

Parliament of the Republic of South Africa



PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Fourth Session – Second Parliament
January to June 2002

5



Parliament of
the Republic of
South Africa

PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

A record of recent events and developments of a procedural nature in the National Assembly of the Parliament of the Republic of South Africa. This periodical is intended to be published quarterly; however, owing to pressure of work and reduced staff capacity, this was not possible in 2002. Accordingly this fifth issue covers the period from January to June 2002.

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PRESIDING OFFICERS & OTHER OFFICE-BEARERS

1. ELECTION OF MEMBER AS TEMPORARY PRESIDING OFFICER FOR DAY'S SITTING

The Rules do not provide for the appointment of a presiding officer for a day's sitting.

On 15 March, when only one presiding officer was available, the House adopted a motion moved for the Chief Whip of the Majority Party, to elect Mr A Mlangeni to preside during the day's sitting when requested to do so by the presiding officer.

Mr Mlangeni duly presided over part of the day's proceedings.

2. APPOINTMENT OF OFFICE-BEARERS

On 7 May, the House appointed Mr G Q M Doidge Chairperson of Committees to replace Mr M J Mahlangu who resigned from the post with effect from that day.

On the same day the Speaker announced in the House that Mr A C Nel had been appointed Deputy Chief Whip of the Majority Party by the African National Congress with immediate effect. He replaced Mr G Q M Doidge. On 10 May, the Speaker announced that Mr N P Nhleko had been appointed Chief Whip of the Majority Party with effect from 9 May to replace Ms N N Mapisa-Nqakula who had been appointed as the Deputy Minister of Home Affairs on 7 May.

PROCEDURAL & RELATED ISSUES

– **NEW OFFICE-BEARERS PROTECTED BY RULE AGAINST REFLECTIONS ON THEIR COMPETENCE OR HONOUR** see “Media Development and Diversity Agency Bill” (Item 34)

3. TIMES FOR PARTY RESPONSES TO MINISTERIAL STATEMENTS

In terms of Rule 106, a member or members of each party may comment on a ministerial or executive statement for not more than three minutes per party. Over time a practice had developed for the House to adopt a resolution with altered times for parties on each occasion when a ministerial statement was to be made.

On 6 March, the House adopted a resolution that, notwithstanding the provisions of Rule 106, the following times be allocated to parties for the remainder of 2002: ANC – 5 minutes; DP and IFP – 4 minutes each; NNP – 3 minutes; UDM – 2 minutes; and all other parties – 1 minute each.

4. AMENDMENT OF ASSEMBLY RULES

On 21 August 2001, the National Assembly

Rules Committee referred the following matters to the Subcommittee on Review of National Assembly Rules for amendment or the drafting of new rules:

- Quorum
- Certification of Bills
- Questions

After parties were asked to make comments on these issues, a document containing the recommendations of the Subcommittee was presented to the N A Rules Committee on 5 February 2002. The Committee deliberated on the issues and agreed that they should be considered by parties for finalisation at the next National Assembly Rules Committee meeting. New Rules on Questions were subsequently adopted on 26 June (see under “Question Time in the House”).

5. LAPSED BUSINESS REVIVED

(a) Bills

In terms of Rule 298(1), Bills that are on the Order Paper on the last sitting day of an annual session for First or Second Reading, and which have been introduced in the National Assembly, lapse at the end of that day. No Bills lapsed in terms of this Rule at the end of 2001.

(b) Other business

Rule 316(1) provides that all motions and all other business, other than Bills, on the Order Paper on the last sitting day of an annual session of the Assembly, lapse at the end of that day. A number of committee reports lapsed in this way on 16 November.

In terms of practice such business may be revived for consideration and therefore put back onto the Order Paper by way of a motion in the House.

On 8 March, the House adopted a motion that business that appeared on the Order Paper on the last sitting day of 2001, and that lapsed in terms of Rule 316, be placed back on the Order Paper. This consisted of 5 SCOPA reports (2nd, 11th, 12th, 13th and 14th); 3 reports of the Standing Committee on Private Members' Legislative Proposals and Special Petitions; 2 reports of the Portfolio Committee on Home Affairs; a report of the Portfolio Committee on Education (study tour to Cuba) and the Interim Report of the Joint Committee on Ethics and Members' Interests (complaint against Mr T S Yengeni, MP).

6. MORNING SITTING ON TUESDAY, 19 MARCH

On 18 March, the House agreed to a motion that, notwithstanding Rule 23 (which provides, *inter alia* that the hours of sitting from Mondays to Thursdays are from 14:00, or such later time as the Speaker determines) on the following day, Tuesday 19 March, the House would sit from 10:00 to adjournment, subject to the availability of the report of the

parliamentary mission to observe the Zimbabwean presidential election. The early start to proceedings was necessitated owing to the fact that the Order Paper for that day was particularly full.

7. SEQUENCE OF PARTY MOTIONS

Following a decision of the Programme Committee that the Chief Whips' Forum should propose a sequence for party motions (*see Item 4, Issue 4*), the Deputy Chief Whip of the Majority Party, Mr G Q M Doidge, presented the proposed sequence to the Programme Committee on 7 February. The sequence was agreed to. It corresponds with that for notices of motion, viz ANC, DP, IFP, ANC, NNP, UDM, ANC, ACDP/ PAC/MF, FF/UCDP/FA/AZAPO. At the following meeting of the Programme Committee on 14 February, it was further agreed that the sequence would continue from where it had ended in 2001. The last party to have proposed a topic for a party motion in 2001 was the IFP. The new sequence, therefore, would commence with the ANC.

8. SUSPENSION OF PERIOD BETWEEN COMMITTEE REPORT AND HOUSE DEBATE

From February to June, Rule 253 (which provides that if a Bill has been referred to an Assembly or joint committee, the debate on the Second Reading of the Bill may not commence before at least three working days have elapsed from the date of the committee's report) was suspended by the House on 7 occasions, namely:

- Second Reading debates on the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill [B62-2001]* and *National Railway Safety Regulator Bill [B7-2002]*, 15 March.
- Second Reading debate on the *Immigration Bill [B79B-2001]*, 16 May.
- Second Reading debate on the *Health Donations Fund Act Repeal Bill [B20-2002]*, 29 May.
- Second Reading debates on the *Constitution of the Republic of South Africa Amendment Bill [B16-2002]*; *Constitution of the Republic of South Africa Second Amendment Bill [B17-2002]*; *Local Government: Municipal Structures Amendment Bill [B22-2002]*; *International Criminal Court Bill [B42-2001]*; and *Insolvency Amendment Bill [B14-2002]*, 7 June.
- Second Reading debate on the *Loss or Retention of Membership of National and Provincial Legislatures Bill*, 10 June.
- Second Reading debate on the *Financial*

Advisory and Intermediary Services Bill [B52B-2001], 18 June.

- Second Reading debate on the *Mineral and Petroleum Resources Development Bill [B15-2002]*, 21 June.

9. AUDITOR-GENERAL'S SPECIAL REPORT ON DELAYS IN TABLING OF ANNUAL REPORTS

Section 65(2) of the Public Finance Management Act sets deadlines for the submission to Parliament of annual reports and financial statements by government departments and public entities. It stipulates that on failure to meet the deadline, a written explanation must be tabled.

A report by the Auditor-General entitled "*Delays in the tabling of Annual Reports as required by the Public Finance Management Act, 1999 (Act 1 of 1999)*" [RP 45-2002] was tabled in both Houses on 13 March. The report was referred to the NCOP's Select Committee on Finance (ATC 15 March 2002), the Standing Committee on Public Accounts (ATC 5 April 2002) and the Portfolio Committee on Finance (ATC 13 June 2002).

The report detailed failures and delays in complying with this requirement, particularly on the part of public entities, but attributed these to teething problems experienced with the new Act. To address the problem, it made several recommendations, *inter alia* that executive authorities, whose responsibility it was to table the reports or explanations, proactively ensure that public entities submit to them the annual reports within the timeframe supplied.

The committees have not reported on this matter during the period under review.

QUESTION TIME IN THE HOUSE

10. QUESTION TIME – INTERIM PROCEDURE EXTENDED

On 20 March, the Chief Whip of the Majority Party moved that, with reference to the resolution adopted by the House on 13 November 2001, the period for the trial run of questions for oral reply be further extended until 28 June 2002 (*see Item 19, Issue 4*). The House divided as some of the opposition parties indicated that they were in principle opposed to key aspects of the proposed new system. The motion was agreed to.

11. QUESTIONS TO THE PRESIDENT

According to guidelines on Questions for Oral Reply drawn up and agreed by the Chief Whips' Forum on the authority of the National Assembly [ATC, 17 July 2000, p 622], "the

President will answer questions of national or international importance once a quarter”.

At a meeting of the Programme Committee on 21 February, the Speaker announced that the date in the first term that had originally been considered for questions to the President had been unsuitable, owing to the scheduling of an international conference. The committee accepted that in the circumstances there would be no opportunity for questions to the President in the first term. The Speaker further announced that she was attempting to arrange for the President to answer questions twice in the second term so that he would, indeed, be answering questions four times during the annual session, as required by the guidelines.

No opportunity was found in the second term for an additional question session for the President.

12. QUESTION TIME – MINISTER'S UNAVAILABILITY AND MINISTER STANDING IN

On 20 March, during the course of question time, the Whip of the IFP informed the Table Staff that in the event of the Minister of Home Affairs not being present when questions addressed to him were called, the Minister of Correctional Services would answer on his behalf.

However, when questions were addressed to the Minister of Home Affairs, the Minister of Correctional Services indicated that he would read out the answers but would not take supplementary questions. In line with agreed practice (i.e. a Minister standing in for another Minister must take supplementary questions), the Speaker could not allow the Minister of Correctional Services to answer the question. Questions addressed to the Minister of Home Affairs therefore stood over.

13. QUESTIONS TO DEPUTY PRESIDENT TAKEN ON A DAY OTHER THAN QUESTION DAY

Owing to the unavailability of the Deputy President to answer questions on Wednesday, 26 June 2002 as required in terms of the interim questions procedure, the House adopted a resolution on the preceding Monday, agreeing to bring forward the questions set down for oral reply by the Deputy President to Tuesday, 25 June 2002, and to give precedence to questions on that day. (See also *Item 20, Issue 4*).

14. NEW RULES ON QUESTIONS AGREED TO

It was previously reported (*Issue 2*) that a new set of guidelines for Questions to the Executive had been introduced in April 2000 on a trial basis, and the relevant Assembly Rules suspended. The changes were fundamental, including dropping interpellation debates,

extending Question Time to two hours, and grouping Ministers into three “clusters” for purposes of answering questions. Except for urgent questions, questions during a particular day could only be put to a particular cluster. The President would answer 6 questions once every parliamentary term while the Deputy President would answer 4 questions every second week.

The trial period was extended by resolution on more than one occasion and adjustments made to the guidelines (*Issues 3 & 4*).

In June 2002, the Assembly Rules Committee finalised Rules reflecting the new procedure. These Rules were adopted by the House on 26 June (the DP dissenting) and put into effect. The new Rules introduced a few changes to the “guideline” procedures followed since April 2000, the most notable of which are the following:

- (a) The number of questions that may be put to an individual Minister on any one Question Day is increased from 8 to 10.
- (b) In the past, Questions for oral reply that could not be placed owing to quotas, were moved forward to the next Question Day for the relevant cluster. Such questions are now submitted for written reply.
- (c) If an oral Question stands over more than once, the Question Paper is endorsed to the effect that it has not been replied to.

In addition, the practice has developed that the order of rotation in which parties gain the opportunity to put Questions in a particular cluster, carries on without interruption from one Question Day for a particular cluster, to the next Question Day for that cluster.

PARLIAMENT AND THE EXECUTIVE

15. BRIEFING FOR THE EXECUTIVE

Parliamentary staff conducted a briefing session for members of the Executive on 6 February. The areas covered were: Constitutional provisions about the roles of and relationship between the Executive and Parliament; Institutional arrangements and structures of Parliament (included Role of Internal Committees, Joint Tagging Mechanism and Joint Programming Committee); the Route of Legislation; and Oversight and Accountability.

MEMBERS

- **MEMBERS NOT EXEMPTED FROM CRIMINAL RESPONSIBILITY IN RELATION TO CRIME OF INTERNATIONAL CONCERN** see “Implementation of Rome Statute of International Criminal Court Bill” (Item 24)



16. DISCIPLINARY COMMITTEE

On 19 June, the Speaker referred a complaint of sexual harassment by a member against another member to the Disciplinary Committee to consider and to advise her.

The Disciplinary Committee met on Tuesday, 25 June and twice on Wednesday, 26 June. The Committee then communicated its views verbally to the Speaker on the afternoon of Wednesday, 26 June before the House met.

The Speaker announced in the House, on the same day, that based on a report she had received from the Disciplinary Committee she would grant the member concerned an opportunity to make a personal explanation. The member made a personal explanation concerning remarks he had directed in the House at another Member and apologised for having given offence. [*Minutes, 26 June 2002*]

17. TRAINING SEMINAR FOR MEMBERS

A training seminar for Members took place on 28 January. Parliamentary staff did presentations on the following matters: Points of Order; Unparliamentary Language; Decision of Questions; Motions; Sub Judice Rule; Matters of Public Importance; Money Bills; Questions; Appointment of Members; Parliamentary Papers; International Agreements; Private Members' Legislative Proposals and Bills initiated by committees; and the Joint Tagging Mechanism. In addition, a demonstration of the Parliamentary website was provided.

18. APPOINTMENT OF DEPUTY MINISTER

On 24 May, the Speaker announced in the ATC that Ms N N Mapisa-Nqakula had been appointed Deputy Minister of Home Affairs on 7 May to replace Mr C Nqakula who had been appointed Minister of Safety and Security on that day. This was due to the death of the Minister of Safety and Security, Mr Steve Tshwete, on 26 April.

LEGISLATION AND COMMITTEES

19. CONSTITUTION AMENDMENT BILLS & RELATED BILLS ON "CROSSING-THE-FLOOR"

Introduction

A package of four Bills was dealt with by Parliament during the first half of 2002 to make provision for elected public representatives at local, provincial and national level to join other parties without thereby losing their seats.

The Bills

Loss or Retention of Membership of National

and Provincial Legislatures Bill (the "Membership Bill"):- This Bill was initiated by the Portfolio Committee on Justice (*see Issue 4, Item 40*). The purpose of the Bill is to create a mechanism in terms of which members of the National Assembly or a provincial legislature could change their party membership without losing their seats. It also provides for an existing party to merge with another party and for a party to subdivide into more than one party. The Bill was introduced in terms of Item 23A of Schedule 2 to the (Interim) Constitution, 1993, which had been retained, with amendments, in the 1996 Constitution.

Item 23A states that "a person loses membership of a legislature . . . if that person ceases to be a member of the party which nominated that person as a member of the legislature", but an Act of Parliament may, within a reasonable period after the new Constitution took effect, be passed . . . to provide for a member to change party membership while retaining membership of the legislature.

The Membership Bill allows for a fifteen-day period during the second and fourth year after an election during which members who together represent not less than 10% of the party that nominated them to that legislature, may change their party allegiance without loss of their seats. A further once-off fifteen-day period was to follow immediately upon the commencement of the legislation during which individual members (without the 10% requirement) could change their party allegiance. During any such window period members may change their party allegiance once only. They do so by informing the Speaker in writing. If the seat subsequently falls vacant, the party which the member joined may nominate another person to fill the seat. If in this process of party changes a new party is formed, that party must formally apply to the Independent Electoral Commission within the window period for registration. At the expiry of the window period, the Speaker must publish details of the altered composition of the legislature within 7 days.

Constitution Second Amendment Bill:- The purpose of this Bill is to regulate the allocation of delegates to the NCOP in the event of changes of party membership in a provincial legislature following upon a window period for party changes in terms of the Membership Bill (see above). The constitutional amendment provides that the provincial legislature must within 30 days of such party changes reallocate and appoint NCOP delegates in the same manner as it does after a provincial election.

Local Government: Municipal Structures Amendment Bill:- Just as the Membership Bill provides for party changes at the national and provincial levels, this Bill makes provision for such changes in respect of the local government sphere. It also provides for the consequent reconstitution of structures and committees of a municipal council at the close of any window period for party changes as

determined by the Constitution Amendment Bill (see below).

Constitution Amendment Bill:- This Bill is modelled on the principles contained in the Membership Bill and specifies the window periods during which members of municipal councils may change party allegiance without losing their seats. A party may not suspend or terminate the party membership of a councillor representing that party during any such window period.

Passage of Bills

The two Bills amending the Constitution had been introduced by the Minister for Justice and Constitutional Development, while the Minister for Provincial and Local Government was in charge of the third, the Local Government: Municipal Structures Amendment Bill. The fourth Bill, the Loss or Retention of Membership of National or Provincial Legislatures Bill, as has been mentioned, was introduced by the Portfolio Committee on Justice and Constitutional Development.

The committees' reports on the Bills appeared in the ATC on 10 June. The Justice Committee also submitted a Further Report on Crossing-the-Floor Legislation in which it made various recommendations concerning the implementation of the four Bills. This report was adopted by the House on 11 June, before it proceeded to a debate on the Bills.

For the second reading of a Bill the debate is usually introduced by the member of the executive in charge of the Bill. The Minister responsible for the Bill also ends the debate by replying to the points raised by the different speakers during the debate. With the package of Bills in question, the Programme Committee agreed to have one debate on all the Bills.

The second reading debate on the crossing-the-floor legislation was introduced by the Minister for Justice and Constitutional Development, while the Minister for Provincial and Local Government assumed the responsibility of replying to the debate and highlighting issues contained in the Local Government: Municipal Structures Amendment Bill. The Loss or Retention of Membership of National or Provincial Legislatures Bill was on the Order Paper as a separate order of the day. It was adopted without debate, though members had spoken to the issues contained in the Bill during the debate on the other Bills in the package of crossing-the-floor legislation. All four Bills were passed after a division.

At the request of the relevant Ministers the Joint Programme Subcommittee, at a meeting on 11 June 2002, agreed to fast-track the Bills on floor-crossing "in order to make it possible for the Bills to be passed by Tuesday, 18 June". The fast-tracking decision was ratified by both Houses on 12 June. The Bills were passed by both Houses by 19 June, after the NA had approved amendments adopted in the NCOP.

The official texts of the Bills, by resolution of both Houses on 19 June, were sent to the

President for assent without the official translations, (notwithstanding the requirements of Joint Rule 221), and were signed by the President on the same day.

Speaker's statement

The Membership Bill provided that a member wishing to change his/her party allegiance during a specified window period had to do so in writing to the Speaker, and could only do so without loss of seat during the window period. The Portfolio Committee on Justice and Constitutional Development had in its report to the House on the Bills included a draft form for this purpose in the interests of establishing a uniform process for all affected legislatures.

The Speaker, with reference to the draft form, sought legal advice from the Parliamentary law advisers to prepare the necessary documentation which was to be made available to all parties and members at the appropriate time. However, it came to her attention that the draft form extracted from the Committee's report had already been circulating amongst certain members.

Concerned at the membership implications if draft forms were to be signed prematurely, she interrupted debate in the House on 11 June to sound a warning to members. She announced that appropriate forms were still being prepared, and further -

Members need to be aware that if they sign any such form or if they resign from any party prior to the window period being opened, they may lose their membership of the National Assembly and possibly of provincial legislatures or local councils. I would therefore urge all members not to sign the forms. Further they should try and recover any forms they might have signed and report the matter to me.

Court action

The four Bills were assented to by the President on 19 June 2002, and as previously indicated, the initial window period for members to change party allegiance without loss of seat was to commence immediately upon enactment.

However, the constitutionality of the Acts was challenged and the Cape High Court, by a full Bench decision, granted an interdict suspending the commencement and/or operation of the four Acts pending the outcome of a Constitutional Court application.

20. NCOP AMENDMENT ON SEC 75 BILL PUT DIRECTLY TO HOUSE

The Assembly Rules (Rule 270) specifically require that if the NCOP passes a section 75 Bill subject to proposed amendments (ie a Bill relating to areas of national legislative competence), the Speaker must refer the Bill and amendments to the relevant portfolio committee for report before the Assembly takes



a decision. (In the case of section 76 Bills, the Bill may as an option be put directly to the House.)

On 26 June, the last sitting day of the Second Term, the House resolved that if the NCOP agreed to the *Mineral and Petroleum Resources Development Bill* subject to proposed amendments (the Bill, a Sec 75 Bill, was on the NCOP's Order Paper for that day), the Bill and amendments, when received, would not be referred to a committee notwithstanding Rule 270, but would "be put directly to the House for decision later today".

Later that afternoon the Speaker announced that she had been informed that the NCOP had indeed passed the Bill subject to proposed amendments. Accordingly, the amendments were individually put to the House and agreed to, whereafter the Bill incorporating the amendments was put and agreed to, with three parties dissenting (Minutes, 26 June 2002).

21. RETAGGING AND CONSEQUENT RE-INTRODUCTION OF BILL

On 14 February, at the request of the Minister of Housing, the *Disestablishment of South African Housing Trust Limited Bill*, was introduced as a section 76 Bill in the National Council of Provinces by the Select Committee on Public Services. In terms of Joint Rule 160(4), however, the Joint Tagging Mechanism found that the Bill:

- (a) was not a section 76 Bill;
- (b) included no provision to which the procedure prescribed in section 76 of the Constitution applies;
- (c) was in breach of section 73(3) of the Constitution in that it had been incorrectly introduced in the wrong House; and
- (d) was thus constitutionally out of order.

The Bill, therefore, could not be proceeded with in the National Council of Provinces.

In terms of Joint Rule 160(6) the Bill was constitutionally out of order. According to Joint Rule 162 the Bill could not be proceeded with, but could be re-introduced in the appropriate House. On 5 March, the Minister of Housing introduced the Bill as a section 75 Bill in the National Assembly.

22. NEW CHAIR – JOINT STANDING COMMITTEE ON INTELLIGENCE

In terms of section 2(4) of the Intelligence Service Control Act, No 40 of 1994, the Speaker and the Chairperson of the National Council of Provinces acting with the concurrence of the President, who shall act after consultation with the leaders of the political parties represented on the Committee, appoint a member of Parliament who is not one of the 15 members appointed on the basis of proportional representation, to be the Chairperson of the Joint Standing Committee on Intelligence.

Dr S C Cwele was appointed as chairperson of the Joint Standing Committee on Intelligence with effect from 22 March 2002. Dr Cwele's appointment was announced in the ATC of 28 March 2002 by both the Speaker and Chairperson.

23. CHAIRPERSON OF PORTFOLIO COMMITTEE CALLED TO ADDRESS RULES COMMITTEE ON LACK OF PROGRESS WITH BILL

The introduction of the *Immigration Bill* [B79-2001] without being certified by the State Law Advisers was reported in *Issue 4, Item 28*. Owing to deadlines set by the Constitutional Court, which had declared sections of the *Aliens Control Act* invalid, it was necessary to adopt the Bill by 2 June 2002.

Delays in processing the Bill by the Portfolio Committee on Home Affairs resulted in the Assembly Rules Committee calling on the chairperson of the portfolio committee to address a special meeting of the Rules Committee on 13 March. The chairperson having done so and having submitted a draft programme of activities of the committee in relation to the Bill, the Rules Committee resolved that a special meeting of the Assembly Programme Committee would be held on 19 March to consider the programme of the portfolio committee in regard to the Bill, and that the Bill should be ready for consideration by the Assembly on 6 May.

At the relevant meeting of the Assembly Programme Committee on 19 March, it was decided that the portfolio committee must table its report on the Bill on 2 May.

Later the portfolio committee was granted additional time and subsequently reported on the Bill on 16 May.

During the Second Reading debate on 17 May (the Rule on a 3-day delay between tabling and the debate having been waived by resolution of the House) the Minister of Home Affairs, in introducing the debate, mentioned his reservations about the extensive changes effected to the Bill by the Assembly committee before second reading.

The Bill was agreed to by the House. It was thereafter passed by the NCOP on 23 May and assented to and signed by the President on 30 May.

24. IMPLEMENTATION OF ROME STATUTE OF INTERNATIONAL CRIMINAL COURT BILL [B42D-2001]

(a) *Designation of Republic as State in which sentences of imprisonment can be served for crimes of international concern*

On 17 July 1998 the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, at which South Africa was represented,

adopted the Rome Statute on the International Criminal Court (“the Statute”). This was an important step towards the establishment of a permanent international criminal justice system which will complement national laws of States in the prosecution of individuals for crimes of international concern, namely genocide, crimes against humanity and war crimes. South Africa has already signed the Statute and ratified it on 10 November 2000.

The Implementation of Rome Statute of the International Criminal Court Bill, passed by the NA with NCOP amendments on 26 June, provides that any person who commits one of the crimes referred to above in the Republic is liable on conviction thereof to a fine or imprisonment, including imprisonment for life. A person who commits such a crime outside the Republic is deemed to have committed that crime inside the Republic if he or she is a South African citizen or is ordinarily resident in the Republic, if he or she is in the Republic after the commission of the crime or if the crime has been committed against a South African citizen or resident.

Article 103 of the Statute envisages that States should indicate their willingness to accept sentenced prisoners to serve their terms of imprisonment in their prisons. States which are willing to accept sentenced prisoners will be placed on a list by the International Criminal Court. In order to give effect to this arrangement in the Statute, clauses 31 and 32 of the Bill provide, *inter alia* that the Minister for Correctional Services must, in consultation with the Cabinet and with the approval of Parliament, decide whether South Africa should be placed on the list of States willing to accept sentenced prisoners and determine the conditions pertaining to such acceptance.

(b) Members not exempted from criminal responsibility in relation to crime of international concern

Clause 27(1) of the Implementation of the Rome Statute of the International Criminal Court Bill makes official capacity irrelevant to criminal responsibility or reduction of sentence in relation to a crime of international concern. Official capacity refers to persons serving as Head of State or Government, a member of Parliament or an elected representative or a government official. Under no circumstances shall such a person be exempt from criminal responsibility under this Statute. Further, Clause 27(2) clearly states that “immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person”.

It follows therefore that members of the South African Parliament cannot invoke our national (or international) laws with regard to immunity in cases involving criminal liability in

relation to crimes of international concern. They are now subject to the rules, procedures and provisions of the International Criminal Court, that take precedence in such matters.

25. POWERS AND PRIVILEGES OF PARLIAMENT BILL

The Ad Hoc Committee on Powers and Privileges of Parliament was established by House resolution on 5 April 2001 (see *Item 8, Issue 4*). The NCOP appointed an ad hoc committee with similar powers and functions on the same date. In terms of the NA resolution, the ad hoc committee was to complete its task by 7 September 2001. On 11 September 2001 the House adopted a motion moved by the Chief Whip of the Majority Party extending the deadline for completion of this task to 2 November 2001. The committee issued an interim report on 2 November (ATC 13 November 2001) asking for further extension of its deadline. The report was adopted without debate and the committee's deadline was extended to 31 March 2002.

The committee issued another interim report on 18 March 2002 (ATC 18 March), *inter alia* indicating that the committee was hoping to finalise and adopt the final draft of the Bill on 3 May 2002 for submission to the National Assembly. On 20 March, the House adopted a motion by the Chief Whip of the Majority Party, extending the deadline for completion of the task of the committee to 31 May. On 31 May, the House adopted a motion by the Chief Whip of the Majority Party, further extending the deadline for completion of the task of the committee to 20 June. The committee issued a second interim report in which it requested the House to extend its deadline to a date to be determined by the Programme Committee for reporting to the House and for introducing the final Bill (ATC 20 June). The Committee's request for the further extension was approved by the House on 24 June 2002.

26. REPORT OF PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND AFFAIRS ON KWAZULU-NATAL CANE GROWERS' ASSOCIATION ACT REPEAL BILL [B48-2001]

The Bill seeks to repeal the KwaZulu Cane Growers' Association Act (Act No. 12 of 1981). In terms of the Act, a levy was imposed on KwaZulu small-scale cane growers.

On 20 May, the Portfolio Committee on Agriculture and Land Affairs reported on a disagreement between the KwaZulu-Natal Cane Growers' Association and the South African Cane Growers (whose membership includes members of the aforementioned Association) over the balance of the money collected as levies by the said Association, as well as on the purposes for which the levies were used. In its report, the Committee recommended that the National Assembly request the Auditor-General



to conduct a full audit of the financial books and assets of the KZN Cane Growers' Association pertaining to the levies collected by the Association in terms of the KZN Cane Growers' Association Act and that a report be presented to the House. The Committee's report and the Bill were adopted by the House on 23 May.

On 21 June, the Auditor-General wrote to the Speaker informing her as follows:

- (a) The KZN Association is not a listed public entity and during its existence was never audited by the Auditor-General;
- (b) The Portfolio Committee could compel the Association to produce documents, including the audit reports of the auditors of the entity; and
- (c) Once the committee has obtained the required information, and some questions remain unanswered, the Office of the Auditor-General could possibly analyse the information obtained and provide technical advice to the Portfolio Committee.

The Speaker wrote to the Auditor-General informing him that his suggestion that a House Committee consider using its extensive powers to obtain the required information was under consideration.

27. LEGISLATIVE PROCEDURES AND LEGISLATION AFFECTING PARLIAMENT

Appointment to Board of Directors of Land and Agricultural Development Bank

The Land and Agricultural Development Bank Bill [B12B-2002], passed by the National Assembly on 21 May, made provision in clause 4(2) for a role for parliamentary committees in government.

In terms of clause 4, the Minister for Agriculture and Land Affairs must appoint a Board of Directors to manage the business of the Land and Agricultural Development Bank. Whenever it becomes necessary to appoint a member of the Board the Minister must, in addition to other measures, issue a written invitation to the relevant parliamentary committees, calling for the nomination of appropriate candidates.

28. APPOINTMENT OF TASK GROUP ON SEXUAL ABUSE OF CHILDREN

On 14 November 2001, the following resolution, moved without notice by the Acting Chief Whip of the Majority Party, was agreed to by the National Assembly: That the House -

- (1) notes the shockingly high incidence of rape and abuse of children and babies across the country;
- (2) notes that South Africa is not only a signatory of the UN Convention on the Rights of the Child, but has also passed some of the world's most progressive

laws aimed at promoting and protecting those rights;

- (3) believes that each incident of rape and abuse of children is not simply an isolated event, but an intrinsic part of the historic abuse of children that has manifested itself over the centuries in -
 - (a) child slavery;
 - (b) child labour;
 - (c) child pornography;
 - (d) child trade;
 - (e) hunger, poverty and disease;
 - (f) abuse; and
 - (g) rape;
- (4) agrees to take the fight to the perpetrators by -
 - (a) holding public hearings on child rape and abuse to analyse its causes, and inform our counterstrategies appropriately;
 - (b) mobilizing all our communities and the public sector to fight and expose this scourge; and
 - (c) campaigning for the harshest punishment permissible under the Constitution;
- (5) reminds South Africans that this unacceptable social behaviour goes against the grain of the cultural traditions of all our people; and
- (6) calls on all South Africans, as individuals, sectors and communities, to unite in the fight against child rape and abuse.

In order to give effect to paragraph (4) of the resolution, the Speaker, after consultation, announced on 11 February 2002, the appointment of a task group consisting of 14 members, two from each of the committees that had a direct interest in the subject. The committees represented in the task group were the Portfolio Committee on Education; Portfolio Committee on Health; Portfolio Committee on Justice and Constitutional Development; Portfolio Committee on Safety and Security; Portfolio Committee on Social Development; Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons; and the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women.

The task group was instructed to conduct public hearings and, with reference to paragraph (4) of the resolution, report to the House by 15 March. The public hearings took place from 11 to 13 March, while a closed meeting of the task group on 14 March was devoted to submissions by children who had been victims of sexual abuse.

On 18 March, the task group tabled an interim progress report and proposed that a final report be tabled in the second parliamentary term with full recommendations for appropriate action to be taken in response to the issues raised in the report. A two-hour debate on the sexual abuse of children was held on 19 March, and the interim report of the task group adopted by the House.

The final report of the task group, containing extensive recommendations for action by, *inter alia*, the Executive with regard to the sexual abuse of children, was tabled on 14 June, and adopted by the House on 24 June, after a further two-hour debate. On the recommendation of the Programme Committee the debate had been scheduled to fall within national broadcasting time to ensure that the public would be informed about the findings of the task group. The recommendations adopted were subsequently communicated to the relevant roleplayers by the Office of the Speaker.

BUDGETARY MATTERS & MONEY BILLS

29. BUDGET REFERRED TO FINANCE COMMITTEE FOR EXTENDED PERIOD

The Rules provide that the main *Appropriation Bill*, upon its introduction, is referred to the Portfolio Committee on Finance, which must complete its consideration of the Budget within a maximum of seven consecutive Assembly working days (Rule 290(3)). In 2001, the House by resolution extended the period available to the Committee to 17 consecutive working days and the Committee reported in 14 days (see *Item 43, Issue 4*). On 19 February, the House by resolution extended the time available to the Committee on the 2002 budget to 15 consecutive working days. The Budget was introduced on 20 February and the Committee reported on 8 March, i.e. after 12 days.

30. REFERRAL OF MONEY AND FINANCIAL BILLS BY RESOLUTION TO COMMITTEES OTHER THAN THE FINANCE COMMITTEE

All money Bills, upon introduction, are in terms of the Rules referred to the Portfolio Committee on Finance for consideration and report (Rule 290(1)). However, based on subject matter, money bills are occasionally by House resolution referred to other committees (see *Item 44, Issue 4*). In this way, the *Private Security Industry Levies Bill* was on 15 March, referred by the House to the Portfolio Committee on Safety and Security, “the Committee to have the power to confer with the Portfolio Committee on Finance” (*Minutes, 15 March*). The Committee reported on the Bill on 22 May).

RELATIONS WITH OTHER BODIES & PARLIAMENTS

31. PARLIAMENTARY OBSERVER MISSION TO ZIMBABWE

On 14 February, the House adopted a motion

by the Chief Whip of the Majority Party noting that the South African Parliament was to send a delegation to observe the presidential elections in Zimbabwe which would take place from 9 to 10 March. In accordance with a further motion adopted on 21 February the House expressed its belief that the presence of the multi-party Parliamentary Observer Team in Zimbabwe would make a constructive contribution towards ensuring that the election process was free and fair. The party breakdown of the delegation was ANC - 14; DP - 1; IFP - 1; NNP - 1; UDM - 1; ACDP - 1

Ms N N Mapisa-Nqakula, Chief Whip of the Majority Party in the National Assembly, was designated leader.

In terms of the resolution, the delegation was to observe the election campaign in the run-up to the elections, the casting of votes during the elections and subsequently the counting of votes, and after completion of its mission, to present a full report to the House.

The delegation’s report was tabled on the ATC of 19 March and considered by the House on the same day. The Chief Whip of the Majority Party without notice moved a resolution *inter alia* stating that the elections “are a credible expression of the will of the people of Zimbabwe.” Amendments moved by the DP and the ACDP not to endorse the elections as free and fair were rejected and the motion moved by the Chief Whip of the Majority Party was adopted after a division.

32. WORKING GROUP ON THE AFRICAN UNION

In his address to the National Assembly on “a new partnership for Africa’s development” on 31 October 2001, the President of the Republic of South Africa asked Parliament to assist in giving more content and meaning to the African Union. On 16 November 2001, the National Assembly, by House resolution, established the Working Group on the African Union to consider the implementation of the Constitutive Act of the African Union.

On 10 February 2002, the names of the 10 members of the Working Group including the Deputy Speaker and Speaker of the National Assembly, were published in the ATC. The Working Group, which is chaired by the Speaker, has so far tabled four reports as follows:

First report - 27 February 2002

Second report - 12 March 2002

Third report - 18 March 2002

Fourth report - 20 May 2002

The 1st, 2nd and 3rd reports of the Working Group on the AU were adopted on 20 March 2002. The 4th report was adopted on 30 May 2002. On the same day, a debate entitled “Afrika, the time has come! Afrika, ke nako!” was held.

The Working Group has held two seminars in cooperation with research institutes, as follows:



Introductory seminar - 1 and 2 March 2002
Second seminar - 1 June 2002

The relationship between the Working Groups of both Houses has always been informal. On occasions, joint meetings have been held. However, on 7 June, the House on the motion of the Chief Whip of the Majority Party resolved that the National Assembly Working Group should confer with the National Council of Provinces Working Group.

33. SADC PF OBSERVER MISSION TO ZAMBIA

The South African Parliament received an invitation from the SADC Parliamentary Forum to send delegates to form part of the Election Observer Mission for the 2001 Presidential, Parliamentary and Local Government Elections in the Republic of Zambia from 10-30 December 2001. Ms P Themba from the National Council of Provinces represented the South African Parliament.

The Election Observation Mission to Zambia which was headed by the Speaker of the National Assembly of Lesotho, Hon. Ntlhoi Motsamai, comprised 26 members of Parliament drawn from Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Tanzania, South Africa, Swaziland and Zimbabwe.

The Election Observer Mission's mandate was primarily to assess the integrity of the electoral process and support the expression of the will of all Zambians in the democratic process.

The Forum's observation programme in Zambia was in five phases, namely, Voter registration, Orientation workshop, Pre-election phase, Election phase, Post election phase (declaration of results).

In accordance with established practice, the Mission deployed teams in all the nine administrative provinces of Zambia and submitted daily reports of their activities and observations to the Mission headquarters in Lusaka.

The final report of the SADC PF Election Observation Mission was tabled on the ATC of 8 March.

STATUTORY FUNCTIONS OF THE NATIONAL ASSEMBLY

– **IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT BILL** see "Legislation and committees" (Item 24)

34. MEDIA DEVELOPMENT AND DIVERSITY AGENCY BILL

Clause 4 of the Bill provides that, of the 9 Agency Board members, 6 are appointed by the President on the recommendation of the NA. Clause 6 of the Bill also provides that a member of the Board may be removed only on a finding

to that effect by the NA and the adoption by the Assembly of a resolution calling for such removal. As the removal of the members is dependent upon a decision of the House, they are subject to the protection of the National Assembly Rule 66.

Rule 66 provides that no member shall reflect upon the competence or honour of a judge of a superior court, or of the holder of an office (other than a member of the Government) whose removal from such office is dependent upon a decision of the House, except upon substantive motion in the House alleging facts which, if true, would in the opinion of the Speaker *prima facie* warrant such a decision.

The Bill was adopted by the NA on 15 May, and by the NCOP on 6 June.

35. TERM OF AMBASSADOR EXTENDED BEYOND PENSIONABLE AGE

On 13 March, the Minister for Public Service and Administration, at the request of the Minister of Foreign Affairs, wrote to the Speaker requesting Parliamentary approval to extend the service of the South African High Commissioner to Botswana, Ms Lujabe-Rankoe, for 3 years beyond the pensionable age of 65. Section 16(7) of the Public Service Act, 1994 stipulates that if it is in the public interest to retain an officer, other than a member of the service or an educator or a member of the Agency or the Services, in his or her post beyond the age at which he or she is required to be retired in terms of subsection (1), he or she may, with his or her consent and with the approval of the relevant executing authority, be so retained from time to time for further periods which shall not, except with the approval of Parliament granted by resolution, exceed in the aggregate 2 years.

On 13 June, the Speaker tabled the Minister's letter in the National Assembly and referred it to the Portfolio Committee on Public Service and Administration for consideration and report and to the Portfolio Committee on Foreign Affairs for consideration. The committees had to confer and the Portfolio Committee on Public Service and Administration had to report by 25 June. On 25 June, the Portfolio Committee on Public Service and Administration recommended that the services of the High Commissioner be retained until 31 August. On 26 June, the National Assembly adopted the report and on the same day the National Council of Provinces adopted a similarly worded recommendation.

36. PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND AFFAIRS APPROVES IMPLEMENTATION OF STATUTORY MEASURES

In terms of section 15 of the Marketing of Agricultural Products Act (Act No. 47 of 1996) no levy shall be introduced, amended or

repealed unless the parliamentary committees have been consulted regarding such introduction, amendment or repeal.

On 12 February, the PC on Agriculture and Land Affairs reported that it had considered the application by the National Agricultural Marketing Council for the implementation of statutory measures in the sorghum industry and approved the recommendations of the Council (see also *Item 53, Issue 4*).

On 23 April, the Portfolio Committee on Agriculture and Land Affairs, having considered the application by the National Agricultural Marketing Council for the implementation of the statutory measures in the Winter Cereal Industry, approved the recommendations of the council, in terms of section 15 of the Marketing of Agricultural Products Act, 1996 [ATC, 3 May 2002]. The committee's report was tabled for information.

37. APPOINTMENT OF AD HOC COMMITTEE ON FILLING OF VACANCY IN GENDER COMMISSION

In February, the Director-General of the Department of Justice and Constitutional Development informed Parliament that the term of office of one member of the Commission on Gender Equality would expire on 3 March. In terms of section 193(4) of the Constitution, Act 108 of 1996, the President on the recommendation of the NA must appoint the members of the Commission on Gender Equality. The Assembly must recommend persons nominated by an Assembly committee in terms of section 193(5) of the Constitution.

On 20 March the House appointed an ad hoc committee to nominate persons to fill the vacancy that had occurred. The ad hoc committee was instructed to complete its task by 24 May. However, this date was on 24 May extended to 24 June and on 24 June again extended to 21 August.

38. AD HOC COMMITTEE ON PUBLIC PROTECTOR

The term of office of the current Public Protector was to come to an end on 30 September 2002.

On 7 May, the House, in accordance with section 193(5) of the Constitution, appointed an *ad hoc* committee to nominate a person for appointment as Public Protector. The committee consisted of 27 members, composed as follows: ANC - 14; DP - 2; all other parties - 1 each. The committee had to report to the House by 21 June.

On 24 June, the House adopted a resolution that, notwithstanding the resolution adopted on 7 May, the date by which the ad hoc Committee on Appointment of Public Protector had to complete its task be extended from 21 June to 8 August.

39. APPOINTMENT OF INDEPENDENT COMMUNICATIONS AUTHORITY OF SA (ICASA) MEMBERS

On 21 February, the House adopted a motion requesting the Portfolio Committee on Communications to make recommendations to the House for the filling of vacancies in accordance with section 5 of the Independent Communications Authority of South Africa Act (Act No. 13 of 2000), the Portfolio Committee to report to the House by 3 May 2002.

The Committee's Report recommending 3 persons for appointment was published on the ATC of 2 May.

On 7 May, the House adopted the Report after a division.

40. APPOINTMENTS TO HUMAN RIGHTS COMMISSION

On 14 March, the National Assembly altered the terms of reference of the ad hoc committee appointed in 2001 to nominate persons to fill pending vacancies on the South African Human Rights Commission (see *Item 52(b), Issue 4*). Three vacancies had occurred, and in addition the term of office of all commissioners was to expire in September 2002.

The new terms of reference required the committee to report by 6 May on nominations of persons to fill the three current vacancies, and by 25 June on its nominations to fill the vacancies caused by expiry of terms of office. The committee reported on 7 June (ATC 11 June) requesting a further extension of time to 25 June for all vacancies. This report was adopted and a final report dated 21 June, nominating seven full-time and four part-time commissioners, was adopted on 26 June by a majority of the members of the Assembly, as required by the Constitution.

41. ESTABLISHMENT OF COMMISSION FOR THE PROMOTION AND PROTECTION OF THE RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

A report of the Portfolio Committee on Provincial and Local Government on the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill* [B 62 - 2001] was tabled in the ATC of 14 March. The Bill was subsequently debated and agreed to in the House on 18 March. The Report indicated that the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities can serve a vital role in providing for the expression of cultural, religious and linguistic rights in a way that fosters nation-building, and that the Commission would represent a significant step in consolidating South Africa's transition from a divided past to a common future that acknowledges the country's diversity and unity. The Commission is the only institution

“supporting constitutional democracy”, provided for in Chapter 9 of the Constitution, that had not yet been established. The Report proposed that 24 September – Heritage Day – might be a suitable day for the Commission to be launched.

42. RATIFICATION OF LEGAL AID GUIDE, 2001

The *Legal Aid Amendment Act (1996)* provides in Section 3A that the Legal Aid Board must produce a guide, in consultation with the Minister of Justice, specifying particulars of the scheme under which legal aid is rendered and the procedure for its administration. The Legal Aid Guide must be tabled in Parliament annually for ratification and is then binding on the Board. In compliance with the Act, the *Legal Aid Guide, 2001*, was tabled in Parliament on 4 February, and referred to the Portfolio Committee on Justice and Constitutional Development. On the recommendation of the Committee, the Assembly ratified the Guide on 15 March. The NCOP ratified the Guide on 20 March.

43. DISASTER MANAGEMENT BILL: ROLE FOR PARLIAMENT [B 21-2002]

The Disaster Management Bill, 2002, was introduced on 2 May. Clause 25(3)(b) of the Bill provides that if a national organ of state fails to submit a copy of its disaster management plan or of any amendment to the plan, to the National Disaster Management Centre, the Centre must report the failure to the Minister, “who must take such steps as may be necessary” to ensure that such plan is submitted to the National Centre, “including reporting the failure to Parliament”. Further, Clause 59(4) stipulates that any regulations made by the Minister in terms of this legislation must be referred to the National Council of Provinces.

44. NATIONAL RAILWAY SAFETY REGULATOR BILL [B7-2002]: ROLE FOR PARLIAMENT

The National Railway Safety Regulator Bill, 2002, was introduced on 28 February and passed by the National Assembly on 30 May. Clause 8(7)(b) of the Bill, provides that “a panel, appointed by the Minister, which may include representatives of the relevant committees of Parliament, must compile a shortlist from which the Minister may appoint persons to the relevant positions on the Board”

of Directors of the Regulator. Clause 20(2) stipulates that the Minister must table the annual report submitted to him or her in terms of subsection (1) in Parliament within 14 days –

- (b) of receipt thereof if Parliament is in session; or
- (c) after the commencement of its ensuing session, if Parliament is not in session.

Clause 51(3)(d) stipulates that, in making regulations, the Minister must –
on request by the National Assembly or the National Council of Provinces or a committee of the National Assembly or the National Council of Provinces, report on the extent to which a specific public comment on the proposed regulations has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account.

Clause 52 provides that the Minister must, within 30 days after making any regulations, table the regulations in the National Assembly and the National Council of Provinces.

CHAMBER

45. DISPLAY OF OBJECT AT JOINT SITTING OF PARLIAMENT

Unique archaeological fragments (engraved ochre pieces and bone tools from the cave at Blombos in the Southern Cape) which are said to reveal that people in Africa were probably the first modern thinkers in the world, were displayed beside the podium when the President delivered his State of the Nation Address to a Joint Sitting of Parliament on 8 February.

This was the first time that such an exhibit had been brought to Parliament and placed in the National Assembly Chamber during a sitting. The fragments were subsequently placed on display for a short period in the lobby to the Old Assembly Chamber.

The President referred to the fragments in his address.

STAFF APPOINTMENT

46. APPOINTMENT OF DEPUTY SECRETARY TO PARLIAMENT

On 20 March, the House, on the recommendation of the Speaker and the Chairperson of the NCOP, appointed Mr M Coetzee as Deputy Secretary to Parliament with effect from 15 April.

ABBREVIATIONS USED

ATC	Announcements, Tablings and Committee Reports (title of a daily parliamentary document)	<i>Parties:</i>	
AU	African Union	ANC	African National Congress
Minutes	Minutes of the National Assembly	DP	Democratic Party
NA	National Assembly	IFP	Inkatha Freedom Party
NCOP	National Council of Provinces	NNP	New National Party
PC	Portfolio Committee	UDM	United Democratic Movement
SAHRC	South African Human Rights Commission	ACDP	African Christian Democratic Party
SCOPA	Standing Committee on Public Accounts	FF	Freedom Front
		UCDP	United Christian Democratic Party
		PAC	Pan Africanist Congress of Azania
		FA	Federal Alliance
		AEB	Afrikaner-Eenheidsbeweging
		MF	Minority Front
		AZAPO	Azania People's Organisation



NOTES



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