

**DRAFT REPORT ON MEETING BETWEEN THE PRESIDING
OFFICERS OF THE NATIONAL ASSEMBLY AND
INSTITUTIONS SUPPORTING DEMOCRACY**

27 FEBRUARY 2015

PARLIAMENT

DRAFT REPORT ON MEETING BETWEEN PRESIDING OFFICERS OF THE NATIONAL ASSEMBLY AND HEADS OF THE INSTITUTIONS SUPPORTING DEMOCRACY

DATE: 27 February 2015

TIME: 10:00 – 13:00

VENUE: Speaker's Boardroom

1. EXECUTIVE SUMMARY

On invitation of the Speaker of the National Assembly, Ms Baleka Mbete, the Heads of the Institutions Supporting Democracy (ISDs) attended a meeting with Presiding Officers of the National Assembly on Friday morning, the 27th of February 2015. This was the first meeting of its kind since the 5th Parliament assumed office.

The meeting took place at Parliament and was attended by the Deputy Speaker, Mr Lechesa Tsenoli, the House Chairperson: Committees, Oversight and ICT, Mr Cedric Frolick, the Chairpersons of the South African Human Rights Commission, Commission for Gender Equality, Financial and Fiscal Commission, ICASA, PanSALB and the CRL Commission, as well as the Public Protector and Deputy Public Protector, the Deputy Auditor-General and a Commissioner from the Electoral Commission and the Public Service Commission, respectively. In attendance were the Chief of Staff in the Office of the Speaker, a representative from the Office on Institutions Supporting Democracy and from the Secretariat of the Forum for Institutions Supporting Democracy (FISD).

The Speaker invited the ISDs as a collective to identify the cross-cutting issues of concern which they would like to prioritise for discussion. She said it was important for Parliament to understand how these issues were affecting the ISDs, and to ensure that they were processed and dealt with, in one way or another. She informed the meeting of the Deputy Speaker's delegated responsibility to assist her in managing matters related to the ISDs.

The cross-cutting issues that were raised during the discussion that followed can be categorised as follows:

- Matters flowing from the report of the Ad Hoc Committee on Chapter 9 and Associated Institutions (commonly referred to as Kader Asmal Report), including appointment

procedures, budget shortfalls and budget location, and the implementation of the Determination of Remuneration of Office bearers of Independent Constitutional Institutions Laws Amendment Act

- Matters related to protocol
- Parliament's response to reports submitted by the ISDs
- ISD specific matters
- FISD interaction with the Speakers' Forum

The meeting resolved that –

1. The processing of the Kader Asmal report, in one way or another, needs to be fast-tracked.
2. The issue of de-linking the budgets of the ISDs from the government departments to which they are associated requires dedicated attention.
3. Regular meetings will be convened between the Presiding Officers and Heads of the ISDs, ideally on a quarterly basis.

2. WELCOMING AND OPENING REMARKS

The Speaker welcomed the Heads of the Institutions Supporting Democracy (ISDs) and the delegated representatives of those who were not able to attend the meeting, as well as the Deputy Speaker, House Chairperson: Committees, Oversight & ICT and staff. She said she was pleased to be able to meet with the ISDs for the first time during the term of the 5th Parliament.

The Speaker invited the ISDs as a collective to identify the cross-cutting issues of concern which they would like to prioritise for discussion. She said it was important for Parliament to understand how these issues were affecting the ISDs, and to ensure that they were processed and dealt with, in one way or another.

The Speaker indicated that the Presiding Officers were aware of a number of issues that require attention, having received a legacy report from the 4th Parliament as well as a

briefing towards the end of 2014 from the Chairpersons of Committees that oversee the respective ISDs. For the sake of progress she suggested that matters specific to the individual ISDs be dealt with in bilaterals. Matters related to the content of the work of the ISDs would, as always, be dealt with by the relevant parliamentary committees to which the ISDs account.

The Speaker briefly expanded on some of the issues of which she was aware, namely concerns about the fact that the 4th Parliament had not managed to process the Ad hoc Committee Report on the Review of Chapter 9 and Associated Institutions, generally referred to as the Kader Asmal Report; the differing appointment procedures in respect of the Heads and Members of the various ISDs; the promulgation of the Determination of Remuneration of Office bearers of Independent Constitutional Institutions Laws Amendment Act that was being awaited, as well as steps to attend to the exclusion of the FFC, PSC and PanSALB from the Act; and, lastly, the FISC's request for interaction with the Speakers' Forum with a view to establishing a closer working relationship between ISDs and the provincial legislatures.

The Speaker reiterated that she would appreciate hearing from the ISDs what would work better for them and, by implication, what would work best for South Africa. The Deputy Speaker added that it would assist to hear from the ISDs what worked, from their perspective, and what did not, so that the necessary systems and procedures could be tightened.

3. CROSS-CUTTING ISSUES REQUIRING ATTENTION

The ISDs expressed their sincere appreciation to the Speaker, Deputy Speaker and House Chairperson: Committees, Oversight & ICT for the opportunity to meet in this way. The cross-cutting issues that were raised during the discussion that followed can be categorised as follows, and are expanded upon below:

- Matters flowing from the Kader Asmal Report
 - Appointment procedures
 - Budget shortfalls and budget location

- The 'Remuneration Act'¹
- Matters related to protocol
 - Protocols of communication
 - Inclusion in the Table of Precedence
- Parliament's response to reports submitted by the ISDs
- ISD specific matters
 - Auditor-General of South Africa
 - FFC
 - ICASA
 - CGE
- FISC interaction with the Speakers' Forum

3.1 Matters flowing from the Kader Asmal Report

The Speaker made the observation that the Kader Asmal report² had raised a range of issues, some of which had become issues of differences and controversy and were therefore never dealt with. The challenge is, of course, that the report dates back to the 3rd Parliament and was deferred to the 4th Parliament, with the adoption of only one of its recommendations, namely the establishment of the Office on Institutions Supporting Democracy. The Speaker said that it was nevertheless important to fast-track its processing in one way or another.

The ISDs suggested that it might be helpful to have some kind of workshop on the report and areas of priority.

3.1.1 Appointment procedures

The Speaker indicated that she was aware of the widely differing procedures for the appointment of the Heads and other members of the ISDs. For example, Parliament is involved in some procedures but not in all; in some instances the President appoints, and in

¹ Determination of Remuneration of Office bearers of Independent Constitutional Institutions Laws Amendment Act, assented to by the President on 30 May 2014

² Ad hoc Committee Report on the Review of Chapter 9 and Associated Institutions, considered partly by the National Assembly on 21 November 2008.

others a Minister. She said of interest to her was to hear how the ISDs were experiencing that.

It became clear during the discussion that it would be helpful if there could be a degree of standardisation in respect of the appointment procedures of the Heads and members of the ISDs, even though it could not be a one-size fits all. The statement was also made that it would work better if all ISD related appointments were made via parliamentary processes for approval by the President.

The ISDs also felt that attention also needed to be given to the time that it takes to make appointments and to the issue of appointment *versus* renewal of terms of office. Enabling legislation in respect of some of the Institutions make provision for the renewal of terms of office, but that it is not clear how this is handled. It appears to be done differently in different instances.

3.1.2 Budget shortfalls and budget location

It was acknowledged that several of the ISDs had expressed concern, via the portfolio committees to which they report, that their budget allocations are inadequate and do not allow them to do full justice to their constitutional mandates. The Speaker said that everyone would know that resources were stretched. However, at her request the House Chairperson: Committees, Oversight & ICT nevertheless reminded the ISD Heads of the importance of the Budgetary Review and Recommendation period, which occurs during October each year. He referred to the three-year budget cycle, and explained that during the so-called BRRR-period thoroughly motivated submission could be made to committees on areas which the ISDs budget allocations did not cater for.

The Speaker said she was also aware of concern about the location of the budgets of the ISDs, and questions as to whether they should be linked to the specific departments to which they are aligned, or not.

The ISDs explained that the location of their budgets under the departments to which they are associated creates an uneasy relationship. They are treated in a similar way to entities of

the departments, mostly without adequate acknowledgement of the fact that they are independent institutions in terms of the Constitution. Their budget allocations almost become a footnote under the big budgets of the departments.

The ISDs were of the unanimous view that their independence would be enhanced if their budgets were to be delinked from the departments with which they were associated.

3.1.3 The 'Remuneration Act'

The Speaker said she was aware of the fact that the Determination of Remuneration of Office bearers of Independent Constitutional Institutions Laws Amendment Act puts a legislative framework in place to determine the salaries, allowances and benefits of commissioners and the heads of institutions, and that the President assented to it on 30 May 2014. She said her Office was following up on the implementation of the Act on a regular basis. She indicated that she was also aware of the exclusion of the Public Service Commission, Financial and Fiscal Commission and PanSALB from the Act, and that an amendment bill is meant to be drafted to attend to this. The office is also following up on that.

The ISDs indicated that it indeed caused concern that the Act had not yet been implemented. Mention was made of the fact that the huge gaps between the salary dispensations of the different institutions created problems.

3.2 Matters related to protocol

The ISDs referred to the need for a communications protocol, providing guidelines on communication between the ISDs and Parliament. However, further discussion was not devoted to this.

Reference was also made in passing to the need for the inclusion of the Heads of the ISDs in the country's Table of Precedence when it gets updated next.

3.3 Parliament's response to reports submitted by the ISDs

The ISDs expressed concern about the fact that the Special Reports that they submit to Parliament do not always receive adequate attention. These are research or investigative reports in addition to the ISDs strategic plans and annual reports which they mostly submit of their own accord.

They also pointed out that some of the special reports which they submit to Parliament cut across different portfolios, yet seldom received attention from any of the relevant committees apart from the one to which they specifically account.

These two matters were not discussed in further detail during the meeting.

3.4 ISD-specific matters

The Speaker reiterated that ISD-specific matters would best be dealt with either by way of bilateral between the Presiding Officers and themselves or with the assistance of the relevant portfolio committees. However, the following was noted:

- The Speaker indicated that she had requested her Office to follow up matters related to the Auditor-General, and that a bilateral should be scheduled in the near future to discuss progress.
- The view of the Public Protector of South Africa that the work of the Office focuses to a large extent on matters related to governance and maladministration, and that it does not flow logically from the Constitution that it accounts to the PC on Justice & Correctional Services. A reconsideration of this alignment would be appreciated.
- It was noted that only certain cosmetic changes were addressed in the Commission for Gender Equality Amendment Bill in 2013, such as the name of the Commission. Attention was not given to appointment procedures, or the fact that reports need to be submitted both to Parliament and the President. The self-funding mechanism for ICASA

needs to be more pronounced. Even though ICASA makes a considerable amount of money it is all transferred to the Government and the institution remains embarrassed, financially.

- PanSALB's concern that it caused tremendous challenges to have a Board consisting only of part-time members was noted.

3.4 FISD interaction with the Speakers' Forum

The Speaker referred to a letter she had received from the Chairperson of the FISD, requesting that she facilitates interaction with the Speakers' Forum with a view to establishing a closer working relationship between ISDs and the provincial legislatures. She indicated that arrangements would be made for a representative of the FISD to make a presentation to the Speakers' Forum at its first meeting of the year, probably in March 2015.

4. WAY FORWARD

It was acknowledged, in the light of the discussion that had taken place, that widely differing views exist about the establishment of an 'umbrella body' to oversee human rights related matters, as suggested in the Kader Asmal Report. There are many complexities in this regard that could not be dealt with in a brief meeting.

The Speaker said that it might nevertheless be beneficial to learn from models that had been applied successfully in other countries. She referred to Australia, where there was an overarching structure but nevertheless dedicated focus on matters such as race, gender, age and the like. This seems to be a model that does not simply clump all the different areas together, without differentiation.

The meeting resolved that –

1. The processing of the Kader Asmal report, in one way or another, needs to be fast-tracked.

2. The issue of de-linking the budgets of the ISDs from the departments to which they are associated requires dedicated attention.
3. Regular meetings will be convened between the Presiding Officers and Heads of the ISDs, ideally on a quarterly basis.

The Speaker said in closing that she looked forward to a term during which they would work together closely, for the benefit of all in the country.

ANNEXURE A: REGISTER OF ATTENDANCE

Name & Designation	Institution
Ms Baleka Mbete, MP, Speaker of the NA	Parliament of the RSA
Mr Lechesa Tsenoli, MP, Deputy Speaker of the NA	Parliament of the RSA
Mr Cedric Frolick, MP, House Chairperson: Committees, Oversight & ICT	Parliament of the RSA
Mrs Tsakani Ratsela, Deputy Auditor-General of SA	Auditor-General of South Africa (AGSA)
Mr Mfanozelwe Shozi, Chairperson	Commission for Gender Equality (CGE)
Ms Thoko Mkhwanazi-Xaluva, Chairperson	CRL Commission
Mr Bongani Finca, Commissioner	Independent Electoral Commission (IEC)
Mr Bongani Khumalo, Acting Chairperson	Financial and Fiscal Commission (FFC)
Adv Thuli Madonsela , Public Protector	Public Protector of South Africa (PPSA)
Adv Kevin Malunga, Deputy Public Protector	Public Protector of South Africa (PPSA)
Ms Lulu Sizani, Commissioner	Public Service Commission (PSC)
Adv Lawrence Mushwana, Chairperson	South African Human Rights Commission (SAHRC)
Mr Kaya Zweni	Executive Director: Office of the Speaker
Mr Paul Davids	Office Manager: Office of the Deputy Speaker
Ms Elmarié Lewis	Acting Senior Manager: Oversight Support (OISD)
Mr Justice Kgoedi	Secretariat: Forum for Institutions Supporting Democracy

Apologies from the following were noted:

Mr T K Makwetu, Auditor-General of South Africa (AGSA)

Adv R K Sizani, Acting Chairperson of the Public Service Commission (PSC)

Mr Y Pillay, Executive Chairperson of the National Youth Development Agency (NYDA)