

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 3 SEPTEMBER 2013

ANNOUNCEMENTS

The Speaker:

1. Assent by Premier in respect of Bills

- (a) *Western Cape Investment and Trade Promotion Agency Amendment Bill* [B 1–2013] – Act 6 of 2013 (assented to and signed by Premier on 20 August 2013).
- (b) *Western Cape Seventeenth Gambling and Racing Amendment Bill* [B 3–2013] – Act 7 of 2013 (assented to and signed by Premier on 20 August 2013).
- (c) *Western Cape Eighteenth Gambling and Racing Amendment Bill* [B 4–2013] – Act 8 of 2013 (assented to and signed by Premier on 20 August 2013).

2. Publication of Act 6 of 2013

Publication of the Western Cape Investment and Trade Promotion Agency Amendment Act, 2013, in Provincial Gazette Extraordinary 7163, dated 28 August 2013.

3. Publication of Act 7 of 2013

Publication of the Western Cape Seventeenth Gambling and Racing Amendment Act, 2013, in Provincial Gazette Extraordinary 7164, dated 28 August 2013.

4. Publication of Act 8 of 2013

Publication of the Western Cape Eighteenth Gambling and Racing Amendment Act, 2013, in Provincial Gazette Extraordinary 7165, dated 28 August 2013.

COMMITTEE REPORTS

The Speaker:

1. (*Negotiating mandate stage*) Report of the Standing Committee on Finance and Economic Development on the *Intellectual Property Laws Amendment Bill* [B 8B–2010] (NCOP), dated 28 August 2013, as follows:

The Standing Committee on Finance and Economic Development, having considered the *Intellectual Property Laws Amendment Bill* [B 8B–2010] (NCOP) referred to the Committee in terms of Standing Rule 220, confers on the Western Cape’s delegation in the NCOP the authority to not support the Bill, taking note of the following:

- (a) The Committee is in agreement that a legal regulatory framework is urgently required to protect indigenous knowledge within the context of South Africa’s existing legal framework governing intellectual property rights;
 - (b) The Bill lacks conceptual clarity, with specific reference to the difference between *indigenous knowledge* and *intellectual knowledge* and matters relating to the protection of traditional cultural works;
 - (c) The current manner in which the Bill aims to amend four separate items of legislation, each protecting a unique form of intellectual property, proves problematic;
 - (d) The Department of Trade and Industry should rather consider a *sui generis* approach in drafting a new statute, allowing for a unique and case specific interpretation of protecting indigenous knowledge. A large school of academic thought are in agreement that the *sui generis* approach would be more beneficial in this regard;
 - (e) The Committee is concerned as to the practical implications of implementing the eventual Act and enforcing its various regulations. The Bill does not provide substantial reference to the nature and enforcement of sanctions to be imposed on entities found to be in breach of the Act. In addition, no measures are provided to resolve disputes emanating from enforcing the provisions of the Act;
 - (f) The Bill does not provide for the establishment of a database to record and document indigenous knowledge;
 - (h) The current Bill is ignorant of the fact that the Regulatory Impact Assessment, as commissioned by the Presidency of the Republic of South Africa in 2009, specifically noted that the Bill should not proceed in its then current form and that “A *sui generis* approach appears to offer the best option for a comprehensive, tailor-made solution”;
 - (i) The Department should rework the current Bill taking into consideration the model laws of The World Intellectual Property Organisation (WIPO), a set of proposals aimed to assist and guide governments and legislators in formulating *sui generis* frameworks in dealing with intellectual property rights.
2. (*Negotiating mandate stage*) Report of the Standing Committee on Agriculture and Environmental Planning on the *National Environmental Management Laws Second Amendment Bill* [B 13–2013] (NCOP), dated 28 August 2013, as follows:

The Standing Committee on Agriculture and Environmental Planning, having considered the *National Environmental Management Laws Second Amendment Bill* [B 13–2013] (NCOP), referred to the Committee in terms of Standing Rule 220, confers on the

Western Cape's delegation in the National Council of Provinces, the authority to support the Bill with the following amendments:

- (a) The definition for “**environmental assessment practitioner**” on Page 3 in line 34 be amended to read as follows: “...when used in Chapter 5, means: the individual responsible for:
- (i) the planning of, management of, coordination of, and/or the undertaking of; or
 - (ii) the review and consideration of; environmental impact assessments, strategic environmental assessments, environmental management programmes or any other appropriate environmental instruments introduced through regulations;”
- (b) The word “national” be inserted to precede the word “Department” on page 3 in line 26 of the Bill. To ensure clarity, it must be kept in mind that the provinces also have Departments responsible for environmental affairs. Further, it appears to be the practice to define a *national* Department as such in definition clauses. This approach was indeed also followed in the *National Environmental Management Laws First Amendment Bill* [B 13B–2012].
- (c) Clause 3 of the Bill has reference. It is suggested that the provision that environmental outlook reports must be prepared within four years of date of commencement of the Act be retained, but that all references to “at intervals of not more than four years thereafter” be amended to “at intervals of not more than five years thereafter”. It appears then as though it is the intention that *the Environmental Outlook Reports should be prepared one year before the IMPs are prepared* in order to ensure that the information in the environmental outlook reports “feed into” or inform the contents of the IMPs. This is, however, not what clauses 2 and 3 will achieve in the long-term. The view is expressed that the due dates for the various reports will then align rationally.
- (d) Clause 5 has reference. Section 24(2)(b) as currently in force should be retained and not amended. Alternatively, Clause 5(b) should read, “geographical areas based on environmental attributes, and as specified in Spatial Development Tools adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which specified activities may not commence without an environmental authorisation from the competent authority;”. The proposed amendment to Section 24(2)(c) should refer to ‘*Spatial Development Tools*’.
- (e) Clause 5 has reference. Section 24(2) (d) as currently in force should be retained and not amended – i.e. : “*activities contemplated in paragraphs (a) and (b) that may commence without an environmental authorisation, but that must comply with prescribed norms or standards*”.
- (f) Clause 5 (e) has reference. Section 24(10)(a) to be amended as follows:
- “ (i) develop or adopt norms or standards for –
 - (aa) a listed activity or specified activity contemplated in subsection (2)(a) and (b);
 - (bb) any part of the listed or specified activity referred to in item (aa);
 - (cc) any sector (dd) any geographical area; or

(ee) any combination of the activities, sectors, geographical areas, listed activities or specified activities referred to in items (aa), (bb), (cc) and (dd)”.

(g) Clause 6(b) to be substituted as follows:

“Procedure for identifying competent authority

(1) When listing or specifying activities in terms of section 24(2) the MEC must identify the competent authority responsible for granting environmental authorisations in respect of those activities.

(2) The Minister must be identified as the competent authority in terms of subsection(1), unless otherwise agreed to in terms of section 24C(3), if the activity—

(a) has implications for international environmental commitments, and where—

(i) it is identified by the Minister by notice in the *Gazette* after consultation with the MEC; or

(ii) the activity takes place in an area protected by means of an international environmental instrument identified by the Minister by notice in the *Gazette* after consultation with the MEC, other than—

(aa) a conservancy;

(bb) a protected natural environment;

(cc) a proclaimed private nature reserve;

(dd) a natural heritage site;

(ee) the buffer zone or transitional area of a biosphere reserve; or

(ff) the buffer zone or transitional area of a world heritage site;

(h) The word “approximately” on page 7 in line 27 of the Bill - Clause 6 (d), be substituted with the words “at least”. The view is expressed that where legislation imposes obligations it should do so clearly, in order that the person on whom the obligation is imposed and the person intended to benefit from the obligation may readily ascertain whether the obligation has in fact been fulfilled.

(i) Clause 12 has reference.

Section 28(4) be amended as follows: “Provided that the Director-General or a head of department may, if urgent action is necessary for the protection of the environment, issue such directive to carry out a listed or specified activity without obtaining an environmental authorisation contemplated in section 24(2)(a) or (b), and consult and give such opportunity to inform as soon thereafter as is reasonable.”

(j) A definition for a “spatial tool” be inserted into the Bill. The expression “spatial development tools”, in section 24(2)(b) and (c) of the principal Act is defined in section 1 of the principal Act. The Bill, see clause 5 on page 5 in line 37, creates the expression “spatial tools” by deleting the word “development” from that paragraph. The Bill does not amend the principal Act in order to create a definition for a “spatial tool”. The definition of “spatial development tool” is, however, retained in the principal Act. It is clear, therefore, that a “spatial tool” and a “spatial development tool” are distinct concepts with distinct meanings.

(k) Clause 19 has reference.

It is the preserve of the National Prosecuting Authority to decide whether to prosecute, and if so, where (which Court) to do so. The facts and surrounding circumstances, (and the severity thereof) of each matter will be instructive.

It is therefore inconsequential whether a competent authority “is of the view” that a more severe penalty should be considered.

It is accordingly recommended that this Section be omitted in its entirety.

It is therefore further recommended that a new subsection be considered to serve as a “reminder” that the High Court may also be approached to consider a more severe penalty.

Section 49B (4): Notwithstanding the above, the National Prosecuting Authority is not precluded from approaching the High Court to impose a more severe penalty.

3. **REPORT OF THE WESTERN CAPE DELEGATION TO THE 44th COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) AFRICA REGION CONFERENCE HELD IN WINDHOEK, NAMIBIA FROM 17–27 JULY 2013.**

Introduction

The 44th Conference of the Commonwealth Parliamentary Association (CPA) Africa Region was held in Windhoek, Namibia from 17–18 July 2013 under the theme “Utilising our commonwealth partnership to promote conflict resolution and economic development on the African continent”.

Delegation

An official delegation of five Members, namely Honourables T R Majola, R B Lentit, C Labuschagne, V Hani, accompanied by the staff member, J E Nkabinde represented the Western Cape Provincial Parliament. Hon T R Majola was the Leader of the delegation and the delegation left for Namibia on Monday, 22 July and returned on Saturday, 27 July 2013. The Western Cape Provincial Parliament delegation was booked in the Windhoek Country Club and Resort.

At the Conference, the delegation became part of the South African delegation that came from other provinces and the National Parliament, led by the Hon M J Mahlangu, the Chairperson of the National Council of Provinces.

Mr J E Nkabinde represented the Secretary to Parliament at the meeting of the Society-of-the-Clerks-at-the-Table.

Objectives of the Conference

The conference was aimed at delegates discussing and sharing experiences on a wide range of issues, including:

- Elimination and prevention of all forms of gender based violence;
- Youth employment in Africa: Challenges and solutions: What can Parliamentarians do?;
- The attainment of the MDGs: Is Africa on its way to meeting the 2015 deadline?;
- Energy security: An imperative for Africa’s development; and

- Peace building and conflict resolution: Finding an African agenda to aid economic development.

Tuesday, 23 July

The whole day was reserved for pre-conference tours. The most important place all the delegates visited was the Soweto Market, and the Penduka non-governmental organization that works with local women by training and assisting them in the creation of markets for their products.

Wednesday, 24 July

Because of time constraints, the programme for the day was changed, with the Sub-regional meetings taking place before the official opening. The sub-regions for Africa are Central Africa, East Africa, Southern Africa and West Africa. The South African delegations formed part of the Southern Africa sub-region meeting.

1. Southern Africa sub-regional meeting

(a) Mr Khumalo's suspension

The sub-region meeting was chaired by Mr M Mahlangu, the Chairperson of the Southern. He read the letter received from Mr M Khumalo, the national CPA Treasury, regarding his suspension by the Swaziland Parliament, of which he is a member.

It was agreed that the Southern African region would send the delegation to the Swaziland Parliament to discuss this matter.

(b) Change of status of CPA

Ms L Maseko, Speaker of Gauteng Legislature and Chairperson of CPA Africa region reported that there were discussions about changing the status of CPA, for being a charity organization to a limited company. She explained that this was due to, amongst others, this organization not expected to pay tax in the United Kingdom and what this meant to the CPA.

It was agreed that this matter would further be discussed at the international CPA meeting in Johannesburg in September.

(c) Upcoming CPA elections

Ms Maseko reported that there would be an election of the International CWP Chairperson at the CPA conference in Johannesburg, and that the African region has nominated Rt Hon R Kadaga for the position. As this would be contested by, amongst others, Australia, she requested that branches made sure that many delegates at the international conference be females so that they could vote.

It was agreed that a letter would be written to branches, requesting them to change the status of women from being observers to delegates so that they would be able to vote there during the election.

2. Official opening ceremony of the 44th CPA Africa Region Conference

The 44th CPA Africa region conference was officially opened by His Excellency, President Hifikepunye Pohamba. He praised Namibia's Commonwealth partners for how they helped Namibia during its liberation struggle against apartheid and colonialism.

Amongst others, the President mentioned how Namibia had benefited from the partnerships of the Commonwealth, and called on members of the African continent to work together in order to build the African continent. He also touched on the importance of empowering the youth and ensuring that gender equality becomes a reality in all societies.

Ms L Maseko, the Chairperson of the CPA Africa Region Executive Committee was also given a chance to make remarks. She urged the delegates to strengthen their commitment in respecting human rights and freedom building, and understanding unity between countries of the region and by doing so, continue to promote the interests of Africa into the commonwealth and beyond. She also requested the CPA Africa to seize the task of building capacity of parliamentarians in order to make laws that are just and responsive to the needs of the people.

Sir Alan Haselhurst, CPA International Chairperson also delivered a message of goodwill. He urged the CPA to be guided by goodwill and wished all the delegates success during discussions.

The vote of thanks was delivered by the Hon Anne S Makinda, Speaker of the National Assembly of Tanzania and Vice President of CPA Africa region.

3. Annual General Meeting (1)

The agenda for the meeting was considered and adopted on the proposal made by Gauteng which was seconded by Namibia.

The following issues were considered at the meeting as per its agenda–

- Consideration and adoption of the Report of the Regional Executive Committee – the report was adopted;
- Consideration and adoption of Reports of sub-committees, namely the CWP Steering Committee, the Regional Representatives and the Programme, Planning and Finance – all reports were adopted without amendments;
- Report of Society of Clerks-at-the-Table (SoCATT) – report adopted with amendments.
- The Constitutional Review Committee – report adopted with amendments.
- The Statement on the Management and Financial Position was considered and adopted.
- Offer and acceptance of future venues for Regional Conference – no regional country offered to host the next CPA Africa Region conference.
- Offer and acceptance of future venues for regional events – Youth Parliament, 15 -22 August; CPA Malawi.

The Annual General Meeting was suspended later and resumed the following day after sessions of the Conference.

Thursday, 25 July 2013

Sessions of the Conference

The sessions were held to discuss the following topics

- Elimination and prevention of all forms of Gender based violence (Moved by Namibia and seconded by Cameroon);
- The attainment of MDGs: Is Africa on its way to meeting 2015 deadline? (Moved by Eastern Cape and seconded by Rwanda);
- Peace building and conflict resolution: Finding an African agenda to aid economic development (Moved by Kenya and seconded by Mozambique); and
- Youth Employment in Africa: Challenges and solutions: What can Parliamentarians do? (Moved by Malawi and seconded by Gauteng).

Delegates and observers attended these sessions. Resolutions, as per attached document, were adopted by the Plenary.

Annual General Meeting (2)

The Annual General meeting proceeded with the election of office bearers:

President of the Association – Lesotho was elected, as the next hosting country, to preside on the Association at the next CPA Africa region.

Meeting of the Society of Clerks-at-the-Table: Africa Region

Mr J Nkabinde, on behalf of the Secretary, attended the meeting.

The following issues were deliberated on–

- The adoption of the minutes of the last meeting in Sandton, South Africa. - The minutes were adopted.
- Update on Payments of subscriptions – the list of branches that have not paid was circulated;
- The following papers were presented during the two day session, namely

The role of the Committee Clerk in supporting and managing parliamentary committees to perform their oversight functions (Moved by Uganda, seconded by Zambia);

The complimentary role of the Clerk and the political leadership in the administration of parliaments (Moved by Botswana and seconded by Ghana);

The role of ICT for effective Table duties (Moved by South Africa and seconded by Kenya).

- General – It was agreed that the reports on specific procedural experiences should be forwarded to the Secretariat in Ghana.

Saturday, 27 July 2013

Delegates departed from Windhoek, Namibia.