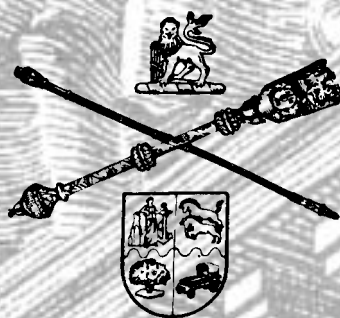


Parliament of the Republic of South Africa



# PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Fifth Session – Second Parliament  
January to July 2003

# 7



Parliament of  
the Republic of  
South Africa

## 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. This seventh issue covers the period from January to July 2003.

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# PRESIDING OFFICERS & OTHER OFFICE BEARERS

– **SPEAKER RELINQUISHES CHAIR IN ASSEMBLY RULES COMMITTEE TO PARTICIPATE IN DISCUSSION AND MOVE A PROPOSAL FOR ADOPTION:** see Item 17 under “Members”

## 1. ALLEGATIONS AGAINST PRESIDING OFFICERS IN JOINT RULES COMMITTEE

At the first meeting of the Joint Rules Committee (JRC) for the year, on 4 February, the Presiding Officers submitted a written report on a meeting they had held with the Minister of Finance concerning Parliament’s budget for 2003/04. According to the report, the Minister had raised several critical issues and, concerning “the exact role of the Presiding Officers as the executive authority in terms of the PFMA (Public Finance Management Act)” -

...the Minister stated that the JRC should assist in removing the contradiction that exists in the current rules wherein the JRC is the apparent executive authority while Presiding Officers appear to be accounting officers.

Adv De Lange, a member of the majority party, then stated:

We all know that it was not Minister Manuel who raised the point ..... We know that the two of you, Presiding Officers, hold this view and we know how you feel on these matters. Clearly, you raised it with Minister Manuel and now it is given to us in the form of them (Treasury) wanting to raise it with us.

He went on to give his view of the relative role and functions of the Presiding Officers and the JRC. The Speaker, as co-chairperson of the JRC, ordered Adv De Lange either to substantiate or withdraw the allegation and, when he refused to do so until he had spoken to the Minister, the Speaker immediately adjourned the JRC.

The Speaker and the Chairperson of the National Council of Provinces thereupon decided to report the allegation directly to their respective Houses. As the Houses were not due to meet soon, they reported by way of publishing the unrevised transcript of the relevant proceedings of the JRC in the document “Announcements, Tablings and Committee Reports” (ATC of 4 February).

A special meeting of the JRC was called for the next day, 5 February, jointly by the Chief Whip of the Majority Party in the National Assembly and the Chief Whip of the National Council of Provinces after consulting the Whips of all parties.

At the meeting, the Presiding Officers as co-chairpersons took the Chair and immediately requested the JRC to elect chairpersons to deal with the subject matter before the Committee.

The Committee elected the Chairpersons of Committees of the two Houses, Mr G Q M Doidge and Ms S N Ntlabati, as acting co-chairpersons, who thereupon took the Chair. Adv De Lange was then given an opportunity to make a statement and did so in the following terms:

I would like to make a statement dealing with a retraction of those remarks made by me at that joint meeting yesterday, the 4th of February. I would like to say that I regret having made those remarks and I withdraw them unconditionally. I obviously apologise to this Committee for any inconvenience that I may have caused in the process.

Although the Presiding Officers, given an opportunity to comment, expressed their dissatisfaction with the terms of the apology as it had not been directed at the affected members including the Minister of Finance, the JRC resolved that it accepted the withdrawal and that it should be published in the next ATC. The JRC agreed that that disposed of the matter. Adv De Lange’s statement was subsequently reported to the Houses in the First Report of the Joint Rules Committee, 2003, which appeared on the ATC of 14 February.

## 2. MEMBERSHIP OF NATIONAL ASSEMBLY OF DEPUTY CHAIRPERSON OF COMMITTEES TERMINATED AND RESTORED

By arrangement between the ANC as the Majority Party and the IFP, the office of the Deputy Chairperson of Committees has since 1999 been held by a member of the IFP. Mr M F Cassim of the IFP was accordingly elected to that office by the House on 12 September 2000 after the resignation of Dr K Rajoo of the same party.

When a Constitutional amendment took effect on 20 March enabling members during a specified “window period” to change their party membership without thereby losing their seats in Parliament, Mr Cassim used the opportunity on 4 April to leave the IFP and join the Peace and Justice Congress (PJC) as its only representative in the Assembly. [See *Item 21 below*]. Mr Cassim’s change of party was announced by the Speaker in the document “Announcements, Tablings and Committee Reports” of 4 April.

Mr Cassim’s membership of the PJC had been confirmed by a designated representative of the PJC, Mr M R Khan. As later appeared from court papers, a dispute subsequently arose between Mr Cassim and other PJC members concerning party leadership, candidates’ lists and other issues. This resulted in the Speaker receiving a letter on 17 June from Mr M R Khan, then as party leader of the PJC, informing her that Mr Cassim’s membership of the PJC had been terminated, that the decision was final and that “there are





no internal remedies available to Mr M F Cassim in terms of our (PJC's) Constitution". By operation of the law, the seat of the PJC in the National Assembly accordingly fell vacant on 17 June.

As 17 June was a sitting day of the House and, indeed, Mr Cassim had presided in the House on that day prior to the Speaker receiving Mr Khan's letter, Mr Cassim was immediately informed in writing that his membership had been terminated and the Speaker, when she took the Chair in the course of the afternoon, interrupted the debate to inform the House that Mr Cassim had vacated his seat in the National Assembly "with effect from today" as his membership of the PJC had been terminated, and that the Office of Deputy Chairperson of Committees had also been vacated (Minutes, 17 June).

As the party list of the PJC as published was also in dispute and an alternative list submitted by Mr Khan beyond the permissible date could not be accepted, the seat could not immediately be filled, nor did the House immediately elect a new Deputy Chairperson of Committees.

On 4 July, the High Court (Cape of Good Hope Provincial Division) on the application of Mr Cassim granted an interim order directing the Speaker to restore the *de facto status quo* as of 17 June and to respect all his rights and privileges as a member and permit him to carry out his duties as a member. On the same day, the PJC applied for leave to appeal against the interim order which resulted in a suspension of that order until the outcome of the appeal. Subsequently, on 29 July, a further court order was issued giving effect to the interim order of 4 July and therefore restoring Mr Cassim's membership as of 17 June notwithstanding Mr Khan's notice seeking leave to appeal. Mr Cassim was accordingly informed in writing that his membership of the National Assembly continued without interruption from 17 June "until the expiry of the court order, as indicated by the Court, or as the Court may further order in the finalisation of this matter". Shortly thereafter, on 1 August, the PJC gave notice to the Court withdrawing its opposition and its appeal. The effect was that Mr Cassim's position as a member of both the PJC and the National Assembly was uncontested and continued without interruption. The restoration of his membership was announced in the ATC of 5 August.

#### *Effect of court order on elected presiding officer*

Since 29 July, Mr Cassim has resumed his functions both as a member and as Deputy Chairperson of Committees. The Speaker has, however, raised the question in the Assembly Programme Committee as a matter of principle whether the courts, in respect of an office-bearer elected by the House, could order a person to be reinstated to that position as that would amount to the courts determining the

internal affairs of the Assembly. She therefore recommended that, in order to put the matter beyond doubt and to send a signal to the courts that they could not interfere in Parliament's internal affairs, parties consider adopting a resolution in the House either affirming Mr Cassim as Deputy Chairperson of Committees or appointing another person (Programme Committee Minutes, 21 August). Parties responded by proposing to discuss the matter further, but at the time of going to print no effect had as yet been given to the Speaker's proposal.

### **3. ELECTION OF MEMBER AS TEMPORARY PRESIDING OFFICER**

When the office of the Deputy Chairperson of Committees fell vacant (temporarily) on 17 June (*See Item 2 above*), the Speaker at a meeting of the National Assembly Programme Committee on 19 June, raised the need to have temporary chairpersons elected as the House was due to sit until late in the following week.

As a consequence, Mr B Nair was elected by the House to preside during the sitting on 24 June when required to do so by the presiding officer, and Mr E Sigwela was also elected on 25 and 26 June, to preside when required on those two days.

## **PROCEDURAL & RELATED ISSUES**

### **4. ALLOCATION OF SPEAKING TIME**

Speaking time in debates is allocated to parties in accordance with their numerical strength in the National Assembly. As a result of the floor crossing process, the numerical strength of the parties in the Assembly changed and the Chief Whips' Forum discussed the reallocation of speaking time in line with those changes. [*See Item 21 of this Issue*]

The Forum decided on 28 May that speaking time would be allocated to parties in the various categories of debates in proportion to the number of members per party represented in the National Assembly. The ANC would continue to donate its time to smaller parties and smaller parties would also be allowed to donate time amongst one another. This arrangement would be guided by the following principles:

- a) the principles which should be upheld are that, firstly, parties must be encouraged to participate in debates. Secondly, the system that is currently in place is informed by proportionality in accordance with the electorate's mandate. No agreement on time allocation should distort the system;
- b) when a member of the Executive is participating in a debate in his/her executive capacity, the time is deducted from the total allocated for

- c) the debate and party times are recalculated on the balance;
- d) the donation of time is a one-on-one arrangement. This should not involve more than two parties and the time donated should not exceed two minutes;
- e) any negotiations concerning speaking time should be done in advance of a sitting and Whips should be informed of the outcome; and
- f) the process of advising parties on a weekly basis of the actual time allocated per debate will continue.

The DA, FA and ACDP requested that their objections against this agreement be noted.

## 5. REQUEST FOR URGENT DEBATE

On 18 March, the DA (then Democratic Party) requested an urgent debate in terms of rule 104 (matter of urgent public importance) on the imminence of war in Iraq on the grounds that “South Africa’s interests are vitally affected by the looming war situation”. The DA’s request met the criteria for such debate. The request, however, was not granted due to the fact that the relevant members of the Executive were not available and that the debate that afternoon on the Appropriation Bill provided an opportunity for the topic to be discussed. By agreement in the light of the request, an additional 30 minutes were added to the time allocated for the First Reading debate of the Bill.

## 6. TIMES FOR PARTY RESPONSES TO MINISTERIAL STATEMENTS

Rule 106 determines that a member or members of each party may respond to a ministerial or executive statement for not more than three minutes per party. Over time a practice has developed for the House to adopt a resolution with altered times for parties on each occasion of a ministerial statement. In March 2002, however, the House adopted a resolution with altered times for the remainder of the year. [See Issue 5, Item 3]

On the first occasion of a ministerial statement in 2003 - a statement by the Minister of Trade and Industry on 19 March - it was agreed beforehand that party responses would be accommodated later and it was, therefore, not necessary for the House to adopt a resolution on that day. On 24 March, however, the House agreed to altered times for party responses to the statement by the Minister of Sport and Recreation on that day. On 25 March, party responses to the statement by the Minister of Trade and Industry were given precedence after the House had adopted a further resolution regarding altered times for party responses.

As the period for floor crossing was imminent, it was decided not to agree to adjusted times for the remainder of the year

initially, as the number of parties in the House could increase or decrease, depending on the results of the floor crossing. After the floor crossing, 17 parties having representation in the Assembly, the House on 24 June agreed, (with the ACDP dissenting), to the following times for party responses to ministerial statements for the remainder of 2003: *ANC - 7 minutes; DA - 5 minutes; IFP - 3 minutes; NNP - 2 minutes; and all other parties - 1 minute each.*

## 7. SUSPENSION OF PERIOD BETWEEN COMMITTEE REPORT AND HOUSE DEBATE

If a bill has been referred to an Assembly committee or joint committee, Rule 253 provides that the debate on the Second Reading of the bill may not commence before at least three working days have elapsed from the date the committee’s report was tabled.

As reported in the previous issue [See Issue 6, Item 7], the Rule had been waived in respect of 12 bills during 2002. The Programme Committee, at its meeting on 13 February, therefore agreed that portfolio committees would be informed that the “3-day Rule”, as it is commonly called, would not be suspended, particularly in view of the fact that it was still early in the year.

During the first half of 2003, Rule 253(1) was suspended on one occasion, namely on 17 June, for the purpose of conducting the Second Reading debate on the Mining Titles Registration Amendment Bill [B24 2003].

## 8. RULING ON EARLY START TO PROCEEDINGS

At the beginning of 2003, the annual debate on the President’s state of the nation address was due to take place from 14:00 on Tuesday, 18 February, and continue on Wednesday, 19 February, with the President replying to the debate on Thursday, 20 February. However, on 23 January, the Programme Committee agreed to condense the debate to two days and to start a day earlier to enable the President to attend to urgent matters of state abroad. This decision necessitated the House to start at 10:00 on Monday, 17 February, and at 09:00 on Tuesday, 18 February.

From Monday to Thursday the hours of sitting of the House are “14:00, or such later time as the Speaker determines, to adjournment” (Rule 23). If the House wishes to start earlier, the House is required by resolution to suspend the Rule. As the decision affected the first sitting of the House for the year, there was no earlier opportunity for the House to adopt such a resolution.

The matter was therefore regularised by the following ruling by the Speaker, published in the ATC for general information on Tuesday, 4 February:

In terms of the powers vested in me in Rule 2 to give a ruling in respect of



unforeseen eventualities, I rule that notwithstanding the hours of sitting provided for in Rule 23, the House commence sitting at 10:00 on Monday, 17 February 2003, and 09:00 on Tuesday, 18 February 2003, for the purposes of the debate on the President's state of the nation address, as decided by the Programme Committee on 23 January.

## 9. ALLOCATION OF WHIPS

The NA Rules Committee, on 29 June 1999, agreed that whips be appointed in accordance with the ratio of 1 whip for every 8,69 members. The Chief Whip of the Majority Party, the Chief Whip of the Opposition and the Deputy Chief Whip of the Majority Party would not form part of the calculation. After the floor crossing, the allocation of whips is as follows: ANC - 32; DA - 5; IFP - 4; NNP - 2; ACDP - 1. The 11 "smaller parties" (UDM; UCDP; PAC; FF; FA; MF; AZAPO; NA; AIM; ID; ADP) who together have 20 members have been allocated 2 whips.

## 10. ALLOCATION OF SEATS IN CHAMBER

The seating arrangements in the NA are done informally among the parties. The Whips of different parties meet among themselves to reach consensus on new seating arrangements whenever there is need to change the seating in the House.

After the floor crossing [*See Item 21 below*] there was a need to rearrange the allocation of seats in the Chamber as some members left their parties to join other parties whilst others formed new parties. The Whips met on 7 April and reached consensus on new seating arrangements in the House. Only one party (ACDP) was not satisfied with the new seating arrangements. The matter was subsequently referred to the Chief Whips' Forum for decision. The Forum discussed the matter and it was resolved to the satisfaction of all the parties concerned.

## 11. MEMBERS' STATEMENTS AND NOTICES OF MOTION

– **MEMBERS' STATEMENTS: FOR PROCESSES LEADING TO THE INTRODUCTION OF MEMBERS' STATEMENTS:** see Issue 6, Item 1

### (a) *Members' statements*

The Programme Committee on 14 November 2002 approved that -

- (a) Members' statements be introduced for a trial period, commencing with the first term of 2003;
- (b) The process be monitored in terms of the identified objectives by a small committee of the Chief Whips' Forum; and

- (c) Following a final review at the end of the first term, the Rule (Rule 105) be appropriately adjusted and put to the House for adoption.

The Chief Whips' Forum established a Task Team (Monitoring Committee) which met regularly during the first term to agree to the wording of an appropriately amended rule for subsequent adoption by the House, and monitor the implementation of members' statements during the trial run and make recommendations in this regard. The guidelines on members' statements were approved by the Chief Whips' Forum and subsequently published in the ATC of 13 February. A briefing session for members was conducted on 19 February, at which staff presented the new procedures. Members' statements were introduced in the House on 25 February for a trial run until the end of the first session (April). Members raised concerns in regard to whether a Deputy Minister or Minister from the same cluster should be given an opportunity to respond to statements if a specific Minister is absent. Rule 105 states that -

a Cabinet member present must be given an opportunity to respond..... to any statement directed to that Cabinet member or made in respect of that Cabinet member's portfolio.

Consensus was reached that the Deputy Minister of the affected portfolio and the Ministers from the same Cabinet cluster would be given an opportunity to respond on behalf of an absent Minister, but preference would be given as follows: Minister/Deputy Minister/other Ministers in the same Cabinet cluster. (The reference to "Cabinet member" in the Rule would need adjustment because Deputy Ministers are not Cabinet members).

On 16 April, the House adopted the amended Rule 105 (Minutes, 16 April). The amendments entail the following:

- (a) Total time allocated for members' statements including responses by Ministers is 31 minutes;
- (b) Time allocated for a member to make a statement is one and a half minutes;
- (c) Members are allowed to make 14 statements per day;
- (d) A maximum of 5 Ministers are given an opportunity to respond to members' statements, a response not to exceed 2 minutes;
- (e) Ministerial responses are taken in the following order of preference: Minister whose portfolio a statement is directed at, the relevant Deputy Minister, or a Minister from the same Cabinet cluster responding on behalf of the absent Minister;
- (f) Statements are taken on Tuesdays and Thursdays, and Fridays when the Assembly sits on a Friday, unless the Programme Committee determines otherwise.

The House further resolved that the Guidelines, as published in the ATC of 13 February, would continue to apply.

#### *(b) Notices of Motion*

With the introduction of members' statements, notices of motion had been restored to their original purpose of enabling members to initiate business for consideration or decision by the House where that was the express intention. The Guidelines as approved by the Chief Whips' Forum and published on the ATC of 13 February covered both members' statements and notices of motion, and the Forum's monitoring committee at the time of this report was separately considering processes for the selection and scheduling of motions of which notice had been given in accordance with the new approach.

## QUESTION TIME IN THE HOUSE

### 12. MONITORING OF EXECUTIVE REPLIES TO QUESTIONS

Questions to the Executive by members are an important parliamentary mechanism for holding Cabinet members to account. The effectiveness of this mechanism depends to some extent on replies being received timeously. At a Rules Committee meeting on 23 October 2002, concerns were discussed about delayed replies and the Speaker's Office was requested to present a system to monitor delayed replies. On 4 March, the National Assembly Rules Committee approved the following system to monitor delayed replies to members' questions. The system was, however, not immediately implemented as Parliament wanted to obtain inputs from the Executive.

#### *(a) Questions for written reply*

The Rules do not prescribe a time limit by which a Minister must submit a reply in writing to a question. In terms of Rule 117, if the Minister has not replied within 10 working days since the date of first publication, a member in whose name the question stands may request that the question be transferred for oral reply. The Internal Question Papers reflect to which Questions replies are outstanding and for how long.

In terms of the Monitoring system, two weeks before the end of each term in any year, staff should report to the Speaker on all questions for written reply that are already 6 weeks old (since date of first publication) and replies outstanding from the previous term.

The Speaker then writes to the Ministers concerned, requesting a reply within 7 days or a written explanation for the delayed response to questions.

The letter is copied to the member concerned, the Leader of Government Business (LGB) and the Portfolio Committee which exercises

oversight over that Minister/Department.

Written explanations for delayed replies are published in the ATC, and copied to the member, the LGB and the relevant Portfolio Committee.

If no reply or explanation for the delay is received within 7 days, the Speaker writes directly to the LGB and copies the letter to the Minister, the member who posed the question and the relevant Portfolio Committee.

Once a year the Speaker reports to the NA Rules Committee on questions that, despite the monitoring system and letters, still remain unanswered.

#### *(b) Questions for oral reply*

In terms of Rule 115, a question for oral reply may not stand over more than once. If a question standing over is not answered on the day for which it is set down for reply, the Question Paper must indicate that the question has not been replied to. Questions not replied to at the end of any year lapse.

In terms of the Monitoring system, staff inform the Speaker when a question has not been answered on the second occasion when it has already stood over once.

The Speaker then writes to the Minister concerned requesting a written explanation for the failure to reply in time in accordance with the Rules. The letter is copied to the member concerned, the LGB and the relevant Portfolio Committee.

The explanation, when received, is published in the ATC and referred to the NA Rules Committee to assess the acceptability of the explanation.

If no explanation is received, the Speaker writes directly to the LGB in that regard.

The Rules Committee annually reviews Ministers' timeous submission of replies.

### 13. URGENT QUESTION TO PRESIDENT

On 30 May, the Leader of the Opposition, Mr A J Leon, submitted an urgent question to the President in terms of Rule 112 based on allegations contained in an article in the Mail and Guardian of 30 May.

In terms of the Rule, the request for an urgent question must be submitted to the Speaker by 12:00 on the Tuesday preceding the following week's Wednesday. In this case questions to the President were scheduled for Thursday, 5 June 2003. The request should therefore have been received by 12:00 on Wednesday, 28 May. The question was only submitted on 30 May.

The request was not granted because it did not comply with the prescribed notice period. Mr Leon was advised that political agreement among parties would have to be obtained to suspend Rule 112 at the next sitting day to accommodate his request. The request could be granted for Wednesday, 11 June, subject to the availability of the President. In the event, the request for an urgent question was not proceeded with.



# PARLIAMENT AND THE EXECUTIVE

## 14. APPROVAL OF SALARY INCREASE TO PRESIDENT

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

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

On 16 April, the House agreed to a motion moved by the Chief Whip of the Majority Party that the salary and allowances payable to the President be determined at seven hundred and forty-seven thousand, four hundred and ninety rand and fifty cents (R747 490, 50) and two hundred and forty nine thousand one hundred and sixty-three rand, fifty cents (R249 163, 50) per annum, respectively, with effect from 1 April.

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

## 15. NOTIFICATION OF EMPLOYMENT OF DEFENCE FORCE

Both the 1993 Constitution (of which certain provisions continue to apply) and the 1996 Constitution, stipulate that the President must inform Parliament of the employment of the Defence Force in co-operation with the police service, in defence of the Republic, or in fulfillment of an international obligation. Four such communications were received from the President in the period under review, as follows:

- 2 May - Burundi
- 19 June - Eastern Democratic Republic of Congo
- 7 July - Democratic Republic of Congo and Uganda
- 9 July - Mozambique

## 16. APPOINTMENT OF NEW MINISTER AND DEPUTY MINISTER

Ms B S Mabandla, previously Deputy Minister of Arts, Culture, Science and Technology was appointed Minister of Housing on 26 February.

She replaced Mrs S D Mthembu-Mahanyele who was released from her duties as Minister of Housing at the end of business on 25 February and subsequently resigned from the National Assembly on 26 February. Mrs Mthembu-Mahanyele was redeployed by her party to the ANC headquarters to take up the position of Deputy General Secretary.

Ms B P Sonjica was appointed Deputy Minister of Arts, Culture, Science and Technology on 26 February.

## MEMBERS

– **MEMBERSHIP OF PARLIAMENT OF DEPUTY CHAIRPERSON OF COMMITTEES TERMINATED AND RESTORED:** see "Presiding Officers & Other Office Bearers (Item 2)

## 17. DISCIPLINARY STEPS AGAINST MEMBER FOR BREACH OF CODE OF CONDUCT AND MISLEADING THE HOUSE

### (a) Background

In March 2001, the Joint Committee on Ethics and Members' Interests received a complaint against Mr T S Yengeni, MP - an ANC member and former Chief Whip regarding his failure to disclose a benefit he had allegedly received when purchasing a motor vehicle. The allegation was made in the context of the Strategic Defence Procurement Process. On 28 March 2001, Mr Yengeni was given an opportunity to make a statement in the House concerning the allegation against him.

In the light of the external forensic investigation that was being conducted into the arms procurement process by a Joint Investigating Team (JIT), the Joint Committee recommended in an Interim Report in June 2001 that the JIT's report should be awaited before the complaint was proceeded with.

After the JIT Report was tabled in November 2001, the Joint Committee issued a further report, in December 2001, noting that a criminal case was pending against Mr Yengeni. The Committee indicated that it would be prudent to await the conclusion of the criminal case before considering the allegation of non-disclosure of the benefit by Mr Yengeni. This report was adopted by the Assembly on 13 August 2002. These matters were reported on in greater detail in an earlier issue of this publication. [See Issue 4, Item 11].

### (b) Court case

The case against Mr Yengeni before the Regional Court for the Regional Division of Northern Transvaal involved a charge of corruption with an alternative charge of fraud. After the court hearing resumed early in 2003, the Court on 13 February accepted a plea agreement from Mr Yengeni and he was found guilty on the alternative charge of, unlawfully and with intent to defraud, falsely and to the



prejudice of Parliament failing to disclose to Parliament a benefit he had received in the form of a discount on the purchase of a motor vehicle, and furthermore making false representations to Parliament in that regard.

He was subsequently, on 19 March, sentenced to four years' imprisonment and has since lodged an appeal against the sentence.

#### *(c) Processes in Assembly*

On 17 February, the first sitting day of the Assembly for 2003, the Speaker announced the outcome of the court case in the House and informed members that she had written to the Joint Committee on Ethics and Members' Interests requesting them to resume without delay their consideration of the complaint against Mr Yengeni. She went on to point out that the personal statement Mr Yengeni had made in the House in March 2001 concerning the allegations against him, in which he may have made false representations to the House, fell outside the mandate of the Joint Committee and therefore the House itself should consider how best to deal with that aspect.

After an informal discussion on the issue between the Deputy Speaker (acting for the Speaker in her absence) and party whips, the Speaker reported in the National Assembly Programme Committee on 20 February that the Chief Whip of the Majority Party would draft a motion for urgent discussion and agreement in the Chief Whips' Forum on possible misrepresentations made by Mr Yengeni in his statement to the House.

At the next meeting of the Programme Committee, on 27 February, the Speaker reminded members that if it was established that Mr Yengeni had misled the House in his statement to it, that constituted a very serious offence. However, the Rules did not provide for sanctions that could be imposed by the House (except censure). The Rules Committee, which would be meeting the following week, would have to consider how in the circumstances the House should proceed.

When the Rules Committee met on 4 March, there was agreement that the matter of Mr Yengeni's possibly having misled the House in his statement to the House in March 2001 should be dealt with expeditiously. Opinion was divided, however, on the process that should be followed. The Speaker relinquished the chair in order to participate in the discussions from the floor. She emphasised that parties should take collective responsibility to protect the integrity of Parliament and proposed that, as Mr Yengeni had made his statement to the House and the public, he should be invited by House resolution directly to address the House on the issue. On the basis of what he said, the House could then decide on an appropriate sanction or, if necessary, refer the matter to a small committee. The Speaker's proposal was supported by the opposition parties in the

committee. The ANC, as majority party, however, stressed that judgement should not be passed on the matter without following due process. Hence an opportunity should be created for Mr Yengeni to be heard but also for members to pose questions. They therefore proposed that a small ad hoc committee should be established as soon as possible by House resolution and that Mr Yengeni should be called before that committee to explain his actions. Whether Mr Yengeni would subsequently be required to appear before the House would depend on the committee's report. The committee would meet in public and according to practice be composed of parties in proportion to their representation in the Assembly.

The ANC's proposal, put as an amendment to the Speaker's proposal, was adopted by 24 votes to 11, and the Speaker's proposal therefore dropped.

On the same day, 4 March, the Chief Whip of the Majority Party gave notice in writing of a motion to appoint a committee to consider Mr Yengeni's statement of 28 March 2001, his guilty plea in court on 13 February as well as any representation by Mr Yengeni, and to advise the House on whether Mr Yengeni deliberately misled the House and, if so, to make recommendations regarding appropriate sanctions. The committee would be required to report by 14 March. The motion was scheduled for consideration by the House on 5 March.

#### *(d) Member's resignation*


When the House met on 5 March, the Speaker announced that she had on that day received a letter from Mr Yengeni resigning from the National Assembly forthwith. She went on to announce that the motion on the Order Paper in the name of the Chief Whip of the Majority Party by agreement would stand over for reconsideration. Parties were then given an opportunity to respond to the Speaker's announcement. Immediately afterwards, the Chief Whip of the Opposition sought leave to move a motion without notice. When there were objections to the absence of notice, he subsequently gave notice of a motion on 7 March noting that Mr Yengeni had resigned and proposing that the House "censures Mr Yengeni for his conduct in abusing the protection of the Chair and the Rules with the deliberate intention of misleading the House".

Both notices of motion remained on the Order Paper when the House went into recess at the end of June.

#### *(e) Final Report of Joint Committee on Ethics and Members' Interests*

Following Mr Yengeni's guilty plea, the Joint Committee resumed its consideration of the complaint against Mr Yengeni. The Committee, in a report dated 14 March (ATC of 18 March), noted that Mr Yengeni had resigned from Parliament and stated that in its view the





complaint against Mr Yengeni “may not be pursued, as he is no longer a Member of Parliament”. It went on to report that it had considered Mr Yengeni’s guilty plea and, on the basis of Mr Yengeni’s admission in court, was of the view that “his continued participation in Parliament would have been inappropriate. Mr Yengeni’s resignation is therefore appropriate”. The Committee went on to state that in its view Mr Yengeni had breached the Code of Conduct and that it “deplores, in the strongest terms possible, the damage done to public trust in Parliament by Mr Yengeni”.

Arising from its consideration of this complaint, the Committee noted that a review of the Code and some of its investigation procedures was necessary. The Report was formally noted by the House on 17 June.

#### **18. DELAYED IMPLEMENTATION OF PENALTIES AGAINST MEMBER**

As reported in the previous Issue of these Notes [See Issue 6, Item 16], the Assembly had on 12 November 2002 adopted a report of the Joint Committee on Ethics and Members’ Interests concerning Mrs N W Madikizela-Mandela’s contravention of the Code of Conduct for Members in failing to disclose various donations and financial interests. The Committee’s recommendations, adopted by the House, were that she be severely reprimanded by the Speaker and that she be penalised with a reduction of the equivalent of a period of 15 days’ salary.

The Assembly went into recess the following day and in the member’s absence the penalties could not immediately be implemented. Shortly afterwards the member instituted legal proceedings, applying to the High Court to review and set aside the Joint Committee’s recommendations, to declare them null and void *ab initio*, and to interdict the Speaker and Parliament from implementing them. She contended in her application that she had not been given a chance by Parliament to be heard when the complaints against her were being considered.

When the 2003 session commenced, the case had not yet been set down for a court hearing, and on 10 March the Speaker wrote to the member requesting her to attend a National Assembly meeting within 10 days in order that the penalties could be implemented. A letter was also sent to the ANC Chief Whip requesting him to secure the member’s attendance.

The Speaker also reported to the Assembly Rules Committee meeting of 26 March on the non-implementation of the penalties as well as the pending court case which had by then been set down for 14 April. After discussion, the Rules Committee agreed that the implementation of the House decision, including any possible court action in that regard, was a matter for the Speaker to process.

On 1 April, Mrs Madikizela-Mandela obtained an urgent interdict preventing the Speaker from imposing the penalties pending the final outcome in the main hearing. The judgement in the main hearing, dated 24 April, was to dismiss Mrs Madikizela-Mandela’s application with costs.

In the meantime the criminal trial in which Mrs Madikizela-Mandela was accused of fraud and theft charges came to an end on 24 April when she was convicted on 43 counts of fraud and 25 of theft. The court sentenced her to five years in prison with one year being suspended for five years. The Court granted her leave to appeal against her conviction and sentence.

Parliament had gone into Easter recess on 16 April and shortly after business recommenced in May, the Speaker received a copy of a letter from Mrs Madikizela-Mandela addressed to the President resigning from the National Assembly. The resignation took effect on 22 May.

#### **19. BREACH OF CODE OF CONDUCT BY MINISTER**

On 15 May, the Speaker received a letter from the Minister of Defence, Mr G P Lekota, placing on record his failure to disclose certain of his financial interests over a period of time in the Register of Members’ Interests and apologising for the omissions. The letter had been copied to the Registrar of Members’ Interests. The following day an article appeared in the press detailing financial interests that had not been disclosed and the Chief Whip of the Opposition, Mr D H M Gibson, submitted a written complaint to the Registrar regarding the Minister’s non-disclosure.

The Joint Committee on Ethics and Members’ Interests investigated the complaint and presented its report on 22 May (ATC of 27 May). The Committee made the finding that the Minister had failed to comply with the provisions of the Code of Conduct with regard to financial interests and had been negligent in making incomplete disclosures. It, however, noted that there was no evidence that the Minister had wilfully withheld information with the intention to mislead Parliament or that a direct conflict of interest had arisen. The Committee recommended that the Speaker issue a written reprimand and that the Minister be fined the equivalent of one week’s (7 days’) salary. The Committee concluded by noting the promptness with which the Minister had responded, his own admission of casualness in regard to disclosure, and his co-operative demeanour.

Consideration of the Committee’s report was programmed for 30 May and the Minister was informed accordingly. The Minister was present in the Assembly when the report was unanimously adopted (Minutes, 30 May).

The Speaker wrote to the Minister on the same day, imposing the fine and issuing the

reprimand. The full text of the Speaker's letter was subsequently published in the document "Announcements, Tablings and Committee Reports" (ATC of 10 June).

The Public Protector also investigated a complaint regarding the alleged failure of Mr Lekota as Minister to comply with certain provisions of the Executive Members' Ethics Act, 1998, and the Executive Code. The Public Protector's Special Report on the matter was tabled in Parliament on 1 September. He stated that the interests that Minister Lekota had not disclosed in Parliament were the same as those he did not declare to the Secretary of the Cabinet in terms of the Executive Ethics Code. However, the financial interests and directorships that Minister Lekota held "were not of such a nature that they might give rise to a conflict of interest and therefore a contravention of the provisions of the Executive Ethics Code". The Public Protector noted that Minister Lekota had already been sanctioned for the non-disclosure by the National Assembly and hence "did not find it necessary to pronounce on the matter of the Minister's failure to disclose his interests to the Secretary of Cabinet". In a separate letter from the President concerning the Public Protector's Report, he informed Parliament that he accepted the findings and that the Minister "was reprimanded for failure to comply fully with paragraph 6 of the Executive Ethics Code". The letter was published in full in the ATC of 5 August.

## LEGISLATION, COMMITTEES AND FORUMS

### 20. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL [B33-2002]

On 14 August 2002, the Minister for Justice and Constitutional Development tabled the above bill in the National Assembly. The bill amends various provisions of the Constitution, as follows:

*(a) Bills on financial matters which also affect the provinces*

A bill on financial matters (as envisaged in the Chapter on Finance in the Constitution) other than a money bill is to be dealt with as a Section 76(1) bill (ie an "ordinary bill affecting the provinces") if it contains even a single provision affecting the financial interests of the provinces. Previously such a bill would have had to be split into a Section 75 bill (ie an "ordinary bill not affecting the provinces") and a Section 76(1) bill.

*(b) Simplified process for NCOP to review executive interventions in provincial affairs*

Amendments to Section 100 relax the time-frames within which an executive intervention in provincial affairs lapses. Previously, the

NCOP had to approve any such intervention within 30 days of its first sitting after the intervention began. The NCOP now has 180 days within which to consider the intervention and must also review the intervention while that intervention continues.

*(c) Regulation of interventions by provincial executives in local government sphere*

Section 139 of the Constitution is amended to provide a comprehensive scheme for such interventions by provincial executives. As stated by the Minister for Justice and Constitutional Development when he introduced the bill in the Assembly on 25 February 2003, the new scheme recognises and preserves the role of a democratically elected municipal council whilst at the same time assuring residents and stakeholders that serious or prolonged failures of governance will be dealt with in order to ensure that each municipality has the ability to meet its obligation to provide basic services or to meet its financial commitments.

The NCOP's review process of such interventions by provincial executives is relaxed in the same way as its review process of interventions by the national executive in a province (see par(b) above).

*(d) Northern Province renamed Limpopo*

Section 104(2) of the Constitution provides that the legislature of a province, through a resolution adopted with a supporting vote of at least two thirds of its members, may request Parliament to change the name of that province. On 12 February 2002 the Legislature of the Northern Province resolved to request Parliament to change the name of that Province from "Northern Province" to "Limpopo Province". The request was conveyed by the Speaker of the Legislature of the Northern Province and tabled in Parliament on 21 June 2002. However, on 1 October 2002 the Legislature resolved to request Parliament to change the name of the Province to "Limpopo" and not to "Limpopo Province" as originally requested. The revised request was dealt with by the Portfolio Committee on Justice and Constitutional Development to which the bill as tabled had been referred. The name change to "Limpopo" is effected by an amendment to Section 103 of the Constitution.

The Constitution Third Amendment Bill was passed by the NA on 25 February after a division, and by the NCOP on 25 March.

### 21. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA FOURTH AMENDMENT BILL: IMPLEMENTATION OF "FLOOR CROSSING"

The package of four bills which made provision for public representatives at national, provincial and local government levels to change party allegiance without losing their seats was discussed in *Issue 5, Item 19 and Issue 6, Item 19*. We reported that after the





bills had been assented to by the President on 19 June 2002, their constitutionality was challenged in the Constitutional Court by the UDM and several other parties. On 4 October 2002, the Constitutional Court ruled only the *Loss or Retention of Membership of National and Provincial Legislatures Act (No 22 of 2002)* to be inconsistent with the Constitution and invalid. The Court ruled that if the government wanted to proceed with providing for floor-crossing at national and provincial levels, it could do so only by way of introducing an amendment to the Constitution.

On 12 November 2002, the Minister for Justice and Constitutional Development tabled in Parliament the *Constitution of the Republic of South Africa Fourth Amendment Bill [B69-2002]*. The bill was subsequently referred to the Portfolio Committee on Justice and Constitutional Development. On 15 November 2002, the Speaker tabled in the Assembly written comments received from the public and provincial legislatures on the above bill, which were submitted by the Minister for Justice and Constitutional Development in terms of section 74(6)(a) of the Constitution. The above comments were referred to the Portfolio Committee on Justice and Constitutional Development.

On 20 January, the Speaker tabled in the Assembly a letter from the Minister for Justice and Constitutional Development concerning a proposed amendment to the said bill, following discussions between the ANC and the IFP which led to an agreement to withdraw the “reinstatement provision” in the bill. The Minister proposed that clause 6 of the bill be amended by the deletion of the following subitem:

6(3) Any person who, subsequent to 20 June 2002 has been removed from membership of a legislature by reason directly or indirectly of anything done by such person in the belief that he or she was lawfully acting in accordance with provisions substantially similar in content to this Schedule, is hereby restored to such membership with all rights and privileges attaching thereto, and any person who has replaced such person as a member of the legislature hereby ceases to be a member of such legislature.

On 25 February, the bill was adopted by the House after a division, and by the NCOP on 18 March. The President assented to the *Constitution of the Republic of South Africa Amendment Act, 2003 (Act No 2 of 2003)* which was published in the Government Gazette on 19 March. On the same day, the Speaker and the Chairperson of Committees made announcements in the House on aspects of the implementation and commencement of the above Act. In this regard, the Speaker alerted members to the proper procedure as follows: the bill had been sent to the President for his assent. Members had to note that the

legislation would come into effect on a date set by the President by proclamation in the Gazette. The window period for members to change party allegiance in terms of the legislation would commence immediately on the day following the date of the commencement of the Act. Any member or party who wished to make any change during this period would need to complete a special form which was prepared for this purpose, and which would be available from the Chief Whip of any party, or from the Secretary to the National Assembly or the Undersecretary. Members and parties had to note that for purposes of informing the Speaker of any intended changes, they needed to personally submit the completed form, which would be the only valid form, to either the Secretary to the NA or the Undersecretary. The form would include covering notes containing details which members and parties would need to comply with in order for the change to be valid.

With reference to the Speaker’s announcement concerning the implementation of the floor crossing legislation, the Chairperson of Committees subsequently announced in the House that the President, by proclamation in the Gazette, had fixed 20 March as the date on which the Act would come into operation. The window period would therefore commence at 00:00 on Friday, 21 March, that is immediately after midnight on Thursday night. He informed members that completed forms should not be presented until the window period had opened.

The main purpose of the Act was to provide for a mechanism during the 15-day window period in terms of which:

- (a) Members of the NA or a provincial legislature could change their party membership only once by written notification to the Speaker of the legislature without losing their seats;
- (b) A party could merge, subdivide, or subdivide and merge only once by written notification to the Speaker of the legislature;
- (c) A member could resign from a party to form another party by written notification to the Speaker of the legislature.

Prior to the “window period” members were alerted to the following:

- (a) A “new” party within the legislature which had not been registered in terms of applicable law needed to formally apply for registration within the window period;
- (b) Registration of the “new” party needed to be confirmed by the appropriate authority (i.e. the Independent Electoral Commission) within 4 months after the expiry of the window period;
- (c) Within 7 days after expiry of the window period the Speaker would publish in the Gazette details of the altered composition of the legislature;

- (d) Where applicable, a party was required within 7 days after the window period to submit to the Secretary of the legislature a list of candidates. The list needed to be in a predetermined order and full names and ID numbers of candidates had to be furnished;
- (e) Members had to personally submit their completed forms and provide positive identification to the Secretary to the NA or the Undersecretary (2 officials designated by the Speaker to receive forms) during office hours, except for the last day of the window period, when both officials were on duty until midnight on 4 April. If, for unavoidable reasons, a member could not personally submit the form, then he/she needed to make alternative arrangements with the Speaker's Office or with the 2 designated staff members;
- (f) Where a person signed on behalf of a party, only the signature of the designated representative of the party would be accepted.

All party membership changes that occurred in terms of Schedule 6A to the Constitution were announced in the House daily by the presiding officers and published in the ATCs. On 25 March, the Speaker announced in the House that the Assembly would only adapt its operations and functioning at the close of the window period. In the interim, receiving parties had to make their own arrangements to accommodate new members. She added that parties could raise with her specific concerns or problems which they encountered. On 4 April, the Speaker made an announcement on the closing of the current window period and on the confusion surrounding the commencement of the second window period.

At the close of the window period, 5 new parties were created thereby bringing the total number of parties in the NA to 17. The altered composition of the 17 political parties in the Assembly is as follows:

• ANC	275
• DA	46
• IFP	31
• NNP	20
• ACDP	7
• UDM	4
• FF	3
• UCDP	3
• PAC	2
• FA	2
• MF	1
• AZAPO	1
• National Action (NA)	1
• Independent African Movement (IAM)	1
• Independent Democrats (ID)	1
• Alliance for Democracy & Prosperity (ADP)	1
• Peace & Justice Congress (PJC)	1

On 16 April, the Chief Whips' Forum discussed a number of items related to floor crossing and reconstitution of the House, namely: *allocation of whips (See Item 9 above); allocation of seating in Chamber (See Item 10 above); and allocation of speaking time (See Item 4 above).*

## 22. SUPPLEMENTARY REPORT OF PORTFOLIO COMMITTEE ON PROVINCIAL AND LOCAL GOVERNMENT

The Portfolio Committee on Provincial and Local Government undertook a study tour of municipalities from 20 to 30 January. A total of 41 municipalities were visited, 3 metro sub-councils, 7 MECs and provincial departments, 4 ward committee and public meetings, 3 urban and rural nodes, and 3 Planning and Implementation Management Support Centres (PIMS).

The Committee's report, dated 15 April, was considered and debated by the House on 27 May. After the debate had been concluded, the Deputy Chief Whip of the majority party moved that the report be noted. The motion was subsequently agreed to.

However, the Committee had intended that the recommendations contained in the Report be adopted by the House. The House had nevertheless limited itself to noting the Report because some of the recommendations had not been suitably worded. After discussion with the chairperson of the Committee, a *Supplementary Report of Portfolio Committee on Provincial and Local Government to Report on Study Tour of Municipalities* was drafted by the Portfolio Committee and published in the ATC of 10 June. In the report, the Committee requested the House to consider a draft resolution as a supplementary report to its report on its study tour of municipalities, dated 15 April, which appeared in the ATC of 13 May.


On 12 June, the House adopted, without debate, the Supplementary Report of the Portfolio Committee on Provincial and Local Government.

## 23. INTRODUCTION BY COMMITTEE OF PUBLIC AUDIT BILL

The Audit Commission established by the Audit Arrangements Act, No 122 of 1992 (as amended), includes eight members of Parliament. The Commission has been engaged in a review of public sector auditing, including the functioning of the Auditor-General. After a preliminary meeting with the Speaker in March, the Chairperson of the Commission, Dr Z P Jordan, MP, on 30 May submitted a draft Public Audit Bill to the Speaker, which was tabled on 2 June (ATC of 2 June).

Bills may only be initiated and introduced by the Executive, a committee or a member of Parliament. The Assembly accordingly, on a motion by the Chief Whip of the Majority Party, resolved on 24 June to establish an ad hoc committee to consider the legislative proposal reviewing the public auditing





function as tabled, and mandated the committee to introduce a bill on the objects contained in the proposal.

The Committee was initially given until 19 September to complete its task. On the instruction of the Speaker, the legislative proposal had in the meantime been published in the Government Gazette for public comment.

#### **24. SEVENTH REPORT OF WORKING GROUP ON AFRICAN UNION**

The Working Group on the African Union, whose mandate is to consider the implementation of the Constitutive Act of the African Union, tabled two reports in the period under review, namely, the sixth and seventh reports. The sixth report was adopted by the House on 11 April, and the seventh report on 19 June. In both reports the Working Group, *inter alia*, recommended that the National Assembly consider convening a meeting of African Parliaments to exchange views on the Pan African Parliament with a view to building a common vision. The meeting which took place from 30 June to 1 July was attended by representatives from African Parliaments including South Africa, regional Parliaments, international Parliamentary bodies and members of the Pan African Parliament Steering Committee. The Meeting adopted a declaration which was subsequently submitted to the AU Summit held in Mozambique in July.

#### **25. COMMUNIQUE OF STEERING COMMITTEE ON PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY (AEC) RELATING TO THE PAN AFRICAN PARLIAMENT (PAP STEERING COMMITTEE)**

In June 2002, a meeting of African Parliaments held in Cape Town recommended in its declaration that the African Union establish a representative steering committee of Parliamentarians to support and coordinate the steps necessary to achieve the ratification of the Protocol to the Treaty Establishing the African Economic Community (AEC) relating to the Pan African Parliament (PAP Protocol). The declaration was subsequently adopted by the OAU/AU Summit held in Durban in July 2002. In conformity with the decision of the Durban Summit, the African Union Commission established the ten-member PAP Steering Committee, comprising two representatives from each of the five geographical regions of the continent.

The Steering Committee held its first meeting on 28 April in Addis Ababa, Ethiopia, and the Speaker of the National Assembly, Dr F N Ginwala, was elected the Chairperson. At this meeting, the Steering Committee adopted a Communique (ATC of 3 June) which, *inter alia*, appealed to all Member States that had not signed and/or ratified the PAP Protocol to do so as soon as possible. The Communique was referred to the Working Group on the African Union.

#### **26. FUNCTIONING OF STANDING COMMITTEE ON PUBLIC ACCOUNTS**

The Standing Committee on Public Accounts (SCOPA) reviewed its functioning at a workshop it held in June 2002. This gave rise to a detailed report which was tabled on 8 May (ATC of 8 May).

The high volume of reports and tasks flowing into SCOPA are identified as requiring some form of prioritization to ensure that the most urgent issues receive priority attention and that all departments and institutions get a turn to be considered over a three-year cycle.

In addressing its systems and procedures the committee recognizes that it should apply an effective sifting method in terms of agreed criteria that would ensure that attention is given to cases where material accountability or governance in financial management terms has failed.

The three categories of priority for sifting of reports are as follows:

- (a) Category A: Matters that would always entail a hearing;
- (b) Category B: Matters that do not necessarily require a hearing, but a specific resolution or letter to express concern, or require further explanation from accounting officers or executive authorities; and
- (c) Category C: Matters that require no other action by SCOPA, but a standard resolution or letter.

The members of SCOPA may also decide on a necessity for a hearing due to public opinion, serious or recurring problematic issues, material amounts in question, subsequent events or the political context at the time.

The sifting will be done by the SCOPA Work Groups and scheduled into SCOPA's work programme.

The report also deals with a workflow planning process for public hearings and the streamlining of the production process to reduce the review process of reports from approximately 32 weeks to 20 weeks.

The filing system of the secretariat is identified as being highly inadequate and a recommendation is made for the Committee to obtain its own record-keeping facility to ensure that the responsibility and resources for the creation and maintenance of its filing rests with the Committee. A range of other administrative and internal issues were raised in the report.

The report came before the House on 25 June and was noted.

#### **27. FINANCIAL AND FISCAL COMMISSION AMENDMENT BILL**

The Financial and Fiscal Commission, established in terms of Section 220 of the Constitution, is required to report regularly both to Parliament and to the provincial legislatures. The *Financial and Fiscal*

*Commission Amendment Bill [B 21 - 2003]* was introduced on 2 April. The bill, inter alia, requires any organ of state which intends assigning a power or function to an organ of state in another sphere of government to request the Financial and Fiscal Commission's advice on any financial implications of the said assignment. Subclause 2 (A)(b) of the bill provides that the Commission must, not later than 180 days from the date of its receipt of notification and request or any other period agreed with the relevant organ of state, make a recommendation or give advice on the intended assignment. Should the Commission fail to comply with the above requirement, it must according to the bill, submit written reasons for such failure to Parliament, and if appropriate, also to the relevant provincial legislature. The bill was passed by the National Assembly on 26 September.

## BUDGETARY MATTERS & MONEY BILLS

### 28. TEXTUAL CORRECTIONS TO MONEY BILL

On 15 May, the Minister of Finance introduced the *Exchange Control Amnesty and Amendment of Taxation Laws Bill [B26 2003]*. The bill and the introductory speech were referred to the Portfolio Committee on Finance for consideration and report.

The Committee reported to the House on 19 May (ATC of 20 May) that it agreed to the bill. On the same day, however, the Minister of Finance informed the Speaker in writing that the bill contained unintended but substantive textual errors that could not be corrected administratively. In terms of the Constitution a money bill can be amended, but the procedure for amending a money bill has to be prescribed by an Act of Parliament. Such an Act has not yet been passed. The Minister of Finance therefore requested that the corrections be proposed on his behalf during the First Reading debate on the bill the following day and the Speaker acceded to the request.

After the First Reading debate on the bill on 21 May, the Chairperson of Committees who was then presiding informed members about the textual corrections that needed to be made to the bill, as printed, and the corrections were recorded in the Minutes. The Chairperson of Committees proceeded to put the question, namely that the bill, with the textual corrections, be read a first time and thereafter a second time, also with textual corrections. Both the First and Second Reading of the bill was agreed to by the House (with the DA abstaining). [See *Issue 2, Item 18*]

The National Council of Provinces agreed to the Exchange Control Amnesty and Amendment of Taxation Laws Bill, with textual corrections, on 28 May.

## STATUTORY FUNCTIONS OF THE NATIONAL ASSEMBLY

### 29. APPOINTMENT OF MEMBERS OF THE BOARD OF SOUTH AFRICAN NATIONAL PARKS

In accordance with section 8 of the National Parks Act, No 57 of 1976, the names of seventeen people who had been appointed to the Board of South African National Parks for the period 1 January to 31 December were tabled in the National Assembly. The Speaker referred the names to the Portfolio Committee on Environmental Affairs and Tourism for consideration and report.

In terms of the above section of the Act, if, within thirty days after the name of any person has been tabled, Parliament passes a resolution disapproving of the appointment of that person as a member of the Board, his or her appointment shall be cancelled.

The Committee did not report and under the circumstances there was no disapproval of any of the names.

### 30. FINAL REPORT OF TRUTH AND RECONCILIATION COMMISSION

#### (a) *Tabling of Final Report of Truth and Reconciliation Commission*

The President tabled the final report of the Truth and Reconciliation Commission on 28 March. On 4 April, the report was referred to the Portfolio Committee on Justice and Constitutional Development and the Portfolio Committee on Finance, in regard to reparations.


#### (b) *Calling of Joint Sitting by the President to address Parliament on the Report and joint debate on Report*

The President called a special sitting of both Houses for 15 April, in terms of section 42(5) of the Constitution, to address Parliament on the Report. This address covered Government's proposals in regard to reparations to be paid to victims. Immediately after the President's address, Parliament proceeded to debate the Report at the Joint Sitting. After the debate the Speaker announced that a joint committee would be set up to consider the President's recommendations regarding reparations as required by section 27 of the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995).

#### (c) *Establishment of ad hoc joint committee on reparations in terms of joint rules 138 (1)(b)*

When Parliament adjourned for the Easter recess on 16 April the joint committee to deal with the question on reparations had not yet been established by resolution of the Houses. The Speaker and the Chairperson of the NCOP therefore, acting in terms of Joint Rule 138(1)(b), established the Ad Hoc Joint Committee on Reparations. The Committee





consisted of 19 Assembly members and 9 Council members. The NA component was made up of 10 ANC members, 2 DA, 1 IFP, 1 NNP, and 3 members from the other 13 parties represented in the National Assembly.

As the joint committee was, by law, required to deal with the question of reparations the referral of the Report to the Portfolio Committees was superseded.

*(d) Report of Ad Hoc Joint Committee on Reparations*

The Committee reported on 24 June (ATC of 24 June). The Committee agreed with the four recommendations made by the President, as identified in this Report. These were in regard to:-

- Symbols and monuments to project the symbolism of struggle and the ideal of freedom;
- Rehabilitation of communities that were subject to intense acts of violence and destruction;
- Medical benefits and other forms of social assistance to address the needs of individual victims; and
- Final reparations of a one-off grant of R30 000 to designated individuals.

The Committee's recommendations were agreed to by both Houses on 26 June.

### **31. NATIONAL YOUTH COMMISSION APPOINTMENTS**

A request regarding the appointment of Commissioners to serve on the National Youth Commission from the Minister in the Presidency, Minister E Pahad, was referred to the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons for consideration and report.

This request derives from the National Youth Commission Act, No 19 of 1996, which provides for such appointments to be made by the President on the recommendation of a Parliamentary committee, on the basis of participation by the public in the nomination process, transparency and openness, and the publication of a shortlist of candidates for appointment.

The Committee reported to the Houses on 27 May and, on 29 May, the National Council of Provinces adopted the report. On 30 May, with the DA dissenting, the National Assembly approved the nomination of the following persons to the Youth Commission:

Jabu Mbalula  
Daniel Van Vuuren  
Nketu Matime  
Petronella Linders  
Vuyiswa Tulelo-Rathebe

### **32. LETTER FROM SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC) TO SPEAKER**

The South African Human Rights Commission is in terms of the Constitution, 1996, accountable to the National Assembly, and

must report on its activities and performance of its functions to the Assembly. The Speaker received a letter from the Chairperson of the Commission, dated 3 April, on the implementation of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000).

The letter highlighted complaints by the Chairperson on non-compliance by many public bodies with the provisions of the Promotion of Access to Information Act, which gives to the Commission, *inter alia*, the responsibility to monitor and report on compliance. Section 32 of the Act requires information officers of all public bodies to annually submit to the Commission reports pertaining to requests for access to records and how the respective public bodies have dealt with such requests.

The Chairperson indicated that the response rate for more than 800 public bodies had been poor, with less than 20 public bodies responding in 2002 and less than 15 for 2003. While the Act does not provide for sanctions for non-compliance, the South African Human Rights Commission Act, No 54 of 1994, makes it a criminal offence for any person to frustrate the work of the Commission.

The Commission requested the Speaker's political intervention in that regard as part of Parliament's overall monitoring role.

The Speaker referred the letter to the Portfolio Committee on Justice and Constitutional Development for consideration and report.

### **33. FILLING OF A VACANCY ON THE COUNCIL OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)**

Section 5 of the Independent Communications Authority of South Africa Act, No 13 of 2000, provides that the National Assembly, having adhered to the public participation process in the nomination and publication of a short-list of candidates for appointment, must make a recommendation to the President, who has to appoint the ICASA councillors.

A vacancy on the ICASA Council had occurred and a letter was received from the Presidency requesting Parliament to initiate the process leading to the filling of the vacancy in terms of the Act. The Speaker referred the request to the Portfolio Committee on Communications for consideration and report.

The Portfolio Committee, in its report to the House, nominated Mr G Petrick and the National Assembly approved the nomination on 30 May.

### **34. NOTICE TO ALTER THE AREA OF JURISDICTION FOR WHICH A HIGH COURT HAS BEEN ESTABLISHED**

On 27 February, the Minister for Justice and Constitutional Development tabled a Notice to alter the area of jurisdiction for which a High Court has been established.



In terms of section 2(2) of the Interim Rationalisation of Jurisdiction of High Courts Act No 41 of 2001, Notices of this nature must be approved by Parliament before publication in the Gazette. The notice was referred to the Portfolio Committee on Justice and Constitutional Development which reported on the matter on 11 March (ATC of 26 March).

The National Assembly on the recommendation of the Committee approved the Notice on 14 April.

### **35. DELAYED APPOINTMENT OF INSPECTOR-GENERAL OF INTELLIGENCE**

The Intelligence Services Control Act, No 40 of 1994, as amended in 2002 (*See Issue 6, Item 21*), provides for the President to appoint the Inspector-General of Intelligence on the nomination of the Joint Standing Committee on Intelligence (JSCI), the nomination to be approved by the Assembly by a resolution supported by at least two thirds of its members.

The vacant post was advertised by the JSCI in November 2002. The JSCI subsequently reported to the Assembly in April 2003 (ATC of 15 April) that it had been unable to attract enough suitable candidates for consideration and shortlisting. It had therefore decided to embark on processes to “inform Parliament and the . . . public about the nature, responsibility and requirements of the post”, and accordingly requested an extension for the nomination of the Inspector-General until 31 July. On 16 April, the House adopted a motion noting the JSCI’s report and requesting it to report to the House on or before 27 June, which was to be the last sitting day of the second term.

The JSCI duly reported on 25 June, nominating Mr Zolile Thando Ngcakani for appointment as Inspector-General (ATC of 30 June). The House did not consider the matter before it went into recess, but on 18 September the House with the required support agreed to recommend Mr Ngcakani for appointment.

### **36. EXTENSION OF SECTIONS OF CRIMINAL LAW AMENDMENT ACT**

Sections 51 and 52 of the Criminal Law Amendment Act, 1997 (Act No 105 of 1997) deal with minimum sentences for certain serious offences like rape and murder, and the committal of accused persons for sentence by a High Court after a plea of guilty or trial in a regional court, respectively. Thus, in terms of section 52 if a regional court, before sentencing an accused, is of the opinion that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a regional court, the court shall stop the proceedings and commit the accused for sentence by a High Court having jurisdiction.

In terms of section 53(2) of the said Act the President, with the concurrence of Parliament, may extend the period of operation of sections 51 and 52 of the Criminal Law Amendment Act

for a further period of 2 years, by proclamation in the Gazette. The sections were to cease to operate on 30 April. On 14 April, the House moved a resolution giving its consent to the President to extend the period of operation of sections 51 and 52 for a period of 2 years, with effect from 1 May. Before this extension, the extension of the operation of the sections was previously approved by the House on two occasions, namely, 16 March 2000 and 4 April 2001.

### **37. PUBLIC PROTECTOR AMENDMENT BILL**

The *Public Protector Amendment Bill [B 6D-2003]* was introduced on 5 January and passed by the National Assembly on 29 May. The purpose of the bill is to further regulate the appointment of the Public Protector and the Deputy Public Protector. The Principal Act provided for the appointment of Deputy Public Protectors by the Cabinet member responsible for the administration of justice.

Apart from providing for the appointment of only one Deputy Public Protector, the amendment bill also shifts the responsibility for this appointment from the Minister to the President. As is the case with the Public Protector, the Deputy Public Protector must now be appointed by the President on the recommendation of the National Assembly. In the case of the Public Protector, a recommendation of the National Assembly for his or her appointment requires a supporting vote of at least 60 per cent of members. In terms of the amendment bill, for a recommendation of the National Assembly to be adopted concerning the appointment of the Deputy Public Protector, a supporting vote of only the majority of members is required.

## **CHAMBER**

### **38. USE OF NATIONAL ASSEMBLY CHAMBER FOR MEETING OF AFRICAN PARLIAMENTS**

It is accepted practice that the National Assembly Chamber is exclusively used for sittings of the House. However, on 28 April, the Task Team on the Meeting of African Parliaments, chaired by the Speaker, decided that the meeting of African Parliaments which was to take place on 30 June and 1 July be held in the National Assembly Chamber. The Speaker consulted on the matter with both the National Assembly Rules Committee at its meeting on 29 April, and the National Assembly Programme Committee on 1 May.

### **39. NON-MEMBER ON FLOOR OF THE HOUSE**

On 17 June, Mr J M Nhlanhla, MP, former Minister of Intelligence, and now ordinary member of the National Assembly, attended the debate on Vote No 8 - National Treasury



(Intelligence), Appropriation Bill. Mr Nhlanhla has been absent from Parliament, due to ill health, for a long while. He is wheelchair-bound and requires constant care of a nurse.

The Speaker, on a request from the member, granted permission for his nurse to sit with him in the Chamber for the duration of his presence in the Chamber.

#### 40. MODEL OF MACE ON FLOOR OF THE HOUSE

Following on a decision by the Rules Committee to relook the symbols of Parliament, the Speaker presented new designs of the Mace for the National Assembly to the Rules Committee meeting on 26 March. These designs were the culmination of a long process of consultation with political parties and the general public. On obtaining members' inputs a model of the new mace was constructed.

On the instruction of the Speaker, the model of the mace was placed, for display, on the floor of the Chamber on 25 June for the duration of the day's sitting. The model was thereafter placed outside the Chamber for viewing and comment by members and the public.

#### 41. MOVING OF SPEAKER'S BAY IN THE NATIONAL ASSEMBLY CHAMBER

At the request of the Speaker, the Speaker's Bay in the gallery of the National Assembly Chamber was, on 13 February, moved to the part of the gallery directly in front of the Speaker's Chair. This was done because all seats in the Speaker's previous bay did not provide a clear view of the podium. The Bay was previously situated next to the President's Bay.

#### 42. TEMPORARY ELECTRONIC VOTING SYSTEM

In September 2002, the electronic voting system in the National Assembly became dysfunctional and a manual voting procedure was agreed to for the rest of that year. The manual procedure allowed for the recording in the Minutes of the number of members of a party who had voted on a particular measure, but not for the recording of the names of members individually. [See Issue 6, Item 38]

During the recess a locally produced electronic voting system was installed, on a temporary basis, that has the capability, inter alia, to record names individually for the Minutes. At a meeting of the Chief Whips' Forum on 12 February, chief whips and senior party representatives were briefed on the operation of the new system for the purpose of informing their party members.

They were given the following information about the system:

- (a) Members no longer have to insert voting cards;
- (b) A member has to vote from his/her bench, as the voting system has been individualised to each particular bench;
- (c) There are three voting buttons representing "yes", "no" and "abstain";
- (d) Two flashing lights indicate that the system has been activated;
- (e) If a member votes incorrectly, he/she has an opportunity to change his/her vote by simply pressing the correct button before the vote ends; and
- (f) Members can approach the Table to have their names recorded manually if their units are faulty.

The temporary electronic voting system was used for the first time on 25 February to record the votes on the Constitution of the Republic of South Africa Third Amendment Bill and the Constitution of the Republic of South Africa Fourth Amendment Bill, both bills requiring a two thirds majority. The current voting system will remain in use until the installation of the proposed new sound and voting system has been installed.

#### ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (daily parliamentary paper which is effectively an appendix to the Minutes of Proceedings)
Minutes	Minutes of the National Assembly
NA	National Assembly
NCOP	National Council of Provinces
PC	Portfolio Committee
SCOPA	Standing Committee on Public Accounts

#### Parties:

ANC	African National Congress
DA	Democratic Alliance
IFP	Inkatha Freedom Party
NNP	New National Party
UDM	United Democratic Movement
ACDP	African Christian Democratic Party
FF	Freedom Front
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress of Azania
FA	Federal Alliance
MF	Minority Front
AZAPO	Azanian People's Organisation
NA	National Action
IAM	Independent African Movement
ID	Independent Democrats
ADP	Alliance for Democracy & Prosperity
PJC	Peace & Justice Congress

# Notes

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