary process, but to allow room for political debate at the conclusion of which the House can express itself on the behaviour or action in question.

- A motion of censure against Mr D H M Gibson by the Chief Whip of the Majority Party. On 6 September, the Chief Whip of the Majority Party moved, amongst others, that the House “notes

On 6 September, notice of a motion of censure was given by the Chief Whip of the Majority Party against Mr Gibson. The motion was published on the Order Paper on 7 September and was scheduled for consideration by the House on 20 September. The motion noted “the reprehensible actions of the Hon D H M Gibson, MP, Chief Whip of the Democratic Alliance, and other members of the Democratic Alliance, accompanied by members of the news media, who attempted to enter a private property belonging to President Thabo Mbeki and First Lady Mrs Zanele Mbeki, on Friday, 1 September 2006, in Johannesburg”.

Two other motions of censure against the Speaker and the former Minister of Minerals and Energy were not passed, but the motion of censure against Mr Gibson was carried by the House. Mr Gibson was afforded an opportunity to respond briefly to the House’s decision, but not for purposes of reopening or extending the debate. The precedent for this statement was set when the Speaker made a statement in response to the motion of censure against her by Mr Gibson the previous week.

Mr Gibson requested the Speaker to use her discretion to allocate additional time to the Democratic Alliance, or alternatively that the Speaker requests the whips to give favourable consideration to the matter. It was further requested by the Democratic Alliance that Mr Gibson be afforded an opportunity to address the House or make a statement after the debate.

As the Speaker does not have the discretion in time allocation for debates, and taking into consideration that the established practice is that time allocations are dealt with and negotiated among the whippers, the Speaker referred the request for the allocation of more time for the Democratic Alliance to the Chief Whip of the Majority Party for processing within the whippers.

The Speaker decided to afford Mr Gibson an opportunity to address the House, provided that the statement would be brief and not be for purposes of reopening or extending the debate.

The motion was moved and debated in the House on 20 September. Mr M J Ellis moved an amendment to the motion, which was negatived after a division. Thereafter the House adopted the original motion by majority vote. Mr Gibson made a statement on his conduct in regard to the motion of the Chief Whip of the Majority Party.

[26] SCOPE OF DEBATE ON SUBSTANTIVE MOTION

A motion which reflects upon the character of a member is not permissible unless made by way of a substantive motion. Such a motion would have to be clearly formulated and contain a properly substantiated charge which requires *prima facie* evidence of the wrongdoing.

On 19 September, Mr D H M Gibson, Chief Whip of the Opposition, moved a motion that the House appoint an *ad hoc* committee to investigate whether the Minister for Public Enterprises deliberately misled or made a false statement to Parliament in respect of statements he had made concerning events at the Koeberg Nuclear Power Station.

At the commencement of the debate, House Chairperson C-S Botha, who was in the chair, cautioned members to confine their inputs to the question of whether an *ad hoc* committee should be appointed to investigate the allegation made against the Minister. She added that the merits of the allegation would be a matter to be investigated by the *ad hoc* committee, should it be appointed. Members were therefore requested to only motivate their position for or against the appointment of the *ad hoc* committee.

At the conclusion of the debate the Chief Whip of the Majority Party moved an amendment to the motion before the House. The effect of the amendment was that an *ad hoc* committee should not be

appointed and that the matter had been dealt with extensively and conclusively. The amendment was agreed to after a division.

[27] CANCELLATION OF PLENARY

In terms of Assembly Rule 111, questions to the President must be scheduled for a question day at least once per term in accordance with the annual parliamentary programme. The practice has been to schedule questions to the President on Thursdays following a request from the President's office.

The responsibility for programming or rescheduling the business of the Assembly lies with the National Assembly Programme Committee (NAPC). In terms of Rule 190(e), the NAPC may take decisions and issue directives and guidelines to prioritise or postpone any business of the Assembly. Between meetings of the NAPC, the Speaker, as its chairperson, normally takes decisions after consultation with party representatives.

On 30 August, the President was scheduled to answer questions for the third term. However, owing to the President's indisposition, the Speaker announced the cancellation of that afternoon's plenary at a meeting of the Chief Whips' Forum.

These questions to the President were rescheduled for 12 October, two weeks into the fourth term. The President also answered questions for the fourth term on 15 November.

[28] TIME FOR PARTY RESPONSES TO MINISTERIAL STATEMENTS SET FOR ANNUAL SESSION

Rule 106 of the Assembly rules states that a member of the Executive may ask the Speaker for an opportunity to make a factual or policy statement relating to government policy, any executive action or other similar matter of which the Assembly should be informed. Following any executive statement, a member or members of each of the parties may comment on the executive statement for not more than three minutes per party.

On 31 August, the Minister of Arts and Culture made a statement on the renaming of Johannesburg International Airport to OR Tambo International Airport. In order to avoid having to pass a resolution on each occasion in specifying times for responses by parties, the Assembly, on the same day, adopted

a motion specifying speaking times for party responses for such statements for the remainder of the year. The times allocated, which took account of the relative strength of parties in the House, were as follows: ANC, 8 minutes; DA, 3 minutes; IFP, 2 minutes; all other parties, 1 minute each (see also *Issue 4, Item 22*).

[29] COMPLAINT BY MEMBER OF THE PUBLIC ABOUT REFERENCE TO HIM IN THE ASSEMBLY

Rule 105 of the Assembly Rules provides that a member, other than the Deputy President, a Minister or a Deputy Minister, may make a statement in the Assembly on any matter. On 1 July 2005, Mr Jayendra Naidoo's attorneys submitted a complaint to the Speaker on his behalf concerning remarks made by Ms P de Lille, MP, on 21 June 2005 in the National Assembly during members' statements. The complaint relates to the alleged abuse of her role as a Member of Parliament and the principle of parliamentary privilege in circumstances that amount to a deliberate attempt to impugn the reputation of Mr Naidoo. Mr Naidoo requested some form of redress for him within Parliament, and consideration of proposed rule amendments to protect the rights of ordinary citizens in future.

The remarks made by Ms De Lille in the National Assembly were made under the protection of members' constitutional freedom of speech in Parliament. Section 25 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004, which came into operation on 7 June 2004 provides, amongst others, that a person other than a member who feels aggrieved by a statement or remark made about that person by a member in a House or committee may submit a written request to the Secretary to have his or her response recorded.

Section 12 of the Act provides that the House in question must appoint a standing committee to deal with issues of contempt of Parliament, including a breach or abuse of parliamentary privilege. The "section 12 committee" as envisaged in the Act had not been established and there were therefore no rules regulating the manner in which such a request should be considered. The subcommittees of the Joint Rules Committee tasked with reviewing the rules of the Houses are in the process of drafting the relevant rules.

The absence of a section 12 committee and rules for processing such a request however do not prevent a complainant from submitting a request to the relevant House for redress. On 14 October 2005, the National Assembly Rules Committee therefore decided that, in the absence of such a committee, a task

team be established to assess the matter and advise the Speaker accordingly. The matter was referred to the Subcommittee on the Review of the Assembly Rules

On 13 December 2005, the subcommittee agreed at its meeting to advise the Speaker that Mr Naidoo be given an opportunity to submit his response to the remarks by Ms De Lille. The Speaker subsequently informed Mr Naidoo's attorneys about this decision. After a follow-up enquiry Mr Naidoo's lawyers informed the Speaker that they were still considering the matter.

At the time of writing, no response was received from Mr Naidoo.

LEGISLATION AND COMMITTEES

[30] COMMITTEE RECOMMENDS THAT MINISTER WITHDRAWS BILL

The Government Immovable Assets Management Bill [B1 – 2006] was introduced and referred to the Portfolio Committee on Public Works on 6 February. The committee produced an *interim* report on the bill on 8 August. The report highlighted the committee's consultations with the Department of Public Works, especially the committee's concern that the scope of the bill should be broadened to include a chapter on local government. The committee therefore recommended that the House request the Minister of Public Works to withdraw the bill for reconsideration.

The Constitution provides that in exercising its legislative power, the National Assembly may consider, pass, amend or reject legislation before it. In addition, the Constitution provides for the Assembly to initiate or prepare legislation, except money bills (section 55). The Rules of the National Assembly thus provide for the Assembly to consider, pass, amend, reject or re-draft legislation. The Assembly does not therefore appear to have the authority to remove a bill from Parliament other than by formally rejecting it. A bill may therefore only be removed from the parliamentary process under the following circumstances:

1. The Joint Tagging Mechanism declares the bill constitutionally or procedurally out of order.
2. The Minister in charge of the bill withdraws the bill before the Assembly, as the first House, takes a decision on the Second Reading of the bill.
3. The bill lapses if it is on the Order Paper, but has not been dealt with by the last sitting day of an annual session or when the Assembly is dissolved.

The *interim* report of the committee did not represent its report on the bill itself. On 5 September, the committee published its second report on the bill, which recommended that the House reject the bill. This report fulfilled the committee's constitutional obligation to deal with the bill and placed the bill before the Assembly for decision. On 21 September, the House by resolution referred the bill back to the committee for further consideration.

The House did not consider the *interim* report of the committee nor did the Minister respond to it. As a result the report lapsed at the end of the annual session.

[31] MEDIATION COMMITTEE ON OLDER PERSONS BILL

In Item 49 of Issue 11, progress was reported on in respect of the Older Persons Bill, a section 76 bill, which at the end of the 2005 parliamentary year was before the Portfolio Committee on Social Development.

On 10 March, the portfolio committee reported that it had agreed to the Older Persons Bill with amendments. On 23 March, the Assembly passed the bill and referred it to the NCOP for concurrence. As the NCOP did not agree with the Assembly's amendments, the bill was accordingly referred to the Mediation Committee on 13 June (see *Issue 8, Item 24* for information on the composition of a Mediation Committee). The Assembly, on 14 June, elected its representatives on the committee in accordance with the Constitution and Assembly Rules 225 and 226.

The Mediation Committee met on 14 June and, after deliberations, agreed to submit another version of the bill which was tabled in the ATC on 20 June. The committee furthermore noted in its report concerns with the technical errors that occurred in the processing and preparation of the printed version of the bill in the Assembly. In this regard, the committee recommended that the Presiding Officers should investigate the reasons for the technical errors that occurred in the processing and preparation of the printed version of the bill in the National Assembly, and report to the Joint Rules Committee on measures to be put in place to avoid a recurrence of similar errors.

The Older Persons Bill was passed by both Houses on 21 June.

[32] CRIMINAL LAW (SEXUAL OFFENCES) AMENDMENT BILL – REFERRED BACK TO PORTFOLIO COMMITTEE FOR RE-TAGGING

The Criminal Law (Sexual Offences) Amendment Bill was introduced in the National Assembly as a section 75 bill by the Minister for Justice and Constitutional Development on 25 August 2003 and referred to the Portfolio Committee on Justice and Constitutional Development. The bill aims to amend the law relating to certain sexual offences and to provide for the amendment and repeal of certain laws.

On 28 August 2003, the Joint Tagging Mechanism (JTM) classified the bill as a section 75 bill (ATC, 29 August 2003, p864). The committee did not complete its consideration of the bill before the Second Parliament was dissolved for the general elections in April 2004. On 15 June 2004, after the elections, the Assembly in the Third Parliament revived the bill and resolved that consideration of the bill should resume from the stage reached before the bill had lapsed. The committee however did not resume discussion on the bill and the bill was “parked”. The new Minister for Justice and Constitutional Development requested the committee to send the bill back to Cabinet for approval, given the substantial changes made by the committee. The bill was returned to the Minister for further consultation at the Executive level without formally being withdrawn from Parliament, and resubmitted to Cabinet for new approval, before being returned directly to the committee.

The Rules of Parliament do not make provision for a bill to be sent back to the Executive. In this regard, see the discussion in Item 30 above.

The Minister returned the bill to the committee in May 2006. On 10 May, the chairperson of the committee issued a press statement in which public comment on the bill, by way of written submissions, was invited. There was no suggestion of further opportunities for oral evidence. The press statement summarised the objects of the bill and stated where copies of the bill could be obtained. A comparison of the two versions of the bills showed that the bill as “returned” by the Minister was substantially different from when it was originally introduced in 2003.

In the meantime members of the public and organised groups wrote to the Speaker, raising concerns about the bill as “returned”. Significant concerns included the following: -

- That the bill be retagged as a section 76 bill to allow provinces an opportunity to comment on it;
- That the “returned” version of the bill was not published for public comment;
- That public hearings were last held on the original bill in September 2003 and organisations were allegedly only given one day’s notice then; and

- That the composition of the committee that conducted the hearings in 2003 (Second Parliament) had changed in the Third Parliament and new members should be given an opportunity to hear the public.

In the light of the court cases *Doctors for life and others versus Speaker of the National Assembly and others*, Case Number CCT 12/05 and *Matatiele Municipality versus President of the Republic of South Africa and others*, Case Number CCT 73/05, the committee decided to proceed as follows: -

- That it should consider placing formal advertisements in the national papers, calling for public submissions and clearly informing members of the public where copies of the bill, as redrafted, can be obtained;
- That the committee should consider creating a further opportunity for public hearings where written submissions warrant that, since it was a new Parliament, and the bill was substantially redrafted after the public hearings in 2003; and
- That in the light of the extent of changes to the original bill, the committee should consult the Joint Tagging Mechanism on the new version without delay (NA Rule 249(3)).

The committee resumed its consideration of the bill and submitted its report on 10 November 2006 (ATC, 13 November 2006, p2622). Owing to the extent of the changes to the original bill, the committee presented a redrafted version of the bill for the Assembly's consideration, namely the Criminal Law (Sexual Offences and Related Matters) Amendment Bill [B 50B-2003]. As regards the public participation in respect of the bill as 'returned' the committee decided that since it is custom to have oral hearings only at the beginning of the passage of a bill through Parliament and since many of the submissions received on the adapted bill boiled down to a repetition of previous submissions made in 2003, no further oral hearings were held.

On 16 November, the Assembly considered the bill and referred it back to the committee to consult with the JTM in terms of Rule 249(3)(e). In terms of the Rule, a committee may consult the JTM on whether the proposed amendments to the bill may affect the classification of the bill or may render the bill constitutionally or procedurally out of order. The decision of the Assembly was based on advice that the bill, as amended, contained section 75 and section 76 provisions, rendering it a mixed bill.

At the time of writing, the committee had not met with the JTM to discuss the reclassification of the bill.

[33] RE-ENACTMENT OF ACTS DECLARED INVALID BY CONSTITUTIONAL COURT

On 17 and 18 August, the Constitutional Court declared four Acts invalid, namely the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act, and parts of the Constitution Twelfth Amendment Act and the Cross-Boundary Law Repeal and Related Matters Act.

According to the Court judgement on the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act, the obligation to facilitate public involvement is a material part of the law-making process and failure to comply with it renders the resulting legislation invalid. For this reason, the Court declared the two Acts invalid, but suspended the order of invalidity for a period of 18 months to enable Parliament to enact these statutes afresh in accordance with the provisions of the Constitution.

In keeping with the judgement of the Court, either Parliament or the Department of Health would have to re-introduce the legislation as bills and Parliament would have to consider them afresh. If there were substantial amendments to the re-introduced bills, the Assembly would have to reconsider the bills and hold public hearings on them. If there were no substantial amendments to the bills, the Assembly could pass the bills without holding public hearings. Since the Council had to hold public hearings in any event, it was left to the Council to determine how to do this, for instance by either holding the public hearings through provincial legislatures or through the relevant select committee.

The Constitution Twelfth Amendment Bill and the Cross-Boundary Municipal Laws Repeal Bill had to be passed by Parliament before the local government elections which were scheduled early in 2006 (see *Item 40, Issue 11*). In respect of the Constitution Twelfth Amendment Act and the Cross-Boundary Municipalities Laws Repeal and Related Matters Act which sought, amongst others, to redemarcate the boundary of the municipality of Matatiele and remove it from KwaZulu-Natal and incorporate it with the Eastern Cape, the Court held, amongst others, that a provincial legislature whose provincial boundary is being altered is required by section 74(8) of the Constitution to approve such alteration and that without such approval, the provincial boundary cannot be altered.

It was found that the Eastern Cape had complied with its duty to facilitate public involvement by holding public hearings in the affected areas, but that KwaZulu-Natal did not hold any public hearings or invite any written submissions, and as a result acted unreasonably. KwaZulu-Natal had therefore

failed to fulfil its duty to involve the public in making its decision. The part of the Twelfth Amendment that alters the boundary of KwaZulu-Natal is therefore invalid as it was not adopted in a manner that is consistent with the Constitution. In addition, the Cross-Boundary Law Repeal and Related Matters Act, to the extent that it relates to the boundary of KwaZulu-Natal, is unconstitutional for substantially the same reasons as those rendering the Twelfth Amendment unconstitutional.

In order to comply with the judgement of the Court, Parliament had to reconsider both bills and pass them afresh, with the approval of the Eastern Cape and KwaZulu-Natal legislatures after having held public hearings on the bills. The order of invalidity for the above two bills was suspended for 18 months so that Parliament could adopt a new amendment in a manner that would be consistent with the requirements of the Constitution.

On 5 November, the Presiding Officers wrote to the Leader of Government Business to obtain clarity about who should initiate the process to correct the legislation and what the timeframes were.

[34] MANAGING THE PASSAGE OF BILLS

In terms of section 45 of the Constitution, the Assembly and Council must establish a Joint Rules Committee to make rules and orders concerning the joint business of the two Houses, including rules and orders to determine procedures to facilitate the legislative process, including setting a time limit for completing any step in the process. Consequently, Joint Rules were developed to give effect to this constitutional provision (Joint Rules 213-215).

On 18 May, the National Assembly Programme Committee (NAPC) expressed concern that the arrangement in respect of the submission, introduction and passing of bills by certain dates did not appear to be working as planned, as Parliament was frequently experiencing delays in processing bills within the time limits set. To ensure that the legislative process is better managed, the Joint Programme Committee (JPC) agreed at its meeting of 1 November that a document dealing with a review of the approach to setting deadlines for bills be prepared, in order for Parliament to meet deadlines for the passage of bills whilst also accommodating the needs of both Houses and provincial legislatures.

Previously, different deadlines were set for section 75 and 76 bills based on the understanding that they needed up to four and six weeks respectively for processing. In terms of this approach particular emphasis was put on the minimum periods ordinarily required by the respective Houses to process

bills, subject to political and other special considerations. The Executive was required to submit all bills in June for introduction in Parliament, regardless of classification, in order for them to be finalised by the end of the year, subject to internal deadlines for the transmission of bills between the two Houses being met. The revised deadline was meant to accommodate fully issues in regard to the technical preparation of bills before introduction, the period of transmission between the two Houses, public participation, etc.

In terms of this approach when a committee fails to meet the deadline for processing bills before it, the provisions of Joint Rule 214 must be invoked. Joint Rule 214(1) reads as follows: “If it is not possible to meet a time limit set for a particular step in the legislative process, the affected person, structure, committee, forum or House must bring the fact and circumstances of the delay, within a reasonable time before the time limit expires, to the attention of the Joint Programme Committee or its subcommittee and request the committee or subcommittee to grant an extension or to take such steps as are within the competence of the committee or the subcommittee”. Therefore on 27 October, the House Chairperson: Committees wrote letters to the chairpersons of the Portfolio Committee on Home Affairs and the Portfolio Committee on Justice and Constitutional Development, requesting them to request formally for an extension to process the bills that had been before their committees. On 1 November, the JPC acceded to the requests.

[35] ICASA AMENDMENT BILL REFERRED BACK TO ASSEMBLY BY PRESIDENT

In terms of section 79(1) of the Constitution, the President can refer a bill back to the Assembly if he has reservations about the constitutionality of the bill. On 11 April, the President wrote to the Speaker to inform her that he was referring the Independent Communications Authority of South Africa Amendment Bill back to the Assembly for reconsideration. In Issue 11, Item 41, it was reported that on 14 December 2005, the Assembly had approved the bill after agreeing to proposed amendments by the NCOP.

In his letter, the President questioned the constitutionality of certain clauses of the bill and was of the view that the appointment of councillors by the Minister of Communications has the potential to impact negatively on the impartiality and independence of the Council, which is in contrast to the requirements of section 192 of the Constitution. This was one of the reasons why the President requested that the Assembly reconsider the relevant clauses. In this regard, he stated that “whereas there may well be

grounds for the amendment of the principal Act, we submit that the process relating to the appointment, removal and performance management of the Icasa Council should remain driven by the National Assembly.” The Speaker tabled the President’s letter in the ATC (26 April, p562) and announced that she had referred the bill and the President’s reservations, in terms of Joint Rule 203(1), to the Portfolio Committee on Communications.

In terms of the Joint Rules, the participation of the NCOP is not required if the Assembly accommodates the President’s reservations and passes an amended bill. On 25 May, the committee reported that it had considered the President’s reservations (Joint Rule 203 determines that the committee must confine itself to the President’s reservations) and presented an amended bill (ATC, 25 May, p895). One of the provisions in the amendment bill transferred the authority away from the President to appoint councillors to the Icasa Council and placed it with the Minister of Communications.

Another provision places an obligation on the Assembly to submit to the Minister a list of suitable candidates at least one and a half times the number of councillors to be appointed. The Assembly may invite technical experts to assist in the selection, evaluation and appointment processes of councillors.

On 30 May, the Assembly debated the committee’s report and, on the motion of the Chief Whip of the Majority Party, the amended bill was passed. Five opposition parties, namely the DA, IFP, FF Plus, ID and ACDP, registered their objection by dissenting. The amended bill was assented to and signed by the President on 19 June.

[36] BILL RECLASSIFIED: DEEDS REGISTRIES AMENDMENT BILL

In Issue 11, Item 2, it was reported that section 18 (1)(a) of the Traditional Leadership and Governance Framework Act, No 41 of 2003, obliges the Secretary to Parliament to refer any bill pertaining to customary law or customs of traditional communities to the National House of Traditional Leaders (NHTL) for its comments. In terms of the Act, the NHTL must, within 30 days of a bill being referred to that House, submit its comments to the House in which the bill was introduced.

On 4 May, the Minister of Agriculture and Land Affairs introduced the Deeds Registries Amendment Bill as a section 75 bill. In terms of Joint Rule 160, the bill was referred to the Joint Tagging Mechanism (JTM) for tagging, and to the Portfolio Committee on Agriculture and Land Affairs. On 18

May, the JTM classified the bill as a section 75 bill and as a bill falling within the ambit of section 18 (1)(a) of the above Act.

On 31 May, however, the JTM reconsidered its earlier classification of the bill, finding that whilst it was a section 75 bill it did not fall within the ambit of section 18(1)(a) of the Traditional Leadership and Governance Framework Act. The bill was subsequently passed by the Assembly on 8 June, and by the NCOP on 21 June. The bill was assented to and signed by the President on 14 July.

[37] SPLITTING OF MIXED BILLS

The Constitution determines four main legislative categories, namely ordinary bills not affecting provinces (section 75), ordinary bills affecting 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. In the event that a bill is found by the Joint Tagging Mechanism (JTM) to contain mixed provisions, the practice is to refer it back to the department concerned to split the bill into separate bills that comply with the constitutional legislative categories.

Electricity Regulation Bill

On 2 September 2005, the Minister of Minerals and Energy introduced the Electricity Regulation Bill. The JTM found the bill to contain both section 75 and section 76 provisions. It was therefore decided to refer the bill back to the department to split the bill.

On 19 October 2005, the Electricity Regulation Bill, containing only section 75 provisions, was reintroduced in the Assembly. By the end of that year, a bill containing section 76 provisions had not yet been introduced (see *Item 26, Issue 11*). On 15 November 2005, the Assembly passed the bill and it was sent to the NCOP for concurrence. The NCOP passed the bill on 16 February 2006, but proposed further amendments. The bill, as amended, was eventually agreed to by the Assembly on 30 March.

The bill containing the provisions which had been excised from the Electricity Regulation Bill in 2005 was introduced in the Assembly on 5 September as the Electricity Regulation Amendment Bill. The NA passed the bill on 9 November and it was sent to the NCOP. By the end of 2006, the NCOP had not yet completed its consideration of the bill.

2010 World Cup South African Special Measures Bill

On 6 June 2006, the Minister of Sport and Recreation introduced the 2010 World Cup South African Special Measures Bill. The bill was introduced as a section 75 bill.

The purpose for enacting this bill was to fulfil South Africa's international commitment to adopt special legislative measures regarding the 2010 FIFA World Cup within stipulated timeframes.

The Joint Tagging Mechanism found that the bill contained both section 75 and section 76 provisions and it was therefore returned to the Minister for splitting. The Minister reintroduced two separate bills in compliance with Parliament's request to split the bill. The two bills were the 2010 FIFA World Cup South Africa Special Measures Bill [National Assembly - section 75] and the Second 2010 FIFA World Cup South Africa Special Measures Bill [National Assembly - section 76].

After considering the two bills, the Portfolio Committee on Sport and Recreation published its reports on the two bills. The Assembly agreed to both bills on 15 August, after which they were sent to the NCOP for concurrence. On 25 August, the NCOP agreed to both bills. The President assented to the bills on 7 September.

[38] REPORT BY ETHICS COMMITTEE ON ALLEGED NON-DISCLOSURE OF FINANCIAL OR PECUNIARY INTERESTS BY MEMBERS OF THE EXECUTIVE

On 15 September 2005, the Auditor-General requested information regarding the declarations of interest by certain members of the Executive. The Registrar of Members' Interests forwarded the information to the Auditor-General. She indicated to the Auditor-General that she would seek responses from the relevant members of the Executive about their alleged non-disclosure.

On 17 March 2006, the Report of the Auditor-General on the Declarations of Interest by Ministers, Deputy Ministers and Government Employees [RP 19 – 2006] was tabled in Parliament. This report found that Members of Parliament did not always declare their interests in companies and/or close corporations. The inclusion in the Auditor-General's report of information on Ministers and Deputy Ministers was as a result of a transversal audit of 142 departments and was not specifically focused on Members of Parliament.

On 24 March, the report was referred to the Joint Committee on Ethics and Members' Interests for consideration. The committee considered the allegations in terms of the procedure which requires the committee to assess the validity of complaints made in the public domain. The committee published its report on the matter in the ATC on 23 May. However, the report was not for consideration by the Houses.

The committee concluded in its report that it must develop further guidelines to assist members to comply with the Code of Conduct for Assembly and Council Members. The committee planned to host a series of workshops within Parliament to promote debate around the issue of ethics and examine various models of accountability for elected public representatives. The committee also planned to host a conference on ethics in public life to obtain expert public views and facilitate public comment on this matter.

During its consideration of the matter the committee was informed through an opinion from the Parliamentary Legal Adviser, dated 18 May 2006, that the financial disclosures in regard to the Register of Members' Interests do not form part of the financial statements and financial management of Parliament. Furthermore, disclosures in the Register are an internal arrangement of Parliament in terms of sections 57(1) and 70(1) of the Constitution. The Auditor-General therefore does not have the requisite jurisdiction to audit the Register.

[39] INVESTIGATION OF OPERATIONAL PROBLEMS IN OFFICE OF PUBLIC PROTECTOR BY *AD HOC* COMMITTEE

The office of the Public Protector is one of the institutions supporting democracy established in terms of Chapter 9 of the Constitution and, like them, it is independent and subject only to the Constitution and the law. Other organs of state, including Parliament, are required to assist and protect it to ensure its independence, impartiality, dignity and effectiveness, and are prohibited from interfering with its functioning. The Public Protector is, however, accountable to the National Assembly and must report to it at least once a year on its activities and the performance of its functions.

The Public Protector is appointed to that office by the President on the recommendation of the National Assembly. The current incumbent, Adv ML Mushwana, took office with effect from 15 October 2002. In 2003 the Public Protector Act, 1994, was amended to provide for the creation of a post of Deputy

Public Protector, also to be appointed by the President on the recommendation of the National Assembly. Adv M T Shai was duly appointed to that post with effect from 1 December 2005.

In the first half of 2006 reports surfaced in the media of tensions that had arisen between the Public Protector and his Deputy. The strained relations between them progressively deteriorated, culminating in public allegations and counter-allegations including allegations of sexual harassment against the Public Protector. Finally, in July 2006, the Public Protector appealed to the Speaker to intervene. This appeal had been preceded by letters written by both parties variously to, amongst others, the Presidency, the Minister and Deputy Minister for Justice and Constitutional Development and the Chairperson of the Portfolio Committee on Justice and Constitutional Development.

The Speaker responded, during the recess, by appointing an *ad hoc* committee on 31 July in terms of the rules with the terms of reference “to enquire into operational problems being experienced by the office of the Public Protector”, with the subsequent addition, for clarification, of “as reported to her by the Public Protector”. The committee by agreement was a small committee consisting of only seven members as follows: ANC 3, DA 2, IFP 1 and other parties 1 (ATC, 31 July 2006, p1713). The Speaker’s decision was ratified by the National Assembly at its first sitting after the recess on 15 August 2006. Given the seriousness of the concerns, the committee was required to complete its work expeditiously and report by 25 August. Although the committee completed its inquiry by the due date, it requested an extension of two weeks to finalise its comprehensive report. This extension was approved by the House on 29 August.

The committee’s report was tabled in the House on 5 September (ATC, 5 September, p1952) and considered by the House on 7 September. Introducing the report, the chairperson of the committee, Prof AK Asmal, commented that the Assembly was “on the one hand enjoined to hold the office of the Public Protector accountable for the performance of its functions whilst at the same time also having the responsibility of assisting and protecting it to ensure its independence, impartiality, dignity and effectiveness”. Pointing out that the enquiry was launched in response to a specific appeal by the Public Protector in person to the Speaker, the chairperson stated that the Assembly and the committee “have been called upon to play a unique role in conducting an enquiry into the reported problems and proposing measures to resolve or remedy those problems”. He emphasised that it was “quite clear to the committee that it was not intended that, in conducting its enquiry, it should assume the role of a judicial enquiry or tribunal of some sort. In other words, it was not the function of the committee to investigate and make findings on the allegations and counter-allegations between the Public Protector

and his Deputy that had been receiving so much publicity. The committee's function very pertinently was to assess the extent of operational problems in the office of the Public Protector either giving rise to, or resulting from, the tensions that had surfaced between the Public Protector and his Deputy, and to make recommendations to overcome operational problems" (Hansard, 7 September).

The committee decided to hold closed meetings as the enquiry and supporting documentation "related to private information that could be prejudicial to particular persons and, further, that it affected the status of the office of the Public Protector". However, given the extent of public interest, press statements were issued after each meeting and a press briefing was also held on the report on 6 September, the day after it was presented to the Speaker and published in the ATC and copies had been sent to the Public Protector and the Deputy Public Protector.

In pursuing its enquiry, the committee met separately with the Public Protector and his Deputy and then met with them jointly to elucidate issues on which it had received conflicting information and to assess the extent to which identified problems could be resolved and remedied. The committee identified a range of operational problems in the office of the Public Protector, some of which existed prior to the appointment of the Deputy Public Protector and partly contributed to the tensions that subsequently developed, whereas others arose directly from the strained relations between the two parties. Some of the key findings of the committee are the following:

- The tensions that developed appeared to have their origins in relatively insignificant administrative matters that the Public Protector and his Deputy should have been able to resolve internally. Their separate actions in directing appeals to external authorities that did not have the jurisdiction or competence to intervene appeared to reflect an insufficient grasp of the significance of the constitutional status of the office as an independent institution.
- Both at times displayed a lack of judgement and discretion in allowing their personal differences to override their primary responsibilities as appointed office-holders, and indeed in airing those differences in the media.
- Although the Public Protector Act, 1994, is silent regarding the powers to be accorded to the Deputy Public Protector, and while the Public Protector and his Deputy are appointed by a similar process, the Public Protector in person is accountable for the functioning of the office and has overall authority.
- Nevertheless, powers should be delegated to the Deputy Public Protector appropriate to her high office and directly related to the core competencies of the office. Such delegation of powers should be formally documented.

- Proper protocol should be observed in communications with external roleplayers. All such communications should in principle be directed by the Public Protector or under his authority. All communications with Parliament should be directed to the office of the Speaker.
- Senior vacancies in the office of the Public Protector should be filled without delay.
- The allegations of sexual harassment required no response from the committee as no formal complaints had been laid and the allegations remained unsubstantiated.

Arising from its findings the committee made a range of recommendations which included “confidence-building measures to assist in removing potential sources of tension” between the parties. Finally, the committee recommended that the Speaker should consider reconvening it before the end of March 2007 to assess progress made and to determine any further action that may be required to ensure that the office was able to fulfil its constitutional and legislative mandate. These recommendations were adopted by the House on 7 September.

[40] ESTABLISHMENT OF *AD HOC* COMMITTEE ON REVIEW OF INSTITUTIONS SUPPORTING DEMOCRACY AND ASSOCIATED INSTITUTIONS

On 21 September, the National Assembly agreed to a motion by the Chief Whip of the Majority Party that the House establishes an *ad hoc* committee to review state institutions supporting constitutional democracy (the so-called Chapter 9 institutions in the Constitution) and the Public Service Commission (NA Minutes, 21 September, p2079). The terms of reference of the committee broadly focused on the role and function of these institutions, their relationships with other bodies, institutional governance, their interaction with the public, and their financial and other resource matters. According to the motion, the committee was required to report to the National Assembly by 30 June 2007.

The House resolution stipulated that the committee would comprise 10 members as follows: ANC 5, DA 2, IFP 1, and other parties 2. A subsequent announcement in the ATC reflected the other parties would be represented by the United Party of South Africa and the Minority Front and contained the names of the members appointed to serve on the committee. (ATC, 6 November, p2454). It is interesting to note that the ANC did not have a majority on the committee. This was also the case when the Speaker announced her decision in 2006 to establish an *ad hoc* committee to consider the

operational problems in the office of the Public Protector (ATC, 31 July, p 1713) (See *Item 39* above). Her decision was subsequently ratified by the House (NA Minutes, 15 August, p 1758).

During its first meeting held on 10 October, the committee elected Prof A K Asmal as chairperson. Flowing from the discussion of the committee's terms of reference, it was decided to include the Independent Communications Authority of South Africa, the National Youth Commission, the Pan South African Language Board and the Financial and Fiscal Commission as associated organs of state relevant to the review process. For ease of reference, the committee became known as the *ad hoc* Committee on the Review of Chapter 9 and Associated Institutions.

The committee received presentations from research institutes and NGOs who were conducting or intending to conduct research on the Chapter 9 institutions. The committee placed an advert in national and provincial newspapers to introduce the committee and its work and to call on the public to send written comments to the committee about their experiences with the 11 institutions. Letters were also sent to approximately 150 NGOs, relevant Ministers and Directors-General and parliamentary committees to inform them of the committee's work and to invite them to comment on their relationships and experiences with the institutions with reference to the committee's terms of reference. The committee also planned to find an appropriate organisation to conduct a public opinion survey to gauge public awareness of the institutions under review.

A resource centre was set up in the Parliamentary Library that contained all the responses to the questionnaire by the institutions, as well as submissions by NGOs and the public, and minutes of meetings.

A questionnaire, agreed to by the committee on 25 October and consisting of 25 questions derived from the terms of reference, was sent to the 11 institutions being reviewed. The written responses to the questionnaire and other documents, such as annual reports, formed the basis for the committee's further interaction with the institutions.

On 28 November, the chairperson submitted a progress report on the activities of the committee to the Speaker.

MONEY BILLS AND BUDGETARY MATTERS

[41] EXTENSION OF TIME FOR PORTFOLIO COMMITTEE ON FINANCE TO CONSIDER APPROPRIATION BILL

Assembly Rule 290(3) provides that the main Appropriation Bill, upon introduction, should be referred to the Portfolio Committee on Finance for consideration and report. It limits the period for the committee to consider and report on the budget to a maximum of seven consecutive Assembly working days (see *Item 50, Issue 11*).

Notwithstanding Rule 290(3), the Assembly, by resolution on 14 February, extended the period for the committee to consider the main Appropriation Bill to 24 consecutive working days (NA Minutes, 4 February, p216).

The Minister of Finance tabled the main Appropriation Bill on 15 February and the committee reported on 22 March.

[42] REFERRAL OF APPROPRIATION BILL TO PORTFOLIO AND JOINT MONITORING COMMITTEES

The Appropriation Bill, upon introduction, is in terms of the Rules referred to the Portfolio Committee on Finance for consideration and report. On 6 March, however, the Speaker announced in the ATC that she was also referring the Appropriation Bill to the portfolio committees for consideration and report on the relevant parts of the Schedule in terms of their mandate. The bill was also referred to the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women and the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons for consideration in terms of their mandates (ATC, 6 March, pp 267-268).

On 8 March, the Speaker also referred the Memorandum of Main Estimates in respect of the relevant programmes of the various departments to the two joint monitoring committees for consideration of the relevant programmes of the Memorandum (ATC, 8 March, pp 278-281).

STATUTORY FUNCTIONS

[43] ELECTORAL COMMISSION: RECOMMENDATION FOR APPOINTMENT OF COMMISSIONER

In terms of the Electoral Commission Act, No 51 of 1996, the National Assembly must, by resolution, recommend for appointment to the Electoral Commission by the President, candidates nominated by a committee of the House. Such nominations are made from a list of eight candidates submitted to the committee by a panel chaired by the Chief Justice (see *Items 32 and 44, Issue 10*).

In December 2005, the Chief Justice wrote to the Speaker to inform her that, as chairperson of the panel constituted in terms of section 6 of the Act, he had been requested by the Minister of Home Affairs and the Chairperson of the Electoral Commission to institute the necessary process leading to the appointment of a judge to fill the vacancy on the Commission that would occur in February 2006, owing to the resignation of a judge from the Commission. The panel, consisting of the Chief Justice, the Public Protector and representatives of the Human Rights Commission and the Commission for Gender Equality had met to consider nominations and to compile a shortlist of candidates from public nominations. Only one candidate was nominated, namely Judge Herbert Qedusizi Msimang. The panel nevertheless proceeded to interview Judge Msimang and recommended him for appointment. Judge Msimang's nomination was submitted to the Speaker for the attention of the relevant committee of the Assembly.

Section 6(4) of the Act requires the panel to submit a list of "no fewer than eight recommended candidates to the committee of the National Assembly referred to in section 6(2)(d). If this provision is read together with section 6(1) of the Act which envisages the Electoral Commission to consist of "five members, one of whom shall be a judge", the requirement that at least eight names be submitted would not apply in this instance, as the sole vacancy required the appointment of a judge.

On 23 January, the Speaker tabled the request of the Chief Justice and referred it to the Portfolio Committee on Home Affairs. In its report published in the ATC on 2 February, the committee recommended that the House, in accordance with section 6 of the Act, make a recommendation to the President that Judge Herbert Qedusizi Msimang be appointed to serve on the Electoral Commission. On 8 February, the House approved the nomination with the required majority.

[44] PRACTICAL GUIDELINES FOR PROTECTED DISCLOSURE BY WHISTLE BLOWERS

Section 10(4) of the Protected Disclosures Act, No 26 of 2000, provides that the Minister for Justice and Constitutional Development “must, after consultation with the Minister for the Public Service and Administration, issue practical guidelines which explain the provisions of this Act and all procedures which are available in terms of any law to employees who wish to report or otherwise remedy an impropriety”. In addition, Parliament is required to approve the guidelines before they are published in the *Gazette*.

On 25 May, the Draft Practical Guidelines for Employees were tabled and referred to the Portfolio Committee on Justice and Constitutional Development for consideration and report. The committee published its report on 5 June and the Assembly adopted the guidelines on 21 June. According to the parliamentary record, the guidelines had not by the end of 2006 been put before the National Council of Provinces for adoption.

[45] COMMISSION FOR GENDER EQUALITY: RECOMMENDATION FOR APPOINTMENT OF COMMISSIONERS

Filling of vacancies

Owing to the vacancies which would occur in the Commission on 18 and 30 April 2006, the Deputy Minister for Justice and Constitutional Development wrote to the Speaker on 13 September 2005, submitting two batches of nominations received and requesting that they be referred to the relevant committee for consideration. The Deputy Minister in the same letter informed the Speaker that the Minister had recommended that the term of office of the new Commissioners should not go beyond 30 September 2007. The Minister’s proposal effectively limited their proposed term of office to two years whereas the Act determined that the term of office of Commissioners should not exceed five years.

On 2 November 2005, the Assembly passed a resolution to establish an *ad hoc* committee to consider nominations to fill the vacancies in the Commission for Gender Equality. In terms of the resolution, the

committee needed to report to the Assembly by no later than 15 February 2006. The nominations were accordingly referred to the committee.

The committee submitted a report on 16 February and requested the Assembly to extend its term to 22 March. The committee reported that it had met only once to elect a chairperson, and that it needed more time to receive briefings from the Department of Justice and Constitutional Development on the appointment process. The Assembly adopted the committee's report on 17 February.

On 10 March, the Speaker wrote to the Minister requesting an explanation for the proposed tenure of new Commissioners. The Minister responded that she had proposed a tenure of less than five years in the light of the Executive's proposed review of the Chapter 9 institutions (see *Item 40* above). The review necessitated a cautious approach to these institutions in the event that there were recommendations that required their restructuring. The Minister further stated that the recommendations could have serious financial implications for the State.

Proposed shortened term for Commissioners

The committee engaged with the department in regard to the appointment process and the Minister's proposed tenure of office for new commissioners.

Members of the public and organised women's organisations wrote to the Speaker raising concerns about the Minister's proposed term of office for new commissioners and the possible difficulty of attracting suitable candidates. The commission raised similar concerns with the Presidency, the Minister and the Speaker. As alluded to earlier, the Speaker consequently wrote to the Minister requesting an explanation in respect of the proposed tenure of new commissioners and also to raise the concerns of various stakeholders. The Speaker requested the Minister to re-advertise the vacancies and to call for nominations of persons to serve a term of office not exceeding five years as determined by the legislation.

On 26 May, the Minister re-advertised the vacancies for a term of office not exceeding five years.

Extension of mandate of committee

On 12 May, the *ad hoc* committee reported to the Assembly, recommending that the Assembly support the Speaker's call that the vacancies be re-advertised for a term of office not exceeding five years and that the Assembly extend the committee's term to allow it to complete its work. The Assembly adopted the committee's report on 17 May.

On 23 March, the Assembly agreed to further extend the term of the committee to 12 May. On 31 March, the Deputy Chief Whip of the Majority Party moved a resolution in the Assembly that when considering the nominations to fill the 11 vacancies that would occur at the end of April, the committee should have regard to and in its report make recommendations on:

- The appointment of full-time and part-time commissioners; and
- With reference to the recommended term of office included in the advertisement, the statutory requirement that the terms of office of full-time commissioners should not expire simultaneously.

With an expanded mandate specifically to look at staggering the term of full-time commissioners within the five year limit imposed by legislation, the committee shortlisted and interviewed candidates. On 18 September, the committee recommended 11 candidates for appointment and further recommended that the term of office of full-time commissioners be staggered over the five years.

On 21 September, the committee's report was submitted to the Assembly for approval. After failing to reach the required majority of 201 votes as required by section 193(5)(a)(ii) of the Constitution, the Assembly finally approved the following candidates by resolution on 12 October:

Full-time commissioners: Dr Teboho Maitse, Ms Nomboniso Papama Gasa, Ms Janine Louise Hicks, Mr Dizline Mfanozelwa Shoji, Ms Yvette Abrahams and Ms Ndileka Eumera Portia Loyilane.

Part-time commissioners: Adv Salome Khutsoane, Ms Nomazotsho Memani-Balani, Ms Rosieda Shabodien, Mr Bafana Gideon Khumalo and Ms Kenosi Vanessa Meruti.

The Assembly's decision was communicated by the Speaker to the President on 17 October.

[46] NATIONAL YOUTH COMMISSION: RECOMMENDATION FOR APPOINTMENT OF COMMISSIONERS

On 10 February, the Minister in the Presidency wrote to the Speaker to inform her about the expiry of the terms of office of the five full-time commissioners on 30 June and requested that the National

Assembly initiate the process to fill the five imminent vacancies. The matter was referred to the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons on 31 March. Since this is a joint committee, the National Council of Provinces was required to concur with the referral and did so on the same day.

The five current commissioners were appointed on 1 July 2003 for a period of three years, which meant that their terms of office would expire on 30 June 2006. In terms of section 4 of the National Youth Commission Act, No 19 of 1996, the President, on the advice of a committee of Parliament, appoints the five full-time members of the National Youth Commission for a term of office not exceeding five years.

On 5 June, the committee reported to the Assembly and the Council and recommended the following five candidates for appointment: Ms N D Nkondlo; Mr M P Modiba; Ms V G Tulelo; Mr O Sipuka and Ms N N Sibhida.

The President's Parliamentary Counsellor raised a concern that the recommendation of five candidates did not provide the President any discretion in determining which candidates to appoint. Contrary to practice, the Parliamentary Counsellor argued that Parliament should recommend more candidates than the number of vacancies that needed to be filled. The practice was based on advice from the parliamentary law advisers and correspondence from the Presidency regarding the nomination of candidates for appointment to the Commission for Gender Equality and the National Youth Commission in 1998 and 1999.

According to practice, when recommending candidates to the President, Parliament must recommend the exact number of candidates as the number of vacancies. The Parliamentary Counsellor however relied on a procedure followed in 1996, when the first members of the Commission were appointed. At that time an *ad hoc* committee proposed 12 candidates to the President, and he appointed five.

On 21 June, both the Assembly and the Council considered the committee's report on the filling of vacancies on the National Youth Commission. The Houses agreed to refer the report back to the committee for further consideration.

The committee reported again on 26 June and recommended that the President appoint commissioners from the following seven candidates: Mr M P Modiba; Ms N D Nkondlo; Mr K Ntshangase; Ms N N Sibhida; Mr O Sipuka; Ms V G Tulelo and Mr E van Rooyen.

On 28 June, the Speaker submitted the recommendation of the committee to the President who appointed the following five candidates for a three-year term with effect from 1 July: Ms N D Nkondlo; Mr M P Modiba; Ms V G Tulelo; Mr O Sipuka and Mr E van Rooyen.

[47] INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (Icasa): RECOMMENDATION FOR APPOINTMENT OF COUNCILLORS

On 20 June, the chairperson of the Portfolio Committee on Communications wrote to the Speaker to inform her that the term of office of three of the seven Icasa councillors was due to end on 30 June. Subsequent to this correspondence, a letter dated 3 July was received from the Minister of Communications, requesting the Assembly to submit a shortlist of candidates for appointment as councillors of Icasa. This matter was referred to the committee for consideration and report on 19 July.

In the meantime the Minister had extended the term of office of two of the three councillors by 45 days to 1 July as provided for in section 7(4) of the Icasa Act, No 13 of 2000. While the Assembly was processing the appointment of councillors, the Icasa Amendment Act, No 3 of 2006, was assented to on 15 June and promulgated on 22 June. The Minister therefore requested the Assembly to process the appointments in accordance with the revised procedure provided for in the Amendment Act. The Speaker had earlier received a letter dated 11 April from the President informing her that he had reservations about the constitutionality of the Bill, in particular clauses 7, 9 and 11 (see *Item 35* above).

Previous issues of Procedural Developments contain references to the process of appointment until now (see 2-34, 5-39, 7-33, 9-18 and 11-61). In terms of the Amendment Act of 2006, the Icasa council consists of a chairperson and eight other councillors appointed by the Minister upon the approval by the Assembly. The Assembly is also required to submit to the Minister a list of candidates at least one and a half times the number of councillors to be appointed.

On 23 July, the committee advertised the vacancies in the Icasa council in the media. The closing date for the public response was 4 August. The committee processed the applications and shortlisted

candidates. On 12 September, the Assembly agreed to a shortlist of eight names from which the Minister was to appoint, as follows:- Dr A J Barendse, Ms M Matlala, Ms M Mohlala, Mr R Nkuna, Ms B Ntombela, Ms K A Serero-Chiloane, Dr M Socikwa and Prof J C W van Rooyen.

The Minister was duly informed of the shortlist on 13 September and on 18 September she returned the following names to the Assembly for approval: Dr A J Barendse, Ms M Mohlala, Mr R Nkuna, Ms B Ntombela and Prof J C W van Rooyen. The Assembly approved the names on 21 September.

The Minister subsequently appointed all five candidates on 1 October, including Dr Barendse who had on 21 September informed the Portfolio Committee on Communications that he would not be able take up his appointment. At the end of the annual session, the Assembly was in the process of approving a replacement for Dr Barendse.

[48] PROVISIONAL SUSPENSIONS IN TERMS OF MAGISTRATES ACT

Provisions of Magistrates Act regarding provisional suspension of magistrates

Section 13(3)(b) of the Magistrates Act, No 90 of 1993, as amended in 2003, provides that 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 55, Issue 11* and *Item 21, Issue 8*). If a magistrate is provisionally suspended, with or without pay, the Minister is obliged 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 the commencement of the next session.

In terms of section 13(3)(c) and (d) of the Act, Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension is confirmed. If Parliament resolves not to confirm the suspension, the suspension lapses. Section 13(3)(f) also provides that the commission's enquiry into the allegations against the magistrate must be concluded as soon as possible and that during the course of the enquiry the commission must submit progress reports to Parliament every three months.

Tabling and requests by the Minister for Justice and Constitutional Development

During the course of the year, Parliament considered a number of reports in this regard. In the first instance the Minister wrote to the Speaker requesting the withdrawal of a report on the provisional suspension of a magistrate. The report had served before the committee since November 2005 (see also

Item 55, Issue 11 and Item 52, Issue 10). The Minister informed the Speaker that she had received a report from the Magistrates Commission informing her that the magistrate in question had tendered his resignation.

The Minister for Justice and Constitutional Development submitted five reports to Parliament in terms of the Magistrates Act. These included -

- a report on the provisional suspension from office, with remuneration, of a magistrate;
- a progress report on three magistrates suspended for alleged misconduct;
- a report on the withholding of remuneration of a magistrate, who is under provisional suspension; and
- two reports on the provisional suspension of magistrates.

These reports were accordingly referred by the Speaker to the Portfolio Committee on Justice and Constitutional Development for consideration and report. In respect of the reports on the provisional suspension of magistrates, the committee reported to the House on 19 October.

On 7 November, the chairperson of the committee introduced the reports in the Assembly. The House adopted the recommendations of the committee, thereby confirming the suspension of one magistrate. In the other instance, the House resolved not to confirm the magistrate's suspension. The committee had recommended that the House not confirm the magistrate's provisional suspension since criminal charges were pending on the same matter. The misconduct inquiry was postponed indefinitely.

[49] NEW AUDITOR-GENERAL: RECOMMENDATION FOR APPOINTMENT AND RECOMMENDATION ON CONDITIONS OF EMPLOYMENT

In terms of section 193(4) of the Constitution, the President, acting on the recommendation of the National Assembly, must appoint the Auditor-General. Section 189 of the Constitution provides that the Auditor-General must be appointed for a fixed, non-renewable period of between 5 and 10 years. (*See Issue 1, Item 46*) In addition to recommending a person for appointment as the Auditor-General, the Assembly also makes a recommendation in respect of the Auditor-General's conditions of employment, salary, allowances and benefits.

In this regard, the Public Audit Act, No 25 of 2004, provides that the oversight mechanism (Committee on the Auditor-General) must consult with the person recommended for appointment as the Auditor-General for purposes of making recommendations to the President. Section 7(2) of the Act states that the salary, allowances and other benefits must take into account the knowledge and experience of “the prospective incumbent.”

In January, the President and the Auditor-General wrote to the Speaker to give notification that the term of office of the Auditor-General would expire on 30 November, and requested the Speaker to initiate the process that would lead to the appointment of the new Auditor-General. The outgoing Auditor-General, Mr S Fakie, had requested that the new Auditor-General be appointed at least two months before the expiry of his term.

Section 6(1) of the Act provides that whenever it is necessary to appoint an Auditor-General, the Speaker must initiate the process in the NA for the recommendation of a person to be appointed by the President. Furthermore, in terms of the Act, the President determines the term of office of the Auditor-General and no longer the NA.

In terms of section 193(5)(a) and (b) of the Constitution, the President appoints a person as Auditor-General after nomination by a committee composed proportionally of all parties in the Assembly and approved by a resolution adopted with a supporting vote of at least 60 per cent of members of the NA. As the Act does not make provision for the Committee on the Auditor-General to be involved in the appointment of the Auditor-General, the Speaker on 18 April announced in the ATC her decision to establish an *ad hoc* committee to make proposals to enable the House to recommend to the President a person for appointment as Auditor-General, the committee to consist of 17 members of the Assembly as follows: ANC 10, DA 2, IFP 1, and other parties 4. The committee had to submit its report on the nomination of the Auditor-General by 21 June. On 17 May, the House ratified the Speaker’s decision, in terms of Rule 214, to establish the *Ad Hoc* Committee on the Appointment of the Auditor-General.

On 20 June, the committee reported that it had short-listed 4 candidates and that interviews would commence on 27 June. In order to conduct its business effectively, the committee requested the House to extend the reporting deadline of 21 June to 28 July. On 21 June the House acceded to the committee’s request to extend the deadline by which the committee had to report to the House from 21 June to 28 July. On 25 July, the committee, in its report, unanimously recommended to the Assembly the name of Mr Terrence Mncedisi Nombembe for appointment by the President as Auditor-General.

The House on 16 August approved the recommendation of the *ad hoc* committee that Mr Terrence Mncedisi Nombembe be appointed as Auditor-General for a term of seven years and informed the President accordingly. In communicating the House resolution to the President, the Speaker undertook to notify the President of the Committee on the Auditor-General's recommendation on Mr Nombembe's conditions of employment once the committee had finalised its report.

On 20 October, the Acting Speaker communicated the recommendation of the Committee on the Auditor-General in respect of the conditions of employment, salary, allowances and other benefits of the Auditor-General to the President.

The President duly appointed Mr Nombembe for a term of seven years with effect from 1 December.

[50] APPROVAL OF PROCLAMATIONS

Section 25 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No 33 of 2004, states that the President must, by proclamation in the *Gazette* and other appropriate means of publication, give notice that the Security Council of the United Nations, under Chapter VI of the Charter of the United Nations, has identified a specific entity as being –

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

Section 26 of the Act gives Parliament a supervisory role in regard to section 25 as it provides that every proclamation issued under section 25 must be tabled in Parliament for its consideration and decision, and that Parliament may take such steps as it considers necessary.

On 7 March, Proclamations 4, 6, 9, 13, 14, 65 and 66 were tabled and referred to the Portfolio Committee on Safety and Security for consideration and report.

The committee in its report on 31 May recommended that the House adopt the proclamations. The proclamations were adopted by the House on 21 June.

[51] EXTENSION OF SERVICE OF DEPUTY DIRECTOR-GENERAL IN DEPARTMENT OF FOREIGN AFFAIRS

On 11 September, a request by the Minister of Foreign Affairs in terms of section 16(7) of the Public Service Act, No 103 of 1994, for Parliament to consider the extension of service of Mr A S Minty, Deputy Director-General in the Department of Foreign Affairs, by five years was tabled and referred to the Portfolio Committee on Public Service and Administration for consideration and report..

Section 16(7) of the Act provides that if “it is in the public interest to retain an officer” beyond the required retirement age, “he or she may, with his or her consent and with the approval of the relevant executive authority, be so retained from time to time for further periods which shall not, except with the approval of Parliament granted by resolution, exceed in the aggregate two years”.

On 18 October, the committee submitted its report to the House. The committee recommended that the House pass a resolution approving the extension of the employment contract of Mr Minty for a period of five years with effect from 1 November.

The committee attached the following conditions to the approval: First, that the Department of Foreign Affairs develops a coherent succession strategy/plan and presents it to the Portfolio Committee on Foreign Affairs, within a period of six months, calculated from the date of approval of this application by Parliament; second, that the department includes the implementation of the succession strategy/plan in its strategic plans; and third, that the department reports annually on progress in the implementation of the succession strategy/plan.

On 19 October, the Assembly duly approved the extension of service of Mr Minty, as recommended by the committee. On 26 October, the Council approved the extension of service of Mr Minty in a similar worded resolution.

[52] APPROVAL OF PANEL TO CONSIDER NOMINATIONS TO FILL VACANCIES ON NATIONAL COUNCIL FOR LIBRARY AND INFORMATION SERVICES

Section 7(2)(a) of the National Council for Library and Information Services Act, No 6 of 2001, provides that the Minister responsible for Arts and Culture must appoint a panel to compile a shortlist of candidates for appointment to the National Council for Library and Information Services. The composition of the panel must first be approved by the corresponding portfolio committee (*see Item 30, Issue 4*).

According to parliamentary records, the terms of office of 10 members of the Council were due to end on 10 October. It also appears that the committee had not been approached before then with a request by the Minister to approve the composition of a panel in terms of section 7(2)(a). On 6 November, the Speaker wrote to the Leader of Government Business to request that the matter be attended to urgently.

The Minister of Arts and Culture submitted a request to the Speaker on 9 November, for the Portfolio Committee on Arts and Culture to approve a panel as proposed by the Minister. On 14 November, the committee approved the composition of the panel to shortlist candidates for appointment to the National Council for Library and Information Services (ATC, 30 November, p3004).

[53] 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 (*see Item 56, Issue 11*).

On 16 November 2005, Parliament approved a draft notice determining the salaries, allowances and benefits of magistrates. The resolutions approving the draft notice also instructed the relevant committees of the Assembly and the Council to submit their final reports before the end of the year, detailing outcomes and recommendations in regard to legislative and procedural matters with reference to certain aspects of magistrates' salaries. However, neither committee had submitted its report by the end of the 2005 session.

On 20 June 2006, the Portfolio Committee on Justice and Constitutional Development tabled a report on the matter. The consideration of the committee's report by the House was initially scheduled for 21 June (the last sitting day of the term), but was postponed by agreement of all parties. On 19 September, the House agreed to a motion by the Deputy Chief Whip of the Majority Party to refer the report back

to the committee for further consideration, the committee to confer with the Select Committee on Security and Constitutional Affairs of the NCOP. On 16 November, the House agreed that the report be adopted and that the recommendations dealing with procedural matters affecting the joint business of Parliament be referred to the Joint Rules Committee for consideration.

ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
JRC	Joint Rules Committee
JTM	Joint Tagging Mechanism
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
PFMA	Public Finance Management Act

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
MF	Minority Front
APC	African People's Convention
PAC	Pan Africanist Congress of Azania
Azapo	Azanian People's Organisation
FD	Federation of Democrats
NA	National Alliance