



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Second Session – Fourth Parliament
January to December 2010

Issue **16**



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 16th issue covers the second session of the Fourth Parliament from January to December 2010. Where no year appears next to a particular month in the text, the reference is made to 2010.

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

CONTENTS

PRESIDING OFFICERS AND OTHER OFFICE-BEARERS

1. Election of House Chairpersons2
2. Appointment of acting chairpersons for EPCs2
3. Appointment of parliamentary counselor2

MEMBERS

4. Membership of Assembly2
5. Appointment of new Ministers and Deputy Ministers.....2
6. Alleged non-disclosure of members' interests2

PROCEDURAL AND RELATED ISSUES

7. Selected rulings3
8. Motion of no confidence in President of the Republic4
9. Early sitting of the House4
10. Joint sittings4
11. Revival of lapsed business5
12. Determination of sitting hours of EPCs.....5
13. Suspension of rules5
14. Questions not having precedence5
15. Questions not replied to.....5
16. Decision of questions postponed.....6
17. Determination of President's salary6
18. Replacement of the Parliamentary Millennium Project (PMP) and its governing structure with a Committee on Nation-Building and Heritage.....6
19. Establishment of Parliamentary Inter-Faith Council (PIFC).....6
20. Reports by the Public Protector.....7
21. Hansard centennial celebrations8

LEGISLATION AND COMMITTEES

22. Extension of deadline for reporting by Ad Hoc Committee to Conduct Coordinated Oversight on Service Delivery8
23. Establishment of Ad Hoc Committee on Protection of Information Bill9
24. Submission of confidential report by Minister of Justice and Constitutional Development9
25. Legislative proposal by Portfolio Committee on Justice and Constitutional Development9
26. Establishment of Ad Hoc Committee on the Commission for Gender Equality (CGE) Forensic Investigation10
27. Establishment of Ad Hoc Joint Committee on Code of Judicial Conduct and Regulations on Judges' Disclosure of Registrable Interests10

28. Establishment of Joint Ad Hoc Committee on the *Second Implementation Report of South Africa's African Peer Review Programme of Action* 10
29. Joint Standing Committee on Intelligence (JSCI): Nomination of second Democratic Alliance (DA) member 10
30. Refusal by Minister of Defence and Military Veterans to provide portfolio committee with documentation 11

MONEY BILLS AND RELATED MATTERS

31. Processing of Appropriation Bill 12
32. Report on implementation of the Money Bills Amendment Procedure and Related Matters Act ... 12

STATUTORY FUNCTIONS

33. Agricultural Research Council (ARC): Recommendation for appointment of council members 12
34. Independent Communications Authority of South Africa (Icasa): Recommendation for appointment of councillors 13
35. Human Sciences Research Council (HSRC): Replacement of board members 13
36. Land Bank: Recommendation for appointment of board member 13
37. South African Human Rights Commission (SAHRC): Reconsideration of recommendation for appointment of commissioner, and recommendation for appointment of commissioner 14
38. National Lotteries Board: Recommendation for appointment of board members 14
39. South African Broadcasting Corporation (SABC): Recommendation for appointment of board members 14
40. Media Development and Diversity Agency (MDDA): Recommendation for appointment of board members 15
41. Public Service Commission (PSC): Request for appointment of commissioner 15
42. Withdrawal of declaration of land from Lowveld National Botanical Garden 15

THE CHAMBER

43. Failure of electronic voting system 16
44. Technical problem in EPC..... 16

UNPARLIAMENTARY EXPRESSIONS

45. Expressions declared unparliamentary during 2010 16

- On 10 September, Adv LH Max replaced Mr AT Fritz (DA – Western Cape) who had resigned with effect from 10 September.
- On 10 September, Mr DJ Stubbe replaced Mr A Louw (DA – Northern Cape) who had resigned with effect from 10 September.
- On 10 September, Mr JF Smalle replaced Ms D van der Walt (DA – Limpopo) who had resigned with effect from 10 September.
- On 10 September, Ms SU Paulse replaced Ms P de Lille (ID – National) who had resigned with effect from 10 September.
- On 8 October, Ms TLP Nwamitwa-Shilubana replaced Dr TS Farisani (ANC – Limpopo) who had resigned with effect from 30 September.
- On 4 November, Mr AH Gaum replaced Ms BA Hogan (ANC – National) who had resigned with effect from 1 November.
- On 17 November, Ms CQ Madlopha replaced Mr GQM Doidge (ANC – National) who had resigned with effect from 1 November.
- On 17 November, Mr CM Moni replaced Rev MA Stofile (ANC – National) who had resigned with effect from 1 November.
- On 2 November, Mr SP Mashatile replaced Mr M Gungubele (ANC – Gauteng) who had resigned with effect from 2 November.
- On 9 November, Mr KA Moloto replaced Mrs MA Rantsolase (ANC – National) who had passed away on 3 November.
- On 9 November, Ms ST Williams-De Bruyn replaced Mr I Vadi (ANC – Gauteng) who had resigned with effect from 9 November.
- On 11 November, Mr AJD Ndou replaced Ms B P Sonjica (ANC – National) who had resigned with effect from 1 November 2010.
- On 17 November, Mr H P Chauke (ANC – National) resigned. The vacancy was not filled in the reporting year.

Annexure 2

APPOINTMENT OF NEW MINISTERS AND DEPUTY MINISTERS

On 31 October, President J G Zuma announced a Cabinet reshuffle. In a letter dated 1 November, the President informed members of the NA of the appointment of the following new Ministers and Deputy Ministers that had assumed office with effect from 1 November:

- Mr S P Mashatile as Minister of Arts and Culture
- Mr M J Phaahla as Deputy Minister of Arts and Culture
- Mr R L Padayachie as Minister of Communications
- Mr K O Bapela as Deputy Minister of Communications
- Adv N A Ramathodi as Deputy Minister of Correctional Services
- Mr E Godongwana as Deputy Minister of Economic Development
- Ms B Thomson as Deputy Minister of Energy
- Dr G M Ramokgopa as Deputy Minister of Health
- Ms H B Mkhize as Deputy Minister of Higher Education
- Ms F I Chohan as Deputy Minister of Home Affairs
- Mr M L Fransman as Deputy Minister of International Relations and Cooperation
- Ms M N Oliphant as Minister of Labour
- Mr G G Oliphant as Deputy Minister of Mineral Resources
- Ms M M Soty as Deputy Minister of Police
- Mr K M N Gigaba as Minister of Public Enterprises
- Mr B A D Martins as Deputy Minister of Public Enterprises
- Ms A Dlodlo as Deputy Minister of Public Service and Administration
- Ms G L Mahlangu-Nkabinde as Minister of Public Works
- Ms D D Pule as Deputy Minister in The Presidency: Performance Monitoring and Evaluation as well as Administration in The Presidency.
- Mr T W Nxesi as Deputy Minister of Rural Development and Land Reform
- Ms B O Dlamini as Minister of Social Development
- Mrs B M Ntuli as Deputy Minister of Social Development
- Mr F A Mbalula as Minister of Sport and Recreation
- Ms E Thabethe as Deputy Minister of Trade and Industry
- Mrs B E E Molewa as Minister of Water and Environmental Affairs
- Ms L M Xingwana as Minister of Women, Children and People with Disabilities

The committee reiterated, however, that the onus for full disclosure rested upon members. It agreed that members of Parliament were expected to comply fully with the requirements of the Code.

The committee recommended the following penalties. All members who had been found guilty of breaching the Code had to -

- attend a compulsory briefing on the requirements of the Code of Conduct;
- be informed in writing that the non-disclosure of interests is considered seriously;
- correct their existing records in their 2010 disclosure; and
- be issued with a warning that any future non-disclosure could result in the maximum penalty.

The Assembly did not consider the report before the end of the 2010 session, and it thus lapsed in terms of Rule 316.

PROCEDURAL AND RELATED ISSUES

[7] SELECTED RULINGS

Ruling on accusations that the President was “deliberately leading the nation into lawlessness”

On 15 February, during the debate on the State of the Nation Address, Mr M E George accused the President of “deliberately leading the nation into lawlessness,” whereupon Mr C T Frolick contended in a point of order that the accusation was unparliamentary. Before the resumption of the debate the following day, the Deputy Speaker ruled that the accusation, read in the context of the speech, meant that the President or Ministers were inciting lawlessness in the country. She further ruled that such unsubstantiated allegations made by a member of the House against another are not parliamentary.

This principle evolved from a previous ruling by presiding officers that “unsubstantiated allegations against the integrity of any member is unparliamentary.”

The principle was confirmed and substantiated by resolution of the House on 16 September 1997 to the effect that “a member who wishes to bring any improper conduct on the part of another member to the attention of the House, should do so by way of a separate substantive motion, comprising a clearly formulated and properly substantiated charge”. The resolution further stated that except upon such a substantive motion, members should not be allowed to impute improper motives to other members, or cast personal reflections on their integrity as members.

In this regard, the Deputy Speaker held that the protection afforded to the members of the House by the principle should also be extended to the President, although he is not a member of the Assembly in terms of section 87 of the Constitution.

She held further that although members have the right to exercise their freedom of speech in the House, they must do

so subject to the principle that they may not impute improper motives to their fellow members. The President and Ministers took an oath or solemn affirmation to obey, observe, uphold and maintain the Constitution and all laws of the Republic, and to imply that they are deliberately leading the nation into lawlessness is a serious allegation that should be brought before the House in the form of a substantive motion.

She ruled that the allegation is unparliamentary and therefore asked the member to withdraw it unconditionally. However, Mr George contended that the statement was well considered and declined to withdraw it, whereupon the Deputy Speaker ordered him to leave the House.

Subsequent to the withdrawal of Mr George from the House, the Chief Whip of the Opposition rose on a point of order and expressed a view that the ruling interferes and significantly narrows the freedom of speech in the House. The IFP and the ACDP concurred with the sentiments expressed by the Chief Whip of the Opposition. However, the dissenting parties agreed with the Deputy Speaker that if the member thought that the ruling was incorrect, he was at liberty to refer it to the NA Rules Committee for consideration.

Ruling on the use of the f-word in the Chamber

On 16 February, after the Deputy Speaker made a ruling on allegations that the President was leading the country into lawlessness, Ms D Kohler-Barnard, while contesting the ruling, used the expression “f**k you.” The presiding officer could not immediately reflect on the matter as the member had left the House immediately after making the utterance.

The following day, the Speaker indicated that he had received a letter from the Chief Whip of the Opposition confirming that Ms Kohler-Barnard had admitted her transgression.

The Speaker indicated that the use of the expletive was unparliamentary, unbecoming and offensive in the extreme. As a result, he had decided to invoke the provisions of NA Rule 52 which states that if the Speaker is of the opinion that a contravention committed by a member of the NA is of so serious a nature that withdrawal of that member from the Chamber is not adequate, the Speaker may suspend the member. Thus Ms Kohler-Barnard was suspended for five parliamentary working days with immediate effect.

On 2 March, upon resumption of her seat in the Assembly, Ms Kohler-Barnard unconditionally apologised to the House.

On remarks “what a shameful dishonesty” in reference to a member

During the debate on the President’s Budget Vote on 12 May, the Minister of Home Affairs used the expression “what a shameful dishonesty” in reference to alleged misappropriation of funds by Mr M S Shilowa. The presiding officer subsequently ruled that the phrase was out of order, but did not request the member to withdraw the remarks.

The Minister had also used words such as "...were we honest...", "...disingenuous..." and "...rat..." in relation to the member, implying that the said member was an animal, dishonest, underhanded or deceitful.

The presiding officer ruled that allegations of misconduct against another member must be brought before the House by way of a substantive motion, despite members' guaranteed freedom of expression in the House as such allegations compromise members' integrity. Comparing another member to an animal, either by statement, sound or quoting it as hypothesis, was unparliamentary and alleging that he was dishonest or disingenuous contravened NA Rule 63 on offensive and unbecoming language. The presiding officer requested the Minister to withdraw the references; whereupon the Minister withdrew the remarks.

The presiding officer further ruled that family members of members of the House may not be used or referred to in the political rhetoric of the House as they are not in a position to defend themselves in the House.

On the application of the *sub judice* rule

NA Rule 67 provides that no member shall refer to any matter on which a judicial decision is pending.

On 3 March, the Deputy Minister of Police, on behalf of the Minister of Police who was not present, indicated that he could not answer questions as to whether he had launched an investigation into the conduct of the VIP Protection Unit with regard to the arrest of a certain university student and whether the public will be informed about the steps implemented to investigate the matter and the steps that will be taken against police officers and other agents who allegedly infringed upon the constitutional rights of the named student. Allegedly the student had made a rude gesture at the President's motorcade to which the VIP Protection Unit had taken exception and arrested the student. He explained that the matter was *sub judice* on the basis that the accused had decided to bring a civil case against the police.

The presiding officer explained that the *sub judice* rule means that a matter is awaiting adjudication or is under adjudication by a court of law. However, to balance the application of the rule and the right of members to exercise their freedom of speech, members may discuss in general terms a matter that is before the courts, provided that they do not discuss the merits of the case, say anything that may predetermine the outcome of the case or comment on matters that are part of the evidence before a court. The rule is meant to protect the judiciary from parliamentary influence as it is a separate arm of the state.

The presiding officer concluded that the mere intention of a person to lodge a case does not make that matter *sub judice*. The matter was at the time not before a court and therefore not covered by the rule.

As the ruling was delivered by the presiding officer some days after the Deputy Minister had declined to answer the question in the House, the Deputy Speaker further ruled that the member who posed the question could still obtain the information through a question for written reply or could request the Speaker to schedule the question outside

of the Safety and Security Cluster's turn for answering questions in the House.

[8] MOTION OF NO CONFIDENCE IN PRESIDENT OF THE REPUBLIC

On 2 March, Rev H M Dandala gave notice of the following draft resolution: "That the House has no confidence in the President of the Republic of South Africa and in terms of section 102(2) of the *Constitution of the Republic of South Africa*, 1996, passes a motion of no confidence in him for his failure to live up to the expectations of a broad spectrum of South Africans." This motion was programmed for debate on 18 March. After a 30 minute debate, Mr N A Ramathodi moved that the motion be amended to omit all the words after "That" and to substitute: "The House has full confidence in the President of the Republic of South Africa and appreciates his leadership of the government and nation". The House agreed to the amended motion by 242 votes to 83.

[9] EARLY SITTING OF THE HOUSE

In terms of Rule 23(2), the business of the NA may be considered by it on Mondays to Thursdays from 14:00 or such later time as the Speaker determines, to adjournment. On 15 February, the House adopted a resolution to the effect that, notwithstanding the hours of sitting of the House as provided for in Rule 23(2), it condoned the starting time of the House at 10:00 that day to debate the President's State of the Nation Address.

[10] JOINT SITTINGS

President's State of the Nation Address

In a letter dated 11 November 2009, the President of the Republic, Mr J G Zuma, called a joint sitting of Parliament for 11 February at 11:00, to enable him to deliver his annual State of the Nation Address. However, in a letter dated 18 January, the President informed the Speaker that the sitting should be scheduled for 19:00 and not 11:00 as initially stated. This, he said, "is to enable the masses of South Africans, especially the workers, to watch the proceedings in their homes when they are back from work. In my view, holding this very important event during the day excludes millions who do not have access to broadcasting facilities at work during the day."

On 4 February, the NA Programme Committee (NAPC) agreed to the President's request and the joint sitting was scheduled for 19:00.

Other Joint Sittings

- Debate on International Women's Day (9 March)
- Debate on Human Rights Day (16 March)
- Debate on 2010 FIFA Soccer World Cup (3 June)
- Debate on Successful Hosting of 2010 FIFA Soccer World Cup (18 August)

ABBREVIATIONS

ARC	Agricultural Research Council
ATC	Announcements, Tablings and Committee Reports (a daily paper which is effectively an appendix to the Minutes of Proceedings)
CCMA	Commission for Conciliation, Mediation and Arbitration
Cipro	Company and Intellectual Property Rights Organisation
CGE	Commission for Gender Equality
EPC	Extended Public Committee (a mechanism that enables the NA to conduct more than one public debate simultaneously)
GEPF	Government Employees Pension Fund
HSRC	Human Sciences Research Council
Icasa	Independent Communications Authority of South Africa
JPC	Joint Programme Committee
JRC	Joint Rules Committee
JSCI	Joint Standing Committee on Intelligence
LoGB	Leader of Government Business
MDDA	Media Development and Diversity Agency
Minutes	Minutes of Proceedings of the National Assembly
NA	National Assembly
NAPC	National Assembly Programme Committee
NDFSC	National Defence Force Service Commission
NCOP	National Council of Provinces
PIFC	Parliamentary Inter-Faith Council
PMP	Parliamentary Millennium Programme
PSC	Public Service Commission
SABC	South African Broadcasting Corporation
SANRAL	South African National Roads Agency Limited

PARTIES

ANC	African National Congress
DA	Democratic Alliance
Cope	Congress of the People
IFP	Inkatha Freedom Party
ID	Independent Democrats
UDM	United Democratic Movement
FF Plus	Freedom Front Plus
ACDP	African Christian Democratic Party
UCDP	United Christian Democratic Party
PAC	Pan Africanist Congress of Azania
MF	Minority Front
Azapo	Azanian People's Organisation
APC	African People's Convention

Annexure 1

MEMBERSHIP OF THE ASSEMBLY

In the 2010 annual session, vacancies occurred in the NA. Some were due to resignations and others as a result of members passing away. Also, certain vacancies had occurred in 2009, but were only filled in 2010. By the end of the 2010 annual session, some of the vacancies had still not been filled.

In terms of Item 23 of Schedule 1A to the *Electoral Act*, No 73 of 1998, vacancies in the NA have to be filled by parties nominating the next qualified and available member from the same candidates' list from which the member vacating the seat had originally been nominated.

The following vacancies occurred and were filled in 2010:

- On 3 February, Mr MR Sonto replaced Dr SM Pillay (ANC – National) who had resigned with effect from 1 February.
- On 9 February, Ms DE Dlakude replaced Ms NE Hanganana (ANC – National) who had resigned with effect from 1 February.

- On 1 May, Mr KJ Dikobo replaced Mr MA Mangena (Azapo – National) who had resigned with effect from 1 May.
- On 4 May, Mr KP Sithole replaced Mr BW Dhlamini (IFP – Gauteng) who had resigned with effect from 4 May.
- On 29 July, Mr FT Maserumule replaced Ms MMA Nyama (ANC – Limpopo) who had resigned with effect from 16 May.
- On 21 July, Mr MA Cele replaced Mr LN Mkhize (ANC – KwaZulu-Natal) who had resigned with effect from 19 May.
- On 21 July, Mr E Magubane replaced Mr TJ Bonhomme (ANC – KwaZulu-Natal) who had resigned with effect from 19 May.
- On 9 July, Ms CC September replaced Mr E Rasool (ANC – Western Cape) who had resigned with effect from 31 May.
- On 15 July, Mr MGP Lekota replaced Rev HM Dandala (Cope – National) who had resigned with effect from 15 July.

THE CHAMBER

[43] FAILURE OF ELECTRONIC VOTING SYSTEM

Voting, or the recording of votes in support of a question in the NA is usually done using an electronic voting system. On 9 September, during consideration of the nomination of a person for appointment to the SAHRC, the electronic voting system malfunctioned. (See Item 37).

As the support of a majority of members (201) had to be recorded in terms of section 193(5)(b)(ii) of the Constitution, manual voting procedures were used.

Party whips did a headcount of members present in the House, and then informed the Table of the number of members present per party and how each party voted. A member who wanted to abstain or vote against the question could do so by informing the Table.

A majority of 254 members in favour was recorded manually and the question agreed to.

[44] TECHNICAL PROBLEM IN EPC

During the budget vote debates on Police and the Independent Complaints Directorate (Votes 24 and 22) in an EPC in the Old Assembly Chamber on 6 May, a member wishing to speak in Afrikaans could not have his speech interpreted from Afrikaans as there were technical problems. This led the chairperson to suspend proceedings for ten minutes to enable technical staff to rectify the loss of Afrikaans translation. This was done successfully and the member could finish his speech in his preferred language.

[45] EXPRESSIONS RULED UNPARLIAMENTARY DURING 2010

“f**k you”
“the nation is being led deliberately into lawlessness”
“liar, member is a”
“shut up”
“told people to kill somebody”
“rubbish”
“rat, member is like a”
“dishonest, disingenuous, member is”
“idiot, member is an”

[11] REVIVAL OF LAPSED BUSINESS: NOMINATION FOR APPOINTMENT OF INSPECTOR-GENERAL OF INTELLIGENCE

In terms of NA Rule 316, all motions and all other business, other than bills, on the Order Paper on the last sitting day of an annual session lapse at the end of that day.

On 16 February, the Assembly resolved that the “Decision of Question on Consideration of Candidate nominated for appointment as Inspector General of Intelligence Services”, which was on the Order Paper and that lapsed at the end of 2009, be revived. The decision of question on this matter was put to the House on the same day, but the two-thirds majority required in terms of section 7(1) of the *Intelligence Services Oversight Act, 1994* (Act No 40 of 1994), could not be obtained and the decision of question was postponed.

The question was again put to the House on 17 February, and with 351 members voting in favour, thereby obtaining the required two-thirds majority, Adv F D Radebe was accordingly recommended for appointment as Inspector-General of Intelligence.

[12] DETERMINATION OF SITTING HOURS OF EPCs

NA Rule 23(2) provides that the business of the House may be considered on Mondays to Thursdays at 14:00 and Fridays at 09:00 or at such later time as determined by the Speaker to adjournment. However, on 18 March the Assembly by resolution agreed that the sitting hours of EPCs may be determined by the NAPC.

[13] SUSPENSION OF RULES

NA Rule 3 provides that any provision of the Rules relating to the business or proceedings at a meeting of the House may be suspended by resolution of the House.

In terms of this, NA Rule 253(1), which provides 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, for the purposes of conducting Second Reading debates, was suspended as follows:

- on Thursday, 4 March to conduct the debate on the Division of Revenue Bill
- on Thursday, 16 September to conduct the debate on the Higher Education Laws Amendment Bill; Skills Development Levies Amendment Bill; Higher Education and Training Laws Amendment Bill; South African Citizenship Amendment Bill; Births and Deaths Registration Amendment Bill and Magistrates’ Courts Amendment Bill.

Furthermore on 16 September, the House resolved to suspend Joint Rule 220(2), subject to the concurrence of the NCOP, which provides that a translation of a Bill’s official text must be received by Parliament at least three days before the formal consideration of the Bill by the House in which it was introduced. The suspension of the Rule was with regard to the following Bills:

- Higher Education Laws Amendment Bill
- Skills Development Levies Amendment Bill
- Higher Education and Training Laws Amendment Bill
- Births and Deaths Registration Amendment Bill

[14] QUESTIONS NOT HAVING PRECEDENCE

The rules of the NA provide for questions to have precedence over any other business of the House on a question day (Wednesdays).

Notwithstanding the rules, the House has the power to suspend its own rules. On 14 September and 9 November, respectively, the House accordingly passed resolutions that questions would not have precedence on 15 September and 10 November respectively.

Precedence was given to a debate on the International Day of Democracy on 15 September and on 10 November to a motion of condolence for the late Ms Alina Machejane Rantsolase, MP, who passed away after a short illness.

[15] QUESTIONS NOT REPLIED TO

The Speaker, in accordance with practice, regularly writes to the Leader of Government Business (LoGB) about questions to which replies are outstanding. On 3 February, the Speaker wrote to inform the LoGB that the total number of unanswered oral and written questions in 2009, and which had therefore lapsed, amounted to 119.

Responding on 18 February, the LoGB informed the Speaker that he had written to all ministers who had not replied to questions in the NA and the NCOP. He had requested that such ministers provide an explanation for each question that had not been replied to and information on how they intended ensuring that all questions were answered within the timeframes set by Parliament for the 2010 session.

On 19 August, question time in the NA virtually disintegrated as two ministers who were responsible for 14 out of the 22 questions on the Question Paper were not in the House to reply. The 22 questions on the Question Paper were addressed to five ministers in the Governance cluster. The only ministers that were available on the day were the Minister of Women, Children and People with Disabilities and the Minister in The Presidency: Performance Monitoring and Evaluation as well as Administration. Questions to the Minister in The Presidency: National Planning Commission were replied to by the Minister of Labour. In respect of the questions to the Ministers of Cooperative Governance and Traditional Affairs (9 questions) and Public Service and Administration (5 questions), who were absent, a request was received that the 14 questions shared between them stand over until the next scheduled question day for ministers in the Governance cluster. The Speaker agreed to the questions standing over, but undertook to discuss his concerns regarding the absence of ministers during question time with the LoGB.

At the end of the 2010 annual session of Parliament, 175 questions were not replied to and therefore lapsed.

[16] DECISION OF QUESTIONS POSTPONED

Item 13 above reported on the suspension of Rule 253(1) on 16 September in respect of six bills.

Debates were conducted on all six bills but only three were read a second time, namely, the Higher Education Laws Amendment Bill, the Skills Development Levies Amendment Bill and the Higher Education and Training Laws Amendment Bill.

In terms of NA Rule 76 the presiding officer ruled that the House would postpone decisions on the following bills as the House could not muster a quorum at that stage of the proceedings:

- South African Citizenship Amendment Bill
- Births and Deaths Registration Amendment Bill
- Magistrates' Courts Amendment Bill

On 26 October, the questions were put again and the three bills above were read a second time.

[17] DETERMINATION OF PRESIDENT'S SALARY

Section 2(1) of the *Remuneration of Public Office Bearers Act*, No 20 of 1998, states that the NA must, with due regard to criteria set out in the Act, determine the salary and allowances paid to the President of the Republic of South Africa on an annual basis.

On 16 November, the House agreed to a motion that the salary and allowances payable to the President be determined at two million three hundred and sixty seven thousand four hundred and sixty six Rand (R 2, 367, 466) per annum with effect from 1 April. In accordance with the Act, the House also determined the amount of one hundred and twenty thousand Rand (R120 000) as that portion of the remuneration of the President to which section 8(1)(d) of the *Income Tax Act*, No 58 of 1962, should apply, i.e. the allowance for expenses incurred for the purposes of holding public office.

[18] REPLACEMENT OF THE PARLIAMENTARY MILLENNIUM PROJECT (PMP) AND ITS GOVERNANCE STRUCTURE WITH A COMMITTEE ON NATION-BUILDING AND HERITAGE

The Parliamentary Millennium Project (PMP) was originally established as a programme within the parliamentary administration tasked with using creative and interactive means to engage South Africans and their representatives to promote nation-building, foster tolerance for diversity and assert South African and African heritage. The PMP was governed by an Advisory Board.

During the Fourth Parliament, discussions were held on changing the PMP into a committee of Parliament to allow political parties and members themselves a platform to promote nation-building and cooperation. On 11 November, the NA, subject to the concurrence of the

NCOP, resolved to replace the PMP and its governance structure with a Committee on Nation-Building and Heritage. The House mandated the committee to:

- a) serve as a consultative mechanism to drive the activist Parliament;
- b) promote the legislature as an instrument of nation-building;
- c) monitor progress with government's nation-building initiatives and the development of an inclusive South African society based on reconciliation, tolerance and mutual understanding;
- d) monitor efforts to foster a shared South African and African identity;
- e) report and make recommendations on its functions and activities whenever deemed necessary;
- f) exercise those powers granted in Rule 201, but must notify other committees when dealing with matters falling within their respective mandates; and
- g) consist of 9 members from the NA (ANC 5; DA 1; Cope 1; IFP 1; and smaller parties 1); and 5 members from the NCOP (ANC 3; DA 1; and other parties 1).

At the time of writing, the NCOP had not concurred with the resolution.

[19] ESTABLISHMENT OF PARLIAMENTARY INTER-FAITH COUNCIL (PIFC)

On 6 November 2009, the Chief Whips' Forum discussed the establishment of the PIFC, whose main aim would be to interact with national religious structures on issues of spiritual and moral support, and participate in resolving religious conflicts on the African continent.

The Forum suggested that such a council would create an additional platform for an activist Parliament that would further advance, forge and renew relationships, promote peace and cooperation among religious formations in South Africa and influence and focus discussions on issues affecting different religions. Furthermore, the council would be used as a mechanism to reach out to the electorate in order to enhance nation-building and social cohesion.

The NA passed a resolution on 10 March giving effect to the above objectives. The House expanded on this by adopting another resolution on 12 May agreeing, subject to the concurrence of the NCOP, to establish the PIFC which would consist of nine NA members, as follows: ANC - 5; DA - 1; Cope - 1; IFP - 1 and other parties 1; and five NCOP members, as follows: ANC - 3; DA - 1 and other parties 1. The motion also mandated the PIFC to perform those functions that were stipulated in the resolution of 10 March.

On 26 August, the NCOP concurred with the establishment of the PIFC.

It is worth noting that the House resolutions did not create a "committee" of Parliament as envisaged in the NA or Joint Rules. The resolution also provided no guidance on how the chairperson would be appointed, remuneration for the chairperson, how the members were to be appointed, how

In the second letter, dated 19 October, the President informed the Assembly of further resignations of SABC Board members, which were Ms B J Masekela, Mr M A Mello, Mr D Niddrie and Ms F Sekha. The request to fill Ms Masekela's position was thus repeated in the second letter. At that time, the committee had not yet completed the selection process for her replacement. The President requested the House to recommend candidates to fill all the vacancies.

The procedure for the appointment of SABC Board members is regulated by section 13 of the *Broadcasting Act*, No 4 of 1999. The Act requires the President to appoint non-executive members of the board on the advice of the Assembly.

At the end of the year, the committee was still processing the nominations of persons to serve on the SABC Board.

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

On 22 September, the Speaker tabled and referred a letter from the Minister in The Presidency: Performance Monitoring and Evaluation as well as Administration, informing the Assembly that the term of office of three members of the MDDA Board would expire on 31 December. The Minister requested the Assembly to recommend three candidates in terms of section 4(1)(b) of the *Media Development and Diversity Agency Act*, No 14 of 2002, to fill the vacancies. The request was referred to the Portfolio Committee on Communications for consideration and report.

The Act requires that the appointment process of Board members must be in accordance with the principles of public participation in the nomination process, transparency and openness, and publication of a shortlist of candidates for appointment.

The Committee received 22 nominations and shortlisted 10 candidates for interviews. It duly published the shortlist of candidates in the ATC of 11 November. The candidates were interviewed on 16 November.

On 17 November, the Committee unanimously recommended to the House that three candidates should be appointed to serve on the Board. On 18 November, the Assembly agreed to the recommendation for the appointment of Ms Louise Carol Vale, Ms Nadia Bulbulia and Ms Phelisa Nkomo to the MDDA Board.

[41] PUBLIC SERVICE COMMISSION (PSC): REQUEST FOR RECOMMENDATION FOR APPOINTMENT OF COMMISSIONER

The Speaker received a letter from the President, dated 25 October, informing the Assembly that the term of office of the chairperson of the PSC, Dr Ralph Mgijima, a

provincial appointee, would expire on 31 January 2011 and requesting the Assembly to fill the vacancy that would arise in accordance with section 196(8) of the Constitution. The President's request was tabled and referred to the Portfolio Committee on Public Service and Administration for consideration and report on 27 October.

After administrative liaison between the portfolio committee, the NA Table and the Office of the President, it was realised that the request had been erroneously sent to the NA, as a successor for Dr Mgijima had to be appointed by the Premier of Gauteng. The Speaker duly withdrew the President's letter by an announcement in the ATC of 3 November.

[42] WITHDRAWAL OF DECLARATION OF LAND FROM LOWVELD NATIONAL BOTANICAL GARDEN, NELSPRUIT, MPUMALANGA

Section 34(2) of the *National Environmental Management Act: Biodiversity Act*, No 10 of 2004, provides that a part of a botanical garden on state land may not be excluded from it except by resolution of both Houses of Parliament.

The exclusion of a portion of state land was required as the South African National Roads Agency Limited (SANRAL) needed to construct a ring road around the town of Nelspruit. The approved alignment however would cut through a 1.47 ha portion of the northern border of the Lowveld Botanical Gardens. For the road to be completed, the said portion of state land needed to be de-proclaimed.

On 10 December 2009, the Minister of Water and Environmental Affairs submitted for parliamentary approval a request for the exclusion of a portion of state land from the Lowveld National Botanical Garden, Mpumalanga province. The Minister's request was referred to the Portfolio Committee on Water and Environmental Affairs on 26 January for consideration and report.

The committee's report, dated 9 February, was published in the ATC of 18 February. It recommended approval of the Minister's request to exclude a portion of state land from the Lowveld National Botanical Garden. In addition, the committee took exception to two matters involving the Department, namely:

- a) that the Department of Water and Environmental Affairs had already issued a record of decision (ROD) to proceed with the construction of the road without first getting approval from Parliament; and
- b) the comment from the departmental official to the effect that the department was bringing the matter before the committee as a "mere formality."

Although having agreed to recommend approval of the Minister's request to de-proclaim the portion of state land, the committee placed on record its disapproval of the way in which the department approached the committee briefing.

The Minister's request was approved by the Council on 25 March and the Assembly on 2 June.

the *Gazette*, as well as in other appropriate media and by written invitation to the relevant parliamentary committees, call for the nomination of persons to serve on the board. The Act does not envisage any further role for the parliamentary committees beyond the invitation to nominate persons to serve on the board.

The committee did not nominate any persons to serve on the board before the end of the 2010 session.

[37] SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC): RECONSIDERATION OF RECOMMENDATION FOR APPOINTMENT OF COMMISSIONER, AND RECOMMENDATION FOR APPOINTMENT OF COMMISSIONER

Item 40, Issue 15 reported that the NA, on 12 November 2009, amended its resolution of 22 September 2009 by omitting the nomination of Adv L K B Mpumlwana as full-time commissioner to the SAHRC, pending its reconsideration of the nomination. The reconsideration was necessitated by the failure of Adv Mpumlwana to disclose certain facts material to his eligibility for appointment. The matter was referred to the Portfolio Committee on Justice and Constitutional Development for further consideration and report.

The committee, in particular, noted the judgment in *Truth and Reconciliation Commission v Mpumlwana* and *Mpumlwana v Truth and Reconciliation Commission and Another* [2001] 3 SA 58 (CK) which found, among other things, that Adv Mpumlwana “by his non-disclosure of his employment in the Eastern Cape Provincial Administration fraudulently misrepresented to the Truth and Reconciliation Commission that he was a fit and proper person to be employed by it, whereas that was not the case.” After considering all the material before it, the committee felt that it could not continue to support Adv Mpumlwana’s nomination. In its report of 31 August, the committee accordingly recommended that his nomination be withdrawn. The House agreed to this recommendation on 9 September without debate.

Subsequent to the withdrawal of the nomination of Adv L K B Mpumlwana by the House on 9 September, the Portfolio Committee on Justice and Constitutional Development recommended in a second report dated 31 August that Dr Gladstone Sandi Baai, who was among those interviewed and identified by the committee as the next suitable candidate should a nominee become unavailable for appointment, be accordingly recommended for appointment as a full-time commissioner in the SAHRC.

The recommendation of the committee was considered by the Assembly on 9 September and the nomination of Dr Gladstone Sandi Baai for appointment as commissioner to the SAHRC was agreed to in accordance with section 193(5)(b)(ii) of the Constitution.

[38] NATIONAL LOTTERIES BOARD: RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBERS

On 17 August, the Minister of Trade and Industry wrote to the Speaker requesting the relevant Assembly committee to recommend a candidate who complies with sections 3(1)(c) and 3(2) of the *Lotteries Act*, No 57 of 1997, for appointment to the National Lotteries Board. The letter from the Minister was tabled and referred by the Speaker to the Portfolio Committee on Trade and Industry on 25 August for consideration.

The Act stipulates a role for the relevant Assembly committee only with regard to the appointment of the chairperson of the board. The Act does not prescribe any role for the Assembly in the appointment of the rest of the board members and the committee therefore did not report to the House.

However, the *Handbook for the Appointment of Persons to Boards and State Institutions* gives the Executive Authority (the Minister) discretion to request the relevant portfolio committee to interview and recommend suitable candidates to be considered for appointment as board members.

On 8 September, the committee recommended to the Speaker that the Minister should consider appointing one of two candidates as a member of the National Lotteries Board. It further recommended that the remaining candidate could be considered by the Minister in the event of a vacancy occurring at the board, except for the position of chairperson. The recommended candidates were Mr Johannes Collen Weapond and Mr Petrus Jacobus (Pieter) Badenhorst.

Since the approval of the House was not required, the Committee requested the Speaker to convey its recommendation to the Minister. The Speaker did so on 15 September.

[39] SOUTH AFRICAN BROADCASTING CORPORATION (SABC): RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBERS

Two requests for the appointment of SABC Board members were received from the Minister of Communications and the President, respectively. The Speaker tabled and referred the requests to the Portfolio Committee on Communications for consideration and report on 8 September and 19 October, respectively.

In the first letter, dated 8 September, the Minister informed the Assembly that Ms B J Masekela had resigned from the SABC Board with effect from 31 October. He requested the House to recommend a candidate for appointment for the remainder of Ms Masekela’s period of appointment, which was until 9 January 2015.

decisions were to be taken, who the structure reported to and from where it obtained funding.

By the end of the year, discussions were ongoing on how to proceed with the House resolution.

[20] REPORTS BY THE PUBLIC PROTECTOR

In terms of section 8(2) of the *Public Protector Act*, No 23 of 1994, the Public Protector regularly submits reports on its investigations and findings to Parliament. A summary of the reports tabled during 2010 follows below.

‘Ex-mineworkers not compensated for occupational diseases’

On 27 March 2009, the former Public Protector Adv M L Mushwana submitted Report No 1 of 2008-09 for tabling. The report dealt with an investigation into allegations that ex-mineworkers were not being compensated for occupational diseases due to incomplete or absent work records and the refusal of the Compensation Commissioner to accept other forms of documentary proof of employment.

The report was submitted in the period after the NA had been dissolved for the general election of 2009 and therefore was not tabled in the 3rd Parliament. Early in the 4th Parliament, the newly appointed Public Protector, Adv T N Madonsela, forwarded to the Speaker a response from the Minister of Health, dated 9 November 2009, to recommendations in the Public Protector’s report.

The Minister’s response set out action that could be beneficial to the claimants. Both documents were tabled by the Speaker on 2 September and referred to the Portfolio Committee on Health and the Portfolio Committee on Mining for consideration.

Alleged breach of Executive Ethics Act by President of the Republic

The President of the Republic sent a letter dated 4 May to the NA, submitting Public Protector Report No 1 of 2010-11. The report followed on an investigation by the Public Protector into a complaint lodged by the Leader of the Official Opposition, Mr A T Trollip, in terms of section 4(1) of the *Executive Ethics Act* (the Act), No 82 of 1998. He alleged that the President had not timeously declared his interests in terms of the Executive Code of Ethics.

Together with the report, the President also submitted for tabling his comments on the report and the action taken in regard to the report’s recommendations, as required in terms of the Act. These documents were tabled on 11 May and referred to the Joint Committee on Ethics and Members’ Interests on 26 May.

Among the recommendations of the Public Protector was a suggestion that the Act should be amended to address all uncertainties and anomalies and Cabinet and Parliament ought to review previous recommendations by the Public Protector regarding the management of the register of interests.

As the Act falls within the purview of the Executive, the President informed the Assembly that the Cabinet would embark on a review of the Executive Code of Ethics, as recommended by the Public Protector. On 16 July, the Speaker announced that a letter dated 30 June had been received from the President, requesting more time for the intended review. He undertook to provide the House with a further progress report following a Cabinet meeting on 21 July.

On 26 August, the President wrote to the Assembly, informing the House that the Cabinet had agreed on 21 July to apply to Cabinet members who breached the Executive Code of Ethics the same sanctions that applied to members of Parliament guilty of violating the parliamentary Code of Conduct.

In a letter tabled on 1 September, an undertaking was also given that a full report on the implementation of the Public Protector’s recommendations would be submitted to Parliament as soon as the Minister of Justice and Constitutional Development had finalised a comprehensive report. Both letters were sent to the Portfolio Committee on Justice and Constitutional Development and to the Joint Committee on Ethics and Members’ Interests on 1 September.

By the end of the year, the Minister’s report was still awaited.

Alleged breaches of Executive Ethics Act by Minister of Communications

The President of the Republic, on 2 August and 10 August respectively, received Report No 19 of 2010-11 and Report No 20 of 2010-11 from the Public Protector. Both reports concerned investigations into alleged breaches of the *Executive Ethics Act* (the Act), No 82 of 1998, by the then Minister of Communications, Gen (ret.) S Nyanda.

In terms of section 4(1) of the Act, the Public Protector must investigate complaints by, among others, NA members. In the case of Report No 19, the complaint was brought by Ms J D Killian, an Assembly member representing Cope. The second complaint came from the Leader of the Opposition, Mr A T Trollip.

The President, in terms of section 3(5)(a) of the Act, must submit a report on a Cabinet member to the NA not later than 14 days after receiving such a report, together with his / her comments and a report on any action taken or action that is to be taken.

A letter dated 15 August was sent to the Assembly, submitting Report No 19. Its receipt, together with the requisite comments by the President and a report on the action taken, were announced by the Speaker in the ATC of 31 August. Together with a letter dated 23 August, the President submitted Report No 20, his comments and a report on the action taken. The Speaker announced that in the ATC on 27 August.

On 10 September, Report No 19 was referred to the Portfolio Committee on Public Enterprises for consideration and Report No 20 to the Standing Committee

on Finance. Both reports also went to the Joint Committee on Ethics and Members' Interests for information.

None of the above-mentioned committees had reported by the end of the annual session.

'Misconduct and maladministration in Commission for Gender Equality (CGE)'

Public Protector Report No 22 of 2010-11 was tabled on 16 November. The report followed an investigation by the Public Protector, at the request of the Deputy Speaker, into complaints relating to misconduct and maladministration in connection with the affairs of the CGE, a body established in terms of the Constitution to support institutional democracy.

On 19 October, the Deputy Speaker, as Acting Speaker, had announced the appointment of the Ad Hoc Committee on the Commission for Gender Equality (CGE) Forensic Investigation to consider this particular report of the Public Protector, as well as a report by the Auditor-General. The Public Protector's report was therefore referred to the ad hoc committee for consideration and report.

By the end of the annual session, the ad hoc committee had not yet completed its work.

'Improper conduct by department and GEPF during privatisation of Venda Pension Fund'

On 10 November, the Speaker tabled Public Protector Report No 28 of 2010-11 that concerned an investigation by the Public Protector into an allegation of improper conduct by the Department of Public Service and Administration and the Government Employees Pension Fund (GEPF) during the privatisation of the Venda Pension Fund.

The report was referred to the Standing Committee on Finance for consideration and to the Portfolio Committee on Public Service and Administration for information.

'Improper conduct and alleged prejudice by governing body of CCMA'

The Speaker tabled Public Protector Report No 30 of 2010-11 on 18 November. The Public Protector had investigated a complaint of improper conduct by the governing body of the Commission for Conciliation, Mediation and Arbitration (CCMA) and the alleged prejudice caused by its decision not to accredit a bargaining councils' panelist.

The report was referred to the Portfolio Committee on Labour for consideration.

[21] HANSARD CENTENNIAL CELEBRATIONS

The centenary of Hansard in the South African Parliament was celebrated on 4 November with the adoption of a motion giving recognition to the hundred years of service rendered to Parliament by Hansard.

Mr P J C Pretorius moved without notice that the House appreciated the indispensable role played by Hansard in recording and translating the debates of Parliament since 1910 and the specific role played by Hansard reporters, translators and administrative staff over the past hundred years.

He mentioned the challenges with which Hansard was confronted at the advent of democracy in 1994, particularly with the introduction of 11 official languages; the way in which these were overcome and in addition to these, the ongoing challenges that face Hansard, not least of all that members' speeches often require considerable editing and correction prior to publication and that it is through the tireless work of Hansard staff that a professional end product is produced.

The House gave recognition to the important role Hansard played in recording the history of our country and Parliament as an institution and expressed its appreciation to Dr At van Wyk, author of a momentous new book on Hansard, titled: *Hoor! Hoor! Hansard 100 jaar debat, 1910-2010* (although an English version has not been published the title may be loosely translated as *Hear! Hear! Hansard 100-year debate, 1910 – 2010*) and resolved to wish the Secretary to Parliament and Hansard staff all success in ensuring the continued success of Hansard as a critical and indispensable service to our country and institution.

LEGISLATION AND COMMITTEES

[22] EXTENSION OF DEADLINE FOR REPORTING BY AD HOC COMMITTEE TO CONDUCT CO-ORDINATED OVERSIGHT ON SERVICE DELIVERY

Since the establishment on 22 September 2009 of the Ad Hoc Committee to Conduct Coordinated Oversight on Service Delivery under the theme: **"Working together to ensure the delivery of quality service to communities"**, the deadline by which it had to report was extended four times and its work done after expiration of a particular deadline, condoned.

On 18 February, the House resolved that, notwithstanding the resolution it adopted on 12 November 2009, the deadline by which the committee had to report, be extended to 14 May. On 11 May, the House further extended the deadline to 30 July by adopting a similar resolution and in the same manner on 11 August resolved to extend the deadline to 24 August.

A further resolution by the House on 2 September extended the deadline to 10 September and condoned the work the committee had done since 30 July. The previous House resolutions had not condoned the work of the committee. This condonation was thus necessary because in terms of Rule 214(6)(c) an ad hoc committee ceases to exist if it has not completed its task by the date set for the completion of the task.

committees should again be approached and asked to submit nominations.

Because the Act limits the role of the committee to submitting names for consideration by the Minister, the committee, at a meeting held on 12 April, deemed it unnecessary to nominate and submit persons to serve in the ARC.

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

The Speaker received two requests from the Minister of Communications to fill, altogether, four vacancies in the Icasa Council. The requests were dated 18 March (one vacancy) and 29 April, (three vacancies) respectively. The requests were tabled and referred to the Portfolio Committee on Communications for consideration and report, respectively, on 25 March and 11 May.

Section 5 of the *Independent Communications Authority of South Africa Act*, No 13 of 2000 requires that the appointment process of councillors must be in accordance with the principles of public participation in the nomination process, transparency and openness, and publication of a shortlist of candidates for appointment. Section 5(1A)(a) requires the NA to submit to the Minister a shortlist of suitable candidates at least one and a half times the number of councillors to be appointed.

The committee advertised the vacancies and requested the public to nominate persons for consideration. It received 91 nominations and shortlisted 20 candidates for interviews. As required by the Act, the committee duly published a shortlist of candidates in the ATC on 22 April and 11 May, respectively.

After the interviews, the committee reported in the ATC of 26 May that it had unanimously recommended seven candidates from which the Minister was to appoint councillors. On 27 May, the House approved the shortlist of seven candidates from which to fill four vacancies on the Council of Icasa.

A request, dated 1 June, from the Minister for the approval by the Assembly of four candidates for appointment to Icasa in terms of section 5(1B)(a) of the Act, was tabled and referred on the same day to the committee for consideration and report. After consideration of the Minister's request, the committee recommended, also on 1 June, that the House should approve the request.

On 2 June, the House agreed to the Minister's recommendation for the appointment of Mr William Hamilton Currie, Mr Joseph Morakile Lebooa, Dr Stephen Siphon Mncube and Ms Ntombizodwa (Miki) Ndhlovu as Icasa councillors.

On 4 November, the Speaker tabled and referred another request from the Minister, dated 22 October, informing the Assembly that the term of office of Dr M Socikwa would

expire on 31 March 2011, and requesting it to commence the process of filling the vacancy.

The committee's call for public nominations resulted in 24 nominations from which it shortlisted five candidates. It published the shortlist in the ATC of 9 November and announced that interviews would be conducted on 25 November.

By the end of the year, the Committee had not reported on its deliberations.

[35] HUMAN SCIENCES RESEARCH COUNCIL (HSRC): REPLACEMENT OF BOARD MEMBERS

Item 33, Issue 15 reported in detail on the Assembly's recommendations to the Minister of Science and Technology for the appointment of members to the HSRC Board. The Assembly approved a shortlist of seventeen candidates on 20 August 2009 as required by section 5 of the *Human Sciences Research Council Act*, No 17 of 2008.

On 24 November 2009, the Minister again wrote to the Speaker, requesting the NA to approve a replacement on the board by a person who had not been on the Assembly-approved shortlist. On 3 March, the Speaker advised the Minister that, although the Act empowered her to appoint replacements, such replacements would be subject to the normal procedure set out in the Act, i.e. appointment from a shortlist approved by the Assembly. The Act did not envisage a procedure for appointing a person not on the approved shortlist.

The Minister was further advised that, if she was unable to find replacements from the shortlist approved by the Assembly on 20 August 2009, the normal procedure described in the Act would have to be followed before the Assembly could participate in the process to replace a board member.

On 4 May, the Minister informed the Speaker that she had accepted the advice and that she had appointed, from the shortlist approved on 20 August 2009, Dr B O Tema to replace Prof S Zinn and Prof T Pillay to replace Prof P Naidoo as HSRC Board members. The Speaker announced the appointments in the ATC of 19 May.

[36] LAND BANK: RECOMMENDATION FOR APPOINTMENT OF BOARD MEMBER

On 16 July, the Speaker tabled and referred letters dated 2 June and 12 July from the Minister of Finance to the Standing Committee on Finance for consideration and to the Portfolio Committee on Agriculture, Forestry and Fisheries. The Minister invited the committees to nominate, by no later than 30 August, a candidate with a strong credit risk background for appointment to the board of the Land and Agricultural Development Bank.

The procedure for the appointment of members to the board is regulated by section 4 of the *Land and Agricultural Development Bank Act*, No 15 of 2002, which stipulates that, whenever necessary, the Minister must, by notice in

Assembly agreed to the bill on 26 October and the NCOP passed the bill on 23 November.

MONEY BILLS AND RELATED MATTERS

[31] PROCESSING OF APPROPRIATION BILL

The procedure by which Parliament and the NA process the budget including the Fiscal Framework, Division of Revenue Bill and Appropriation Bill is determined by the *Money Bills Amendment Procedure and Related Matters Act, No 9 of 2009*. (See items 28 & 29, Issue 15). This Act effectively replaced the previous procedures set out in the rules.

The 2010 budget was the first after the Act came into effect that was subject to the provisions of the Act. Consequently, on 17 February the Minister of Finance delivered his budget speech and tabled:

- (1) The Speech of the Minister of Finance on the National Annual Budget;
- (2) Budget Review, including:
 - (a) The fiscal framework;
 - (b) Revenue proposals, inclusive of customs and excise duties; and
 - (c) The estimates of national revenue;
- (3) Division of Revenue Bill [B 4 – 2010]; and
- (4) Appropriation Bill [B 3 – 2010].

In terms of the procedures contained in the Act, the House adopted the following motion that, “notwithstanding the relevant provisions of the rules on money bills, the fiscal framework and revenue proposals, as well as the Minister of Finance’s speech, be referred to the Standing Committee on Finance for consideration and report within 16 days”.

In terms of the Act these instruments had to be referred and considered in a particular sequence. First, the Fiscal Framework was referred to the Standing Committees on Finance of both Houses which were required to report separately within a specified period. The NA subsequently debated and adopted the Fiscal Framework and committee report on 2 March. The NCOP adopted the Fiscal Framework on 10 March.

Thereafter, the Division of Revenue and Appropriation Bills were referred to the Standing Committee on Appropriations in the Assembly, while the Schedule of Votes and strategic plans went to the different portfolio committees. In accordance with the sequence, the Division of Revenue Bill was adopted by Parliament before any amendments to the Appropriation Bill could be considered: The Assembly adopted the Bill on 4 March (with the suspension of Rule 231 (1)) and the NCOP on 25 March.

The different Votes in the Schedule to the Appropriation Bill were then debated in EPCs. Once the EPC debates were concluded the Standing Committee on Appropriations tabled its report on 21 May and the Appropriation Bill itself for House consideration. The Bill was scheduled for First Reading and debate in the NA on 26 May. Following the First Reading, the House agreed to each of the Votes and

then the complete Appropriation Bill. The Bill was then read a second time on the same day. The NCOP passed the Appropriation Bill on 4 June.

[32] REPORT ON IMPLEMENTATION OF THE MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS ACT

On 26 May, the NA adopted the Report of the Standing Committee on Appropriations on the Appropriation Bill 2010 published in the ATC of 21 May. The report recommended that: “A detailed project plan (report) for the implementation of the Money Bills Amendment Procedure and Related Matters Act (the Act)... be tabled in the House within 30 days by the Office of the Speaker”.

On 11 August, however, the Speaker announced a delay in the submission of the report in the ATC due to ongoing consultations and the number of stakeholders involved. After a further delay, the report was tabled in the ATC of 3 November. It outlined progress with the implementation of the Act and set out planned activities and processes.

STATUTORY FUNCTIONS

[33] AGRICULTURAL RESEARCH COUNCIL (ARC): RECOMMENDATION FOR APPOINTMENT OF COUNCIL MEMBERS

On 9 December 2009, the Minister of Agriculture, Forestry and Fisheries wrote to the Speaker inviting the Portfolio Committee on Agriculture, Forestry and Fisheries to nominate candidates to serve on the ARC. The Minister requested the committee to respond by 7 January. At the time, the Minister was informed that Parliament was in recess and that committees would not be conducting business before the Minister’s deadline.

In a letter dated 5 March, the Minister repeated her request to the committee to submit nominations by 31 March.

The procedure for the appointment of members of the ARC is regulated by section 9(3) of the *Agricultural Research Council Act, No 86 of 1990*. The Act requires the Minister, by notice in the *Gazette* and other appropriate media to invite, among others, the Portfolio and Select Committees of Parliament responsible for agriculture to submit to the Minister names of persons to be considered to serve on the ARC. Furthermore, it stipulates that the Minister should establish a selection committee to compile a shortlist of eligible candidates from the nominations received by the Minister. The Minister is authorised to appoint any number of members from the shortlist of candidates recommended by the selection committee.

Although the notice appeared in the *Gazette* in 2009, it was not copied to the relevant parliamentary committees and Parliament therefore did not participate in nominating suitable candidates. The selection committee appointed to evaluate the nominations decided that the parliamentary

The committee reported on 8 September and the House adopted its report on 9 September.

(For establishment of committee and previous extensions of deadline, see Issue 15, Item 27).

[23] ESTABLISHMENT OF AD HOC COMMITTEE ON PROTECTION OF INFORMATION BILL

On 18 March, the House passed a resolution to appoint an ad hoc committee to consider and report on the Protection of Information Bill [B6 – 2010]. The committee was composed of 10 ANC members, 2 DA members, 1 Cope member, 1 IFP member and 3 members from the other parties. It was further agreed that the committee would report to the House by 7 May.

However, by 7 May the committee had not reported and on 11 May the House passed another resolution in which it condoned the continued existence of the ad hoc committee and extended the deadline to 30 September by which the committee had to report.

By 30 September the committee had still not reported. On 16 November another resolution was passed in the House extending the deadline for reporting to 28 January 2011.

[24] SUBMISSION OF CONFIDENTIAL REPORT BY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

On 4 June, the Minister of Justice and Constitutional Development wrote to Parliament, submitting a report on the implementation of the provisions of the *Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, No 48 of 2008*, in adherence of a decision of a NCOP select committee.

As the information contained in the report was closely linked to a report which had been requested by the Portfolio Committee on Justice and Constitutional Development but which was not due for another year, the Minister suggested that the report could also go to the relevant portfolio committee.

The Minister furthermore requested that the report and attached submissions be treated as confidential, as they contained information that was commercially sensitive.

NA Rule 157(1)(c) provides for a document to be placed before a committee as a confidential document. They also require that the committee must declare it a confidential document. It then has to ensure that the committee members have access to the document in a manner that will not compromise the document’s status.

Section 36 of the *Promotion of Access to Information Act, No 2 of 2000*, provides for the mandatory protection of commercial information of a third party if it contains, *inter*

alia, information that is likely to cause harm to the commercial or financial interests of the third party or if its disclosure could reasonably be expected to prejudice that third party in commercial competition.

The preamble to the Act states that the right of access to any information held by a public or private body may be limited only to the extent that the limitations are reasonable and justifiable in an open and democratic society. The Speaker, in determining whether to accede to a request for declaring a document confidential, would therefore err on the side of promoting members’ access to information. However, in this particular case the confidentiality of the documents was mandatory in terms of the Act.

On 13 August, the Speaker announced in the ATC the receipt of the above-mentioned correspondence from the Minister of Justice and Constitutional Development and said that he had acceded to the Minister’s request to declare the report and submissions by the mobile phone service providers confidential in terms of the *Promotion of Access to Information Act*. He referred the papers to the Portfolio Committee on Justice and Constitutional Development, but did not compel the committee to report.

[25] LEGISLATIVE PROPOSAL BY PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Section 1(3) of the *Repeal of the Black Administration Act and Amendment of Certain Laws Act, No 28 of 2005*, provides that the remaining provisions of sections 12 and 20 and the Third Schedule of the *Black Administration Act, No 38 of 1927*, will be repealed on 30 December 2010 or on such date as national legislation to further regulate the matters dealt with in these provisions has been implemented, whichever occurs first. These sections deal with the judicial functions of traditional leaders.

During their deliberation on the Traditional Courts Bill, which regulates the matters dealt with in sections 12 and 20 and the Third Schedule of the *Black Administration Act*, the Portfolio Committee on Justice and Constitutional Development proposed to introduce an amending bill that will extend the date of application of these provisions to 30 December 2012 for the purposes of obtaining greater public input and consensus on contentious issues and allowing traditional courts to continue functioning legally.

On 16 September the NA passed a motion that instructed the Portfolio Committee on Justice and Constitutional Development to publish the full particulars of its legislative proposal in the ATC forthwith; and notwithstanding the provisions of Rule 238(1), granted the committee permission to proceed with the proposed legislation.

The Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Bill [B37 - 2010] (NA - section 75) was thus introduced by the committee. The Assembly passed the bill on 2 November and the NCOP did so on 23 November.

[26] ESTABLISHMENT OF AD HOC COMMITTEE ON THE COMMISSION FOR GENDER EQUALITY (CGE) FORENSIC INVESTIGATION

(See also item 20)

After consultation with the Chief Whip of the Majority Party and senior whips of the other parties, on 19 October, the Deputy Speaker acting as Speaker, appointed an Ad Hoc Committee on the Commission for Gender Equality (CGE) Forensic Investigation. The committee consisted of 14 members, in the following proportions: ANC 8; DA 2; Cope 1; IFP 1; and other parties 2. The Committee was instructed to consider and report on:

- (a) Report of the Auditor-General of South Africa to Parliament on an investigation at the Commission for Gender Equality – October 2010, and
- (b) Public Protector Report No 22 of 2010-11 on an investigation into complaints relating to misconduct and maladministration in connection with the affairs of the Commission for Gender Equality.

The committee was further instructed to report to the House by no later than 26 November. The House ratified the decision of the Acting Speaker on 26 October in terms of Rule 214(2). At the request of the committee, on 16 November, the House agreed to extend the deadline by which it had to report to 28 January 2011.

[27] ESTABLISHMENT OF AD HOC JOINT COMMITTEE ON CODE OF JUDICIAL CONDUCT AND REGULATIONS ON JUDGES' DISCLOSURE OF REGISTRABLE INTERESTS

The Code of Judicial Conduct and Regulations on Judges' Disclosure of Registrable Interests were submitted to Parliament on 30 September in terms of section 12(2) of the *Judicial Service Commission Act*, No 9 of 1994, and tabled in the ATC on 20 October.

On 28 October, the House established a Joint Ad Hoc Committee, with the concurrence of the NCOP, to consider the Code of Judicial Conduct and the Regulations on Judges' Disclosure of Registrable Interests. The committee consisted of 9 members of the NCOP and 14 members of the NA, in the following proportions: ANC 8, DA 2, Cope 1, IFP 1 and other parties 2. The committee was instructed to report back to the House by 16 November.

On 16 November, the Assembly passed a motion to extend the date by which the committee had to report to the House to 28 January 2011.

[28] ESTABLISHMENT OF JOINT AD HOC COMMITTEE ON THE SECOND IMPLEMENTATION REPORT OF SOUTH AFRICA'S AFRICAN PEER REVIEW PROGRAMME OF ACTION

The Speaker and the Chairperson of the NCOP announced in the ATC of 26 November that, after consulting the Chief Whip of the Majority Party and the Chief Whip of the Council, a Joint Ad Hoc Committee on the *Second Implementation Report on South Africa's African Peer Review Programme of Action* was established in terms of Joint Rule 138(1)(b). The committee was to consist of 14 members, as follows: ANC 4, DA 2, Cope 1, IFP 1, other parties 1 and NCOP 5. The committee would be co-chaired by the House Chairpersons responsible for committees in the NA and NCOP, and would develop a programme for Parliament's response to the *Second Implementation Report on South Africa's African Peer Review Programme of Action*. The committee would liaise with the South African National APRM Governing Council and Focal Point (the Minister of Public Service and Administration), oversee and coordinate the work of related task teams, exercise those powers in Joint Rule 32 that might assist it in carrying out its task and report to the Houses by no later than 30 April 2011.

[29] JOINT STANDING COMMITTEE ON INTELLIGENCE (JSCI): NOMINATION OF SECOND DEMOCRATIC ALLIANCE (DA) MEMBER

Issue 15 (Item 26) reported on the establishment and composition of the Joint Standing Committee on Intelligence in 2009. Section 2 of the *Intelligence Services Control Act*, No 40 of 1994, prescribes a formula to determine the number of representatives of political parties on the committee. By applying the formula to the Fourth Parliament, which was established in 2009, the DA qualified to have two members on the committee. However, at the time, the DA elected to nominate only one party member to serve on the committee.

On 28 September, the Chief Whip of the Opposition informed the Speaker that the DA wished to nominate Mr D J Stubbe, a member of the Assembly, as its second representative on the committee. In terms of the Act, nominated members must obtain security clearance from the State Security Agency before being appointed by the Speaker in the case of Assembly members. The Speaker must act with the concurrence of the President who, in turn, must act with the concurrence of the leader of the relevant political party. The Speaker duly wrote to the President on 13 October to inform him of the nomination of Mr Stubbe and to the Minister of State Security to alert him to the need for a formal security clearance process once the President had concurred with the nomination.

The President informed the Speaker on 22 November that he concurred with Mr Stubbe's appointment after consulting the Leader of the DA, Ms H Zille. By the end of

the year, Mr Stubbe's security clearance had not been confirmed by the Minister of State Security.

[30] REFUSAL BY MINISTER OF DEFENCE AND MILITARY VETERANS TO PROVIDE PORTFOLIO COMMITTEE WITH DOCUMENTATION

On 15 September 2009, the Minister of Defence and Military Veterans, Ms L Sisulu, MP, briefed the NA's Portfolio Committee on Defence and Military Veterans on the proposed National Defence Force Service Commission (NDFSC) ("the Commission") that would be established as a mechanism for consulting members of the defence force on their conditions of service.

On 18 November 2009, the interim commission appeared before the committee presenting a preliminary report on its investigations into conditions of service in the defence force. The commission informed the committee that it had submitted a report to the Minister, but that it was reluctant to provide it to the committee without ministerial approval or consent.

During meetings in March and April the committee raised concerns about the report not being available to it. In July, the Minister appeared before the committee and explained that the reports drafted by the commission were of an interim nature, and had first to serve before Cabinet before they could be submitted to the committee. She undertook to provide the reports to the committee once they had been considered by Cabinet. The Minister also assured the committee that the information contained in the reports had no bearing on the Defence Amendment Bill [B11 – 2010] (NA – sec 75) which had been tabled in Parliament on 1 June and subsequently referred to the committee for consideration and report.

Subsequently, the chairperson of the committee approached the Speaker for guidance on the committee's request for the report of the interim NDFSC to be submitted to it. Press reports at the time gave the impression that Parliament's oversight role had been compromised as the Speaker had to intervene to obtain immediate access to the report on behalf of the committee.

On 26 August, the Speaker released the following media statement on the matter.

"The role of Parliament in overseeing the Executive is an important constitutional function and seeks to hold the Executive to account. Parliament has no intention of relinquishing this right and responsibility, and further, has made its strengthening a priority.

Parliamentary convention maintains that while a portfolio committee is still processing a Bill, and until the portfolio committee reports on a Bill, it is inappropriate for the Presiding officers to intervene and potentially undermine the authority granted to the portfolio committee by the House. For this reason, the Presiding officers have up to now not involved themselves in a matter being processed by committees. As a rule, Committees should be encouraged to only seek the intervention of the presidium once they

have completed their business. However, having been requested by the Portfolio Committee on Defence and Military Veterans to give guidance in this instance, the Speaker took up the issue with the Executive.

Having met with the Leader of Government Business, Deputy President Motlanthe, and the Minister for Defence, Speaker Sisulu is assured that the portfolio committee will receive the report after it has been processed by Cabinet. They both expressed their commitment and respect for the authority of Parliament to oversee the Executive and their willingness to cooperate with Parliament in providing any required or requested information.

We have been given the assurance that Cabinet will process the report speedily.

For sake of clarity, we emphasise that, in the performance of its oversight and legislative functions, Parliament has the power, provided by the Constitution, Rules and the Powers, Privileges and Immunities of Parliament Act, to summon any person to give evidence and to require any person or institution to produce documents. The practice has been for Parliament to invoke this measure as a last resort, preferring to rely on the cooperation of Government and other sectors.

Parliament has accepted the undertaking of the Leader of Government Business and the Minister to make the reports available to members of the committee as soon as the remaining processes have been concluded. We have taken this view to maintain and promote cooperative governance.

It is hoped that this statement brings clarity to the various issues, but most importantly, that Parliament's oversight and legislative roles were not compromised in any way."

Notwithstanding the statement above, the committee decided to suspend its deliberations on the Defence Amendment Bill pending Cabinet's finalisation of the reports of the interim NDFSC. It communicated this decision to the House Chairperson responsible for committees.

This decision led to the Speaker writing to the chairperson of the committee on 2 September emphasising that Parliament had accepted the undertaking of the Executive that the reports would be submitted to the committee as soon as the remaining processes had been concluded.

The Speaker pointed out that a committee of Parliament had no power or authority to set timeframes for the Cabinet and that the Minister had assured him that there was no link between the reports and the amendment bill. This "speculation" on the part of the committee did not provide a reason for it to suspend consideration of the bill.

The Speaker also informed the chairperson that, should the committee wish to delay processing of the bill, for whatever reason, a committee report to that effect should be brought before the House.

The committee resolved to continue processing the Defence Amendment Bill. It reported to the House on 14 October that it had adopted the bill with amendments. The