

**PARLIAMENT**  
OF THE  
**REPUBLIC OF SOUTH AFRICA**

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**ANNOUNCEMENTS,  
TABLINGS AND  
COMMITTEE REPORTS**

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WEDNESDAY, 2 APRIL 2014

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## ANNOUNCEMENTS

### National Assembly and National Council of Provinces

#### The Speaker and the Chairperson

#### 1. Classification of Bills by Joint Tagging Mechanism (JTM)

- (1) The JTM in terms of Joint Rule 160(3)(c) found the **Unemployment Insurance Amendment Bill** [B 7 – 2014] (National Assembly – prop s75) to be constitutionally out of order.

In terms of Joint Rule 162(1) the Bill may therefore not be proceeded with.

In terms of Joint Rule 162(2)(a) the Bill may be corrected and re-introduced.

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## TABLINGS

### National Assembly

#### 1. The Speaker

The Speaker received from the President of the Republic of South Africa the following documents:

- (1) Letter in response to Public Protector's Report on an *Investigation into Allegations of Impropriety and Unethical Conduct relating to the Installation and Implementation of Security Measures by the Department of Public Works at and in respect of the Private Residence of President Jacob Zuma at Nkandla in the KwaZulu-Natal Province:*



02 April 2014

Dear Honourable Speaker,

### **SECURITY UPGRADES AT NKANDLA RESIDENCE**

I refer to the above matter as well as the recent report I received from the Public Protector of the Republic of South Africa, a copy of which is attached for ease of reference.

Upon my assumption of office as the President of the Republic, Cabinet through the security cluster conducted a security assessment at my private residence in Nkandla, in the course of which certain security upgrades were commissioned. This is the norm in respect of all incoming Heads of State in the Republic. In addition, my family had already commenced construction work with a view to improving the same property.

For some time, government had been concerned about allegations of maladministration and excessive expenditure in relation to these security upgrades. A preliminary investigation conducted by the Department of Public Works found that the matter was deserving of a full investigation.

The Ministers in the security cluster were instructed to launch a full investigation into the needs assessment and analysis, procurement and implementation of the security upgrades at my residence. To this end, a multi-disciplinary Task Team comprising senior government officials, with the oversight of the security cluster Ministers, were tasked to conduct an in-depth investigation.

Their report has been finalised and presented to me and I am aware that Parliament has been favoured with the same.

The Report adopts a particular methodology, appreciation and interpretation of the relevant legislation and contains findings and recommendations on remedial action.

Around the same time, the Public Protector was engaged in an investigation into the same security upgrades, the terms of reference being apparent from the report itself. The report reveals the extent to which the Public Protector engaged with the Ministers of the Security Cluster, senior government officials, government security experts, private individuals and indeed myself.

This report also adopts a particular methodology, contains certain findings and recommends remedial action to be taken by *inter alia* myself as President and the various Ministers.

During the course of December 2013, I caused a proclamation to be gazetted which empowers the Special Investigating Unit (SIU) to enquire into and investigate the security upgrades at Nkandla. I enclose a copy of the gazette which details the terms of reference.

Exercising my powers in terms of Section 4(1)(f) of the Special Investigating Unit and Special Tribunals Act of 1996, I have written to the Head of the SIU requesting a provisional report in order that I may be apprised of the status of the investigation and to assess whether the investigation is proceeding expeditiously.

I have received an acknowledgement of my correspondence from the SIU and I am assured that the provisional report will be ready to hand shortly.

In the conspectus of these interventions Mr Speaker, I must apply my mind as to the appropriate action to be taken, remedial and otherwise.

I am keenly aware of my status as Head of State as set out in Section 83 of the Constitution of the Republic of South Africa as well as the concomitant responsibilities to which I am enjoined in terms of the same Constitution. So too, am I aware and recognize the accountability to Parliament which I share both individually and collectively with my Cabinet in the performance of my responsibilities and oath of office.

On an appraisal of the matters before me, it is apparent that:

1. the Security Cluster Ministers cooperated in the Public Protectors' investigation;
2. both the investigation by the Security Cluster Ministers and the Public Protector enquired into substantively the same subject matter;
3. the Security Cluster Ministers, the Public Protector and the SIU all have a constitutional and legislative mandate to conduct their respective investigations;
4. a considerable amount of state resources have been expended in the conduct of all investigations and the compilation of reports.

Notwithstanding, there are stark differences both in respect of the findings as well as the remedial action proposed in the two reports. This much is clear from the reports as well as very public pronouncements made by the respective parties. In my experience in government I have not encountered such an anomaly.

Mr Speaker, I am intent on giving full and proper consideration to all these matters and upon receipt of the SIU report will provide Parliament with a further final report on the decisive executive interventions which I consider would be appropriate.

Yours sincerely



**Mr Jacob Gedleyihlekisa Zuma**  
**President of the Republic of South Africa**

Mr Max V. Sisulu  
Speaker of the National Assembly  
Parliament of the Republic of South Africa  
P.O. Box 15  
**CAPE TOWN**  
8000

- (2) Proclamation by the President of the Republic of South Africa (Proclamation No. R.59, 2013): and

## PROCLAMATION

*by the*

*President of the Republic of South Africa*

**R. 59, 2013**

**SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT AND SPECIAL TRIBUNAL**

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as "the Act"), have been made in respect of the affairs of the national Department of Public Works (hereinafter referred to as "the Department");

AND WHEREAS the allegations relate to a prestige project involving the security upgrading of the private residence of the President situated at Nkandla, KwaZulu-Natal (hereinafter referred to as "the Project");

AND WHEREAS the Department or the State may have suffered losses in connection with the Project that may be recovered;

AND WHEREAS I deem it necessary that the said allegations made in connection with the Project should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, and after consultation with the Minister of Public Works, refer the matters mentioned in the Schedule, in respect of the Department for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of those matters, the terms of reference of the Special Investigating Unit are to investigate, as contemplated in the Act, any -

- (a) serious maladministration in connection with the affairs of the Department;
- (b) improper or unlawful conduct by officials and/or employees of the Department;
- (c) unlawful appropriation or expenditure of public money;
- (d) intentional or negligent loss of public money;
- (e) offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences were committed in connection with the affairs of the Department; or
- (f) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which has taken place between 1 January 2008 and the date of publication of this Proclamation, or after the date of publication of this Proclamation, and which is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or which involves the same persons, entities, transactions or contracts investigated under the authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any damages or losses suffered by the Department or the State, in relation to the matters mentioned in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Nkandla this eighteenth day of December Two thousand and thirteen.

**J G Zuma**  
**President**

By Order of the President-in-Cabinet:

**J T Radebe**  
**Minister of the Cabinet**

**SCHEDULE**

1. The procurement of, and contracting for, goods, works or services by or on behalf of the Department in connection with the Project –
  - (a) in a manner that was not fair, equitable, transparent, competitive or cost-effective;
  - (b) in a manner that was contrary to applicable -
    - (i) legislation;
    - (ii) manuals, guidelines, practice notes or instructions issued by the National Treasury;
    - (iii) manuals, codes, policies, procedures, prescripts, guidelines, instructions or practices of, or applicable to the Department; or
    - (iv) delegations of authority;
  - (c) from contractors, suppliers or service providers (hereinafter collectively referred to as “the Department’s suppliers”) –
    - (i) owned, managed or operated by –
      - (aa) officials or employees of the Department (hereinafter collectively referred to as “the Department’s personnel”); or
      - (bb) the spouses, life partners, relatives, friends or associates of the the Department’s personnel; or
    - (ii) in which the Department’s personnel held undeclared or unauthorised interests;
  - (d) by the manipulation of the Department’s procurement processes by the Department’s personnel, including the employment of unlawful schemes and practices, such as -
    - (i) cover-quoting to secure –
      - (aa) unmerited advantage; or
      - (bb) the awarding of contracts by the Department to the actual or potential prejudice of the Department or the State, or any other potential contractors, suppliers or service providers; or
    - (ii) splitting, where works, goods or services are split into parts or into items of lesser value as a means of avoiding compliance with procurement prescripts or keeping procurement within the scope of the delegated authority of certain of the Department’s personnel; or
  - (e) by evading competitive bidding processes by the renewal, extension or amendment of the Department’s contracts with the Department’s suppliers, including the extension of the periods of duration of such contracts,

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and related unauthorised, irregular, fruitless and wasteful expenditure incurred or losses suffered by the Department or the State.

2. Payments that were made by or on behalf of the Department in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

3. Any undisclosed or unauthorised interests which the Department's personnel may have had in the Department's suppliers bidding for work or doing business with the Department or to whom contracts were awarded by the Department, and the extent of any actual or potential benefits derived directly or indirectly by the Department's personnel from such undisclosed or unauthorised interests in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

4. Maladministration of the affairs of the Department and any losses or prejudice suffered by the Department or the State as a result of such maladministration in relation to –

- (a) payments that were made to the Department's suppliers despite their non-performance, incomplete performance or defective performance;
- (b) overpayments or duplicate payments that were made to the Department's suppliers;
- (c) unlawful conduct or irregular practices of the Department's personnel affecting the Department's funds; or
- (d) failure by the Department's personnel to exercise proper control over the expenditure of the Department's funds,

including the causes of such maladministration in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

5. Improper or unlawful conduct by the Department's suppliers or other third parties in relation to any acquisitive act or transaction contemplated in paragraph 1 of this Schedule.

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- (3) Copy of the Public Protector's Report, as submitted to the President by the Public Protector.

## **National Council of Provinces**

### **1. The Chairperson**

- (a) Statement issued in terms of section 106(1)(b) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000), on allegations of maladministration, fraud, corruption or any other serious malpractices within Westonaria Local Municipality, Gauteng.

Referred to the **Select Committee on Cooperative Governance and Traditional Affairs** for consideration.

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## **COMMITTEE REPORTS**

### **National Assembly and National Council of Provinces**

# **1. LEGACY REPORT**

## **OF THE**

# **CONSTITUTIONAL REVIEW COMMITTEE**

## **FOR THE 4th PARLIAMENT**

### **2009-2014**

**Report of the Constitutional Review Committee on its activities undertaken during the 4th Parliament (May 2009 – March 2014)**

#### **Key highlights**

#### **Reflection on committee programme per year**

##### **2009**

The Committee commenced its work by isolating matters that were outstanding from the third Parliament's programme.

The committee held a workshop on its strategic plan / framework for 2009-2014.

The committee received and processed 13 submissions from the members of the public and interest groups.

The committee met Deaf Federation of South Africa (DEAFSA), Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) and the Pan South African Language Board (Pansalb) on the outstanding submissions from the previous committee

The committee was able to locate its mandate within the context of a proactive Parliament and to meet its mandatory submissions process in line with Section 45(1) (c) of the Constitution of the Republic of South Africa and Part 7 (Rules 97 to 102) of the Joint Rules of Parliament

**2010**

The committee conducted public hearings in Limpopo province, where Sepedi and Sesotho sa Leboa is spoken on 1-3<sup>rd</sup> February 2010 as well as on the 6-8<sup>th</sup> April 2010, with academics, traditional leaders and the general members of the public on this issue. In addition, the committee consulted those who were closely involved with the process of drafting the constitution so as to get the gist of what transpired during the constitution negotiating process, as well engaged in a process of obtaining relevant documentation, which includes minutes of the Technical Committee on Language Rights, reports and other relevant material in that regard.

As a sequel to the public hearings in Limpopo, the committee met with academics and traditional leaders in Cape Town to deliberate more on the issue. The speakers of the language are evenly divided between those who want to call it Sepedi and those who call it Sesotho sa Leboa.

The JCRC is currently deliberating on this outstanding submission and realises the dynamics that this complex situation presents. The Committee has called all parties represented in Parliament to inform it of their respective positions on this matter.

The Committee received and considered eight submissions from members of the public and interest groups.

In a view to reposition its workings and look beyond the mandatory process of public submissions process, the Committee undertook a study tour to Venice and Strasbourg in order and to learn from the international best practices.

**2011**

The committee continued with the debate on the issue of Sepedi and Sesotho sa Leboa committee with the academics and representatives from the Limpopo Provincial House of Traditional Leaders. The records on the constitutional assembly committees were solicited but nothing could be traced in this regard.

The Committee received and considered nine submissions from members of the public and interest groups. These included profound issues such as proposals around the following:

- In section 25, which is alleged to be restricting government from distributing the land
- In sections 211 and 212 of the Constitution, in which submitters propose a review on sections 211 and 212 so as to elaborate on the role and powers of traditional leaders.
- In section 86 of the Constitution, in which submitters call for the scrapping of the provision.

## 2012

The committee had always grappled with the fact that , while it had the mandate to review the Constitution, Bills which sought to amend the Constitution were never brought to the CRC, but were dealt with by the Portfolio Committee on Justice and Constitutional Development. A workshop with experts from the universities of Cape Town and University of South Africa (UNISA) was held so as consider the mandate of the Committee and to solicit the views of the experts on what they believe to be the actual mandate of the Committee (Report published in ATC, No.82-2013).

The committee dealt with a submission by the Lesbian Gay Bisexual Transgender and Intersex as referred to by the Speaker (see Minutes of 7 September 2012). In addition, the committee issued a press statement in which it placed on record that it had at no stage agreed to a proposal to weaken or amend rights relating to sexual orientation contained in the Constitution. Equally, the committee reiterated that it upholds the provisions of our constitutional democracy. Furthermore, section 9 of the Bill of Rights, which expunge on equality in terms of sexual orientation will not be inferred with.

In addition, the committee received 19 submissions from members of the public and interest groups. Out of those, only nine submissions had been finalised. These are submissions that do not require a review of the Constitution.

## 2013

The committee had during this year received eight submissions from members of the public and interest groups. These were referred to the office of the Parliamentary Legal Advisers but are not yet finalised.

## 2. Committee's focus areas during the 4<sup>th</sup> Parliament

### 2.1 Finalisation of outstanding submissions

#### **Submission by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CLR) and the Pan South African Language Board (Pansalb) on the alleged Erroneous designation of Sepedi as one of the official languages**

The committee conducted public hearings in Limpopo province on 1-3<sup>rd</sup> February 2010 as well as on the 6-8<sup>th</sup> April 2010, with academics, traditional leaders and the general members of the public on this issue. In addition, the committee consulted those who were closely involved with the process of drafting the constitution so as to get the gist of what transpired during the constitution negotiating process, as well engaged in a process of obtaining relevant documentation, which includes minutes of the Technical Committee on Language Rights,

reports and other relevant material in that regard. The Committee is currently deliberating on this outstanding submission and appreciates the dynamics that this complex situation presents. Requests were made to those closely involved with the process to either come and brief the committee or make written submissions. A few submissions in that regard have been received, and the necessary follow-ups were made to expedite the matter.

### **Submission by Deaf Federation of South Africa (DEAFSA)**

This submission has been outstanding since 2007. The submitters were requesting the previous committee to assist in the institution of the sign language as a twelfth official language. The committee met with DEAFSA on 13 November 2009 to discuss its submission. The committee decided, among other things, that it would need to get the report of the Task Team, consisting of the Presidency and the Ministries of Arts and Culture, as well as the then Ministry of Education, that would be convened to look at the matter. The Committee approached the office of the Minister in the Presidency, Mr Essop Pahad to solicit such a report. After several attempts to obtain the report from the aforementioned office, no one could recall there being such a report.

## **2.2 Adoption of a strategic framework/plan for 2009-2014**

The committee conducted a workshop on the draft strategic plan, which was adopted on 9 October 2009.

## **3. Key areas for future work**

- To follow up on the proposal that was submitted to the Joint Rules Committee around the review of the joint rules in order to allow for the facilitation of the execution of the mandate of the committee.
- Effective follow up on outstanding submissions since the third and fourth Parliaments.
- Review of the strategic framework/ plan 2009-2014.

## **4. Key challenges emerging**

- The lack of quorum on Fridays especially when decisions are to be made remains a challenge.
- The time slot allocated contributes to poor attendance due to some members having to rush for connecting flights back to their constituencies.
- The programmes of both Houses often impacts negatively on the committee programme. Since members of the committee are drawn from the two Houses, decisions cannot be taken in the absence of members of the other House.
- Finalisation of deliberations and adoption of the report on deliberated 2012 submissions

- Deliberations on 2013 submissions
- Report on the 2013 submissions
- Review of the strategic framework/plan (2009-2014).
- Possible lack of clear cooperation with other committees on matters of common interest.

## **5. Recommendations**

- 5.1 There is a need for Parliament to attend to the attendance of members to committees in order to improve the schedule of meetings.
- 5.2 The issue of appointing alternate members for each party represented in the committee should be looked at.
- 5.3 There is a need to develop an effective follow-up mechanism on outstanding submissions for the last five years.
- 5.4 There is a need to develop formal/informal mechanisms to improve collaboration with other committees on matters of common interest.

## **1. Introduction**

### **1.1 Department/s and Entities falling within the committee's portfolio**

In light of its mandate, the committee does not oversee any government department.

### **1.2 Functions of committee:**

The CRC is mandated to review the Constitution annually.

### **1.3 Method of work of the committee**

The CRC calls for public submissions as a method by which to identify constitutional matters/provisions that may require constitutional amendment.

### **1.4 Purpose of the report**

The purpose of this report is to provide an account of the Constitutional Review Committee's work during the 4<sup>th</sup> Parliament and to inform the members of the new Parliament of key outstanding issues pertaining to the programme of the committee.

This report provides an overview of the activities the committee undertook during the 4<sup>th</sup> Parliament, the outcome of key activities, as well as any challenges that emerged during the period under

review and issues that should be considered for follow up during the 5<sup>th</sup> Parliament. It summarises the key issues for follow-up and concludes with recommendations to strengthen operational and procedural processes to enhance the committee's roles in future.

## 2. Key statistics

The table below provides an overview of the number of meetings held, legislation and international agreements processed and the number of oversight trips and study tours undertaken by the committee, as well as any statutory appointments the committee made, during the 4<sup>th</sup> Parliament:

Activity	2009/10	2010/11	2011/12	2012/13	2013/14	Total
Meetings held	7	11	11	10	5	
Legislation processed: <b>None because the committee is not mandated to process any legislation</b>						
Oversight trips undertaken		1				
Study tours undertaken		1				
International agreements processed: <b>None because the committee is not mandated to process any international agreement</b>						
Statutory appointments made: <b>None because the committee does not oversee any statutory body</b>						
Interventions considered: <b>None because the committee does not have a mandate that would enable it to consider interventions</b>						



Activity	2009/10	2010/11	2011/12	2012/13	2013/14	Total
Petitions considered: <b>None because the committee is not mandated to deal with petitions.</b>						

**Stakeholders:** The committee has no specific stakeholders, except for members of the public who make submissions on an annual basis.

### 3. Briefings and/or public hearings

#### 3.1 NUMBER OF MEETINGS HELD: 40 (incl.2013)

DATE	AGENDA
<b>2009: 7 Meetings</b>	
02 July 2009	Election of the co-chairpersons.
08 July 2009	Re-election of the co-chairperson from the NCOP. Consideration of the committee programme.
28 August 2009	Consideration of the committee programme. Adoption of minutes of 2 and 8 July 2009. Deliberations on the five-year plan. Consideration of outstanding submissions.
18 September 2009	Consideration of the 2009-2014 strategic plan Briefing by Parliamentary Legal Advisers on legal opinion on 2009 submissions
9 October 2009	Adoption of Committee's 2009-2014 strategic plan. Adoption of minutes of 28 Aug and 18 Sept 2009. Continuation of a briefing by Parliamentary Legal Advisers on legal opinion on 2009 submissions.
30 October 2009	Discussion on the proposed study tour to the Venice Commission in Venice and Strasbourg.
13 November 2009	Presentation by Pansalb, Commission for Promotion & Protection of the Rights of Cultural, Religious & Linguistic Communities and Deaf South Africa on the submissions made around the alleged erroneous declaration of Sepedi as an official language and the declaration of the sign language as the 12 <sup>th</sup> official language respectively.
<b>2010: 10 Meetings</b>	
26 Feb 2010	Deliberations on the 2009 public submissions. Adoption of minutes.
17 March 2010	Adoption of minutes of 9 &30 October and 13 November 2009.

21 April 2010	Consideration of Minutes of 17 March 2010. Deliberations on the 2009 public submissions. Adoption of the synopsis report on the public hearings that were conducted in Limpopo 6-8 April 2010.
19 May 2010	Continuation of deliberations on the 2009 public submissions.
21 July 2010	Deliberations and adoption of the Third Term Programme. Meeting on progress on the planned study tour to the Venice Commission in Venice and Strasbourg.
23 July 2010	Meeting with representatives from the National House of Traditional Leaders and the Mpumalanga House of Traditional Leaders.
13 August 2010	Adoption of minutes of 19, May, 21 & 23 July 2010. Discussion on the correspondence from the Legal Resources Centre and UCT Law, Race and Gender Unit on the submissions by National House of Traditional Leaders and the Mpumalanga House of Traditional Leaders. Deliberations on the draft report on the 2009 public submissions. Discussion on the suggested research to be commissioned on the issue of Sepedi vs SeSotho sa Leboa dispute.
27 August 2010	Presentation on legal opinion by the Parliamentary Legal Advisers on the 2010 public submissions. Adoption of the draft report on 2009 public submissions.
17 September 2010	Discussion on the logistical arrangements on the study tour to Venice and Strasbourg.
11 October 2010	Preparatory meeting for the study tour to Venice and Strasbourg.
12 November 2010	Consideration of 2010 public submissions, committee draft programme for 1 <sup>st</sup> and 2 <sup>nd</sup> term 2010, draft report on the study tour to Venice and Strasbourg.
<b>2011: 8 Meetings</b>	
18 February 2011	Adoption of the 1 <sup>st</sup> and 2 <sup>nd</sup> term programme Deliberations on the draft report on the 2010 public submissions Deliberations on the draft report on the study tour
04 March 2011	Meeting with academics/linguists from the Universities of South Africa, Limpopo, Johannesburg and Pretoria , as well as traditional leaders Limpopo Provincial House of Traditional Leaders on the issue of Sepedi VS Sesotho sa Leboa
18 March 2011	Adoption of the outstanding minutes. Adoption of the report on the 2010 public submissions. Deliberations on the draft report on the study tour to Venice and Strasbourg.
03 June 2011	Adoption of the report on the study tour to Venice and Strasbourg.

	Adoption of the committee's 2010 annual report. Adoption of minutes of 12 November 2010 and 18 March 2011.
19 August 2011	Briefing by the Parliamentary Legal Services on the 2011 public submissions.
2 September 2011	Consideration of the 2011 public submissions.
07 September 2011	Deliberations on the 2011 public submissions.
21 October 2011	Adoption of minutes. Consideration of the letter from Dr Ambrosini. Deliberations on the draft report on 2011 public submissions.
<b>2012: 11 Meetings</b>	
24 February 2012	Consideration of outstanding minutes. Deliberations on the draft report on the 2011 public submissions. Discussion on the proposed date for a workshop on the committee's mandate. Adoption of the 2012 committee programme.
06 March 2012	Hosting of the Swedish delegation of the Committee on Constitution.
13 March 2012	Adoption of outstanding minutes. Deliberations on the report on the 2011 public submissions. Finalisation of the dates for the workshop.
26 April 2012	Consideration of minutes. Adoption of the report on the 2011 public submissions. Discussions on the proposed study tour to Kenya and Ghana.
30 May 2012	Hosting of the delegation from the Ad Hoc Committee for the Revisions of the Constitution in the National Assembly of Mozambique.
23 June 2012	Workshop with constitutional experts from the Universities of Cape Town (UCT) and South Africa (UNISA) to reflect on the mandate of the Committee.
27 July 2012	Hosting of the delegation from the Constitutional Implementation Oversight Committee of the Republic of Kenya.
7 September 2012	Adoption of minutes of 6 and 13 March, 26 April, 30 May and 27 July 2012.
19 October 2012	Briefing by the Parliamentary Legal Advisers on the 2012 public submissions.
2 November 2012	Deliberations on the 2012 public submissions.
<b>2013 4 Meetings</b>	
15 February 2013	Adoption of minutes of 7 September, 19 October and 2 November 2012. Deliberations on the 2012 public submissions and the draft report on the workshop on the committee's mandate.
19 March 2013	Consideration of minutes of 15 February 2013. Deliberations on the 2012 public submissions.

10 May 2013	Adoption of minutes of 15 February and 19 March 2013. Adoption of the report on the workshop on the committee's mandate (ATC No. 82-2013) Deliberations on the 2012 public submissions.
14 June 2013	Adoption of minutes of 10 May 2013. Adoption of the document on the proposed amendments to the Joint Rules in order to expand the mandate of the committee.

**2014**

27 February 201	Adoption of the 2009-2014 legacy report
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**Public Hearings: 2010**

Date	Place visited	Objective
1-3 <sup>rd</sup> February 2010	Limpopo Province	To get the views of the stakeholders/ communities that were directly affected by the alleged incorrect designation of Sepedi in the Final Constitution.
6-8 <sup>th</sup> April 2010	Limpopo Province	To get the views of the stakeholders/ communities that were directly affected by the alleged incorrect designation of Sepedi in the Final Constitution.

**3.2 NUMBER OF SUBMISSIONS SUBMITTED PER YEAR**

Year	Number of submissions received	Number of submissions finalised	Submissions not finalised due to further deliberations
2009	15	9	Submission that proposes amendments to section 25 of the Constitution (Property Clause). The submitters believe the provision, as it stands, restricts government from distributing the land. Submission that proposes amendments to Chapter 12 of the Constitution. The submitters propose a review of sections 211 and 212 so as to elaborate the role and powers of traditional leaders. Submission that proposes an amendment to section 47(1)(e) of the Constitution, so that any member of Parliament who is convicted of corruption, fraud or similar offence

			involving dishonesty be ineligible to serve as a member of parliament. The Committee is soliciting guidance from political parties represented in the committee to inform it of their respective positions on these matters.
<b>2010</b>	<b>8</b>	<b>7</b>	Submission that proposes amendments to section 25 of the Constitution. The submitters call for the review of the policy relating to the expropriation of land. The Committee is soliciting guidance from political parties represented in the committee to inform it of their respective positions on this matter.
<b>2011</b>	<b>9</b>	<b>6</b>	Submission that proposes amendments to section 25 of the Constitution. The submitter calls for a review of the provision. Submission that proposes amendments to Chapter 12 of the Constitution. The submitters propose a review of sections 211 and 212 so as to elaborate the role and powers of traditional leaders. Submission that proposes an amendment to section 86 of the Constitution, which deals with the election of the President. The submitters call for the scrapping of the provision. The Committee is soliciting guidance from political parties represented in the committee to inform it of their respective positions on these matters.
<b>2012</b>	<b>19</b>	<b>9</b>	The Committee has finalised submissions that do not warrant amendment to the Constitution. However, deliberations are ongoing on the 10 submissions that propose amendments the Constitution.
<b>2013</b>	<b>8</b>	The committee has not deliberated on these submissions yet	Submissions were referred to the Parliamentary Legal Services for a legal opinion.

**4. Legislation**

The committee does not process any legislation, as per its mandate.

**5. Oversight trips undertaken.**

There were no oversight trips undertaken during the period under review.

**6. Study tours undertaken**

<b>Date</b>	<b>Places Visited</b>	<b>Objective</b>	<b>Lessons Learned</b>	<b>Status of Report</b>
15-22 October 2010	Venice Commission in Venice and Strasbourg	To reposition the workings of the CRC in order to look beyond the mandatory process of public submissions process, and to learn from the international best practices in that regard	The constructive engagement with the Venice Commission, the Council of Europe and the European Parliament created opportunities for further engagements and provided a fertile ground for effective and efficient functioning of the committee.	Adopted on 3 June 2011 (published in ATC No. 67-2011)

**4. International Agreements:**

The abovementioned does not fall within the mandate of the committee.

**5. Statutory appointments**

The abovementioned does not fall within the mandate of the committee.

**6. Interventions**

The abovementioned does not fall within the mandate of the committee:

**7. Petitions**

The committee does not deal with petitions as there is a committee that is mandated to consider such matters.

## **8. Obligations conferred on committee by legislation**

The committee does not deal with legislation.

## **9 Summary of outstanding issues relating to the department/entities that the committee has been grappling with**

The committee, in terms of its mandate, does not oversee any government department.

## **10. Recommendations**

10.1 Parliament should expedite the processing of the proposal submitted by the committee to the Joint Rules Committee around the review of the joint rules to allow for the facilitation of the execution of the mandate.

10.2 There is a need for Parliament to attend to the attendance of members to committees in order to improve the schedule of meetings.

10.3 The committee should build strategic relations with other committees so as to maximise capacity and improve oversight. For example, the committee may have to consider policies and papers (white and/or green) pertinent to annual constitutional reforms.

## **11. Committee strategic plan**

The committee's 2009-2014 strategic plan was adopted on 9 October 2009.

## **2. Report of the Interim Joint Committee on Scrutiny of Delegated Legislation on its activities undertaken during the 4th Parliament (September 2011 – March 2014)**

### **Key highlights**

#### **1. Reflection on committee programme per year and on whether the objectives of such programmes were achieved**

Parliamentary scrutiny of delegated legislation forms a critical element in any modern system of constitutional democracy and has the potential to enhance constitutional values and principles, improve the quality of Acts of Parliament and save legal costs or court time in the future by anticipating challenges to the constitutional validity of such legislation. It is against this backdrop that the Interim Joint Committee on Scrutiny of Delegated Legislation (Joint Scrutiny Committee) was established. The National Assembly approved the establishment of the Interim Joint Committee on Scrutiny of Delegated Legislation on 22 June 2011 and by the National Council of Provinces on 20 September 2011. Given the legal and procedural technicalities of the functions of the Committee and that the committee is still “finding its functional feet”, no set programme exists.

#### **2. Committee’s focus areas during the 4<sup>th</sup> Parliament**

The work of the Joint Committee is focused on the scrutiny of the following:

- (a) delegated legislation
- (b) delegated provisions in bills before their formal consideration by the House
- (c) any other delegated legislation agreed upon by the Joint Committee.

#### **3. Key areas for future work**

The Joint Committee will continue its work in respect of the above mentioned focus areas and exercise its functions in accordance with the criteria identified in terms of the Rules of Parliament.

#### **4. Key challenges emerging**

- **The Joint Committee has experienced challenges since its inception. These would include the following:**

- (a) Membership of this committee is such that it is not always possible to meet as planned due to the sometimes clashing meeting programmes that members experience. Therefore, the finalisation of referrals to the Joint Committee will depend on the program of Parliament and the availability of its members.



- (b) Consideration should be had to the constitutional mandate of the Joint Committee in respect of delegated legislation. The Joint Committee is of the view that a Discussion Document would have to be drafted to assist all portfolio and select committees when dealing with bills containing delegated provisioning.
- (c) Further, taking the constitutional imperatives of public participation into consideration, the Joint Committee would have to determine its role in ensuring that delegated legislation are accessible to the public. Currently, regulations are published in the Government Gazette, which is made accessible to the public. The Joint Committee would need to consider further methods to determine how to make delegated legislation available to the public in order to ensure compliance with its constitutional mandate of public participation.

## **5. Recommendations**

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### **1. Introduction**

#### **1.1 Department/s and Entities falling within the committee's portfolio**

None

#### **1.2 Functions of committee:**

The Interim Joint Committee shall –

- (1) exercise its powers and functions in accordance with the Rules applicable to joint committees generally, unless otherwise provided for in these interim Rules; and
- (2) in accordance with the criteria identified in these interim Rules, scrutinise –
  - (a) delegated legislation
    - i. requiring approval by Parliament for it to enter into force;
    - ii. which Parliament may disapprove, thus invalidating it; and
    - iii. that requires consultation with Parliament.
  - (b) delegating provisions in bills before their formal consideration by the House; and
  - (c) any other delegated legislation agreed upon by the Committee

### **1.3 Method of work of the committee**

The Joint Committee uses scrutiny criteria when dealing with its work as mandated by a resolution of the Houses of Parliament.

- (1) Delegated legislation shall be scrutinised by the Committee in accordance with some of the following criteria:
  - a. Whether they impose levies, taxes or duties not authorised through a money bill passed in accordance with section 77 of the Constitution;
  - b. whether they comply with procedural aspects pertaining to delegated legislation;
  - c. whether they impinge on the jurisdiction of the courts;
  - d. whether they are retrospective in nature and, if so, whether that is permitted in terms of the parent Act;
  - e. whether they conform with the objects of the parent Act;
  - f. whether they appear to make unusual use of powers conferred by the parent Act;
  - g. whether they have been properly drafted;
  - h. whether they trespass on personal rights and liberties, including those set out in the Bill of Rights, in a manner inconsistent with the Constitution; or
  - i. whether they amount to substantive legislation.
- (2) delegating provisions in bills shall be scrutinised by the Committee in accordance with some of the following criteria:
  - (a) Whether they impose levies, taxes or duties not authorised through a money bill passed in accordance with section 77 of the Constitution;
  - (b) whether they impinge on the jurisdiction of the courts; or
  - (c) whether they have been properly drafted.

### **1.4 Purpose of the report**

The purpose of this report is to provide an account of the Interim Joint Committee on Scrutiny of Delegated Legislation work during the 4<sup>th</sup> Parliament and to inform the members of the new Parliament of key outstanding issues pertaining its legislative programme.

This report provides an overview of the activities the committee undertook during the 4<sup>th</sup> Parliament, the outcome of key activities, as well as any challenges that emerged during the period under review and issues that should be considered for follow up during the 5<sup>th</sup> Parliament. It summarises the key issues for follow-up and concludes with recommendations to strengthen operational and procedural processes to enhance the committee's oversight and legislative roles in future.

**2. Key statistics**

The table below provides an overview of the number of meetings held, legislation and international agreements processed and the number of oversight trips and study tours undertaken by the committee, as well as any statutory appointments the committee made, during the 4<sup>th</sup> Parliament:

Activity	2009/10	2010/11	2011/12	2012/13	2013/14	Total
Meetings held						
Legislation processed						
Oversight trips undertaken						
Study tours undertaken						
International agreements processed						
Statutory appointments made						
Interventions considered						
Petitions considered						

**3. Stakeholders:**

None

**4. Briefings and/or public hearings**

{Any critical issues that were focused on, challenges and/or issues arising from these that needs to be followed up}

**5. Legislation**

The following pieces of legislation were referred to the committee and processed during the 4<sup>th</sup> Parliament:

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
<b>2009/10</b>				
<b>2010/11</b>				
<b>2011/12</b>				
<b>2012/13</b>				
<b>2013/14</b>				

**a) Challenges emerging**

The following challenges emerged during the processing of legislation:

- Technical/operational challenges that may have delayed legislation and/or complicated the processing thereof
- Content-related challenges

**b) Issues for follow-up**

The 5<sup>th</sup> Parliament should consider following up on the following concerns that arose:

- Monitoring of new entities being established
- New mechanisms or corrections to challenges
- etc

**6. Oversight trips undertaken**

None

**7. Study tours undertaken**

None

**8. International Agreements:**

None

**9. Statutory appointments**

None

**10. Interventions**

None

**11. Petitions**

None

**12. Obligations conferred on committee by legislation:**

None

**13. Summary of outstanding issues relating to the department/entities that the committee has been grappling with**

None

**14. Recommendations**

(Include possible recommendations to resolve operational and/or procedural concerns encountered during the 4<sup>th</sup> Parliament)

**15. Committee strategic plan**

None