



INDUCTION HANDBOOK for Members of Parliament and Provincial Legislatures

A publication of the South African Legislative Sector



INDUCTION HANDBOOK

For Members of Parliament and Provincial Legislatures

- Module 1: Rules, Practice and Procedure in the House
- Module 2: The Legislative Process
- Module 3: Committee Procedures, Practice and Systems
- Module 4: Oversight and Accountability
- Module 5: Public Participation
- Module 6: International Relations and Protocol

2nd Edition

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FOREWORD

Since the Third Term (2004 -2009), the South African Legislative Sector (Parliament and Provincial Legislatures) has pioneered professional development programmes for members of Parliament and Provincial Legislatures. These programmes were designed to ensure systematic development of all members to enable them to fulfil their constitutional responsibilities as representatives of the people of South Africa. This work has been achieved through partnerships with various institutions of higher learning.

South Africa's development strategy, the National Development Plan (NDP), highlights 'a capacitated developmental state' as one of its six priorities. Within this context, Parliament and Provincial Legislatures need to improve and build capacity of both officials and members to effectively contribute to the realisation of an accountable and responsive state which can be achieved by exercising their oversight role effectively.

In this term, the Sector gave particular attention to improving the implementation of its capacity building programmes and aligning its oversight instruments to systematically track the implementation of the NDP. The Speakers' Forum envisages that these interventions will enable members to be robust in their oversight and accountability role, and ensure effective delivery of services to the people of South Africa. These modules provide a foundation and basis to achieve this objective.

On behalf of the Speakers' Forum of South Africa, we trust that both new and returning members will find the information contained in the Induction modules useful over the next five years.

B Mbete, MP
Speaker of the National Assembly, RSA Parliament
Chairperson of the Speakers' Forum of South Africa (2014 -2019)

PREFACE

Dear Members of Parliament and Provincial Legislatures,

Congratulations on being elected to be part of the collective that has an honour of representing and serving the people of South Africa. This compendium of 6 Induction modules has been developed by the Secretaries, officials of Parliament, Provincial Legislatures and the Legislative Sector Support (LSS) under the guidance of the Speakers' Forum. The content of the compendium should be considered as living perspectives based on our understanding this far. The modules contained in the compendium may be amended based on further reflection, observation and creativity given the constantly changing environment.

Module 1: Rules, Practice and Procedure in the House

Module 2: The Legislative Process

Module 3: Committee Procedures, Practice and Systems

Module 4: Oversight and Accountability

Module 5: Public Participation

Module 6: International Relations and Protocol

This series is the second edition of Induction modules originally developed in 2014. It lays the foundation for the established and highly successful Legislative Sector Capacity Building Programme, which includes the following:

- a) Graduate Certificate in Leadership
- b) Post Graduate Diploma in Governance and Public Leadership
- c) Post Graduate Diploma in Public Policy and African Studies
- d) Masters Programmes

All interventions have been designed to provide insight into policies, oversight and legislative matters that will enable you to strengthen our representative democracy. It is members who keep South Africa's democracy strong and vibrant.

We trust that the content will enrich your knowledge and understanding of the requirements of your role as a member.

Lechesa Tsenoli, MP

**Deputy Speaker of the National Assembly (2014 – 2019), RSA Parliament
Chairperson: Reference Group on Gender and Capacity Building,
Speakers' Forum of South Africa**



RULES, PRACTICE AND PROCEDURE IN THE HOUSE

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Members of Parliament and Provincial Legislatures*

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1 INTRODUCTION

In line with the Constitution, Legislatures must determine and control their internal arrangements, proceedings and procedures, and make rules and orders concerning their business, with due regard to representative and participatory democracy, accountability, transparency and public involvement. The general purpose of Parliamentary Rules and Procedures is to facilitate the transaction of business and to promote co-operation and order in the House.

The Constitution accords Cabinet members, Deputy Ministers, Members of Parliament and Provincial Legislatures and permanent delegates certain privileges, such as freedom of speech in the House and its committees, subject to its rules and orders.

According to Erskine May, rules are necessary because it is dangerous to rely on the inspiration of the moment for standards of action or conduct. Rules are developed for three necessary purposes:

- Orderly procedure: Without it, the House could result in confusion, chaos and disorder.
- The protection and liberty of the minority: This ensures fairness towards the minority by giving each Member the right to voice an opinion.
- The expression of the will of the majority by allowing for the majority to make decisions effectively and efficiently.

While each Legislature¹ may create its own set of rules, these tend to be more alike than different. Procedure in the Legislature is intended to ensure that there is a balance between the Government's need to get its business through the House, and the Members' responsibility to debate that business without immobilising the proceedings of the House.

South African Legislatures vary in size, the number of Members, the budgets appropriated, a diversity of individuals and groups in society and as a result carry out their similar constitutional mandates slightly 'differently'. These 'differences' may, however, give rise to various approaches when attempting to resolve 'legislature-wide' challenges with regard to rules, practice and procedure in the House. This Framework, therefore, is an attempt to provide a generic description of all rules, practices and precedents.

The Framework aims to set standards for the effective induction of all new and returning Members, but does not aim to be prescriptive in nature. In developing this document, the rules, processes, procedures and conventions of the National Assembly, National Council of Provinces and all provincial legislatures were scrutinised and a generic approach developed.

The first democratically elected President of the Republic of South Africa, His Excellency N R Mandela said: *"Parliament is the voice of the people and you, the Presiding Officers, bear a heavy responsibility in ensuring that that voice is clearly heard in national affairs and that its role is protected and defended"*. The rules, orders and procedures are therefore there to ensure that public representatives engage fairly and without fear or prejudice.

2 OBJECTIVES

The objective of this Module is to introduce and expose Members to the rules, processes and procedures of the House in order to enable them to operate within the agreed framework.

3 ROLES AND RESPONSIBILITIES

The following are office-bearers (Presiding Officers and other office-bearers) in respect of whose election or appointment provision is made in the Constitution and/or the rules, as the case may be:

- The Speaker/Chairperson of the Council;
- The Deputy Speaker/Deputy Chairpersons of the Council;
- The House Chairpersons/Chairperson of Committees;
- The Chief Whip of the Official Opposition Party;
- The Chief Whip of the Majority Party/Chief Whip of the Council;
- Provincial Whips;
- Programming Whip;
- Party Whip;
- Delegated Whip (might include whips of minority parties);
- Leader of Government Business (LOGB);
- Leader of the Opposition; and
- Parliamentary Counsellors to the President and Deputy President.

3.1 THE ROLE OF THE PRESIDING OFFICER (SPEAKER/CHAIRPERSON OF THE COUNCIL/HOUSE CHAIRPERSON/CHAIRPERSON OF COMMITTEES)

Presiding duties in the House are shared between the Speaker/Chairperson of the Council and the Deputy Speaker/Deputy Chairperson of the Council and House Chairpersons/Chairpersons of Committees.

The task of a Presiding Officer is to chair plenary meetings of the House. This entails maintaining order, interpreting and ensuring proper application of the rules and practices of the House, and in general ensuring the smooth conduct of proceedings. The Presiding Officer is required to act fairly and impartially and to ensure that the rights of all parties are protected. In all his or her actions, the Presiding Officer must uphold the dignity and good name of the House, commonly referred to as the 'decorum' of the House.

The Presiding Officer ensures that the proceedings of the House are conducted in an orderly fashion and according to laid-down procedures and practices. He or she interprets and applies the Rules and, where necessary, gives rulings on points of order.

In giving a ruling on procedure, either at his or her own initiative or in response to a point of order, the Presiding Officer is guided by the rules and conventions, as well as precedent. It is in his or her discretion to hear argument on a point of procedure, and to decide when he or she is ready to give a ruling. A considered ruling may be given at a later stage, after consulting Hansard and considering the matter fully. The Presiding Officer may give a private ruling in writing, for example in response to a letter from a Member.

The Presiding Officer's ruling on a point of order is final and binding, and may not be challenged or questioned in the House. A Member who is aggrieved by a Presiding Officer's ruling on a point of order may subsequently in writing to the Speaker or Chairperson request that the principle or subject matter of the ruling be referred to an appropriate structure.

A Presiding Officer may give a ruling or frame a rule to cover a situation for which the rules do not provide. Such a rule remains in force until considered by the Rules Committee.

It is in the nature of the Legislature that debates can be robust. The rules provide the Presiding Officer with powers of varying severity to enable him or her to deal with various situations appropriately. It is customary, however, for such powers to be used sparingly where possible. Usually, where a Member has expressed him or herself in a way deemed unacceptable by the Presiding Officer, the relevant Member will be instructed to withdraw the expression and, on compliance, the matter is regarded as settled and should not be referred to again. A more serious offence, such as defying the authority of the Presiding Officer, may lead to a Member being directed to

withdraw from the Chamber for the rest of the day, and grave offences may lead to a suspension after due process.

All Members, including those who serve in the Executive, are equally subject to the authority of the Presiding Officer. If the Presiding Officer during a debate calls for order for the purpose of addressing the House on any matter, all Members, including the Member speaking, fall silent and hear him or her without interruption. Although affiliated to a political party, the Presiding Officer is required to act impartially and to protect the rights of all Members. Equally, he or she is entitled to support from all Members, whatever their political affiliation.

The Presiding Officer may take part in debate from the floor but by convention does so sparingly. An exception is when reporting on matters relating to the Legislature and its administration. He or she generally avoids becoming involved in political controversy in his or her capacity as Speaker/Chairperson. The Speaker/Chairperson, or any other officer while presiding, has no deliberative vote, but must cast a deciding vote when there is a tie, meaning an equal number of votes on both sides of the question. However, the Presiding Officer may cast a deliberative vote when a question must be decided with a supporting vote of at least two-thirds of the Members.

3.2 THE EXCLUSIVE DUTIES OF THE SPEAKER/ CHAIRPERSON OF THE COUNCIL

The Speaker/Chairperson of the Council is the representative of the House in its relations with the other arms of State – the Executive and the Judiciary – and with other outside bodies and persons. In this role the Speaker/Chairperson represents the authority of the House and protects its rights and privileges.

Important official communication from and to the Legislature is signed by and addressed to the Speaker/Chairperson. The Speaker/Chairperson

receives delegations from other parliaments and special visitors on behalf of the House. On formal occasions the Speaker/Chairperson represents the House and plays a central ceremonial role. As Speaker/Chairperson, he or she is not a Member of the Executive Government.

3.3 THE ROLE OF THE HOUSE CHAIRPERSONS/ CHAIRPERSON OF COMMITTEES

The House Chairperson/Chairperson of Committees, amongst others, acts as a presiding officer and takes the Chair whenever requested to do so by the Speaker/Chairperson of the Council or whenever the Speaker/Chairperson of the Council and Deputy Speaker/Deputy Chairperson of the Council is absent.

3.4 THE ROLE OF THE CHIEF WHIP OF THE MAJORITY PARTY/CHIEF WHIP OF THE COUNCIL

While the responsibilities of the Chief Whip of the Majority Party and the Chief Whip of the Council may vary between the Houses, their responsibilities generally are to:

- oversee the functioning of the Whippery;
- in consultation with Whippery, ensure that Members attend and participate in committees and plenary sessions;
- facilitate and oversee the activities of the Multiparty and Provincial Whips Forums;
- co-ordinate House business by-
 - o liaising with the Office of the Leader of Government Business (LOGB) in respect of attendance by the Members of the Executive to the House;
 - o facilitating Members' attendance and a quorum in the House;
 - o facilitating the arrangement of the order of Speakers for debate; and
 - o moving motions with regard to the business of the House.
- arrange business on the Order Paper, subject to the rules and the directives of the Programme Committee, after consultation with the LOGB where government business is concerned;

- establish and maintain good working relations with the Whips of other parties/Provincial Whips on a basis of mutual trust so that the work of Legislatures can be facilitated;
- facilitate the allocation of Members of the party/provincial delegation to Committees and other structures in the Legislature;
- co-ordinate the application for leave of absence for Members; and
- ensure, in consultation with the Presiding Officers and Programming Whip, that the parliamentary programme does not interfere with days allocated for political work.

3.5 THE ROLE OF THE CHIEF WHIP OF THE OPPOSITION²

The Chief Whip of the Opposition is the chief spokesperson for that party on matters relating to the organisation of parliamentary business and the smooth functioning of Parliament. He or she is a Member of the Chief Whips' Forum and the Programme Committee, among others.

3.6 THE ROLE OF THE PROVINCIAL WHIPS³

In the Council, each provincial delegation has a Provincial Whip.

The overall responsibility of the Provincial Whip is to:

- ensure that the NCOP maintains a strong link with the provincial legislatures;
- in the absence of the head of delegation (Premier), act as de facto leader of their provincial delegation by ensuring that Members of the provincial delegation have the necessary support to carry out their responsibilities;
- co-ordinate the activities of the provincial delegation and ensure that they are informed of planned activities of the NCOP and other issues pertaining to the promotion of their provincial interests;
- assist the Chief Whip in fulfilling his or her duties as required by the NCOP;
- ensure that Members of their provincial delegation attend Select Committee meetings, sittings and carry out their responsibilities, as delegated by Provincial Legislatures; and
- co-ordinate the submission of names of special delegates to participate in debates.

8 ² Applicable to NA and Provincial Legislatures only

³ Applicable to the NCOP only; however, impacts to some extent on the work of the Provincial Legislature

3.7 THE ROLE OF THE PROGRAMMING WHIP⁴ THE OVERALL RESPONSIBILITY OF THE PROGRAMMING WHIP⁵ IS TO:

- compile and present the programme of the Legislature; and
- participate in the Technical Programme Committee meetings, in order to provide information on the Legislature's programme⁶.

3.8 THE ROLES OF THE DELEGATED WHIPS (NCOP)

There are whips delegated to assist the Chief Whip in the performance of certain specific functions. They assist the Chief Whip and Presiding Officers with the day-to-day political management and co-ordination of the specific activities and business of the NCOP.

There are Duty Whips in the NCOP responsible for the following:

- transport within the parliamentary precincts and parliamentary villages;
- processing of leave in consultation with the Chief Whip;
- housing in parliamentary villages;
- resources;
- questions and motions; and
- programming.

3.9 THE ROLE OF PARTY WHIPS⁷

Party Whips are appointed to ensure the smooth functioning of the Legislature. They are party-political functionaries and their functions may vary from party to party. Some Whips focus on specific duties and each party determines what these are. They co-operate with the Whips of other parties and provincial whips in ensuring that the Legislature implements its constitutional mandate.

⁴ Applicable to the NCOP only

⁵ This role is performed by the Chief Whip/ Programming Authority in the Provincial Legislatures.

⁶ Applicable only to the NA and NCOP

⁷ Applicable to the NA and certain Provincial legislatures only

3.10 THE ROLE OF THE LEADER OF GOVERNMENT BUSINESS (LOGB)⁸

In terms of the Constitution, the President/Premier must appoint a Member of the Executive as the Leader of Government Business (LOGB). The LOGB is an ex officio Member of the Programme Committee. The LOGB is responsible for:

- the affairs of the Executive in a legislature;
- ensuring that Cabinet Members attend to their parliamentary responsibilities; and
- performing any other functions provided for in the rules or a resolution of the House.

3.11 THE ROLE OF THE LEADER OF THE OPPOSITION⁹

As the leader of the largest opposition party in the House, the Leader of the Opposition, by convention enjoys a special status in the Legislature. The leader has no specific duties in terms of the rules, but is generally the first opposition spokesperson in most important parliamentary debates.

3.12 THE ROLE OF PARLIAMENTARY COUNSELLORS¹⁰

Two Members of the Assembly may be designated as Parliamentary Counsellors, one to the President and the other to the Deputy President. The counsellors are responsible for facilitating communication between the Assembly and the offices of the President and Deputy President, respectively.

10 ⁸ Applicable to the NA and Provincial Legislatures

⁹ Applicable to the NA and Provincial Legislatures

¹⁰ Applicable to NA only

4 THE CONSTITUTIONAL, LEGISLATIVE AND PROCEDURAL FRAMEWORK

This refers to the constitutional legislative and procedural framework within which a legislative body operates. This framework comprises the following:

- The Constitution
- Statutes
- House Rules
- Joint Rules of Parliament, if and when applicable
- Orders or any other binding decisions of the House
- Directives and guidelines of the Rules Committee
- Rulings from the Presiding Officer
- Practice and Convention

4.1 THE CONSTITUTION

As the Constitution of the Republic of South Africa, 1996, is the supreme law of the country, the rules and orders must be consistent with its provisions. The Constitution is therefore the primary source of authority in the Legislature.

4.2 STATUTES

Subject to the Constitution, statutes are another source of authority in the legislatures. These statutes include:

- Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, 2004 (Act No 4 of 2004); Electoral Act, 1998; (Act No 73 of 1998); Determination of Delegates (National Council of Provinces) Act, 1998 (Act No 69 of 1998); Remuneration of Public Office Bearers Act, 1998 (Act No 20 of 1998); National Council of Provinces (Permanent delegate vacancies) Act, 1997 (Act No 17 of 1997); Public Funding of Represented Political Parties Act, 1997 (Act No 103 of 1997); Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No 10 of 2009); Political Party Funding Act, 2018 (Act No 6 of 2018).

4.3 RULES AND ORDERS

The Standing Rules of Legislatures serve as important source of procedure. The Constitution prescribes what the rules and orders must provide for. These rules and orders are designed to regulate the business of the Legislature. Furthermore, they serve to ensure that legislatures fulfil their constitutional and statutory mandate.

The rules and orders apply, as appropriate, and must be adhered to by all Members including members of the Executive.

4.4 RULINGS FROM THE PRESIDING OFFICER

Rulings from the Presiding Officer/Chairman an important part of the practice and procedure of the House. Rulings commonly involve interpretation of the rules and their application to particular practical situations. However, a ruling may be made in the absence of a specific provision in the rules.

In giving a ruling on a matter, a presiding officer is guided by established sources of procedure, and these rulings serve as precedents which are binding until they are overturned after a due process.

4.5 PRACTICE AND CONVENTION

Practice can be defined as that part of procedure which develops during the course of sittings of the House or its committees. Interparty co-operation, particularly among whips and in programming committees, leads to the formation of established modes of operation that are accepted and recognised by parties. These are established by agreement and usage over a period of time.

Some practices and conventions have been in place for a long time and may be defined as the usual and regular method of proceedings. For example, the Presiding Officers bowing to the right and left before the start of the proceedings. Importantly, a convention or practice cannot limit a provision of the rules.

5 PARLIAMENTARY PAPERS

Parliamentary papers in the House are of two kinds:

- **House papers**, among others:
- Order Paper
- Question Paper (and Internal Question Paper)
- Minutes of Proceedings
- Announcements, Tablings and Committee Reports (known as the 'ATC')
- **Papers laid upon the Table ("tabled")**: These are papers submitted to the House for its consideration or information in terms of statutes, an order of the House or the rules. They may emanate from the Executive or elsewhere.
- Tabling of papers does not necessarily mean that papers are placed on the table. When papers are recorded in the ATC they are regarded as tabled.

6 PROGRAMMING OF BUSINESS

6.1 BRIEF OVERVIEW OF PROGRAMMING PROCEDURE

The "shape" of a parliamentary year in broad outline – the dates of the sessions, legislative cycles for the year, House and Committee activities – is generally determined at a meeting of the Programme Committee, chaired by the Speaker^[1] or the Speaker and the Chairperson of the Council, as the case may be.

The Programme Committee meets on the day and at the time determined by the Speaker or Chairperson to organise and determine the business of the Legislature and of its committees in the short, medium and long term. Part of parliamentary business emanates from the legislative programme of Government. The Leader of Government Business plays a key role in co-ordinating the legislative programme and, where necessary, facilitating the programming of Bills emanating from the Executive.

6.2 ROLE-PLAYERS IN PROGRAMMING OF BUSINESS

The Chief Whip, Party Whips, Programming Whip, and House Chairpersons/ Chairpersons of Committees are all important players in the compilation of the Programme of the Legislature.

The production of a programme for all parliamentary business takes into account the needs of both the Executive and the Legislature and is a complex process that requires consultation with all the role-players.

6.2.1 THE ROLE OF PROGRAMME COMMITTEE

The role of the Programme Committee is to organise and schedule the business of the Legislature. This process consists of consultations and presentations, amongst others, by the Whip responsible for programming, and the sections that deal with Bills, House and Committee business.

The business of each sitting day is scheduled by agreement among party representatives thereby ensuring the smooth running of the business of the Legislature. Decisions on prioritisation, postponement and issuing directives and guidelines pertaining to the business of the Legislature may be taken by the Programme Committee, however, these decisions may be made in consultation with the Leader of Government Business, where applicable.

6.2.2 FUNCTIONS AND POWERS OF THE JOINT PROGRAMME COMMITTEE (JPC)

The Joint Programme Committee (JPC) is a committee which, amongst others, monitors and oversees the implementation of Parliament's annual legislative programme and may set deadlines for the introduction of Bills. The Committee is chaired by the Speaker and the Chairperson of the Council, and consists of the Presiding Officers, Chief Whips, Leader of Government Business (or his/her representative), and Whips designated by parties.

The programme for the forthcoming year is generally determined in broad outline by the JPC. This programme is adjusted as is necessary by the Programme Committees of the Houses, however, deviation should not be substantial from the existing outline as agreed to by the JPC.

The Committee meets, approximately, twice or thrice a year. The JPC must:

- prepare and, if necessary, from time to time adjust the annual programme of Parliament, including the legislative programme;
- monitor and oversee the implementation of Parliament's annual legislative programme and may set deadlines for the introduction of Bills; and
- implement the Joint Rules regarding the scheduling or programming of the business of Parliament, and the functioning of the joint committees, joint subcommittees and other joint structures.

The JPC, through its subcommittees, is also responsible for the fast-tracking of Bills. The Executive is required to provide the JPC with a provisional legislative programme which includes the Bills that the Executive intends to introduce and their legislative timeframes.

6.3 HOUSE BUSINESS

House business is determined by the rules and the Programme Committee. In terms of the rules, and unless otherwise determined in specific cases, business consists of the following: opportunity for prayer or meditation, announcements from the Chair, notices of motion, formal motions, opportunity for Members' statements, opportunity for Ministerial Statements, Petitions, Orders of the Day and Questions.

Orders of the Day are dealt with in the order in which they appear on the Order Paper, however, the sequence can be altered by a motion or the Programme Committee.

7 PRIVILEGES AND IMMUNITIES; RULES OF DEBATE AND MAINTENANCE OF ORDER

The Constitution grants Members freedom of speech in the House and its committees, subject to its rules and orders. The application of the rules and orders in the House should therefore allow Members the opportunity to fully express themselves in the House. The rules relating to order and debate are aimed not at limiting freedom of speech, but at guiding debate and orderly processing of the business of the House in the context of that freedom so as to allow open consideration of issues.

The rules also seek to promote the responsible exercise of the right of freedom of speech during proceedings of the House and its committees. This right is regarded as essential to parliaments across the world as it entitles a Member to freely express sentiments and opinions on issues without any fear of criminal or civil liability. The procedures imposed by the rules are designed to allow this to be done in an orderly fashion.

The House plays a critical role in exercising and upholding the principles of democracy enshrined in our Constitution. The rules of debate, practices and conventions of the House are based on the principle of maintaining order and decorum in the House. They regulate, amongst others, the use of parliamentary language and gestures, the raising of points of order and conduct in the House.

7.1 PRIVILEGES AND IMMUNITIES

Parliamentary privilege is described as the sum of the rights enjoyed by the House and its Members without which they could not discharge their functions during proceedings and which exceed those rights enjoyed by ordinary citizens, institutions and organisations. The primary parliamentary privileges are the right of freedom of speech and the right to unfettered access to the House. These privileges, amongst others, allow Members to attend and raise contentious issues in the House without fear of hindrance, prosecution or civil liabilities.

Other privileges and immunities are provided for in the Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act (Act No. 4 of 2004).

7.2 ORDER IN DEBATES

7.2.1 MEMBERS' CONDUCT AND DECORUM IN THE HOUSE

There are established rules and practices relating to the conduct of Members and decorum in the House. Some of these rules are contained in the rules, while others may be derived from precedent and practices or conventions. The underlying principle is that of showing respect to the House and to other Members. Conduct should not cause a disruption to proceedings.

Members are required:

- To rise when the Presiding Officer enters the Chamber at the start of the proceedings and to remain standing until invited to be seated;
- Not to move onto the floor area of the Chamber in front of the benches, or to “break the line” between a person speaking from the floor, and the presiding officer;
- Not to stand in the passages;
- Not to bring dangerous weapons of any kind; cultural object may only be brought with the prior approval of the Presiding Officer;
- Not to take photographs or video footages during proceedings in the House;
- Not to speak on a cell phone;
- Not to read newspapers or articles in the House unless it is done in preparation for a speech which the Member is about to deliver;
- Not to display party symbols in the House;
- Not to use electronic equipment that disturbs the proceedings;
- Not to converse aloud during debate;
- Not to interrupt the Member on the floor, except to raise a point of order or a question of privilege. In certain instances, the following may be allowed:
 - o Interjections: The Chair has discretion to allow interjections to the extent that they are relevant to the debate and not disruptive.

- o Question to a Member speaking: a Member may seek the permission of the Chair to ask the member speaking in a debate a question. If the member speaking declines to take the question, the Chair will disallow the request. The Chair will not allow this form of interruption to be used to deliberately disrupt the Member speaking.
- Not to use offensive or unbecoming language;
 - Not to bring food into the Chamber - Members are, however, permitted to drink water;
 - On leaving the Chamber, to do so quietly and discreetly especially when many Members are leaving simultaneously;
 - To be present in the Chamber during debates;
 - On adjournment, to rise and remain in their places until the procession has left the Chamber;
 - To sit in the waiting benches before being called to the podium.

Members should anticipate their speaking turn and take their place in the waiting bench in good time, not leaving it till the last minute. Once there, they should sit quietly and not make interjections. Other Members should not insult, ridicule or otherwise interfere with a Member on his or her way to or from the waiting bench or podium.

7.3 RULES OF DEBATE

7.3.1 MEMBER TO ADDRESS PRESIDING OFFICER/CHAIR

The rules require the Member speaking to address the Chair, and they are intended to assist the Chair to control the debate. Every Member who wants to speak must rise in his or her place addressing the Chair or as otherwise prescribed by the rules.

Addressing the Chair prevents dialogue between Members that may lead to disorder. In addition, when a Member speaks through the Chair, a direct attack on another Member is avoided. The rule applies also to a Member rising to pose a question to the Member speaking.

7.3.2 UNPARLIAMENTARY LANGUAGE

No Member may use offensive or unbecoming language. If the use of a word or phrase is challenged, the Chair may make a ruling immediately or undertake to revert back to the House with a considered ruling later.

An offensive remark is not rendered parliamentary by being quoted, used hypothetically, put in the form of a question or stated as a figure of speech.

Accusing a Member of lying, telling a deliberate untruth or of deliberately misleading the House would be unparliamentary. It may however not be unparliamentary to state that a Member has provided false information, provided intent is not implied. It follows from this that a Member's word must be accepted at face value. If a Member has good grounds to question whether another Member's word should be accepted, a substantive motion may be submitted. It is not for the Chair to judge the accuracy or otherwise of statements made in the House.

7.3.3 REFERENCE TO OTHER MEMBERS

Members should refer to each other in a respectful manner. Generally, no Member may refer to another Member by his/her first name or names only. It has therefore become practice for Members to address each other as "Honourable".

7.3.4 REFLECTIONS UPON JUDICIAL OFFICERS

No Member may reflect upon the competence or honour of a Judge or the holder of any judicial office.

7.3.5. REFLECTIONS ON COURTS, AND COURT PROCEEDINGS

The rules on *sub judice* require Members to refrain from reflecting on the merits of matters on which a judicial decision in a court of law is pending. This may entail that Members avoid suggesting what conclusions a court should come to or intimidating or bringing improper motives to bear on witnesses in matters under judicial consideration.

7.3.6 REFLECTIONS UPON MEMBERS OF THE HOUSE

Making unsubstantiated allegations against the integrity of any Member is unparliamentary, nor may improper or unworthy motives be imputed to a Member.

A Member who wishes to bring an allegation of improper conduct on the part of another Member to the attention of the House, should do so by way of a substantive motion, comprising a clearly formulated and properly substantiated charge, and except upon such a substantive motion, Members should not be allowed to impute improper motives to other Members.

7.3.7 REFLECTIONS UPON DECISIONS AND STATUTES OF THE SAME SESSION

No Member may reflect upon any decision of the House taken during the same annual session or within the timeframe as prescribed by the rules, except to move that such decision be amended or rescinded. The same applies to any statute passed during the same session, except in order to move for its amendment or repeal.

7.3.8 IRRELEVANCE OR REPETITION

A Member must direct his or her speech to the question under discussion and must refrain from irrelevant or repetitive argument. The Presiding Officer, after his or her attention called to the conduct of a Member who persists in irrelevance or repetition of arguments, may direct the Member to discontinue his or her speech.

7.3.9 THE PUBLIC GALLERY

Members may not directly address the public or individuals in the gallery. The House cannot engage with the gallery. Members of the public attend House sittings to observe and not to participate in the proceedings.

7.4 POINTS OF ORDER

7.4.1 RAISING A POINT OF ORDER

A point of order is raised to call the attention of the Presiding Officer to a matter of parliamentary procedure or practice, or a matter relating to unparliamentary conduct, as defined.

The transgression must be brought to the attention of the Presiding Officer immediately when it occurs. It is for the Presiding Officer to decide whether and to what extent a point of order may be entertained. No further discussion is allowed once the Presiding Officer has made a ruling.

7.4.2 A POINT OF ORDER MUST RELATE TO A POINT OF PROCEDURE, ORDER OR PRIVILEGE

A valid point of order limits a Member's right not to be interrupted. Accordingly, such an interruption is only allowed if it calls attention to a point of order or a point of privilege. In other words, it must relate to the rules or to practice. The Presiding Officer will not allow Members to raise what are clearly not valid points of order.

7.4.3 A POINT OF ORDER MUST BE BRIEF AND TO THE POINT

The point of order must be put first, before being elaborated upon. It is not in order to make a speech leading up to the point of order.

When a point of order is raised, the Member called to order must resume his or her seat, and after the point of order has been stated to the Presiding Officer, he or she shall give a ruling or decision thereon either forthwith or subsequently.

Spurious points of order to disrupt the Member speaking or in an attempt to respond to the Member speaking will be regarded as an abuse of the rules of procedure.

7.4.4 PRESIDING OFFICER'S DISCRETION

When a point of order is taken, the Presiding Officer is obliged to respond by giving a ruling or decision. If it is ruled that the point of order is valid, he or she will take appropriate corrective action. If the response is that the Member speaking may continue, the Presiding Officer is in effect dismissing the point of order. The Presiding Officer may give a ruling immediately or give a considered ruling at a later stage.

7.5 THE PRESIDING OFFICER'S POWER TO MAINTAIN ORDER

7.5.1 DIRECTING THE MEMBER TO WITHDRAW UNPARLIAMENTARY LANGUAGE

In the course of debate, a Presiding Officer may, either on his or her own accord, or in response to a point of order, direct a Member to withdraw words or refrain from behaviour that, in the Presiding Officer's opinion, is unparliamentary or otherwise unacceptable. Such words are to be withdrawn, or behaviour ceased, unconditionally and without further debate or discussion.

7.5.2 MEMBER ORDERED TO WITHDRAW FROM THE CHAMBER

If the Presiding Officer considers that a Member is deliberately contravening a provision of the rules, or is in contempt of or is disregarding the authority of the Presiding Officer, or behaves in a grossly disorderly way, the Presiding Officer may order the Member to withdraw immediately from the Chamber for the remainder of the day's sitting.

Except in unusual and severe cases, in most instances the Member will be afforded an opportunity to withdraw offending words or apologise for behaviour on the spot. Often it is only in response to the Member's refusal to do so that he or she is then ordered to withdraw for the rest of the day, on the grounds of defiance of the authority of the Presiding Officer.

7.5.3 REMOVAL OF A MEMBER FROM THE HOUSE

If a Member refuses to leave the House when ordered to do so by the Presiding Officer, the Presiding Officer must instruct the Serjeant-at-Arms to remove the Member from the House.

If the Serjeant-at-Arms is unable in person to effect the removal of the Member, the Presiding Officer may call upon the Legislature Security Services to assist in removing the Member from the House.

7.5.4 PRESIDING OFFICER TO BE HEARD WITHOUT INTERRUPTION

Whenever the Presiding Officer addresses the House during a sitting, any Member then speaking or intending to speak must resume his or her seat.

7.5.5 GRAVE DISORDER IN PLENARY

If a situation of grave disorder should occur in plenary, the Chair may adjourn the meeting, or may suspend the proceedings for a period to be determined by him or her.

8 TYPES OF BUSINESS IN PLENARY

8.1 STATEMENTS BY MEMBERS, MEMBERS OF THE EXECUTIVE, AND EXPLANATIONS BY MEMBERS

8.1.1 STATEMENTS BY MEMBERS

A Member, other than a Member of the Executive, may be recognised by the Presiding Officer to make a statement on any matter. Members of each party are entitled to make a number of statements, minority parties being given an opportunity to participate in a manner consistent with democracy. Provision is also made for Executive Members to respond to statements directed to them or made in respect of their portfolios.

Normal rules of debate apply when a Member makes a statement. This means that the statement cannot contain, amongst others, unparliamentary language or reflection on matters that are before the courts. As with speeches, a Member's statement, is concluded when his/her time expires. If a Member, for whatever reason, fails to utilise the opportunity to make a statement, the party to which that Member belongs, forfeits that opportunity.

Statements need not be in writing, but are recorded in Hansard. The NCOP Rules do not make provision for Members' statements.

8.1.2 STATEMENTS BY EXECUTIVE MEMBERS

An Executive Member may make a "factual or policy" statement relating to government policy, any executive action or other similar matters of which the House should be informed. The Executive Member in question must request for an opportunity to make such a statement. The time allocation for Executive Statements is prescribed in the Rules. The rules provide for a copy of the statement to be provided to the leader of each party when or before the statement is delivered. Following a statement, each party may respond in a manner prescribed in the Rules.

The NCOP Rules do not make provision for Statements by Ministers.

8.1.3 EXPLANATIONS BY MEMBERS

Members are allowed to make explanations in the House. This happens only when a material part of a Member's speech has been misquoted or misunderstood. The Member afforded this opportunity may not, however, introduce any new matter, and no debate is allowed upon his/her explanation. Members may also explain matters of a personal nature or the vindication of his or her own conduct in the House. Such matters may also not be debated.

The Presiding Officer may request a Member to provide him/her with the text of the explanation prior to making a decision on whether to grant an opportunity for an explanation.

8.2 MOTIONS

A motion is a proposal by a Member that the House do something, order something to be done or express an opinion with regard to some matter. It may, however, also be a proposal that the House discusses some matter. Essentially, the rules provide for two types of motions to come before the House, namely subjects for discussion (debate only) and draft resolution for consideration (decision with or without debate). These type of motions require prior notice.

Motions may either be on notice (Notice of Motion normally commencing with the words "I hereby give notice that in the next sitting I shall move that ... ") or without a notice (Motions without Notice). Notice of Motion normally commences with the words "I hereby give notice that in the next sitting I shall move that ... " Motion without Notice normally commences with the words "I hereby move that ..."

8.2.1 GENERAL GUIDELINES FOR NOTICES OF MOTION

Notices of motion should be limited to matters that Members specifically intend should be brought before the House for debate or decision. With some exceptions (listed below) notice must be given of every motion, since

in principle the House must be informed in advance of any substantive motion, to give Members and parties time to prepare to debate it.

Exceptions: The following motions do not require notice:

Motions –

- By way of amendment to a draft resolution;
- Raising a point of order or a question of privilege;
- For the postponement or discharge of, or giving precedence to, an order of the day;
- Referring a Bill to a committee;
- By the Member in charge, proposing a draft resolution on the report of a committee immediately after the debate on the report has been concluded.

8.2.2 PROCEDURE OF GIVING A NOTICE OF MOTION

Notice can be given of a motion by reading the motion aloud in the House when the Presiding Officer calls for notices of motion, or by delivering to the Secretary a signed copy of the notice on any parliamentary working day.

The leave of the House is required to give oral notice of a motion at any other time. Having given oral notice of a motion in the House, a Member is required immediately afterward to deliver to the Table a signed, written copy of that notice. If the signed version differs from the oral version, the written version is treated as a standard written notice of motion, while the verbal notice is not placed on the Order Paper. The Member is advised accordingly.

If authorised to do so, a Member may give notice of a motion on behalf of another Member. Oral notices of motion given on any sitting day, if in order, appear on the Order Paper thereafter.

A written notice of motion received by the Secretary before 12:00 on any day, will appear on the Order Paper for the second sitting day thereafter.

8.2.3 EFFECT OF NOTICE

A “notice of motion” merely indicates an intention on the part of a Member to move a motion in the House if and when it is programmed for consideration by the House.

A notice of motion remains the property of the Member until he or she actually moves it in the House. If the Member chooses not to move the motion at the time for which it has been programmed, the motion lapses (unless the Member has authorised another Member to move it on his or her behalf). This distinguishes a motion from an “Order of the Day” which is not dependent upon being moved by a Member. A Member may withdraw a notice of motion appearing in his or her name on the Order Paper by written instruction to the Secretary.

Once a motion has been formally moved in the House, it becomes the property of the House and may only be withdrawn with the approval of the House. (The Member, who has moved the motion, may move without notice that it be withdrawn). If any amendments to the motion have been moved, they must be withdrawn before the motion itself can be withdrawn.

8.2.4 AMENDMENTS TO NOTICES

An amendment is a motion, subsidiary to the main motion, which proposes to change it. As such, it is subject to the rules and practices governing motions, including that a signed copy of an amendment that is moved, must be provided to the Table. The Speaker may amend or otherwise deal with a notice of motion which offends against practice or the rules.

Amendments are of three kinds. They may propose to-

- leave out words in the motion;
- delete words in the motion and substitute other words in their place; or
- insert words in the motion.

Amendments must be relevant to the motion, and may not introduce a new subject or extend the scope of the original motion. An amendment may be proposed to an amendment. An amendment is subject to the approval of the Speaker, who will not allow an amendment that is out of order or frivolous. As in the case of motions, procedural staff may be consulted in regard to formulation of amendments.

Putting amendments: The Presiding Officer puts the amendments as directed by the rules. In doing so, he or she will generally seek to enable each party to record its vote in favour of or against each amendment, where feasible.

8.2.5 SUBJECT FOR DISCUSSION

A subject for discussion provides an opportunity for the House to debate a particular topic without the House being required, at the end of the debate, to take a decision. The wording of a subject for discussion should be limited to identifying the topic, which should be clearly established. The wording determines the scope and focus of the debate. A topic that is too vague or broad will lead to an unstructured general debate.

A Member proposing such a motion should identify it as a subject for discussion. A motion proposing a subject for discussion also requires prior notice.

8.2.6 DRAFT RESOLUTIONS

Draft resolutions may be further divided into:

- **Substantive motions**, which are independent, self-contained proposals concerning a concrete item of business. Erskine May¹¹ defines a substantive motion as “a proposal made for the purpose of eliciting a decision of the House”. Pettifer¹² adds that a substantive motion “may take the form of a proposal made to the House by a Member that the House do something, order something to be done, or express an opinion with regard to some matter. It must be phrased in such a way that, if agreed to, it will purport to express the judgment or will of the House”.

28 ¹¹ Erskine May, *Parliamentary practice*, Butterworths Lexis Nexus, London, 2004, P382.

¹² Pettifer, JA (ed) *Australia House of Representatives Practice*, Commonwealth of Australia, Canberra, 1.981., P398

A motion may be phrased in such a manner that it is a proposal that the House discusses some matter. Essentially, the rules provide for two types of motions to come before the House, namely subjects for discussion (debate only) and draft resolution for consideration (decisions with or without debate). These type of motions require prior notice.

- **Formal motions**, which are substantive motions of a specifically procedural nature, including motions to amend sitting hours, to postpone or give precedence to an order of the day. As they normally deal with the business of the House, they are usually introduced by the Chief Whip of the Majority Party.

- **Motion which has constitutional consequences**

Another form of draft resolution which may be distinguished is a motion, adoption of which has constitutional consequences. Examples are a motion of no confidence or a motion to dissolve a House in terms of the Constitution.

8.2.6.1 GUIDELINES FOR DRAFT RESOLUTIONS

Generally, draft resolutions should be short, brief and framed so as to express with as much clarity as possible the distinct opinion or decision of the House. A draft resolution -

- must deal with matters within the competence of the Legislature;
- must deal with only one substantive matter;
- must consist of a clear and brief proposed resolution or order of the House. Any extraneous matter meant to motivate a decision should be omitted, and can be put forward when the Member introduces the motion in the House;
- must not contain statements, quotations or other matters not strictly necessary to make the proposed resolution or order intelligible;
- is subject to the rule of anticipation. A notice of motion on the Order Paper on a particular topic will therefore block all other notices on substantively the same topic;
- may not be the same in substance as a draft resolution that has been approved or rejected during the same session;

- may not contain unbecoming or offensive expressions;
- may not issue an instruction to the Executive;
- should observe the principles of co-operative government (Chapter 3 of the Constitution), and
- must be handed to the Table immediately after notice has been given in the House (a signed written copy).

All motions are subject to the rules of debate of the House, including the rule on offensive language and the sub judice rule.

8.2.6.2 EFFECT OF DRAFT RESOLUTIONS

Broadly speaking, a Legislature only imposes its will through legislation. A draft resolution adopted by the House is of persuasive force, and only binds the House itself. The House cannot, for example, by resolution instruct a Member of the public, or the Executive, to take certain action.

A resolution is sent to the institution or person to which such a resolution relates. Where applicable, the resolution is directly communicated to the relevant Minister or executive authority.

9 CONSIDERATION OF COMMITTEE REPORTS BY THE HOUSE

In practice a committee report, including a report on a Bill that is placed on the Order Paper for consideration, requires a decision of the House. If no debate is scheduled, then the chairperson of the committee, or a person designated by the committee, briefly introduces the report, highlighting any recommendations. After the introduction or a debate on the report, a motion, moved by the Chief Whip, is put that the House either adopts the report, notes the report or takes whatever action is deemed necessary.

10 DISCUSSION OF MATTERS OF PUBLIC AND URGENT PUBLIC IMPORTANCE

The rules of debate of this kind make special provision to reconcile the needs of private Members with the unobstructed progress of government business and other programmed business. They make it possible for private

Members to request the Speaker to allow discussion on matters that they consider of sufficient immediate public and national importance to take precedence over other programmed business in certain circumstances. Members of all parties may use this mechanism.

The Speaker has discretion to grant or disallow such a request, applying agreed criteria for this purpose. On finding merit in a request, he or she consults the Leader of Government Business, after which the matter goes to the programming structures to find a slot for the debate.

10.1 CRITERIA

In exercising his or her discretion, the Speaker must apply the following criteria:

- Matters already discussed by the House during the same annual session may not be discussed under this rule;
- the matter must be raised at the earliest opportunity;
- the matter must be –
 - o of so serious a nature that it requires urgent attention; or
 - o of sufficient immediate public importance to warrant it taking precedence over other programmed business;
 - o at national level, the request must deal with a matter of national importance for which the government can be held responsible, or that falls within the scope of ministerial action;
 - o the subject must relate to a specific matter of recent occurrence, and not to a general state of affairs or to a matter of policy;
 - o the matter must be defined and specific;

- 0 the request must deal with only one substantive matter;
- 0 the request will not be granted if the matter can be considered by some other means in the near future; and
- 0 the sub *judice* rule applies to such a discussion.

11 DECISION OF QUESTIONS

All questions before the House are decided by majority decision. This may or may not involve counting of votes.

Normally, voting is public and transparent and is reflected in full in the Minutes of Proceedings. There are, however, exceptions such as when voting by secret ballot has been agreed on a motion of no confidence, electing the Speaker, the Deputy Speaker and the President.

In a division, Members' votes are recorded using the electronic voting system, where applicable. All Members present in the House when the question is put must vote. The name and vote (or abstention from voting) of each Member is recorded. Voting may however also be done manually.

11.1 WHEN DECISION TAKEN

A question may come before the House for decision -

- when debate on the matter has been concluded;
- without a debate being conducted on the matter; or
- at a time subsequent to the conclusion of a debate on the matter, after a decision of the question has been postponed. A decision is postponed-
 - 0 to ensure that there is a quorum when the question is put;
 - 0 because the House has set aside time for a series of decisions to be taken simultaneously, for example on the Votes in a main appropriation Bill;
 - 0 because the debate took place in an Extended Public Committee/ mini-plenary, or
 - 0 because a second vote is being taken where a decision requiring a special majority, failed to obtain that majority.

11.2 QUORUMS

Except where a special majority is required by the Constitution, the following quorums are required for voting-

- a majority of Members must be present before a vote may be taken on legislation; and
- at least one third of the Members must be present before a vote may be taken on any other question before the House.

If, when a question is put for decision, the Presiding Officer is alerted to the possible absence of a quorum, he or she must direct that the bells be rung for the agreed period. If after that time there is no quorum, he or she may either suspend proceedings or postpone the decision of the question. Alternatively, where a division has been called, Presiding Officers have directed that the presence or absence of a quorum may be determined by the result of electronic voting/manual voting.

Quorum not present: Where the result of a division shows that the required quorum was not present for the decision, this means that no decision has been taken, and the decision is deferred.

Not applicable to the NCOP.

11.3 STANDARD PROCEDURE FOR DECIDING ON A QUESTION (WHERE NO SPECIAL MAJORITY IS REQUIRED BY THE CONSTITUTION)

The following procedure is followed when the Constitution does not require the decision to be taken by a special majority.

The Chair announces the Question to be decided, by saying: "The Question before the House is-" [e.g. "... that the bill be read a second time"; "that the motion moved by X be agreed to"].

- Consensus: The Chair then asks: "Any objection?" and pauses for an answer. If there is no objection, the Chair states: "No objection. Agreed to." At this point, the question has been agreed to.

- Objection: If there is objection, the Chair then puts the Question to the House, in the following terms: "I put the Question. Those in favour will say "Aye"; those against, "No". Question not heard or understood: If the question is not heard or understood, the Chair puts the question again.
- Members respond by saying "Aye" or "No". The Chair then judges, on the voices and on probability, whether the "Ayes" or the "Noes" are in the majority, and states: "I think the [Ayes/Noes] have it". No further debate: At this point the Question has been fully put, and no further debate on the subject is allowed. Declarations of vote: At this point, the Chair may grant the opportunity for declarations of vote.
- If there is no disagreement with the assessment by the Chair of who is in the majority, the Chair proceeds to confirm the assessment, with the words: "And so they have".
- In this case the decision, not being opposed, is taken by consensus, and no voting takes place.
- If there is objection to the Question being agreed to as assessed by the Chair, this can be expressed in two ways:
 - o by parties requesting that their objection be recorded (this will be reflected in the Minutes of Proceedings); or
 - o by calling for a formal division.

11.4 DECLARATIONS OF VOTE

When a decision is to be taken by the House, the Presiding Officer has a discretion to permit one Member of each political party to state the reasons why his or her party is in favour of or against the question. In applying discretion, the practice is for the Presiding Officer to be disinclined to allow declarations where debate on the question has just been concluded.

Usually, but not necessarily, declarations of vote are made where there is opposition to the question. In the vast majority of cases, they are made when a division is held. One exception to this is the day when the votes of the main appropriation Bill are taken. During this procedure, which often

involves multiple divisions, declarations of vote are often made even on those votes where there is no objection.

11.5 DIVISION

Calling for division: If a party strongly opposes a proposed decision, it may wish to take the matter to a vote. In this case a Member (usually a Whip) rises when the Chair has made its assessment and, addressing the Chair, states that his or her party calls for a division.

Bells rung: At this, the Chair will announce

"A division having been called, the bells will be rung for [as prescribed by the Rules] minutes."

Division bells are then rung to alert Members not in the Chamber to the fact that a division is taking place and their attendance in the House is required. During this time, Members should return to their designated seats in order to vote.

Doors closed: The Secretary at the Table informs the Chair when it is time for the bells to stop ringing. When the bells stop ringing, service officers close the doors to the Chamber, and no Member is allowed to enter or leave until the result of the division has been announced.

Member calling for division to remain and vote with minority: The Member who called for the division may not leave the Chamber until the result of the division is declared, and must vote with the minority.

Further divisions: If further divisions are required to dispose of the question, or if there is a series of divisions for any reason, the period during which the bells are rung for a second and subsequent divisions, is usually shortened at the discretion of the Presiding Officer, who announces this to the House.

Confusion or error: Where confusion or error occurs in relation to a division, another division is held, unless the results can be corrected in another way. Minutes may be corrected if numbers have been inaccurately reported.

Points of order during division: It is in order to rise on a point of order during a division, provided the point of order has to do with a matter that arises out of or during the division.

11.6 TAKING DECISIONS ON MATTERS OTHER THAN BILLS AND MOTIONS

The Constitution and other laws require the House to take decisions on matters other than Bills and motions. An example is the ratification of international agreements. Such matters are considered by a committee before coming before the House for consideration. Instead of coming before the House in the form of a committee report with recommendations, the relevant Order Paper entry reflects the actual decision to be taken. If the relevant committee report on the issue includes additional recommendations flowing from its consideration of the matter, the committee report is placed on the Order Paper for separate consideration.

11.7 VOTING IN THE NCOP

11.7.1 GENERAL RULE

Except where the Constitution provides otherwise, each province has one vote, which is cast on behalf of the province by the head of its delegation. All questions to be decided in terms of section 65 of the Constitution before the NCOP are agreed when at least five provinces vote in favour of the question.

11.7.2 QUORUM

One third of the Members is required to be present before a decision could be taken in terms of section 75 of the Constitution, however, where decision is required in terms of section 65 of the Constitution five provinces are required except where the Constitution provides otherwise.

11.7.3 EXCEPTIONS TO THE RULE

11.7.3.1 BILLS AMENDING THE CONSTITUTION

Whenever the NCOP is entitled to vote on a Bill amending the Constitution, the question is decided with a supporting vote of at least six provinces.

11.7.3.2 ORDINARY BILLS NOT AFFECTING PROVINCES (S75 AND S77 BILLS)

Section 65 does not apply when the NCOP votes on an ordinary Bill not affecting the provinces. In this instance each delegate in a provincial delegation has one vote. The question is decided by a majority of the votes cast, but if there are an equal number of votes on each side of the question, the Presiding Officer must cast a deciding vote.

11.8 JUDICIAL SERVICES COMMISSION

In terms of the Constitution, the Judicial Services Commission consists of, amongst others, four permanent delegates to the NCOP designated by the NCOP with a supporting vote of at least six provinces.

Six members of the National Assembly are designated to serve in the Judicial Services Commission, at least three of whom must be members of opposition parties represented in the Assembly.

11.9 MAGISTRATES COMMISSION

The Magistrates Commission consists of, amongst others, four permanent delegates to the NCOP, designated by the NCOP, with a supporting vote of at least six provinces.

Four members are designated by the National Assembly from among its Members to serve in the Commission, at least two of whom must be members of opposition parties represented in the Assembly.

11.10 PROCEDURES IN THE NCOP

11.10.1 GENERAL PRINCIPLES

The Chairperson of the NCOP may determine a day for the decision of questions by the NCOP. When the debate on a question is concluded in the NCOP, the Presiding Officer may postpone the decision of the question. A question that was postponed after the debate on it was concluded in the NCOP must be put without further debate.

A question to be decided by the votes of provinces is fully put when put immediately before an opportunity for declaration of votes is or may be given.

A question to be decided by the votes of individual Members is fully put when the voice of both the “Ayes” and the “Noes” has been given on it.

When a question before the NCOP is to be decided by the votes of individual Members and fewer than one third of the Members are present when the vote is to be taken, the bells must be rung for three minutes. If at least one third is still not present after the bells have been rung, the Presiding Officer must postpone the decision of the question.

Each delegation head must from time to time submit to the Secretary a list of the names of persons who serve as special Members in the provincial delegation for the respective matters on the Order Paper which must be decided by the votes of individual Members. A dispute, on which a person is entitled to vote as a special Member on any particular question, must be settled by referring to the latest relevant list before the vote on that question is taken.

11.10.2 VOTING BY INDIVIDUAL MEMBERS

When a question to be decided by the votes of individual Members has been fully put, the Presiding Officer, on request, may allow each political party in a speech not exceeding three minutes, to state the reasons why the party is in favour of or against the question.

Whenever a question to be decided by the votes of individual Members is put by the Presiding Officer, any Member, instead of demanding a division, may request the opposition of that Member, or of that Member's party, to be formally recorded in the Minutes of Proceedings. The Presiding Officer may order that a division takes place if four or more Members request that their opposition be formally recorded.

After a question has been put and the officer presiding has indicated whether the "Ayes" or the "Noes" have it, any Member may demand a division. If fewer than four Members support the demand for the division, the Presiding Officer must declare the decision on the question. If four or more Members support the demand, a division must take place and without debate.

11.10.3 PROCEDURE FOR DIVISIONS

A division takes place in accordance with the following procedure:

- The Presiding Officer must order the bells to be rung and, after the bells have rung for three minutes, order the doors to the floor of the Chamber to be locked;
- When the doors have been locked, no Member is allowed to enter or leave the Chamber until the result of the division has been declared;
- The Presiding Officer must put the question again and call for Members to vote and Members abstaining to take their seats in areas designated by the officer presiding. Any persons referred to in sections 66 and 67 of the Constitution may not vote;

- The Secretary must record the names and numbers of votes cast;
- When the names and numbers have been recorded the Presiding Officer must declare the result of the division.

While a division is in progress, Members may speak to a point of order arising out of or during the division. In the event of confusion or error in a division, the procedure set out above must be repeated, but if there is an inaccuracy in the numbers of the votes and these numbers can accurately be corrected in another, less cumbersome, way the procedure need not be repeated.

If the numbers have been inaccurately reported or any errors occur in the names on the division lists, the Presiding Officer must order the Minutes of Proceedings to be corrected.

11.10.4 VOTING BY PROVINCES

Before a question that is to be decided by the votes of provinces is put, the Presiding Officer must order the bells to be rung three times for 30 seconds at a time, separated by 10-second intervals. The bells need not be rung if all the delegation heads are present in the Chamber.

If all the delegation heads are present or if not all the delegation heads are present and at least three minutes have elapsed since the bells have stopped ringing, the Presiding Officer-

- must put the question; and
- on request, may allow each province, in a speech not exceeding three minutes by the delegation head or another Member authorised by the delegation head, to state the reasons why the province is in favour of or against the question.

After the question has been put and declarations of vote (if any) have been made, the delegation heads present must cast the provinces' votes in accordance with their mandates. Voting takes place by allowing each

delegation head in turn to cast the province's vote, which vote must be recorded in the Minutes. After the votes have been cast and recorded the Presiding Officer must declare the result of the vote.

11.10.5 MANDATES

Mandates mean the conferral of authority by a provincial legislature on its delegation to the NCOP to cast a vote on a question. There are three kinds of mandates, namely-

- negotiating mandate;
- final mandate; and
- voting mandate

The head of a provincial delegation is responsible for communicating the official mandate of the province to the NCOP.

11.10.6 INTERNATIONAL AGREEMENTS

NCOP Rule 73A specifically provides as follows:

- No mandate is required when the House votes on International Agreements provided in terms of section 231(2) of the Constitution, however, the head of the provincial delegation must cast a vote on behalf of the province.
- In the absence of the head of the provincial delegation a Member may vote on behalf of the province.
- A decision is agreed to when at least five or more provinces vote in favour.

11.10.7 ELECTRONIC VOTING

Permanent delegates are issued with voting cards which would indicate their name, province and party. A question to be decided by the votes of provinces is fully put immediately before an opportunity for declaration of votes is or may be given. A question to be decided by the votes of individual Members is fully put when the voice of both the "Ayes" and the "Noes" has been given on it. When a question before the NCOP is to be decided by the votes of individual Members and fewer than one third of the Members are present when the vote is to be taken, the bells must be rung for three minutes. If at least one third is still not present after the bells have been rung, the Presiding Officer must postpone the decision of the question.

Each delegation head must from time to time submit to the Secretary a list of the names of persons who serve as special Members in the provincial delegation for the respective matters on the Order Paper which must be decided by the votes of individual Members. A dispute, on which person is entitled to vote as a special Member on any particular question, must be settled by referring to the latest relevant list before the vote on that question is taken.

12 QUESTIONS TO THE EXECUTIVE

The Constitution imposes an obligation on legislatures to provide for mechanisms to ensure that all executive organs of state in government are accountable to them, and to maintain oversight of the exercise of executive authority, including the implementation of legislation. Questions to the Executive is one of the mechanisms that legislatures have put in place in order to comply with this constitutional obligation.

Questions may be put for oral and written reply to the President, the Deputy President, Premier and Cabinet Ministers/MECs on matters for which they are responsible. Members hand in signed questions to the Questions Office,

marked for oral or written reply. A Member may give notice or take charge of a question on behalf of an absent Member if the Member has been authorised to do so by the absent Member.

Questions are edited under the authority of the Speaker/Chairperson, in terms of the requirements set out below, and made available to government departments to enable them to prepare replies for their Ministers/MECs.

12.1 RULES AND CONVENTIONS APPLICABLE TO CONTENT OF QUESTIONS

Questions placed on the Question Paper are required to conform to the rules and the conventions as codified in Guidelines to ensure that this procedure remains an effective, orderly but a robust mechanism for obtaining information and pushing for action from the Executive.

12.2 FORM OF QUESTIONS

12.2.1 OBJECT OF QUESTIONS

The object of questions is to-

- obtain information; and
- press for action.

Questions must be phrased according to these objectives.

12.3 RULES OF DEBATE APPLICABLE TO QUESTIONS

The rules of debate that appears in Chapter 5, Part 2, are also applicable as relevant to questions, much of which has been codified in Guidelines, thus a question is not permissible which-

- contains offensive expressions;
- casts a reflection on the conduct or character of persons - whose conduct may only be challenged in a substantive motion;

- anticipates discussion on an order of the day;
- repeats in substance questions already answered or that awaits a reply in that annual session, or that the Minister has refused to answer. However, a similar question different in some respects may be asked; and the same question may be put to different Ministers to the extent that they have a responsibility in terms of their portfolios;
- criticises decisions of the House;
- publishes any name or statement not strictly necessary to make the question intelligible;
- refers to the merits of a matter under judicial consideration; and
- makes discourteous reference to a friendly foreign country or its Head of State.

12.4 ARGUMENTS AND EXPRESSIONS

Questions may not-

- express an opinion or seek the expression of one;
- contain arguments, inferences or imputations;
- contain unnecessary epithets;
- contain rhetorical, controversial, ironical or offensive expressions;
- contain extracts from newspapers or books, or paraphrases or quotations from speeches.

The facts on which a question is based may be set out briefly, but the questioner is responsible for ascertaining the accuracy of the facts.

12.5 PRACTICAL EXCLUSIONS

Questions may not-

- only provide information;
- convey a particular point of view;
- constitute a speech, or be excessively long;
- refer to communications between an individual Member (other than the questioner) and a Cabinet Member;
- be based on a hypothetical proposition;

- seek an opinion on a question of law, such as interpretation of a statute, an international document or a Cabinet Member's own powers. However, it is in order to ask under what statutory authority a Cabinet Member acted in a particular instance;
- seek a solution to a legal question;
- raise questions which would require an impractically extensive answer;
- seek information on matters of past history for the purposes of argument;
- be trivial, vague or meaningless; or
- be a repeat of other questions, with trivial variations.

12.6 SCOPE OF QUESTIONS TO MINISTERS/MECS

Questions must relate to matters for which Cabinet Members/MECs are officially responsible. Accordingly, the following criteria are applied-

- It is not in order to ask for information about matters that are the responsibility of institutions or persons not responsible to the Government, i.e. Chapter 9 institutions and institutions supporting democracy, the JSE, etc.
- Questions relating to semi-state bodies are restricted to matters for which Cabinet Members are responsible by statute or other legislation.
- Questions may not refer to the consideration of matters by a committee or deal with matters within the jurisdiction of the chairperson of a committee or the House.
- Questions may not be asked about the action of a Member of the Executive for which he or she is not responsible to the Legislature.
- it is not in order to put a question to a member of the Executive for which another Member of the Executive is more directly responsible, or to ask a Member of the Executive to influence a colleague.
- Questions suggesting amendments to a bill before the House or in committee are inadmissible unless such amendments may only be moved by a Cabinet Member/MEC.
- It is inadmissible to ask a member of the Executive whether statements in the Press or by private persons or unofficial bodies are accurate, or to call for comment on statements by persons in other countries (unless the statement is contained in a message from another government).

- Questions may not seek information about the internal affairs of other independent countries, unless such countries form part of a common organisation through which the information is obtainable.

12.7 SCOPE OF QUESTIONS TO PRESIDENT AND DEPUTY PRESIDENT

The President may be asked questions about matters of national or international importance. These may include-

- Matters for which the Government is responsible, excluding matters for which a line Minister is directly responsible;
- His or her public duties;
- The granting of honours;
- The dissolution of the National Assembly;
- The definition of the responsibilities of Cabinet Members;
- Whether statements made by Cabinet Members (not Deputy Ministers, who are not Members of the Cabinet) on public occasions represent the policy of the Government.

He/she may also be asked to furnish a copy of a speech made by him or her outside Parliament. A speech made by the President on a public occasion may only be questioned by calling for a copy and asking whether it represents Government policy.

Note:

- Matters of a party political nature are out of order.
- Questions may not seek an opinion.

The Deputy President deals with questions in accordance with his responsibilities assigned to him by the President.

12.8 QUESTION PAPERS

There are two types of question papers, the “Internal Question Paper” and the “Question Paper”.

The Internal Question Paper-

- is a running, up-to-date record of all questions not yet replied to;
- contains questions for both oral and written reply; and
- is the document whereby notice is given of questions.

The Internal Question Paper indicates which questions for oral reply are standing over and which are appearing for the first time.

The Question Paper only includes oral questions and is also known as the agenda for oral question days. It therefore reflects the questions for oral reply on a given question day.

The following information is valid for all questions for oral reply:

12.9 FORMAT OF QUESTIONS

A question for oral reply may not contain more than two subdivisions. Members are allowed to ask for a maximum of two figures in oral questions. A question for oral reply which is of a statistical nature will be converted into a question for written reply (dates are not regarded as statistical).

12.10 ORDER OF QUESTIONS ON QUESTION DAY

On question day the categories of questions for oral reply are dealt with in the sequence of party priorities.

Question days are determined by the Programme Committee.

12.11 SUPPLEMENTARY QUESTIONS

The rule on supplementary questions is very restrictive in that a supplementary question must arise “directly” from the original question and the reply thereto. It may not constitute a new question. The Member who asked the question is given the first opportunity to ask a supplementary question. It is in the discretion of the Presiding Officer to decide who may ask the other supplementary questions. A Member who asks a supplementary question is entitled to express an opinion or make a statement. The Presiding Officer decides whether the supplementary question is in order. A supplementary question must consist of only one question.

12.12 QUESTIONS FOR ORAL REPLY: QUESTIONS TO THE PRESIDENT

The President answers questions of national or international importance once per quarter during session time within the annual programme. The Speaker ensures that only questions satisfying the set criteria are put to the President.

12.13 QUESTIONS FOR ORAL REPLY: QUESTIONS TO THE DEPUTY PRESIDENT

Questions for oral reply can be addressed to the Deputy President. The Deputy President may not be scheduled to answer questions in the week that the President answers questions.

12.13.1 NATURE OF QUESTIONS TO THE DEPUTY PRESIDENT

Questions to the Deputy President must be limited to matters of national and international importance as assigned to him by the President. These matters assigned to the Deputy President will be published in the ATC for the attention of members.

12.14 QUESTIONS FOR ORAL REPLY: QUESTIONS TO PREMIER/QUESTIONS TO PREMIER WITHOUT NOTICE

The Premier answers questions of provincial importance in accordance with the programme of the Legislature which could include questions to the Premier without notice at some Legislatures.

12.15 QUESTIONS FOR ORAL REPLY: QUESTIONS TO MINISTERS/MECS

Ministers/MECs answer questions in respect of the portfolios and in accordance with the programme of the Legislature.

12.16 PROCEDURE

A Member who gives notice of a question must give the Speaker a signed copy of the notice, indicating clearly that the question is for oral reply.

12.17 PRIORITISING OF QUESTIONS

Questions for oral reply appear in the Internal Question Paper in the order in which they are received. In the NA parties may rearrange their questions in order of priority, using Tuesday's Internal Question Paper as a basis. The Questions Office then arranges all these questions in a party sequence. The sequence is determined by the Rules Committee.

12.18 URGENT QUESTIONS

A Member who wants an urgent question to be placed on the Question Paper should hand in the question to the Speaker before 12:00 noon preceding the question day, clearly indicating that it is an urgent question. The request is dealt with as if it were a request for a debate on an urgent matter of national

public importance. The Speaker must consult the Leader of Government Business before approving it. Accommodation of such a question is subject to the availability of the responsible executive member.

Application may be made to put an urgent question to any Member of Cabinet, including the President and the Deputy President. An addition of 30 minutes is added to the question time for an urgent question that has been approved. An urgent question precedes any other question on the question day. It is within the discretion of the Speaker as to the number of urgent questions that are permitted on a question day.

12.19 QUESTIONS STANDING OVER

A Cabinet Member may request that a question for oral reply stand over until another question day. If a question put during question time stands over because the relevant Cabinet member is not in the House to answer, and the Member who asked the question so requests, the question will be put on the next Question Paper out of the usual cluster within which the relevant Minister ordinarily appears to answer questions.

A question may not stand over more than once, unless the relevant Cabinet member provides a valid reason for requesting that it stand over another time. If it stands over again, the Question Paper must be endorsed to the effect that the question has not been replied to.

12.20 QUESTIONS FOR WRITTEN REPLY

Questions for written reply may be addressed to the President, the Deputy President and Ministers. Such questions are not dealt with in the House but appear on the Internal Question Paper. These are usually not very urgent or they require long and statistical replies.

Questions with replies prepared by the relevant departments and approved by the Minister, are distributed to all the stakeholders: the Member who asked the question, the press and all other relevant stakeholders. The questions together with replies are published as part of the Hansard (Questions and Replies).

12.21 FORMAT FOR WRITTEN REPLY

These may not exceed more than 10 subdivisions. As a matter of practice, questions do not exceed five paragraphs in length. The Questions Office, under the authority of the Speaker/Chairperson, will discuss any such occurrences with the relevant member or the questions whip of the party to find a satisfactory outcome that conforms to the Rules.

12.22 PROCEDURE TO BE FOLLOWED BY MEMBERS

A Member who wishes his or her question to be dealt with as a question for written reply, should indicate this clearly at the top left of the page. It must be signed or sent from his e-mail or accompanied by his or her electronic signature. Questions are placed on the Internal Question Paper in the order in which they are received.

12.23 QUESTIONS FOR WRITTEN REPLY TRANSFERRED FOR ORAL REPLY

If a Member does not receive a reply to his or her question for written reply within 10 parliamentary working days after it has appeared on the Internal Question Paper (Question Paper) for the first time, that Member is entitled to instruct the Questions Office to place such question for oral reply on the Question Paper.

12.24 WITHDRAWAL OF QUESTIONS FOR WRITTEN REPLY

A Member who wishes to withdraw a question for written reply must instruct the Questions Office accordingly. This will be indicated on the summarised list of questions for written reply and the relevant department will be informed.

12.25 REPLIES TO QUESTIONS

The Speaker has been given no authority in the rules or the Constitution over the reply of any member of the Executive. How a Cabinet member replies to a question remains the sole responsibility of such a Cabinet member. When a member of the Cabinet replies to an oral question, he or she must be mindful that such a reply is governed by their constitutional obligation to be accountable and provide Parliament with full and regular reports concerning matters under their control.

The Speaker is not in a position to rule on whether a Cabinet member has replied to a question, save to remind any such member of his or her constitutional obligation to the Assembly that his or her reply should be relevant to the question or is expected to be in response to the points raised in the question. The House has the ultimate power, either through a motion of censure or a motion of no confidence to apply the ultimate sanction against a members of the Executive.

A previous ruling of the Speaker of New Zealand which was brought to the attention of the Assembly on 13 March 2019 (Hansard: National Assembly Debates, 13 March 2019):

“The Speaker does not judge whether ministerial replies are adequate or make political judgments on how well Ministers have responded in the House, or, indeed, how well other members are performing. Those are matters for members themselves, for the press, and for

the public generally. There is nothing new about members being dissatisfied with Ministers' replies, and appealing to the Speaker about them can be seen by Speakers' rulings in the book going back to at least 1892." (New Zealand Parliament, Hansard Debates, 20030501).

This is in step with a previous ruling of the former Deputy Speaker of the National Assembly Dr B G Ranchod:

"... the Chair regulates the proceedings in the House, (but) it is not possible for the Chair to dictate to Ministers how they should reply to questions. If members are dissatisfied, there are political processes available to them to be critical of the manner in which Ministers deal with questions." (Hansard, National Assembly: Debates 1995, column 642-643).

13 HOUSE RESOLUTIONS

When a committee tables its report, the report is scheduled for consideration by the House. When the House has adopted the report, its recommendations become resolutions of the House.

House resolutions are formally communicated to the relevant executive authority for implementation. This authority could be, for instance, the President, Premier or Cabinet Minister or Provincial MEC. Practice or the rules will dictate who communicates these resolutions to the relevant authorities.

At the Speaker's/Chairperson's discretion, follow up letters inquiring about progress may also be sent.

14 LAPSING OF BUSINESS

14.1 LAPSING OF BUSINESS ON THE LAST SITTING DAY OF THE ANNUAL SESSION OR TERM OR WHEN THE LEGISLATURE IS DISSOLVED

All motions and other business, other than Bills on the Order Paper on the last sitting day of an annual session or last sitting of a term or when the Legislature is dissolved, lapse at the end of that day. Such business may be revived by way of a motion adopted by the House.

14.2 LAPSING OF BILLS ON THE LAST SITTING DAY OF THE ANNUAL SESSION OR TERM OR WHEN THE LEGISLATURE IS DISSOLVED

All Bills introduced in the House and which on the last sitting day of an annual session, appear on the Order Paper for First or Second Reading, lapse at the end of that day unless the Legislature decides otherwise.

All Bills before the Legislature or a committee on the last sitting day of a term of the Legislature or when the Legislature is dissolved, lapse at the end of that day. A Bill may be revived by way of a motion adopted by the House.

15 ROLE OF STAFF

15.1 THE ROLE AND DUTIES OF THE SECRETARY TO THE LEGISLATURE

The Secretary of a legislature¹³ is responsible for ensuring the provision of procedural and related services to Presiding Officers, Members of the House and the House during its proceedings. He/she is the chief editor and accounting officer.

15.2 THE ROLE OF THE SERJEANT-AT-ARMS/USHER OF THE BLACK ROD

The Serjeant-at-Arms/Usher of the Black Rod is responsible for, amongst others–

- the security of the Chamber;
- assisting the Presiding Officer with the maintenance of order in a sitting by removing disorderly persons from the House or galleries;
- recording of Members' attendance, ceremonial and protocol services;
- being the custodian of the Mace/Black Rod, which is the symbol of the authority of the Presiding Officers and the Houses;
- managing Chamber support staff; and
- performing ceremonial duties of the Legislature.

15.3 ROLE OF HANSARD

Proceedings of the House are recorded and transcribed to create a verbatim report known as Hansard. An unrevised copy is made available to Members for perusal. A final bound volume is made available to all Members and all volumes can be obtained from the Library.

15.4 PROCEDURAL STAFF

Procedural staff provides, under the authority of the Secretary to the Legislature, advice to the Presiding Officers and any Member on questions of procedure. Procedural staff, amongst other duties, –

- develop procedural guides and House papers;
- brief Presiding Officers prior the Sitting;
- prepare the Chamber, including systems in the Chamber;
- capture and retain accurate written records of formal decisions and proceedings;
- provide advice and guidance on procedure in the Chamber and related structures;

- provide service and technical procedural advice to internal committees;
- draft rules, motions and other procedural documents;
- process statutory obligations of the Legislature (i.e. relating to appointments to statutory bodies);
- maintain the institutional memory of procedure;
- serve as returning officers during the first sitting of a parliamentary term;
- provide administrative support to Presiding Officers;
- communicate House Resolutions; and
- induct and train Members on procedural issues.

15.5 CLERK OF PAPERS

The tabling of papers in Parliament is done under the authority of the Presiding Officers. The Clerk of Papers is responsible for the co-ordination and administration of the tabling process.

The Clerk of the Papers prepares the relevant entry for publication in the *Announcements, Tablings and Committee Reports* (ATC). Papers that have been handed to the Clerk of Papers are deemed to have been presented to the Legislature on the day on which they are recorded in the ATC.

Papers are tabled –

- to give effect to the constitutional requirement that Members of the Cabinet must provide the Legislature with full and regular reports concerning matters under their control;
- to enable the Legislature to maintain oversight of the exercise of the respective executive authority, including the implementation of legislation;
- to assist the Secretary as the information officer; and
- to give effect to statutory requirements that papers be tabled.

16 ANNEXURES

16.1 NCOP LEGISLATIVE PROCESS

16.1.1 THE NCOP'S LEGISLATIVE MANDATE

The legislative mandate of the NCOP is set out in section 42(4) of the Constitution.

16.1.2 LEGISLATIVE PROCESS

Section 76 Legislation is usually introduced in the NA and referred to the NCOP in terms of section 76(1) of the Constitution. Legislation introduced in terms of section 76(2) of the Constitution is usually introduced in the NCOP and referred to the NA.

16.1.3 MINIMUM SIX-WEEK CYCLE APPLICABLE TO SECTION 76 LEGISLATION

The NCOP follows a minimum 6-week cycle to process legislation affecting provinces (section 76 legislation). The aim of the cycle is to allow provinces the opportunity and time required to process the legislation in terms of the Constitution and their rules. Once introduced, and after a section 76 Bill has followed the due process in the NA, the Bill will be referred to the relevant select committee.

Week 1

- The Minister or department initiating the Bill briefs the Select Committee on the Bill. Special delegates may opt to attend the briefing meetings. If not, the select committee minutes are made available as soon as possible after the meeting via the Parliamentary website. Once the briefing has taken place, the Chairperson of the Select Committee dealing with the Bill usually discusses the process that the committee wishes to follow

with the Programming Whip. Dates are identified for public hearings, as well as the receipt of negotiating and final mandates, and indicated in the programme of the NCOP. A plenary date is also reflected in the programme once confirmation has been received that the relevant Minister is available on the envisaged date.

Week 2

- Permanent delegates are briefed on Bills by relevant government departments. They are then expected to go to their provinces to brief the relevant provincial committees on the Bill prior to their deliberations on the Bill, which take place in week 2 of the cycle. This ensures that relevant provincial committees have the necessary information when they meet in the respective provinces to discuss the Bill.
- The permanent delegate in a specific select committee is responsible for briefing the relevant provincial committee.
- Provincial Briefing Meetings are arranged with the relevant provincial committees which takes place during week 2 of the cycle. The permanent delegate to the NCOP is expected to attend the meeting to brief the provincial committee on the Bill.

Week 3

- Provinces must hold public hearings during this week. In recent years there has been a significant increase in the number of incidences wherein Parliament was faced with legal challenges to legislation due to the lack of both public participation and facilitation of public participation in the legislative process. Following these developments, significant strides have been made in improving and standardising the manner in which public participation in the legislative process is conducted. (See practice note on the LAMOSA Judgement.)
- At the end of week 3, each provincial legislature prepares negotiating mandates using the inputs received from members of the public during the course of the public hearings.

Week 4

- The relevant select committee of the NCOP meets to discuss the negotiating mandates received from provinces. The respective provincial legislatures confer their authorities onto a member of their respective parliamentary delegations to cast votes on their behalves during the select committee meeting. Negotiating, final, or voting mandates must be prepared in the manner and form prescribed by the Mandating Procedure of Provinces Act, Act No 52 of 2008.

When are mandates required?

- The mandates are required in relation to the following Bills:
- Section 64 of the Constitution
- Section 74 of the Constitution
- Section 76 of the Constitution
- Section 78 of the Constitution

Format of mandates

The mandate from the Legislature must contain the following:

- Signature
- Name of Bill
- Number of Bill
- Date of deliberation
- Vote of the Legislature

Members of a select committee meet to deliberate on whether the proposals received from provinces through their negotiating mandates will be accepted or rejected. If these proposals are accepted they will be incorporated into the Bill. This in turn will result in the Bill taking on a new version. For example, if proposals to change the Foreign Mission Bill [B2 - 2019] were to be accepted by the select committee, it would become Foreign Mission Bill [B2B - 2019]. Once amendments are incorporated into a Bill, it is forwarded to provinces for further deliberations.

Week 5

After having considered a revised Bill containing amendments, Provincial legislatures develop their final mandates, which will be discussed by the select committee. These final mandates express respective provinces' final views on the Bill. Each province can either vote in favour of or against the Bill. The select committee considers the final mandates and uses the information contained within to prepare its report on the Bill.

Week 6

A plenary of the House is scheduled wherein voting on the Bill takes place in terms of the voting mandates from provincial legislatures.

In accordance with section 8 of the Mandating Procedure of Provinces Act, Act No 52 of 2008, if no matter arises from the deliberations of the NCOP select committee when considering final mandates which may necessitate consideration by a provincial legislature, the provincial delegation to the NCOP must table its province's final mandate in the NCOP plenary as that province's voting mandate. The delegation head votes on the Bill on behalf of each province.

The six-week-cycle is the minimum time prescribed for processing a Section 76 bill. When necessary, a bill may be dealt with over two cycles, especially if the bill would have substantial impact on the provinces or if extensive public hearings in the provinces are required. However, it is important to identify the date on which the bill is scheduled to be considered in plenary early in the cycle, so that the relevant committee would be able to structure its programme accordingly.

House Decisions Regarding Legislation

Section 76

In the case of Section 76 legislation, each province has one vote cast by the head of delegation. At least five provinces must vote in favour in terms of Section 65 of the Constitution for a decision to be carried.

Section 75

Section 75 legislation is introduced in the NA and referred to the NCOP. It is then referred to the relevant committee for consideration and report, and a copy is submitted to the provincial legislatures for deliberation. There is no need for provinces to develop mandates on section 75 Bills, which are ordinary bills that do not affect the provinces directly. Individual members vote on them according to party mandates. However, all bills are referred to provinces, as they may wish to make inputs. Care is taken to give select committees sufficient time to allow for proper consideration of these bills. The NCOP may propose amendments to any such legislation. However, the NA may either accept or reject the amendments, and there is no mediation process if amendments are rejected by the NA.

Sections 75 and 77

In the case of Section 75 and 77 legislation, each provincial delegate has one vote. At least one third of NCOP members must be present, and a vote is decided by the majority of the votes cast.

Section 74

When dealing with Section 74 legislation, each province has one vote, which is cast by the head of delegation. In order for legislation to pass at least six (6) provinces must vote in favour of the legislation.

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LEGISLATIVE PROCESS

*Induction Handbook for
Members of Parliament and Provincial Legislatures*

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1 OBJECTIVES AND STRUCTURE OF THE COURSE MODULE

Lawmaking is one of the core functions of Parliament and Provincial Legislatures. This module is designed to provide Members of Parliament (MPs) and Members of Provincial Legislatures (MPLs) with information to allow them to immediately function as Members of the Legislative Sector. Members will be introduced to the Legislative Process and the functions of legislatures in lawmaking.

The unit includes information on: Types of Bills, Structure of a Bill, Procedure to be followed when passing a Bill, Referral of Bill for assent and the Post-legislative process.

2 LEGISLATIVE PROCESS

2.1 CONSTITUTIONAL LEGISLATIVE AUTHORITY

The power to draft legislation is the responsibility of Parliament and the Provincial Legislatures, and is enshrined in the Constitution.

National Assembly (NA)

Section 73(1) states that any Bill may be introduced in the National Assembly. Section 44(1)(a) of the Constitution provides the National Assembly with

the power to amend the Constitution and to pass legislation on any matter, including a matter within the functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5 of the Constitution. Subsection (2) allows for the intervention by Parliament, by passing legislation in accordance with Section 76(1), with regard to a matter falling within a functional area listed in Schedule 5 when it is necessary to maintain national security, to maintain economic unity, to maintain minimum national standards required for the rendering of services, or to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.

National Council of Provinces (NCOP)

The NCOP has the power to initiate or pass legislation with regard to any matter within a functional area listed in Schedule 4 of the Constitution, as well as any other matter required by the Constitution to be passed in accordance with section 76(3). The NCOP can also consider, pass, amend, propose amendments to, or reject legislation before the Council.

Provincial Legislatures

The responsibility in respect of the performance with regard to the legislative process differs from province to province, as determined in terms of the Constitution, national legislation, and Rules and Orders of the particular Provincial Legislature concerned.

2.2 TYPES OF BILLS

National Bills

Section 44 of the Constitution provides for the following types of Bills in the national sphere:

- Bills amending the Constitution (section 74);
- Ordinary Bills not affecting provinces (section 75);
- Ordinary Bills affecting provinces (section 76); and
- Money Bills (section 77).

Bills amending the Constitution (section 74)

There are two types of Bills amending the Constitution. They are Bills that affect provinces or Bills not affecting provinces. All constitutional amendment Bills, other than those listed in the paragraph below, only require to be passed by the Assembly, but require that the National Council of Provinces debate the Bill in the Council.

Constitutional amendment Bills that require to be passed by both Houses relate to –

- Amendments to sections 1 and 74(1) of the Constitution;
- Amendments to Chapter 2 (Bill of Rights) of the Constitution;
- Any amendment of any other provision of the Constitution that relates to a matter that affects the Council or that alters provincial boundaries, powers, functions or institutions or that amends a provision that deals specifically with a provincial matter.

If a constitutional amendment impacts on a specific province or provinces, that province or those provinces must approve those amendments for the Bill to be passed by the Council¹. In other words, the affected province(s) has/ have a veto power.

Ordinary Bills not affecting provinces (section 75)

Ordinary Bills not affecting provinces are those types of Bills that are not classified as section 74, section 76 or section 77 Bills. Only the Assembly can amend section 75 Bills, the Council may only propose amendments. These proposed amendments can either be accepted or rejected by the Assembly.

Ordinary Bills affecting provinces (section 76)

The test to determine whether a Bill must be dealt with in accordance with the procedure provided for in section 75 or section 76 has been decided in *Tongoane and Others v Minister of Agriculture and Land Affairs*. The test was confirmed by Ngcobo CJ, in *Tongoane and Others v Minister of Agriculture and Land Affairs* as follows:

"... any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. This naturally includes proposed legislation over which provinces themselves have concurrent legislative powers, but it goes further. It includes Bills providing for legislation envisaged in the further provisions set out in section 76(3) (a)-(f), over which the provinces have no legislative competence, as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 remains relevant to all Bills that do not, in substantial measure, affect the provinces. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3) (a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence." [Emphasis]

Ordinary Bills affecting provinces are those Bills that fall within a functional area listed in Schedule 4 or envisaged in sections 44(2), 65(2), 163, 182, 195(3) and (4), 196, 197 and 220(3) of the Constitution.

Section 44(2) provides for intervention by Parliament with regard to a matter falling within the functional area listed in Schedule 5; section 65(2) deals with the uniform procedure on how provincial legislatures confer authority to vote on their NCOP delegations; section 163 deals with national legislation to recognise national and provincial organisations representing municipalities; section 182 regulates the functions of the Public Protector; section 195(3) and (4) details the values and principles governing public administration;

section 196 deals with the Public Service Commission; section 197 is on the Public Service and section 220(3) deals with the establishment of the Financial and Fiscal Commission.

Money Bills (section 77)

A Money Bill is a Bill that appropriates money; imposes national taxes, levies, duties or surcharges; abolishes or reduces, or grants exemptions from any national taxes, levies, duties or surcharges; or authorises direct charges against the National Revenue Fund.

A Money Bill follows a section 75 procedure through Parliament. Only the Minister responsible for national financial matters may introduce a Money Bill or a Bill dealing with equitable shares and allocations of revenue. The precise process of considering and amending Money Bills is set out in the Money Bills Amendment Procedure and Related Matters Act (No 9 of 2009).

Provincial Bills

The Constitution provides for the following types of provincial Bills²:

- Provincial Bills falling within a functional area listed in Schedule 4 (matters of concurrent national and provincial legislative competence);
- Provincial Bills falling within a functional area listed in Schedule 5 (matters of exclusive provincial competence);
- Provincial Bills on any matter falling outside of Schedule 4 or 5 that has been expressly assigned to a province by national legislation; and
- Provincial Bills on any matter for which the Constitution (expressly) envisages the enactment of provincial legislation (for example, Money Bills).

A provincial Money Bill is defined³ as a Bill that appropriates money (i.e. the provincial budget or the adjustments budget(s)); imposes provincial taxes, levies or surcharges; abolishes or reduces, or grants exemptions from any provincial taxes, levies, duties or surcharges; or authorises direct charges against a Provincial Revenue Fund.

70 ² See section 104 of the Constitution

³ See section 120

A Provincial Legislature cannot amend a provincial Money Bill, unless a provincial Act that provides for the procedure has been enacted⁴.

2.3 STRUCTURE OF A BILL

Cover page

The cover page of a Bill contains the title of the Bill, the number of the Bill, details of the Government Gazette in which the Bill was published, the proposed classification of the Bill and the relevant Minister responsible for the Bill⁵.

The cover page of a provincial Bill is likely to look somewhat different, depending on the requirements of the Standing Rules of the particular Provincial Legislature. Prior publication of a provincial Bill in the provincial Gazette varies as a prerequisite and this function may be performed by the legislature once the Bill is tabled, depending on the relevant Provincial Legislature's rules. The cover page of a provincial Bill is therefore likely to only reflect the title of the Bill, the year in which it was tabled and the MEC responsible for the Bill (or the responsible Member or Committee).

Long title

The long title is a summary of the objectives of a Bill and usually mentions the most important provisions of the Bill in broad terms. The different objectives or purposes are separated by semi-colons and a phrase such as "and to provide for matters connected therewith" may be used at the end to include miscellaneous related matters. If the Bill is an amendment Bill that amends other Acts, then the long title will mention which Acts will be amended, once the Bill is enacted.

⁴ See section 120(3)

⁵ National Assembly Guide to Procedure, 2004

Preamble

The preamble is a formal statement containing information regarding the background to the law, the reasons for its adoption and the objectives to be achieved. Inserting a preamble into a Bill is optional.

Enacting provision

The enacting provision provides for Parliament or the Provincial Legislature to declare that it is enacting the law. It appears after the long title and the preamble, but before the beginning of the substantive provisions of the Bill.

Table of Contents

The table of contents appears immediately after the enacting provision. Dividing the legislation into chapters, parts and clauses is a useful tool to enhance accessibility and understanding of lengthier Bills.

Definitions

Clause 1 of a Bill usually contains definitions of words used in the Bill. The purpose of definitions is to clarify the meaning of terms used in the Bill, to assist the reader in interpreting the Bill. They do not contain substantive provisions and are arranged alphabetically.

Clauses

A Bill consists of numbered parts called clauses and sub-clauses. Each clause has its own heading and should follow a logical sequence. The clauses contain the substance of the Bill. They can confer rights or powers, or impose duties on bodies and persons and are usually set out in detail in the clauses of the Bill.

Short title

The short title of a Bill is the name of the Bill that will be signed into law by the President, in the case of national legislation or the Premier, in the case of provincial legislation. The short title will also provide information on the commencement of the Act.

Schedule

The schedule appears after the short title of a Bill and contains information about laws that will be repealed or amended when the Bill is signed into law.

Explanatory Memorandum

The explanatory memorandum of a Bill provides a background to the Bill and explains the objects of each clause or group of clauses in detail. The memorandum also includes information on parliamentary procedure relating to an opinion by the State Law Adviser and the relevant government department on the classification of the Bill. In the case of provincial Bills, the classification of Bills is not required.

The State Law Adviser can indicate whether the Bill should be referred to the National House of Traditional Leaders, if the Bill contains provisions pertaining to customary law or customs of traditional communities. For provincial Bills, a referral to a provincial House of Traditional Leaders may be required if provincial legislation to this effect was enacted by a particular province.

INTRODUCTION OF BILLS

WHO MAY INTRODUCE A BILL

National Assembly

Only a Minister, Deputy Minister, member, or committee of the Assembly may introduce a Bill in the Assembly. However, only the Minister responsible for national financial matters may introduce a Money Bill or a Bill dealing with the equitable shares and allocation of revenue in the Assembly.

National Council of Provinces

A member or committee of the Council may introduce a section 76(2) Bill in the Council. A Minister or Deputy Minister may initiate introduction of a Bill in the Council through a delegate or a committee of the Council.

Provincial Legislature

A member of the Executive Council of a province (MEC) or a committee or a member of a Provincial Legislature may introduce a Bill in the Provincial Legislature, but only the MEC for Finance may introduce a money Bill⁶.

2.4 PROCEDURE TO BE FOLLOWED

Introduction of Draft Bill

In terms of Joint Rules of Parliament, a Cabinet member or Deputy Minister who intends introducing a Bill in the Assembly or who initiates the introduction of a Bill in the Council must submit a draft Bill as approved by Cabinet to the Speaker and the Chairperson. The Speaker and the Chairperson must refer the draft Bill to the relevant Portfolio Committee and Select Committee and provincial legislatures in order to assist committees and legislatures to plan their work and acquaint themselves with the proposed legislation.

Whether or not a draft provincial Bill is required to be introduced in a Provincial Legislature will depend on the requirements in terms of the standing rules of that particular legislature.

Process in the National Assembly

Bills falling under sections 74, 75, and 77 of the Constitution may only be introduced in the Assembly. Bills falling under section 76 (Bills affecting provinces) may be introduced in the Assembly under section 76(1).

All Bills introduced in the House are allocated a Bill number in terms of the sequence of introduction for a particular annual session e.g. [B1 – 2019]. The B denotes that it is a Bill; 1 denotes that it is the first Bill to be introduced and 2019 denotes the year of introduction.

Once a Bill has been introduced, the House may, upon the request of the person introducing the Bill, debate the principles of a Bill. This debate is known as the First Reading of a Bill. If the First Reading took place, the Bill is referred to a committee for consideration and report to the House.

74 ⁶ See section 119 of the Constitution.

Referral to Joint Tagging Mechanism (JTM) for classification

When a Bill is introduced in Parliament, it must without delay be referred to the JTM for classification of the Bill as either a section 74, 75, 76 or 77 Bill. The JTM consists of the Speaker and Deputy Speaker of the Assembly and the Chairperson and permanent Deputy Chairperson of the Council and is advised by Parliament's Constitutional and Legal Services Office. The findings of the JTM are published in the Announcements, Tablings and Committee Reports (ATC) document. A committee to which a Bill has been referred may report to the Assembly or the Council only after the JTM has classified the Bill. This process is not required for provincial Bills.

Referral to Committee: National Assembly

The referral of a Bill to a committee usually happens simultaneously with its referral to the JTM for classification. The committee is briefed by the relevant government department. The purpose of the briefing is to provide information on the background, policy position and objectives of the Bill under consideration. The briefing provides members with an opportunity to ask clarity-seeking questions on the content of the Bill.

The committee is required to facilitate public participation on the Bill. It does this by inviting submissions from the public on the Bill. After the committee has considered the submissions made by the public, it analyses the submissions and sees how the Bill can be amended, if required. The committee considers and votes on amendments proposed, clause by clause. The committee compiles a list of approved amendments (known as the A-list, if the legislative process started in the NA) and the committee compiles its report on the Bill. The A-list is sent for printing and incorporation into the original version of the Bill. After the A-list is incorporated into the Bill, a new version of the Bill (B-version) is published and put before the committee, along with its report for consideration. If the report and the amended Bill are adopted by the committee, the report is published in the document referred to as Announcements, Tablings and Committee Reports for information for all members and the public. The B-version of the Bill is sent for printing and distribution.

The report and the Bill are then placed on the Order Paper of the House, for consideration and second reading respectively. The stage in the Assembly, when it considers a Bill after the committee's consideration is called the Second Reading of a Bill. If the House agrees that the Bill should be read a second time, the Secretary reads the short title of the Bill in the House. The Bill is considered to be read a second time and referred to the NCOP for concurrence.

PROCESS IN THE NCOP

Bills not affecting provinces

The NCOP deals with Bills referred to it by the NA for concurrence. These are Bills introduced in terms of sections 74, 75, 76(1) and 77. Bills not affecting provinces follow a similar process as in the NA. A Bill referred to the NCOP is referred to a committee by the Chairperson for consideration and report to the House. The committee facilitates relevant public participation on a particular Bill. Once the committee has finalised the consideration of the Bill, the Bill, together with the report of the committee, is placed on the Order Paper for consideration by the House.

If the NCOP passes a Bill referred to it for concurrence without proposing amendments, the Bill will be referred to the President for signature and assent. If the NCOP proposes amendments to a Bill, the Bill, together with the proposed amendments, is referred back to the NA. The NA may either accept or reject the proposed amendments. If the NA passes a Bill with or without amendments, the Bill is referred to the President for assent.

Bills affecting provinces (section 76(1) and 76(2))

A Bill affecting provinces which has been introduced in the NA must be dealt with in terms of section 76(1) (see process outlined above for Bills not affecting provinces for NA part of procedure).

A Bill affecting provinces introduced in the NCOP must be dealt with in terms of section 76(2). The NCOP has the power to amend Bills affecting provinces. The minimum period for dealing with a Bill affecting provinces in the NCOP is six weeks. If the Bill is introduced in the NCOP and the Council passes the Bill, it is transmitted to the Assembly for concurrence.

Adoption of a Bill without amendments

If the NA passes the Bill introduced in the Assembly in terms of section 76(1), the Bill is referred to the NCOP for consideration and adoption. On receipt of the Bill, the Chairperson of the NCOP refers it to a committee for consideration and report. The Chairperson of the NCOP also refers the Bill to the Provincial Legislature for conferral of authority to negotiate and vote on the Bill (negotiating and final/voting mandates). The committee and the provincial legislatures are required to facilitate public involvement in the legislative process.

Briefing to the Council's select committee

After a Bill has been referred to the provincial legislatures, the permanent delegates are required to brief the relevant committee in the Provincial Legislature on the contents of the Bill. The department that introduced a Bill may be invited to a briefing by the permanent delegate. This, where possible, usually happens during the first week after the department has briefed the NCOP committee.

Public Involvement in provinces

The NCOP and the provincial legislatures are constitutionally required to facilitate public involvement in the processing of a Bill (usually during the second and third weeks after the referral of the Bill). (See Guidelines and the Public Participation Module and Model.)

Consideration of negotiating mandates by the Council's Select Committee

After the public hearings in provinces, a committee designated by a Provincial Legislature must confer a negotiating mandate on its provincial delegation to the NCOP, in accordance with the procedures prescribed in the Mandating Procedure of Provinces Act, 2008 and the Standing Rules of the relevant legislature. The negotiating mandate is a negotiating position of a province. At this stage, provinces may persuade each other to adopt a particular position.

In their negotiating mandates provinces may propose amendments to a Bill. Amendments proposed to the Bill in the negotiating mandates are put per province for consideration. The delegates are required to report back to their provincial legislatures on the outcome of the negotiations.

Final mandates

If, after negotiations, the committee agrees to a Bill without any amendments, the delegates must request the Provincial Legislature to confer authority to vote on a Bill at committee stage. This is referred to as final mandates. A final mandate is the final position of a province on whether its delegation in the NCOP is to agree or reject the Bill, or abstain from voting on a Bill. For a committee to agree on a Bill, at least five provinces must support the Bill.

Once the committee has finalised the consideration of the Bill, the Bill, together with the report of the committee, is placed on the Order Paper for consideration by the House. If the House adopts a Bill without amendments, the Bill is referred to the President for signature and assent.

Where, after negotiations, the committee adopts the Bill with amendments, the minutes of the committee, together with a list of proposed amendments and the Bill, are sent to the provincial legislatures to confer a final mandate on the proposed amended version of the Bill. The list of amendments

is referred to as the “A-list”, depending on how many times the Bill was amended. Assuming that a Bill as referred to a committee was numbered [B1 - 2019], the amended Bill number will change to [B1B – 2019]. For instance, if it is the second amendment to the Bill, the list will be referred to as the “C-list”. In this instance the Bill number will change to [B1D - 2019].

The Provincial Legislatures may either accept or reject the proposed amendments. Either way, the Provincial Legislature must confer a final mandate on the delegates. Once a final mandate has been conferred, there are no negotiations. This will be the final position of a province. Unlike the negotiating mandate, the final mandate is conferred by the House. If at committee stage nothing changes, the final mandate becomes a voting mandate. That mandate will be used for voting in the House.

Once the committee has finalised the consideration of the Bill, the Bill, together with the report of the committee, is placed on the Order Paper for consideration by the House. For a Bill to be adopted by the House, at least five provinces must vote in favour of that Bill. If the House adopts a Bill, with amendments, the Bill is referred back to the NA for consideration.

Process before NA after the amended Bill is referred back

If the NA passes the amended Bill, the Bill must be submitted to the President for assent and signature.

If the Council rejects the Bill or if the Assembly refuses to pass an amended Bill from the Council, the Bill or the amended Bill must be referred to the Mediation Committee.

The Mediation Committee consists of members of the Assembly and the Council. The Mediation Committee has 30 days within which to agree on a version of the Bill, either as passed by the Assembly, or as passed by the Council, or a new version of the Bill.

If the Mediation Committee agrees on the version passed by the Assembly, the Bill is referred back to the Council. If the Council passes the Bill, the Bill is sent to the President for assent and signature.

If the Council does not pass the Bill, the Bill lapses unless the Assembly passes a version of the Bill as initially adopted by it with a two-thirds majority. The Bill is thereafter sent to the President for assent and signature.

If the Mediation Committee agrees on the version passed by the Council, the Bill is referred back to the Assembly. If the Assembly passes the Bill, the Bill is sent to the President for assent and signature. If the Assembly does not pass the Bill, the Bill lapses unless the Assembly passes a version of the Bill as initially adopted by it with a two-thirds majority. The Bill is sent thereafter to the President for assent and signature.

If the Mediation Committee agrees on a new version of the Bill, the Bill is referred to both the Assembly and the Council. If the Bill is passed by the Assembly and the Council, the Bill is sent to the President for assent and signature.

Process in the Council

In the case of section 76 Bills (ordinary Bills affecting provinces), each province has one vote at the NCOP plenary, which is cast by the head of its delegation, and at least five provinces must vote in support of a Bill for it to be passed by the NCOP. In the case of section 74 Bills (Bills amending the Constitution), at least six provinces must vote in support of a Bill for it to be passed by the NCOP.

In respect of section 76(1) Bills, the Council may pass the Bill, pass an amended Bill or reject the Bill. If the Council passes the Bill without amendment, the Bill is submitted to the President for assent and signature. If the Council passes an amended Bill, the Bill must be referred to the Assembly. If the Assembly passes the amended Bill, the Bill must be submitted to the President for assent and signature.

The Council follows a minimum of a six-week cycle as a guide to process Bills. The cycle may be extended subject to approval by the Chairperson of the Council. The cycle includes the following steps:

- Briefing to the Council's select committee by the department (week 1);
- Briefing by Council delegates to provincial committees (week 2);
- Provincial public hearings (weeks 3 and 4);
- Consideration of negotiating mandates by the Council's select committee (week 5);
- Consideration of final mandates by the Council's select committee (week 6); and
- Consideration of voting mandates by the Council.

Below is a graphic representation of the NCOP Six-Week Cycle, which is discussed in the following section:

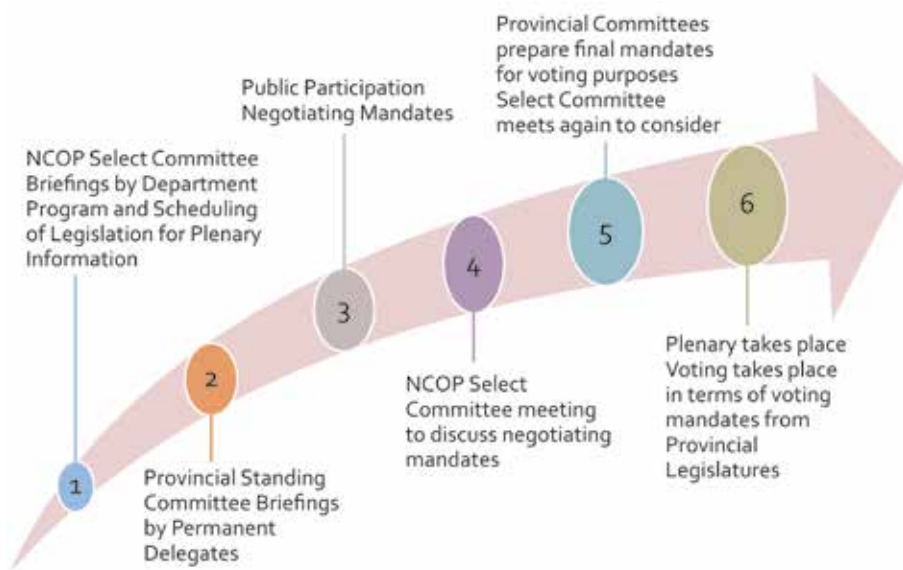


Figure 1: NCOP Six-Week Cycle

Note: The depiction of the NCOP Six-Week cycle in Figure 1, deals with the minimum turnaround time to process a Bill. See Practical Guide on Public Involvement Module for more information.

INTRODUCTION OF BILL

Provincial Legislatures

Provincial Bills must be introduced in the legislature concerned in accordance with the Standing Rules of that legislature. This may differ from legislature to legislature.

The language requirements for provincial Bills will be determined by the provisions of the Standing Rules of the relevant Provincial Legislature. However, these requirements must be consistent with the Constitution of the RSA, 1996 and any provincial legislation enacted in terms of section 6(4) thereof to determine the official languages of that province. Section 6(3)(a) of the Constitution specifically provides that (provincial) governments may use any of the official languages, taking into account factors such as usage, needs and preferences, but must use at least two official languages.

PUBLIC INVOLVEMENT (PUBLIC PARTICIPATION)

Parliament

The Assembly and the Council are obliged in terms of the Constitution to facilitate public involvement in their legislative and other processes (section 59 and section 72). Public involvement may take different forms, including but not limited to public hearings, a call for written submissions, and the issuing of press releases. Public hearings may be held at Parliament or in provinces. In the case of the Council considering section 76 Bills, public involvement may either be facilitated by the Council or by the provincial legislatures. However, the onus still rests with the Council to ensure that provincial legislatures facilitate public involvement (see *Doctors for Life International*).

PUBLIC INVOLVEMENT (PUBLIC PARTICIPATION)

Provincial Legislatures

A Provincial Legislature is similarly required, in terms of section 118 of the Constitution, to facilitate public involvement in its legislative processes. This usually takes the form of public hearings. Further particularity may be prescribed in the Standing Rules of the particular legislature.

Committee Deliberations

Members of the Committee discuss the public inputs received and/or made during the public hearings. Members' views are expressed on the Bill. The department responds to questions and expresses the Executive view on whether amendments put forward could be implemented. The Committee considers each clause of the Bill through comments, questions or proposal of amendments.

After deliberating on the Bill, the Committee votes on the Bill. In some instances, the Chairperson will put the motion of desirability to signal the start of the Committee's voting on the Bill. The motion consists mainly of the long title of the Bill. The putting of the motion signals the beginning of voting on the content/clauses of the Bill.

The Committee votes clause-by-clause on the Bill. Amendments to clauses are also put for decision, whereafter the clause, as amended, is put for adoption. After the Bill has been agreed to, the Committee reports to the House on the Bill.

Where a Bill has been amended, the Parliamentary Legal Adviser is responsible for drawing up the list of amendments. The Committee Secretary ensures that the amended Bill is produced and that the list of amendments and the amended Bill are printed. These products are referred to as the proof copies of the Bills.

These processes, read with the changes required by the context, may equally apply to provincial Bills, depending on the Standing Rules and practices of the particular legislature.

Committee Report

After voting on the Bill, the Committee adopts a report. In its report the Committee must indicate whether it recommends approval of the Bill, with or without amendments, or the rejection of the Bill. The Rules of the Assembly and the Council provide that in its report, a Committee must, if it is not a unanimous report, specify in which respects there was no consensus and, in addition to the majority report, express the views of any minority concerned.

In the case of a Portfolio Committee of the Assembly, a question may be decided only if a majority of members is present and there is agreement among the majority of the members present. In the case of a Select Committee of the Council dealing with a question on a section 75 Bill, the question is decided only if a majority of the permanent delegates of the Committee is present and on the basis of the majority of votes cast.

In the event of an equality of votes, the Chairpersons of the Portfolio Committee and the Select Committee can exercise a casting vote in addition to the deliberative votes as ordinary members of the committees.

These processes, read with the changes required by the context, may equally apply to provincial Bills, depending on the Standing Rules and practices of the particular legislature. The issue concerning a quorum and the decision on a provincial Bill in committee may differ from legislature to legislature.

In terms of the Constitution (section 112), a majority of the members of a Provincial Legislature must be present before the House may vote on a Bill or an amendment to a Bill, and all questions in the House are decided

by a majority of the votes cast. A province's permanent delegates to the NCOP may attend and speak in a Provincial Legislature, but may not vote (section 113). The House has the final say on a provincial Bill and may consider, pass, amend or reject any provincial Bill before it (section 114(1)).

Where amendments are of such an extensive nature, the Committee may choose to submit a redrafted version of the Bill referred to it.

After a Committee has agreed to the Bill with or without amendments, the Committee's report is published in the ATC document. Thereafter the amended Bill is placed on the Order Paper for consideration by the House.

3 POST LEGISLATIVE PROCESS

3.1 REFERRAL OF BILLS TO PRESIDENT OR PREMIER FOR ASSENT

In terms of the Joint Rules of Parliament when the official text of a national Bill is sent to the President for assent, it must be accompanied by the official translation/s of the Bill.

Once a provincial Bill is passed by a legislature, the Bill is referred to the Premier of that province for assent. A Bill assented to by the Premier becomes a provincial Act, must be gazetted promptly and takes effect when published or on a date determined in the Act. The Standing Rules of a Provincial Legislature may contain requirements regarding certification of the official text of a Bill prior to referral of the Bill to the Premier, as well as the translations that must accompany the official text.

The President/Premier, upon receipt of the Bill, may either assent or send it back to the NA or the Provincial Legislature for reconsideration if he or she has reservations about the constitutionality of the Bill⁷.

⁷ Section 79 and 121 of the Constitution

After reconsideration, depending on whether the President/Premier's reservations have been addressed, he or she may either assent to and sign the Bill or refer the Bill to the Constitutional Court for decision on the Bill's constitutionality. If the Constitutional court agrees that the Bill is indeed constitutionally compliant, the President must sign the Bill into law.

4 CONCLUSION

Although the legislative processes outlined above only focus on Bills to which section 75 and 76 of the Constitution apply, section 74 and 77 Bills are not considered as frequently as section 75 and 76 Bills. The Money Bills Amendment Procedure and Related Matters Act (No 9 of 2009) provides guidance on the procedure for money Bills to be considered and amended by Parliament.

It is hoped that this module will provide enough information to new and incoming members of Parliament and the Provincial Legislatures to enable them to function from the beginning of the parliamentary term.

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APPENDIX 1: GLOSSARY

Chairperson means a chairperson of a Committee who is appointed by the Committee in terms of the Rules.

Chairperson of the National Council of Provinces (NCOP) means the Principal Office Bearer and Presiding Officer in the National Council of Provinces, as selected in terms of Section 64 of the Constitution.

Chapter 9 Institutions means state institutions established to strengthen constitutional democracy as set out in the Constitution.

Chief Whip of the Majority Party in the National Assembly (NA) refers to a Member who is designated by his/her party to assist in the smooth running of the party and functioning of the House. He or she organises party business and maintains party discipline.

Chief Whip of the NCOP refers to a member elected in terms of Rule 13 who, in terms of Rule 22, arranges the business of the Council.

Constitution means the Constitution of the Republic of South Africa.

Elective means parts of studies that form a unit.

Executive Action means anything done by a Member of the Cabinet in terms of the powers given or delegated to that Member.

Executive Authority (a) in relation to a National Department, means the Cabinet Member who is accountable to Parliament for that Department, and (b) in relation to a National State Owned Entity, means the Cabinet Member who is accountable to Parliament for that Public Entity or in whose Portfolio it falls.

Financial Management of Parliament Act, No 10 of 2009 in the context of the separation of powers, aims to give the Houses control over their own finances, in addition to the control that they have over their own internal arrangements, proceedings and procedures; however, compliant with the constitutional value of transparency, accountability and effective financial management along uniform expenditure classifications and treasury norms and standards.

Government of the Republic means the Executive arm of the State in the National, Provincial and Local spheres, which are distinctive, interdependent and interrelated (Section 40 (1)).

House Chairperson means the Chairperson appointed by the House as provided for in the Rules for the duration of the House (NA Rule 14 and NCOP Rule 9).

Joint Rules means the rules referred to in Section 45 (1) of the Constitution. Module means a standard period or course of training.

National Assembly (NA) means the House of Parliament that is elected to represent the people and ensure government by the people under the Constitution. It does this by electing the President, by providing a national forum for public consideration of issues, by passing legislation and scrutinising and overseeing Executive action (Section 42 (4) of the Constitution).

National Council of Provinces (NCOP) means the House of Parliament that represents the provinces to ensure that provincial interests are taken into account in the national sphere of Government by participating mainly in the national legislative process and providing a national forum for public consideration of issues affecting the provinces (Section 42 (4) of the Constitution).

National Government means the national Executive established by Chapter 5 of the Constitution, and includes all national organs of the State.

Organ of the State means organ of the state as defined in Section 239 of the Constitution.

Oversight means formal, watchful, strategic and structured scrutiny exercised by Parliament in respect of the implementation of laws and policies, the use of the budget, the strict observance of statutes and the Constitution, thoroughness of the supervision of finances and the effective management of the area of responsibility of each Member of the Executive when using the Executive Authority assigned to that Member in order to discharge the given responsibility.

Parliament means both the National Assembly and the National Council of Provinces.

Rules means rules according to which the National Assembly and the National of Council of Provinces operate, and adopted by the respective House.

Section 74 Bill means a Bill that deals with amendments to the Constitution and to which the procedure prescribed in Section 74 of the Constitution applies.

Section 75 Bill means an ordinary Bill that deals with the functional areas of exclusive national legislature competence to which the procedure prescribed in Section 75 of the Constitution applies.

Section 76 Bill means an ordinary Bill that deals with the functional areas of concurrent national and provincial competencies to which the procedure prescribed in Section 76 of the Constitution applies.

Speaker means the Principal Office Bearer in the National Assembly or Provincial Legislature, as elected in terms of the Constitution and Provincial Standing Rules and Orders.

Unit means a standard of training measurement.

APPENDIX 2: LIST OF ACRONYMS

AR	Assembly Rules
ATC	Announcements, Tablings and Committee Reports
CIP	Comprehensive Induction Programme
HC	House Chairperson
FMPA	Financial Management of Parliament Act
IGRA	Inter-Governmental Relations Act
ISDs	Institutions Supporting Democracy
JRC	Joint Rules Committee
JTM	Joint Tagging Mechanism
LOGB	Leader of Government Business
MEC	Member of the Executive Council
MOP	Minutes of Proceedings
MP	Member of Parliament
MPL	Member of the Provincial Legislature
NA	National Assembly
NCOP	National Council of Provinces
OP	Order Paper
P	Paragraph
PC	Portfolio Committee
PFMA	Public Finance Management Act
PO	Presiding Officers
PIIPPLA	Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004
SALS	South African Legislative Sector
SC	Select Committee
SEC	Section of the Constitution or Act
SOP	Standard Operating Procedures
SWP	Standing Working Procedures



COMMITTEE PROCEDURES, PRACTICE AND SYSTEMS

*Induction Handbook for
Members of Parliament and Provincial Legislatures*
(2nd Edition)

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1 INTRODUCTION

The legal rationale for the existence of oversight committees originates from section 55 (2) and 114 (2) of the Constitution which provides respectively that the National Assembly (NA) and Provincial Legislatures must provide mechanisms to ensure that the executive is accountable and to maintain oversight over the executive authority and organs of state. In addition, sections 57(2) and 116(2), applying to the National Assembly and the Provincial Legislatures obligates that the Rules, Orders of the National Parliament, and the Provincial Legislatures provide for the establishment, composition, powers, functions, procedures and duration of committees.

Committees must consider and report to the House any matter that is referred to them. Committees can only take decisions on their internal matters but must make recommendations to the House through the reports on any other matter that is referred to them except where such provision is provided by statutes.

2 ESTABLISHMENT OF COMMITTEES

The Rules and orders of a Legislature¹ enables it to configure the type of committees to be established and allocate Members accordingly. In respect of their proceedings, committees are microcosms of the House and are limited in power by the extent of the authority delegated to them in terms of the rules, the Constitution or any other law.

94 ¹ Where the word Legislature/s is mentioned this also refers to Parliament as well.

2.1 COMPOSITION OF PARLIAMENTARY COMMITTEES

The composition of committees broadly reflects the numerical strengths of parties represented in the legislature. Broadly speaking, committees must develop expertise, gather information and do detailed work that must underpin properly informed decisions. This necessitates an element of developing capacity through benchmarking, study opportunities of various systems with the caveat that benchmarking must be coordinated, value for money effective and relevant to their operations.

2.2 TYPES OF LEGISLATURE COMMITTEES

A legislature may establish the following types of committees:

- Portfolio/Select and Standing Committees assigned oversight over a portfolio of government affairs or committees with a specific brief stipulated in the Standing Rules and Statutes.
- Ad hoc Committees established by resolution of the House for the performance of a specific task within a specified period.
- Joint Committees: The NA and NCOP can establish joint committees to deal with matters affecting both Houses.
- Committees dealing with the internal business of the legislature (inter alia Rules, Programming, etc).
- Subcommittee: Applicable rules and orders of a legislature would make a provision for the establishment of the subcommittee.

2.3 POWERS AND FUNCTIONS OF A COMMITTEE

A committee has the power to report and make recommendations to the House. It makes recommendations to the legislature on matters it has considered, but cannot take binding decisions. An exception to this would be when a committee is given a specific (special) power by statute in performing their oversight functions. Committees must maintain oversight of –

- the executive authority falling within its portfolio, including the implementation of legislation;

- any executive organ of state falling within its portfolio, and
- any other body or institution in respect of which oversight was assigned to it.

Committees may monitor, investigate, enquire into and make recommendations concerning any such executive organ of state or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such executive organ of state, institution or other body.

Committees may consult and liaise with any executive organ of state, institution or other body within the national, provincial or local sphere of government, and although some of these powers and functions are contained in the Constitution, the Standing Rules may authorise committees to:

- summon any person to appear before it to give evidence, or to produce documents;
- initiate and introduce legislation other than money Bills;
- consider Bills referred to it;
- recommend whether a Bill must be approved or rejected;
- receive petitions, representations or submissions from interested persons or institutions;
- conduct public hearings;
- permit oral evidence on petitions, representations, submissions and any other matter before the committee;
- investigate and report on matters referred to it or on its own initiative;
- determine its own procedure subject to the approval of the Presiding Officer;
- meet at a venue determined by it, which may be a venue away from the seat of the Legislature;
- establish sub-committees, if so authorised by the Rules; and
- Exercise any other powers assigned to it by the Constitution, legislation, the Standing Rules or resolutions of the House.

A committee is confined to its terms of reference as stipulated by the Resolution of the House. A committee may accordingly not consider or enquire into or report on any matter which does not fall directly within the subject for which it was appointed, as stated or implied in its terms of reference, or which is not based on a paper which has been referred to it.

2.4 THE ELECTION AND ROLE OF THE CHAIRPERSON

Unless the Rules provide otherwise, a committee must elect one of its members as the chairperson of the committee. In an event the chairperson of a committee is absent or unable to perform the functions of chairperson, the committee may elect another of its members as acting chairperson unless Rules and Orders of the Legislature provide otherwise. The elected Chairperson of a committee must ensure that the meeting or hearing at which he or she presides is conducted in accordance with the Legislature Rules and Orders.

The Chairperson, as the leader of a committee, has a responsibility to implement the mandate of a committee by organising and planning its work, taking into account the following:

- Consideration of legislation;
- Oversight of executive action; and
- Facilitating public participation.

The Chairperson should amongst other roles:

- Preside over meetings of a committee and direct its proceedings in accordance with the Rules and Orders. This includes guiding the committee on matters before it and ensuring that all members have an equal opportunity to be heard;
- Determine the agenda of the meeting;
- Draft the committee programme in consultation with committee members;
- Call meetings of a committee in accordance with the Parliamentary Programme and the directives of the programme committee;
- Enforce the observance of order and decorum among members;

- Act on behalf of, and take decisions for, a committee when it is not practically possible for a committee to meet. In doing so, the Chairperson must act in the best interests of the committee and must report to the committee on all decisions taken on its behalf;
- Interrupt, suspend or adjourn meetings of a committee if necessary;
- Call persons, including the Executive, to give evidence or to present themselves before the committee to answer questions or to make representations, and is responsible for informing persons appearing before the committee of their rights and obligations; and
- Act as a spokesperson for the committee and represent the committee in all the forums where required.

3 COMMITTEE BUSINESS

In pursuit of the Constitutional imperative to provide effective, transparent, accountable and coherent government, the Legislature conducts oversight and holds the Executive accountable through its committees.

In respect of quorums and decisions, a committee may proceed with business irrespective of the number of members present. However, when a decision has to be made a simple majority of members must be present. Legislature committees are, in terms of the Rules and Orders, assigned specific functions in carrying out the constitutional mandate of the Legislature. Key functions are more about maintaining oversight over the performance of government departments in rolling out their service delivery programmes, implementation of the laws passed and on how they involve members of the public in their activities.

However, there are limitations in terms of the Rules with regard to the access of the public in committee meetings.

In summary, Legislature Committees are required to:

- Review, monitor and evaluate Departmental policies;
- Review Annual Performance Plans and Budgets;
- Consider Departmental Quarterly and Annual Reports;
- Examine the link between the policy (sector plan) and budget (business plan); and
- Monitor the implementation of plans and applicable legislation.

Note: Refer to Law-Making, Public Participation, Oversight and Accountability modules.

4 GOVERNANCE AND MANAGEMENT OF COMMITTEES

4.1 STANDING RULES

Legislatures have committees, which are responsible for, inter alia, developing the procedures, rules, orders and practices concerning the business of the Legislature. The committee often referred to as the Rules Committee in Legislatures and/or the Joint Rules Committee in Parliament. With specific regard to committees of legislatures, the establishment and composition of committees, appointment procedures, role of chairpersons, alternates and substitutes, quorum, decisions, powers and functions of committees, role of sub committees etc, are some of the critical issues that may be covered in the Standing Rules.

4.2 GOVERNANCE STRUCTURES

In respect of their proceedings, committees are microcosms of the House itself and are limited in power by the extent of authority delegated to them. They are governed for the most part in their proceedings by procedures and practice which reflect those prevailing in the House.

Presiding officers

The Executing Authority provides political and strategic leadership of the legislatures. They oversee the overall activities of the legislature, including committees.

Rules Committee

The decision making body which is chaired by the Speaker. Their decisions have impact on the work of committees. The Rules Committee also recommend/appoint and constitute oversight committees.

Whips Forum

The committee constituted by the Chief Whip (majority party) and whips/ political party representatives of the parties represented in the legislature. One of its responsibilities is to ensure communication and cooperation amongst the political parties represented in the legislature who constitute the committees. This results in increased performance of the legislature and its committees.

The Chief Whip of the majority party is responsible for political interface among parties in the Legislature.

Programme Committee

The programming committee ensures synergy amongst the different components and stakeholders involved in the activities of the Legislature i.e. the Executive Council, Legislature and relevant stakeholders. This is the committee responsible for making decisions regarding activities of the Legislature and overseeing the implementation of the programme.

Joint Programming Committee

The committee responsible for joint planning of the activities of the National Assembly (NA) and the National Council of Provinces (NCOP). The Provincial Legislatures also participate in this committee and are represented by the Chief Whips and Chairpersons of the Joint Programming Committees.

House Chairperson of Committees²

The Office of the House Chairperson plays a critical role in overall coordination and management of Committees. The work of the House Chairperson Committees entails administrative management of committees through implementation of the Oversight and Accountability Model and other institutional prescripts.

One of the designated responsibilities is presiding over the Committee of Chairpersons. The Chairpersons of Committees may make recommendations to the Rules Committee or the Programme Committee regarding any matter affecting the scheduling or functioning of any committee, subcommittee or other forum.

The House Chairperson is also responsible for developing guidelines and procedures for the overall and effective functioning of committees. Committee activities are informed by responsibilities and mandates of the respective portfolio of departments as informed by the relevant departmental Annual Performance Plans.

4.3 MEETINGS THAT REQUIRE SPECIAL APPROVAL AS REQUIRED BY THE STANDING RULES

- Meetings during time allocated for the sitting of the House;
- Meetings away from Parliament;
- Meetings during time allocated for a constituency period;
- Meetings during time allocated for study groups;
- Meetings during time allocated for party caucuses/training of MPs; and
- Meetings during weekends and public holidays.

4.4 PARTICIPATION OF NON-COMMITTEE MEMBERS

Members may attend any committee meeting and participate in the discussions, but may not vote as they are not members of the committee.

² includes Chair of Chairs in Legislatures

5 COMMITTEE SUPPORT SERVICES

The Secretary of the Legislature, as an Accounting Officer, has a responsibility to provide support services to committees in the form of human and financial support.

Committee Support Services is an integral service that committees require in order to function well and ultimately give effect to their mandate as engine rooms of the House. These services are rendered to all elected representatives³ irrespective of party affiliation. This service does not entail support to private or party-political work. The following Committee Support Services are available to committees of legislatures:

5.1 SECRETARIAL AND PROCEDURAL SUPPORT

A Parliamentary Committee is provided with secretarial and procedural support staff, in the form of a *Committee Secretary/Coordinator* that amongst others provides the following services:

- Strategic and operational planning: assisting the committee to draft the strategic, operational plan and business plan through identifying sectoral strategic priorities;
- Facilitating and developing, monitoring and implementation of committee programmes;
- Liaising with and assisting all relevant stakeholders to ensure and promote participation, co-operation and inclusiveness in committee activities, which includes providing feedback to stakeholders;
- Providing procedural advice by ensuring that committee proceedings continue within the purview of the Constitution, Standing Rules, and relevant legislation;

- Facilitating the processing of amendments to legislation;
- Capturing and drafting minutes of committee meeting proceedings;
- Facilitating implementation of committee decisions;
- Drafting reports of all committee oversight activities;
- Drafting evidence-based performance reports of committees on behalf of the committee; and
- Coordinating support services for the committee.

5.2 RESEARCH AND INFORMATION SERVICES

Content and research support service will be provided to committees. The support services assist a committee to take informed decisions. Amongst others, the following services are provided:

- Synthesizing information presented to and before the committee;
- Keeping in touch with current local and international developments that relate to the committee's focus area;
- Advising the committee on a strategic way forward after consideration of all the comparative information and analyses;
- Summaries and analyses of Bills;
- Analysis and review of policy documents; and
- Research support on any matter before a committee.

5.3 LEGAL ADVISORY SUPPORT

A committee may require a legal opinion on any matter before it. A Legal Advisor will be allocated to a committee to provide the required legal opinion. The Legal Advisor may attend a committee meeting to give the opinion or may submit it in writing to the committee. This service is responsible for, inter alia:

- Legal analysis and interpretation of legislation;
- Provisioning of legal advice in general and opinion; and
- Assisting the committee in drafting of legal documents.

5.4 COMMUNICATIONS AND PUBLIC PARTICIPATION SUPPORT

The following services are provided:

- communication services on proceedings and outcomes of committee proceedings through various communication platforms; and
- Support with mobilising the public to attend committee activities such as public hearings.

6 COOPERATIVE RELATIONS WITH INSTITUTIONS SUPPORTING DEMOCRACY (ISD)⁴

In order to enhance the capacity of the legislatures to perform its function of oversight and accountability, it is encouraged that there be cooperative relations between the committees and the following institutions, some of which are referred to as Institutions Supporting Democracy or Chapter 9 Institutions:

- The Public Protector (PP)
- The Auditor General of South Africa (AGSA)
- The Independent Electoral Commission (IEC)
- The South African Human Rights Commission (SAHRC)
- The Commission for Gender Equality (CGE)
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission)
- The Public Service Commission (PSC)
- The Financial and Fiscal Commission (FFC)
- The Pan South African Language Board (PanSALB)
- The Independent Communications Authority of South Africa (ICASA)
- The National Youth Development Agency (NYDA).
- The South African Local Government Association (SALGA)

These institutions are independent of government, subject only to the Constitution and the law, and report annually to Parliament.





OVERSIGHT AND ACCOUNTABILITY

*Induction Handbook for
Members of Parliament and Provincial Legislatures*

(2nd Edition)

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1 INTRODUCTION

In democratic countries legislatures perform three basic functions – representative, legislative and oversight functions – through which they keep government accountable for its plans, policies and programmes. In consideration of the principle of separation of powers, government plans and delivers with minimal interference from a legislature. However, it falls to a legislature to ensure that government’s plans and priorities are aligned.

Legislatures have the authority to consider, amend and approve policy proposals presented by the executive. Consideration should be focused on aligning policy proposals to government priorities. This type of oversight exercised over government activity can be defined as foresight, scrutiny, ex ante oversight or simply oversight.

Foresight is an important component of oversight for two complementary reasons. Firstly, it contributes to improving the quality of policies or programmes initiated by the executive and, secondly, because policies or programmes may be assessed, debated or amended before they are ratified, it enhances the legitimacy of such policies. This significantly contributes to the promotion of good governance and the quality of democracy.

A Legislature’s ability to keep the government accountable for its action depends on whether and how well a legislature oversees what the government

does – and there is no limit to what can be overseen by a Legislature. In other words, each aspect of government activity may be scrutinised and/or overseen by a legislature. For instance, parliamentary or legislative questions can be asked in relation to all areas of government activity.

2 LEGISLATIVE AND POLICY FRAMEWORK

This section sets out a legislative and policy framework for Members and other office bearers of the Legislature, and is there to guide and regulate financial and performance oversight, as well as accountability. This legislative framework is derived from sections 43 and 104 of the Constitution of the Republic of South Africa. The oversight mandate is derived from sections 55, 56, 68, 69, 92, 114, 115 and 133 of the Constitution. In addition, there are distinct sections that guide issues pertaining to performance oversight and international treaties.

Sections 55, 69, 92, 114 and 133 of the Constitution require of Legislatures to ensure that all executive organs of state in the national and provincial spheres of government, respectively, are accountable to them. To this end, legislatures maintain oversight of the exercise of executive power, including the implementation of national legislation. However, the Constitution does not provide for any mechanisms in this regard in the way it sets out the processes for passing laws. This task is left for Parliament and Legislatures to regulate in terms of legislation and rules.

The South African Legislative Sector Oversight Model refers to accountability as “the hallmark of modern democratic governance. Accountability refers to institutionalised practices of giving an account of how assigned responsibilities are carried out.” Accountability simply means that those in power must be held accountable for their acts, omissions and decisions, including those affecting expenditures or policies. The concept of accountability therefore includes and, in fact, originates from accounting in the financial sense, although its scope is far wider than its origins. The

function of accountability is to hold the government to account in respect of how taxpayers' money is used.

The conventional Westminster view on oversight, which was inherited by some former British colonies, is often rather adversarial. In some instances, oversight is professed to be the purview of opposition parties and not the legislature itself as an institution. In the South African context, Legislatures (as legislative organs of state) are constitutionally mandated to scrutinise and perform oversight of the executive and any organ of state.

Oversight can also be seen in terms of what legislatures and their members do. This involves reviewing, monitoring and supervising the executive and the programmes, activities and policy implementation of other organs of state. Oversight activities may seek to determine the efficacy of agents or their capacity to fulfil their mandate. Efficacy is about whether an organ of state makes sufficient use of public funds and provides value for money. It may also seek to identify or determine the propriety of actions, i.e. whether an agency acted correctly and complied with legal or ethical norms in its activities and objectives.

Functions of oversight within the context of the South African legislative sector are to:

- Detect and prevent abuse, arbitrary behaviour, or illegal and unconstitutional conduct on the part of the government and public agencies;
- Hold the government to account in respect of how taxpayers' money is used;
- Ensure that policies announced by the government and authorised by Parliament are implemented; and
- Improve the transparency of government operations, thereby enhancing public trust in government which, in itself, is a prerequisite for effective policy delivery.

The vision and missions of Legislatures should guide their oversight constitutional mandate.

For example, the strategic **vision** of the sector is to build an effective people's Parliament that is responsive to the needs of the people and driven by the ideal of realising an improved quality of life for all the people of South Africa. Its mission is to represent and act as a voice of the people in fulfilling the sector's constitutional functions of passing laws and overseeing executive action.

Values and principles, on the basis of which the sector conducts its oversight, are derived from Chapter 3 of the Constitution of the RSA. This chapter requires that all spheres of government and all organs of state within each sphere must –

- Preserve the peace, national unity and the indivisibility of the Republic;
- Secure the wellbeing of the people of South Africa; and
- Provide an effective, transparent, accountable and coherent government to the people of this country.

The financial oversight framework of the legislative sector in South Africa is embedded in the Constitution and carried out through various pieces of legislation, such as the Division of Revenue Act, the Intergovernmental Fiscal Relations Act of 1997, the Public Finance Management Act of 1999, the Municipal Finance Management Act of 2003, the Money Bills Amendment Procedure and Related Matters Act of 2009 and the Public Audit Act of 2004, amongst others.

OVERSIGHT COMMITTEES

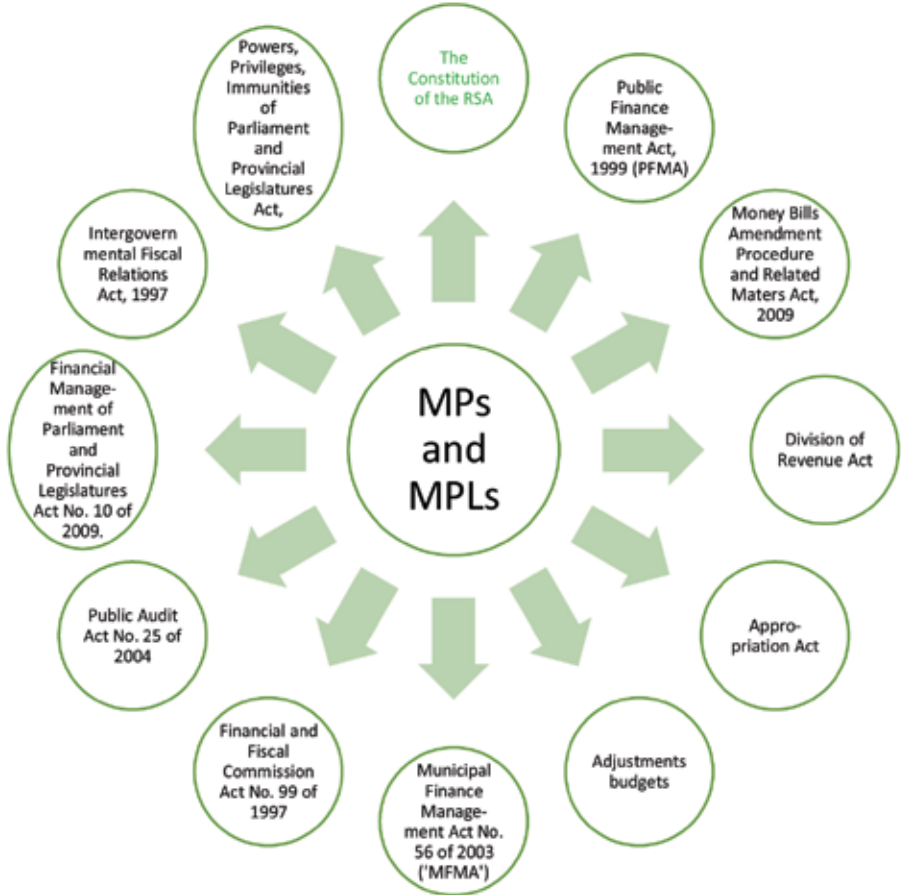
Committees of the Legislature are established as instruments of the Houses in terms of the Constitution, legislation, rules and resolutions of the Houses to facilitate overseeing of the government and monitoring of the executive. To this end, committees are provided with procedural, administrative, technical and logistical support. These committees are regarded as the engine rooms of Legislatures. During committee meetings Ministers and MECs account for their performance against government priorities.

Committees of the Legislature can interact with civil society organisations, organised business, experts and professional bodies in order to establish accurate facts and/or gain more information through which to hold the executive and heads of departments to account regarding any issue and relating to any matter. Committees can demand accountability from members of the executive and heads of departments within the ambit of the provisions set out in sections 56, 69 and 114 of the Constitution.

Committees produce oversight reports for presentation to the respective Houses of Parliament and provincial Legislatures. Oversight reports are presented on matters such as money Bills, medium-term budget policy statements, the national Budget, Budget Votes, quarterly expenditures, conditional grant spending and annual reports.

In addition to committee reports, Legislatures' oversight over public finances was strengthened by the establishment of the Parliamentary Budget Office in terms of the Money Bills Act of 2009, to provide independent, objective and professional advice and analyses to Parliament in matters that relate to the budget and money Bills.

Diagram: Legislation governing or impacting on Financial Oversight



2.1 LEGISLATIVE FRAMEWORK FOR FINANCIAL OVERSIGHT

2.1.1 THE CONSTITUTION OF THE RSA

According to sections 213 and 226 of the Constitution, funds can only be withdrawn from the National Revenue Fund or the Provincial Revenue Fund in terms of an Act of Parliament or a provincial Act. The Division of Revenue Act, the Appropriation Act and various provincial Appropriation Acts, all of which are passed annually, as well as the Public Finance Management Act are used for this purpose. Other money Bills can also be used for this purpose. Furthermore, the Division of Revenue Amendment Act, the Adjustments Appropriation Act and various other provincial Adjustments Appropriation Acts, also passed annually after the review of government expenditure in the middle of the financial year, supplement the appropriation of funds to departments in the national, provincial and local spheres of government, as well as organs of state in these spheres. These pieces of legislation are classified by the Constitution as money Bills and enjoy a specific status under the Constitution.

Sections 77 and 120 of the Constitution provide for national and provincial money Bills in similar terms. A money Bill is a piece of legislation which –

- appropriates money;
- imposes national/provincial taxes, levies, duties or surcharges;
- abolishes or reduces, or grants exemptions from, any national/provincial taxes, levies, duties or surcharges; or
- authorises direct charges against the National/Provincial Revenue Fund.

A money Bill may not deal with any other matter except –

- a subordinate matter incidental to the appropriation of money;
- the imposition, abolition or reduction of national/provincial taxes, levies, duties or surcharges;

- the granting of exemption from national/provincial taxes, levies, duties or surcharges; or
- the authorisation of direct charges against the National/Provincial Revenue Fund.

2.1.2 PUBLIC FINANCE MANAGEMENT ACT, 1999 (PFMA)

This Act regulates financial management in the national government (the executive arm of the State) and the provincial governments to ensure that all revenue, expenditure, assets and liabilities are managed effectively and efficiently. The Act was passed within the context of sections 213 and 216 of the Constitution to provide for a national revenue fund and treasury control over allocated funds. The Act provides for procedures relating to public finance management. It further requires government departments to draw up strategic and annual performance plans, to budget, to use resources economically, effectively and efficiently, to produce in-year monitoring (IYM) reports and to develop annual reports with audited annual financial statements. These documents are important sources of data for financial oversight over government departments and institutions.

As an oversight tool, the PFMA also provides important guidelines on matters of performance reporting, such as the publishing of quarterly reports and annual reports by organs of state. Other matters provided for include the withholding of funds, wasteful and fruitless expenditure, irregular expenditure, virement of funds, unfunded mandates, financial misconduct, fiduciary duties of accounting officers, as well as the establishment of internal audit committees.

2.1.3 MONEY BILLS AMENDMENT PROCEDURE AND RELATED MATTERS ACT, 2009

The Money Bills Amendment Procedure and Related Matters Act of 2009 emanates from sections 77(3) and 120(3) of the Constitution. It sets out the

procedure which Legislatures must follow when amending their Budget. This also includes the fiscal framework, the annual Division of Revenue Bill (even though this Bill is not classified as a money Bill in terms of the Constitution), the annual Appropriation Bill and Adjustments Appropriation Bill, as well as revenue Bills such as the annual Taxation Laws Amendment Bill. Provision is also made for the procedure to follow when amending other money Bills.

The Act provides for ways in which legislative Committees process the Budget Review and Recommendation Reports (BRRR). The BRRR is a consolidated account of Parliament's own assessment of government departments' performance.

Parliament's reporting on the Medium-Term Budget Policy Statement (MTBPS) is the next oversight element in the procedure. The Act requires the Minister of Finance to submit to Parliament the MTBPS at least three months prior to the introduction of the national Budget and sets out its required contents, including a revised multi-year fiscal framework, spending priorities of national government for the next three years, and a review of the actual spending by each national department and each provincial department between 1 April and 30 September of the financial year under review.

The purpose of the BRRR is to provide an assessment of a department's service delivery performance, given available resources, as well as an assessment of the effectiveness and efficiency of a department's use, forward allocation or recommendations on forward use of available resources. The Act requires that a BRRR refer to –

- the medium-term estimates of expenditure of each national department, along with their strategic priorities and measurable objectives, as tabled in the National Assembly with the national Budget;
- departments' current strategic plans;
- departments' expenditure reports, published by National Treasury in terms of section 32 of the Public Finance Management Act;
- departments' financial statements and annual reports;

- reports of the Standing Committee on Public Accounts (Scopa) relating to each department; and
- any other information requested by, or presented to, a House or Parliament.

Section 16 of the Act provides for norms and standards which provincial Legislatures must adhere to. Provincial Legislatures are expected to enact their own Money Bills Amendment Procedure and Related Matters Acts.

2.1.4 DIVISION OF REVENUE ACT

The Division of Revenue Bill is envisaged in section 214 of the Constitution. It is classified as a section 76 Bill as its processing follows the procedure for ordinary Bills affecting provinces, as set out in section 76 of the Constitution of the Republic of South Africa.

An interesting aspect of the procedure which applies to money Bills and the Division of Revenue Bill is that section 73(2) of the Constitution provides that only the Cabinet Member responsible for national financial matters – in other words the Minister of Finance – may introduce these in the National Assembly. Similarly, section 119 of the Constitution provides that only the Member of the Executive Council responsible for financial matters in the province – in other words the MEC for Finance – may introduce a money Bill in the Legislature.

The Division of Revenue Act (DoRA) is an important piece of legislation as it is the first step in dividing national revenue among the three spheres of government. As required by section 214 of the Constitution, DoRA is enacted each year –

- to provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
- to determine the equitable share of that revenue for each province and municipality; and
- to allocate grants to provinces and local government from the national government's share of revenue, and any conditions on which those allocations may be made.

Parliament may pass the Division of Revenue Bill which, after signature by the President and publication in the Government Gazette, becomes the Division of Revenue Act. As far as the Division of Revenue Bill is concerned, Parliament consults with provincial governments¹, organised local government and the Financial and Fiscal Commission (FFC). Before Parliament passes the Division of Revenue Bill, it must consider the recommendations of the FFC and consider the following criteria listed in section 214(2) of the Constitution:

- the national interest;
- any provision that must be made in respect of the national debt and other national obligations;
- the needs and interests of the national government, determined by objective criteria;
- the need to ensure that provinces and municipalities can provide basic services and perform the functions allocated to them;
- the fiscal capacity and efficiency of provinces and municipalities;
- the developmental and other needs of provinces, local government and municipalities;
- economic disparities within and among the provinces;
- obligations of provinces and municipalities in terms of national legislation;
- the desirability of stable and predictable allocations of revenue shares; and
- the need for flexibility in responding to emergencies or other temporary needs, and other factors based on similar objective criteria.

The consultation process is further regulated in terms of the Intergovernmental Fiscal Relations Act of 1997, including considering the recommendations made by the FFC. The memorandum to the DoRA includes specific responses to each of the items listed in section 214(2)(a) to (j) of the Constitution.

118 ¹ The DoRA is referred to provinces, which conduct public hearings and adopt negotiating mandates in the House, to be sent back to National Parliament through the NCOP

2.1.5 APPROPRIATION ACT

Section 213(2)(a) of the Constitution provides that “Money may be withdrawn from the National Revenue Fund only in terms of an appropriation by an Act of Parliament”. For this reason, the national or provincial Appropriation Acts appropriate money from either the National Revenue Fund or the relevant Provincial Revenue Funds, respectively, for departments and programmes for a particular financial year.

2.1.6 MUNICIPAL FINANCE MANAGEMENT ACT NO. 56 OF 2003 (MFMA)

The PFMA and the Municipal Finance Management Act (MFMA), which regulates the local sphere of government, are the two primary statutes to consider when it comes to dealing with the financial management of State funds and reporting on the use of these funds.

The PFMA and MFMA have important regulations attached to them and which form part of these respective Acts. The PFMA includes the amended Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities (‘Treasury Regulations’), whereas the MFMA includes Municipal Supply Chain Management Regulations, Municipal Investment Regulations, and Municipal Public-Private Partnership Regulations.

2.1.7 FINANCIAL MANAGEMENT OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT NO. 10 OF 2009

This Act was promulgated to regulate the financial management of Parliament and provincial Legislatures in a manner consistent with their status in terms of the Constitution; to ensure that all revenue, expenditure, assets and liabilities of Parliament and provincial Legislatures are managed efficiently, effectively and transparently; to provide for the responsibilities of

persons entrusted with financial management in Parliament and provincial Legislatures; and to provide for matters connected therewith.

Section 4(1) of the Act provides that an oversight mechanism of the Legislature(s) must maintain oversight of the financial management of the Legislature(s) by, inter alia:

- Considering instructions issued by the executive authority in terms of section 37(5);
- Considering the annual report submitted to Parliament in terms of section 60;
- Considering instructions issued by the executive authority in terms of section 66; and
- Performing any other functions specified in this Act or by the Rules of Parliament, or consistent with the objects of this Act.

The Joint Standing Committee on Financial Management of Parliament was established in terms of the Act that provides for the establishment of an oversight mechanism to maintain oversight of the financial management of Parliament. Similar committees also perform the function of providing oversight over the executive authorities within provincial Legislatures.

2.1.8 FINANCIAL AND FISCAL COMMISSION ACT NO. 99 OF 1997

The Financial and Fiscal Commission (FFC) is established in terms of section 220 of the Constitution which requires that the Commission must function in terms of an Act of Parliament and, in performing its function, must consider all relevant factors, including those listed in section 214(2) of the Constitution.

Section 214(2) of the Constitution provides that the Division of Revenue Bill can be enacted only after provincial governments, organised local government and the FFC have been consulted, and any recommendations of the Commission have been considered.

Section 27(2) of the FFC Act provides that “Any information which the Commission requires for the performance of its functions and which is available to an organ of state or any institution that derives any funds from the National Revenue Fund, a Provincial Revenue Fund or a municipality, must be supplied free of charge to the Commission, on the Commission’s request.” The Commission therefore plays an important role in the legislative sector in terms of the legislative framework and the oversight work.

2.1.9 PUBLIC AUDIT ACT NO. 25 OF 2004

Section 188 of the Constitution provides for the functions of the Auditor-General of South Africa (AGSA) who has to audit and report on the accounts, financial statements and financial management of –

- All national and provincial state departments and administrations;
- All municipalities; and
- Any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

The Public Audit Act gives effect to the provisions of the Constitution, as indicated above. In order to strengthen the powers of the AGSA, the Public Audit Act of 2004 was amended in 2018 to provide, inter alia, for the AGSA to refer suspected material irregularities, arising from an audit performance under the Act, to a relevant public body for investigation; to empower the AGSA to take appropriate remedial action; and to provide for the AGSA to issue a certificate of debt where an accounting officer or accounting authority failed to recover losses from a responsible person or persons and to instruct the relevant authority to collect the debt².

² Act No. 5 of 2018

2.1.10 INTERGOVERNMENTAL FISCAL RELATIONS ACT, 1997

The Act promotes co-operation between national, provincial and local spheres of government on budgetary and financial matters. It also prescribes a process for the determination of the equitable sharing and allocation of revenue raised nationally. The Act is enacted as per section 214(1)(b) of the Constitution. It is one of the pieces of legislation which committees use in relation to law-making and their oversight work.

The provisions of this Act are complemented by another piece of legislation, namely the Intergovernmental Relations Framework Act of 2005, read with Chapter 3 of the Constitution. The purpose of the Act is to establish mechanisms and procedures for national government, provincial government and local government to promote and facilitate intergovernmental relations. The Act also aims to provide for mechanisms and procedures to facilitate the settlement of the intergovernmental disputes. Some of the disputes may have financial implications, such as the stoppage or withholding of funds to organs of state in terms of the Constitution, the PFMA, the MFMA and the Division of Revenue Act.

2.1.11 POWERS, PRIVILEGES, IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT, 2004

This Act defines and declares certain powers, privileges and immunities of Legislatures, Members of the National Assembly, delegates to the NCOP and Members of Provincial Legislatures. The Act is also relevant when Members exercise their powers and functions (evidence and information) in terms of sections 56, 69 and 115 of the Constitution.

2.2 LEGISLATIVE AND POLICY FRAMEWORK FOR PERFORMANCE OVERSIGHT

Oversight is the proactive interaction initiated by a legislature with the executive and administrative organs ... that encourages compliance with the constitutional obligations on the executive and administration to ensure delivery on agreed-to objectives for the achievement of government priorities.

The concept of oversight contains many aspects which include political, administrative, financial, ethical, legal and strategic elements. The functions of oversight are –

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of government and public agencies while protecting the rights and liberties of citizens;
- To hold government to account in respect of how taxpayers' money is used by detecting waste within the machinery of government and public agencies, and to improve the efficiency, economy and effectiveness of government's operations;
- To ensure that policies announced by government and authorised by Parliament and provincial Legislatures are delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programmes; and
- To improve transparency in government operations and to enhance public trust in government which, in itself, is a condition of effective policy delivery.

Oversight is a function of a Legislature which flows from the separation of powers, as well as the concept of responsible government which entails certain powers. Foremost among these is the power to hold the executive authority to account. Monitoring the implementation of legislation goes to the heart of the oversight role. The way in which the oversight function is carried out will vary according to the circumstances.

Accountability is the social relationship where an actor (an individual or an agency) feels an obligation to explain and justify his or her conduct to some significant other (an accountability forum, a specific person or agency).

The concept of accountability entails giving an 'account' of actions or policies, or 'to account' for spending and other actions; giving an explanation and justification for decisions or actions against criteria of some kind; or making of amends for any fault or error and taking steps to prevent its recurrence in the future. This translates into –

- Holding the executive authority accountable to the Legislature;
- Encouraging an open government in order to enhance public confidence in such a government and responsiveness to the people;
- Encouraging and promoting principles of co-operative government; and
- The executive authority justifying its policies and decisions to the Legislature.

Section 92(2) and section 133(2) of the Constitution entrench the doctrine of individual and collective responsibility of Members of the Executive Council. Members of the Executive Council are individually responsible for portfolios assigned to them. The collective responsibility of the Executive Council implies that they are jointly responsible for the conduct of government and obliged to support government policy.

Constitutional Provisions governing Oversight

Certain sections of the Constitution of the Republic of South Africa (see below) set out oversight and accountability obligations.

Section 42 (3) & (4)	<p>(3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action.</p> <p>(4) The National Council of Provinces represents the provinces to ensure that provincial interests are considered in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting provinces.</p>
Section 55 (2)	<p>The National Assembly must provide for mechanisms –</p> <p>(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and</p> <p>(b) to maintain oversight of –</p> <p>(i) the exercise of national executive authority, including the implementation of legislation; and</p> <p>(ii) any organ of state.</p>
Section 56	<p>The National Assembly or any of its committees may –</p> <p>(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;</p> <p>(b) require any person or institution to report to it;</p> <p>(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and</p> <p>(d) receive petitions, representations or submissions from any interested persons or institutions.</p>
Section 66 (2)	<p>The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.</p>

Section 69	<p>The National Council of Provinces or any of its committees may –</p> <p>(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;</p> <p>(b) require any person or institution to report to it;</p> <p>(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and</p> <p>(d) receive petitions, representations or submissions from any interested persons or institutions.</p>
Section 92(3)	Members of Cabinet must ... provide Parliament with full and regular reports concerning matters under their control.
Section 100 (2)	<p>If the national executive intervenes in a province by assuming responsibility for the relevant executive obligation which that province cannot or does not fulfil, the national executive must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began. The intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.</p>
Section 59 (1) and (2)	<p>The National Assembly must facilitate public involvement in the legislative and other processes of the Assembly and its committees and conduct its business in an open manner. It must hold its sittings and those of its committees in public, but reasonable measures may be taken to regulate public access, including media access to the Assembly and its committees.</p>

Section 114 (2)	<p>A provincial legislature must provide for mechanisms to ensure that all provincial executive organs of state in the province are accountable to it; and to maintain oversight of —</p> <p>(i) the exercise of provincial executive authority in the province, including the implementation of legislation; and</p> <p>(ii) any provincial organ of state.</p>
Section 115	<p>A provincial legislature or any of its committees may —</p> <p>(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;</p> <p>(b) require any person or provincial institution to report to it;</p> <p>(c) compel, in terms of provincial legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of <u>paragraph (a)</u> or <u>(b)</u>; and</p> <p>(d) receive petitions, representations or submissions from any interested persons or institutions.</p>
Section 125 (4)	<p>Any dispute concerning the administrative capacity of a province regarding any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the referral to the Council.</p>
Section 133 (3)	<p>Members of the Executive Council of a province must provide the provincial legislature with full and regular reports concerning matters under their control.</p>

Section 139 (2)	<p>If a provincial executive intervenes in a municipality which cannot or does not fulfil an executive obligation by assuming responsibility for the relevant obligation in that municipality, the provincial executive must submit a written notice of the intervention to the Cabinet member responsible for local government affairs, the relevant provincial legislature and the National Council of Provinces within 14 days after the intervention began. The intervention must end if the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.</p>
Section 118	<p>A provincial legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees, and conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken to regulate public access, including access of the media to the legislature and its committees.</p>
Section 139 (3)	<p>When the relevant provincial executive intervenes in a municipality which cannot or does not fulfil an executive obligation by dissolving the Municipal Council, the provincial executive must immediately submit a written notice of the dissolution to the Cabinet member responsible for local government affairs; and the relevant provincial legislature and the National Council of Provinces. The dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.</p>

Section 139 (6)	When the relevant provincial executive intervenes in a municipality which cannot or does not approve a budget or any revenue-raising measures necessary to give effect to the budget; or which, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or which admits that it is unable to meet its obligations or financial commitments, the relevant provincial executive must submit a written notice of the intervention to the Cabinet member responsible for local government affairs; and, the relevant provincial legislature and the National Council of Provinces, within seven days after the intervention began.
Section 154	The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
Section 155 (6)	Each provincial government must establish municipalities in its province in a manner consistent with the applicable national legislation and, by legislative or other measures, must — (a) provide for the monitoring and support of local government in the province; and (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.
Section 155 (7)	The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority.

Section 231	<p>The role of Parliament in the process is stated in section 231(1) of the 1996 Constitution of the Republic of South Africa. To this effect, the holding of negotiations and the signing of international agreements are within the competency of the executive, but the approval of Parliament is required nonetheless in order for the agreements to be binding. Under section 231(2), approval should be granted by the two Houses of Parliament. Parliament also signs the Instrument of Ratification and deposits it with a requisite organisation or state.</p> <p>Section 231(3) of the Constitution caters for agreements of a technical, administrative or executive nature. These categories of agreements would normally not require ratification or assent, as they have neither extra budgetary implications, nor legislative implications. They should be tabled in Parliament within a reasonable time for information only.</p>
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Note: *The list of provisions contained in the Constitution of the RSA is not exhaustive.*

2.2.1 PFMA PERFORMANCE BUDGETING

The past decade has seen many governments attempting to establish a results-oriented (or performance-based) budgeting approach. South Africa adopted the same principles of performance-based budgeting through the PFMA. This piece of legislation emphasises performance contracting; strategic planning; monitoring and evaluation (M&E) and reporting, and contributes to good governance.

Monitoring and evaluation of outcomes creates a basis for accountability and learning

Planning and implementation should be informed by evidence-based monitoring and evaluation. Monitoring and reporting processes are already in place for government's priorities, plans and policies. Integrating

the National Development Plan (NDP) into these plans will enable the NDP's implementation to be monitored through existing processes. The Department for Performance Monitoring and Evaluation (DPME) has the responsibility for overseeing government's progress against many of these objectives through an outcomes approach and will have overall responsibility for monitoring progress.

It is also important that government keep track of all progress against the NDP. This includes identifying unforeseen circumstances that may hamper progress or identifying serious blockages that need to be addressed. This will require a more strategic and high-level form of monitoring that will be carried out by the National Planning Commission, drawing on data that is already collected by DPME and other sources so as to minimise the reporting burden.

Assessing the impact of achieved outcomes will enable decision makers to determine what does not work when identifying areas which require further improvement.

A description of the following terms will help with understanding the link between inputs, activities, outputs, outcomes and impact:

Inputs: The question to ask here is: What is needed to kick start the process? These are all the resources that contribute to the production and delivery of outputs, including finances, personnel, equipment and buildings, for example.

Activities: These are all the processes or actions that are needed to produce the desired outputs and, ultimately, outcomes.

Outputs: In this case, the final products, goods or services of a programme or project should be measured, e.g. the number of beneficiaries receiving a service. As signs of effectiveness, outputs can be readily measured against indicators and targets which must be clearly spelled out in a department's Annual Performance Plan (APP). Outputs are subjected to oversight and scrutiny.

Directors-General (of national departments) or Heads of Departments (of provincial department) are responsible for outputs and implementation, and are accountable to the relevant Minister (national department) or the relevant Member of the Executive Council (provincial departments). This echoes the regulations of the Public Service which relies on a performance-driven system based on measurable outputs' (PFMA 1999, vii).

Outcomes: When it comes to outcomes, one measures the results of a policy or programme, e.g. increased health, increased educational levels, etc. Outcomes should relate clearly to a department's strategic goals and objectives, as set out in its Strategic Plan and Annual Performance Plan.

The Outcomes Approach: This approach is designed to ensure that government is focused on achieving real improvement in the lives of all South Africans. The outcomes approach clarifies what is expected to be achieved, the process of how it will be achieved, and monitoring and evaluating whether set targets have been met or not. This is done to assist the three spheres of government which must ensure that the services delivered by government result in an improvement of citizens' lives, rather than government carrying out functions that will not translate into outcomes that will change people's lives.

Outcomes planning means planning backwards from the outcomes that have to be achieved and to work out how these will be achieved. The outcomes that must be achieved have to be identified; thereafter the outputs that will ensure that those outcomes are achieved must also be determined. Activities that will contribute to the outputs must be identified, and resources needed to implement the activities allocated accordingly.

Focusing on Outcomes clarifies which role players need to be involved to ensure that an outcome is achieved. Plans will involve identifying what outputs are needed to achieve the outcome. These plans will be implemented by a government entity responsible for the area of work each of the outputs involves. Every rand that is spent must contribute to improving people's lives.

Impacts: These are the results of achieving specific outcomes, such as reducing poverty and creating jobs.

Managing for outcomes requires that attention is given to the full delivery chain. The chain starts with an outcome that has to be achieved. Thereafter output measures that must be used to monitor if delivery is still on track must be identified. The chain then describes the key activities that need to be successfully carried out to achieve the outputs, and closes by listing the crucial inputs.

Impact: Although not strictly part of the performance budgeting and evaluation process (as per the PFMA), it would be useful for Committees to keep the impact of government programmes in mind. Impacts are the result of the combined effect of outcome activities. They are often more subjective, perceptual and qualitative and may be harder to define or measure. Through their interpretations and subsequent actions/responses, beneficiaries can also contribute to the impacts, either positively or negatively.

Committee oversight on effectiveness/efficiency therefore focus on the relationship between inputs and outputs and measures how well a department converts money into value for money.

The Sector Oversight Model (SOM) is closely aligned with the above distinctions and the Committee of Chairpersons (CoC) will need to ensure that Committees and researchers pay equal attention to the above. Considering the many research analyses, there is a view that researchers often focus too much on over-spending or under-spending (efficiency), relying too much on a relevant department's submission and without actually linking spending allocations to performance, targets, indicators and backlogs. Consequently, Committee oversight reports often reflect this shortcoming and turn out to be too descriptive, whereas they should be highly analytical and derived from independent and robust analysis and scrutiny.

To clarify further, the PFMA draws a distinction between processes and associated variables which are relevant from a technocratic and political perspective, respectively. Policy and associated priorities (political imperative to be overseen) are identified by the Executive to guide the strategic goals of a province, whereas MECs and their departmental staff generate the outputs to give effect to the strategic vision.

The PFMA assumes that the political heads of departments (Cabinet Ministers or provincial MECs) are responsible for policy matters and outcomes, including seeking Parliament's or the Legislature's approval to adopt their departments' Budget Votes. This is where proactive contracting between Committees and departments comes into play, but more about that later.

There is a technocratic imperative to oversee the efficiency of inputs and outputs. Each programme or sub-programme is a response to the strategic goal that echoes a department's mission. A distinction can be drawn between capital inputs (such as infrastructure) and current/operational inputs (such as staff salaries). Outputs concern themselves with "how much?", "when?" and "at what cost?" Throughputs, on the other hand, are the number of received government services. However, it does not say much about the quality or quantum of services that a beneficiary have received.

2.2.2 STRATEGIC PRIORITIES FOR OVERSIGHT

Strategic priorities for oversight serve to inform onward oversight over the Executive to ensure that government's plans and performance are aligned with the priorities expressed in strategic documents which are mentioned below. Some of these value-add areas include, but are in no way limited to:

- Guiding Committees on what their focus should be when conducting oversight over the Executive

- Generating cluster priorities and Committee/portfolio-specific oversight focus
- Allowing for themed oversight, public participation, stakeholder management and feedback sessions
- Allowing for themed “rapid response interventions” by Committees
- Guiding and informing Parliament and provincial Legislatures when connecting with communities
- Ensuring all oversight activities are relevant and accordingly aligned

The sources of strategic priorities on oversight include the following documents:

- Global: Sustainable Development Goals (SDGs)
- Continental: Africa Agenda 2063
- Regional: SADC Master Plan
- National: Constitutional Principles and Values, National Development Plan (NDP); Medium-Term Strategic Frameworks, State of the Nation Address (SONA) priorities
- Provincial: State of the Province Address (SOPA) priorities.

2.2.2.1 SUSTAINABLE DEVELOPMENT GOALS

The Sustainable Development Goals are a collection of 17 global goals set by the United Nations’ General Assembly in 2015 for the year 2030. The SDGs are part of Resolution 70/1 of the United Nations’ General Assembly: *Transforming our World: The 2030 Agenda for Sustainable Development*.



http://www.za.undp.org/content/south_africa/en/home/sustainable-development-goals.html

2.2.2.2 AFRICA AGENDA 2063

This strategic framework looks at the anticipated socioeconomic transformation of the continent over the next 50 years. It builds on, and seeks to accelerate, the implementation of past and existing continental initiatives for growth and sustainable development. It also provides a robust framework for addressing past injustices and for realising the 21st century as The African Century. (African Union)

<https://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>

The agenda is intended to achieve the following outcomes:

- An Africa which is prosperous, based on inclusive growth and sustainable development
- An integrated continent, politically united, based on the ideals of Pan Africanism and the vision of an African renaissance
- An Africa of good governance, democracy, respect for human rights, justice and the rule of law
- An Africa which is peaceful and secure
- An Africa with a strong cultural identity, common heritage, values and ethics
- An Africa whose development is people-driven and which relies on the potential offered by people, especially its women and youth
- An Africa which cares for its children
- An Africa which is strong, united and resilient, and an influential global player and partner.

2.2.2.3 SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) MASTER PLAN

Infrastructure development in the SADC Region will create a larger market and greater economic opportunities which are critical for promoting and sustaining regional economic development, as well as trade and investment, and which will contribute to poverty eradication and improved social conditions through:

- Freeing up trade and economic activity
- Building regional infrastructure and services
- Integrating regional development
- Ensuring sustainable food security
- Facilitating social and human development
- Addressing cross-cutting issues, including gender and development; HIV/Aids; science and technology; environmental and sustainable development; private sector and statistics

2.2.2.4 CONSTITUTIONAL PRINCIPLES AND VALUES

The preamble to the Constitution of 1996 outlines the fundamental values on which government should build a transformed Public Service. These values include:

- human dignity
- the achievement of equality
- the advancement of human rights and freedom
- non-racialism and non-sexism
- the supremacy of the Constitution and the rule of law
- democracy and social justice, and
- equity and respect

The Public Service should therefore be development-oriented. However, this ideal cannot be realised without giving consideration to the principle of efficient, economic and effective use of resources, and that value for money should underpin all efforts to realise a development orientation. Likewise, the value of accountability rests on transparency and an appreciation of efficiency, effectiveness and economy in the handling of public finances with respect to financial accountability. Responding to people's needs would require public servants to deliver services impartially, fairly, equitably and without bias.

In this regard, section 195 of the Constitution sets out the democratic values and principles which must govern the Public Service. Public servants must:

- Maintain a high standard of professional ethics
- Be effective and use resources economically and effectively
- Be development-oriented
- Provide services in an impartial, fair and equitable way, without any bias
- Respond to people's needs and encourage the public to participate in policy making
- Be accountable
- Foster transparency

- Assist in cultivating good human resource management and career development practices, and
- Be representatives of public administration, with employment and personnel management practices based on ability, objectivity, fairness and the need to address the imbalances of the past

2.2.2.5 NATIONAL DEVELOPMENT PLAN (NDP)

The National Development Plan is South Africa's overarching policy guiding framework in pursuing development for the country. The NDP contains a range of aspirations and goals which seeks to eliminate poverty and reduce inequality by 2030. South Africa can realise these goals by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the State, and promoting leadership and partnerships throughout society.³

Given the complexity of national development, the plan sets out six interlinked priorities which are as follows:

- Uniting all South Africans around a common programme to achieve prosperity and equity
- Promoting active citizenry to strengthen development, democracy and accountability
- Bringing about faster economic growth, higher investment and greater labour absorption
- Focusing on key capabilities of people and the State
- Building a capable and developmental state, and
- Encouraging strong leadership throughout society to work together to solve problems

³ National Planning Commission, (2013).

The achievement of the NDP's objectives requires progress on a broad front, and three priorities stand out₄:

- Raising employment through faster economic growth
- Improving the quality of education, skills development and innovation, and
- Building the capability of the State to play a developmental, transformative role

To streamline implementation, government sets out its five-year priority outcomes in the MTSF. This informs the oversight priorities for the term of Parliament and provincial Legislatures.

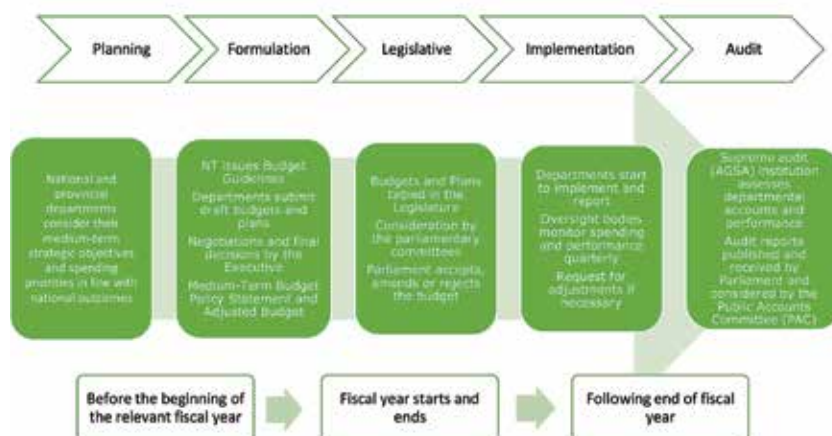
3 FINANCIAL OVERSIGHT CYCLE AND PRIORITIES

The purpose of this section is to discuss the role of the Legislature in the different stages of the Budget Cycle.

3.1 STAGES IN THE BUDGET CYCLE

The national and provincial budget process is a continuous cycle that runs from April to March every year. A number of processes are in place to ensure oversight over public expenditure and performance. The oversight processes include the adoption or amendment of the Budget, as well as in-year monitoring of its implementation. South Africa has an Auditor-General (AG) who audits departments' financial and non-financial performance. The findings of these audits are then reported to the Legislature.

Diagram: Overview of various Stages in the Budget Cycle



3.1.1 PLANNING

The planning period starts with the revision of the performance of the previous period, as well as an analysis of the environment in which the institution operates, identifying any changes in clients' needs and the national priority outcomes of government.

The National Development Plan (NDP): Vision 2030 provides the national priorities, brings coherence and consistency to the different plans and should guide budget allocations. The Medium-Term Strategic Framework (MTSF) is a five-year building block towards realising the 2030 vision of the NDP.

All government institutions table Strategic Plans and Annual Performance Plans in the National Assembly. These should contain relevant MTSF commitments and other statutory commitments.

How can Oversight improve this Process?

- By ensuring that national priorities (14 outcomes) are reflected in the budget
- By stressing that the quality of plans is important
- By stressing the relevance of Parliament doing oversight over outputs
- By integrating NDP recommendations into government processes

3.1.2 FORMULATION AND TABLING

The National Treasury/Provincial Treasury is responsible for formulating the national/provincial budget. Typically, the Budget Office in the National Treasury co-ordinates the process, requesting information from individual ministries/departments before it allocates resources to meet the political priorities set by government.

In general, budget formulation is an incremental process in which each year's new budget builds on the previous year's budget. Changes in the environment from the previous year reflect new policy priorities, particularly when a new government comes into office, as well as the effects of inflation on the cost of government's activities.

Key factors to consider when formulating the national Budget are:

- Strategic direction in terms of national priority outcomes
- Revising macroeconomic framework, fiscal and budget policy
- Revising the three-year Medium-Term Expenditure Framework (MTEF) baselines, and preparing detailed costing plans for spending priorities
- Allocating available resources among the three spheres of government in line with policy priorities

It should be noted that various role-players provide political and technical advice when faced with trade-offs between competing spending priorities.

Government institutions submit revised budgets for the current year and draft budgets for the next Medium-Term Expenditure Framework. The parliamentary phase of the budget process starts with the adoption of the Adjusted Budget and the Medium-Term Budget Policy Statement (MTBPS).

3.1.2.1 THE ROLE OF LEGISLATURES AT THIS STAGE IS TO ASSESS AND REPORT ON:

- Macroeconomic forecasts⁵
- Fiscal frameworks⁶
- Policy priorities
- Revenue and expenditure trends and estimates
- Inputs by the public

142 ⁵ A process of predicting or forecasting the macroeconomic outlook in terms of the Gross Domestic Product (GDP), inflation, unemployment or the fiscal deficit

⁶ Where is this footnote?

3.1.3 LEGISLATIVE PROCESS

In the third phase of the Budget Cycle, the national Budget is presented to the Legislature for consideration (which may include hearings in various committees) and eventual amendment or adoption.

After the Budget is tabled, it is debated in the Legislature with the involvement of organised interest groups and civil society, the media and the general public. Organised interest groups, representing different sectoral interests, are invited to public hearings in which presentations are received. As a result of the passing of the Money Bills Amendment Procedure and Related Matters Act (Act No. 9 of 2009), each House of Parliament established a Committee on Finance and a separate Committee on Appropriations. The former Joint Budget Committee (JBC) was renamed the Joint Budget Committee on Appropriations (i.e. Appropriations Committee). The Act also empowers Parliament to make changes to the Budget by amending money Bills.

A public participation process, as required by the Money Bills Amendment Procedure and Related Matters Act (Act No. 9 of 2009) unfolds as follows:

- Hearings on the fiscal framework and revenue proposals are held by the Finance Committees of the National Assembly (NA) and National Council of Provinces (NCOP);
- Hearings on the Division of Revenue Bill are held by the Joint Budget Appropriations Committee;
- Hearings on the Appropriation Bill are held by the Joint Budget Appropriations Committee;
- Hearings on the Revenue Bill are held by the Joint Budget Appropriations Committee; and
- Hearings on other money Bills are held by the Joint Budget Appropriations Committee.

3.1.4 LEGISLATIVE MANDATE AND THE ROLE OF PARLIAMENT

- The budget process starts in the year prior to the tabling of the Budget, when each parliamentary committee tables a Budget Review and Recommendation Report (BRRR)
- These reports evaluate the performance of each government department and must be referred to the Minister of Finance and the relevant portfolio/department/Minister by Parliament
- Recommendations in these reports inform the decision on whether or not to amend the Budget
- When the Minister of Finance tables the Budget, he/she must table a report indicating how the Division of Revenue and the Budget give effect to recommendations made in the reports
- If a Minister's explanation does not address the concerns of Parliament, Members can amend the Budget to give effect to their proposals

3.1.5 BUDGET IMPLEMENTATION

The implementation phase occurs when the Budget has been enacted by Parliament; and is also the phase in which service delivery execution takes place. The Budget is implemented by the Executive (i.e. the political head of departments) through government departments and state-owned enterprises (SOEs).

The Legislature is also responsible for authorising the Executive to execute the budget expenditure within government departments. Thereafter entities and agencies initiate spending, either directly through their finance directorates or indirectly through procurement procedures which are guided by specific rules.

After expenditure and payments are concluded, departments and agencies prepare monthly and quarterly in-year expenditure and monitoring reports, as well as annual reports. These reports indicate the manner in which these

entities delivered on their mandates, i.e. under-spending, over-spending or balanced (depending on efficiency expenditure). Legislatures, through their Committees, also monitor the performance of departments as part of its budget oversight. Organised civil society and the general public also perform in-year and year-end financial monitoring. These monitoring reports are presented to parliamentary committees. Regular monitoring of expenditure against the budget and performance against targets allows for the revision of management action and projections should these be necessary.

3.1.6 AUDIT

The last stage in the Budget Cycle includes a number of activities which aim to measure whether public resources have been used effectively and efficiently. The auditing stage involves a review of the final budget documents by independent audit institutions such as the Auditor-General of South Africa (AGSA), and an assessment of the consistency of such documents against legal authorisation. The AGSA examines the financial management, performance and position of each entity by scrutinising its year-end reports, i.e. Annual Reports.

- *Timelines in terms of the Money Bills Amendment Procedure and Related Matters Act, 2009.*

The Legislature, through its committees, must annually assess the performance of each national department, with reference to the following:

- The medium-term estimates of expenditure of each national department, its strategic priorities and strategic objectives, as tabled in the National Assembly with the national budget; strategic and or annual performance plans (February/March)
- The expenditure monitoring report relating to departments, published by the National Treasury in terms of section 32 of the Public Finance Management Act (July, October, January and April)
- The financial statements and annual reports of each department (October)
- The reports of the Committee on Public Accounts relating to a department (October)

3.2 BUDGET DOCUMENTATION

This section presents a brief overview of each of the accountability documents that institutions should produce in relation to each stage of the planning, budgeting, implementation, reporting, and monitoring and evaluation cycle. The purpose of this section is to introduce documents tabled by the executive sphere of government for scrutiny and deliberation by Members. This section also includes the documents tabled by the Minister of Finance in terms of the Money Bills Amendment Procedure and Related Matters Act (Act No. 9 of 2009) for approval and reporting. The Money Bills Amendment Procedure and Related Matters Act, as amended, provides the requirements of the documents, as well as the role of the committees.

3.2.1 INFORMATION FLOW AND RELATIONSHIP BETWEEN PLANS AND BUDGETS

Diagram: Link between Strategic Plan, Budgeting and Reporting



In terms of section 13 (a) and (b) of Chapter 3 of the Public Finance Management Act of 2009, the Executive Authority must oversee the preparation of all departments' Strategic Plans, Annual Performance Plans, budgets and adjustments budgets, and table the Strategic Plans and Annual Performance Plans in the provincial Legislature annually.

Plans and budgets should be interrelated to improve operational effectiveness. It is important for budgets to link to plans to ensure that key objectives and priorities are funded and achieved. In this regard, departments must continue to improve and implement various initiatives that seek to focus greater attention on the relationship between budgets and performance, such as an activity-based costing methodology. In achieving this, outputs are broken down into activities. These are then costed and the unit cost of delivery is established. This information informs the calculation of budgets.

Performance and financial reporting enables effective accountability, empowering oversight bodies such as the Finance Committee on Oversight and other interested stakeholders, to track progress, identify the scope for improvement and better understand the issues involved.

Financial reports also play an essential role in managing the performance of Parliament and provincial Legislatures. The reports concentrate on performance against budgets and service delivery plans, and will alert managers when remedial action is required. In addition, these monthly and quarterly financial reports will facilitate the compilation of the year-end financial statements and the annual report.

3.2.2 REPORTING FRAMEWORK

South Africa's intergovernmental planning, budgeting and reporting frameworks are complex. It spans short-term, medium-term and long-term horizons, cutting across various sectors, spheres, geographic and functional areas. Central to national government's planning coherence is the Medium-

Term Strategic Framework (MTSF). The MTSF aims to integrate policies on a horizontal and vertical level by clustering sectoral line Ministries around shared objectives.

Nationally raised revenue is equitably divided among the three spheres of government. The provincial share is divided among provinces, and the national government's share is allocated to national Votes and further divided into conditional grants allocated to provincial and local government/municipalities.

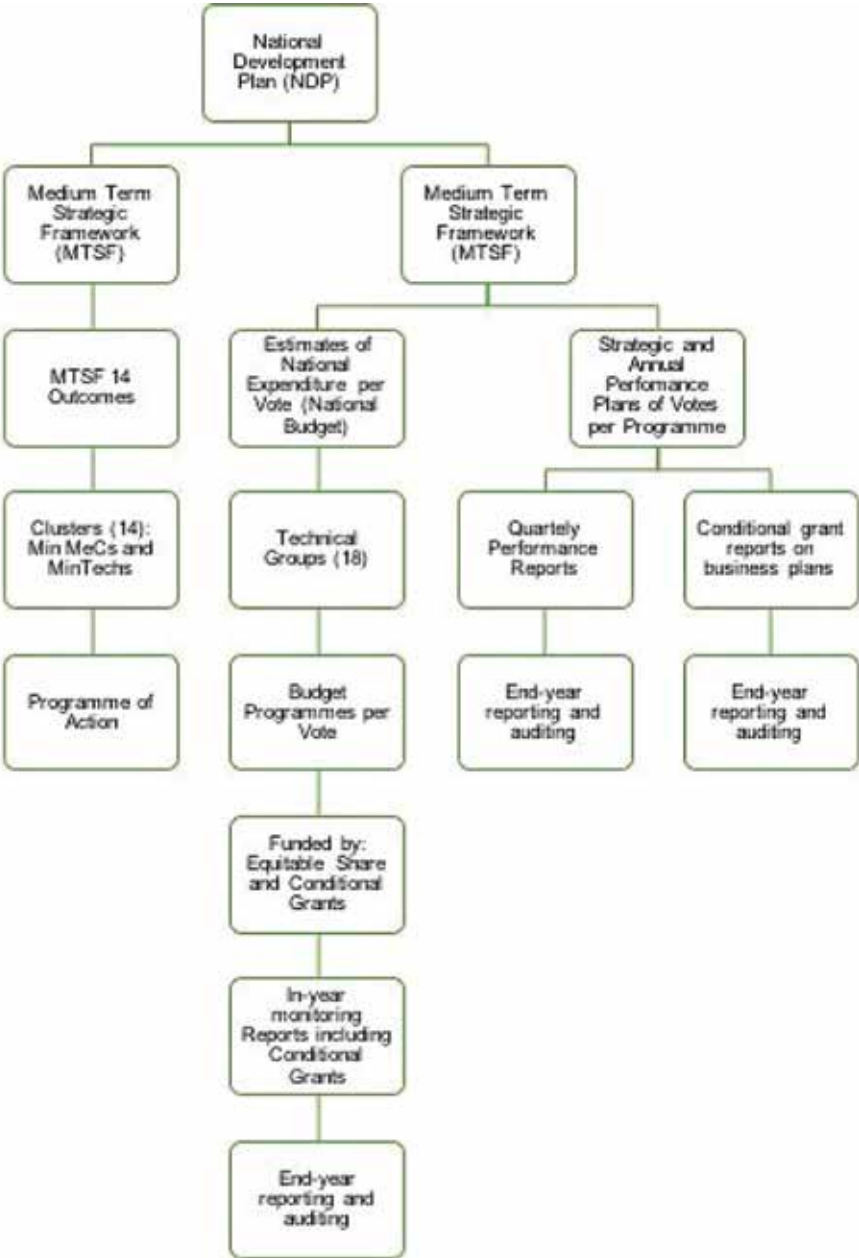
The diagram below illustrates the complexity and linkages of performance and expenditure reports available to Parliament for monitoring performance and expenditure, specifically on the NDP. The NDP provides a golden thread that brings coherence and consistency to the different plans and budgets for all three spheres of government.

The 2014-2019 MTSF is the first five-year building block towards realising the 2030 vision of the NDP's Programme of Action, and reports performance on the 2014-2019 MTSF on a quarterly basis.

All government institutions table their Strategic Plans and Annual Performance Plans in the Legislature. These contain relevant MTSF commitments and other statutory commitments not reflected in the MTSF. All departments and entities are required to submit quarterly performance reports to the National Treasury and the Department of Planning, Monitoring and Evaluation.

The various performance reports are available to oversight bodies for monitoring performance. In other words, oversight bodies, such as Legislatures, depend on these reports to determine the effective and efficient spending of public finances on service delivery. It is therefore of utmost importance that these reports reflect expenditure and performance on shared objectives and outcomes of the NDP. However, this integration depends on successful intergovernmental planning and budgeting processes.

Diagram: Reporting System for monitoring Performance and Expenditure



3.2.3 BUDGET REVIEW

The Budget Review provides a summary of the budget documentation, including:

- Economic overview
- Fiscal policy
- Fiscal framework
- Revenue trends and tax proposals
- Consolidated spending plans
- Division of revenue and spending by provinces and municipalities
- Government debt and contingent liabilities
- Financial position of public-sector institutions

3.2.4 ESTIMATES OF NATIONAL/PROVINCIAL EXPENDITURE

The Minister of Finance tables the Budget in Parliament every year, while the MEC for Finance does the same in the provincial Legislature. Authorisation to spend the budget is sought through the tabling of an Appropriation Bill. The national/provincial budget contains the projected revenue and expenditures that flow through the National Revenue Fund/Provincial Revenue Fund.

The abridged Estimates of National Expenditure (ENE)/Estimates of Provincial Expenditure (EPE) is tabled with the Appropriation Bill. It contains detailed information about the allocations set out in the Appropriation Bill for the current financial year. In addition, government's proposed spending plans for the full three-year (MTEF) period, 2019/20 to 2021/22, are also shown. The ENE/EPE is compiled using data and information provided by national departments and their respective entities. Information on how government institutions have spent their budgets in previous years is included. Explanations are provided on how institutions intend to use their allocations over the medium term to achieve their goals, and the outputs and outcomes their spending is expected to lead to.

Tables depict non-financial performance indicators and targets, departmental receipts, and detailed expenditure trends and estimates by programme, sub-programme and economic classification for each department and for selected entities. Brief explanatory narratives set out the institution's purpose (and that of its programmes), mandate, programme level objectives and descriptions of sub-programmes. A more in-depth narrative analyses the institution's expected expenditure over the MTEF period. A summary table is included at the end of the chapter of the ENE/EPE Budget Book 2 for Votes in which there is significant spending on infrastructure.

A more detailed e-publication for each Vote is available online. These e-publications contain programme personnel data tables and detailed information for all entities, as well as additional summary data tables on provincial and municipal conditional grants, public-private partnerships, donor funding, and expenditure at the level of site service delivery, where applicable.

The budget submission consists of:

- a narrative report; and
- data submissions for each national government department, as well as each institution.

The narrative report must explain the context for the budget and provide an evidence-based rationale for decision makers to formulate their expenditure recommendations. It must be a comprehensive report that includes the following elements, which are explained in more detail below:

- Key programmes
- Composition of spending
- Reallocations
- Baseline reductions
- Value-for-money
- Human resources
- Cost pressures
- Public institutions
- Conditional grant change proposals

Information contained in the department's Budget Explanatory Narrative Report must be supported by relevant financial data. The data is submitted in the form of online Excel workbooks. These workbooks contain data in respect of the main requirements of a budget submission.

3.2.5 MEDIUM-TERM BUDGET POLICY STATEMENT (MTBPS)

The MTBPS contains the fiscal policy of government, which is the policy on taxation, spending and borrowing by government. These documents also include the fiscal framework that needs to be approved and reported on by the Finance Committee on Oversight.

3.2.6 DIVISION OF REVENUE BILL

This Bill deals with the allocation of funds to national, provincial and local government, as required by the Constitution.

3.2.7 APPROPRIATION BILL

Each year the Appropriation Bill sets out the proposed amounts to be appropriated from the National Revenue Fund for the first year of the medium-term expenditure framework (MTEF) period. The 2019 Appropriation Bill sets out allocations to national government Votes by programme and main economic classification⁷ for 2019/20.

3.2.8 ADJUSTED BUDGET

The Adjusted Budget contains amendments to be made to the appropriations voted in the main budget for the year and must be presented to Parliament.

⁷ Allocations are made by economic classification. The main categories of economic classification are: current payments (payments made for operational requirements such as those for compensation of employees and goods and services); transfers and subsidies; payments for capital assets (assets that can be used for more than one year); and payments for financial assets (loans or equity investments in public corporations).

3.2.9 Revenue Bills

Revenue Bills impose or abolish national taxes, levies, duties or surcharges or which abolish, reduce or grant exemption from any national taxes, levies, duties or surcharges.

3.3 DOCUMENTS TABLED BY DEPARTMENTS (NATIONAL AND PROVINCIAL)

3.3.1 STRATEGIC AND ANNUAL PERFORMANCE PLANS

The Framework for Strategic and Annual Performance Plans guides the formulation of Strategic Plans and Annual Performance Plans.

Strategic Plans do not replace project plans or programme and policy plans appropriate to the activities or responsibilities of institutions. A Strategic Plan should draw on these and other plans or project proposals, and should indicate the likely sequencing of implementation in the period ahead.

Strategic Plans identify strategically important outcomes-orientated goals and objectives against which public institutions' medium-term results can be measured and evaluated by Parliament, provincial Legislatures and the public.

Annual Performance Plans identify performance indicators and targets that the institution will seek to achieve in the upcoming budget year. It is important that these performance indicators and targets are aligned across an institution's annual plans, budgets, in-year and annual reports. In addition, the process to produce the Annual Performance Plan should be aligned to the budget process.

3.3.2 IN-YEAR MONITORING REPORTS

Once the financial year begins, the accounting officer must submit regular monthly monitoring reports to the Minister/MEC and the relevant Treasury. The PFMA specifies a variety of progress reports – monthly, quarterly and year-end – with different responsibilities for executive authorities and accounting officers.

These reports focus on performance against budget and service delivery plans, and will alert managers when remedial actions are required. The onus to take such actions is put squarely on the manager and not on the relevant Treasury. The Treasury's role will shift away from the traditional micro-control approach, which required even mundane matters to be referred to it for approval.

3.3.3 QUARTERLY PERFORMANCE REPORTS

Quarterly performance reports provide progress updates on the implementation of an institution's Annual Performance Plan in the previous quarter, with particular reference to monitoring delivery against quarterly performance targets.

3.3.4 ANNUAL REPORTS

The Annual Report provides information on the performance of the institutions in the preceding financial year for the purposes of oversight. The Annual Report looks at the institution's performance relative to the budget estimates, as well as targets set in the Annual Performance Plan and provides the audited annual financial statements. It reveals how the budget was implemented and the state of the institution's financial management systems, and should include relevant background statistics and administrative data series.

4 PERFORMANCE OVERSIGHT

Role of the Provincial Government

The National Development Plan identifies the task of improving the quality of services to the public as a critical component in achieving transformation. This objective will require provinces to focus on identifying and overcoming challenges to achieve desired outcomes. The provincial planning process should therefore focus on the proposals that are made in areas of core provincial competencies.

Role of Local Government

The National Development Plan highlights the need to strengthen the ability of local government in the fulfillment of its developmental role. Municipal Integrated Development Plans (IDPs) need to be used to focus attention on critical priorities in the NDP that relate to the mandate of local government. This would allow the IDP process to become more manageable and the participation process more meaningful.

4.1 THE PERFORMANCE OVERSIGHT CYCLE



4.1.1 STATE OF THE NATION ADDRESS (SONA)

The State of the Nation Address commences the oversight process of the year. It is an address to the nation by the President of the Republic of South Africa. The address is delivered at a Joint Sitting of the National Assembly (NA) and the National Council of Provinces (NCOP) of Parliament. It focuses on the current political and socioeconomic state of the nation. The State of the Nation Address usually takes place in February. However, when

general elections are held, two addresses take place: the first to mark the final session of the outgoing Parliament and the second after the elections, when the new President and Parliament are acknowledged. In the address, the President highlights the achievements and challenges experienced over the past year and presents the programme for the year ahead. The address covers political, economic and social matters, and considers the general state of South Africa. It reflects on South Africa's domestic affairs, as well as its relations in Africa and abroad.

The State of the Nation Address is an important means of accounting to Parliament and the South African public on how the government has performed over the past year, and to involve the public in the political agenda of the coming year.

Public participation is an integral part of the State of the Nation Address ceremony. Members of the public are invited to participate in the ceremony as invited guests of Parliament. Furthermore, the State of the Nation Address forms an important part of Parliament's oversight function, because in it the President takes the pulse of the nation and sets out policy objectives and deliverables for the year ahead. It is against these objectives and planned deliverables that the Minister of Finance introduces the Budget for the coming year, usually towards the end of February. The policy objectives and key deliverables form the basis of what government will have to do in the coming year. The State of the Nation Address and the Budget are the main benchmarks by which Parliament holds government accountable to the people for what it delivers, and for how money that is allocated is spent. After the State of the Nation Address is delivered, it is debated by the two Houses of Parliament. Political parties have an opportunity to comment and raise questions on matters addressed in the speech. Issues of concern are raised and areas of critical importance to the nation are highlighted. The public is invited to attend and observe these debates, as is the case with all sessions of Parliament. In turn, the President responds to the points raised and questions arising during the debate in his reply.

Each year Parliament identifies a theme which is informed by Parliament's strategic focus. The theme speaks to Parliament's vision statement which is "to build an effective people's Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa".

This vision is underpinned by:

- The creation and sharing of knowledge that will ensure an informed citizenry who are able to participate in the processes that impact on them and the wellbeing of the country.
- The creation and availing of development opportunities with the aim of realising a better quality of life for all.

The SONA not only provides Members of Parliament with an opportunity to familiarise themselves with the challenges facing South Africa, but also explores those areas in which exceptional achievements were reported. It offers parliamentary committees an opportunity to evaluate the SONA and provides an in-depth report of the activities of all South Africa's government departments. The traditional approach to budgeting is that it is done on an annual basis.

4.1.2 STATE OF THE PROVINCE ADDRESS

Following the SONA, Premiers will present the State of the Province Address to their respective provincial Legislatures. The State of the Province Address is a localised version of the State of the Nation Address when Premiers reflect on their achievements and communicate their programmes of action in respect of government's five priority areas – education, health, the fight against crime and corruption, rural development and land reform, as well as jobs for the year ahead. In past years, many provinces have held the event away from the Legislature, in places such as sports grounds and university campuses. This is done to bring the Legislature closer to the public and to accommodate more people at the event. Members of the Legislature scrutinise the SOPA and hold the Provincial Executive Council to account on the relevant and respective SOPA commitments.

4.1.3 BUDGET INFORMATION MATRICES (BIM) DATE CATEGORIES

The following are used when preparing and analysing oversight:

- The SONA and Premiers' SOPA: All relevant statements (usually priorities, outcomes and sometimes outputs) made by the President and Premiers;
- Speeches by Minister of Finance/MECs for Finance: All relevant statements by the Minister of Finance/MEC for Finance with respect to his/her portfolio;
- Speeches by other MECs on their Portfolios: Break down MECs' speeches into their component parts;
- Resolution-Tracking Document: Contains committee-specific resolutions approved by the House for purposes of monitoring implementation by the Executive;
- Presentation of the Budget: Departments' budget presentation to portfolio committees are captured in the matrix. All priorities, outputs, outcomes, targets and performance indicators are to be placed in the matrix;
- Projected Outputs: Departments' projected outputs from the budget presentation are explicitly drawn out and captured in the matrix;
- Budget/Adjustment (White Book format) Figures: The Excel spreadsheet, electronic format of the budget is captured in the matrix;
- Charts: Simple Expenditure, Percentage Share, Percentage Change vs. Inflation Rate, Estimated vs Actual Expenditure, Budget Change in Constant Terms, Capital vs Current Expenditure, etc.
- Departmental Annual Reports are captured in the matrix in its component parts;
- Legislation and Policy Papers: Any pieces of legislation and policy papers that were released during the financial year in question are placed as links in the electronic matrix for quick referencing;
- Departmental Statistics: All statistics provided by departments are captured in the matrix; allowing access to the environmental information used in the formulation of priorities and programmes;

- **External Statistical Resources:** Statistical material provided by relevant stakeholders and experts or expert organisations are also captured to be cross-referenced against departments' stated figures;
- **Policy Literature:** Any material gathered by support staff (especially the information officer) in the form of books, journal articles or other sources are listed;
- **Database of Experts:** A list of experts, institutes and organisations that produce work related to the issues in the portfolio. Contact details are also provided;
- **Database of Stakeholders:** A list of CBOs, NGOs and experts who are concerned with the issues in the portfolio, together with their contact details.

4.1.4 APPROPRIATION BILL/DEPARTMENTAL VOTE

It is at the Appropriation Bill/Departmental Vote stage at the outset of every financial year in which every variable of oversight is debated. This is the only stage in any single budget year that this rule is applied. Each committee can therefore formulate its most comprehensive report in terms of each component of oversight for the coming year.

Of most significance, at this first stage, is the formal negotiation between a committee and a department about the desirable outcomes that might be expected from the policy priorities and resource allocations indicated in the budget under consideration. This refers to the negotiated equilibrium between a department's priorities, its projected inputs and outputs, and its projected outcomes required in terms of the logic of oversight. This equilibrium cannot be negotiated as intensively at any other stage in the cycle of one financial year.

4.1.5 THE ROLE OF QUARTERLY PERFORMANCE REPORTS

When a government is voted into office, an inevitable contract of accountability is entered between government and the citizens whom it serves. It is therefore incumbent on government to inform the citizens

and legislatures on what it intends to achieve by way of predetermined objectives. These predetermined objectives are reflected in:

- Performance agreements between a Minister/MEC and the Head of Department (HOD);
- Service-delivery improvement programmes;
- Strategic Plans;
- Annual Performance Plans (APPs);
- Quarterly performance reports and
- Estimates of expenditure

Performance information indicates how well an organisation is performing against its aims and objectives. Good performance information helps identify what policies and processes work and why they work. Making the best use of available data and knowledge is critical to improving the performance of government as a whole; and is essential for effective management, including business planning, monitoring and evaluation. Moreover, performance information allows effective accountability by facilitating more effective monitoring and oversight by external institutions such as Parliament, members of the public and other stakeholders due to the availability of quality information. Performance information therefore plays a crucial role in:

- Indicating progress against objectives;
- Prompting an external focus by public institutions on transparency, accountability and progress on service delivery;
- Ensuring the best results for citizens;
- Identifying gaps between policy formulation and policy implementation;
- Enhancing strategic planning processes; and
- Reflecting the level of institutional capacity to deliver services to citizens.

Departmental budgets increasingly contain non-financial information on outputs and outcomes. Effective programme performance management requires a performance management system that links planning for programme performance and resource management with performance monitoring and programme evaluation.

- Strategic planning links “What is to be achieved?” with “How it is to be done?” by focusing the attention of managers on meeting government’s

objectives and identifying appropriate programme management structures and strategies for the cost-effective delivery of services to achieve desired outputs and outcomes.

- Annual Performance planning determines what is expected to be done, usually annually (forward estimates could extend this to three to five years), to achieve the programme objectives determined in the strategic planning process.
- All Accounting Officers must establish procedures for quarterly reporting to the executive authority to facilitate effective performance monitoring, evaluation and corrective action. Provincial Treasuries should play a role in this process.
- Role of line managers in provincial departments: Section 45 of the PFMA details the responsibilities of departmental officials, trading entities and constitutional institutions by stating that:

"An official in a department ... must ensure that the system of financial management and internal control established for that department, trading entity or constitutional institution is carried out within the area of responsibility of that official;

Is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;

Must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and any under-collection of revenue due ..."

In effect, this implies that each line manager is responsible for the use of financial resources or inputs in a particular programme. Strategic objectives must be submitted for each main division (programme) within the department's Vote (section 27(4)) and therefore line managers may also be held accountable for the outputs generated within that programme. Furthermore, the reporting

requirements of departments (section 40(3) (a) and (b)) require that annual reports and financial statements must fairly represent:

- The name of the department;
- Its business;
- Its financial results;
- Its performance against predetermined objectives;
- Its year-end financial position; and
- Particulars of any material loss and unauthorised, irregular, fruitless or wasteful expenditure.

An important issue for line managers arising from the above is that of reporting performance against predetermined objectives. This means that performance targets (objectives) should be set in the budget *ex ante*. These should then be monitored during the implementation process and then evaluated *ex post* in the annual report. It is thus crucial to implement a system for monitoring performance on an ongoing basis. This system would include determining objectives, defining performance measures and performance indicators, and monitoring progress against performance targets. At this point, it is worth defining the difference between performance measures and performance indicators.

Performance measures define the relationship between inputs and outputs. In other words, performance measures measure how successfully outputs are produced by using various inputs. In effect, they measure the productivity of resource use. Performance indicators, on the other hand, define the relationship between outputs and outcomes. Thus, performance indicators measure the impact on broader society of the outputs of a particular programme. Developing performance measures is easier than developing performance indicators, as there is normally a well-defined relationship between inputs and outputs that is generally tangible and measurable. On the other hand, the relationship between outputs and outcomes is more suggestive, as there may be other exogenous factors which could influence outcomes on society.

Performance measures and indicators also define the distinction between political and managerial accountability. As highlighted in the PFMA, political heads are accountable for outcomes, whereas department heads are accountable for outputs. In terms of Treasury Regulation 5.3.1, all accounting officers must establish procedures for quarterly reporting to the executive authority to facilitate effective performance monitoring, evaluation and corrective action.

Quarterly reports from departments provide a committee with the information needed to monitor effective programme implementation. The information contained in the quarterly reports must indicate present expenditure on a month-to-month basis against planned expenditure. It is also in the Legislature's interests to ensure that more than just financial data are delivered in these reports. Relevant environmental data should be included with some degree of commentary/narrative by the department. This must be achieved without overly burdening departments.

4.2 PERFORMANCE MANAGEMENT REPORTING

4.2.1 OPERATIONAL PLANNING

Operational planning usually involves the listing of activities to be undertaken or services to be provided by the departmental units to achieve programme/sub-programme objectives; identification of alternative expected activity levels dependent on final resource allocations; as well as identification of performance responsibilities and measurement criteria.

Programme management structures should reflect the purpose and objective(s) of each programme as determined in the strategic and or annual planning process and form the basis for the monitoring and evaluation of performance. To this effect, programme/sub-programme objectives should identify:

- Why the programme/sub-programme is expected to be beneficial (i.e. outcome, result required);
- Who the direct or indirect customers (beneficiaries) are; and
- What is to be produced or provided (i.e. output/process in customer terms)?

4.2.2 RESOURCE MANAGEMENT

Effective resource management is essential to programme performance management. Strategic, annual and operational plans are translated into short-term functional plans by agency budgets which allocate available resources to individual programmes and sub-programmes. Budgets should formally communicate the commitment of resources (inputs) to achieve specified performance (outputs) and the division(s) responsible for such performance, in accordance with the priorities, structures, and activities identified during the strategic and operational planning processes.

Effective resource management requires that budgets provide the basis for monitoring and controlling actual against budgeted performance in both financial and non-financial quantifiable data. Performance management systems should incorporate the budget data to enable managers to systematically monitor inputs against outputs and implement corrective measures as required.

4.2.3 PROGRAMME PERFORMANCE: MANAGEMENT AND MONITORING

Programme performance management links what is being done to what is being achieved. It focuses attention on the effectiveness and efficiency of achieving government policy objectives, meeting community needs, and satisfying statutory and ethical accountabilities. In the public sector, programme performance management helps to offset the absence of the discipline imposed by market forces. Programme performance management involves the timely collection and assessment of financial information (e.g. costs) about programme activities and outputs, non-financial information about the quantity and quality of programme outputs (e.g. volume, standards), and measures of programme outcomes (e.g. customer satisfaction, behavioural changes) in order to assess issues such as:

- The extent to which programmes are reaching their target population,
- The quality and efficiency of service delivery and customer satisfaction, and
- The level and pattern of resource utilization.

4.2.4 PROGRAMME PERFORMANCE MANAGEMENT (PERFORMANCE REPORTING)

Performance information is used by decision makers, both within and outside agencies, to form judgments about the value for money (in terms of relevance, effectiveness, and efficiency) being received from programmes, hence their relative claims on available resources. Performance monitoring is an ongoing process based on information collected to measure and evaluate outcome, outputs and activities in terms of:

- Actual performance against plans (i.e. predetermined goals, targets, budgets, standards, etc.),
- Current performance against past performance (i.e. trend analysis), and
- Performance against internal and/or external benchmarks.

Performance indicators are a key element of the performance monitoring process. Performance indicators should be developed for both internal and external use and may be qualitative as well as quantitative, particularly those relating to programme effectiveness. Performance indicators can be derived from and/or compliment other performance information, such as monthly budget and activity reports, benchmarks, customer surveys, etc., to provide the data which managers require to measure, evaluate and improve on the performance in their area of responsibility.

Performance indicators should measure what is done in terms of effectiveness (i.e. satisfaction of purpose), efficiency (i.e. input/output relationships), and workload (i.e. levels of activity or service delivery). Effectiveness and efficiency indicators should also address customer service standards (the quality of the service to the client) and cost effectiveness (the relationship between inputs and outcomes). Programme evaluation involves the systematic, rigorous review of:

- The relevance of a programme, in the light of current circumstances, to the needs or problems that it is designed to address;
- The extent to which the stated objectives of a programme are, or have the potential of being achieved;
- The full cost of meeting the programme objectives and any secondary unintended benefits;

- Adverse consequences deriving from the programme; and
- Whether there are more cost-effective ways (e.g. outsourcing) in which the programme objectives can be met.

The type of evaluation undertaken depends upon the purpose and the stage reached in a programme's life cycle, both factors being important in determining the nature of preliminary negotiations with stakeholders, the scope of the data collection exercise, and the types of issues to be explored in depth.

4.2.5 THE QUALITY OF PERFORMANCE DATA

Performance information must be correctly calculated and reliable. Systems for collecting and validating performance data are likely to be more robust when departments define the quality of the data in advance. Performance information can be costly to produce. Departments must therefore consider how data will be used and the cost of collection, and strike an appropriate balance between the cost and the comprehensiveness and reliability of data. Departments should also establish clear performance measure definitions. In this regard, the source of the data and the arrangements for their collection and analysis have been shown to facilitate a common understanding between those designing information systems and reporting performance and those collecting the data.

Departments should also designate a responsible manager to be accountable for performance data. Experience shows that data is more likely to be reliable when managers are assigned responsibility for data collection and reporting. Where managers actively monitor performance information, they are able to identify variations in performance which call for examination.

Managers must conduct reviews to assure themselves that the department's performance information systems are a reliable basis for capturing and reporting performance information. They must also develop and

implement effective controls over the collection of data. Performance data may be collected from the department's information systems, surveys and external sources. It is important to establish controls that will ensure the reliability of data. The controls will vary depending on the source of the data. Predetermined checks need to be undertaken with regard to the collection, review and verification of performance information. Establish and implement clear guidelines for the validation of performance data.

4.2.6 THE USE OF NONFINANCIAL DATA COST ACTIVITIES

One of the most essential elements of performance or results-based budgeting is the costing of activities. Nonfinancial data should be used in costing exercises, a process which leads to realistic numbers being used to formulate budget allocations. Linking the costs of services and performance information is crucial for improving accountability and service delivery. Accountability is a relationship based on the obligation to demonstrate and take responsibility for performance in light of agreed expectations. Clearly, performance information rendered for accountability purposes is greatly enhanced when it includes information on the costs of government services. High quality performance information leads to a better costing approach and, ultimately, better accountability agreements based on this information.

4.2.7 FIRST QUARTERLY REPORT

The First Quarterly Report provides a committee with the preliminary indicators on the implementation of a programme. The committee will check to ensure that the use of resources allocated to the programme – financial, human and capital – is consistent with projections made earlier in the year. For example, the committee will strive to ensure, three months into the financial year, that 10 safety teams have been trained in the first quarter. Evidence for this will be in expenditure on training material, training venue hire and associated costs.

If it comes to the committee's attention that at the end of the first quarter, the department's expenditure on the project is 20% less than what was projected, the committee will focus particular attention on the implementation of the project, and thereby may choose not to dedicate greater scrutiny to projects that are on track in terms of projected outputs and expenditure.

It should be noted that the committee cannot assume that this is an indication of immediate failure. It may be that the departmental staff found a way to make the process cheaper. Nevertheless, the committee does not want to assume that lower costs have no impact on the quality of delivery and, therefore, will also want to reassure itself that quality has not been compromised.

If the committee finds that they under-spent because of failure to hold the training workshops, a host of questions will arise. If two workshops were not held, what implications does this have for the full realisation of 40 teams by the end of the year? Will the department be able to make up for the two missed training workshops in the coming financial quarters? Is the department able to table a plan before the committee to explain how to resolve the problem? The committee will examine the chain of events as they unfolded over the previous three months to ascertain the reasons for the failure to deliver. This is with a view to ensuring that the mistakes are not repeated, in order to determine whether the committee may be able to help directly, and to ultimately ensure that all 40 of the schools have a safety team in place by the end of that year.

Oversight alerts us to any failure in expenditure, in and that the likelihood of realising is fundamentally jeopardised. At the First Quarterly Report stage, it is still too early to establish whether the project is adequately structured to address the priorities for which it was formulated. Scrutiny of the First Quarterly Report is an exercise in the technical analysis of implementation and planning. Although the focus rests on variables of inputs and outputs,

the committee must understand that if failures in inputs result in the failure to establish safety teams, the result is potentially the worsening of the priority the project was designed to address. This is because one more year, at least, will have elapsed before the government might apply itself to the situation. As the situation worsens, it is also probable that it will require more resources to produce the desired reduction of school-based violence.

4.2.8 SECOND QUARTERLY REPORT

The Second Quarterly Report remains focused on the implementation of a project or sub-programme, with the obvious exception that more of the project will have unfolded. Once again, the committee will concentrate its attention on the status of the project in relation to the projections at the start of the year. At the same time, it may be possible to begin assessing the state of affairs around the priority which the project or sub-programme is designed to address. This means, once again, being briefed on the environmental policy information and a re-appraisal of the relationship between the sub-programme and the priority/priorities it hopes to satisfy.

The importance of this stage is that six months have passed since the initiation of the project. It therefore cannot be assumed that the same conditions which led to its formulation still exist. The committee will already want to determine whether the 10 existing safety teams are having an impact in the schools where they were established in the first financial quarter.

At the juncture of the Second Quarterly Report, there will be a greater ability to relate the development of the programme to the other variables of the SOM model. In order to understand the greater spectrum of implications, the committee will still be unable to visit, in any substantive way, the project's impact on the original priority, poor school safety, and the outcome thereof on improved school safety. It is not likely that safety conditions will have noticeably improved by the second quarter, but second quarter measures are needed to continue to determine the value of the project. This will help

a committee in deciding if there are any grounds for revisiting the planning/design of the safety team project.

If a pattern of continued underspending from the 1st quarter is found, the committee will again want to ascertain the reasons for this. If it is discovered that the project implementers have realised massive savings through outputs efficiency, the committee will want to see how these savings will be used in the department. If it is discovered that the department is falling behind in the establishment of safety teams, it will once again investigate the root of the problem by examining the financial/resource management of the department and the specific directorates/units that are involved in the direct delivery of the project. This allows the committee to assess causal linkages between planning and implementation.

4.2.9 THIRD QUARTERLY REPORT

At the stage of the Third Quarterly Report, the committee will still be focused on the relationship between inputs and outputs. This means that the committee must continue to satisfy itself with the use of resources in the programme implementation process, and the achievement of its outputs. At this stage, 30 of the 40 safety teams should be in place.

However, by the time of the Third Quarterly Report, the committee should have the opportunity to apportion significantly more time for analysis of the impact of the safety teams and the experience of the individual schools with the safety teams. The first 10 safety teams will have been in place for at least six months, and another 10 will have been in place for three months, but have benefited from possible implementation reforms based on the experience of the establishment of the first 10 safety teams. Any identified efficiencies or inefficiencies must be discussed with the department.

It is at this juncture that the committee may begin to devote some time to the other variables of oversight. While analysis of inputs and outputs takes precedence in the Quarterly Reports which emphasise resource usage and recent delivery details, the committee may already begin to

assess the outcomes realised from the presence of safety teams in up to 20 schools. This might be done in conjunction with a re-examination of the requirements that informed the policy environment (priorities) at the outset of the programme.

The committee cannot take for granted that a project is still grounded in the environmental realities that existed at the start of the project. It will have to receive input from its support team to assist it in re-evaluating the state of school safety in the province. This will enable the committee to assess the nascent outcomes of school safety teams in contrast to the state of school safety.

4.2.10 FOURTH QUARTERLY REPORT

The Fourth Quarterly Report is most pertinent in that it arrives in close proximity to the next budget tabled by the executive. As a result, the momentum generated by the work done over the previous three quarters not only prepares a committee to issue a judgement on the success/value of the project, but to do so in conjunction with its consideration of the next financial year's budget. It effectively becomes a key verification mechanism for the committee in relation to the sound planning of the department.

If a project has failed to deliver, the committee can first ascertain whether the department is about to run the same project, with the same staff, in the same manner. The committee will also want to assess whether other interdependent programmes have incorporated the ramifications of the failure of this project into their planning process.

If a project was successful, and the initial outcome assessments are positive, the committee will want to see where and how the success is being capitalised on in relation to other projects and follow-ups. In effect, the committee looks for discrepancies between the upcoming budget and the Fourth Quarterly Report. At this stage, the steps taken for variable input will have been completed, and the realisation of output should be evident in terms of the example. In reality, the realisation of output will take place over a period of a number of years.

4.3 THE ANNUAL REPORT

Consideration of a department's Annual Report requires the committee and its support team to take into account every aspect of oversight. The analysis of the Annual Report should give a comprehensive indication of where a department truly finds itself in terms of the priorities it has been pursuing in the current financial year. Of significance at the Annual Report stage is the concurrence between the tabling of the Annual Report and the Auditor General's Reports before the Legislature. Since the application of the PFMA, there is greater correspondence between the timeframes under review in the audit reports and those in the Annual Reports. Previously, audit reports reflected developments three years in arrears.

Oversight and the Budget Cycle (BC) demand that portfolio committees only process departments' Annual Reports after the Public Accounts Committee (PAC) process. The model, capitalising on the tenets of performance budgeting that inform the PFMA, has at its core the relationship between expenditure and performance. It is therefore essential that the financial management details that arise in the PAC are thoroughly investigated and inform the considerations of departments' Annual Reports.

The budget item *Personnel Expenditure* illustrates the utility of the Budget Cycle (BC) layout. When personnel costs are not reconciled adequately and discrepancies arise, it is often the case that a department cannot provide the exact state of its personnel expenditure.

The conceptual model allows the Legislature to scrutinise the relationship between personnel and capital expenditure in an effort to ensure a proper balance between the two. If the Public Accounts Committee (PAC), also known as the Standing Committee on Public Accounts (Scopa) in some Legislatures, affirms that the state of personnel expenditure is in doubt, then the portfolio committee for the department concerned can pursue the matter in its analysis of the department's work. This will ensure that the

committee has a better understanding of the extent of the resources being used for the realisation of departmental outputs and to better evaluate its efficiency and effectiveness.

The consideration of an Annual Report will assist a committee to formulate its ideas for the coming budget. The committee will be able to develop an idea of the state of affairs for a given priority and make recommendations on how best this priority should be resourced and approached during the next financial year.

4.3.1 OVERSIGHT VISIT WORK

Oversight Visit Work and/or Focused Intervention Studies (FIS) can take place whenever a committee decides. For the most part, FIS will also provide the impetus for committees' oversight visits. The Budget Cycle prescribes at least two per financial year. The first FIS should take place just after a committee deals with a departmental Vote and before the arrival of the First Quarterly Report. The Budget Cycle demands another FIS after the Auditor-General's Report and Annual Report processes, but before the arrival of the Third Quarterly Report.

The FIS does not lend itself to analysing one variable of oversight over another. A committee may decide to conduct an FIS that focuses on one, all or various degrees of each variable. The basis of a committee's decision on what will be the nature of a FIS will have to do significantly with the positioning of the FIS stage in the Budget Cycle.

The subject of the first Budget Cycle-prescribed FIS will be informed by a department's Budget Vote. During the departmental Vote stage, a committee is likely to confront concerns that are not satisfactorily addressed. A committee may be convinced that a specific sub-programme or project does not have sufficiently funded capital and current expenditure, and may therefore fail in its objectives.

Likewise, it may not be convinced that one matter should be prioritised over another (priority). A committee may even discover that the basis of an entire programme is poorly grounded and therefore should be extensively reviewed, requiring a detailed application of Priorities-Input-Output-Outcomes.

Yet, in as much as a committee will have just dealt with a department's budget, it may want to give priority to those programmes that are fundamental, resource intensive in relation to other issues, and where the FIS may have a profound impact at the earliest stages in helping to ensure the departments' success. Thus, the variable for inputs should be given greater priority over other variables. It may seem that the variable for priorities would be the logical choice, but a Legislature must be careful in the extent to which it pursues that variable at the FIS stage of the Budget Cycle.

While it is not explicitly excluded, it should only be pursued in the FIS stage where there are substantial grounds to question the prerogative of the executive in its priorities. Instead, a committee should focus on where it can directly assist a department in the task of service delivery where it can be assured of having a positive impact.

The subject of the second Budget Cycle-prescribed FIS will be informed by the Auditor General's Report and Annual Reports. As with the first FIS, the subject is not strictly prescriptive and can range from exclusive variables, several variables, or all the variables.

The positioning of this FIS in the Budget Cycle allows a committee to juxtapose the work of the completed financial year against the mid-point of the current financial year. This will invariably emphasise the outputs of a department. The committee will be able to assess the actual outputs and implementation processes against what was presented at the start of the current financial year and therefore assess the actual state of service delivery. Therefore, it is recommended that variable outputs receive greater priority at this stage.

5 ACCOUNTABILITY

This section covers four areas, i.e. the functions of accountability; accountability in the House; accountability and Ministerial responsibility and accountability in committees.

The Functions of Accountability

The functions of accountability include the following:

- To enhance the integrity of public governance to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behaviour;
- To affect democratic control as an institutional arrangement;
- To improve performance, which will foster institutional learning and service delivery;
- To ensure, through transparency, responsiveness and answerability, public confidence in government;
- To bridge the gap between the governed and the government; and
- To enable the public to judge the performance of the government by the government giving account in public.

5.1 ACCOUNTABILITY IN THE HOUSE

This refers to the process in which:

- Ministers and Members of the Executive Council answer or give an account and submit to scrutiny. The Executive must provide the Legislature with information about their policies and the activities of their departments.
- The flow of information from the Executive Council to the Legislature about its activities goes to the core of oversight and accountability. The duty to answer or explain is captured by the notion of 'explanatory accountability' which requires the giving of reasons and the explanation for action taken.
- An element of explanatory accountability is the duty to provide financial accounts, demonstrating the regularity of government expenditure. If accountability hinges on the receipt of information, then financial information is crucial. Power over expenditure is vital for the system of representative and responsible government.

5.2 ACCOUNTABILITY AND MINISTERIAL RESPONSIBILITY

Accountability can be thought of in two ways:

- In a technical sense, it refers to the duty of a Head of Department (HOD) to account as 'accounting officer' to his or her Minister, the Auditor-General and, finally, the Public Accounts Committee. Here, accountability refers to giving an account of actions and spending. This definition is aligned with the PFMA notion of administrative accountability of officials.
- A wider understanding of accountability, however, requires Ministers or MECs to explain and justify, against criteria of some kind, their decisions or actions. It also requires that the person goes on to make amends for any problems or failures and takes steps to prevent its recurrence in the future.

A condition of the exercise of that power in a constitutional democracy is that the administration or Executive is overseen by, and held accountable to, an organ of government distinct from it. This is echoed by the notion of 'separation of powers', which provides for checks and balances in respect of the exercise of executive power, thus making the Executive more accountable to an elected Legislature.

Taking the aforementioned point further, some elements are seen to be necessary for political accountability, as required by the Constitution, to work:

- Persons who have the power to make decisions and put them into effect;
- Objectives or standards that are to be attained by those persons;
- An authority to whom the decision maker is answerable; and
- Some means of calling those responsible for decisions to account.

Informatory Responsibility

"Informatory responsibility" is the obligation of the Minister/MEC to fully and openly inform Parliament/the Legislature about the operations and performance of a department and state-owned enterprises (SOEs) under his/her portfolio. The Minister/MEC may not knowingly mislead the Legislature, i.e. tell a deliberate lie.

Redirectory Responsibility

“Redirectory responsibility” is the obligation placed on a Minister/MEC to refer Committee queries to an SOE, for example, for whom he/she is responsible. For researchers this means that the budget analysis must include information regarding the SOE for consideration by the Committee. It is on the basis of this information that the Committee can then engage the Minister/MEC and request responses.

Explanatory Responsibility

“Explanatory responsibility” means that the Executive must give reasons and provide explanations for actions taken, as well as service delivery or operational problems or failures. This includes the duty to provide accounts and clarification on the regularity of government expenditure and the effective implementation of the budget to achieve.

Amendatory Responsibility

“Amendatory responsibility” means that the Minister/MEC admits that things have gone wrong in response to issues raised by Committees (whether or not he/she is personally culpable) and promises to have the matter rectified. The Minister/MEC defends his/her actions in good faith and mistakes should be admitted to.

Negligent or criminal behaviour is condemned and the necessary amends promised. Public servants may be disciplined or prosecuted if they are found guilty of misconduct or illegal actions. Tracking of Executive’s responses to House resolutions and their evaluation to assess compliance are used to determine whether service delivery or operational problems/failures have been successfully remedied.

Accountability in Committees

Committees interact with civil society organisations, organised business, experts and professional bodies as a way of enhancing accountability and call Members of the Executive and departmental heads to account on any issue relating to any matter over which they effect accountability.

5.3 OVERSIGHT IN THE HOUSE AND COMMITTEES

The oversight function of Parliament and provincial Legislatures is exercised by parliamentarians over government action or priorities. In terms of the Constitution and in exercising their legislative powers, Parliament and provincial Legislatures must provide for mechanisms to maintain oversight over the executive arm of government. Parliament and provincial Legislatures have established mechanisms for facilitating oversight of government during House sittings where all Ministers and MECs account for their performance against government priorities.

Oversight in the House

The Constitution anticipates that the National Assembly (NA) and the National Council of Provinces (NCOP) will have to share the joint responsibility for oversight in four specific situations. This overview is discussed in more detail in Module 1: Processes and Procedures.

Oversight of Security Services (Parliament)

Section 199(8) of the Constitution provides that multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the Standing Rules and Orders of Parliament in order to give effect to the principles of transparency and accountability.

State of National Defence

Section 203 of the Constitution provides that the President may declare and approve a state of national defence in certain circumstances. This is done to ensure that the Executive does not abuse its executive control over the armed forces.

International Agreements in Parliament

Section 231(2) provides for an international agreement which binds the Republic only after it has been approved by a resolution in both the NA and

the NCOP, unless it is an agreement referred to in a subsection. Parliament has a responsibility to oversee the implementation of these international agreements.

Plenary debates

Plenary debates are a further means to bring important information to the attention of the Executive regarding specific government programmes and legislation that are required to improve service delivery.

Notices of motion

Motions are one of the mechanisms available to members of all political parties which can be used to help fulfil their oversight responsibilities in Parliament by bringing issues to Parliament for debate.

Motions without notice

Motions which require notice may be moved without notice, provided that no single Member present objects. It is therefore common practice for parties to be consulted before the House meets when seeking to move a motion without notice, and to inform the Presiding Officer of their intention to do so.

Due to Members representing provinces, in the NCOP, decisions on motions are taken in terms of section 65 of the Constitution, i.e. each province has one vote which is cast on behalf of the province by the head of its delegation. The motion is agreed to when at least five provinces vote in favour of the motion.

Members' Statements

Members of Parliament are afforded the opportunity to make statements on any matter and Ministers then respond to such statements. However, the NCOP Rules do not make provision for Members' Statements. It does, however, make provision for explanations by Members.

Statements by the Executive

A member of the Executive may ask the Speaker to make a factual or policy statement relating to government policy on any executive action (or a similar matter) of which a Legislature should be informed.

Questions

Section 92 of the Constitution stipulates that members of the Executive are accountable collectively and individually to Parliament/Legislatures for the exercise of their powers and the performance of their functions.

5.4 ROLES AND RESPONSIBILITIES IN OVERSIGHT AND ACCOUNTABILITY

5.4.1 THE SPEAKER OF THE NA/LEGISLATURES AND CHAIRPERSON OF THE NCOP

The roles and responsibilities of the Speaker of the NA/Legislatures and the Chairperson of the NCOP are to:

- Oversee that the House fulfils its oversight role in terms of its constitutional mandate;
- Afford an opportunity and space in the programme of the House to discuss reports and allow Members to pose questions to the Executive;
- Facilitate tabling of reports by departments in terms of the PFMA;
- Ensure referral of reports to relevant Committees;
- Facilitate Question Time and Members' Statements;
- Ensure that rulings are consistent (Digest of Rulings);
- Ensure that legislation affecting provinces (section 76 Bills) is dealt with in accordance with the procedures set out in the Constitution and the Standing Rules; and
- Provide political leadership and ensure the development of the annual joint parliamentary and programme framework.

5.4.2 HOUSE CHAIRPERSONS AND CHAIRPERSON OF COMMITTEES

The roles and responsibilities of House Chairpersons and Chairperson of Committees are to:

- Allow for regular meetings during the planning and programming phase to conduct oversight;
- Schedule meetings with State institutions and departments;
- Ensure preparation of pertinent questions to an institution to be responded to;
- Allow for questions that arise as a result of responses to those pertinent questions;
- Ensure the programming of committee activities;
- Convene and chair meetings of the Committee of Chairpersons;
- Consider and approve Committees' requests to travel for purposes of oversight;
- Co-ordinate the oversight activities of Committees;
- Monitor compliance by the Executive with regard to recommendations set out in Committee reports;
- Ensure the compilation of Committee reports on oversight activities;
- Ensure that all Committees are briefed on Budget Votes by government departments and submit progress reports on such briefings to the Committee on Programming;
- Ensure the implementation of the Oversight and Accountability Model;
- Ensure the implementation of policies relating to Members' Facilities;
- Facilitate Members' travelling to interact with constituents;
- Monitor and report on the planning and implementation of service delivery programmes, policies and laws by the three spheres of government;
- Monitor the processing of interventions in compliance with section 139 of the Constitution;
- Monitor the regular review of approved interventions and provide strategic advice, when necessary;
- Ensure that recommendations on interventions are followed up and acted upon by relevant structures;

- Facilitate the participation of SALGA in the processes of the NCOP and its committees;
- Facilitate the consideration of issues emanating from SALGA;
- Assess and provide advice to the House on measures taken by national and provincial governments to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions; and
- Facilitate the implementation of new or interventionist initiatives.

5.4.3 MEMBERS OF PROVINCIAL LEGISLATURES

- As elected office bearers, Members of Legislatures represent their constituents;
- Members must attend and engage with information before the House and Committees; and
- Members must make use of all provisions in the Constitution and the Standing Rules.

5.4.4 LEGISLATIVE PROGRAMMING COMMITTEE

- It is responsible for determining the annual programme of a Legislature, including the Legislative Programme;
- It monitors and oversees the implementation of a Legislature's annual Legislative Programme and may set deadlines for the introduction of Bills;
- It is also concerned with the functioning of joint committees and subcommittees;
- It takes decisions on the prioritisation of business and may set time limits for steps in the legislative process and timeframes for the passage of Bills through Parliament;
- It is responsible for the fast-tracking of Bills;
- It does not normally report to the House;
- In order to perform its task, the committee requires the Executive to provide it with a provisional Legislative Programme for the year, listing the Bills the Executive intends introducing, together with timeframes showing when each Bill is expected to be ready for introduction.

5.4.5 LEADER OF GOVERNMENT BUSINESS

- The LGB is responsible for arranging the attendance of Cabinet/Executive Council Members in respect of parliamentary business generally;
- He/she facilitates the timeous response to questions and other oversight mechanisms that are in place; and
- He/she contributes to the development of the Legislative Programme.

6 INSTITUTIONS SUPPORTING DEMOCRACY

Chapter 9 and other statutory bodies which support democracy are mandated to assist the Legislature in holding the Executive to account. They do not, and cannot be expected to, enjoy the same independence as the judiciary. The National Assembly therefore plays an important role in the appointment of commissioners and other office bearers.

The nature of the work of Chapter 9 Institutions requires them to work with the Legislature and, to some degree, with the Executive. Secrecy is the enemy of accountability, and Chapter 9 Institutions are designed to ensure that public power is exercised in an open and transparent manner. They have a duty to reveal weaknesses and problems by collating and publishing information. They have powers to require answers or explanations from government and other actors. Ordinary citizens, in turn, can rely on this information to play their own role in holding the Executive and legislative branches of government to account.

6.1 INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY (ISCDS)

These institutions are independent and subject only to the Constitution and Acts of Parliament that prescribe their functions and powers. They must be impartial and exercise their powers and perform their functions without fear, favour or prejudice. In terms of section 181(3) of the Constitution, other organs of state, have to assist and protect the aforementioned institutions

to ensure their independence, impartiality, dignity and effectiveness. In terms of section 181(5) these institutions are accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year. The institutions are:

6.2 THE AUDITOR-GENERAL (AG)

The Auditor-General (AG) is an independent supreme audit institution of South Africa which carries out audits of government accounts in order to determine whether government did, in fact, implement the Budget as appropriated by the Legislature and complied with the financial prescripts. Therefore, section 188(1) of the Constitution empowers the AG to audit and report on the accounts, financial statements and financial management of all national and principal State departments and administrations, all municipalities and any other institution or accounting entity required by national or provincial legislation to be audited by the AG.

Section 188(3) of the Constitution prescribes that the AG must submit audit reports to any Legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. Section 55(2) of the Constitution prescribes that the National Assembly must provide for oversight mechanisms to ensure that all organs of state in the national sphere of government are accountable to it and maintain oversight over the Executive and constitutional institutions. Section 188(3) of the Constitution prescribes that the AG must submit audit reports to any Legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation.

6.3 THE COMMISSION FOR GENDER EQUALITY (CGE)

The Constitution of South Africa provides that the objective of the Commission for Gender Equality is to promote gender equality, and to advise and make recommendations to Parliament or any other Legislature with regard to any laws or proposed pieces of legislation which affect

gender equality and the status of women. Section 187 of the Constitution requires the Commission for Gender Equality to:

- Promote respect for gender equality and the protection, development and attainment of gender equality; and
- Exercise its the powers and functions, in terms of the Commission on Gender Equality Act (Act No. 39 of 1996), including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.

6.4 THE PUBLIC PROTECTOR (PP)

The Public Protector is an office established by the provision of section 181(1) (a) of the Constitution Act (Act No. 108 of 1996). It is mandated to investigate on the basis of a complaint or on its own initiative at any level of government. This includes national, provincial and local government, any public office bearer, any parastatal and any statutory body. Section 182(1) of the Constitution requires that the Public Protector investigate state affairs of public administration in any sphere of government that is alleged or suspected to be improper, and which may result in any misconduct or prejudice, and report on that conduct and take appropriate remedial action.

The Public Protector is entrusted with the constitutional responsibilities to produce information and knowledge that is critical to the exercise of oversight over the Executive by the Legislature. The Public Protector may not investigate court decisions and must at any time submit a report to the National Assembly on the findings of a particular investigation if:

- He/she believes it is necessary;
- He/she deems it to be in the public interest;
- It requires the urgent attention of, or an intervention by the NA, or if requested to do so by the Chairperson of the National Council of Provinces (NCOP).

Any report issued by the Public Protector must be open to the public, unless exceptional circumstances require that a report be kept confidential.

6.5 THE SA HUMAN RIGHTS COMMISSION

Chapter 2 of the Constitution of South Africa contains a Bill of Rights which is meant to protect human rights. The SA Human Rights Commission (SAHRC) was established in terms of section 181(1) of the Constitution and the Human Rights Commission Act of 1994. The constitutional functions of the Human Rights Commission are outlined in section 184 of the Constitution as follows, and they exist to:

- Promote respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and assess the observance of human rights in South Africa.

The Human Rights Commission performs the above functions across all government departments and municipalities to protect the basic social needs of all the people of South Africa. It also produces valuable information and knowledge that is critical to proactive oversight by the Legislature.

6.6 THE COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES (CRL RIGHTS COMMISSION)

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities aims to promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities on the basis of equality, non-discrimination and free association. The Constitution outlines the basic functions of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities as follows:

- To promote respect for the rights of cultural, religious and linguistic communities.
- To promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities on

- the basis of equality, non-discrimination and free association; and
- To recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council/councils for a community/communities in South Africa.

Other Statutory Institutions supporting Democracy

In addition to the commissions described in Chapter 9, the Constitution sets up other structures in South Africa to make sure that human rights are protected and that constitutional democracy is guaranteed.

6.7 The Financial and Fiscal Commission has the responsibility to advise and make recommendations to Parliament, provincial Legislatures, organised local government and other organs of State on financial and fiscal matters. Its primary role is to ensure the creation and maintenance of an effective, equitable and sustainable system of intergovernmental fiscal relations in South Africa. The Commission derives its mandate from Chapter 13 of the Constitution.

6.8 The Pan South African Language Board (PanSALB) was established by the Constitution of the Republic of South Africa, 1996, in order –

- To promote and create conditions for the development and use of official languages, the Khoi, Nama and San languages, as well as sign language; and
- To ensure respect for all languages commonly used by communities in South Africa.

6.9 The Public Service Commission (PSC): Section 196(1) of the Constitution requires that a single Public Service Commission be established for the Republic of South Africa. The Constitution prescribes that the Public Service Commission must be independent and impartial, and must exercise its constitutional powers and perform its functions without fear, favour or prejudice in the interest of maintaining an effective and efficient public administration, as well as a high standard of professional ethics in the Public Service.

The Public Service Commission monitors and evaluates the Department of Public Service and Administration. It is also mandated to foster good governance and sound administration in the Public Service in relation to conditions of service, management of compensation, human resources, labour relations, Public Service governance, service delivery, state information technology, capacity building and skills management.

6.10 The Independent Communications Authority of South Africa (ICASA) is the regulator for the South African communications, broadcasting and postal services sector. ICASA was established by an Act of statute, namely the Independent Communications Authority of South Africa Act of 2000, as amended.

ICASA's mandate is spelled out in the Electronic Communications Act for the licensing and regulation of electronic communications and broadcasting services, and by the Postal Services Act for the regulation of the postal sector.

6.11 The Independent Police Investigative Directorate (IPID) must ensure independent oversight over the South African Police Service (SAPS) and the Municipal Police Services (MPS). It also has to conduct independent and impartial investigations of identified criminal offences allegedly committed by members of the SAPS and the MPS, and make appropriate recommendations. The Legislature must make use of the Directorate's findings to hold the Executive accountable. (The Department of Community Safety in the provinces, the SA Police Service).

6.12 DEPARTMENT OF PERFORMANCE MONITORING AND EVALUATION IN THE PRESIDENCY

As the custodian of Monitoring and Evaluation (M&E) in government, the Department of Performance Monitoring and Evaluation (DPME) co-ordinates the government-wide M&E system. Its policy framework is supported by three other frameworks, namely the National Evaluation Policy Framework (NEPF) under the DPME; the Framework for Managing Programme Performance Information (FMPPI) under the National Treasury; and South Africa's Statistical Quality Assessment Framework (SASQAF) under Statistics South Africa (Stats SA).

M&E Relevance to Legislative Oversight and Accountability

It is extremely important and useful for Parliament and Legislatures to access and use the valuable data as a source which is derived from the various mechanisms described above. Independent analyses should be employed in tandem with the methodology and roll-out of the newly developed M&E Framework.

7 ANNEXURES

ANNEXURE 1

TRACKING RESOLUTIONS FOR OVERSIGHT AND ACCOUNTABILITY

FRAMEWORK FOR TRACKING RESOLUTIONS

1 PROCESS OF TRACKING RESOLUTIONS

Once a House adopts a Committee Report, the recommendations contained in that report become resolutions of the House. The Proceedings Unit (PU), on behalf of the Speaker, has to communicate this to the Executive. The Proceedings Unit should send a list of all resolutions to the Executive, along with any timelines for responses which were set out in the report.

The Executive is expected to send an official response to the Proceedings Unit via the Office of the Speaker. The Proceeding Unit will then send these responses to the relevant committees. The Executive is also expected to provide the responses in both hard copy and electronic format. Should a department fail to respond within the timelines set out in the report, it becomes the responsibility of an individual Committee to follow up with the department on the late or non-submission.

The Proceedings Unit also needs to be copied in when such communications take place. This is done so that the Proceedings Unit can keep track of responses by the Executive and simultaneously address capacity challenges that the unit may face if it is expected to follow up on non-submissions to individual Committees.

Once a Committee receives a response from a department, the response must be evaluated by the Committee Co-ordinator (CC), using the Evaluation Guide. A researcher must also analyse the response, and present his/her analysis to the Committee. The analysis must give a clear indication of the following:

- Does the response address a government priority issue and does this have any implications for the achievement of these priorities?
- Does the response deal with any internal arrangements of the Executive or does it pertain to service delivery issues?
- What are the implications for service delivery?
- Is this a recurring matter?
- Was the resolution adequately responded to?
- Can the issue be regarded as having been finalised (closed) or should it be kept “open” for further follow-up with the department?

It is preferable to conclude any resolutions that are kept open before the next oversight imperative is undertaken by a committee.

The Committee Co-ordinator must draft and present a Resolutions Report to the Committee on a quarterly basis. This must be done in time to inform other reporting requirements of the Office of the Chairperson of Committees (CoC).

Furthermore, each Committee must also provide the Office of the Chairperson of Committees with a resolution tracking progress report on a quarterly basis. The Office of the CoC must then provide Office Bearers with statistics on resolutions of all committees on a quarterly basis.

The Chairperson of Committees must be allocated a quarterly time slot in the House Programme in order to report on the Executive’s performance when it comes to complying with resolutions.

Resolution tracking must be a standard item on the agenda of all Committee meetings. During these meetings, updates must be provided on the status of resolutions tracking and compliance by the Executive.

A Committee’s quarterly and annual oversight reports on departments must also provide a clear account of the Executive’s performance on the most recent resolutions that had been passed in the House.

2 TIMEFRAMES

The Executive must submit responses to Committee resolutions within three months after it has been adopted by the House, unless a specific date for submission was explicitly indicated and forwarded to them by a committee.

Responses by the Executive should be sent to the Office of the Speaker and forwarded to the Proceedings Unit who will refer them to Committees.

The Office of the Chairperson of Committees must provide Office Bearers with statistics on resolutions (done by all Committees of the House) on a quarterly basis.

Resolution tracking must be a standard item on the agenda of Committee meetings, and Committee Co-ordinators must provide an update each time a response is received from a department.

Committee Co-ordinators must draft and present a Resolutions Report to the Committee on a quarterly basis. This must be done in time to inform other reporting requirements of the Office of the Chairperson of Committees.

Researchers must conduct analyses of responses within a month of their receipt and present their analyses to their Committees. When doing so, the Researcher must also indicate whether resolutions are linked to GPG priorities, service delivery priorities, or internal arrangements and processes of departments.

Researchers should, on an annual basis, conduct in-depth research on all responses received during the year as this will assist the Committee in identifying possible areas for oversight, to assess the implementation of resolutions by the Executive, and to assess the impact on departmental performance.

3 REPORTING REQUIREMENTS ON RESOLUTION PERFORMANCE

All portfolio committees should do quarterly and annual reports on departments' performance. These should include a clear account of departments' performance or response to the most recent resolutions of the House.

- The Office of the Chairperson of Committees must report quarterly, at the beginning of each quarter, to Office Bearers on the efforts of Committees of the House to get responses on resolutions, as well as the actual performance of the Executive in responding to these resolutions.
- The Office of the Chairperson of Committees must report quarterly, in the ending quarter, to meetings of Chairpersons on the work of Committees of the House on efforts to get responses to resolutions from departments, and their actual performance.
- The Chairperson of Committees must be allocated time in the programme to report to the House on a quarterly basis about the performance of departments with regard to responding and/or complying with resolutions of the House.

4 ROLES AND RESPONSIBILITIES OF OFFICE BEARERS

4.1 THE SPEAKER

As the custodian of the business and other outputs of the House, the Speaker is also the custodian of resolution tracking. The elevation of the resolution tracking function to this level ensures that it is treated with the necessary authority. However, the Speaker may delegate this function to the Office of the Chairperson of Committees as custodian of committee processes that lead to the generation of resolutions.

4.2 CHAIRPERSONS OF COMMITTEES

In terms of the location of the resolution tracking function, the Committee on Ministerial Accountability recommended that Office Bearers (OBs) and the Chairpersons' Committee should track and aggregate resolution compliance. Therefore, resolution tracking and the aggregation of resolution compliance should be done by the Office of the CoC.

The Office of the Chairperson of Committees must provide Office Bearers with statistics on resolutions of all committees on a quarterly basis. The Chairperson of Committees must, on a quarterly basis, be allocated time in the Programme to report to the House on the performance of the Executive in regard to their response and/or compliance with resolutions of the House.

Each Chairperson of a Committee should ensure that a full list of resolutions is maintained so that general performance by departments on resolution compliance can be assessed.

4.3 CHAIRPERSONS OF COMMITTEES

Each Committee Chairperson should ensure that a full list of resolutions is maintained, so that general performance by Departments on resolution compliance could be assessed.

5 ROLES AND RESPONSIBILITIES OF SUPPORT STAFF

5.1 PROCEEDINGS UNIT (PU)

The PU must refer resolutions to the Executive on behalf of the Speaker, highlighting timeframes for responses as set out in the report.

The PU must refer responses from the Executive to Committees and the Office of the CoC for consideration and information, respectively.

The PU must keep a record of the Executive's responses and, on a quarterly basis, report to the Chairperson of Committees on the Executive's compliance rate.

5.2 COMMITTEE ADMINISTRATIVE ASSISTANTS (CAA)

The CAA must keep a record of all responses received from the Executive in hardcopy.

The CAA must keep a record of all engagements with the Executive in respect of resolutions.

5.3 COMMITTEE CO-ORDINATORS (CC)

The CC must ensure that resolution tracking reflects as an item on the agenda of each committee meeting and provide an update whenever a response is received from the Executive.

The CC must draft a Resolution Tracking Report and present it to the Committee on a quarterly basis.

The CC must submit a quarterly Resolution Tracking Report to the Office of the CoC.

The CC must follow up with the Executive regarding responses whenever there is non-compliance to timeframes.

The CC must evaluate the adequacy of responses, using the Resolutions Adequacy Evaluation Guide.

The CC must ensure that resolutions are drafted in accordance with the SMART principle.

The CC must ensure that Committees first deal with outstanding resolutions when they engage the Executive during the budget, annual report and quarterly report processes.

5.4 COMMITTEE RESEARCHERS (CR)

The CR must analyse responses and present it to the Committee once they are received from the Executive.

The CR must conduct an annual analysis of resolutions passed and responses received for presentation to the Committee.

5.5 EVALUATION GUIDE FOR COMMITTEE CO-ORDINATORS

If a department has merely 'noted' a resolution, rate the commitment to implement as "questionable" and flag it for the Committee to pursue with the department.

If a department has indicated that a resolution is 'receiving attention', rate the response as "commitment to implement", but ensure that the Committee follows up with the department.

If a department's response shows a clear commitment/proof of correction of a service delivery or related matter, rate the response as "effective" and inform the Committee. It need not pursue the matter with the department any further.

If a department fails to respond to the resolution despite reminders and follow-ups, rate the response as 'failure to comply' or 'ineffective' and flag it for the Committee to pursue with the department.

If a department is merely reporting back on a process, rate the response as 'ineffective', notably at the Annual Report stage, and flag it for the Committee to pursue with the department.

Furthermore, rate each resolution response as:

- Specific or Vague;
- Measurable or Non-measurable;
- Time bound (if a department has committed to a timeframe) or Lacking in Timeframe.

The above will give the Committee an indication as to whether a department may be shirking its responsibility.

Table 4: Resolution Tracking Template

Dept	Date of Sitting	Committee Report from which a resolution emanated	Date resolution sent to Dept	Date response received from Dept.	Time taken for response	Does resolution relate to service delivery or internal processes	Does resolution relate to government priority	Was response analysed	Was Analysis Presented to the Committee	Date of Closure
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ANNEXURE 2

FORMAT OF OVERSIGHT REPORT

LEGISLATIVE SECTOR OF SOUTH AFRICA

Template for Committee Reports to the House (Parliament/Legislatures)

Committee on [Name of Committee]
Oversight Report on the [Which Quarter] Quarterly Report
of the
[Name of Department]
for the
[which financial year] financial year

*In line with the Sector Oversight Model (SOM) of the South African Legislative
Sector and focusing on the National Development Plan (NDP) and other
Development Agendas*
(Applies to Committees when tabling reports to the House)

MTSF (2014-2019): Outcome 1: Quality Basic Education

Committee Details		Department Details	
Name of Committee		Name of Department	
Which Financial Year		Dept. Budget Vote Nr.	
Which Quarter		Hon. Minister / MEC	
Committee Approvals			
	Name	Signed	Date
Hon. Chairperson			
Adoption and Tabling			
Date of Final Adoption by Committee		Scheduled date of House Tabling	

NOTES:

- When expressing monetary amounts, please use South African Rand only "R" and express the full Rand amount with no cents.
- When expressing percentages, please use the % symbol and round off percentages to two decimal places.
- When analysing a department's performance, please do not copy and paste the department's performance/budget tables. These need to be analysed.
- In the Executive Summary, include only the strategic or high-level "snapshots" of the required information. Details will be provided later in the report under "Programme Achievement"

[Note: Please remember to "update" the table of contents just before printing or forwarding]

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1 ABBREVIATIONS

Abbreviation	Full Wording
APP	Annual Performance Plan
SOM	Sector Oversight Model
MTSF	Medium-Term Strategic Framework (in this case, relating to the 2019-2023 term of office)
NDP	National Development Plan
PGDP	Provincial Growth and Development Plan
PwDs	Persons living with Disabilities
RISDP	Regional Indicative Strategic Development Plan
SDGs	Sustainable Development Goals

2 EXECUTIVE SUMMARY

Summarise the contents of the report based on:

- **Achievements:** Mention the main strategic achievements of the department during the period under review. Give only highlights as the details will be provided under “Programme Performance”. (See below)
- **Key Challenges:** Mention the main strategic challenges which the department experienced during the period under review, as well as measures that are in place to address them.
- **Main Risks:** Note the main strategic risks forecast by the department during the period under review, as well as measures that are in place to manage them.
- **Requests for Intervention:** These are requests for intervention by the department with respect to its APP/Budget/Quarterly Performance. State what the Committee is doing/has done to address these.
- **Undertakings:** Mention any undertakings by a Minister/MEC/department to address oversight findings of the Committee which require attention.

Note: Only snapshots, one-liners or bullet points of the most important or strategic achievements. Do not give any unnecessary details, please.

3 INTRODUCTION

- a. Introduce this report and state that it has been developed in accordance with the Sector Oversight Model (SOM).
- b. Provide basic information on its purpose, context, etc.

4 PROCESSES FOLLOWED

- a. Note the process that was followed with respect to:
 - Obtaining required submissions from the respective department
 - The preparation, compilation and finalisation of this report
 - The next onward steps in this process

5 COMPLIANCE AND QUALITY

- a. Information on the submission by the department of its Quarterly Report (and any other supporting documentation, if so requested) to the Committee in accordance with relevant / prescribed / requested:
 - Timeframes
 - Formats
 - Quality parameters
 - Legal parameters (e.g. compliance with the PFMA and other relevant legislation and regulations)

6 OVERSIGHT ON STRATEGIC PRIORITIES

a. Strategic Priorities

Information on achievements by the department during the period under review of relevant Strategic and Political Priorities:

[Note: Only achievements related to the strategic priorities are relevant here. Please do not refer to operational performance, as that will be discussed under "Programme Achievement". (See below)]

NDP Oversight Pillar: Social Transformation (Health, Education, Nation Building, Social Cohesion)			
Outcome 1: Quality Basic Education			
PGDP: [Province to include relevant focus area of PGDP]			
RISDP: Human and social development and special programmes, science and technology, gender and development			
Agenda 2063: Goal 2 – well educated citizens and skills revolution underpinned by science, technology and innovation			
SDG: Goal 4 – Ensure inclusive and equitable quality of education and promote life-long learning opportunities for all			
Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations
Sub-Outcome 1: Improved quality of teaching and learning through development, supply and effective utilisation of teachers			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Average hours spent by teachers on professional development activities per year	2017 - 62hrs 2018 - 66hrs 2019 - 70hrs			
Number of teachers who have written a self-diagnostic assessment	2017- 40 000 2018 - 105 000			
Percentage of teachers meeting the required content knowledge levels after support	2017-30% 2018-50%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of learners in schools with at least one educator with specialist training on inclusion	2017: 92% 2018: 95%			
Number and Percentage of Funza Lushaka bursary holders placed in schools within six months of their completion of studies or upon confirmation that the bursar has completed studies	2017/18 - 100% 2018/19 - 100%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Sub-Outcome 2: Improved quality of teaching and learning through provision of Infrastructure and learning materials				
Number of schools built through the Accelerated School Infrastructure Initiative (ASIDI) that have reached practical completion and handed over to the beneficiaries for usage.	2017- 60 2018 - NONE			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Number and percentage of public ordinary schools provided with water; electricity; sanitation facilities in line with agreed norms and standards per year	2016/17 Water - 100% Electricity - 100% Sanitation - 100%			
Number and percentage of learners provided with required textbooks in all grades and in all subjects per annum	100% every year from 2015			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Number and Percentage of Grade 1-9 learners provided with required workbooks per grade per year	100% every year from 2015			
Percentage of learners having access to information through (a) Connectivity (other than broadband) (b) Broadband	2017/18: 18% (1650) cumulative: 69% (16913) 2018/19: 21% (1650) cumulative: 75% (18563) 2019/20: 27% (1650) cumulative: 82% (20213)			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Sub-Outcome 3: Regular annual national assessments to track improvements in the quality of teaching and learning (ANA)				
Policy detailing the role of Universal and Verification ANA and analysis published	Policy published and commenced with communication and training by December 2014			
Create item bank of high quality, valid, and reliable items	A functional item bank to be complete by 2019			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Items used in Universal ANA are piloted a year before being used, on learners matching target population for the assessment	Piloting report produced and work shopped in wider education community by 2015			
Learner and teacher instrument is developed and piloted to collect background information	Verification ANA report to include learner and teacher background information from 2016/17			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Annual report on statistical equivalence of Universal and Verification ANA.	Annual report from 2014 ANA by June 2015			
District ANA report produced for every district (by DBE) using Universal ANA	Annual ANA report produced for each district in the country from January 2015 onward			
Sub-Outcome 4: Improved Grade R and planning for extension of ECD				

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of Grade 1 learners who have received Grade R per year	100% every year from 2015			
Number and percentage of learners in qualifying public schools provided with workbooks for Grade R each year	2017- 97% 2018 - 97%			
Number and percentage of Grade R practitioners with NQF level 6 and above qualification each year	2017- 20% 2018-30%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations
Percentage of Gr 1 entrants who attended Gr R that are school ready	2018/19 – 75%		
Policy, detailed plans & strategies developed by June 2018 & critical preparatory strategies launched by the Department of Social Development and Department of Basic Education	2018/19: Critical preparatory strategies launched		

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Sub-Outcome 5: A credible, outcomes-focused planning and accountability system (building the capacity of the state to intervene and support quality education)				
Proportion of principals appointed based on competency assessment processes	2017: 90% 2018: 100%			
Proportion of principals who have signed performance agreements each year	2017 – 60%			
Number and percentage of learners who complete the whole curriculum each year	2017 – 73% 2018 – 95%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of schools producing a minimum set of management documents at a required standard	2017 – 88% 2018/19 – 94%			
Percentage of schools where school governing body meets minimum criteria in terms of effectiveness	2017 – 88% 2018/19 – 89%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of learners in schools that are funded at a minimum level	2018/19 – 100%			
Percentage of schools with more than one financial management responsibility based on assessment	2017 - 91% 2018 - 93% 2019 - 95%			
Rate of utilisation of SA-SAMS in public school (excluding WC)	2016/17 - 96% 2017/18 - 98% 2018/19 - 99%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Implementation evaluation with clear recommendations on quality outputs and improvement in relation to tracking learner movement, progress, performance and completion	Implementation evaluation report by June 2016			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of schools visited at least twice a year by district officials (including subject advisers) for monitoring and support purposes	95% (2018/19)			
Percentage of school principals rating the support services of districts as being satisfactory	2017 – 67% 2018 – 71%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of district managers whose competency has been assessed against defined criteria	2017 – 85% 2018 – 90%			
Complete and consistent post-provisioning policy and regulations in place & proceed with implementation and monitoring	Policy complete (December 2015) & monitoring of implementation proceeding (April 2016)			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Clear roles and functions for district offices and minimum competencies for district officials	Competency framework in place (April 2015)			
Proportion of principals appointed based on competency assessment processes	2017: 90% 2018: 100%			
Sub-Outcome 6: Partnerships for a Strong Education System				
Proportion of NECT activities implemented (in 8 districts)	2017 - 65% 2018 - 80%			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations
Number of education dialogues per year	2 per year		
Number of innovations/ approaches identified for incorporating in broader school system on the basis of impact on school and district performance through the NECT activities	At least 2 per year		
Impact Indicators			

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Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of learners in grades 3 achieving at 50% and above in the annual national assessments in literacy and numeracy per year	2017: 69% 2018: 72%			
Percentage of learners in grades 6 achieving at 50% and above in the annual national assessments in home language; first additional language and in mathematics per year	2017: 69% 2018: 72%			

NDP Oversight Pillar: Social Transformation (Health, Education, Nation Building, Social Cohesion)				
Outcome 1: Quality Basic Education				
PGDP: [Province to include relevant focus area of PGDP]				
RISDP: Human and social development and special programmes, science and technology, gender and development				
Agenda 2063: Goal 2 – well educated citizens and skills revolution underpinned by science, technology and innovation				
SDG: Goal 4 – Ensure inclusive and equitable quality of education and promote life-long learning opportunities for all				
Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Percentage of learners in grades 9 achieving at 50% and above in the annual national assessments in home language; first additional language and in mathematics per year	2017: 69% 2018: 72%			
Number of Grade 12 learners passing at bachelor level in the national senior certificate examinations per year	2017: 235 000 2018: 255 000 2019: 270 000			

NDP Oversight Pillar: Social Transformation (Health, Education, Nation Building, Social Cohesion)				
Outcome 1: Quality Basic Education				
PGDP: [Province to include relevant focus area of PGDP]				
RISDP: Human and social development and special programmes, science and technology, gender and development				
Agenda 2063: Goal 2 – well educated citizens and skills revolution underpinned by science, technology and innovation				
SDG: Goal 4 – Ensure inclusive and equitable quality of education and promote life-long learning opportunities for all				
Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Number of Grade 12 learners passing Mathematics at 50% or more in the national senior certificate examinations per year	2017: 63 169 2018: 65 646			
Number of Grade 12 learners passing Physical Science at 50% or more in the national senior certificate examinations per year	2017: 45 055 2018 :46 233			
Average score obtained by Grade 6 learners in language in the SACMIEQ assessment	Lang: 520 Math: 520			

NDP Oversight Pillar: Social Transformation (Health, Education, Nation Building, Social Cohesion)				
Outcome 1: Quality Basic Education				
PGDP: [Province to include relevant focus area of PGDP]				
RISDP: Human and social development and special programmes, science and technology, gender and development				
Agenda 2063: Goal 2 – well educated citizens and skills revolution underpinned by science, technology and innovation				
SDG: Goal 4 – Ensure inclusive and equitable quality of education and promote life-long learning opportunities for all				
Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
Average score obtained by Grade 8 learners in mathematics in the Trends in International Mathematics and Science Study (TIMSS)	361 (2015)			
Percentage of 7 to 15 year old's attending education institutions	2017: 99.6% 2018: 99.8%			
The percentage of children who turned 9 in the previous year and who are currently enrolled in Grade 4 (or a higher grade)	2017: 71% 2018: 73%			

NDP Oversight Pillar: Social Transformation (Health, Education, Nation Building, Social Cohesion)				
Outcome 1: Quality Basic Education				
PGDP: [Province to include relevant focus area of PGDP]				
RISDP: Human and social development and special programmes, science and technology, gender and development				
Agenda 2063: Goal 2 – well educated citizens and skills revolution underpinned by science, technology and innovation				
SDG: Goal 4 – Ensure inclusive and equitable quality of education and promote life-long learning opportunities for all				
Indicators (Prepopulated from MTSF)	Target (Prepopulated from MTSF)	Summarized Departmental Performance	Committee Recommendations	
The percentage of children who turned 12 in the previous year and who are currently enrolled in Grade 7 (or a higher grade)	2017: 57% 2018: 58%			
The percentage of youths who obtained a National Senior Certificate from a school	2017: 56% 2018: 58%			
The percentage of youths who obtained any FET qualification	2017: 93% 2018: 100%			

b. Additional Provincial Priorities

Provincial Priority Pillars	
Provincial Priority Pillar 1: [....]	
Special Projects (other than those that have been referred to in the NDP section above)	Summarised Departmental Performance
Provincial Priority Pillar 2: [....]	
Special Projects (other than those that have been referred to in the NDP section above)	Summarised Departmental Performance

c. Measurement of Service Delivery Impact/Achievement

When giving information on departmental monitoring and evaluation, state its actual “on the ground” service delivery achievements/impacts of its Programmes for the period under review.

7 OVERSIGHT ON TECHNICAL PERFORMANCE

a. *S.M.A.R.T*

Information on the adherence by the departmental Quarterly Report to the S.M.A.R.T principles and the extent to which, for every target, the actual performance ties fully to the planned predetermined objective.

b. *Achievement of APP predetermined objectives*

Information on:

- Number of APP targets relevant for this Quarter
- Number and percentage of the APP targets for this Quarter that have been achieved during this Quarter
- Percentage APP achievement for this Quarter as compared to last Quarter
- Percentage APP achievement for this Quarter as compared to the same Quarter Last Financial Year
- Main areas in the APP that have experienced non-achievement during this Quarter
- Main reasons provided by the Department for non-achievement of its APP during this Quarter
- Measures in place (with timeframes) to correct/achieve the non-achieved targets for this Quarter and to prevent recurrence of non-achievement

c. *Programme Information*

Information on the department's performance per Programme for the period under review

Note: Programme Level: Give detailed information, but not so detailed as to reproduce the department's own Information. Remember that this is an analytical report by the Committee.

d. *Priority, Output, Outcome Linkages*

Information on whether (and if so, the extent to which) Departmental Programmes/Projects are indeed achieving its Strategic Objectives/Service Delivery Outcomes for the period under review.

8 OVERSIGHT ON BUDGET EXPENDITURE

Information on Departmental Budget Expenditure:

- i. Expenditure for this Quarter only (in Rands and also as a percentage of the total budget allocation)
- ii. For every Quarter from the start of the Financial year to the end of this Quarter (in Rands and also as a percentage of the total budget allocation)
 - a. As a rule of thumb, in Quarter 1, budget expenditure should be approximately at 25% of the total allocation. In Quarter 2, it should be approximately at 50%. In Quarter 3, it should be approximately 75%, and at the end of Quarter 4, it should be approximately 100%. In line with these guidelines, is there any trend of over-expenditure/under-expenditure for the period under review? If so, what are the main areas of such over-spending / under-spending trends and what are the main reasons provided by the department for this?
 - b. How does the % budget expenditure compare with the % APP achievement for the period under review?
 - c. Departmental budget expenditure per Programme for the period under review
 - d. Achievements by the department for the period under review with respect to:

Note: Please do not tabulate the information and please do not copy the Department's Table in this regard. Rather provide an analysis.

- e. *Achievements by the department for the period under review with respect to:*
 - i. Efficiency/Value-for-money SCM/Procurement processes
 - ii. Reduction of Fruitless/Wasteful expenditure
 - iii. Reduction of Fraud and Corruption

- iv. Move towards “ongoing clean audits”
- v. Spending Conditional Grants (where applicable)

9 OVERSIGHT ON A “CAPACITATED PUBLIC SERVICE”

Information on:

- a) Current vacant posts in the department
- b) Current acting positions in the department
- c) Precautionary suspensions in the department
- d) Transversal mainstreaming in the department
- e) New Appointments during the period under review
- f) Terminations during the period under review

10 PUBLIC INVOLVEMENT

Information on:

- The steps/measures the department has taken to meaningfully involve the public/stakeholders in the course of its work/service delivery
- Public education programmes of the department
- Feedback sessions conducted by the department
- Impact of departmental Public Participation activities

11 OVERSIGHT ON RESOLUTION MANAGEMENT

Information on the department's implementation of House Resolutions for the period under review:

RESOLUTIONS MANAGEMENT		
RESOLUTIONS PASSED DURING THE PREVIOUS QUARTER	RESOLUTIONS/ ACTION DUE DURING THE QUARTER UNDER REVIEW	RESOLUTIONS CLOSED
Number of Resolutions passed during the Previous Quarter	Number of Resolution Responses/Action due in the Quarter under review	From those due in the Quarter under review, how many Resolutions are now closed
E.g. 15	E.g. 16	E.g. 9
Nature of Resolutions	How many new and how many outstanding	Reasons for Resolutions not yet closed
E.g. 10 related to service delivery (Water and Sanitation), 5 related to Service Delivery (Roads)	E.g. 10 new and 6 Outstanding	E.g. 3 due to non-action by Department, 3 due to inadequate response from Department, 2 due to unrealistic deadline, 1 due to confusing/ ambiguous resolution
With respect to the Resolutions/Action due during the Quarter under review but still Open, what measures has the Committee taken to ensure speedy Closure of these Resolutions		
E.g.: The Committee has engaged the MEC and there is a written commitment to provide responses to the above outstanding resolutions before the end of the next Quarter.		

12 OVERSIGHT ON IMPLEMENTATION OF LAWS

a) *Implementation of Laws*

IMPLEMENTATION OF LAWS	
All legislation (National and Provincial) applicable to the respective Department	Extent to which Department is implementing the Law during the Quarter under Review
Separate Row for each Law	Only State "Good", "Poor" or "NIL"
Add as many Rows as Required	Add as many Rows as Required
From the above, for each "Poor" or "NIL", please provide reasons/challenges identified by the Department	
Separate Row for each Law identified as "Poor" or "NIL"	
Add as many Rows as Required	
For each of the reasons/challenges above, please outline the mitigating measures (with timeframes) by the Department to improve implementation of Laws passed	
Separate Row for each Reason/Challenge	
Add as many Rows as Required	

b) *International Treaties*

INTERNATIONAL TREATIES	
All international treaties that the Department has entered	Extent to which department is implementing the respective treaties
Separate Row for each Law	Only State "Good", "Poor" or "NIL"
Add as many Rows as Required	Add as many Rows as Required
From the above, for each "Poor" or "NIL", please provide reasons/challenges identified by the Department	
Separate Row for each Law identified as "Poor" or "NIL"	
Add as many Rows as Required	
For each of the reasons/challenges above, please outline the mitigating measures (with timeframes) by the Department to improve implementation of international treaties	
Separate Row for each Reason/Challenge	
Add as many Rows as Required	

13 OVERSIGHT ON PERFORMANCE VERIFICATION

Give information on whether there is any evidence, either in the Quarterly Report or through the Committee's interaction with the department and other stakeholders; and note whether the committee is satisfied that the department maintains portfolios of evidence to verify its reported performance information.

14 OVERSIGHT ON ANY OTHER COMMITTEE FOCUS AREA

Include any other area of departmental performance with respect to its Quarterly Report that the Committee wishes to report on and which is not already included in any of the above focus areas.

In addition, Committees may wish to use any of the SOM tools to further enhance their analyses.

Note: This section is optional.

15 FINDINGS, RECOMMENDATIONS AND IMPLICATIONS ON LAWMAKING

a) Committee findings/concerns:

COMMITTEE FINDINGS/CONCERNS
With respect to [which Focus Area above], the committee is concerned that: ...
With respect to [which Focus Area above], the committee is concerned that: ...
With respect to [which Focus Area above], the committee is concerned that: ...
Add as many rows as required

COMMITTEE FINDINGS/CONCERNS

b) Committee Recommendations:

COMMITTEE RECOMMENDATIONS			
Based on the information set out herein-above as well as the Committee Concerns, the Committee therefore recommends as follows:			
Ref Number	Recommendation	Type of response expected	Due Date
CHS/QXPR/001	That the MEC	e.g. Written Response	DD/MM/YYYY
CHS/QXPR/002	That the MEC	e.g. updated APP	DD/MM/YYYY
CHS/QXPR/003	That the MEC	e.g. revised budget	DD/MM/YYYY
Add rows if required			

Explanatory note on the reference numbers for Recommendations (ultimately Resolutions)

Reference number is in the format: [A] / [B] / [C]

[A] = Three letter Committee identifier. E.g. COGTA/HS can be "CHS", SRAC can be "SRA"

[B] = The SOM Imperative [e.g. Q1PR or Q2PR or FIS1 or APR, or BV. In this case, since this is a Q-Report template, it will either be Q1PR or Q2PR or Q3PR or Q4PR]

[C] = The number of the recommendation in this report [001,002,003 ..., 00n]

Recommendations/ Resolutions	Smart-Ness			
	Specific?	Measurable?	Attainable?	Realistic?
The Provincial Cabinet should consider increasing the budget allocation for the Gauteng Department of Housing to enable the achievement of time-bound projects and also take into consideration the effects of immigration, high cost of land and the increasing.				
The Dept. should provide detailed reporting in both its Quarterly and Annual reports on the progress made towards the Economic Empowerment of People living with disabilities, Women and Youth in compliance with section 2(1)(d)(i) of the Preferential Procurement Policy Framework Act No. 5 of 2000 (PPPFA).				

The Department should make a concerted effort towards the recruitment of people living with disabilities in line with the Employment Equity targets and provide the Committee with a progress report by 31 July 2019.				
The Department should provide the Committee with a progress report on the Gauteng Housing Fund by 31 July 2019.				
The Department should provide the Committee with a progress report on the eKhaya System by 31 September 2019.				

ANNEXURE: EXERCISE ON OVERSIGHT REPORT RECOMMENDATION “SMART-NESS”

The following are illustrative Legislature Committee Oversight Recommendations to a department. Define if each of the recommendations is ‘SMART’ (motive): Specific, Measurable, Attainable, Realistic, Time-bound.

GUIDELINES ON HOW TO RATE “SMART-NESS”

- **Specific:** Rate as ‘Yes’ for Specific if the recommendation/resolution concerns itself with one particular issue, rather than many issues;
- **Measurable:** Rate as ‘Yes’ for Measurable only if recommendation/resolution talks to specific goals or deliverables (e.g. service-delivery outputs (e.g. number of potholes filled); targets; feedback reports, etc.)) that the Committee wants the department or MOE to attain.
- **Attainable:** Rate as ‘Yes’ for Attainable only if the recommendation/resolution is such that the department/MOE, etc. can actually achieve it (it must be within reach). Typically, resolutions which accord with targets/indicators set out in the department’s service delivery plans would be attainable as the particular department actually set it themselves at the beginning of the F/Y;
- **Realistic:** Rate as ‘Yes’ for Realistic only if the recommendation/resolution is such that what it asks for is doable for the department/MOE (it must form part of its SDBIP and/or reporting obligations). Such resolutions must push the department, but not break it;
- **Time-bound:** Rate as ‘Yes’ for Time-bound only if a specific time-frame has been attached to the recommendation/resolution, e.g. 15 February 2019. Giving only a month may not be as specific as giving a day.

c) *Implications on Lawmaking/Policy Development*

Information on how the Committee plans to use its findings/ recommendations above to inform the Policy Development/ Lawmaking process.

16 ACKNOWLEDGEMENTS

The Committee hereby thanks and acknowledges ...

17 ADOPTION

In accordance with Rule [XXX] of the Standing Rules of the [Name of Legislature], the Committee hereby presents the report to the House for adoption.



PUBLIC PARTICIPATION

*Induction Handbook for
Members of Parliament and Provincial Legislatures*

(2nd Edition)

A publication of the South African Legislative Sector



ACKNOWLEDGEMENTS

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1 INTRODUCTION

The nature of public participation radically changed with the drafting of the new South African Constitution in 1996. The new Constitution asserts that South Africa is a constitutional democracy country that upholds representative and participatory democracy. In a representative context the Members of Parliament (MPs) represent the views of the electorate, whilst in a participatory democracy the public is actively involved in decision-making processes such as lawmaking and oversight. The intention of public participation and involvement in democratic processes is primarily to influence decision-making processes that reflect '*the will of the people*'.

Subsequently, the SA Legislative Sector recognised the need to operate within a structured framework of participation. The legislative sector, consisting of Parliament and all provincial legislatures, thus conceived a Sector Public Participation Framework that provides a documented platform for shared understanding, alignment and minimum requirements and guidelines for Public Participation. The Framework was adopted by the Speakers' Forum and required Legislatures to develop their own Public Participation Models.

South Africa has adopted a macroplan for the country, which currently is the National Development Plan (NDP), that serves as a blueprint to drive its achievement of objectives of a developmental state. The plan outlines

steps for the realisation of a developmental, capable and ethical state that treats citizens with dignity. The NDP acknowledges that government needs to provide the channels for ordinary citizens to influence decision-making and resource allocation for the future of their communities, towns and cities by fostering a culture of active citizenry (NDP, 2012).

Parliament has identified the need to assess key legislation passed by the democratic Parliament over the past 21 years. A High Level Panel (HLP) was established to review legislation, assess implementation, identify gaps and propose action steps with a view to identifying laws that require strengthening, amendment or change. This sector takes into cognisance the findings of the HLP report relating to public participation. The findings emphasised the notion of active citizenry by highlighting aspects of democracy relating to representation, active citizenship and a responsive government. The findings propose the deepening of democracy and promoting a vibrant, engaged and active citizenry.

2 OBJECTIVE OF THE MODULE

Public participation is one of the core functions of Parliament and provincial legislatures and forms a key component of legislative sector work. The module is developed to equip and support Members of Parliament (MPs) and Members of Provincial Legislatures (MPLs) with the information, knowledge and capacity required to perform their responsibilities as Members of the SA Legislative Sector (SALS).

The module is designed to provide Members of Parliament (MPs) and Members of Provincial Legislatures (MPLs) with critical information allowing them to immediately function optimally in performing their role as public representatives. The programme forms part of the comprehensive induction programme that is intended to orientate Members to the legislative environment and the legislative sector approach and practices when dealing with public participation.

The main objectives of the module are to:

- Provide MPs and MPLs and office bearers of Legislatures with the technical information required on the operations and functions of the public participation function of the SA Legislative Sector (SALS).
- Provide Members and office bearers of the legislative sector with basic and practical information, tools and processes.
- Familiarise Members of the SA Legislative Sector with the aspect of public participation and the dynamic nature thereof.

The course is based on a people-centred developmental approach and the current legislative sector legal and policy framework and practice pertaining to public participation, thereby keeping with the fundamental national vision of being responsive to the needs of the people in order to ensure a better quality of life for all.

3 STRUCTURE OF THE MODULE

The module on public participation is an introductory training document designed for use by Members of Parliament and Provincial Legislatures of South Africa. The module consists of various learning units containing comprehensive information on public participation and forms part of the comprehensive induction programme for Members. The module comprises four units including (i) Introduction to Public Participation, (ii) Legal and Policy Framework for Public Participation, (iii) Public Participation Framework for the SA Legislative Sector and (iv) Structures, Roles and Responsibilities for Effective Public Participation.

4 UNIT 1: INTRODUCTION TO PUBLIC PARTICIPATION

Public participation is increasingly relevant in modern day democracies where there is a growing demand for accountability and transparency by governments. The emphasis is on the provision of opportunities for

direct, meaningful participation by the public to influence decision-making processes and policy and contributes to heightened levels of trust and government legitimacy whilst serving to strengthen democracy.

Public participation is inextricably linked to democracy and, more specifically, participatory democracy. The type of participation and the extent thereof may vary, given the different types of democracies one finds, ranging from direct to representative to participatory democracy.

In introducing the concept of public participation, the unit focuses on a best-fit definition of public participation for South African legislatures. It provides a concise historical background and current day international trends, whilst concluding with a broad overview of public participation in the South African legislative environment, where the Constitution places a clear obligation on legislative institutions to ensure participation in legislative processes.

4.1 DEFINITION AND PURPOSE OF PUBLIC PARTICIPATION

Defining Public Participation

A best-fit definition of public participation for the SA Legislative Sector views public participation as the process by which the sector informs, educates and consults with interested or affected individuals, organisations and government entities before making a decision. Public participation is a two-way communication and collaborative problem-solving mechanism with the goal of achieving and representing decisions that are more acceptable. Other terms sometimes used are 'public involvement', 'community involvement' or 'stakeholder involvement'.

Furthermore, in a diverse society such as South Africa, there is also a need to acknowledge that the term 'public' is inclusive and diverse by its very nature. In this context, there should be a focus on those who are confronted with poverty and lack access to resources, including children, women, people with disabilities and the youth.

Public participation is a fundamental dimension of democracy and an important factor in the strengthening and maturing of democracies. “Meaningful public participation ensures that the appropriate level of participation is utilised. A public participation process should provide for levels of participation that are commensurate with the level of public interest.”¹ Meaningful participation should therefore be promoted at all times to ensure effective public participation in the legislative processes.

4.2 PURPOSE OF PUBLIC PARTICIPATION

- To obtain the view of the public on policy, legislation and other processes in order to enrich the decision-making processes of the institutions.
- To impart knowledge to communities about governance and government matters that affect them, so that the pace and relevance of service delivery is improved.
- To obtain information about the experiences of the people with regard to service delivery and government action, so that the institutions take the necessary action to bring about change.

4.3 BENEFITS, PRINCIPLES AND VALUES OF PUBLIC PARTICIPATION

Why is so much emphasis placed on public participation and what is its relevance globally and in the South African situation? Public participation is viewed as an integral part of democracy itself and therefore public participation in the policy and decision-making processes is an imperative in any democratic country.

4.3.1 BENEFITS OF PUBLIC PARTICIPATION

Meaningful public participation has a myriad of advantages of which a comprehensive list is shown on the next page²:

- It is a constitutional provision and can minimise litigations;
- It informs lawmaking and oversight (ownership);

- Enhances public support for legislation and government policies and democratic stability and ensures that the public is informed, involved and educated and is able to bridge the gap between them and the authorities;
- Develops civil society;
- Deepens participatory democracy, legitimacy and credibility;
- Boasts confidence and minimises conflicts and confrontations;
- Limits the abuse of authority;
- Increases ease of implementation and improved service delivery;
- Improves quality of decisions;
- Minimises cost and delay;
- Builds consensus;
- Increases ease of implementation;
- Aids in avoiding worst-case confrontations
- Maintains credibility and legitimacy;
- Anticipates public concerns and attitudes;
- Develops civil society;
- Produces decisions that are responsive to public values and substantively robust;
- Helps to resolve conflict, builds trust;
- Educates and informs the public about the environment;
- Leads to better policy outcomes;
- Assists the public in developing the capacity for improving their lives;
- Promotes principles of good governance;
- Fosters a sense of ownership and commitment;
- Contributes to policy implementation by building support and eliminating resistance;
- Could save costs by minimising or eliminating the need for policy implementation to be policed;
- Could serve as a control mechanism to limit the abuse of authority;
- Ensures that the public is informed, involved and educated and is able to bridge the gap between themselves and public authorities;
- Has the capacity to enhance and consolidate the democratic culture of the nation;
- Is essential for long-term democratic stability; and
- It enhances legitimacy and creates public support for legislation and government policies, thereby ensuring democratic stability.

Perhaps the greatest long-term benefit is that public participation is an enormously important way of empowering citizens. By engaging with governments on issues that affect their lives, the public is brought into the mainstream and acquires skills, knowledge and capacity. It signals a shift in thinking about governance and democracy³.

4.3.2 PRINCIPLES OF AND CRITERIA FOR PUBLIC PARTICIPATION

The SA Legislative Sector ascribes to the following principles of public participation:

- Promotes active and representative participation towards enabling the public to meaningfully influence the decisions that affect their lives.
- Engages the public in learning about and understanding community issues and the economic, social, environmental, political, psychological, and other impacts of associated courses of action.
- Incorporates the diverse interests and cultures of the community in the development process, and disengages from support of any effort that is likely to adversely affect the disadvantaged members of a community.
- Works actively to enhance the leadership capacity of community members, leaders and groups within the community.
- Utilises a community's diversity to deepen shared understanding and produces outcomes of long-term benefit to the whole community or society.

The basic principles⁴ of public participation would therefore include proactivity, inclusiveness and shared responsibility, openness throughout the process, access, transparency, and respect for public input. In line with this, public participation should be timely, effective, adequate and formal, and contain information, notification, dialogue, consideration, and response⁵. These principles point to some key aspects required to promote successful public participation policies and practices, which require firm, continuous commitment from government and civil society.

One key aspect of public participation is that the larger public must be kept informed of the possible impacts of a decision and it must be highly visible and accessible to the public so, should they decide to participate, they have a clear understanding of how and where they can participate. Therefore, it should be standard practice to establish and maintain an effective public information and education programme as a precondition for the public participation programme.

4.3.3 VALUES UNDERPINNING PUBLIC PARTICIPATION

The SA Legislative Sector has endorsed the values listed below:

- Those affected by a decision have the right to be involved in the decision-making process.
- Includes the promise that the public's contribution will influence the decision.
- Promotes sustainable decisions by recognising and communicating the needs and interests of all participants, including decision-makers.
- Seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- Seeks input from participants in designing how they participate.
- Provides participants with the information they need to participate in a meaningful way.
- Communicates to participants how their input affected the decision.
- Includes all relevant perspectives.

4.4 GLOBAL PERSPECTIVE ON PUBLIC PARTICIPATION

The importance of public participation to the continued existence and maturation of democracy is rooted in the ancient concept of democracy applied in the city states of Athens, Greece in which the power to rule resided in the people and where important decisions affecting the citizens were made directly through a face-to-face assembly of all the citizens.

Over time, the principle of participation has been entrenched, formally society, democracy is widely believed to be the regime that, of all regime forms, makes the best provision for public participation by institutionalising rule by, for, and of the people”.

Globally, participatory democracy is viewed as essential to ensure a high level of legitimacy, contribute to empowerment and strengthen democracy. The current international trend points to the rejection of democracy operating through elected representatives only and embraces strategies of direct democracy, which seeks ongoing accountability. The rationale for such a participatory form of democracy is part of a growing international trend aimed at creating vehicles for dialogue between governments and people. It is grounded in the view that, where people are not involved in decisions that affect their lives, social policies and political interventions are likely to fail.

The international political environment increasingly favours public participation in political or government processes and realises the value of such engagement. Therefore, today, public participation is increasingly considered standard practice and regarded as an integral and key condition for a successful modern democracy. Modern democracies that employ public participation as standard practice are perceived as more democratic, efficient and more likely to remain successful than democracies where old “top-down” methods are used.

The type of participation envisaged in a participatory democracy, namely ongoing interaction between the people and their elected representatives in all decision-making is seen as contributing most to the enhancement of democracy in a society.

Participatory democracy is sometimes counter-posed to representative government, but employing public participation strategies can also be seen as reinforcing and strengthening representative government to include greater levels of participation by citizens and by providing public representatives with information they would not otherwise have, but which is necessary for effective and responsive decision-making. Strategies to

facilitate and promote public participation are also critical in ensuring the participation of marginalised and under-resourced constituencies in decision-making by representative bodies (Cachalia, 2006).

The majority of constitutions, as in the case of South Africa, also place great emphasis on the principles of accountability, transparency and openness. This has relevance for public participation, in that it imposes a general obligation on government, particularly its elected representatives, and creates a climate that encourages and promotes interaction.

4.4.1 INTERNATIONAL INSTRUMENTS ON PUBLIC PARTICIPATION

Non-binding international and regional instruments, as well as popular pressure to open up governmental decision-making processes, are spurring national governments to take steps to improve transparency, participation, and accountability. At the 1992 Earth Summit in Rio, nations from around the world adopted Principle 10 of the Rio Declaration, which emphasises the importance of public access to information, participation in decision-making processes, and access to judicial procedures and remedies. In Agenda 21, the plan of action that accompanied the Rio Declaration, governments pledged themselves to the pursuit of broader public participation in decision-making processes and policy formulation for sustainable development. In 1998, the United Nations Economic Commission for Europe adopted the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (known as the Aarhus Convention). The Bolivian Summit Declaration (1996) reflected growing co-operation between governments in the American hemisphere on issues relating to public participation, particularly on environmental matters. Bolivia, for example, has passed a law for popular participation and a national system for community development has been put in place. The Manila Declaration (1982) and African Charter for Popular Participation in Development and Transformation (1990) are further examples of the trend towards public participation.

4.5 PUBLIC PARTICIPATION IN THE BROADER SOUTH AFRICAN CONTEXT

The history of oppression in South Africa dictates the need for a higher form of accountability and the need to sustain and strengthen its young democracy through ascribing to the notion of participatory democracy. The South African State therefore has a constitutional, legal, moral and historical obligation to facilitate participation in decision-making processes affecting citizens. In alignment with this obligation, various pieces of legislation and policies have been put in place to make provision for and give effect to the notion of participation – especially in the area of environmental law and in the legislative arm of government, which is regarded as the guardian of democracy.

The mode of public participation selected or implemented is dependent on specific context and may vary from one set of circumstances to the next. In the legislative environment, there is a drive to put in place minimum criteria across the legislative sector to avoid legal battles and aspire to the ideal of participation beyond basic legal requirements to satisfy the quest for authentic, empowering and meaningful participation of the people of South Africa. The legislative sector aims to entrench, encourage and facilitate participation with a view to fully meet its mandate as the legislative arm of government, as it was intended and to uphold and strengthen democracy as the guardians of democracy and constitutional values.

Lastly, South Africa remains a developing nation and public participation is regarded as a fundamental building block of development, whilst also being a key characteristic of participatory democracy. Therefore there is a direct correlation between democracy and development. In turn, meaningful public participation has the effect of strengthening development and therefore democracy.

5 UNIT 2: LEGAL AND POLICY FRAMEWORK FOR PUBLIC PARTICIPATION

5.1 CONSTITUTIONAL MANDATE AND PROVISIONS RELATING TO PUBLIC PARTICIPATION

While the concept of a 'democratic state' refers to diverse forms of citizen participation and representation in the political sphere, the specific rights, duties and obligations of both citizens and the state are enshrined in South Africa's constitutional democracy. In South Africa, the ambition to move beyond simple representative democracy (participation in elections only) to a more complex participatory democracy framework occurs through constitutional provisions. These are intended to enable citizens to participate in a number of direct ways to ensure oversight and accountability.

These obligations are enshrined in the Constitution to ensure a 'living' democracy in terms of the ways in which citizens are able to influence lawmaking. Promoting public participation in the legislatures, according to the constitutional mandate, is not only important to promote a people-centred democracy, it is also critical, because it strengthens the functioning of the legislatures. Effective public participation can improve the capacity of legislatures to fulfil their role to build "a capable, accountable and responsive state that works effectively for its citizens".⁶

⁶ National Planning Commission, Vision 2030.

The Constitution of the Republic of South Africa, 1996

Section 1: Founding Values

The Republic of South Africa is one sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.
- (c) Supremacy of the Constitution and the Rule of Law.
- (d) Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness.

Chapter 4: Parliament

Section 56. Evidence or information before National Assembly

The National Assembly or any of its committees may –

- (d) receive petitions, representations or submissions from any interested persons or institutions.

Section 59. Public access to and involvement in the National Assembly.

- (1) The National Assembly must –
 - (a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
 - (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken to
 - (i) regulate public access, including access of the media to the Assembly and its committees.
- (2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

Section 69. Evidence or information before the National Council

The National Council of Provinces or any of its committees may –

- (d) receive petitions, representations or submissions from any interested persons or institutions.

Section 70. Internal arrangements, proceedings and procedures of the National Council.

- (1) The National Council of Provinces may –
- (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.

Chapter 6: Provinces

Section 115. Evidence or information before provincial legislatures.

A provincial legislature or any of its committees may –

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- (b) require any person or provincial institution to report to it;
- (c) compel, in terms of provincial legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- (d) receive petitions, representations or submissions from any interested persons or institutions.

Section 116. Internal arrangements, proceedings, and procedures of provincial legislatures. (1)

A provincial legislature may—

- (b) make rules and orders concerning its business with due regard to representative and participatory democracy, accountability, transparency and public involvement.

Section 118. Public access to and involvement in provincial legislatures. (1)

A provincial legislature must –

- (a) facilitate public involvement in the legislative and other processes of the legislature and its committees, and
- (b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken to
- (i) regulate public access, including access of the media to the legislature and its committees.

5.2 PRECEDENTS FROM CASE LAW

These guidelines are premised on the Constitutional Court judgment in *Doctors for Life International v The Speaker of the National Assembly 2006 (12) BCLR 1399 (CC)*, which dealt, amongst others, with the duty of a legislature to facilitate public participation in its legislative process.

A provincial legislature, in making a determination on whether public participation should be facilitated in respect of a Bill, should be cognisant of the following:

- The duty to facilitate public participation is an aspect of the right to political participation, which is, in turn, considered a fundamental human right. The public is entitled to participate in decisions that affect them.
- The fact that the National Assembly had facilitated public participation on a Bill does not absolve a provincial legislature from the duty to ensure that adequate public participation is facilitated provincially – the provincial perspective on a Bill may be distinct from the national perspective.
- The public has a right to adequate information and to an effective opportunity to exercise the right to political participation. Information is adequate where it is of such a nature that it enables members of the public to know what the issues in the Bill are, so that they may decide whether such issues are likely to affect them.
- Where notice of an opportunity for public participation is given, care must be taken that the manner in which such notice is given ensures a reasonable prospect that the notice will come to the attention of the public.
- Reasonableness in discharging the duty to facilitate public participation will depend on a number of factors, including:
 - The provincial legislature must consider the nature and importance of the Bill and the intensity of its impact on the public;
 - The time and expense of facilitating public participation is relevant, but may not in itself justify denial of public participation where public participation is otherwise reasonably necessary;

- The provincial legislature's views on the content, importance and urgency of a Bill are given particular weight, and a court will be loath to interfere with such views, provided that such views are reasonable;
- It is important that the reasons for decisions concerning public participation, the particular considerations taken account of in making such decisions and the steps taken in terms of these decisions be placed on record;
- Facilitation of an opportunity for public participation includes, not only the provision of such an opportunity, but also ensures that the public has reasonable access to such an opportunity;
- The provincial legislature enjoys a wide discretion in determining the manner of public participation – including written submissions and/or oral submissions and/or public hearings;
- The absence of a public response after initial publication of a Bill may be properly indicative of a lack of public interest in a Bill;
- Failure by a provincial legislature to make adequate provision to facilitate public participation where this is reasonably called for may invalidate the resulting legislation. The provincial legislature should exercise caution and ensure that it acts reasonably in determining whether to facilitate public participation and in determining the nature and extent of the facilitation of public participation; and
- What matters at the end of the day is that a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say.

One of the founding values of the Republic of South Africa, as set out in the Constitution, is a system of democratic government to ensure accountability, responsiveness and openness. The Supreme Court of Appeal in *King and Others v Attorneys Fidelity Fund Board of Control and Another*⁷ found that the abovementioned value is contained in the constitutional requirement that the rules and orders of the National Assembly for the conduct of its business must be made with due regard, not only to representative democracy, but also to participatory democracy.

⁷ 2010 (4) SA 185 (SCA).

The court further found that;

“it also finds expression in the National Assembly’s power to receive petitions, representations or submissions from any interested persons or institutions, its duty to facilitate public involvement in its legislative and other processes and of those of its committees, its duty generally to conduct its business in an open manner and hold its sittings and those of its committees in public, and its duty, generally, not to exclude the public or the media from sittings of its committees.”

The value of accountability, responsiveness and openness finds expression in the Constitution also in relation to the National Council of Provinces and provincial legislatures in much the same manner as set out above. Public participation therefore includes the duty to facilitate public involvement in legislative and other processes; the duty to conduct the business of a legislature in an open manner and hold plenary sittings and those of committees in public; and the duty not to exclude the public or the media from sittings of the House or committees unless it is reasonable and justifiable to do so in an open and democratic society.

The Supreme Court of Appeal had an opportunity to give content to the concept of public involvement in the case of *King*. It defined it in the following terms:

“Public involvement” is necessarily an inexact concept, with many possible facets, and the duty to facilitate it can be fulfilled, not in one, but in many different ways. Public involvement might include public participation through the submission of commentary and representations: but that is neither definitive nor exhaustive of its content. The public may become involved in the business of the National Assembly as much as by understanding and being informed of what it is doing as by participating directly in those processes. It is plain that by imposing on Parliament the obligation to facilitate public involvement in its processes, the Constitution sets a base

standard, but then leaves Parliament significant leeway in fulfilling it. Whether or not the National Assembly has fulfilled its obligation cannot be assessed by examining only one aspect of public involvement in isolation of others, as the applicants have sought to do here. Nor are the various obligations section 59(1) imposes to be viewed as if they are independent of one another, with the result that the failure of one necessarily divests the National Assembly of its legislative authority.”

The above definition was endorsed by the Constitutional Court in *Doctors for Life International v Speaker of the National Assembly and Others* and in *Matatiele Municipality and Others v President of the RSA and Others*.

The judgement of the court in *Doctors for Life International* explains the meaning of public involvement and gives guidance on what is expected of legislatures in fulfilling this obligation. The court found that the ordinary meaning of the words ‘public involvement’ or ‘public participation’ refer to the process by which the public participates in something. “Facilitation of public involvement in the legislative process therefore means taking steps to ensure that the public participates in the legislative process. That is the plain meaning of section 72(1) (a).” In other words, the duty to facilitate public involvement in the processes of Parliament, either House of Parliament or a provincial legislature envisages action on the part of Parliament, the relevant House or a provincial legislature that will result in the public participating in lawmaking and other processes. Participation is the end to be achieved.

The court in *Doctors for Life International* indicated that legislatures have a significant measure of discretion in determining how best to fulfil their duty to facilitate ‘public involvement’ in its processes. Furthermore, although the measures required by the constitutional obligation may vary from case to case, a legislature must act reasonably. What is ultimately important is that a legislature has taken steps to afford the public a reasonable opportunity to participate effectively in the lawmaking process.

In *Doctors for Life International v Speaker of the National Assembly and Others*, Judge Sachs stated the following:

“All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful fashion. The objective is both symbolic and practical: the persons concerned must be manifestly shown the respect due to them as concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws. An appropriate degree of principled, yet flexible, give- and-take will therefore enrich the quality of our democracy, help sustain its robust deliberative character and, by promoting a sense of inclusion in the national polity, promote the achievement of the goals of transformation.”

During the course of the Fifth Parliament, in the *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others*⁸, the Constitutional Court dealt with the constitutional validity of the Restitution of Land Rights Amendment Act. The primary challenge sought a declaration that the Amendment Act in its entirety was invalid for failure by the National Council of Provinces (NCOP) and some, or all, of the provincial legislatures to facilitate adequate public participation, as required by sections 72(1)(i)(a) and 118(1)(a) of the Constitution.

Given the failure to comply with the aforementioned sections, the court had to consider the representative and participatory elements in South Africa’s democracy. The court considered the procedures followed by the provinces and the fact that they had less than one calendar month to process fully a complex piece of legislation with profound social, economic and legal consequences for the public.

6 UNIT 3: PUBLIC PARTICIPATION FRAMEWORK FOR THE SOUTH AFRICAN LEGISLATIVE SECTOR

The SA Legislative Sector recognised the need to operate within a structured framework of participation. A Sector Public Participation Framework was developed for public participation that provides a documented platform for shared understanding, alignment and minimum requirements and guidelines for Public Participation. Each legislature utilises the sector framework as a benchmark to customise its own public participation model. The framework was adopted by the Speakers' Forum and requires each provincial legislature to develop a customised model.

6.1 MODELS OF PARTICIPATION

There are different models of public participation to explore. These models include a pure representative model, a basic model, a realism model, and the 'possible ideal' model for South Africa. (De Villiers, 2001).

In seeking the best-fit model of participation for South Africa, four approaches to public participation have been identified. These represent four ways in which public participation in the legislative and policy-making process may be facilitated. The first three are respectively those of pure representative democracy, a basic model of public participation and a realism model of public participation, whilst the fourth, the 'possible ideal' model reflects the approach of South African legislatures.

The pure representative model of democracy maintains that the public elects their representatives during elections after which public representatives are tasked with the work of Parliament. Participation is limited and/or restricted to the election period.

The basic model of participation affords the public an opportunity to interact with elected political representatives at various times during the election period. However, it does not determine the type of interaction between the public as voters and their elected representatives.

The realism model for participation provides for “open” political interaction. The primary interest groups form part of the debates with political representatives where agreements are reached at the “round-table”. In this model, key role-players are members of the public who are represented by both elected representatives and various key interest groups or stakeholders. This is further characterised by continuous interaction and level of communication.⁹

The possible ideal model includes three categories of participants, namely those who are organised and strong, those who are organised but weak and those who are weak and unorganised. The model is two-dimensional in that it includes the role of smaller political parties and the majority party and it links the government with legislatures. This broadens opportunities for participation and interaction beyond the formal procedures and institutions of representative governance. This model has an holistic approach whereby public participation should take place when the executive drafts a policy, rather than after that policy or legislation is introduced in a legislature.

6.2 PUBLIC PARTICIPATION IN THE SA LEGISLATIVE ENVIRONMENT

South Africa has adopted a representative-participatory democracy. In line with this, the legislative sector, consisting of Parliament and the nine Provincial Legislatures, is constitutionally mandated to elicit public participation in directing its decision-making and policy processes. Based on its constitutional mandate, the SA Legislative Sector envisages an institution, which is people-centred and responsive to the needs of the public. Implicit in this vision is the development of a legislative system, which facilitates the participation of all South African citizens, irrespective of their

social standing or educational level, in ways that meaningfully influence their quality of life.

For this to occur, it is important that the legislative system be designed in such a way that it is easily accessible to and understood by ordinary citizens. Furthermore, the system of participation in place should provide an opportunity for citizens to substantively influence decision-making that affects them. As part of this vision, the SA Legislative Sector has as one of its core objectives an obligation to facilitate public participation and education. In order for effective education and public participation to take place, however, it is essential that the SA Legislative Sector is able to operate within a structured framework of participation that is transparent and accountable and which promotes fundamental democratic rights and social justice.

The specific rights, duties and obligations of both citizens and the state are enshrined in South Africa's constitutional democracy. These constitutional obligations are there to ensure a 'living' democracy and there are both *general* and *specific* duties pertaining to the legal obligations facing the SA Legislative Sector. Therefore, South Africa also adheres to the principles of participatory democracy, as outlined in sections 59(1)(a), 72(1)(a) and 118(1)(a) of the Constitution of the Republic of South Africa (Act 108 of 1996) (hereafter the Constitution).

Since 1994, there have been a number of court cases, which have clarified and given content to both general and more specific forms of citizen participation in legislative processes. The obligation to ensure participation thus extends South Africa's representative democracy to include a legally binding obligation to promote participatory democracy.

The right of inclusion is thus a constitutional obligation, which may only be limited within the parameters of 'reasonableness' within the context of an open democratic society. The legal interpretation of public involvement does not draw a distinction between information sharing and consultative forms of participation, which could have a direct impact on legislative processes.

The right to have a direct impact on proposed legislation implies that citizens must be granted meaningful opportunities to influence decision-making.

Historically, public participation in the SA Legislative Sector was limited to undemocratic elections and exclusive public hearings. Since 1994, however, this situation has changed with Parliament and legislatures responding to their mandate of engaging the public in legislative processes. Despite the turnaround, many still grapple with devising relevant strategies, implementation challenges and instituting mechanisms for monitoring and evaluation of activities and assessing impact. There has been a lack of a uniform approach and set of minimum standards for public participation within the SA Legislative Sector. This gap was confirmed by a series of Constitutional Court rulings relating to criteria and minimum standards for public participation activities.

As a result, the sector embarked on a process of developing an overarching public participation framework for the SA Legislative Sector, which was adopted by the Speakers' Forum of South Africa in 2013. This framework now provides a guideline for legislatures and sets parameters and minimum standards to uphold in executing the constitutional mandate of public participation.

6.3 A BEST-FIT APPROACH FOR PUBLIC PARTICIPATION IN THE SA LEGISLATIVE SECTOR

The SA Legislative Sector approach provides an opportunity for optimal participation through relations between constituencies, communities and/or members of the public with their elected structures. These would guarantee that the views of the public are filtered through the system to the relevant leadership representatives and to provide relevant feedback to the public on the ground. This approach further encourages Members of Parliament and Legislatures to continue with their constituency work, urges members to continuously engage with members of the public as political representatives throughout the parliamentary term, and to always provide feedback on issues engaged upon.



Figure 1: Best-Fit Approach

6.4 LEVELS OF PARTICIPATION

As part of the SALS framework, the spectrum of participation, as adjusted for the SA Legislative Sector, may prove useful in identifying the degree of participation linked to the public interaction, as illustrated in the adopted SALS Public Participation Framework. The figure below has been adapted from the Ladder of Participation by Arnstein¹² to reflect a best-fit approach for conducting public participation in the SA Legislative environment.

The legislative sector construct of four forms of participation depicts that each level of public participation has a corresponding increase in the opportunity for public input to influence or have an impact on the process. It ranges first from informing the public, to consulting it, then to involving it, and, finally, to collaborating with it.

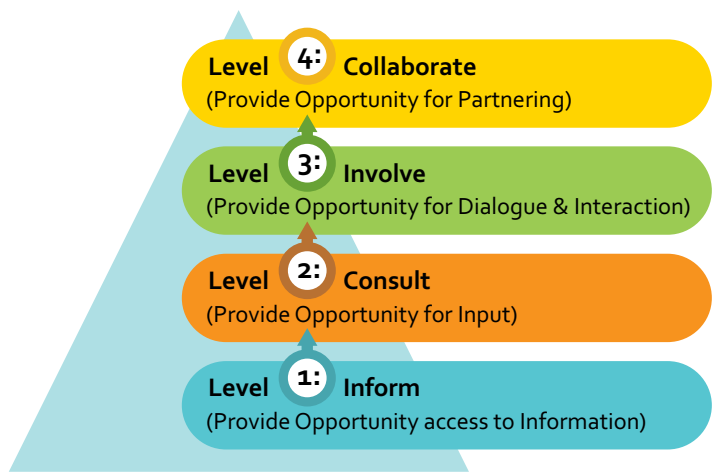


Figure 2: Levels of Participation

Each level of participation has a corresponding increase in the opportunity for the public to influence or have input into the relevant process. The following is therefore the spectrum of opportunity for public input into the relevant process¹³:

- The first level of public participation is to ***inform*** the public (e.g. of the status of the proposed project or the relevant process). This level provides the public with balanced and objective information to assist them in understanding the options, problems and/or solutions.
- The second level is to ***consult***. At this level, the public is invited to provide feedback, input or comment on analyses, alternatives and/or decisions whether in person or in writing.
- The third level is to ***involve***. At this level, the public is provided with the opportunity for dialogue and interaction. This could also be described as direct public participation throughout the process to ensure that issues and concerns are consistently understood and considered. However, the legislature is still the decision-maker following consideration of all inputs.
- The fourth level is to ***collaborate***. At this level, the public is provided with an opportunity to partner with or work jointly with decision-makers in the identification of the preferred solution. Ultimately, the power to decide resides with public representatives after engaging with the public on a specific matter.

Meaningful public participation ensures that the appropriate level of participation is utilised. A public participation process with minimum guidelines should provide for levels of participation that are in accordance with the level of public interest displayed.

The legislative sector seeks to *inform*, *consult*, *involve* and *collaborate* wherever appropriate in order to achieve the highest level of opportunity for input into its processes. In conducting public participation, there needs to be alignment between the levels of participation, particularly between the levels of involvement and collaboration. The Public Participation Framework seeks to build towards alignment within the levels of participation, thereby ensuring a best-fit approach for the legislative sector. The overarching purpose of the Public Participation Framework seeks to move the legislative sector to involvement within the levels of participation.

¹³ This section is largely adapted from the IAP2 Public Participation Spectrum, 2000. 271

6.6 STAKEHOLDER IDENTIFICATION AND ANALYSIS

Stakeholder identification and analysis assist with guiding any public participation effort and avoid ineffective public participation interventions. Various stakeholders are participating in and have a direct influence on public participation operations and the image of institutions. In order to establish appropriate stakeholders for public involvement, we need to begin with identifying the stakeholders that are important for the legislative sector. The successful management of stakeholder participation in the legislative processes includes:

- Identifying all internal and external stakeholders;
- Prioritising key stakeholders;
- Analysing their needs, interests and power base; and
- Deciding on a tactic to involve them constructively.

6.6 PUBLIC PARTICIPATION MECHANISMS

Generally, the Constitution provides the policy basis and guidance for all public participation programmes in South Africa. The same types of public participation implementation mechanisms, avenues and activities are executed across the legislative spectrum. In broad terms, these are through public hearings, petitions, public education and outreach programmes, constituency office use, as well as committee proceedings and House sittings.

Parliament and provincial legislatures have common mechanisms to ensure that the public has the ability to engage in lawmaking through education, outreach and information dissemination; the ability to propose, comment or criticise in both written (petitions) as well as oral (pre-hearings and hearings) submissions.

Effective public participation comprises of various elements incorporating information, publicity and education, and opportunities for submissions or inputs via various outreach activities and other formal processes. Strategies for eliciting public participation are focused on bringing people on the margins and periphery of society into the direct political process, creating

a system of governance that is inclusive, responsive and transparent. The objective is to consolidate a form of democracy that engages with and recognises the interests of all people.



Figure 3: Public Participation Mechanisms

6.6.1 PUBLIC SUBMISSIONS

A submission expresses views or opinions on a matter or piece of legislation under consideration by a committee of Parliament. Individuals or groupings may be invited by Committees of Parliament or provincial legislatures to make submissions on certain topics or Bills. The public are also free to submit petitions to members and legislatures on service delivery issues related to legislation and the non-implementation thereof by the relevant authorities. The diagram below depicts the processing of submissions received during Taking Parliament to the People and the Legislature. Submissions are resolved in a five-phase process, as illustrated below. For submissions from the public to be processed effectively, content and format need to be considered carefully.



Figure 4: Public Submissions

6.6.2 PRE-PUBLIC HEARINGS, PUBLIC HEARINGS AND POST-PUBLIC HEARINGS

Public hearings represent the most common form of public participation, and they are usually convened when Parliament or provincial legislatures seek to engage with the public on a particular issue or a specific segment of society, which might be greatly affected by proposed legislation. However, as indicated, invitations are often sent on short notice and the public have insufficient time to prepare inputs. These must be convened when the institution seeks to engage with the public on a particular issue or with a specific segment of the public, which may be greatly affected by proposed legislation, legislation that attracts public interest, and as part of the oversight process.

Furthermore, as part of a commitment to improve public access to hearings, the sector has made progress in providing transport for those in poor and/or rural areas to attend. They have also, as mentioned, begun providing pre-hearing briefing sessions to ensure that invited participants have the ability to engage meaningfully. While the latter initiative represents a positive development, it is not consistently implemented across the legislative sector.

During public hearings and public meetings, members of the public have the opportunity to make verbal and written submissions to members of the executive to assist them in resolving any problem that falls within the committee's scope of work. The public is invited to share inputs, views and perceptions on government programmes. This enables direct, formal input from interest groups, stakeholders and individuals into the refinement of legislation.

Before the hearings and pre-hearings are conducted, it should be ensured that relationships with stakeholders are established, effective communication and awareness programme are developed, communities are mobilised, and consultation meetings are convened.

Once a hearing is conducted, a report on the hearing should be tabled in the House for consideration and debate.

There is also an obligation to provide feedback to stakeholders, as well as ensure that the issues are referred to the relevant structures. Feedback is provided either in writing or through meeting platforms.

Public hearings represent the most common form of public participation and they are usually convened when Parliament or provincial legislatures seek to engage with the public on a particular issue or a specific segment of society, which might be greatly affected by proposed legislation or policy. The issues or topic of the hearing are mainly dependant on the Bill to be discussed. To this extent, the public is afforded an opportunity to share its views on the parliamentary and legislature programmes.

It is important to note that committee members responsible for relevant public hearings are obligated to attend such a hearing and raise issues affecting their respective constituencies. Feedback should be communicated to the public after the hearing and it is critical that issues raised at hearings should be elevated to the House.

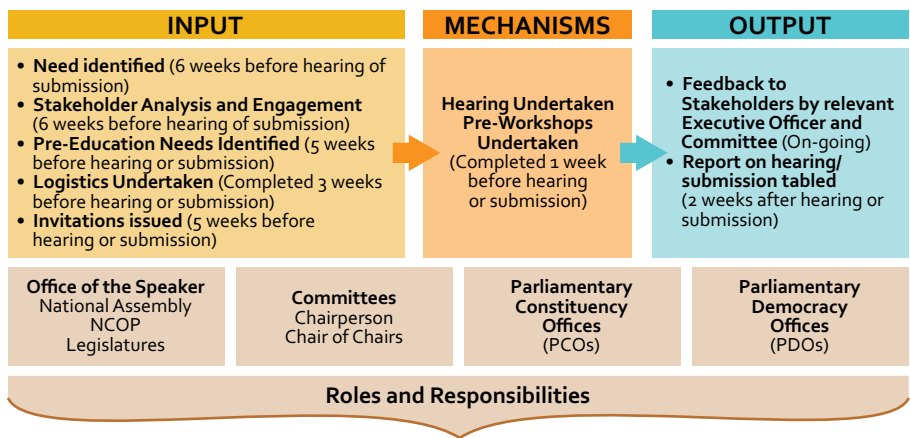
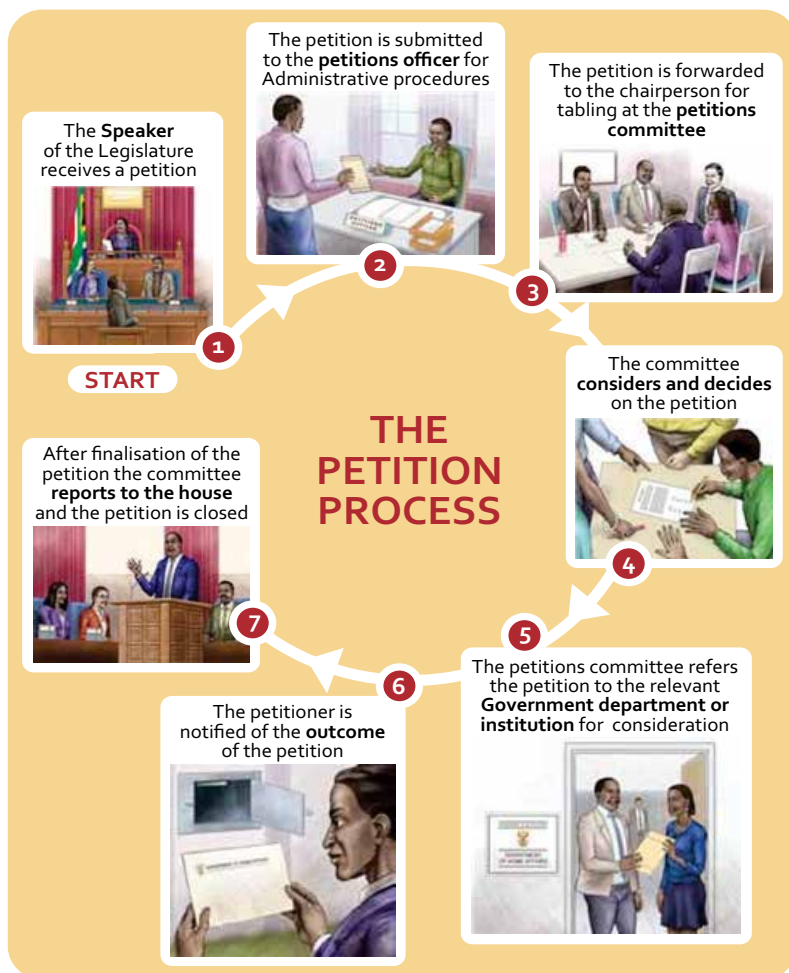


Figure 5: Pre-hearings, Hearings and Post-Hearings

6.6.3 PETITIONS¹⁴

A petition is a written request, complaint, or representation addressed to the institution by an individual or group after having exhausted other avenues. This can be on either service delivery or policy matters. The petitions process is split into the following high-arching phases: Consideration, Preliminary Investigation, Referral and Appeal.



¹⁴ Petitions diagram provided by KZN Legislature

Figure 6.1 : Petitions

The diagram below depicts the processing of petitions including timeframes.

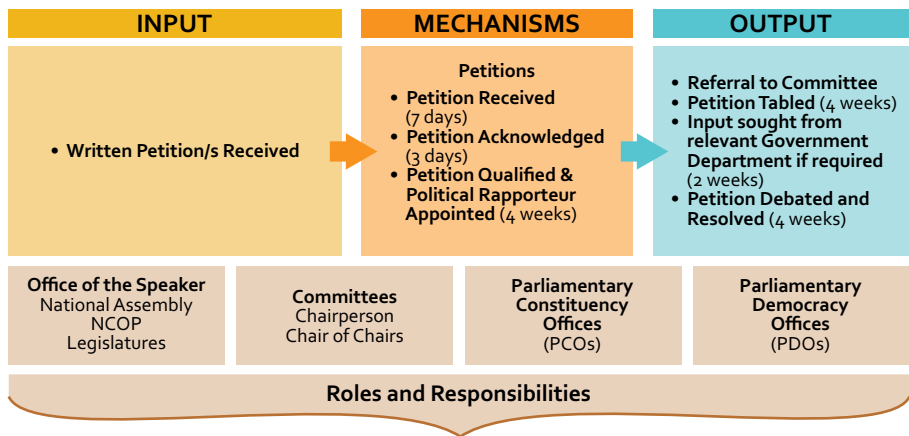


Figure 6.2: Timeframes for petitions processing

6.6.4 TAKING PARLIAMENT TO THE PEOPLE

The National Council of Provinces (NCOP) periodically sits at a predetermined location to interact with the community on issues of service delivery. This also brings together Members of Cabinet at National and Provincial levels and Municipal Councillors, thus facilitating direct interaction between the public and political leaders from all three spheres of government. The programme is conducted twice yearly – during March and November. The last day of the sitting is reserved for the formal sitting of the NCOP, which is addressed by the Deputy President in March and the President in November.

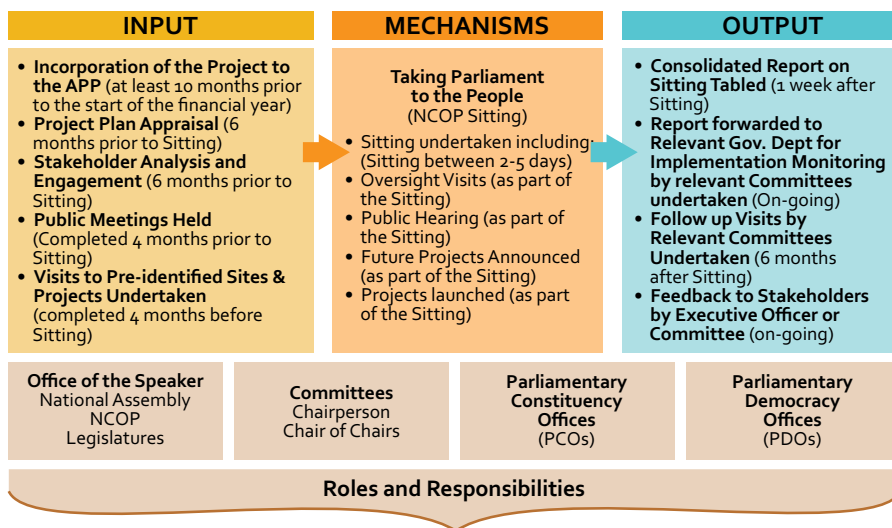


Figure 7: Taking Parliament to the People - NCOP Sitting

6.6.5 TAKING THE LEGISLATURES TO THE PEOPLE

Similar to the NCOP initiative, provincial legislatures have initiated a process of “Taking Parliament to the People”, a process whereby some committee meetings and even formal sittings of a legislature are held in community venues or towns more accessible to the more rural parts of the province. This initiative should be undertaken at least once a year.

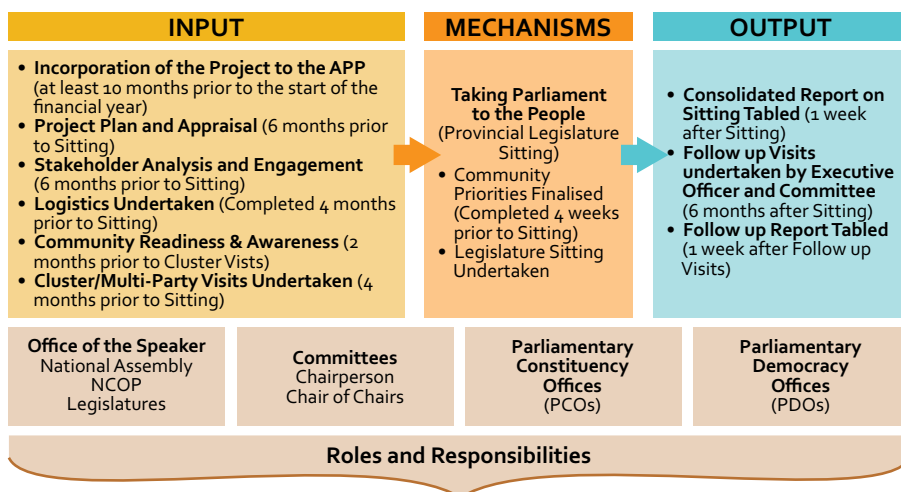


Figure 8: Taking Parliament to the People - Provincial Legislature Sitting

6.6.6 SECTORAL PARLIAMENTS

These focus on identified special interest groups by providing them with a platform to raise issues they face on a daily basis relative to service delivery and legislative policies. These engagements are not only on raising issues for the institution to address through the relevant committee, it also affords the participants the opportunity to present recommendations or remedial action to the institution. The various special interest groups are identified as:

- Workers’ Sector Parliament.
- Youth Sector Parliament.
- Women’s Sector Parliament.
- People’s Assembly/Parliament.
- Senior Citizens’ Sector Parliament.
- Persons with Disabilities Sector Parliament.
- Any other groups identified through the planning process.

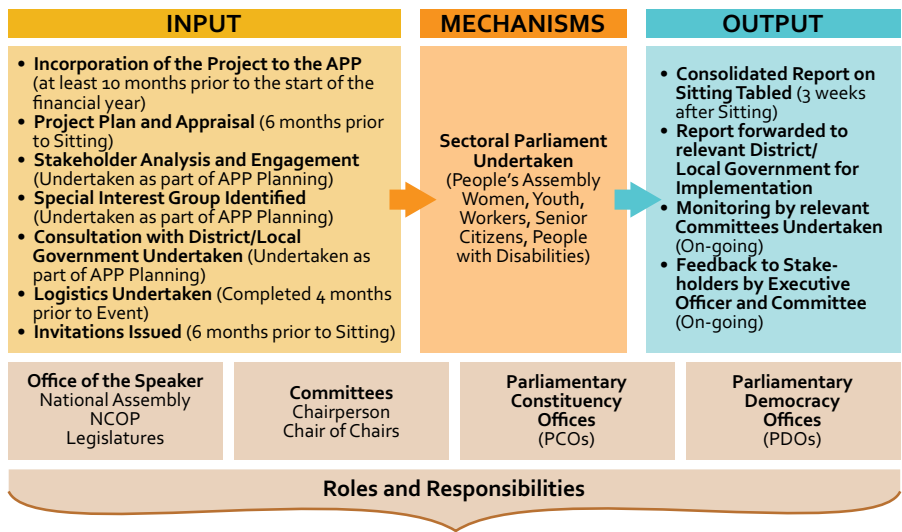


Figure 9: Sectoral Parliaments

6.6.7 PUBLIC PARTICIPATION IN COMMITTEES

The public has access to all sittings of the House as well as standing and portfolio committee meetings. Attendance of meetings by the public informs them about the issues at hand, but they do not participate unless they are specifically invited to address the committee on specific issues. This represents a very limited form of participation, as it relates mostly to information sharing. Members of the public request or are invited to attend committee meetings as stakeholders or ordinary citizens to make submissions or for observation.

Committees serve as an extension of the House and are presided over by the designated chairpersons. These committees are categorised into portfolio committees and standing committees.

6.6.8 PUBLIC EDUCATION AND OUTREACH

Education, outreach and information dissemination represent key elements of the SA Legislative Sector's commitment to ensure effective public participation, since it is clear that without information, participation is not possible.

In conducting public education and awareness programmes, techniques and materials are used for educating the public on their elected representatives and promoting the principle of open and accountable government. These programmes seek to inform the public about the processes and developments within the legislature and ways in which they can become involved through the various mechanisms. Public Education seeks to increase the level of participation of the public across the legislative sector.

This is facilitated through:

- Educational workshops;
- Tours of Parliament and provincial legislatures;
- School education and information programmes;
- Public awareness campaigns and workshops;
- Exhibitions where the institution exhibits and markets its work; and
- The use of media strategies including broadcasting, print and electronic media.

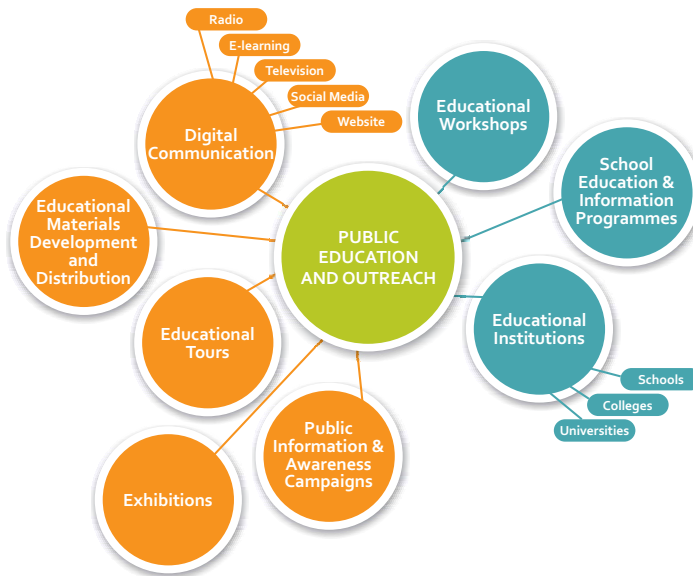


Figure 10: Public Education and Outreach

The public education function of the Legislature serves to support the various public participation activities through the provision of information to the public and stakeholders who have been targeted for public participation.

The educational tours target schools, colleges and universities within the geographical reach of the institution. Educational tours and workshops are conducted at the relevant institution. Public awareness campaigns and workshops educate the public on proposed Bills and how they can

make inputs. Committees also use these workshops to get feedback from the public on issues of concern, such as health, education, housing, environmental issues, and more.

The community education and outreach programmes and the associated workshops are aimed at educating the public about democratic processes, the role and function of the state, proportional representation, the role and functions of the institution and the petitions system, amongst others.

The objectives of this programme are to:

- Promote public participation through public education;
- Create awareness of the institution;
- Create awareness of the roles and functions of the relevant institutions; and
- Create awareness on how the public can take part in the legislative process.

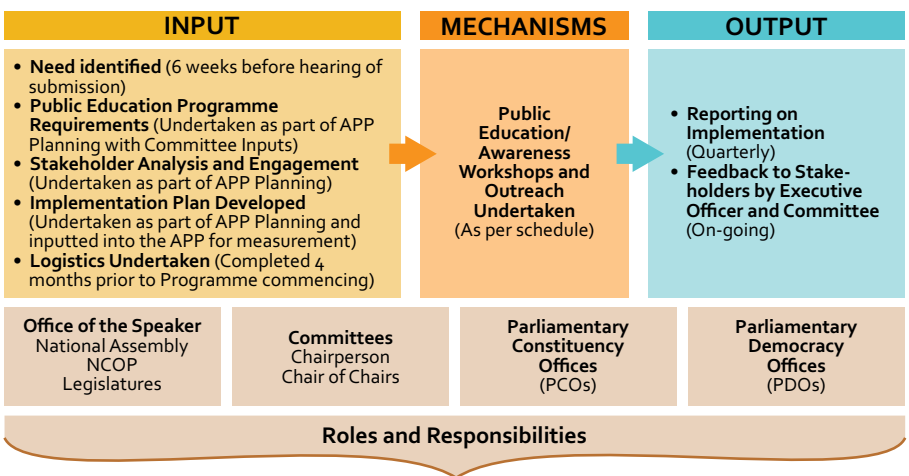


Figure 11: Community Outreach Programmes

6.7 PUBLIC PARTICIPATION AND OVERSIGHT

Public participation and involvement in the legislative process is crucial during oversight processes and activities. Legislatures must ensure that there is sufficient involvement of the public through publicising scheduled committee meetings;

In addition, Legislatures must ensure that there is a synopsis of a report that the committee will be dealing with, for example, the citizens' version of the report; and schedule at least one of its meetings to be held in communities to solicit community-based verification.

6.7.1 ANNUAL PERFORMANCE PLAN

The Sector Oversight Model demands the constant enlistment of external information input for independent verification. The annual performance plan stage is more rushed than the budget process; however, this process still demands an effort to obtain as much external input as possible in order to assist the support staff and the committee.

6.7.2 THE APPROPRIATION BILL DEPARTMENTAL VOTE

Once the Appropriation Bill/departmental votes are tabled in the House, the committee co-ordinator immediately circulates these to all the contacts on the stakeholder lists. There are two lists. The first is for experts, institutes, academics, and other professionals. The second is for community-based organisations, community-based interest groups, that is, parent-teacher associations, workers associations, that is, police officer unions; teacher unions; and other similar bodies that are beneficiaries of a particular service.

These stakeholders should know that they have approximately 1-2 weeks to make a submission to the committee co-ordinator. The committee co-ordinator processes and circulates these submissions to all members of

the committee and support staff. The committee then requests certain stakeholders to make presentations based on their submission(s). The inputs from external sources are intended to further equip the committee for its engagement with a department. These inputs represent the committee's access to non-official data and perspectives, and where these inputs are substantial, they may even present the committee with an 'independent verification' source against which to measure the official data and information presented by a department.

6.7.3 QUARTERLY REPORTS

The Sector Oversight Model demands the constant enlistment of external information input for independent verification. The Quarterly Report stages, though more rushed than the budget, as they are, still demand a concerted effort to obtain as much external input as possible. This is in order to assist the support staff and the committee at the earliest and intermediate stages of a committee's consideration of progress on a certain priority. It is likely that the most useful information sources for the committee will be those that can provide clarity on the state of implementation of a department's programmes. This may mean, in the case of our example, hearings of parent-teacher groups that can verify that certain measures were taken at their school where the school safety team project is under way.

6.7.4 ANNUAL REPORT

The emphasis at this stage is on the variable outcomes, and the measurable indicators agreed upon for the financial year in question, and rendering independent verification crucial to the efficacy of the committee's engagement with the department. Independent sources of information are used to confirm that the department is actually meeting the priorities it set out to satisfy at the start of the financial year in question.

Public Accounts Committee Processes on Annual Reports

The committee co-ordinator will ensure the attendance of priority organisations at the hearings. This includes the press, and the bodies listed on the portfolio committee's stakeholder list. The committee co-ordinators for the Public Accounts Committee and the relevant portfolio committee for the department present at the hearing will liaise so that the research institutes, professors, experts, and so forth on the portfolio committee's stakeholder list are invited to the hearing. This will assist in empowering those organisations to understand the departmental operations.

6.7.5 OVERSIGHT VISIT WORK/FOCUSED INTERVENTION STUDIES

External stakeholders will be invited to assist the committee by way of submissions in the selection of a subject for the Focused Intervention Study (FIS). After this step, the committee will likely request certain stakeholders to prepare detailed submissions and to make presentations on the chosen subject. These organisations and experts may also be requested to assist further with the development of questions and attendance on oversight visits as guests of the committee. These groups will also attend the debriefing by the different teams of members who split up for the oversight visits in order to comment and provide their own opinions on the findings of the committee's task teams.

6.7.6 STRATEGIC BUDGET REVIEW FOR OUTER YEARS

The Medium-Term Budget Policy Statement (MTBPS) allows a department to anticipate its budgetary allocations for the coming three years.

Public participation takes on added importance during the MTBPS stage, since it is at this, more than at any other stage in the BCM, where an impact can be made on the department's budget. All stakeholders should be requested to make submissions and must be provided more time and opportunities during this stage to make presentations from community members to community-based organisations and experts.

In addition, as many stakeholder representatives and groups as possible should be encouraged to attend presentations by the department and the committee's interaction with the department. This is to provide some form of immediate external verification to evidence by the department on its delivery performance over the years.

6.8 PUBLIC PARTICIPATION AND LAWMAKING

A key constitutional imperative is that of facilitation of public involvement in the processing of Bills. The facilitation of public participation and involvement in the legislative processes is central to the mandate of Parliament and the Legislatures. The constitutional obligations are there to ensure a 'living' democracy in terms of the ways in which citizens perceive they have the political agency to influence lawmaking. During the lawmaking process, the public are invited to make submissions on Bills.

7 UNIT 4: STRUCTURES, ROLES AND RESPONSIBILITIES FOR EFFECTIVE PUBLIC PARTICIPATION

This unit focuses on the structures in place for facilitating public participation within the SA Legislative Sector, also highlighting the various roles and responsibilities to be carried out by the various positions or formations. A distinction is drawn between political and administrative structures.

The aim of these structures is to promote and enable effective and meaningful public participation and this unit touches on the interdependencies of the various structures. The optimal functioning and co-ordination of public participation through both the political and administrative levels structures are imperative for successful public participation.

7.1 POLITICAL LEVEL STRUCTURES FOR PUBLIC PARTICIPATION

7.1.1 OFFICE OF THE SPEAKER

Generally the Office of the Speaker, with the Speaker at the helm as key office bearer and political head of the institution, is legally accountable and responsible for effective public participation in the respective legislatures. Historically, the Speaker's Office has been recognised as the custodian of public participation in the SA Legislative Sector.

The Office of the Speaker in the National Assembly and provincial legislatures and the Chairperson of the National Council of Provinces play key leadership roles in promoting effective public participation.

The Speaker, as political head of the institution, bears the responsibility to ensure that a public participation strategy is adopted, implemented, monitored, reviewed and adapted regularly by all the role-players. The Speaker oversees that all role-players in the management of the core business of Parliament or the provincial legislature (Whips, Chair of Chairs, the Secretary, etc.) should prioritise the implementation of public participation.

7.1.2 COMMITTEES

Most of the work of the Legislatures takes place in committees and they are responsible for ensuring the mainstreaming of public participation in their work. As a traditional form of democratic participation, the public has access to all sittings of the House, as well as standing and portfolio committee meetings. It is indicated that "... a distinction must be made between participation in and observation of parliamentary/committee activities that promote actual public participation. Attendance of meetings by the public

informs them about the issues at hand, but they do not participate unless they are specifically invited to address the committee on specific issues”¹⁵. Consequently, attendance of these committees represents a very limited form of participation, as it relates mostly to information sharing.

7.1.3 WHIPPERY

The Whips in negotiating and arranging business before the House has to ensure that public participation is mainstreamed in the work of each committee and the House.

7.1.4 PUBLIC REPRESENTATIVES

Members of Parliament and Legislatures (MPs and MPLs) as elected public representatives individually, through the constituency offices, and collectively, through their committee structures, have a critical role to ensure that the public is involved in and participate in the legislative process and other decisions that affect them.

7.1.5 PARLIAMENTARY CONSTITUENCY OFFICES

Parliamentary constituency offices are the ‘structural outreach’ avenues of the SA Legislative Sector, and are intended to be powerful vehicles for bringing about interaction between MPs/MPLs and their constituencies. These offices serve to bridge the divide between the legislature and the people. They play a critical role in communicating the programmes of government and to hear concerns that the public has on the delivery of services by government institutions. These are utilised by public representatives to:

- Channel information on legislative processes to communities they serve.
- Facilitate community input into the relevant processes.

¹⁵ Ibid.

7.2 ADMINISTRATIVE LEVEL STRUCTURES FOR PUBLIC PARTICIPATION

Officials in the various administrative structures of legislatures are responsible for providing administrative, technical and logistical support to public representatives in achieving effective public participation.

7.2.1 OFFICE OF THE SECRETARY

The Secretary, as administrative head of the legislature, has the responsibility to ensure that the necessary support is provided to the political structures and individual MPs and MPLs in carrying out their mandate of eliciting public participation. He or she oversees that all role players in the management and administration of the institution prioritise the element of public participation.

7.2.2 PUBLIC PARTICIPATION UNIT

The Public Participation Unit is central to co-ordinating and driving all efforts in providing the necessary technical, administrative and logistical support to all relevant stakeholders in realising effective public participation.

7.2.3 PARLIAMENTARY DEMOCRACY OFFICES

As part of a programme to build an effective People's Parliament that is responsive to the needs of the people, the Parliament of the Republic of South Africa has embarked on a process of establishing parliamentary democracy offices (PDOs) in all nine provinces, in the underserved, under-resourced and deep rural areas to provide all South Africans with the opportunity and mechanisms to take part in the legislative processes and activities of Parliament whilst it fulfils its constitutional duty of meaningful public participation and involvement. Currently, parliamentary democracy offices have been established in Limpopo, Northern Cape and North West. The role of the PDOs:

- Conducting public education and provide information about Parliament and its work;
- Providing a platform for people to access and participate in the processes of Parliament;
- Facilitating public input and feedback;
- Providing ground and logistical support for parliamentary programmes and activities; and
- Co-ordinating and co-operating with other spheres of government.

7.2.4 COMMUNICATION AND RESEARCH SUPPORT IN RESPECT OF PUBLIC PARTICIPATION

The implementation of public participation requires a dynamic interaction of Members and the public, based on information and knowledge about communities and phenomena prevalent in communities and the environment.

In this regard, the communications function plays an essential support role in ensuring awareness-raising and information-sharing with the public through various communication techniques and avenues. The elements of media liaison and management, marketing and publicity of the institution and its activities, public relations and events, content development as well as multimedia (website et al) and publishing are all important ingredients in any public participation plan and the successful implementation thereof.

The research function, furthermore, plays a critical role in ensuring collection, analysis and provision of different kinds of information to Members at different stages in the participatory and legislative process.

Aside from these core support elements, all the other support services of the legislatures, in conjunction with the Public Participation Unit, are instrumental in ensuring optimal support to Members of Parliament and Provincial Legislatures in their duty to obtain public inputs.

Communication is a critical enabler and provides requisite support to the legislatures in fulfilling their constitutional mandate of lawmaking, oversight and public participation. The need to communicate is clearly essential in meeting the objectives of public participation of the SALS.

7.3 RISKS AND CHALLENGES RELATED TO PUBLIC PARTICIPATION

Despite the progress made in developing participatory procedures, public participation is hindered by a number of contributory factors. These factors emanate from socio- political factors, historical exclusion, demographic factors, etc.

Risk and Challenges	Recommendations
Accessibility <ul style="list-style-type: none">• The venues that are identified for public hearings are not accessible to the people. They are either too far or not relevant to the Bill in question	<ul style="list-style-type: none">• Where venues are not accessible, transport should be provided and efforts should be made to take these services closer to the people• The Committee Chairperson should ensure that the venues identified are relevant to targeted stakeholders
Information dissemination <ul style="list-style-type: none">• Certain media platforms are ineffective, either because they are too expensive, or unable to reach people in rural areas	<ul style="list-style-type: none">• Cheap and accessible media platforms, such as social media should be factored in, in order to reach as many people as possible

Political influence <ul style="list-style-type: none"> Members of the public are politically influenced not to take part in public participation initiatives. 	<ul style="list-style-type: none"> Members of legislatures should encourage and mobilise members of the public in their constituencies to take part in public participation initiatives
Insufficient public education <ul style="list-style-type: none"> There is lack of understanding on policy and on how Parliament and legislatures function 	<ul style="list-style-type: none"> Public education awareness campaigns should be intensified Public education material should be developed and simplified to be understandable by members of the public The use of role-playing, such as drama, stage plays, poetry, etc. should be encouraged as a tool for educating members of the public
Language barriers <ul style="list-style-type: none"> Language remains a problem in advancing public participation, especially during public hearings. Bills are written in English, thus making it difficult to understand 	<ul style="list-style-type: none"> The language policy of the province should be strictly adhered to, to ensure that it includes all language groups
Lack of essential skills by public participation practitioners <ul style="list-style-type: none"> Public participation practitioners lack skills in areas such as public speaking and community organisation 	<ul style="list-style-type: none"> The training programmes aimed at capacitating and the skilling of public practitioners should be made available on a regular basis to ensure that the practitioners are well equipped

<p>Timeframes</p> <ul style="list-style-type: none"> • Tight timeframes given to legislatures to process Bills, especially NCOP Bills, make it difficult to fulfil the constitutional mandate, resulting in the exercise being viewed as a matter of compliance 	<ul style="list-style-type: none"> • Timeframes have to be reviewed to ensure that public participation becomes effective
<p>Challenges pertaining to public participation units in the legislature</p> <ul style="list-style-type: none"> • It is not clear where PP units report to politically and other legislatures do not have committees that are dedicated to public participation 	<ul style="list-style-type: none"> • It is recommended that the PP should be based in the Office of the Speaker and a committee dedicated to public participation should be established
<p>Lack of standardised petitions process</p> <ul style="list-style-type: none"> • Standardisation of the process for submitting and processing petitions across institutions is a challenge 	<ul style="list-style-type: none"> • Legislatures should make use of the already developed sector petitions strategy to ensure uniformity
<p>Parliamentary constituency offices</p> <ul style="list-style-type: none"> • Constituency offices are often seen as party offices and not as an extension of the legislature 	<ul style="list-style-type: none"> • Clear guidelines should be developed to ensure that constituency offices fulfil their mandate

<p>Resources</p> <ul style="list-style-type: none"> • Budget constraints remain a problem in advancing public participation. Budget allocations are not the same in all legislatures; some legislatures have more resources than others 	<ul style="list-style-type: none"> • The budget allocated for public participation should be reviewed to ensure facilitation of public participation becomes effective
<p>Feedback</p> <ul style="list-style-type: none"> • Lack of feedback mechanisms after public participation initiatives to stakeholders is a challenge 	<ul style="list-style-type: none"> • Feedback mechanisms should be developed to encourage the stakeholders to take part in the legislative process

8 CONCLUSION

Public Participation remains central to the mandate of the legislative sector and it remains vital to deepen democracy. Members of the legislative sector thus have an obligation as public representatives to facilitate public involvement in legislative processes.

This places a heavy burden on public representatives, officials and the public alike to facilitate participation and to interact and work together towards fulfilling the ideal of a better life for all through focused development and the strengthening of the South African democracy.

GLOSSARY OF TERMS

CONCEPTS DEFINED

Generic concepts that relate to the context of this framework are detailed below. More specific core concepts are defined within the relevant sections.

Public Participation - A best-fit definition for the SA Legislative Sector:

Public participation is the process by which Parliament and provincial legislatures consult with the people and interested or affected individuals, organisations and government entities before making a decision. Public participation is a two-way communication and collaborative problem-solving mechanism with the goal of achieving representivity and decisions that are more acceptable. Other terms sometimes used are 'public involvement', 'community involvement' or 'stakeholder involvement'.

Furthermore, in a diverse society such as South Africa, there is also a need to acknowledge that the term 'public' is inclusive and diverse by its very nature. In this context, there should be a focus on those who are confronted with poverty and lack access to resources, including children, women, people with disabilities and the youth.

Public participation is a fundamental dimension of democracy and an important factor in the strengthening and maturing of democracies. The latter is of particular interest and importance in a young democracy like South Africa. Good examples and opportunities are emerging, which, if nurtured, can set a trend and an example on the Continent and internationally¹⁶.

Public Involvement: Public involvement is a process wherein people in South Africa exercise their collective and individual initiatives to promote their interests in decision-making and oversight. A public participation framework for the sector takes into account the minimal considerations in facilitating public involvement. These considerations are based on what is appropriate in light of the specific process, content, importance and urgency, as well as the response from the public. The above is dependent on the nature of the process, i.e. whether it potentially affects an identifiable section of the population, and/or whether the potentially affected section of the population is given a proper opportunity to have a say. This also alludes to the provision of meaningful opportunities for the public to participate whether written or oral. Submissions must then be considered and responded to¹⁷.

Participatory Democracy: The South African Constitution asserts the need for the realisation of a participatory democracy, which calls for the active involvement and participation of the citizenry, as well as more defined interest groups¹⁸.

Public participation processes serve to strengthen institutions of representative democracy by democratising those institutions. In the most pragmatic sense, in a participatory democracy, the public is actively involved in the decision-making processes of the government. Within this system, two forms of key public 'actors' exist: the citizenry, as represented by parties, and interest groups or stakeholders. In this model, public participation involves a meaningful exchange between the public actors and government.

¹⁶ Girma, 2012.

¹⁷ Parliament RSA, Report on the review of constitutional prescripts and Constitutional Court rulings pertaining to public participation, nd.

¹⁸ Op.cit. Scott.

Civil Society: Includes a wide array of non-governmental and non-profit organisations; community groups, charitable organisations, labour unions, indigenous groups, faith-based organisations, professional associations and foundations. These have a presence in public life; expressing the interests and values of their members or others based on ethical, cultural, political, scientific, religious or philanthropic considerations.

Stakeholders: These people have a specific and clearly definable interest in what is undertaken and have an interest in the institutional outcome. The framework refers to them as partners in the design and implementation of better solutions and outcomes.

Co-Operative Government: This is when all spheres of government and all organs of state within each sphere co-operate with one another in mutual trust and good faith by fostering friendly relations; assisting and supporting one another; informing one another of, and consulting one another on matters of common interest; co-ordinating their actions and legislation with one another; adhering to agreed procedures; and avoiding legal proceedings against one another.

Constitutional Democracy: A form of government where a constitution is supreme and guarantees basic personal and political rights; fair and free elections; and an independent judiciary. In a constitutional democracy, the structures, powers, as well as limits of government are set forth in a constitution. Most rights within a constitutional democracy are also balanced with responsibilities.

Good Governance: Epitomised by predictable, open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in the furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs.

Organs of State: This is any state institution in the national, provincial or local sphere of government or any other functionary or institution exercising power or performing a function in terms of the Constitution of the Republic of South Africa or a provincial constitution. In addition, performing a public function in terms of any legislation, but this excludes a court of law or a judicial officer.

Oversight: This proactive interaction initiated by a legislature with the executive and administrative organs encourages compliance with the constitutional obligation of the executive and administration to ensure delivery on agreed-to objectives for the achievement of government priorities.

Legislature: It includes Parliament (National Assembly and National Council of Provinces) and all provincial legislatures). They are institutions constitutionally charged with the responsibilities of making laws, conducting oversight over the executive, facilitating public participation and co-operative governance.

LIST OF ACRONYMS

CC	Constitutional Court
HLP	High Level Panel
IAPP	International Association for Public Participation
MP	Member of Parliament
MPL	Member of Provincial Legislature
NA	National Assembly
NCOP	National Council of Provinces
PDO	Parliamentary Democracy Offices
PP	Public Participation
RSA	Republic of South Africa
SALS	SA Legislative Sector

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INTERNATIONAL RELATIONS AND PROTOCOL

*Induction Handbook for
Members of Parliament and Provincial Legislatures*
(2nd Edition)

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1 INTRODUCTION

The ¹Constitution of the Republic of South Africa created Parliament and Provincial Legislatures as independent institutions, with distinct mandates at the national and provincial spheres respectively. They are granted powers to determine and control their arrangements, proceedings and procedures. This includes making rules and orders with due regard to representative democracy, accountability, transparency and public involvement. South Africa is, however, a unitary state with a decentralised system of governance (national, provincial and local government spheres). Irrespective of the sphere of government, all institutions must observe and adhere to ²the principles of cooperative governance in which all spheres are ³distinctive, interdependent and interrelated, hence the collaboration.

Parliament and Provincial Legislatures (under the banner of the South African Legislative Sector) participate in unison in international relations guided by the country policy and strategy. As the national institution, Parliament represents the Legislative Sector interests in international parliamentary platforms and takes a leading role in multilateral platforms where Provincial Legislatures partake as part of the SA delegation. Engagements at international level are co-ordinated with a view to collaborate and build partnerships.

312 ¹ Section 43, 44 and 104 of the Constitution of the Republic of South Africa

² Chapter 3 of the Constitution

³ Section 40 (1) of the Constitution of the Republic of South Africa

Historically international relations has been the exclusive domain of the Executive with little room for participation by the Legislatures. Over time, Legislatures have come to play an influential role in international relations which recognises the interdependence of nations and pursues cooperation as a way of dealing with complex challenges faced by South Africa. Parliamentarians have adopted an activist approach in the global arena and this is largely informed by the fact that parliaments form the bedrock of democracy, governance and democratic accountability.

Parliamentary international relations is the continuation of a political process and dialogue among legislatures of the world. At different international meetings, Members of Parliament (MPs) and presiding officers have an opportunity to exchange views with their counterparts from other countries on a range of international challenges and opportunities. The need for a clear strategic orientation for parliamentary international relations requires constant review and reflection given the changes that take place within the international environment.

2 OBJECTIVES OF THE MODULE

The module provides an overview of the parliamentary dimension to international relations, parliamentary diplomacy, guiding principles for international participation and the legal and policy framework that guides this participation. It provides information on platforms in which Parliament and Provincial Legislatures participate in international, regional, continental, and global legislative and executive bodies, with particular reference to their objectives, functions, powers, structures, membership and sessions.

The module also seeks to provide information and guidance on protocol, ceremonial rules and practices in South Africa, with special reference to the South African Legislative Sector (a collaboration of Parliament and Provincial Legislatures).

3 UNIT 1: LEGAL AND POLICY FRAMEWORK FOR SOUTH AFRICA'S INTERNATIONAL PARLIAMENTARY RELATIONS

3.1 CONSTITUTIONAL FRAMEWORK

The South African parliamentary dimension to international relations is premised on the values that are espoused by the Constitution of South Africa (Act 108 of 1996) and informed by South Africa's foreign policy principles. South Africa's international engagements are anchored on the goal of creating a better South Africa and contributing to a better and safer Africa and a better world. The Constitution of the Republic of South Africa stipulates that the negotiation and signing of international agreements are within the mandate of the executive branch. However, the approval of Parliament is required for these agreements to be binding. This approval is granted by the two Houses of Parliament. Furthermore, the Constitution stipulates that international agreements of a technical, administrative or executive nature, or agreements that do not require ratification or accession by the executive branch, are binding without the need for parliamentary approval. These agreements must be tabled to Parliament within a reasonable period of time.⁴ National Parliament and Provincial Legislatures should ensure accountability of the Executives in respect of all international engagements and donor funds received. The oversight role should not be limited to the above, but should include the twinning arrangements and MoUs signed by the Executive in order to ascertain impact in achieving the national and provincial priorities.

The role of Parliament in the process is stipulated under section 231(1) of the 1996 Constitution of the Republic of South Africa. Parliament also signs the Instrument of Ratification and deposits it with a requisite organisation/state.

Provisions of section 231(3) catered for agreements of a technical, administrative or executive nature. This category of agreements would normally not require ratification or accession, as they have no extra budgetary implications, and do not have legislative implications. They should be tabled in Parliament within a reasonable time for information purposes only. All international agreements have to be approved by the national executive, by means of a President's Minute. All agreements have to be tabled in Parliament. These agreements are then monitored by the relevant Committees in the National Assembly and the National Council of Provinces, to ensure compliance and implementation.

3.2 SOUTH AFRICA'S FOREIGN POLICY FRAMEWORK AND PRIORITIES

South Africa's foreign policy is an expression of domestic public policy that projects the democratic values of the country. These values are entrenched in the provisions of the 1996 Constitution of the Republic of South Africa, which affirms the right of the South African society to live in human dignity, equality, democracy and freedom. In accordance, the Legislative Sector's international engagement supports and reflects the values enshrined in the South African Constitution.

The National Development Plan provides a roadmap and serves as a blueprint through which South Africa's vision 2030 should be achieved. Chapter 7 of the NDP emphasises that in order to pursue and implement an effective foreign policy which is directly linked to the country's domestic priorities, decision-makers must be guided by a specific set of key elements as follows:

- a) Africa as a priority
- b) Strengthened multilateralism
- c) Improved human security
- d) Mutually beneficial trade and integrated foreign policy making.

The NDP further notes that South Africa's evolving international relations work must endeavour to shape and strengthen national identity, cultivate national pride and patriotism to ensure social cohesion and stability, and grow the economy for the development and upliftment of all South Africans. It is against this backdrop that the mandate of Parliament and Provincial Legislatures reflects these key policy documents of the state and posture its participation towards the attainment of such policy imperatives. These values also find expression in the aspirations of the African Union (AU) Agenda 2063 strategy, the Southern African Development Community Regional Indicative Strategic Development Plan (SADC RISDP).

It is to be noted that foreign policy is conducted against the background of a dynamic domestic, regional and global political and economic environment. The current global environment is characterised by shifts in political, economic and social dynamics that impact on all parts of the world and as such there is a need for the re-alignment of new developments. South Africa has aligned its foreign policy engagement with Africa's Agenda 2063 to contribute to the socio-economic development of the African continent. This is in keeping with the notion that the struggle for a better South Africa is intertwined with the pursuit of a better Africa in a better world. To this end, South Africa's commitments derived from its mandate through parliamentary engagements will seek to complement efforts towards achieving the seven aspirations expressed in Agenda 2063 aimed at positioning Africa as a strong, united and influential global player and partner.

South Africa's foreign policy priorities mirror the country's deep commitment to the consolidation of its democracy. In this regard, the country's foreign policy develops from, and is informed by, domestic imperatives which are mutually reinforcing. The country's interaction with the international community reflects its national imperatives, including critical issues such as democracy, job creation, education, health, poverty eradication and economic development.

At the continental level, South Africa's foreign policy envisions an African continent that is democratic, prosperous, peaceful, non-racial, non-sexist and united, which contributes to a just and equitable world. However, South Africa pursues its foreign policy in a world characterised by developmental challenges with regard to Africa and the South. In seeking to address these challenges, South Africa's foreign policy is underpinned by the following principles:

- A commitment to promote the African Agenda in world affairs;
- A commitment to economic development through regional and international co-operation in an interdependent world;
- A commitment to the promotion of human rights;
- A commitment to the promotion of democracy;
- A commitment to justice and international law in the conduct of relations between nations; and
- A commitment to international peace and to internationally agreed upon mechanisms for the resolutions of conflict.

In pursuit of its foreign policy objectives, South Africa is guided by the overarching priorities confirmed by the annual Cabinet Lekgotla and the President's State of the Nation Address.

3.2.1 CONSOLIDATION OF THE AFRICAN AGENDA

The African Agenda serves as a point of departure for South Africa's engagement with the international community. The African Agenda is premised on the belief that South Africa cannot prosper in isolation from the rest of the continent. South Africa could only flourish if it relates with the continent on principles of equity, mutual benefit and peaceful co-operation.

The African Agenda is further based on the understanding of the African Union that socio-economic development cannot take place without peace and stability, as these constitute the necessary conditions for sustainable socio-economic development and a stable political environment.

3.2.2 STRENGTHENING OF SOUTH-SOUTH COOPERATION

The challenge that confronts South Africa and the rest of the developing world is to consolidate strategies and tactics to effectively position the countries of the South in a manner that shapes the global agenda relevant to their interests and needs. Such strategic positions have resulted in solidarity and partnerships within the countries of the South, as well as accelerated the speed of regional political co-operation and the regional economic integration process. This potential is evident by the emergence of new regional and sub-regional groupings, which include the India-Brazil-South Africa Dialogue Forum (IBSA), and the association of Brazil, Russia, India, China and South Africa (BRICS).

3.2.3 STRENGTHENING OF NORTH-SOUTH COOPERATION

South Africa's engagement with the developed countries and the formations of the North is premised on the notion of forging partnerships and bringing about peace, security and development in the South. South Africa, with other leaders of Africa and the South, continues to embark on a process of systematically engaging the leaders and institutions of the developed countries, including the European Union and G8 (governments of the eight most industrialised countries), in an effort to secure support for the New Partnership for Africa's Development (NEPAD) and other developmental interests of the South, including strengthening of governance structures, regional parliaments, exchanging of experiences and sharing of ideas on best practice in various aspects.

3.2.4 PARTICIPATION IN THE GLOBAL SYSTEM OF GOVERNANCE

Addressed under parliamentary diplomacy in Unit 3

4 UNIT 2: COOPERATIVE GOVERNANCE AND COLLABORATION IN RESPECT OF INTERNATIONAL RELATIONS

The legal and policy framework detailed above provides that the South African Legislative Sector engages in international relations using two separate mechanisms:

- a) the traditional mechanism of conducting oversight and
- b) parliamentary diplomacy.

4.1 RELATIONSHIP BETWEEN THE LEGISLATIVE AND EXECUTIVE IN RESPECT OF INTERNATIONAL RELATIONS MATTERS

The traditional mechanism used by Parliament to engage in international relations is the parliamentary committee's architecture dealing with international relations, that is the Portfolio Committee on International Relations and Cooperation, and the Select Committee on Trade and International Relations. Both these committees oversee the work of the Department of International Relations and Cooperation (DIRCO) by monitoring its budget, holding hearings on pertinent international relations matters and engaging in site visits, amongst others.

The second platform through which international relations is conducted by the Legislative Sector is parliamentary diplomacy, which finds expression through the participation in international fora and strategic parliamentary networks which the sector is affiliated to. This mechanism encompasses

bilateral and multilateral international relations activities. The legislative sector operates in an environment that compels Parliament and Provincial Legislatures to continuously interface with the executive in the process of executing its constitutional mandate given the nature of the international environment.

The collaboration between the arms of State is determined through the roles defined by the doctrine of separation of powers with respect to conducting oversight during the process of negotiating and ratification of international agreements. The aspect of cooperative governance is also realised during the process of the domestication of international treaties into national law, to enable the different agents within the state to implement the treaty, whilst the Legislative Sector is charged with the responsibility to conduct oversight over the implementation of agreements and treaties to measure the level of implementation and impact thereof.

The Legislative Sector finds itself collaborating with the executive on a range of international activities, for example election observer missions where Members of Parliament join the executive team. The Department of International Relations and Cooperation is the current host of the Pan-African Parliament to which the Parliament of South Africa is affiliated. From time to time, the South African Parliament coordinates briefings with the Department of International Relations and Cooperation and the Administration of the Pan-African Parliament to be updated on an array of issues relating to the financial and political management of the Pan-African Parliament. It is worth noting that the Gauteng Legislature and Provincial Government are the provincial host of the Pan-African Parliament, and as such it is expected that as a matter of protocol, these stakeholders are always invited to the major events and activities of the Pan-African Parliament. Provinces are also hosts of embassies and consulates, and as such it is expected that stakeholders such as Provincial Legislatures, Parliament and Members of the Executive Council are directly or indirectly involved and interface from time to time in respect of their activities.

4.1.1 COORDINATION WITH THE EXECUTIVE

DIRCO is the custodian of South Africa's international relations. Effectively, all international relations activities should include DIRCO, including incoming and outgoing official visits, the establishment of formal agreements between states, etc.

The Department of International Relations and Cooperation acts as a contact point in co-ordinating the activities of provincial, local governments and traditional monarchs with regard to international relations, visits (incoming and outgoing) and other international activities (twinning agreements, etc.). The Department of International Relations and Cooperation, through the South African Missions abroad, is responsible for the coordination of visits from South Africa and abroad. The following guidelines serve to assist in arranging these visits:

- Intergovernmental and Provincial Protocol (DIPP) is designated to act as a contact point in the Department of International Relations and Cooperation in coordinating the activities of the above stakeholders with regard to international relations activities.
- These, *inter alia*, include the coordination of all international activities by DIPP's stakeholders. It is therefore important that all preliminary plans be channelled through the Directorate: Intergovernmental and Provincial Protocol (DIPP) of the Department of International Relations and Cooperation.
- The Directorate (DIPP) will liaise with the responsible political desks at DIRCO and request the responsible South African Mission(s) abroad for their input.
- There should be no direct approaches. South African Missions have been requested to refer any direct approaches to them by the stakeholders back to this Directorate.

Officials of stakeholders are also strongly urged NOT to liaise directly with foreign Missions (Embassies/High Commissions) in South Africa, regarding appointments in their country/countries, because this causes unnecessary duplication and delays. The Department of International Relations and Cooperation will liaise with the foreign Missions in South Africa.

If some of the above mentioned stakeholders are invited directly by an Embassy/High Commission in South Africa as their guests, and they undertake to make all the arrangements, it would be courteous to inform DIRCO in order that they could alert the Mission in the country/countries to be visited. Visiting a country in which South Africa has diplomatic/consular representation without informing the Ambassador/High Commissioner/Consul General might be construed as undermining the authority of the High Commissioner/Ambassador. The High Commissioner/Ambassador is appointed by the President of South Africa and is as such the direct representative of the President.

4.2 COORDINATION OF THE LEGISLATIVE SECTOR IN INTERNATIONAL PARLIAMENTARY RELATIONS

The South African Legislative Sector participates in, or is a member of, a number of international and regional bodies. In most of these engagements, the participation of provincial legislatures is at sub-national branch level. To this end, all country representatives are expected to vote and function as a block. Over the years, the Legislative Sector has progressed to the point that legislatures (including National Parliament) take responsibility on a rotational basis for coordinating the attendance of, and participation in, these activities. In this way the country acts as a unified entity and supports the policy direction prescribed by National Parliament.

4.2.1 NATIONAL PARLIAMENT

As mentioned above, Parliament employs the parliamentary committee's architecture dealing with international relations to deal with and engage in international relations, that is the Portfolio Committee on International Relations and Cooperation, and the Select Committee on Trade and International Relations. Both these committees oversee the work of the Department of International Relations and Cooperation (DIRCO) by monitoring its budget, holding hearings on pertinent international relations matters and engaging in site visits, amongst others.

Furthermore, the Parliamentary Group on International Relations (PGIR) in Parliament is a strategic body charged with the task of policy formulation and the implementation of a parliamentary dimension to international relations.

In line with national foreign policy priorities, the PGIR identified the following five broad areas of focus for Parliament's participation in international relations:

- Prioritising Africa
- Strengthening South-South cooperation
- Strengthening of North-South dialogue
- Participation in multilateralism; and
- Strengthening bilateral relations

4.2.2 PROVINCIAL LEGISLATURES

As the Constitution only empowers the national sphere of government to act in the arena of international relations, the provincial and local government spheres of government have entered the international relations arena. However, these activities have been limited to the establishment of mutually beneficial relationships, mainly between structures of a similar nature or level – provincial government to sub-national government, local

government to local government. The nature of these relationships is limited to areas of technical exchange and assistance and the creation and support of programmes aimed at improving service delivery, capacity building, etc.

Since 1994 a number of provinces, cities and towns have established bilateral (sometimes called twinning) and multilateral agreements with counterparts abroad. In many instances these relationships have existed for many years and have contributed in a meaningful way to the operations and functions of those entities.

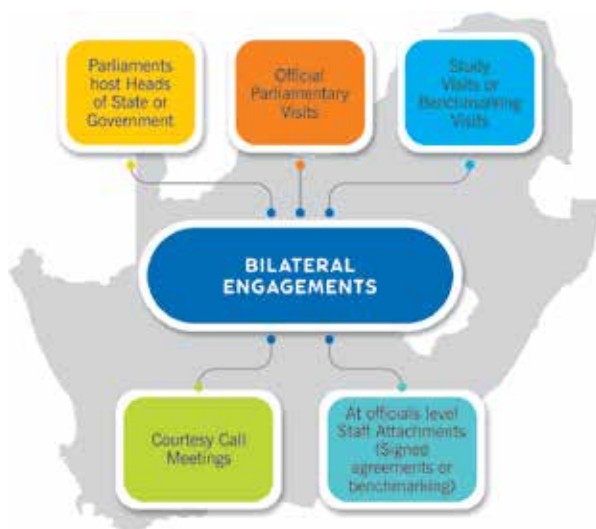
In the case of provincial legislatures, some have established bilateral and multilateral agreements with sub-national parliaments across the globe. Again, the focus of these agreements is of a technical and knowledge exchange nature. This allows Members of these legislative bodies to exchange learnings, build capacity, share experiences and improve the functioning of legislatures. In some cases, these agreements flow from the agreements established by the respective provincial governments.

5 UNIT 3: PARLIAMENTARY DIPLOMACY AND INTERNATIONAL PARTICIPATION

The parliamentary diplomacy of South Africa and its strategic partnership finds expression, relevance and guidance from the International Relations *national* priorities and imperatives as advocated in the foreign policy of the country. Global issues shaping the environment within which South Africa operates are increasingly complex and multi-dimensional, requiring a coherent cross-sectoral approach and a coordinated response across all spheres of government.

The strategic partnerships and parliamentary networks which the Parliament of South Africa and Provincial Legislatures entered into with different countries of the world are some of the mechanisms that characterise the nature and operation of parliamentary diplomacy. In turn,

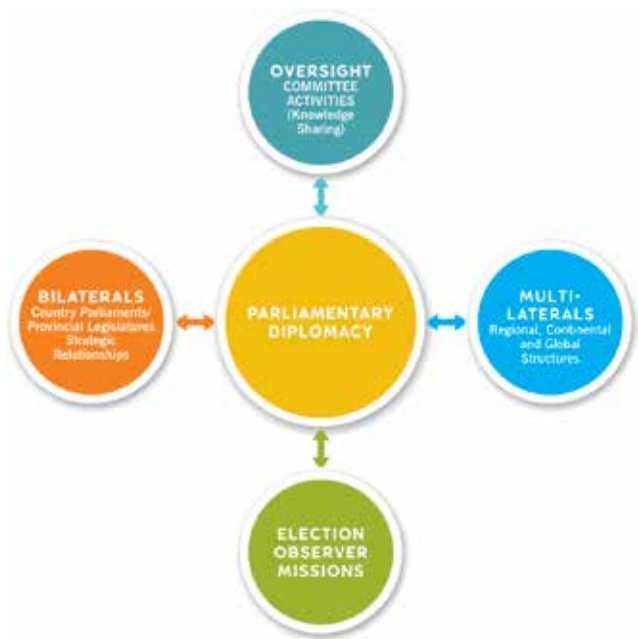
the involvement of the South African Parliament and Provincial Legislators in the sphere of international relations and cooperation through the vehicle of parliamentary diplomacy, assists in actively projecting the country's image, values and culture both domestically and abroad. These parliamentary strategic partnerships and networks usually take the form of bilateral or multilateral relations, and friendship groups amongst two or more countries depending on the nature of the parliamentary partnership and networks. Parliamentary diplomacy activities also include outreach programmes to bring foreign policy to the people.



In pursuit of its role in international relations, cooperation and participation, the Parliament of the Republic of South Africa is a member of inter-parliamentary organisations which include the Southern African Development Community Parliamentary Forum (SADC-PF), Pan African Parliament (PAP), African, Caribbean, Pacific-European Union Joint Parliamentary Assembly (ACP-EU JPA), Inter-Parliamentary Union (IPU); Commonwealth Parliamentary Association (CPA) and India, Brazil, South Africa Parliamentary Forum (IBSA-PF) and it is participating in the formation of the Brazil, Russia, India, China and South Africa Parliamentary Forum (BRICS-PF) and Globe Parliamentary Forum.

Parliament’s affiliation and participation in these organisations is driven by the need to uphold universal values and the principles of democracy, respect for human rights and international law as well as the need to reinforce South Africa’s foreign policy objectives at the level of international parliamentary fora.

Figure 1: Elements of Parliamentary Diplomacy



With regards to the issues of global governance, through the South African Parliament’s involvement and participation in international organisations such as PAP, IPU, CPA and ACP-EU, efforts continue to be made towards finding ways to support the reform of the institutions of global governance such as the UN, WTO, IMF and World Bank in particular, with respect to the matter of good governance and management of these institutions. The reform of these institutions should be expedited in order to respond to the needs and challenges that face the majority of the people of the world, especially in the developing countries.

At present, the views of the developing countries are not sufficiently represented in the global governance arena, given the current form of representation which favours developed countries at the expense of developing countries. Parliament, as an institution that represents the people, should strengthen its role and strategic posture in order to add its voice in efforts to overcome these unequal global circumstances. The South African Parliament's commitment to the restructuring of international institutions of governance should be aimed at bringing a more democratic world order that truly reflects the realities of the twenty-first century.

INTERNATIONAL PARTICIPATION – Global, Continental and Regional Parliamentary Organisations

The South African Parliament's participation in multilateralism and in the global system of governance finds its expression in the need to promote democracy, human rights, gender justice, international law, justice, sustainable, good political and economic governance. The Interparliamentary Union noted that parliamentarians must contribute to the design of a new rules-based system of global governance which meets the deeper aspirations of the citizens. Therefore, there is a need to ensure closer parliamentary interaction with the international financial institutions in a bid to exercise greater parliamentary oversight.



The need to reform international institutions of governance such as the United Nations and the World Trade Organisation, and the Bretton Woods Institutions, such as the International Monetary Fund and the World Bank. Among others, Parliament’s participation in international parliamentary bodies is aimed at making significant progress towards achieving the Sustainable Development Goals and Africa’s Agenda 2063 and also plays a critical role in global environment and sustainable development.

To this end, the parliamentary bodies promote knowledge and understanding about parliamentary democracy and respect for the rule of law, and individual rights and freedoms. Establishing strategic partnerships through multilateral bodies enables Parliaments, in developing countries, to engage Parliaments in developed countries on the existing global imbalances which always favour countries of the global north and marginalise countries of the global south. They also serve as networks through which national parliaments can channel the issues of continental and global institutions such as the United Nations and the African Union. Some of the common areas of international interest include the following:

- Work with SADC National Parliaments in furthering initiatives aimed at establishing regional parliaments, and achieving deeper political and economic integration.⁵

- Strengthening of the African Union organs and structures.
- Transforming the Pan African Parliament into a full legislative body.
- Implementation of the New Partnership for Africa's Development, and
- Ensuring peace, stability and security in Africa.

5.1 INVOLVEMENT IN REGIONAL BODIES

5.1.1 SOUTHERN AFRICAN DEVELOPMENT COMMUNITY PARLIAMENTARY FORUM (SADC-PF)

The SADC-PF was formally launched in 1996 as the Southern African Development Community's (SADC's) parliamentary institution, in accordance with Article 9(2) of the SADC Treaty. In 1997 it was approved by all SADC Heads of State as an autonomous body of the SADC.

SADC-PF is a regional inter parliamentary body composed of 14 parliaments representing parliamentarians in the SADC region. These Member Parliaments are Angola, Botswana, Lesotho, Seychelles, Democratic Republic of Congo, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

SADC-PF's main aim is to provide a platform for Member Parliaments and parliamentarians to promote regional integration in the SADC region through parliamentary involvement, and promote best practices in the role of Parliaments in regional integration and cooperation.

The specific objectives of the Parliamentary Forum are to address a wide range of issues including, but not limited to, the following:

- Promotion of human rights, gender equality, good governance, democracy and transparency;
- Promotion of peace, security and stability;
- Accelerating the pace of economic cooperation, development and integration on the basis of equity and mutual benefits;

- Facilitating networking with other inter-parliamentary organisations;
- Promoting the participation of non-governmental organisations, business and intellectual communities in SADC activities, and
- Informing SADC of the popular views on the development and issues affecting the region.

There is a need to promote the process of transforming the SADC Parliamentary Forum to become a SADC Regional Parliament. This transformation would enhance sustainable development and people-centred democracy in the region.

The Plenary Assembly consists of the Presiding Officers and 4 representatives elected by each national Parliament. Each national Parliament must ensure equitable representation of women and political parties in their respective parliaments. To this end, the chairperson of the Parliamentary Women's Caucus must also form part of the delegation to the SADC-PF. The Plenary Assembly is the policy-making and deliberative body of the forum.

The Executive Committee manages the affairs of the forum and gives strategic direction to the Secretariat. It consists of 6 Presiding Officers and 6 representatives elected by the Plenary Assembly every two years. It manages the affairs of the Forum, gives strategic direction to the Secretariat and ensures that the decisions of the Plenary Assembly are implemented.

5.1.2 THE SADC-PF WOMEN'S PARLIAMENTARY CAUCUS

The Regional Women's Parliamentary Caucus has a cross-sectoral focus with the objective of attaining 50% representation of women in the SADC National Parliaments and promoting effective participation of women, based on SADC's Protocol on Gender and Development. After every election, a new Parliament elects a delegation for the duration of its term and the mandate of the delegation is obtained through the Portfolio Committee on Foreign Affairs and the Presiding Officers.

There has been instances, however, where the delegation has attended the SADC-PF meetings without any formal mandate, which prevented them from taking any decisions which had the potential of binding the Parliament. The Parliament of the Republic of South Africa has for many years resourced the SADC-PF to support the facilitation and management of the implementation of the SADC-PF Women's Parliamentary Caucus programme.

Although regional integration is not a new phenomenon in the SADC region, the current challenge is to systematically take the process of integration to a higher level. More coherence is essential amongst the member parliaments and the executive of SADC, both at national and regional level.

5.2 PARTICIPATION IN CONTINENTAL BODIES

5.2.1 THE PAN-AFRICAN PARLIAMENT (PAP)

The Pan-African Parliament (PAP), also known as the African Parliament, was established in March 2004 under Article 17 of the Constitutive Act of the African Union as one of the nine organs of the African Union. PAP's establishment was necessitated by the vision to provide a pan-continental platform for African parliamentarians to be more involved in discussions and decision-making regarding the problems and challenges facing the continent.

PAP was envisioned as a platform from which the African people could be represented in decision-making processes, good governance, oversight, accountability and transparency. It would be vested with legislative powers to craft continental laws.

South Africa is one of the founding members of the PAP and is represented in the Plenary. South Africa is also the host country for the PAP. South Africa's bid to host the PAP was motivated by the desire to create a truly unique

African People's Parliament to ensure the full and effective participation of the African people in the economic development and integration of the Continent. As a host nation, South Africa continues to:

- Provide adequate premises free of charge to accommodate the offices of the PAP and its other needs for space.
- Ensure that the PAP is housed in accessible premises not occupied by any other organisation or company or Government agency.
- Provide the official residence, at its expense, for the President of the PAP.
- Ensure that there is appropriate, efficient and modern infrastructure, especially telecommunications facilities to enable the PAP to function efficiently.
- Ensure that the PAP conducts its work in a politically conducive atmosphere with adequate logistical facilities.
- Ensure that convenient local transport to and from the parliamentary complex is provided to Members.

Furthermore, South Africa, like other Members of the PAP, continues to make financial contributions to the PAP through contributions made to the African Union (AU). The above-mentioned obligations and responsibilities entrusted upon South Africa as a host country signifies the trust, faith and respect that the African Continent has in South Africa's capacity and capability to lead and meet all PAP's expectations.

When the PAP was initially established, it was envisaged that during its first term 2005 to 2009, it would exercise advisory and consultative powers and transform into a Continental Parliament with full legislative powers. However, in its current form, the PAP is still a consultative and advisory body that investigates, deliberates, and makes recommendations and advocates positions on continental affairs.

South Africa seeks to transform the PAP into a Continental Parliament with full legislative powers to promote and accelerate the pace of political and economic integration so as to expedite development on the African continent.

The PAP comprises of the President, the Bureau, Committees, and the Secretariat. The President is the presiding officer and is elected from amongst members of the PAP during the first sitting of each term. The role of the President is to facilitate deliberations of the PAP during Sessions and to serve as the political head of the PAP, as well as to oversee the business of the continental Parliament.

In overseeing the affairs of the PAP, the President is assisted by four Vice Presidents who represent the rest of the Continent's sub-regions (North, South, West and Central Africa). The President and the four Vice Presidents constitute the Bureau of the PAP and the Bureau serves as the Executive for the PAP.

The work of PAP is organised around Parliamentary Committees. Each Committee investigates, deliberates, develops reports and makes recommendations to PAP sessions on matters falling within the purview of their mandate.

The day-to-day administration of the PAP is run by the Secretariat, which provides administrative support to the Bureau and the Committees. The Secretariat is headed by a Clerk who is assisted by two Deputy Clerks for Administrative and Legislative Affairs, respectively. As head of the Secretariat, the Clerk organises elections of the President and Vice Presidents, takes minutes of all proceedings of Parliament, including the Parliamentary Committees, and authenticates the votes and proceedings of each sitting by signature.

The PAP has faced many challenges including establishing effective structures, formulating institutional policies and procedures, ensuring collective continental ownership, dialogue, stability, peace, implementing effective political oversight, formulating continental policies, harmonising national and continental policies and addressing the challenges facing the continent.

5.3 INVOLVEMENT WITH GLOBAL BODIES

5.3.1 RELATIONSHIP WITH THE EUROPEAN UNION

Prior to 1994, solid strategic and historic relationships and partnerships existed with members of the European Union that supported the liberation movements and South Africa's transition to democracy. The relations between South Africa and the European Union have flourished since the birth of democracy in South Africa in 1994. Relations continue to exist and presented opportunities for cooperation in a multitude of fields at both bilateral level with specific countries and at multilateral levels of the confederation of European countries, called the EU.

The EU is South Africa's critical link in the engagements with the North to build a developmental state by contributing to sustainable growth, social development and capacity building. The partnership is also aimed at advancing the development needs of the African Continent and the South which is mutually beneficial and compatible with South Africa's interests in its increasing international role. Engagement with multilateral organisations like the EU is premised on promoting the African Agenda and the Agenda of the South through high level political dialogue within the context of the Joint Africa–EU Strategy.

5.3.2 PARLIAMENT OF SOUTH AFRICA AND THE EUROPEAN PARLIAMENT

Relations with the European Parliament have advanced since the Third Parliamentary term with the establishment of Inter-Parliamentary meetings (IPM) that are held twice annually in Cape Town, South Africa and Strasbourg, France. The meetings are aimed at bringing about a regular exchange of visits by parliamentary delegations in line with the Trade, Development and Co-operation Agreement between South Africa and the European Union that was established in 2009.

The focus of the meetings is on a diverse range of issues including regional integration, nuclear energy, human rights and international trade agreements. The proposed Partnership Agreement between South Africa and the European Union proposes specific provisions on co-operation between the respective legislatures including the establishment of a committee or specialised group to monitor relations between South Africa and the European Union.

5.3.3 RELATIONSHIP BETWEEN THE EU AND THE SOUTH AFRICAN LEGISLATIVE SECTOR (SALS)

The relationship between the South African Legislative Sector (SALS) and the European Union (EU) commenced in 1997 with the EU support of the Parliamentary Support Programme (PSP). This programme from 1996-2003 was aimed at deepening democracy through enhancement of institutional processes. The Legislatures Support Programme (LSP) was subsequently implemented from 2004-2009 as a logical progression of the PSP.

The relationship between the EU and SALS matured to a more balanced and strategic partnership in which both partners emerged as equal and mutually accountable partners. Following the formalisation of the collaboration of Parliament and Provincial Legislatures through the adoption of the Sector Policy for the SA Legislative Sector and Strategy Framework in 2008. It was within this balanced, mutually accountable partnership and environment that SALS and the EU Delegation designed the Legislative Sector Policy Support Programme (LSPSP). The LSPSP provided an opportunity to entrench cooperation and collaboration of Parliament and Provincial Legislatures in SA.

As a continuation of its long-standing relationship, in 2017 the SALS and the European Union entered into an agreement aimed in the main at strengthening the oversight capacity of SA Legislatures.

Dialogue and consultation between SALS and the EU delegation and the EU Parliaments forms a critical element of the ongoing strategic partnership. To this end a number of consultative engagements have been held since 2010. These are knowledge sharing and exchange platforms that involve broad-based engagement between the SALS, EU relevant bodies and stakeholders.

The engagements and seminars serve as a platform for sector dialogue that ensures consultative participation of stakeholders and role-players with necessary knowledge and functional expertise that would add value to the sector dialogue. Participation of other international Parliaments and other bodies of common interests involved in advancing parliamentary democracy is by invitation.

5.3.4 INTER-PARLIAMENTARY UNION (IPU)

The IPU is the focal point for world-wide parliamentary dialogue and strives for peace and co-operation among peoples and for the firm establishment of representative democracy. Members use the forum as a base from which they engage closely with the United Nations. The IPU co-operates with regional inter-parliamentary organisations, as well as with international intergovernmental and non-governmental organisations which are motivated by the same ideals.

It was established in 1889 as an association of individual parliamentarians. Currently, the IPU has 179 Members and twelve Associate Members. The Executive Committee is composed of the President of the IPU, 15 members belonging to different parliaments and the President of the Coordinating Committee of the Meeting of Women Parliamentarians. The Executive Committee is the administrative organ of the IPU.

Currently six geopolitical groups are active within the IPU. The geopolitical groups exist to facilitate the work of the IPU. The Africa Group convenes meetings of all African parliamentary delegations attending IPU Assemblies in order to discuss issues of mutual interest. The Executive Committee may invite the chairpersons of the geopolitical groups to participate in discussions in an advisory capacity. The IPU Secretariat, led by the Secretary-General of the Union, provides administrative and technical support to the IPU.

The Assembly, which is a decision-making body within the IPU, is assisted in its work by three Standing Committees which prepare reports and draft resolutions for the Assembly to consider, namely, the Committee on Peace and International Security, the Committee on Sustainable Development, Finance and Trade and the Committee on Democracy and Human Rights.

The South African Parliament enjoys sound relations with the IPU. This can be derived from the fact that despite its young democracy, the IPU chose South Africa to host the 118th Assembly in 2008 under the Theme: "Pushing back the frontiers of Poverty". Confidence in SA is further demonstrated by the fact that SA delegates attend meetings of all the following three important Standing Committees of the IPU: The Committee on Peace and International Security, the Committee on Sustainable Development, Finance and Trade, and the Committee on Democracy and Human Rights (these committees prepare reports and draft resolutions for the Assembly to consider).

The IPU and the UN are working together to implement their policy objectives through many joint activities. These involve not only the United Nations, but also a growing number of United Nations specialised agencies and programmes. The partnership between the IPU and the United Nations has focused particularly on priority areas such as democracy, the strengthening of parliaments, human rights, women's issues, child protection, HIV and AIDS, trade and sustainable development.

In the globalising world, Parliaments are being called upon to play an important role in the management of global politics in order to provide popular legitimacy to the international decision-making processes. At present, most of the multilateral institutions such as the United Nations, the World Bank, the International Monetary Fund and the World Trade Organization are lacking in democratic representation that reflects the reality of the global population, hence there is a greater need for these institutions to be reformed.

Given the central role of trade in generating resources for development, the South African Parliament is involved in the IPU - World Trade Organisation negotiations through its participation in Parliamentary Conference on the WTO. The Parliamentary Conference on the WTO is the mechanism of parliamentary interaction with the WTO. The aim of the conference is to provide an opportunity for parliamentarians to put forward their inputs into trade negotiations while bringing about greater transparency to such negotiations and to democratise the workings of the WTO.

Moreover, South Africa participates in the work of the Coordinating Committee on Women Parliamentarians, the Advisory Group on United Nations Affairs and the Advisory Group on HIV and Aids, which is currently chaired by South Africa. There is no permanent South African delegation to the IPU. The criteria for nominating the South African delegation to attend the IPU conferences/meetings largely depends on the topics and issues to be discussed in the particular IPU conference.

It is important to ensure that the IPU retains its character and nature in working with and for parliaments in promoting international cooperation, peace and democracy. However, the IPU must be transformed into a diplomatic organisation with a legal status that allows it to act on the international arena.

5-3-5 COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA)

In pursuit of South African foreign policy priorities of strengthening the North- South Relations, Parliament and Provincial Legislatures are affiliated and participate fully in all sessions of the Commonwealth Parliamentary Association and Commonwealth Women Parliamentarians within the Africa Region and internationally.

The Commonwealth Parliamentary Association (CPA) consists of the national, provincial, state and territorial Parliaments and Legislatures of the countries of the Commonwealth. It promotes knowledge and understanding about parliamentary democracy and respect for the rule of law and individual rights and freedoms.

The CPA is composed of branches formed in Parliaments and Legislatures in Commonwealth countries that subscribe to parliamentary democracy. CPA branches are currently grouped geographically into eight Commonwealth Regions, namely Africa, Asia, Australia, British Islands, Canada, Caribbean, Mediterranean, Pacific and South-East Asia. The Members of the Legislatures, which is formed into a branch, are entitled to become members of other branches. In order for a branch to qualify as a full member, it must be a legislative body for both national and State or provincial Parliaments, and the legislature of dependent territories.

The Presiding Officers of the Legislatures are normally branch Presidents unless delegated otherwise, while the leaders of the parliamentary parties are Vice Presidents. The Secretary of the Legislature acts as the Secretary of the branch. The branches require Members to pay an annual subscription fee and may permit Members to apply for associate status on ceasing to belong to the legislature.

The aim of the Association is to promote the advancement of parliamentary democracy by enhancing knowledge and understanding of democratic governance. It also seeks to build an informed parliamentary community that is able to deepen the Commonwealth's democratic commitment and to further cooperation among its Parliaments and Legislatures.

The South African Parliament and all nine Provincial Legislatures are members of the CPA. Although branches are autonomous in terms of the CPA constitution, the South African Legislative Sector recognises that the South African delegation with representatives of all Legislatures is one delegation from a unitary country led by the President of the branch of Parliament.

The President of the National Parliament branch leads the South African delegation and takes the responsibility of coordinating the South African delegation. This coordination ensures that all South African branches share a common mandate that represents the interests of the country as opposed to narrow interests of the Legislatures. To this end, Parliament and Provincial Legislatures serve in the Executive Committee, substructures of this organisation and support efforts of transforming this organisation into a diplomatic organisation that will serve the agenda of the developing countries within the Commonwealth. There is a need to transform the CPA into an International Organisation with diplomatic status to represent the interests of the developing countries in the Commonwealth.

Two conferences are held annually, one regional and one international. The delegation to the CPA International Conference is composed of 5 delegates and one secretary for the delegation. Each branch is allowed to send observers at special costs. The CPA meets the costs of accommodation, meals and the social programme for these delegates. Should additional delegates attend an observer fee is levied.

The delegation to the CPA Africa Region is comprised of 4 representatives and one Secretary for the delegation. In this case as well, the CPA meets the costs of accommodation, meals and the social programme for these delegates. Should additional delegates attend, an observer fee is levied. The Regional Representative receives a separate invitation and the Regional Representative for the Southern Africa Region is usually the leader of the South African delegation from Parliament.

In advancing the empowerment of women, the Commonwealth Women Parliamentarians (CWP) was founded by women delegates in 1989. This was intended for women to discuss ways to increase female representation in Parliaments and work towards the mainstreaming of gender consideration in all CPA activities and programmes. It also ensures the participation and involvement of women in the socio-economic development of Commonwealth Regions.

The constitution of the CPA requires all branches to establish CWP chapters at both international and regional level as a structure responsible for furthering the objectives of the CWP strategy. In addition to the CWP International, there are regional chapters of the CWP with their own steering committees and programme of activities. The Regional Representative of the CWP also receives a separate invitation to attend CPA conferences.

5.3.6 GLOBAL LEGISLATORS ORGANISATION (GLOBE INTERNATIONAL)

GLOBE is an international organisation established in 1989 by a group of legislators from G8 countries. GLOBE comprises of national parliamentarians from over 80 countries committed to developing and overseeing the implementation of laws in pursuit of sustainable development. GLOBE is partner to UN programmes, national and supranational governments and legislative bodies.

GLOBE recognises the central role of legislatures and parliaments in strengthening and tackling the world's major environmental challenges, as well as to emphasise the role of legislatures in holding governments to account for the implementation of international commitments. This non-party political organisation supports legislatures through national chapters to develop and advance laws on climate change, natural capital accounting and forests. GLOBE's mission is to create a critical mass of legislators that can agree and advance common legislative responses to the major global sustainable development challenges.

To achieve this mission GLOBE promoted the establishment of a Climate Legislation Initiative. This was agreed at the first World Summit of Legislatures held in Brazil in June 2012. At the conclusion of the summit, 300 legislators from 86 countries committed to work to advance national legislation and to share best legislative practice on key issues of sustainable development. As a direct result of that commitment the GLOBE Climate Legislation Initiative has been established for a core group of countries (this number will grow to include 66 countries by 2015) dedicated to supporting legislatures on climate change.

Alongside the Climate Policy Programme, GLOBE operates a series of other international initiatives and dialogues. These are: the GLOBE Legislatures Forests Initiative, the GLOBE Natural Capital Initiative, the EU-China Dialogue and initiatives on fisheries and the conservation of marine environment.

5.3.7 THE UNITED NATIONS COMMISSION ON THE STATUS OF WOMEN

The South African Parliament is a regular participant in the United Nations Session Commission on the Status of Women and Inter-Parliamentary Union Meeting on Women in Politics. The sessions of the Commission on the Status of Women (CSW) takes place annually at the United Nations headquarters in New York. Representatives from Member States, including Parliamentarians, United Nations entities as well as NGOs attend the session. The session includes roundtables, interactive dialogues and panels, and other parallel events.

5.3.8 NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL)

The NCSL is a bipartisan organisation, established and financially supported by the 50 Legislatures in the United States of America, to help accomplish the goals outlined in NCSL's mission statement.

America's two-party system demands that the NCSL retains the confidence of the Republican and Democratic Party members of state legislatures. The NCSL by-laws established a system of governance for the organisation that institutionalises its bipartisan credentials. It serves the legislators and staff of the nation's 50 states, its commonwealths and territories through providing research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues.

The NCSL is an effective and respected advocate for the interests of state governments before Congress and federal agencies. The leadership of NCSL is composed of legislators and staff from across the country. The NCSL also is unique in its inclusion of legislative staff in its governing structure. The NCSL Executive Committee provides overall direction on operations of the Conference.

The National Conference of State Legislatures is founded to:

- Improve the quality and effectiveness of state legislatures;
- Promote policy innovation and communication among state legislatures;
- Ensure state legislatures have a strong and cohesive voice.

The mission of the National Conference of State Legislatures (NCSL) is:

- To advance the effectiveness, independence and integrity of legislatures in the states, territories and commonwealths;
- To foster interstate cooperation and to facilitate information exchange amongst state legislatures;
- To represent the states and their legislatures in the American federal system of government consistent with support of state sovereignty and state flexibility and protection from unfunded mandates and unwarranted federal pre-emption;
- To improve the operations and management of state legislatures; to improve the effectiveness of legislators and legislative staff; and to encourage the practice of high standards of conduct by legislators and legislative staff; and
- To promote cooperation between state legislatures in the United States and legislatures in other countries.

The NCSL International Programme coordinates programmes designed to support and promote international understanding and the exchange of ideas about institutional strengthening between state legislatures and legislatures in other countries.

Provincial legislatures have built relations with the National Conference of State Legislatures. Annually, a delegation of provincial legislatures attends the NCSL Legislative Summit and have engaged in programmes in which they have exchanged information through workshops held in various provincial legislatures in South Africa.

These workshops have varied from exchanges on members' affairs, ethics to oversight practices and provincial legislatures and the NCSL have engaged on common developmental programmes. There is no formal relationship established between provincial legislatures and the NSCL. There is potential for collaboration aimed at strengthened capacity, particularly in the areas of research, training, knowledge and information management.

5.3.9 THE AFRICAN, CARIBBEAN AND PACIFIC– EUROPEAN UNION JOINT PARLIAMENTARY ASSEMBLY (ACP-EU)

The ACP-EU Joint Parliamentary Assembly (JPA) was set in terms of Article 17 of the Partnership Agreement between Members of the African, Caribbean and Pacific Group of States and the European Community and its Members. The ACP-EU is the only international parliamentary assembly in which the representatives of various countries meet regularly, with the aim of promoting the interdependence of the North and South.

The relationship between the ACP and Europe started in 1963 with the first Yaoundé Convention (convention signed in the city of Yaoundé, Cameroon between the EU and ASMM (African States, Madagascar and Mauritius). This agreement detailed EU-ACP relations for trade, market access, development and development-finance. South Africa became an associate member of the EU-ACP conventions in 1998.

The ACP-EU Joint Parliamentary Assembly (JPA) has three standing committees, namely, the Committee on Political Affairs (South Africa is currently a member of this committee), the Committee on Economic Development, Finance and Trade, and the Committee on Social Affairs and Environment. Each Member of the Assembly has a right to be a member of one of the standing committees.

The South African Parliament participates as a member of the Committee on Economic Development, Finance and Trade. South Africa's continued membership and continuous participation in the Committees of the JPA indicates a good working relationship that exists between the South African Parliament and the ACP-EU.

5.3.10 ASSOCIATION OF SENATES, SHOORA AND EQUIVALENT COUNCILS IN AFRICA AND THE ARAB WORLD (ASSECAA)

The Association seeks to establish a bridge of cooperation for Africa and the Arab World and to enable the region to harness its potential in order to benefit from the worldwide conscious trend towards conglomeration and regionalisation.

The Association is a relatively new institution and held its first meeting in Mauritania in February 2001. The objective of the Association of Senates/ Second Chambers in Africa and the Arab World is to strengthen parliamentary bicameral systems, to reinforce economic, political and cultural cooperation and security among the people it represents, to support and join Arab, African, Islamic and international parliamentary efforts, and to contribute to the parliamentary activities of the Arab, African, Islamic and International Parliamentary Unions and engage in the dialogues emanating from them with the purpose of supporting these efforts to achieve the objectives of the Association.

The Association holds annual meetings in one of the member countries according to alphabetic order, otherwise in a member country, which offers to host the meeting. The Presiding Officer of the hosting Assembly undertakes the task of coordinating among the different member Assemblies until the next meeting of the Association is convened.

An extraordinary meeting is normally held upon the request of one of the Presiding Officers and on the approval of a two thirds majority.

The Association's Council is composed of two members representing each Chamber, nominated before the date of the convening of the Council, and each Assembly has the right to delegate other members not exceeding three in number.

The Association Council drafts and amends the rules of procedure, draws up an agenda for the Conference, decides on applications for joining the Association, approves the annual budget and carries out any other tasks assigned to it by the Conference. The Association is supported by a Secretariat.

The National Council of Provinces is an associate Member of the ASSECAA. The Presiding Officers of the NCOP lead the parliamentary delegations to participate in the activities/conferences of the Association. During the Fourth Parliament, the Deputy Chairperson led most of the NCOP delegations to the meetings/conferences of the Association. The Deputy Chairperson has also been instrumental in driving the gender issues in the Association, in line with South Africa's policies on gender representation, 50-50 representation, and on women emancipation in Africa and the globe.

The Secretariat of the Association is responsible for most of the activities of the Association. They are responsible for the administration and logistical arrangements of the Association. The headquarters of the secretariat is in Sana'a, Yemen.

5.3.11 THE INDIA, BRAZIL AND SOUTH AFRICA PARLIAMENTARY FORUM (IBSA-PF)

IBSA-PF is a trilateral, development initiative, which aims at promoting South to South cooperation and exchange ideas and best practises, as well as creating a platform for collaboration.

The primary objectives of IBSA-PF are as follows:

- Oversee and monitor the implementation of decisions adopted during the IBSA Summit of Heads of State and Government and Ministerial Meetings;
- Strengthen people to people contact with a view to achieving mutual understanding, trust and friendship among the people of the member countries;
- Further cement friendly relations among the member countries;
- Strengthen and deepen South-South cooperation;
- Promote, contact, co-ordinate and exchange experiences among Parliaments and Parliamentarians of the member countries;
- Provide for the exchange of ideas and information on Parliamentary practices and procedures; and
- Cooperate in international fora in matters of common interest.

5.3.12 THE BRAZIL, INDIA, CHINA AND SOUTH AFRICA PARLIAMENTARY FORUM (BRICS-PF)

The RSA Parliament participates in the BRICS Parliamentary Forum within the context of deepening South-South cooperation as one of the mechanisms to advance the interests of the developing countries on the global stage. This is also an influential international relations platform to prioritise the developmental challenges of the South and to prioritise policy objectives of the African Agenda. The strengthening of South-South parliamentary relations has developed into high level intercontinental engagements for the strengthening of solidarity, economic development,

interdependence among the developing countries in an effort to address common socio-economic challenges related to poverty, education, health, population, environmental concerns, the rights of women and children, etc.

5.4 ELECTION OBSERVATION MISSIONS

The Parliament of the Republic of South Africa continues to participate in election observations on the African continent, particularly in the SADC region. The main aim of the South African Parliament's involvement in the observation of these elections is to strengthen democracy and development in the region in line with the values of the South African Constitution and the country's foreign policy.

During the Fourth Parliament, multiparty delegations have formed part of the Pan-African Parliament Observer Missions, SADC-PF and SADC Election Observation Missions in Angola, Swaziland and Zimbabwe. Periodic training consistent with regional and continental election observation instruments should be scheduled to assist Parliamentarians deployed to election observer missions.

The Post Conflict Reconstruction and Development Policy (PCRD) framework of the African Union (AU) seeks to prevent conflict and improve the timelines, effectiveness and coordination of peace-building and post-conflict reconstruction and development activities in line with a vision for the renewal of Africa. The PCRD policy includes short, medium and long-term programmes that address the needs of the affected population, prevent escalation of disputes, avoid relapse into conflict, addresses the root causes of conflicts and build and consolidate sustainable peace. This policy is based on the provisions of the AU's PSC Protocol and lessons learnt in the Continent's peace building efforts and NEPAD's conditions for sustainable development.

Motivated by the need to deepen peace and democracy in Africa and thus lay a basis for sustainable development, Parliament's work in post-conflict reconstruction and development should focus on facilitating and consolidating human rights, justice and reconciliation, good political and economic governance, as well as gender justice in countries where the South African government has been involved in peace-making processes. These countries include Angola, Burundi, South Sudan, Cote d'Ivoire, the Democratic Republic of Congo, Western Sahara and Zimbabwe.

In this regard the South African Parliament is better positioned to share the country's experience on inclusive political dialogue, truth and reconciliation, as well as, sharing knowledge on the role of Chapter 9 Institutions (institutions supporting democracy).

Election Observer Missions are crucial in enhancing post conflict reconstruction and development frameworks because they ensure the credibility of political processes.

PROTOCOL AND ETIQUETTE

6 UNIT 4: INTRODUCTION AND GUIDING PRINCIPLES FOR PROTOCOL AND ETIQUETTE

6.1 INTRODUCTION

This section will provide guidance to Members of Parliament and Provincial Legislatures on protocol and ceremonial rules and practices of the South African State.

The section will also cover the related subject of etiquette (rules pertaining to individual conduct), including cultural sensitivities and nuances, to assist Members of Parliament to abide by the applicable codes of conduct and ethics, as well as to cultivate important relationships whilst avoiding diplomatic and protocol faux pas.

The scope is to codify and reflect on the fundamental protocol principles of the state relevant to Parliament and Provincial Legislatures. The module will assist with providing a standard on courtesies extended to visiting Presiding Officers of foreign legislatures and other visiting dignitaries.

The synopsis of the broad rules and practices of state and parliamentary protocol in the RSA, and international protocol and etiquette norms, have been utilised as an initial contribution to the design and development of content for the comprehensive induction programme for the SA Legislative Sector. The legislative basis of the rules is mostly gazetted – in Acts, Schedules to Acts, and Proclamations as well as International Conventions.

This module is not a replacement for policy, or a policy-making instrument, but rather a guiding instrument based on and informed by approved policies and rules within the Joint Rules, Members' interests and privileges, and procedural matters of Legislatures.

The unit raises important aspects, such as courtesies and hospitality extended to visiting Presiding Officers and delegations of foreign national legislatures, and the presentation of official gifts of Parliament, that are yet to find policy expression for the Legislative Sector, and are informed by tradition and practice upheld so far.

Notably, a key constituent component of the module, the National Official Table of Precedence of 1996, has been the subject of a multi-stakeholder discussion, premised on the fact that the gazetted document has not been reviewed by the South African State since its proclamation, posing significant challenges to the Legislative Sector relating to some of its omissions and shortcomings.

This protocol module will indicate the principles as well as the methodology for giving effect to the implementation of the protocol and ceremonial procedures of the state in the context of Parliament and the provincial legislatures. Members of Parliament have to be appraised of the following fundamental subjects:

- I. Precedence in the RSA, the National Official Table of Precedence 1996 of the Republic of South Africa, and the challenges posed by the fact that it has not been reviewed since its proclamation;
- II. The official forms of address in the Republic of South Africa and particularly in Parliament and provincial legislatures. In this regard, the use of the designation of “honourable” is particularly relevant.
- III. The ceremonies of the State in the Republic of South Africa, the participation of the legislative authority in the ceremonies of the state and the ceremonies in Parliament and provincial legislatures.
- IV. The protocol and ceremonial components of incoming and outgoing state, official, and working visits by foreign and South African dignitaries, including visiting heads of states and government, royalty, visiting presiding officers of foreign national legislatures and the visits of the Presiding Officers abroad.

- V. The national symbols of the Republic of South Africa, the custodianship of the national symbols by the President of the RSA, and the symbols of Parliament as well as the governing principles for the use of both at Parliament. In the provincial legislatures, Members need to be appraised of symbols used in their respective legislatures, such as the emblem or coat of arms of their respective provinces and their maces.
- VI. Protocol rules regarding the movement and placement of VIPs, signing ceremonies, exchanging official gifts and other elements pertaining to official engagements, including dining.
- VII. Introduction to diplomacy, the system of diplomatic ranking; diplomatic immunities and privileges in terms of the relevant Act, and their relevance to Parliament and Provincial Legislatures in their interaction with the diplomatic corps.
- VIII. The installation of condolence books.
- IX. Etiquette: The broad yet important and often sensitive topics of cultural and religious sensitivities, official and diplomatic communication and introductions, as well as the matter of appropriate attire for official occasions.

6.2 GUIDING PRINCIPLES

The legislative sector, as one of the three authorities of the South African state, is bound to abide by the key aspects of the protocol and ceremonial rules and practices of the state. Administratively, this resides with the Branch State Protocol of the Republic of South Africa in the Department of International Relations and Cooperation, of which the Chief of State Protocol is the responsible authority.

7 UNIT 5: DEFINITION OF “PROTOCOL” AND APPLICATION

In context of this synopsis, the word “protocol” is used in the sense of “the official procedure or system of rules governing affairs of state or diplomatic occasions” (Oxford dictionary).

It indicates what constitutes acceptable behaviour in official circumstances and formalises official channels of communication and conducting state affairs between the governments of different countries.

In the case of Parliament for instance, it would indicate the official protocol and ceremonial procedure or system of rules governing the affairs of Parliament as the national legislative authority and in line with the Joint Rules of Parliament.

Protocol also provides for the allocation of precedence or appropriate hierarchical place to office bearers and individuals according to the position they hold, and ensures that they receive the courtesies to which that individual’s position entitles him or her in political and administrative structures. It also determines the rules in respect of forms of address and titles and for the exchange of official and private correspondence.

7.1 WHY PROTOCOL?

"It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently." – Warren Buffet

In a context of diversity (local and international), misunderstanding, disagreement, confusion and potential conflict are constant threats in the absence of commonly understood and embraced norms governing conduct and behaviour, especially in official settings. Acceptable behaviour in one state or institution might be unacceptable in another.

Protocol and etiquette are invisible and subtle, but critical tools that facilitate the conduct of official relations, enabling the achievement of set goals whilst avoiding blunders that may compromise official relations.

Protocol facilitates the upholding of relations, interaction and communication between states, their representatives and officials. Accordingly, breaches of protocol have implications (especially when viewed as being deliberate) for the state entities or governments concerned.

The timeless formality of international diplomatic culture remains in place, and ensures that each country is respected uniformly and without bias. According to the Vienna Convention on Diplomatic Relations, all countries are equal, irrespective of their political system, size etc.

7.2 PROTOCOL BASIC PRINCIPLES

Protocol focuses on:

- what constitutes proper conduct in official circumstances, or the rules of official interaction;
- the proper official forms of procedure in affairs of the state such as state ceremonies (including at Parliament as one of the arms of the state), and diplomatic affairs;
- the implementation of rules for the above procedures;
- the allocation of the proper place or precedence of office bearers and dignitaries in state, political and administrative structures; and
- rendering the appropriate courtesies to such persons according to the position they hold.

Breaches of protocol reflect on the institution or organisation and could occasionally be calculated.

The following elements determine the applicable protocol principles:

- The Environment dictates the protocol.
- Who is hosting? The protocol of the host is paramount. Also, the host takes center stage, which is not always a reflection of their precedence.
- The most important object/person is always to the left of the spectator.
- If there are more than two objects or people, the focus changes to the middle. Then the rule left right from the spectator's point of view, etc. is followed.

7.2.1 APPLICATION OF FLAG USE & PLACEMENT/SEATING ARRANGEMENTS



Bilateral: Place of honour (left from the spectator's point of view) given to guest flag. Also seat/place guest in place of honour (left from the spectator's point of view). Table flags indicate seating.



Bilateral Roundtable seating: Heads of delegations at head; visiting delegation seated on left hand side, in order of precedence from closest to furthest from head of delegation.



Conference/Multilateral: Flags arranged from the flag of the host, on the furthest left side from the spectator's viewpoint, usually followed by the organisation's flag, and the rest of the member countries in alphabetical order (English alphabet).

In relation to the receipt of international delegations and international visits, Members of Parliament and Provincial Legislatures will be guided on relevant protocols and fully supported and briefed by the Protocol Officials in the respective institutions.

1.3 PRECEDENCE (SENIORITY)

Individual countries determine the structure of their state as well as the framework for the positions and offices within it, ranking its office bearers and representatives according to their seniority in what is commonly referred to as a Table of Precedence.

South Africa's National Official Table of Precedence is a nominal and symbolic hierarchy of important positions within the Republic, reflecting the seniority accorded to different groups in South African society, and is compiled by the Presidency of the Republic of South Africa.

The criteria applied by the Presidency in determining seniority have been duties, competencies and responsibilities. If the seniority of two office bearers is equal to two or more categories, salary is taken into consideration.

Amendments to the National and Provincial Official Table of Precedence can only be effected by the President of the Republic of South Africa and will be published in the Government Gazette.

The National Official Table of Precedence⁶ was last issued and published in 1996, following changes in state structures brought about by the adoption of the Constitution of the Republic of South Africa 1996. Subsequently, further developments in structures of the state, such as the establishment in Parliament of the office of the House Chairperson, and reports of commissions appointed by the state on matters with relevance to the seniority of office bearers have made the 1996 National and Provincial Official Table of Precedence outdated and in need of review.

⁶ Government Gazette 16919 of 12 December 1996 Notice 20

7.3.1 THE NATIONAL TABLE OF PRECEDENCE

The **National Official Table of Precedence** of 1996 is as follows:

Rubric	
1	The President of the Republic of South Africa or the Acting President
2	The Deputy President and the President-elect (for the period between his or her election and assumption of office)
3	The Chief Justice or the Acting Chief Justice and the President of the Supreme Court of Appeal and the Acting President of the Supreme Court of Appeal
4a	Former Presidents of the Republic of South Africa, in order of seniority
4b	Former Deputy Presidents, in order of seniority
5	Cabinet Ministers, the Speaker of the National Assembly, the Chairperson of the National Council of Provinces and Premiers of the respective provinces, in order of seniority (see rule 2)
6a	Ambassadors Extraordinary and Plenipotentiary (officiating), High Commissioners and Apostolic Nuncios or Pro-Nuncios, in order of seniority
6b	Envoys (Representatives) Extraordinary and Ministers Plenipotentiary (officiating), in order of seniority
6c	Chargé d'affaires en titre (usually a diplomatic secretary, counsellor or minister – who heads a diplomatic mission (e.g., an embassy) in the absence of its titular head (e.g., an ambassador), in order of seniority
6d	Heads of other permanent diplomatic missions, in order of seniority
7a	Deputy Ministers, Members of the Executive Councils and Speakers of Provincial Legislatures, in order of seniority
7b	The Deputy Speaker of the National Assembly and the Deputy Chairperson of the National Council of Provinces, in order of seniority

7c	The Chief Whip of the majority party in the National Assembly and the Chief Whip of the National Council of Provinces, and Deputy Speakers of Provincial Legislatures, the Chairperson of the Standing Committee on Public Accounts in the National Assembly and the Parliamentary Counsellor of the President, in order of seniority
8	The Secretary of the Cabinet and the Chief of the National Defence Force (see rule 3)
9a	Chargé d'affaires <i>ad interim</i> of embassies, in order of seniority
9b	Chargé d'affaires <i>ad interim</i> of legations, in order of seniority
9c	Chargé d'affaires <i>ad interim</i> of other permanent diplomatic missions, in order of seniority
10	Leaders of the different political parties in the National Assembly and National Council of Provinces, in order of seniority
11a	The Deputy Chief Justice and the Deputy President of the Supreme Court of Appeal
11b	Judges of Appeal, in order of seniority
11c	Judges of the Constitutional Court, in order of seniority
11d	Judges President, in order of seniority
11e	Deputy Judges President, in order of seniority
11f	Judges of the Supreme Court, in order of seniority
12	Former Chief Justices, in order of seniority
13	Chairpersons of the commissions established under The Constitution of the Republic of South Africa, in order of seniority
14a	Members of the National Assembly and of the National Council of Provinces, in order of seniority
14b	Members of the provincial legislative authorities, in order of seniority
14c	Local royalties, in order of seniority
14d	The Chairperson of the National Council for Traditional Leaders
14e	Chairpersons of the Provincial Houses of Traditional Leaders, in order of seniority

15a	The Auditor-General, Governor of the South African Reserve Bank, Chairperson of the Public Service Commission and the Public Protector, in order of seniority (see rule 4)
15b	Members of the Public Service Commission, in order of seniority
15c	Directors-General and their equivalents of government departments, including the Secretary to the National Assembly and the Secretary to the National Council of Provinces, the Secretary for Safety and Security, the Secretary for Defence and Directors-General of the respective provinces, in order of seniority (see rule 4)
15d	Attorneys-General, in order of seniority
15e	Chairpersons of state corporations, in order of seniority (see rule 5)
16a	The mayor of the capital of the province in which the function is held
16b	Chairpersons of the Metropolitan Councils of the region in which the function is held
17	Mayors of provincial capitals, with the seniority according to the grade in which the local authority is categorised
18	The spouses of the foregoing persons (or in the case of single or divorced persons or widowers or widows, the persons officially recognised by the government as their hosts or hostesses) enjoy the precedence of their spouse mentioned in the table (or the persons for whom they act as host or hostess)
19	Persons who do not appear in this table may, on special occasions, be accorded courtesy precedence (as defined in rule 7) by the President of the Republic of South Africa

7.3.2 THE PROVINCIAL TABLE OF PRECEDENCE

The Provincial Table of Precedence is derived from the National Table of Precedence, but extracted to only include provincial persons.

Rubric	
1	The Premier
2	MECs in order of seniority
3	Provincial Speaker
4	Members of the Provincial Legislature
5	Chief Whips of political parties
6	Judges, in order of their seniority
7	Former Judges
8	Chairpersons of Commissions
9	Royal families
10	Chairperson of the House of Traditional Leaders
11	State institutions, e.g. Auditor General and Public Protector
12	Director-General
13	Former MECs, Speaker and so forth
14	Former Chairpersons of standing committees and members
15	Mayors in order of their seniority
16	Wives of the aforementioned persons

Rules regarding the observance of the Table of Precedence (in this case the point of reference is the National Official Table of Precedence):

- The Table of Precedence must be observed on all official occasions. It may be deviated from only with the approval of the President of the Republic of South Africa.
- When foreign relations or interests are the main focus of an official function, or when precedence above office-bearers in Rubric 5 is given to the leader of the diplomatic corps in terms of international protocol, the Minister of Foreign Affairs must be given precedence above the leader and the office-bearers in Rubric 5 (see above).
- When foreign relations or interests are the main focus of an official function, the Director-General of the relevant Department hosting the function, enjoys precedence after the Secretary of Cabinet, the Chief of the South African National Defence Force and the Director-General of Foreign Affairs.
- If the Public Protector already holds a higher position on the official Table of Precedence, he or she retains personal higher precedence for all official functions.
- Rubric 15(e) is included, provided that chairpersons of state corporations are invited when the particular function relates to their specific fields or according to the choice of the host should they wish to invite all or any of the chairpersons.
- Persons not appearing on the table may not be placed above persons appearing in it unless they have either been accorded ad hoc precedence in terms of Rubric 19 of the table or are invited as guests of honour.
- Courtesy precedence is restricted to persons who are not normally resident in the Republic of South Africa but includes church dignitaries within the republic and other dignitaries, office bearers and functionaries for whom separate provision has not been made in the table.
- The spouses of the foregoing persons (or in the case of single or divorced persons or widowers or widows, the persons officially recognised by the government as their hosts or hostesses) enjoy the precedence of their spouse mentioned in the table (or the persons for whom they act as host or hostess).

- Amendments to the table may only be effected by the President of the Republic of South Africa and will be published in the Government Gazette.
- Visiting dignitaries of other countries holding the same rank will take precedence over South Africans holding that rank.

7.3.3 CHALLENGES WITH THE NATIONAL OFFICIAL TABLE OF PRECEDENCE

- The document was published in January 1996 and does not reflect all structures identified in the Constitution of the Republic of South Africa, 1996.
- The table does not provide for all positions at provincial level.
- The local government structures as identified by the Municipal Structures Act are not reflected.
- The traditional leaders' position as identified in the Traditional Leadership and Governance Framework Act, 2003 and the Commission on Traditional Leadership (formerly known as the Nhlapo Commission) must be considered.
- Certain positions do not exist anymore and other notable positions, for example the National Director of Public Prosecutions, the House Chairpersons of the National Assembly and the National Council of Provinces and Secretary to Parliament do not appear in the Table.

7.4 OFFICIAL FORMS OF ADDRESS

Members of Parliament and Provincial Legislatures need to be acquainted with the appropriate use of the official forms of address in the Republic of South Africa, derived from the relevant manual published by The Presidency (1997).

- It is important to distinguish between a "form of address" and a title.
- It is important to note the differences in using titles and addressing personages in the first and third persons.
- It is also important to use the correct written salutation and letter endings, particularly in official correspondence.

A title is always used with a name (first name or surname), and is used in accordance with rules that apply to that specific title; the full title of, for example, the British monarch is "*Her Majesty Queen Elizabeth the Second of Great Britain and Northern Ireland*", in the third person, and "*Your Majesty*" in the first person, but the form of address used for the sovereign is "*Ma'am*".

- I. Distinguish between a title and a job. "Mr" is a title; "Speaker" is a job. The Speaker of the National Assembly is, for example, accordingly addressed in the House as "Mr Speaker" or (female) "Madam Speaker".
- II. It is the prerogative of a woman to choose if her marital status is part of her identity and which title she will use, example the use of Mrs or Ms. The title "Ms" is sometimes used as a counterpart for "Mr."
- III. In Parliament and Provincial Legislatures, the use and history of the use of "honourable" should be clarified. The title of "The Honourable" comes from the Westminster System and South Africa having been ruled by Britain at a period in its history. In 1994 the first session of the National Assembly took a decision that members will be addressed as the honourable member, Mr Surname, the "honourable" being a respectful form of address and not a title (it should not be connected to the name of a member but to show respect in Parliament). Furthermore, the 1 June 1985 Cabinet Memorandum (similarly adopted in 1997) determined that no person in office bears the title The Honourable, outside of the legislative environment. i.e. "Honourable" is to be used when Members refer to each other in the House/legislative proceedings, and not as part of a salutation in correspondence.
- IV. Cognisant of the fact that the above does not apply to other countries' legislatures (the use "The Hon."), when using "The Hon", Mr, Mrs or Ms is omitted and any other title is placed in front of "The Hon", for example Dr The Hon Ferdie Hartzenberg. Mr and Mrs, however, are used with His or Her Excellency, for example HE Dr/Mr/Mrs/Ms/Miss A B Surname.

- V. The abbreviations for Member of Parliament (MP) and Member of the Executive Council (MEC) or Member of the Provincial Legislature (MPL) are used on the envelope and not on the invitation card. The name of the spouse follows the name of the official on the card. A husband's initials identify a married woman when he is the office bearer, for example:
- i. Male official: Mr A B Surname and Mrs Surname
 - ii. Female official: Mrs A B Surname and Mr Surname
- I. For all other couples, if the husband is the official, the husband's initials and surname are used to identify both persons. If the wife is the official, her initials are used to identify only her and the surname is used for both persons, for example:
- i. Male official: Mr and Mrs A B Surname
 - ii. Female official: Mrs A B Surname and Mr Surname
- II. It is not correct to use Minister A B Surname when addressing a minister in person. Minister plus Surname is only used when referring to the minister in the third person. The correct form to use is Mr/Madam Minister or Mr/ Mrs Surname. The above applies to the President, Deputy President, Deputy Ministers and Premiers. South African citizens do not address a South African ambassador as "Your Excellency".
- III. With reference to local government "His" or "Her Worship the Mayor" is never connected to the name of the mayor, only to the name of the town or city. Therefore, the mayor is still addressed as "councillor" when the surname is also used, for example Councillor So-and-so but His Worship the Mayor of the City of So-and-so, Councillor So-and-so. A mayor can also be addressed in person as Mr Mayor or Madam Mayor. Academic titles replace Mr, Mrs, Ms or Miss. Honorary academic titles, for example Honorary Doctor, are only used when participating in an academic function.

- IV. When an envelope is addressed to a person in office, the spouse is not included on the envelope even if the letter or card includes the name of the spouse.
- V. The tables below are quoted, as mentioned supra, from
7“Protocol and Communication – A practical guide”

7.4.1 OFFICIAL FORMS OF ADDRESS IN SPEAKING

President	Mr President/Madam President or Mr Surname/Mrs, Ms, Miss Surname then Sir or Madam
Deputy President	Mr/Madam Deputy President or Mr/Mrs/Miss/Ms Surname then Sir/ Madam Deputy President
Speaker & Deputy Speaker	Mr/Madam (Deputy) Speaker then Sir/Madam
Chairperson & Deputy Chairperson of the National Council of Provinces	Mr/Madam (Deputy) Chairperson or Mr/Mrs/Ms/Miss Surname then Sir/ Madam
Cabinet Minister & Deputy Minister	Mr/Madam Minister then Sir/Madam
Premier	Mr/Mrs/Miss/Ms Premier or Sir/ Madam
House Chairperson	Mr/Madam House Chairperson then Sir/Madam
Chief Whip	Mr/Madam Chief Whip then Sir/ Madam
Chairperson of a Standing/ Portfolio/Select Committee	Mr/Madam Chairperson then Sir/ Madam
Member of Parliament/ Legislature	Mr/Ms/Mrs Surname then Sir/Madam
Member of the Executive Council	Mr/Mrs/Miss/Ms Surname then Sir/ Madam or Councillor

Chief Justice/Deputy Chief Justice	Outside Court: Justice/Sir/Madam Inside Court: Judge/Sir/Madam
Judge of the Supreme Court of Appeal	Outside Court: Justice/Madam/Sir Inside Court: Judge/Sir/Madam
Chief Magistrate or Magistrate	Inside court: Your Worship, or if referring to him or her, His or Her Worship
Ambassador and High Commissioner (substitute where applicable) of foreign country accredited to South Africa	Your Excellency or Mr/Madam (e) Ambassador or Sir/Madam (e)
Diplomatic Rank of Envoy or Minister (substitute where applicable)	Mr/Madam(e) Minister or Sir/Madam(e)
Chargé d'affaires e.t. (en titre as permanent head of mission accredited to the Minister of Foreign Affairs) and Chargé d'affaires a.i. (ad interim as interim head of mission)	Mr/Madam(e) Chargé d'affaires or Mr/Mrs/Ms/Miss Surname and then Sir/Madam
Consul-General or Consul	Mr/Madam(e) Consul-General and then Sir/Madam(e)
Chief of the South African National Defence Force	General/Admiral
Secretary for Defence	Mr/Mrs/Miss/Ms Surname then Sir/Madam
Chief of the Army, Navy, Air Force and Medical Services	General/Admiral then Sir
The Mayor of the Metropolitan Municipality	Mr Mayor then Sir or Councillor or Madam Mayor then Madam or Councillor
The Mayor of the District or Local Municipality	Mr Mayor then Sir or Councillor or Madam Mayor then Madam or Councillor

Chairperson of the Executive Committee of the (name of council)	Councillor then Sir/Madam
Secretary to Parliament or Provincial Legislature	Mr/Mrs/ Surname or Mr/Madam Secretary
The Pope	Your Holiness
Cardinals	Your Eminence
Moderator (Protestant churches)	Reverend Surname
Archbishop of the Anglican Church	Your Grace
Chief Rabbi	Chief Rabbi Surname
Imam	Sheikh or Sir

* HE = His or Her Excellency

** Although the official name of a country may include the word Republic, Kingdom or Federation, the form of address of the Ambassador or High Commissioner only refers to the popular name of the country, for example State of Qatar and Hellenic Republic, but the Ambassador of Qatar and the Ambassador of Greece.

Addressing Traditional Leaders in South Africa

Title	Language/Culture	Area
Kgosi/Kgoshi/Kgoši/ Morena	King or Chief in Sesotho, Setswana and Sepedi	Free State, Northwest, Polokwane, Northern Cape
Kgosikgadi/Mohumagadi/ Mmakgosi	Queen/Chieftess	Free State, Northwest, Polokwane
iNkosi/iNkhosi Hosi/Khosi	King or Chief in isiZulu/isiXhosa/ Siswati Xitsonga/Tshivenda	KZN, Eastern Cape, Mpumalanga Limpopo
Ingonyama/Isilo (Zulu) Ikumkani (Xhosa)	King/Principal	
Isiphakanyiswa	Chief	
Ibamba/Ibambela	Acting Chief	
Kgosana Inkosana	Headman Prince	KZN, Eastern Cape

NOTE in respect of written communication: If the letter begins with *Dear Sir(s)*, *Dear Madam*, or *Dear Sir/Madam*, the COMPLIMENTARY CLOSE should be "Yours faithfully". If the letter begins with a personal name, e.g. *Dear Mr James*, *Dear Mrs Robinson*, or *Dear Ms Jasmin*, it should be "***Yours sincerely***".

7.4.2 OTHER NOTABLE SPOKEN FORMS OF ADDRESS

FOREIGN PRESIDENT/HEAD OF STATE OR DEPUTY	Your Excellency <i>*Excellency: Classically for foreign high-ranking office bearers</i>
PRIME MINISTER	Your Excellency or Mr/Madam Prime Minister
CHANCELLOR	Your Excellency or Mr/Madam Chancellor
KING/QUEEN	Your Majesty
A MINISTER/DEPUTY FROM ANOTHER COUNTRY	Your Excellency
PAPAL NUNCIO/NUNCIO	Your Excellency
DIRECTOR(s)-GENERAL	Director-General or Mr/Ms Surname
SECRETARY-GENERAL	Mr/Madam Secretary General (plural: Secretaries General)
PRINCE/PRINCESS	Your Royal Highness
DUKE/DUCHESS	Your Royal Highness

7.4.3 A NOTE ON INTRODUCTIONS

⁸“The whole purpose underlying an introduction is to allow one person to get to know another. In introducing one person to another, it is good to give some background on the person involved”. For example: “Mr Frolick, may I introduce Ms Gonzales, the Commercial Attaché of the Embassy of Spain in Cape Town? Mr Frolick is the House Chairperson of the National Assembly for Committees, Oversight and ICT in the South African Parliament”. (Branch State Protocol Guide).

The name of the most important person is mentioned first, followed by the words “may I present” or “may I introduce” and then the name of the lesser-ranking person, adding where appropriate some words to give an indication of the background of the person being introduced. The person to whom the other is introduced (i.e. from the above example The House Chairperson) will then extend his hand and say for e.g. “It is a pleasure to meet you.”

It should be noted that it is very important to familiarise oneself with the customs of the country one visits or one's guests/visitors, for example in Muslim countries only persons of the same gender shake hands. This is also for instance applicable amongst ultra-orthodox members of the Jewish faith.

7.5 PROTOCOL RULES REGARDING MOVEMENT AND PLACEMENT OF DIGNITARIES

- The most important visitor (leader of delegation, Head of State etc.) descends first from an aircraft and boards it last on departure (except for a protocol officer).
- The most important person (leader of delegation, Head of State etc.) alights first from a motor vehicle/train and boards it last (except for a protocol officer).
- The hostess/hosts always walks on the left-hand side of an important visitor. (The visitor will always stay on her/his right – even when inspecting the military guard).
- If you're ushering dignitaries, they should be to your right, about an arm's length away.
- In South Africa the left-hand rear seat in a motor vehicle is the seat of honour and the foreign dignitary will be seated there – even if the host/hostess is also in the vehicle. She/he will then sit behind the driver on the right-hand rear seat. In countries where they drive on the right-hand side of the road, this rule is reversed.
- At an official dinner/luncheon, the seat of honour for the top visiting dignitary is on the right of the host/hostess.
- If introduced to a Head of State/Government one rises and normally shakes hands. In some Muslim countries, men will not normally shake hands with ladies (they will not normally extend their hands).
- A reception line at an aircraft; motorcade; function etc. should be arranged according to the Table of Precedence and should never result in a free for all.
- In the office during a meeting with a foreign dignitary, the seat of honour is the one on the right-hand side of the host/hostess or the minister.
- A guest of honour always leaves a dinner/luncheon table first (with the host/hostess) before any other guest departs.

7.6 NATIONAL SYMBOLS

Members of Parliament and Provincial Legislatures should be keenly aware of the national symbols, and the rules regarding their use.

7.6.1 PRIMARY NATIONAL SYMBOLS

THE NATIONAL FLAG



On 20 April 1994, the President of the RSA published a general notice in the Government Gazette, in accordance with the interim constitution, in which he proclaimed the adoption of the new flag.

The flag was taken into use at one minute past midnight on the morning of 27 April 1994, the day on which the new constitutional dispensation became a reality. The rules and regulations regarding the national flag can be found in the "Instructions Regarding the Flying of the National Flag of the Republic" as found in the Government Gazette No 22356 of 2001.

The table below indicates the use of the national flag:

LOCATION OR USE
• Union Buildings and Tuynhuys
• Buildings housing government departments' and provincial legislative authorities head offices and members of Cabinet and deputy ministers, according to the size of the building
• Ceremonial use, according to the size of the building
• Ordinary use, according to the size of the building
• Use during stormy weather
• Table flag (There is no standard size for a table flag.)

A National Day of the Republic of South Africa is a ceremonial day and the national flag for ceremonial use should be flown. Apart from this day, the flag for ceremonial use may also be flown on special occasions on instruction from the Presidency. Flag stations and times when the national flag should be flown:

- Parliament, Cape Town
- Union Buildings, Pretoria
- Tuynhuys and 120 Plein Street, Cape Town
- Offices of the Premiers of the nine provinces
- All court buildings in South Africa
- All international and national airports in South Africa
- Main buildings where departments of state are housed or any other buildings, as determined by the Presidency
- Flag stations of the SANDF, as defined in the Permanent Force Regulations
- Main customs buildings in and on the borders of South Africa
- Ships of South African nationality, in accordance with the provisions of Section 65 of the Merchant Shipping Act, 1951 (Act 57 of 1951)
- All SAPS stations in South Africa
- All foreign offices of the Republic, including SA Diplomatic and Consular Missions abroad

A range of further rules pertaining to the use of the national flag is applicable in different circumstances or occasions and these rules are reflected in the “Instructions Regarding the Flying of the National Flag of the Republic” as per Government Gazette No 22356 of 2001.

The national flag must at all times be treated with dignity and respect. The flag must not touch the floor or the ground or deck, be used as a tablecloth or be draped in front of a platform; be used to cover a statue, plaque, cornerstone, etc. at unveiling or similar ceremonies; or be used to start or finish any competition, race or similar event.

THE NATIONAL COAT OF ARMS

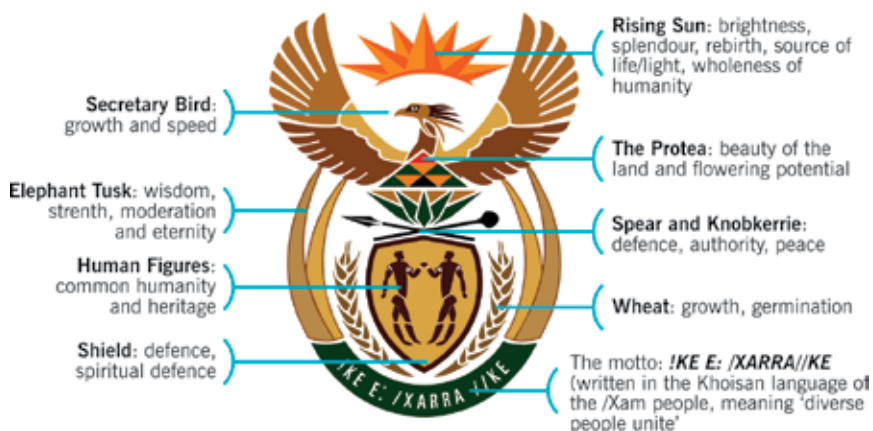


Unlike the national flag, which any citizen can acquire and use as a symbol of his or her nationality, the coat of arms is the official emblem of the state and is not used by citizens. On 27 April 2000, the President unveiled the new coat of arms for South Africa. The change reflected government’s aim to highlight the democratic change in South Africa and a new sense of patriotism.

A national coat of arms, or a state emblem, is the highest visual symbol of the state. The coat of arms is also a central part of the Great Seal, traditionally

considered to be the highest emblem of the state. Absolute authority is given to every document with an impression of the Great Seal on it as this means that the President has approved it.

There are rules governing the placement of the emblem and co-branding which are determined and prescribed by the GCIS with the Department of Arts and Culture.



THE NATIONAL ANTHEM

Subsequent to the proclamation in the Government Gazette No. 15663 Volume 346 of 20 April 1994 which proclaimed die Stem van Suid-Afrika (The Call of South Africa) and Nkosi Sikelel' iAfrika, a shortened multilingual version was approved by Cabinet on 17 May 1995.

The national anthem is sung or played:

- when the head of state or his or her representative is present at official gatherings;
- after the presentation of a national token or honour (order or decoration);
- after the President's arrival or at the end of a state banquet;
- after proposing a toast to the country; and
- at important occasions where it is fitting to collectively express national pride, such as national days.

NATIONAL ANTHEM OF SOUTH AFRICA

Nkosi sikelel' iAfrika
Maluphakanyisw' uphondo lwayo,
Yizwa imithandazo yethu,
Nkosi sikelela, thina lusapho lwayo.

Morena boloka setjhaba sa heso,
O fedise dintwa le matshwenyeho,
O se boloke, O se boloke setjhaba sa heso,
Setjhaba sa, South Afrika, South Afrika.

Uit die blou van onse hemel,
Uit die diepte van ons see,
Oor ons ewige gebergtes,
Waar die kranse antwoord gee,

Sounds the call to come together,
And united we shall stand,
Let us live and strive for freedom
In South Africa, our land.

The national salute is only taken by a head of state. In South Africa, the national salute comprises the first three verses of the national anthem.

7.6.2 SECONDARY NATIONAL SYMBOLS

National Bird is the BLUE CRANE (*Anthropoides paradisica*)



National Flower is the GIANT or KING PROTEA (*Protea cynaroides*)



National Animal is the Springbuck/Springbok (*Antidorcas marsupialis*)



National Fish is the GALJOEN (*Coracinus capensis*)



National Tree is the REAL YELLOWWOOD (*Podocarpus latifolius*)



7.6.3 SYMBOLS OF PARLIAMENT AND PROVINCIAL LEGISLATURES

Like all institutions, Parliament and Provincial Legislatures have a set of symbols, customs and rules that applies within their precincts and proceedings. The symbols inherited from the past has been adjusted and renewed to reflect the new democratic dispensation. Refer to the relevant symbols for Parliament and the respective Provincial Legislatures.

Below is a reflection of the logos or emblems of these institutions.



EMBLEM OF PARLIAMENT

Parliament now uses an emblem as its new corporate identity. An emblem meets different criteria than that of the coats of arms in as much as there are no supporters or coronet.



THE BLACK ROD



The Black Rod is the symbol of the authority of the Chairperson of the National Council of Provinces. The new Black Rod reflects the important role of the provinces in the functioning of the NCOP.

The symbols on the band of the drum

The symbols used on the drum to represent the provinces can be seen on the coats of arms of the respective provinces.

- North West: The calabash or water container that is an essential possession in arid areas and times of drought.
- Free State: A cluster of blossoms of the Orange River Lily on one stem alludes to the natural beauty and heritage of the province and the unity of the people.

- Northern Cape: The thorn tree symbolizes growth and development in the province.
- KwaZulu-Natal: The strelitzia flower represents the natural beauty of the province.
- Mpumalanga: The red Barberton daisy alludes to both the natural heritage of the province and the sun which is rising from the east.
- Eastern Cape: The Red Aloe (*aloe ferox*), is an indigenous Eastern Cape plant that can withstand severe climatic conditions, and is therefore a symbol of perseverance and strength.
- Limpopo: The baobab tree is indigenous to the province. The baobab is one of the most unusual deciduous trees of Africa, and is found extensively in the province.
- Gauteng: The chemical symbol for iron relates to industrial development and economic activity.
- Western Cape: The grapes refer to agriculture in the broadest sense.

THE NATIONAL ASSEMBLY MACE



The Mace has been used in its current ceremonial form in the House of Commons in England since the 16th century. The People's Mace was launched on 14 September 2004, in the National Assembly.

The mace was designed to reflect the history, tradition, diversity, culture and languages of South Africa. Each element has been carefully chosen to reveal the different facets of African-ness and South African-ness. It also celebrates the country's natural beauty, its plant and animal life and its rich mineral resources.

The shape of the mace recalls the knobkierie, an African symbol of defence, authority and leadership.

7.7 CEREMONIES

Ceremonies of state are formal occasions where the relevant state representatives and their guests convene to fulfil a specific objective according to a ceremonial order of proceedings based on state ceremonial practice or ritual. The latter usually subscribes to international standards and the general protocol definition of procedures which are considered to constitute acceptable behaviour or conduct in official circumstances, while simultaneously reflecting national traditions and customs.

On such occasions of state, the authorities of state participate in such a manner that their constitutional roles are clear.

The ceremonies of state in the Republic of South Africa are detailed below.

7.7.1 THE INAUGURATION CEREMONY OF THE HEAD OF STATE OF THE REPUBLIC

In terms of the Constitution of the Republic of South Africa, 1996, the National Assembly elects the President and Head of the National Executive, the Chief Justice of the RSA presides over the election and conducts the swearing in or affirmation of faithfulness to the Republic of South Africa of the elected Head of State and Head of the National Executive, who then assumes office after having been sworn in by the Chief Justice of the Republic of South Africa.

The above mentioned ceremony refers to the ceremony of installation of the Head of State of the Republic of South Africa. Arrangements for this ceremony are usually made by the National Inauguration Committee which should be inclusive and representative. The ceremony includes, among

many components, the taking of the oath of office or solemn affirmation by the President-Elect, who is given a national salute by the National Ceremonial Guard, a 21gun salute by a gun troop and usually accompanied by a fly-past of aircraft. The President usually delivers an inaugural address and the occasion is marked by festivities including cultural festivities.

7.7.2 THE INVESTITURE CEREMONY WITH NATIONAL ORDERS



Order of Boobab



Order of Ikhamanga



Order of Luthuli



Order of
Mapungubwe



Order of Mendi for
Bravery



Order of the
Companions of
O.R. Tambo.

This is a ceremony where the Head of State of the Republic of South Africa as Grand Patron of the National Orders of the Republic of South Africa honours persons with, or admit them to, the National Orders of the Republic of South Africa. At the ceremony, the President presents the recipients with the insignia of the orders they are admitted to.

These orders include:

- **The Order of Mapungubwe:** awarded to South African citizens for exceptional achievements to the benefit of South Africa and beyond.
- **The Order of Boobab:** awarded to South African citizens for outstanding contributions in community service, business and the economy, science, medicine and technological innovation.

- **The Order of Luthuli:** awarded to South African citizens in recognition of outstanding contributions in the struggle for democracy, nation building, human rights, justice and peace as well as for the resolution of conflict.
- **The Order of Ikhamanga:** awarded to South African citizens who have excelled in the field of arts, culture, literature, music, journalism and sport.
- **The Order of Mendi for bravery:** awarded to South African citizens who have distinguished themselves by displaying extraordinary acts of bravery through which their lives were placed in great danger or who have lost their lives, including trying to save the life of another person or by saving property, in or outside the RSA.
- **The Order of the Companions of OR Tambo:** awarded to foreign nationals such as foreign Heads of State and others for friendship shown to South Africa - this order is one of cooperation, peace and solidarity.

7.7.3 FUNERAL CEREMONY OF STATE DIGNITARY

In the Republic of South Africa, a distinction is made between a state funeral and an official memorial service. State funerals are accorded only to Presidents and Deputy Presidents.

The following office bearers receive official memorial services, if the family so wishes: Cabinet members, Premiers, the Speaker of the National Assembly, the Chairperson of the National Council of Provinces, the Chief Justice and the President of the Constitutional Court. (Cabinet Minutes dated 29 November 1995-item 3.1.16).

Similar to the ceremony of the inauguration of the Head of State, a National Funeral Committee needs to be established to conduct arrangements for the state funeral of the Head of State and would do so in close cooperation with and sensitivity to the wishes of and contributions by the family of the deceased. It is the prerogative of the family of the deceased to agree on whether the late dignitary should lie in state.

7.7.4 THE RECEIVING CEREMONY FOR VISITING HEADS OF STATE

This refers to the official welcoming or receiving ceremony for a visiting Head of State to the Republic of South Africa at the invitation of the South African Head of State.

The ceremony in either Pretoria (Union Buildings) or Cape Town (Tuynhuys) is a military ceremony at which full ceremonial honours are given to the distinguished guest and the flags of both countries are flown, the National Anthems of both countries are played (that of the guest is always played first), the Head of State is invited to inspect a guard of honour, composed of 96 members of the National Ceremonial Guard, and a 21-gun salute is given. It is also customary that following the receiving ceremony and bilateral engagements between the two countries, the South African Head of State hosts a state banquet for the visiting Head of State.

7.7.5 THE CEREMONY FOR THE PRESENTATION OF LETTERS OF CREDENCE BY HEADS OF DIPLOMATIC MISSIONS ACCREDITED TO THE RSA TO THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

After a foreign state has proposed its candidate for the position of Head of Diplomatic Mission to the RSA, and has sought and received the agreement of the receiving state namely South Africa (called an “agrément”), the Head of Mission designate presents his/her letter of credence and letter of recall of his/her predecessor to the President of the Republic of South Africa at a ceremony.

The new Head of Mission is given a general salute by a Guard of Honour, composed of members of the National Ceremonial Guard, and the salute takes place before the Head of Mission enters the hall where he or she will present the letters of credence to the South African Head of State.

7.7.6 THE SWEARING-IN CEREMONIES

The Constitution of the Republic of South Africa provides that before certain offices bearers, including Cabinet Ministers and Deputy Ministers, Premiers, Acting Premiers, Members of the National Assembly and Permanent Delegates of the National Council of Provinces, Members of Executive Councils and Members of Provincial Legislatures and Judicial and Constitutional Office bearers assume office, they shall take the prescribed oath/solemn affirmation. Members of Cabinet and Deputy Ministers must take the prescribed oath/solemn affirmation within twenty-four hours of the President's announcement.

7.7.7 CEREMONIES OF STATE INVOLVING PARLIAMENT AND PROVINCIAL LEGISLATURES

a. State of the Nation Address by the President of the Republic of South Africa

In terms of Article 84.2 (d) of the Constitution 1996, the President calls a Joint Sitting of the National Assembly and the National Council of Provinces to deliver the annual State of the Nation Address to Parliament. The occasion is both a ceremony of State and of Parliament.

In the year that national elections are held and Parliament has been dissolved before such elections, the newly elected or re-elected President's state of the nation address to the first session of the new parliament also constitutes the ceremonial opening of the new parliament by the President as Head of State of the Republic (Article 49 of the Constitution).

The format of the ceremony is selected by the President together with the relevant Presiding Officers of Parliament to fulfil specific objectives and may take on a variation of possible formats:

- A full ceremonial format
- A half ceremonial format
- An informal ceremony that requires no military ceremonial.

The Presiding Officers of Parliament traditionally host a luncheon or dinner banquet on the occasion of the State of the Nation Address for selected guests.

b. State of the Province Address by the Premiers of the Provinces and Opening Ceremony of Provincial Legislatures

Respective Provincial Legislatures hold official opening ceremonies at the beginning of each term, at a date agreed upon by the Speaker and the Premier. Official Opening ceremonies are held subsequent to the official opening ceremony of National Parliament.

Respective Provincial Legislatures hold their annual State of the Province Address after the State of the Nation Address has taken place at Parliament, at a date agreed upon by Provincial Speakers and Premiers. In an election year, a second State of the Nation and subsequent State of the Province Addresses are held immediately following elections and the establishment of the new Parliament and Provincial Legislatures. All these ceremonies are conducted according to the guidelines as stipulated in the Protocol Manual of the Republic of South Africa.

c. Opening Ceremony of the National House of Traditional Leaders

The Opening Ceremony of the National House of Traditional Leaders is held at a date agreed upon by the Chairperson of the National House of Traditional Leaders and is attended by the President of the Republic of South Africa, the Speaker of the National Assembly, the Chairperson of the National Council of Provinces and the Minister of Cooperative Governance and Traditional Affairs.

Provincial Houses of Traditional Leaders hold their official opening ceremonies at the beginning of each term, at a date agreed upon by the Provincial Chairperson of the House of Traditional Leaders, the Speaker, the Premier, and the MEC for Cooperative Governance and Traditional Affairs, Official Opening ceremonies are held subsequent to the official opening ceremony of the National House of Traditional Leaders.

d. Receiving Ceremonies for visiting Heads of State and Visiting Presiding Officers of foreign National Legislatures

When a foreign Head of State is paying a state visit to the Republic of South Africa, the Leader of Government Business in Parliament writes to the Presiding Officers of Parliament informing them of the visit and, on behalf of the Head of State, requests them to consider inviting the visiting Head of State to address a Joint Sitting of the Houses of Parliament (only Heads of State, not Heads of Government are traditionally invited to address a Joint Sitting). The programme of the visiting Head of State, who is invited to pay a state visit to South Africa by the South African Head of State, is finally the domain of government and is issued by the Chief of State Protocol of the RSA.

Whereas the South African Head of State's receiving ceremony for a visiting Head of State is mostly a military ceremony, the Parliamentary ceremony is mostly civilian, with the Head of State being received by the Presiding Officers, entering the National Assembly Chamber in procession, and being invited to deliver his or her address to the Joint Sitting.

Visiting Speakers or Presidents of National Assemblies and Presidents of Senates or their equivalents on official visits to Parliament at the invitation of the Presiding Officers of Parliament, are received with protocol courtesies by the Presiding Officers but do not address a Joint Sitting of the Houses of Parliament.

Instead, they pay a courtesy call on their South African counterparts, engage in bilateral consultations with them and their delegations and are also invited to sign the Distinguished Guests' Book of Parliament, after which they follow a programme arranged by their South African hosts.

It is envisaged that both receiving ceremonies mentioned above may in future include a wreath laying ceremony at the eternal flame and memorial in the Parliamentary Garden of Remembrance.

Courtesy Calls

Courtesy calls on the Presiding Officers of Parliament by Heads of Diplomatic Missions accredited to the Republic of South Africa are made from time to time. The practice of the Diplomatic Corps in South Africa of making social calls is still followed in varying degrees. Heads of Diplomatic Missions (Ambassadors or High Commissioners) may request the Branch State Protocol to arrange a courtesy call on the Presiding Officers of Parliament.

It is advisable that the request for an official courtesy call is done by letter or Note Verbale from the Embassy through the Department of International Relations and Cooperation and copied to the Parliamentary Protocol Office.

7.8 OFFICIAL VISITS

A range of courtesies may be accorded to visiting Heads of State or delegations and these are determined by the type of visit as noted above. Such courtesies relate to accommodation, transport, security and other ceremonial aspects.

7.8.2 INCOMING VISITS

- a. State Visits (receiving of Heads of State by Parliament).
- b. Official Visits (receiving of former Heads of State, Heads of Government and Royalty who are not Heads of State, Presiding Officers of Foreign National Legislatures and parliamentary delegations led by a Chairperson of a Committee).
- c. Working Visits/Study Visits (receiving of Parliamentary delegations attending parliamentary conferences, seminars, study groups and election observation missions).
- d. Special Visits (receiving of Parliamentary and other dignitaries for a special accession e.g. State of the Nation Address, Election of the President, Election of the Speaker, Envoys, Emissary Missions).
- e. Private Visits (receiving of dignitaries conducting a private visit to South Africa who express a request to call on the Presiding Officers or request a conducted tour of Parliament).

7.8.2 OUTGOING VISITS

- a. Official Visits (outgoing visits by the Presiding Officers and Parliamentary Committees).
- b. Working Visits/Study Visits.
- c. Private Visits.
- d. Special Visits.

It is to be noted that the following key issues relating to outgoing visits are for consideration by the International Relations Section and should be taken into account when drafting the policy on international engagements/ participation by Members of Parliament:

- Composition of a delegation;
- Political mandate of a delegation;
- Personal invitations to international engagements;
- Permission for MPs to undertake official or working visits; and
- Class of travel, accommodation, ground transport and other logistics.

An important matter to take into consideration regarding official outgoing visits by the Presiding Officers of Parliament and Provincial Legislatures is the hospitality extended by the host parliament to the South African office bearers. Should the total number of the delegation of the Presiding Officer exceed the number for which the receiving country offers hospitality, Parliament or the Legislature bears the responsibility for the members of the delegation that exceed the relevant number.

Installation of condolence books and adoption of motions of condolences

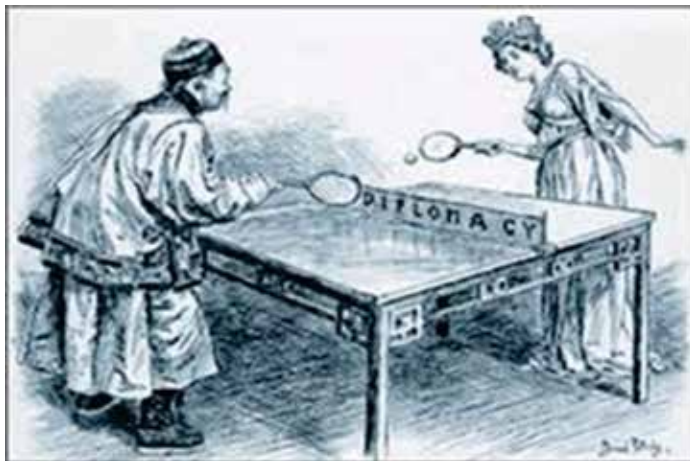
In the Parliament of the Republic of South Africa, a condolence book is opened on the occasion of the demise or passing of a South African dignitary who held high office in the South African State, a former such office bearer, a serving Member of Parliament, or a personage who is nationally mourned as directed by the President of the Republic of South Africa. Provincial Legislatures may follow the same practice.

A condolence book is installed at the announcement of a bereavement. The practice is that the Presiding Officers make the first entry in the condolence book. Upon closure of the book, it is sent under an accompanying letter signed by the Presiding Officers of Parliament to the bereaved family of the deceased.

On certain occasions a motion of condolence is also adopted by one or both Houses of Parliament or a Provincial Legislature.

On occasions of the passing of a foreign dignitary or a national disaster in a foreign country, a motion of condolence may be adopted which is forwarded to the relevant country via the diplomatic channel under cover of a letter from the Presiding Officers.

7.10 DIPLOMACY AND THE DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT



“Diplomacy is the conduct of international relations by negotiating rather than by force, propaganda or recourse law, and by other peaceful means which are either directly or indirectly designed to promote negotiation” (Berridge). Sir E Satow described it as “the application of intelligence and tact to conduct efficient relations between governments of independent states.” It is also described as “the best means devised by civilization for preventing international relations from being governed by force alone.” (D. de Broglie)

Formalised relations between countries (economic, political and cultural), run along bilateral or multilateral lines. ‘Bilateral’ refers to ties between two states, whilst ‘multilateral’ refers to relationships of more than two states, often within an organisation e.g. BRICS.

Embassies/High Commissions and Consulates General are representative entities of a country/government within a host country. An Embassy is where the “Ambassador” is based (only one Ambassador for a specific country), and usually stands in the capital city of a host country, and should primarily take care of state-to-state relations, representing government/interests of the sending country.

Amongst members of the Commonwealth, the Embassy is referred to as the High Commission, and in turn, the Ambassador as the High Commissioner. The physical building is known as the Chancery.

The Ambassador/High Commissioner (“Extraordinary” and “Plenipotentiary”) is the most senior ranking diplomatic representative of their sending country – accredited in (reside and work in the host country) or out (recognised/accredited to manage diplomatic relations from another place/city of residence and work) of residence. They are appointed by the President (Political Appointees and Professional Diplomats), and represent the President, Government and people of sending country in the host country.

A “Permanent Representative” heads his or her country’s permanent mission to certain international organisations, e.g. AU. An “ambassador-at-large” is an Ambassador not in-residence, who is entrusted to operate in several usually neighbouring countries, a region or sometimes hold a seat in an international organisation.

A Consulate can be thought of as a “branch” of the Embassy, led by a Consul (generally deemed to be a lower ranking – reports to the Ambassador in a host country), based in strategically selected cities outside of the capital city, with a major role being trade promotion. Both an Embassy and a Consulate provide consular services, i.e. services provided to individuals - visas, passports, etc.

The following diplomatic designations follow the Ambassador/High-Commissioner (sometimes referred to as the Head of Mission) in the following hierarchy:

- Minister Plenipotentiary (“all powers”; high-ranking diplomatic official/2nd in command and assigned a specific role depending on the Mission’s requirements);
- Counsellors/Minister Counsellor (also senior officials; oversee various portfolios, e.g. Counsellor: Political; Counsellor: Economic; Counsellor: Administration, etc.);
- Attached Departments – Security Agencies, DHA, The DTI, Military Attaches, etc. (Head at Counsellor level);
- First, Second and Third Secretaries (political line function officials; may have particular focus, e.g. public diplomacy, tourism etc.);
- Foreign Affairs Attachés (corporate services support staff);
- Locally Recruited Personnel (LRPs), who are not diplomats, but locally-recruited, mostly administrative support staff to Missions.

An Honorary Consul is a local eminent person, who is often a citizen of the host country with business ties to the sending country and is granted very limited powers to provide consular services; not a government employee – a nomination of an Honorary Consul is subject to approval of the receiving state (Chapter 3 of Vienna Convention on Consular Relations).

The Branch State Protocol manual highlights the importance of the Diplomatic Immunities and Privileges Act, Act 37 of 2001. The Act is implemented at Parliament and resident diplomatic representatives are accorded corresponding courtesies when visiting Parliament.

The Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963, have had a profound impact on the way diplomatic relations are conducted, with the various modes of diplomacy including bilateral diplomacy, multilateral diplomacy, summitry and negotiation.

With regard to correspondence with diplomatic and consular missions, and through them their National Ministries of International Relations, it is important to note that only the Department of International Relations and Cooperation may communicate with resident foreign diplomatic and consular missions by Diplomatic Note (Note Verbale). Resident Missions may also communicate by Note Verbale as diplomatic and consular entities. Other structures of state and entities communicate by letter, preferably through the diplomatic channel (i.e. through DIRCO).

7.10.1 DIPLOMATIC AND OFFICIAL PASSPORTS



Diplomatic passports are issued according to the South African Diplomatic Passport Policy to specified categories of public office bearers and government officials to proceed abroad on government service. Diplomatic passports are issued with a validity period of five years.

Categories include specific positions in the Presidency, the National Legislature (Presiding Officers of Parliament and their Deputies, as well as the Speakers of Provincial Legislatures and their Deputies), executive political office bearers, members of the judiciary and divisions as well as of the specialist courts, provincial and local government representatives, South African diplomatic personnel, public service officials on official duty abroad and eminent persons.

Official passports on the other hand, are for official governmental, but not necessarily diplomatic, business. Official passports are issued to officials attached to government institutions, who have to travel on official business, free of charge by the Department of Home Affairs.

Diplomatic and Official passports are ONLY for official duty and not personal. Official travel is travel where all aspects of the journey are paid for and arranged by Parliament or the Provincial Legislature, i.e. travel on a duly authorised official trip at the state's expense. Official passports may not be used for international travel on party political business. They are the property of the state and are to be surrendered at end of term (South African Passports and Travel Documents Act, 4 of 1994).

All official international travel must be undertaken using a South African Official Passport. Members and officials will not be able to utilise regular South African tourist passports to undertake official international travel.

The administration of Parliament or the Provincial Legislature facilitates the process of applying for South African Official passports for the following:

- All ordinary Members
- All officials from Manager level up
- Other officials as required

The Department of Home Affairs prescriptions requires that official passports be returned for safekeeping to the designated nodal point in the department/institution, when not being utilised for official travel.

Individual countries may confer, at their discretion, certain rights to holders of Diplomatic and Official passports, including for example, VISA waivers and exemptions for SA diplomatic and official passport holders.

7.10.2 IMMUNITIES AND PRIVILEGES

Immunity: A form of legal immunity in International Law that confers a procedural protection from local jurisdiction in the receiving State; Immunity from jurisdiction in criminal proceedings (Article 31); Immunity from jurisdiction in civil proceedings; Inviolability of the mission; the person and personal effects of the diplomat.

Privilege: Some substantive exemption from the laws and regulations of the receiving State, e.g. some tax exemption.

Diplomatic immunities and rights are formalised in the 1960s Vienna Conventions. Their domestication finds expression in the Diplomatic Immunities and Privileges Act No. 37 (2001), as amended, regulates foreign diplomats in South Africa, as well as various SA laws and bilateral agreements. Other applicable conventions underpinning diplomatic immunities and privileges are the Convention on the Immunities and Privileges of the United Nations; the Convention on the Immunities and Privileges of Specialized Agencies; as well as the Convention for Heads of State.

South Africa applies Equal Treatment to all States in terms of Article 47 (1) of the VCDR, and not Reciprocity in terms of Article 47 (2). Reciprocity can be considered in the conferral of diplomatic privileges, however, immunities and inviolability are non-negotiable, whilst authorities have a duty to ensure the safety and welfare of the general public. The Vienna Conventions emphasize that diplomats are bound to respect the laws of the receiving State (article 41 VCDR) and therefore immunity is not meant to be a license for transgressing the laws of the host country.

7.11 ETIQUETTE

Protocol and etiquette go hand in hand. "Protocol is the combination of good manners and common sense, which allows effective communications between heads of state and their representatives...". Etiquette on the other hand, encompasses the body of manners and forms prescribed by custom, usage, or authority. It is accepted as correct behaviour when people deal with one another.

Etiquette preserves respect for the rights and dignities of others. In short, etiquette represents good manners. Etiquette helps people proceed with the more important phases of social interaction" (A Guide to Protocol and Etiquette for Official Entertainment, Department of the Army Pamphlet 600-60, U.S.A.).

Etiquette relates more to the conduct or behaviour or manners of the individual, in social interaction, over the telephone, at banquets, and accordingly there are rules governing social etiquette, business etiquette, telephone etiquette and table etiquette.

7.11.1 WHY ETIQUETTE?

Given the diversity amongst the people of the world, there is a need for a common understanding of what constitutes acceptable behaviour in an official context, notwithstanding each party's own cultural norms. Etiquette is underpinned by understanding, respect and courtesy, as they find expression in so-called manners. Manners are the means by which we show others an awareness and appreciation of their presence and a sensitivity to their personal being.

Against the backdrop of globalisation and a re-emergence of nationalism, an awareness of the differences between cultures is growing with the increasing interaction between countries. It is important to be alert to the religious influences, traditions, customs and norms of other countries, in order to cultivate relationships and to avoid unnecessarily causing offense.

7.11.2 THE CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT AND PROVINCIAL LEGISLATURES

The code of conduct for Members of Parliament Provincial Legislatures seeks to determine acceptable behaviour by Members, as well as to help Members conduct themselves appropriately as public representatives. This section seeks to complement the code in placing emphasis on the expected behavioural conduct by Members in official circumstances.

Quoting the code of conduct

“The ethical code is intended to provide a framework of reference for Members in the discharge of their responsibilities. The minimum ethical standards of behaviour that South African people have a right to expect of their elected representatives are that they would in their daily conduct uphold propriety, integrity and ethical values. The purpose of the code is to create public trust and confidence in the elected representatives and to protect the integrity of the institution.

Members must commit themselves to the following principles; selflessness, integrity, objectivity, openness, honesty and leadership. The ethical code cannot anticipate or prescribe behaviour in hypothetical cases while the public interest and just cause cannot be defined in the abstract.”

Values

Values are the standards considered to be important, good and right, and influence the moral and ethical judgements people make. Values affect behaviour and activate memory to guide behaviour. Values identify the principles for the conduct of the institution in carrying out its mission.

7.11.3 GIFTS

The exchange of gifts usually forms an integral part of any official engagement as it is a visible sign of the friendship or relationship between the giver and the receiver. A gift must always reflect the culture of the giver and be procured locally.

Regarding the receiving and giving of official gifts, there is an approved policy in Parliament on receiving but not giving of gifts. Broad guidelines exist in the executive branch of government on this but not in Parliament, and the latter is dealt with on an ad hoc basis. There is, however, an approved process for procurement of gifts.

The giving and receiving of gifts is a sensitive issue necessitating that cultural and religious sensitivities, superstitions and taboos be taken into consideration when presenting gifts.

The following general rules apply:

- Give thought to the gift in light of the likes/dislikes/interests of the intended recipient thereof.
- A gift must be able to stand the test of time – quality matters.
- Do not open gifts immediately – wait for the other delegation to indicate its intentions as it may be cause for embarrassment if the value of one gift differs significantly from the other, or the gift may be deemed to be inappropriate.
- Do not be overly enthusiastic in your appreciation.
- Gestures are important when handing over the gift, e.g. using the right hand/with both hands, etc.
- Be cognizant of the other country's rules regarding giving and receiving gifts, including the value limits of gifts receivable; also ensure reciprocity and contact the responsible embassy/consulate if unsure.
- A gift should fall within the norms acceptable as articulated in the code of ethics, i.e. not for a favour or a bribe. A gift must be able to stand the test of scrutiny.

7.11.4 ATTIRE

In terms of what was the appropriate dress code for parliamentary business, the rule in South Africa is that Parliament and Provincial Legislatures recognised diversity as per the Constitution of the RSA 1996.

Tradition or religion is not defined; it recognises the right to tradition and religion and therefore Members of Parliament and Provincial Legislatures are allowed to wear their religious or traditional attire in Parliament. The attire of an individual is largely a matter of the style of the individual. However, for state and official occasions, such as ceremonies and official banquets, office bearers/guests are bound to an appropriate dress code.

The dress code for formal occasions is specified on the invitation card of a function, and usually indicates whether it is day or evening suit or dress, traditional attire, white or black tie, with or without wearing the insignia of orders, decoration and medals.

It should also be indicated that when political office bearers travel officially, they are often received by senior representatives of the host country upon arrival and may be facilitated through a state or VIP airport lounge, where sports attire such as track suits would not be considered appropriate.

Formal dress in the Republic of South Africa has become customarily identified with a lounge suit or dark suit for men, day or evening dress for ladies, or formal traditional attire.

Informal or casual dress are sometimes misleading terms. Smart casual dress for men on diplomatic occasions may be jacket and pants with or without a tie instead of a lounge suit. Casual dress usually refers to attire for outdoor functions and sporting events.

As elected representatives of the people of South Africa holding public office, and representing the national and provincial legislative authority of the state of the Republic of South Africa, the Members of Parliament and Provincial Legislatures are expected to follow the appropriate dress code determined for occasions and when travelling abroad on official business, maintain suitable formality or semi-formality as the occasion dictates.

7.11.5 CULTURAL AND RELIGIOUS SENSITIVITIES

The Constitution of the Republic of South Africa 1996, in the Bill of Rights, (Chapter 2 of the Constitution), guarantees that “Everyone has the right to freedom of conscience, religion, thought, belief and opinion”, and also outlines the role of traditional leaders; reference should also be made to the Traditional Leaders and Framework Amendment Act, Act 41 of 2003 Section 8, that identifies the categories of kingship, senior traditional leadership and headmanship.

It is important for Members and staff of the Parliamentary Service to develop and demonstrate an understanding of different religions such as Christianity, Islam, Hinduism, Buddhism, Judaism, African traditional religions and understand the most prominent sensitivities within religions, both locally and abroad.

Parliamentary delegations often travel abroad and should respect that once one enters another sovereign country, the laws and customs of that country needs to be respected, while international visitors to South Africa needs to be treated correctly, and also understand that problems may arise regarding cultural differences when travelling abroad.

Domestically, respect for people's different religious beliefs, traditions and cultures are important as to not give offence. Understanding of certain taboos in African cultures and traditional values such as respect for elders and the importance of the extended family come to mind, and the eleven official languages and the heterogeneous ethnic-linguistic composition of South African society are important in this regard.

Culture encases the following: values, norms, beliefs, language, knowledge, perceptions and traditions. This includes behaviour, habits and etiquette rules, dress and cuisine. People relate to each other and with the environment through the lens of their own cultural framework. The ability to adapt to other cultures and different groups of people is thus paramount for representatives of official entities.

Regarding traditional leaders referred to above, the institution, status and role of traditional leadership, according to customary law, are recognised in Chapter 12 of the Constitution of the Republic of South Africa 1996, and their role is spelt out in Article 212 (1) and (2) of the Constitution, providing for the Houses of Traditional Leaders and Council of Traditional Leaders.

7.11.6 ATTENDANCE OR ARRANGEMENT OF OFFICIAL FUNCTIONS AND SEATING ARRANGEMENTS

It is necessary to be cognisant of the importance of proper seating arrangements at official functions such as luncheons, dinners and banquets, and that the order of precedence comes into effect on such occasions. Failure to observe the order of precedence can create diplomatic or interdepartmental rows or embarrassment.

Ideally, when a guest of honour is invited, no guest who ranks above the guest of honour should be invited. However, circumstances permitting, seating arrangements can be adapted to suit the situation. When seating arrangements are considered, the guest list should be prepared strictly according to the National Official Table of Precedence of the country. This is

especially relevant when seated at the main table, as this would determine who is seated on the right-hand side of the host.

7.11.7 DINING ETIQUETTE



Members should also familiarise themselves with the use of different types of dishes, glasses, and cutlery placed at formal luncheons. In essence, the broad advice is that from left to right one could remember a “BMW” formula – from left to right in front of the guest is placed the bread plate, in the centre the meal/s plates, and to the right, the set of glasses to be used for wine, juices and water. In terms of cutlery, one usually uses the utensils from the outermost towards the innermost sets as the courses are served. If in doubt, wait for the host or hostess to see what he or she uses.

8 CONCLUDING REMARKS

When codifying protocol practice for the Legislative Sector, the dimension of the Legislative Sector as being one of the three arms of the South African State, bound by the rules of state protocol, should not be lost despite the separation of powers.

This outline is not a scientific publication, but an attempt to establish broad guidelines to assist Members of Parliament and Provincial Legislatures in their understanding of what constitutes acceptable conduct in official circumstances.

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List of Contributors to the Induction Modules for Members of Parliament and Provincial Legislatures

VERSION 1 – 2014

The below-mentioned officials of the South African Legislative Sector are herewith acknowledged with gratitude for their ground-breaking efforts and contribution to the development of the 1st version of the Induction Handbooks for Members in 2014.

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MODULE 7: PUBLIC PARTICIPATION (DRAFT)

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