

# 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 14<sup>th</sup> issue covers the fifth and sixth sessions of the third Parliament from January 2008 to March 2009, and includes a list of expressions declared unparliamentary as well as a list of challenged expressions not declared unparliamentary for the period April 2004 to March 2009. Where no year is provided next to a particular month in the text, the reference is made to 2008.

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## **PRESIDING OFFICERS AND OTHER OFFICE-BEARERS**

### **[1] APPOINTMENT OF NEW CHIEF WHIP AND DEPUTY CHIEF WHIP OF MAJORITY PARTY**

On 25 September, the President appointed Mr E N Mthethwa as the Minister of Safety and Security. At the time, Mr Mthethwa was the Chief Whip of the Majority Party.

Mr A C Nel, who was the Deputy Chief Whip of the Majority Party, was appointed Acting Chief Whip of the Majority Party.

On 23 October, Mr M S Booi was appointed Chief Whip of the Majority Party. Mr G B Magwanishe replaced Mr Nel as the Deputy Chief Whip of the Majority Party as Mr Nel was appointed House Chairperson.

### **[2] ELECTION OF PRESIDING OFFICER (HOUSE CHAIRPERSON)**

House Chairpersons in the Assembly are appointed by a resolution of the House. On 23 October, in terms of a resolution moved by the Chief Whip of the Majority Party, the House appointed Mr A C Nel as House Chairperson to replace Mr G Q M Doidge who had been appointed Minister of Public Works on 25 September.

## **PARLIAMENT AND THE EXECUTIVE**

### **[3] RESIGNATION OF PRESIDENT**

During a sitting on 22 September, the Speaker announced that she had received a letter of resignation from the President of the Republic of South Africa. The Speaker proceeded to read the letter which was subsequently published in the Minutes (*Minutes, 22 September, pp1720-1721*).

In the letter the President, among other things, informed the House that the leadership of his political organisation, the African National Congress, had decided to recall him as President of the country. He said that the letter served to inform members that he had therefore decided to resign his position as President of the country, effective upon receiving the Speaker's advice that Parliament had finalised the matter.

On 23 September, the Chief Whip of the Majority Party moved that the House, noting that the President of the

Republic of South Africa had submitted his resignation to the Speaker on 21 September, agrees that the resignation of the President would take effect on 25 September.

Although there was no debate on the motion, declarations of vote were made on behalf of the Freedom Front Plus, Democratic Alliance, United Democratic Movement, Inkatha Freedom Party, African Christian Democratic Party, Independent Democrats, United Christian Democratic Party, Minority Front and the African National Congress.

Dr C P Mulder, on behalf of the Freedom Front Plus, submitted a written formulation of the party's viewpoint in respect of the President's resignation.

A division was demanded and the results of the vote were as follows: AYES – 298, NOES – 10 and ABSTENTIONS – 1. The motion by the Chief Whip of the Majority Party that the President's resignation would take effect on 25 September was accordingly agreed to.

### **[4] ELECTION OF PRESIDENT, SPEAKER AND DEPUTY SPEAKER**

#### **Introduction**

On 21 September, the President of South Africa, Mr T M Mbeki, submitted his resignation to the National Assembly, seven months prior to the expiry of his term of office. In his resignation letter, the President informed the National Assembly that the leadership of his political organisation, the African National Congress (ANC), had decided to recall him as President of the country, leading to his resignation.

#### **Constitutional background**

In terms of the Constitution, the President is elected by the National Assembly from amongst its members. If a vacancy occurs in the office of the President, the National Assembly must elect a new President within 30 days of the vacancy arising. The election to fill a vacancy must be held at a time and on a date determined by the Chief Justice, or another judge designated by the Chief Justice.

As required, the Chief Justice was notified of the vacancy in the office of the President and he called a meeting of the National Assembly for 25 September for the purpose of electing a President for the country.

The Chief Justice determines the rules as contemplated in item 9 of Part A of Schedule 3 to the Constitution under which the election takes place, and accordingly, he presented detailed rules to the National Assembly with a request that they be distributed to members before the relevant sitting.

The rules dealt with procedures for the meeting, duties of the presiding officer and those assisting the presiding officer, nomination of candidates, procedures for voting and announcing the results of the election.

### **Election of new President**

On 25 September, the National Assembly was convened with the Chief Justice taking the Chair. He announced that the purpose of the sitting was to elect a President for the country. The returning officer and assistant returning officers are appointed by the Chief Justice. The Secretary to Parliament is normally the Returning Officer and other officials of Parliament serve as assistants.

After the Chief Justice had called for nominations, two members, Mr K P Motlanthe of the ruling ANC and Mr W J Seremane of the largest opposition party (DA), were duly nominated.

As more than one member was nominated, the Chief Justice announced that a secret ballot would take place in terms of item 6 of Part A of Schedule 3 to the Constitution and suspended proceedings for preparation of the ballot papers. For the purposes of such an eventuality, arrangements were made in advance to have voting booths, ballot boxes and a list of members entitled to vote available.

Ballot papers were prepared as directed by the returning officer. The surnames of the two candidates were printed on the ballot paper in alphabetical order. Ballot papers were issued to members individually, upon their names being called, who then proceeded to voting booths in the Chamber of the National Assembly, marked their papers and deposited them in ballot boxes. The ballot boxes were shown to be empty before voting, and then sealed on instruction from the Chief Justice after voting had finished. It should be noted, especially, that voting took place in the Chamber in an open session. The public and the media were allowed to view the voting from the public gallery, while the secrecy of the ballot was nevertheless maintained.

The Chief Justice suspended proceedings to allow the votes to be counted. The assistant returning officers removed the ballot boxes to a separate room where counting took place.

Upon the resumption of business, the Chief Justice announced the results of the ballot with Mr K Motlanthe duly elected President of South Africa with 269 votes against 50 votes for Mr Seremane (*Minutes, 25 September, p1774*).

It should be noted that, in terms of the rules applicable to the election of the President issued by the Chief Justice, the returning officer was instructed to retain the nomination papers, the used ballot papers and their counterfoils in a

sealed packet for a period of at least one year. The sealed packet may not be opened except by order of a court.

### **Election of Speaker and Deputy Speaker**

On 25 September, the Speaker, with leave, announced that she had resigned as Speaker of the National Assembly with immediate effect. Her resignation was necessitated by her anticipated appointment as Deputy President of the country.

The Chief Justice took the Chair to preside over the election of the Speaker and called for nominations. Two members, Ms G L Mahlangu-Nkabinde of the Majority Party and Mrs C S Botha of the largest opposition party, were duly nominated.

There having been two nominations, the Chief Justice announced that a secret ballot would take place. He suspended proceedings, and after preparation of the ballot papers, the House proceeded to a secret ballot to elect the Speaker.

Identical voting and counting arrangements were made and followed, as was the case with the election of the President.

When proceedings resumed, the Chief Justice announced the results of the ballot and declared Ms G L Mahlangu-Nkabinde duly elected as Speaker of the National Assembly.

The Serjeant-at-Arms conducted the Speaker to the Chair whereafter she expressed the sense of the honour conferred on her.

The newly elected Speaker previously held the office of Deputy Speaker and as a result a vacancy had occurred for a Deputy Speaker. The House therefore proceeded to elect a Deputy Speaker for the National Assembly.

The Speaker called for nominations and Ms N C Madlala-Routledge of the Majority Party was duly nominated. There were no other nominations and the Speaker declared Ms Madlala-Routledge duly elected as Deputy Speaker of the National Assembly. The Deputy Speaker expressed the sense of the honour conferred on her.

### **[5] APPROVAL OF PENSION, DEATH AND MEDICAL BENEFITS OF PRESIDENT**

On 26 September, the National Assembly resolved that, in terms of section 2(5)(a) of the Remuneration of Public Office Bearers Act, No 20 of 1998, a taxable pension benefit be paid to the President upon retirement which is equivalent to 100% of the total annual remuneration (salary and allowance) payable on the day prior to retirement. The

said pension benefit to be increased annually in keeping with the pension increases granted to public office-bearers (*Minutes, 26 September, p1788*).

The Assembly also resolved that, in terms of section 2(5)(b) of the said Act, upon the death of the President or a former President, a taxable pension benefit be paid to the spouse equal to 50% of the pension benefit payable to the President or former President at the time of death. The said pension benefit to be increased annually in keeping with the pension increases granted to public office-bearers.

In terms of section 2(6) of the said Act, the Assembly resolved that after the retirement of the President, the State shall contribute the full amount payable to a medical aid scheme in respect of the President or the spouse or dependant as the case may be.

The Assembly, by resolution, agreed that the decision which was adopted by the House on 5 November 1998, be amended in accordance with the above decisions, with retrospective effect from 5 November 1998.

## **[6] APPOINTMENT OF LEADER OF GOVERNMENT BUSINESS AND RELATED MATTERS**

Mr K P Motlanthe became a member of the National Assembly with effect from 6 May and took his seat in the Assembly on 20 May. Mr Motlanthe was subsequently appointed by the President as Minister in the Presidency in July and on 19 August, the Speaker announced that Mr Motlanthe had been appointed Leader of Government Business with effect from 18 July. Mr Motlanthe replaced Ms P G Mlambo-Ngcuka who had resigned as a member of the National Assembly with effect from 25 September.

Mr Motlanthe was elected President of the Republic on 25 September. Ms B Mbete was appointed by the President as Deputy President of the Republic.

On 21 October, the Speaker, Ms G L Mahlangu-Nkabinde, announced that she had been informed by the President that the Deputy President had been appointed Leader of Government Business in terms of section 91(4) of the Constitution.

## **RELATIONS WITH PARLIAMENTS AND OTHER BODIES**

### **[7] PARLIAMENT HOSTS 118<sup>TH</sup> ASSEMBLY OF IPU**

Established in 1889 and with its Headquarters in Geneva, the Inter-Parliamentary Union (IPU) is the international organisation of Parliaments of sovereign states. More than 140 national Parliaments and seven associated regional Assemblies are currently affiliated to the IPU. It is the focal point for worldwide parliamentary dialogue and works for peace and co-operation amongst peoples and for the esta-

ishment of representative democracy. The organisation also co-operates with regional inter-parliamentary organisations as well as with international intergovernmental and civil society organisations that are motivated by the same ideals.

On 12 April 2007, the Speaker and the Chairperson of the NCOP signed an agreement between the Parliament of South Africa and the IPU concerning the hosting of the 118<sup>th</sup> Assembly of the IPU and related matters in Cape Town from 13-18 April 2008.

The 118<sup>th</sup> IPU Assembly was inaugurated on 13 April at a ceremony held at the Cape Town International Convention Centre, which was attended by 1 700 delegates from 135 countries. The theme for the Assembly was "*Pushing back the frontiers of poverty*". Inaugural addresses were delivered by the Speaker of the National Assembly, Ms Baleka Mbete; United Nations Deputy Secretary-General, Dr Asha-Rose Migiro; and Acting President of the IPU Executive Committee, Ms Katri Komi. The ceremony concluded with a statement by the President of the Republic, who declared the 118<sup>th</sup> IPU Assembly officially open. The agenda for the 118<sup>th</sup> IPU Assembly included:

- General debate on the political, economic and social situation in the world with the overall theme of *Pushing back the frontiers of poverty*;
- The role of Parliaments in striking a balance between national security, human security and individual freedoms, and in averting the threat to democracy (Standing Committee on Peace and International Security);
- Parliamentary oversight of State policies on foreign aid (Standing Committee on Sustainable Development, Finance and Trade);
- Migrant workers, people trafficking, xenophobia and human rights (Standing Committee on Democracy and Human Rights);
- The role of Parliaments and the Inter-Parliamentary Union in ensuring an immediate halt to the rapidly deteriorating humanitarian situation in conflict areas and its environmental dimension, in facilitating the Palestinians' right to self-determination – particularly by ending the blockade in Gaza – and in accelerating the creation of a Palestinian State through viable peace processes.

### **[8] ELECTION OBSERVER MISSION TO ZIMBABWE**

On 12 March, the National Assembly adopted a motion noting that Zimbabwe was to hold joint presidential and parliamentary elections on 29 March and resolved that Parliament should send a fifteen-member multiparty delegation as part of the Southern African Development Community (SADC) observer mission. The NCOP concurred with the Assembly's decision on 19 March. The party re-

presentation on the delegation was ANC 9; DA 3; UDM 1; ACDP 1 and AZAPO 1.

In May, the Zimbabwe Electoral Commission (ZEC) announced that the presidential candidates had failed to achieve enough votes and that there would consequently be a run-off election on 27 June. On 25 June, the National Assembly adopted a further motion that Parliament send a twenty-member multiparty delegation to Zimbabwe, again as part of the SADC mission, to observe the run-off election. The NCOP concurred with this decision on the same day.

In terms of the resolutions, the delegations were to observe the election campaign in the run-up to the elections, the casting of votes and subsequent counting and, after the completion of the missions, present missions' reports to the Houses. At the time of writing, the reports had yet to be tabled.

## MEMBERS

### [9] MEMBERSHIP OF NATIONAL ASSEMBLY

Vacancies occur due to the resignation of a member from the National Assembly or from the party a member represents in the National Assembly or the passing away of a member. Vacancies are filled in terms of the Electoral Act, No 78 of 1998, which stipulates that casual vacancies have to be filled by parties nominating the next qualified and available member from the party list.

The following vacancies which occurred during the reporting period as well as one vacancy that occurred in 2006 and two that occurred in 2007 were filled during the period January 2008 to March 2009:

1. Mr T D H Ramphela (ANC – National) resigned with effect from 1 October 2006 and was replaced by Ms T M A Gasebonwe with effect from 31 October 2008. After not being sworn in, her nomination was duly adjusted to be effective from 31 October 2008.
2. Ms Z N Nawa (ANC – National) passed away on 5 November 2007 and was replaced by Mr K P Motlanthe with effect from 6 May 2008.
3. Mr A M Maziya (ANC – National) resigned with effect from 1 December 2007 and was replaced by Mr J M Mnisi with effect from 6 May 2008. Mr Mnisi was not eligible to be nominated because he occupied a position in the public service. A vacancy therefore existed in terms of the law. The vacancy was filled by the nomination of Mr A C Jacob with effect from 7 August 2008.
4. Mr D H M Gibson (DA – Gauteng) resigned with effect from 15 January 2008 and was replaced by Dr D T George with effect from 15 January 2008.
5. Mr P J Gomomo (ANC – Eastern Cape) passed away on 22 January 2008 and was replaced by Mr P S Sizani with effect from 23 September 2008.
6. Prof A K Asmal (ANC – National) resigned with effect from 1 March 2008 and was replaced by Ms N C Mfeketo with effect from 6 May 2008.
7. Ms N C Kondlo (ANC – Eastern Cape) passed away on 23 March 2008 and was replaced by Mr J H Nash with effect from 7 August 2008.
8. Ms S H Ntombela (ANC – Free State) resigned with effect from 14 May 2008 and was replaced by Ms Z P Dlungwana with effect from 15 May 2008.
9. Mr S A Mshudulu (ANC – National) resigned with effect from 25 July 2008 and was replaced by Mr K K M Nyembe with effect from 7 August 2008.
10. Mr M E George (ANC – Eastern Cape) resigned with effect from 23 September 2008. The vacancy was not filled in the reporting period.
11. Mr K P Motlanthe was elected as President of the Republic on 25 September 2008 and ceased to be a member of the National Assembly in terms of section 87 of the Constitution. He was replaced by Mr L M Kgabi with effect from 14 November 2008.
12. Ms P G Mlambo-Ngcuka (ANC – National) resigned with effect from 25 September 2008 and was replaced by Ms A C Mashishi with effect from 31 October 2008.
13. Dr E G Pahad (ANC – National) resigned with effect from 25 September 2008 and was replaced by Ms S B Moilola-Nqodi with effect from 31 October 2008.
14. Mr R Kasrils (ANC – National) resigned with effect from 25 September 2008 and was replaced by Mr F C Fankomo with effect from 31 October 2008.
15. Mr F S Mufamadi (ANC – National) resigned with effect from 25 September 2008 and was replaced by Ms F J Wright with effect from 31 October 2008.
16. Mrs G J Fraser-Moleketi (ANC – National) resigned with effect from 25 September 2008 and was replaced by Mr E Godongwana with effect from 14 November 2008.
17. Mr P J Moleketi (ANC – Gauteng) resigned with effect from 25 September 2008 and was replaced by Mr S Shiceka with effect from 25 September 2008.
18. Mr A G H Pahad (ANC – National) resigned with effect from 25 September 2008 and was replaced by Ms D N Sikosana with effect from 14 November 2008.
19. Mr M G P Lekota (ANC – National) resigned with effect from 25 September 2008 and was replaced by Ms T B Sunduza with effect from 14 November 2008.
20. Mrs A T Didiza (ANC – National) resigned with effect from 26 September 2008 and was replaced by Mr P O Moloto with effect from 14 November 2008.

21. Mr A Erwin (ANC – National) resigned with effect from 26 September 2008 and was replaced by Ms J C Moloi–Moropa with effect from 14 November 2008.
22. Ms S P Rwexana (ANC – National) resigned with effect from 28 October 2008 and was replaced by Mr X B Mabaso with effect from 14 November 2008.
23. Ms L M Mashiane (ANC – National) resigned with effect from 25 November 2008 and was replaced by Ms B T Shongwe with effect from 9 December 2008.
24. Ms C M P Ramotsamai (ANC – National) resigned with effect from 2 December 2008 and was replaced by Mr R P Zondo with effect from 9 December 2008.
25. Mr M T Likotsi (APC – Floor-crossing) lost his seat with effect from 16 December 2008 and was replaced by Mr B Xuma with effect from 9 January 2009.
26. Rev N M Mahlawe (ANC – Eastern Cape) resigned with effect from 20 January 2009 and was replaced by Mr J M Matshoba with effect from 27 January 2009.
27. Ms M A A Njobe (ANC – Eastern Cape) resigned with effect from 21 January 2009 and was replaced by Ms A D N Qikani with effect from 27 January 2009.
28. Mr S L Dithebe (ANC – National) lost his seat with effect from 27 January 2009 and was replaced by Mr D Erleigh with effect from 27 January 2009.
29. Ms M M Mdladlose (Nadeco – floor-crossing list 2005) lost her seat with effect from 29 January 2009 and was replaced by Mr S A P Ngcobo with effect from 10 February 2009.
30. Mr J Schippers (ANC – National) passed away on 31 January 2009 and was replaced by Mr C J Hlaneki with effect from 4 February 2009.
31. Mr E Saloojee (ANC – National) passed away on 1 February 2009 and was replaced by Ms N F Nojozi with effect from 4 February 2009.
32. Mr L R R Reid (ANC – National) resigned with effect from 17 February 2009 and was replaced by Mr F H Nkoana with effect from 5 March 2009.
33. Mr L J Modisenyane (ANC – Free State) resigned with effect from 25 February 2009 and was replaced by Ms F Bikani with effect from 5 March 2009.
34. Mr M J Malahlela (ANC – National) resigned with effect from 1 March 2009 and was replaced by Mr T P Sidina with effect from 5 March 2009.
35. Bishop L J Tolo (ANC – Limpopo) lost his seat with effect from 2 March 2009.
36. Mr D V Bloem (ANC – National) lost his seat with effect from 6 March 2009 and was replaced by Ms L M Dunjwa with effect from 20 March 2009.
37. Ms E Ngaleka (ANC – National) lost her seat with effect from 6 March 2009 and was replaced by Ms H B Mkhize with effect from 20 March 2009.
38. Ms S M Camerer (DA – Gauteng) resigned with effect from 28 March 2009. Her seat was not filled in the reporting period.

## **PROCEDURAL AND RELATED ISSUES**

### **[10] LAPSED BUSINESS REVIVED**

In terms of the Assembly Rules, all motions and all other business on the Order Paper on the last sitting day of an

annual session or term of the Assembly or when the Assembly is dissolved, lapse at the end of that day.

The Assembly resolved that the following items, which were on the Order Paper and that lapsed at the end of the 2007 annual session, be revived for consideration by the National Assembly:

12 February 2008: *National Environmental Laws Amendment Bill* and the *Report of the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions*; and

19 June 2008: Consideration of the Report of the Portfolio Committee on Justice and Constitutional Development on *Hearings conducted by Committee on occasion of review by Parliament on aspects of equality in society*.

### **[11] QUESTION NOT FULLY REPLIED TO**

In respect of questions, Assembly Rule 316 determines that all parliamentary business (including questions) lapse on the last sitting day of an annual session. A question that has therefore not been replied to will be recorded in the official record as not replied to.

In March, the matter of a question, that appeared on the Internal Question Paper of 24 August 2007 and which was not satisfactorily replied to by the Executive, was brought before the Speaker for consideration. The request to the Speaker was to ensure that the Executive provide the full reply to the question. The Speaker, being aware that there was no basis upon which to act on the request, tried to assist by requesting that the National Assembly Table staff contact the President's Parliamentary Counsellor informally to request the part of the reply that was not provided to the question.

The President's Parliamentary Counsellor acknowledged that the question was not fully responded to due to an oversight in the office. Accordingly the Speaker, in response to the request, advised the party to resubmit the second paragraph of the question as a new question.

### **[12] INDEPENDENT COMPLAINTS DIRECTORATE (ICD): NOMINATION FOR EXECUTIVE DIRECTOR**

The request from the Minister of Safety and Security in respect of a nomination of an Executive Director to the Independent Complaints Directorate (ICD) was tabled and referred to the Portfolio Committee on Safety and Security by the Speaker on 31 October 2007.

The nomination was made in terms of the provisions of section 51 of the South African Police Service Act, No 68 of 1995. The Act requires the Minister to nominate a suitably qualified person in terms of a procedure determined by the Minister in consultation with the Portfolio Committee on Safety and Security and the Select Committee on Security and Constitutional Affairs.

While Parliament was processing the Minister's nomination, the Minister addressed a further request to the Speaker and the Chairperson of the NCOP asking Parliament to withdraw his nomination of a suitably qualified person for the position of Executive Director.

The Speaker and the Chairperson tabled the Minister's request for the withdrawal of the Minister's nomination in the ATC on 30 October.

## [13] JOINT SITTINGS

### **Address by foreign heads of state**

On 28 February, the President of the Republic of France, His Excellency Mr Nicolas Sarkozy, addressed a Joint Sitting of Parliament.

On 28 May, the President of the Federal Republic of Nigeria, His Excellency Alhaji Umaru Musa Yar' Adua addressed a Joint Sitting of Parliament.

### **Debate on Report of Task Team of Members of Parliament Probing the Violence and Attacks on Foreign Nationals**

On 19 June, a debate was held on the Report of Task Team of Members of Parliament Probing the Violence and Attacks on Foreign Nationals.

### **90<sup>th</sup> birthday celebration for Mr Nelson Mandela**

On 24 June, the Speaker and the Chairperson of the NCOP called a Joint Sitting to celebrate, through joint debate, the 90<sup>th</sup> birthday of former President Nelson Mandela.

## [14] WITHDRAWAL OF PARLIAMENTARY OVERSIGHT AUTHORITY REPORT

The Parliamentary Oversight Authority (POA) is the highest decision-making body on matters relating to the administration of Parliament. In 2008, the POA published a number of reports, including the report on *Proposed Policies on Parliamentary Travel and Computer and other Equipment for Members of Parliament*. The report was tabled by the Speaker and the Chairperson in the ATC of 13 May. The report appeared under "Further Business" on the Order Paper on 14 May.

The Speaker and the Chairperson announced in the ATC of 15 August the withdrawal of the report. The report was put back on the Order Paper and remained there until it lapsed at the end of the annual parliamentary session.

## [15] SUSPENSION OF RULES

### **Suspension of Joint Rule 15(3) (Proposal to establish joint mechanism)**

Joint Rule 15(3) states that "if a proposal to establish a joint committee is contained in draft legislation before a portfolio committee, a select committee or a joint committee referred to in Joint Rule 111, that committee must first refer the proposal to the Joint Rules Committee for a report and recommendation before that committee considers the proposal."

The *Financial Management of Parliament Bill*, a section 76 bill, which was considered by the Portfolio Committee on Finance contained a proposal to establish a joint mechanism. The bill started its life in Parliament as a bill introduced by a committee when the Assembly, on 23 September 2003, instructed the Portfolio Committee on Finance to consider the subject of the financial management of Parliament (see *Item 10, Issue 9*).

However, the second Parliament dissolved before the Portfolio Committee could finish its work on the matter. The third Parliament, by resolution, mandated the Ad Hoc Committee on Finance to consider the subject of the financial management of Parliament. The Assembly's ad hoc committees however were dissolved on 24 June 2004 and replaced by portfolio committees. The mandate given to the Ad Hoc Committee on Finance was transferred to the Portfolio Committee on Finance (see *Item 36, Issue 10*).

When the portfolio committee was considering the bill in 2008, the bill had a proposal to establish a joint mechanism. The chairperson of the portfolio committee wrote to the Speaker on 14 August, making her aware of the proposal in the bill and requesting that the matter be referred to the Joint Rules Committee. The Assembly was in committee period at the time and the Joint Rules Committee was scheduled to only meet in October. The Speaker informed the chairperson that the portfolio committee should proceed with the consideration of the proposal in the bill and that the House would suspend Joint Rule 15(3) at its first sitting of the third term.

On 22 September, the first sitting of the third term, the Chief Whip of the Majority Party moved a motion to suspend Joint Rule 15(3) for the purposes of disposal of the *Financial Management of Parliament Bill*. Since this was a Joint Rule the Assembly needed the concurrence of the NCOP. Consequently, the NCOP on 23 September agreed to a motion suspending the Joint Rule. The effect of the suspension was that the non-referral of the proposal to establish a joint mechanism was condoned by both Houses.

The bill was passed by the Assembly on 26 September and referred to the NCOP for concurrence. The NCOP agreed to an amended version of the bill on 15 February 2009 and on 19 February 2009, the Assembly agreed to the bill as amended by the NCOP.

At the time of writing the bill had not yet been assented to by the President.

#### **Suspension of Joint Rule 154(2) (Submission of views to JTM)**

Joint Rule 154 deals with the submission of views on the classification of a bill to the Joint Tagging Mechanism (JTM). The rule states:

*154.(1) Assembly and Council members and committees and provincial legislatures may submit their views on the classification of a Bill to the JTM in writing within the period stated in the ATC which may not be less than three working days.*

*(2) The JTM may not classify a Bill before the expiry of the period in the ATC.*

The *Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Bill* was initiated by the Portfolio Committee on Justice and Constitutional Development, and introduced in the Assembly on 17 June. On the same date, it was referred to the JTM for classification in terms of Joint Rule 160. In terms of Joint Rule 154 written views on the classification of the bill could be submitted to the JTM within three parliamentary working days.

As Parliament was fast approaching the annual winter recess, it was decided to suspend Joint Rule 154(2), with the concurrence of the NCOP, to allow the bill to be debated in the Assembly on 19 June.

#### **Suspension of Assembly Rule 121(3) (Proposal to establish a committee)**

Assembly Rule 121(3) states that “if a proposal to establish a committee is contained in draft legislation before a portfolio committee, that committee must first refer the proposal to the Rules Committee for a report and recommendation before that committee considers the proposal.”

The *Money Bills Amendment Procedure and Related Matters Bill* which was introduced by the Portfolio Committee on Finance contained a proposal for each House to establish a committee on finance and a committee on appropriations.

On 14 August, the chairperson of the portfolio committee wrote to the Speaker informing her of the proposal in the bill and requesting that the matter be referred to the Rules Committee. The Assembly was in committee period and the

Rules Committee was scheduled to only meet in October. The Speaker informed the chairperson that the portfolio committee should proceed with the consideration of the proposal in the bill and that the House would suspend Rule 121(3) at its first sitting of the third term.

On 22 September, the Chief Whip of the Majority Party moved a motion to suspend Rule 121(3) to dispose of the bill.

#### **Assembly Rule 253(1) (Suspension of 3-day rule)**

Rule 253(1)(a) 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. Rule 253(1)(b) provides that the debate on the Second Reading of a bill that has not been referred to a committee may not commence before at least three working days have elapsed since the bill was introduced.

The rule would normally be suspended in order to consider urgent legislation. In the period under review, the rule was suspended in respect of the following bills:

- 1) *Division of Revenue Bill* on 26 February and 12 February 2009;
- 2) *Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Bill* on 19 June;
- 3) *Special Pensions Amendment Bill and the Prevention of and Treatment for Substance Abuse Bill* on 24 June;
- 4) *Child Justice Bill* on 25 June;
- 5) *Mineral and Petroleum Resources Development Amendment Bill, Air Services Licensing Amendment Bill, South African National Space Agency Bill and Liquor Products Amendment Bill* on 26 June;
- 6) *National Land Transport Bill, Mineral and Petroleum Resources Royalty Bill and the Mineral and Petroleum Resources Royalty (Administration) Bill* on 21 August;
- 7) *Criminal Procedure Amendment Bill and Judicial Matters Amendment Bill* on 21 October;
- 8) *Revenue Laws Second Amendment Bill* on 23 October;
- 9) *National Youth Development Agency Bill* on 21 November.

#### **[16] MOTION TO SEND MEMBERS TO AREAS AFFECTED BY XENOPHOBIA**

On 11 May, there had been media reports of violent attacks aimed mainly at foreign nationals from other African states in Alexandra Township in Gauteng. Similar attacks were also reported in other areas of Gauteng.

On 13 May, the House agreed to a motion without notice noting with deep concern the violence that was perpetrated against Africans from other parts of Africa, namely those from Mozambique, Malawi and Zimbabwe. The motion further requested that some members of Parliament speedily be sent to the affected areas to observe the problems and to speak to both citizens of the country and those



refugees and others who had been affected; and appealed for a thorough investigation into the causes of that violence and that a solution be found to avoid a repetition.

The implementation of the House resolution was discussed by the Chief Whips' Forum on 14 May, where it was agreed that a debate would be held around the broad topic of attacks on foreign nationals in Alexandra and other affected areas. The debate was held on 16 May, and all political parties condemned the violence. As per decision of the Chief Whips' Forum, members of Parliament deployed to the affected areas met on 20 May to discuss the situation and compare the information they had at their disposal.

At its meeting of 21 May, the Chief Whips' Forum agreed that members of Parliament in whose constituencies the attacks were taking place would form part of the delegation to visit the affected areas. The visit, of what became known as the Task Team of Members of Parliament Probing Violence and Attacks on Foreign Nationals, took place on 26 May, and the areas visited included Alexandra, Tembisa, Germiston and Reigerpark/Ramaphosa settlement area.

The delegation was led by Mr K O Bapela (ANC).

The Speaker and the Chairperson of the NCOP, in terms of Joint Rule 7(2), called a Joint Sitting of the Houses of Parliament for Thursday 19 June, to debate the report of the task team.

As a Joint Sitting does not take decisions, the sitting adjourned and the two Houses met separately to decide on the report of the task team. The Assembly adopted the report. A further motion was moved and adopted which condemned the attacks and expressed the Houses' sympathy with those affected by the violent attacks, and that the remorse of the Parliament of South Africa, as the representatives of the people of South Africa, be conveyed to all Parliaments, governments and peoples on the African continent.

The motion was conveyed by the Speaker, with the assistance of the Department of Foreign Affairs, to the African foreign diplomatic missions in South Africa for the onward transmission to the relevant Parliaments.

The same motion condemning the attack which was adopted by the Assembly was moved and agreed to in the NCOP.

## **[17] RULES GOVERNING ORDER IN JOINT SITTINGS AND RULES OF DEBATE ADOPTED**

In Item 14 of Issue 12, it was reported that the Speaker and the Chairperson framed interim Joint Rules to govern joint

debates and that the Joint Rules Committee had referred the interim rules to the Joint Subcommittee on Review of the Joint Rules for processing. The joint subcommittee's report was considered and adopted by the JRC on 28 February 2007 subject to applicable amendments.

On 13 March 2008, the report of the JRC which recommended that the Joint Rules be amended was published on the ATC. The Assembly and the NCOP adopted the report of the JRC on 18 and 19 March respectively. The report contained rules in regard to the conduct of members during Joint Sittings and rules of debate, which are now contained in Chapter 2A (Rules 14A to 14W) of the Joint Rules.

## **[18] RULE AMENDMENTS**

### **Language requirements for bills**

The Joint Rules of Parliament contain rules that regulate the parliamentary language practice in regard to bills. In 2001, concern was expressed at the requirement in the rules that bills must be translated only before they are sent to the President for assent. As a result of this concern, the matter was referred to the Joint Rules Committee for consideration.

The subcommittee of the Joint Rules Committee responsible for reviewing the Joint Rules agreed that a bill may be introduced in one language, but may not be debated by the House in which it was introduced before it has been translated. In other words, at the stage of its second reading a bill should at least be available in two of the official languages.

At the start of the Third Parliament, the matter was revived as a legacy issue for consideration by the Joint Rules Committee. In 2007, a subcommittee of the Joint Rules Committee tabled a report on the language requirement for bills. The report contained a proposal to amend the Joint Rules to provide that the official text of the bill must be translated into at least one of the other official languages and that the translation must be received by Parliament at least three days before the formal consideration of the bill by the House in which it was introduced. Amendments adopted by the House concerned must also be factored into the translation before the bill is forwarded to the President for assent.

In 2008, the National Assembly and the National Council of Provinces agreed to amend Joint Rule 220(2) and (4) under "*Language requirement for Bills*" to give effect to the recommendations of the Joint Rules Committee in relation to the language requirement for bills.

### **Joint Standing Committee on Intelligence (JSCI)**

Section 2(6)(b) of the Intelligence Services Oversight Act, No 40 of 1994, provides that the JSCI may initiate and

recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the functions and activities of the JSCI.

On 21 June 2006, the JRC agreed to refer the draft rules for the JSCI to the Joint Subcommittee on Review of the Joint Rules for processing. On 20 June 2007, the joint subcommittee presented the draft rules for the JSCI to the JRC. The JRC agreed to the adoption of the draft rules on the same day.

At a meeting of the JRC on 21 November 2007, the Assembly co-chairperson of the joint subcommittee explained that the incorrect text of the draft rules was put before the JRC for consideration and adoption, which was only discovered after the draft rules were adopted by the JRC. The JRC subsequently adopted the correct version of the draft rules.

On 13 March, the report of the JRC containing the rules of the JSCI was published in the ATC (*ATC, pp446-457*). The Assembly and the NCOP adopted the report of the JRC on 18 and 19 March respectively. The rules of the JSCI were included under Schedule B to the Joint Rules.

## **[19] FORMALISATION OF MULTIPARTY WOMEN'S CAUCUS**

On 20 June 2007, the Joint Subcommittee on Review of the Joint Rules was instructed by the Joint Rules Committee to draft rules for the establishment of a Multiparty Women's Caucus. On 21 November 2007, the co-chairperson of the sub-committee presented the draft rules for consideration by the Joint Rules Committee.

The report of the JRC in respect of the Multiparty Women's Caucus was adopted by the Assembly on 18 March and by the NCOP on 19 March. The rules governing the establishment and operation of the caucus were included as Rules 137A to 137F of the Joint Rules.

## **[20] REPORT OF AD HOC COMMITTEE TO CONSIDER MATTERS IN TERMS OF SECTION 12 OF NPA ACT ADOPTED**

On 23 September 2007, former President T M Mbeki suspended Advocate Vusi Pikoli as the National Director of Public Prosecutions. Following the suspension, an enquiry, chaired by former Speaker, Dr F N Ginwala, was established in terms of section 12(6)(a) of the National Prosecuting Authority Act (the Act) to determine the fitness of Adv Pikoli to hold the office of National Director.

On 4 November, the enquiry produced a report, which it submitted to the President. After considering the report and

submissions from Adv Pikoli, President K P Motlanthe, who succeeded President Mbeki, resolved to remove Adv Pikoli from office in terms of section 12(6)(a) of the Act.

The President communicated this decision to Parliament in December as required by section 12(6)(b) of the Act.

On 12 January 2009, the Speaker and the Chairperson established an ad hoc joint committee in terms of Joint Rule 138 to consider the matter in terms of section 12 of the Act. The mandate of the committee was to either accept or reject the President's decision to remove Adv Pikoli from office, after considering the President's reasons for his decision and the representations made by the National Director.

In terms of Joint Rule 138, an ad hoc joint committee can be established by a resolution adopted by both Houses or by a decision of the Speaker and the Chairperson, acting jointly, after consulting the Chief Whip of the Majority Party in the Assembly and the Chief Whip of the Council.

The decision of the Presiding Officers was ratified by the Assembly on 27 January 2009 and by the NCOP on 17 February 2009.

The report of the ad hoc joint committee which recommended that the Houses pass a resolution not to restore to office the National Director of Public Prosecutions was adopted by the Assembly on 12 February 2009 and by the NCOP on 17 February 2009.

## **[21] CONFLICT OF INTEREST WITHIN PARLIAMENTARY CONTEXT: RULING BY SPEAKER**

During the consideration of the *National Prosecuting Authority Amendment Bill* and the *South African Police Service Amendment Bill* the Speaker received requests from the public that those members of the Assembly who were convicted of fraud related to travel vouchers, or had been implicated in irregularities relating to claims made by various travel agencies, or who were being investigated by the Directorate of Special Operations (DSO) should recuse themselves when the National Assembly and its committees deliberated on and considered these bills. The requests were made on the basis that a conflict of interest could arise or exist when these members had to decide whether to pass the bills. The matter was also raised within the committees considering the bills.

The *National Prosecuting Authority Amendment Bill* was introduced in the Assembly on 21 May. The main object of the bill was to amend the National Prosecuting Authority Act, No 32 of 1998, by repealing the provisions relating to the DSO. On 23 October, during the Second Reading

debate on the bills, a member rose on a point of order to request that the Speaker rule on whether these members should recuse themselves from the debate as it constituted “a clear conflict of interest and that further participation by affected members and possible later voting and debating would amount to a breach of the code of conduct”.

In her ruling the Speaker said that there was no statutory or rule basis for her to instruct an elected member not to participate in the proceedings on these bills. In terms of established parliamentary practice the Speaker would not involve him or herself in the recusal of members of the Assembly during the consideration of particular issues.

It was further stated that conflict of interest within the parliamentary context was presumed to refer to direct pecuniary interest in a matter before the House. The code of conduct for members of Parliament referred specifically to a personal or private financial or business interest. The Speaker stated that it was therefore established practice that a member’s interest should be immediate and personal and not of a general or remote character. It should also not be an interest that was shared with the public or related to a matter of policy.

In conclusion, the Speaker stated that members were sent to Parliament to represent their constituencies and should therefore not be disenfranchised lightly nor the House deprived of their opinion. The Speaker thus ruled that in light of the above she could not instruct any member to leave the House during the consideration of the bills.

The effect of the Speaker’s ruling was that members who were implicated and found guilty of fraud in respect of travel vouchers, could not be said to have a direct pecuniary interest in the dismantling of the DSO as it would not confer on them a personal pecuniary advantage or diminish a personal pecuniary loss.

## **[22] RE-ENACTMENT OF ACT DECLARED INVALID BY CONSTITUTIONAL COURT: CHOICE ON TERMINATION OF PREGNANCY AMENDMENT BILL**

In Item 33 of Issue 12, it was reported that the Constitutional Court declared four 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 Item 25 of Issue 13, it was further reported that on 22 November 2007 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. However, the *Choice on Termination of Pregnancy Amendment Bill* was not finalised in 2007.

By 7 February, the bill was passed by both Houses in order to comply with the decision of the Constitutional Court. The bill was assented to and signed by the President on 12 February.

## **[23] OVERSIGHT AND ACCOUNT- ABILITY MODEL ADOPTED**

In Item 42 of Issue 11 it was reported that the Task Team on Oversight and Accountability was established on 19 August 2003 to drive the implementation of the recommendations of the Joint Subcommittee on Oversight and Accountability. On 19 March, the model was adopted in principle by the JRC and published on the ATC dated 27 January 2009. The model focused, amongst other things, on institutional characteristics of oversight and accountability, existing oversight mechanisms used by Parliament and proposed new mechanisms.

The model was adopted by the Assembly on 17 February 2009 and by the NCOP on 19 March 2009.

## **LEGISLATION AND COMMITTEES**

### **[24] MEDIATION COMMITTEE**

#### **Housing Development Agency Bill**

On 8 May, the Assembly passed the *Housing Development Agency Bill*. On the same day, the bill was transmitted to the NCOP for concurrence. The NCOP amended the bill.

On 13 August, the portfolio committee tabled a report in which it noted that the bill was amended by the NCOP. Although the portfolio committee had further amendments to propose for inclusion in the bill, it could not do so as Assembly Rule 276(2) provides that no amendments may be proposed to the NCOP’s amended bill. Thus, the bill had to be subjected to a mediation process for such amendments to be considered. On 19 August, the Assembly rejected the bill and it was accordingly referred to the Mediation Committee in terms of Joint Rule 186(1)(b).

On 20 August, the Mediation Committee reported that it had agreed to a new version of the bill (*ATC, 20 August, p1566*). On 21 August, the Assembly noted the committee’s report and passed the bill. On 23 September, the President assented to and signed the bill.

## **Mandating Procedures of Provinces Bill**

The *Mandating Procedures of Provinces Bill*, a section 76(2) bill, was introduced in the NCOP by the Select Committee on Security and Constitutional Affairs on 18 April 2007. The select committee reported on the bill on 25 October 2007 and the NCOP passed the bill on 6 November 2007 and transmitted it to the National Assembly for concurrence.

The bill was referred to the Assembly's Portfolio Committee on Justice and Constitutional Development which reported to the Assembly on 6 March that it had agreed to an amended version of the bill. The National Assembly passed the amended bill on 13 March and returned it to the NCOP for concurrence. The amended version was referred to the Select Committee on Security and Constitutional Affairs which reported on 25 June that it had agreed to the Assembly's amendments.

However, when the NCOP considered the bill on 23 September, five provinces rejected the bill, and the bill was therefore rejected in terms of section 65 of the Constitution.

On 25 September, the bill was referred to the Mediation Committee in terms of Joint Rule 186(2)(b). The Mediation Committee reported on 3 November that it had agreed to a new version of the bill (*ATC, 3 November, p2036*). On 19 November, Parliament passed the bill.

## **Second-Hand Goods Bill**

On 8 February, the *Second-Hand Goods Bill* was introduced in Parliament by the Minister of Safety and Security. The objects of the bill were to regulate the business of dealers in second-hand goods and pawnbrokers and to promote ethical standards in the second-hand goods trade.

On 19 March, the Assembly passed the bill and referred it to the NCOP for concurrence. On 12 November, the NCOP passed the bill with amendments and transmitted it to the Assembly for consideration of the NCOP amendments.

The bill was referred to the Portfolio Committee on Safety and Security for a report and recommendation on the NCOP amendments. The portfolio committee recommended that the bill as amended by the NCOP not be agreed to.

The House considered the report of the portfolio committee on 27 January 2009 and rejected the bill. The bill was accordingly referred to the Mediation Committee for consideration in terms of Joint Rule 186(1)(b).

The Mediation Committee, after its deliberations, agreed to submit another version of the bill. The new version of the

bill was agreed to by the Assembly on 5 February 2009 and by the NCOP on 17 February 2009.

## **[25] REPORT OF JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS ON FINDINGS OF AUDITOR-GENERAL AND COMPLAINT AGAINST MINISTER**

The Joint Rules of Parliament establish a Code of Conduct for Assembly and Permanent Council Members. In terms of the Code members must annually disclose their financial interests in a Register. The Joint Rules also provide for a Joint Committee on Ethics and Members' Interests (the committee) whose functions include the implementation of the Code, the publication of the Register and the development of ethical standards for Parliament.

On 14 November, the committee tabled a report on an investigation by the Auditor-General into the completeness of the Register of Members' Interests for 2007. The Auditor-General's investigation, carried out as part of the financial audit of Parliament, included details of fourteen members who had allegedly not disclosed certain interests and could therefore have been in contravention of the Code. The committee reported that it had interrogated the Auditor-General's findings and invited the relevant members to respond. Based on these findings and responses, it had then issued a number of recommendations. Of the fourteen members, the committee found that seven had not disclosed their interests and were in contravention of the Code. Fines of between R500 and R3 500 were accordingly recommended.

The committee nevertheless highlighted that a number of members had resigned from companies and close corporations but these resignations were not reflected on the database of the Company and Intellectual Property Rights Organisation (CIPRO) which the Auditor-General had utilised in the investigation. The reason for this was that resignations required the signatures of other partners, which sometimes created delays. In such instances, the committee did not penalise members for non-disclosure. The National Assembly adopted the report of the Joint Committee on Ethics and Members' Interests on the findings of the Auditor-General on 20 November.

The committee also tabled a separate report on an alleged failure by the Minister of Correctional Services, Mr B M N Balfour, to declare a payment made by a company for his vehicle. After receiving a complaint to this effect, the committee studied various financial records and documents, including a statement by the Minister and affidavits from the bank and the company concerned. After deliberations, the committee found that the allegation against the Minister

was without foundation. The National Assembly adopted the report of the committee on this matter on 20 November.

## **[26] SOCIAL HOUSING BILL – ROLE FOR PARLIAMENT**

The *Social Housing Bill* was introduced on 27 July 2007 and passed by the Assembly on 19 August 2008.

The bill aims, amongst others, to establish the Social Housing Regulatory Authority that is accountable to the Minister of Housing and Parliament. The bill further prescribes that the Minister must, after public consultation, submit any principle for social housing development to Parliament for approval.

In addition, clause 9 states that the regulatory authority is composed of a council. The Minister must establish a selection committee consisting of not more than seven members, two of whom must be the chairpersons of the portfolio and select committees responsible for housing or their delegates, to advise the Minister on the appointments.

Clause 19 states that the Minister, by notice in the *Gazette* and after consultation with Parliament, must make regulations prescribing, among others, a code of conduct, the investment criteria and the qualifying criteria for social housing institutions.

## **[27] PREVENTION OF AND TREATMENT FOR SUBSTANCE ABUSE BILL – ROLE FOR PARLIAMENT**

The *Prevention of and Treatment for Substance Abuse Bill* was passed by the Assembly on 19 November and was returned to the Assembly for concurrence after the NCOP amended the Assembly's version. By 4 March 2009, the bill's assent had not yet been announced.

When the bill becomes law, Parliament will play a role in the recommendation of persons to be appointed to the Central Drug Authority. In addition, the annual report of the Authority will be tabled in Parliament.

In terms of section 53(1) of the Act the members of the authority may be "appointed only after–

- (a) the Minister has through the media and by notice in the *Gazette* invited nominations of persons as members of the Central Drug Authority; and
- (b) the Parliamentary Committees for Social Development of the National Assembly and the National Council of Provinces have made recommendations to the Minister in relation to such appointments after

a transparent and open process of considering persons so nominated".

In terms of section 53(11) –

- (a) The Central Drug Authority must annually, by no later than the last day of August, submit to the Minister a report on all its functions as well as a comprehensive description of the national effort to reduce the demand for, harm caused by and supply of, substances in the previous financial year.
- (b) The Minister must table the report referred to in paragraph (a) in Parliament within 14 days after it is submitted to him or her, if Parliament is then sitting, or, if Parliament is not then sitting, within 14 days after its next sitting day.

## **[28] JURISDICTION OF REGIONAL COURTS AMENDMENT BILL – SUBMISSION OF REPORTS TO PARLIAMENT**

The *Jurisdiction of Regional Courts Amendment Bill* aims to extend jurisdiction in civil matters, including divorce matters, to the regional courts. The bill aims to enhance access to justice for all, which is its primary objective and should also contribute to enhancing competence and career advancement opportunities for the magistracy as a whole.

On 22 September, the final version of the bill was passed with NCOP amendments. The President's assent was announced on 5 November (*ATC, 5 November, p2038*). Although the Act was promulgated, by 3 March 2009 a date of commencement was still to be proclaimed.

In its report on the final version of the bill, the Portfolio Committee on Justice and Constitutional Development expressed concern regarding the capacity of the Department of Justice and Constitutional Development to fully implement the bill. The department presented a comprehensive implementation plan to the committee, and the committee would be seeking to actively monitor the implementation of the bill and, for that purpose, would require six-monthly reports from the department on such implementation.

The committee was further of the view that it would be prudent to adopt an incremental approach to the implementation of the bill. The provisions of the bill are crafted in order to enable such an approach, and care should be taken to prevent a situation where the system of the administration of justice is expected to meet unrealistic expectations.

The committee effected an amendment to the bill in order to ensure, firstly, that rules of court are made in order to enable the regional courts to exercise their new extended civil jurisdiction effectively and efficiently and, secondly, that those rules retain and build on the characteristics of the current divorce court rules, in so far as those courts are user-friendly, inexpensive and accessible.

The new rules must be made within six months of the commencement of the Act and must be submitted to Parliament.

## **[29] JUDICIAL SERVICE COMMISSION AMENDMENT BILL – ROLE FOR PARLIAMENT**

The *Judicial Service Commission Amendment Bill* was passed by Parliament and assented to on 22 October. By 4 March 2009 its date of commencement was still to be proclaimed.

The Act will have an effect on Parliament in various ways.

The Code of Judicial Conduct, compiled in terms of section 12 of the Act, must be tabled in Parliament for approval, with the option of obtaining and considering public comment thereon. The Act specifies as follows:

### **Code of Judicial Conduct**

- 12.**(1) The Chief Justice, acting in consultation with the Minister, must compile a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval.
- (2) The Minister must table the first Code under this section in Parliament within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (1) both versions of the Code must be tabled in Parliament within the said period.
- (3) When the Code or any amendment thereto is tabled in Parliament in terms of subsection (1) or (2), Parliament may, after obtaining and considering public comment thereon, approve the Code or such amendment—
- (a) without any changes thereto; or
- (b) with such changes thereto as may be effected by Parliament.
- (4) The Code must be reviewed at least once in every three years by the Chief Justice, acting in consultation with the Minister, and the result of such review, including any proposed amendment to the

Code, must be tabled in Parliament, for approval, as contemplated in subsection (3).

The first regulations for the disclosure of assets, compiled in terms of section 13 of the Act, must be tabled in Parliament for approval, with the option of obtaining and considering public comment thereon. The Act specifies as follows:

### **Disclosure of registrable interests**

#### **13. ...**

(7) The Minister must table the first regulations for the disclosure of registrable assets under this section in Parliament, for approval, within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (5) both versions of the regulations must be tabled in Parliament within the said period.

- (8) When the regulations or any amendment thereto is tabled in Parliament, Parliament may, after obtaining and considering public comment thereon, approve the regulations or such amendment—
- (a) without any changes thereto; or
- (b) with such changes thereto as may be effected by Parliament.

When the Judicial Service Commission requests the appointment of a Tribunal to investigate the alleged incapacity, incompetence or misconduct of a judge in terms of section 19 of the Act, the Speaker of the National Assembly is mentioned, as follows:

### **Tribunals**

#### **19. ...**

- (4) If the Commission finds that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, the Commission must submit that finding, together with the reasons therefor and a copy of the report, including any relevant material, of the Tribunal, to the Speaker of the National Assembly.

In this instance ‘respondent’ means a judge against whom a complaint was lodged or who is the subject of an allegation referred to a tribunal in terms of this Act. The rules of the proceedings of a tribunal established in terms of section 19 of the Act are to be compiled by the Chief Justice in terms of section 25 and tabled in Parliament, as follows:

### **Rules and procedure**

- 25.**(1) The Chief Justice must make rules regulating procedures before a Tribunal.
- (2) Rules made under subsection (1)–

- (a) are applicable to all Tribunals;
- (b) may be amended or repealed at any time;
- (c) must be tabled in Parliament by the Minister before publication in the *Gazette*; and
- (d) must be published in the *Gazette*.

Section 35 contains miscellaneous provisions on regulations. These regulations have to be tabled in Parliament by the Minister before publication in the *Gazette*.

### **[30] CONSUMER PROTECTION BILL – ROLE FOR PARLIAMENT**

The *Consumer Protection Bill* requires the Minister to appoint a Commissioner for the National Consumer Commission that is established in terms of clause 85. The Minister must consult the relevant parliamentary committee in respect of such appointment before making such appointment.

On 11 November, the bill was passed by both Houses and was submitted to the President for assent. At the time of writing, the bill was not yet assented to.

### **[31] SOUTH AFRICAN NATIONAL SPACE AGENCY BILL – ROLE FOR PARLIAMENT**

The *South African National Space Agency Bill* was submitted to Parliament on 5 May.

The bill, as amended, by the Portfolio Committee on Science and Technology provides that in appointing the National Space Agency Board, the Minister must appoint members of the Board after calling for nominations from the public, appointing a panel of experts to compile a shortlist of not more than 30 persons, submitting the list to the National Assembly for approval and receiving an approved shortlist from the Assembly from which to select members of the Board.

The President assented to and signed the bill on 11 December.

### **[32] CORRECTIONAL SERVICES AMENDMENT BILL – IMPACT ON PARLIAMENT**

The *Correctional Services Amendment Bill*, adopted by the Assembly on 8 May, and assented to by the President on 8 November, made a number of significant changes to the 1998 principal Act. Three of the amendments have a direct impact on Parliament.

First, the Act provides that the Minister of Correctional Services must submit the incarceration framework created by the Act to the relevant parliamentary committees responsible for correctional services for approval. Only after this approval had been obtained can the Minister make regulations to enact the framework into law.

Second, the Act amends the principal Act to provide that the Minister must appoint four or more persons who are not in full-time employment of the state to the National Council for Correctional Services in consultation with the relevant parliamentary committees.

Third, the Act provides that the Inspecting Judge of Prisons must submit a report to the Minister and the relevant parliamentary committees after each prison inspection.

### **[33] AD HOC JOINT COMMITTEE ON AMENDMENT REGULATIONS MADE IN TERMS OF PUBLIC FUNDING OF REPRESENTED POLITICAL PARTIES ACT**

On 1 July, three bills intended to abolish floor-crossing at national, provincial and local government level were introduced in the National Assembly by the Minister for Justice and Constitutional Development (see Item 37 on “Repeal of floor-crossing legislation”).

The Minister informed the Speaker that as a consequence of the abolition of floor-crossing, amendments to the regulations provided for in section 10(1) of the Public Funding of Represented Political Parties Act, No 103 of 1997, needed to be effected to revert to the original regulations made in 1998 before the floor-crossing legislation was promulgated. Section 10(1) determines that the President may, by proclamation in the *Gazette*, make regulations consistent with the Act. In this instance, the amendment of the regulations was in regard to prescribing the procedure according to which payments are made to and from the Represented Political Parties’ Fund after the expiry of a window period for floor-crossing.

The Minister on 20 October tabled draft amendment regulations which were submitted to Parliament in terms of section 10 of the Act. In terms of this section, the draft amendment regulations were referred to an ad hoc joint committee for consideration and report by 5 November.

On 13 November, the committee reported to Parliament after its deadline for reporting was extended to 18 November. The NCOP adopted the committee’s report on 27 November.

At the time of writing the Assembly had not yet considered the committee's report.

### **[34] REPORT OF JOINT TASK TEAM ON THE LEGISLATIVE PROCESS IN PARLIAMENT**

The Joint Task Team on the Legislative Process in Parliament was set up to look at the legislative process following a workshop held on 23 January in respect of difficulties encountered specifically with the processing of the *Children's Amendment Bill*. The joint task team was required to make recommendations aimed at improving the current legislative process and submit a report to the Joint Rules Committee.

The task team, which comprised members from both Houses, was convened by Ms F I Chohan. A retired advocate who is also a former Chief Parliamentary Law Adviser to Parliament was commissioned by the task team to provide it with constitutional and technical support.

Meetings were held on 4 and 6 November and the report on reviewing the legislative process in Parliament was presented by the convenor of the task team to the Joint Rules Committee on 13 November. Recommendations were made in respect of the legislative process, tagging of bills, mixed bills, legal advisory and drafting services for parliamentary committees, public participation in the legislative process and a legislative handbook.

The Joint Rules Committee agreed to include the report of the joint task team in the list of legacy/outstanding issues for consideration by the Joint Rules Committee in the fourth Parliament.

### **[35] REPORT OF AD HOC COMMITTEE ON THE REVIEW OF CHAPTER 9 AND ASSOCIATED INSTITUTIONS PARTIALLY ADOPTED**

In Item 26 of Issue 13, it was reported that an ad hoc committee was established by the House on 21 September 2006 to review state institutions supporting constitutional democracy and the Public Service Commission as listed in Chapters 9 and 10 of the Constitution respectively. The report of the committee was tabled on 21 August 2007. By the end of the annual sitting for 2007, the report had not yet come before the House for consideration.

On 21 November 2008, the House agreed by motion to adopt the recommendation in the report pertaining to the establishment of a unit on constitutional institutions and other statutory bodies. Furthermore, the House urged that

consideration be given to the implementation of the recommendation in the report pertaining to budgets of the bodies reviewed being contained in a separate programme in Parliament's budget vote, as envisaged by the committee. It was also agreed that the rest of the report be held in abeyance with a view to allowing the fourth Parliament to consider it in a manner it deems appropriate.

### **[36] PRESIDENT'S RESERVATIONS ON CONSTITUTIONALITY OF BILLS**

#### **Human Sciences Research Council Bill**

On 25 April, the President referred the *Human Sciences Research Council Bill* back to the Assembly for reconsideration in terms of section 79(1) of the Constitution. The Constitution permits the President to refer a bill back to the Assembly if he/she has reservations about the constitutionality of the bill.

In his letter, the President pointed out that he had reservations in respect of clause 5(3) of the bill, which states that the Minister may, in consultation with the National Assembly, appoint members of the Board of the Human Sciences Research Council. The President indicated that the clause may undermine the principle of separation of powers as the Assembly would be involved in appointing members of the Board, a function which is the prerogative of the Minister. Thus, the Minister's executive powers would be circumscribed by the Assembly as the Minister would be required to be in agreement with the Assembly in appointing Board members.

On 9 May, the Speaker, in terms of Joint Rule 203(1), referred the bill and the President's reservations on the constitutionality of the bill to the Portfolio Committee on Science and Technology for consideration and report (*ATC, 9 May 2008, p603*). The involvement of the NCOP was not required.

On 25 June, the committee tabled its report in which it recommended an amended bill and that the President's reservations be accommodated. On 21 August, the Assembly passed the bill and on 23 September, the President assented to and signed the bill.

#### **Competition Amendment Bill**

The *Competition Amendment Bill* was considered and passed by the NCOP on 25 September and by the National Assembly on 21 October. It was thereafter sent to the President for assent.

In a letter dated 27 January 2009 the President wrote to the Speaker and expressed his reservations about the constitu-



tionality of clause 12 of the bill. One of the provisions of clause 12 violated the right to a fair trial. Furthermore, interested parties or stakeholders were not given an opportunity to comment on the second revised version of the bill before it was passed by Parliament. The President accordingly referred the bill back to the National Assembly for consideration in terms of section 79(1) of the Constitution.

After the Portfolio Committee on Trade and Industry had considered the President's reservations on the constitutionality of clause 12(5) of the bill and having conferred with the Select Committee on Economic and Foreign Affairs thereon, it reported back on 17 February 2009 that the bill be passed again without amendment

The amendment bill was considered and passed by the National Assembly on 18 February 2009. The effect was that the President's concerns were not addressed.

### **Films and Publications Amendment Bill**

The *Films and Publications Amendment Bill* was passed by both Houses in August.

On 27 January 2009, the Speaker received a letter from the President informing her that he had reservations about the constitutionality of the bill and that in terms of section 79(1) of the Constitution, he was referring the bill back to the Assembly for reconsideration.

In his letter, the President pointed out that he had reservations in respect of clause 29 in so far as it improperly prohibits the right of freedom of expression contained in section 16(1) of the Constitution. Section 16(1) provides that everyone has the right to freedom of expression, which includes freedom of the press and other media, freedom to receive or impart information or ideas, freedom of artistic creativity, and academic freedom and freedom of scientific research. Concerns raised in submissions to the President also held that clause 29 would compel journalists engaged in legitimate activities to disclose or reveal their sources of information.

On 2 February 2009, the Speaker, in terms of Joint Rule 203(1), referred the bill and the President's reservations on the constitutionality of the bill to the Portfolio Committee on Home Affairs for consideration and report (*ATC, 9 May, p146*). Since the bill was classified a section 75 bill, which is an ordinary bill not affecting provinces, the involvement of the NCOP was not required. On 18 February 2009, the committee tabled its report in which it recommended that the President's reservations be accommodated and presented an amended bill. On 19 February 2009, the Assembly passed the amended bill which was submitted to the President for assent.

## **[37] REPEAL OF FLOOR-CROSSING LEGISLATION**

During 2002 and 2003, Parliament had approved legislation which allowed a member of the Assembly, provincial legislature or municipal council to become a member of another political party whilst still retaining membership of the said legislature or council. This legislation also enabled existing political parties to merge with others, subdivide into more than one and any one subdivision to merge with another political party (*see Item 21, Issue 7; Item 19, Issue 5; Item 19, Issue 6; Item 24, Issue 11; and Item 15, Issue 13*).

The *Constitution Fourteenth Amendment Bill*, the *Constitution Fifteenth Amendment Bill* and the *General Laws (Loss of Membership of National Assembly, Provincial Legislature or Municipal Council) Amendment Bill* were introduced in Parliament on 1 July effectively to abolish such so-called "floor-crossing".

This meant that members of the legislatures and councils would no longer be able to alter membership of their parties without losing membership of the said legislature or council. Further, political parties would no longer be able to subdivide, merge or change names in legislatures and councils without losing membership thereof.

In effect the bills amended, amongst others, certain sections of the Constitution, the Electoral Commission Act, the Public Funding of Represented Political Parties Act, the Determination of Delegates (National Council of Provinces) Act and the Local Government: Municipal Structures Act.

Section 74(3) of the Constitution requires that bills amending the provisions of the Constitution must be passed by the Assembly with a supporting vote of at least two thirds and also by the NCOP with a supporting vote of at least six provinces.

The Assembly and the NCOP passed the three bills with the prescribed majorities on 20 and 25 August respectively. The President assented to and signed the bills into law on 12 January 2009.

## **[38] ESTABLISHMENT OF AD HOC COMMITTEE TO CONSIDER CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT BILL**

On 13 January 2009, the Speaker established an ad hoc committee in terms of Rule 214 to consider the *Criminal Law (Forensic Procedures) Amendment Bill*. The Speaker referred the bill to an ad hoc committee because of the

cross-cutting nature of the issues contained therein. The bill was drafted to provide the South African Police Service (SAPS) with access to fingerprint databases of other government departments for criminal investigation purposes, the expansion of the SAPS's powers to take and retain fingerprints and other biometric materials and to provide for the establishment, administration and use of a DNA database. The committee was required to report to the House by 23 January 2009.

In terms of Rule 214, an ad hoc committee can be established by either a resolution of the House or, during the House's adjournment for a period of more than 14 days, by a decision of the Speaker after consulting the Chief Whip of the Majority Party and the senior whip of each of the parties.

Owing to time constraints, the committee could not meet the deadline of 23 January 2009 or the revised deadline of 10 March 2009 which was granted by the House. The committee reported on 23 March 2009. The House condoned the committee's continued existence and functioning on 24 March 2009.

The report of the committee was considered and adopted by the House on 24 March 2009. The report recognised that the importance of the bill in the fight against crime could not be overemphasised and recommended that the next Parliament consider the bill as a matter of urgency.

### **[39] ESTABLISHMENT OF AD HOC COMMITTEE TO CONSIDER LEGISLATION ON INTELLIGENCE MATTERS**

On 29 May, the Minister of Intelligence introduced the *Protection of Information Bill*. Since there is no portfolio committee to consider legislation on intelligence matters, the Assembly, on 13 May, established an Ad Hoc Committee on Intelligence Legislation to consider the bill. In practice, the Joint Standing Committee on Intelligence (JSCI) does not consider legislation.

Membership of the ad hoc committee consisted of 13 members as follows: ANC 8; DA 2; IFP 1; and other parties 2.

On 19 June, the ad hoc committee's mandate was extended to include the consideration of the *Intelligence Services Amendment Bill* and the *National Strategic Intelligence Amendment Bill* which were introduced on 11 June. The date by which the ad hoc committee had to report on all three bills was extended to 29 August. This date was further extended to 9 October. The committee however did not report by 9 October, and on 21 October the House condoned the continued existence of the committee and the work it

conducted after its term had expired and further extended the date to 21 November for the committee to finalise the bills.

The *Protection of Information Bill*, the *Intelligence Services Amendment Bill* and the *National Strategic Intelligence Amendment Bill* were withdrawn from the parliamentary process by the Minister on 30 October.

## **MONEY BILLS AND BUDGETARY MATTERS**

### **[40] MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS BILL**

Section 73 of the Constitution provides that only a Cabinet member responsible for financial matters may introduce a money bill in the National Assembly. A money bill is defined as a bill which appropriates money, imposes national taxes, levies, duties or surcharges, abolishes or reduces, or grants exemptions from any national taxes, levies, duties or surcharges, or authorises direct charges against the National Revenue Fund. Section 77(3) stipulates that Parliament may only amend money bills in accordance with a legislative procedure established in terms of that section.

On 25 June, the National Assembly adopted a motion instructing the Portfolio Committee on Finance (the committee) to consider a procedure to amend money bills with a view to introducing legislation envisaged in section 77(3). The Assembly further agreed that the committee should take account of the work done by the Budget Task Team, and report by 15 August.

This was a culmination of a process that started in 1999 when a consultant was engaged to research Parliament's oversight functions. The consultant's report was submitted to Parliament in July of the same year. The Joint Rules Committee (JRC) subsequently established an Ad Hoc Joint Subcommittee on Oversight and Accountability and referred the consultant's report to this committee. In March 2003, the JRC approved the recommendations of the subcommittee and instituted an implementation plan, which included the establishment of a Budget Task Team with a mandate to develop legislation to give effect to section 77(3) to enable Parliament to amend money bills.

On 29 July, the committee reported that, in accordance with Assembly Rule 239(3), it had published a draft bill – prepared by the task team – on 10 July (Gazette No 31238) with an invitation for interested persons and organisations to make submissions. On 14 August, the committee reported that it had deliberated on the bill but requested that

the timeframe for reporting be extended to 29 August. The House agreed to the request on 19 August. On 28 August, the committee reported that aspects of the draft bill required further development and consequently requested a further extension for reporting until 30 September. Owing to competing business and programming considerations, this request did not come before the House during the term and consequently lapsed on the last sitting day of 2008.

The draft bill proposed the establishment of a number of committees within the National Assembly and the NCOP. Assembly Rule 121(3) stipulates that if a proposal to establish a committee is contained in draft legislation, the committee considering the legislation must first gain the permission of the Rules Committee before proceeding. On 22 September, however, the National Assembly adopted a motion suspending Rule 121(3) and thereby allowing the Portfolio Committee on Finance to proceed with the draft bill.

On 10 October, the committee reported that it had concluded its deliberations and accordingly introduced the *Money Bills Amendment Procedure and Related Matters Bill*, subsequently classified as a section 75 bill. The Assembly adopted both the committee report and bill, with an amendment moved in the House, on 23 October. The bill was then referred to the NCOP.

The NCOP adopted the bill on 17 February 2009, subject to a number of proposed amendments. The bill was referred to the Portfolio Committee on Finance. The bill was passed by the Assembly on 19 February 2009, without debate.

The bill sets out a number of principles, mechanisms and procedures for Parliament to enable it to amend the different types of money bills.

At the time of writing, the bill was not yet assented to by the President.

## **STATUTORY FUNCTIONS**

### **[41] MEDIA DEVELOPMENT AND DIVERSITY AGENCY (MDDA) BOARD – RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBERS**

On 31 July, the Speaker tabled a request from the Minister in the Presidency for the Assembly to recommend two candidates for appointment by the President to the MDDA Board in terms of section 4(1)(b) of the Media Development and Diversity Agency Act, No 14 of 2002 (see *Item*

*64, Issue 11*). The Speaker referred the Minister's request to the Portfolio Committee on Communications.

On 30 September, the committee tabled its report in which it stated that a total of nine candidates were interviewed in Parliament. The committee recommended to the President that Dr T Bosch and Ms P Ntombela-Nzimande be appointed as Board members.

On 22 October, the Assembly adopted the committee's recommendation. The President subsequently appointed Dr Bosch and Ms Ntombela-Nzimande as members of the MDDA Board with effect from 1 January 2009 for a term of office of three years.

### **[42] PUBLIC SERVICE COMMISSION (PSC): RECOMMENDATION FOR APPOINTMENT OF COMMISSIONERS**

On 29 July, the President informed the Speaker of current and impending vacancies in the PSC and requested the initiation of the process for the recommendation by the Assembly of three fit and proper persons to fill the vacancies.

Furthermore, the President requested that in view of the limited number of sittings of the Assembly in 2008 and the general elections in 2009, the necessary processes be initiated to fill vacancies.

On 29 August, the Speaker tabled the President's request and referred it to the Portfolio Committee on Public Service and Administration.

Section 196(7) of the Constitution provides that five of the 14 commissioners that are appointed by the President must be approved by the National Assembly. Section 196(8) further determines that the commissioners must be –

- recommended by a committee of the Assembly that is proportionally composed of members of all parties represented in the Assembly; and
- approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members.

On 14 November, the committee tabled its report. In addition to the three candidates recommended by the committee to serve on the PSC, the committee also recommended two further candidates in the event that any of the recommended candidates was not available to serve on the Commission.

On 20 November, the Assembly approved the nomination of Ms N J Mxakato-Diseko, Mr M J Malahlela and Ms S S Nkosi to fill the positions of commissioners on the PSC in

terms of section 196(8)(a) of the Constitution and that Mr G P Bogatsu and Mr D van Wyk be recommended as supplementary nominations.

#### **[43] SOUTH AFRICAN HUMAN RIGHTS COMMISSION: RECOMMENDATION FOR APPOINTMENT OF COMMISSIONER**

On 25 September, the request by the Minister of Justice and Constitutional Development for the filling of a vacancy of a full-time commissioner on the Human Rights Commission in terms of section 193(5) of the Constitution was referred to the Ad Hoc Committee on Filling of Vacancy on Human Rights Commission for consideration and report.

On 26 September, the Assembly agreed to establish a 13-member ad hoc committee to consider the nominations and report to the Assembly by 5 November. However, the deadline for reporting was extended to 17 November. The committee tabled its report on 14 November and on 19 November, the House agreed to recommend to the President that Ms P Govender be appointed as a full-time commissioner on the South African Human Rights Commission.

#### **[44] 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* and *Item 30, Issue 13*).

A vacancy occurred on the Icasa Council as a result of the resignation of a councillor. On 17 May 2007, the Minister of Communications wrote to the Speaker informing her that Ms M Mohlala had tendered her resignation, effective from 31 May 2007. 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 (see *Item 30, Issue 13*).

On 23 October 2007, the Assembly approved the committee's report in respect of the shortlisted candidates. The Minister was duly informed that Ms R Msiza and Mr T Ndlovu had been shortlisted. On 20 November 2007, the Minister recommended the appointment of Ms R Msiza as an Icasa councillor, and on 30 November 2007, the Minister's recommendation was tabled and referred to the committee for consideration and report (*ATC, 21 February, p280*).

On 28 February, the Assembly agreed to the appointment of Ms Msiza as an Icasa councillor. (*Minutes, 28 February, p358*).

A letter dated 14 April was received from the Minister advising the Assembly of the unavailability of Ms R Msiza for appointment to the Icasa Council. The Minister requested the National Assembly to reopen the nomination process for the filling of this vacancy, and for it to run concurrently with the filling of two other vacancies being processed by the committee.

The committee again invited the public to nominate persons for appointment to the Icasa Council. The committee interviewed six candidates and recommended to the House a list of suitable candidates at least one and a half times the number of councillors to be appointed (*ATC, 11 June, p1105*).

On 12 June, the House agreed that the names of Mr F Sibanda, Ms N Batyi, Mr T Makhakhe, Ms L S Somo and Prof B Dumisa be submitted to the Minister for consideration for appointment as councillors to Icasa (*Minutes, 12 June, p1113*).

The Minister recommended that, in terms of section 5(1B) of the Icasa Act, No 13 of 2000, as amended, the National Assembly approves that Mr F K Sibanda, Ms N Batyi and Mr T Makhakhe be appointed to serve on the Icasa Council. Having considered the Minister's recommendation, the committee recommended that the National Assembly approve the appointment of the three persons mentioned above (*ATC, 25 June, p1423*).

On 25 June, the House agreed that Mr F K Sibanda, Ms N Batyi and Mr T Makhakhe be appointed as councillors to fill vacancies on the Icasa Council (*Minutes, 26 June, p1428*).

#### **[45] TECHNOLOGY INNOVATION AGENCY – RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBERS**

In terms of section 5(5) of the Technology Innovation Agency Act, No 26 of 2008, the Portfolio Committee on Science and Technology shortlisted candidates for appointment to the Board of Directors of the Technology Innovation Agency on 17 March. The House approved a list of candidates which it submitted to the Minister for consideration on 24 March.

At the time of writing the Minister had not yet made the appointments.

## UNPARLIAMENTARY LANGUAGE

Unparliamentary language is seen as any remark or expression which is contrary to the provisions in the Rules and agreed practice. This includes offensive, provocative or threatening language in the House, personal attacks on members, insults and obscene language.

The rules governing the use of offensive or unbecoming words also apply to quotations. An offensive remark is no less offensive for being framed as a question. Unparliamentary expressions are only applicable with reference to members of the House and not to political parties. Derogatory remarks about members' race, ethnicity or religion are unparliamentary. The withdrawal of an unparliamentary expression must be unconditional. Once the words or expressions have been withdrawn, they cannot be referred to again in a debate.

In deciding whether an expression is unparliamentary, the Chair takes into account the tone, manner and intention of the member speaking, the person to whom the expression is directed, the degree of provocation and whether or not the remarks created disorder in the Chamber, as well as the context in which the expression was made.

The following are expressions that have been ruled to be unparliamentary for the period April 2004 to March 2009, as well as those that were challenged but not ruled to be unparliamentary. It must be remembered that in all these cases the specific context would have been a factor in the ruling that was given.

### [46] EXPRESSIONS DECLARED UNPARLIAMENTARY DURING THE THIRD PARLIAMENT (APRIL 2004 – MARCH 2009)

#### A

**Amanga aluhlaza** [Blatant lies]  
**Animal**, member is an

#### B

**Baas boy**  
**Baying of donkeys**  
**Bigot**  
**Bobbejaan** [baboon].

#### C

**Cat**, member thinks, behaves and talks like a  
**Cheap woman**  
**Chihuahua**  
**Clown**  
**Compromised**, you are (with reference to a member)

**Corrupt** (with reference to a member)  
**Cover-up**  
**Cowardly**  
**Crowd**

#### D

**Deliberately misled the House**  
**Despicable**  
**Dishonest**  
**Dogs**  
**Donkeys**  
**Don't lie** (in reference to a member)

#### F

**Fat cats**, bunch of well-connected ANC  
**Farce** (with reference to parliamentary process)  
**Feel at home on the farmyard with our feathered**  
**Friends of criminals**

#### H

**Horns**, not have the **horns**, but he certainly has the knack  
**Horrible**, member is  
**House of Clowns**  
**Hungry puppies**

#### K

**Killing of many thousands of people**, Minister played an active role in the

#### L

**Liars**  
**Lot**  
**Lying**, member is

#### M

**Mentally unfit**  
**Meow** (or any other animal noise)  
**Mob**

#### P

**Presided over the deaths of thousands of people**  
**Political criminal**

#### R

**Racist**, a member is a

#### S

**Sell-out**  
**Sham** (with reference to the parliamentary proceedings)  
**Sit on a member**  
**Slinks**

#### T

**Taliban**, go back to Afghanistan  
**That man with a moustache looks like a security agent of the past who tortured me**  
**Threatening**, President not to attend sitting  
**Travelgate thieves**  
**Treason**, accuse member of  
**Truth**, does not speak the

#### U

**Underhandedness**  
**Unparliamentary**, member is

## W

**Winkie** (or referring to member by name)

## [47] EXPRESSIONS CHALLENGED BUT NOT DECLARED UNPARLIAMENTARY

## A

**Arrogant**, Minister is

## B

**Blackmailed into consensus**, we will not be

**Biggest mouthed member**

**Bored**

## C

**Charming**

**Corrupt government**

**Cover-up**

## D

**Dictator**, member was a

## I

**Ill-considered statements**, by members

**Improper conduct**

**Izinja ziyayikhonkotha imoto ehambayo, emileyo ziyayintsontsela** [Only those who work hard are being criticised]

## L

**Last refuge of scoundrels** (with reference to a party)

## M

**Misleading**, member

**Misled the House**

## N

**Naïve** (with reference to a party)

**Network of syndicates of crime** (with reference to government)

**Nonsense**, member is talking

## P

**Pipsqueak**

## R

**Racist** (with reference to a party)

**Rubbish**, I will not listen

**Rude to ignore repeated letters**

**Rutang bana ditaola**, [equip the young generation with the necessary skills]

## S

**Scavenger** (with reference to a party)

**Shut up**

**Stupid**

## T

**Token members**

## U

**Ukhulume izinto ezingelona iqiniso** [she spoke about things that are not true]

## W

**Womanhood is questionable**, your

## ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (daily paper which is effectively an appendix to the Minutes of Proceedings)
JRC	Joint Rules Committee
JSCI	Joint Standing Committee on Intelligence
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
POA	Parliamentary Oversight Authority

## 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 Congress
PAC	Pan Africanist Congress of Azania
Azapo	Azanian People's Organisation
FD	Federation of Democrats
NA	National Alliance

