



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

**PROCEDURAL
DEVELOPMENTS
IN THE
NATIONAL
ASSEMBLY**

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Issue **13**

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 13th issue covers the fourth session of the Third Parliament from January to December 2007.

Compiled by: Staff of the National Assembly Table, Parliament of the Republic of South Africa, P O Box 15, Cape Town 8000

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PRESIDING OFFICERS AND OTHER OFFICE-BEARERS

[1] APPOINTMENT OF LEADER OF OPPOSITION

Section 57(2)(d) of the Constitution provides for the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition. Although no specific duties are allocated to the leader in terms of the Assembly rules, the Leader of the Opposition, by convention, enjoys a special status in Parliament and is accorded a specific salary. From 1999 to 6 May 2007, the position was occupied by Mr A J Leon of the Democratic Alliance (DA).

Ms H Zille, was elected party leader of the DA during the party's Federal Congress held on 5-6 May 2007 in Johannesburg, replacing Mr Leon. As Ms Zille had indicated that she would continue to serve as Cape Town Mayor, a new leader of the opposition in the Assembly had to be elected to succeed Mr Leon. On 24 May, the Speaker announced at a sitting of the House that she had been informed that Ms C-S Botha had been elected by the DA as its parliamentary leader and that she would be accordingly recognised as the Leader of the Opposition in the Assembly with immediate effect. Ms Botha at this time also occupied the position of House Chairperson in the Office of the Speaker (see *Item 2* below).

[2] MS C-S BOTHA STEPS DOWN AS HOUSE CHAIRPERSON AND ELECTION OF NEW HOUSE CHAIRPERSON

On 24 June 2004, the House adopted a motion establishing three positions of House Chairperson (see *Item 7, Issue 10*). The House Chairpersons would form part of the Speaker's Office and would assist the Speaker and Deputy Speaker with presiding duties in the House and perform other functions allocated to them by the Speaker. On the same day, Ms C-S Botha, a member of the Democratic Alliance (DA), was appointed as House Chairperson together with two other members. Ms Botha's areas of operation, in addition to presiding duties, included members' facilities.

On 6 September 2007, it was announced in the House that Ms Botha had stepped down as House Chairperson. On the same day, Mr M B Skosana, a member of the Inkatha Freedom Party (IFP), was elected as House Chairperson in her place.

[3] ANNOUNCEMENT OF NEW CHIEF WHIP OF DEMOCRATIC ALLIANCE AND RESIGNATION OF CHIEF WHIP

On 24 May, the Speaker announced that she had been informed that Mr I O Davidson had been elected Chief Whip of the DA with immediate effect. He replaced Mr

D H M Gibson, who was the Chief Whip of the Official Opposition from 1999 to 2007 and who was due to retire with effect from 15 January 2008.

On 16 October, the House by motion noted the departure from Parliament of Mr D H M Gibson. Mr Gibson who had been a member since 1991 tendered his resignation from the Assembly with effect from 15 January 2008 to take up an appointment as South Africa's Ambassador to Thailand. Parties were afforded the opportunity to bid farewell to Mr Gibson and to wish him well with his new appointment.

[4] APPOINTMENT OF CHIEF WHIP OF MAJORITY PARTY

Towards the end of 2006, the then Chief Whip of the Majority Party, Mr M T Goniwe, was accused of misconduct. The ANC's National Disciplinary Committee subsequently found Mr Goniwe guilty.

On 21 February 2007, the Secretary-General of the ANC wrote to the Speaker to inform her that Mr Goniwe had been expelled from the party. In terms of section 47(3)(c) of the Constitution, Mr Goniwe also lost his membership of the National Assembly and all other positions held in the Assembly with effect from 14 December 2006. The Speaker was also advised in the same letter that Mr A C Nel would be Acting Chief Whip of the Majority Party in the Assembly. Mr Nel was Deputy Chief Whip of the Majority Party at the time.

On 30 August 2007, the Speaker announced that she had been informed that Mr I D Mogase had been appointed Chief Whip of the Majority Party with immediate effect.

MEMBERS

[5] FILLING OF VACANCIES

In the course of the parliamentary year, several vacancies occurred in the Assembly. Some vacancies were due to resignations and others as a result of members passing away. There were also a few cases where vacancies that had occurred in 2006 were filled in 2007.

In terms of Item 23 of Schedule 1 to the Electoral Act, No 78 of 1998, casual vacancies have to be filled by parties nominating the next qualified and available member from the same candidates' list from which the member vacating the seat had originally been nominated.

The following vacancies occurred and were filled in 2007:

- On 28 February, Ms N M Twala replaced Mr Z J Kati (ANC - Eastern Cape) who had passed away on 29 September 2006.
- On 1 April, Ms S P Lebenya replaced Mr T E Vezi (IFP - KwaZulu-Natal) who had resigned with effect from 31 March.

- On 1 June, Mr G J Selau replaced Mr T S Dodovu (ANC - North West) who had resigned with effect from 16 March 2006.
- On 25 June, Ms N Hlangwana replaced Mr P D N Maloyi (ANC - North West) who had resigned with effect from the same day.
- On 15 August, Ms Z A Ndlazi replaced Mr M Diko (UIF - floor-crossing list 2005) who had passed away on 28 July 2006.
- On 23 August, Mr N Singh replaced Prince N E Zulu (IFP - KwaZulu-Natal) who had passed away on 15 June.
- On 5 September, Mr M H Hoosen replaced Mr A Harding (ID - Western Cape) who lost his seat with effect from 22 August.
- On 11 September, Mr I E Jenner replaced Ms F Batyi (ID - National) who had lost her seat with effect from 28 August.
- On 12 September, Ms N N Sibhidla replaced Mr Y S Bhamjee (ANC - KwaZulu-Natal) who had resigned with effect from 10 August.
- On 19 September, Mr M K Khauoe replaced Dr E Nkem-Abonta (ANC - floor-crossing list 2005) who had resigned with effect from 1 February.
- On 19 September, Ms K S Forane replaced Mr M S Manie (ANC - National) who had resigned with effect from 1 March.
- On 19 September, Ms T M A Gasebonwe replaced Mr T D H Ramphela (ANC - National) who had resigned with effect from 1 October 2006.
- On 19 September, Mr M H Fazzie replaced Mr M T Goniwe (ANC - Eastern Cape) who had lost his seat with effect from 14 December 2006.
- On 19 September, Mr B M Kekana replaced Mr M M S Lekgoro (ANC - National) who had resigned with effect from 1 August.
- On 19 September, Mr L J Sehlaré replaced Dr F N Ginwala (ANC - National) who had resigned with effect from 17 August.
- On 5 November, Ms Z N Nawa (ANC - National) passed away. Ms Nawa's vacancy was not filled in the reporting year.
- On 1 December, Mr A M Maziya (ANC - National) resigned. The vacancy was not filled in the reporting year.

Note: (See Item 15 for changes in membership as a result of floor crossing)

[6] FAREWELL TRIBUTE TO MR M S MANIE, MP

At the sitting of the House on 27 February, the Speaker announced that Mr M S Manie, a member of the ANC, had resigned from the Assembly with effect from 1 March. Mr Manie had been a member of the Assembly since 1994.

Parties were afforded the opportunity to make farewell speeches upon his resignation.

PROCEDURAL AND RELATED ISSUES

[7] COMFORT BREAKS DURING DEBATE ON STATE-OF-THE-NATION ADDRESS

On 12 and 13 February, members were allowed comfort breaks during the debate on the State-of-the-Nation Address delivered by the President. On these days, the Speakers' lists are normally very long as 240 minutes are allocated for the debate.

In previous years, comfort breaks were also allowed when the House considered Decisions of Questions on Votes and the Schedule to the Appropriation Bill.

During normal House sittings, there are no comfort breaks for members.

[8] IRREGULAR USE OF TRAVEL FACILITIES BY MEMBERS: ANNOUNCEMENTS BY SPEAKER

In Item 10, Issue 12, it was reported that the Disciplinary Committee had been convened to advise the Speaker on appropriate action to be taken against eight members in respect of whom judicial processes in regard to irregular use of travel facilities had been concluded. It was further reported that the Speaker had informed the Assembly that the National Prosecuting Authority (NPA) had identified another 12 members who allegedly utilised their travel vouchers for vehicle hire in contravention of the parliamentary rules and regulations. The Speaker referred the available information in respect of the 12 members to the Disciplinary Committee for advice. During December 2006, judicial processes were concluded against four further members. The Speaker subsequently referred the four cases to the Disciplinary Committee thereby bringing the total number of members against whom judicial processes had been concluded to 12.

The committee held several meetings from January to June 2007. At its first meeting, the committee decided to first consider the matter of the 12 members who had entered into plea bargains with the State which it referred to as Group A. The committee would consider the cases of the other 12 members identified by the NPA at a later stage (Group B).

On 7 February, the committee reported to the Speaker in respect of the 12 Group A members. On 29 March, the Speaker made an announcement in the Assembly concerning the irregular use of travel facilities by the 12 Group A members. With the members standing, two being absent, the Speaker administered a reprimand to them in the following terms:

Members, under your own signatures and while being assisted by legal counsel, you have each admitted to wilfully either defrauding or stealing

from Parliament amounts ranging from R33 000 to R241 000.

I view the actions to which you have confessed in an extremely serious light and as unbecoming of members of this honourable House. When you first entered this Chamber, each one of you solemnly promised to perform your functions as a member of this House to the best of your ability and to uphold the laws of the land. That promise places on you, as on all elected representatives, an extra responsibility also to espouse the highest social values.

However, through this case, you have abused the public's trust. Not only have your actions reflected negatively on the integrity of all members of Parliament, but on the integrity of this esteemed institution generally. That is totally unacceptable, to say the least.

The Speaker further announced that she was acting within her own legal authority. She would therefore communicate with the relevant political parties on any other steps that only they could consider in response to the transgressions of their members. The Speaker would return to the Assembly in due course on the cases of the 12 Group B members.

In respect of the two members who had been absent when the Speaker had administered the reprimand in the House, written reprimands were sent to their parties which were made public by having them published in the ATC (*ATC, 18 April, pp 664-666*).

The committee met on 27 February and 5 June to consider the matter of the 12 Group B members and thereafter reported to the Speaker.

At the time of writing, the Speaker had not yet reverted to the Assembly to announce her findings in respect of the Group B members.

[9] FIRST READING DEBATE PROCEDURE ADOPTED FOR TRIAL PERIOD – EXTENDED

In Item 20, Issue 12, it was reported that the Assembly agreed by motion to implement the provisions of Rule 246(1) for First Reading debates on bills in accordance with certain guidelines for a trial period until the end of 2006.

On 27 March 2007, the Assembly agreed by motion to extend the trial period to the end of the second term in accordance with the same guidelines. During this period First Reading debates were conducted on two bills, namely the *Local Government Laws Amendment Bill* and the *Correctional Services Amendment Bill* (*NA Minutes, 27 March, p489*).

At the time of writing, the format of the debates had not been reviewed at the end of the first trial period

as per the decision of the NAPC when it first adopted it on 7 September 2006 nor had there been any referral of the matter to the Rules Committee for specific rule adjustments.

[10] ADOPTION OF NEW GOVERNANCE MODEL FOR PARLIAMENT

After lengthy consultation, the Joint Rules Committee (JRC) agreed to establish a new governance model for Parliament on 18 November 2004 (see *Item 38, Issue 10*).

Following its approval by the JRC, the governance model and its proposed structures still had to be presented to the Houses for final approval, though it had been agreed that the model would be implemented over a period of two financial years, starting in January 2005, and the relationships between the different structures would be established.

The Report of the Joint Rules Committee, setting out the governance model and its concomitant structures, was published in the ATC on 27 March 2007 and adopted by both the Assembly and National Council of Provinces on 29 March.

Following the adoption of the report, the range of consequential rule changes required were referred to the Joint Subcommittee on Review of the Joint Rules for drafting. By the end of the parliamentary year, the rules changes had not yet been presented to the JRC for consideration.

[11] TIME ALLOCATED FOR PARTY RESPONSES TO MINISTERIAL STATEMENTS FOR REMAINDER OF THIRD PARLIAMENT

Rule 106 of the National Assembly states that a Cabinet member may 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, commencing with the largest opposition party and followed by other parties in the order of the size of their membership in the Assembly.

In May, the Minister for the Public Service and Administration requested an opportunity to make a statement in the National Assembly regarding the Public Service wage negotiations. The Speaker granted the Minister permission to make the statement on 30 May. On the same day, the Assembly passed a motion specifying the following new time allocations for party responses to executive statements for the remainder of the Third Parliament:

African National Congress: 8 minutes; Democratic Alliance: 3 minutes; Inkatha Freedom Party: 2 minutes and all other parties: 1 minute each. The new time allocations were calculated in terms of the representation of parties in the National Assembly.

[12] BREAKDOWNS IN SOUND SYSTEM IN CHAMBER

During Questions to the President on 31 May, the sound system broke down, which resulted in proceedings being suspended until the system could be stabilised.

On 12 June, during the debate on Vote 1 - The Presidency, Appropriation Bill, there were two breakdowns in the sound system. Proceedings in the House were accordingly suspended for 24 and 12 minutes respectively until the system could be stabilised.

The system was subsequently upgraded during the July recess.

[13] DISTURBANCE ON PUBLIC GALLERY

On 20 June, at the commencement of proceedings, a visitor on the public gallery stood up, shouted protestations and threw pamphlets onto the floor of the House. He was apprehended and removed from the gallery and taken for questioning. The debate continued without further disruption.

Later that day the Deputy Speaker, who was presiding at the time of the incident, announced the steps that were taken following the disturbance in the gallery. She had ordered that the person in question be taken into custody by the South African Police Service for questioning in terms of section 11 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004. Section 11 provides that a person who creates or takes part in any disturbance in the precincts while Parliament or a House or committee is meeting, may be arrested and removed from the precincts on the order of the Speaker or the Chairperson or a person designated by them, by a staff member or a member of the security services.

The Deputy Speaker added that she would inform the Whips once she had received a full report on the incident.

[14] AMENDMENT OF SCHEDULE TO JOINT RULES

In terms of the Code of Conduct for Assembly and permanent Council members contained in the Schedule to the Joint Rules, a member is required to disclose the description, value and source of gifts and hospitality received if the value of the gift exceeds R350, or a description and the value of gifts from a single source which cumulatively exceed R350 in any calendar year or if the hospitality is intended as a gift in kind.

The amount required for disclosure in this instance was considered to be too low and made compliance with the code onerous. Furthermore, disclosure in respect of this amount was agreed to in 1997 when the Code was first established, and the amount has not been revised since then.

On 13 and 21 June, the Council and the Assembly respectively agreed by resolution to amend item 8(f) of the Schedule to the Joint Rules to increase the amount to R 1 500.

[15] FLOOR-CROSSING: 1 - 15 SEPTEMBER 2007

On 29 August, the Acting Speaker announced in the House that the second floor-crossing window period in the Third Parliament would occur between 1 and 15 September in terms of the Constitution (see *Item 24, Issue 11*). The Acting Speaker reminded members that the 10% threshold would only apply on the basis of the total membership of a party immediately prior to the commencement of the floor-crossing period.

Change in parties' composition

During the floor-crossing window period changes in party membership and status occurred as follows:

- On 3 and 6 September, Messrs N T Godi and M T Likotsi left the Pan Africanist Congress of Azania respectively and formed a new party called the African People's Convention.
- On 12 September, Ms M N Mdaka and Ms Z A Ndlazi left the United Independent Front and joined the African National Congress, while Messrs C M Morkel and V C Gore left the Progressive Independent Movement and the Independent Democrats respectively and also joined the African National Congress.
- On 14 September, Mr S Simmons left the United Party of South Africa and formed a new party called the National Alliance.

By 15 September a total of seven members had used the opportunity presented by the window period to change party membership or form new parties. In this period three parties, namely the United Independent Front, the Progressive Independent Movement and the United Party of South Africa, ceased to exist. Two new parties, namely the African People's Convention (APC) and the National Alliance, were formed. The total number of parties in the Assembly after floor-crossing had thus decreased from 16 to 15.

Reconstitution of Assembly

In compliance with the Constitution, the Speaker published a notice in the *Gazette* on 21 September, reflecting the reconstituted composition of the Assembly, as follows:

	PARTY		SEATS BEFORE FLOOR- CROSSING	SEATS GAINED	SEATS LOST	SEATS AFTER FLOOR- CROSSING	% OF TOTAL
1	African National Congress	ANC	293	4	-	297	74,25%
2	Democratic Alliance	DA	47	-	-	47	11,75%
3	Inkatha Freedom Party	IFP	23	-	-	23	5,75%
4	United Democratic Movement	UDM	6	-	-	6	1,5%
5	Independent Democrats	ID	5	-	1	4	1%
6	African Christian Democratic Party	ACDP	4	-	-	4	1%
7	Freedom Front Plus	FF Plus	4	-	-	4	1%
8	National Democratic Convention	Nadeco	4	-	-	4	1%
9	United Christian Democratic Party	UCDP	3	-	-	3	0,75%
10	Minority Front	MF	2	-	-	2	0,5%
11	African People's Convention	APC	-	2	-	2	0,5%
12	Pan Africanist Congress of Azania	PAC	3	-	2	1	0,25%
13	Azanian People's Organisation	Azapo	1	-	-	1	0,25%
14	Federation of Democrats	FD	1	-	-	1	0,25%
15	National Alliance	NA	-	1	-	1	0,25%
16	United Independent Front	UIF	2	-	2	-	-
17	Progressive Independent Movement	PIM	1	-	1	-	-
18	United Party of South Africa	UPSA	1	-	1	-	-

Adjustment to whips' composition

The loss of a seat by the ID reduced the party's representation in the Assembly to four members. This situation placed the ID in the same category of other smaller parties such as the ACDP, the FF Plus and Nadeco and as a result lost its entitlement to a whip. However, an additional whip was allocated to smaller parties by the Speaker, thus bringing the number of whips representing smaller parties to four.

[16] SUBSTANTIVE MOTION ON APPOINTMENT OF AD HOC COMMITTEE (MINISTER OF HEALTH)

A motion which reflects upon the character of a member is not permissible unless made by way of a clearly formulated motion and contains a properly substantiated charge which requires *prima facie* evidence of the wrongdoing (see *Item 26, Issue 12*).

On 6 September, Mr I O Davidson, Chief Whip of the Democratic Alliance, gave notice of such a substantive motion requesting the House to appoint an ad hoc committee to investigate whether the Minister of Health was fit to hold public office in view of certain allegations against her.

A notice of such a substantive motion requires the approval of the Speaker before it can be printed on the Order Paper. The Speaker in considering the matter needs to satisfy herself that *prima facie* evidence exists for the

matter to be considered by the House. The onus is always on the person making the allegations to produce the evidence.

The Speaker found the notice to be in order and a debate on whether to set up an ad hoc committee took place on 18 October.

A debate on such a motion is confined to the merits and demerits of establishing the ad hoc committee. The House should therefore not delve into the very issue that the proposed committee must deal with.

During the course of the debate an amendment was moved to the motion effectively saying that there was no merit in appointing an ad hoc committee and that the House has full confidence in the Minister of Health. The amendment was adopted with the support of 178 members, 55 against and 2 abstaining (*NA Minutes, 18 October, pp1939-1940*).

[17] SUBSTANTIVE MOTION ON APPOINTMENT OF AD HOC COMMITTEE (NON-EXECUTIVE SABC BOARD MEMBER)

On 13 September, the National Assembly recommended 12 candidates for appointment as non-executive Board members of the SA Broadcasting Corporation (see *Item 32* below). Among these candidates was Ms G T Serobe. The recommendations of the House were subsequently communicated to the President, as the appointing authority.

On 20 September, Ms S C Vos (IFP) gave notice of a substantive motion in which it was proposed that an ad hoc committee be set up to conduct a preliminary investigation into whether Ms Serobe, while being interviewed by members of the Portfolio Committee on Communications, wilfully furnished false or misleading information.

It was purported that Ms Serobe had said that she did not know the person who had nominated her and thereby committed a breach of parliamentary privilege in terms of section 17(2)(e) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004. According to this provision, someone who wilfully furnishes the House or a committee with false or misleading information is guilty of an offence and is liable to a fine or to imprisonment for a period not exceeding two years or to both a fine and imprisonment.

In addition to conducting a preliminary investigation into the above allegation, the ad hoc committee would also have to establish whether the matter warranted formal referral to the National Director of Public Prosecutions for prosecution under the Act. If the House agreed to the motion, the President, as the appointing authority, would have had to be informed immediately of the decision to set up an ad hoc committee to investigate whether Ms Serobe had committed a breach of parliamentary privilege.

Ms Serobe, in response to the notice of motion by Ms Vos, wrote to the Speaker on 26 October. She assured the Speaker that she had no intention of trying to conceal from the portfolio committee who had nominated her for appointment to the SABC Board. She provided an explanation of the sequence of events and assured Parliament of her continued respect for the House and its committees. The letter was published in full in the ATC on 15 November for the information of members.

The motion was finally scheduled for consideration by the House on 22 November, the last sitting day of the session. After the debate, the House voted on the motion which was defeated by 159 votes to 45.

[18] ADDITIONAL QUESTION TIME SCHEDULED DUE TO UNAVAILABILITY OF MINISTERS

Rule 109(3) provides that if a Minister is absent on a day when questions relating to the relevant cluster are to be answered and those questions are not answered by another Cabinet Member or by the Deputy Minister concerned, the Speaker may, if requested to do so by the member in whose name a question to that Minister stands, and after consultation with the Leader of Government Business, direct that -

- (a) questions to that Minister be placed on the Question Paper for the first question session for Ministers following that day; and

- (b) an additional 30 minutes be added to the question time for that session.

On 24 October, the Deputy Speaker announced in the House that owing to the unavailability of some Ministers grouped in Cluster 2: Social Services and Governance to answer questions that afternoon, many of the questions on the Question Paper would have to stand over. She said that although Rule 109(3) is meant to alleviate the unavailability of Ministers in the House during Question time, the large volume of questions that would stand over would make it impossible for the presiding officers to apply the rule.

The Deputy Speaker ruled that in terms of Rule 2(1) which allows the Speaker to give a ruling or frame a rule in respect of unforeseen eventualities, and despite the inconveniences and costs, consideration would be given by the National Assembly Programme Committee (NAPC) in consultation with the Leader of Government Business to schedule an additional question session at which all the questions standing over that day could be taken.

On 1 November, the NAPC agreed that the slot for Questions scheduled for Wednesday, 21 November allocated to Cluster 2: Social Services and Governance be increased by an hour in addition to the normal two hours allotted for Questions so that Ministers would be afforded an opportunity to answer Questions that stood over from 24 October.

[19] APPROVAL OF ADJUSTMENT TO PRESIDENT'S SALARY

On 22 November, the National Assembly, by resolution, approved the salary and allowances to be paid to the President in terms of section 2(1) of the Remuneration of Public Office Bearers Act, No 20 of 1998.

The House resolved by motion that the salary to be paid to the President of the Republic shall be R1 270 045,00 per annum, with effect from 1 April 2007, and that an amount of R40 000 a year shall be that portion of the remuneration granted to the President to defray expenditure incurred by him for purposes of his office.

[20] JOINT SITTING: ANNOUNCEMENT REGARDING PROCESS FOR CONSIDERING PRESIDENTIAL PARDONS

Joint Sittings may be called by the President when necessary to deliver the annual or a special address to Parliament, for special business or to inform Parliament of the declaration of a state of national defence.

The President called a Joint Sitting on 21 November, to make an announcement regarding a process for consideration of presidential pardons for persons who had committed what are alleged to be political offences.

The President said in his address that he had decided to institute a special process to assist him in discharging his constitutional obligation to consider requests for pardon from people who had already been convicted for offences they claim belong among the category of offences that were considered by the Truth and Reconciliation Commission (TRC) Amnesty Committee. He added that the process would cover requests for pardon from those people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC.

He added that to entrench the practice further that the nation had sought to cultivate - acting in unity as it addresses the crimes of the past - he would like political parties represented in Parliament to assist him to consider these requests.

He therefore requested political parties represented in Parliament to each appoint a representative who would serve on a Reference Group that would consider each such request and then make a recommendation to the President. At the time of writing, the Reference Group had not yet been established.

[21] SUSPENSION OF 3-DAY RULE

National Assembly Rule 253(1) provides *inter alia* that the debate on the Second Reading of a bill may not commence before at least three working days have elapsed since the committee's report was tabled. The rule gives members the opportunity to study the committee report and apply their minds to proposed amendments, and further affords non-committee members the opportunity to participate constructively in the Second Reading debate on a bill.

Notwithstanding the above rule, there are times when the rule has to be set aside so as to facilitate the smooth and speedy transition of a bill in the parliamentary process. Reasons that necessitate the suspension of this rule include requests from the Office of the Leader of Government Business to facilitate commencement dates of legislation, budgetary requirements that necessitate the passage of a bill before a certain date, time constraints experienced by the relevant portfolio committee and programming challenges.

From February to December, Rule 253 was suspended by the House on 12 occasions for the purposes of the -

- Second Reading debate on *Division of Revenue Bill* [B 3-2007] on 27 February
- Second Reading debate on *South African Airways Bill* [B 35-2006] on 28 February
- Second Reading debate on *Taxation Laws Second Amendment Bill* [B 19-2007] on 14 June
- Second Reading debate on *Prohibition or Restriction of Certain Conventional Weapons Bill* [B 7B-2007] on 29 August
- Second Reading debate on *Education Laws Amendment Bill* [B 33B-2007] on 20 September
- Second Reading debate on *South African Express Bill* [B14B-2007] on 16 October
- Second Reading debate on *Broadband Infraco Bill* [B 26B-2007] on 16 October
- Second Reading debate on *Electronic Communications Amendment Bill* [B 38-2007] on 6 November
- Second Reading debate on *Revenue Laws Second Amendment Bill* [B 43-2007] on 13 November
- Second Reading debate on *Securities Transfer Tax Administration Bill* [B 45-2007] on 13 November
- Second Reading debate on *Choice on Termination of Pregnancy Amendment Bill* [B 21B-2007] on 22 November
- Second Reading debate on *Traditional Health Practitioners Bill* [B 20-2007] on 22 November.

LEGISLATION AND COMMITTEES

[22] MEDIATION COMMITTEE ON FOODSTUFFS, COSMETICS AND DISINFECTANTS AMENDMENT BILL

The Foodstuffs, Cosmetics and Disinfectants Amendment Bill, a section 76 bill, was introduced by the Minister of Health in the National Assembly on 20 October 2005. Since 1972, when the principal Act was passed, the Act was amended only once, namely in 1981. A review of the principal Act was necessitated owing to some developments with regard to the regulation of foodstuffs.

On 18 May 2006, the bill was passed by the Assembly and referred to the NCOP for concurrence. The NCOP amended the bill and transmitted it back to the NA on 25 October 2006. On 7 November 2006, the Portfolio Committee on Health reported that it had rejected the amended bill. Had the Assembly adopted the committee's report at the time, the bill would have had to be referred to the Mediation Committee. In terms of Joint Rule 186(3), the bill must be referred to a Mediation Committee within seven working days after the Assembly has rejected the bill, and the Mediation Committee then has a maximum of 30 days, in terms of the Constitution, to report to the Assembly.

In view of the fact that the Houses were scheduled to adjourn the following week, it would have been an onerous, if not impossible task for the Mediation Committee to meet the timeframes. Also, had the bill been referred to the Mediation Committee, and had it been unable to agree on it within the 30-day period, the bill would have lapsed, unless the Assembly, with a supporting vote of at least two thirds of its members, again passed the bill. The NA rules provide that all bills introduced in the Assembly and which appear on the Order Paper for First or Second Reading on the last sitting day of an annual session lapse at the end of that day, unless the Assembly decides otherwise. As the bill was before the Assembly neither for First or Second Reading, but for a different purpose, it would not lapse on the last day of the session.

In view of the timeframes, it was agreed that the bill not be scheduled for consideration by the House in 2006 and that the portfolio committee's report on the bill remain on the Order Paper under Further Business. The consideration of the bill and the subsequent setting up of the Mediation Committee therefore was deferred to early 2007. In addition, the Leader of Government Business had informed Parliament that there was no urgency for the bill to be passed in 2006.

On 13 February 2007, the Assembly refused to pass the bill and the bill was subsequently referred to the Mediation Committee on 14 February. In terms of NA Rule 225, the following parties represented in the Assembly were entitled to nominate members for appointment to the Mediation Committee: ANC - 7; DA - 1 and IFP - 1. On 20 February, the Assembly elected nine members as nominated by their respective parties on the Mediation Committee.

On 23 February, the Mediation Committee reported that it had agreed to a new version of the bill (*ATC, 23 February, p227*). On 6 March, the Assembly adopted the report of the Mediation Committee and subsequently approved the bill.

[23] CRIMINAL LAW AMENDMENT ACT: EXTENSION OF PERIOD OF OPERATION OF RELEVANT SECTIONS AND REPEAL OF STATUTORY REQUIREMENT FOR EXTENSION

When the Criminal Law (Sentencing) Amendment Act, No 38 of 1997, came into operation, Parliament was asked to concur with a request for the President to extend the operation of sections 51 and 52 of the Criminal Law Amendment Act, No 105 of 1997, for a period of two years at a time.

This had been done since 1999 (see *Item 51, Issue 4; Item 36, Issue 7; and Item 57, Issue 11*), as section 53(1) of that Act provided that those sections, which deal with the imposition of certain minimum sentences and the committal of certain convicted people to the High Court for sentencing, ceased to have effect after the expiry of two years from the commencement of the Act unless the President, with the concurrence of Parliament, extended their operation by proclamation in the *Gazette*.

On 13 March, the Minister for Justice and Constitutional Development wrote to the Speaker, informing her of the Executive's intention to introduce a bill to regulate minimum sentences and address certain practical problems that had arisen in the application of the Act. Since the legislation could not be enacted before the expiry of the period referred to above, and the provision for minimum sentences would therefore be suspended, the Minister requested Parliament to concur with the extension of the period of operation of sections 51 and 52 for another two years. In terms of the Act, the extension could not be for the period of less than two

years. However, once the intended legislation had been enacted and the new provisions were in force, they would override the current extension.

The National Council of Provinces concurred to the extension on 20 March, while the Assembly agreed to the same on 27 March. In terms of both resolutions, the extension would come into effect on 1 May.

The Criminal Law (Sentencing) Amendment Bill was introduced in the Assembly on 30 May. After its approval by Parliament, it was assented to by the President on 21 December and came into operation on the last day of 2007.

In the new Act, section 51 of the Criminal Law Amendment Act was substituted with a section that imposed discretionary minimum sentences for certain offences, while section 52 was repealed in its entirety. Section 53 was also amended and the requirement for the operation of sections 51 and 52 to be extended every two years was removed.

[24] AD HOC COMMITTEE ON OPERATIONAL PROBLEMS IN THE OFFICE OF THE PUBLIC PROTECTOR – RECONVENED

In Item 39, Issue 12, it was reported that the Ad Hoc Committee on Operational Problems in the Office of the Public Protector was established by the Speaker to enquire into the operational problems being experienced in the office of the Public Protector as reported to the Speaker by the Public Protector.

The committee made a number of recommendations aimed at strengthening the office which included confidence-building measures to assist in removing potential sources of tension between the Public Protector and his Deputy. The committee also recommended to the House that it be reconvened 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 is able to fulfill its constitutional and legislative mandate.

On 27 March, the House, by resolution, reconvened the ad hoc committee in order for it to assess progress made in regard to the recommendations contained in its report, as agreed to by the House on 7 September 2006, and to submit a report with its findings and recommendations to the House by 2 July 2007.

The committee saw its main task to establish its satisfaction with what had been done since the adoption of its report by the House to implement the recommendations and whether good working relations had been restored between the Public Protector and his Deputy. The committee invited the Public Protector and the Deputy Public Protector to submit written reports or comments on progress that had been made in this regard.

They both jointly confirmed that steps had been taken to implement the recommendations to solve the operational problems that existed in the office. Apart from the continuing legal action that the two had instituted against each other, the committee was satisfied that there had been progress towards resolving the operational problems in the office, and advised that no further action was required at that time.

On 23 August, the House agreed to the second report of the ad hoc committee.

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

In Item 33, Issue 12, it was reported that the Constitutional Court had declared four Acts invalid, namely the Traditional Health Practitioners Act, the Choice on Termination of Pregnancy Amendment Act, parts of the Constitution Twelfth Amendment Act and the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Act. It was further reported that on 5 November 2006, the Presiding Officers wrote to the Leader of Government Business to obtain clarity about who should initiate the process to correct the legislation and the timeframes involved.

Following this communication, the Department of Health indicated that Parliament should take the initiative in reopening the process with regard to the two health bills. The other two bills would be introduced by the Minister for Justice and Constitutional Development and the Minister for Provincial and Local Government respectively.

The relevant role-players in Parliament agreed that the two health bills should be introduced in the National Council of Provinces.

On 8 June 2007, the National Council of Provinces passed a resolution to re-enact the two health bills in compliance with the court order. The existing Acts would be deemed as the text before Parliament and the National Council of Provinces would be deemed the First House. The bills were referred to the Select Committee on Social Services.

On 29 June, the Minister for Justice and Constitutional Development introduced the Constitution Thirteenth Amendment Bill which was referred to the Portfolio Committee on Justice and Constitutional Development. On the same day the Minister for Provincial and Local Government introduced the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill which was referred to the Portfolio Committee on Provincial and Local Government.

On 22 November, the Traditional Health Practitioners Bill, the Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill and the Constitution Thirteenth Amendment Bill were passed by both Houses

and sent to the President for assent. At the time of writing, the Choice on Termination of Pregnancy Amendment Bill had still not been finalised.

[26] AD HOC COMMITTEE ON REVIEW OF INSTITUTIONS SUPPORTING DEMOCRACY AND ASSOCIATED INSTITUTIONS: EXTENSION OF DEADLINE FOR REPORTING

On 21 September 2006, the House by resolution established an ad hoc committee to review state institutions supporting constitutional democracy and the Public Service Commission as listed in Chapters 9 and 10 of the Constitution, respectively. The committee was asked to report to the House by 30 June 2007 (see *Item 40, Issue 12*).

The first three months of the committee's work were used to prepare the groundwork and enable the 11 institutions to respond to the questionnaire sent to them by the committee. The responses to the questionnaire formed the basis of the committee's interaction with the 11 institutions, which was concluded on 14 March.

The chairperson of the committee wrote to the Speaker on 12 June to request an extension of the deadline for reporting to the House to allow for the process of writing the report and fine tuning. On 21 June, the House agreed to the committee's request to extend the deadline for reporting from 30 June to 31 July.

The committee on 31 July agreed unanimously to the adoption of the report. On the same day the chairperson, on behalf of the committee, informed the Speaker that the committee had completed its work on the report but requested a further extension of the deadline to 21 August in order for the report to be sent to the printer for typesetting and printing. On 21 August, the House ratified the decision of the Speaker to extend the deadline for reporting from 31 July to 21 August. The report of the committee was launched at a media briefing and circulated to members of Parliament on the same day. At the time of writing the report had not yet been brought before the House for consideration.

[27] MEDIATION COMMITTEE ON CHILDREN'S AMENDMENT BILL

On 25 August 2006, the Children's Amendment Bill was introduced in the NCOP in accordance with section 76(2) of the Constitution. The bill was passed by the NCOP on 29 May 2007 and referred to the Portfolio Committee on Social Development of the National Assembly. Since committees had to consider budget votes during June, and since July was earmarked as a constituency period, the committee only began its deliberations on the bill in August.

The committee finalised the bill, which included a list of amendments, on the evening of 23 October and reported

to the Assembly on 24 October. The bill was scheduled for debate on 25 October. Late in the evening of 24 October, the State Law Adviser e-mailed about 50 manuscript pages of amendments to the Committee Section for purposes of creating the amended versions of the bill as approved by the committee. The amended versions would consist of a separate list of amendments and a version of the bill that incorporated those amendments. The substantial list of amendments that was submitted made it impossible for all the amendments to be included in the bill in time for the debate scheduled for 25 October. As a result, the National Assembly Programme Committee agreed to postpone the debate on the bill to 1 November.

The amended version of the bill was sent for printing on 26 October and proofs were received from the printer on 29 October. Around midday on 29 October, the State Law Adviser produced a list of additional amendments. The additional amendments were sent to the printer who produced revised proofs of the amended versions to the Committee Section on 30 October.

However, on the morning of 1 November, the Committee Section reported that additional amendments to the bill were received from the State Law Adviser as late as 31 October. Concerns regarding the accuracy of the final version of the bill were further compounded by a large number of amendments - 55 pages. Against this background, the Speaker agreed that the debate should continue on 1 November but that the decision on the Second Reading be postponed to allow members an opportunity to study the final version of the bill before agreeing to it. Nevertheless, certain members were deeply concerned that they would be required to debate the bill before they had an opportunity to study the final version to ascertain its accuracy.

The chairperson of the Portfolio Committee on Social Development was advised to convene a meeting of the committee to consider the final version and adopt the bill. After consultations, it was decided not to proceed with the debate until all members had had an opportunity to study the final version of the bill. On 6 November, the Assembly finally passed the bill with certain textual corrections which were announced in the House by the chairperson of the committee.

On 7 November, the bill was referred back to the Council for consideration. Before the bill could be considered by the Council, further textual and substantive errors were identified and the Chairperson of the Council was advised that the Select Committee on Social Services should reject the Bill. On 20 November, the select committee reported that it had rejected the bill as amended by the Assembly. Since the bill was introduced in the Council, the only way that these further corrections could be effected was by way of the Council rejecting the bill, which meant that the bill would be taken to mediation.

The bill was referred to the Mediation Committee on 21 November. On the same day, the Mediation Committee reported the bill with further amendments and presented

a mediated version of the bill to both Houses. On 22 November, both the Assembly and the Council adopted the report of the Mediation Committee and passed the Children's Amendment Bill.

MONEY BILLS AND BUDGETARY MATTERS

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

On 21 February, the Minister of Finance introduced the Appropriation Bill and thereafter tabled the bill, the Budget Speech, Estimates of National Revenue, taxation proposals in respect of income tax, the Budget Review 2007, the Division of Revenue Bill and the Estimates of National Expenditure. The Appropriation Bill, together with the introductory speech and papers tabled were referred to the Portfolio Committee on Finance for consideration and report and to the Joint Budget Committee to consider in terms of its mandate.

Rule 290(3) provides that the main Appropriation Bill, upon introduction, should be referred to the Portfolio Committee on Finance for consideration and report for a period of seven days. The Assembly, however, by resolution on 20 February, extended the period for the committee to consider the main Appropriation Bill to 14 consecutive working days. The committee reported on the bill on 9 March.

STATUTORY FUNCTIONS

[29] RECONVENING OF AD HOC COMMITTEE TO CONSIDER STAGGERING OF TERMS OF GENDER COMMISSIONERS

In Item 45, Issue 12, it was reported that the National Assembly had adopted the report of the Ad Hoc Committee on Nomination of Persons to fill Vacancies on Commission for Gender Equality in respect of full-time and part-time commissioners. The Assembly's decision was communicated by the Acting Speaker to the President on 17 October 2006.

On 8 December 2006, the Minister for Justice and Constitutional Development wrote to the Speaker, enquiring whether she could approach the chairperson of the ad hoc committee for assistance with a decision about the staggering of the terms of office of the full-time commissioners. In terms of section 3(4)(a) of the Commission on Gender Equality Act, No 39 of 1996, the term of office of full-time commissioners should not expire simultaneously. The Assembly had recommended six candidates for full-time appointment to the Commission but did not express itself on the term of office of each commissioner recommended for such appointment. The

Minister indicated that as she did not know the candidates, it would be difficult for her to advise the President which commissioners should be appointed for a period of five years and which commissioners should be appointed for a period of either three or four years.

The Minister's request however presented procedural difficulties. The committee had ceased to exist when it completed its task and reported to the House. It would therefore be procedurally improper to consult with a chairperson of a committee that no longer existed. The Speaker replied to the Minister and explained the procedural difficulties. However, to be of assistance, the Speaker forwarded the curricula vitae of the recommended candidates to the Minister.

The Leader of Government Business subsequently met with the Speaker to discuss the Minister's request and it was agreed that the ad hoc committee which was established in 2006 to consider nominations would be reconvened. On 1 March 2007, the Assembly, by House resolution, agreed to reconvene the ad hoc committee to consider and make recommendations to the President on the staggering of the terms of office of full-time commissioners, through the Office of the Speaker. On 6 March, the ad hoc committee met and made the following recommendations to the President:

Candidates to be appointed for a period of five years: Dr Teboho Maitse, Ms Nomboniso Papama Gasa and Ms Janine Louise Hicks.

Candidates to be appointed for a period of four years and six months: Mr Dizline Mfanolezwe, Ms Yvette Abrahams and Ms Ndileka Eumera Portia Loyilane.

The President subsequently agreed with the committee's recommendations.

**[30] INDEPENDENT
COMMUNICATIONS AUTHORITY
OF SOUTH AFRICA (Icasa):
RECOMMENDATION FOR
APPOINTMENT OF COUNCILLOR**

The Icasa Amendment Act, No 3 of 2006, sets out the procedure for the appointment of Icasa councillors (see *Item 47, Issue 12*). The amended procedure is set out below:

First, the request from the Minister of Communications to recommend candidates for appointment is referred to the Portfolio Committee on Communications for consideration and report. Second, after considering the committee's report, the National Assembly must submit to the Minister a list of suitable candidates at least one and a half times the number of councillors to be appointed to the Icasa Council. Third, the Minister, in turn, recommends to the National Assembly persons whom the Minister proposes to appoint to serve on the Icasa Council. Fourth, the Minister's recommendation is referred to the portfolio committee for consideration

and report. Fifth, if the National Assembly is satisfied with the names recommended by the Minister, the Assembly approves the recommendation. Sixth, the Minister thereafter appoints the chairperson or other councillors by notice in the *Gazette*.

During 2007, two vacancies occurred and were filled.

The first vacancy relates to the replacement of Dr A J Barendse, who had not taken up his position in the Icasa Council (see *Item 47, Issue 12*). To fill this vacancy the Minister had to consider the three remaining candidates from the shortlist submitted to her by the House on 12 September 2006. On 23 January 2007, the Minister of Communications wrote to the Speaker recommending to the House the approval of Dr M Socikwa, one of the remaining candidates from the shortlist, as a replacement for Dr Barendse. On 28 February, this matter was referred to the Portfolio Committee on Communications for consideration and report. The committee in its report to the House recommended that the nomination of Dr Socikwa be approved. The committee's recommendation was subsequently approved by the House on 15 March.

The second vacancy occurred as a result of the resignation of councillor Ms M Mohlala. On 17 May, the Minister wrote to the Speaker informing her that Ms M Mohlala had tendered her resignation, effective from 31 May. In the same letter, the Minister requested that the process of filling a vacancy in the Council should be initiated. This matter was subsequently referred to the Portfolio Committee on Communications for consideration and report.

On 16 October, the committee submitted its report to the House which the House approved on 23 October.

The Minister was duly informed of the shortlist and on 20 November she recommended the appointment of Ms R Msiza as an Icasa councillor. On 30 November, the Minister's recommendation was tabled and referred to the committee for consideration and report.

**[31] COMMISSION FOR GENDER
EQUALITY: APPOINTMENT
OF AD HOC COMMITTEE
AND RECOMMENDATION
FOR APPOINTMENT OF
COMMISSIONER**

On 14 May, Mrs J Piliso-Seroke, chairperson of the Commission for Gender Equality, wrote to the Speaker to inform her that her term of office would expire on 30 September and that the process of filling the vacancy should therefore begin. Mrs Piliso-Seroke was serving her second and final term of office as member of the Commission.

Although section 193(5) of the Constitution provides for the Assembly's involvement in the appointment process of commissioners, the process must be initiated by the Minister for Justice and Constitutional Development

by advertising the vacancy and inviting the public to nominate appropriate candidates. The nominations are referred to the Assembly, which by practice establishes an ad hoc committee to shortlist, interview and recommend candidates for appointment. The President appoints the new chairperson of the Commission.

On 18 July, the Minister wrote to the Speaker informing her that the term of office of Mrs Joyce Piliso-Seroke would expire on 30 September and that the Assembly should prepare for the establishment of a committee to fill the vacancy. Further, the Minister informed the Speaker that she was preparing to publish a notice contemplated in section 3(3) of the Commission on Gender Equality Act, 1996, inviting interested parties to propose candidates to fill the impending vacancy.

In order to expedite the process of filling the vacancy, it was agreed that it would assist if the same members who had served on the previous Ad Hoc Committee on Nomination of Persons to Fill Vacancies in the Commission for Gender Equality would serve on the ad hoc committee to be established (see *Item 45, Issue 12*). Assembly Rule 215 allows the Assembly, when establishing an ad hoc committee, to specify the names of the members who are appointed to that committee.

On 29 August, the Assembly agreed by motion to appoint an ad hoc committee to nominate a person to fill the vacancy that would arise on 30 September. The same members who had served on the previous ad hoc committee were appointed to serve on the new committee. In terms of the motion, the committee had to report to the House by no later than 30 October.

In the committee's report dated 25 October, it recommended that Dr Andre Keet be nominated for appointment to fill the vacancy on the Commission (*ATC, 5 November, p2044*). This recommendation was subsequently approved by the House on 13 November.

[32] SOUTH AFRICAN BROADCASTING CORPORATION (SABC): RECOMMENDATION FOR APPOINTMENT OF NON- EXECUTIVE BOARD MEMBERS

In terms of section 13 of the Broadcasting Act, No 4 of 1999, the President appoints 12 non-executive members to serve on the SABC Board, on the advice of the National Assembly. The Board members hold office for such period as determined by the President, which period must however not exceed five years (see *Item 34, Issue 8*).

The Minister of Communications wrote to the Speaker indicating that the term of office of the current non-executive Board members was to expire on 31 December and requested that the process of appointing a new SABC Board be initiated during the current parliamentary session.

The Minister's letter was tabled in the ATC of 24 May and referred to the Portfolio Committee on Communications on 5 June for consideration and report.

The committee reported on 11 September and on 13 September the House, after a division, approved that the following persons, as nominated by the committee, be recommended for appointment as non-executive members of the SABC Board: Ms N Bulbulia, Ms A Gilwald, Mr D K Golding, Mr B Khumalo, Ms F Lagadien, Mr A Mbeki, Ms K Mkhonza, Ms C Qunta, Ms G T Serobe, Adv P Tlakula, Mr A Trikamjee and Mr B P Vundla.

[33] MEDIA DEVELOPMENT AND DIVERSITY AGENCY (MDDA): RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBERS

On 13 June, the Minister in the Presidency wrote to the Speaker to inform her that the term of office of four members of the MDDA Board would expire on 1 January 2008. The Minister requested the National Assembly to commence with the process of nominating candidates to replace the outgoing Board members.

In terms of section 4 of the Media Development and Diversity Agency Act, No 14 of 2002, the Board consists of nine members. Six members are appointed by the President on the recommendation of the National Assembly. The other three members are appointed by the President, one of whom must be from the commercial print media and another from the commercial broadcast media.

On 20 September, the Minister's request was referred to the Portfolio Committee on Communications for consideration. The committee reported on 5 November and on 7 November the House approved that the following four candidates, as nominated by the committee, be recommended for appointment as members of the MDDA Board: Ms Gugu Msibi, Ms Nomonde Gongxeka, Prof Guy Berger and Mr Siviwe Minyi.

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
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces

PARTIES

ANC	African National Congress
DA	Democratic Alliance
IFP	Inkatha Freedom Party
UDM	United Democratic Movement

