

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2749/2015

In the matter between:

**PRIMEDIA BROADCASTING, A DIVISION OF
PRIMEDIA (PTY) LTD**

First Applicant

SOUTH AFRICAN NATIONAL EDITORS' FORUM

Second Applicant

RIGHT2KNOW CAMPAIGN

Third Applicant

OPEN DEMOCRACY ADVICE CENTRE

Fourth Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Second Respondent

SECRETARY TO PARLIAMENT

Third Respondent

MINISTER OF STATE SECURITY

Fourth Respondent

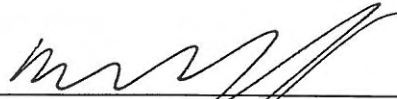
FILING SHEET

Documents filed herewith:

1. Supplementary Affidavit of Pheladi Gwangwa
2. Supplementary Affidavit of Mpumelelo Mkhabela
3. Amended Notice of Motion: Part B

Dated at Johannesburg on 18 MARCH

2015



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**SERVICE BY EMAIL AS
AGREED BETWEEN THE
PARTIES**

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SUPPLEMENTARY AFFIDAVIT

I, the undersigned

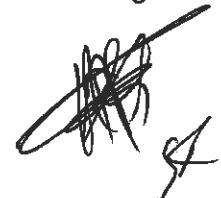
PHELADI GWANGWA

state under oath that:



I INTRODUCTION

1. I am an adult female station manager of 702, which is operated by the First Applicant. I am authorised by the applicants to represent them in these proceedings and to depose to this affidavit on their behalf.
2. The facts contained in this affidavit, unless the context indicates the contrary, are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I make all submissions of law on the basis of the advice given by the Applicants' legal representatives, which advice I accept has been correctly given.
4. This affidavit is made pursuant to this court's order on 10 March 2015 which permitted the Applicants to supplement their founding affidavit for purposes of Part B of this application. A copy of the judgment and order is attached marked **PG32**.
5. I do not intend to repeat what is contained in the Founding Affidavit. Instead, I address only new issues that have arisen as a result of the litigation thus far. I first address the "jamming" relief, and then the broadcasting relief.
6. In view of the urgency with which the initial application was brought, the series of events which have transpired since that occurred and the facts which have come to light since the launch of the application, the applicants have altered the relief sought in Part B of these proceedings in respect of both the "jamming" issue and the broadcasting relief. The amended relief sought by the applicants appears from the amended Notice of Motion filed together



herewith. There can be no prejudice to the respondents given that the respondents have yet to file their answering affidavit on Part B and will thus have an opportunity to make out their case in respect of this relief.

II JAMMING

7. With regard to the interference with or "*jamming*" of telecommunication signals, the amended notice of motion seeks two forms of relief:

7.1. A declaration that the use of a device to interfere with telecommunications during the State of the Nation Address on 12 February 2015 was unconstitutional and unlawful; and

7.2. A structural order requiring the Respondents to conduct an investigation into use of the jamming device, submit the result of the investigation to the court, and allowing the Applicants to comment thereon.

8. In this Part, I intend to set out the basis for each form of relief sought.

Declaration of unlawfulness

9. As pointed out in my Replying Affidavit, both Parliament and the Minister have apologised for the use of the jamming device at the SONA. Parliament has also given assurances that a similar incident will not occur again. However, as I understand their answers thus far, neither concede that the use of the device **was** in fact unlawful. The Minister, in particular, continues to assert



that there was both a legal basis and legitimate justification for the use of the device.

10. Given the nature of the incident, it is important to confirm whether or not the Respondents acted lawfully or unlawfully. The Applicants, and all South Africans, are entitled to know whether the device was used legitimately or not.
11. The Applicants submit that there are four reasons why the use of the device was unlawful:

11.1. It was irrational;

11.2. There was no legal authority for its use;

11.3. It was employed contrary to section 4 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004;
and

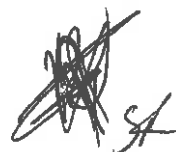
11.4. It violated the right to an open Parliament.

Irrational

12. The Minister takes responsibility for deploying the device. He contends that the purpose was to protect the event and the dignitaries present there, including the President and Deputy President, from drones and radio-operated bombs. He states that it was intended to be used until the President and Deputy President entered the Chamber. He states that, at that point, other security measures which would not disrupt the signal would be applied.



13. However, the Minister states that the device was not used as it was intended. As a result of an "*operational error*" by an unnamed official, it was not switched off at the appointed time. It was only switched off after the SONA began when Mr Blose noticed the complaints by members of the media and instructed the official to turn the device off. Mr Blose stresses that "*the intention was never to operate the signal disruptors beyond the intended time period*" (Minister's Part A Answering Affidavit at para 18).
14. Either the intended use, or the actual use of the device was irrational. If the device was intended to protect dignitaries and others from drones and bombs, the time when it was most needed was when all of the dignitaries were present in the chamber at the same time: during the SONA. The Minister does not explain why it was consistent with the security purpose for which the device was brought to Parliament to turn it off when the risk was at its highest. He does not explain why the risk of drones or bombs decreased when the President and Deputy President arrived. He does not explain why the device would no longer be effective, or would no longer be needed at that time.
15. The bald references to "*other security measures*" does not assist the Minister. The Minister must explain why those measures achieved the purpose, yet could not be used before the President and Deputy President arrived. If those measures were as effective as the disruptor, why were they not deployed for the whole event? If they were less effective, why were they deployed when security needed to be at its highest?
16. Accordingly, the intended use of the device was irrational because there was no connection between purpose and means. The fact that it was intended to



be (and was eventually) turned off when the SONA began demonstrates that the device in fact served no rational purpose. The means (the device) could not and did not serve the purpose (security).

17. The position worsens for the Respondents. If we assume that the intended use was rational, then the actual use advanced by the Minister was irrational. The device was used for a period of at least 20 minutes longer than it was supposed to be on. This was result of the "*operational error*". An error can never be rational. It was taken for no rational reason, but as the result of an official's error. A mistake cannot be rational.

No legal authority

18. In the Founding Affidavit, the Applicants asserted that there is no legal authority for the use of the jamming device. We pointed out that ICASA has declared their use unlawful. ICASA exempts the State Security Agency ("**the Agency**") from that prohibition, only to the extent that the use of signal disruptors is permitted by other empowering legislation.
19. The Minster, in his Answering Affidavit, relies on the Intelligence Services Act 65 of 2002 ("**ISA**") as the legal basis for the use of the jamming device. That Act allows the Agency to use "*security equipment*". The ISA incorporates the definition of "*security equipment*" used in the Private Security Industry Regulation Act 56 of 2001. The definition includes "*a device used for intrusion detection, ... bomb detection*". This, the Minster argues, includes a signal disruptor.


A handwritten signature in black ink, consisting of a stylized, scribbled name followed by the letters 'SA'.

20. This argument is without merit:

20.1. A signal disruptor, on the Minister's own version, does not detect intrusions or bombs. It does not inform an operator that an intrusion has occurred, or that a bomb is in the vicinity. It allegedly disrupts the signal used to direct drones and activate bombs. There is a large difference between detection and disruption. The first informs, the second prevents.

20.2. The relevant part of the definition of "*security equipment*" needs to be considered as a whole. It reads: "*a device used for intrusion detection, access control, bomb detection, fire detection, metal detection, x-ray inspection or for securing telephone communications*". The focus throughout is on detection – of intrusion, bombs, fire and metal. When the definition deals with communications, it talks about securing those communications, not disrupting them. Given the clear prohibition in the Electronics Communications Act, as interpreted by ICASA, an explicit authorisation would be required.

21. I stress that, insofar as the incident of 12 February 2015 is concerned, it cannot assist the Minister to find another source for the power to use the signal disruptor. He has pinned his colours to the mast of the ISA and the above definition of "*security equipment*". If that does not permit the use of the device, then its use was unlawful.



Section 4 of the Privileges Act

22. The Speaker and the Chairperson have stated that they had no knowledge of the use of the signal disruptor until complaints were raised by MPs and journalists. That concession means that the use of the device was also contrary to sections 3 and 4 of the Privileges Act. The sections read:

"3. Control over precincts of Parliament

The Speaker and the Chairperson, subject to this Act, the standing rules and resolutions of the Houses, exercise joint control and authority over the precincts on behalf of Parliament.

4. Presence of security services in precincts of Parliament

(1) Members of the security services may-

- (a) enter upon, or remain in, the precincts for the purpose of performing any policing function; or*
- (b) perform any policing function in the precincts,*

only with the permission and under the authority of the Speaker or the Chairperson."

23. "Security services" is defined in s 1 as *"the security services referred to in section 199 of the Constitution"*. Under s 199(1), the security services include: *"a single defence force, a single police service and any intelligence services established in terms of the Constitution"*. That includes the State Security Agency.
24. According to both the Minister and Parliament, the device was used without the permission of the Speaker or the Chairperson. Indeed, it was done



without their knowledge. Accordingly it was contrary to both ss 3 and 4 of the Privileges Act and unlawful. The violation was committed both by Parliament – who failed to maintain control over what equipment was used on the precinct – and by the Minister and the Agency who failed to obtain Parliament's permission.

25. I submit that Parliament must be responsible for the use of all security equipment within the parliamentary precinct. It is extremely concerning for Parliament to admit that they do not know what equipment is brought onto the precinct, and even into the chamber. This suggests a serious failure of Parliament's responsibility under s 4 to regulate and monitor what the security services do in Parliament.

The right to an open Parliament

26. As detailed in the Founding Affidavit, the use of the jamming device prevented journalists from informing members of the public about what was occurring in the Chamber during the SONA. Journalists could not simultaneously observe events and report on them. That is a violation of the right to an open Parliament.
27. In the modern era, it is no longer sufficient for journalists to report on what happened in Parliament in a newspaper the next day. The technology exists to provide live updates of exactly what happens in Parliament, as it happens. This technology – like Twitter, live blogs, Facebook, and other methods – allow interested members of the public to follow exactly what is happening in Parliament, even if they do not have access to a TV or a radio. Even if they



have access to a live feed through another method, access to the internet allows them to receive immediate analysis by journalists or commentators whose opinions they value.

28. The signal disruptor prevented this from occurring. If it had not been for the protest by journalists and MPs, it would likely have continued during the SONA. That is the case on both Parliament and the Minister's version. They both accept that, had it not been for the complaints, the device would not have been switched off. That interferes with an open Parliament. While others may still have been able to know what occurred, those who chose to rely on live updated from journalists (or MPs) in the Chamber would not know what was occurring.
29. There is no justification for this interference. Notably, neither Parliament nor the Minister have even attempted to substantively justify interfering with the signal during SONA. The reason, we submit, is they accept that it was an improper interference with the public's right to know what happens in their Parliament.

Investigation

30. The second form of relief the Applicants sought is an order compelling Parliament and the Minister to investigate why the signal disruptor was employed and who was responsible and to submit it to the Court. Both Parliament and the Minister have instituted investigations into the incident. They have also informed this Court about what occurred. They have not, however, provided this Court with the official report of their investigations.



31. The Applicants submit that it is still necessary to compel Parliament and the Minister to submit the results of their investigations to this Court. The explanations that have been provided thus far are entirely unsatisfactory:

31.1. The explanations provided by Parliament and the Minister are contradictory. Parliament states that the device was switched off as a result of the intervention by the Speaker, the Chairperson and the Secretary. They do not mention the Minister. The Minister asserts that the device was turned off following the intervention of Mr Blose. He does not recall any role played by Parliament. Both versions cannot be true. If Parliament was ignorant of the device as they claim, then they should provide a more detailed explanation of how it was able to ensure that it was turned off.

31.2. The Minister's explanation is, as pointed out above, irrational. The Minister should be required to explain: (a) what other measures were taken when the device was turned off; and (b) why those measures could not have been employed earlier.

31.3. Parliament should explain why it abdicated all responsibility for the use of signal disruptors to the security agencies, contrary to the provisions of ss 3 and 4 of the Privileges Act. The Minister should explain how the Agency was able to bring the device into the chamber without the knowledge (let alone the permission) of the Speaker, the Chairperson, the Secretary or anyone on their staff. It appears that the Agency was simply allowed to do whatever they pleased within the parliamentary precinct without regard for the requirements of s 4 of the Privileges Act.



32. These inconsistencies suggest that the Respondents have not been entirely forthright with this Court.
33. These are matters of great constitutional moment. They concern not only the openness of Parliament, but basic questions of accountability and the separation of powers.
34. Accountability is one of the founding values of the Constitution. The jamming of the signal requires a coherent and honest investigation. To date, that has not been forthcoming. If the public is to be assured that the persons in fact responsible for the use of the device has been identified and held accountable, then a thorough, independent investigation is necessary.
35. The use of the device has exposed a tension between the executive and legislative arms of government. Parliament has asserted that the devices will never be used again. The Minister has not. They have not provided a consistent story. Moreover, they have both demonstrated a worrying tendency to allow the security services free reign to do whatever they please within the Chamber in the name of security.
36. The Applicants therefore invite the Respondents to put up the results of their investigations voluntarily. If they are unwilling to do so, then it is appropriate and necessary for this Court to order them to provide the reports so that it can satisfy itself that the explanation for their unlawful conduct is in fact accurate. This constitutes just and equitable relief in terms of section 172(1)(b) of the Constitution.



II BROADCASTING RELIEF

37. The Applicants seek three heads of relief with regard to the broadcasting of proceedings from Parliament:

37.1. A declaration that the manner in which the proceedings of 12 March 2015 were broadcast was unlawful;

37.2. A declaration that Parliament's Policy on Filming and Broadcasting of Parliament ("**the Policy**") is invalid; and

37.3. An interdict directing Parliament to ensure that incidents of "*grave disorder*" and "*unparliamentary behaviour*" in Parliament form part of the live feed.

38. The Founding Affidavit already provides the basis for this relief. In this affidavit, I only address three additional issues to supplement the case that has already been made out:

38.1. The Policy is unlawful because it was passed in a procedurally irrational manner; and

38.2. The powers and obligations of broadcasters of the parliamentary feed;

The Passage of the Policy

39. The Applicants' primary claim, as set out in the Founding Affidavit, is based on the breach of the right to an open Parliament. However, in order to assess that challenge, it is helpful to understand how the Policy came into being.

40. The Applicants do not have complete knowledge of how the Policy was adopted. However, since I deposed to the founding affidavit in Part A, new



facts have come to light which cast substantial doubt on whether the Policy was developed, adopted, and publicised in line with the Constitution's commitment to an open and participatory Parliament and in a manner that could permissibly limit the right to freedom of expression. From what we have been able to determine from the personal experience of our journalists, and from publicly available records, it appears that there was very little consultation with the media or the public before the Policy was adopted.

41. To the extent that what follows is inaccurate, it is a result of the limited publicly available information, and industry knowledge about the adoption of the Policy. We invite Parliament to correct any errors by providing a full account of how the Policy was developed.
42. In my Founding Affidavit, I noted that the Policy was adopted by the Speaker and Chairperson in August 2009 (para 71). All that I knew about the circumstances of its adoption came from the limited details on the cover page of the Policy. I reasonably assumed that it was adopted following a process of deliberation in Parliament, after allowing the public and the media the opportunity to comment on it, and that it was adequately publicised at the time of its adoption. Given the urgency of bringing Part A of this application, there was no time to test these assumptions.
43. I have since had the opportunity to investigate the development, adoption, and publication of this Policy in greater detail, with the assistance of the other Applicants and our legal representatives. The following has emerged:
 - 43.1. I am informed that the Applicants first became aware of the existence of the Policy and its contents at the meeting between Parliament



officials, SANEF, and the Press Gallery Association held in January 2015 to discuss the August and November 2014 disruptions. Before this meeting, none of the journalists present were aware of the Policy's existence. This is confirmed by Mpumelelo Mkhabela the Chairperson of SANEF, in his confirmatory affidavit which will be filed with this affidavit. I was not aware of the Policy until it was provided to me by my legal representatives. They received it from SANEF, who first obtained it at the meeting.

43.2. The Policy is not presently available on Parliament's website. To the best of my knowledge, it was not publicly available in either electronic or in hard copy before the January 2015 meeting. I do not know whether this secrecy is intentional. I am not aware of any reason why the Policy should not have been made publicly available.

43.3. Following a diligent search of *Hansard* transcripts of parliamentary proceedings and committee minutes, I have found no indication that the Policy was debated or approved by MPs before its adoption by the Speaker and Chairperson. The only mention of a policy dates back to inconclusive Joint Rule Committee discussions in 2003. During those meetings, an early version of the "Draft Rules of Coverage" was discussed but was postponed for another time. I attach copies of these minutes, marked **PG33**, **PG34** and **PG35**.

43.4. I have also been unable to find any mention of consultations with the public or the media, or any indication that a meaningful opportunity was afforded to make submissions on the content of the Policy before its adoption. SANEF's chairman has informed me that journalists who



were active in reporting on Parliament in 2009 when the Policy was adopted cannot recall any discussions about the Policy, or any requests for comments from the media.

44. It is deeply troubling that a Policy designed to give effect to Parliament's duty to promote openness and public participation appears to have been developed, adopted, and applied in a manner which failed to live up to those standards.
45. Assuming that the above facts accurately reflect the manner in which the Policy was adopted, it is irrational and invalid. I have been advised that all government action must be both substantively and procedurally rational. Substantive rationality requires a connection between the means used and the ends sought to be achieved.
46. Procedural rationality recognises that the means for achieving the purpose for which the power was conferred must include everything that is done to achieve the purpose. Not only the decision employed to achieve the purpose, but also everything done in the process of taking that decision, constitute means towards the attainment of the purpose for which the power was conferred.
47. In this instance, the process that was followed was irrational. The Policy obviously affected both the public at large and the media specifically. It was not merely an internal parliamentary matter that could be determined without public consultation. It was an issue that fundamentally affected the public's right to know what happens in Parliament, and the media's right and duty to

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a smaller 'A'.

report on what happens in Parliament. The failure to invite comments from either the public or the media was irrational.

48. It is also irrational that there does not appear to have been a definitive determination by Parliament about whether or not to adopt the Policy. The minutes available to the Applicants indicate that the adoption of the Policy was twice postponed for further discussion. Yet there never seems to have been a decision by a committee of Parliament, or Parliament as a whole, to adopt or approve the Policy. Considering that Parliament itself believed that further consultation and an ultimate decision was necessary, this is irrational.
49. The process is even more irrational against the backdrop of Parliament's constitutional duty to facilitate public participation in its "*legislative and other processes*" (ss 59(1)(a) and 72(1)(a) of the Constitution). The absence of reasonable efforts to facilitate public participation in the development of a Policy so central to Parliament's processes and that so obviously affects the public would be a clear indication that the Policy is irrational and unlawful.
50. Moreover, and in any event, in the absence of any clear indication as to the precise status of the policy, it is not clear that it can lawfully limit the rights of the public to freedom of expression contained in section 16 of the Constitution. This is because section 36 of the Constitution only permits a "law of general application" to limit the right to freedom of expression.
51. The Applicants invite Parliament to indicate precisely when and by whom the Policy was enacted and to show that: it took reasonable steps to consult with the media, and the broader public; gave due consideration to their views; and



adequately publicised the Policy upon adoption. Parliament is clearly in the best position to inform the court of how the Policy came into being.

52. In order to rebut a conclusion that the Policy was adopted through an irrational process, the Speaker and Chairperson should, at a bare minimum, provide the following information:

52.1. Records of parliamentary sessions and / or committee meetings where the Policy was tabled and discussed;

52.2. Information on what steps were taken to source comment and input on the Policy from the media and the broader public;

52.3. An indication whether these inputs, if any, were ever placed before the Speaker, Chairperson or relevant committees and whether they afforded these submissions appropriate consideration in finalising and adopting the Policy;

52.4. What steps, if any, have been taken to conduct a review of the Policy since 2009, especially in light of recent disruptions in Parliament in late 2014; and

52.5. Details of whether and how Parliament publicised the existence of the Policy at the time of its adoption in 2009 and at any time since then.

53. In the absence of this information, the Applicants will contend that the Policy as a whole is irrational and invalid.

54. The appropriate remedy, should the Court reach that conclusion, is to suspend the order of invalidity for nine months to allow Parliament to enact a new broadcasting policy after following a rational, participatory process.



55. During this period of suspension, the policy can remain in place provided that the position on broadcasting disruptions on the floor is governed by the interim regime that is described below.

The Duties of Broadcasters

56. As explained in the Founding Affidavit, Parliament provides a live audio and visual feed to broadcasters. However, it is the duty of the broadcasters concerned to decide how and when to broadcast that feed. They can edit it, delay the live feed or use it in any other way that is consistent with the Policy. It is ultimately the broadcasters (and other media organisations), not Parliament, that decide what parts of the feed are made available to the public.
57. The broadcasters do not have an unrestrained power to broadcast whatever they please, no matter how offensive or age-inappropriate it may be. If obscene language, hate speech, nudity or violence occurs on the floor of the House, broadcasters must determine whether and when to broadcast it. In doing so, they must consider the legal obligations that exist on them with regard to all images and sounds that they broadcast.
58. There are two primary limits on what broadcasters may transmit. First, the Independent Communications Authority of South Africa Act 13 of 2000 ("**ICASA Act**") establishes a Complaints and Compliance Committee ("**CCC**"). The CCC can hear complaints from any person who believes that a broadcaster has violated the ICASA Act, the Broadcasting Act or the terms of the broadcaster's licence (s 17C). The CCC makes recommendations to



ICASA which can then act on them and impose sanctions on the broadcaster including fines, and (in the case of repeated violations) suspending or revoking the broadcast licence (s 17E(2)).

59. Second, virtually all broadcasters (including Primedia) belong to the National Association of Broadcasters ("**NAB**"), a voluntary association of broadcasters. All the members of the NAB sign up to a code of conduct. The NAB established the Broadcasting Complaints Commission of South Africa ("**BCCSA**"), an independent body that hears complaints from members of the public who believe a broadcaster violated the code. The BCCSA can, amongst other sanctions, impose a fine, or order the broadcaster to broadcast the BCCSA's negative finding.
60. The BCCSA and the codes of conduct it enforces have been approved as envisaged under section 54(3) of the Electronic Communications Act 36 of 2005, and therefore its members are obliged to comply with those BCCSA codes.
61. Under both the CCC and the BCCSA regimes, broadcasters risk sanction if they broadcast inappropriate material at inappropriate times without the necessary warnings. This creates a serious incentive for broadcasters to ensure that any violent or offensive behaviour that occurs in Parliament is only broadcast at appropriate times with appropriate warnings. This can be done by, for example, delaying the live feed, placing a warning on all parliamentary broadcasts, or by cutting the feed if such events occur.
62. This is not an unusual occurrence. There is always a risk that, during live broadcasts, someone may say or do something offensive that should not be



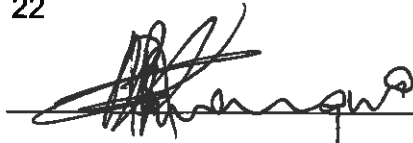
broadcast at that time. In the live broadcast of a sports event, a naked streaker may enter the field. When televising a political speech live, it is possible the speaker will say something racist, offensive or resort to hate speech. And in any live news event of a tense situation, there is the possibility of violence occurring.

63. There is no prohibition on nudity, violence or offensive language. As long as it is shown with appropriate warnings and at appropriate times, the fact that the violence, nudity or offensive speech occurs in Parliament is no reason not to broadcast it. Indeed, for all the reasons we have already advanced, the fact that such behaviour occurs during sessions of Parliament is more reason to broadcast it. We trust broadcasters to televise all other live events. There is no reason they should not be trusted to broadcast Parliament.

CONCLUSION

64. In all the circumstances, the applicants pray for the relief set out in the amended Notice of Motion that is filed together herewith.




 RHELADI GWANGWA

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at ROSEBANK on 18 MARCH 2015, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.




 COMMISSIONER OF OATHS

Full names: S R MVELASE
 Business address: 15 STURGEON AVENUE, ROSEBANK
 Designation: COT
 Capacity: CSC

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MEDIA 24 LTD **Fifth Applicant**

And

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JUDGMENT DELIVERED 10 MARCH 2015

THE COURT

- [1] This is an application for interim relief, Part A, against the first to third respondents, pending final relief which is claimed against all four respondents (Part B). In this judgment we deal with Part A and the relief sought to the extent necessary.

THE RELIEF SOUGHT

- [2] In this application, the applicants seek, in their amended notice of motion, the following relief against the first to third respondents (Part A) (we omit the relief concerning the so-called signal jamming issue, which has fallen away at the interim stage):

"1. Dispensing with the rules, time limits, forms and procedures provided for in the Uniform Rules of Court and granting leave for this application to be heard as a matter of urgency.

2. Pending the outcome of Part B of the Application, in respect of all open sittings of the National Assembly or the National Council of Provinces, joint sitting of Parliament or open meetings of their committees:..

2.2 The First to Third Respondents are directed to ensure that the audio and visual feeds of such sittings and meetings are not interrupted and that during occurrences of "grave disturbances" or "unparliamentary behaviour", a wide angle shot of the chamber, including audio, will be broadcast.'

- [3] In a later application, Part B, the applicants will seek the following declaratory relief in respect of the policy:



"...1.2 The manner in which the audio and visual feeds of the state of the Nation Address on 12 February 2015 were produced and broadcast by the first to third respondents was unconstitutional and unlawful.

1.3 The Policy on Filming and Broadcasting of Parliament is invalid to the extent it requires that audio and visual feed provided by Parliament does not show 'grave disturbances' or 'unparliamentary behaviour' that takes place during Parliamentary proceedings.

as well as the following mandatory order:

2. In respect of all open sittings of the National Assembly or the National Council of Provinces, joint sittings of Parliament or open meetings of the committees:

...

2.2 The First to Third Respondents are directed to ensure that the audio and visual feeds of such sittings and meetings are not interrupted and that during occurrences of "grave disturbances" or "unparliamentary behaviour", a wide angle shot of the chamber, including audio, will be broadcast."

BACKGROUND

[4] In August 2009, Parliament adopted the Broadcasting Policy (the policy) through which it seeks to "regulate all filming within the precinct of Parliament and provide guidelines on public broadcasting of proceedings of Parliament and related matters, including the use of photography and bright camera lights."

[5] The provisions of clause 8.3.3.2 of the policy are the subject of this litigation – they provide as follows:

"8.3.3.2 Disorder on the floor of the House:



- a) *Televising may continue during continued incidents of grave disorder or unparliamentary behaviour for as long as the sitting continues, but only subject to the following:*
- I. *On occasions of grave disorder, the director must focus on the occupant of the Chair for as long as proceedings continue, or until order has been restored; and*
 - II. *In cases of unparliamentary behaviour, the director must focus on the occupant of the Chair. Occasional wide-angle shots of the chamber are acceptable."*

- [6] On 21 August 2014, the effect of the policy in respect of disorder in the House first manifested itself. On that date, during presidential question time, a member of the Economic Freedom Front (the EFF) persisted in asking the president when he intended to repay some of the money spent on his private residence, Nkandla. Although the Speaker disallowed the question, the EFF member persisted. The Speaker suspended the sitting at which point members of the riot police entered the Chamber and removed several members of the EFF. The removal was not captured on the official parliamentary feed.
- [7] During the debate on the Grand Inga Power Project, on 14 November 2014, the effect of the policy was confirmed. On that day, the official live video broadcast of the proceedings was shut down while members of the South African Police Services removed members of parliament, apparently for "unparliamentary" behaviour.
- [8] On 27 January 2015, representatives of Parliament and representatives of the broader media interest met "to discuss concerns regarding the live feed broadcast." (record 29) Parliamentary representatives confirmed "as encapsulated in the Broadcasting Policy at clause 8.3.3", that "on occasions of "grave disorder" and "unparliamentary behaviour", the policy was that the



camera focus would be on the occupant of the presiding officer's chair, or in the case of "unparliamentary behaviour", the presiding officer's chair or wide angle shot."

- [9] On 30 January 2015, media representatives, through their attorney, recorded their concerns in a letter in which they requested "*...that the feed not be cut off, that it was essential that a complete picture of what was happening in Parliament be shown, including disturbances, and that the Broadcasting Policy be urgently amended accordingly, before the President's address on the State of the Nation.*" (record 29)
- [10] The State of the Nation address was scheduled for 12 February 2015; on that day, Parliament responded to the 30 January 2015 request indicating "*... [Parliament] cannot operate outside its own policy....*"
- [11] The State of the Nation address on 12 February 2015, a joint sitting of the houses of parliament, was presided over by the Speaker of the National Assembly and the Chairperson of the National Council of Provinces. Mr Godrich Gardee, a member of parliament and a representative of the EFF, interrupted the president's address by raising a question of privilege. The Speaker sought to continue the scheduled proceedings while members of the EFF sought to pursue their questioning of the president. The Speaker requested the relevant members either to allow the proceedings to continue or to leave. When they refused, the Speaker "called upon the Sergeant at Arms and parliamentary security personnel to 'assist' the representatives of the EFF to leave the Chamber." EFF members were forcibly removed.
- [12] During the removal, apart from a glimpse of security personnel entering the Chamber, the camera focused on the Speaker and the Chairperson and remained so focused until the EFF members had



been removed from the Chamber – a period of approximately 5 minutes. During that time, the attention of those in the Chamber, including that of the Speaker and the Chairperson, was focused on the altercation between the EFF members and the security personnel. Members of the press and the public recorded the altercation on their cellular telephones.

- [13] The debate on the State of the Nation Address was scheduled for 17 to 19 February 2015. On 13 February 2015, fearing a similar implementation of the policy, the first applicant sought an undertaking from the respondents *"...that they would not prevent full access to the debate on the State of the Nation address by either allowing signal jamming to take place, and would ensure that live feed accurately reflected the material events taking place in Parliament."* (record 35) The respondents were requested to respond to the letter by 16 February 2015, at 10h00. The respondents failed to respond by the deadline; the applicants, therefore, launched this application later that same day. The applicants no longer seek relief in respect of signal jamming in Part A (though it remains relevant to Part B); we therefore do not deal with the allegations pertaining to it in this judgment.

Urgency

- [14] The policy has been operative since August 2009. The applicants first experienced the impact of the "disturbance clause" in August 2014, yet only met with the respondents in January 2015, and thereafter recorded their concerns and demands in correspondence. The applicants launched this application on 16 February 2015, with the aim of ensuring, *"that all South Africans will be able to follow the upcoming debate on the President's State of the Nation Address from 17 to 19 February 2015 (and all other parliamentary sessions until finalisation of Part B)."*



[15] The application was only heard on 6 March 2015, well after the debate scheduled for 17 to 19 February 2015. At the hearing, the applicants relied on the reference to "...all other parliamentary sessions until finalisation of Part B" for their submission that interim relief was still appropriate. The application is now directed at 11 March 2015, being the date on which the president is scheduled to answer parliamentary questions – an event which might quite possibly give rise to further disruption. The applicants anticipate a situation that could result in another cut in the live feed.

Requirements for interim relief

[16] The requirements for an interim interdict are well known:

- (a) A *prima facie* right though open to some doubt;
- (b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- (c) That the balance of convenience favours the granting of an interim interdict;
- (d) The absence of another adequate remedy.

DISCUSSION

[17] This application can be disposed of with reference to requirements (b) and (c). Below, we deal only with them. The applicants relied on the provisions of sections 59(1)(b) and 72(1)(b) of the Constitution as authority for the proposition that Parliament is obliged to conduct its proceedings in an open and transparent manner. The applicants acknowledged Parliament's right to "regulate public access, including access to the media," although, the applicants stressed that such measures should be reasonable. It is in issue whether the measures



currently in place in respect of “unparliamentary behaviour” and “grave disturbances” are reasonable.

- [18] The respondents, however, submitted that they are compliant with their constitutional duty in that they have reasonable measures in place to balance the public’s right to access to its proceedings with the obligation to preserve the dignity of Parliament.
- [19] It is common cause that on 12 February 2015, the public had access to the proceedings in Parliament both through audio-visual feed and through members of the media and public being present in the Chamber. Although the feed was restricted to a view of the Speaker and Chairperson for approximately 5 minutes because of the “grave disturbance”, public access was still possible via the presence of the media and general public present in the Chamber for the period of shut down. We accept that members of the public are interested in those incidents but we also accept that Parliament may be entitled to regulate public access to them. The interim relief sought by the applicants seeks to compel Parliament to abandon, in part, the policy that has been in place for 5 years. Mr S Budlender, however, who appeared for the applicants, stressed that the applicants sought only a wide angle shot of the disturbances and not a close up. Even in that measured form, the relief sought does not seek to maintain the *status quo*; instead, it seeks to introduce a new regime.
- [20] In our view, given the limited restriction of the public’s access to parliamentary proceedings (5 minutes on 12 February 2015), the 5-year period during which the measures have been operative and the imminent expedited hearing in respect of Part B in April 2015, the balance of convenience militates against granting an interim interdict that will introduce a new regime as distinct from preserving a status quo. (Cf LAWSA Vol 11 2nd Ed para 401; **National Gambling Board v Premier, KwaZulu-Natal, & Others** 2002 (2) SA 715 (CC) para 49.)



- [21] In addition, in these proceedings the constitutionality of the relevant provisions of the policy – that is their reasonableness or otherwise – has not been fully ventilated. Both parties have expressed the need to file supplementary affidavits prior to the Part B hearing.
- [22] Even though we accept that in the present climate, occurrences of “unparliamentary behaviour” or “grave disturbances” are a possibility, we are nevertheless persuaded that, given the period for which the restrictions have already been in operation and the fact that they will continue to apply only for a relatively short period pending the determination of the Part B relief, the applicants have not shown irreparable harm in these proceedings justifying intervention on an urgent interim basis. The applicants have been able, and will continue to be able, to report on proceedings in Parliament through traditional reporting methods, even during those relatively brief periods (if they recur) in which, because of “grave disturbance”, the visual feed does not display the disruption.
- [23] The respondents in turn have alleged that to “compel Parliament to run its proceedings under court order would undermine the principle of separation of powers.” In our view, an order of court directed at compliance with the provisions of the Constitution would not undermine the principle of separation of powers. At this stage of the proceedings, however, it would be premature to pronounce on the constitutionality of the relevant provisions. We are disinclined, therefore, in the absence of irreparable harm and where the balance of convenience does not favour the applicants, to grant interim relief that would in part suspend the policy.

CONCLUSION

- [24] The applicants could have approached this court sooner; nevertheless, we are persuaded that the matter warrants an



expedited hearing, being sufficiently urgent and involving constitutional issues of national importance.

[25] In the circumstances of the matter, interim relief is not justified. However, since important constitutional issues are to be determined in Part B, it is appropriate to order that each party pay its own costs. (See **Biowatch Trust v Registrar, Genetic Resources** 2009 (6) SA 232 (CC))

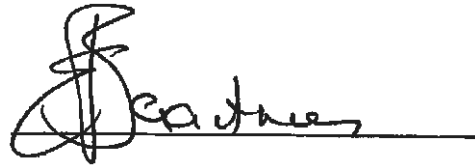
[26] The timetable and hearing date for the Part B relief, as set out in the order which follows, is one to which all the parties (including the fourth respondent, who was not represented at the hearing of the Part A relief) have agreed, regardless of the outcome of the Part A relief. For the avoidance of doubt, the expedited hearing of the Part B relief in accordance with the order below covers all the relief sought in Part B, including the relief relating to the so-called signal jamming issue.

[27] We make the following order:

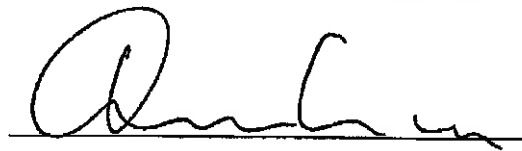
- (a) The application for interim relief in terms of Part A is dismissed.
- (b) Each party is directed to bear its own costs in respect of the said application for interim relief.
- (c) The application for the relief claimed in Part B is postponed for hearing on 20 April 2015.
 - (i) The applicants are directed to file supplementary founding affidavits, if any, on or before 18 March 2015.
 - (ii) The respondents are directed to file further supplementary answering affidavits, if any, on or before 27 March 2015.
 - (iii) The applicants are directed to file supplementary replying affidavits, if any, by 2 April 2015.



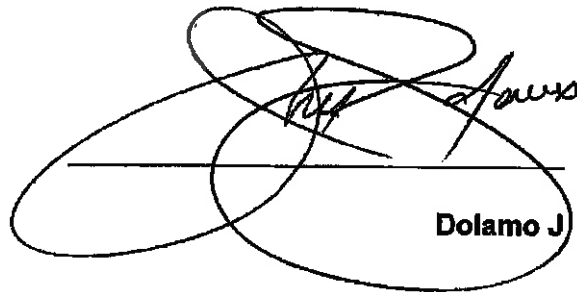
- (iv) Heads of argument must be delivered as follows: the applicants by 7 April 2015 and the respondents by 14 April 2015.



Baartman J



Rogers J



Dolamo J



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Parliament Broadcasting Policy; Moving of Press Gallery Association

Committee: [Joint Rules \(/committee/33/\)](#)

Date of Meeting: 18 Mar 2003

Summary

No summary available for this committee meeting.

Minutes

JOINT RULES COMMITTEE

18 March 2002

PARLIAMENT BROADCASTING POLICY; MOVING OF PRESS GALLERY ASSOCIATION

Co-Chairpersons: Ms G Pandor (Chair of the NCOP) and Ms F Ginwala (Speaker of the NA)

Documents handed out:

Minutes of the 4 February 2003 Meeting (<http://www.pmg.org.za/docs/2003/viewminute.php?id=2556>)

Draft Parliament Broadcasting Policy (see Appendix 1)

Parliament Language Policy (Appendix 2)

SUMMARY

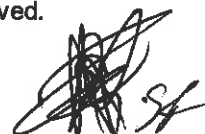
The Joint Rules Committee heard reports from its subcommittees. Official minutes of the meeting will be available at a later date. Minutes are provided below for the agenda items: Parliament Broadcasting Policy and Parliamentary Press Gallery Association

MINUTES

Parliament Broadcasting Policy

Mr M Mahlangu (ANC) noted that the object of the policy is to preserve the dignity of Parliament, while ensuring that viewers are informed about parliamentary work. He noted that there are certain guidelines that broadcasters should adhere to when broadcasting events inside Parliament. Therefore there would be restrictions to film certain parts of the chambers and a certain style of broadcasting should be adopted during presentation. (for a full report see the document attached)

Mr A Nel (ANC Deputy Chief Whip) welcomed the report and noted that it is important that certain restrictions be formulated with regard to broadcasting so that the dignity of Parliament can be preserved.



Mr P Nefolovhodwe (AZAPO) expressed his disapproval of the policy. If the Committee does not want the public to see members when they are asleep during parliamentary sessions then it should tell the members not to fall asleep, because to restrict broadcasting is tantamount to preventing public from having access to parliamentary debates.

The Speaker concurred with the latter speaker noting that to evade broadcasting would be immoral and might lead to constitutional challenges. Therefore it would be appropriate for the Committee to find a suitable approach in this regard, which would not be interpreted as preventing public access to parliamentary debates.

Dr J Benjamin (ANC) said that it is important that what the camera focuses on should be informed by parliamentary policy based on what is intended to be achieved. Therefore it would not be appropriate for the broadcaster to focus on sleeping members while there are important issues under discussion since that would be irrelevant to the purpose of the policy. It is important for members to bear in mind that what the broadcasters focus on is backed by a particular ideology, which he or she wants to achieve. She then proposed that this policy should be referred to the political parties represented in Parliament so that they could be able to make their contribution on what a final product should look like.

The Chair, Ms Pandor, noted that indeed it would be impossible for the Parliament to direct the broadcasters on what to broadcast.

Ms P De Lille (PAC) said that a policy should be there to guide and not to impose or direct people on what to say or broadcast. She therefore agreed with the view that this policy should be referred to political parties for further deliberations.

The Chair, Ms Pandor, noted that the members agreed that this policy should be referred to the respective political parties for their input and thereafter a final decision would be taken on the matter.

Parliamentary Press Gallery Association

The Chair, Ms Pandor, noted that even though the members of the Press Gallery Association are to be moved to Parliament Towers, a building outside the Parliament complex, the press would still be accommodated since facilities to that effect has been installed in the National Assembly.

The Speaker said that the move to locate the PGA in Parliament Towers was prompted by the need to create office space near the National Assembly for various new party members after the floor crossing process. She therefore requested members not to interpret the move as being sinister since there would always be ancillary media facilities in the National Assembly that would assist the media staff in its broadcasting.

Dr A Van Niekerk (FA) said that there is a public perception that Parliament wants to sideline the media by prejudicing their rights inside Parliament.

The Speaker said that those perceptions are strange taking into account the fact that Parliament had just passed a law on media diversity. The restructuring should be seen as a way of bringing members near to the National Assembly and as nothing else.

The Chair, Ms Pandor, noted that the view that media would not be able to enjoy freedom when relocated to Parliament Towers should be rejected since the intention, as stated by the Speaker, is to create office space for the members and media facilities have been improved in the National Assembly which will thus enhance the media involvement.

The Speaker noted that the Presiding Officers would arrange a meeting with the Secretary of Parliament, Mr S



Fenyane, to ensure that a principle regarding the media is formulated that would be followed by this Parliament and carried over to the new term of the incoming Parliament.

The Chair thanked everyone in attendance and the meeting was adjourned.

Appendix 1:

Parliament of the Republic of South Africa

Television Broadcasting

"DRAFT RULES OF COVERAGE"

The following are rules for the televising of proceedings of Parliament:

STATEMENT OF OBJECTIVES

The camera director should seek, in close collaboration with the Manager of Sound and Vision, to give a full, balanced, fair and accurate account of proceedings, with the aim of informing viewers about the work of the Houses.

[Note: In carrying out this task, the director should have regard to the dignity of the Houses and to their functions as working bodies rather than places of entertainment.]

SPECIFIC GUIDELINES FOR PICTURE DIRECTION

1. Restriction on Filming Certain Parts of Chambers, etc:

- a. The press and public galleries, the officials' and visitors' boxes, and the area behind the Chair, not being directly related to proceedings, should not be shown, other than unavoidable shots as part of wide-angle or other shots authorised by the Chair (i.e. when the presiding officer recognises a person or group in one of those areas).
- b. Great care should be exercised in showing the occupant of the Chair. Shots showing the Presiding Officers receiving advice from the Table, should be avoided. Officials of the House attending in the Chamber should not normally be shown, unless they are taking an active part in the proceedings.
- c. During divisions, a wide-angle shot of the Chamber may be used. In addition, the following events relating to divisions may be shown using the standard format in sub-paragraph 2 (a): Putting the Question, both initially and after the bells have rung; any points of order which may arise, together with any response by the Chair; and announcement by the Chair of the voting result.
- d. In no circumstances should close-up shots of Members' or Officers' papers be taken.

2. Style and Presentation:

- a. The standard format for depicting the Member who has the floor should be a head-and-shoulders shot, not a close-up.
- b. Subject to sub-paragraphs (c) to (g) below, the camera should normally remain on the Member speaking until she or he has finished.
- c. Wide-angle shots of the Chamber may be used from time to time. For example, while the director is seeking a closer shot of a Member who has just been called, at times when no single Member has the floor, and to establish the geography of the House for the benefit of viewers.
- d. As a matter of general practice, the director should switch to a picture of the occupant of the Chair whenever she or he addresses the House; this principle should be applied all the more strictly during any incidence of disorder or altercations between the Chair and other Members. So long as it is clear to the director to which Member is being referred, a reaction shot is permitted.
- e. Occasional cut-away shots to illustrate individual reactions are allowed, but only to show a Member who has been referred to by the Member speaking.
- f. Medium-angle shots, including over-the-shoulder shots, are permissible where the director wishes to show both the Member who has the floor and another Member intervening or seeking to do so.
- g. Occasional group shots - mid-way between the standard head and shoulders shot and the wide-angle shot - are permitted; such shots may be used either for the purposes of showing the reaction of a group

of Members, or in order to establish the geography of a particular part of the Chamber.

- h. Under no circumstances are "dead" shots to be shown, i.e. shots such as empty benches or any others which are not relevant to the proceedings of the House.
- i. The main objective of the director is to provide a means, in conformity with acceptable standards of dignity, propriety and decorum, by which the proceedings of Parliament should be made available through accurate and impartial coverage of the debates of Parliament and the public meetings of its committees.

2. Special Camera Techniques:

- a. Occasional panning along the benches is permitted but only as a wide-angle shot.
- b. Zoom shots should only be used at the adjournment of the House from the Chair to a concluding wide shot.

TREATMENT OF DISORDER

1. Disorder in the Galleries:

- a. Neither interruptions from, nor demonstrations in, the galleries are "proceedings", and as such they should in no circumstances be televised.
- b. If an incident of the sort described in sub-paragraph (a) above occurs in such a way as to interfere with an otherwise permissible shot, the director should cut either to a wide-angle shot of the Chamber which does not show the offending incident, or to the occupant of the Chair.

1. Disorder on the Floor of the House:

Televising may continue during incidents of grave disorder or unparliamentary behaviour for as long as the sitting continues, but only subject to the following guidelines:

- a. On occasions of grave disorder, the director should normally focus on the occupant of the Chair for as long as proceedings continue, or until order has been restored. (By "grave disorder" is meant incidents of individual, but more likely collective, misconduct of such a seriously disruptive nature as to place in jeopardy the continuation of the sitting.)
- b. In cases of unparliamentary behaviour, the director should normally focus on the occupant of the Chair. Occasional wide-angle shots of the Chamber are acceptable. (The phrase "unparliamentary behaviour" is intended to signify any conduct which amounts to defiance of the Chair but which falls short of grave disorder.)

CONDITIONS OF AUTHORITY TO BROADCAST

1. Live broadcast and rebroadcast on television of the proceedings and excerpts of proceedings of Parliament, is authorised on the following conditions:

- a. Broadcast and rebroadcast may occur, and recordings may be made, only from the official composite vision and sound feed provided by the Sound and Vision Unit of Parliament.
- b. Televising shall respect the dignity and decorum of Parliament, shall only be used for purposes of fair and accurate reports of proceedings, and shall not be used for:
 - (i) Party-political propaganda of any kind;
 - (ii) Satire, ridicule or light entertainment;
 - (iii) Commercial sponsorship or advertising.
- c. Fairness and accuracy must be observed, and reports of proceedings shall provide a balanced presentation of different views.
- d. Excerpts of proceedings are to be placed in context.
- e. Where excerpts are used on commercial television, any advertising that occurs immediately before or after the excerpts are shown, should not in any way reflect on or detract from those proceedings.

1. Guidelines with specific reference to televising of committee proceedings:

Broadcasting of proceedings is at all times at the discretion of the committee, which may at any time withdraw approval for broadcasting. It is also subject to availability of this facility.

(Where a committee intends to broadcast its proceedings, a witness to appear before the committee shall be given reasonable opportunity before appearing to object and state grounds for her/his objection. The committee shall consider any such objection, having regard to the proper protection of the witness and the public interest in the proceedings, and if the committee decides to proceed notwithstanding the witness' objection, the witness shall be so informed before appearing in the proceedings.

2. Editing and Broadcasting Decisions:

- a. Parliament's responsibility is confined to provide a feed of the proceedings of whatever House is sitting, and of any committee which has been decided to televise. Any process of editing or selection of feeds is the responsibility of the broadcaster.
- b. Control of broadcasting falls under the Presiding Officers and chairpersons, with the Manager of Sound and Vision Unit as the hands-on manager.
- c. Instructions of the Presiding Officers and Chairpersons of Committees, in relation to the operation of the sound and vision equipment in the Chambers, shall be observed.
- d. The instructions of the Speaker in respect of broadcasting shall be observed.

1. Monitoring and Archiving:

- a. Coverage should be monitored for compliance with the above conditions.
- b. A complete archive of the clean feed of the proceedings of the two Houses should be maintained.
- c. Members of Parliament should pay a nominal charge for archive material.
- d. Authority of the Presiding Officers must be obtained for the providing of copies of proceedings to any other person or organisation. The cost thereof to be determined by the Secretary to Parliament.

3 September 2001

Appendix 2:

PARLIAMENT LANGUAGE POLICY

IMPLEMENTATION OF THE USAGE OF ADDITIONAL LANGUAGES IN PARLIAMENTARY PROCEEDINGS:

The introduction of extra languages beyond the present arrangement would require:

A) RECURRENT EXPENDITURE per annum (Costs of permanent and/or freelancing staff, printing and equipment maintenance). The implementation of the usage of additional languages during plenary and Committees proceedings would require the following:

- 4 sets of 24 Interpreters (2 per language per session) costing about R18m for 12 languages (including Sign language);
- 60 Translators for 10 languages (6 per language) costing about R7, 2m or 36 Translators for 6 languages costing R4, 3m;
- Printing costs of about R44m for 11 languages or R24m for 6 languages;
- Maintenance of equipment in Chambers and all Committee Rooms, nominal estimate of R1m.

TOTAL ESTIMATE OF RECURRENT EXPENDITURE:

(a) R70m for 11 languages plus Sign language or

(b) R47, 3m for 6 languages

B) CAPITAL EXPENDITURE involves:

* ALTERATIONS TO BUILDINGS. This would depend on the specifications necessary to accommodate the extra interpretation booths estimated at 8 extra booths per Chamber and 11 per Committee Room and the

budget provisions by the Department of Public Works;

* EQUIPMENT for interpreting. This involves additional equipment in the Chambers and in all the Committee Rooms. The equipment can either be leased at a cost of about R15, 000 per day per sitting in one venue or purchased outright.

TIME FRAMES

Given the structural changes that will be needed to be effected to most venues/buildings and the present budget allocation of R8m, the date of implementation of whatever policy changes would require an additional budgetary allocation from the National Treasury within the MTEF.

Audio

No related audio

Documents

No related documents

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[People's Assembly \(http://www.pa.org.za\)](http://www.pa.org.za)



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[Questions and Replies \(/question_replies\)](#) [Calls for Comments \(/calls-for-comments\)](#)

[Committees \(/committees/\)](#) / [Joint Rules \(/committee/33/\)](#) / [Committee Meetings](#)

Subcommittee Reports: consideration

Committee: [Joint Rules \(/committee/33/\)](#)

Date of Meeting: 20 May 2003

Summary

No summary available for this committee meeting.

Minutes

JOINT RULES COMMITTEE

20 May 2003

SUBCOMMITTEE REPORTS: CONSIDERATION

Minutes as prepared by the Committee Secretary, Ms S Bowers (NCOP Table)

Please note: This is not the final draft

(Second Draft)

Parliament of the Republic of South Africa

JOINT RULES COMMITTEE

Co- Chairpersons: Speaker of the National Assembly

Chairperson of the National Council of Provinces

Committee Secretaries: M Xaso (NA Table) Ext. 3260

JA Borien, S Bowers (NCOP Table) Ext. 3647

DRAFT MINUTES OF THE JOINT RULES COMMITTEE MEETING HELD ON 20 MAY 2003
(as at 12 June 2003)

PRESENT

National Assembly National Council of Provinces

Speaker Chairperson of the NCOP

Deputy Speaker Deputy Chairperson of the NCOP

Andrew, K M Durr, K DS

<https://pmg.org.za/committee-meeting/2594/>



Aucamp, C Kgoali, J L
Bakker, D M Lubidla, E N
Benjamin, J Makoela, M I
Bhengu, F Nkuna, C
Blanche, J P I Sulliman, M A
Cassim, M F Surty, M E
Chohan-Khota, F Themba, M P
Ditshetelo, P H K Van Niekerk, A E
Doidge, G Q M Vilakazi, J N
Ellis, M
Frolick, C T
George, M E
Greyling, C H F
Hendrickse, P A C
Jeffrey, J H
Kalyan, S V
Landers, L T
Louw, S K
Masutha, M T
Millin, T E
Modisenyani, L J
Moonsamy, K
Mulder, C P
Nair, B
Nefolovhodwe, P J
Nel, A C
Rajbally, S
Ripinga, S S
Seaton, S A
Sosibo, J E
Van der Merwe, S C
Van der Merwe, J H



Staff in attendance:

Mfenyana, S; Coetzee, M; Mbangula, M S; Matyolo, L L; Hahndiek, K; Klassen, L; Keswa, N; Charlton, H; Ismail, N; Meyer, L; Mansura, K; Palmer, I.

1. APOLOGIES

Botha, C S; Carrim, Y I; Dzulani, B N; Gibson, D H M; Green, L; Hendrickse, P A C; Kota, Z A; Kolweni, Z S; Malumise, M; Mbuyazi, L R; Mngomezulu, G P; Njobe, M A; Setona, T S; Thabete, E; Tihagale, J O.

2. ADOPTION OF AGENDA

The Chairperson of the National Council of Provinces took the Chair and opened the meeting at 10:05. The Agenda was adopted without additions.

Mr Nair requested that item 9 on the agenda, the Report of the Joint Subcommittee on the Parliamentary Budget, be advanced on the agenda as he had other meetings to attend.

The Chairperson enquired whether Mr Nair would be able to attend his other meetings and return later to present the report, as the budget was inter-related to other areas that would be discussed.

Mr Nair explained that his other meetings would start at 12:00 and that in his absence in the JRC meeting, it would be possible for Mr Charlton to provide input into the discussion.

The Speaker said that it was important that the Chairperson of the Subcommittee was present to take part in the discussions on the report. She suggested that Mr Nair join the meeting again at a later stage. In addition, that the meeting would then be interrupted at that stage to allow a report on the budget. Further, that the presence of the chairperson was integral to the discussion in order to shape the JRC's understanding of the issues.

The Chairperson said that it would be possible to accommodate Mr Nair by moving the item forward on the agenda and dealing with it whilst he was present. She added that the report would be dealt with under matters arising in order to facilitate a response from him.

Ms Seaton raised a concern regarding whether a discussion would be possible since the report had only been received just before the meeting.

The Chairperson said that there thus seemed to be a need for Mr Nair to be present and to participate in the discussion, as he would be able to identify the salient points from the report, specifically those that required direction from the JRC.

Mr Nair asked whether, due to the fact that all the members may not have received copies of the report and would not have had time to study the report, members could peruse the proposals and the report be discussed at a later date.

The Chairperson agreed but said that he could present the critical issues which required policy decisions from the JRC. She further said that this would allow parties an opportunity to consider the report. She suggested that a special meeting be arranged to consider the report.

The Speaker enquired whether documents were sent out eight days before the JRC meeting. She said that the chairperson of the Parliamentary Budget Subcommittee indicated that the report was sent out the previous week, but that the documents received were dated Friday 16 May 2003. She was concerned that all documents seemed to have been distributed between the Wednesday and Friday of that week. She reminded



everyone that the JRC had previously agreed that documentation would be distributed at least eight days before a JRC meeting. Also, that the date of the JRC meeting was known five months before and that the staff had sufficient notice to ensure timeous distribution of documents. She added that she would in future set dates for meetings only if the agenda and documentation were circulated eight days before the meeting. She further added that a commitment was needed from the Secretary to address the issue, as it hampered planning and discussion during the meeting.

Mr Van der Merwe referred to a memorandum from the staff dated 19 May 2003, which he only received prior to the meeting. He said that he would thus be unable to participate in a discussion on the matter.

The Deputy Speaker reminded everyone that there was a difficulty in deciding upon a date for the current meeting at the last JRC meeting. She said that the JRC then decided to deviate from the previous agreement which was that there would be at least two weeks between the first meeting when Parliament resumes after a recess and the convening of a JRC meeting to allow subcommittees to deliberate and report. This time around the meeting took place within one week of each other, as there was difficulty with suitable dates.

The Chairperson said that the meeting should proceed and requested the Secretary and his staff to note the problems and to improve thereon.

ADOPTION OF MINUTES OF 5 FEBRUARY 2003

The minutes were amended by the addition of the names of Mr Ditshetelo and Mr Andrew to the attendance list of the meeting. On the motion of Mr Surty, the minutes were adopted as a correct record of the meeting of February 2003. Mr Ditshetelo seconded the adoption.

ADOPTION OF MINUTES OF 18 MARCH 2003

On the motion of Ms Kgoali, the minutes were adopted as the correct record of the meeting. Mr Sulliman seconded the adoption.

5. ADOPTION OF MINUTES OF SPECIAL MEETING OF 25 MARCH 2003

The minutes were amended by the addition of the names of Mr Van Niekerk and Mr Andrew to the attendance list of the meeting. Further, by the deletion of Mr Doidge's name from the Council's attendance list. On the proposal of Mr Van Niekerk, the minutes were adopted. Ms Rajbally seconded the adoption.

6. MATTERS ARISING FROM THE THREE SETS OF MINUTES

The Chairperson indicated that the matters arising had been synthesised from the three sets of minutes, which had been adopted by the JRC. She further indicated that the Deputy Presiding Officers had to proceed by providing a report on the Language Policy.

6.1. Language Policy for Parliament

The Deputy Chairperson of the Council reported that the Task Team had met on 28 March 2003 to consider the submissions from the political parties. He said that the submissions had subsequently been consolidated into one document which had been circulated. Also, that the consolidated document had been sent back to the parties for more inputs. Further, that the Task Team had a follow-up meeting the week before the JRC meeting to consider all the inputs from parties to the consolidated document. He said that, due to the memorial service for Mr Walter Sisulu, there had not been enough time for the parties to express their inputs at the meeting and that only the New National Party had time to respond. Also, that the document which has thus been submitted to the JRC, was work in progress. In addition, that parties may have to be allowed to talk to the document as their inputs were also attached to the circulated document. He proposed that the Task Team be mandated to meet again and thereafter submit a refined document to the JRC.

The Chairperson responded that the Task Team should finalise the document and present the JRC with a composite agreed proposal. In addition, that they should include a costing.



The Speaker said that time frames should be indicated and urged the Task Team to plan its work and to advise the JRC when the final report would be available. Parties should ensure participation of their representatives in the process. She requested the Chairperson of Committees in the National Assembly and the Deputy Chairperson of Committees in the Council to assist by facilitating time slots in order to allow the Task Team the time to prioritise the issue.

The Chairperson informed the meeting that Ms Kgoali had been appointed as the Chairperson of Committees in the Council and would thus be working with Mr Doidge to provide assistance.

Mr Mahlangu explained that the Task Team had not attached the costing document, as they still needed to agree on the policy itself. He said that once agreement had been reached, that a costing would be done and included in the final document that would be submitted to the JRC.

The Chairperson requested the Task Team to continue to assist the JRC. She requested that the final document be a set of proposals which could be easily comprehended by all.

Agreed:

Task Team on Language Policy to present to the JRC a composite and simplified document which includes costing.

Task Team to plan its work and to advise the JRC as to when the final report would be available.

Chairpersons of Committees in both Houses to facilitate time slots to enable the Task Team to meet.

6.2. Implementation Plan regarding recommendations contained in the Final report of the Joint Subcommittee on Oversight and Accountability

The Chairperson reminded members that the Presiding Officers, assisted by the staff, were tasked with developing an implementation plan to be presented to the JRC. She asked the Secretary to Parliament to present the document.

The Secretary responded that the document was submitted to the Presiding Officers and that he had not expected to present it to the JRC.

The Speaker said that the Council and Assembly staff submitted proposals that had been compiled in a document dated 15 May 2003. Also, that she understood the document to be a composite report, based on the input from the two Houses. Further, that she assumed that it was circulated.

The Chairperson proposed that given that the document had not been circulated, a discussion on the recommendations and the policy issues be postponed.

Mr Jeffery said that he agreed with the Chairperson's proposal. He expressed his concern about the time that had lapsed since the adoption of the subcommittee's report by the JRC. He proposed that a special meeting be held to consider the issues and requested that his concern be noted.

The Speaker agreed that the time element was important. She said that there was an assumption in the documents from both Houses, the staff and the joint subcommittee, that there was a common vision. She said that it was important to set up structures and to link the vision exercise as a procedure. She highlighted the fact that one proposal argued in favour of a joint committee and the other in favour of a special task team. She said that even if they agreed on these differences within the documents, that there remained a need for a common view. She urged members to consider those aspects when dealing with the documents. She requested the Secretary to Parliament to ensure distribution of the composite document as well as the individual documents from each House.

The Chairperson said that a special meeting was needed to discuss the relevant document. She then said that Mr Nair would now be allowed to introduce the critical issues arising from the report of the Subcommittee on

the Parliamentary Budget.

Agreed:

Secretary to Parliament to copy the individual documents from each of the House Secretaries as well as the consolidated document and distribute them to all the members of the JRC.

Special JRC meeting to be held to discuss the implementation plan.

6.3 Report of Joint Subcommittee on the Parliamentary Budget (Item 9 on the Agenda)

Mr Nair, the Chairperson of the subcommittee, referred to the comments by the Speaker and Mr Van der Merwe regarding the late circulation of documentation and apologised for the late submission and distribution of the subcommittee's report. He said that the subcommittee had still been experiencing problems with functioning as a subcommittee of 16 members, as only a few members attended meetings. He said that in this context, the subcommittee had requested a legal opinion regarding whether the budget subcommittee needed a quorum. He further remarked that these issues had been raised previously and expressed his concern that the subcommittee had not received clear-cut responses from the JRC on various issues. He referred to the recommendations from the Minister of Finance which stated that Parliament should have a vision for the next five years to enable Treasury to have a clear picture of where Parliament is heading and of its needs in terms of capital expenditure. He said that some proposals in the report required serious policy decisions and that members should carefully consider future strategies with regard to the process. He referred to page 2 of the report and suggested that when the Presiding Officers consider the issue of the composition of the joint budget subcommittee, that they involve the Chairpersons of Joint Subcommittee on Support for Members, the Chairpersons of Committees in both Houses, the Secretary to Parliament and the Chief Financial Officer. He proposed the establishment of what he referred to as the "treasury group". He also referred to the need for certainty regarding the composition of the budget perusal or treasury group. He further referred to page 3 of the report and requested the JRC to consider these issues as well. He said that if the proposals were accepted, that it could provide the appropriate structures to drive the budgeting process.

He said that the entire budgeting process would have the cooperation of Mr Charlton's Office, the management team and Chairpersons of Committees. He added that Mr Charlton and his team were prepared to train the Committee Chairpersons and their technical staff. He said that through such interaction, all committees of Parliament in both Houses, would be able to accelerate the budgeting process.

He further informed the meeting that policy decisions were required with regard to Annexure G, which deals with a summary of the recommendations and actions required as at 13 May 2003, of the report. He said that attention should also be paid to inflation and foreign exchange rates in the compilation of the budgets as they impacted on the budget. He also requested that the proposals be discussed at the next JRC meeting. He added that the allocation of R14 million required immediate decision. He said that the subcommittee had considered allocations which were suggested in Annexure D. He requested that annexure D, which reflects the committee budget allocation, be adopted to enable committees to have the benefit of resources.

The Chairperson said that Mr Nair had presented the salient issues and that the policy areas that would be considered by the JRC, were contained in Annexure G. She indicated that the decision with regard to Annexure D had been assigned to the Deputy Presiding Officers to deal with. She said that the Deputy Presiding Officers had met with the Chairpersons of Committees in both Houses as well as the committee chairpersons and that the figures that were submitted, had been broadly agreed on and accepted. She added that a JRC meeting should be convened to discuss the proposals captured in Annexure G.

The Speaker said that Mr Nair's subcommittee should be called the Parliamentary Budget subcommittee, as this would erase any doubts regarding the mandate of the subcommittee. She requested parties to ensure that their representatives participate in the work of the subcommittee. She further referred to Mr Nair's presentation in which he indicated that there was uncertainty regarding the composition of the subcommittee after the floor crossing process and requested that any further doubt be resolved before the end of the week. She also requested Chief Whips to ensure that their members attend the meetings of the Subcommittee. She said that the subcommittee should draft a schedule of meeting dates until June 2003. Further, that with regard to the



question of inadequacy and complaints about committees, that the National Assembly had asked committees to table their programmes in the House in order for them to be adopted. She referred to complaints received from committees regarding lack of funds and inaccessibility thereof and proposed that a system be set up in terms of which resources could be availed. She requested the Chairpersons of Committees in both Houses to consider the issue. She tasked the Finance department with working out simple ways of assisting committees in drafting programmes to enable them to obtain resources within their budget allocation. She acknowledged that the Committee Section was inadequate to perform the task that it was supposed to do. She said that resources would be effectively utilised if all these issues were to be addressed.

Mr Cassim said that he was in agreement with the Speaker that all committees should have their programmes formally adopted by the House. He also said that he had already forwarded the programmes of six committees to Mr Charlton for costing.

Mr Doidge said that the House should also adopt edited committee reports and annual reports. He was concerned about the inadequate policy directives that existed. He said that it had been difficult for committees to access resources and that committees were often unable to get a statement of their account. He also acknowledged that the committee section was under-resourced and said that it was not appropriately structured.

The Chairperson requested Mr Charlton to note points relating to finance and to comment thereon.

Mr Modisenyane said that information was needed to enable committees to plan. He said that Parliament should provide guidance to committees in this regard.

Mr Mahlangu said that he agreed with the previous points regarding the submission of plans. He alluded to the uncertainty regarding the name of the subcommittee and referred the meeting to the Rules.

The Chairperson explained that there had been some confusion with regard to the way in which the subcommittee referred to itself. She said that there was a joint budget committee in Parliament, which deals with the national budget and that using the names as stated in the Rules would avoid confusion.

Mr Nel said that he was aware of the problems in the Committee Section and that a process should be initiated to address these problems. He raised a concern regarding the tabling of committee reports in the House and said that it might present problems, as committees may want to amend their reports from time to time.

The Chairperson acknowledged that there would be challenges but said that it should not prevent the JRC from proceeding.

Mr Surty said that the presentation had been helpful and proposed that the document which had been circulated be referred to the Whips for further consideration. Further, that the meeting adopt Annexure D.

The Chairperson responded that the meeting should be weary of adopting the annexure as it had not been a practice of the meeting and that the document had been brought to the meeting for information purposes. She said that the JRC would not like to adopt committee funds as it might lead to other areas of scrutiny.

Mr Doidge said that whichever structure needed to decide on committee budgets, should do so as speedily as possible, as committees had already been utilising the money.

The Chairperson said that the JRC had agreed on a line item for committees in the budget of Parliament. She said that the allocation was difficult as there had been a range of submissions and no intervening process with committees in order to decide the allocations. She said that it had been indicated that the allocations had been agreed upon by the affected structures that assisted the Presiding Officers. She requested the meeting to note that a procedure had been engaged upon, which had arrived at a much neater arrangement than what had previously existed. She added that the JRC should note the process but not decide thereon. She requested Mr



Charlton to respond to areas that had been discussed.

Mr Charlton requested members to acquaint themselves with the approach to be used in the 2004/05 budgets process. He said that the budget software had been improved and requested parties to utilise it.

The Chairperson added that one of the areas in which improvement had been sought was the ability to establish the nature of expenditure of the budget of each unit within the institution and that improvement had been reached.

The Speaker requested Mr Charlton to compile a manual or guideline for committee chairpersons on how to access resources. She said that it could be done technically but requested that it be translated into a more user-friendly language.

The Chairperson said that the discussion had been concluded and that the JRC would have to come back to the policy issues raised especially with regard to Annexure G. She added that a special meeting had to be convened to deliberate these issues.

Agreed:

Special JRC meeting to be arranged to consider the policy issues, especially with regard to Annexure G (Summary of Recommendations and Actions Required as at 13 May 2003) of the report.

Chairpersons of Committees in both Houses to assist with setting up of system to enable preparation of plan and programmes to ensure that committees can access funds.

Chief Financial Officer to compile a manual detailing how Committee Chairpersons can access committee funds.

Whips to ensure that members take work of the Joint Subcommittee seriously.

Committees to co-operate with the Joint Subcommittee on the Parliamentary Budget.

6.4. Draft Policy on Television Broadcasting in Parliament

Mr Surty indicated that the matter was still under consideration and that it would be finalised by the next JRC meeting.

Agreed:

Chief Whips to finalise policy and report at next JRC meeting.

6.5. Bus Service and maintenance of Parliamentary buildings and villages

The Secretary to Parliament said that the report on the above matter had been forwarded to the Presiding Officers. He referred to a memorandum which had been addressed to Presiding Officers dated 15 May 2003 re Improvement of Bus Services. He said that the memorandum indicated that the matter had been attended to, which would lead to the involvement of some members from the Subcommittee on Support for Members and the Subcommittee on Internal Arrangements. He added that the processing of a new tender for the bus service would also assist in ensuring monitoring of the identified problems. He expressed the hope that, once a new service provider was identified, there would be participation of both management and members which would lead to an improved service.

The Chairperson briefed the meeting and said that the contract of the current service provider would be expiring on 30 May 2003. She said that members of the subcommittee had assisted the DPW with drafting of tender documents for the new service provider. Further, that it was anticipated that the new bus service would be in operation by the 30th of June 2003. Also, that interim arrangements would be made in the transition period.

The Deputy Speaker said that a further discussion with the Minister was needed and would be pursued. She added that they were currently considering a suitable date for a meeting with the Minister to discuss these and other areas of concern.

Ms Kgoali said that she was part of the subcommittee but that she could not recall that she had been invited to

such a meeting.

Mr Klassen said that he had been informed by DPW that Mr Durand had assisted with the drafting of tender documents as he had been delegated by the subcommittee.

The Speaker was concerned that a government department had to inform Parliament as to its involvement, as the subcommittee had not delegated this task. She said that these irregular procedures needed to be cleared up. Also, that the quality of the bus service and security on the busses had been raised in the NA Rules committee. She said that the issue was how Parliament was going to monitor the service offered to members. She said that this needed to be addressed and that information needed to be provided to the subcommittee on support for members. She added that the NA Rules committee had tasked the Deputy Speaker to investigate those issues. She requested management to monitor Public Works and to ensure that a satisfactory service would be provided.

The Chairperson suggested that the subcommittee on support for members investigate the matter and the content of the tender document to ensure that the areas of concern had indeed been addressed.

Agreed:

Joint Subcommittee on Support for Members to consider the content of the tender document relating to the new bus service and ensure that areas of concern are addressed.

Security on busses needs to be addressed and a report to be submitted to the Joint Subcommittee on Members Support.

Management to monitor work being done by Public Works Department within Parliament to ensure that it provides a satisfactory service to members and to submit a report on the matter within one week.

6.6 Medical Services within Parliament

The Chairperson said that there had been various concerns regarding the nature of the medical services currently provided to members and the role of the health workers in the institution. She asked the Subcommittee on Support for Members to report on the item.

Dr Benjamin informed the meeting that the management and Presiding Officers were supposed to report on the matter.

The Chairperson responded that the report received from management merely contained a costing and that it had not indicated the proposed service to be offered.

Ms Seaton said that the management was supposed to submit a report with costing and proposals to the Subcommittee on Support for Members. Also, that the subcommittee had tasked management to investigate the possibility of bringing medical practitioners to Parliament, the required procedure and the cost thereof.

The Speaker said that she had also requested Parmed to consider the costing. She added that Parmed would be unable to proceed with the matter unless they were provided with the required information

Mr Jeffery referred to page 12 of the Minutes of the 18th of March 2003, which set out the tasks that had been assigned to management. He requested the Secretary to report on each of the items.

The Chairperson said that management should report to the Subcommittee on Support for Members within one week. She added that the report should also be forwarded to the JRC.

Mr Ellis requested that an explanation be provided regarding the absence of a report on the matters agreed to on 18 March 2003.

The Chairperson requested the Secretary to respond.



The Secretary said that there had been an understanding regarding the procedure that would be followed in submitting reports to the JRC. He said that the chairpersons of the joint subcommittees were supposed to report to the JRC. Also, that management and staff would make inputs into the joint subcommittees and that the decisions of the subcommittees would then be referred to the JRC. He added that the joint subcommittee might not have had an occasion to consider the report in this case.

The Chairperson said that the minutes of 18 March were clear on management's responsibilities. She requested the Secretary to ensure that emergency services were re-instated as a matter of urgency.

The Speaker said that the report regarding the costs of medical services was dated 14 May 2003. Also, that the report was a copy of the report from corporate services to the Secretary which stated that the JRC resolved that management should provide a report on costs of providing medical treatment on emergency and health treatment under Category B and C respectively. She added that the report provided the actual costs but contained no proposal. She said that there seemed to be a problem within the management system and requested the Secretary to investigate the procedure of dealing with documentation within his office.

Mr Jeffery suggested that the cost issue on category B and C be referred to the Joint Subcommittee on Support for Members in order to facilitate processing thereof. He requested the immediate re-instatement of core services and category B matters and that it be monitored by the Presiding Officers.

The Chairperson responded that a memorandum should be sent out by management the following day which should indicate the progress with respect to the re-instatement of medical treatment in cases of emergency.

The Secretary responded that he was under the impression that the emergency services were being provided and that it had already been re-instated.

Ms Seaton confirmed that the emergency services had been reinstated.

The Chairperson requested the Joint Subcommittee on Support for Members to consider the issues to enable action or decision on those areas.

Ms Benjamin responded that the process had started with the subcommittee and that the decision was made at the JRC. She said that it had been her understanding that once the JRC had made a decision, that it would be management's responsibility to ensure and report on implementation.

The Speaker said that the annual cost to Parliament could not be estimated due to the very nature of emergency services. She said that a submission to Parmed was needed which should indicate whether members were in need of the service as well as whether it could be provided at Parmed's cost or not. She added that this report should be submitted to the Presiding Officers and to the Parmed Committee.

The Deputy Speaker requested that a submission be made to the Parmed committee as soon as possible as the committee would be meeting the following week.

The Chairperson said that the decisions on page 12 of the minutes of 18 March 2003 needed to be revisited and acted upon by management. Also, that the category B costing had been done and that it should be submitted to the Parmed committee for consideration. She added that category C had to be considered after a detailed report had been received from management on the cost related thereto.

Agreed:

Decisions of 18 March 2003 relating to this issue to be revisited and acted upon.

Parmed Committee to consider issues raised under Category B.

Detailed report in relation to the costing of Category B to be submitted to the Presiding Officers.

Detailed report relating to Category C to be submitted to the Presiding Officers.



7. Report of the Joint Subcommittee on Internal Arrangements

The Deputy Speaker said that item 2 of the report related to the issue of working relations between DPW and Parliament on various aspects of the services that DPW rendered to Parliament. She added that the subcommittee, at its last meeting, had discussed a document that had been submitted by the DPW. She added that the subcommittee had noted some areas of possible difficulty and felt that co-ordination and planning would ensure the availability of services. Further, that the subcommittee had requested that an action plan be submitted for its consideration on how to address the problem areas. She said that the subcommittee would provide an update at the next JRC meeting. She further referred to item 5, which related to the artworks of Parliament. She said that the subcommittee had considered the report received from the curator and that it had decided to refer to the policy. Further, that the subcommittee had agreed that an "artworks management committee" be formed to consider issues such as the policy on loan of artworks to outside institutions.

With regard to the Statue of former President Mandela, she said that the subcommittee still had to decide on the issue of location. She referred the meeting to the document attached to the report which indicated the views of the various parties. She added that the subcommittee had established that there was no government policy on the issue of location of statues. She said that the subcommittee would proceed as soon as they had reached agreement on the issue of the location of the statue. She said that there were two parties that were in agreement that the statue of Louis Botha should be moved and that the NNP had proposed a location to where it could be moved. She also said that all the parties were of the view that the statue of former President Mandela should be placed in a prominent place.

With regard to the issue of the budget, the subcommittee was of the view that they should input into the budgeting process of the department for 2004/05. She added that a suggestion was made that the Deputy Presiding Officers would seek to meet with the new DG of DPW on that issue as they had initiated discussions with the previous DG.

The Speaker said that there had to be a meeting with DPW before Parliament should allow them to proceed with repairs. She said that Parliament had to ensure that DPW submit a plan on all work to be done and that the way in which the plan was implemented would take on board the needs of Parliament. She said that it had previously been agreed that Parliament would include a budget of Parliament's needs in either Parliament's vote or that of DPW. She requested management to submit a report on Parliament's needs. With regard to the statue of former President Mandela, she said that it should not be erected outside the National Assembly entrance as that was the only public ceremonial place. She proposed that a part of the garden of remembrance be used as a possible location. She added that this location would be very prominent as it would allow the public to view it but that it would at the same time be on Parliament's premises. She requested the subcommittee to consider the possible proposed location.

The Chairperson agreed that a subcommittee on artworks should be established to deal with the issues being discussed. She also agreed with the Speaker that part of the garden of remembrance should be investigated as a possible location.

Mr Van Niekerk said that there had been a decision taken that there should not be a statue of a living politician erected. He said that the specific decision should be repealed or that an exception should be made in this specific case or that the JRC should deal with it if the decision had been taken in the JRC meeting.

The Chairperson responded that the subcommittee should also consider this issue.

Mr Mahlangu said that he recalled that the JRC took a decision that the statue should be erected and that it was only the location that was an issue at the time.

The Chairperson requested the subcommittee to investigate whether a national policy existed in this regard.

The Speaker referred to the minutes of 18 March 2003 and specifically to the question of allocation of office space. She requested the Secretary to indicate whether office space had been allocated to all parties.

The Secretary responded that it had been dealt with although minor adjustments were being made.

Department of Public Works (DPW)

Agreed:

Management in conjunction with Department of Public Works to draft an action plan for management of all DPW projects and maintenance in Parliament and that timeframes be included.

Chairpersons of the Joint Subcommittee on Internal Arrangements to meet with the new DG of DPW to discuss item for inclusion in the DPW budget for 2004/05.

Management to submit a budget of Parliament's needs in relation to Public Works Department and report to the JRC.

Joint Subcommittee to establish an Artworks Management Committee.

Former President Mandela's Statue

Agreed:

Joint Subcommittee on Internal Arrangements to verify whether there is any national policy concerning statues of living persons.

Joint Subcommittee on Internal Arrangements to consider further possible location of statue of former President Mandela, including part of "garden of remembrance" to be considered as possible location.

8. Report of Joint Subcommittee on Delegated Legislation

Mr Masutha reported that the interim report had been submitted to the JRC. He said that the subcommittee invited Professor Corder to express his views on the report. Also, that Professor Corder had been in general agreement with the report.

The Speaker responded that parties had to consider the report. She said that another JRC meeting should be scheduled to discuss the report.

Mr Andrew said it was difficult to prepare for the JRC meetings. He suggested that there should be a cross - reference in the memorandum to indicate whether there was a document attached to the item on the agenda or whether it had been referred to or distributed in a previous meeting or notice.

The Speaker said that the management board should look at a standard procedure and that documentation should be posted on the website to enable members to download additional copies for themselves. Also, that there should be adequate preparation for JRC meetings and that documents should also be cross-referenced.

Item 9 had been dealt with on the Agenda under "Matters Arising". The meeting proceeded to item 10.

Agreed:

Parties to consider report.

Special JRC meeting to be arranged to discuss report.

10. Report of Joint Subcommittee on Support for Members

Dr Benjamin reported that the joint subcommittee held a strategic planning workshop to develop a comprehensive programme. She said that the report was still being finalised but that it would be submitted to the JRC upon completion. The purpose was to assess achievements and failures of the subcommittee and to develop a programme of action for 2003/04. She said that a number of decisions of the JRC had not been implemented and that the subcommittee had tried to impress upon the management that once the JRC had decided upon something, it had to be implemented. She raised some examples of decisions that had not been implemented.

Ms Seaton said that it had to be clarified whether the JRC had the power to make decisions, and why those decisions were changed somewhere else. She referred to the decision by the JRC that 70 tickets would be allocated to members but that that decision had subsequently been changed.



Mr Jeffery referred to the issue of airport parking and said that it seemed to have been dropped off the agenda. He enquired whether special arrangements could be made for members on the basis that they parked their cars quite regularly at the airport. He said that he understood that members of the pre-1994 Parliament were allowed to park their cars for free. He asked whether the Presiding Officers or the subcommittee could report on the current process and whether there could be an improvement on the current status.

Ms Rajbally said that various decisions had been taken by the JRC had not been implemented. She asked who was being tasked with follow-up to ensure that decisions were implemented.

Ms Kgoali said that the issue of parking was referred to the Presiding Officers to report on.

The Speaker informed the JRC that there was a proposal that was agreed upon but she requested management to report thereon.

The Secretary said that a structure had been set up to extract decisions within 3 days. He said that those decisions are sent to Presiding Officers and the Management Board to consider the action to be taken. He added that the follow-up action was based on the decisions. He said that in cases of uncertainty, decisions had been raised with the Presiding Officers or with the relevant subcommittee. He added that this procedure had now been re-enforced, as the Assistant Secretary was now responsible for co-ordinating meetings of joint subcommittees and JRC.

The Chairperson said that with regard to the airport parking, that the JRC had agreed that a card would be provided and an amount loaded for the year. With regard to the members' services office, it had been agreed that such an office would be established and that the budget of 2003/04 would address this matter. In terms of the video monitoring, that it had been discussed and agreed that such facilities would be made available in offices of whips and chairpersons as soon as funds were available. With regard to the L19 circular, it had been agreed that changes would be made. She requested responses from the Secretary on the above- mentioned issues.

Ms Seaton said that she had not yet received an answer on her question regarding the allocation of 70 tickets. She wanted to know where the decision was taken to take away the 10 tickets.

The Secretary responded that the ACSA cards had been flown from Johannesburg on the 19th of May 2003 and that they would be distributed upon arrival. He said that with regard to L19, there was a document for members to consider. He added that the Members Support Office had been discussed. Further, that most staff servicing members were located in various departments. He said that they had discussions in management to see how to address this and decided that they had to find a process to co-ordinate the work. He said that the services were being provided and that staff would be available to interact with members.

The Speaker suggested that the Secretary peruse the minutes of the previous 5 JRC meetings and extract all the decisions regarding members' support and submit a report thereon to the Presiding Officers. She said that the report should detail the progress made on implementation. She added that the Presiding Officers would circulate the report and follow up as well. She requested the Secretary to monitor progress. In terms of members support, she proposed that a virtual office be set up which would link all staff dealing with members support. She requested the Secretary to respond to the issue of the 70 tickets raised by Ms Seaton and said that she believed that it was already included in the budget.

The Secretary said that the matter was raised in a meeting with Presiding Officers and the Minister and that the Minister was reluctant to provide an additional ten tickets. He added that the Finance Section was still operating on the basis of 60 tickets in the hope that the 10 would be added.

The Speaker said that she had received a memorandum from the Secretary, dated 16 May 2003, explaining the basis of the request for 70 tickets and requesting the signature of the Presiding Officers.

Ms Seaton asked whether the Minister of Finance looked at the line items on the budget and whether prioritisation was made within Parliament. She referred to the delay in implementation of decisions and requested the Secretary to ensure that all decisions were implemented.

The Speaker requested members to feed all decisions to the JRC through the offices of the Presiding Officers. She further added that this would constitute a composite of all agreed decisions and could be a reference document if need be.

Mr Andrew said that there had been slow downloading of e-mails due to congestion in the system. He enquired whether anything was being done to increase the capacity of the network within Parliament and requested an indication of when there would be an improvement.

The Deputy Secretary responded that there was a problem with regard to the network bandwidth. He said that Parliament had authorised the installation of larger capacity on the bandwidth but that there was a technical problem with the type of system and service that Telkom could provide.

The Speaker said that the JRC should receive a written report on the problems and solutions as well as an indication of when it would be addressed.

Support for members

Agreed:

The following decisions of the previous JRC meetings to be implemented without delay:

Creation of Member Services Office - 7 May 2002

Provision of Video Monitoring Facilities - October 2000

Parking Facilities at Airport - 18 March 2003

Effecting Changes and Update Circular L19 on Facilities for Members. L19 still have clauses that the JRC had agreed should be removed i.e. the inclusion of Monthly Internet Subscription under Allocation of Telephones - 7 May 2002.

Secretary to Parliament to peruse minutes of previous 5 JRC meetings to extract all the decisions and report to Presiding Officers on implementation.

Presiding Officers then to circulate the report and follow up on delays.

Internet Access and bandwidth

Agreed:

Management to provide report to members regarding problems and solutions of bandwidth for e-mail and internet access.

11. Report of Joint Subcommittee on International Relations

There was no report to be considered.

12. Joint Committee on Ethics and Members Interests

The Speaker said that committees were being established and that chairpersons of all the committees and subcommittees of the JRC needed to be remunerated. She said that this had to be considered as it had cost implications. She said that there were previously two committees, one dealing with the Code of Ethics and the other with Enforcement of the Code. She added that these committees had subsequently been amalgamated. Further, that the result had been that there had been little progress on the development of the Code. She said that this issue needed to be debated.

Ms Seaton said that the parties had been asked to consider the issue and that her party was of the view that the committee should remain as one and she further proposed that the chairpersons be remunerated.

The Chairperson said that a distinction needed to be drawn between the form of remuneration of committees



Audio

No related audio

Documents

No related documents

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Deliberations

Committee: [Joint Rules \(/committee/33/\)](#)

Date of Meeting: 19 Aug 2003

Summary

No summary available for this committee meeting.

Minutes

JOINT RULES COMMITTEE

19 August 2003

DELIBERATIONS

These minutes were provided by the National Assembly Table Staff

Chairpersons: Drs F Ginwala and N Pandor

Documents handed out:

ANNEXURE [A]: ANC Proposal on Implementation of the Recommendations of the Joint Subcommittee on Oversight

PRESENT

National Assembly

National Council of Provinces

Speaker

Chairperson of the National Council of Provinces

Dep. Speaker

Dep. Chairperson of the National Council of Provinces

Andrew, K M

Ackermann, C

Bakker, D M

Botha, C S

Benjamin, J

Dlulane, B N

Bhengu, F

Kgoali, J

De Lange, J H

Kolweni, Z S

Doidge, G Q M

Lever, L

Gibson, D H M

Makoela, M I



Greyling, C H F

Surty, M E

Jeffery, J H

Van Niekerk, A E

Kalyan, S V

Vilakazi, J N

Masutha, MT

Mngomezulu, G P

Mulder, C P

Rajbally, S

Seaton, S A

Sosibo, J E

Thabethe, E

Staff in attendance:

Mfenyana, S; Matyolo, L L; Hahndiek, K; Klassen, L; Keswa, N; Coetzee, M; Charlton, H; M Mbangula; L Meyer.

1. Apologies

Modisenyane, L G; Green, L; Mahlangu-Nkabinde, G L; Ramodike, M N; September, C; Van Wyk, J F; Cassim, M F; Southgate, R M; Mbuyazi, L R; Nhleko, N P; Hendrickse, P A C; Setona, T S; Nkuna, N C; Durr, K D S; Ellis, M; Van der Merwe, J H; Choha-Kota, F; Landers, L T.

2. Adoption of Agenda (Item 2 on the Agenda)

The meeting agreed to the following additions:

- Management Board report.
- Discussions on "directing authority".
- Ethics Committee.

3. Adoption of Minutes of 20 May 2003

After the following correction on p23, the minutes, on the motion of Ms S Seaton and seconded by Ms Rajbally, were adopted.

Ms Seaton clarified that the matter she had raised at the previous meeting was that the Internet subscription needed to be included under the allocation for telephones. The wording in the minutes seemed to convey that the subscription should be excluded from that allocation.

4. Matters arising

4.1 Implementation Plan in respect of the recommendations contained in the final report of the Joint Subcommittee on Oversight and Accountability

Mr Surty reported that the African National Congress (ANC) had considered both the individual reports which were prepared by the Secretaries to both Houses as well as the consolidated report which was prepared by the Office of the Secretary. He outlined the recommendations contained in the document attached as annexure B to these minutes.

Mr Lever sought clarity on whether the ANC proposal was intended to supplement or supplant the consolidated report. Mr Surty responded that the proposal had been informed by the contents of the consolidated report. He added that most of the details contained in the consolidated report would be considered by the Task Team which would be chaired by the Presiding Officers. The Task Team would also need to set timeframes for the



completion of its processes. Mr Lever indicated that the Democratic Alliance (DA) supported the ANC proposal and urged that the Task Team be established as soon as possible. He appealed that the Accountability Standards Act be implemented immediately. Both the New National Party and the Inkatha Freedom Party expressly indicated their support for the ANC proposal.

Agreed:

- African National Congress submission on the Implementation Plan agreed as a basis. (full text of ANC proposal attached as annexure A)
- Joint Rules Committee to report to the Houses for purposes of debates.

4.2 Deliberations on the report of the Joint Subcommittee on Delegated Legislation on scrutiny of delegated legislation

The Deputy Chairperson indicated that at the last meeting parties had been asked to consider the interim report of the Joint Subcommittee and report at the present meeting. The National Council of Provinces had convened a workshop on the report. The workshop was also attended by some committees of the National Assembly. When asked for comment by the Deputy Chairperson, Mr Masutha concurred with the Deputy Chairperson that parties had been asked to deliberate on the report, adding that the Joint Subcommittee was awaiting guidance on the matter.

Mr Surty intimated that the Joint Subcommittee should be commended for its work in compiling the report. He proposed that, first, the National Assembly conduct a workshop similar to that of the NCOP and, second, the next meeting of the Joint Rules Committee should consider the recommendations of the Joint Subcommittee. Both the IFP and the DA supported Mr Surty's proposal.

The Deputy Chairperson expressed concern that a year had passed without action since the report was published in the ATC. He appealed to parties to consider the recommendations and discuss them in caucuses with a view to reporting at the next Joint Rules Committee meeting.

Agreed:

- National Assembly to consider a workshop on the report.
- Next meeting of the Joint Rules Committee to consider the recommendations in the report.
- Parties to look at the Report in preparation for the next Joint Rules Committee.

4.3 Deliberations on the report of the Joint Subcommittee on the Parliamentary Budget

The Deputy Chairperson explained that the report of the Joint Subcommittee had been on the agenda of the special meeting of the JRC which was later cancelled. Political parties had been asked to consider the report. He pointed out that the budget process for the next financial year was currently underway, and this factor, should make consideration of this report more urgent. In view of this, Parliament urgently needed to consider the report of the Joint Subcommittee, especially annexure G (dealing with issues for policy decisions). Mr Andrew indicated that the DA member (Mr R Heine) who used to deal with budget issues had passed away. The party had appointed a new member who was still familiarizing himself with the issues. As a result of this, the DA had not been able to consider the report.

Ms Kgoali proposed that a special meeting of the Joint Rules Committee be convened in September 2003 to consider the report.

The Speaker indicated that she had been asked to approve excess expenditure that had been incurred by Parliament. At the present moment there was no legal requirement for Parliament to follow the normal procedure in terms of excess expenditure. She suggested that there was a need for a Parliamentary structure to be established to consider the basis for approving or disapproving excess expenditure, adding that she would need guidance on dealing with this matter. She further indicated that the SCOPA could be the appropriate structure for this purpose. In addition, the identified structure should also address the question of reporting mechanisms. Parliament, rather than a committee, should be involved in this process.



It was important that Parliament's accountability should be public, transparent and justified to the public. Responding to Ms Seaton's proposal that the matter raised by the Speaker be referred to the Chief Whips' Forum, Ms Kgoali pointed out that the Chief Whips' Forum was a National Assembly structure which did not involve the NCOP. She said that issues emanating from the Joint Rules Committee should involve both Houses. The Speaker agreed, adding that issues that had previously been referred to the Chief Whips' Forum for consideration tended to take long before reaching the Joint Rules Committee. She objected to the proposal that the matter be referred to the Chief Whips' Forum, instead, she proposed that parties be asked to consider the matter.

Ms Seaton amended her proposal to say that the Chief Whip of the ANC and the Chief Whip of the NCOP should bring chief whips together to consider the matter.

Adv Del Lange suggested that, if it occurred that before the special JRC meeting was held, that Parliament needed assistance with regard to the issues (over expenditure) raised by the Speaker, the SCOPA would be the ideal structure to deal with the matter.

Deliberations on the report of the Joint Subcommittee on the Parliamentary

Budget

Agreed:

- A special meeting of the Joint Rules Committee to be convened in September 2003 to deal with the report.

Speaker's report on requested approval for excess parliamentary expenditure

Agreed:

- Political parties to consider appropriate process and mechanism to deal with the matter, taking into account the need for Parliament to be accountable.
- Speaker could approach SCOPA on the establishment of an appropriate mechanism.
- The matter to be considered at a special Joint Rules Committee meeting in September.

4.4 Finalisation of the Language Policy for Parliament

The Deputy Speaker requested that both the Appraisal by the University of the Free State and the costing document related to this subject be withdrawn from the document-pack. She mentioned that a new "costing" document had been produced and circulated at the start of the meeting. She reported that the policy addressed the following areas: House debates and committee proceedings; official record of parliamentary proceedings and committee reports; daily papers such as order papers, announcements, tablings and committee meetings and external communication.

She said that in terms of the draft policy, two phases for implementation were being proposed. Phase 1 would entail the use of six official languages. Phase 2 entailed the implementation of all the official languages. At the start of a new Parliament after an election, members would be asked to register their language preferences. Dr Mulder indicated that the Freedom Front was in support of the proposed policy. He sought clarity with regard to the languages to be used in communication with the public i.e adverts. Ms Seaton also indicated that the IFP was in support of the proposed policy. Ms Rajbally asked whether it would not be proper to also include other languages, such as Indian languages, as part of the policy. She added that the speakers of these languages could be asked to give prior notice before using them.

Mr Gibson indicated that the DA was also in support of the proposed policy. He asked that the cost of implementing the policy be incorporated into Parliament's current budget.

He expressed concern, though, that the Hansard did not seem to serve any good purpose, adding that Hansard was a year behind schedule.



Mr Surty commended the Task Team on its work and indicated that the ANC was in support of the proposal. Responding to Mr Gibson's concern about Hansard, he suggested the concern related to an operational issue and should be addressed as such. On Ms Rajbally's point, he responded that it would be financially difficult to implement the proposal. Dr Benjamin explained that in terms of the proposed policy, copies of Hansard would also be made available in the Library. Mr Van Niekerk indicated that the NNP was in support of the proposed policy. He explained that the Task Team also used the National Policy Framework as its point of departure. Regarding implementation, he mentioned that the Task Team had indicated that the last two bullets (last page of the draft policy) should, if possible, be moved to the first phase. On the budget he suggested that the costing as presented should be revisited.

Mr Jeffery asked whether the Task Team had, during its deliberations, considered facilities to enable Members of Parliament to learn other languages during a Parliamentary term. The Deputy Speaker explained that during the constitution drafting process, a conscious decision had been taken to develop many of the languages that were previously ignored. The idea was also that these languages should also be included in curricula for tertiary institutions. She agreed with Mr Surty that it would be complicated to include in the policy other languages in addition to the eleven official languages. She mentioned that the Presiding Officers had agreed and signed a document dealing with the refurbishment of the National Assembly Chamber. The process of refurbishment would enable the full implementation of the language policy.

Agreed:

- Principle of the proposed policy agreed as per the document presented by the Deputy Speaker on behalf of the Task Team on a Language Policy for Parliament.
- Implementation and other details to be considered further by the Task Team.

4.5 Report on Draft Policy on Television Broadcasting of Parliament

Mr Surty reported that the Chief Whips had not been able to finalise the matter. The Speaker indicated that the Joint Rules Committee did not need to await the report of the Chief Whips' Forum for it to deal with the matter. She said that the Chief Whips' Forum was not a decision-making body but, rather, a facilitating mechanism. Therefore there was nothing preventing the Joint Rules Committee from considering this matter in the absence of a report from the Chief Whips' Forum. Ms Seaton indicated that the IFP was in support of the draft policy as initially tabled.

Ms Kgoali stated that the ANC had not yet finalised the matter and, for that reason, the party was not able to state its position on the issue. Mr Gibson said that the policy was generally acceptable to the DA even though it tended to be too restrictive in certain instances. He pointed out that it was important for whips to ensure that their members behaved themselves well in the House. The television camera should be able to move around to show what happened in the House. Mrs Vilakazi pointed out that members sometimes fell asleep in the House because of medication.

Mr Nel indicated that the Chief Whips' Forum had considered the draft policy and agreed that its principle was acceptable and should be adopted. He said that the issue of "monitoring" of the television policy should be referred to the Joint Subcommittee on Internal Arrangements for further consideration. He added that detailed guidelines were necessary with regard to, among others, televising of committee meetings. The issue of sign-language in this respect also needed consideration. The Deputy Speaker pointed out that there was not much time left before the end of the current Parliament. She appealed to parties to speed up the finalisation of this and other outstanding issues.

The Chairperson proposed that at the next meeting of the Joint Rules Committee concrete proposals on this matter should be made, adding that the proposals of the Chief Whips' Forum as outlined by Mr Nel should be made available to members of the Joint Rules Committee.

Agreed:

- Concrete proposals on the Broadcasting Policy to be considered at the special meeting of the Joint Rules Committee.
- The proposals of the Chief Whips' Forum, as outlined by Mr Nel, to be made available to members of the Joint Rules Committee before the special meeting.



- Proposals on the Policy to take into account the role of the print media.

4.6 Processing of Draft Bill on Financial Administration of Parliament and Provincial Legislatures

The Speaker stated that the Joint Rules Committee needed to discuss the procedure to deal with the Bill rather than its content. The contents of the Bill would be considered by a committee to be appointed for that purpose. She expressed concern regarding point 3 in the introductory note of the Bill which stated that the Bill was a mixed Bill. She said that the Bill ought to be a normative Bill. She proposed that the Bill should be dealt with by National Parliament, and that Provinces should have their own legislation in this regard. Ms Seaton supported the Speaker's view on the Provinces having their own legislation.

Adv De Lange indicated that the ANC had not finalized its position on the Bill. He proposed that this matter be added to the agenda of the special JRC meeting. Mr Andrew indicated that the contents of the Bill should be compatible with provisions of the Powers and Immunities of Parliament legislation. The Chairperson expressed concern about a provision in the draft bill, regarding the process. Among others, the procedure indicated that a committee needed to submit a memorandum to the National Assembly to obtain permission to publish the Bill. She said that if this procedure meant that the process could not be initiated before the special meeting, the process could be unnecessarily delayed.

The Chairperson suggested that the stages leading to the publishing of a Bill should be initiated immediately, adding that the Bill should be completed before the end of the current Parliament.

Agreed:

- Joint Rules Committee to discuss the procedure to deal with the Bill rather than its content.
- Contents of the Bill to be considered by a committee to be appointed for that purpose.
- Scope of the Bill to be limited to National Parliament, provinces could have their own legislation in this regard.
- The issue to be on the agenda of the special JRC meeting.

Process as outlined in the introductory note to the draft Bill to be implemented (National Assembly to proceed with the process to initiate the bill)

4.7 Report on Internet access and bandwidth

The Deputy Speaker said that in terms of the report she had received from management the Internet bandwidth had been increased four-fold. The Secretary indicated that the improvement of the service was on track and that an application had been made to Telkom for a further increase of the bandwidth. Dr Benjamin expressed concern that email from the constituencies had been inaccessible for the past two weeks.

Mr Gibson indicated that the reports of the Deputy Speaker and that of the Secretary were incompatible. He explained that the Deputy Speaker had indicated that the problem with the bandwidth had been resolved, however, the Secretary reported that an application on this issue had been submitted to Telkom. Mr Andrew added that the report by the Secretary was unacceptable. He said that parties needed information on the current size of the bandwidth and the envisaged extent of its increase. He suggested that this issue be reported in writing to parties within a week, adding that parties might need to consider matter within their caucuses.

The Chairperson explained that in terms of a report she had received from the Secretary, in April 2003, the bandwidth had been increased from 256 to 512 kilo-bites. However, this increase had proved insufficient and a further application to increase the bandwidth to a Million kilo-bites had been made. This further increase would be effective on 1 September 2003.

The Chairperson asked whether a trouble-shooting strategy was in place to assist members who encountered problems with the system. Mr Jeffrey requested that information on the Parliamentary website be updated.

Agreed:

- Management to make specific information on Internet access available to members immediately.
- Management to report on "trouble-shooting" office at the next meeting of the Joint Rules Committee.



4.8 Amalgamation of Joint Committee on Ethics and Members' Interests

Ms Seaton mentioned that she agreed with the Legal Opinion that the same Committee could both establish and implement the code of conduct. If the Committee were to be split into two, the current problems regarding quorum would worsen. The Speaker stated that both the composition and the actual functioning of the Committee needed to be re-examined. On the functioning of the Committee, she pointed out that a report on Conflict of Interests which was requested from the Committee around 1996/97 was still outstanding. The records of the Committee should be checked to establish how far the issue had progressed. She also raised concern about the Committee's accountability to Parliament.

Regarding amalgamation, she said that the Joint Subcommittee on the Review of Rules could be asked to consider the implications of the amalgamation of the Committee.

In 1997, the Committee seemed to have taken a decision that, after a year, records of persons who ceased to be members of Parliament should be destroyed. This was, in part, due to a lack of filing space. In 1999 records were destroyed. The Committee did not report the matter to the House. She said that when people ceased to be members of Parliament what they declared and not declared was still relevant. The policy to destroy the records was never discussed by the House.

She indicated that prior to 1998, every six months, she used to write to the Committee asking it to report to the House. However, with time she discontinued the practice.

The last two meetings of the Committee could not take place due to lack of quorum. Again, there were still two vacancies in the membership of the Committee which were never filled by the smaller parties after the floor-crossing process.

She suggested that the Joint Rules Committee consider the decision of the Committee to shred documents. Questions to be asked in this regard should be - Should documents containing confidential information be destroyed? If not, for how long should these be kept? She suggested that perhaps a subcommittee of the Joint Rules Committee could consider these issues. She further proposed that any shredding of documents should be halted.

Ms Kgoali sought clarity on whether the Speaker's concerns had been raised with the Chairpersons of the Joint Committee. And, if yes, what had been the response of the Chairpersons? She said that the Joint Committee had in the recent past had different Chairpersons, adding that if the current chairperson did not have the relevant information they could not be expected to report on something that had not been requested of them. Ms Seaton indicated that the matter of shredding of documents had in fact been discussed by the Joint Committee. The Joint Committee would soon table a report on the matter. She agreed with Ms Kgoali that the Speaker's concerns should first be raised with the Chairpersons of the Joint Committee.

She said that there was a need to re-address the composition of the Joint Committee. The composition should not be based on a party proportional basis. Mr Gibson agreed with Ms Seaton's views on the composition of the Joint Committee. He indicated that perhaps the Committee took the decision to shred documents because Parliament had no jurisdiction over persons who had ceased to be members. He suggested that the decision of the Committee should be rescinded immediately.

On the absence of a Policy on Conflict of Interests, he said that this was a reflection on the Chairpersons of the Joint Committee, the Presiding Officers and the Joint Rules Committee, adding that the Joint Rules Committee seldom held the Committee to account.

Adv De Lange pointed out that the Joint Committee on Ethics and Members' Interests was a Parliamentary committee and no committee of Parliament could make decisions on behalf of Parliament. The decision of the Joint Committee on these issues should immediately be tabled before the Joint Rules Committee, with a view to including a rule in the Joint Rules on shredding of documents. He also proposed that the Secretariat should consider any outstanding tasks that were previously referred to the Joint Committee and request the Committee to report on those.



Mr Masutha highlighted the fact that the Powers and Immunities of Parliament Bill contained a provision on conflict of interests. He suggested that the Joint Committee should liaise with the Ad Hoc Committee on Powers and Immunities of Parliament on this matter.

The Chairperson cautioned the meeting against directing the Joint Committee to amend its decision on the shredding of documents. She suggested, instead, that the Joint Rules Committee should write to the Committee expressing concern about the decision to shred documents and request it to amend that decision and report to both Houses in terms of Joint Rule 124 as to amendments the Committee intended making in respect of the decision. She suggested further that the Secretariat should ensure that the requirement for the tabling of annual reports by the Committee was adhered to. She recalled that both Mr M L Mushwana and Sister B Ncube, the former chairpersons of the Joint Committee, had reported on Conflict of Interests to the Joint Rules Committee. It was the Joint Rules Committee rather than the Joint Committee that failed to deal with the matter.

Ms Kgoali asked that the Joint Committee be given an opportunity to respond to the concerns raised by the Speaker. She indicated that the Joint Committee should report to the Presiding Officers and the Presiding Officers should, in turn, report to the Joint Rules Committee. Mr Surty agreed that the Joint Committee had in fact reported and that the Joint Rules Committee had been slack in responding to the matter. He asked that the Joint Rules Committee consider the linkage between the Code and the Powers and Immunities Bill. He added that the Committee had been responsive to matters relating to conflict of interests and ethical transgressions.

Mr Nel agreed, adding that Members of Parliament were serious about issues of governance and that mechanisms were in place to deal with issues such as conflicts of interests. Ms Seaton indicated that the Joint Rules were previously changed to accommodate the issue of amalgamation of the Joint Committee. She suggested that parties needed to consider the composition of the Joint Committee.

The Speaker clarified the basis for raising the concerns she had raised regarding the Joint Committee. She pointed out that she had at the start of the meeting indicated her intention to raise the issues. She said that her concern pertained to the fact that different accountability lines were not dealt with adequately. When the report on the Conflict of Interests was presented to the Joint Rules Committee, the difficulty was that the House rather than the Joint Rules Committee had to deal with the matter. However, this never happened.

She proposed that Dr Mulder should submit names of representatives of the smaller parties to serve on the Joint Committee. Further, that any further destruction of documents should be halted until the matter was addressed. She pointed out that parties had the responsibility to ensure that their members reported to them to ensure responsibility and accountability. Mr Gibson indicated that the DA member of the Joint Committee had not received the notices of the last two meetings of the Committee.

Agreed:

- Secretariat to identify tasks that were previously referred to the Joint Committee which were still outstanding and ask the Committee to report on those.
- Joint Committee to be requested to reconsider work previously done on Conflict of Interests and to report with proposals to the Houses i.e not to JRC.
- Joint Rules Committee to write to the Committee requesting that:

(a) Shredding of documents be halted immediately.

(b) Record-keeping by the Committee be discussed further.

- Secretariat to ensure that the requirement for the tabling of annual reports by the Committee was complied with.
- Dr Mulder to submit names of representatives of the smaller parties to serve on the Committee.

5. Report of Joint Subcommittee on Internal Arrangements

The Deputy Chairperson outlined the issues needing the decision of the Joint Rules Committee as follows:

5.1 Annual increase of catering prices:



The Joint Subcommittee recommended that the proposed annual increase of catering prices be agreed to.

Agreed:

- Food price increase as spelt out in the Report of the Joint Subcommittee on Internal Arrangements to be implemented.
- Management to submit a report to the Presiding Officers and the Joint Subcommittee on Internal Arrangements, spelling out in detail -

- a. steps taken to improve the catering services,
- b. the basis of individual cost increases, and

(c) the actual cost of meals.

- Management to ensure that correct policy is reflected in the policy guidelines.
- Management to address the varying standards in dining rooms.

5.2. Loan agreement in terms of existing Lending Policy:

The portrait painting of Speaker Van Coller (oil on canvas, by the artist Frank Wiles) had been requested by the Van Coller Museum in Cathcart. The museum had submitted a security and environmental control report which the Parliamentary Curator had approved. The Subcommittee on Lending of Artworks considered the details of the loan and reported to the Joint Subcommittee. The Joint Subcommittee considered the matter and recommended that the loan request of the Van Coller painting be agreed to.

Agreed:

- Loan agreement to be proceeded with.

5.3 Proposed amendments to Artworks Lending Policy:

The Artworks Curator proposed amendments to the Lending Policy. The Joint Subcommittee had been unable to process this matter. However, the Joint Subcommittee thought it prudent to submit this document directly to the JRC as time was of the essence.

The proposed amendment to the Artworks Lending Policy had been cleared by Parliament's Law Advisors. It is meant to allow for the streamlining of the process of considering loan applications. The present policy required decisions to be taken by the three structures, i.e. the Lending Committee, the Joint Subcommittee and the JRC, before a loan could be effected.

Agreed:

- Amendment to artworks lending policy to be proceeded with.

5.4 Postal services

Agreed:

- The establishment of a post office to be proceeded with.

6. Report of Joint Subcommittee on Support for Members

Dr Benjamin outlined the submission of the Joint Subcommittee. However, due to time constraints the detail of the report was not considered.

Agreed:

- Parties to consider and process the report for consideration at the next Joint Rules Committee meeting.

7. Other items on agenda stood over for discussion at the next Joint Rules Committee meeting.



The meeting adjourned at 13:00.

ANNEXURE [A]

ANC PROPOSAL ON IMPLEMENTATION OF THE RECOMMENDATIONS OF THE JOINT SUB-COMMITTEE ON OVERSIGHT.

1. Introduction

The Presiding Officers are required to present an implementation plan to the Joint Rules committee in the wake of the adoption of most of the recommendations of the ad hoc subcommittee on oversight. The one matter still outstanding relates to Accountability Standards and the JRC is yet to consider which of the two options it will adopt, or if indeed a third option should be considered.

2. Implementation Mechanism

The Presiding Officers being the implementing authority of Parliament will require the assistance of a dedicated Task Team, which will be chaired/convened jointly by the Presiding Officers. The Task Team should consist of key Members who will be able to dedicate time and commit the resources of their office to the process. In this regard the following people should be considered: The Chief whips and Deputy Chief whip of the majority party or their representatives, the two Chairpersons of Committees, two (or more) chief whips from opposition parties and perhaps six to ten other Members.

The Task Team will in turn have three components:

3. The Chair of Committees Component

This component should be chaired jointly by the Chairpersons of Committees. The aspects that this component will consider and report to the Task Team on will be:

1. The drafting of the Best Practice Guide to capture inter-alia the best oversight practices of committees;
2. Drafting guidelines for Portfolio and Select Committees to allow for Joint Planning of oversight work;
3. Drafting protocols to ensure structured communication between committees of the two Houses;
4. Capacity development in Select and Portfolio Committees;
5. Developing a data compilation or record keeping system and monitoring and tracking mechanism in the committee section.

This component will require the technical assistance of and work closely with the head of the Committee Section and draw in further technical capacity from within Parliament.

4. The Budget Legislation Component

This component will be chaired jointly by the Chairpersons of the Budget Committee and should essentially develop Legislation referred to in Section 77(2) of the Constitution.

This component will conduct research and develop a draft policy in terms of S 77(2) and finally draft proposed legislation. This component will require the technical assistance of researchers and legal advisers/drafters.

5. The Projects Component

This component should be chaired by Members who are able to dedicate most of their time to the tasks allocated to this component. The tasks include:

1. The drafting of the Constitutional "Landscape" document including commentary from key constitutional negotiators;
2. An audit of the various bodies exercising public powers or performing public functions and the resulting delineation process;
3. Developing a draft proposal toward a policy to be adopted in terms of section 55(2)(b)(ii).



This component may also be tasked with drafting the option preferred by the JRC in regard to the Accountability Standards matter, which is referred to above.

The component will also require the technical assistance of researchers/legal advisers/drafters for each of the three different projects.

6. Relationship between the three components of the Task Team

The different components will work under the auspices of and be guided by and will report to the Task Team.

Additional Members of Parliament may be drawn into each of these components depending on their needs. This will be done under the direction of the Task Team.

7. Immediately Implementable Matters

(1) Chapter 9 Institutions

The matters regarding the resolutions on organising workshops, debates and discussions and the consultative process aimed at engaging the Institutions Supporting Democracy, are matters that the presiding officers can implement without delay.

(2) Vision and Mission

There is already a process underway to develop a Vision and Mission Statement and this process should continue and feed into the Task Team for strategic planning and refining for adoption at the JRC.

(3) Subcommittee on Review of Rules

There should be a rule drafted through the Joint Subcommittee on the Review of Rules to implement the resolution requiring each new Parliament to assess and review its oversight capabilities at least once during its five year life-span.

The matter of programming more oversight debates can also immediately be referred to the programming committee for implementation.

8. Conclusion

All of the resolutions are captured in the above proposal and for ease of reference attached please find a summary of the resolutions. (Annexure 1)

ANNEXURE 1

RESOLUTIONS

Resolution

The sub-committee recommends that:

- i. Parliament through the Joint Rules Committee (JRC), compiles a document "landscaping" the Constitutional provisions dealing with the inter-related themes of Oversight, Accountability, Transparency and responsiveness, and outlining international trends. Such a document should also include inputs from key constitutional negotiators either in



form of commissioned research or essays, (preferably) both.

ii. Following the tabling of the abovementioned document debates, workshops and discussions should be programmed and organised within Parliament, first amongst MP's themselves, and then later on expanded to include other stakeholders. These debates and discussions should have as their objective the development of a broad understanding of the Oversight Role and Purpose of Parliament within our Constitutional democracy.

Resolution

The subcommittee recommends that:

1. Parliament commissions an audit of the various bodies exercising public powers or performing public functions and which should in addition clearly delineate which line-function departments are responsible for the various organs of state. Portfolio and select committees within Parliament will consequently assume the necessary oversight responsibility.
2. Parliament through the Joint Rules Committee develops a policy aimed at meeting its constitutional obligations set out in S55(2)(b)(ii)
 1. Such policy should consider the necessity for basic legislation

giving effect to section 55(2) on issues of oversight and accountability, and dealing especially with organs of state directly accountable to Parliament.

Resolution

The sub-committee recommends that:

1. The JRC initiate a process aimed at drafting guidelines for portfolio and select committees to allow inter-alia for joint planning of oversight work.
2. A process should be initiated to establish protocols to ensure structured communication between committees through streamlining of the committee section, which would allow for more effective and formal communication between committees of both Houses that embark on mutual interest oversight work and briefing sessions.

Audio

No related audio

Documents

No related documents

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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO 2749/2015

PH NO 154

In the matter between:

**PRIMEDIA BROADCASTING, A DIVISION OF
PRIMEDIA (PTY) LTD**

First Applicant

SOUTH AFRICAN NATIONAL EDITORS FORUM

Second Applicant

RIGHT2KNOW CAMPAIGN

Third Applicant

OPEN DEMOCRACY ADVICE CENTRE

Fourth Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Second Respondent

SECRETARY TO PARLIAMENT

Third Respondent

MINISTER OF STATE SECURITY

Fourth Respondent

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

MPUMELELO MKHABELA

state under oath that:

1. I am an adult male editor of *The Sowetan* newspaper and the Chairperson of the second applicant, a non-profit organisation whose members are editors, senior journalists and journalism trainers from all areas of the South African media, situated at 2nd Floor, 7 St David's Office Park, St David's Place, Parktown, Johannesburg.



2. I am authorised by the second applicant to represent them in these proceedings and to depose to this affidavit on their behalf.
3. The facts contained herein are, save where the contrary is stated or appears from the context, within my personal knowledge and are, to the best of my knowledge and belief, true and correct.
4. In this affidavit I briefly describe the history of the interaction between the South African National Editors' Forum ("**SANEF**") and the First to Third Respondents (jointly referred to as Parliament) regarding the broadcast feed of Parliament.
5. During the latter half of 2014, there were two incidents that foreshadowed the disruption of the broadcast feed at the State of the Nation Address on 12 February 2015.
6. On 21 August 2014, during presidential question time, members of the Economic Freedom Fighters ("**EFF**") asked the President questions about when he would pay back money spent on his Nkandla residence. The Speaker refused to allow the questions and the EFF refused to stop asking them. The Speaker suspended the sitting in order to restore order. At that stage, a large contingent of riot police entered the chamber and began to remove the EFF Members of Parliament. None of these events were captured on the official parliamentary feed, either aurally or visually.
7. On 23 September 2014 at Parliamentary Dinner took place, hosted by the Speaker of the National Assembly ("**the Speaker**") and the Chairperson of the National Council of Provinces ("**the Chair**") for interaction with SANEF and other senior journalists. Other representatives of Parliament, and Members of Parliament were also present. Various issues were raised by SANEF at the dinner, including, given



their significance the issues regarding the incomplete nature of the broadcast feed were raised. The representatives of Parliament undertook to look into the issue at that event.

8. On 6 November 2014, an EFF member of Parliament, Mr Andile Mngxitama was ordered to leave the Chamber following a heated exchange with the Speaker concerning the propriety of motion tabled by the EFF which the Speaker indicated had not been properly tabled. Mr Mngxitama refused to leave the Chamber, and was then suspended by the Speaker under rule 52 of the Rules of the National Assembly. During this exchange, the broadcast feed focused exclusively on the Speaker and did not show Mr Mngxitama or the surrounding context.
9. On 12 November 2014, SANEF sent a letter to Luzuko Jacobs, the spokesperson of Parliament raising concerns about the manner in which the broadcast feed had been on handled in the incidents of 21 August 2014 and 6 November 2014 and requesting an engagement with Parliament on this issue. This letter is attached as **MM1**.
10. On 13 November 2014 during a debate on the Grand Inga Power Project, South African Police Service members were called to remove Members of Parliament from the Chamber. When this happened, the official live video and audio broadcast of the proceedings was shut down. This prevented the media from relaying, and excluded the public from hearing or viewing, relevant developments in the proceedings. I note that in the founding affidavit, this event is described as having taken place on 14 November 2014, but the events described in fact took place on 13 November 2014.

11. On 14 November 2014, SANEF issued a statement condemning failure of Parliament to show all relevant events that took place during the incidents of 21 August 2014, 8 November 2014 and 13 November 2014.
12. Parliament replied in a letter from Mr Jacobs on 18 November 2014, in which the spokesperson emphasised that Parliament was committed to facilitating public and media access to both Houses of Parliament, and that "infringement of this access was a serious issue". The letter indicated that Parliament was giving their attention to the matter and would revert to SANEF as soon as possible. This letter is attached as **MM2**.
13. No substantive response to this letter was forthcoming in December 2014. On 9 January 2015, SANEF's director, Mr Mathatha Tsedu, sent an email to Mr Jacobs following up on the matter and emphasising that the matters should be resolved before the opening of Parliament. This email and the reply on 10 January 2015, from Mr Jacobs indicating that Parliament would be in contact regarding the matter are attached as **MM3**.
14. Eventually, during the week of 12 January 2015, Parliament indicated that they would hold a "workshop" for Parliament to explain the process under which the proceedings of Parliament are broadcast. This workshop took place on 27 January 2015, and is described at paragraphs 75 to 77 of the founding affidavit.
15. I note that it was at this meeting that Parliament first brought the broadcast policy to SANEF's attention, despite SANEF's queries regarding the basis for Parliament's decisions regarding the provision of the broadcast feed since September 2014. The representatives of Parliament indicated that they were still in the process of investigating the causes of the disruptions to the feed on 21 August 2014 and 13 November 2014.

16. In addition, I note at the incidents on 21 August 2014 and 13 November 2014, the actions Parliament took regarding the feed were not in accordance with the policy. In both instances the feed was stopped altogether, and in neither case were the cameras simply focused on the presiding officer as set out in paragraph 8.3.3.2 of the broadcast policy.
17. SANEF indicated at this meeting that in their view the restrictions set in the policy regarding the broadcast of instances of "grave disturbance" and "unparliamentary behaviour" in paragraph 8.3.3.2 were inconsistent with the Constitution, and made various proposals at this meeting to reach a compromise with Parliament. In particular these proposals were that the policy should be changed to allow incidents of grave disturbance or unparliamentary behaviour to be broadcast as part of the feed, or, even if not broadcast as part of the feed, the events captured by Parliament's cameras but not broadcast should be made available to the media on request; and finally, that members of the media should be allowed to bring their own cameras into Parliament to allow those members to record events as they transpired.
18. Importantly, the representatives of Parliament indicated that no footage is retained by Parliament that is not included in the feed. The position that was indicated to us was that only the footage captured by camera included in the feed is "recorded", in the sense that it is retained. Therefore, no footage other than that included in the feed in accordance with the broadcast policy is available.
19. SANEF indicated that at the very least, given the imminent State of the Nation address and debate, that an interim position be adopted that would allow greater access during these important issues whilst amendments to the policy itself were considered.



20. The representatives of Parliament, primarily the Mr Jacobs and the Deputy-Secretary of Parliament, Ms Tyawa, at the meeting indicated that they did not have the authority to agree to either amend the policy, or to allow any of the proposed changes on an interim basis whilst amendments to the policy were considered. The representatives therefore asked that SANEF provide its suggestions in writing to allow the relevant persons to consider the proposals and respond.
21. Parliament and SANEF issued a joint press release summarising this meeting on 27 January 2015, and I attach the press release as **MM4**.
22. As set out in the founding affidavits at paragraphs 75 to 77, SANEF submitted these written proposals on 30 January 2015 to Parliament, and specifically indicated that the matter required urgent attention due to the imminent State of the Nation address on 12 February 2015.
23. Between 30 January 2015 and 12 February 2015, SANEF representatives sent several email to Parliament requesting a response, and in particular emphasising that the issue required to be addressed, at least on an interim basis, before the State of the Nation address. I attached these emails as **MM5** to **MM12**.
24. As set out in the founding affidavit, Parliament responded in a letter dated 12 February 2015, indicating that they were bound by the broadcast policy, and that the policy would not be changed. I note that in the founding affidavit this letter is recorded as having been sent on 12 February 2015, prior to the State of the Nation address, but in fact the despite being dated 12 February 2015, the letter was only received on 13 February 2015. I attach the email from Mr Jacobs attaching the letter as **MM13**.

A handwritten signature in black ink, appearing to be 'MK' with a flourish underneath.

25. As a result of the events at the State of the Nation, and in particular how the feed did not show the events described in detail in the founding affidavit regarding the broadcast feed and jamming of mobile signals, and in light of Parliament's refusal to engage further on the broadcasting policy, SANEF saw no alternative but to proceed with this application.
26. I reiterate that SANEF supports the relief sought by the applicants in the amended notice of motion.

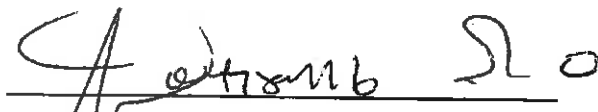


MPUMELELO MKHABELA

I HEREBY CERTIFY that the deponent has acknowledged that ^{HE} ~~she~~ knows and understands the contents of this affidavit, which was signed and sworn before me at Rest Bar on this the 18 day of MARCH 2015, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

Myk
18-03-2015

SM
15/03/18


COMMISSIONER OF OATHS

Full names: Jeremia Maseko
Business address: 15 SINDIGA AVE
Designation: ROSBARK
Woff.

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Luzuko Jacobs
Private Bag X136
PRETORIA
0001

November 12 2014

Dear Luzuko,

At the recent Parliamentary dinner with editors hosted by National Assembly Speaker Baleka Mbete and Chairperson of the NCOP Thandi Modise in Johannesburg, Sanef raised a number of media freedom issues. These included the fact that the National Assembly's live TV stream was turned off during the recent question and answer session with the President on August 21, and that some journalists were prevented from entering the Parliamentary building.


Despite assurances from Parliament's Presiding Officers, particularly the Speaker, Sanef's Council held in Durban on Saturday noted with concern similar incidents during this past week. During the NA debate on Thursday November 6, while members of the EFF tried to raise points of order, the Parliamentary cameras remained focused on the Speaker, depriving citizens watching the proceedings of a holistic view of what happened in the National Assembly. In another incident, journalists were prevented from entering the NCOP during the President's address.

While we note that Parliament issued a statement that the NCOP issue will be addressed, Sanef is nevertheless concerned about these incidents which impact on the rights of journalists working in Parliament, and by extension on the rights of citizens to follow Parliamentary proceedings fully.

We believe that it is in the interest of Parliament, the media and citizens that Parliament urgently implements steps to prevent a recurrence of events impacting on media freedom.

We would appreciate your urgent response to this matter and are ready to attend a meeting with yourselves to look at possible solutions.

Regards


Mpumelelo Mkhabela
Sanef Chairperson

Chairperson M Mkhabela • Deputy Chair B Sisoke • Secretary General K Katopodis • Treasurer A Qunital • Executive Director M Esobu





PARLI
OF THE REPUBLIC

Mpumelelo Mkhabela
Chairperson
South African National Editors' Forum
Email: director@sanef.org.za; admin@sanef.org.za
Telephone: 011 482 5771
Mobile: 082 296 2541

Tuesday, 18 November 2014

Dear Mr Mkhabela

MEDIA ACCESS TO WORK OF PARLIAMENT

We have received your letter dated 12 November regarding the above matter.

Parliament is committed to facilitating media and public access to the legislative and other processes of the Houses of Parliament - the National Assembly and the National Council of Provinces - and their Committees. Infringement of this access is a serious issue. As you would be aware, excluding such access is only permitted if it is reasonable and justifiable to do so in an open and democratic society.

The matters which you raised in your letter to us are receiving attention and we will revert to you as soon as possible.

Yours faithfully



Luzuko Jacobs
Spokesperson for Parliament



From: Mathatha Tsedu <MTsedu@media24.com>
Sent: 09 January 2015 16:42
To: 'Luanda Rwexana'
Cc: 'Luzuko Jacobs'; 'admin@sanef.org.za'
Subject: RE: MEDIA ACCESS TO WORK OF PARLIAMENT

Dear Luzuko,

Compliments of the new season to you and Luanda. I am writing to follow up on our correspondence last year and the agreement that you would revert after looking into the issues raised. We are hopeful that we will be able to meet, even if informally, prior to the opening of Parliament to ensure we deal with concerns raised.

Regards
For Africa, Always
Mathatha

Mathatha Tsedu
Executive Director
South African National Editors Forum (Sanef)
Block A
18 Cedar Avenue
Richmond
Tel +27 11 482 5771/6775
Director@sanef.org.za

A handwritten signature in black ink, appearing to be 'MK' followed by a flourish.

From: Luzuko Jacobs <ljacobs@parliament.gov.za>
Sent: 10 January 2015 19:50
To: Rwexana, Luanda; Mathatha Tsedu
Cc: admin@sanef.org.za
Subject: RE: MEDIA ACCESS TO WORK OF PARLIAMENT

Dear Mr Tsedu

Best wishes for the new year to you. We will call you on Monday to take up this matter with you. Expect to hear from us.

Regards

Luzuko

mk
sw



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PARLIAMENT AND MEDIA ORGANISATIONS MEET TO DISCUSS FILMING AND BROADCASTING OF PARLIAMENTARY PROCEEDINGS

Parliament, Tuesday 27 January 2015 - Parliamentary officials, members of the South African National Editors' Forum (Sanef) and the Press Gallery Association (PGA) met today to discuss provision of broadcast feed from the National Assembly.

South Africa's major broadcasters – SABC, eTV, Primedia and ANN7 – were also at the meeting.

The meeting followed complaints from the Sanef about provision of the Parliamentary feed – audio and visuals - during disruptions in the National Assembly Chamber in August and November last year.

Parliament's officials gave a comprehensive overview of the current constitutional, legal and policy framework within which filming and broadcasting of Parliamentary proceedings occur.

Both the Sanef and the PGA called for the urgent review of the policy. The meeting agreed that the Sanef will make a written submission to Parliament motivating for the urgent review of the policy.

Parliament's officials informed the meeting of the improvement of broadcast quality and capability that will be operational from February 12. The infrastructure will enable parliament to provide greater variety of audio visual feed.

The Sanef was led by its Chairperson, Mr Mpumelelo Mkhabela (also editor of the Sowetan) and its Executive Director, Mr Mathatha Tsedu, the PGA by its Chairperson Mr Thabo Mokone (also parliamentary correspondent for Times Media) and Mr Paul Vecchiatto (also parliamentary correspondent for Business Day). The Deputy Secretary to Parliament, Ms Penelope (Baby) Tyawa, and Parliament's Spokesperson, Mr Luzuko Jacobs, led Parliament's delegation.

ISSUED BY THE PARLIAMENT OF THE RSA, THE SOUTH AFRICAN NATIONAL EDITORS' FORUM AND THE PRESS GALLERY ASSOCIATION

For inquiries, please call:

- Luzuko Jacobs 073 795 2273
- Mpumelelo Mkhabela 082 296 2541
- Thabo Mokone 082 490 9284

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mk
~

From: Izak Minnaar <minnaari@sabc.co.za>
Sent: 30 January 2015 15:47
To: Luzuko Jacobs
Cc: Mathatha Tsedu; Mpumelelom@sowetan.co.za; MokoneTh@sundaytimes.co.za
Subject: SANEF & PGA submission on Parliament's Policy on Filming and Broadcasting
Attachments: SANEF PGA SUBMISSION ON MEDIA COVERAGE OF EVENTS AT PARLIAMENT 30 Jan 2015.docx

"MM5"

551

Dear Luzuko

Please find attached the Sanef & PGA submission as promised.

Please note the request in the last paragraph:

Sanef and the PGA request that these policy changes be implemented in time for the opening of Parliament on 12 February 2015, or alternatively that an Interim arrangement be put in place in line with the proposals set out above to ensure fair and balanced coverage of the State of the Nation address.

Regards

Izak Minnaar

EDITOR: SABC DIGITAL NEWS

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WK

From: Luzuko Jacobs <ljacobs@parliament.gov.za>
Sent: 30 January 2015 17:14
To: Minnaar, Izak
Cc: Mathatha Tsedu; Mpumelelom@sowetan.co.za; MokoneTh@sundaytimes.co.za
Subject: Re: SANEF & PGA submission on Parliament's Policy on Filming and Broadcasting

Dear Izak

Thanks for this message. I will revert to you in due course.

regards

Luzuko.

A handwritten signature in black ink, appearing to be 'MK' followed by a stylized flourish.

From: Izak Minnaar <minnaari@sabc.co.za>
Sent: 04 February 2015 15:55
To: Luzuko Jacobs
Cc: Mathatha Tsedu; Mpumelelom@sowetan.co.za; MokoneTh@sundaytimes.co.za; katy@ewn.co.za; ben.said@enca.com
Subject: RE: SANEF & PGA submission on Parliament's Policy on Filming and Broadcasting

Dear Luzuko

Would it be possible to please provide Saneef & PGA with feedback on arrangements regarding SONA coverage next week by Friday 6 February, in line with the requests in our submission?

Regards

Izak Minnaar

EDITOR: SABC DIGITAL NEWS

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Website: <http://www.sabc.co.za/news> | NewsBreak: 082 152

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ML
in

From: Luzuko Jacobs <LJacobs@parliament.gov.za>
Sent: 05 February 2015 08:33
To: minnaari@sabc.co.za
Cc: ben.said@enca.com; katy@ewn.co.za; Mathatha Tsedu; Estelle Randall;
Mpumelelorn@sowetan.co.za; MokoneTh@sundaytimes.co.za
Subject: Re: RE: SANEF & PGA submission on Parliament's Policy on Filming and
Broadcasting

Dear Izak

Thanks for this message.

I have noted it and will revert to you as soon as possible.

Regards

Luzuko.

MK
2

From: Izak Minnaar <minnaari@sabc.co.za>
Sent: 06 February 2015 19:24
To: Luzuko Jacobs
Cc: ben.said@enca.com; katy@ewn.co.za; Mathatha Tsedu; Estelle Randall; Mpumelelom@sowetan.co.za; MokoneTh@sundaytimes.co.za; Luanda Rwexana
Subject: RE: RE: SANEF & PGA submission on Parliament's Policy on Filming and Broadcasting

Dear Luzuko

Just a reminder that Sanef and the PGA need an urgent response from Parliament regarding arrangements for SONA coverage next week.

Please advise at your earliest convenience.

Regards

Izak Minnaar

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mk
sh

From: Mathatha Tsedu <MTsedu@media24.com>
Sent: 10 February 2015 12:48
To: 'Luzuko Jacobs'; 'minnaari@sabc.co.za'
Cc: 'ben.said@enca.com'; 'katy@ewn.co.za'; 'Estelle Randall';
'Mpumelelom@sowetan.co.za'; 'MokoneTh@sundaytimes.co.za'
Subject: RE: RE: SANEF & PGA submission on Parliament's Policy on Filming and Broadcasting

Hi Luzuko,

Are you able to indicate when we can get an indication of Parliament's attitude to our input and proposals?

Regards
For Africa, Always
Mathatha

Mathatha Tsedu
Executive Director
South African National Editors Forum (SaneF)
Block A
18 Cedar Avenue
Richmond
Tel +27 11 482 5771/6775
Director@saneF.org.za



From: Luzuko Jacobs <ljacobs@parliament.gov.za>
Sent: 10 February 2015 13:07
To: Mathatha Tsedu; Minnaar, Izak
Cc: Randall, Estelle; ben.said@enca.com; katy@ewn.co.za;
Mpumelelom@sowetan.co.za; MokoneTh@sundaytimes.co.za
Subject: RE: RE: SANEF & PGA submission on Parliament's Policy on Filming and Broadcasting

Dear Mr Tsedu

Thanks for this message.

Please note that I will revert to you as soon as possible regarding your enquiry.

regards

Luzuko.

Handwritten signature of Luzuko Jacobs, consisting of stylized initials 'MK' and a flourish below.

From: Mathatha Tsedu <MTsedu@media24.com>
Sent: 12 February 2015 14:12
To: Luzuko Jacobs
Subject: FW: Sanef & PGA call on Parliament for uninterrupted supply of video and audio feed

"MM12" 558

FYI

Regards
For Africa, Always
Mathatha

Mathatha Tsedu
Executive Director
South African National Editors Forum (Sanef)
Block A
18 Cedar Avenue
Richmond
Tel +27 11 482 5771/6775
Mobile +27 82 454 0527
Director@sanef.org.za

From: Fontini Wilters [<mailto:admin@sanef.org.za>]
Sent: Thursday, February 12, 2015 2:04 PM
To: Fontini Wilters
Subject: Sanef & PGA call on Parliament for uninterrupted supply of video and audio feed



• Block A, 1 Richmond Forum, Ground Floor, Cedar Avenue, Richmond, Johannesburg •

Sanef & PGA Statement 12 February 2015

Parliament fails to give assurance of continuous coverage of proceedings or allow media houses own cameras in the house

The South African National Editors' Forum (Sanef) and the Press Gallery Association (PGA) (have expressed serious concern about Parliament's silence regarding requests for guarantees that the broadcasting of events in the National Assembly would not be stopped even if there was commotion in the House.

Two weeks ago the two organisations submitted proposals to Parliament seeking guarantees about their concerns of a possible repeat of incidents in the recent past when Parliament sometimes interrupted its video broadcast of the proceedings, or did not capture so-called unparliamentary behaviour on the floor during National Assembly sittings.

Despite repeated calls this week, Parliament has remained silent on whether the video and audio feeds will remain on even during the so-called un-parliamentary behaviour.

In a meeting between Sanef, the PGA, the major broadcasters and parliamentary officials two weeks ago, Parliament presented its Policy on Filming and Broadcasting which states that the parliamentary broadcast feed should focus on the Speaker during incidents of disorder or unparliamentary behaviour instead of showing the activity on the floor and public galleries of the house.

The media organisations expressed their concerns that the policy was in conflict with the constitutional values of transparency, accountability and openness that should underpin the activities of the legislature; and that Parliament should supply a fair and balanced record of what happens in Parliament to the South African public.

The media organisations requested an urgent review of the policy to bring it in line with the Constitution and Broadcast legislation, and Parliament invited the media to submit a written submission.

The media submission to Parliament, sent on Friday January 30, stated that by omitting and/or restricting public viewing of some activities of a public institution, Parliament acts in conflict with stipulations in the Constitution, Broadcast Act and Broadcast Code. The submission also included a request for the media to be allowed to provide their own video feeds, should the Parliamentary feed not cover the activities in the house adequately.

Sanef and the PGA requested Parliament to implement these requests in time for the State of the Nation address later today, to ensure full coverage of the events – however, Parliament has not responded to these requests. Sanef and the PGA call on Parliament to ensure that the public of South Africa and other interested people should be guaranteed uninterrupted coverage of sessions of Parliament and its committees today and in the days to come.

For further comment please contact:

Mpumelelo Mkhabela 082 296 2541 Sanef Chairperson

Thabo Mokone 0824909284 PGA Chairperson



From: Luzuko Jacobs <ljacobs@parliament.gov.za> **"MM13"**
Sent: 13 February 2015 16:17 **560**
To: paul.vecchiatto@gmail.com; Mathatha Tsedu; Izak Minnaar;
MkhabelaM@sundaytimes.co.za; MokoneTh@sundaytimes.co.za
Cc: Baby Tyawa; Luanda Rwexana; admin@sanef.org.za
Subject: Submission on Media coverage of event at Parliament.
Attachments: SKMBT_C55415021315571.pdf

Dear Mr Tsedu

The submission from SANEF as per the subject line dated 30 January 2015 bears reference.
Herewith attached is Parliament's response to the submission for your kind attention. This letter was meant to have been sent to you yesterday and it would appear that it did not go through. For that I apologise.
I will follow up with you on this matter and to continue our engagement on issues of mutual concern.

Regards

Luzuko

Please note: This email and its content
are subject to the disclaimer as displayed at the following url: <http://webmail.parliament.gov.za/disclaimer.html>

A handwritten signature in black ink, appearing to be 'MK' with a flourish underneath.



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

OFFICE OF THE SECRETARY

PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27 (21) 403 2240 Fax: 27 (21) 403 2604
www.parliament.gov.za

12 February 2015

Mr. I Minnaar
SANEF and PGA

Per e-mail: minnaari@sabc.co.za

Dear Mr. Minnaar

**RE: POLICY ON FILMING AND BROADCASTING: REPRESENTATIONS BY
SANEF AND PGA DATED 30 JANUARY 2015**

The above matter refers.

I would like to thank you for making time to discuss matters of mutual concern between Parliament and the media at our meeting on January 27. It is our intention to maintain contact with stakeholders with a view to exchange ideas and identify areas where we could improve our service. It is in this context that we, as the administration of Parliament, received and considered your representations regarding our policy as per the subject line.

At the outset I should point out that Parliament embraces openness and transparency in the conduct of its business. These are pivotal principles to fostering constitutional obligations of Parliament. You would appreciate that Parliamentary business including committee meetings, is open to the public including media. The limited exceptions in this regard include instances where legislation or rules provide for closed sessions or when committees are considering a matter which is:

- of a private nature that is prejudicial to a particular person
- protected under Parliamentary privilege
- confidential in terms of law or
- of such a nature that its confidential treatment is reasonable and justified in an open and democratic society.

Plenaries are never closed to the public, including media. Two media bays in the National Assembly chamber are reserved for the sole use of the media. Parliament also provides audio-visual content of its proceedings to the media to facilitate access, public participation and involvement in its business.

The Policy on Filming and Broadcast is part of a broader regulatory framework for access. It is informed by the values and principles as outlined above. It seeks to regulate filming and public broadcasting of proceedings and to minimise security and physical risk and obtrusive, undue interference and distraction through movement and activities.

Parliament's responsibility in facilitating access relates specifically to the proceedings. There is no desire nor inclination on the part of the institution to curtail this facilitated access to the proceedings in any manner. We however do not deem demonstrations (in the public gallery for instance) and/or anything else which happens when the House is not sitting to be part of the proceedings.

Therefore, when a House adjourns or proceedings are suspended there is no business of Parliament underway. Hence, there is no constitutional obligation on Parliament to broadcast what is not considered to be the business of Parliament.

It is regrettable that the incidents in August and November 2014 might have fuelled the misconception that Parliament "cut the broadcast feed". As explained at the meeting with you in January, the broadcast feed was not cut. Our approach to broadcast is informed by our policy as stated and which was presented to you. The institution cannot operate outside of its own policy. We, therefore, are not able to accommodate any recommendation which suggests otherwise.

We do not think that there is a constitutional obligation on Parliament to film disruptions when the House is either suspended or adjourned. Parliament attempts to balance the rights of the public to access information, the right of the media to express themselves and the right to dignity of the Members of Parliament (MP's). All of this is taken into account in the context of section 57(1)(a) and (b) and section 70(1)(a) and (b) of the Constitution.

We have recently upgraded our broadcast feed to high definition to improve our service to the media and public. In this regard and in light of the upcoming State of the Nation Address on 12 February 2015 I would like to assure you once again that accredited media will be afforded access to the broadcast feed of the proceedings in the House in keeping with the provision of our policy as presented to you.

Yours faithfully



GENGEZI MGIDLANA
SECRETARY TO PARLIAMENT



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2749/2015

PH 154

In the matter between:

**PRIMEDIA BROADCASTING, A DIVISION OF
PRIMEDIA (PTY) LTD**

First Applicant

SOUTH AFRICAN NATIONAL EDITORS FORUM

Second Applicant

RIGHT2KNOW CAMPAIGN

Third Applicant

OPEN DEMOCRACY ADVICE CENTRE

Fourth Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF
PROVINCES**

Second Respondent

SECRETARY TO PARLIAMENT

Third Respondent

MINISTER OF STATE SECURITY

Fourth Respondent

AMENDED NOTICE OF MOTION – PART B

TAKE NOTICE FURTHER that the applicants seek an order in the following terms:

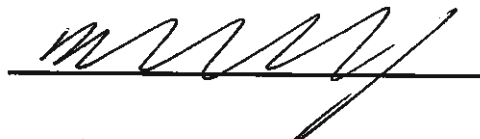
1. It is declared that paragraph 8.3.3.2(a) of the Policy on Filming and Broadcasting of Parliament is unconstitutional, unlawful and invalid.
2. The First to Third Respondents are directed to ensure that the audio and visual feeds of open Parliamentary sittings and meetings are not interrupted and that during occurrences of “grave disorder” or “unparliamentary behaviour” on the floor of the House, a wide angle shot of the chamber, including audio, will be broadcast.
3. Alternatively to paragraphs 1 and 2 above:
 - 3.1. It is declared that the Policy on Filming and Broadcasting of Parliament is unconstitutional, unlawful and invalid.
 - 3.2. This declaration is suspended for nine months.
 - 3.3. Pending the enactment of a new policy regulating the public broadcasting of proceedings of Parliament, the First to Third Respondents are directed to ensure that the audio and visual feeds of open Parliamentary sittings and meetings are not interrupted and that during occurrences of “grave disorder” or “unparliamentary behaviour” on the floor of the House, a wide angle shot of the chamber, including audio, will be broadcast.
4. It is declared that the manner in which the audio and visual feeds of the State of the Nation Address on 12 February 2015 were produced and broadcast by the first to third respondents was unconstitutional and unlawful.

5. It is declared that the use of a device to interfere with telecommunications during the State of the Nation Address on 12 February 2015 was unconstitutional and unlawful.
6. The First to Fourth Respondents are directed to conduct an investigation into the use of a device to interfere with telecommunications during the State of the Nation Address on 12 February 2015. In this regard:
 - 6.1. The First to Fourth Respondents shall submit a report on oath on the investigation conducted ("**the Report**") within 14 days of the date of this order.
 - 6.2. The Report shall address the following issues:
 - 6.2.1. Who was responsible for the use of the device on 12 February 2015;
 - 6.2.2. Whether the Speaker, the Chairperson, the Secretary, or anybody in their offices aware that the device would be placed in the chamber. If so, at what time they became aware;
 - 6.2.3. If they were aware, why they permitted it to be placed there.
 - 6.2.4. The disciplinary actions, if any, that have been or will be taken against the responsible officials.
 - 6.3. The Applicants shall be entitled to comment on the Report, particularly whether it meets the requirements of prayer 6.2.
 - 6.4. The Court shall retain jurisdiction to make any further orders it deems appropriate based on the Report and the Applicants' response.

7. Further and/or alternative relief.

TAKE NOTICE FURTHER that the attached founding, replying and supplementary affidavits of the applicants will be used in support of this application.

TAKE NOTICE FURTHER that the Full Bench of this Court, in its order of 10 March 2015, set dates for the filing of answering papers, replying papers and heads of argument and set this matter down for hearing on 20 April 2015.



Webber Wentzel Attorneys

First and Second Applicants' Attorneys

The Legal Resources Centre

Third and Fourth Applicants' Attorneys

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Ref: D Milo/ D Wild/ R Smith