

Parliament of the Republic of South Africa



PROCEDURAL DEVELOPMENTS IN THE NATIONAL ASSEMBLY

Third Session – Second Parliament
January to December 2001

4

Produced with the assistance of:



The European Union
Parliamentary Support Programme
Tel: (021) 422-0080



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 2001. Accordingly this fourth issue covers the whole of 2001.

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PRESIDING OFFICERS AND OTHER OFFICE BEARERS

1. MOTION OF SUPPORT FOR SPEAKER

On 14 May an open letter to the Speaker by the leader of the UDM, Gen BH Holomisa, was published in the Press alleging improper interference by the Speaker into the parliamentary process of investigating the procurement of arms by the Government, and bias in conducting the business of the House.

On the following day, the Speaker made a statement from the Chair asking the House to examine the allegations and determine what action it wished to take, possibly considering the matter of privilege. She pointed out that such grave charges could have serious consequences and attacked the integrity of the House and Parliament. She called upon Members to consider and determine how the matter should be pursued.

On 23 May the matter was discussed at the Chief Whips' Forum. It was agreed that it was necessary to take action to resolve the matter, since the allegations had been widely publicised and were damaging to the Office of Speaker and the image of Parliament. The following options were considered:

Substantive motion: This would mean that the matter could be debated on the floor of the House, and amendments could be moved. The question would be decided by the House, which would possibly dispose of the matter.

Referral to a committee by House resolution; one of the following:

- The Rules Committee, with the Speaker recusing herself as Chair;
- the Chief Whips Forum, which would have to be assigned this function notwithstanding the Rules, which do not cover such a function. The Speaker would have to recuse herself as a member;
- the Rules Subcommittee on Powers and Privileges, which would also have to be specifically assigned this function by House resolution and be instructed to report directly to the House. Here, too, the Speaker would have to recuse herself;
- a task group appointed from among its members by one of the above structures; or
- an *ad hoc* committee, with clear terms of reference, composed either proportionately in accordance with the numerical strength of parties; or modelled on the Disciplinary Committee and consisting of one member per party, presided over by the Deputy Speaker; or a committee taking proportionality into account, but giving no party an absolute majority. The resolution appointing the committee should specify names, to avoid the Speaker having to appoint members.

The Chief Whips Forum having considered these options, on 7 June the Chief Whip of the Majority Party moved: That the House –

(1) noting –

- (a) a letter widely circulated outside this House and authored by BH Holomisa, MP, on behalf of and in his capacity as leader of the United Democratic Movement;
 - (b) the unsubstantiated allegations contained in the letter and the media, concerning the conduct of the Speaker;
 - (c) that this is the first ever Parliament in a democratic dispensation and the first ever South African Speaker functioning in a democratic and multi-party representative House, guided by an internationally admired and challenging constitutional framework;
 - (d) that, as we are a new democratic order, it can be expected that our new democratic institution will be faced with new and complex procedural and constitutional issues; and
 - (e) that it is internationally regarded as good practice and convention that in the event of a member wishing to criticise a Presiding Officer that it be done through a substantive motion tabled in the House and not through an attack on the Presiding Officer outside the House; and
- (2) believing that the Speaker –
- (a) by virtue of the office she occupies, must play a guiding role in the development of Parliament and the formulation of appropriate procedures and rules; and
 - (b) has exercised her role in a manner consistent with the strengthening of Parliament and all representatives within it,

expresses its support for and appreciation of, the role played by the Speaker in protecting and promoting the interests of Parliament and in ensuring the participation of all parties represented in Parliament.

An amendment to the motion was moved by the Chief Whip of the Opposition, as follows: To omit all words after "That" and to substitute: "the House", noting that –

- (1) serious allegations have been made against the Speaker which must be substantiated or refuted;
- (2) the Speaker herself is on record as saying that she favoured an all-party committee without an ANC majority; and
- (3) the outcome of a debate on a confidence motion would be determined by the ANC, irrespective of the arguments and allegations advanced by other parties, and would weaken Parliament and the Office of the Speaker instead of strengthening them,

therefore resolves to appoint an all-party committee to investigate the allegations and the appropriateness of the existing relationship between the Speaker, the majority party and the executive, this committee to report thereon to the House on or before 29 June 2001." After a debate, the amendment was voted down and the majority motion carried after a division.

2. PARLIAMENTARY COUNSELLOR REPLACED

The Speaker announced on 25 January that Ms SC van der Merwe, MP, had been designated

Parliamentary Counsellor to the President in terms of the Rules of the National Assembly with effect from 24 January 2001. Ms Van der Merwe replaced Mr C Nqakula, MP, who had been appointed Deputy Minister of Home Affairs [ATC 25 January].

PROCEDURAL AND RELATED ISSUES

- **INTRODUCTION OF BILL NOT CERTIFIED BY STATE LAW ADVISERS** see "Legislation and committees"
- **SAME QUESTION RULE** see *Filling of vacancies in commissions* under "Statutory functions of the National Assembly"
- **JOINT COMMITTEE OF PARLIAMENT IMPEDED IN ITS WORK** see "Legislation and committees"
- **INTRODUCTION OF BILLS BY COMMITTEES** see "Legislation and committees"

3. SPEAKER'S DEBATES

On 8 March – International Woman's Day – the Assembly debated the following subject as a Speaker's debate: "Parliamentary follow-up to Beijing +5". The debate was introduced by Ms P Govender, MP, the Chairperson of the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women.

On 25 May – African Unity Day – the Assembly debated the subject of "African unity" as a Speaker's Debate. The debate was introduced by Mr M Ramgobin, MP.

(See *Item 20, Issue 1* for a discussion of Speaker's Debates.)

4. SEQUENCE OF PARTY MOTIONS

It was decided at the Programme Committee on 13 September that Whips would agree on a sequence for party motions. Agreement was reached at the Chief Whips' Forum on 3 October that the sequence would be changed to correspond with the sequence in which notices of motion are called for in the House, and questions are asked during Question Time, *viz* ANC, DP, IFP, ANC, NNP, UDM, ANC, ACDP/PAC/ME, FF/UCDP/FA/AZAPO.

5. DECLARATIONS ON RACISM

(a) Signing and tabling of Declaration on the United Nations World Conference Against Racism and House resolution thereon

On 19 March the Speaker tabled the Declaration (entitled "Tolerance and Diversity: A vision for the 21st Century") on the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. At the same time she announced that following a request from the Executive Co-ordinator for the World Conference

against Racism (WCAR) for the Speaker to sign the World Conference against Racism Declaration "in recognition of the historic role that the South African National Assembly has been playing since the end of Apartheid", she had signed the Declaration (ATC p214).

The statement was followed by a debate on a resolution moved by the Chief Whip of the Majority Party to declare the decade 2001 to 2010 as the Decade for National Mobilisation against Racism. In making some introductory remarks, the Speaker stated that the request that she sign the declaration was "a recognition of and tribute to the work of members of the first democratic Parliament elected in 1994, and also to the contribution of of all those who have been members of this second Parliament."

The resolution was adopted together with amendments which inserted in the resolution a reference also to sexism and an instruction to the Programme Committee to schedule a debate on poverty and HIV/Aids before 6 April.

As a result of scheduling difficulties, it was only on 10 May that the House discussed as a subject for discussion: "The fight against poverty and HIV/Aids is an urgent national priority".

(b) Conference on racism organised by Inter-Parliamentary Union in Durban and debate on Final Declaration

On the occasion of the United Nations World Conference Against Racism held in Durban in August/September, the Inter-Parliamentary Union held a parallel one-day conference for Members of Parliament on 2 September, on the subject "Action of parliaments and their Members in the fight against racism, racial discrimination, xenophobia and related intolerance". Hosted by the South African Parliament and chaired by the Speaker, the conference was attended by more than 300 members of over 50 Parliaments and culminated in a Final Declaration which was presented to the UN Conference on 4 September by the Speaker on behalf of the Inter-Parliamentary Union.

The Declaration, whereby Members attending the conference pledged to actively combat racism and intolerance in various ways, was tabled in the National Assembly (ATC 25 September). The House debated the Final Declaration as a subject for discussion on 18 October. The Speaker opened the debate with a speech from the floor.

On 23 October a motion dealing with xenophobia was moved without notice by the Acting Chief Whip of the Majority Party and adopted without debate. In terms of the motion, the House recognised that Parliament and its Members had a special responsibility to address racism, xenophobia and related intolerances, and committed itself to fighting xenophobia.

(c) Debate on report on World Conference Against Racism

On 7 November the House debated the following Subject for Discussion: The Report by the Minister

of Foreign Affairs on the World Conference Against Racism. The debate had initially been scheduled for 16 October but stood over.

See also *Unparliamentary language*.

6. UNPARLIAMENTARY LANGUAGE: RACIAL INSULTS

On Thursday, 11 October, while the Deputy Chairperson of Committees was giving a ruling on remarks with a racial connotation made during Question Time the previous week, further remarks were made, giving rise to further points of order that the remarks were racist. Arising out of this, the Chief Whip of the Opposition, Mr DHM Gibson, asked the Deputy Chairperson of Committees, who was in the Chair at the time, to give a general ruling on racial insults in Parliament. He subsequently also wrote a letter to the Speaker in this regard.

The Deputy Chairperson, in a written response to Mr Gibson, pointed out that in her speech from the floor on 18 October, in which she opened the debate on the Declaration of Racism emanating from the IPU conference on racism on 2 September, the Speaker had dealt comprehensively with the issues Mr Gibson had raised in his letter.

In discussing the action Parliament and individual Members can and should take in the fight against racism, the Speaker had stated that in view of our history, it was incumbent on Members actively to take the lead to rid our society of its racist heritage. She emphasised that, also when participating in debates in the House, Members had a unique opportunity actively to inculcate and promote the values of tolerance, diversity and inclusivity, and they should be setting standards in that regard. Rather than be concerned about whether a particular remark was unparliamentary, Members should be sensitive to the message they were conveying.

7. DEBATES ON MATTERS OF PUBLIC IMPORTANCE AND URGENT PUBLIC IMPORTANCE

(a) Guidelines for approving requests

At a meeting of the National Assembly Rules Committee on 2 March, the Speaker presented the criteria she applied in considering requests for debates on matters of public importance and urgent public importance (Rules 103 & 104) and asked the committee to consider whether it was necessary to put an approved set of criteria into the Rules. No decision was taken, but it was argued that the rule as it stood gave the Speaker the discretion to decide; if criteria were included in the Rules it would impede the flexibility now afforded her. The Speaker said she felt the criteria may need to be expanded.

The Speaker stated that where she found merit in a request, she was obliged to consult the Leader of Government Business, after which the matter went to the programming whips to find a slot for the debate.

At a second meeting of the National Assembly

Rules Committee, on 21 August, an expanded document was distributed reflecting details of current criteria applied (see below). Parties were invited to comment on the criteria.

In addition to the primary requirement that the subject must be topical and relate to a specific matter of recent occurrence, the guidelines were as follows:

1. Criteria for debates on matters of public importance (Rule 103 of the National Assembly)

- The request must deal with a matter for which the Government can be held responsible.
- The matter must be definite and specific.
- The request must not deal with more than one matter.
- The request will not be granted if the matter can be dealt with by some other means in the near future.
- The *sub judice* rule applies.
- The rule of anticipation applies.
- If approved, the date and time of the debate will be subject to the availability of the responsible Minister.

2. Criteria for debates on matters of urgent public importance (Rule 104 of the National Assembly)

- The subject matter must be of so serious a nature that it requires immediate attention.
- The subject must relate to a specific matter of recent occurrence, and not to a general state of affairs or to a matter of policy.
- Such a request should only be allowed under very special circumstances (eg a sudden emergency).
- The request must not deal with more than one matter.
- The request should not be granted if the matter can be dealt with by some other means in the near future.
- The request must concern a matter for which the Government can be held responsible or that comes within the scope of Ministerial action.
- The matter must be raised at the earliest opportunity.
- Adequate notice must be given to the responsible Minister.
- The *sub judice* rule applies.

(b) Debate requested by parties and by more than one Member

Rules 103 and 104, concerning matters of public importance and urgent public importance respectively, specify that “a private Member” may request the Speaker for such a debate. However, a letter to the Speaker dated 28 March and containing a request for a debate on a matter of public importance, was signed by representatives of nine parties.

The request was granted and the debate – on “The sudden escalation of rural violence in South Africa” – was held on 3 April. The Order Paper reflected that the debate had been requested by the nine parties concerned.

On two occasions requests by two Members from different parties for a debate in terms of Rule 103 were

granted. They were “The alarming incidence of child rape and abuse” on 14 November and “The importance of a successful land reform programme; land invasions and the responsibility of parties represented in Parliament to uphold the rule of law” on 15 November. In both instances the matter was published on the Order Paper in the names of both the Members.

(c) Debates requested during recess

In response to requests for debates in terms of Rules 103/104 received during a recess, the Speaker informed the relevant Members in a private ruling conveyed by letter, that such requests would only be entertained on sitting days, since the Rule refers to the submission of requests on “sitting days”.

8. APPOINTMENT OF AD HOC COMMITTEE TO INTRODUCE POWERS AND PRIVILEGES BILL

The Joint Subcommittee on Powers and Privileges is a subcommittee of the Joint Rules Committee tasked, under the Joint Rules of Parliament, to make recommendations to the Joint Rules Committee to transform the existing law and practice on parliamentary powers and privileges. Arising out of the deliberations of the joint subcommittee it had developed draft legislation to replace the existing Act of 1963. In its final report dated 7 June (ATC 11 June) the joint subcommittee reported as its recommendations, the Second Draft of the Powers and Immunities of Parliament Bill; and the Minutes of the meeting of the Joint Subcommittee held on 4 April 2001.

To take the process forward, on 5 April the House resolved, subject to the concurrence of the NCOP, that the subcommittee report its recommendations to transform the existing law and practice on existing parliamentary powers and privileges, directly to the House; and that an ad hoc committee of the House be appointed to introduce a Bill on the subject. For this purpose the Rule that a joint subcommittee is accountable to, and may only make recommendations to, its parent committee, was suspended. The ad hoc committee, in terms of the resolution, was to –

- consist of 27 members in the following proportions: Majority Party 14, Official Opposition 2, all other parties 1;
- consider the recommendations of the joint subcommittee and introduce a Bill in accordance with chapter 13 (providing for the legislative process) of the National Assembly Rules, and specifically comply with the relevant provisions of the National Assembly Rules 239 and 240 (providing for preparation of draft Bill and introduction of draft Bill before introduction respectively);
- exercise those powers in Rule 138 (providing for general powers of committees) that may assist it in carrying out its task;
- subject to the concurrence of the National Council of Provinces, confer with a corresponding council committee; and

- complete its task by not later than 7 September 2001.

The NCOP appointed an ad hoc committee with similar powers and functions on 5 April.

While the Rules provide for a procedure whereby a committee wishing to introduce a legislative proposal must first obtain the permission of the House, in this instance permission was implicit in the above resolution.

On 11 July the Speaker and the Chairperson of the NCOP announced that the *Ad Hoc* Committee on Powers and Privileges of Parliament (National Assembly) had published a draft *Powers and Immunities of Parliament Bill*, 2001, in the *Gazette* (ATC 11 July). The notice in the *Gazette* invited interested persons and institutions to submit written comments before 1 August 2001.

On 11 September 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.

The committee issued an interim report on 2 November (ATC 13 November) asking for a further extension of its deadline and for prioritisation of its work in 2002, since the scheduling of meetings of the committee presented difficulties in view of Members' other commitments. The report was adopted without debate and the committee's deadline was extended to 31 March 2002 (Minutes 16 November).

9. SEQUENCE OF BUSINESS AT THE START OF A SITTING DAY

On 20 September, before notices of motion were taken, the Speaker announced that by agreement, the Minister of Foreign Affairs would make a statement prior to notices of motion being taken, on the South African Government's response to the terrorist attack on the United States of America on 11 September 2001. This was notwithstanding Rule 29, which provides for statements by Cabinet Ministers after notices of motion and formal motions.

By agreement, no time was set aside on that day for responses to the statement; however, on Wednesday, 30 October, the House in a 1½-hour debate discussed the statement as a subject for discussion.

10. ABSTENTION OF PARTY MINUTED ALTHOUGH NO DIVISION

The practice has developed in the Assembly that parties may on request have their abstention from voting recorded during a division. In addition, parties may on request have their objection recorded, as a milder and less time-consuming form of disagreement, without resorting to calling for a division.

On 23 October, on a decision on the second reading of the *Private Security Industry Regulation Bill* [B12B-2001], when other opposition parties requested their objection to be recorded, the AEB asked that its abstention be recorded. The request was complied with although no division had taken place.

11. NOTICES OF MOTION NOT ALLOWED ON MATTER REFERRED TO COMMITTEE RELATING TO A CHARGE AGAINST A MEMBER

On 27 March, when notice was given of a motion referring to allegations of the corrupt acquisition of a motor vehicle by a Member, the Speaker announced that she would disallow notices of motion on the matter, on the grounds that it was being investigated by the Joint Committee on Ethics and Members' Interests. She went on to ask Members to submit any substantive evidence they might have in this regard, to the committee for consideration.

The notice of motion in question and another notice of motion on that day were however allowed on the grounds that while referring to the matter, they did not deal directly with it.

On 28 March the Speaker granted a request by the Member in question, Mr TS Yengeni, to make a statement relating to the allegations against him.

In its interim report on 19 June 2001, the Joint Committee recommended that since the matter was being investigated by the joint investigating team investigating the arms deal, Parliament should await the report of the team, and the committee should consider it in order to proceed with the complaint.

The committee did not conclude its investigation into this charge and charges against other Members during the year.

PARLIAMENT'S INVESTIGATION INTO THE GOVERNMENT ARMS PROCUREMENT CONTRACT

12. INTRODUCTION AND CHRONOLOGICAL OVERVIEW OF DEVELOPMENTS

The Report of the Standing Committee on Public Accounts (SCOPA) on the arms procurement package was adopted by the National Assembly on 3 November 2000 (see *Item 19, Issue 3*). The Report, and developments since its adoption, have raised important legal and procedural issues concerning Parliament's oversight role, the conduct of relations between Parliament and the Executive, the role and functioning of committees, and the disclosure of information presented to committees.

The following is an overview of developments since the adoption of the Report, followed by paragraphs on the related legal and procedural aspects.

Auditor-General's Report

A report of the Auditor-General entitled "Special Review by the Auditor-General of the Selection Process of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence [RP161-2000]" was tabled on 20 September 2000 and referred to the Portfolio Committee on Defence and the Standing Committee on Public Accounts (SCOPA) for consideration and report. The report identified concerns relating to aspects of the

arms acquisition by the Government.

SCOPA's Report on Review by the Auditor-General SCOPA's 14th report for 2000, dealing with the Auditor-General's "Special Review", was presented to the National Assembly on 30 October. The report recommended "an independent and expert forensic investigation", and continued:


In this regard, the Committee will prepare a brief for such an investigation, which stipulates particular assertions that ought to be investigated, while placing no limitation on the scope of the investigation. In noting the complex and cross-cutting nature of the areas to be investigated, the Committee feels that the investigation would be best served by combining a number of areas of investigative expertise and a number of differing areas of legal competence and authority. It therefore recommends that an exploratory meeting, convened by the Committee, be held within two weeks of the tabling of this Report in the National Assembly. The Auditor-General, the Heath Special Investigating Unit, the Public Protector, the Investigating Directorate of Serious Economic Offences and any other appropriate investigative body should be invited, so that the best combination of skills, legal mandates and resources can be found for such an investigation. Once this is established, the Committee will issue an investigation brief to the team for its input. Also, the chosen investigating body will be requested to report on its progress to the Committee at regular intervals, as well as at the conclusion of its work, so that this can be included in the Committee's final report to the National Assembly on the matter.

On the last sitting day of the year, 30 November, the Assembly adopted SCOPA's report without debate.

Developments after 14th Report adopted

The exploratory meeting between SCOPA members and "appropriate investigative bodies" – ie the Office of the Auditor-General, the Heath Special Investigations Unit, the Public Protector and the Investigative Directorate for Serious Economic Offences – took place in Pretoria on 13 November 2000. Shortly afterwards, media reports began to appear, including statements by Members of Parliament, suggesting that the Assembly had resolved to recommend to the President that the Heath Special Investigation Unit, amongst others, should be involved in the investigation. The President was urged to heed the Assembly's recommendation. (In terms of the *Special Investigating Units and Special Tribunals Act, 1966*, the Heath Unit, an executive organ of state, could only become involved if the President issued a proclamation to that effect.) The Chairperson of SCOPA and Judge Heath also wrote to the President requesting him to issue the required proclamation.

A Joint Investigating Team, comprising the Auditor-General's Office, the Public Protector and the Investigative Directorate of Serious Economic



Offences (IDSEO) was formed to carry out the investigation after the exploratory meeting convened by SCOPA on 13 November 2000. An investigation charter, giving a clear description of the Joint Investigating Team's functions, modus operandi and other relevant detail was compiled by the Auditor-General, after the mentioned agencies had held meetings on 16 November and 1 December 2000 (SCOPA Report ATC 4 April 2001).

Speaker's intervention

In response to the media reports concerning the nature of the resolution that the Assembly had adopted, on 27 December 2000 the Speaker issued a press statement pointing out that through its adoption of the report, the House had not instructed the president to issue any proclamation regarding the work of the Heath Unit. She further pointed out that the proposal that SCOPA direct this external investigation, and that the joint investigating team would report to SCOPA and receive instructions from it, was problematical, in view of the provisions of the Constitution. A committee of the National Assembly had no authority to subcontract its work to the bodies proposed, or require them to undertake any particular activity, or to report directly to it. Such direction as the Assembly may wish to give would require specific referral by a resolution of the National Assembly, and be subject to the procedures provided for in relevant legislation. The mandates and reporting lines of the various bodies were different and arose from the Constitution or particular legislation. Furthermore, the Speaker pointed out that Parliament could not allocate resources to any statutory or constitutional body except through the normal budgetary processes.

Actions by the Executive

In January 2001 the President exercised his prerogative not to issue a proclamation involving the Heath Unit in the investigation. The political interpretation in some quarters was that the Speaker's press statement had given the President a 'way out'.

On 22 January the Ministry of Defence wrote to the Speaker asking for the return of confidential documents supplied to SCOPA, and stating that the documents had in fact been provided to Parliament illegally. This request was not acceded to.

Letter from Leader of Government Business (LOGB)

On 19 January the Deputy President, in his capacity as Leader of Government Business, wrote an open letter to Dr Woods criticising Dr Woods and Parliament, and questioning aspects of SCOPA's 14th Report. The letter was copied *inter alia* to the Speaker. Since the letter constituted a public criticism of Parliament, the Speaker, as the responsible presiding officer, addressed a preliminary response dated 29 January to the LOGB dealing with some of the accusations made, and published the correspondence in the ATC (ATC 31 January 2001). The correspondence was also formally referred to SCOPA for consideration and report.

Speaker appears before SCOPA

On 29 January the Speaker at her own request appeared before SCOPA to explain the steps she had decided to take and to discuss the legal and procedural issues involved.

Second letter from Leader of Government Business

The Leader of Government Business wrote a second letter, dated 31 January, this time addressed to the Speaker, thanking her for clarifying the background to the issues, and concurring that there were more issues to be addressed. He specified a number of questions which in his view required consideration by SCOPA (ATC 6 Feb 2001).

Handling of confidential documents

In February the Speaker wrote to the Chairperson of SCOPA advising him to place the confidential documents relating to the arms deal, in the custody of Parliament. A system of ensuring confidentiality, while providing strictly controlled access by SCOPA members, was devised and put in place.

Developments in SCOPA

In the early part of 2001, the controversy surrounding the arms deal had become a highly charged political battle, with SCOPA as its focus. This made it difficult to find consensus within SCOPA, which prior to these events had operated on a consensus basis. During the same period, political parties made changes to their representation within SCOPA.

On 13 February a meeting was held between the Speaker, SCOPA and the Heads of the Investigating Team to clarify issues relating to documentation and accountability.

On 26 February three Ministers who had had a direct role in the armaments procurement process – the Ministers of Finance, Defence, and Trade and Industry – appeared before SCOPA to present their views. They outlined the processes followed in arriving at decisions concerning the awarding of prime contracts in Strategic Defence Procurement.

On 4 April the committee produced an interim progress report in response to a request from the Speaker to produce a report by the end of the first term. Growing demands were made at this time by minority parties for committee reports to include minority reports, to enable all shades of opinion to be conveyed.

Criticism of Speaker

In early May there were media reports of an interview with the Chair of SCOPA, Dr Gavin Woods, in which he claimed that the Speaker had, "by design", been instrumental in sidelining SCOPA and impeding its work. The Speaker responded in a letter dated 11 May, copied to all members of SCOPA, in which she pointed out that such criticism should be raised substantively within Parliament, asserted the correctness of her actions, and rejected the charge that she had sidelined the committee.

On 14 May General Holomisa, leader of the

UDM, published an open letter to the Speaker, making substantial and direct allegations of improper conduct on her part in relation to SCOPA and the investigation into the arms acquisition. The Speaker responded with a statement in the House on 15 May, identifying and responding to the main points of the accusation, and leaving it to the House to decide what appropriate action to take. On 23 May the Chief Whips' Forum, a National Assembly multiparty forum of senior whips, having considered various options, decided to deal with the allegations by way of a substantive motion in the Assembly.

A substantive motion moved by the Chief Whip of the Majority Party on 7 June was debated in the Assembly expressing support for the Speaker in the light of the allegations made against her by General Holomisa. An opposition amendment was defeated and the original motion adopted after a division. The Speaker did not participate in the debate.

SCOPA report

SCOPA tabled its Second Report, for 2001 on 30 May (ATC 1 June 2001), dealing *inter alia* with the criticism by the Leader of Government Business. This was purely a majority report. The report conveyed that it had not been possible to achieve unanimity, and that dissenting minority views were available in the minutes of the committee. This report was not considered by the House during 2001.

Speech from floor by Speaker

On the occasion of the consideration of the Budget Vote on Parliament on 20 June, the Deputy Speaker being in the Chair, the Speaker made a political speech from the floor on the controversy surrounding SCOPA, and discussed the issue of the Speaker belonging to a political party.

Speech on Parliament and the Executive by Deputy President

On 21 June the Deputy President spoke in the Vote on the Presidency on relations between Parliament and the Executive, reaffirming the commitment of the Executive to support Parliament and give it the kind of backing it needed to perform its functions.

Tabling and consideration of Joint Investigation Report

The Joint Investigation Report produced by the investigating agencies was presented to Parliament on 14 November 2001 at a meeting in the National Assembly Chamber to which all Members of both Houses were invited. Immediately afterward, the Team briefed all the committees with an interest in the arms deal, and answered questions.

The report was formally tabled and referred by the Speaker to SCOPA and all other relevant committees, to consider issues and findings within the area of competence of each. The report was also forwarded to the Executive. The committees were instructed by the Speaker to report by 6 December. Owing to time constraints, the committees agreed to hold a joint

meeting with the Team with a view to a process of interaction. This joint meeting took place on 4 and 5 December and was, by agreement, chaired by the Chairperson of Committees, an elected presiding officer, assisted by the Deputy Chairperson of Committees.

The relevant committees all reported by the end of the year; their reports have not yet been considered by the National Assembly.

List of confidential documents published

In an announcement on the ATC (27 November 2001) the Speaker listed the confidential documents in the custody of Parliament. The list was also published on the parliamentary website.

13. CHARGES AGAINST MEMBER BROUGHT BEFORE COMMITTEE

National Assembly Rule 136 provides: "If any information charging an Assembly member comes before a committee, the committee may not proceed upon that information, but must report it to the Speaker without delay." Accordingly, when reports appeared in the press that papers had been submitted to SCOPA which implicated Members of Parliament in irregularities, the Speaker wrote to the chairperson pointing out that the committee could not proceed with any charge against a Member, and must refer any such charge to her. After obtaining and scrutinising the relevant papers, the Speaker concluded that they contained no allegations of substance against any Member. She accordingly, on subsequently addressing SCOPA, informed the committee that there was no charge against a Member on which she needed to take action.

14. SEPARATION OF POWERS BETWEEN PARLIAMENT AND THE EXECUTIVE

The SCOPA 14th Report of 2000 recommended an independent forensic investigation of the arms deal "combining a number of areas of investigative expertise", and stated that it would compile a brief for this investigation. With a view to arranging such an investigation, it held an exploratory meeting with a number of investigative bodies.

In her press statement on 27 December 2000 and her subsequent address to SCOPA, the Speaker pointed out that Parliament cannot, through a committee or otherwise, issue binding instructions to the Executive or any of its agencies, except by passing legislation, nor could it require agencies reporting to the Executive or independent agencies, to report to it except in terms of the constitutional oversight role of Parliament. The statement went on:

The mandates and reporting lines of the various bodies which were convened by the Public Accounts Committee vary and arise from the Constitution or particular legislation. Some such as the Public Protector report to Parliament, others to the relevant Minister. A Committee of the National Assembly has no authority to subcontract its work to any of these bodies, or require them to

undertake any particular activity, or to report directly to the Committee.

Furthermore, Parliament could not separately fund such investigations by executive agencies – in terms of the Constitution the only way in which Parliament can vote funds for the Executive, is by way of the Budget.

This did not, however, prevent the committee from meeting and holding discussions with these or other bodies, or receiving submissions or information, in accordance with its oversight role.

In the event, the Joint Investigating Team was composed of the Office of the Auditor-General (which also prepared the brief for the investigation), the Public Protector and the Investigating Unit of Serious Economic Offences. SCOPA continued with its oversight role and called the relevant Ministers to appear before it to present the Executive's role in the arms acquisition.

15. CRITICISM OF PARLIAMENT BY THE EXECUTIVE, AND RESPONSE BY SPEAKER AND SCOPA

The Deputy President, in his capacity as Leader of Government Business (LOGB), on 19 January 2001 wrote an open letter to Dr Woods, copying it to the Speaker, the media, the diplomatic corps and relevant role-players. The letter, a response to Dr Woods' letter to the President requesting inclusion of the Heath Unit in the investigation, was an attack on Dr Woods but also, and more particularly, on Parliament, criticising Parliament for acting in an unprofessional manner by levelling charges of corruption without producing evidence to back up the allegations. It questioned aspects of the 14th Report, maintaining that SCOPA had "seriously misdirected itself and thus arrived at decisions that are not substantiated by any facts" and went on to contend that allegations of corruption, for which no evidence had been provided, had been made against the Executive as well as friendly foreign states and firms, on an unfounded assumption that they were "prone to corruption".

Since the letter to Dr Woods contained public criticism of Parliament, the Speaker, as the responsible presiding officer, wrote a preliminary response to the LOGB dealing with some of the accusations made, and copied the LOGB's letter together with her response, to all members of SCOPA with the instruction that SCOPA consider this correspondence and the issues that it brought up and in due course report on all of these issues. In her response to the LOGB, the Speaker pointed out *inter alia* that –

- The 14th Report recommended an independent and expert forensic investigation for which the Committee would prepare a brief, and further that "an exploratory meeting convened by the committee" should be held to which four named and possibly other investigative bodies should be invited.
- The report did not recommend that any or all of those bodies must be included, nor did it refer to the procedural and constitutional issues that would arise should Parliament wish to involve or instruct

either independent or executive agencies or organisations in its inquiries.

- There were differences among members of Scopa on what the report was intended to convey; if it was deemed necessary by the Committee, it may pursue this and make a specific recommendation to the Assembly.

The letter from the LOGB and the Speaker's response were published in the ATC (31 January 2001).

In response, the Leader of Government Business wrote a second letter, this time addressed to the Speaker, thanking her for clarifying the background to the issues and concurring that there were more issues that SCOPA needed to address. The letter indicated that it would be necessary to substantiate the conclusions reached by SCOPA. This letter was also tabled (ATC 6 Feb 2001) and copied to SCOPA.

SCOPA's Second Report of 2001 dealt *inter alia* with the issues raised in the LOGB's first letter. This more substantive report outlined the nature of the investigation taking place. It also dealt with the criticism by the Leader of Government Business, stating: "As regards the general characterisation of the international arms industry being corrupt, the Committee restates its position that there was never any intention to taint the Cabinet as being prone to corruption and dishonesty." An interpretation of the 14th report was provided, to the effect that that there had been no recommendation to include the Heath Special Investigating Unit in the Team. The report did not incorporate recommendations.

On 21 June 2001 the Deputy President made a speech in the Vote on the Presidency, in which he reaffirmed the commitment of the Executive to support Parliament and give it the kind of backing it needed to perform its functions. He acknowledged that Parliament needed to conduct an investigation into the arms deal and that it was its constitutional right to do so.

16. POWERS AND FUNCTIONS OF COMMITTEES, AND RELATIONS WITH HOUSE

In her statement dated 27 December 2000, the Speaker said:

Unlike the position in some other countries, in South Africa committees [of the National Assembly] draw their mandate from and are accountable to the National Assembly and function in terms of the Rules. The mandates and reporting lines of the various bodies which were convened by the Public Accounts Committee vary and arise from the Constitution or particular legislation. ... A committee of the National Assembly has no authority to subcontract its work to any of these bodies, or require them to undertake any particular activity, or to report directly to the Committee. ... The Committee may, however, meet with and hold discussions with these or any other bodies, or receive submissions or information.

On a later occasion the Speaker clarified that accountability to Parliament on the part of the Executive and

independent bodies established in terms of the Constitution was not accountability in respect of the substance of investigations, and SCOPA could not co-ordinate the investigation. Parliament's interest was to make sure there was a result. Bodies could give SCOPA information or exchange information, but these bodies were not directly accountable to Parliament.

17. STATUS OF CONFIDENTIAL DOCUMENTS BEFORE COMMITTEES

On 22 January 2001 the Ministry of Defence, in a letter to Dr Woods, requested that the confidential documents supplied to SCOPA be returned, and stated that the documents had in fact been provided to Parliament illegally. After consulting the Speaker, Dr Woods, the chairperson of SCOPA, agreed to respond to the effect that the documents would remain in the possession of Parliament and that a process would be put in place to ensure that they would remain secret and confidential. The Speaker wrote to the Chairperson of SCOPA on 6 February advising him to place the confidential documents relating to the arms deal in the custody of Parliament. A system of ensuring confidentiality, while providing controlled access by SCOPA members, was devised and put in place.

System for controlled access to confidential documents

When it became known that SCOPA was in possession of top secret government documents, and after the decision had been taken that the documents would be retained by Parliament, the Speaker instructed that arrangements be made to ensure their safety and continued confidentiality. The relevant documents were obtained from the committee chairperson, listed, and the following procedure followed:

The documents were placed in a safe set aside for this purpose equipped with two different locks. One key was held by the Speaker or her nominee, and the other by the Secretary to Parliament or his nominee. In the event, the nominees were the Secretary to the National Assembly and the Parliamentary Security Advisor. In order to gain access to the documents it was necessary for both key-bearers to unlock the safe, take the documents to a controlled venue and there, in a formal way, make them available to Members. Members required the authority of the chair of SCOPA to gain access, and on this basis block times were set aside during which all the relevant Members had access.

It was decided that only full – not alternate or co-opted – members of SCOPA may have access. On entering the venue, Members had to identify themselves, sign a register and record their time of entering and leaving the venue.

The Serjeant-at-Arms was present in the viewing venue – a committee room – at all times while the documents were on view, and a policeman stood guard outside. No cameras, recording instruments or other gadgets could be brought in. Members were

cautioned that the contents of the documents may not be disclosed; and that any breach would amount to a breach of parliamentary privilege and contempt of Parliament.

The documents are still in the possession of Parliament.

18. ROLE OF SPEAKER IN INVESTIGATION PROCESS

In her speech in the National Assembly on 20 June 2001, on the occasion of the debate on the Vote on Parliament, the Speaker spoke of the responsibility of presiding officers “to help shape the legislature in accordance with fundamental democratic values and principles ... In doing so, we inevitably have to interpret [the Constitution and the Rules] to the best of our ability and it is always open to the House to declare its different understanding or interpretation, and to expect the presiding officers to act accordingly.”

In the course of developments the Speaker intervened on several occasions:

- (1) She alerted SCOPA that in terms of the Rules it could not proceed on charges against Members that were brought before it.
- (2) On 27 December, in response to media reports reflecting confusion as to the significance of the adoption by the National Assembly of the SCOPA 14th Report, the Speaker issued a press statement:
 - clarifying the nature of an Assembly resolution;
 - pointing out that constitutionally committees cannot subcontract work to external agencies in conflict with the legal mandates and reporting lines of the latter;
 - pointing out that committee chairpersons cannot on major issues act without the committee's agreement; and
 - pointing out that Parliament cannot allocate resources to external agencies other than through budget processes.
- (3) On confidential documents in SCOPA's possession she:
 - advised on a request from the Ministry for their immediate return;
 - instructed that they be placed in Parliament's custody; and
 - approved procedures for the documents to be accessed.
- (4) Since the open letter by the Leader of Government Business addressed to Dr Woods constituted a public criticism of Parliament, she sent a preliminary response and referred the correspondence to SCOPA;
- (5) At her own initiative, she appeared before SCOPA to brief SCOPA members, and took the opportunity to urge SCOPA to continue with its own investigations.
- (6) She urged SCOPA to report progress to the House before the end of the first term.
- (7) She responded in writing to the Chairperson of SCOPA on claims he had made in the media

- concerning her interventions. The letter, dated 11 May, was copied to all members of SCOPA.
- (8) She reported to the House on specific allegations against her in an open letter by General Holomisa, suggesting that the House take a decision on how to proceed;
- (9) She made a political speech from the floor in the House during the debate on the Parliamentary Budget Vote, prefacing it with the words: "I'll take advantage of the suggestion by the Leader of the Opposition that having stepped off my throne I enter the hurly-burly of contested politics, but it is not a path I intend to pursue hereafter." Referring to criticism of membership by the Speaker of a political party, and suggestions that this gave rise to bias, she stated: "Surely what is of relevance in this context is to assess whether any particular judgment or action is motivated by party-political advantage. The critical factor in considering the conduct of any Speaker, is not a perceived conflict between parliamentary responsibility and loyalty, but gauging specific actions in the context of the responsibilities placed on the office bearer by the Constitution and the Rules."; and
- (10) In an announcement on the ATC (27 November) the Speaker listed the confidential documents in the custody of Parliament. The list was also published on the parliamentary website.

QUESTION TIME IN THE HOUSE

19. TRIAL PERIOD FOR NEW GUIDELINES FOR QUESTIONS EXTENDED

It was reported in *Issue 3* that a new procedure for questions for oral reply had been introduced on 5 April 2000, and that during 2000 the trial period was extended to 14 February 2001. During the first half of 2001 the Chief Whips' Forum appointed a subcommittee of the Forum to evaluate the trial system and make proposals to the Forum with a view to finalising the new system and including it in the Rules. The Subcommittee, having met on a number of occasions and considered written submissions by various parties, reported on 22 May that it had been able to reach agreement on some, but not all aspects of the new system.

The Chairperson of the Forum reported to the National Assembly Rules Committee on 21 August that the Forum had assessed the principle of the new question system and decided that the matter needed to be formalized. On his suggestion, the matter was referred for drafting to the Subcommittee on Review of Assembly Rules.

During the year, the trial period was further extended by resolution of the House on five occasions, the last two – on 26 June and 13 November – after a division as some of the opposition parties indicated that they are in principle opposed to key aspects of the proposed new system. In terms of the

resolution adopted on 13 November, the trial period has been extended to 20 March 2002.

20. QUESTIONS TO DEPUTY PRESIDENT POSTPONED

Owing to unavailability of the Deputy President to answer questions on Wednesday, 28 March, the House adopted a resolution on the preceding Tuesday that such questions would be delayed until Thursday, 29 March. Accordingly, the full two hours of Question Time on Wednesday were devoted to Questions to Ministers. However, on Thursday, 29 March, the Deputy President being still unavailable, a further motion was adopted that the questions not be taken on that day. Questions to the Deputy President were subsequently taken on Wednesday, 4 April. No additional time was allocated for Questions on that day.

21. ADDITIONAL SUPPLEMENTARY QUESTIONS ALLOWED

In terms of the guidelines for questions currently being applied, four supplementary questions are allowed following a Minister's reply to a question. During Questions to the Deputy President on 17 October, after the fourth supplementary question had been replied to, the Speaker announced that in view of the importance of the subject of the relevant question for South Africa (the peace process in Burundi), she would allow two more Members who had their hands raised, to ask supplementary questions. This procedure took place with the tacit consent of the House.

PARLIAMENT AND THE EXECUTIVE

– APPOINTMENT OF SOLE MEMBER OF PARTY AS DEPUTY MINISTER see "Members"

22. MINISTERIAL AND EXECUTIVE STATEMENTS

In the course of the year, 10 Ministerial and Executive statements were made in the House.

In order to avoid having to pass a resolution on each occasion specifying times for responses by parties, on 9 October the House adopted a motion specifying speaking times for party responses, if any, to such statements for the remainder of the year. The times allocated were as follows: ANC, 5 minutes; DP, 4 minutes; IFP, 4 minutes; NNP, 3 minutes; UDM, 2 minutes; all other parties, 1 minute each.

23. FINAL REPORT OF AD HOC COMMITTEE ON REPORT 13 OF THE PUBLIC PROTECTOR

On 1 March the report of the Ad Hoc Committee on Report 13 of the Public Protector (see *Item 24, Issue 3*) was published (ATC p143). This report arose from a request made by the Assembly to the Public Protector

in August 1997 to investigate and report on allegations by the then Minister of Mineral and Energy Affairs, PM Maduna, MP, concerning irregularities in the Strategic Fuel Fund (SFF) and reporting thereof by the Auditor-General. The Public Protector's report had criticised Minister Maduna for his remarks and proposed that sanctions against the Minister be considered.

The report of the ad hoc committee recommended that recommendations in the Public Protector's report be referred to a variety of Assembly committees, the committees to consider these matters and to report back. Concerning the Public Protector's recommendation that "Parliament make a pronouncement regarding the accountability of the Minister and any possible sanction which Parliament might consider appropriate", the ad hoc Committee recommended that it would not be appropriate for the Committee to make a pronouncement on an appropriate sanction in the case in question, but instead that these matters be referred to the Rules Committee of the National Assembly to consider any amendments to the Rules of the National Assembly and/or the Powers and Privileges of Parliament Act that might be appropriate. This recommendation was made on the following grounds:

- The process of pronouncing on accountability and sanctions is a judicial or quasi-judicial one. Since the Committee was not constituted as a disciplinary committee, this fell outside its mandate.
- The Minister had duly apologised unreservedly and unconditionally retracted his remarks.
- The committee quoted the judgment of the Supreme Court of Appeal in the matter of *The Speaker of the National Assembly vs De Lille and Another 1999 (4 SA 863 SCA)*, as follows: "There is ... nothing in the "Rules and Orders" of the Assembly which qualifies, in any respect relevant to the appeal, the right to freedom of speech in the Assembly which s58(1) guarantees. More directly, there is nothing which provides any constitutional authority for the Assembly to punish any Member of the Assembly for making a speech through an order suspending such Member from the proceedings of the Assembly. The right of free speech in the Assembly protected by s58(1) is a fundamental right crucial to representative government in a democratic society. Its tenor and spirit must conform to all other provisions of the Constitution relevant to the conduct of proceedings in Parliament." The judgment goes on to state that section 57 of the Constitution "provides that the National Assembly 'may determine and control its internal arrangements, proceedings and procedures'. There can be no doubt that this authority is wide enough to enable the Assembly to maintain internal order and discipline in its proceedings by means which it considers appropriate for this purpose. This would, for example, include the power to exclude from the Assembly for temporary periods any member who is disrupting or obstructing its proceedings or impairing unreasonably its ability to conduct its business in an orderly or regular manner acceptable in a democratic society. Without some internal mechanism of control and discipline, the

Assembly would be impotent to maintain effective discipline and order during debates."

When the ad hoc committee's report was considered on 13 March, the chairperson of the committee, Mr AC Nel, MP, moved that it be adopted subject to a change to the recommendations relating to the referral of some aspects to committees. On this occasion the decision of the question was postponed to the following day. On 14 March Mr Nel withdrew his amendment and both the Deputy Chief Whip of the Majority Party and the Chief Whip of the Opposition gave notice of amendments to the question on the adoption of the report. While the majority party amendment simply effected a technical adjustment to Mr Nel's motion, the opposition amendment proposed a reprimand of Minister Maduna. The opposition amendment was defeated in a division, and the question on the adoption of the report was approved incorporating the majority party amendment.

The matter was not taken further in the course of the year.

24. MINISTERIAL DIRECTIVE NOT SUPPORTED BY PORTFOLIO COMMITTEE ON JUSTICE

The Criminal Procedure Amendment Act, 1997 (Act No. 76 of 1997), provides that certain directives to be drafted by the Legal Aid Board must be "submitted to Parliament and tabled as soon as possible" before being published in the *Gazette*. The Act is silent on any role for Parliament after tabling.

Such directives were tabled on 16 February 2001 and referred to the Portfolio Committee on Justice and Constitutional Development. Having considered the directives, the committee, in its report dated 19 September (ATC 8 October) reported that it could not support the said directives. On 13 November the report was adopted without debate.

The Speaker thereafter referred the Report, as adopted, to the Minister of Justice.

MEMBERS

– **LEGISLATIVE PROPOSAL TO ALLOW MEMBERS TO CROSS THE FLOOR** see Introduction of Bills by committees under "Legislation and Committees" below.

25. APPOINTMENT OF SOLE MEMBER OF PARTY AS DEPUTY MINISTER

As part of a Cabinet reshuffle on 24 January, the President appointed Mr MA Mangena, MP, of Azapo as Deputy Minister of Education. While the appointment of Ministers and Deputy Ministers from parties other than the majority party is not uncommon, Mr Mangena's appointment is notable in that he is the leader and sole parliamentary representative of Azapo. As a Deputy Minister, Mr Mangena was allocated a front bench on the Opposition side.

The *Constitution of the Republic of South Africa Amendment Bill* [B68-2001], introduced on 12 September 2001, contains a provision that the President may appoint not more than two Deputy Ministers from outside the Assembly. The Bill was passed and became law on 20 November. Mr Mangena resigned as a Member on 1 December and was replaced as a member of his party from the same date by Mr PJ Nefolovhodwe.

26. DELAY IN NEW MEMBER TAKING OATH

In terms of the Constitution, Members who lose their party membership, lose their seat in Parliament. The Secretary was informed in July by the United Democratic Movement (UDM) that Dr SE Mzimela, MP, had lost his membership of that party with effect from 30 June. On 2 August the party nominated Mr WG Makanda as his replacement. Dr Mzimela had in the interim instituted court proceedings challenging his expulsion from the party, which decided to postpone having the new Member take the oath in view of the court proceedings. Mr Makanda eventually took the oath of office on 16 October, before the outcome of the proceedings was known.

27. DISCIPLINARY STEPS AGAINST MEMBER FOR ABUSE OF TRAVEL FACILITIES

Following the disciplinary steps taken against a Member in 2000 owing to irregular use of travel facilities (see *Item 20, Issue 3*) on 20 February 2001 the Speaker made a statement concerning the irregular use of travel facilities by a second Member. With the Member standing, the Speaker issued a reprimand to him in the Chamber.

She said that he had admitted having allowed a friend and a friend's child to travel during 1999 using tickets purchased using his travel vouchers. The Disciplinary Committee had further found that he had knowingly misused his travel benefits in this instance and that there was prima facie evidence that fraud had been committed. She added that she was required to refer the relevant information and documentation to the Director of Public Prosecutions for further investigation.

The Member would be further required to repay Parliament the full transport costs of the trips to Cape Town by an adult and a child, the repayment to be effected within 30 days. In addition, the Member was to forfeit two tickets from his allocation.

The Member thereupon indicated that he accepted the decision with humility and would abide by it.

LEGISLATION AND COMMITTEES

- ESTABLISHMENT OF JOINT BUDGET COMMITTEE see “Budgetary matters and money bills”
- BUDGET WITH FINANCE COMMITTEE FOR EXTENDED PERIOD see “Budgetary

- matters and money bills”
- APPOINTMENT OF AD HOC COMMITTEE TO INTRODUCE POWERS AND PRIVILEGES BILL see “Procedural and related issues
- REFERRAL OF MONEY BILLS BY RESOLUTION TO COMMITTEES OTHER THAN THE FINANCE COMMITTEE see “Budgetary matters and money bills”

28. INTRODUCTION OF BILL NOT CERTIFIED BY STATE LAW ADVISERS

It is a long-standing practice, not provided for in the Rules, that prior to submitting a Bill to Parliament, the relevant state department submits the Bill to the State Law Advisers for certification. This is done with a view to averting possible legal and constitutional challenges to the Bill, *inter alia* by ensuring that its provisions are constitutional and consonant with other Acts on the Statute Book. Thereafter, the State Law Adviser who has worked on the Bill is made available to the relevant parliamentary committee to facilitate the Bill's passage through Parliament by answering questions and formulating amendments.

A draft of the *Immigration Bill* was submitted to Parliament on 7 June (ATC 15 June) by the Minister of Home Affairs as a section 75 Bill (relating to areas of national legislative competence) without having been certified by the State Law Advisers, although accompanied by independent legal opinion to the effect that it was constitutionally in order. It was referred in terms of the Joint Rules to the relevant parliamentary committees of both Houses for consideration, but not formally introduced, since requirements regarding publication prior to introduction had not been complied with. It was later formally introduced, still without having been certified, on 23 August [B46-2001]. (See also reference to this Bill under *Tagging of Bills* under “Legislation and committees”.)

On 26 September the JTM found the Bill to be constitutionally out of order. It was reintroduced in amended form on 1 October [B79-2001], without having been certified, and referred again to the Portfolio Committee on Home Affairs. On the last sitting day of the year it was still before the committee.

Since no rule provides for certification by the law advisers, the matter of the introduction of a Bill without certification was discussed at the Joint Rules Committee (JRC) meeting on 24 August. After an extended discussion, the JRC resolved to refer the matter of certification to the Joint Subcommittee on Review of the Joint Rules for processing and referral back to the JRC. (The matter was also referred on 21 August by the National Assembly Rules Committee to its subcommittee on rules.)

29. MINORITY COMMITTEE REPORTS

The Rules of the National Assembly provide that except when reporting on a Bill, a committee may not submit a minority report. It was argued by opposition members in the Standing Committee on Public

Accounts that this was in conflict with section 57(2)(b) of the Constitution, which stipulates that the rules and orders of the National Assembly must provide for “the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy”.

The matter was discussed in depth in the Joint Rules Committee on 24 August. Legal advice indicated that the rules in this regard were not unconstitutional. It was pointed out that the prohibition on minority reports did not preclude reflecting the views of the minority in the main report, if the committee so decided. (It was noted that the Rules of the NCOP applicable to all committees require that a committee may not present a minority report but “must” reflect minority views in the committee in its reports.) However, a report should not contain minority recommendations.

The Joint Rules Committee decided that there would be no change in regard to minority reports, and that the question of reflecting minority views could be discussed further once parties had made written submissions. The matter was not taken further in the course of the year.

In its Second Report dated 30 May (ATC 1 June), the Standing Committee on Public Accounts refers to minority views as follows: “This Report does not represent the unanimity of Committee members. Consensus could not be reached on substantial issues raised in the Fourteenth Report. These substantial differences are recorded in the minutes of the Committee’s meetings.” The 19 June report of the Joint Committee on Ethics and Members’ Interests specifically and substantially included minority views.

30. LEGISLATIVE PROCEDURES AND LEGISLATION AFFECTING PARLIAMENT

(a) Amendments to the Constitution

The Constitution of the Republic of South Africa Amendment Bill [B68B-2001] was read a second time on 1 November and became law on 20 November. Besides amendments relating to the judiciary and local government, the Bill makes provision for the appointment of not more than two Deputy Ministers from outside the Assembly. (See *Appointment of sole member of party as Deputy Minister* under “Members”.)

The *Constitution of the Republic of South Africa Second Amendment Bill* [B78-2001], assented to by the President on 7 December, effects a range of adjustments to the financial regime established by the Constitution. Its main provisions are as follows:

- It extends the principle that only the Minister of Finance may introduce a money Bill, to cover most legislation emanating from Chapter 13 of the Constitution, ie legislation relating to macro-economic policy and the financial administration of the State. The aim is to ensure that the Treasury assesses such legislation and its impact prior to introduction.
- The definition of “money Bill” is extended to

provide that only the Minister may introduce legislation which abolishes or reduces, or grants exemptions from, national taxes and other charges or authorises the withdrawal of money from the National Revenue Fund. A similar provision is made in the provincial sphere.

- The composition and appointment of the Financial and Fiscal Commission is changed, inter alia reducing the number of members from 22 to eight.
- Parliament is enabled to provide a framework within which provinces may authorise direct charges against their Revenue Funds, and must pay revenue allocated through them to local government, to municipalities in the province.

The other provisions are technical and consequential.

Another constitutional amendment bill, the *Constitution of the Republic of South Africa Amendment Bill* [B4-2001], relating to defence matters and introduced by the Minister of Defence, was withdrawn on 20 August (see *Procedure for Constitutional Amendment* under “Procedural and related matters”).

(b) Other statutory amendments

A number of Bills passed during the year made provision for roles for Parliament or parliamentary committees in government:

The *Advisory Board on Social Development Bill* [B43B-2000] (assented to by the President on 16 May) provides that the relevant board must “establish clear lines of communication, including meetings” with inter alia “the parliamentary committees of Social Development of the National Assembly and the NCOP”. The Bill also provided that members of the board must be appointed only after the same committees have made recommendations thereon to the Minister.

The *Cultural Laws Amendment Bill* [B45B-2000] (assented to by the President on 4 December) stipulates that delegations from the Heraldry Council, the Pan South African Language Board, the National Archives Council, the National Geographical Names Council and the National Film and Video Foundation Council must brief the Portfolio Committee on Art, Culture, Science and Technology on their annual reports within five months after the reports have been tabled. The relevant clauses were inserted by the portfolio committee.

The *Cultural Laws Second Amendment Bill* [B46F-2000], a “section 76” Bill relating to areas of concurrent national and provincial legislative competence, (assented to on 4 December) makes similar provision in respect of the National Heritage Council. The relevant clauses were inserted by the portfolio committee.

This Bill was referred for mediation in terms of the Rules after NCOP amendments were rejected by the NCOP. The Mediation Committee came up with a new version of the Bill, which inter alia replaces the specific reference to the portfolio committee with the words “the relevant committees of Parliament.” The Bill was assented to on by the President on 4 December.

The Veterinary and Para-Veterinary Professions

Amendment Bill [B66-2001] provides that “the Minister shall inform the parliamentary committees in writing of the designation or election of” members of the South African Veterinary Council. The relevant clauses were inserted by the portfolio committee. The Bill was not passed during the year; on the last sitting day, the Bill stood referred to the NCOP Select Committee on Land and Environmental Affairs.

The National Council for Library and Information Services Bill [B44B-2000], a “section 75” Bill relating to areas of national legislative competence (assented to by the President on 20 June), provides that before appointing members of the National Council for Library and Information Services, the Minister must appoint a panel, “after the composition was approved by the Portfolio Committee on Arts, Culture, Science and Technology”, to compile a short list of candidates. It also stipulates that a delegation from the Council must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report. The relevant clauses were inserted by the portfolio committee.

After the Bill had been read a second time on 27 February and passed to the NCOP, it was referred back by the Council with proposed amendments, which included a role for the relevant NCOP select committee. Having considered the amendments, on 22 May the Portfolio Committee on Arts, Culture, Science and Technology, after conferring with its NCOP counterpart, recommended that the Bill be passed without the proposed amendments. On 31 May the committee’s report was adopted and the Bill passed without debate.

At a meeting of the National Assembly Programme Committee on 4 October, the Speaker announced that she would take up in the Joint Rules Committee the matter of committees writing into legislation powers for themselves “to which they were not entitled, as they were not autonomous”.

Two Bills, the *Agricultural Research Amendment Bill* [B25B-2001] and the *Marketing Of Agricultural Products Amendment Bill* [B26D-2001], removed decision-making roles for the relevant parliamentary committees from Acts that had been on the statute book. In the case of the former Bill, the role related to the procedure for appointment of the Agricultural Research Council, and in the case of the latter, to the appointment of members to the National Agricultural Marketing Council and the approval of marketing interventions. It was argued in the explanatory memorandum to these Bills that this confused the roles of the legislature and the executive, which in terms of the Constitution are separate.

31. JOINT COMMITTEE OF PARLIAMENT IMPEDED IN ITS WORK

A motion was moved on 23 May on behalf of the Chief Whip of the Majority Party, noting that the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women had been prevented from holding a workshop at Nongoma in

KwaZulu-Natal aimed at empowering rural women to participate in the democratic process. The motion confirmed that the members of the committee were fulfilling their duties as mandated by the electorate and condemned this interference with the work of elected members of this Parliament. It went on to recommend that the committee return to the area to continue their task once appropriate arrangements have been made to ensure the cooperation of the entire community and the safety of all participants.

The motion was adopted unanimously after a debate. The Chairperson of the NCOP made a statement on the incident in the Council on 15 May.

32. CONSIDERATION OF AMENDMENTS PROPOSED BY THE OTHER HOUSE TO BILLS

The *Correctional Services Amendment Bill* [B8B-2001], a “section 75” Bill relating to areas of national legislative competence, having been read a second time on 11 May and passed to the NCOP, was referred back with proposed amendments. The National Assembly adopted the recommendation of the National Assembly Portfolio Committee that the Bill be passed without the proposed amendments. In such a case, the Constitution provides that the Assembly may pass the Bill again, either with or without amendments, or decide not to proceed with the Bill. On 30 October, when the report of the Portfolio Committee was considered, the House adopted without debate a motion by the Acting Chief Whip of the Majority Party that the House pass the original Bill again.

See *Legislative procedure and legislation affecting Parliament* above for other instances where NCOP amendments were rejected by the Assembly.

33. LANGUAGE OF BILLS

Section 6(3)(a) of the Constitution provides that the national government must use at least two languages for the purposes of government. Draft legislation must accordingly be available in at least two official languages. In addition, Joint Rule 221 states: “When the official text of the Bill is sent to the President for assent it must be accompanied by the official translation or translations.”

However, it became increasingly common during 2001 that translations of Bills in a second official language were provided by state departments only once Bills were ready for assent by the President. This late delivery of the translated version impeded passage of the relevant Bills through Parliament, and in some instances, the President’s assent to a Bill that had been passed by Parliament was delayed owing to the lack of a translation.

At a meeting of the Joint Rules Committee on 9 October, it was agreed that a Bill may not be placed before the National Assembly for second reading unless “the translation of the Bill” was also available. Ministers were advised in writing accordingly.

The *Telecommunications Amendment Bill*

[B65D-2001] was passed by the National Assembly on 25 October (a draft translation being available), passed by the NCOP on 14 November with proposed amendments and agreed to with amendments by the National Assembly on 16 November. However, owing inter alia to the many amendments to the Bill within Parliament, the official translation was still in the process of finalisation.

In the light of a request by the Minister of Communications on 26 November that the Bill be expedited, the Speaker and the Chairperson of the NCOP directed that the official English text only be submitted to the President for assent, notwithstanding Joint Rule 221 as quoted above. This was done on 28 November, and the Bill was assented to by the President on 29 November. The official translation (Afrikaans version) was sent to the President on 30 November.

Three other Bills that were passed during 2001 – the *Gas Bill* [B18D-2001], the *Academy of Science of South Africa Bill* [B67B-2001] and the *Africa Institute of South Africa Bill* [B47-2001] – had not been sent to the President for assent by the end of the year because official translations were not yet available.

34. BILL REFERRED BACK TO COMMITTEE FOR REPORT THE SAME AFTERNOON

The Portfolio Committee on Finance submitted its report on the *Provincial Tax Regulation Process Bill* [B51B-2001] on 14 September (ATC 17 September). On 18 September, on a motion by the Chief Whip of the Majority Party, the Bill was referred back to the Portfolio Committee on Finance for further consideration “and report during the course of this afternoon”.

Later that afternoon the Speaker reported to the House that the committee had duly submitted its further report, in compliance with the resolution adopted earlier. The report had been circulated to Members in the Chamber.

After a debate, two amendments to the Bill were put from the Chair and agreed to, after which the Bill, as amended, was read a second time. It was assented to by the President on 4 December.

35. LAPSED BILL REVIVED AND RECOMMENDED

The *National Council for Library and Information Services Bill* [B44B-2000] (see *Legislative Procedure and Legislation Affecting Parliament* under “Legislation and Committees”) lapsed at the end of 2000, after the Portfolio Committee on Arts, Culture, Science and Technology had submitted a report on the Bill on 11 October 2000.

On 14 February 2001 the House adopted a motion by the Chief Whip of the Majority Party that the House resume proceedings on the Bill from the stage reached during the previous session. Although the committee had already reported on the Bill, on 20 February it was recommitted by resolution of the House. The committee reported the Bill without

amendment on 27 February. It was assented to by the President on 19 June.

No other Bills lapsed at the end of 2000.

36. CHANGE OF NAME OF DEPARTMENT AND PORTFOLIO COMMITTEE

On 18 December 2000, the Speaker announced that owing to the change in the name of the portfolio of the Minister for Welfare and Population Development to Social Development in October 2000, she had determined that with effect from 22 January 2001 the name of the Portfolio Committee on Welfare and Population Development would change to the Portfolio Committee on Social Development.

37. REFERRAL OF CONSTITUTION AMENDMENT BILL TO PORTFOLIO COMMITTEE ON DEFENCE

On 30 January the Speaker referred to the Portfolio Committee on Defence, drafts of three related Bills on defence matters submitted to her by the Minister of Defence. One of these, the *Constitution of the Republic of South Africa Amendment Bill* [B4-2001], was a constitutional amendment Bill that proposed to repeal a provision that was still in force of the Interim Constitution of 1993. The subject of the amendment was the termination of integration of APLA and MK members in the Defence Force.

The Speaker, in terms of Assembly Rule 247(5), refers a Bill to the portfolio committee under which the subject matter of the Bill falls. The subject of the Bill was defence matters; however, the Minister of Justice and Constitutional Development is responsible for the administration of the Constitution.

Accordingly, when the Bills were introduced on 9 February, the Speaker in terms of Rule 249(3)(c) instructed the portfolio committee to consult the Portfolio Committee on Justice and Constitutional Development on the constitutional amendment Bill.

The Minister of Defence subsequently withdrew the Bill on 20 August.

38. TAGGING OF BILLS

Since the Constitution makes provision for different procedures for different kinds of Bills, it is essential to classify or “tag” Bills correctly. This is the purpose of the Joint Tagging Mechanism (JTM), a body established in terms of the Joint Rules, consisting of the four senior presiding officers of Parliament, advised by the law advisers.

The National Assembly Rules state that Bills introduced by the Executive must be accompanied by an indication of the classification of the Bill. In the following instances, the JTM disagreed with the accompanying classification and reclassified the Bill:

Marketing of Agricultural Products Amendment Bill [B26-2001] – Introduced as a “section 75” Bill (a Bill relating to areas of national legislative competence); reclassified as a “section 76” Bill (a Bill relating to

areas of concurrent national and provincial legislative competence) (ATC 8 June).

Industrial Development Amendment Bill [B32-2001] – Introduced as a section 75 Bill; reclassified as a section 76 Bill (ATC 8 August)

Immigration Bill [B46-2001] – Introduced as a section 75 Bill relating to areas of national legislative competence. While it had not been certified by the State Law Advisers (see *Introduction of Bill not certified by state law advisers* under “Procedural and related issues”), it was accompanied by independent legal opinions certifying it as constitutionally in order. It was reclassified as a Money Bill, since it contained a money bill provision. Since the rest of the Bill deals with matters not incidental to the appropriation of money or the imposition of taxes, levies or duties, it was found to be a mixed Bill, and therefore constitutionally out of order (ATC 26 September). On 12 September the Speaker wrote to the Minister of Home Affairs informing him of the finding of the JTM.

The Bill was reintroduced [B79-2001] on 1 October, the relevant provision having been corrected to clarify that it was not a money bill provision, and was classified by the JTM as a section 75 Bill. At the end of the session, the Bill was still before the relevant portfolio committee.

A previous version of the *South African Boxing Bill* [B58-2000] had been declared a mixed Bill in 2000 and therefore out of order (see *Item 21, Issue 3*). A new Bill, the *South African Boxing Bill* [B13-2001] which omitted the provisions to which the procedure set out in section 76 of the Constitution applies, was introduced and duly certified as a section 75 Bill (relating to areas of national legislative competence) by the JTM. The new Bill was assented to by the President on 14 August.

39. PRIVATE MEMBERS' BILLS

The Standing Committee on Private Members' Legislative Proposals and Special Petitions reported on 14 November 2001 that it had met on eight occasions, and conducted one set of public hearings during 2001. It had finalised three private members' legislative proposals, and was considering a fourth proposal. Two private members' legislative proposals had been withdrawn. In all three finalised cases, the committee's recommendation was that permission to proceed with the proposed legislation be refused. These recommendations were approved by the House on 16 November.

Like the *Ad Hoc* Committee on Powers and Privileges, in its report the committee mentioned difficulties in scheduling meetings of committees other than portfolio committees, owing to Members' other commitments.

40. INTRODUCTION OF BILLS BY COMMITTEES

In terms of the Constitution, a Bill may be introduced in the National Assembly by a Cabinet member or Deputy Minister, or a member or committee of the

National Assembly. The vast majority of Bills are introduced by Cabinet members, and several private members' Bills have been introduced. This year saw two Bills introduced by committees of Parliament.

On 20 June, on a motion by the Deputy Chief Whip of the Majority Party, the House gave permission for a legislative proposal introduced by a committee to be proceeded with. The proposal had been submitted by the Portfolio Committee on Justice and Constitutional Development (ATC 18 June) and proposed certain urgent amendments to the Criminal Procedure Act, 1977, (Act No 51 of 1977). Having been fast-tracked by decision of the Joint Programme Subcommittee (Minutes 20 June), the second reading of the *Criminal Procedure Amendment Bill* [B37-2001] was passed on 22 June.

A second legislative proposal by the same portfolio committee (ATC 12 November) was put to the House on 13 November. The legislative proposal sought to amend Schedule 2 to the Constitution to enable a member of a legislature to become a member of another party whilst retaining membership of that legislature, and to enable an existing party to merge with another party or to subdivide into more than one party.

While the legislative proposal was being considered by the House, the Leader of Government Business, with leave, made a statement on the preparation of draft legislation on similar mechanisms at local government level.

The proposal was agreed to, and the Bill was published in the *Gazette* for public comment on 15 November. It was not finalised this year.

A third Bill to be introduced by a committee concerns the powers and privileges of Parliament (see *Appointment of ad hoc committee to introduce Powers and Privileges Bill* under “Procedural and Related Issues” above).

BUDGETARY MATTERS AND MONEY BILLS

41. CONSTITUTIONAL AMENDMENT ADJUSTING DEFINITION OF MONEY BILL

The *Constitution of the Republic of South Africa Second Amendment Bill* [B78-2001] makes several adjustments to the financial regime established by the Constitution. See *Legislative procedures and legislation affecting Parliament (Amendments to the Constitution)* under “Legislation and committees” above.

42. ESTABLISHMENT OF JOINT BUDGET COMMITTEE

In pursuance of discussions in the Programme Committee of 11 October, on 23 October the House adopted a motion establishing a Joint Budget Committee (JBC) consisting of 15 Assembly Members of whom nine are from the majority party and six from the opposition parties; and 8 NCOP Members of whom five must be from the majority

party and three from opposition parties. The opposition Members were allocated as follows: National Assembly – DP 2, IFP 1, NNP 1, FF 1, PAC 1, UCDP one alternate Member; NCOP – DP 1, NNP 1, UDM 1, IFP one alternate Member.

The committee is empowered to summon witnesses and call for papers, conduct public hearings, take oral evidence and determine its own procedure.

The functions of this new joint committee are to analyse and debate the Medium-Term Budget Policy (MTBP) Statement to be tabled; conduct hearings on the Medium-Term Expenditure Framework and the Division of Revenue Bill; and engage in the budgeting process throughout the budget cycle in order to allow Parliament to have an input during the drafting stage of the budget. The objective is to execute the oversight function of Parliament in a meaningful way.

By means of the Statement, the Minister of Finance advises Parliament on what has changed in the economic outlook since the Budget was tabled; shares with the House the developments in public policy that will shape the Budget to be tabled the subsequent year; and invites Parliament and the nation to reflect on national priorities, performance and plans.

On 30 October the Minister of Finance presented and tabled his Medium-Term Budget Policy (MTBP) Statement for 2001 and it was referred to the Joint Budget Committee. On the day that the committee submitted its report (13 November), the House debated the Medium-Term Budget Policy Statement as a subject for discussion.

43. BUDGET WITH FINANCE COMMITTEE FOR EXTENDED PERIOD

National Assembly Rule 290(3) provides for a maximum period within which a Bill and any schedule and papers are to be considered by the Portfolio Committee on Finance – in the case of a main appropriation Bill, a maximum of seven consecutive Assembly working days. (For any other Bill, a period is determined in each case by the Speaker after consultation with the Leader of Government Business in the Assembly.)

On 14 February the House, on a motion by the Chief Whip of the Majority Party, resolved that the main *Appropriation Bill* [B10-2001], upon introduction, be referred to the Portfolio Committee on Finance, the Committee, notwithstanding the relevant Rule, to report to the House within 17 consecutive working days.

The Bill was referred to the committee on 21 February, and the committee reported on 13 March, ie within 14 working days.

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

In terms of National Assembly Rule 290 the Speaker normally refers a money Bill to the Portfolio Committee on Finance for consideration and report.

On 5 April a money Bill, the *Taxation Laws*

Amendment Bill [B17-2001] was instead referred to a Joint Committee (consisting of the Assembly portfolio committee and the corresponding Council select committee). The Joint Committee had been established by resolution of both Houses on 20 March in terms of Joint Rule 111.

Two other money Bills – the *Revenue Laws Amendment Bill* [B36-2001] and the *Revenue Laws Second Amendment Bill* [B84-2001] were dealt with in the same way (Minutes 20 March, 5 April, 11 October and 7 November).

By resolution on 14 November, the *Unemployment Insurance Contributions Bill* [B85-2001] was, on introduction, referred to the Portfolio Committee on Labour for consideration and report, the Committee to have power to confer with the NCOP Select Committee on Finance. In its report dated 15 November submitting an amended Bill, the National Assembly committee stated that it had considered proposed amendments by the Select Committee.

(See also the *Constitution of the Republic of South Africa Second Amendment Bill* [B78-2001] under “Legislation affecting Parliament”, and *Establishment of Joint Budget Committee* under “Budgetary matters and money Bills”)

45. DELAY IN TABLING ANNUAL REPORTS – EXPLANATIONS SUBMITTED IN TERMS OF PUBLIC FINANCE MANAGEMENT ACT

Section 65(2)(a) of the Public Service Management Finance Act provides that if a state department or public entity fails to table its annual report and financial statements in the relevant legislature within six months after the end of the financial year, it must table a written explanation setting out the reasons why they were not tabled.

Letters calling for explanations were sent to all departments and public entities that failed to submit the relevant documents in time. Several explanations were subsequently received and published in the ATC.

PROGRAMMING OF BUSINESS

46. GUIDELINES FOR FAST-TRACKING OF BILLS APPROVED IN PROGRAMME COMMITTEE

On 22 February the Joint Programming Committee agreed to the following guidelines for fast-tracking of Bills:

Introduction

- The principles set out here are guidelines to assist the Joint Programming Committee (JPC) or its subcommittee in determining the merits of individual fast-tracking requests.
- In terms of the Joint Rules of Parliament, the JPC or its subcommittee must decide whether the request is properly motivated, and also determine

the appropriate response to the request for the fast-tracking of the Bill.

Making a request

- If a Bill is initiated by the National Executive, the Leader of Government Business must make the request for fast-tracking.
- If the Bill is a private member's Bill, the request for fast-tracking must come from the Member in charge of the Bill.

Criteria for determining proper motivation of fast-tracking requests

A. Urgency of request:

- The Leader of Government Business (LGB) is required to show that prompt passage of the Bill is a matter of urgency.
- The request for fast-tracking of the Bill must therefore specify:
 - (a) Why fast-tracking is necessary under the circumstances;
 - (b) Whether a delay in the passage of the Bill will seriously affect the interests of the state or the general public; and,
 - (c) How those interests will be affected.

Content of Bill

- The LGB must give the Committee an indication of the content of the Bill.
- The request for fast-tracking must therefore specify:
 - (a) Whether the Bill introduces significant changes in policy;
 - (b) Whether public participation took place before the request for fast-tracking was made;
 - (c) Whether there is any opposition to the Bill;
 - (d) Whether the Bill is technical in nature; and,
 - (e) The length of the Bill.
- If the Bill extends the term of office of a council or statutory body, the JPC or its subcommittee will only approve the request for fast-tracking if the LGB can show compelling reasons why it should be approved.
- The request for fast-tracking must therefore explain why the Bill in question was not introduced in Parliament before the council or statutory body's term of office expired or was close to expiration.

Classification of Bill

- The request for fast-tracking must be accompanied by an opinion from the State Law Adviser on the classification of the Bill.

Implications of Bill

- The implications of the Bill must be set out in a separate memorandum to the fast-tracking request.
- The memorandum must specifically address:
 - (a) The implications of the Bill, financial or otherwise, for provinces; and,
 - (b) Whether funds are available to implement the legislation if the Bill is passed immediately.

Bill before Parliament

- If the Bill has not yet been introduced in Parliament, the LGB must indicate when the Bill will be placed before Parliament.

Capacity of Parliament to fast-track Bill

- The LGB must show that the request for

fast-tracking can be adequately accommodated within the current parliamentary programme.

47. FAST-TRACKING OF BILL

One Bill – the *Criminal Procedure Amendment Bill* [B37-2001], which was introduced by the Portfolio Committee on Justice and Constitutional Development – was fast-tracked during the year (see *Introduction of Bills by Committees* under “Legislation and committees”). In terms of the Rules, the fast-tracking decision was taken by the Joint Programme Subcommittee and ratified by the Assembly on 20 June. The Bill was read a second time on 22 June and transmitted to the NCOP for concurrence on the same day. The NCOP ratified the fast-tracking on 26 June and passed the Bill on 27 June. It was assented to by the President on 13 July.

RELATIONS WITH OTHER BODIES AND PARLIAMENTS

(See also *Declarations on Racism* under “Procedural and related matters”)

48. ADDRESSES BY HEADS OF STATE AND HEADS OF GOVERNMENT

The President of the Democratic People's Republic of Algeria, His Excellency Mr Abdelaziz Bouteflika, addressed a Joint Sitting of Parliament on the afternoon of 16 October. His speech was preceded by a welcome address by the Speaker, while a vote of thanks was proposed by Mr DM Nkosi, MP.

Informal meetings of Members of both Houses were addressed on Tuesday, 27 February by the Prime Minister of the Netherlands, Mr Wim Kok, and on Thursday, 31 May by the French Prime Minister, M Lionel Jospin.

49. CONSIDERATION OF CONSTITUTIVE ACT OF AFRICAN UNION AND DRAFT PROTOCOL OF PAN-AFRICAN PARLIAMENT

In *Issue 3, Item 4* it was reported that the Portfolio Committee on Foreign Affairs was instructed in 2000 to report on the Constitutive Act of the African Union by not later than 15 March.

On 27 February the committee, having consulted the Portfolio Committees on Justice and Constitutional Development and on Finance, submitted a first and second report on the Constitutive Act of the African Union for consideration by the House.

The first report, which recommended that the House, in terms of section 231(2) of the Constitution, approve the international agreement containing the Constitutive Act, was adopted by the House on 27 February after a debate. The second report, while stating that it was politically imperative for the Act to be ratified if South Africa was to remain a committed and influential member of the

OAU/AEC and SADC, pointed out possible conflict with international law and the United Nations Charter, and recommended that the Executive monitor adoption and implementation to ensure "...that it is interpreted and applied in accordance with our Constitution and legal dispensation and our obligations under International Law ...". The report was adopted by the House on 8 March 2001.

On 4 April the Speaker and the Chairperson of the NCOP tabled the Report and Decisions of the 5th Extraordinary Session of the Assembly of Heads of State and Government of the OAU/AEC, held in Sirte, Libya from 1 to 2 March. The Report indicated that the African Union had been established unanimously by member states, and that the necessary decisions should be taken pertaining to the transformation of the OAU into the African Union. The Report also reflected that the draft Protocol on the Pan-African Parliament had been adopted, with certain amendments.

On 16 November, on a motion by the Acting Chief Whip of the Majority Party, the House resolved that a working group be established to consider the implementation of the Constitutive Act.

50. PARLIAMENTARY DELEGATION TO ISRAEL/PALESTINE

On 28 February the House, on a motion by the Chief Whip of the Majority Party, resolved to send a multiparty delegation of MPs to visit Palestine and Israel on a fact-finding mission, the delegation to report back to Parliament on its findings. It was also resolved that ways would be explored in which the South African Parliament could be of assistance in encouraging a peaceful settlement.

The delegation, consisting of 8 members led by Ms T Modise, MP (ANC), visited Israel and Palestine from 9 to 19 July. Its report, tabled on 25 September, contained several recommendations, inter alia that the Speaker be "encouraged to foster and develop dialogue amongst the Parliaments of Palestine, Israel and South Africa through inter-parliamentary exchanges with Speakers and Members of Parliament", and that "The Parliament of South Africa explore ways to leverage support for the people of Palestine, the Palestinian Legislative Council and the development of democracy and democratic processes in Palestine and Israel through its involvement in the Inter-Parliamentary Union (IPU), Commonwealth Parliamentary Association (CPA) and the SADC-Parliamentary Forum (SADC-PF)". The report stated that it did not necessarily reflect the policy of the Government of South Africa regarding the conflict between Israel and Palestine.

After a debate in the National Assembly on 23 October, the report was adopted following a division. On adoption of the report, the Deputy Speaker announced that in keeping with its recommendations, the Speaker had issued an invitation to the Speaker of the Knesset in Israel to send a parliamentary delegation to this Parliament next year.

STATUTORY FUNCTIONS OF THE NATIONAL ASSEMBLY

(See also *Legislation affecting Parliament* under "Legislation and committees")

51. EXTENSION OF PERIOD OF OPERATION OF SECTIONS OF CRIMINAL LAW AMENDMENT ACT

Section 53 of the Criminal Law Amendment Act, 1997 (Act No 105 of 1997), as amended, provides that sections 51 and 52 of the said Act, relating to minimum sentences and committal of accused for sentence respectively, expire two years after the Act commences. However, this period may be extended by the President, with the concurrence of Parliament, for two years at a time.

On 4 April, on a resolution moved on behalf of the Minister for Justice and Constitutional Development, the House gave its consent that the President by proclamation in the Gazette extend the period of operation of the relevant sections "for a further period of two years, with effect from 1 May 2001".

52. FILLING OF VACANCIES IN COMMISSIONS

(a) Commission on Gender Equality

In July 2000 the Minister of Justice informed Parliament of existing and forthcoming full-time and part-time vacancies in the Commission on Gender Equality. In terms of the Constitution, the Assembly must recommend for appointment persons nominated by a committee of the Assembly; and the recommendations must be approved by a supporting vote of a majority of the members of the Assembly. Accordingly, the Assembly adopted a resolution on 1 November 2000 establishing a 27-member all-party ad hoc committee to consider nominations.

In terms of the Commission for Gender Equality Act, the Minister in February 2001 submitted a list of candidates proposed by interested parties for consideration by the relevant Assembly committee. After consideration of the list, the ad hoc committee submitted a report to the Assembly on 20 March (ATC p218). However, concerns having been raised about some of the recommendations, on 27 March the House resolved to refer the report back to the ad hoc committee for further consideration and report. The committee submitted an adjusted report on 28 March. A debate was held on the committee's adjusted report on 29 March, followed by a division in which several parties voted against the report. Since the result of the division was: Ayes – 193; Noes – 82, the Assembly failed to approve the report with "a majority of the members of the Assembly" as required by the Constitution. (As the Assembly has 400 Members, a majority is 201 or more.)

Since the House was constitutionally required to

make the recommendations, the Speaker referred the report back to the committee for further consideration and report (ATC 29 March). The committee issued a final report on 3 April, which included adjustments to the proposed terms of office of some of the candidates. Since this final report differed from the earlier report, the House was able to consider the matter again without falling foul of the Same Question Rule (Rule 95(2)), which prevents the House from considering a second time during the same session, a matter which is the same in substance as a matter which has already come before the House. On 4 April the report with its recommendations were adopted with the requisite majority.

(b) Human Rights Commission

On 2 November the House resolved to appoint an ad hoc committee to nominate persons to fill two vacancies on the Human Rights Commission that were to occur on 31 December 2001 and 31 January 2002 respectively. In terms of the resolution, the committee was to complete its task by 1 March 2002.

(c) Magistrates Commission

Four of the members of the Magistrates Commission are designated by the National Assembly from amongst its members, "at least two of whom must be members of opposition parties represented in the Assembly" (section 3(1) of the Magistrates Act, 1993). On 26 June the House by resolution designated Ms F I Chohan-Kota, MP (ANC) to replace Ms DPS Jana, MP (ANC) on the Commission. On 9 October the House by resolution designated Mr MA Mzizi, MP (IFP) to replace Prof LBG Ndabandaba, MP (IFP) on the Commission.

(d) Judicial Services Commission (JSC)

Minister A M Omar having resigned from the JSC with effect from 26 February, on 1 June the House designated Ms FI Chohan-Kota, MP, to replace him. However, Ms Chohan-Kota having given notice on 25 June of her intention to resign from the JSC with effect from 1 August, on 26 June the House by

resolution appointed in her stead Ms NN Mapisa-Nqakula, MP. (See also Magistrates Commission above for the appointment to that body of Ms Chohan-Kota on 26 June.)

53. APPROVAL OF RECOMMENDATIONS BY PARLIAMENTARY COMMITTEES IN TERMS OF STATUTE

Section 15 of the Marketing of Agricultural Products Act, 1996, provides that "No levy shall be introduced, amended or repealed ... unless the parliamentary committees have been consulted ...". The relevant section requires these committees to make a decision within 30 days and publish the reasons for their decision in the Gazette.

In its report dated 13 February (ATC 20 February) the Portfolio Committee on Agriculture approved recommendations in this regard concerning the sorghum industry and the citrus fruit industry in terms of the said section. No resolution by the plenary National Assembly was involved.

In a further report dated 2 October (ATC 3 October), the committee approved recommendations concerning the implementation of proposed statutory measures in the deciduous fruit industry.

THE CHAMBER

54. AUDIOVISUAL FACILITIES

Five new cameras have been installed in the National Assembly Chamber, resulting in improved picture quality and faster and more efficient pan and tilt capabilities.

For the first time, Parliament's own data/video projectors were used at the Opening of Parliament and on Budget Day to allow those visitors not accommodated on the Public Gallery, to view National Assembly proceedings from the Old Assembly Chamber and Committee Room E249. Previously, projectors had been hired for this purpose.

ABBREVIATIONS USED

| | | | |
|---------|---|-----------------|------------------------------------|
| ATC | Announcements, Tablings and Committee Reports (title of a daily parliamentary document) | <i>Parties:</i> | |
| IPU | Inter-Parliamentary 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 |
| JPC | Joint Programme Committee | UDM | United Democratic Movement |
| JPSC | Joint Programme Subcommittee | ACDP | African Christian Democratic Party |
| JRC | Joint Rules Committee | FF | Freedom Front |
| JTM | Joint Tagging Mechanism | UCDP | United Christian Democratic Party |
| LGB | Leader of Government Business | PAC | Pan Africanist Congress of Azania |
| MTBP | Medium Term Budget Policy | FA | Federal Alliance |
| | | AEB | Afrikaner-Eenheidsbeweging |
| | | MF | Minority Front |
| | | AZAPO | Azanian People's Organisation |

