* Article 6: Voting. We believe that at least for the period when membership of the PAP is based on the membership of the Parliaments of the Member States, the Members are representing their legislatures and therefore should be voting by way of a mandate received from their legislatures, and not as individuals. When the PAP has developed to such a stage that Members campaign themselves for seats in the PAP then they vote as they please.

* Article 8: Immunities. We believe that a comparison should be made of the immunities, which members of the SA Parliament receive as opposed to the immunities which members of the PAP have. SA Parliament to be aware of any "clashes" — particularly since the immunities could be very broad and far-reaching.

Immunities should as far as possible be linked to the discharge of duties as a member of the PAP.

* Article 10: Allowances.

  The understanding of the South African Parliament has always been that the individual Parliament's would be responsible for the salaries of their Members to the Pan-African Parliament (PAP). These persons would be full Members of that Parliament and would therefore receive that salary. In terms of allowances, the issue that would have to be looked at, would be the subsistence and travel allowances (S&T). It is that component that would have to be incorporated in the budgeting.

  It therefore means that the governments on the continent must be aware that in budgeting for 2003 and beyond, they have to ensure that in their budgets they include provision for allowances and travel of the Members of the Pan-African Parliament. (It is anticipated that the first sitting of the Pan-African Parliament will take place in 2003)

  Consideration should also be given to the question of what support would the individual Parliaments have to provide to their Members of the PAP.

* Article 12(5): We would suggest that the President and the four Vice Presidents be **accountable** for the management and administration of the PAP, but that the Clerk and Deputy Clerks be **responsible** for the management and administration of PAP. This position links up with the comments that we have previously made regarding the continuity of membership of the PAP. It is likely that the President and other Officers will not have the continuity in the same way as the Clerk and Deputies have. The latter will be the institutional memory of the PAP, and therefore it would be more appropriate if they were responsible for administration and management of the PAP.

* It is envisaged that the PAP will ultimately have full legislative functions. The question is should the PAP's legislative function be limited to setting norms and standards that domestic law must incorporate, or should the PAP have full legislative powers so that it produces law that each of the Member States have to base their practice upon?

* It would be important that a basic set of principles and rights are agreed upon in order to reduce the potential for conflict in the area of Human Rights law. We need to give recognition to the fact that Charters on Human Rights already exist on the continent, as formulated by the Organisation of African Unity.

It would be vital that the African Union and the PAP, in particular, examine those Charters in order to look at whether they are still appropriate in regard to current conditions, or whether there is a need to review and amend those instruments.

III. African Charter on Human and People's Rights — African Court on Human and People's Rights

The preamble to this protocol provides:
"Firmly convinced that the attainment of the objectives of the African Charter on Human and People's Rights requires the establishment of an African Court on Human and People's Commission to complement and reinforce the functions of the African Commission on Human and People's Rights."

Article 6 on Admissibility of Cases provides:

(3) The Court may consider cases or transfer them to the Commission.

Article 8, meanwhile, provides:
The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, **bearing in mind the complementarity between the Commission and the Court.**

* The roles of the Court and the Commission have to be clarified in quite a distinct way so that we see how they are distinguished from each other, then we can accept the complementarity between the two. We accept that they must liaise because the basis of appeal to the Court would be the infringement of rights.

The Constitutive Act in Article 26 provides:
Interpretation
The Court shall be seized with matter of interpretation arising from the application or implementation of this Act....

Article 6(3) of the Protocol on the Court and article 26 of the Constitutive Act need to be reconciled. Under normal circumstances courts are usually the last ports of arbiter. Article 4 of the Protocol on the Court provides powers to the Court to provide an opinion on any legal matter relating to the Charter or any other relevant human right instruments but excludes any subject matter being examined by the Commission.

It is unusual for an arrangement in which a court would consider a case of transfer it to a commission.

* We believe that the Court must have the power to determine the outcome.

Article 10 of the Protocol of the Court provides for free legal representation where the interests of justice so require. It is accepted that this provision may be there to ensure accessibility of justice to all. However, it would seem that the wording is such that it is open to abuse as there are not stipulations regarding conditions for qualification for free legal representation.

* We would propose the inclusion of a conditionality, such as "free legal representation where the interests of justice and administration so require, as determined by the Assembly or the Pan-African Parliament in legislation."

* Article 15 regulates the term of office of judges. Article 15(2) might need to be tidied up, as it is too informal to such an institution. The comments raised above under the Constitutive Act article regulating this are applicable here.

* Article 17(3) grant judges of the Court immunities extended to diplomatic agents in accordance with international law. Article 17(3) and its full implications have to be examined as it raises a set of complex problems with respect to natural justice.

* Article 17(4) provides:

> At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their function.

The formulation of article 17(4) needs to be carefully reviewed because the level of licence that it grants appears to be excessive and does not link to any known standards. It is far too wide and needs to include certain checks and balances.

* Article 19(1) provides for cessation of office. This article is also intended to reinforce the independence of the judiciary. Consideration should be given to the need to ensure that due process is available to judges in such instances.

It may also be useful to consider providing for members of the judiciary to approach the Assembly in cases where they hold the view that their rights have been infringed.

IV. African Charter on Human and People's Rights — Commission on Human and Peoples' Rights

* Article 41 of the Charter provides for the appointments to the Commission. It would be important to look at the process with a view to identifying how greater transparency, public participation and the involvement of civil society can be introduced into the process.

F. Conclusion

The Working Group had seen this initial process as an interim process preparing the initial thinking of the two Houses, and would therefore recommend that, subject to the concurrence of the National Assembly, a joint working committee on the African Union be established.

Report to be considered.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Labour on ***Labour Standards Convention***, dated 4 June 2002:

> The Portfolio Committee on Labour, having considered the request for approval by Parliament of the ***Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976 (Convention No 144)***, referred to it, recommends that the House, in terms of section 231(2) of the Constitution, approve the said Convention.

Report to be considered.

2. Report of the Portfolio Committee on Labour on ***Occupational Safety and Health Convention***, dated 4 June 2002:

> The Portfolio Committee on Labour, having considered the request for approval by Parliament of the ***Convention concerning Occupational Safety and Health and the Working Environment, 1981 (Convention No 155)***, referred to it, recommends that the House, in terms of section 231(2) of the Constitution, approve the said Convention.

Report to be considered.

National Council of Provinces:

1. Report of the Select Committee on Labour and Public Enterprises on ***Labour Standards Convention***, dated 5 June 2002:

> The Select Committee on Labour and Public Enterprises, having considered the request for approval by Parliament of the ***Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976 (Convention No 144)***, referred to it, recommends that the Council, in terms of section 231(2) of the Constitution, approve the said Convention.

Report to be considered.

2. Report of the Select Committee on Labour and Public Enterprises on ***Occupational Safety and Health Convention***, dated 5 June 2002:

> The Select Committee on Labour and Public Enterprises, having considered the request for approval by Parliament of the ***Convention concerning Occupational Safety and Health and the Working Environment, 1981 (Convention No 155)***, referred to it, recommends that the Council, in terms of section 231(2) of the Constitution, approve the said Convention.

Report to be considered.

No 36—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

THURSDAY, 6 JUNE 2002

1. The House met at 14:01.
2. The Deputy Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:02] Notices of motion.
4. [14:18] Mr D H M Gibson moved without notice: That the House, as one of the Parliaments of the Commonwealth—

   (1) congratulates Queen Elizabeth II on her Golden Jubilee; and

   (2) wishes her well for the future.

   Agreed to.
5. Mr M J Ellis moved without notice: That the House—

   (1) wishes twins Zinzi and Zanele Kona good health and good luck as they leave the Red Cross Children's Hospital to return home to Port Elizabeth;

   (2) welcomes the medical miracle which led to the conjoined twins being succesfully separated; and

   (3) hopes that the two children will lead long, productive lives.

   Agreed to.
6. [14:19] The Deputy Chairperson of Committees gave a ruling on a remark made by Mr D V Bloem during the debate on 4 June 2002, and directed him to withdraw the remark.

   Whereupon the member withdrew the remark.
7. FIRST ORDER [14:21]

   Debate on Vote No 15—Education, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

   Debate concluded.

8. [17:35] The Minister for the Public Service and Administration made a statement on public service wage negotiations.

   Debate concluded.

9. The House adjourned at 18:15.

S MFENYANA,

Secretary to Parliament.

No 14—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

THURSDAY, 6 JUNE 2002

1. The Council met at 14:05.

2. The Deputy Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:06] Notices of motion.

4. [14:09] Mr G A Lucas moved without notice: That the Council—

   (1) expresses its deep concern at the continuation of the military confrontation between India and Pakistan over the disputed area of Kashmir;

   (2) is convinced that there can be no military solution to the conflict around Kashmir;

   (3) calls on both governments to take into consideration the consequences of war on the people of their countries; and

   (4) challenges both countries to engage, without preconditions, in a political dialogue aimed at achieving a lasting political settlement to the conflict.

   Motion agreed to in accordance with section 65 of the Constitution.

5. [14:10] Mr P D N Maloyi moved without notice: That the Council—

   (1) expresses its deep concern over the current deadlock in the Middle East peace process;

   (2) expresses further concern over the recent killing and wounding of innocent civilians on both sides;

   (3) condemns the repressive policies and actions of the Israeli government including the economic suffocation of the Palestinian people;

   (4) reiterates its support for the inalienable rights of the Palestinian people to self-determination; and

   (5) supports the call for increased pressure on Israel to comply with existing agreements and their timely implementation.

Motion agreed to in accordance with section 65 of the Constitution.

6. [14:11] Ms J N Vilakazi moved without notice: That the Council—

(1) notes the statement by the Minister of Correctional Services that effective rehabilitation depends on narrowing the wealth gap, eradicating violence as a lifestyle of choice and changing socio-economic conditions;

(2) further notes that the Minister is committed to placing the rehabilitation of prisoners at the core of his activities so that a balance is struck between rehabilitation and safe custody;

(3) believes that the shift from a punitive approach to one focused on rehabilitation poses major challenges;

(4) also believes that the Minister and his department are capable of dealing with these new challenges; and

(5) therefore commends the Minister for working hard to improve the lives of prisoners.

Motion agreed to in accordance with section 65 of the Constitution.

7. [14:15] Rev P Moatshe moved without notice: That the Council—

(1) notes—

(a) the announcement by the Minister for Agriculture and Land Affairs, Thoko Didiza, that South Africa's meat exports are to be boosted following a successful fight against the scourge of foot-and-mouth-disease;

(b) that we have now been granted new foot-and-mouth disease free status by the international body which sets standards on animal health; and

(c) that this will lead to increased levels of meat exports and will provide relief to domestic meat producers; and

(2) thanks the Minister and her department for the excellent work they have done to eliminate the disease and to restore the confidence of emerging and small-scale red-meat producers.

Mr A E van Niekerk moved as an amendment: That the following paragraph be added after paragraph (2):

(3) also thanks all the farmers and rural communities who have made this achievement possible.

Amendment agreed to in accordance with section 65 of the Constitution.

Motion, as amended, agreed to in accordance with section 65 of the Constitution, namely: That the Council—

(1) notes—

(a) the announcement by the Minister for Agriculture and Land Affairs, Thoko Didiza, that South Africa's meat exports are to be boosted following a successful fight against the scourge of foot-and-mouth-disease;

(b) that we have now been granted new foot-and-mouth disease free status by the international body which sets standards on animal health; and

(c) that this will lead to increased levels of meat exports and will provide relief to domestic meat producers;

(2) thanks the Minister and her department for the excellent work they have done to eliminate the disease and to restore the confidence of emerging and small-scale red-meat producers; and

(3) also thanks all the farmers and rural communities who have made this achievement possible.

8. [14:17] Mr B J Tolo moved without notice: That the Council—

(1) notes the concerns expressed by President Mbeki about the overwhelming levels of unskilled and unemployed people in our country;

(2) shares the President's concern that funds such as the Umsobomvu Fund and funds that accrue from the skills levy for training are indeed underutilised and have taken off too slowly;

(3) further notes that the raising of skills levels is absolutely critical to ensuring measurable improvements in unemployment and proper empowerment of our people; and

(4) calls on all agencies and skills training providers to demonstrate commitment to the plight of unskilled people in our country through improved training and disbursement of the funds available.

Motion agreed to in accordance with section 65 of the Constitution.

9. [14:18] Ms J N Vilakazi moved without notice: That the Council—

(1) notes the newspaper reports that the Micro Finance Regulatory Council has warned people not to sign any blank documents when borrowing money;

(2) further notes that some borrowers have complained of money being deducted from their salaries in terms of garnishee orders obtained by micro lenders;

(3) also notes that the Micro Finance Regulatory Council has done numerous investigations and has brought 44 cases before an independent disciplinary committee; and

(4) therefore calls upon the Minister for Justice and Constitutional Development to play his part in curbing the abuses and to encourage the officials of the court to peruse any such documents they receive.

Motion agreed to in accordance with section 65 of the Constitution.

10. FIRST ORDER [14:21]

Consideration of ***Report of the Working Group on the African Union*** (Announcements, Tablings and Committee Reports, 5 June 2002, p 546).

Debate concluded.

Question put: That the Report be adopted.

IN FAVOUR OF: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West, Western Cape.

Report accordingly adopted in accordance with section 65 of the Constitution.

11. [14:26] The Chief Whip of the Council moved: That the Council, subject to the concurrence of the National Assembly, resolves that the National Council of Provinces Working Group on the African Union confer with the National Assembly Working Group on the African Union.

    Motion agreed to in accordance with section 65 of the Constitution.

12. [14:29] The Chief Whip of the Council moved without notice: That precedence be given to Order No 3 on the Order Paper.

    Motion agreed to in accordance with section 65 of the Constitution.

13. THIRD ORDER [14:30]

    Consideration of ***Media Development and Diversity Agency Bill*** [B 2B—2002] (National Assembly—sec 75) and of Report of Select Committee on Labour and Public Enterprises thereon (Announcements, Tablings and Committee Reports, 27 May 2002, p 471).

    Debate concluded.

    Bill agreed to in accordance with section 75 of the Constitution (New National Party, African Christian Democratic Party and Democratic Party dissenting).

14. SECOND ORDER [15:28]

    Policy debate on Budget Vote No 2: Parliament, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

    Debate concluded.

15. The Council adjourned at 17:13.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 6 JUNE 2002

ANNOUNCEMENTS:

National Assembly:

1. The Speaker:

   The Minister of Finance submitted the ***Wetsontwerp op Finansiële Advies- en Tussengangersdienste*** [W 52—2001] (National Assembly—sec 75) to the Speaker and the Chairperson on 5 June 2002. This is the official translation of the ***Financial Advisory and Intermediary Services Bill*** [B 52—2001] (National Assembly—sec 75), which was introduced in the National Assembly by the Minister on 29 August 2001.

2. The Speaker:

   The following papers have been tabled and are now referred to the relevant committees as mentioned below:

   (1) **The following paper is referred to the Portfolio Committee on Transport:**

   The Business Plan of the National Department of Transport for 2002-2003.

   (2) **The following paper is referred to the Portfolio Committee on Public Works:**

   Together pushing back the Frontiers of Poverty—Laying Tomorrow's Development.

   (3) **The following papers are referred to the Portfolio Committee on Social Development, the Portfolio Committee on Justice and Constitutional Development and the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Children, Youth and Disabled Persons for consideration and report. The committees must confer and the Portfolio Committee on Social Development must report:**

   (a) The Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption, tabled in terms of section 231(2) of the Constitution, 1996.

(b) Explanatory Memorandum to the Agreement.

(c) Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, tabled in terms of section 231(2) of the Constitution, 1996.

(d) Explanatory Memorandum to the Agreements.

(4) **The following papers are referred to the Portfolio Committee on Environmental Affairs and Tourism for consideration and report:**

(a) The Convention for the Protection, Management and Development of Marine and Coastal Environment of the East African Region and Related Protocols (Nairobi Convention), tabled in terms of section 231(2) of the Constitution, 1996.

(b) Explanatory Memorandum to the Convention.

(c) The Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Related Protocols (Abidjan Convention), tabled in terms of section 231(2) of the Constitution, 1996.

(d) Explanatory Memorandum to the Convention.

(5) **The following paper is referred to the Portfolio Committee on Labour. The Report of the Auditor-General to be referred to the Standing Committee on Public Accounts for consideration and report:**

Annual Report and Financial Statements of the Unemployment Insurance Fund for 2000, including the Report of the Auditor-General on the Financial Statements for the year ended 31 December 2000 [RP 207-2001].

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Finance:

(a) Annual Report and Financial Statements of the Public Investment Commissioners for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001 [RP 50-2002].

(b) General Notice No 662 published in Government Gazette No 23383 dated 30 April 2002, Statement of the National and Provincial Government's Revenue, Expenditure and National Borrowing as at 31 March 2002, in terms of section 32 of the Public Finance Management Act, 1999 (Act No 1 of 1999).

2. The Minister of Arts, Culture, Science and Technology:

Annual Report and Financial Statements of the National Arts Council for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001.

3. The Minister of Transport:

   (a) Air Services Agreement between the Government of the Republic of South Africa and the Government of the Republic of Mozambique, tabled in terms of section 231(3) of the Constitution, 1996.

   (b) Explanatory Memorandum to the Agreement.

4. The Minister of Labour:

   Annual Report and Financial Statements of the Compensation Fund for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001 [RP 72-2002].

COMMITTEE REPORTS:

National Assembly:

1. **Report of the Portfolio Committee on Home Affairs on Budget Vote 4: Home Affairs, dated 4 June 2002:**

   The Portfolio Committee on Home Affairs, having considered and examined Budget Vote 4: Home Affairs, reports as follows:

   A. Introduction

   On 21 May and 4 June 2002, the Committee was extensively briefed by the Director-General and senior officials on the budget allocation for the Department of Home Affairs for the 2002-03 financial year.

   The Committee noted that an amount of R1 251 188 000 is included in the government's budget for 2002-03 in respect of the Department. Compared to 2001 there has been an increase of R228,8 million. The largest percentage of this increase can be attributed to the upgrading the infrastructure of all crucial systems, including rewriting the Population Register, upgrading the Movement Control System, and implementing the Document Management System and transfers to the IEC, to enable it to conduct by-elections, upgrade systems and prepare for the national elections in 2004.

   B. Programme 1: Administration

   The budget for Administration will grow by 10,3% over the medium term. 64,2% of the allocation for Administration is consumed by personnel expenditure as posts have been filled to increase capacity in the Department.

   Spending on professional and special services increases by 9,6% per year until 2004-05 to accommodate the computerisation of the Department and expansion of the IT function.

   1. Computerisation of Offices

   For the current financial year, 30 offices of the Department for the 10 regions have been identified for computerisation. Regions like the Eastern Cape, Limpopo, KwaZulu-Natal and Mpumalanga will receive priority as they have less than 50% of their offices computerised at present. An amount of R215 000 will also be spent on equipment to upgrade the passport system.

   The Committee notes progress in this area, but a lot still needs to be done. This will go a long way towards providing efficient services to our people.

We also believe that computerisation will contribute to the elimination of corruption.

2. Task Team on Electoral Act

In March 2002, the Cabinet adopted the Department's Cabinet Memorandum 3 of 2002, on the establishment of an electoral law task team. The Committee notes that the Cabinet Memorandum provided for R450 000 for the work of the task team. However, the chairperson of the task team drew up a budget for the task team that amounted to R3,5 million.

The Committee notes with concern that not enough money has been allocated for the task team to do its work. The team has been allocated R450 000, whereas it needs R3,5 million.

We appeal to the government to attend to this matter, as the task team is expected to finish its work by November this year.

3. Personnel Establishment

The Committee has noted with concern that the Department is still functioning with a staff establishment that was fixed by the Office of the Public Service Commission in 1995. 730 of the Department's posts are vacant; only 234 of these vacancies are funded, and the Department is in the process of filling them. The remaining 496 posts are unfunded and cannot be filled due to public service regulations. These vacancies severely hamper the Department in its efforts to provide an efficient and accessible service to citizens. The results are long queues at virtually all the Department's regional and local offices.

The Committee notes with concern the shortage of staff in the Department. We therefore urge the Department to finalise the compilation of a scientifically-based staff establishment.

C. Programme 2: Service to citizens

The amount allocated to this programme is R580,799 million, and the main spending items include:

* The Hanis project
* Rewriting the population register
* Implementing the Electronic Document Management System.

1. Home Affairs National Identification System (HANIS)

The Committee has been informed that the total expenditure on HANIS until March 2002 amounted to R495 122 478. The Department has also introduced an additional phase, which will be the expansion of HANIS to regional and subregional offices.

The Identification Subsystem is being upgraded to cater for 42 000 forms per day, and should be completed at the end of August 2002, according to the Department.

The budget allocated for 2002-03 will be spent as follows:

Personnel	R 7,593,042 million
Administrative expenses	R 1,131,600 million
Inventories	R 1,124,000 million
Equipment	R148,622,899 million
Professional Services	R 59,458,459 million

The Department is optimistic that it will be able to generate funds for the National Treasury by providing a Remote Verification Service to cater for the needs of the Commercial Sector. This will enable interested parties to query HANIS databases and to do reliable data verification. A call centre for this purpose will be established later in the year.

The Committee noted the progress made by the Department in establishing the HANIS system. It is, however, clear that a lot of interaction with the Department is still needed, especially in the form of committee briefings, to ensure that the implementation of the system occurs with some speed. We also believe that this will go a long way to eliminate corruption in the Department.

2. ***Population Register***

The Committee notes the work done by the Department on the population register, especially the registration of three million children eligible for a grant by 2005.

3. ***Electronic Document Management System (EDMS)***

The objective of the EDMS is to implement an effective, real-time, on-line solution that will cater for the automated document management process, resulting in overall business process efficiency. The system will make all Home Affairs records and archiving information immediately available for access to any authorised individual at any workstation in the system, both nationally and internationally.

Phase 1 that is currently being implemented, includes:

— The implementation of a centralised EDMS to cater for the Department's management of business processes related to births, marriages and deaths, and an effective Management Information System

— High volume document capture modules

— Centralised indexing environment

— An effective on-line storage environment

— A disaster recovery facility

— Integration with the National Population Register

The budget for phase 2 is R35 million, and it is envisaged to be utilised for:

Hardware	R8 million
Workflow Software	R4 million
Training	R2,95 million
System Integration	R3,3 million
Professional Services	R2,7 million
Infrastructere upgrades	R5,5 million
Hard- and Software support	R5,45 million
Change Management	R3,1 million

4. ***Improvement of services to poor, rural and disadvantaged communities***

Infrastructural Development

The Committee commends the Department for its partnership with a private company, which will provide the Department with 100 freight containers, to be deployed in rural communities, where access to services is difficult due to geographical and logistical reasons.

The Committee urges the Department to expedite the opening of these offices as part of the overall objective of service delivery by the government.

We continue to express concern about the delapidated state of buildings that are used for the provision of Home Affairs services in a number of areas.

Rural masses continue to be denied access, or experience difficulty to obtain access to, Home Affairs services. It is important to move with some speed to ensure that Home Affairs has offices in the rural areas.

We commend and note the container solution that will make services more accessible to rural and disadvantaged communities. It is, however, only a short-term solution. A clear long-term strategic plan should be developed to provide permanent infrastructure for the Department in these communities. The Committee recommends that the Department should draw up a strategic infrastructure development plan to accomplish this.

5. ***Reorganisation and restructuring***

The Committee notes that the Department recently tabled its second strategic plan. We also note that the Minister emphasised that the reorganisation and restructuring of the Department should be shaped by the ***Immigration Bill*** and the devolution of civic affairs delivery functions to municipalities.

D. Programme 3: Migration

The reprioritised amount allocated to this programme is R230 139 million. The main issue addressed in this programme is the redesigning of the Movement Control System (MCS) to a real-time on-line system.

1. Movement Control System

The Committee notes the progress the Department is making in redesigning the Movement Control System to a real-time on-line system.

The objectives of the Movement Control Project are as follows:

— Implement a centrally driven and managed system, which will function on a real-time on-line basis

— Permit immediate and simultaneous access to movement data by all Ports of Entry

— Ensure information integrity and validity pertaining to the movements of aliens and South African residents across our borders

— Improve and enhance service to persons utilising the services of the Chief Directorate: Migration

— Enable integration between all systems and databases utilised by the Chief Directorate: Migration

— Remove backlogs and current inconsistencies in the Movement Control environment

— Introduce electronic workflow to the Movement Control environment to ensure reduction in fraud and corruption opportunities

The budget allocated for the MCS for the current financial year is R45 million, and the breakdown is as follows:

Hardware	R15 million
Software	R5 million
Workflow Software	R2 million
Training	R1,5 million
System Integration	R2,5 million
Professional Services	R6 million
Core infrastructure upgrades	R3 million
Change Management	R3 million
Hardware and Software support	R7 million

2. Implementation of new Immigration System

The ***Immigration Bill*** was approved by the National Assembly in May 2002, and the financial implications of the Bill is estimated at R13,698 million for the 2002-03 financial year.

The Committee notes that the Department is still busy finalising the allocation of funds to implement the new Immigration System. We also note that funds that was earmarked for Immigration under the previous Aliens Control Act will be reprioritised and integrated for implementation of the new system. We further note that the Department is still busy assessing exactly how much funds will be needed to implement the new system.

3. Ports of entry

The number of persons that use our ports of entry to enter and depart from our country, has grown from 19,8 million per year in

1994 to 28,3 million per year in 2001. This represents an increase of 42,9%, while the staff establishment at most of these ports has not been reviewed since 1995 and no real changes in respect of funding or accommodation requirements have materialised.

In 1997, the Cabinet approved an amount of R101 million for upgrading the ports of entry. However, divided between 53 ports, these improvements could still not satisfactorily address the needs at border posts. The Committee was informed by the Department that it simply cannot cope with the increased pressure on its budget, by means of reprioritising existing funds, to upgrade and staff existing border posts and to erect new border posts, which is the expectation raised by the Department of Environmental Affairs and Tourism in its Cabinet Memorandum to the Cabinet.

The Committee was further informed by the Department that, based on an investigation by a consultant appointed by the Department of Public Works, an amount of R94,6 million is needed to bring the infrastructure at our land border posts up to an acceptable level to cope with the increased flow of travellers through them, to create a favourable impression as visitors enter the RSA and to ensure an acceptable level of security at these ports of entry.

4. Undocumented migration

The Committee recognises the damage that results from uncontrolled and unregulated migration to South Africa. We believe that the new immigration legislation passed by the Committee will go a long way to provide the Department with teeth to deal with the real issues that face South Africa as a result of economic migration to South Africa.

E. Programme 4: Auxiliary and associated services

The reprioritised amount allocated to this programme is R227 227 million, and includes:

1. Film and Publication Board/Film and Publication Review Board

The increase of funding to the Film and Publication Board over the medium term is necessary to accommodate the expansion of the mandate of the Board to include the protection of children from exploitation and internet pornography.

2. Government printing works

The Committee expresses concern that the Department is owed a lot of money by other departments that had made use of printing services.

We also note that, having completed a feasibility study on the possibility to privatise the Government Printing Works, and having submitted to Cabinet a number of alternatives, the Cabinet approved that a public enterprise be established, with a small private equity shareholding, and that the objective is to recover labour and material costs.

3. Electoral Commission

The Committee notes the Financial Statements of the Electoral Commission for 1998-99, 1999-00 and 2000-01, including the report of the Auditor-General on the same, recently referred to the Committee.

2. Report of the Portfolio Committee on Transport on Visit to Durban, City Deep and Pretcon Container Terminals, dated 5 June 2002:

The Portfolio Committee on Transport, having undertaken a tour of Durban, City Deep and Pretcon Container Terminals on 29 April and 3 May 2002, reports as follows:

A. Introduction

The Committee embarked on a fact-finding mission to establish the role played by the container terminals and private freight operators in promoting the use of rail. Also considered was what is being done to attract freight from road to rail; whether there are any factors that may impact negatively on the use of rail; and, lastly, what could be done in the short term to make rail a naturally preferred mode of transport.

This follows a Cabinet decision to support a movement of freight from road to rail. The Committee, in exercising its oversight function, took it upon itself to meet with relevant stakeholders.

A multi-party delegation of four members took part in a visit to Durban on 29 April 2002 and to Gauteng on 3 May 2002.

GAUTENG	**DURBAN**
Mr G Schneemann (Group leader)	Mr G Schneemann
Mrs D N Mbombo	Mr N Magubane
Mr S Farrow	Mr S Farrow
Mr J J Niemann	Mr J J Niemann

In order to examine these important issues, the delegation visited two major container terminals (City Deep & Pretcon) operated by Spoornet, and Durban Container Terminal operated by South African Port Operations (SAPO), and met with the following private freight operators:

1. Rail Road Africa
2. Cross Country Containers
3. Roadwing
4. MSC Logistics
5. Intermodal
6. Bidfreight Transport
7. Container Liners Operator Forum
8. Vigomaud Transport

B. Durban Container Terminal (DCT)

1. Background

The DCT is situated in a strategic position. There are three modes of transport used at DCT—road, rail and coastal shipping services. Of the cargo that is handled, 75% moves by road, with 40% in the Durban area and 30% to destinations beyond Durban. The split of cargo by transport modes is 75% road and 22% rail, with the remaining 3% being shipped via coastal services.

DCT handles 65% of the country's container volumes.

SAPO supports the view of moving cargo from road to rail because they strongly maintain that it is easier to load 100 containers onto a single train than onto 100 individual road vehicles.

Their main concern is the extent to which rail is ready to handle the shift. At the present moment there are challenges that need to be addressed in order to see the desired shift of containerised freight from road to rail.

2. Constraints facing SAPO

The constraints facing SAPO include:

(a) High rate of copper cable theft causing train delays.

(b) Transit time by rail on the Johannesburg/Durban leg is five to seven days and 24 hours by road.

(c) There is a shortage of locomotives, causing trains to be delayed in the marshalling yards.

(d) Theft of cargo occurs while being transported on rail.

(e) Insufficient interface and compatibility of computer systems, which cause delays in transport due to insufficient information being available. It was claimed that 30% of containers arrive with incorrect information, and 15% of export containers arrive late for their vessels.

(f) Rail tariffs are higher than road transport rates.

(g) Shortage of straddle carriers.

(h) Shortage of wharf-side cranes.

(i) Capacity of piers and rail terminal.

3. Solutions

Solutions to these challenges include:

(a) More visible security alongside rail tracks in order to curb theft of overhead cables.

(b) Turnaround times of trains and transit times need to be improved.

(c) Spoornet and SAPO need to interact more closely to address the current challenges.

(d) Streamlining of supply chain towards a fully integrated seamless transport system.

(e) Streamlining of interface with Customers and Spoornet.

(f) Proposed repositioning of mobile cranes from Richards Bay and the combi terminal.

(g) Introduction of 60 new straddle carriers by the end of 2002.

(h) Proposed extension of Pier 1, which includes a new small rail terminal.

4. Freight operators

When the delegation met with the freight operators, it was clear that there was insufficient interaction between Spoornet, SAPO and themselves. They alluded to the fact that they supported the shift of freight from road to rail but that Spoornet and SAPO needed to address the existing challenges that impact on the smooth operation of rail.

5. Constraints

The freight operators underlined the following constraints:

(a) Delays in loading/offloading vessels causes additional costs and also causes a shift of freight onto road.

(b) There is a shortage of locomotives and poor utilisation of rail wagons, including a short supply for the rail of empty containers, which results in congestion and delays.

(c) Rail tariffs promote the use of road rather than rail.

(d) There is no synchronisation of operating times between terminals. DCT operates on a 24-hour basis while City Deep operates from 06:00 to 17:00.

(e) The need for the Department of Transport (DOT) and the Department of Public Enterprises (DPE) to have a common vision regarding the moving of freight from road to rail.

(f) Slow turn-around of vessels.

(g) Service Level Agreements (SLA) do not seem to work.

C. City Deep and Pretcon Terminals

1. Background

According to Spoornet, City Deep was planned specifically as a transit terminal for containerisation. It is situated close to the industrial areas of Gauteng. City Deep and Pretcon only deal with import and export containerised freight. Spoornet operates both City Deep and Pretcon terminals, which are inland terminals that provide an essential intermodal link between road and rail. City Deep handles eight trains per day and has the capacity to handle 2 400 containers per day, but currently operates at 50% of capacity. Pretcon handles four trains per day and has the capacity to handle 1 000 containers per day.

In order to increase container security on rail, rail wagons have been modified to prevent container doors from being opened. Spoornet has 24-hour security in the marshalling yards.

To make it easier for clients to track and locate their containers, Spoornet has designed a website where container information can be provided.

2. Constraints facing Spoornet

(a) No planned movement of containers from the port to the customer is provided.

(b) Unplanned storage in the terminals causes congestion.

(c) There is a lack of communication and information sharing between Spoornet, cargo owners and freight operators.

(d) Vandalism, crime and theft are a challenge in operating rail.

3. Freight operators

All the representatives of private freight operators agreed that rail is the best method of transporting containerised freight. Their concern was that the current situation was not encouraging the use of rail.

4. Constraints

(a) Quality of service is poor and not predictable.

(b) Rail tariffs promote the use of road instead of rail. 65% of City Deep/Pretcon-bound containers are transported by road from the coast.

(c) There is a lack of capacity at Spoornet.

(d) Operating hours of inland terminals need to be extended.

(e) Constant changes in management cause a loss of experienced staff.

(f) Spoornet needs to invest in new rolling stock and human resources.

(g) Insufficient law enforcement of road transporters takes place.

(h) Information on the Spoornet website is often incorrect.

(i) There is insufficient planning on the part of Spoornet.

(j) The motor industry volumes have grown by 56%, while the infrastructure has remained the same.

5. Interaction with Spoornet

Spoornet alluded to the fact that they do have capacity problems. They have monthly meetings with the operators in order to address issues which need to be resolved.

Around the issue of security at City Deep, excellent co-operation between Spoornet and the operators had been achieved and as a result safety and security have improved tremendously.

D. Recommendations

1. Rail transit times and the turnaround of trains need to be reduced.
2. Security needs to be increased along rail lines to curb the theft of overhead cables.
3. Planning and utilisation of rail wagons needs to be improved.
4. Operating hours of inland terminals should be reviewed.
5. Rail tariffs need to be reviewed to ensure that they are competitive with road transport.
6. More effective policing of road transporters needs to take place.
7. Service levels need to be reviewed and improved to promote the use of rail.

8. Spoornet and SAPO need to work together as a team to promote the use of rail.
9. Introduce dedicated container trains with locomotives.
10. Ensure effective law enforcement on overloaded and under-declared containers entering container terminals.
11. Labour relations need to be improved to prevent strike-related action.
12. Communication with customers needs to be improved.
13. Rail of export containers needs to be given priority.
14. Accuracy of the website needs to be improved.
15. Investigate joint venture options with stakeholders.
16. Empower middle management to improve decision- making processes.
17. Make available a copy of the Halcrow recommendations to the Committee.

E. Acknowledgements

The Committee wishes extend its gratitude to Transnet for hosting the delegation, and also thanks Spoornet, South African Ports Operations and all the private freight operators for their participation.

3. **Report of the Portfolio Committee on Trade and Industry on public hearings on Industrial Policy, dated 5 June 2002:**

The Portfolio Committee on Trade and Industry, together with the Select Committee on Economic and Foreign Affairs of the National Council of Provinces, held public hearings on industrial policy at Parliament from 23 April to 7 May 2002. Submissions were invited to address a range of issues related to industrial policy and to comment on the discussion document of the Department of Trade and Industry, entitled Accelerating Growth and Development: The Contribution of the Integrated Manufacturing Strategy, which was released in April 2002.

The Committee reports as follows:

1. Introduction

Submissions and evidence were presented by the following in oral and written form:

Private sector institutions, and individuals

Textile Federation
Small Business Project
Business South Africa
South African Federated Chambers of Commerce
George Kean, Consultancy and Commentary
British Chamber of Business in Southern Africa
American Chamber of Commerce in South Africa
Caroline Skinner and Imraan Valodia, University of Natal

Labour organisations

Chemical, Energy, Paper, Pulp and Allied Workers Union
South African Transport and Allied Workers Union

Congress of South African Trade Unions
National Education, Health and Allied Workers Union
Food and Allied Workers Union
National Union of Metalworkers of South Africa
National Labour and Economic Development Institute

Government, Public Bodies and Political Parties

Department and Ministry of Trade and Industry
Foundation for Education, Science and Technology
Competition Commission of South Africa
Department of Arts, Culture, Science and Technology
Nedlac
South African Communist Party
Motor Industry Development Programme of Department
Industrial Development Corporation
Council for Scientific and Industrial Research
Commission on Gender Equality

The hearings were held to assess the broad industrial policy framework and were not limited to the document released by the Department of Trade and Industry entitled Accelerating Growth and Development: the Contribution of the Integrated Manufacturing Strategy (hereafter referred to as the IMS). The document, however, clearly represents an important development in government's thinking on industrial policy and much of the engagements were centred around the core issues identified in it. The release of the document just prior to the hearings unfortunately limited the ability of several stakeholders to engage with it in detail. The hearings and this Report therefore represent an initial basis for ongoing engagement.

The essence of a manufacturing or industrial strategy is to address the existing industrial structure and its implications for the possible future development paths of the economy. It should outline choices and set out the priorities of government together with a co-ordinated plan of the main areas in which actions will be taken. South African industry includes sophisticated production activities and developed heavy industries but in the last decade has failed to create employment, meaning that many engage in survivalist activities to make ends meet. Economic participation inevitably reflects the historical control over resources along the dimensions of race and gender. The challenges for an industrial or manufacturing strategy are therefore both great and urgent.

Preliminary comments

The Committee noted with concern the low level of participation by business. This was reflected both in the shallow engagement with the country's industrial policy framework by the business organisations which did make submissions, and the lack of participation by firms and representative organisations at the sector level (apart from the textile sector). The withdrawal from the hearings of organisations representing black business meant that the voice of this important stakeholder was absent from our proceedings. The Committee noted the importance of engagement by business if the new industrial policy framework is to realise its objectives.

The Committee also noted that while institutions falling within the Council of Trade and Industry Institutions (COTII) did make general comments on the manufacturing strategy in their submissions, in most cases their representations did not address the specific roles of their institutions within the new framework. The activities of these institutions are self-evidently an important and integral part of government's industrial policy framework.

The main themes from the submissions are now outlined, followed by the conclusions, which draw together key points on which broad consensus emerged and the main tensions which were explored.

2. *Main themes*

The Committee found that there was broad consensus around the need to develop a manufacturing/industrial strategy that sets out key objectives and priorities for an industrial development path and the role of different groupings in it. There was agreement that this means moving beyond dialogue to collective action, and that the State has a key leadership role in achieving this.

There was a high level of agreement that the new draft of the DTI policy in the IMS represents a significant advance on the previous policy outline produced in May 2001. This is reflected in the identification of the main challenges and priorities, and the need to move from macroeconomic stability to microeconomic action. The step towards customised offerings for the pursuit of strategic goals was also welcomed. As such, it is believed that the framework provides a solid basis from which to proceed.

This Report now outlines the DTI submission and the main industrial policy themes raised in the hearings, with reference to the various submissions made. The main areas of tensions where further analysis and debate are required, are highlighted.

DTI submission—An Integrated Manufacturing Strategy, and Microeconomic Reform Programme

The DTI submission was based on its document, Accelerating Growth and Development: The contribution of the Integrated Manufacturing Strategy, which is linked to the Microeconomic Reform Strategy, also tabled by the DTI during the hearings. The IMS provides the basis for "a collective government position...[to] co-ordinate a set of actions across government". It also provides guidance as to what "economic citizens can expect from the DTI over the next few years".

A strategy is defined in the IMS as a "long-term plan for future success or development". It therefore implies anticipation of the future and how it may be influenced, which in turn necessitates the collection and analysis of information, and the co-ordination of actions (as part of having a coherent plan). As such, the IMS is a crucial platform on which to build a collective approach to achieve the goals of employment generation and broad-based, more equitable, growth.

The Microeconomic Reform Strategy sets out a vision for 2014 for "a restructured and adaptive economy characterised by growth, employment and equity, built on the full potential of all persons, communities and geographic areas". The requirements to realise this vision include:

* A geographic spread of social and productive investment
* An integrated manufacturing economy capable of high degrees of value added
* An extensive ICT and logistics system capable of speed and flexibility
* A high degree of knowledge and technology capacity
* Greater diversity of enterprise type and size
* Skilled, informed and adaptable citizens
* An efficient, strong and responsive state structure

The strategy identifies the challenges in terms of the dualistic nature of South Africa's economy. It therefore seeks the improvement of cost-competitiveness in the developed economy, and the realisation of potential in the underdeveloped part of the economy, which represents the experiences of a large proportion of South Africans.

The performance of the South African economy is a starting point for the microeconomic reform strategy as well as for several submissions. This performance is characterised by weak growth, declining investment and savings rates, low levels of investment in research and development, falling formal employment and high levels of unemployment, especially among black people and women across racial groups. These characteristics are manifested in, and reflect, the high levels of inequality and poverty.

The strategy is an important part of the integrated action plan announced by President Mbeki in February 2001. This plan outlines the need for co-ordinated government interventions. Areas which are highlighted, include technology, human resource development, access to finance and infrastructure.

The DTI approach identifies competitiveness (required for increased production and employment) as having to do with a range of factors which impact on the ability of firms to produce and sell products. These include the prices of inputs, infrastructure, technology and innovation, skills and effective regulation. Central to the impetus for growth in this approach is improved efficiency through integration with the international economy and increased knowledge intensity. Technology, innovation and information communication technology (ICT) are emphasised as major drivers in this strategy. This is contrasted particularly with the past reliance on natural resources and cheap unskilled labour for competitiveness.

The DTI proposes a framework of value matrices for addressing the vertical and horizontal relationships involved in increasing value added across sectors, and the links with areas such as agriculture, beneficiation, ICT and tourism. Eight sectors are identified for promotion using customised services: clothing and textiles, agro-processing, metals and minerals, tourism, automotive and transport, crafts, chemical and biotechnology, and knowledge-intensive services. The DTI will also continue to pursue broad-based programmes related to competitive market access, the regulatory environment, investment promotion, access to finance, and policy coherence.

The key performance areas are black economic empowerment, small business development, employment and the geographic spread of economic activity. Targets are to be set, with an effective monitoring and evaluation framework to be put in place.

In its response to the hearings, the DTI argued that South Africa was already well on the way to becoming a knowledge economy and that the promotion of knowledge-driven activities, such as innovation and marketing intelligence, were a key to further development in all sectors. The Department also argued that a knowledge economy needs to draw on the experiences and capacities of everyone, and that in this context one of the major challenges was to more effectively upgrade the skills and capacities of our people, many of whom were at present not just unemployed but lacked the skills to take up employment.

The key themes raised by the DTI's submission were the focus of much of the debate around the subsequent submissions, and they were returned to in the response of the DTI at the end of the hearings.

Manufacturing strategy, industrial policy and industrial strategy

The DTI places manufacturing at the centre of the economy, and emphasises the need to increase value addition. The strategy also incorporates the need to promote diverse areas such as the beneficiation of natural resources and tourism. There was broad agreement on the need to examine linkages between cross-cutting areas, such as ICT, and the development of different sectors of the economy. This did, however, raise the question as to whether industrial strategy is not a more appropriate term as it connotes the influencing of different industries' development paths in line with national socio-economic priorities. These are not limited to sectors which are clearly delineated in economic terms as constituting manufacturing. This is also consistent with industrial policies as being the set of interventions to realise a particular vision for industrial restructuring.

Role of State: from dialogue to collective action

The need for a coherent plan to take collective actions forward to implementation is a core element of the strategy. The DTI submission clearly articulates that they act as a facilitator for the Microeconomic Reform Strategy and will champion competitiveness and equity in the economy. This they aim to do through partnerships in designing the interventions required. The emphasis on a stronger state leadership role was widely welcomed, to ensure the move beyond dialogue is achieved. The rationale for leadership is based on the intrinsic features of the South African economy, rather than a narrower understanding of state action being limited to addressing "market failures".

Submissions from Nedlac and the various social partners noted that the experience of collective engagements indicates that there are three key factors for success. First is the power of constituencies to drive the issue in question and to follow through. Second is leadership and constituencies' capacity to act, in particular government. Third is the sharing of information. Experiences of weaknesses across all constituencies were noted by Nedlac. However, particular concerns exist around the fragmentation of business. These concerns include difficulties in getting mandated positions and the weak capacity of small and medium business to effectively engage on key policy issues.

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In this regard, the DTI noted that their ability to move forward with collective actions would depend on the coming together of different stakeholders within sectors to move beyond narrow interests and lobbying to concrete analysis of the challenges and mapping out of the future development path. Sector job summits needed to fulfil this role if they were to be a mechanism for determining collective action in industrial policy.

The relative success of the Motor Industry Development Programme was contrasted with other sectors such as clothing and textiles. These examples highlight the importance of well-organised constituencies, such as in the motor sector. But, if a developmental industrial policy is to be taken forward which meets the objectives outlined by the DTI, such as employment creation, increased participation and equity, then the constituencies which should benefit most are not necessarily those which are strongest. This further emphasises the key leadership role of government in co-ordinating and delivering on agreed actions, and in not being limited to a reactive role to the demands coming from sectors.

The differences between sectors also highlights the importance of taking sector specific characteristics into account in the more targeted approach adopted in the strategy. The design and implementation of customised services by the DTI and the value matrices framework enable these sector specific factors to be carried through into appropriate measures. This was widely welcomed.

The roles of parastatals such as the IDC and other institutions across government must be part of a co-ordinated approach. In this regard, while the IDC has evidently played a leading role in large-scale beneficiation projects, which would not have taken place without its participation, there is concern as to progress in other areas. For example, IDC activity in small and medium enterprise finance appears to be largely reactive.

The weak representation at the hearings of other institutions within the Council of Trade and Industry Institutions (COTII) is of concern, given the need for effective co-ordination. Indeed, this is also an area of the DTI strategy where almost no detail is provided, and yet it aspires to lay the foundation for an integrated and co-ordinated framework. As the DTI itself notes in the strategy, the co-ordination and oversight of the COTII is "a significant challenge to the DTI and requires that DTI be equipped with the requisite capacities to meet this challenge".

Clarity on the process of further engagement to develop the strategy is required. It was noted by Nedlac and the constituencies that the engagement to date had been on the previous version of the strategy released by the DTI in May 2001.

Exports and trade liberalisation

Exports are identified by the DTI as a target sector in its own right. Export performance and potential is also one of the grounds for identifying specific value chains for promotion. The DTI further argues that exports have been encouraged by trade liberalisation and that sectors with improved export performance have also recorded

better performance in terms of employment. Other submissions, including those by Cosatu and affiliates, question this. Data on manufacturing sectors indicates that the best performing export sectors in recent years have recorded employment losses. And, sectors recording the largest net increases in jobs (plastics and wood products) have not had particularly strong export performance.

While there was consensus that export competitiveness is an important aspect for improved industrial performance, the causal links do not appear unambiguous. The recently released UNCTAD Trade and Development Report 2002 explains why significantly increased exports by developing countries in the past two decades has not produced the same improvements in growth. Even in hi-tech exports, the production activities being located in developing countries are often limited to assembly operations, with multinational corporations being attracted by low wages and investment incentives. Indeed, there is a risk of a "race to the bottom", with countries competing with each other as an investment location by offering incentives, competing on lower wages, and compromising labour standards. As long as developing countries remain in activities at the bottom of the value chain, exports may not contribute significantly to growth. In addition, the "fallacy of composition" means that if countries are following similar approaches it will be self-defeating—what works for one country will not necessarily work for many as an oversupply of an exported product will lead to falling prices in world markets.

While the liberalisation of trade has been linked to the imperatives of globalisation, submissions by the South African Communist Party and trade unions argued strongly that the different processes subsumed under the heading of globalisation have tendencies to reinforcing marginalisation. The outcomes therefore depend on the nature of engagement with these processes. For example, export performance is not a short-hand for success in industrialisation. It is possible to have improved export performance without increased production or employment, as has been the case in metals products, highlighted in the submission of NUMSA. Increased imports have gone hand-in-hand with increased exports. Import penetration in metal products has been most marked in the engineering and foundry products subsector, meaning that a tendency to more basic processing has been reinforced rather than the increased beneficiation which is an objective of the manufacturing strategy. Links between exports and technology are similarly not straightforward and need to be understood in more detail.

Trade liberalisation has forced companies to compete with imports and improve efficiency levels. At issue is the nature of the restructuring responses of firms and the costs in terms of employment and production. In particular, concerns were raised about the adequacy and sequencing of support measures for industries. Growth-oriented restructuring requires high levels of investment to increase productive capabilities and expand employment. With the relatively low levels of investment which have prevailed, firms in sectors such as textiles have upgraded machinery and raised productivity but in the context of static production, yielding reductions in employment. In the motor vehicle sector, measures designed to address the specific restructuring requirements in that sector have had a greater measure of success.

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Rather than a false dichotomy being drawn between exports and the domestic market, an alternative emphasis proposed by Labour and the SACP is for a developmental strategy underpinning competitiveness—where links between domestic demand, meeting basic needs and production are developed rather than a narrow focus on exports. For example, products such as fridges are primarily oriented to the domestic market. There are also linkages between products such as metal pipes and tubes and infrastructure investment.

Technology, knowledge intensity, and research and development

There was broad agreement over the worrying implications of the decline in research and development expenditure in the economy to around 0,7% of GDP (compared with the 2% commonly targeted by industrialising countries). There was also agreement over the need to recognise the increasing application of information and communication technologies to production, and the need to improve South Africa's skills base, especially in science, engineering and technology related disciplines. The DTI places increasing knowledge intensity at the centre of the manufacturing strategy as perhaps the prime driver of growth. This is founded on the belief that "Old Ways Don't Work" anymore, such as strategies based on raw materials or labour costs. Instead it is the development and application of "knowledge intensity" and ICT that are viewed as key for the development of "integrated value matrices". The response of the DTI to submissions re-emphasised their view that economic participation required appropriate skills for the new economy.

Strong submissions by the Department of Arts, Culture, Science and Technology (DACST), the Foundation for Education, Science and Technology (a DACST agency) and the CSIR further developed the issues of research and development (R&D) and the application of technology. These reinforced the need to have a clear strategic understanding of developments in this area. The R&D policy framework being developed by DACST will complement the IMS, while the CSIR is engaged in a range of concrete initiatives. The development of such strategies is evidently of importance, as the reductions in R&D expenditure in recent years are exactly the opposite of what is required for the DTI's strategy.

The causes of lower R&D expenditure were identified in the submissions as to do with both the private and public sectors. In both cases, however, the absence of a clear set of priorities for industrial development is an important factor. Public sector expenditure has declined largely as a result of shifts away from the apartheid priorities, without a redirection of efforts to priorities identified for broad-based and more equitable development. In the private sector, the competitive pressures of liberalisation have led to firms cutting costs, including research budgets. The "hollowing out" of corporate research has also been linked to the acquisitions of South African firms by multinational companies whose research capacity is situated primarily in their home base. In extreme cases, the multinational companies have closed significant production capabilities in South Africa and used the South African subsidiary as an assembly and "warehousing" operation for mainly imported components and products. It is worth noting that it is precisely the application of ICT

which enables the more effective control by multinationals of operations in different countries. Gains from the technologies of globalisation therefore require a clear strategy of engagement. The counter-example of Sasol—with very high local research investments—illustrates the importance of domestic capabilities, and the possible results of State action.

It was also emphasised that it is the application of technology and R&D which is the objective and not higher R&D activities for their own sake. Developing countries typically have a higher proportion of R&D spending undertaken by government. Examples were given of Korea (with a manufacturing leadership focus), Malaysia (aiming to be a fast-follower in the effective application of technologies, rather than primary research) and Australia (with an explicit focus on resources and agriculture). In this context, it is evidently important to avoid portraying the strategy as a choice between either resource beneficiation or knowledge intensity—the application of technologies is important for increased beneficiation and value added. The strategy being formulated by DACST has three focus areas: achieving mastery of technological change in the economy; increasing investment in South Africa's science base; and strengthening and realigning the science and technology machinery of government. At present, the research community is predominantly white, and aging, with research areas that reflect the previous government's priorities.

According to DACST the local research community at present communicates mainly with overseas research groupings. South African firms also communicate mainly with overseas producers for technologies. Apart from notable exceptions, such as Sasol, there is therefore an "innovation chasm" between local research and its application in local production. Application of technology also requires increased investment expenditures in new and more advanced machinery and equipment. This is easier to achieve in an expansionary environment.

Submissions by both labour and industry emphasised that, rather than treating technology independently, it must be linked into the wider issues of the strategies of firms and their investment and training decisions. Technology is not inherently biased to different segments of the economy. Its application can yield very significant gains in rural and small-scale economic activities, and can therefore contribute to increasing integration of the South African economy rather than fragmentation. But, application in these areas requires government leadership to a greater degree as there are economies of scale in research activities and upfront costs which make R&D less likely in smaller entities. In addition, while the gains to the economy as a whole are potentially very large, the financial rewards to an individual enterprise may not appear to be large (and therefore an incentive to invest in research activities).

Similar issues were raised by the CSIR submission and subsequent deliberations by the Committee. While the many areas of consensus with the DTI strategy were highlighted, the CSIR's focus was on the need to view technology as a process from development through to application as part of enterprises' production strategies and employment decisions. There is a need to identify key issues within selected

industries and related to key technologies, and to design interventions. Identification of these will be enhanced by business intelligence at both a global level and on domestic value matrices, which needs to be made available to the organisations with responsibilities in the field. Similarly linkages between initiatives such as Industrial Development Zones and Spatial Development Initiatives need to be spelt out.

Initiatives such as the Auto Industry Development Centre and the Light Metals Development Centre in which the CSIR is engaged along with firms and other institutions provide examples of partnership in practice. However, the need to raise the majority of its funds from fees charged to the private sector raises questions as to the effectiveness of the CSIR in its role of proactively "leading" developments that are in line with national priorities and the future development path, rather than "following" private firms. In most industrialising countries. Research to support long-term priorities is given much greater state support in order to provide services as a "public good". For example, the USA's programmes in defence and space provide major support to industries engaged in areas such as materials development. More effective use of the CSIR as a public institution could be viewed as it constituting a major supply-side measure.

Investment patterns and Foreign Direct Investment (FDI)

There was broad consensus about the poor investment performance in recent years, and the need for the investment rate to be significantly higher if stronger growth and employment generation are to be attained. Both Business and Labour submissions argued that more effective co-ordination of government activities across different departments and public institutions was necessary for higher investment rates. There was also widespread agreement that poor investment performance was due to the decisions of private firms rather than a lack of funds. Low levels of investment by government and parastatals in the last decade was noted as one of the factors underlying low investment rates in the economy.

There was also consensus that foreign direct investment is attracted to economies which are growing rather than FDI being the catalyst for growth. The potential threats from FDI in the form of mergers and acquisitions were highlighted by several submissions by trade unions. In both the metals and dairy sectors there have been cases of foreign acquisitions leading to South African subsidiaries being converted into "warehousing" operations for imported products. The failure to realise the benefits to the South African economy from foreign listings was also noted.

The Business submissions put forward a general platform arguing for lower taxes and privatisation rather than engaging with the implications for industrial policy specifically. Submissions by the SACP and Labour argued for the need to understand the patterns of capital accumulation and investment decisions as part of evolving corporate strategies. Given widespread market failures in financial markets there is a need to ensure that public development finance institutions, especially the Industrial Development Corporation, are oriented towards industrial development goals. Government infrastructure

investment, including in spatial development initiatives, also has an important role in crowding-in private investment. By providing greater certainty as to future developments in these areas, government also reduces perceptions of risk around investment decisions by private firms.

The need to explore measures such as prescribed assets to ensure that financial resources are deployed to long-term growth objectives was also raised by Labour and the SACP, both of whom also saw a need to underpin industrial policy with a comprehensive restructuring of the financial sector.

Pricing of inputs and import-parity pricing

The DTI strategy raises the pricing of inputs as an important area for government attention, with particular reference to services such as transport and telecommunications. The Competition Commission and others also noted the negative implications of import-parity pricing for the development of broad-based manufacturing, but few details were provided on actions in this area. Import-parity pricing is widely practised and effectively means that there are no cost advantages for manufacturing firms using South African produced material inputs as they have to pay prices equivalent to the costs of importing (including the transport, tariffs and related costs that they would have to incur). This price may be significantly above the price which South African producers are charging in the export market. A value chain approach, which examines linkages between different stages of processing from raw materials through to finished products could address such issues, provided concrete mechanisms are in place to enforce remedies.

Empowerment and participation

The poor progress in black economic empowerment is highlighted in the IMS, as is the lack of progress in ensuring equitable participation by women, with black rural women in particular bearing the brunt of ongoing poverty. A four-pronged approach is to be adopted towards black economic empowerment including new offerings, a partnership programme and a non-statutory black economic empowerment advisory council. Support measures and access to finance will be designed to increase the participation in the economy of black people and women. Other submissions noted the importance of integrating meaningful empowerment measures into government's industrial strategy. The Labour submission noted the need to adopt a broad definition of empowerment that extended beyond increased ownership to effective participation of the mass of the population.

The lack of effective treatment of relationships between gender and industrial strategy in the various submissions was, however, highlighted by Committee members. As noted by the Commission on Gender Equality, the roles of women are influenced by traditional and modern practices of patriarchy which include access to economic assets such as finance and land. The continuing gender division of labour means that women (and black women in particular) tend to work in lower paid and less secure employment, as well as undertaking unpaid work in the household. The gender division of labour is integrally linked to the development path of the economy and continuing high levels of poverty.

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Industrial restructuring has evident effects on women, and their participation in the economy. This applies to patterns of employment and unemployment and, for example, the effects of increased practices of casualisation and outsourcing in sectors such as clothing and retail. Concerns raised by the Commission on Gender Equality include: the need to be more explicit in the definition of beneficiaries; ensuring that strategies designed for sectors under customised programmes promote the development of industries in a transformative manner; and that women's organisation need to be taken more into account in economic decision-making. There are implications for measures addressed at micro-enterprises, small firms and co-operatives, access to training, participation in policy formulation, elimination of occupational segregation, and the monitoring of policy impacts.

HIV/AIDS

Union research indicates that there are already effects being felt of HIV/AIDS on skilled categories of workers. There are also indications through unions' networks of shop-stewards that businesses are changing their decisions to take account of the perceived impacts of HIV/AIDS on purchasing patterns. That is, producers in sectors such as food and furniture are moving away from basic goods for low-income markets based on the belief that HIV/AIDS will mean declining demand in these market segments.

The Motor Industry Development Programme

The Motor Industry Development Programme (MIDP) was initiated in 1996 based on an analysis of the key challenges facing the auto sector and was a result of industry and government agreement. It is viewed as a major success by DTI on the grounds that it has succeeded in stimulating exports, and preventing major employment losses. The auto firms have restructured to reduce the numbers of different models assembled in South Africa and have increased the volumes of those models which are produced and local component production. The main feature which has encouraged the restructuring is the rebate of import duties from the export of vehicles and components.

An important element of the programme is the integrative effects along the value chain. These arise from the groupings established, namely the Motor Industry Development Council of the main stakeholders, the MIDP as the main programme, the Strategic Investment Team which proactively identifies investment opportunities in components, the Auto Industry Development Council which links research, training, investment and corporate strategies, and the "benchmarking clubs" which have been established to support components producers.

A key reason identified for the success of the programme is the leadership exerted by firms (especially the main German assemblers) and by government. The take-up of government support measures indicates the importance of a co-ordinated sector strategy for the effectiveness of government initiatives. In addition, through the Strategic Investment Team, potential developments are anticipated at the industry level through collective information sharing and links with government policies. Government exerts leverage through its specific programmes such as the Critical Infrastructure Fund.

Rather than being transplanted directly to other sectors, the lessons from comparisons with sectors such as clothing and textiles are that measures must be based on an understanding of the sector-specific challenges and that the commitment of the different constituencies to a commonly agreed set of concrete objectives is crucial. Questions were also raised about the concentration on a very small set of components exports (catalytic converters, seat-leather and exhausts) and the relatively limited employment creation as a result.

Agro-processing and food production

Submissions by the Food and Allied Workers Union (FAWU) and the National Labour and Economic Development Institute (Naledi) noted that deregulation and liberalisation mean that prices of food products in South Africa are now determined in international markets. This means that prices can fluctuate greatly from year to year and speculation may exacerbate the volatility of prices, such as when news of possible developments in other countries has a major impact on the prices of staple foodstuffs for low-income consumers.

It was also noted that trade agreements, such as with the European Union, have not yielded the expected gains. Studies have questioned whether overall impact for the South African economy will be positive, especially as the opening of the EU market to South African produce has been much slower than anticipated for a variety of reasons. The ongoing (and in some cases, increasing) subsidisation of agriculture in industrialised countries is also cause for concern.

Small, medium and micro enterprises

The IMS notes the significance of small, micro and medium enterprises in the economy and identifies reductions in barriers facing their operations as a priority for empowerment. Measures to achieve this are to include a one-stop shop for entrepreneurs for access to finance, and attention to market access and unfair competition.

The submission by the Small Business Project proposed the need for a regulatory review to examine the ways in which regulations inhibited the growth of SMMEs. The submission also highlighted the lack of a clear plan and concrete measures for SMMEs in the IMS. Committee members noted the importance of viewing SMME development against the legacy of apartheid and the need for proactive government measures, including promoting greater access to affordable finance, in order to empower SMMEs to contribute to more equitable growth. It was noted by Labour representations that SMMEs did, however, tend to have a shorter-term focus and were therefore less likely to make investments in machinery and skills development required for long-term growth.

Subcontracting, outsourcing and casualisation

There has undoubtedly been a major increase in subcontracting and outsourcing by firms. This has ambiguous effects which need to be analysed. At one level, these processes may lead to increased participation by SMMEs owned by historically disadvantaged persons. However, there are a number of negative effects. The increased flexibility and increased insecurity resulting from such arrangements conflicts with a greater emphasis on R&D and skills development.

Evidence was also presented in the written submission by Skinner and Valodia on the clothing sector in KwaZulu-Natal. Skinner and Valodia's research found that firms are using outsourcing arrangements simply to by-pass labour regulations and health and safety requirements on a very large-scale. As such, these practices may simply be exploitative.

3. Conclusions and recommendations

The DTI's Integrated Manufacturing Strategy is undoubtedly a major advance in developing an appropriate industrial policy to reorient the economy to achieve the objectives of broad-based growth, employment generation and equity. In it the leadership role for the state is clearly established. The challenge is to take this leadership through to effective strategies at the sector level, through the collection and analysis of information, design of appropriate customised measures and co-ordination of the actions of different government departments and institutions. The urgency of these measures cannot be in doubt given the large job losses which have been sustained across industrial sectors.

There was broad consensus from the hearings that the value matrix framework was a useful approach for understanding the vertical and horizontal linkages between activities, within and across value chains. Similarly, a strong understanding of the various relationships between knowledge-intensity, beneficiation, investment, the financial sector (including the issue of promoting greater access to affordable finance by SMMEs) and increased participation in the economy is crucial for development and successful implementation of the strategy.

There was also consensus on the importance of effective collective action, led by the state, with customised measures based on the specific needs of different sectors. In addition, the focus on research and development and the effective application of technology to improve production capabilities is welcome to reverse the declines in investment in these areas.

There are also a range of tensions which reflect the realities of the South African economy. These tensions include that between the requirements of international competitiveness in established manufacturing industries, and the need to create employment and increase the participation of the mass of the population who are unemployed or under-employed. A similar tension exists between the emphasis on exports and production for the local market. It is important to note that submissions and subsequent debate in the hearings did not view these tensions as representing alternative choices. The high levels of poverty and unemployment are partly a result of the previous industrial policies which simultaneously supported the development of certain industries. And, meeting the imperatives to broaden access to resources, for example, in finance, education and infrastructure, is necessary to ensure the sustainable development of future productive capabilities.

Nor was it argued that exports and local production are mutually exclusive. Export capabilities depend on investment and productive capabilities which are founded on local economic strengths. Increased integration in the domestic economy through better infrastructure

provision, affordable access, improved education and skills development, is a key part of the platform for sustained industrial growth and will be supported by an effective set of industrial policies. The application of knowledge also does not intrinsically mean a focus on only one segment of the economy. Indeed, without developing and applying knowledge appropriate to economic activities across the economy increased economic integration will not be achieved and high levels of inequality will be perpetuated. This relates to the concrete measures in implementing the industrial strategy, and the activities of institutions such as the CSIR and IDC.

Arising from the hearings and the Committee's deliberations are the following recommendations:

* Further clarification is required as to how the value matrix framework is to be applied in practice.

* There is a need for further clarity on the precise mechanisms through which DTI will seek to promote more effective collective action, including how to overcome impediments identified by participants in the hearings.

* There is an urgent need to build capacity in the DTI to analyse the determinants of industrial development within and across sectors, and to design and implement appropriate policy measures.

* More effective co-ordination around the implementation of the IMS is required between different branches of government such as DACST and DTI, and between institutions within COTII. The challenge facing the COTII institutions is not merely to comment in general on the IMS document, but to identify in detail how their own activities will contribute to the advancement of the strategy. The Committee accepts the point made in the Department's response that they too have an active role to play in ensuring the implementation of the strategy through, inter alia, "interrogating the mandates and activities" of the COTII institutions, and through the role they play in "debating and questioning all legislation that the DTI and other economic departments table".

* The role of the IDC needs to be addressed in greater detail, as part of assessing the ways in which the IMS can impact on investment patterns and empowerment. In particular, the IDC's operations in the SME sector and in empowerment must be reoriented to enable it more effectively to "identify and support opportunities not yet addressed by the market", just as it has historically done in large-scale upstream beneficiation.

* Specific measures to increase research and development activities in South Africa, including additional direct funding by government, are urgently needed. Serious consideration should be given to the proposal by the CSIR to make R&D support a component of customised support packages made available by government to support the IMS. A particular focus needs to be the development of technologies appropriate to the challenges of development and the promotion of employment.

* Visible and concrete benefits from the industrial strategy must be realised in underdeveloped and rural areas of the economy.
* The promotion of cooperatives and other forms of collectively owned enterprises needs to be fostered and encouraged as a major component of SMME and empowerment strategies.
* There is a need to take empowerment into account in more concrete terms and particularly to address the absence of a substantive treatment of gender. In this respect, the recommendations of the Commission for Gender Equality to engender the IMS merit careful consideration. There is a need, in particular, for customised support programmes to take account of the current gender profiles and problems in promoting gender equality that are specific to industries or sectors to which they are applied.
* The roles of different levels of government in industrial strategy must be determined. The effectiveness of many measures, such as linkages with infrastructure provision and the operation of industrial development zones, lie in the hands of provincial and local government and municipalities. It is therefore necessary to ensure a high level of co-ordination between a national IMS and the policies and programmes of provinces and local governments. The Committee recommends that as part of the ongoing process of consultation, particular steps are taken to engage with the provincial and municipal spheres of government, as well as with other stakeholders operating at these levels.

The Committee welcomes the interaction and look forward to further debate and engagement in order to strengthen the industrial policy framework. In particular, the Committee will seek to promote further discussion and debate on implementation of industrial policy as well as on the interrelationship between industrial policy and:

* The development of a supportive macroeconomic framework
* Measures to promote greater access to affordable finance for development
* Empowerment and Training Programmes
* Further extending the State's developmental role, including that of parastatals

The Committee wishes to thank all those who made submissions, as well as the European Union Parliamentary Support Programme, which made available financial assistance for research support.

National Council of Provinces:

1. **Report of the Select Committee on Social Services on Provincial Visit to Gauteng, dated 18 September 2001:**

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Annexure I

The Select Committee on Social Services reports as follows:

A. Introduction

A delegation of the Committee visited the Lindela Repatriation Centre and the Department of Home Affairs in Gauteng on 24 and 25 May 2001. The aim of the visit was to—

* critically assess the living conditions at the Centre, to investigate allegations in the media about human rights abuses at the Centre, and to see in which way the Committee could intervene to address problem areas; and

* ascertain progress made with the new system of the ID smart card at the Department.

The delegation, under the leadership of Ms L Jacobus (ANC—Gauteng), included—

* Ms N S Ntlabati (ANC—Free State);
* Mrs E C Gouws (DP—Eastern Cape);
* Mr T H Sogoni (UDM—Eastern Cape); and
* Mr J Horne (New NP—Northern Cape).

Ms M Mukhuba, Committee Secretary, accompanied the delegation.

Lindela Repatriation Centre

B. Background

The Lindela Repatriation Centre was established in 1996. It is the only centre of its kind in the country. There has been a continuous outcry in the media about the treatment of inmates at the Centre. A number of instances of abuse, including physical and mental abuse of inmates, had been reported. It is also alleged that inmates' human rights were being violated and that the living conditions were appalling. Illegal activities allegedly committed by staff, such as the tearing up of legal papers and other documents, had also been leveled against officials who ran the centre.

The visit included a meeting with management and staff as well as a tour of the facility.

C. Findings

1. Overview by Mr J L van Vuuren, Project Leader/Deputy Director: Home Affairs

The Centre is a place where illegal immigrants are kept prior to deportation to their countries of origin. Within 72 hours, the

Centre's officials should be able to classify from which country an immigrant comes. The official's only source of information is the arrestee himself or herself. It is common for arrestees to provide officials with inaccurate information, because they fear deportation. The information is sent to the relevant Embassy or High Commission as well as to the Department of Home Affairs. Once this has been done, the official prepares the repatriation documents to facilitate deportation.

The Centre functions with four computers, three cameras, three fingerprint scanners and an identification card reader, which are integrated into a database. The database information includes—

* Name and surname;
* Date of birth;
* Photo capturing on an individual basis;
* Fingerprint identification;
* Date and place of arrest;
* Date of admission;
* Date of release; and
* Country of origin.

The information is then stored on the identification card given to the inmate on admittance. Upon release, this card is scanned into a separate computer and the inmate's fingerprints are read on the scanner again. The identification card is kept on file at the Centre for administration purposes.

Up to 4 000 people can be accommodated at the Centre. About 1 500 people are deported every month. The South African Police Service brings about 90% of the immigrants to the Centre from various police stations, mostly from ones in Gauteng. However, immigrants are also brought from police stations in other provinces along Gauteng's border. The remaining 10% are brought to the Centre by Home Affairs officials, who often travel from as far as Cape Town, Port Elizabeth, Durban, Umtata, Richard's Bay, etc. Immigrants are repatriated, almost on a daily basis, to border posts, Johannesburg International Airport and Lanseria Airport. Furthermore, a train departs weekly to Mozambique from the railway station next to the Centre.

2. ***Site visit***

The delegation had an opportunity to observe the kitchen, ablution facilities, sleeping quarters, dining hall, sports field and recreation centre.

Accommodation

The delegation was presented with a document compiled by the Broadcasting Complaints Commission of South Africa (BCCSA), which ruled out all allegations against the Centre that had appeared in the media (see Annexure A).

Inmates were free to move around inside the Centre, but they were not allowed to leave unless they were being repatriated to their countries of origin.

Food

An amount of R21,81 per day was allocated to each inmate for meals.

Different menus for breakfast, lunch and dinner were on display on the walls next to the kitchen. Meals were prepared in the kitchen and then transported to the dining hall for distribution. There was also a canteen, where various things are sold.

Bedrooms

The sleeping area was divided into a section for men and women. Children under 10 were kept with their mothers. There was also a cr che for toddlers. During the visit the cr che was closed because there were not enough children. Each room had a number of bunk beds. Upon arrival, the inmates were allocated a room with a bed and blanket. One of the inmates said that the blankets had lice and bugs. The officials indicated that the inmates themselves brought these lice and bugs into the Centre. Blankets were sent to the dry cleaners twice a month.

Mattresses were constantly being damaged, and this was evident in the men's section. The damaged ones were replaced regularly. Women had their own television room. Toilets and showers were inside their rooms. Personal toiletries for women were provided on a daily basis and baby formula, bottles and teats were provided for mothers with babies.

Health service

The Centre had a clinic with one nurse on duty every day and a doctor who visited it on a daily basis. The nurse saw about 100 people per day. At around 10:45 on the day of the visit, the nurse had already seen over 50 persons.

Security

There was an electric perimeter fence as well as a run with dogs. The facility was also monitored by close circuit television and cameras. Surveillance tapes recorded by these cameras were kept for 30 days. The officials indicated that even though there was tight security, inmates sometimes did escape. Some of them hid on the day of deportation to escape the scheduled deportation.

Recreation facilities

There was a library that used to provide newspapers and magazines to inmates. Most of the material had been stolen and the library was subsequently closed. There was also a playground where inmates could play football and other games. There were also a number of pay phones in both sections for use by inmates. A Vodacom facility was located in the men's section, but women were also allowed to use it.

Communication with inmates

There was an induction programme conducted by an official for

new inmates on their day of arrival. The person who did the induction could speak some of the languages commonly spoken and understood by the inmates.

D. Conclusion

1. The level of compliance with human rights principles regarding the living conditions and the basic human rights of the inmates appeared to be satisfactory.
2. The Centre was in a very impressive condition, neat and very different from prison conditions.
3. Food for inmates met the nutritional requirements.
4. The women's section was cleaner and more organised than the men's section.
5. The clinic did not have adequate equipment for health workers to fulfil their duties. If an inmate was in a serious condition, he or she was taken to the nearest hospital under the supervision of a security guard.
6. Ms Jacobus indicated that the delegation was satisfied with the conditions at the Centre. It was the complete opposite from what was reflected in the media.

E. Recommendations

1. Staff should be protected against diseases that are brought to the Centre by inmates.
2. Inmates should undergo check-ups for illnesses or diseases before they are admitted to the Centre.
3. The Department of Home Affairs should assist the Centre by providing more staff and infrastructure in order to run the facility more effectively.
4. Additional health care personnel should be deployed to the Centre.
5. The Departments of Home Affairs and of Safety and Security should clarify whose responsibility it is to provide security for deportees.
6. The Department of Home Affairs should take strong disciplinary action against officials who engage in any form of corrupt practice.
7. An HIV/AIDS awareness programme should be implemented.
8. Foreign missions should be encouraged to respond timeously to requests for information by officials of the Centre.
9. The Centre should be allocated its own budget and administer it, and should give an account of its expenditure to the Department of Home Affairs.

Department of Home Affairs

F. Background

The delegation met with officials at the Department of Home Affairs in Pretoria.

G. Findings

1. Overview by Mr J R Chavalala, Chief Director: Strategic Planning and Service Delivery, Home Affairs, and other officials

The officials briefed the delegation on the smart card ID system. Discussions were taking place between the Departments of Home Affairs, of Health, of Social Development and of Transport in order to include personal information from these departments on the smart card. Discussions will also have to take place at Cabinet level before final approval is given for the system to be implemented.

It will take about 18 months from the date of Cabinet approval to conclude the process of procurement and contracting. Once the contract is approved, it will take a further nine months before the first card is issued, because the technology to produce the card is currently not available in this country. Malaysia and Finland currently have this technology. The envisaged date for the issuing of the first smart card is the beginning of 2003.

H. Recommendations

1. The Department should expedite its discussions with the relevant departments.

2. The Cabinet should agree on the information that should be captured on the smart card.

3. The tender process should begin as soon as possible in order to meet the envisaged date of 2003.

I. Annexure—Findings by BCCSA, published on 21 May 2001

"MESSAGE TO CLIENTS, STAKEHOLDERS AND STAFF OF BOSASA

"BROADCASTING COMPLAINTS COMMISSION FINDS IN FAVOUR OF DYAMBU AND BOSASA"

1. You may be aware that Dyambu Operations (Pty) Ltd, now called Bosasa, was in part the subject of A defamatory Carte Blanche programme broadcast on the evening of Sunday 7 May 2000. At the time we stated our intention to pursue every avenue to preserve our good name and in fact laid the whole matter before the Broadcasting Complaints Commission of South Africa (BCCSA).

2. We are delighted to tell you that the BCCSA has not only upheld the complaint of Dyambu Operations but has also censured Carte Blanche for contravening its Code of Conduct. A retraction was read on Carte Blanche yesterday evening the 20th May 2001 and published in the national press, the retraction and full judgment will be available on M-Net's website for the next two weeks.

3. The findings are as follows:

The commissioners (Prof Kobus van Rooyen SC with Dr Willem de Klerk and Rathu Mokgoatheng) found that negative comment on the Lindela facilities did not take fair and balanced account of all related material facts.

They found that the broadcast ignored several positive facts about the centre, which were brought to the producer's attention. For example, it failed to mention several facilities, including a fully equipped clinic with a doctor and qualified nurses, a well-equipped games room, four TV rooms, a soccer field, public telephones, a fully stocked canteen and a dining hall serving fully balanced and well prepared meals.

4. The commissioners reprimanded M-Net for its negligence in not affording Dyambu Operations any opportunity of responding to negative and critical statements despite having promised to do so.

5. The commissioners also found that M-Net was negligent in not making reasonable efforts to fairly present significant alternative points of view by not having broadcast a responding statement by Dyambu Operations.

6. It also confirmed that there had been no improprieties in the award of the tender by the Department of Home Affairs in 1996.

7. The enquiry concluded that the impression created in the programme that politicians, including Dr. Lindiwe Sisulu, had an interest in Dyambu Operations, the company awarded the tender to manage the facility, was unfounded.

8. The enquiry further concluded that the impression created that there were improper dealings in the company structuring of Dyambu Operations, was also unfounded and could easily have been explained by a corporate lawyer as being in accord with ordinary corporate law.

9. While regretting that the occasion should never have arisen in the first place, it is pleasing that our efforts have led to a satisfactory resolution of this unfortunate affair, and has completely vindicated us of these allegations. ..."

No 37—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

FRIDAY, 7 JUNE 2002

1. The House met at 09:02.

2. The Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [09:03] Notices of motion.

4. [09:18] The Chief Whip of the Majority Party moved without notice: That the House, subject to the concurrence of the National Council of Provinces, resolves that the National Assembly Working Group on the African Union confer with the National Council of Provinces Working Group on the African Union.

   Agreed to.

5. Mr D H M Gibson moved without notice: That the House—

   (1) congratulates Bob Skinstad on his re-appointment as captain of the Springboks, and all of his team members on their selection to play for our country; and

   (2) wishes them every success in the test against Wales on Saturday.

   Agreed to.

6. Mr M J Ellis moved without notice: That the House—

   (1) sends its support and best wishes to Bafana Bafana in their crucial World Cup match against Slovenia on Saturday; and

   (2) assures each member of the team that our nation is with them as they take the field.

   Agreed to.

7. The Chief Whip of the Majority Party moved: That Rule 253(1) be suspended for the purposes of conducting the Second Reading debates on the following Bills:

   (a) ***Constitution of the Republic of South Africa Amendment Bill*** [B 16—2002] (National Assembly—sec 74);

(b) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17—2002] (National Assembly—sec 74);

(c) ***Local Government: Municipal Structures Amendment Bill*** [B 22—2002] (National Assembly—sec 75);

(d) ***International Criminal Court Bill*** [B 42—2001] (National Assembly—sec 75); and

(e) ***Insolvency Amendment Bill*** [B 14—2002] (National Assembly—sec 75).

Agreed to.

8. FIRST ORDER [09:20]

Consideration of Report of Portfolio Committee on Communications on ***Electronic Communications and Transactions Bill*** [B 8 and B 8A—2002] (National Assembly—sec 75) (Announcements, Tablings and Committee Reports, 4 June 2002, p 543).

Report adopted without debate.

9. SECOND ORDER [09:21]

Second Reading debate—***Electronic Communications and Transactions Bill*** [B 8B—2002] (National Assembly—sec 75).

Debate concluded.

Bill read a second time (Democratic Party dissenting and Afrikaner Eenheidsbeweging abstaining).

10. THIRD ORDER [10:58]

Debate on Vote No 32—Transport, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

11. The House adjourned at 13:16.

S MFENYANA,

Secretary to Parliament.

No 72—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 7 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

(1) The Joint Tagging Mechanism (JTM) on 6 June 2002 in terms of Joint Rule 160(6), classified the following Bill as a section 76 Bill:

(i) ***Disaster Management Bill*** [B 21—2002] (National Assembly—sec 76).

(2) The Minister for Justice and Constitutional Development submitted the ***Wysigingswetsontwerp op die Grondwet van die Republiek van Suid-Afrika*** [W 16—2002] (National Assembly—sec 74) and the ***Tweede Wysigingswetsontwerp op die Grondwet van die Republiek van Suid-Afrika*** [W 17—2002] (National Assembly—sec 74) to the Speaker and the Chairperson on 7 June 2002. This is the official translations of the ***Constitution of the Republic of South Africa Amendment Bill*** [B 16—2002] (National Assembly—sec 74) and the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17—2002] (National Assembly—sec 74), which were introduced in the National Assembly by the Minister on 19 April 2002.

(3) The Minister for Provincial and Local Government submitted the ***Wysigingswetsontwerp op Plaaslike Regering: Munisipale Strukture*** [W 22—2002] (National Assembly—sec 75) to the Speaker and the Chairperson on 7 June 2002. This is the official translation of the ***Local Government: Municipal Structures Amendment Bill*** [B 22—2002] (National Assembly—sec 75), which was introduced in the National Assembly by the Minister on 15 May 2002.

National Assembly:

1. The Speaker:

The following papers have been tabled and are now referred to the relevant committees as mentioned below:

(1) **The following paper is referred to the Portfolio Committee on Public Service and Administration, the Portfolio Committee on Justice and Constitutional Development and the Portfolio Committee on Safety and Security:**

A review of South Africa's National Anti-Corruption Agencies, Public Service Commission [RP 216-2002].

(2) **The following paper is referred to the Portfolio Committee on Public Service and Administration:**

Ethics Survey for 2001—Ethics in Practice, Public Service Commission.

National Council of Provinces:

1. The Chairperson:

(1) Bill passed by National Council of Provinces on 6 June 2002: To be submitted to President of the Republic for assent:

(i) ***Media Development and Diversity Agency Bill*** [B 2B—2002] (National Assembly—sec 75).

(2) Message from National Assembly to National Council of Provinces:

Bill passed by National Assembly on 7 June 2002 and transmitted for concurrence:

(i) ***Electronic Communications and Transactions Bill*** [B 8B—2002] (National Assembly—sec 75).

The Bill has been referred to the Select Committee on Labour and Public Enterprises of the National Council of Provinces.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Justice and Constitutional Development on the **International Criminal Court Bill** [B 42—2001] (National Assembly—sec 75), dated 7 June 2002:

The Portfolio Committee on Justice and Constitutional Development, having considered the subject of the ***International Criminal Court Bill*** [B 42—2001] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, presents the ***Implementation of the Rome Statute of the International Criminal Court Bill*** [B 42B—2001] (National Assembly—sec 75), and endorses the classification of the Bill as a section 75 Bill.

The Committee wishes to report further, as follows:

1. Territorial jurisdiction of South African courts

(a) Clause 4 of the ***International Criminal Court Bill*** deals with the jurisdiction of South African courts in respect of the crimes of genocide, crimes against humanity and war crimes which are created in the proposed legislation. Clause 4(3) more specifically sets out the circumstances in which the South African courts will

have jurisdiction to hear cases against persons who are alleged to have committed one of the crimes in question if the crimes are alleged to have been committed outside the territory of the Republic, namely—

* if the perpetrator is a South African citizen;
* if the perpetrator is not a South African citizen but is ordinarily resident in the Republic;
* if the perpetrator is present in the Republic after the commission of the crime; and * if the perpetrator has committed a crime against a South African citizen or against a person who is ordinarily resident in the Republic.

(b) The approach adopted in the Bill by giving South African courts extended jurisdiction to deal with crimes which were committed outside the territory of the Republic is similar to the Canadian legislation, among others, dealing with the International Criminal Court.

(c) It is understood that Belgium is the only country which, to date, has gone even beyond what South Africa and Canada have done in respect of jurisdiction, namely by giving the Belgian courts universal jurisdiction to deal with prosecutions instituted against persons who are alleged to have committed one of the above crimes. This, in effect, means that the Belgian courts can deal with cases in which the crimes in question have been committed by any person anywhere in the world.

(d) The Committee expressed the view that the possibility of giving the South African courts universal jurisdiction to deal with the prosecutions under discussion, should be explored. It consequently requested the Department of Justice and Constitutional Development to—

(i) undertake the necessary research in this regard, taking all the implications of such an approach into consideration, particularly those of a financial nature and the difficulties which may arise as a result of competing requests from different countries; and

(ii) report back to the Committee within six months after the adoption of this Report by the National Assembly.

2. ***Enforcement of sentences of imprisonment in South African prisons***

(a) Article 103 of the Statute envisages States indicating their willingness to accept sentenced prisoners to serve their terms of imprisonment in their prisons. States which are willing to accept such sentenced prisoners will be placed on a list by the Court. At the time of indicating their willingness to accept sentenced prisoners, States are given the opportunity to spell out conditions pertaining to such acceptance. The Court will thereafter, in individual cases, designate particular States on the list for purposes of referring sentenced prisoners to serve their sentences. In order to give effect to this arrangement in the Statute, Clauses 31 and 32 of the Bill, in brief, provide for the following:

(i) The Cabinet member responsible for correctional services must, in consultation with the Cabinet and with the approval of Parliament, decide, as soon as is practicable, whether South Africa should be placed on the list of States willing to accept sentenced prisoners and determine the conditions pertaining to such acceptance.

(ii) This decision must be submitted to the Court.

(iii) Similar procedures apply in the event of South Africa wishing to revoke or vary such an acceptance.

(iv) Once South Africa has been placed on the above-mentioned list, the Court can designate South Africa as a State to accept a particular prisoner in a particular case for purposes of serving a sentence of imprisonment. This designation is referred, via the Central Authority, to the Cabinet member responsible for correctional services, who is given a discretion whether to accept the designation in question or not.

(v) The Court must be informed as soon as possible whether the designation is accepted or not.

(vi) A warrant of detention issued by the Court in respect of a person referred to South Africa for purposes of serving a sentence of imprisonment is deemed to be a valid warrant for the purposes of section 6 of the Correctional Services Act, 1998.

(b) The Committee requests the Cabinet member responsible for correctional services to initiate an investigation, as soon as possible, into the possibility of placing South Africa on the list of States willing to accept sentenced prisoners for purposes of serving their sentences of imprisonment in South African prisons and, if so accepting, to determine the conditions pertaining to such acceptance, as contemplated in Clauses 31 and 32 of the Bill and, in the process thereof, to consider all possible implications thereof, particularly those of a financial nature.

3. ***Commencement of Bill***

The Rome Statute of the International Criminal Court is scheduled to commence on 1 July 2002. With this in mind, Clause 5(2) of the Bill provides that no prosecution may be instituted against a person accused of having committed a crime if the crime in question is alleged to have been committed before the commencement of the Statute. The Committee requests the Department of Justice and Constitutional Development to make every effort to ensure that the proposed legislation can be put into operation on or before 1 July 2002, also ensuring that the required subordinate legislation is prepared and promulgated timeously.

Report to be considered.

2. Report of the Portfolio Committee on Justice and Constitutional Development on the ***Insolvency Amendment Bill*** [B 14—2002] (National Assembly—sec 75), dated 7 June 2002:

The Portfolio Committee on Justice and Constitutional Development, having considered the subject of the ***Insolvency Amendment Bill*** [B 14—2002] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill with amendments [B 14A—2002], and endorses the classification of the Bill as a section 75 Bill.

The Committee wishes to report further, as follows:

1. During its deliberations on the Bill, the Committee's attention was drawn to the NEDLAC Report on the Labour Law Amendment Bills (September 2001) and the fact that amendments to sections 4, 9, 11 and 136 of the Insolvency Act, 1936 (Act No. 24 of 1936), agreed upon at NEDLAC, were not included in the Bill. These provisions deal with notice to trade unions and employees of applications for the sequestration of an employer's estate, service of court orders on trade unions and employees and the creation of an offence for failure to give certain notices.

2. According to the memorandum on the objects of the Bill, the proposed amendments to these provisions require amendments to other legislation, such as the Companies Act, 1973 (Act No. 61 of 1973), and the Close Corporations Act, 1984 (Act No. 69 of 1984). The Committee has not taken a stand on this issue, but if this view were accepted as correct, it would follow that amendments to the Insolvency Act, 1936, only would apply to the insolvency of individual debtors and not to corporate debtors. A large percentage of cases where the problems aimed to be remedied by these amendments occur, are cases of corporate insolvent debtors.

3. The Committee's attention was drawn to the fact that proposed uniform legislation that deals with corporate and individual insolvencies is under consideration by the Department of Justice and Constitutional Development. The proposed legislation emanates from reports by the South African Law Commission and the Standing Advisory Committee on Company Law.

4. The Bill now under consideration by the Committee proposes amendments to sections 38 and 98A of the Insolvency Act, 1936. These sections apply to the insolvency of individual debtors as well as to companies and close corporations that are wound up because of insolvency. The main objects of the Bill are to further regulate the effect of sequestration on employment contracts and the claims for severance and retrenchment pay. The Committee is of the view that the Bill is not the appropriate mechanism to deal with notice to trade unions and employees of applications for the sequestration of an employer's estate, service of court orders on trade unions and employees and the creation of an offence for failure to give certain notices. Interested parties have not had an opportunity to make submissions to the Committee on these matters and the Committee has not taken any position on the acceptability of these provisions.

5. The Committee recommends that the Minister for Justice and Constitutional Development be approached to request his Department to consider the inclusion of the proposals dealing with notice to trade unions and employees of applications for the sequestration of an employer's estate, service of court orders on trade unions and

employees and the creation of an offence for failure to give certain notices in the proposed uniform legislation that deals with corporate and individual insolvencies.

Report to be considered.

3. Third Report of the Standing Committee on Public Accounts, dated 16 May 2002:

The Standing Committee on Public Accounts, having heard evidence in August last year from the new Commissioner of Correctional Services and the former acting Commissioner, now the chief financial officer, on the Report of the Auditor-General for the 1999-2000 financial year [RP117-00], and also having considered information received subsequent to the hearing, dated 25 October 2001, as well as written responses from the Commissioner to questions from the Committee arising from its review of the Auditor-General's Report on the financial statements for the 2000-2001 financial year [RP 148-01], dated 25 January 2002, and further responses dated 9 May 2002, reports as follows:

A. Recruitment and training

The Committee is concerned about the following factors related to human resources that are negatively impacting on the capacity of the Department to deliver correctional services to the prison population of South Africa:

1. A lack of capacity to train the annual intakes of the Department.
2. Poor planning and administration associated with the utilisation of training facilities.
3. Poor planning in terms of training curricula and equipment.
4. Inadequate screening by the Department of new recruits, resulting in the subsequent discovery of recruits with fraudulent qualifications or criminal records.

The Committee has noted the attempts to more effectively manage recruitment and screening processes, as well as to better plan the academic calendar and improve the training curricula. The Committee expects to see substantial progress reported in this regard in the annual reports in respect of the 2001-02 financial year. The Committee recommends that the Portfolio Committee on Correctional Services also note the matters raised and evaluate whether progress is made with respect to each of the areas of concern. It is also recommended that the Department demonstrate to the Committee and the Portfolio Committee on Correctional Services the manner in which it effectively measures the total cost of training and how it determines the value gained from such an investment in training.

B. Jackson State University Scholarship Programme

The Committee welcomes the termination of this Programme (with unjustifiably high costs to the taxpayer). The Committee recommends that the Department in future not only ensure that South African tertiary institutions are used for similar types of training, but also that participants in such programmes are contractually bound to the Department for at least as long as they have been assisted to study.

C. Computer audit

The Committee noted with concern the weaknesses with regard to the general controls within the Admission and Release System, the Pharmaceutical System at the Department's head office and the Pretoria management area, and the application controls within the Provisioning Administration System. It is especially concerned at the lack of a separation of duties and the associated risk of fraud. The undertaking by the Department that the matter was receiving urgent attention, was therefore welcomed. The Committee recommends that the Auditor-General evaluate the progress made during the 2001-02 audit.

D. Internal control environment and risk management

1. The Committee noted that once again the Auditor-General reported a variety of symptoms of poor internal control, the following being examples:

   (a) Insufficient debtor management and debt recovery.

   (b) Poor checking of source documents at head office and poor batch control at various provincial offices.

   (c) Inadequate certification of payrolls.

   (d) Poor control of UIF payments and recording of contributions.

   (e) Incomplete reconciliations between the computerised financial management and personnel and salary systems.

   (f) The Committee was informed of the Department's intention to address each of the findings of the external auditors, as well as the internal auditors, at the highest management level.

The Committee was further informed of disciplinary action taken against a number of officials who had not complied with control procedures. The Department also undertook that in future steps would be taken in every case of failure to comply with requirements of the Public Finance Management Act (the PFMA). In this regard, the Committee wishes to remind the Commissioner of his obligations in terms of section 81 of the PFMA, as well as the responsibilities of other officials in terms of section 45 of that Act.

The Committee recommends that—

(i) the Commissioner report to the National Assembly on the success of Operation Vukuza in each of the respective provinces, and on how any deficiencies identified had been addressed.

(ii) the Commissioner indicate progress made with the capacitation of the internal audit unit, as well as any arrangements made for outsourcing.

(iii) the Commissioner include the Audit Committee report to the House on the responsiveness by the Department's manage-

ment to internal findings as well as the Audit Committee's recommendations regarding stricter monitoring mechanisms and the application of disciplinary procedures.

The Committee further recommends that in his report for 2001-02 the Auditor-General specifically report on:

(iv) whether reliance could be placed on the work of the Department's internal auditors, and if not, indicate the main reasons for the non-reliance; and

(v) the responsiveness by the Department's management to the findings in his latest report.

2. The Committee was provided with information on the latest risk assessment exercise carried out by the Department. A list of the main areas of risk identified, was provided, as well as the measures, which at face value seemed to address each of the risk areas. In view of the various financial management problems reported by the Auditor-General, the Committee is deeply concerned that proper management of the financial resources of the Department was not identified as one of the priority risk areas.

The Committee recommends that the Commissioner—

(a) prioritise risk management and ensure that progress made in respect to each of the areas in terms of planned deadlines is monitored at least on a bimonthly basis, and that effective corrective measures are taken where required

(b) provide impetus to certain of the risk management plans, e.g. drafting of the proposal on the development of human resources strategies, and the development of the inmate tracking system, so that finalisation of the actions be achieved sooner rather than later

(c) regard financial management as one of the priority risk areas

(d) provide each of 10 main risk areas a target date for finalisation of the corrective action.

E. Vehicle management

The Committee is concerned at the management weaknesses with respect to government transport. It noted that the logistics directorate would be conducting a detailed analysis and inspection at 50 management areas during the coming year in order to deal with weaknesses more proactively.

The Committee recommends that the Commissioner report on the results of the inspections and any corrective actions taken, the extent and outcomes of any disciplinary actions instituted against any staff members, and the completeness currently of the register of unauthorised drivers.

F. Stock and equipment

The Committee has taken note of the barcoding system which had been implemented at national Head Office and of the fact that it will be rolled out to all the provinces.

The Committee recommends that—

1. the Commissioner indicate the status of implementation of the barcoding system in each of the respective provinces
2. the effectiveness of the barcoding system throughout the Department be evaluated and reported on by the Auditor-General in the 2001-02 audit report.

G. Merit awards and members' qualifications

The Committee noted the evidence in the Commissioner's correspondence of 25 January 2002 that no merit awards were paid without proper approval per a departmental merit list as source document.

The Committee recommends that the Commissioner provide the House with—

1. a proper report on all cases investigated by the departmental task team appointed to investigate all cases of possible irregular merit awards in respect of the 1999-00 financial year
2. the results of the work carried out by the special task teams established in the various provinces to investigate possible fraudulent qualifications
3. the results of the recovery actions as a result of incorrect payment of merit awards planned for finalisation by 28 August 2002
4. information as to whether the qualifications of all staff members have been verified.

H. Personnel Salary Administration System

The Committee was informed that the Department had implemented a new Persal function which will meet all the Department's needs, including reliable information on staff members on suspension.

The Committee recommends that the Auditor-General review and report on the effectiveness of the enhanced Persal system during the 2001-02 audit.

I. Medical Fringe Benefits

1. The Committee was informed that the Department may be liable for an amount of approximately R48,5 million to the SA Revenue Services in respect of outstanding PAYE. The Committee further noted that in January 2002 the matter had not been resolved, despite it having been raised in August 2000 already.

   (a) The Committee therefore recommends that both the SARS and the Department ensure that the matter be immediately resolved and the outcome be reported to the House within two months of the date of adoption of this Report by the National Assembly.

   (b) The Committee further recommends that the SARS, in consultation with the National Treasury, consider issuing appropriate guidelines to all public sector departments at national and provincial level regarding PAYE obligations in respect of all benefits or perks received from the employer

ment to internal findings as well as the Audit Committee's recommendations regarding stricter monitoring mechanisms and the application of disciplinary procedures.

The Committee further recommends that in his report for 2001-02 the Auditor-General specifically report on:

(iv) whether reliance could be placed on the work of the Department's internal auditors, and if not, indicate the main reasons for the non-reliance; and

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The Committee recommends that the Commissioner—

(a) prioritise risk management and ensure that progress made in respect to each of the areas in terms of planned deadlines is monitored at least on a bimonthly basis, and that effective corrective measures are taken where required

(b) provide impetus to certain of the risk management plans, e.g. drafting of the proposal on the development of human resources strategies, and the development of the inmate tracking system, so that finalisation of the actions be achieved sooner rather than later

(c) regard financial management as one of the priority risk areas

(d) provide each of 10 main risk areas a target date for finalisation of the corrective action.

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The Committee is concerned at the management weaknesses with respect to government transport. It noted that the logistics directorate would be conducting a detailed analysis and inspection at 50 management areas during the coming year in order to deal with weaknesses more proactively.

The Committee recommends that the Commissioner report on the results of the inspections and any corrective actions taken, the extent and outcomes of any disciplinary actions instituted against any staff members, and the completeness currently of the register of unauthorised drivers.

F. Stock and equipment

The Committee has taken note of the barcoding system which had been implemented at national Head Office and of the fact that it will be rolled out to all the provinces.

The Committee recommends that—

1. the Commissioner indicate the status of implementation of the barcoding system in each of the respective provinces
2. the effectiveness of the barcoding system throughout the Department be evaluated and reported on by the Auditor-General in the 2001-02 audit report.

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   (a) The Committee therefore recommends that both the SARS and the Department ensure that the matter be immediately resolved and the outcome be reported to the House within two months of the date of adoption of this Report by the National Assembly.

   (b) The Committee further recommends that the SARS, in consultation with the National Treasury, consider issuing appropriate guidelines to all public sector departments at national and provincial level regarding PAYE obligations in respect of all benefits or perks received from the employer

with respect to, for example, free medical aid, free or subsidised housing, or other allowances to ensure compliance with the income tax legislation in all cases.

1. Medical Services (MEDCOR)

The Committee noted that finality has not been reached with respect to the new administrator of the departmental medical scheme.

The Committee recommends that the matter be finalised as a matter of urgency and progress be reported on to the House within two months of the adoption of this Report by the National Assembly.

J. Unauthorised expenditure

1. Par 2.2.1(a), [RP 117-00] (1999-00 financial year)

The Auditor-General reported that expenditure totalling R534 486,93 incurred during various financial years was regarded as unauthorised in terms of section 33 of the Exchequer Act, 1975 (Act No. 66 of 1975), and comprised the following:

(a) Development and provision of computer-based assessment instrument, R107 713,08

The Department engaged a consultant from a university through a tender to lead a research and development project. Due to a lack of appropriate co-ordination and a misunderstanding over the tasks and responsibilities of various partner directorates in the Department, additional professional expertise was utilised. The authorised tender amount was consequently overspent by more than 100% without prior approval form the State Tender Board. The State Tender Board was approached for *ex post facto* approval on 26 July 1999, but approval was not granted and the said amount is regarded as unauthorised.

The Committee was informed that no action was taken against the staff responsible, on the grounds that they were no longer in the service of the Department.

The Committee recommends that the Parliamentary Law Advisers be requested to advise on the feasibility of the accounting officer attempting to recover any possible loss to the State, in order for the Committee to consider validation of the unauthorised expenditure.

(b) Maintenance contract, R243 577,94 (R1,367,22 in 1999-00)

During the previous financial year payments amounting to R1 367 225 relating to a maintenance contract were made after the contract had expired and without the approval of the State Tender board. During the year under review additional unauthorised expenditure of R243 577,94 was incurred in this regard. As in the previous year, the State Tender Board was approached for *ex post facto* approval, but approval was not granted and the said amount was regarded as unauthorised by the Auditor-General.

The Committee was informed that after a departmental enquiry, disciplinary action was taken against two of the three officials responsible. The Committee was also informed that an enhanced contract management policy has been implemented under the direction of the Good Governance Chief Directorate, but that full implementation could not be confirmed.

In view of the aforementioned action taken, the Committee recommends that—

* the Auditor-General evaluate the effectiveness of the contract management policy
* the Portfolio Committee on Correctional Services be requested to monitor the implementation of the procurement and provisioning system of the Department, in the light of the requirements of section 38(1)(iii) of the PFMA
* the unauthorised expenditure in respect of both financial years is approved by the National Assembly.

(c) Appointment of board of inquiry: Pollsmoor management area, R183 195,91

The Minister of Correctional Services ruled that a board of inquiry had to be appointed to investigate the violence at the Pollsmoor management area in 1997. The total cost of the investigation exceeded the authorised amount in terms of the prescribed State Tender Board regulations. The State Tender Board did not grant *ex post facto* approval, and the amount of R183 195,91 was therefore regarded as unauthorised.

The Committee was informed that no action was taken against the staff member responsible on the grounds that he or she was no longer in the service of the Department.

The Committee recommends that the Parliamentary Law Advisers be requested to advise on the feasibility of the accounting officer attempting to recover any possible loss to the State, in order for the Committee to consider validation of the unauthorised expenditure.

2. Par 3.6, p 130 [RP148-01] (2000-01) (see 25/1/02, p 17 & 18

In his Report on the 2000-01 financial year the Auditor-General reported expenditure totaling R773 873,11 incurred during various financial years as unauthorised in terms of section 33 of the repealed Exchequer Act, 1975 (Act No. 66 of 1975), comprising the following:

(a) Strategic planning sessions, R723 873,11

The Auditor-General performed a forensic audit regarding expenditure relating to certain strategic planning sessions, and a final report was submitted to the Department on 14 February 2001. According to the forensic report, there were severe restrictions on the investigation, as many

documents including timesheets and invoices were not available. According to the report unauthorised expenditure incurred with regard to strategic planning services and travelling expenditure relating thereto for the period 1 June 1992 to 31 may 1995, amounted to R508 666,19 and R215 206,92, respectively.

The Committee was informed that no action was taken against the staff member responsible on the grounds that he or she was no longer in the service of the Department.

The Committee recommends that the Parliamentary Law Advisers be requested to advise on the feasibility of the accounting officer attempting to recover any possible loss to the State.

(b) ***Psychological counselling of members: Pietermaritzburg management area, R50 000***

During a visit to the Pietermaritzburg prison the former Minister of Correctional Services ordered that the prison be closed down and its members and prisoners transferred. Members at the prison vowed to oppose an order to close down the prison. Relationships were tense and mass action was threatening. Since actions by the Department to defuse the situation did not yield positive results, the provincial commissioner in KwaZulu-Natal made an application to head office to obtain the services of two external psychologists to attend to the problem. Due to a dire need for assistance to defuse the tense situation, the correct procedure for urgent cases was not followed.

The State Tender Board was approached for *ex post facto* approval on 17 and 30 March 2000, but approval was not granted and the said amount is regarded as unauthorised.

The Committee was informed that disciplinary action had been taken against the official responsible, and that provisioning administration officers are now trained regarding procedures in cases of urgency.

In view of the above actions taken, the Committee recommends that the unauthorised expenditure in question be authorised by Parliament, but that the accounting officer ensure that in future unauthorised and irregular expenditure are correctly disclosed in the financial statements.

3. ***The Committee further recommends that the Commissioner ensure that in future—***

(a) upon the resignation or retirement of staff members from the Department, any related potential or pending enquiries or disciplinary actions are appropriately resolved

(b) all unauthorised, irregular or fruitless and wasteful expenditure be properly recorded in the accounts of the Departments and accurately disclosed in the financial statements to the National Assembly.

4. Unauthorised expenditure of R29 253 730 (1998-99)

Having considered further information submitted to it by the former acting Commissioner during 2001, the Committee recommends as follows:

(a) With regard to the unauthorised medical expenditure totalling R27 429 482 relating to a contract for medical aid administration without the appropriate tender procedures having been followed, the Committee has been informed that a proper service was rendered to the Department and that no one had unduly benefitted. The Committee therefore recommends that the amount be authorised by the National Assembly.

(b) This Committee cannot condone the payment of awards of R109 293 to the former Commissioner in the circumstances in which it had taken place. The Committee has further been informed that an amount of R60 111 was recovered from the former Commissioner. The Committee recommends that the Accounting Officer initiate the necessary steps to recover any part of the amount in question that may still be outstanding from the relevant beneficiary. The Committee further recommends that the matter be resolved as far as possible within the next six months and that the outcome be reported to the National Assembly.

(c) Unauthorised expenditure totalling R347 730 was incurred, which related to repairs and maintenance as well as capital improvements amounting to R147 591 and R200 139 for the 1996-97 and 1997-98 financial years, respectively, before proper transfer of the property to the State. As a service was rendered to the Department and no one had unduly benefitted, the Committee recommends that the amount be authorised by the National Assembly.

K. Computer audit

The Committee was informed of a number of control deficiencies with regard to the Department's provisioning administration system, as well as corrective measures taken by the Department in response to the weaknesses identified by the Auditor-General.

The Committee recommends that the Auditor-General review the effectiveness of the corrective measures during the next computer audit planned for the Department of Correctional Services.

L. Housing guarantees

The Committee heard evidence that the Department was pursuing legal action where possible to recover debt to the State with respect to housing guarantees.

The Committee strongly encourages the Commissioner to continue with legal actions and to explore every possible avenue aimed at limiting the loss to the State before considering writing off any of these debts.

Report to be considered.

National Council of Provinces:

1. Report of the Select Committee on Local Government and Administration on the ***Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill*** [B 62B—2001] (National Assembly—sec 75), dated 5 June 2002:

   The Select Committee on Local Government and Administration, having considered the subject of the ***Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill*** [B 62B—2001] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

   The Committee further reports that the following amendments formally proposed by New National Party were rejected:

CLAUSE 5

1. On page 4, in line 10, after "matter" to insert:

   and required response from such authority or organ of state dealing with the substance of the matter

CLAUSE 5

1. On page 5, after line 13, to add:

   (4)(a) If within a reasonable time after the Commission has published a finding that a language, religious or cultural right of a community has been violated or a policy or practice has been violated, and adequate and appropriate action has not, in the opinion of the Commission, been taken thereon, the Commission may—

   (i) submit its findings to the Parliamentary Committees responsible for matters concerning this Act for consideration and the taking of appropriate steps to secure compliance with the Commission's findings;

   (ii) refer the matter to—

   (aa) the Public Protector, if the non-compliance with the Commission's findings relates to any impropriety on the part of an official or an organ of state;

   (bb) the South African Human Rights Commission—

   * if the non-compliance with the Commission's findings involves the violation of a human right as protected in terms of Chapter 2 of the Constitution; or

   * if there are reasonable grounds to believe that the complainant has been threatened, intimidated or discriminated against due to involvement in lodging a complaint, a finding or other involvement in an investigation under this Act.

   (iii) in consultation with the complainant, apply to a Court for an appropriate remedy, including—

   (aa) an interim order;

   (bb) a declaratory order;

(cc) an interlocutory order or interdict;

(dd) an order for the payment of any damages;

(ee) an order for the implementation of special measures to address the situation complained of;

(ff) an order to comply with any provision of this Act, or a published finding, recommendation or decision of the Commission;

(gg) an order that an appropriate amount must be set aside for the realisation of language, religious or cultural rights of the complainant.

(b) Where the Commission is of the opinion that an official, an organ of state or an institution has—

(i) wilfully disregarded or acted in contempt of the findings or decisions of the Commission; or

(ii) frustrated the timeous and effective implementation of the findings or decisions of the Commission; or

(iii) failed to give adequate reasons for the non-compliance or timeous compliance with the Commissions findings or decisions,

it may apply to the Court for an order of costs in its favour.

CLAUSE 11

1. On page 6, after line 42, to insert:

(d) submit the relevant names of the selected persons to the relevant Parliamentary Committees together with reasons why they were selected, for response;

CLAUSE 26

1. On page 9, after line 49, to add:

(h) a multi-party delegation from the relevant Parliamentary Committees.

The New National Party supported the Bill, with strong reservations about the lack of enforcement power of the Commission, and it regretted the fact that the Committee took a final decision on political grounds and not on objective grounds, so as to strengthen the Bill and to give effect to the spirit of the South African Constitution. The New National Party further regrets that a request to accept the proposed amendments and thus cause the Bill to be referred back to the National Assembly for reconsideration, was refused.

The Democratic Party supported the Bill, with reservations on Clause 12(3).

No 38—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

MONDAY, 10 JUNE 2002

1. The House met at 14:00.

2. The Deputy Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:01] Notices of motion.

4. [14:15] The Chief Whip of the Majority Party moved without notice: That the House—

   (1) notes the international successes of two of our sporting teams this past weekend;

   (2) recognises the magnificent Bafana Bafana win over Slovenia on Saturday in their second match of the World Cup as an historic achievement for Jomo Sono and the team;

   (3) acknowledges that the sterling victory of the Springbok team over Wales on Sunday marks a new beginning for South African rugby;

   (4) congratulates coach Jomo Sono and the Bafana Bafana team on their splendid performance; and

   (5) congratulates Springbok coach Rudolf Straeuli and his team on their excellent match.

   Agreed to.

5. Mr J J Dowry moved without notice: That the House—

   (1) welcomes Mark Shuttleworth and his two fellow astronauts, Juri Gidzenko and Roberto Vittori, in Cape Town where they will participate in a procession; and

   (2) congratulates Mark Shuttleworth for being a true ambassador for South Africa and believes that his enthusiasm is an inspiration for all South Africans.

   Agreed to.

6. The Chief Whip of the Majority Party moved without notice: That the House—

(1) notes with shock and profound sadness the untimely death of the honourable Peter Ramoshoane Mokaba, who passed away on 9 June 2002;

(2) recognises that Peter Mokaba was a South African patriot who, throughout his life, demonstrated a profound commitment to the liberation of the people of our country and the continent of Africa;

(3) remembers the honourable Mokaba as one of the stalwarts and symbols of our people's struggle for a non-racial, non-sexist, democratic South Africa;

(4) recalls that, as president of the South African Youth Congress and the African National Congress Youth League and a member of the National Executive Committee of the African National Congress he was a robust, fearless, loyal and dedicated cadre who lived by the words, "rather die next to the enemy than let him pass";

(5) acknowledges the dynamic contribution that the honourable Mokaba made to this House since the election of the first democratic Parliament in 1994, during which time he served as Deputy Minister of Environmental Affairs and Tourism and as Chairperson of the Ad Hoc Committee on Powers and Privileges of Parliament, which positions he served with dedication and passion;

(6) believes that he leaves a legacy that epitomises heroism and dedicated service and that his untimely death has robbed South Africa of a great son who at his tender age still had a tremendous contribution to make to the reconstruction and development of our nation; and

(7) expresses its condolences to the entire Mokaba family.

Debate concluded.

Motion agreed to, all members standing.

7. FIRST ORDER [14:36]

Debate on Vote No 8—National Treasury (including SARS) and Vote No 13—Statistics South Africa, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

8. SECOND ORDER [16:56]

Second Reading debate—***Planning Profession Amendment Bill*** [B 76B—2001] (National Assembly—sec 75).

Debate concluded.

Bill read a second time.

9. [17:52] The Deputy Chief Whip of the Majority Party moved without notice: That—

(1) Rules 240 and 253(1)*(b)* be suspended for the purposes of respectively the introduction of, and the Second Reading debate on, the ***Loss or Retention of Membership of National and Provincial Legislatures Bill***; and

(2) subject to the concurrence of the National Council of Provinces, Joint Rule 154 also be suspended in respect of the Bill.

Agreed to.

10. The House adjourned at 17:54.

S MFENYANA,

Secretary to Parliament.

No 73—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

MONDAY, 10 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

(1) The Joint Tagging Mechanism (JTM) on 10 June 2002 in terms of Joint Rule 160(6), classified the following Bill as a section 76 Bill:

(i) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76).

National Council of Provinces:

1. The Chairperson:

The following papers have been tabled and are now referred to the relevant committees as mentioned below:

(1) **The following papers are referred to the Select Committee on Land and Environmental Affairs for consideration and report:**

(a) The Convention for the Protection, Management and Development of Marine and Coastal Environment of the East African Region and Related Protocols (Nairobi Convention), tabled in terms of section 231(2) of the Constitution, 1996.

(b) Explanatory Memorandum to the Convention.

(c) The Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region and Related Protocols (Abidjan Convention), tabled in terms of section 231(2) of the Constitution, 1996.

(d) Explanatory Memorandum to the Convention.

(2) **The following paper is referred to the Select Committee on Labour and Public Enterprises:**

Annual Report and Financial Statements of the Unemployment Insurance Fund for 2000, including the Report of the Auditor-General on the Financial Statements for the year ended 31 December 2000 [RP 207-2001].

2. The Chairperson:

Message from National Assembly to National Council of Provinces: Bill passed by National Assembly on 10 June 2002 and transmitted for concurrence:

(1) ***Planning Profession Amendment Bill*** [B 76B—2001) (National Assembly—sec 75).

The Bill has been referred to the Select Committee on Land and Environmental Affairs of the National Council of Provinces.

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Education:

(a) Revised National Curriculum Statement Grades R-9 (Schools) Policy 2002 (Overview Document).

(b) Revised National Curriculum Statement Grades R-9 (Schools) Policy 2002 (Learning Area Statements).

(c) Annual Report and Financial Statements of the South African Council for Educators for 2001.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Provincial and Local Government on Budget Vote 5: Provincial and Local Government, dated 10 June 2002:

The Portfolio Committee on Provincial and Local Government, having considered Budget Vote 5: Provincial and Local Government, reports as follows:

A. Introduction

1. The budget review of the Ministry and the Department of Provincial and Local Government was undertaken from 23 to 26 April 2002.

2. Those who appeared before the Committee included Minister F S Mufamadi, Deputy Minister N Botha, Acting Director-General Mr C Clerihew, Deputy Directors-General Mr E Africa and Ms J Manche, Chief Directors Mr L Buys, Ms G Gumbi-Masilela, Ms T Mketi, Ms B Mogane-Ramahotswa, Ms L Mosia, Mr D Powell,

Mr T Seboka and Mr S Selesho, Directors Mr A P Botha, Ms S Dzengwa, Ms K Harrison, Mr T S Malaka, Mr B Marrian, Mr R Mosiane, Mr M Nkasawe, Mr Y Patel and Ms Y Silimela.

3. The National House of Traditional Leaders was represented by its Chairperson Inkosi M B Mzimela, Deputy Chairperson Morena M Mopeli, and members Kgoshi M Malekane, Kgoshi C Mathebe, Nkosi M Matanzima and Chief Executive Officer Mr L Molubi. The delegation from the Municipal Infrastructure Investment Unit (MIIU) consisted of the Chairperson of the Board, Ms M Hesketh, Acting Chief Executive Officer, Mr J Leigland, and Project Manager, Ms D Magugumela. The Municipal Demarcation Board was represented by its Chairperson, Dr M Sutcliffe and Manager, Mr H Monare. Local Government Water and Related Services SETA was represented by its Chairperson, Mr S Mqaka, Deputy Chairperson Mr J Mohlala and Chief Executive Officer, Mr A Machin. The South African Local Government Association (SALGA) was represented by Councillor J Mohlala, CEO Mr T Mokwena and Managers Mr M Mabusela and Mr J Mettler.

4. A full-day workshop was held with the Department on 26 February 2002, at which the programmes, plans and strategies of the Department were discussed. This served as a precursor to the budget review.

B. Minister's Overview

1. The Minister explained that the President's "State of the Nation Address" informs the Ministry's and the Department's programmes for the year. The Department's work would contribute to advancing government's work which is centred around the interrelated themes of (i) pushing back the frontiers of poverty; (ii) overcoming underdevelopment; and (iii) achieving higher rates of investment and growth.

2. The Minister explained that the President's Coordinating Council (PCC), which met in December 2001, enabled the three spheres of government to review progress on the establishment of the new system of local government. The PCC noted appreciable progress in this regard, but also identified challenges which require immediate attention. Consequently, the Department is drafting a revised programme of support for local government for adoption by Cabinet. The key elements of the programme include:

   (a) Facilitating greater national and provincial government assistance to municipalities to cope with the transformation.

   (b) Ensuring greater coordination between the programmes and projects of national and provincial departments and IDPs.

   (c) Ensuring that programmes such as LED (Local Economic Development) and CMIP (Consolidated Municipal Infrastructure Programme) contribute more to stimulating local economies.

3. The Minister emphasised the importance of the ISRDP (Integrated Sustainable Rural Development Programme) and the URP (Urban Renewal Programme) and the need for effective cooperation between all three spheres of government and traditional leaders to ensure their successful implementation.

4. The Minister explained that discussions were underway to explore the possibilities of including municipal staff as part of the country's public service. This would encourage mobility between the three spheres of government.

5. The Minister stressed the importance of "volunteerism" in this "The Year of the Volunteer" and the need for ordinary people to take greater control over their own lives. For its part, the Department would be taking a much more "hands-on" approach to delivery in future.

C. Strategic Planning Process and Restructuring of Department

1. Consistent with the requirements of the PFMA (Public Finance Management Act), the Department has finalised a Strategic Plan for 2002-2005. This will be followed by a Business Plan.

2. The further restructuring of the Department will take place in terms of the Strategic Plan. There has been a significant increase in staff. However, the Department has "under-spent" on its personnel budget for 2001/02 by 23,7%. The main reason for this was the delay in filling vacant posts caused mainly by the need to conduct job evaluation for every management post.

3. The Department has a current staff complement of 208. 56% of the Department's staff is female. However, at senior management level, women make up only 20%. White and African women make up almost 50% each of this 20%. The 80% men in senior management comprise 35% African, 35 % White and 10% Coloured. The Department has three staff members with disabilities. This falls short of the 5% target government has set for departments. The Department is finalising its internal employment equity plan as part of its strategic planning process.

4. The Department's internal skills audit has just been finalised and the Department is now developing an internal capacity-building programme.

5. The Committee welcomes the Strategic Plan as it provides a clearer form and structure for the Department's programmes and activities and for the Committee's oversight role. The Committee feels however that the Strategic Plan needs to be more specific, especially in terms of measurable objectives and outcomes. The Plan should also be more explicit about how the Department's work contributes to the key goals of government as a whole, including economic growth, job-creation, development and redistribution.

6. The Committee welcomes improvements in the social composition of the Department. It notes with concern, however, the inadequate representation of women in the senior management echelons.

7. The Committee notes that the post of Director General of the Department has not yet been filled, and urges that this be done expeditiously.

8. The Committee welcomes the Department's commitment to strengthening its capacity-building programme. The majority in the Committee feels that it is not just technical capacity that must be developed, but also a better understanding of the goals, political values, perspectives, strategies and programmes of the government as a whole that is urgently necessary. The Committee welcomes the Minister's statement that the Department needs to have a more "hands-on" approach to its responsibilities.

D. Overview of Budget and Programmes

1. The Programmes of the Department are: (i) Administration; (ii) Governance and Development; (iii) Institutional Reform and Support; and (iv) Auxiliary and Associated Services.

2. The Ministry and the Department of Provincial and Local Government have been allocated R6385 million for the 2002/03 financial year, which is an increase of 34,8% in nominal terms (30% in real terms). The increases are 34,8%, 22,4% and 8,1% over the MTEF (Medium Term Expenditure Framework) period.

3. Most significant is the increase to local government. Transfers to local government go up by 18,3% over the three-year MTEF period. The allocation for the current financial year rises to R8, 5 billion from last year's R6,4 billion. Included in this is the "equitable share" of R3, 8 billion and conditional grants of R2, 4 billion. The 2002-3 budget shifts resources towards the provision of basic infrastructure and services at local level. The Department therefore has to facilitate significantly more service delivery.

4. The Committee welcomes the increases in the budget, particularly for local government. The Committee is pleased too that, unlike last year, district municipalities will be receiving funds from the "equitable share". Of course, the allocation to local government is still not adequate. The Committee does not believe, however, that the answer lies in flinging more money at local government. Municipalities have to make more effort to raise the revenue due to them from their own sources, spend money more strategically and productively, and manage their finances better. Over time, however, national government will have to allocate more money to local government if local government is to fulfil its increasing responsibilities. The Department too now has more responsibilities to fulfil with its bigger budget, and needs to further develop its capacity to spend and allocate its budget more effectively.

5. In future budget oversight hearings, the Committee would like the Department to more clearly set out the relationship between its Strategic Plan and its budget.

6. The Committee welcomes the "clean bill of health" for the 2000/01 financial year the Department received from the Auditor General's Office.

E. Legislative Programme

1. The Department hopes to introduce the following legislation this year:

   (a) Disaster Management Bill.

   (b) Property Rates Bill.

   (c) Municipal Structures Amendment Bill.

   (d) Legislation on Traditional Leadership and Institutions.

   (e) Local Government Laws Amendment Bill.

   (f) Amendment to Sections 100 and 139 of the Constitution.

   (g) Legislation emanating from Section 41 of the Constitution.

   (h) Repeal of Outdated Local Government Legislation.

F. Integrated Governance: Intergovernmental Relations (IGR), Co-Operative Governance, Provincial Systems

1. The Department emphasised the importance of integrated governance to ensuring improvements in planning, service delivery and development.

2. The Department is preparing legislation on IGR (Intergovernmental Relations) and cooperative governance, as required by section 41 of the Constitution. Among other things, the legislation will deal with enhancing the role of local government in executive intergovernmental process. The Department is also working with National Treasury to prepare constitutional amendments relating to interventions in municipalities experiencing major financial difficulties within a framework for monitoring, support and interventions.

3. The Department is to review the Schedule 4 and 5 powers and functions of the spheres of government set out in the Constitution.

4. The Committee feels that integrated governance is key to achieving the major goals of government. While it notes the progress in this regard, it feels that more needs to be done. The Committee feels that the success of the ISRDP and URP depend crucially on integrated governance—and the success of these programmes will also serve to enhance integrated governance. An important barometer of integrated governance therefore will be progress on the ISRDP and URP. The Committee believes that a review of the Schedule 4 and 5 powers and functions of the spheres of government is important, and is to seek a briefing from the Department on the matter later in the year.

G. ISRDP (Integrated Sustainable Rural Development Programme) and URP (Urban Renewal Programme)

1. To oversee the implementation of the ISRDP and URP, provincial political structures made up of premiers and MECs, and nodal political structures consisting of Executive Mayors have been established.

2. Over 120 ISRDP projects worth R3,7 billion were identified in November 2001 using the Interim IDP (IIDPs) processes and through consultative workshops. A further 122 priority projects worth R584 million were identified for this financial year. Of these, 48% are currently being implemented while 52% are in the planning stages. The Department of Labour has made available R18 million for skills development. UNDP provides assistance with monitoring and evaluation to the tune of US$350 000. Various parastatals and donor agencies have shown interest in supporting the programme.

3. Of the 110 anchor URP projects compiled by the Department, 63,6% are still in the preparatory stage, 29% are completed and 7,4% are still to commence. Examples of planned URP projects include Galeshewe Cultural Village in Kimberly, Mitchell's Plain Town Centre and Alexandra Jukskei Greening.

4. Part of the funding for the ISRDP and URP comes from the Consolidated Municipal Infrastructure Programme (CMIP) and the "equitable share". Each project is separately administered and has to have a business plan. For instance the Alexandra URP nodal project is audited with World Bank assistance. The Department has also embarked on mobilising private sector and other stakeholders to assist with the programmes.

5. The Committee feels that it is vital that the ISRDP and URP are a success. Their effective implementation requires not just the involvement of government, but public representatives in all three spheres, the private sector, trade unions, community organisations, non-governmental organisations and a range of civil society organisations, as well as ordinary people. The Committee believes that MPs living in or servicing the nodal areas should actively monitor and contribute to the implementation of the ISRDP and URP. The Minister should also consider writing to the relevant MPs to seek their appropriate contribution. The Committee also feels that there should be more communication through the media about the ISRDP and URP.

6. The Committee feels that it is difficult to evaluate progress on the ISRDP and URP at this stage. It accepts that these are complex and challenging programmes that cannot be implemented overnight. The Committee is keen to consider a more comprehensive progress report on the ISRDP and URP later in the year. It is also keen to get a better sense of the funding arrangements for these programmes. The Committee will also consider visiting the nodal areas next year.

H. CMIP (Consolidated Municipal Infrastructure Programme), LED (Local Economic Development) and Social Plan Fund

1. The CMIP was established in 1998 as an infrastructure programme to address backlogs in service delivery. The LED was established in 1999 as a poverty alleviation programme to facilitate local economic growth. The Department has decided to

merge the two programmes to have a coordinated approach. The allocation to CMIP has increased from R1034m last year to R1769,5m this year, an increase of 71%.

2. The LED Fund has funded 186 projects to the value of R186 million. It has created 3 215 permanent jobs. Through the fund, 99 738 person days of temporary employment have been created and 8 293 people trained on various projects. The Department has identified over 80 new projects for the 2002/03 financial year.

3. The Social Plan Fund is an outcome of the 1998 Presidential Jobs Summit. It was established in 1999 to provide municipalities with financial assistance to undertake local economic regeneration studies. During the last financial year, the Plan provided funding to six municipalities. Following a review of the fund, eight rural nodes have been allocated money for this financial year.

4. The combined CMIP and LED funds will be utilised to develop a National Infrastructure Investment Framework; strengthen the role of the Municipal Infrastructure Task Team; provide national strategy for addressing infrastructure backlogs; and facilitate a single infrastructure funding mechanism. Both programmes will undergo extensive external evaluation to consider their impact.

5. The Committee welcomes the merging of the two programmes. The committee is pleased that the CMIP budget has been increased by 71%. It is concerned, however, about whether the Department will be able to allocate its full CMIP funds to municipalities, especially in view of its inability to allocate its full CMIP budget in the past two financial years. The Department explained that there were many sound reasons for this "under-spending", including the slow process of project approval and implementation by both provincial government and municipalities. However, the Department is determined to overcome the obstacles and allocate the full CMIP budget during this financial year. The Committee is keen to see this happen and will be monitoring the progress.

I. Local Government Transformation

1. The Department reported that it is constantly monitoring and actively contributing to the local government transformation process. Among the many areas in which it is working are the consolidation of IDPs (Integrated Development Plans), establishment of performance management systems, finalisation of the division of powers and functions between local and district municipalities, determination of the fiscal powers of local and district municipalities, and review of the local government financial system (including the "equitable share", the property rates system, the RSC levy, and the implications of the restructuring of electricity industry).

2. The Department accepts that the transitional arrangements in regard to the division of powers and functions between district and local municipalities, while necessary, make for uncertainty. The finalisation of the division is necessary to ensure proper

planning, budgeting, setting up institutional structures and attending to other key aspects of the transformation. The Department has set up an Inter-Departmental Task Team (IDTT), including SALGA, the Finance and Fiscal Commission, and Municipal Demarcation Board to undertake a detailed assessment of the capacities of municipalities and their service delivery arrangements. The IDTT report has taken into account the views of all stakeholders. The Department is presently undertaking a series of bilateral consultations with the Departments of Health, Water Affairs and Forestry, Minerals and Energy, and National Treasury. Through this process consensus is emerging. It is envisaged that the division of powers and functions will be finalised by May 2003.

3. The City Support and Learning Network has been established to bring together the 9 major municipalities, including the 6 metropolitan municipalities, so that they can learn from each others' experiences and support each other.

4. The Department is developing guidelines on the establishment of ward committees. It recognises, of course, that a number of ward committees have already been established. The Department is looking into the possibility of the Imbizo concept used by provincial and national government being extended to local government.

5. In co-operation with the MDB, the Department is investigating the specific problems of cross-boundary municipalities and exploring various options to deal with the problems.

6. About 55% of the country's population is receiving free basic water services. There are 10 pilot projects on the provision of free basic electricity. The Department explained that there are problems of logistics, infrastructure, capacity and funding that are determining the pace of progress, especially in respect of electricity.

7. The Department is to develop policy frameworks to regulate the remuneration of councillors and senior managers of municipalities. This will be an interactive process with the relevant role players.

8. The Committee recognises the magnitude of the local government transformation underway and the many challenges that have to be contended with. It is acutely aware that the Department alone cannot meet these challenges. SALGA, provincial governments, public representatives, municipalities, trade unions, the private sector, NGOs, CBOs, local government professionals and other sections of civil society, as well as ordinary residents, have important roles to play. The Committee itself should be doing more to contribute to the transformation.

9. While recognising the challenges, and the important role of other stakeholders, the Committee feels that the Department should be contributing more effectively to the local government transformation. There is a need for greater clarity on issues around the

strategy, programmes, targets and time-frames of the Department's local government transformation work. The Department could also be playing a more effective coordinating role of the key stakeholders in the local government transformation process. The Committee is pleased to learn that there has been significant progress in finalising policy on the distribution of powers and functions between local and district municipalities and that the Department has the support of all the key stakeholders. As this is a matter of such importance, this progress should be communicated publicly.

10. While it is understandable, given the infrastructure disparities, the Committee is concerned that the free basic water service is being provided largely to urban residents, and hopes that more rural residents will receive the service soon as well. The Committee is also concerned at the cutting off of water services to residents who cannot afford to pay, and urges the Department to contribute to exploring practical ways of resolving the issues of arrears in payments and free services. The Committee will seek to arrange a joint meeting with the Waters Affairs and Minerals and Energy Portfolio Committees.

11. While recognising the sensitivities of the issues, the Committee feels appropriate consideration should be given to reviewing the boundaries of the provinces as a way of resolving the difficulties posed by cross-boundary municipalities.

12. While recognising the restraints of funds, resources and capacity, the Committee feels that provincial governments could do more to assist municipalities to effect transformation.

13. The Committee believes that the Department should do more to assist SALGA to play a more effective role—and that this can be done in a way that does not intrude on SALGA's autonomy.

14. The Committee believes that it is absolutely crucial for the success of the local government transformation that an effective capacity-building strategy is implemented and that an appropriate system of local government finances is developed. These are urgent needs—and the Committee believes they should be expeditiously attended to. The Committee, once again, expresses its concern about the financial implications of the restructuring of the electricity industry—and requests the Department to intervene appropriately.

15. The Committee feels that there is not a sufficiently concrete sense of progress in regard to the local government transformation process—and is keen to pursue this further with the Department later in the year. The Committee is also to undertake a study tour of municipalities in the second half of the year.

16. The majority in the Committee feels that there is a need for further careful consideration of councillor remuneration. One of the issues that needs to be addressed is the significant gap in remuneration between full-time and part-time councillors. There are also difficulties that flow from ward councillors being

part-time while PR councillors are full-time. Obviously the national budget is under considerable strain, but over time, consideration has to be given to whether it might be appropriate for councillors remuneration to be paid for either in full or part from the national budget. Over the longer term, with increasing responsibilities being imposed on local government to ensure delivery and development, there also needs to be an open debate about whether the gap between public representatives in the local, provincial and national spheres should not be significantly reduced, so as to allow for easier mobility of representatives between the three spheres (although this will serve to increase the gap between full-time and part-time councillors). Of course, in suggesting these debates occur over time, the Committee is acutely aware of the stringent constraints on the budget and other difficulties, and that it will take quite some time before these issues can be fully addressed.

J. Local Government Capacity-Building

1. The Department explained that it recognises the importance of having an intensive local government capacity-building programme to ensure that the new local government model is effectively implemented and is working with other relevant stakeholders in this regard. The December 2001 meeting of the PCC resolved that municipalities should receive "hands-on support from national and provincial governments within a framework of clear transformation targets and deadlines". (Deleted reference to joint World Bank project as it could not be verified). The Department is also finalising special support programmes for the two new metropolitan municipalities—Ekurhuleni and Nelson Mandela—with the assistance of the Cities Network programme.

2. The Committee believes that it is extremely vital that the capacity-building programmes for local government be intensified and more effectively implemented. The success of the local government transformation depends crucially on a significant improvement in levels of capacity. It is not only technical capacity that has to be improved, but there also has to be a focus on political capacity and the need for a particular work-orientation. The Committee repeats its concern at the lack of co-ordination between all the stakeholders responsible for local government capacity-building, and urges that this be attended to expeditiously. The Committee feels that it might be appropriate for the Department to see its role as primarily that of co-ordinating. SALGA should take primary responsibility for building the capacity of councillors and the LGWSETA (Local Government, and Water Sector Education Training Authority) should focus primarily on personnel training. The Committee is keen to organise a full briefing on local government capacity-building with the key stakeholders in the second half of this year.

K. Traditional Leadership and Institutions

1. The Department explained that it recognises the importance of finalising policy and legislation on traditional leadership and institutions. The President, in his "State of the Nation" address made it very clear that there will be significant progress in this regard this year.

2. The Department intends to finalise the White Paper on Traditional Leadership and Institutions by July 2002 and to introduce legislation later this year. The interim bill on the powers and functions of traditional leaders in local government will not be re-introduced. National framework legislation will be introduced, which will allow provinces to formulate their own legislation.

3. The Department continues to offer support to the National House of Traditional Leaders and recently established a task team to address the specific concerns of the House. The term of the House is to expire soon and the Department is assisting with preparations for the inauguration of the new House.

4. The Department is at present considering a report dealing with the Khoisan communities.

5. Of course, the majority in the Committee appreciates the complexities and difficulties in attending to issues of traditional leaders and institutions, but would like to see significant progress this year, and urges that the Department fulfils the deadlines it has set in this regard. The Committee would also like to see greater progress in addressing the concerns of the Khoisan communities as well.

L. Disaster Management

1. The Department expects that parliament will pass the Disaster Management Bill by June this year. The bill seeks to provide a uniform and co-ordinated approach to disaster management in the country. It shifts the focus from managing disasters to prevention and mitigation. It is envisaged that the Disaster Management Framework as required by the Bill will be developed by February 2003. By March 2003 a process of assessing capacities of municipalities and provinces will be launched with a view to implementing sections of the Bill. SALGA has commissioned a study to determine which sections of the Bill can be immediately implemented.

2. The Department is negotiating for some sections of the Fundraising Act to be transferred to it for easy access during disasters. NGOs have been approached to provide relief operations on agency basis when the need arises. The Department will also be in consultation with the LGWSETA on disaster management capacity-building and training.

3. The Department is part of developing a SADC Cross-border assistance framework, a Standing Operational Procedures Manual for Relief Operations, and an initiative to relax protocols that pose logistical cross border constraints.

4. The Committee welcomes the progress on disaster management.

M. South African Local Government Association (SALGA)

1. SALGA's allocation has increased from R16 million last year to R22 million this financial year. SALGA explained that the R22 million will serve merely to meet the expenses of personnel, travelling, and meetings. According to a tentative budget it had drawn to meet the costs of its proposed programmes, SALGA needs R120 million. It intended to draw these extra funds from its provincial affiliates. At present the provinces raise R30 million.

2. SALGA is undertaking an audit of municipalities to establish progress on the local government transformation process and the report on this will be presented to Parliament. SALGA is embarking on a plan to play a more active role in the implementation of the ISRDP and URP. SALGA is actively engaged with the Department of Minerals and Energy on the financial implications of electricity restructuring. SALGA is concerned about the possible adverse effects of the restructuring of electricity on the finances of municipalities and is working with the Department on how to respond to this.

3. SALGA undertook a major organisational analysis and identified, among other things, that its work is being hampered by its lack of both administrative and technical support. In response to this SALGA is undergoing a major restructuring process, central to which is the alignment of the organisational structures with overall strategy. The objective of the restructuring process is to create cohesion within the organisation. The core elements of restructuring process include determining strategy, performance goals and budget allocations nationally. SALGA believes that both the envisaged cohesion and the injecting of more human and financial resource capacity into the organisation will assist SALGA to execute its constitutional mandate, and accelerate service delivery.

4. SALGA recognises that it lacks the necessary profile it needs, especially during these challenging times of local government transformation. SALGA will also take initiatives to raise funds and not be dependent only on national allocations.

5. The Committee appreciates the difficulties SALGA has to contend with, but believes that it can and must be more effective. The Committee finds it difficult to appreciate how SALGA will be able to raise a budget of R120 million. Notwithstanding resource and other limitations, the Committee feels that SALGA needs to be monitoring and contributing to the local government transformation more effectively. SALGA's participation in parliament is far from adequate, and the Committee appeals to it to appoint a permanent parliamentary liaison officer. The Committee also feels that the public profile of SALGA needs to be enhanced. The Committee feels that it needs to pursue many more issues with SALGA and will seek to meet with SALGA's representatives to take this further in the second half of the year.

N. National House of Traditional Leaders:

1. In executing its constitutional mandate, the National House has established six standing committees: Management; Internal Arrangements; Rules; Constitutional Development; Social Development; and Traditions, Customs and Culture.

2. The House has established an HIV/AIDS task team, in co-operation with the Department of Health. The House also participates in a rural safety project in co-operation with the Department of Safety and Security.

3. As part of its plans for the next financial year, the House has drawn up a strategy to ensure more effective service delivery. Other identified activities for the 2002/03 financial year include participation in the White Paper process, building structures and partnerships with potential investors and donors, and capacity building workshops for the members of the House.

4. Inkosi Mzimela expressed the House's deep disappointment in the government's failure to address the concerns of traditional leaders. The House objected to the control the Department has over its budget. It wanted to "de-link from the administration of the Department". The House would like to be part of the Presidency as it considers that its work cuts across all Departments. The House feels that the Department is not responsive to its capacity-building needs. The House wants to be involved in the drafting of the White Paper on Traditional Leadership and Institutions.

5. The Committee feels that the report submitted by the House is not satisfactory, and requests the Department to assist the House in preparing an adequate report for the next financial year. In particular, the Committee has to have a better sense of how the House is spending the budget allocated to it, what the House's programmes and activities are, what outcomes it is seeking to achieve each year, and how it measures its progress. The Committee suggests the Department meets the House and resolves outstanding issues regarding a capacity-building programme within three months. As for the other issues raised by the House, the Committee Chairperson will meet with the Department and Ministry and provide a response to the House within three months. The majority in the Committee feels that the House should continue to negotiate with the Department and Ministry around its concerns. There is steady, if slow, progress on the concerns of traditional leaders—and the House is encouraged to constantly negotiate to further its interests.

O. Local Government, Water And Related Services Sector (LGWSETA)

1. The LGWSETA draws its funds from the skills levy paid by the employer. In the last financial year it received R121 million. For this financial year it expects to receive R120 million. In terms of the relevant funding regulations only 60% of this is available to be disbursed as grants to employers to fund learning activity in

local authorities and water companies. According to the LGWSETA, this falls far short of its needs. Proper training is not possible with these funds. The learning costs are estimated to be between R15,000 and R20,000 per learner per learnership. On this estimate, if the total available grants are claimed by employers, the maximum number of learners that can participate in full time learnerships is estimated to be between 3600 and 4800 learners per year, which is between 1.3% and 1.7% of the total employees in the local government and water sector. The learnership course development costs are estimated to be between R1.1 and R1.4 million each. The LGWSETA needs to develop a minimum of 40 learnerships with a total estimated development budget of between R44 and R56 million over the next three years, an amount greater than the total estimated discretionary grant funds available to it over the first five year period (2000-2005).

2. The LGWSETA feels there are at least four options to increase the funds it gets:

   (a) To increase the levy from 1% to 4% of payroll. This would have to be a voluntary undertaking by employers in the sector because an amendment to the Skills Development Act is unlikely to find political support from employers generally;

   (b) To broaden the scope of coverage of the sector to become a local government and utilities sector including for example electricity generation. This would involve an amalgamation of some existing SETA's that would require amendments to regulations and the approval of the Minister of Labour;

   (c) To allocate a much larger percentage of the further and higher education budget to vocational training, as happens in the Netherlands and other European countries

   (d) To access donor funds to meet learning development costs as a short-term intervention.

3. The LGWSETA explained that as a relatively newly created structure it was experiencing certain teething problems that it would, over time, overcome. Its CEO was only appointed in November 2001 and the new skills manager will start only in August 2002. The CEO conceded that the LGWSETA report to parliament may not be satisfactory, but next year the report will reflect an increased level of development and delivery activity.

4. The CEO explained that there were no intakes for learnerships during the last financial year. The LGWSETA hopes that there will be eight learnerships by the end of this financial year. The LGWSETA has decided to focus its development activity on shorter skills programme to address urgent needs for service delivery.

5. The Committee finds it very difficult to get a clear sense of the value of the LGWSETA's work. While appreciating the difficulties the LGWSETA confronts, the Committee feels that it can be

more effective than it is. The Committee felt that the previous Local Government Training Board was very ineffective, and hoped the LGWSETA would be a significant improvement. At this stage, regrettably, there is no sign of this. The Committee, as explained above, is very concerned about the inadequacy of capacity-building and training programmes in the local government sphere, and feels that LGWSETA should be working with other stakeholders and doing more to contribute to the local government transformation. The Committee is especially concerned about the lack of co-ordination between the relevant capacity-building and training stakeholders, and would like to see LGWSETA playing a more active role in contributing to the necessary co-ordination being effected. The Committee will seek to convene a meeting of all the relevant stakeholders later in the year.

6. The Committee is not clear about how effectively and productively the LGWSETA has used the funds allocated to it thus far. The Committee does not feel competent to evaluate the LGWSETA's proposals on options to increase its funds, but will refer this to the Labour Portfolio Committee and the Department of Labour.

P. Municipal Demarcation Board (MDB)

1. The budget of the MDB has been reduced from 15,8 million last year to R11, 6 million this financial year. The Board had a shortfall of R3, 5 million last year, which was funded by the Department. The Board consistently relies on the Department for supplementary funding. The Board expressed concern at the reduction of its budget. Although the boundary determinations have been essentially completed, the Board still has a lot of outstanding work to attend to, and the budget allocated is not adequate.

2. The main activities of the Board have centred around: (i) boundary categorisation, (ii) powers and functions of municipalities, (iii) alignment of service delivery boundaries and (iv) improvement on the functioning of its administration. During this financial year, the Board will consolidate its work around the areas outlined above and will also be part of finalising the outstanding issues of local government transformation.

3. The majority in the Committee feels that the Board still has important responsibilities to fulfil and should be funded adequately. The Board has been extremely frugal and productive in its use of its budget and other resources. In view of its exemplary use of funds, its case for more funds carries a certain credibility with the Committee.

Q. Municipal Infrastructure Investment Unit (MIIU)

1. The MIIU was established in 1998 for a five-year term mainly to assist municipalities to secure private sector investment in municipal services. Its term comes to an end in April 2003 but cabinet is likely to renew it.

2. The MIIU's allocation has increased from R6 million last year to R7 million this year. The MIIU's overall budget is R17, 5 million. This budget is also being financed with surplus funds carried forward from the previous financial year plus anticipated interest on investment and success fees. The financial year of the MIIU ends in February of each year but will change as required by the PFMA to align with the financial year of government. The consolidation of newly-demarcated municipalities slowed down requests for assistance from MIIU last year, but the demands on MIIU are expected to increase in this financial year.

3. In the past financial year, MIIU completed MSPs valued at R6,7 million. 433 445 households benefited from this. In the past financial year the Unit managed to sign five major MSPs, including the Kelvin Power Plant Sale in Johannesburg and Uthukela Water Partnerships Multi-Jurisdictional Municipal Service Districts. The latter, which is the first of its kind in the country, is a very innovative water distribution service involving three district municipalities.

4. The MIIU has conducted a series of diagnostic studies of municipalities to investigate potential successes, constraints and challenges for the MSPs.

5. The Committee welcomes the clear and precise report from the MIIU and feels that the MIIU has been effective. The Committee supports a renewal of MIIU' mandate. Of course the Committee recognises the obvious challenges in securing private sector investment for more rural municipalities, but feels the MIIU should be seeking more creative ways of achieving this, especially with the increasing importance of the ISRDP and the long-term benefits for the private sector if it became appropriately involved in this programme.

R. Conclusion

1. The reports of the Department to the Committee were better this year than last year. Of course, they could be better.

2. The Department has major responsibilities. It has to contend with budgetary, resource, personnel and other limitations. In the circumstances, it is coping reasonably. Notwithstanding the constraints, the Department has to be far more effective in fulfilling its responsibilities.

3. The Committee has identified its concerns in different sections of this report. Fundamentally, these revolve around two inter-related themes:

   (a) the need for greater coordination and integration in the many senses identified in this report; and

   (b) the need for major capacity-building initiatives in the many senses suggested in this report.

4. Within limitations of time and capacity, the Committee will follow up on the issues raised in this report before the end of the financial year. The Committee expects the Department and above statutory bodies to respond to the issues raised in this report in their presentations to next year's budget hearings.

5. Within the context of the separation of powers between the executive and legislature, the Committee would like to co-operate more effectively with the Department and contribute more to addressing the challenges identified in this report.

6. The Committee recognises that it too needs to improve its capacity to fulfil it oversight role.

7. The reports provided by SALGA, LGWSETA, and the National House of Traditional Leaders were not satisfactory and have to be better next year. Where possible, the Department should offer appropriate assistance to these organisations.

8. The Committee expresses its appreciation to researchers—Ms D Hene and Mr C Sibanyoni and Committee Secretary, Mr L Brown for their assistance in the preparation of this report.

9. The Committee expresses its appreciation to the Minister, Deputy Minister, Acting Director General, other representatives of the Department and representatives of the statutory bodies for their co-operation with the Committee in respect of the budget hearings.

2. Report of the Portfolio Committee on Provincial and Local Government on the ***Local Government: Municipal Structures Amendment Bill*** [B 22—2002] (National Assembly—sec 75), dated 7 June 2002:

The Portfolio Committee on Provincial and Local Government, having considered the subject of the ***Local Government: Municipal Structures Amendment Bill*** [B 22—2002] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill with amendments [B 22A—2002].

The Committee further reports, as follows:

1. The Bill basically addresses the consequences of constitutional amendments providing for "crossing the floor" in the local government sphere.

2. The current electoral system in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is very closely linked to the model of local government. The model was significantly based on a prohibition of "floor crossing". In respect of both the constitutional amendments as well as the amendment of the principal Act by this Bill, there has been a concern to provide for "floor crossing" in a way that does not erode the foundations of the new model of local government, especially the concepts of democracy underpinning it.

3. The Committee believes that the provisions of this Bill respond appropriately to the above concerns and that they could serve to strengthen aspects of the new model of local government.

4. The provisions to allow for "crossing the floor" have consequences for the composition of district councils, metropolitan subcouncils and other municipal structures and committees. Among other matters, the Bill provides for the reconstitution of metropolitan subcouncils in terms of a new formula that makes provision for "floor crossing". It is difficult at this stage to fully anticipate all the consequences that "crossing the floor" will have for district councils, metropolitan subcouncils and other municipal structures and committees. The Committee will closely monitor the process. The Committee urges the Department of Provincial and Local Government to play a full and effective role in ensuring that all the practical consequences of "floor crossing" are catered for through legislation, including regulations, as well as guidelines and other appropriate means.

5. The provisions on "crossing the floor" also confer additional responsibilities on the Electoral Commission. The Commission is urged to put the necessary infrastructure and procedures in place to attend to these responsibilities expeditiously.

3. Report of the Portfolio Committee on Justice and Constitutional Development on the ***Constitution of the Republic of South Africa Amendment Bill*** [B 16—2002] (National Assembly—sec 74), dated 7 June 2002:

   The Portfolio Committee on Justice and Constitutional Development, having considered the subject of the ***Constitution of the Republic of South Africa Amendment Bill*** [B 16—2002] (National Assembly—sec 74), referred to it and classified by the Joint Tagging Mechanism as a section 74 Bill, reports the Bill with amendments [B 16A—2002].

4. Report of the Portfolio Committee on Justice and Constitutional Development on the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17—2002] (National Assembly—sec 74), dated 7 June 2002:

   The Portfolio Committee on Justice and Constitutional Development, having considered the subject of the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17—2002] (National Assembly—sec 74), referred to it and classified by the Joint Tagging Mechanism as a section 74 Bill, reports the Bill with amendments [B 17A—2002].

5. Report of the Portfolio Committee on Justice and Constitutional Development, dated 7 June 2002:

   The Portfolio Committee on Justice and Constitutional Development resolved to initiate a ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** dealing with procedures on loss or retention of membership of a legislature by a member who ceases to be a member of the party which nominated him or her, and on the merging of one party with another party.

   The Committee complied with Rule 238(1) by tabling a memorandum in the National Assembly on 12 November 2001, setting out particulars and explaining the objects of the proposed legislation, as well as stating whether it would have financial implications for the State.

The House, in accordance with Rule 238(3), on 13 November 2001 gave permission that the proposal be proceeded with.

The Committee therefore reports that it has introduced the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) by submitting a copy thereof to the Speaker in accordance with Rule 243.

6. Further Report of the Portfolio Committee on Justice and Constitutional Development on ***Crossing-the-Floor Legislation***, dated 10 June 2002:

The Portfolio Committee on Justice and Constitutional Development wishes to report further on the ***Crossing-the-Floor Legislation***, as follows:

1. The four Bills dealing with changes of party membership and merger/subdivision of parties, namely the—

   * ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002];
   * ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002];
   * ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002]; and
   * ***Local Government: Municipal Structures Amendment Bill*** [B 22 B—2002],

   will commence on the date of publication in the *Gazette*.

   In terms of transitional provisions contained in the legislation (the new item 23A(4) in [B 25—2002], and the new Schedule 6A item 7 in [B 16B—2002]), the first opportunity for those changes will occur immediately after such commencement and will last for a period of 15 days.

2. It is imperative that the administrative structures and mechanisms, in particular the designation of officers by the Independent Electoral Commission, to deal with those procedures must be in place at the time of such commencement.

   * The Committee recommends that the Independent Electoral Commission be urged to ensure that steps are taken timeously in order to ensure that the provisions of item 7 of the new Schedule 6A, as provided for in the ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002], could be implemented smoothly in the local government sphere.
   * The Committee also recommends that the Secretaries of Parliament and of the various provincial legislatures be urged to ensure that steps are taken timeously in order to ensure that the provisions of the new item 23A(4), as provided for in the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002], could likewise be implemented smoothly in the national and provincial government spheres.

The Committee is of the view that the relevant functionaries may wish to ensure that uniform practices and procedures are developed for this purpose. The Committee offers the drafts contained in the Annexure to

this Report as a contribution to promote such uniformity. It is further suggested that the Independent Electoral Commission should, as soon as possible, publicise a list of all officers designated by the Commission to facilitate the necessary procedures in the local government sphere and submit the list to political parties.

3. The Committee further recommends that the Department of Justice and Constitutional Development be requested, in conjunction with the relevant role-players:

   * To research the laws pertaining to the registration of political parties in order to ascertain whether or not any such laws should be amended in order to expedite the registration of new parties emerging as a result of the new provisions, in particular the subdivision of parties. It should be noted that the Independent Electoral Commission expressed the view that, at present, the Independent Electoral Commission Act, 1996, does not make provision for the subdivision of parties.

   * To review the laws pertaining to the funding of political parties, in particular parties represented in a legislature, and to take such steps as may be necessary to ensure that those provisions are aligned with the changes effected in terms of the above legislation.

   * To consider all legislation which may need to be amended in order to be brought into line with the new laws referred to in paragraph 1, and to make recommendations regarding such changes as may need to be effected.

   * To revert to the Committee within two months of the commencement of the said legislation regarding all steps it has taken or will be taking as a result of the above matters.

4. In addition to the Report of the Portfolio Committee on Provincial and Local Government on the ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (Announcements, Tablings and Committee Reports, 10 June 2002), it should be noted that an important principle is established by the amendments to the Local Government: Municipal Structures Act, 1998, in so far as the reconstitution of metropolitan subcouncils is concerned after changes of party membership or mergers or subdivision of parties have taken place. In terms of the relevant amendment, metro councils may determine their own mechanism for the appointment of councillors in the proportional representative component of metropolitan subcouncils. Although such a mechanism must comply with the principles of fair representation and democracy as set out in Part 2 of Schedule 4 to the Municipal Structures Act (as amended), it is desirable for some degree of uniformity to be maintained by the respective metro councils. To this end, the Minister for Provincial and Local Government is requested to issue guidelines to metro councils on a possible model for such a mechanism.

5. The Committee further recommends that a copy of this resolution, together with the abovementioned Bills, be forwarded as a matter of the utmost urgency to the—

* Speaker of the National Assembly and the Chairperson of the National Council of Provinces;
* Speakers of the provincial legislatures;
* Independent Electoral Commission;
* Department of Home Affairs;
* Department of Provincial and Local Government; and
* South African Local Government Association.

Report to be considered.

ANNEXURE

Form 1

NOTICE TO ELECTORAL COMMISSION
(Item 4(2)(a) of Schedule 6A to Constitution)

☐ **CHANGE OF MEMBERSHIP OF A PARTY**
☐ **BECOMING MEMBER OF A PARTY**
☐ **CEASING TO BE MEMBER OF A PARTY**

In terms of item 4(2)(a) of Schedule 6A to the Constitution, I, ... (full names), hereby inform the Electoral Commission that, being a councillor who was elected—

☐ from the party list of the ..... (name of original party) represented in the Municipal Council of ....., I have become a member of the ..... (name of new party).

☐ to represent ..... (name of ward) in the Municipal Council of ....., who was nominated by the ..... (name of party) as a candidate in the ward election, I have ceased to be a member of the ..... (name of original party) and have become a member of the ..... (name of new party).

☐ to represent ..... (name ofward) in the Municipal Council of ....., who was nominated by the ..... (name of party) as a candidate in the ward election, I have ceased to be a member of the ..... (name of original party) and have not become a member of another party.

☐ to represent ..... (name of ward) in the Municipal Council of ....., who was not nominated by aparty as a candidate in the ward election, I have become a member of the ..... (name of party).

....
SIGNATURE OF COUNCILLOR **DATE**

CONFIRMATION

In terms of item 4(2)(a) of Schedule 6A to the Constitution, I, ... (full names), acting on behalf of and in my capacity as ..... of the ..... (name of party), hereby confirm that ..... (fullnames of new member) has been accepted as a member of the ..... (name of party).

....
SIGNATURE OF REPRESENTATIVE **DATE**

CERTIFICATION

I, ... (full names of officer designated by the Electoral Commission)hereby certify that this notice has been duly submitted to me by ..... (full names of councillor) and confirmed by *..... (name of party) on ..... (date) at ..... (place).

....
SIGNATURE OF DESIGNATED OFFICER **DATE**

*Complete, if applicable

Form 2

NOTICE TO ELECTORAL COMMISSION
(Item 4(2)(b) of Schedule 6A to Constitution)

☐ **PARTY MERGING WITH ANOTHER PARTY**

☐ **PARTY SUBDIVIDING INTO MORE THAN ONE PARTY**

☐ **PARTY SUBDIVIDING AND SUBDIVISION MERGING WITH ANOTHER PARTY**

In terms of item 4(2)(b) of Schedule 6A to the Constitution, I, ... (full names), acting on behalf of and in my capacity as ..... of the ..... (name of party), hereby inform the Electoral Commission that—

☐ the ..... (name of original party) as represented in the Municipal Council of ..... has mergedvith the ..... (name of party). A list of the names and signatures of all the councillors involved in the merger is attached.

☐ the ..... (name of subdivision) has subdivided from the ..... (name of original party), being a party represented in the Municipal Council of ..... A list of the names and signatures of all the councillors involved in the subdivision is attached.

☐ the councillors mentioned in the attached list have subdivided from the ..... (name of original party), being a party represented in the Municipal Council of ..... and merged with the ..... (name of party). A list of the names and signatures of all the councillors involved in the subdivision and merger is attached.

....
SIGNATURE OF REPRESENTATIVE **DATE**

CONFIRMATION
(Complete in event of merger or subdivision and merger)

In terms of item 4(2)(b) of Schedule 6A to the Constitution, I, ... (full names), acting on behalf of and in my capacity as ..... of the ..... (name of party), hereby confirm the names of all the councillors involved in the—

☐ merger; or

☐ subdivision and merger; and

that the ..... (name of party) has accepted the merger.

....
SIGNATURE OF REPRESENTATIVE **DATE**

Form 2

CERTIFICATION

I, ... (full names of officer designated by the Electoral Commission), hereby certify that this notice has been duly submitted to me by ..... (full names of representative) and confirmed by *..... (name of party) on ..... (date) at ..... (place).

....

SIGNATURE OF DESIGNATED OFFICER **DATE**

*Complete, if applicable

Form 3

NOTICE TO SPEAKER OF LEGISLATURE
CHANGE OF MEMBERSHIP OF A PARTY
(Item 23A(5)(c)(i) of Schedule 2 to Act 200 of 1993)

In terms of item 23A(5)(c)(i) of Schedule 2 to the Constitution of the Republic of South Africa, 1993, I, ... (full names) hereby inform the Speaker of the ..... (name of legislature) that I have—

- ceased to be a member of the ..... (name of original party); and
- have become a member of the ..... (name of new party).

....
SIGNATURE OF MEMBER **DATE**

CONFIRMATION

In terms of item 23A(5)(c)(i) of Schedule 2 to the Constitution of the Republic of South Africa, 1993, I, ... (full names), acting on behalf of and in my capacity as ..... of the ..... (name of party), hereby confirm that ..... (full names of new member) has been accepted as a member of the ..... (name of party).

....
SIGNATURE OF REPRESENTATIVE **DATE**

CERTIFICATION

I, ... Speaker of the ..... (name of legislature), hereby certify that this notice has been duly submitted to me by ..... (full names ofmember) and confirmed by ..... (name of party) on ..... (date) at ..... (place).

....
SIGNATURE OF SPEAKER **DATE**

Form 4

NOTICE TO SPEAKER OF LEGISLATURE
(Item 23A(5)(c)(ii) of Schedule 2 to Act 200 of 1993)

☐ **PARTY MERGING WITH ANOTHER PARTY**
☐ **PARTY SUBDIVIDING INTO MORE THAN ONE PARTY**
☐ **PARTY SUBDIVIDING AND SUBDIVISION MERGING WITH ANOTHER PARTY**

In terms of item 23A(5)(c)(ii) of Schedule 2 to the Constitution of the Republic of South Africa, 1993, I, ... (full names), acting on behalf of and in my capacity as ..... of the ..... (name of party), hereby inform the Speaker of the ..... (name of legislature) that—

☐ the ..... (name of original party), as represented in the ..... (name of legislature) has merged with the ..... (name of party). A list of the names and signatures of all the members involved in the merger is attached.

☐ the ..... (name of subdivision) has subdivided from the ..... (name of original party), being a party represented in the ..... (name of legislature). A list of the names and signatures of all the members involved in the subdivision is attached.

☐ the members mentioned in the attached list have subdivided from the ..... (name of original party), being a party represented in the ..... (name of legislature) and merged with the ..... (name of party). A list of the names and signatures of all the members involved in the subdivision and merger is attached.

....
SIGNATURE OF REPRESENTATIVE **DATE**

CONFIRMATION
(Complete in event of merger or subdivision and merger)

In terms of item 23A(5)(c)(ii) of Schedule 2 to the Constitution of the Republic of South Africa, 1993, I, ... (full names), acting on behalf of and in my capacity as ..... of the ..... (name of party), hereby confirm the names of all the members involved in the—

☐ merger; or

☐ subdivision and merger; and

that the ..... (name of party) has accepted the merger.

....
SIGNATURE OF REPRESENTATIVE **DATE**

Form 4 **CERTIFICATION**

I, ... Speaker of the ..... (name of legislature), hereby certify that this notice has been duly submitted to me by ..... (full names of representative) and confirmed by *..... (name of party) on ..... (date) at ..... (place).

....

SIGNATURE OF SPEAKER **DATE**

*Complete, if applicable

No 39—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

TUESDAY, 11 JUNE 2002

1. The House met at 09:02.

2. The Deputy Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. FIRST ORDER [09:03]

   Consideration of Further Report of Portfolio Committee on Justice and Constitutional Development on ***Crossing-the-Floor Legislation*** (Announcements, Tablings and Committee Reports, 10 June 2002, p 632), namely the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002], ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002], ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] and ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002].

   Report adopted without debate.

4. SECOND ORDER [09:04]

   Second Reading debate—

   (1) ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002] (National Assembly—sec 74);

   (2) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74); and

   (3) ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75).

   Debate concluded.

   Question put: That the ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002] be read a second time.

   Division demanded.

   The House divided:

   AYES:—280: Ainslie, A R; Asmal, A K; Aucamp, C; Bakker, D M; Balfour, B M N; Baloyi, M R; Bell, B G; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Bloem, D V; Bogopane, H I; Borman, G M; Botha, A J; Botha,

N G W; Bruce, N S; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Da Camara, M L; Davidson, I O; Davies, R H; De Lange, J H; Delport, J T; Diale, L N; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Dlamini, B O; Dowry, J J; Du Toit, D C; Duma, N M; Durand, J; Dyani, M M Z; Ellis, M J; Erwin, A; Fankomo, F C; Farrow, S B; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Geldenhuys, B L; George, M E; Gerber, P A; Gibson, D H M; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gore, V C; Gous, S J; Greyling, C H F; Grobler, G A J; Gumede, D M; Gxowa, N B; Hajaig, F; Heine, R J; Herandien, C B; Hendrickse, P A C; Hlaneki, C J M; Hogan, B A; Holomisa, S P; Jankielsohn, R; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kalyan, S V; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekota, M G P; Leon, A J; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Ludwabe, C I; Luthuli, A N; Lyle, A G; Mabandla, B S; Mabe, L; Mabena, D C; Mabudafhasi, T R; Mabuza, D D; Madlala-Routledge, N C; Maduna, P M; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, G L; Mahlangu, M J; Mahlawe, N; Maimane, D S; Maine, M S; Makasi, X C; Malebana, H F; Maloney, L; Maluleke, D K; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathebe, P M; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbete, B; Mbombo, N D; McIntosh, G B D; Mfundisi, I S; Mguni, B A; Mlangeni, A; Mngomezulu, G P; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Moonsamy, K; Moosa, M V; Morobi, D M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mshudulu, S A; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mudau, N W; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndou, R S; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Ngwenya, M L; Nhleko, N P; Nhlengethwa, D G; Niemann, J J; Njobe, M A A; Nobunga, B J; Nonkonyana, M; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, J T; Ntuli, R S; Ntuli, S B; Nzimande, L P M; Odendaal, W A; Olckers, M E; Olifant, D A A; Oliphant, G G; Oosthuizen, G C; Opperman, S E; Pahad, A G H; Pahad, E G; Phadagi, M G; Phala, M J; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, B A; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Redcliffe, C R; Ripinga, S S; Saloojee, E; Schalkwyk, P J; Schippers, J; Schmidt, H C; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; Selfe, J; September, C C; Seremane, W J; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Smith, V G; Smuts, M; Solo, B M; Solomon, G; Sonjica, B P; Sono, B N; Sosibo, J E; Sotyu, M M; Swart, P S; Thabethe, E; Tinto, B; Tolo, L J; Tsheole, N M; Turok, B; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Wyk, A (Anna); Van Wyk, J F; Van Wyk, N; Waters, M; Xingwana, L M T; Zita, L; Zondo, R P; Zuma, J G.

NOES:—44: Abrahams, T; Abram, S; Baloyi, O S B; Bekker, H J; Bhengu, G B; Biyela, B P; Cassim, M F; Dhlamini, B W; Douglas, B M; Dudley, C; Ferreira, E T; Frolick, C T; Green, L M; Groenewald, P J; Hlengwa, M W; Koornhof, G W; Lucas, E J; Madasa, Z L; Mars, I; Maseka, J T; Mbadi, L M; Mbuyazi, L R; Meshoe, K R J; Middleton, N S; Mndende, O N;

Mulder, C P; Mulder, P W A; Mzizi, M A; Ndlovu, V B; Nefolovhodwe, P J; Ngubane, H; Nkabinde, N C; Pheko, S E M; Ramodike, M N; Roopnarain, U; Sibiya, M S M; Skosana, M B; Slabbert, J H; Southgate, R M; Swart, S N; Van der Merwe, J H; Van Wyk, A (Annelize); Vos, S C; Zulu, N E.

Question agreed to in terms of section 74(3)*(a)* of the Constitution.

Constitution of the Republic of South Africa Amendment Bill [B 16B—2002] accordingly read a second time.

Question put: That the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] be read a second time.

Division demanded.

The House divided:

AYES:—280: Ainslie, A R; Asmal, A K; Aucamp, C; Bakker, D M; Balfour, B M N; Baloyi, M R; Bell, B G; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Bloem, D V; Bogopane, H I; Borman, G M; Botha, A J; Botha, N G W; Bruce, N S; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Da Camara, M L; Davidson, I O; Davies, R H; De Lange, J H; Delport, J T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Dlamini, B O; Dowry, J J; Du Toit, D C; Duma, N M; Durand, J; Dyani, M M Z; Ellis, M J; Erwin, A; Fankomo, F C; Farrow, S B; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Geldenhuys, B L; George, M E; Gerber, P A; Gibson, D H M; Gillwald, C E; Gogotya, N J; Gomomo, P J; Goniwe, M T; Goosen, A D; Gore, V C; Gous, S J; Greyling, C H F; Grobler, G A J; Gumede, D M; Gxowa, N B; Hajaig, F; Heine, R J; Hendrickse, P A C; Herandien, C B; Hlaneki, C J M; Hogan, B A; Holomisa, S P; Jankielsohn, R; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kalyan, S V; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekota, M G P; Leon, A J; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Ludwabe, C I; Luthuli, A N; Lyle, A G; Mabandla, B S; Mabe, L; Mabena, D C; Mabudafhasi, T R; Mabuza, D D; Madlala-Routledge, N C; Maduna, P M; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, G L; Mahlangu, M J; Mahlawe, N; Maimane, D S; Maine, M S; Makasi, X C; Malebana, H F; Maloney, L; Maluleke, D K; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathebe, P M; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbete, B; Mbombo, N D; McIntosh, G B D; Mfundisi, I S; Mguni, B A; Mlangeni, A; Mngomezulu, G P; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Moonsamy, K; Moosa, M V; Morobi, D M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mshudulu, S A; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mudau, N W; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndou, R S; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Ngwenya, M L; Nhleko, N P; Nhlengethwa, D G; Niemann, J J; Njobe, M A A; Nobunga, B J; Nonkonyana, M; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, J T; Ntuli, R S; Ntuli, S B; Nzimande, L P M; Odendaal, W A; Olckers,

M E; Olifant, D A A; Oliphant, G G; Oosthuizen, G C; Opperman, S E; Pahad, A G H; Pahad, E G; Phadagi, M G; Phala, M J; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, B A; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Redcliffe, C R; Ripinga, S S; Saloojee, E; Schalkwyk, P J; Schippers, J; Schmidt, H C; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; Selfe, J; September, C C; Seremane, W J; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Smith, V G; Smuts, M; Solo, B M; Solomon, G; Sonjica, B P; Sono, B N; Sosibo, J E; Sotyu, M M; Swart, P S; Thabethe, E; Tinto, B; Tolo, L J; Tsheole, N M; Turok, B; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Wyk, A (Anna); Van Wyk, J F; Van Wyk, N; Waters, M; Xingwana, L M T; Zita, L; Zondo, R P; Zuma, J G.

NOES:—44: Abrahams, T; Abram, S; Baloyi, O S B; Bekker, H J; Bhengu, G B; Biyela, B P; Cassim, M F; Dhlamini, B W; Douglas, B M; Dudley, C; Ferreira, E T; Frolick, C T; Green, L M; Groenewald, P J; Hlengwa, M W; Koornhof, G W; Lucas, E J; Madasa, Z L; Mars, I; Maseka, J T; Mbadi, L M; Mbuyazi, L R; Meshoe, K R J; Middleton, N S; Mndende, O N; Mulder, C P; Mulder, P W A; Mzizi, M A; Ndlovu, V B; Nefolovhodwe, P J; Ngubane, H; Nkabinde, N C; Pheko, S E M; Ramodike, M N; Roopnarain, U; Sibiya, M S M; Skosana, M B; Slabbert, J H; Southgate, R M; Swart, S N; Van der Merwe, J H; Van Wyk, A (Annelize); Vos, S C; Zulu, N E.

Question agreed to in terms of section 74(3)*(a)* of the Constitution.

Constitution of the Republic of South Africa Second Amendment Bill [B 17B—2002] accordingly read a second time.

Question put: That the ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] be read a second time.

Division demanded.

The House divided:

AYES:—280: Ainslie, A R; Asmal, A K; Aucamp, C; Bakker, D M; Balfour, B M N; Baloyi, M R; Bell, B G; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Bloem, D V; Bogopane, H I; Borman, G M; Botha, A J; Botha, N G W; Bruce, N S; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Da Camara, M L; Davidson, I O; Davies, R H; De Lange, J H; Delport, J T; Diale, L N; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Dlamini, B O; Dowry, J J; Du Toit, D C; Duma, N M; Durand, J; Dyani, M M Z; Ellis, M J; Erwin, A; Fankomo, F C; Farrow, S B; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Geldenhuys, B L; George, M E; Gerber, P A; Gibson, D H M; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gore, V C; Gous, S J; Greyling, C H F; Grobler, G A J; Gumede, D M; Gxowa, N B; Hajaig, F; Heine, R J; Hendrickse, P A C; Herandien, C B; Hlaneki, C J M; Hogan, B A; Holomisa, S P; Jankielsohn, R; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kalyan, S V; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekota, M G P; Leon, A J; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Ludwabe, C I; Luthuli, A N; Lyle, A G; Mabandla, B S; Mabe, L; Mabena, D C; Mabudafhasi, T R; Mabuza, D D; Madlala-Routledge, N C; Maduna, P M; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, G L; Mahlangu, M J; Mahlawe, N; Maimane, D S; Maine, M S; Makasi, X C; Malebana, H F;

Maloney, L; Maluleke, D K; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathebe, P M; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbete, B; Mbombo, N D; McIntosh, G B D; Mfundisi, I S; Mguni, B A; Mlangeni, A; Mngomezulu, G P; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Moonsamy, K; Moosa, M V; Morobi, D M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mshudulu, S A; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mudau, N W; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndou, R S; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Ngwenya, M L; Nhleko, N P; Nhlengethwa, D G; Niemann, J J; Njobe, M A A; Nobunga, B J; Nonkonyana, M; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, J T; Ntuli, R S; Ntuli, S B; Nzimande, L P M; Odendaal, W A; Olckers, M E; Olifant, D A A; Oliphant, G G; Oosthuizen, G C; Opperman, S E; Pahad, A G H; Pahad, E G; Phadagi, M G; Phala, M J; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, B A; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Redcliffe, C R; Ripinga, S S; Saloojee, E; Schalkwyk, P J; Schippers, J; Schmidt, H C; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; Selfe, J; September, C C; Seremane, W J; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Smith, V G; Smuts, M; Solo, B M; Solomon, G; Sonjica, B P; Sono, B N; Sosibo, J E; Sotyu, M M; Swart, P S; Thabethe, E; Tinto, B; Tolo, L J; Tsheole, N M; Turok, B; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Wyk, A (Anna); Van Wyk, J F; Van Wyk, N; Waters, M; Xingwana, L M T; Zita, L; Zondo, R P; Zuma, J G.

NOES:—44: Abrahams, T; Abram, S; Baloyi, O S B; Bekker, H J; Bhengu, G B; Biyela, B P; Cassim, M F; Dhlamini, B W; Douglas, B M; Dudley, C; Ferreira, E T; Frolick, C T; Green, L M; Groenewald, P J; Hlengwa, M W; Koornhof, G W; Lucas, E J; Madasa, Z L; Mars, I; Maseka, J T; Mbadi, L M; Mbuyazi, L R; Meshoe, K R J; Middleton, N S; Mndende, O N; Mulder, C P; Mulder, P W A; Mzizi, M A; Ndlovu, V B; Nefolovhodwe, P J; Ngubane, H; Nkabinde, N C; Pheko, S E M; Ramodike, M N; Roopnarain, U; Sibiya, M S M; Skosana, M B; Slabbert, J H; Southgate, R M; Swart, S N; Van der Merwe, J H; Van Wyk, A (Annelize); Vos, S C; Zulu, N E.

Question agreed to.

Local Government: Municipal Structures Amendment Bill [B 22B—2002] accordingly read a second time.

5. THIRD ORDER [11:43]

Consideration of Reports of Portfolio Committee on Justice and Constitutional Development on—

(1) ***Reinstatement of Enrolment of Certain Legal Practitioners Bill*** [B 6 and B 6A—2002] (National Assembly—sec 75) (Announcements, Tablings and Committee Reports, 27 May 2002, p 462);

(2) ***International Criminal Court Bill*** [B 42—2001] (National Assembly—sec 75) (Announcements, Tablings and Committee Reports, 7 June 2002, p 596); and

(3) ***Insolvency Amendment Bill*** [B 14 and B 14A—2002] (National Assembly—sec 75) (Announcements, Tablings and Committee Reports, 7 June 2002, p 598). Reports adopted without debate.

6. FOURTH ORDER [11:43]

Second Reading debate—

(1) ***Reinstatement of Enrolment of Certain Deceased Legal Practitioners Bill*** [B 6B—2002] (National Assembly—sec 75) (introduced as ***Reinstatement of Enrolment of Certain Legal Practitioners Bill*** [B 6—2002] (National Assembly—sec 75);

(2) ***Implementation of the Rome Statute of the International Criminal Court Bill*** [B 42B—2001] (National Assembly—sec 75) (introduced as ***International Criminal Court Bill*** [B 42—2001] (National Assembly—sec 75); and

(3) ***Insolvency Amendment Bill*** [B 14B—2002] (National Assembly—sec 75).

Debate concluded.

Reinstatement of Enrolment of Certain Deceased Legal Practitioners Bill [B 6B—2002] read a second time.

Implementation of the Rome Statute of the International Criminal Court Bill [B 42B—2001] read a second time.

Insolvency Amendment Bill [B 14B—2002] read a second time.

BUSINESS SUSPENDED AT 12:54 AND RESUMED AT 14:03.

7. [14:03] Notices of motion.

8. [14:20] The Chief Whip of the Majority Party moved without notice: That the House—

(1) notes with shock the recent killing on Thursday evening of three farm workers, while sleeping, by their farm manager on a farm in Nylstroom, Northern Province;

(2) congratulates the South African Police Service for their swift action in arresting the farm manager, Mr Johan Weideman, and confiscating the .22 rifle and 9 mm pistol allegedly used for killing the farm workers, and also the judiciary for charging the farm manager with three charges of murder;

(3) calls on the farming community to take heed of the calls of this Government to protect the safety of farmers and farm workers and to respect the contents of the agreement on the vision for agriculture in South Africa.

Agreed to.

PRECEDENCE GIVEN TO ORDER NO 7 ON THE ORDER PAPER.

9. SEVENTH ORDER [14:21]

Second Reading debate—***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) (As introduced by the Portfolio Committee on Justice and Constitutional Development).

There was no debate.

Question put: That the Bill be read a second time.

Division demanded.

The House divided:

AYES:—265: Ainslie, A R; Andrew, K M; Aucamp, C; Bakker, D M; Bell, B G; Baloyi, M R; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Blanche, J P I; Bloem, D V; Bogopane, H I; Borman, G M; Botha, A J; Bruce, N S; Buthelezi, M N; Cachalia, I M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Da Camara, M L; Davidson, I O; Davies, R H; De Lange, J H; Delport, J T; Diale, L N; Dithebe, S L; Dlali, D M; Dlamini, B O; Doidge, G Q M; Dowry, J J; Du Toit, D C; Duma, N M; Durand, J; Dyani, M M Z; Ellis, M J; Fankomo, F C; Farrow, S B; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Geldenhuys, B L; George, M E; Gerber, P A; Gibson, D H M; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gous, S J; Greyling, C H F; Grobler, G A J; Gumede, D M; Gxowa, N B; Hajaig, F; Hanekom, D A; Heine, R J; Hendrickse, P A C; Herandien, C B; Hlaneki, C J M; Hogan, B A; Holomisa, S P; Jankielsohn, R; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kalyan, S V; Kannemeyer, B W; Kasienyane, O R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lowe, C M; Ludwabe, C I; Luthuli, A N; Lyle, A G; Mabandla, B S; Mabe, L; Mabena, D C; Mabudafhasi, T R; Mabuza, D D; Madlala-Routledge, N C; Maduna, P M; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, G L; Mahlangu, M J; Mahlawe, N; Maimane, D S; Maine, M S; Makasi, X C; Malebana, H F; Maloney, L; Maluleke, D K; Malumise, M M; Maphalala, M A; Mapisa-Nqakula, N N; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathebe, P M; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbombo, N D; McIntosh, G B D; Mfundisi, I S; Mguni, B A; Mlangeni, A; Mngomezulu, G P; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Moonsamy, K; Moosa, M V; Morkel, C M; Morobi, D M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpaka, H M; Mshudulu, S A; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mudau, N W; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndou, R S; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Ngwenya, M L; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nobunga, B J; Nonkonyana, M; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntuli, B M; Ntuli, J T; Ntuli, R S; Ntuli, S B; Nzimande, L P M; Odendaal, W A; Olckers, M E; Olifant, D A A; Oliphant, G G; Oosthuizen, G C; Opperman, S E; Pahad, E G; Phadagi, M G; Phala, M J; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, B A; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Redcliffe, C R; Ripinga, S S; Saloojee, E; Schalkwyk, P J; Schippers, J; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; September, C C; Seremane, W J; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Smith, V G; Smuts, M; Solo, B M; Solomon, G; Sonjica, B P; Sono, B N; Sosibo, J E; Sotyu, M M; Swart, P S; Thabethe, E; Tinto, B; Tolo, L J; Tsheole, N M; Turok, B; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, S C; Van Deventer, F J; Van

Jaarsveld, A Z A; Van Wyk, A (Anna); Van Wyk, J F; Van Wyk, N; Waters, M; Xingwana, L M T; Zita, L; Zondo, R P.

NOES:—42: Abram, S; Bekker, H J; Bhengu, G B; Biyela, B P; Buthelezi, M G; Cassim, M F; Dhlamini, B W; Douglas, B M; Ferreira, E T; Frolick, C T; Green, L M; Groenewald, P J; Koornhof, G W; Madasa, Z L; Makanda, W G; Mars, I; Maseka, J T; Mbadi, L M; Mbuyazi, L R; Meshoe, K R J; Mogoba, M S; Mulder, C P; Mulder, P W A; Mzizi, M A; Ndlovu, V B; Nefolovhodwe, P J; Ngubane, H; Nkabinde, N C; Pheko, S E M; Ramodike, M N; Roopnarain, U; Sibiya, M S M; Skosana, M B; Slabbert, J H; Smith, P F; Southgate, R M; Swart, S N; Van der Merwe, J H; Van Wyk, A (Annelize); Vos, S C; Zondi, K M; Zulu, N E.

Question agreed to.

Bill accordingly read a second time.

10. FIFTH ORDER [14:27]

Debate on Vote No 4—Home Affairs, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77) (For Committee Report on Vote, see Announcements, Tablings and Committee Reports, 6 June 2002, p 561).

Debate concluded.

11. SIXTH ORDER [16:46]

Debate on Vote No 19—Sport and Recreation South Africa, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

[17:30] Debate interrupted.

The Speaker made an announcement concerning the circulation of forms amongst certain members relating to party membership.

[17:33] Debate on Vote No 19—Sport and Recreation South Africa, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77) resumed.

Debate concluded.

12. The House adjourned at 19:06.

S MFENYANA,

Secretary to Parliament.

No 15—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 11 JUNE 2002

1. The Council met at 14:02.

2. The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:03] Statement of condolence on the death of Mr P R Mokaba

   Debate concluded.

   The Chief Whip of the Council moved without notice: That the Council—

   (1) notes with shock and profound sadness the untimely death of the honourable Peter Ramoshoane Mokaba, who passed away on 9 June 2002;

   (2) recognises that Peter Mokaba was a South African patriot who, throughout his life, demonstrated a profound commitment to the liberation of the people of our country and the continent of Africa;

   (3) remembers him as a principled person who had the courage of his convictions;

   (4) recalls that, as president of the South African Youth Congress and the African National Congress Youth League and a member of the National Executive Committee of the African National Congress he was a robust, fearless, loyal and dedicated cadre who lived by the words, "rather die next to the enemy than let him pass";

   (5) acknowledges the dynamic contribution that the honourable Mokaba made to Parliament since the election of the first democratic Parliament in 1994, during which time he served as Deputy Minister of Environmental Affairs and Tourism and as Chairperson of the Ad Hoc Committee on Powers and Privileges of Parliament, which positions he served with dedication;

   (6) believes that he leaves a legacy that epitomises heroism and dedicated service and that his untimely death has robbed South Africa of a great son who at his tender age still had a tremendous contribution to make to the reconstruction and development of our nation; and

(7) expresses its condolences to the entire Mokaba family.

Motion agreed to in accordance with section 65 of the Constitution, all members standing.

4. [14:15] The Chief Whip of the Council moved: That the Council, following joint briefings and deliberations, agrees to suspend Joint Rule 154 in respect of the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76).

Motion agreed to in accordance with section 65 of the Constitution (KwaZulu-Natal abstaining).

5. [14:18] Questions.

6. [15:43] Notices of motion.

7. [15:46] Ms C-S Botha moved without notice: That the Council—

(1) notes that—

(a) Ms Lerato Mgorosi, a first-year student at the Victoria Toma School for Design in Bloemfontein, won a national award for the design of the clothes of the volunteers during the Conference on Sustainable Development in Johannesburg later this year;

(b) the judges of this competition said her design was practical, colourful and ideal for volunteers who will have to work long hours and will have to walk a lot; and

(c) morwetsana enwa o bontsha le ho pakahatsa hape hore ho sebetsa ka boitelo le ho nahana hantle ha batjha ba Afrika Borwa, ba ka fihlella phethahatso ya ditoro tsa bona;

[this young lady has shown and proven that our South African youth can make their dreams become a reality through hard work, commitment and focus;]

and

(2) congratulates this young Free State student and encourages other young people to follow her example.

Motion agreed to in accordance with section 65 of the Constitution.

8. [15:47] Mr M A Sulliman moved without notice: That the Council—

(1) notes with shock the horrible accident in Masvingo outside Harare in which 36 Zimbabwean students tragically lost their lives;

(2) expresses its condolences with the families of the victims in their sad bereavement; and

(3) wishes those injured a speedy recovery.

Motion agreed to in accordance with section 65 of the Constitution.

9. [15:48] Ms E C Gouws moved without notice: That the Council—

(1) takes cognisance of the outstanding performance of a 17-year-old boy from rural Umtata in the Eastern Cape who without—

(a) proper training;

(b) running gear;

(c) the advantage of being on a nutritional diet; or

(d) previous experience of competing internationally,

won the gold medal in the 3 000 meters at an athletics meeting in Paris; and

(2) notes that this outstanding achievement shows the vast talent that we still need to develop in our country.

Motion agreed to in accordance with section 65 of the Constitution.

10. [15:49] Mr G A Lucas moved without notice: That the Council—

(1) notes that Senegal has become the first African country to make it through to the second round of the soccer World Cup;

(2) further notes that this achievement is even more remarkable given the fact that this is their first World Cup finals and that they played in the same group as the current world and European champions, France;

(3) congratulates Senegal on this magnificent achievement;

(4) expresses its hope that their achievement will inspire our very own Bafana Bafana for their crucial encounter with Spain, as well as Cameroon; and

(5) notes that Africa's time has come.

Motion agreed to in accordance with section 65 of the Constitution.

11. [15:50] Mr D M Kgware moved without notice: That the Council—

(1) notes that—

(a) President Thabo Mbeki yesterday delivered a keynote address to delegates at the World Food Summit in Rome;

(b) the summit and the New Partnership For Africa's Development (Nepad) will focus on reviewing advances made since the 1996 World Food Summit, outlining the measures leaders now envisage as well as the mobilisation of the requisite political will and resources to move forward at an accelerated pace to achieve the 1996 targets; and

(c) South Africa will also report on progress and provide an assessment and a way forward out of the current food situation in the African region; and

(2) reiterates our President's commitment to work tirelessly in the fight against poverty.

Motion agreed to in accordance with section 65 of the Constitution.

12. [15:51] Mr J Horne moved without notice: That the Council notes what was said about the New Partnership for Africa's Development (Nepad) by the leader of the New National Party, Marthinus van Schalkwyk, when he addressed a meeting of the International Democratic Union in Washington DC on 10 June 2002, namely that—

(1) Nepad is a signal from Africa to the rest of the world about African optimism; and

(2) it is critically important for our friends, especially in America, Europe and all around the world, to support this important African initiative.

Motion agreed to in accordance with section 65 of the Constitution.

13. [15:52] Mr M A Sulliman (on behalf of the Chief Whip of the Council) moved: That leave of absence be granted to Mr B Willem for the period 10 May 2002 to 31 August 2002.

    Motion agreed to in accordance with section 65 of the Constitution.

14. [15:53] The Council discussed the following subject: The parliamentary role in addressing the critical tasks for the successful achievement of African unity and development.

    Debate concluded.

15. FIRST ORDER [16:51]

    Policy debate on Budget Vote No 31: Trade and Industry, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77) (For Committee Report on Vote, see Announcements, Tablings and Committee Reports, 31 May 2002, p 491).

    Debate concluded.

16. SECOND ORDER [19:02]

    Consideration of Report of Select Committee on Finance (Announcements, Tablings and Committee Reports, 22 May 2002, p 448—***RSA/Seychelles Double Taxation Agreement***).

    Order disposed of without debate.

    Question put: That the Report be adopted.

    IN FAVOUR OF: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West, Western Cape.

    Report accordingly adopted in accordance with section 65 of the Constitution.

17. The Council adjourned at 19:04.

S MFENYANA,

Secretary to Parliament.

No 74—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 11 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

   (1) The Subcommittee of the Joint Programme Committee on 11 June 2002 took a decision, in accordance with Joint Rule 216(2), that the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74), ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75) and ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) be fast-tracked by, where necessary, shortening any period within which any step in the legislative process relating to the Bill must be completed, in order to make it possible for the Bill to be passed by Tuesday 18 June 2002.

   In terms of Joint Rule 216(4) this decision must be tabled in both Houses for ratification.

National Assembly:

1. The Speaker:

   (1) Bill passed by National Assembly on 11 June 2002: To be submitted to President of the Republic for assent:

      (i) ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002] (National Assembly—sec 74).

National Council of Provinces:

1. The Chairperson:

(1) Message from National Assembly to National Council of Provinces:

Bills passed by National Assembly on 11 June 2002 and transmitted for concurrence:

(i) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74) (referred to the Select Committee on Security and Constitutional Affairs).

(ii) ***Insolvency Amendment Bill*** [B 14B—2002] (National Assembly—sec 75) (referred to the Select Committee on Security and Constitutional Affairs).

(iii) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) (referred to the Select Committee on Security and Constitutional Affairs).

(iv) ***Reinstatement of Enrolment of Certain Deceased Legal Practitioners Bill*** [B 6B—2002] (National Assembly—sec 75) (referred to the Select Committee on Security and Constitutional Affairs).

(v) ***Implementation of the Rome Statute of the International Criminal Court Bill*** [B 42B—2001] (National Assembly—sec 75) (referred to the Select Committee on Security and Constitutional Affairs).

(vi) ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75) (referred to the Select Committee on Local Government and Administration).

2. The Chairperson:

The following papers have been tabled and are now referred to the relevant committees as mentioned below:

(1) **The following papers are referred to the Select Committee on Labour and Public Enterprises:**

(a) Annual Report and Financial Statements of the Compensation Commissioner for 1999-2000 [RP 208-2001].

(b) Annual Report and Financial Statements of the National Skills Fund for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001.

(c) Annual Report and Financial Statements of the Compensation Fund for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001 [RP 72-2002].

(2) **The following papers are referred to the Select Committee on Finance:**

(a) Annual Report and Financial Statements of the Public Investment Commissioners for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001 [RP 50-2002].

(b) General Notice No 662 published in Government Gazette No 23383 dated 30 April 2002, Statement of the National and Provincial Government's Revenue, Expenditure and National Borrowing as at 31 March 2002, in terms of section 32 of the Public Finance Management Act, 1999 (Act 1 of 1999).

(3) **The following paper is referred to the Select Committee on Education and Recreation:**

Annual Report and Financial Statements of the National Arts Council for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001.

(4) **The following paper is referred to the Select Committee on Public Services:**

(a) Air Services Agreement between the Government of the Republic of South Africa and the Government of the Republic of Mozambique, tabled in terms of section 231(3) of the Constitution, 1996.

(b) Explanatory Memorandum to the Agreement.

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister for Justice and Constitutional Development:

(a) Proclamation No R 32 published in Government Gazette No 23364 dated 26 April 2002, Commencement of the Constitution of the Republic of South Africa Second Amendment Act, 2001 (Act No 61 of 2001).

(b) Proclamation No R 33 published in Government Gazette No 23373 dated 1 May 2002, Commencement of sections 1*(b)* and 2 of the Legal Aid Amendment Act, 1996 (Act No 20 of 1996).

(c) Proclamation No R 34 published in Government Gazette No 23381 dated 3 May 2002, Commencement of section 16(4) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No 47 of 2001), made in terms of section 18(2) of the Act.

(d) Proclamation No R 35 published in Government Gazette No 23384 dated 6 May 2002, Commencement of the Criminal Procedure Amendment Act, 1996 (Act No 86 of 1996).

2. The Minister for Agriculture and Land Affairs:

Annual Report and Financial Statements of the Land Bank for the year ended 31 December 2001.

COMMITTEE REPORTS:

National Assembly:

1. **Interim Report of the Ad Hoc Committee on Filling of Vacancies on South African Human Rights Commission, dated 7 June 2002:**

The Ad Hoc Committee on Filling of Vacancies on South African Human Rights Commission reports as follows:

The Committee has been mandated to complete its task by 6 May 2002, and regrets to report that it was not able to meet that deadline.

The Committee did, however, advertise the vacancies and complete shortlisting. It has held interviews on 4, 5 and 7 June 2002, and it will be meeting shortly to finalise its recommendations to the House. It is envisaged that the Committee will be in a position to complete its work in due course.

The Committee therefore requests that the House, notwithstanding its Resolution adopted on 2 November 2001, grant it permission to publish its final report by not later than Tuesday, 25 June 2002.

Report to be considered.

2. **Report of the Portfolio Committee on Safety and Security on Study Trip to Brazil, dated 8 November 2001:**

The Portfolio Committee on Safety and Security, having conducted a study trip to the Federal Republic of Brazil, reports as follows:

A. Introduction

The study trip took place from 19 to 25 August 2001, and the following members were in attendance:

Mr M E George (Chairperson)
Adv A H Gaum
Mr V B Ndlovu
Adv P S Swart
Mrs M M Sotyu
Mrs J E Sosibo
Mr R P Zondo
Mr L Pakati (Committee Secretary)

B. Purpose of trip

South Africa is in the process of consolidating its democracy. To achieve this the country needs to provide a safe and secure environment, not only for its citizens but also for business and investment. Crime in this regard is widely perceived as an increasing threat to sustainable democracy and socio-economic development. The Committee sees its role as supportive of strategies and policies the government has developed to reduce the levels of crime. To help to fulfil this responsibility from an informed position, the Committee, at times, undertakes provincial as well as international study visits. Internationally, the Committee visits various carefully selected countries to interact with government officials and political leaders involved in crime prevention and combating. The ultimate aim is to share ideas and experiences and to see if South Africa can emulate some of the positive experiences of the host countries.

C. Visits in Brazil

The delegation had fruitful discussions with senior police officials, both at federal and state levels. Places visited were Brasilia, Sao Paulo and Rio de Janeiro. In all the cities discussions were held with senior

municipal police officials, military police, civil police and judicial police and one successful private security company in Sao Paulo. Of particular interest to the SA parliamentary delegation were the following topics:

* Organisation and functioning of the Brazilian Police
* Border control/policing
* Organised and transnational crime
* Social crime prevention
* Firearms control and legislation
* Regulation of private security industry
* Training of police
* Combating terrorism

1. Organisation and functioning of Brazilian Police

The Minister of Justice is the political head of the federal police force. Initially, political accountability used be the responsibility of the Minister of Home Affairs. At the federal state level, the governor is the political head and at the level of the municipality the ultimate accountability lies with the Mayor of the city. All of them have powers to legislate within the provisions of the federal constitution.

Safeguarding public order and security is one of the critical demands of any democracy and one of the most important responsibilities of an accountable government. In Brazil this responsibility is shared between the federal government and the various states (26 states). Generally, crime combating and other police matters are the responsibility of the various individual states that make up the federation. On the other hand the Constitution states that the responsibility of the state police is restricted to certain areas only—the state. In this sense, and in accordance with the constitution, each state has the police force of its own, whose jurisdiction is restricted within the particular boundaries of the concerned state.

Unlike in Germany, where there is no uniformity in the manner in which the states police are organised, there is some uniformity in Brazil in the sense that in all the states the police are divided into four categories:

* Judicial police
* Investigative police
* Military police (uniformed police)
* Municipal guards

The federal police force has specific and explicitly stated responsibilities. Among other things, they deal with organised crime, money laundering, drug trafficking, maintaining political and social order, protection of the constitution and Parliament

and the training of police personnel. On the other hand, the police in the states are tasked with the responsibility of dealing specifically with ordinary crime within their borders.

2. ***Prevalent crimes***

The delegation had an opportunity to take a guided tour of the police museum at the Police Academy in Brasilia. To a large extent the museum provides a profound insight into the extent of crime and criminality in Brazil. Again it shows the extent desperate drug smugglers go to, to smuggle drugs across borders. The delegation was shown the following:

> Different illegal cigarettes brands and liquor; forged foreign passports; fake currencies; home-made bombs; machines that print currencies and coins; machines used to press dagga and other drugs; samples of valuable stones that are extracted in Brazil; different types of animals used to store cocaine and other hard drugs during smuggling.

3. ***Border control***

Brazil is so big that it is considered to be the size of a continent; it has 170 million inhabitants in 26 states; it is the eighth largest economy in the world; people emigrate to Brazil in search of better life opportunities and the country has one of the busiest ports in the world. It is the combination of these factors that place border policing on top in the list of government priorities. For the police it is a mammoth task to control the borders of a country of this size. There in one border police unit in each state to police land borders.

According to Article 144 of the Federal Constitution, the task of border control is the competence of the federal police. They do not only control borders but are also responsible for the issuing of passports to travellers. The major and more prevalent crimes that are associated with borders are drug smuggling and smuggling of people out of Brazil. Brazil is considered a country of immigrants. People are constantly coming in to Brazil and there are also many who emigrate to the US for better opportunities. There are syndicates who specialise in smuggling people to Japan and other European countries to work as labourers. Most smuggled children and young women are taken to the US and Spain to become prostitutes.

The police, through their intelligence network, always try to intercept such crime syndicates. They also try to prevent people from coming into Brazil illegally. These people are repatriated as soon as possible. However, they come back soon after the repatriation and the cost of carrying the same exercise repeatedly is expensive. Another way to discourage them is to put them in prison, charge and fine them $1 000—which is a huge sum of

money. The combination of these measures, to a significant degree, help to deter illegal immigrants from entering Brazil illegally. Like in South Africa, in Rio de Janeiro, most of the illegals tend to join crime syndicates, while in Sao Paulo the tendency is to become illegal labourers. The Chinese on the other hand tend to specialise in distributing fake clothing and audio-visual material.

4. Firearms control

Previously the carrying of firearms was not illegal. When it became illegal those who broken the law received light sentences. Such offences were not taken seriously by the law. However, firearms have since become a serious problem and the government has begun to treat crimes that are committed with firearms very seriously. For instance, just before the delegation arrived, the government had just destroyed 100 000 illegal firearms in Rio De Janeiro. The aim of the exercise was to remove a sizeable number of firearms out of circulation system.

Paraguay is the major source of illegal firearms. Most illegal 9 mm firearms are smuggled from Paraguay. Like in South Africa, another major source of illegal firearms is the legal ones. They are mostly used to commit violent crimes, such as armed robbery and murders. The government has therefore realised the increasing need to control the proliferation of both legal as well as illegal firearms.

In 1997 an Act of Parliament was promulgated to do three things. One was to limit the number of firearms in circulation. Two was for the government to develop sophisticated methods to register firearms and to prevent their escalation. Lastly, since one of the problems initially was lack of communication between the various states and the federal government, the Act endeavoured to address this administrative loophole by compelling the government to develop a national law to enforce uniformity when dealing with firearms. Currently, in all the states, a person has to have a maximum of six firearms, and they are divided for the following purposes:

* two for personal collection
* two for hunting
* two for self-defence.

Sports people fall in a special and exclusive category. The category recognises their peculiar circumstance and as such, allows them to acquire additional weapons. Like in South Africa, all applicants have to meet certain conditions before they qualify, which are:

(a) The background of the applicant—to check if he has a criminal record.

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

(b) He has to undergo psychological tests—to check if he is fit to carry a firearm.

(c) He has to be above 21 years of age.

(d) He has to demonstrate the need—e.g. if he lives in a violent area.

5. Drugs and drug-trafficking

Brazil does not produce illegal drugs. It gets most of its drugs from neighbouring countries such as Colombia. Although one does get marijuana in the northern parts of the country, it is of bad quality and, for this reason, is not good for export. It is consumed locally by the poorer communities who cannot afford expensive imported drugs such as cocaine and heroine. There were attempts in the past to plant cocaine but they failed. At the moment neither heroine nor cocaine production is taking place.

The policing of illegal drugs is the responsibility of the Federal Police. The problem is so endemic that the government decided to create a National Secretariat to specifically deal with illegal drugs. The secretariat also falls under the Minister of Justice. Its primary function is to co-ordinate strategies for the eradication of illegal drugs. In this regard, they co-ordinate intelligence gathering and national policy. In addition, they are responsible for the training of drug sniffing dogs, monitor postal trafficking, work at airports and sea borders. At the moment, they have decided to focus their resources and energy on destroying 13 products that are used to produce cocaine and heroine.

Brazil has formed a strong partnership with the United Nations (UN). The project costs $9 million and is supposed to be in operation for the next five years. Since the major source of drugs is Colombia, it was therefore logical that the Brazilian Police formed a partnership with the Government of Colombia to help both countries in the fight against drugs. For this purpose, they have established, which they call the Cobra Plan. This acronym was coined to indicate the involvement of Colombia (co) and Brazil (bra) as partners.

The Cobra plan is carried out between Brazil and Colombian border control police units. Both police forces have a very strong working relationship. So far the plan seems to be working effectively and well. 30 tons of cocaine was recovered in 1996, and the number increased to 160 ton in 2000. This is attributable solely to the strong working relationship between the two neighbours. According to the Brazilian Police, it is difficult to work with their Colombian counterparts because the latter live under very dangerous circumstances in Colombia. They are the targets of criminals. According to statistics, two police officers are killed everyday in Colombia, and out of 2 000 people kidnapped, 500 were members of the Colombian police. Military units are then used to augment the capacity of the police at the borders. Again, one of the problems in border control is the kind

of constitutional arrangement of state police versus federal police. In this sense, there is lack of co-operation between states and federal police. And this weakness in the system is likely to persist well into the future because it is considered to be very sensitive and many officials prefer to leave it to the attention of the politicians.

6. Other mechanisms used to fight drugs

There is an intimate link between crimes that involve drugs, weapons, cargos and smuggling of people. However, criminals prefer to invest in drugs because they are the most lucrative in organised crime. The government believes that any strategy should be informed by this link. Essentially, this implies that, although it is important to have specialised units, it is equally important to widen their approach. To this end, the Brazilian government is using the following tools to fight drugs:

Intelligence—Interpol is used to gather intelligence on international criminals.

Extradition—Brazil has extradition agreements with most of her neighbours.

Money-laundering law—the police have powers to cease property of a suspected criminal.

Witness protection—this is necessary for successful prosecution.

Criminal association law—this criminalises membership of a banned criminal organisations. And all these measures are enforced by Federal White Collar Law.

7. Decriminalisation of marijuana

The government does not believe that the decriminalisation of dagga would yield any positive tangible outcome. On the contrary, they believe that the more it becomes freely available, the more it will be consumed and abused. In addition, the fact that it is addictive, alone poses a serious problem.

D. Forensic technology

As a means of communication, criminals are making very good use of the latest technology. Internet, in this regard, is used as a global connecting network. Essentially, this allows the generalised use of information. At the same time, global crimes such as, pornography with young children; violation of authors rights and other information security-related crimes are perpetrated through the internet phenomenon. Difficult as it may be, the police are not only expected to investigate these crimes but also to deal with them with a great deal of efficiency and effectiveness. To this end, they must be able to recover and present digital evidence. This means that they must be specialists in the field of forensic technology. In Brazil police deal with such intricate crimes in four steps, namely:

* environmental analysis
* digital representation
* translation of evidence
* forensic reports

E. Visit to Sao Paulo

In Sao Paulo the delegation had fruitful and informative discussions with the municipal police. They reiterated the fact that like in any modern country, organised crime is a serious problem. What makes the problem even more difficult and frustrating at times, is that procedures are too formal and involve a lot of paperwork. Another problem from the perspective of the state police is that it is not viewed as their responsibility and they therefore are not authorised to deal with it. For instance, when they catch criminals, they have to inform the federal police to take over. At state level they cannot infiltrate criminal organisations operating in their states. In Sao Paulo the total number of police personnel is 120 000, and there is only 2 000 federal police. In this sense, the state has more personnel than the federal police when it comes to dealing with organised crime, and yet, they cannot translate those numbers to good use because they are compelled by the constitution to respect borders, whereas criminals do not do that.

As if that is not enough, a further division occurs between military police (uniformed police) and civil police. This affects the effectiveness of the police because the latter is supposed to work only after a crime has been committed. Sometimes, depending on the personalities involved, the units work simultaneously. There is, however, a national political discussion currently taking place, debating the possibility of merging the two units to help minimise some of the distortions in the present arrangement. The topic, however, is very controversial and sensitive. Some people are more than comfortable with the status quo while others are keen to effect the necessary changes. In the State of Sao Paulo the Secretary of Police, in particular, is known to be trying hard to unite the two units. However, he is not getting the support he needs from other states.

Sao Paulo is a very big city. It is the most populous in Brazil, with 36 million inhabitants. Similar to South African cities, its economy is a combination of first and third world economies. In this context it soon becomes apparent that all levels of law enforcement have a critical role to play. The civil guard (municipal police) in the municipalities in particular, play a critical role in crime prevention. One of the immediate advantages of the municipal police concept is that it creates a structure that is lean, easily manageable, accessible to the people on the street and quick to respond. In line with the demands of Article 144 of the Constitution, the civil guard of Sao Paulo was inaugurated on 15 September 1986 by municipal ordinance No 10.115. Ever since, it has performed very well.

In a city the size of Sao Paulo the police work under severe pressure because crime affects many people. There is pressure from all sorts of people, particularly the media. According to the police, the media simply do not understand how the police work. For the police, the media attention is problematic, and the solution is to simply ignore them and focus on the job at hand.

Illegal drugs are a serious problem in Sao Paulo. There is a new breed of the youth who live on drugs, either as consumers or drug peddlers. Officials consider it as not only a problem for Brazil but a regional and international one. They do not believe that more police resources are a solution to the problem. Their argument is that the problem is as prevalent and serious in the US as in Brazil.

According to them, the US has more resources, and yet they have not been successful in dealing with illegal drugs. Instead, the problem is increasing.

At some point in time, Brazil was used as a transit country, but today it is a consumers' market. The reason, as was mentioned in one of the preceding paragraphs, is that they have a very big young population. Most of them are poor and desperate and it is easy for them to be invaded by cheap drugs.

F. Visit to Headquarters of Private Security Company (Pires)

Given that in South Africa the complaint has always been lack of proper training of private security guards by security companies, it was deemed appropriate therefore that the delegation be introduced to the management of the best training facility in the whole of Latin America—Pires private security company. Their sterling work and achievements are traceable back to 1983. The story goes like this: During the early seventies to early eighties, the economy of Sao Paulo grew substantially, banks prospered and both industry and commerce expanded. They demanded security that could not be provided by the government. The changes demanded the production of a highly qualified cadre of security guards that would meet the increasing demands of a fast-growing economy. In 1983 the federal government decided to effect changes to the federal law to include the rules and regulations for security training requirements and facilities for the security industry. Pires responded to these challenges by investing more on training of its personnel.

Pires' special training not only concentrated on security of banks, heavy industry and the commercial sector, but also on the security of embassies, consulates, hospitals, hotels and universities. Pires also, specialises in executive protection and drivers training in defensive driving. Security escort services and custody of valuables are also part of its diversified services.

Pires' managers believe that their success can be attributed to sound human resources management. They claim that careful recruiting, testing and training are the essential steps taken to produce a high

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level of professionalism. After rigorous selection and background investigation the candidates are sent to Pires privately-owned, training academy, known as CFAPP. It is here that they are trained, using the latest techniques and equipment.

The academy was found in 1985 and inaugurated in 1997. It covers 137 000 square metres in the municipality of Guarulhos in the State of Sao Paulo. Having trained thousands of men and women, the academy has received the certificate of "Quality System ISO 9002", which is considered to be the highest recognition any training institution in Brazil can strive for. Some people refer to CFAPP as the Security University of Latin America.

Its facilities allow it to train up to 450 students at the same time, some of who are from other countries. The academy consist of the following:

1. Five large monitored and air-conditioned classrooms for 45 students each.
2. One auditorium, fully automatic with a seating capacity of 150.
3. One large building specifically for personal defence training.
4. Three large and fully automatic shooting galleries.
5. One interactive video shooting course.
6. One complete fire-fighting complex.
7. One driving track for defensive and offensive driving training.
8. One dog kennel.
9. Two dormitories for up to 224 intern students—each room with four bunk beds and individual wardrobes.
10. One large cafeteria.
11. One kitchen and laundry.
12. One library.
13. One chapel.
14. A leisure area with a barbecue, running tracks, a soccer field and tennis courts.

G. Lema Municipal police

Lema is a small town 189 km north of Sao Paulo. It has a population of 89 000 citizens and 30 municipal guards. In addition to the municipal guards there are 54 civil police. Both police complement each other for the sake of preventing crime. The Lema municipal guards pride themselves on the fact that they are small, efficient and quick to respond to challenges. They take their work very seriously and some of the tasks they perform, include the following:

1. Traffic control.
2. Public rescue service.
3. Inspection of pubs and bars.
4. Protection of community amenities and school buildings.

5. Monitoring and protection of environment.

6. Monitoring school events and sports gatherings.

As a result of many successes in regard to the above functions, they are thinking of widening the powers of their municipal police. Each municipal police is headed, by a Secretary, and the political head is the Major. Lema municipal police and its characteristics are modelled along the lines of private security companies.

It is expensive to train municipal police, because unlike other police, they have to be trained in all aspects of security, including municipal bylaws, to protect buildings and infrastructure, to render paramedical training, to shooting and to perform water rescue work. For this reason they recruit and train small groups at a time. In this way they are able to train everyone thoroughly because each is given individual attention. Above all a municipal guard should be psychologically prepared and physically fit and always ready to perform. Training takes place in the municipalities themselves and is continuous. Recruits are taught 18 courses in a period of three months. Courses taught include the following:

Social instruction

* social psychology
* human relations
* sociology
* social welfare
* professional ethics

Legislation and administration

* constitution
* human rights
* rights of road users
* data processing

Operational instruction

* criminology
* operational techniques
* organisation and functioning of Brazilian police
* telecommunications
* physical conditioning

In small cities they use bicycles to patrol the streets. A bicycle can travel at 20 km/h—the average speed of a car in city traffic. The advantage of using bicycles is that they are not inconvenienced by heavy traffic. Lema municipal guards consider themselves very successful and as role models to other municipalities. They have reduced the number of road accidents and have also removed a large number of stray animals.

H. Visit to military police in Sao Paulo

The military police specialises in policing public events and gatherings. They also monitor public amenities, such as parks. They are equivalent to South Africa's public order police. They further divide themselves into specialised units, to which they refer as battalions. They handle crime situations under dangerous conditions, such as riots in jails. (For various reasons, Sao Paulo has some of the most over-crowded jails in the world, and riots are not a rare phenomenon.) They work and patrol the most dangerous informal settlements and jungles. In these regions there are often no streets and control is difficult to exercise.

The battalions are divided as follows:

* sporting activities (stadiums)
* dog unit (mainly used to detect explosives and drugs)
* rural areas special unit
* bombs and kidnapping
* motorcycles unit (to patrol the streets, which are always busy and congested)
* VIP unit
* police on horses
* special public celebrations.

They patrol the streets between 07:00 and 19:00. Between 19:00 and 22:00 they undergo physical training in preparation for the following morning shift. According to them this arrangement is informed, firstly, by the fact that there is less crime after 7 in the evening and 07:00 in the in the morning and, secondly, by the fact that for each patrol they have to be physically and psychologically fit to cope with any crime situation. After each 15 days they sit down and analyse crime patterns in the city so that they can deploy resources where they are most needed. To cope with the dangers on the street they have to be fully armed. The weapons they use according to the demands of the situation are short guns, 9 mm submachine guns and rifles such as M16 and AR15. Their working relation with other police formations is as follows:

> Civil police—their function is to deal with judicial and legal matters and investigations. In this sense, their relations are not on operational level.
>
> Federal police—the military police always have to understand their limitations according to the constitution. Whenever they are about to step over their jurisdiction and powers, they have to inform the federal police and when they have to intercept or infiltrate illegal drug-trafficking. However, according to them, this is only in theory because in practice they seize drugs themselves and only inform the federal police afterwards.

The military police in Sao Paulo agree that with only 508 personnel and only two women (who work as undercover police), they are

severely understaffed. In addition to the 508, they need 170 staff members, especially women. They have 85 vehicles, mostly 4X4s. This number is not considered to be enough.

The morale of the military police was very high and the delegation was told that money or resources were not considered as serious factors in boosting moral. What they needed, was praise, medals, free holidays and a simple thank you from their senior officials.

I. Acknowledgements

The delegation would like to convey sincere thanks and appreciation to their hosts in the Federal Republic of Brazil, without whom the visit would not have been so informative and successful. Special thanks go to the following people:

J F Mallmann—Police Management
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Andre M Caricatti—Technology and Crime
Dr Paulo A Rocheli Filho—Public Security Adviser
Sergio Fidelis Brasil Fontoura
Jomar B Pinto
Sergio B Menezes
Aldemira Almeida Fontes
Eli Sousa Lima
Col P M Josias
Sampaio Lopes—Commander Civil Guards Sao Paulo

3. Report of the Portfolio Committee on Home Affairs on visit to SADC countries, dated 25 September 2001:

A. Introduction

As part of our Committee's role of exercising oversight over the process of developing a new Immigration Policy for South Africa and to better understand Home Affairs issues, especially in respect of land border posts, airports and seaports as vital points of entry that are targeted by illegal immigrants, as well of contribution and, allegations of corruption, and the exploitation of the VAT system, we visited:

* Namibia
* Botswana
* Zimbabwe
* Mozambique

1. The aim of the visits was to:

(a) Gain first-hand knowledge of specific migration problems that are being experienced by the various countries and its impact on South Africa

(b) Better understand the problems that face border posts in the various countries and its impact on South Africa

(c) Find common solutions and mechanisms to deal with the migration problems of the region and the country

(d) Gain general insight into the SADC region's situation regarding migration and the movement of people

(e) Apply the knowledge that was gained in order to consider the Immigration Bill from an informed position

In all the countries, we gave special attention to ports of entry, such as land border posts, air and seaports. The information that we gathered will help us to formulate a practical and workable immigration policy.

2. Composition of delegation

The delegation under the leadership of Mr D A Mokoena (ANC), included Mr W M Skhosana (ANC), Mr K W Morwamoche (ANC), Mr P M Mathebe (ANC), Mrs C I Gcina (ANC), Mr M R Sikakane (ANC), Mr G A J Grobler (DP), Mr M Waters (DP), Mr F Beukman (New NP), Prince N E Zulu (IFP) and the Committee Secretary, Mr J F Vermeulen.

B. Approach

Information was obtained by interviewing Immigration Officers, Departmental Officials, politicians, the police, Customs and Excise Officials in the countries that were visited.

The information in this Report under "Findings" contains information as it was conveyed to the Committee. The evidence gathered should not necessarily be seen as the view of the Committee. The Committee's views are reflected under "Conclusion" and "Recommendations".

C. Findings—Namibia

The delegation held meetings in Namibia between Monday, 30 July 2001 and Thursday, 2 August 2001. Meetings were held in Windhoek and Walvisbay as follows:

Meetings were held with various role players who explained migration problems in Namibia, as follows:

1. South African High Commissioner to Namibia, Mr C Nkondo and his staff on migration in Namibia

(a) There are very few Namibians who migrate to South Africa and there are also few South Africans that migrate to Namibia, although there are no official statistics.

(b) The trafficking of drugs through Namibia to South Africa and cash in transit heists are on the increase.

(c) Many Taiwanese, Chinese, Indians and Angolans regard Namibia as the best springboard into South Africa.

(d) Many Chinese are settling in Namibia and Chinese shops are mushrooming all over Namibia.

(e) Some Namibians regard South Africa as "big brother" and are negative toward South Africans. South African citizens struggle to get work or permanent residence permits in Namibia.

(f) There is a very large refugee camp near Otjivango with mostly Congolese and Angolan refugees. There is also a refugee camp near Osire.

2. Namibian Parliamentary Standing Committee on Security and Standing Committee on Governmental Affairs

(a) Namibia has an Immigration Act that was passed in 1990 and it has been amended twice.

(b) There are thousands of Refugees from the North of Africa even Sudan.

(c) There are about 200 000 refugees in the Osire Refugee camp 25 kilometers from Windhoek. Many are from Angola. Economic refugees do not want to stay in the refugee camps but want to go to towns to work.

(d) Namibia and South Africa share common migration problems. Both countries have long borders that are difficult to control. On the border of Namibia and Angola there are families and tribes that live on both sides of the river. The river divides the tribe.

(e) Especially Angolans come to Namibia for medical attention, education and work. There are no fences between the Namibian/Angolan border and people cross as they please. It is legal to cross the border and stay within a 60 km radius of the border without a permit. There are not enough resources to guard the 1 000 km border. Namibia had a major car theft problem recently from migrant thieves.

(f) Some hospitals in Northern Namibia are 60%-70% filled with Angolan patients. Some Angolans even draw a pension in Namibia. During the Namibian war, Namibians crossed to Angola in large numbers and Namibia now feels obliged to help Angolans who cross to Namibia. After the war, some Angolans even acquired Namibian identity cards. Namibia had serious backlogs in the issuing of Identity Documents (ID) some time ago. The voters' roll is outdated and many people still have no ID.

(g) Drug smugglers use Namibia as a springboard to South Africa.

(h) The Namibian government is concerned about the large numbers of Chinese in the country. Some of them smuggle goods into the country by bribing officials and evading customs duties and taxes. Some Chinese people even kill rival Chinese. Chinese shops are everywhere and they sell low quality goods.

(i) Foreign companies, especially in the building and fishing industries, who use foreign labour at the expense of locals, created many problems. Petty criminals from China were used as cheap labour especially in the building industry.

3. Namibian Customs, Immigration and Police Officials

(a) Immigration

* Namibia deports ten to fifteen thousand people per year and this is costing the country a lot of money. People are even deported as far as China and America.

* Namibia needs skilled labour from other countries and preference is given to citizens from SADC countries when Namibia wants to contract foreign skilled labour.

* Namibia also does not allow dual citizenship and experiences many problems with farmers who stay on the border and retain passports from both Namibia and South Africa in order to avoid paying for study permits for their children who study in South Africa.

(b) Customs and Excise

* The Namibian Customs Officials said that an aggressive customs oriented strategy was very important to educate the public. This was achieved by providing the public with information documents.

* Admission of guilt fines on minor customs fraud can be paid.

(c) Police: Commercial Crime Unit

* There are many counterfeit Rand notes in Namibia.

* Syndicates steal traveller's cheques in South Africa and cash them in Namibia.

* Syndicates defraud people with "Nigerian letters". These letters are faxed to Namibia from South Africa.

* Vehicles stolen by syndicates in South Africa are brought to Namibia. Namibia is then used to register the stolen vehicles after which the vehicles are taken to Angola. It is very difficult to detect the syndicates because when the Namibian police run a computer test, they find that the vehicle is not stolen. They said that they have reason to suspect that the registration authority in South Africa could be bribed by car theft syndicates. If the theft of a vehicle is registered late on computer, it could provide the syndicates with enough time to get stolen vehicles to Angola.

* Some South African citizens also come to Namibia and sell vehicles to Angolans. They then fly back to South Africa and report the car that they sold as stolen, in order to get insurance money. By that time the vehicle is already in Angola. Some Angolan police are involved in the fraud. From past experience, the Namibian police said that they could not get stolen vehicles back from Angola even when they could prove that the cars were stolen.

* Cannibas is transported from South Africa to Namibia. Designer drugs such as heroine and cocaine are also coming to Namibia in larger amounts. Market growing for cocaine and heroine.

* Namibian laws are too outdated to deal with crime syndicates. There are also not enough resources to do proper container searches at border posts. No laws in Namibia to allow to investigate suspects—can only do surveillance. Also no organised crime or money laundering legislation. No anti-corruption office or legislation.

(d) Walvisbay Airport, Mr D Booysen, Airport Manager; Mr S Mulundu, Senior Immigration Officer and Mr R Strong, Acting Controller: Customs and Excise

* The Namibian law is outdated and counterfeit goods are not illegal as in South Africa.

* Some importers sometimes package cigarettes as something else in order to evade the paying of duties. Also import low quality cigarettes.

* The Chinese mafia and some Chinese business people undervalue goods that they import.

(e) Walvisbay Harbour, Mr Hengari, Port Operations Manager: Namport; Mr Muttotta, Head Maritime Directorate: Namport; Capt van der Meer, General Manager: Port Authority Division, Namport

At the harbour, customs, immigration and police run their own shows respectively and are not connected to Namport. The Namibian Ports Authority is a fully commercialised government entity that took over from Portnet in 1994. 15—20 Stowaways per year at the port. Ships have to cover cost of deportations.

D. Findings—Botswana

Botswana has a population of about 1.6 million people. There are 40 members of Parliament plus 4 specially elected members. There is also a house of Chiefs which act in an advisory capacity to Parliament. It is also a country with very extensive borders that are hard to patrol.

The delegation held meetings in Botswana from Friday, 3 August 2001 until Saturday, 4 August 2001. Meetings were held in Gaborone and at various border posts where the delegation was told about migration and related problems, as follows:

1. Ms T Lujabe-Rankoe, South African High Commissioner to Botswana

(a) There are four commercial border posts between South Africa and Botswana.

(b) There is a need for more commercialized border posts.

(c) Officials on the South African side of border posts have no discipline and are inefficient. There was recently a problem when the President of Botswana wanted to cross a border post after the official closing time. Officials on the South African side wanted to know who was going to pay for their overtime.

(d) Recently a bus that was transporting handicapped school-children broke down. The bus reached Kopfontein border post at 22:07. That is 7 minutes past the official closing time. Officials on the South African side of the border post did not want to let them through and they had to sleep in the bus until the next morning. The next morning they were only helped 2 hours after official opening time.

(e) Investigations into misconduct by staff members in the Department takes too long.

(f) The buildings at border posts need to be upgraded and computers should be functional.

(g) The system of claiming VAT refunds at border posts causes delays.

2. ***Minister D Kwelagobe, Minister of Home Affairs and members of Botswana's Parliament***

(a) Unco-ordinated times of open border posts between South Africa and Botswana should be addressed.

(b) Martins drift closes at 16:00 and there is a need to extend the hours of operation.

(c) Not all border posts have customs facilities and Ramatlabama (commercial border post) is too far from some towns for people to go there just too declare a vehicle or shopping.

(d) 4 Families on both sides of the border fence cross illegally as they have to travel too far for permits.

(e) When South Africans come to Botswana they are given a 90-day visit permit; but when Botswana citizens go to South Africa, they are only given a 30-day permit. This inequality should be addressed as permit extensions cost money.

(f) The maintenance of the fence along the South African/ Botswana border is poor, and it encourages stock theft. Stock theft along the border is rife and in the Kalahari area it is difficult to get stolen stock back to Botswana. It is alleged that the South African police collude with thieves. Even if 10 cattle are identified as stolen, only half will be returned. Always forgo a few. If stolen cattle is found on the Botswana side, they are all returned.

(g) Game poaching is also rife on the banks of the Limpopo.

(h) Agreements between South Africa and Botswana are difficult to implement. It was agreed that bridges should be built at 3 border posts. For example at Swartkopfontein it is

impossible to cross after heavy rains. Another example is Pontsdrif that is an important crossing for a big diamond mine in the area. But now South Africa is saying that the bridges are not commercially viable.

(i) Ramatlabama is a very busy commercial border post, on the Transkalahari highway, but it closes at 20:00. Makgobistad closes at 16:00 but it would be better to close at 19:00 or 20:00. Extended hours of operation needed.

(j) Also need South African revenue collection facility at Makgobistad as even corpses are turned back to go through Ramatlabama to be declared. The non-establishment of South African revenue services contributes to problems at border posts. There are currently only 4 border posts with such facilities. Even when people carry very small parcels, they cannot cross at non-commercial border posts. They then jump the fence, rather than going on a detour.

(k) Botswana citizens experience real problems to pay for medical insurance when they study in South Africa. South Africa demands that foreign students who study there, should have medical insurance. Poor people really struggle to pay for such medical insurance.

(l) A contact-forum between Home Affairs Ministers do exist. Botswana also have a local working Committee at border post and regional level that reports to the Minister. The Ministers' meeting with Dr Buthelezi never materialized as he never has time to meet. Supposed to meet once a year.

(m) There was a influx from the Far East into Botswana, and now the government insists that they apply for visas in Beijing before entering Botswana.

(n) Minister Kwelagobe said that they propose a register for Chiefs that will provide a form of border control. On this system, Chiefs will keep a register of their tribe members and their crossing to South Africa.

(o) Introduced an investment code recently for foreign investors. A person is recognised as an investor when he or she brings a certain amount of money into Botswana. A potential investor should also prove that he or she has a viable project, and then Home Affairs will process the necessary permits.

3. ***Ramatlabama border post***

(a) This is a commercial border post between South Africa and Botswana that opens at 06:00 and closes at 20:00.

(b) The staff complain that the building is very cold in winter and that rain causes power cuts—also generator problems.

(c) Ms M Motwe from South African Revenue Services (SARS) at the border post said that SARS, Home Affairs and the Police Service are equally responsible for the border post but that they have never been told who is the top authority at the border post. When they have meetings they have a rotating Chairperson. To take a decision for instance to stay open late should be made collectively.

(d) It was suggested that all border posts should stay open later.

(e) The public toilets at the border post are an absolute mess and not fit for human usage.

(f) The security inside the buildings is poor and there is no security glass on the counters to protect officials.

4. ***Botswana side of Ramatlabama border post***

(a) The main complaint was that the border post should have extended hours of operation. Sometimes people get stranded due to the closure of the border post.

(b) A complaint was also raised about the poor state of the fence around the border post.

(c) Officials also said that the South African side had no clear line of commandment and that it created problems.

(d) Monthly meetings at border level—interstate once a year.

5. ***Skilpadshek border post***

(a) The head of the border post was apparently ill at the time of the Committee's visit. Six immigration officers work here and and they work in shifts of 2 at a time.

(b) Home Affairs has no telephone or fax facilities.

(c) Discipline seems to be slack as the delegation was subjected to behavior that is inconsistent with Batho Pele principles. We do not want to give more details about this, as we do not intend to target individuals. This is also the fruit and not the root of the problem. The root problem is that officials should know who the final authority is at any border post.

6. ***Kopfontein border post***

(a) This is the border post where the handicapped schoolchildren had to sleep overnight in their bus. The Chief Immigration Officer was not on duty at the time of the Committee's visit and we interviewed the senior immigration officers who were present. We also interviewed Inspector Maotwe and Inspector Tshotshe from SAPS and Mr Seamela from SARS.

(b) Inspector Tshotshe said that the border post closes at 22:00 and that special arrangements have to be made in advance for late entry. If an arrangement is in place they will stay open later he said. Commanders stipulate procedure and

requests for late entry must be made in writing. He also said that he was not aware of the incident that took place there but he apologised for it.

(c) Mr Seamela from SARS said that Kopfontein was a very busy commercial border post. They experience many problems with people not wanting to pay VAT on goods. They have a large amount of detained goods at the border post. Detained furniture is stacked even in the passages.

7. Botswana side of Kopfontein: Tlokweng border post

(a) Tlokweng border post is on the Botswana side of Kopfontein. The building is very impressive compared to the building on the South African side.

(b) The Botswana immigration officials said that there was no co-operation from South African immigration officials, for example: people come through the South African side with other peoples Passports. Customs on the South African side seem to be in cahoots with fraudulent practices such as under-declaration and under-valuation of goods. VAT is also refunded on the South African side before goods are even cleared on the Botswana side.They also said that the South African movement control system is outdated.

(c) More SARS services are required and the hours of operation at the border post should be extended.

8. Groblersbrug border post

(a) This border post opens at 08:00 and closes at 18:00. We were told that it is becoming increasingly busy and the hours of operation should be extended. More staff would then be needed and they should be provided with proper accommodation.

(b) We saw the first sign of upgrading of buildings at South African border posts here.

(c) Illegals who cross into South Africa here are mostly from Zimbabwe. 56 Illegal immigrants were arrested here in December 2000.

(d) 35 000 people use the border post per month.

(e) There are no more army patrols as in the past.

(f) Officials complain about lack of human resources, poor buildings and facilities.

(g) They also say that they have never been inspected since 1998 by head office.

(h) Work well with counterparts in Botswana.

(i) Need adequate staff housing at border post.

9. *Martinsdrif border post (Botswana side of Groblersbrug)*

(a) A new facility to house immigration staff is nearly completed and the facility is very modern and spacious.

(b) The Botswana Immigration Officials say that they have joint working group meeting with their counterparts in South Africa.

(c) They also say that the bridge that links South Africa and Botswana will be renovated. The bridge will be widened in order to accommodate 2-way traffic and the arches will also be cut off as they are too low.

(d) They proposed that the border post should be open 24 hours.

(e) The border post is mostly used by tourists and for commercial crossings.

10. *Dukwi Refugee Camp*

Some members of our delegation made a brief stop-over at the Dukwi Refugee Camp. This Camp historically has been a haven of many South African exiles. There were emotional scenes characterised by nostalgia when one of our delegates, the Honourable Chief Piet Mathebe, identified and went into a dwelling where he has lived. He spoke with the occupants who had fled from Somalia. As it was on a Sunday, we joined a highly spirited church service of Refugees from all over Africa. They honoured us by giving us an opportunity to say a few words after which we made personal donations. Needless to say the refugees were greatly encouraged and impressed with our visit. This serendipitous encounter with the refugees at Dukwi deepened our understanding of the plight of refugees. We appreciate the harborage given by the Botswana Government and the subventions of the United Nations High Commission for Refugees.

E. Findings—Zimbabwe

Zimbabwe has a population of about 12 million people. South Africa is connected to Zimbabwe with the Beitbridge border post and this is one of the busiest border posts in Southern Africa. Zimbabwe has a total of 24 border posts.

The delegation held meetings in Zimbabwe Monday, 6 August 2001 until Wednesday, 8 August 2001. Meetings were held in Victoria Falls, Harare and at Beitbridge border post.

1. Mr Bazvi, Chief Immigration Officer, Victoria Falls

(a) There has been a 60% decrease in tourism since the start of the land problems. Unemployment is high but migration to South Africa is undocumented.

(b) Because of our credible passport system, people move illegally.

(c) Our passport system is very strict and it takes about three months to be issued. A normal passport costs 500 Zimbabwean dollars.

(d) No dual citizenship is allowed in Zimbabwe.

(e) Foreigners must have scarce qualifications in order to be granted with work permits.

(f) Investors with 5 million US $ gets permanent residence and waits 5 years for citizenship.

(g) There are refugee camps in Zimbabwe and the Zimbabwe Refugee Committee is the determining body for refugee status.

(h) Waiting for SADC protocol on movement of goods and people to be finalised.

2. ***Victoria Falls Airport***

Mainly a tourist airport.

3. ***Mr Mokwadi, Chief Immigration Officer and Mr Ndlovu, Deputy Chief Immigration Officer, Zimbabwe***

(a) Previous immigration law was based on control but now selection committees are responsible for determining applications based on skills. In 1996 the old act was reviewed and discriminatory clauses were removed. The aim is that foreign skills should come into Zimbabwe and train locals. The policy is not to permit foreigners to work in Zimbabwe for longer than 3 years. Foreign investors are allowed to apply for permits and to await the outcome of such application from within the country.

(b) Marriages of convenience are prevalent. On one Friday 75 civil marriages were registered. Some even pay Lobola to make the marriage look authentic.

(c) It is not really possible to enter into fraudulent customary marriages. The community involvement is too high and fraudsters will be exposed.

(d) Zimbabwe is under pressure to relax visa regulations on tourism countries.

(e) Zimbabwean Refugee Law is very liberal and recognized refugees can take up employment. There are about 5000 recognised refugees in Zimbabwe.

(f) They are housed in 5 holding camps while they await the outcome of their asylum applications. Most of the camps are close to Mozambique. The United Nations High Commission on Refugees assists refugees through grants. Mr Mokwadi said that he did not know what measures were in place to stop the grants once refugees were employed.

(g) Skilled people are leaving Zimbabwe, especially since the start of the land crisis.

(h) There are many Zimbabwean doctors in South Africa. Many Zimbabweans work on South African farms.

(i) People who hold Temporary Residence Permits in Zimbabwe are mostly from South Africa, England, United States of America and Scandinavia. There are also Tanzanian and Kenyan professionals in Zimbabwe.

He also said that the following key challenges are facing Zimbabwe:

(j) To open more border posts.

(k) Incentives and ways to attract skills to the country.

(l) To manage the high outflow of skills out of the Department of Home Affairs.

(m) To cope with the small staff compliment of 300 people in the Department of Home affairs.

(n) The development and review of Immigration legislation.

(o) Investors to be granted Permanent Residence straight away.

4. ***Zimbabwean Parliamentary Committee on Defence and Home Affairs***

(a) Cross border crime is rife and the police and immigration officials have inadequate resources to fight sophisticated crime syndicates. Stolen cars cross borders amazingly quickly.

(b) The housing for police at Beitbridge is inadequate. They stay in old horse stables and old police cells that have been converted. Many police officers die of Aids and this problem is burdening the State. It is difficult to issue death certificates due to so many Aids deaths clogging the system.

5. ***Minister J L Nkomo, Minister of Home Affairs, Zimbabwe***

(a) As the Minister of Home Affairs Minister Nkomo is also responsible for Security and Order in Zimbabwe.

(b) Britain has never made money for land resettlement available as they promised even after the signing at Lancaster House. 32 million pounds was promised by Britain, but now the new Labour Party does not want to honor the Conservative Party's commitment. If the commitment that was made at Lancaster house were honored, there would have been no land crisis in Zimbabwe.

(c) The government agreed with farmers on a willing buyer willing seller clause when they discussed land redistribution, but after the agreement farmers were unwilling to sell land. In 1998 agreed with farmers that the situation should be reviewed.

(d) The government intends to redistribute 8 million hectares of land and leave 4 million hectares for commercial farmers. Government also established a joint distribution Committee with farmers. Most commercial farms only utilize 30% of the land.

(e) The government does not want people to invade farms and land not identified for redistribution will be left alone. There will also be no new farm invasions. Government lost control when invasions started but will not allow it to happen again. The absence of definitive laws/legal instruments causes problems for the country as 3/4 of the Law and Order Act, was declared Unconstitutional. There is thus no law that addresses the Zimbabwean situation adequately at present. The government is battling to be in control.

(f) Fake travel documents are rampant and many drug syndicates operate in the country.

(g) 90% of companies in Zimbabwe have their origin in South Africa.

6. ***Beitbridge Border Post, Mr Chitsaka, Principal Immigration Officer; Mr Y Jacob, Head of Customs, Zimbabwe; Mr J Moyo, Regional Commissioner, Customs; Mr L Ndlovu, Customs, Mr Ngoma, President's Office, Zimbabwe***

(a) This is a commercial and the busiest border post in SADC and commercial clearing takes place between 08:00 and 18:00.

(b) The border is too long to be effective and illegals cross regularly.

(c) 1 000 vehicles cross into Zimbabwe every day and 1000 into South Africa. It means that 2000 vehicles use Beitbridge every day.

(d) Young people enter South Africa legally and then they look for work in South Africa and do not return to Zimbabwe. Women who use border passes and farm laborers tend to return to Zimbabwe.

(e) Corrupt practices are rife at the border post but monthly liaison meetings are held with South African counterparts in an attempt to co-operate and solve problems at border post level.

(f) Queues are too long and the answer might be to open the border post 24 hours. It will also prevent trucks from staying overnight at Beitbridge. The concept of a one-stop border post should be considered seriously. This would mean that South African and Zimbabwean operations would be merged. This could be more cost effective and would save a lot of time. The border post will be more efficient. The Zimbabwean side presently not computerized. This makes it more difficult for example to ensure that vehicles that cross are not stolen.

(g) South African side of Beitbridge Border Post

We were glad to see a big team from the South African Revenue Services deployed here. The whole atmosphere was different than the time of our previous visit. Everything seemed to run smoothly and security was also much better than during our previous visit.

F. Findings—Mozambique

Mozambique has a population of about 18 million people. South Africa is connected to Mozambique through the Komatiepoort border post, and this is one of the busiest border posts in SADC. The delegation held meetings in Mozambique from Thursday, 9 August 2001 until Friday, 10 August 2001. All meetings were held in Maputo.

1. Mavalane International Airport, Maputo

(a) Mavalane airport is the largest airport in Mozambique. 350 people are employed there, of whom 163 work directly for the airport. The rest work for companies who operate at the airport. It is also open 24 hours a day.

(b) A committee on facilitation and security deals with migration and customs issues. Just like other airports not all passengers are searched upon arrival. Searches depend on information received and where the flight is from. They are busy to establish the 2-tier system of the red and green line, as at most other international airports. This system works on the principle that a domestic passenger who returns from abroad should choose either the green or red channel. The passenger chooses the appropriate channel if something is to be declared or not.

(c) There are no sniffer dogs at the airport.

(d) There is a system whereby passengers from countries that have no Mozambican Embassy, can obtain a visa upon arrival at the airport. Illegals try to abuse this system. Most illegals are from Pakistan, Nigeria and the Great Lakes region. They use Mozambique as a transit to South Africa, but Mozambique is also cheaper to live in than the Great Lakes region.

2. Y J Duarte, South African High Commissioner to Mozambique

(a) The Komatipoort border post between South Africa and Mozambique is very busy. South Africa exports goods to the value of R5 billion to Mozambique per year. Mozambique only exports goods to the value of R380 000 to South Africa per year. The imbalance is very big. South Africa is Mozambique's prime resource for goods and services.

(b) South Africa repatriated 180 000 Mozambicans in 2000 compared to 60 000 Zimbabweans. There are many Mozambicans in South Africa with false documents. Some even draw pensions in South Africa.

(c) The South African High Commission in Maputo receives 500—800 visa applications per day. Mozambicans go to shop in Nelspruit and Nelspruits' economy will not survive without Mozambican trade. People follow goods, that is why they shop in South Africa.

(d) The closure of the Mbuzini Tunnel caused many problems as the fence divides the Mahlalela tribe. Since the closure of the tunnel, they have to take a detour to visit across the border.

(e) South Africa cannot scrap Visa requirements for Mozambicans. The next step should be a SADC visa and prospect of no Visa should be a future vision.

(f) 8 000-9 000 Mozambican children school in the Komatiepoort area. 12 000 children from the Gaza area school in South Africa.

3. ***Minister A Manhenje, Minister of Interior and Defence***

(a) Mozambique does have an Immigration Bill but the region needs a common approach to migration at SADC level.

(b) Did meet with Minister Buthelezi to discuss migration issues.

(c) Mozambique is in favor of moving step by step in the process to remove restrictions regarding the movement of SADC citizens.

(d) Many Mozambicans want to go to South Africa, as they believe that people get rich quickly there. Mozambique wants to stop illegal crossings to South Africa, but employment in Mozambique is scarce.

(e) Migration to Mozambique is not from SADC countries but mostly from Somalia, Nigeria, Congo and Angola. These migrants are mostly economic refugees.

(f) The split tribe issue should be resolved, not manage to do so yet. Swaziland and Tanzania established free movement for split tribes to attend funerals etc. The Minister said that in southern Mozambique he saw South Africans in traditional clothes at a function that see themselves as part of a tribe who live in Mozambique. The leader of this tribe lives in Swaziland. He said that they try to facilitate the movement of such tribe members.

(g) Mozambican law does not allow dual citizenship.

4. ***Maputo Harbour, Mr. S Ndlovu, National Director of Shipping and Ports, Mozambique***

(a) Stowaways are mostly from Tanzania and Kenya, and they usually want to go to South Africa. Some think that Mozambique would provide a better life than the Great Lakes region. Some attempt to go to the United States of America and Europe.

(b) It is difficult to inspect goods in transit, as international law does not allow one to inspect goods in transit.

(c) Mr Ndlovu said that Mozambique has no specific law on Migration and that they try to adhere to United Nations laws on refugees and migration.

5. ***Mr Momade, National Director for Migration, Mozambique***

There are good relations between Mozambique and South Africa at border post level.

When looking at a SADC immigration policy, the following should be remembered/discussed:

(a) The security of each country i.e. trafficking of drugs, weapons and people. (But even with strict laws these problems are still there).

(b) The negative effects of open borders.

(c) Positive ways to facilitate the movement of goods and people.

(d) Risks will always exist.

(e) If SADC members receive the same treatment in other SADC countries as non-SADC members then there is no benefit of SADC membership.

(f) Problems in SADC are not unique as Europe is full of illegals.

(g) Even the USA is full of illegals, and this should not prevent the free movement of people and goods.

(h) South Africa can fulfill the role to "kick start" all other SADC countries in the direction of free movement as South Africa is very developed, and any example provided by South Africa will have a great impact on SADC.

(i) There would actually be better control if borders are opened to free movement as then you will know exactly how many people came to a country—even with control people just move illegally and governments do not know how many people came to their countries.

G. Acknowledgements

1. We thank the National Assembly for having granted us permission to undertake this Study Tour and funding it.

2. We thank the Department of Foreign Affairs for making the services of its Foreign Missions available to facilitate the scheduling of meetings for the Committee in the various countries.

H. Recommendations

1. The Committee should undertake a Study Tour of:

(a) Swaziland

(b) Lesotho

(c) Durban harbour

(d) East London harbour

(e) Port Elizabeth harbour

(f) Mossel Bay

This will enable us to have a panoramic view of migration and border/port control in the SADC region.

(g) We should also revisit Cape Town harbour

(h) Cape Town International Airport

2. We urge all SADC countries to give Home Affairs a distinct profile as opposed to merging it with other line functions as this suppresses and undermines crucial aspects of Home Affairs.

3. Home Affairs Porfolio Committees of SADC countries should convene in order to establish a common understanding of Parliamentary oversight.

4. Such a Home Affairs Parliamentary Committee of SADC could play a vital role in assisting the African Union to deal with Home Affairs issues, borders, immigration, citizenship, drug trafficking, contraband goods, customs and excise, stowaways etc. Such a forum will be in a very good position to deal with the issue of communities that are split by border fences, a common SADC problem. The forum could also discuss a SADC policy on foreign investors and joint ventures.

5. Ministers of Home Affairs of SADC countries should meet on a regular basis as it is clear that there is a comprehensive need for a SADC protocol on Migration.

6. SADC countries should help each other to develop legislation in respect of organized crime, Immigration and border control.

7. The idea of "one stop" border facilities should be given serious attention. Such a system could save time and co-ordinate and facilitate better border control at SADC level.

8. To establish more customs facilities at some South African border posts, especially between South Africa and Botswana should be investigated at Ministerial level. Such an investigation should also look at co-ordinating the times of open border posts between countries, especially in respect of commercial border posts.

9. The Department of Home Affairs should give more attention to train its personnel properly. All the departments represented at the border posts should train their staff to be more people friendly as they are the first line of communication to people who visit our country. The first responsibility however should always be proper border control. This can only be achieved with proper training. Discipline of all staff is vital and any staff member who does not act responsibly, such as being under the influence of alcohol on duty, that we as a Committee have experienced, must be severely dealt with.

10. Computers must be upgraded at border posts, hardware as well as software.

11. Immediate attention should be given to the unexceptable situation of public facilities at border posts, eg the poor state of offices, ablution facilities and border fences as outlined in the report.

12. More frequent contacts and visits by the Minister, Director-General and Regional Representatives to the various border posts must be undertaken on a regular basis to acquaint themselves with the needs and problems experienced by our personnel.

13. Proposals put forward by our neighbouring States to improve trade and better relations between SADC countries, as well as border incidents reported, should be handled in a much more professional and sensitive manner. Insidents and proposals as highlighted in the report, are after months still not given the necessary attention.

I. Conclusion

1. This Study Tour was a real eye-opener. We adopted an open-minded approach, which enabled us to learn from our neighbours, and also influenced them. Our hosts were extremely impressed with our approach, as they perceived that we did not come to their countries riding a high horse, but to persuade them to move along with South Africa, as we are busy processing an Immigration Bill that will affect them intimately.

2. Criminals exploit border control. Current control measures are not sufficient to stop, smuggling, VAT exploitation or the movement of illegals across SADC borders.

3. Resources are lacking, especially at South African border posts where buildings, equipment, toilets facilities are insufficient. Accommodation for staff at especially rural border posts not sufficient in South Africa and for example. Zimbabwe.

4. Staff morale and discipline is also unsatisfactory at South African border posts.

5. Corruption at some border posts also seems to be out of control.

6. Some SADC countries urgently need to enact laws that will empower them to deal with problems that are prevalent in our modern day society where criminal syndicates are very well organized and exploit loopholes in legislation and border control.

7. The system of claiming VAT at South African border posts causes delays.

4. **Report of the Portfolio Committee on Home Affairs on Visit to Beitbridge, dated 23 January 2002:**

The Portfolio Committee on Home Affairs, having visited Beitbridge, reports as follows:

A. Introduction

Following widespread media reports that there was abnormal traffic congestion to the extent that a six km queue had been formed at the Beitbridge Border Post in Messina in the days shortly preceding Christmas Day, I (Aubrey Mokoena) telephoned the new Chief Whip on 22 December 2001, the Hon Nosiviwe Mapisa-Nqakula, to grant permission for me and any available member of the Committee to conduct an emergency oversight visit to that Border Post. Such permission was telephonically duly granted immediately.

B. Operations

In summary, I contacted the Hon Chief Walter Morwamoche, who lives in the Northern Province, and asked him to join me. He agreed. I drove in my car to pick him up at Jane Furse on Sunday 23 December 2001, at 17:00.

I had earlier communicated with the Director-General, Mr Billy Masetlha, to make him aware that we were on our way.

On our way, we encountered numerous roadblocks instituted by the SANDF. Our passage was facilitated by prior communication with the Northern Province Regional Director, Mr M V Mabunda, who had received instructions from the Director-General. We arrived at Beitbridge at 23:00 and performed the oversight function until 04:00 in the morning.

The following morning at 08:00 we started with further interviews on the South African side, after which we proceeded to the Zimbabwean side. We completed our work at 15:00 on 24 December and drove back home.

We interviewed officials from the Immigration Service, SARS, SAPS and SANDF to find out from them why the service at the bridge was characterised by such lethargy. We also interviewed pedestrians, travellers, motorists and commercial truck drivers.

C. Evidence

The evidence is crystallised as follows:

1. The co-ordinating committee at Beitbridge, consisting of the Immigration Service, SARS, SAPS and the SANDF, is not functioning well.
2. No-one is directly responsible for the overall control of Beitbridge. This causes the management of the bridge to be poor.
3. Each of the four units mentioned under paragraph 1 operates as an entity with its own freedom.
4. There is an overlap of roles, i.e. the Police try to do immigration work. This causes overlapping and delays.
5. The computers at Beitbridge are not linked to the Home Affairs mainframe at the Pretoria Head Office. Information can thus not be verified speedily.

6. There was a shortage of staff to deal with the expected festive season travellers.

7. Although the border post was open 24 hours a day, serious problems arose due to the fact that the Beitbridge Border Clearing Agency did not function 24 hours a day. This agency is responsible for clearing commercial trucks. The trucks thus blocked the road while waiting for the clearing agency to open.

D. Recommendations

1. There should be separate mandatory parking facilities for commercial trucks, as they cause further congestion. It takes more time to clear a commercial truck to cross the bridge than, for instance, a family who is going on holiday. When trucks are being cleared to cross the bridge, they contribute to the traffic congestion, as they do not make use of the parking facilities demarcated for them. The clearing agency should also operate 24 hours a day when the bridge is open 24 hours a day during the festive season. This will go a long way towards keeping the flow of commercial trucks going.

2. Traffic officers must be involved in traffic flow management, instead of this role being left to the police. Traffic officers should also have been present to sensitise motorists to the "Arrive Alive Campaign".

3. After an earlier visit of our Committee to Beitbridge, SARS implemented an audit at the bridge. During this time a whole team was sent to investigate the operations at the bridge. Our Committee visited the bridge during this "blitz audit", and operations at the bridge ran much smoother than during our previous visit. This type of audit should be sustained on a permanent basis and should not be done as an ***ad hoc*** exercise.

4. The structural layout of the bridge should also be improved to facilitate better traffic management, even to the extent of separating commercial and holiday travellers.

5. The overall management of the bridge should be improved. Someone will have to take control over all the units (Immigration, SARS, SAPS, SANDF) that function at the bridge. It is very important that a Ministry becomes the definitive authority to take overall authority of all these units at border posts. There should be a Cabinet decision on this issue, as it is a policy decision that will affect all border posts. During our oversight visits last year to various border posts, we saw that serious problems are being created due to the fact that there is no definitive authority to take overall responsibility. The current situation at border posts can be compared to a school with many teachers but no principal. Such a situation is a recipe for disaster.

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

E. Official personnel interviewed

1. Rudy Hartman, Home Affairs
2. Lindiwe Meirotti, Home Affairs
3. Inspector Augustinus, SAPS
4. Sergeant Nel, SAPS
5. Serole Makwele, SARS
6. Marshal Mutepe, Home Affairs
7. Zimbabwean officials
   * Mujuru Mangco
   * Sefheni Ncube
   * Weston Gasva

National Council of Provinces:

1. Report of the Select Committee on Social Services on the ***Probation Services Amendment Bill*** [B 18B—2002] (National Assembly—sec 75), dated 7 June 2002:

   The Select Committee on Social Services, having considered the subject of the ***Probation Services Amendment Bill*** [B 18B—2002] (National Assembly—sec 75), referred to it, reports the Bill with proposed amendments, as follows:

CLAUSE 1

1. On page 2, in line 13, to omit "2" and to substitute "4A".
2. On page 4, from line 12, to omit the definition of "house arrest".
3. On page 4, after line 19, to add:

   (e) by the substitution for the definition of "supervision" of the following definition:

   " 'supervision' means supervision of **[a]** an accused, convicted or sentenced person by a probation officer **[by virtue]** in terms of the provisions of any law;".

CLAUSE 3

1. On page 4, in line 48, to omit "mandatory".

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 4A in Act 116 of 1991

4. The following section is hereby inserted in the principal Act after section 4:

"Appointment and duties of assistant probation officers

4A. (1) The Minister may appoint as many suitable persons as he or she may deem necessary as assistant probation officers to perform the duties imposed by or under this Act or any other law on an assistant probation officer.

(2) The duties of an assistant probation officer shall include—

(a) the monitoring of persons under supervision;

(b) family finding;

(c) the gathering of information for assessment by the probation officer; and

(d) assisting a probation officer with his or her duties.".

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 4B in Act 116 of 1991

5. The following section is hereby inserted in the principal Act after section 4A:

"Assessment of arrested children

4B. Every child who is alleged to have committed an offence and who has been arrested shall as soon as may be reasonably possible after his or her arrest be assessed by a probation officer.".

CLAUSE 7

1. On page 6, in line 23, after "2002" to insert:

, and comes into operation on a date determined by the President by proclamation in the *Gazette*

LONG TITLE

1. On page 1, in the fourth line, to omit "mandatory".

2. Report of the Select Committee on Social Services on the ***Health Donations Fund Act Repeal Bill*** [B 20—2002] (National Assembly—sec 75), dated 11 June 2002:

The Select Committee on Social Services, having considered the subject of the ***Health Donations Fund Act Repeal Bill*** [B 20—2002] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

3. Report of the Select Committee on Land and Environmental Affairs on the ***KwaZulu Cane Growers' Association Act Repeal Bill*** [B 48B—2001] (National Assembly—sec 75), dated 11 June 2002:

The Select Committee on Land and Environmental Affairs, having considered the subject of the ***KwaZulu Cane Growers' Association Act Repeal Bill*** [B 48B—2001] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

No 40—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

WEDNESDAY, 12 JUNE 2002

1. The House met at 15:28.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. The Speaker made an announcement regarding the late start of proceedings.
4. [15:28] Questions—Deputy President and Cluster 1: Peace and Security.
5. [17:28] Notices of motion.
6. [17:43] The Chief Whip of the Majority Party moved without notice: That the House—

   (1) notes that Bafana Bafana lost 3-2 in a match against Spain in the World Cup competition in Daejeon, South Korea;

   (2) believes that—

      (a) Bafana Bafana displayed excellent talent and played world cup matches diligently in a competition where the world champion, France, was eliminated; and

      (b) Bafana Bafana have represented our country admirably and have served as an inspiration to all our people, young and old; and

   (3) congratulates Bafana Bafana for their splendid performance in the 2002 World Cup soccer competition in Daejeon, South Korea.

   Ndizani Bafana Ndizani.

   Agreed to.

7. The Chief Whip of the Majority Party moved: That the House ratifies the decision the Joint Programme Subcommittee on 11 June 2002 took in accordance with Joint Rule 216(2), namely that the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74), ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75) and ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) be fast-tracked by, where

necessary, shortening any period within which any step in the legislative process relating to the Bills must be completed, in order to make it possible for the Bills to be passed by Tuesday, 18 June 2002 (***see*** Announcements, Tablings and Committee Reports, 11 June 2002, p 652).

Agreed to.

8. FIRST ORDER [17:44]

Debate on Vote No 2—Parliament, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

9. [19:26] Mr G B D McIntosh, with leave, made a personal explanation concerning remarks he had made in the Chamber on 11 June 2002, withdrew the remarks and expressed regret at having made the remarks.

10. The House adjourned at 19:28.

S MFENYANA,

Secretary to Parliament.

No 16—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

WEDNESDAY, 12 JUNE 2002

1. The Council met at 14:04.

2. The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:05] Notices of motion.

4. [14:10] Ms J N Vilakazi moved without notice: That the Council—

   (1) notes with concern that nearly five million children throughout the country have no access to good education because their parents cannot afford to pay for it;

   (2) further notes the statement by the Minister of Education that children can no longer be expelled from or harassed in schools on financial grounds;

   (3) believes that it is a disgrace that so many South African children do not have access to quality education even in public schools because their parents cannot afford to pay for it; and

   (4) therefore calls on the Minister of Education to ensure that all possible steps are taken to protect the children's right to quality education.

   Motion agreed to in accordance with section 65 of the Constitution.

5. [14:14] The Chief Whip of the Council moved without notice: That the Council—

   (1) notes—

      (a) that South Africa stands at the threshold of a historic victory by entering the next round of the World Cup Finals;

      (b) the dedication and the commitment of the players in the Bafana Bafana team; and

      (c) that Bafana Bafana has just managed to level the score, having trailed 1-0 in the first seven minutes of the game; and

(2) wishes Bafana Bafana well and expresses the hope that in the remaining 45 minutes of the game they will perform to the best of their ability and do South Africa proud.

Motion agreed to in accordance with section 65 of the Constitution.

6. [14:15] Mr P A Matthee moved without notice: That the Council—

(1) concurs with the remarks yesterday of the Speaker of the National Assembly to the effect that members who want to change their political party membership should be careful not to sign forms prematurely to indicate this intention, as the member would be in danger of forfeiting his or her seat as a result; and

(2) proposes that members of provincial legislatures as well as Council members seriously take note of this, especially in view of the fact that the DA has already instituted various disciplinary actions against Council members whose membership the DA wants to terminate before the floor-crossing clause comes into effect.

Motion agreed to in accordance with section 65 of the Constitution.

7. [14:16] Ms J N Vilakazi moved without notice: That the Council—

(1) welcomes the announcement made by the Minister of Health that HIV infection rate in the Republic is stabilising;

(2) notes that this serves as recognition of the Government's HIV/Aids policies which encourage safe sex and the use of condoms;

(3) further notes that communities need to cooperate with health officials and HIV/Aids activists in fighting this dreadful disease; and

(4) commends the Minister of Health for this breakthrough.

Motion agreed to in accordance with section 65 of the Constitution.

8. [14:17] Mr A E van Niekerk moved without notice: That the Council—

(1) notes that this weekend Afrikaans-speaking legal professionals established an association of legal professionals for Afrikaans and that the association is prepared to assist people in language-related cases;

(2) appeals to legal professionals from the other indigenous linguistic communities to do the same for their languages; and

(3) together with numerous benevolent Afrikaans speakers and Afrikaans organisations, will do everything in its power to assist them in this regard.

Motion agreed to in accordance with section 65 of the Constitution.

9. [14:19] The Chief Whip of the Council moved: That the Council ratifies the decision that the Joint Programme Subcommittee on 11 June 2002 took in accordance with Joint Rule 216(2), namely that the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74), ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75) and ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) be fast-tracked by, where necessary, shortening any period within which any step in the legislative

process relating to the Bills must be completed, in order to make it possible for the Bills to be passed by Tuesday, 18 June 2002 (***see*** Announcements, Tablings and Committee Reports, 11 June 2002, p 652).

Motion agreed to in accordance with section 65 of the Constitution.

10. FIRST ORDER [14:20]

Policy debate on Budget Vote No 16: Health, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

11. [17:14] The Chief Whip of the Council moved without notice: That precedence be given to the first and second subjects for discussion as printed on the Order Paper.

Motion agreed to in accordance with section 65 of the Constitution.

12. [17:16] The Council discussed the following subject: Media and Parliament: A partnership to promote representative and participatory democracy.

Debate concluded.

13. [18:02] The Council discussed the following subject: Sustainable youth development.

Debate concluded.

14. SECOND ORDER [18:51]

Consideration of ***Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill*** [B 62B—2001] (National Assembly—sec 75) and of Report of Select Committee on Local Government and Administration thereon (Announcements, Tablings and Committee Reports, 7 June 2002, p 608).

Debate concluded.

Bill agreed to in accordance with section 75 of the Constitution.

15. The Council adjourned at 19:50.

S MFENYANA,

Secretary to Parliament.

No 75—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 12 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

   (1) The Joint Tagging Mechanism (JTM) on 11 June 2002 in terms of Joint Rule 160(6), classified the following Bill as a section 75 Bill:

      (i) ***State Information Technology Agency Amendment Bill*** [B 24—2002] (National Assembly—sec 75).

National Council of Provinces:

1. The Chairperson:

   (1) Bill passed by National Council of Provinces on 12 June 2002: To be submitted to President of the Republic for assent:

      (i) ***Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill*** [B 62B—2001] (National Assembly—sec 75).

COMMITTEE REPORTS:

National Council of Provinces:

1. Report of the Select Committee on Public Services on the ***Disestablishment of South African Housing Trust Limited Bill*** [B 3B—2002] (National Assembly—sec 75), dated 11 June 2002:

   The Select Committee on Public Services, having considered the subject of the ***Disestablishment of South African Housing Trust Limited Bill*** [B 3B—2002] (National Assembly—sec 75), referred to it, reports the Bill with proposed amendments, as follows:

CLAUSE 1

1. On page 2, in line 7, to omit "July" and to substitute "September".

CLAUSE 4

1. On page 3, in line 23, to omit "Appropriation Act, 2002 (Act No. 2 of 2002)" and to substitute "relevant Appropriation Act".

No 41—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

THURSDAY, 13 JUNE 2002

1. The House met at 14:01.

2. The Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:02] Notices of motion.

4. [14:17] Mr C H F Greyling moved without notice: That the House—

   (1) notes that the Municipality of Emthanjeni (De Aar) is one of the 14 winners worldwide of the Stockholm partnership awards for original solutions to sustainable development in metropolitan areas;

   (2) congratulates the municipality on this excellent achievement; and

   (3) believes that their original and cost-effective plans for the management of water, sanitation and waste will be an example to other municipalities.

   Agreed to.

5. FIRST ORDER [14:18]

   Debate on Vote No 24—Safety and Security, and Vote No 22—Independent Complaints Directorate, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

   Debate concluded.

6. SECOND ORDER [17:19]

   Debate on Vote No 5—Provincial and Local Government, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77) (For Report on Vote, see Announcements, Tablings and Committee Reports, 10 June 2002, p 614).

   Debate concluded.

7. The House adjourned at 20:15.

S MFENYANA,

Secretary to Parliament.

No 17—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

THURSDAY, 13 JUNE 2002

1. The Council met at 14:08.

2. The Deputy Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:09] Notices of motion.

4. [14:10] Ms J N Vilakazi moved without notice: That the Council—

   (1) notes with sadness the death of three men who drowned at Inanda dam in KwaZulu-Natal;

   (2) expresses condolences to their families, colleagues and friends who are affected by their death; and

   (3) calls on the authorities to launch a thorough investigation into the incident.

   Motion agreed to in accordance with section 65 of the Constitution.

5. FIRST ORDER [14:11]

   Policy debate on Budget Vote No 27: Environmental Affairs and Tourism, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

   Debate concluded.

6. SECOND ORDER [16:44]

   Consideration of ***Disestablishment of South African Housing Trust Limited Bill*** [B 3B—2002] (National Assembly—sec 75) and of Report of Select Committee on Public Services thereon (Announcements, Tablings and Committee Reports, 12 June 2002, p 693).

   Debate concluded.

   Bill, subject to proposed amendments, agreed to in accordance with section 75 of the Constitution.

7. The Chairperson of Committees gave a ruling on a point of order raised by Ms A M Versfeld earlier during debate.

8. The Council adjourned at 16:50.

S MFENYANA,

Secretary to Parliament.

No 76—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 13 JUNE 2002

ANNOUNCEMENTS:

National Assembly:

1. The Speaker:

(1) Message from National Council of Provinces to National Assembly:

Bill, subject to proposed amendments, passed by National Council of Provinces on 13 June 2002 and transmitted for consideration of Council's proposed amendments:

(i) ***Disestablishment of South African Housing Trust Limited Bill*** [B 3B—2002] (National Assembly—sec 75) (for proposed amendments, see Announcements, Tablings and Committee Reports, 12 June 2002, p 693).

The Bill has been referred to the Portfolio Committee on Housing of the National Assembly for a report on the amendments proposed by the Council.

(2) The following paper tabled on 13 March 2002 and referred to the Standing Committee on Public Accounts, is now also referred to the Portfolio Committee on Finance:

Report of the Auditor-General on the Delays in the tabling of Annual Reports as required by the Public Finance Management Act, 1999 (Act 1 of 1999) [RP 45-2002].

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Environmental Affairs and Tourism:

(a) Agreement on the Conservation of Albatrosses and Petrels, tabled in terms of section 231(2) of the Constitution, 1996.

(b) Explanatory Memorandum to the Agreement.

National Assembly:

Papers:

1. The Speaker:

   Request received from the Minister for the Public Service and Administration for parliamentary approval for retention of service beyond the age of 65 in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

   Referred to the Portfolio Committee on Public Service and Administration for consideration and report and to the Portfolio Committee on Foreign Affairs for consideration. The committees to confer and the Portfolio Committee on Public Service and Administration to report to the House by 25 June 2002.

   Copies of the correspondence are available from the Clerk of the Papers.

COMMITTEE REPORTS:

National Assembly and National Council of Provinces:

1. The following Report on ***Violence against Women*** was adopted by the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women on 29 May 2002:

Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women

Parliament of the Republic of South Africa

Report on Violence against Women

May 2002

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The Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women's: Overview of the work the Committee has done to date with regard to Violence Against Women

May 2002

Introduction

This Parliamentary Committee (hereinafter called the Committee) was established as an Ad Hoc Committee in 1996 and at the end of 1998 became a Standing Committee. The specific role of this committee is to monitor and oversee Government's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action. One of the priorities set by the committee was to address itself to their oversight function regarding the monitoring of violence against women. In this regard, the Committee has undertaken several activities, which are discussed below.

Activities of the Committee

1. Violence Against Women Hearings during 1997 and 1999

The Portfolio Committee on Justice and the Ad Hoc Committee held hearings during 1997 and 1998 on Violence Against Women. A report[1] was tabled in this regard. Part of the 1998 hearings also focused on other aspects relating to gender and justice. These include Domestic Violence, the legal system, spousal killings, sexual offences and sexual offence pilot courts.

At the time of these hearings, the Committee made a call that the Justice Ministry and other role-players accelerate the introduction of the proposed legislation on Domestic Violence and comprehensive legislation on sexual offences against women. To date, the Domestic Violence Act (Act 116 of 1998) has been enacted but the Sexual Offences legislation has still not come before Parliament.

2. Violence Against Women Hearings - November 1999

The Committee held hearings from the 8th to the 17th of November 1999. Written and oral submissions were made. The objective of the hearings were to:

- Identify what and where the blockages are which impede women who have been victims of all forms of violence, from having access to justice.
- Determine the varied ways in which such obstacles to justice can be addressed and eliminated.

The report emanating from the hearings thematically categorises the information under the following headings:

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[1] Violence Against Women Hearings. Report. June 1998.

- Criminal Justice.
- Law enforcement.
- Welfare services and shelter.
- Health care.
- Incarceration of offenders.
- Recent research on violence against women.
- Public awareness and education.
- Allocation of financial resources and the Budget.
- Inter-ministerial co-operation and co-operative governance.
- Co-operation between Government and civil society.
- The need for statistical databases.

Although the hearings were held before the Domestic Violence Act 116 of 1998 came into operation, it highlighted difficulties anticipated with the implementation of the legislation. Many of these difficulties also emerged later in a workshop held by the Committee after the implementation of the Act. The Committee furthermore makes very specific recommendations with regards to the different thematic areas.

In addition to the detailed report on the hearings, a summary report (July 2001) is also available.

3. Provincial visits

Delegations from the Committee visited Nelspruit, Mpumalanga, Port -Elizabeth and Pietersburg from April to June 2000. They visited Magistrates, the South African Police Service (SAPS) Commissioners and Prosecutors. These meetings formed part of the Committee's investigation into the difficulties experienced by these officials in the implementation on the Domestic Violence Act and Maintenance Act 99 of 1998.

4. A Joint 2-day workshop between the Committee and the Public Participation Unit (PPU) of Parliament, 25 – 26 July 2001.

The Parliamentary Public Participation Unit PPU) and the Committee convened a National Conference on enhancing the participation of women in the law making process.

The objectives of the conference were to:

- Audit the experiences of civil society with respect to how women have experienced participation in the legislative processes.
- Audit the obstacles which impede the participation of women.
- Elicit information on how the participation of women can be improved.
- Gather and collate information on problems experienced with respect to the implementation of the Domestic Violence Act.

- Gather and collate information on problems experienced with respect to the implementation of the Maintenance Act.
- Reflect on methodologies for making gendered impact on how budgets are drawn up and how public sector resources are allocated (at national, provincial and local levels).
- Gather and collate information on women's legislative needs with respect to issues of inheritance and succession.

Some of the specific problems that emerged from the presentations on the implementation of the Domestic Violence Act included:

- Inadequate resources being allocated to the implementation of the Act.
- Sexual abuse often not seen as abuse.
- When SAPS are called, the onus is often placed on women to say what they want SAPS to do with the perpetrator.
- The forms are difficult to complete.

A detailed report entitled "Strengthening Women's Voices though Participation: Consultative Conference on engaging Women in Parliament" is available.

5. Rural workshops

The PPU and the Committee hosted capacity building workshops for rural women in four provinces during 2001. The provinces were Mpumalanga, North-West, Limpopo and Kwa-Zulu Natal. These workshops constituted the pilot Rural Women's Project.

The objectives of the workshops were to:

- Create an understanding amongst rural women about Parliament and the law making process.
- Create an understanding of how to participate in the legislative process.
- Obtain submissions on the implementation of the Domestic Violence Act and the proposals for the proposed Inheritance and Succession legislation.

It was evident from the workshops that there is a need for public education around the Domestic Violence Act. Many of the women who attended the workshops thought that only physical violence constituted domestic violence. It was only after the Act was explained to them that they understood that there were different types of domestic violence.

Whilst the workshops were a success, there were incidents which nearly disrupted this process. The incidents were discussed in the National Assembly to make sure that this type of incident does not occur again, because it may hinder

the performance of the public representatives to cascade the important message to rural women in South Africa.

6. Committee report commissioned from the Center for the Study of Violence and Reconciliation (CSVR) on Budgets and Violence Against Women

The Committee commissioned the Centre for the Study of Violence and Reconciliation to investigate the extent of government financial aid to non-profit organisations (NPOs) providing support services to women experiencing violence.

The aims of the study were to:

- Quantify government departments' financial aid and support to organisations providing some kind of support to girls and women aged fifteen years and older who have experienced gender-based violence.
- Identify factors enhancing and/or constraining organisations' ability to access government funds for this work.
- Describe the type of activities for which organisations receive government support.

The research findings will be used to assist members of the Parliamentary Committee to undertake a range of activities aimed at ensuring that future budgets allocate sufficient funds to address the needs of women who are experiencing gender violence.

Recommendations

The Committee, in fulfilment of its oversight role, has undertaken several informative initiatives in respect to violence against women. The reports resulting from the various initiatives are rich with information and recommendations to various Government Departments. It is thus recommended that:

- Questions emanating from the various forums be posed to the different departments with regard to the implementation of the Act, resources available and budgetary requirements.
- The various reports should be disseminated to the various departments and they should be asked to formally respond to it.
- A huge public education initiative be undertaken by GCIS to ensure that the Domestic Violence Act becomes more accessible to women, especially rural women.
- We ensure that the criminal justice system is more gender sensitive, especially in terms of sentencing, sensitivity of court officials, and women's access to justice.

- More shelters be provided for women who experience domestic violence, because women often have to return home to perpetrators of violence, because there is not an adequate number of shelters.
- Customary law be revised, because rural women still suffer the effects of customary law.
- The rural workshops be continued in the provinces not covered in 2001 rural workshops and the 2000 provincial visits.
- A debate on Domestic Violence be held in the National Assembly and the National Council of Provinces.

Attached to this report are the following appendixes:

1. Report on Violence Against Women in South Africa based on the public hearings held in November 1999. Compiled in February 2001.
2. Addendum to the Violence Against Women report of February 2001.
3. Summary report on Violence Against Women. July 2001.
4. Summary report on Violence Against Women. October 2001.

Acknowledgements

The Committee wishes to thank the following people who helped to compile this report:

1. Melissa Fourie, who as a volunteer undertook the mammoth task of collating and compiling the report on the hearings on Violence Against Women that took place in November 1999.
2. Shereen Dawood, researcher for the ANC Study Group of the Committee, who assisted in compiling the July and October summary reports of the hearings.
3. Carmine Rustin, of the Parliamentary Research Unit, who assisted in compiling the final report on the work undertaken by the Committee on Violence against Women.

.....
Ms. P. Govender
Chairperson of the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women.

Date: .....

The Joint Committee on the Improvement of the Quality of Life and Status of Women

Report on Violence Against Women in South Africa based on the public hearings held in November 1999

February 2000

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"We cannot say we are moving faster towards the attainment of complete liberation from the legacy of the past unless the women of our country live without fear in their houses and walk freely through the streets and villages of our land." – President Thabo Mbeki[2]

▪ INTRODUCTION

- The Joint Committee on the Improvement of the Quality of Life and Status of Women (hereinafter referred to as the Committee) was permanently established in June 1998 to monitor and oversee progress with regard to the improvement of the quality of life and status of women in South Africa, with specific reference to the government's commitments made at the United National Fourth World Conference on Women in Beijing in 1995, and the provisions of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

- The South African government's signature and ratification of CEDAW created an obligation to introduce measures to protect the basic rights of women and to improve the status of women by eliminating gender-based discrimination. CEDAW requires countries to report to the UN every four years, and South Africa's first progress report was submitted to the UN CEDAW Committee in 1997.

- CEDAW defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[3] It encompasses "physical, sexual and psychological violence –

    - occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

    - occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

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[2] Address to the Nation on National Women's Day, 9 August 1999

[3] Article 1 of Annex F to CEDAW

- perpetrated or condoned by the state, wherever it occurs."[4]

- The Beijing Platform for Action (BPFA) is a comprehensive plan of action to enhance the social, economic and political empowerment of women, and is premised on the need for the sharing of power and responsibility in the home, workplace and in wider society. South African government departments tabled their commitments to the BPFA in February 1996.

- In his opening address to Parliament on 25 June 1999, President Thabo Mbeki's spoke of the "twilight world of... continuous sexual and physical abuse of women and children". More light has been shed on this twilight world during the past year than ever before, mainly due to the increased vigilance of the public with the assistance of the media.

- Interpol: SA has highest reported rape ratio in the world Insurance Policy.

- The objectives of the November 1999 hearings on violence against women were the following:-

  - to identify what and where the blockages are which impede women who have been victims of all forms of violence, from having access to justice; and

  - to determine the varied ways in which such obstacles to justice can be addressed and eliminated.

- The hearings were held from 8 to 17 November 1999. A full list of submissions (both written and oral) appears at the end of the report. Copies of all written submissions are available from the Committee clerk. Other documents referred to in this report are also listed at the end hereof.

- This report will deal with the following aspects of violence against women, with special reference to the submissions made at the hearings:

  - criminal justice;

  - law enforcement;

  - welfare services and shelters;

  - health care;

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[4] Article 2 of Annex F to CEDAW

- incarceration of offenders;
- recent research on violence against women;
- public awareness and education;
- allocation of financial resources and the Budget;
- inter-ministerial co-operation and co-operative governance;
- co-operation between government and civil society;
- the need for a statistical database;
- recommendations and queries to government departments.

- **CRIMINAL JUSTICE**

  <u>New and proposed legislation and its implementation</u>

  - CEDAW stipulates that government should "develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms."[5]

  - Significant progress has been made in the amendment of existing legislation and the promulgation of new legislation relating to violence against women and children. The most important of these are:

    - the Domestic Violence Act (DVA)[6], which comes into operation on 15 December 1999 and replaces the Prevention of Family Violence Act[7]. Difficulties anticipated with the implementation of the DVA are described elsewhere;

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[5] Article 4(d) of Annex F to CEDAW
[6] Act 116 of 1998
[7] Act 133 of 1993

- limiting the granting of bail for persons accused of having committed specified serious offences, which include rape;[8]

- providing for minimum sentences for murder and rape with aggravating circumstances.[9] Certain difficulties in the judicial interpretation of especially the minimum sentence amendment have come to light, and will be detailed below.

- The South African Law Commission (SALC) has also produced a Sexual Offences Discussion Paper incorporating a proposed Sexual Offences Bill. The most important features of the proposed Sexual Offences Bill are the following:-

  - The common law definition of rape (a man having intentional unlawful sexual intercourse with a woman, without her consent) restricts the sexual intercourse to the penetration of the vagina by the penis, and non-consensual anal or oral penetration does not constitute rape or indecent assault in common law. In proposing the repeal of the common law offence of rape, the Commission has put forward a new gender-neutral statutory offence, centring on 'unlawful sexual penetration' under coercive circumstances.

    This definition means that the State will not be required to prove absence of consent on the part of the victim. The accused can still raise consent to sexual intercourse as justification for the unlawful conduct, but will in future have to carry the burden of proof in this regard. Furthermore, penetration would include penetration to any extent by a penis, object/part of the body of a person/animal *into* the anus, ear, mouth, nose, vagina/body orifice of an animal; or body orifice of a person in a manner simulating sexual intercourse. This means, *inter alia*, that both men and women can be rape victims and perpetrators.

    "Under coercive circumstances" include force, threat, abuse of authority, impaired mental capacity, unlawful detention, mistaken identity,

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[8] Criminal Procedure Amendment Act 75 of 1995
[9] Criminal Procedure Amendment Act 105 of 1997

mistaken act or if the complainant is under 12 years of age.

The proposed legislation also provides that marriage or other relationships does not constitute a defence to rape, and a husband can therefore be convicted of raping his wife. It also provides for retrospective application. Furthermore, rape in other laws will be replaced by the new definition.

- Similarly, the current position defines incest as *sexual intercourse* between persons within prohibited degrees of relationships. The proposed definition is that *sexual penetration* replaces the term sexual intercourse.

- In the proposed legislation, sexual molestation constitutes a sexual act with a child of two years and younger. It includes committing a sexual act with the intention of inviting/persuading/allowing a child of two years and younger to engage in a sexual act. The child's consent does not constitute a defence. A *child* is defined as someone under the age of 16 years.

- Persistent sexual abuse of a child (two or more occasions of a sexual/act/penetration with a child within a period of one year) will constitute an offence in the proposed legislation.

- In the proposed legislation child prostitution constitutes a sexual act with a child (someone under the age of 18 years) for reward, favour and compensation to a child or any other person. It includes inviting, persuading/inducing a child to commit a sexual act for reward, favour/compensation.

- Keeping a brothel for child prostitution: Keeping a brothel constitutes an offence. A brothel is defined as movable/immovable property where commercial exploitation of a child occurs. *Keeping* includes: owning, leasing, renting, managing, occupying or otherwise having control of a brothel.

- Facilitating or allowing commercial sexual exploitation: This covers any person who facilitates commercial sexual exploitation, including a parent,

guardian or caregiver who allows commercial sexual exploitation.

- Provisions not included in the Proposed Bill include cultural and religious practices considered harmful to children[10], sexual harassment[11], the criminalisation of harmful behaviour of people with HIV and the HIV testing of sexual offenders.

- The proposed legislation, and in particular the move away from *without consent* to include *coercive circumstances* is considered by many organisations as very progressive. Women's organisations, in particular Rape Crisis, have expressed support for the new definition of rape.[12]

- The SALC is also in the process of producing a discussion paper on the procedural aspects of the prosecution of sexual offences, which will also deal with the evidentiary rules, which operate against the complainant in rape cases. Such evidentiary rules, which are arguably based on common assumptions that women's evidence in rape trials should be treated with caution since women are thought to lie in sexual offence cases out of jealousy, spite and revenge, include:-

  - the cautionary rule, in terms of which certain types of evidences are treated with caution in a criminal trial, such as where the complainant is the only witness;

  - evidence of the previous sexual history of the complainant, which can only be admitted with the consent of the presiding officer on the basis of its relevance. This rule appears to be based thereon that, if a woman has had sexual intercourse

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[10] It was decided that this kind of provision is perhaps better and more suitably located within the revised and comprehensive Child Care Act 74 of 1983.

[11] Though this is comprehensively dealt with in the Labour Relations Act 66 of 1995, it means that people in employment are protected from sexual harassment. It seems clear that there are other areas where this is likely to take place. Thus further investigations and proposals will need to be made in this regard.

[12] The Commission on Gender Equality reported to the Committee that it was in the process of conducting research on judgements on rape, as well as drafting of sexual offences legislation and other legislation which impact on women.
In its June 1998 report on the Violence Against Women Hearings, the Committee described a submission by Rape Crisis and UWC's Community Law Centre regarding the Namibian draft bill on sexual assault. This bill dealt with, inter alia, a redefinition of rape, minimum sentences for rapists, order for payment of compensation to the complainant, mandatory commencement of rape trials within three months of date of arrest, disallowing a negative inference based solely on the length of the delay between the alleged rape and the laying of a complaint, the right of a complainant to be legally represented during criminal proceedings, and the prohibition of evidence relating to the previous sexual history of the complainant.

(whether or not such intercourse was with the accused), she is more likely to have consented to sexual intercourse;

- the rule of first report in rape or sexual offence cases, an exception to the general rule that previous consistent statements are inadmissible, in terms of which the complainant's evidence that she reported the rape to another person soon after the alleged offence is admissible. The application of this rule often leads to the drawing of a negative credibility conclusion if the complainant did not report the alleged offence to another person.

- In its June 1998 report on the Violence Against Women Hearings, the Committee described a submission from the Centre for Violence and Reconciliation detailing the phenomenon of "intimate femicide" - the killing of women by intimate male partners. The submission compared sentences handed out to men and women who killed their spouses and found startling disparities in what appeared to be inappropriately light sentences for men who murdered their partners and inappropriately heavy sentences for women who did the same in the context of continuous domestic violence. Recommendations by the Centre included:-

  - establishing a task team to consider the question of gender bias in sentencing;

  - introducing legislation permitting the introduction of similar fact evidence or evidence of a history of domestic violence;

  - abandoning the complete defence of non-pathological criminal incapacity;

  - early release for women serving sentences for killing their abusers; and

  - training of members of the judiciary.

- Specific impediments to the implementation of the DVA was raised in a written submission to the Committee by the Gender Advocacy Programme (GAP)[13]:

  - Women lack knowledge on their rights to freedom from domestic violence, and their specific remedies in terms of the DVA.

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[13] Submission H

- The DVA gives magistrates discretion to determine whether the respondent is committing or has committed an act of domestic violence, and whether the complainant may suffer undue hardship as a result of the domestic violence. This opens this way for prejudices of magistrates to affect the protection of women, and to lead to great inconsistency in the application of the DVA.

- Allowing legal representation in court will disadvantage women who do not have the financial means to solicit legal assistance. This may also discourage women from applying for a protection order, and make the process a lengthy and costly affair.

- Clerks of the Court are not trained to fulfil the role of the point of entry to the justice system for complainants of domestic violence.

- The DVA places the burden of the costs of service on the complainant; if she cannot pay, she has to furnish the Clerk of the Court with proof that she is not able to pay. The complainant will usually also lose time at work to apply for a protection order, resulting in a loss of income.

- The majority of South African women reside many miles from the nearest police station or magistrate's court, limiting their access to the remedies provided by the DVA.

- Support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services are all required to assist women to transcend the cycle of abuse.

- The DVA provides the SAPS with clear roles and responsibilities in assisting victims of domestic violence. Women are understandably critical of the services provided by the SAPS, especially in view of past attitudes to domestic violence as a "family matter" and not a serious offence.

- The DVA makes provision for the complainant to receive a notice of her rights in her official language and to have the contents thereof explained to her. Most police stations are understaffed and no more than three official languages are spoken. As far as GAP was aware, no additional personnel had been allocated to stations for the implementation of the

DVA, nor had strategies to address this issue been developed.

- The head of the Family Court also raised the following concerns about the implementation of the DVA:
  - The DVA provided for 13 new forms, for which the printing by the Government Printer had not yet commenced at the time of the hearings.
  - The DVA provided that an application for a protection order would be heard after hours only if the complainant would suffer "undue hardship" if the matter was not heard. Concern was raised about how this hardship would be determined if the complainant was not given an after hours hearing.
- The Department of Justice made certain general comments[14] regarding difficulties with implementation of new legislation:
  - The consultation process with all roleplayers (some independent) is time-consuming.
  - The delay in implementing new legislation is caused by a lack of policy statement and implementation strategy for such legislation: an implementation strategy and the funding thereof must be discussed from the outset of development of policy and drafting of new legislation.
  - New policies, legislation and the expectations created thereby increase the existing case load and need for funding, which causes bad service delivery, which means that, as before, victims do not approach courts with gender and gender violence disputes.

Functioning of existing courts and establishment of special courts

- Women reported negative experiences of courts in general, and the rate of conviction of crimes of violence against women remains unacceptably low. Submissions complained about inexperienced, unprofessional and ill-prepared prosecutors, insensitive treatment of traumatised witnesses, lack of facilities at courts and lack of transport to courts, magistrates' lack of understanding of issues of

[14] Submission Y

gender violence, clogged-up court rolls[15] and unnecessary postponements of matters[16], a shortage of regional magistrates and more qualified prosecutors, intermediaries and interpreters.[17]

- The Masimanyane Women's Support Centre reported to the Committee on a study on domestic violence and rape using police dockets[18] and court files.

Mdantsane Court: 1997 to April 1999

Total number of rape cases in 1997	624
Postponements	368
Struck off the roll (the files did not provide a reason, though probably due to insufficient evidence)	100
Warrants for arrest issued	30
Cases withdrawn (not specified whether by state or complainant)	60
Trials	40
Entered in error	20
Finalised	6
Unconditional imprisonment	3

[15] The President of the Regional Court for the Western Cape reported that there was currently a backlog of 7000 cases in the Western Cape regional courts. The present delay between complaint and trial was approximately 9 months.
[16] The SAPS's submission on its Family violence, Child Protection and Sexual Offences Units specifically mentions the difficulties caused by numerous postponements of cases involving child witnesses, as well as trauma suffered by a child witness as a result of a postponement.
[17] From the submissions of the Masimanyane Women's Support Centre, UCT's Institute of Criminology's Gender, Law and Development Project, the Tawanarang Legal Advocacy Centre to End Violence Against Women and the Commission on Gender Equality.
[18] Ilitha Labantu reported that, in rural Transkei, police dockets mysteriously disappeared on a regular basis.

Guilty with sentences between 2 to 9 years	3

East London Court: 1997 to April 1999

Total number of rape cases in 1997	793
Postponements	647
Acquittals	40
Moved to another court	25
Sentenced	20
Suspended sentences of four years or more	9
Fines of R200	3

- Masimanyane reported that the police expected the social workers to inform women of their rights, while social workers expected the police to do it. One woman who went to the district surgeon was sent back to the police (for which she had to find her own transport) because they said no medical examination could take place until she had made a statement (though they could have called the police to come to the hospital).

- Overall, Masimanyane described a lack of communication, lack of training and a lack of transport to hospitals and police stations. They also reported a reluctance on the part of medical examiners to appear in court for fear of witnesses being treated with disrespect. Victims often back out of prosecution due to lack of support. There are reports of women waiting for their court appearance in the same hallway as her assailants. The victims do not know what is going on and they are not given any information at all. Examples were cited of dockets being lost and of victims not being notified of their assailant's bail hearing nor of his release on bail.

- UCT's Institute of Criminology's Gender, Law and Development Project reported that, based on research undertaken in rural areas in the Southern Cape, women had to wait in the same area as the accused, did not have proper consultation with the prosecutor before trial, failure to explain the decision whether to prosecute or not, and inadequate preparation for the trial.

- The Commission on Gender Equality reported the failure of Sheriffs to serve interdicts in informal settlements, demanding service fees to be paid prior to service, requiring applicants to deliver interdicts themselves, and even the complete absence of sheriff services in rural areas. The Commission also complained of a lack of follow-up in domestic violence cases, especially breaches of existing orders, decision by particular court to issue peace orders instead of interdicts to lack of sheriff services in rural areas, handing interdicts to applicants for service when applicants do not have enough money to pay sheriff's fees.

- The Department of Justice told the Committee that they were finalising a Customer Service Charter for Court Users, a Service Delivery Improvement Plan and Victims Rights Charter, and were engaged in various information campaigns for court users, including the Sixteen Days of Activism against Violence Against Women.

- In the Department of Justice's 1997 report, it described the development of a monitoring system for the Guidelines on Sexual Offences developed by a national task team. This issue was again mentioned in the Department's 1998 report. The Committee still needs to know from the Department whether a method of enforcing the Guidelines have been further investigated and implemented.[19]

- In the Department's 1998 report, it reported back on a Canadian study tour dealing with violence against women. Lessons from the tour included an inter-sectoral approach, the economic empowerment of women, survivor counselling and offender rehabilitation, and the establishment of shelters and safe houses for victims. The Department further stated that the Department would present a report on the study tour to the NCPS inter-ministerial meeting and that the Department envisaged the appointment of an inter-sectoral task team to facilitate the implementation of the recommendations.[20] The Committee requests the Department of Justice to furnish it with a progress report in this regard.

- The Committee also intends establishing from the Department of Justice whether the necessary forms prescribed by the DVA have been printed and distributed to magistrate's courts across the country.

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[19] As appears from the Committee's Second Annual Report (January 1998 - March 1999), page 15, initially only 200 copies of the Guidelines were distributed. When the Committee raised concerns, the Department raised donor funding to ensure the printing of sufficient numbers of copies of the Guidelines.

[20] As reported in the Committee's June 1998 report on the Violence Against Women Hearings.

- The Department of Justice reported to the Committee[21] on two programmes for implementation of specialised courts.

  - Specialised family courts, already operating as pilot courts in CT, PE, Durban, JHB and LebowaKgomo, handled *inter alia* domestic violence matters, with the Family Advocate, Department of Welfare and various NGO's working at these centres to provide counselling, mediation and investigation. The Department of Justice indicated that it was intended that new Family Courts would be established in Mafikeng, Nelspruit, Umtata, George, Bloemfontein and Kimberley, with satellite centres at Magistrate's Courts around the main centres.

  - However, the head of Family Courts reported[22] to the Committee that there was little infrastructure and support services available for the Family Courts, even though they had been in existence for six years. The courts were badly underfunded (for example, stationery and photocopiers were not available), which causes unnecessary delays, for example in the granting of interdicts. There were also no waiting rooms for women.

  - A serious security problem was also experienced at the Family Courts and there were instances of assault on the premises. Often women were too scared to leave the offices since they knew that the alleged perpetrator would be waiting outside.

  - There are presently four sexual offences courts, which are better placed to deliver higher quality service to the victims of violence against women and children. The Department of Justice told the Committee that it planned to roll out 20 new Sexual Offences Courts in the next two years.

  - The four existing Sexual Offences Courts are all situated in urban areas, which means that complainants from rural areas have to travel long distances to attend the trial. Due to lack of transport, such a complainant may even find herself in the same vehicle as the accused.[23] The Department of Justice reported that 20 new Sexual Offences Courts would be established within the next two years. The pilot project for Family Courts would also be expanded to other centres.

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[21] Submission X
[22] Submission BB
[23] Reported by the President of the Regional Court for the Western Cape

- The Regional Magistrate's Commission[24] presented the Committee with statistics for the Sexual Offences Court in Wynberg:

	Cases finalised	Guilty	Not guilty
April 1999	15	8	7
May 1999	22	15	7
June 1999	21	12	9

- Two of the permanent magistrates in the Sexual Offences Court in Wynberg raised the following concerns[25] with the Committee:

  - There is a need to reconsider the adversarial system in sexual offence cases. Such a system assumes that both parties were equal, while such equality had to be questioned where the one party is a little girl, and the other an elderly man with a senior advocate. Much of the outcome of a case depended on the ability, wit, energy, ruthlessness and even permissible rudeness, which a cross-examiner might display. The selfish and partial manner with which parties are allowed to present evidence results often in procedural and formal truth being promoted at the expense of material truth.

  - There was also a need to re-examine the strict rules of evidence applicable in sexual offence cases, and in particular the cautionary rules of evidence.

  - There should be a general rule that children should testify through an intermediary, and only in exceptional circumstances should there be deviated from this rule. Consideration should be given to an amendment to Section 170A of the Criminal Procedure Act to include mentally impaired persons with a mental age of less than eighteen. It was also difficult for magistrates to determine when a witness would suffer "undue mental stress" as is required by Section 170A.

  - Difficulties have arisen in the interpretation of Section 51(3) of the Criminal Procedure Amendment Act[26] regarding

[24] Submission BB
[25] Submission BB

imposing minimum sentences, as well as the restrictive interpretation of Section 158 of the CPA, which deals with the circumstances in which a court may depart from the general principle that a witness should give his or evidence in the presence of the accused.

- The Director of Public Prosecutions reported that, from 1 December 1999, a special High Court would be convened in Mndantsane in the Eastern Cape to hear only rape cases, which had built up during the last three years.

Court clerks, interpreters and prosecutors

- Two important functions of clerks of the court were emphasised during the hearings: their role as organisers and facilitators of case rolls at courts, and their role as primary assistants to applicants for protection orders in terms of the DVA.

  - The President of the Regional Court for the Western Cape[27] told the Committee that the organisation of court rolls was one of the major difficulties faced by Magistrates. A system of "court nags" has recently been introduced, with the court nag's task to ensure that cases set to run will in fact run, mainly by phoning witnesses and other role players two weeks prior to the trial date to ensure that all will be available on that day.

  - The Tswaranang Legal Advocacy Centre to End Violence Against Women[28] told the Committee that, since clerks were the first entry point for a woman at court, they need to give better technical assistance and support. GAP[29] also emphasised the need for proper training of clerks of the court, since the treatment women receive from clerks often result in women not returning with application forms for interdicts.

- The lack of experienced prosecutors trained in dealing with crimes of violence against women emerged as a major impediment to criminal justice. Often prosecutors are the survivor's only ally in the criminal justice system, and these prosecutors are not equipped to

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[26] Act 105 of 1997
[27] Submission BB
[28] Submission CC
[29] Submission H

deal sensitively[30] with the traumatised complainant or to provide an equal opponent to experienced defence attorneys.

- The Tswaranang Legal Advocacy Centre to End Violence Against Women described prosecutors as insensitive to gender violence, and complained of a lack of consultation with the complainant.[31]

- The Masimanyane Women's Support Centre reported on difficulties caused by the high turnover in prosecutors, with prosecutors going on leave, study leave, or transfer to other courts.[32]

- In its submission to the Committee, the UWC's Community Law Centre reported that prosecutors are ill-prepared because of large workloads and blamed a lack of resources.

- The Director of Public Prosecutions reported to the Committee that public prosecutors have been told that violence against women is a priority area: the number of convictions needs to increase and instructions have been given to ensure that investigations are completed quickly to so that victims do not forget parts of evidence and defendants are advantaged by the lapsed period of time. In addition, prosecutions may only be withdrawn on the authority of the Provincial Director of Public Prosecutions.

- The Head of the Sexual Offences Unit and Community Affairs in the Office of the Director of Public Prosecutions told the Committee that, since the bulk of sexual offenders appear before Regional Courts, the regional court prosecutors require urgent training in the presentation of evidence, in particular scientific evidence, in sexual offence cases. Two training courses had already been held involving 60 prosecutors, which courses dealt with the collection of evidence, presentation of DNA evidence, cross-examination skills and sensitivity in dealing with witnesses (including the framing of age-appropriate questions).

- In this regard, the Sexual Offences Unit had met the Child Protection Units in all provinces to get them to co-operate with prosecutors, and also found that the training of prosecutors and investigators together was very beneficial. It was also proposed that a coalition should be formed

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[30] Reported by Ilitha Labantu in the context of rural Transkei
[31] Submission CC
[32] Submission Z

between NGO's and the police and prosecutors to provide counsellors and intermediaries for traumatised witnesses.

- The Department of Justice reported to the Committee that they were in the process of establishing pre-trial services to alert prosecutors and magistrates to previous convictions and arrests of offenders.

- The President of the Regional Court in the Western Cape also reported a real need for more qualified prosecutors, intermediaries and interpreters.

Magistrates

- During the course of the hearings it became apparent that the Regional Courts, which heard 95% of all rape cases as the court of first instance, should be the focus of emergency reform.

- The President of the Regional Court in the Western Cape reported the following difficulties in her submission to the Committee:

  - There was currently a backlog of 7 000 cases in the regional courts in the Western Cape. The present delay between complaint and trial was approximately 9 months.

  - There were only ten permanent seats of the regional court in the Western Cape, with satellite courts in the rural areas such as Malmesbury, Springbok, Calvinia, Vredenburg, Vredendal.

  - The four sexual offences courts were all situated in urban areas, which often means that very young complainants have to travel long distances to give evidence. Due to lack of transport, such a complainant may even find herself in the same vehicle as the accused.

  - There is severe shortage of regional magistrates, and it was recommended that provision should be made for acting magistrates to be employed. It was also mentioned that it was a serious psychological health hazard for prosecutors and magistrates to adjudicate in sexual offences courts for lengthy, uninterrupted periods of time.

- The National Network on Violence Against Women complained that many judicial officials have little or no understanding of gender violence, the rape trauma syndrome or the battered wife syndrome, which is evidenced by their negative attitudes directed at survivors

of these crimes. Various submissions, including that of the Tswaranang Legal Advocacy Centre to end Violence Against Women and Ilitha Labantu argued that both magistrates and judges require training on the non-legal aspects of rape.

- The Chief Director of Justice College reported to the Committee on the training of regional and district court magistrates, as well as prosecutors on sexual offences, child law, domestic violence, violence against women (a pilot training project), basic human rights and social context training. The Justice College receives a significant amount in donor funding in addition to its own budget.

The judiciary

- The Committee has on various occasions expressed concern about inappropriate statements made by High Court judges and what appears to be inappropriately light sentences handed down in judgements in cases of rape and other violence against women[33]. To date, the Committee's efforts to engage in discussion with the judiciary on issues of violence against women has been hampered by incorrect and sensationalist media reporting. However, the Committee remains of the view that such discussion could be beneficial to both the Committee and the judiciary.

- Many of the submissions expressed concern about statements made in recent judgements of High Court judges in cases of rape, especially in the context of the minimum sentence amendment to the Criminal Procedure Act[34]. Numerous calls were made for the education of judges on issues relating to discrimination and violence against women. For example, concern was expressed about views on women taken by the judiciary which reveal a reliance on stereotypes and which suggest that women collaborate in crimes against them.[35]

- This issue came to the fore in the interpretation of the recent amendment to the Criminal Procedure Act dealing with the imposition of a minimum sentence of life imprisonment where the victim is under the age of 16, is raped more than once, is raped by more than one person where such person is acting with a common

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[33] Submissions by Carol Bower, Rape Crisis Cape Town (A), Beauty Ntuli, WACA Advice Centre (D).
[34] Criminal Procedure Amendment Act 105 of 1977.
[35] This view was expressed in the written submission of, *inter alia*, the Commission on Gender Equality.

purpose, or where the rape involves the infliction of grievous bodily harm, save where the court is satisfied that "substantial and compelling circumstances" exist which would justify a less severe sentence. It is the judicial interpretation of this exception, which has come under scrutiny by women's organisations and the media.

- The Committee was furnished with a submission by the UWC's Community Law Centre's Gender Project[36] which examines disparities in recent cases.

  - In the case of *S v Zitha*[37], a six-year-old girl was raped in her home by three men who had entered the house (armed with a panga) for purposes of robbery. Despite the girl's pleas that they take whatever they want but just leave her alone, the three men raped her in turn on her own bed, one of them raping her twice. All three men were convicted of rape.

    During sentence proceedings, it was argued on behalf of the accused that the youth of the three men (they were 20, 19 and 18 at the time of the commission of the offence) constituted a substantial and compelling circumstance, along with the fact that none had any previous convictions and all three had come from unfortunate backgrounds. More astonishingly, it was advanced on behalf of the accused that the little girl had not suffered any serious injury apart from the rape and that the rape had not been premeditated since the men had gone into the house in order to commit a robbery.

    Goldstein J held that even if the rape had not been planned in advance, it was no simple act - it *"constituted a series of horrific invasions of the sanctity of the complainant's body"*. He also rejected the argument that the accused's youth and clean record could be seen as a substantial and compelling circumstance, and held that it was the duty of the court to impose a sentence of life imprisonment for the offence of rape.

  - In the case of *S v Segole*[38], a 24-year-old woman was abducted at gunpoint by two men. She was driven to a deserted farm, robbed of her jewellery and valuables and

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[36] Prepared by Nicolette Naylor, a researcher for UWC's Community Law Centre's Gender Project.
[37] 1999 JDR 0410 (W) dated 10 June 1999
38 1999 JDR 0336 (W) dated 6 May 1999

then ordered into a the deserted ruin of a house, where both men raped her. Afterwards, she was tied up and left there. She managed to escape from the house, and reached safety by stumbling through mud and swamps to a factory nearby.

> It was advanced on behalf of the accused that the complainant had not suffered any serious physical injury nor had she to be treated in hospital. It was even argued that she exaggerated the severity of the injuries and that the psychological trauma was not severe. It was further argued that both accused were from a deprived background.
>
> Jordaan AJ quite correctly took the evidence of the psychological trauma experienced by the survivor into consideration and stated that he could not "*disregard these factors*". He also stated that no weight could be attached to the fact that the accused were from disadvantaged backgrounds as they had not gained anything by raping the woman. They could simply have robbed her and taken her vehicle - yet they chose to humiliate and degrade her. In conclusion it was stated that "the circumstances of this case do not create compelling circumstances envisaged by Parliament."

- In the case of *S v Shongwe*[39], a nine-year-old girl was raped in her home by the father of her mother's boyfriend. He was interrupted when someone entered the house. The district surgeon who examined the girl stated that her injuries were slight in that there were two slight vaginal tears, which appeared superficial.

> Cillie J felt that any person with practical experience in criminal cases and sentencing would regard a sentence of life imprisonment on the accused in this case as "shocking". He interpreted the section of the Act to mean that wherever a judicial officer is of the view that the sentence which would have been imposed prior to the Act and the one required in terms of the new Act are so different that it leads to an injustice, then a departure from the Act would be justified. The court held that the non-serious nature of the offence and the lack of real harm to the child were sufficient grounds for departing from the mandatory sentence requirement.

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[39] 1999 JDR 0473 (O) dated 11 August 1999

This decision needs to be compared with the decision of *S v Mofokeng*[40] the court comes to exactly the opposite conclusion. Here it was held by Stegmann J that for substantial and compelling circumstances to be present the facts of the particular case must present some circumstance that is so exceptional in its nature and that so obviously exposes the injustice of the statutorily prescribed sentence that it can rightly be described as "compelling".

> The decision in *Shongwe* is patently wrong, and results in an emasculation of the new legislation. It in no way takes into account the purpose of the legislation or the ordinary grammatical meaning of the words "*substantial and compelling circumstances*" as opposed to the words "*any other circumstance which in the opinion of the court should be considered*."

- In *S v Mahamotsa*[41], two women under the age of 16 were raped on separate occasions by a 23-year-old man. Both were raped more than once by the accused, who had apparently taken them to his house by means of a weapon or something resembling a weapon (the sentencing judgment is not very clear in this regard). The second rape was committed after the accused had been arrested for the first incident and released in the care of his guardian.

  Kotze J firstly listed a number of mitigating factors, which included the fact that the complainants did not lose their virginity as a result of the incidents. They had already been sexually active, and "one of them, although only at school, had sexual intercourse with another person two days before the incident" (our translation from the Afrikaans original). In addition, the complainants had not sustained any physical injuries or psychological harm.

  The court then held that the following constituted a "substantial and compelling circumstance":

  > "Although there was intercourse with each complainant more than once, this was the result of the virility of a young man still at school who had intercourse with other school pupils against their wishes, and, note, school

[40] 1999 (1) SACR 502 (W)
[41] Unreported judgement dated 28 July 1999, Case No 29/99, Free State

> pupils who had previously been sexually active... Where one is dealing with school pupils, and where, in addition, it appears that the two girls concerned had already had intercourse before, one really shouldn't lose perspective, especially not in relation to the first count, which dealt with a complainant who had in any event been naughty a few days earlier and had intercourse with someone else. The injustice which she suffered in this case does not demand an unusually severe sentence." [*Translation from Afrikaans original.*]

This judgment has a chilling effect, both in terms of its general approach and its conclusion regarding "substantial and compelling circumstances". In his interpretation of the Act and the phrase "substantial and compelling circumstances", Kotze J perpetuates the very myths surrounding rape that one would have hoped to see our courts discarding, i.e. that rape isn't traumatic for a woman unless there are physical scars and injury to show for it, that there are no psychological consequences where a woman has been sexually active prior to the rape and that so-called "rape" is often merely a matter of misunderstood male virility.

- In its submission to the Committee, the Community Law Centre expressed the view that, in the consideration by judges of what is "substantial and compelling circumstances", the following factors should <u>not</u> be taken into account:-

  - whether the complainant has been sexually active;
  - whether the complainant and accused know each other or are related; and
  - whether any real physical injury was sustained by the complainant.

<u>Appeals from the Regional Court and the Sexual Offences Courts</u>

- The President of the Regional Court in the Western Cape reported to the Committee that, from 11 February 1997 till the present, about 850 matters were finalised in the Sexual Offences courts in Wynberg. There were only about 40-45 appeals against convictions of which only 14 were successful.

- Concern was expressed about a recent increase in the setting aside of convictions and the reduction of sentences on appeal, especially in view of the fact that magistrates had the best opportunity to assess a witness's performance, an advantage a presiding judge on appeal does not have. The President of the Regional Court in the Western Cape indicated that they were particularly concerned about such appeals being granted by acting judges.

- The Director of Public Prosecutions also expressed concern about lenient sentences being handed down in matters where minimum sentences were applicable, and indicated that his office were in the process of taking various of these judgements on appeal.

<u>Appointment of judges and disciplinary proceedings</u>

- The chairperson of the Parliamentary Justice Committee and member of the Judicial Service Commission (JSC), Advocate Johnny de Lange, made a submission to the Committee regarding the JSC's approach to the appointment of judges. The submission dealt, *inter alia*, with:-

    - The JSC, as the body charged with advising the President on the appointment of judges, constituted in terms of Section 178 of the Constitution: the Chief Justice, the President of the Constitutional Court, a designated Judge President, the Cabinet member responsible for the administration of justice, two practising advocates and two practising attorneys nominated from their respective professions appointed by the President, one designated university teacher of law, six members of the National Assembly, of which three must be from opposition parties, four permanent delegates to the National Council of Provinces and four persons designated by the President.

- The South African judiciary is composed as follows (as in November 1999):

Number of permanent judges in 13 divisions (including Land Claims Courts, but excluding Labour Courts)	194
Women judges	10
Black judges (29 have been appointed since 1994)	30

Black judges who are heads of divisions (Chief Justice of Supreme Court of Appeal, Judge President of High Court in Transkei and President of the Land Claims Court)	3

- UWC's Community Law Centre pointed out in their submission that a demographically representative judiciary does not guarantee race and gender sensitivity. The ideal is that every person on the bench must be sensitive to race and gender issues, irrespective of their own race and gender.

- The Chief Justice has formulated the criteria for the appointment of judges as follows[42]:

    - Is the applicant an appropriately qualified person?
    - Is she or he a fit and proper person?
    - Would her or his appointment help to reflect the racial and gender composition of South Africa?
    - Is the proposed appointee a person of integrity?
    - Is the proposed appointee a person with the necessary energy and motivation?
    - Is the proposed appointee both technically competent and able to give expression to the values of the Constitution?
    - Has the proposed appointee the appropriate potential?
    - What message is given to the community at large by a particular appointment?

- It is apparent from the aforesaid that there is no specific requirement for knowledge on and sensitivity to issues relating to women and violence against women.

- The President of the Regional Court in the Western Cape expressed the view to the Committee that judges were mostly drawn from a pool of senior advocates, usually men, whose

[42] Summarised

experience was mainly in commercial matters, and if they do have criminal experience, it was as an accused-orientated defence counsel. They were therefore not necessarily well-equipped to hear criminal trials and appeals.

- The Commission on Gender Equality reported to the Committee that it was investigating the possibility of incorporating CGE into the JSC to ensure the appointment of a more gender-sensitive judiciary.

- The Minister of Justice advised the Committee that draft legislation on disciplinary and grievance proceedings for judges had been finalised and is presently being circulated among the judiciary.

Education of judges

- Both the Department of Justice and the Chief Director of Justice College reported that High Court judges resisted efforts to participate in training on the basis that it may compromise judicial independence. However, the Department has in the past reported on its Canadian Justice Linkage Project, a five-year judicial training programme that includes higher court judicial officers.[43]

- Constitutional Court Judge Kate O'Regan presented a report to the Committee on her attendance at a judicial colloquium on the application of international human rights law at the domestic level. The communiqué adopted by the colloquium raised the following issues:

  - the need for countries to seek ways to ensure access for women to the justice system;

  - the need for lawyers, legislators, judges & citizens to recognize the importance of and be familiar with international and regional human rights law;

  - judicial education: calling "for all judges to engage in an on-going process of comprehensive, in-depth and credible judicial education to integrate CEDAW, CRC and other international human rights instruments into domestic law and decision-making to enhance the social, political and economic lives of women & children and to eradicate violence against them", and "for Governments to support the judiciary in these efforts, including through the provision of adequate resources";

[43] Draft Position Paper "Framework for Transformation of the Judiciary" prepared by the Department of Justice and revised in March 1999

- education for lawyers and citizens on human rights;
- the establishment of an international judicial education centre "to assist countries in the design, development and delivery of judicial education programmes on international human rights instruments and jurisprudence", as well as "an international resource centre to advise and assist law-makers, judicial officers, prosecutors and lawyers in developing specific practices and processes required to implement and integrate international human rights instruments into their domestic legal systems".

- **LAW ENFORCEMENT**

Previous commitments and recommendations

- In its White Paper on Safety and Security in 1998, the Department of Safety and Security stated that service delivery is a key aspect for women who have often faced secondary victimisation from the SAPS in the past. To give effect to various victim's rights (including the right to be treated with respect and dignity, the right to legal advice and the right to protection), "specific guidelines for use at station level should be developed to ensure that in cases in which women have been victims of sexual offences, rape or domestic violence they are treated with extra dignity, compassion and care". The White Paper further stated that these aspects would be developed in line with the existing initiatives of the Victim Empowerment Programme (VEP) under the National Crime Prevention Strategy (NCPS).[44]

- In its November 1998 report on Government's Implementation of CEDAW and the BPA, the Committee recorded that it had received no response from either the Minister of Safety and Security or the Independent Complaints Directorate (ICD) to its May 1998 letters requesting an update on programmes to combat violence against women, details of budgetary allocations for implementation of such programmes and the implementation by the SAPS of certain recommendations made by the ICD.

[44] As reported in the Committee's November 1998 Report on Government's Implementation of CEDAW and the BPA, page 81.

- In the 1998 report of the ICD[45] on the conduct of members of the SAPS made, *inter alia*, the following recommendations[46]:
  - The SAPS should embark on an extensive training programme, aimed at improving the member's understanding of the nature and consequences of violence against women, the context within which such violence occurs and is aimed at enhancing the member's capacity to respond appropriately to such complaints.
  - Suitably trained officers should be attached to each police station. Complainants should be offered a choice of a male or female member to assist in the initial stages of the investigation.
  - Each police station should have a list of organisations that deal with violence against women.
  - The SAPS should review its mechanisms regarding the release of information to the media so as not to discriminate against women and not to invade their privacy.
- The Committee urgently requires a response from the SAPS and the ICD as to whether any of the above recommendations have been implemented.

Present experiences of the SAPS

- Numerous submissions to the Committee indicated that the SAPS remains inaccessible, insensitive[47] and ineffective[48] in preventing violence against women and assisting victims of violence, thereby decreasing the reporting of the crime and prosecution of attackers. The difficulties can roughly be categorised as problems of attitude and abuse and operational problems.

Attitudes and abuse

- Submissions described police as accusatory (Why did you go with him"; "You should not walk in that area alone"; "You know what happens at the shebeens, you shouldn't have been there"), hostile ("you're wasting my time... come back when you get your story straight"; "what do you want us to do about it?"; "why did you wash

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[45] This report is based on an investigation of the conduct of the SAPS members responsible for the investigation of the rape of Nomboniso Gasa on Robben Island.
[46] As reported in the Committee's June 1998 report on the Violence Against Women Hearings.
[47] Reported by National Network on Violence against Women
[48] Reported by Ilitha Labantu

yourself?") and uncooperative ("find him and then come back to us"; "sit there until a female officer arrives to help you")[49].

- Police were accused of trying to dissuade women from laying charges against perpetrators by stressing negative outcomes/consequences for women if they insist on the arrest of the offender.[50]

- Women also complained of poor police service in cases of domestic violence, and two thirds of those who had gone to the police had difficulty in convincing the police that they were in need of protection or were not treated seriously: in 80% of cases, police arrived hours later or the next day when called to the scene; 34% of women were told to "stop wasting police time", 26% were accused of provoking the violence, 39% were accused of lying; 74% were expected to give statements in not their first language; 43% were told that charges could not be laid due to lack of evidence; police also failed to inform women on procedure, to update them, or to investigate the complaint properly; 55% of complainants were told to "find their attacker" before the police would arrest him.[51]

- The Commission on Gender Equality complained of the SAPS's failure to take complainants seriously, even ridiculing complainants, failure to provide sanctuary to complainants, failure to attempt to apprehend abusers where warrants have been issued, and demanding that survivors accompany police to point out perpetrators.

- Police, on the other hand, complained of women withdrawing charges, lack of resources & transport, non-cooperation of victims in investigations, "false complaints", and laws which limit police's right to enter the respondent's home.

- Various allegations were also made about sexual advances by police officers.[52] It was also reported to the Committee that many policemen are vulnerable to bribery by offenders[53], resulting in case

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[49] Recorded by UCT's Institute of Criminology's Gender, Law and Development from women about the SAPS during their research amongst rural Southern Cape women. These experiences were confirmed by, inter alia, Nisaa.
[50] Reported by the National Network on Violence against Women
[51] Findings of research conducted by UCT's Institute of Criminology's Gender, Law and Development Project amongst rural women in the Southern Cape
[52] Reported by the Commission on Gender Equality and the National Network on Violence Against Women
[53] Reported by Nisaa

files going missing, thus hampering the investigation and ultimately justice.[54]

- It is a requirement of CEDAW that government should take measures to ensure that law enforcement officers receive training to sensitise them to the needs of women.[55]

- The National Network on Violence Against Women reported that, while it is recognised that training will facilitate the development of more humane treatment of women by police and other officials, gender-sensitive training has in the past not resulted in gender-sensitive practices in the police workplace. There is thus a need to evaluate the outcome of training, and its application in the workplace.

- Tswaranang Legal Advocacy Centre to End Violence Against Women made the point that the mainly military training of police does not equip them to deal sensitively with issues of violence against women.

- In a written submission, the National Police Commissioner advised the Committee that a training programme had been developed to equip members with basic knowledge and skills in this area and all SAPS members would be trained in this over the next two years.

- The Department of Safety and Security reported[56] to the Committee the following efforts to address crimes against women and children:-

  - the SAPS has declared crimes against women and children a policing priority for the third consecutive year;

  - a "national instruction" has been issued with regard to the support of sexual offences and crucial aspects of the investigation thereof. A video-recording of this national instruction was made and distribute countrywide;

  - basic training, detective training and specialised training courses (on, for example, the investigation of sexual offences, family violence and child protection) are in place for members of the SAPS, with special attention to dealing with women survivors;

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[54] Reported by National Network on Violence Against Women
[55] Article 4(i) of Annex F to CEDAW
[56] An "information note" prepared for Director Heunis

- the SAPS is represented at Interpol's Standing Working Party on Offences Against Minors.

Operational problems

- There still appears to be a gross discrepancy in the distribution of police stations in historically disadvantaged areas, and in particular, in rural areas. It was reported to the Committee that permanent police stations feature in only 14% of historically black areas and in 86% of historically white areas. The main service providers in black areas are satellite stations and contact points.[57] The majority of South African women reside many miles from the nearest police station or magistrate's court, limiting their access to justice.

- It was reported that policemen refuse to respond to calls by women by saying that they do not have vehicles to come to the complainant.[58]

- The National Network on Violence Against Women submitted that there are too few female police officers to counsel survivors of violence, and that they received repeated requests by women for counselling by female officers.

- Women described such difficult experiences as waiting for hours at the police station, having to repeat their story to various different police officers, not having statements taken in their first language, and poor follow-up about arrests, detention or bail hearings of the accused.[59]

- The Office of the DPP emphasised that police need to be trained on the techniques of collecting DNA evidence and its preservation.[60] They need training on how to deal with traumatised victims and children when asking questions particularly as most rapes are not committed by strangers but by those close to the victims, such as relatives.

- The Police Commissioner also told the Committee that police stations are in the process of becoming more victim-friendly and

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[57] UCT's Institute of Criminology's Gender, Law and Development Project's research report entitled "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

[58] Reported by National Network on Violence Against Women

[59] Recorded by UCT's Institute of Criminology's Gender, Law and Development from women about the SAPS during their research amongst rural Southern Cape women

[60] The Committee received a written submission from P C Willis arguing for the incorporation of fingerprinting and DNA identification coding on the new national identity "smart card". The Committee has not investigated this issue, nor were any questions put to the relevant government departments in this regard.

that R1 million had been allocated for rape victim care packages containing basic toiletries.

- Concern was also expressed about the SAPS's compliance with the Domestic Violence Act, which comes into operation on 15 December 1999.[61] By way of example, the DVA makes provision for the complainant to receive a notice of her rights in her official language and to have the contents thereof explained to her. Most police stations are understaffed and no more than three official languages are spoken. It did not appear as if additional personnel had been allocated to stations for the implementation of the DVA, nor had strategies to address this issue been developed.

- The National Police Commissioner advised the Committee that SAPS national instructions have been compiled in preparation for the implementation of the DVA and that all SAPS members must be trained in terms of these instructions.

- The Department of Safety and Security also reported to the Committee the efforts of the SAPS to transform its existing Child Protection Units into specialised Family Violence, Child Protection and Sexual Offences Units.

    - These FCS units are responsible for policing the crimes of assault with the intention to do grievous bodily harm and attempted murder of a victim older than 18 years where the crime is committed in the context of a family. The units also have jurisdiction over sexual offences (where the victim is 18 and older) including rape, indecent assault, incest and violation of the Sexual Offences Act[62] with regard to the sexual exploitation of adults. The FCS units are also responsible to police the following crimes where the victim is under the age of 18: rape, indecent assault, sodomy, incest, attempted murder, assault with the intention to do grievous bodily harm, common assault (where three or more incidents occur in the context of a family), kidnapping, abduction, violation of the Sexual Offences Act with regard to the sexual exploitation of children, the Child Care Act[63] and the Films and Publication Act[64] relating to child pornography.

    - Fourteen of these FCS units are already operational. There are 27 Child Protection Units and four Indecent Crime Units situated in the main centres, while specialised SAPS

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[61] Expressed by, *inter alia*, the Gender Advocacy Programme
[62] Act 23 of 1957 (as amended)
[63] Act 74 of 1983 (as amended)
[64] Act 65 of 1996 (as amended)

members attached to the Detective Service operate in 156 smaller centres across the country. Where no such special unit or individual is operational, members at the local detective service or police station police the crimes.

- Members of the FCS units receive a three week training course presented by experts including psychologists, criminologists, advocates, medical practitioners and senior police officers.

- The following issues still has to be addressed by the Department of Safety and Security:-

  - the development of a profile of rape survivors and perpetrators;

  - disciplinary action against members of the SAPS who are themselves perpetrators of violence against women;

  - the technical aptitude of investigating officers in the investigation of charges of violence against women, especially rape;

  - the establishment of specialised units for rape and other violence against women and children; and

  - the Department's participation in trauma centres for rape survivors.

- **WELFARE SERVICES AND SHELTERS**

  - The February 1996 Beijing Cabinet commitments relating to violence against women include:-

    - the provision of shelters and relief support to women and girls[65];

    - increasing the understanding of policymakers and implementers of the impact of violence on women and girls; and

    - encouraging the media to present positive images of women.

Counselling and shelters

[65] In its 1998 report, the Department of Justice reported back on a Canadian study tour on dealing with violence against women, and the lessons drawn from the tour listed the need for counselling for victims, as well as the necessity of establishing shelters and safe houses for survivors.

- Participants in the hearings reported an absence of proper counselling for women who are survivors of violence. It appeared that officials and professionals were not adequately trained to give meaningful assistance to survivors of violence. It was also reported to the Committee that young women face additional difficulties, since schools are reluctant to deal with sexual assault and see rape as a "police issue" while families tend to "hide" the problem.[66]

- NGO's and CBO's also reported a severe lack of temporary safe housing for women as a means of escaping situations of violence.[67] This Commission for Gender Equality called for the urgent establishment of shelters in especially rural areas.

- Nisaa reported to the Committee that, at present, most shelters are funded by overseas donor agencies. They submitted that it is imperative that South African shelters begin to find local funding in the interest of sustainability. Since many NGO's have developed considerable expertise in running shelters, Nisaa is of the view that NGO's should run the services with government funding, and NGO's thus being accountable to government.

- The University of Cape Town's Institute of Criminology's Gender, Law and Development Project presented a submission on research undertaken in rural areas in the Southern Cape, and drew the following findings to the committee's attention:

    - Participants reported fear of retaliation, public humiliation, ostracism by family and friends and little faith in the police and courts.

    - Women reported little or no support from family or the community; women were often too scared of retaliation to help other women, family members blamed the victim for not being obedient enough, with further retaliation from the abuser who has now been humiliated before his family.

    - Participants reported little or no assistance from social workers from local welfare agencies, namely the Department of Welfare and the Christelike Maatskaplike Raad (both of which prioritised child abuse): women expressed a strong

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[66] UCT's Institute of Criminology's Gender, Law and Development Project's research report entitled "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

[67] In its submission, the Gender Advocacy Programme stated that support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services are all required to assist women to transcend the cycle of abuse.

need for more and better domestic violence counselling and shelters.

- The Gender Advocacy Project (GAP) stated in their written submission to the Committee that support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services were essential to assist women to transcend the cycle of abuse.

- The Welfare Ministry reported to the Committee on the following achievements and proposed projects:-

  - A service directory for police and other professionals has been developed.

  - "One-stop service" shelters were being planned. The Department intends piloting these shelters in under-resourced provinces.

  - The Department had embarked on training of SAPS and Department of Justice officials on the provisions of the DVA. Training of social workers and volunteers would take place in January/February 2000.

  - The Department was planning public education and awareness campaigns on the DVA, and was also in the process of informing provincial Welfare Departments.

  - The Victim Empowerment Programme (VEP), a key programme of the inter-ministerial National Crime Prevention Strategy (NCPS), has been launched and R6 million allocated to the VEP. Provinces and projects responsive to needs of women and girls receive priority in the allocation of funds. 42 service centres for victims of violence were already operational and had been allocated funding of R2,25 million. The funding of nine outreach centres in the provinces is detailed below.

- In the White Paper on Social Welfare of 1997 guidelines for strategy include strategies to counteract all forms of abuse and violence against women, support services for women who have been battered, raped and sexually abused, the training of police officers, magistrates and criminal justice personnel in the management of violence against women, gender sensitive welfare services and taking into account women's needs as care givers.

- The Department of Welfare indicated to the Committee in its 1998 progress report that it was encouraging the media to present positive images of women through a "white ribbon campaign" and the "taxi-net campaign".[68]

- The Department of Justice reported to the Committee that it has established a 24 hour helpline for abused women.

- The following issues remain to be addressed by the Department of Welfare:

  - the Department's efforts to ensure that women are not discriminated against with regard to welfare grants and properly regarded as main care provider, in particular in situations where the husband is alive but absent or unemployed;

  - the Department's efforts to ensure the allocation of more funds to care dependency grants for seriously impaired children.

Transport

- Various submissions described the difficulties experienced by especially rural women in accessing health care and legal services due to in accessibility of transport.

- UCT's Institute of Criminology's Gender, Law & Development Project reported[69] to the Committee that, in a study conducted among rural women in the Southern Cape, almost 35% of women travel to or from work in the dark in rural areas. It was also found that 54% of historically disadvantaged groups walk to and from work on foot.

- The Department of Transport was not requested by the Committee to participate in the hearings. The Committee intends requesting the Department to furnish it with its formal response to the following issues[70], with reference to its White Paper on National Transport Policy of 1996:-

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[68] Reported in the Committee's November 1998 Report on Government's Implementation of CEDAW and the BPA, page 34

[69] "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

[70] These questions were raised by the Committee with the Parliamentary Transport Committee in August 1997.

- the Department's efforts to make public transport more accessible and affordable to women, who rely on these services for access to justice and health care services;

- the Department's efforts to improve transport within villages and towns, as well as transport to and from rural areas;

- the Department's efforts to ensure the safety of women on the public transport system, with particular reference to more conductors and alarm cords on trains, safe waiting places at train stations and special measures for transport services after standard commuter times.

- **HEALTH CARE**

Medico-legal examinations

- Various submissions to the Committee reported on practical difficulties experienced with the required medico-legal examination of the victims of sexual assault and rape:

  - Health care services are disproportionately concentrated in historically white and urban centres. Most district surgeons in the rural areas work part-time, combining their official duties with private practice.[71]

  - A concomitant lack of access, mainly transport, especially for rural women. UCT's Institute of Criminology's Gender, Law and Development Project reported that rural women were severely affected by the lack of operational telephones, long distances to travel to police stations (which are often inaccessible and poorly resourced) and to clinics and hospitals.[72] Police are supposed to transport women to district surgeons, but seldom do so, partly as a result of shortage of police vehicles.[73]

  - Lengthy waiting periods[74] between reporting the crime to the police and the medical examination, which not only compounds the victim's trauma, but is also a deterrent to proceeding with criminal charges. One research report

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[71] Reported by UCT's Institute of Criminology's Gender, Law & Development Project
[72] "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"
[73] Reported by both the Women's Health Project and UCT's Institute of Criminology's Gender, Law and Development Project
[74] Also reported by UCT's Institute of Criminology's Gender, Law and Development Project

showed that only 54,8% of survivors were examined within 3 hours of reporting to the police.[75]

- A lack of privacy during the medical examination and a failure on the part of district surgeons to explain the reasons for and nature of the examination, often due to linguistic problems;[76]

- Inadequate treatment for conditions such as HIV/AIDS, STD's and pregnancy, or treatment without even the most basic of explanations of the health risks faced by rape survivors. Often the necessary treatment, such as post-exposure prophylaxis, is not available. The absence of pre- and post - HIV test counselling was also reported.[77]

- The President of the Regional Court in the Western Cape further told the Committee that district surgeons often lack expertise and equipment; there have also been cases where district surgeons have refused to examine drunk & drugged victims. The Masimanyane report admitted reluctance on the part of district surgeons to appear in court, and there was even the suggestion that district surgeons deliberately completed the J88 form in an inadequate manner to avoid being called as a witness.

- A specific request was tabled by the President of the Regional Court to remove question 11(e) ("date of last intercourse with consent") from Form J88 on the basis that it is an unnecessary invasion of the privacy of the survivor.

- Traditionally, forensic evidence collected by the health workers has not been adequate for the prosecution of alleged offenders. The Head of the Sexual Offences and Community Affairs Unit in the Office of the Director of Public Prosecutions reported to the Committee on a successful pilot project in Kimberley, which provided training for forensic nurses to collect evidence and give expert evidence in rape and sexual assault trials. The Office of the DPP indicated that their view was that forensic training had to be extended to nurses and where possible they should be able to give

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[75] Research report by UNISA's Institute for Social and Health Sciences on rape surveillance at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics during 1996 to 1998. 23,6% of rape survivors waited between 3 and 5 hours, 10,7% waited between 5 and 7 hours, and 10,9% waited for longer than 7 hours.

[76] The Women's Health Project. Tswaranang Legal Advocacy Centre to End Violence Against Women mentioned that there is often a callous, unsympathetic and even biased treatment of women who are abused or rape victims.

[77] Reported by Women's Health Project

expert evidence, especially in rural areas, where there is a shortage of medical facilities.

Physical and psychological aspects of treatment of victims of violence

- It further appeared that few health care workers were properly equipped to deal with both the physical and psychological aspects of the treatment of women and children who were victims of violence, especially sexual violence.

- The Women's Health Project reported that most of the general practitioners surveyed by them felt inadequate in coping with issues surrounding domestic violence. Thirty-three percent of the GPs who attended the course reported that they saw women in violent situations almost on a daily basis and a further 13 % saw them at least once a week. Sixty two percent of the doctors saw women who had been raped more than once a month. Where the GPs could deal with the physical aspects such as rape and injury, they were wary and felt ill-equipped to deal with "private" aspects of the problem such as offering counselling and referring the survivor to social structures that could offer assistance (such as legal institutions and shelters).

- Ilitha Labantu reported that district surgeons and hospitals were only concerned about rape victims when the survivor showed physical injuries.

- The Office of the Director of Public Prosecutions (DPP) raised the issue that medical students must be trained properly on how to examine sexually assaulted victims.

- It also appeared that health workers were perfectly positioned to assist women who are victims of violence, with a significant majority of women informing the health care worker who treats them of the identity of their abuser.[78]

- Many health workers, however, are not trained to deal with issues of violence and an education and counselling opportunity is therefore missed.[79] Women's Health Project reported to the Committee that, while the Department of Health recognises the

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[78] In CERSA's report on their research among women in the Eastern Cape, Mpumalanga and the Northern Province, it emerged that 71,4% (Eastern Cape), 93,3% (Mpumalanga) and 90% (Northern Province) of women who received health care told the hearth care worker who had injured them.

[79] Based on research reports by the Women's Health Project and the Centre for Epidemiological Research of South Africa at the Medical Research Council.

problem of violence against women and intends to develop programmes, there is no institutionalised training at present in the medical or nursing curriculum or in-service training to prepare health workers to deal with violence against women. This is borne out by the fact that only 10% of health workers routinely ask clients about domestic violence: the reasons for not inquiring about abuse were feeling professionally and personally ill-equipped to deal with such problems (40%), perceptions that it is unnecessary (47%) and being too busy (13%).

- In the Department of Health's 1998 progress report to the Committee, the Department stated that it had joined other countries to discuss a resolution on the prevention of violence as a public health priority, that it participates in the National Network on Violence Against Women and that it assisted in developing guidelines for survivors of sexual offences.

- The following issues[80] remain to be addressed by the Department of Health:

  - the necessity of shifting the focus of health care services for women from childbearing to reproductive health, including counselling and education on and treatment for reproductive health, including infertility, sexually transmitted diseases and especially violence against women; and

  - training and education of health care workers in domestic violence as a mainstream health issue.

HIV / AIDS and violence against women

- Women and children who have been the victims of sexual abuse and violence face special risks of contracting sexually transmitted diseases (STDs), and in particular HIV/AIDS.

- The violence and coercion involved in the sexual relationships of so many men and women in South Africa limit especially young women's capacities to protect themselves against HIV/AIDS.[81] In research conducted among women in three South African provinces[82], CERSA reported that many women indicated that their partner openly brought girlfriends home or boasted about them, and that even more women indicated that they did not perceive that they were able to refuse sex with their husbands. Given the pattern

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[80] These issues were raised by the Committee with the Parliamentary Health Committee in August 1997
[81] CERSA in Submission N
[82] Submission O

of gender relations described in this research, it is likely that women would not be in a position to insist on condom use, even if they wanted to, and in relationship characterised by physical violence they faced further abuse.

- Various perverse myths have arisen during the last decade connecting sex with certain types of women with a cure for AIDS, thereby adding a new dimension to sexual violence against women. In 1990, a document appeared calling on African men in the Durban area to acquire "the AIDS antibody" by raping Indian women. Even though the flyer was believed to be the work of a "third force" intent on aggravating conflict in and between black communities, it still succeeded in increasing the fear surrounding the disease. There is also a well-circulated myth that sex with a child virgin will cure oneself of the virus.[83]

- Lisa Vetten writes[84] that, although it is extremely hard to show a correlation between the incidence of rape and suspected or confirmed HIV positivity, the desire the spread the disease to ensure one does not die alone, coupled with anecdotes like those above, does suggest that HIV/AIDS needs to seriously considered in trying to understand factors giving rise to rape in South Africa. Certainly, it would seem that rapists may be targeting younger girls and children in the belief that, being less sexually active, they are also less likely to be HIV positive.

- Government funding of the controversial anti-retroviral drug AZT - widely used in the treatment of AIDS - for rape survivors has received much attention in the media and from the public during the last months.

- In an address to the National Assembly on 16 November 1999, the National Minister of Health, Dr M E Tshabalala-Msimang, indicated that it is conservatively estimated that up to four million South Africans, approximately 10% of our population, have been infected with the HIV virus. The Department of Health reported in 1999 that young women in there 20s have the highest infection rates. 26,1% and 26,9% of pregnant women aged 10-14 and 25-29 respectively are HIV positive.[85]

- The Minister further stated in her address that the government does not supply AZT (which is generally used in conjunction with other drugs) to people infected with HIV/AIDS (including pregnant

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[83] As recorded by Lisa Vetten in Submission 1G
[84] Submission 1G
[85] As reported by CERSA in Submission O, page 21.

mothers) and people who may have been infected through needle-pricks or through rape, on two grounds:-

- Affordability. In her address to Parliament, the Minister stated "We simply cannot afford AZT. At current market prices the cost of the triple therapy drugs alone, for the treatment of four million South Africans, would be ten times the total South African health care budget, and 140 times what we spend on pharmaceuticals in the public sector."
- The absence of proper research on the possible harmful side-effects of AZT, in particular its toxic profile.

- With regard to the treatment of rape survivors, the Minister said the following:

> "I must draw your attention to the fact that AZT is not registered for this particular use in South Africa, or to the best of my knowledge, anywhere else in the world.[86]
>
> "It is extremely unusual to expose healthy adults or children to a drug like AZT, that was developed for use in chemotherapy, and that is known to have caused cancer in animal studies. Few drugs on our market are known carcinogens in animal models, and those that are, are mainly used to treat patients with established serious conditions such as cancer, where their effects have been carefully studied in clinical trials, and where their use is strictly controlled.
>
> "We have absolutely no idea of what the effects are, either short-term or long-term, of using AZT, a known carcinogen, on healthy people. The use of AZT is, at the present time, illegal, aside from it being dangerous."

▪ INCARCERATION OF OFFENDERS

- The Department furnished the Committee with the following relevant statistics[87] about prisoners presently in the care of the Department:-
  - There are 12 034 prisoners convicted of sexual offences – 11% of the total sentenced prisoner population.

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[86] The Minister also stated that South Africa is the only country in the world in which the use of AZT to treat health care workers, following needle-prick injuries, is registered.
[87] Submission 1H

- There are 4 111 sentenced and unsentenced female prisoners: 871 (21,1%) have been convicted of murder, 516 (12,6%) of assault, 347 (8,4%) of narcotics-related crimes, and 326 (7,9%) of fraud.

- The average age of female prisoners was 30,77 years, and the average sentence of those already sentenced was 36,38 months. There are 315 infants in prison in the care of female prisoners.

- As at 30 April 1999, the number of HIV-positive prisoners was 1 789, a 25,46% increase from the number of 1 426 in May 1998.

- The Department of Correctional Services presented a submission[88] to the Committee describing their extensive education and rehabilitative counselling programmes for inmates[89], and in particular perpetrators of sexual violence. Convicted rapists receive counselling and treatment from psychologists as they have been identified as a priority target group. The Department conceded that their rehabilitative efforts were difficult to measure due to a lack of statistical support.

- The Department reported on their education programmes for women inmates (such as programmes on adult basic education and training, reproductive health, including HIV/AIDS, parenting skills, and stress and anger management, alcohol and drug abuse). The Department also makes use of NGO's, such as People Opposed to Women Abuse who hold workshops on violence for female offenders who have committed violent crimes.

- Departmental policy stipulates that mothers with infants and young children[90] must be kept in a separate Mother and Child Unit, where surrounding and facilities are complementary to sound physical, social and mental care and development of the child.

- It was also reported that the Department now had a programme in place by which all reasonable efforts were made to notify victims of the parole hearings, release or escape of prisoners. Victims may make oral representations at parole hearings without the prisoner being present, or written representations. The victim may also

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[88] Submission 1C

[89] In its 1998 report, the Department of Justice reported back on a Canadian study tour on dealing with violence against women, and in the lessons drawn from the tour listed the need for rehabilitation for offenders. This issue was also raised by UWC's Community Law Centre.

[90] A female prisoner may, subject to prescribed conditions, be permitted to have her child with her until the child is five years of age.

request to have certain conditions included in the prisoner's parole conditions, especially in rape and child abuse cases, such as that the offender is restricted from certain public or residential areas.

- The Department's submission points out that a victim or relative is responsible to inform the Commissioner of Correctional Services in writing of her contact details, changes of address, and costs incurred to attend the parole board hearing.

- The Department also attempts to assist prisoners about to be release by way of counselling, accommodation and transport arrangements and community integration programmes to assist prisoners to obtain employment on release.

▪ RECENT RESEARCH ON VIOLENCE AGAINST WOMEN

- Several research reports were presented to the Committee at the hearings. The findings, which appear important to the Committee, are summarised below. <u>The Committee requests that these summaries should not be used without reference to the entire research reports, copies of which are available from the Committee clerk</u>. It is always necessary to take into account the limitations of such research, which were all conducted in specific geographic areas, and to recognise the danger of generalisation. These difficulties only highlight the dire need for a proper statistical database on issues relating to violence against women and children and gender attitudes.

- UNISA's Institute for Social and Health Sciences presented a research report on rape surveillance through district surgeon offices in Johannesburg from January 1996 to December 1998. Some of their findings on an analysis of 1401 rape cases reported at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics during this period were the following:

  - 51% of survivors were between ages 15 and 25;

  - 80% of survivors were African, 10,2% Coloured, 8,1% White and 1,8% Asian;

  - 88,3% of rapes were perpetrated by a person of the same race group as the survivor;

- 58,2% of rapes occurred over the weekend, and 43,7% took place between 18h01 and 0h00, i.e. most rapes took place after working hours and after dark;

- 44,7% of survivors were acquainted with their attacker in some way: 21,9% of victims knew their attacker by sight, 5,7% were "friends", 4,2% were relatives, 3,4% were ex-boyfriends, 3,1% neighbours, 1,5% family acquaintances, 1,2% boyfriends and 0,8% co-workers[91];

- Younger victims were more likely to know their attackers: offenders were known to 57,4% of victims between ages 1 to 12, 53,8% of victims between 13 to 19 years (the perpetrator was unknown to 61,6% of victims between 20 to 30, 64% of 31 to 40, and 83,3% of those older than 50);

- 31% of rapes were committed in open fields, 29,1% in the rapist's home, and 14,2% in the victim's home. 32 cases occurred in Hillbrow, 70 in the Johannesburg CBD, 60 in Lenasia, 50 each in Berea, Orange Farm, Soweto, and 46 in Joubert Park;

- A single perpetrator committed 73% of rapes, while 27% involved multiple attackers (two attackers – 13,6%, three attackers – 6,4% and four attackers – 7%);

- Where a single perpetrator was involved, 51,5% of perpetrators were known to their victims, and 48,2% of rapes occurred in homes (32,3% in the rapist's home and 15,9% in the victim's home);

- Where multiple attackers were involved, 75,1% of the perpetrators were strangers to the victims, and 50,8% of the attacks occurred in public areas;

- Weapons were used in 54,9% of attacks: mostly knives (50,9%) and firearms (35,3%). In 85,5% of cases the weapon was used to threaten only.

- UCT's Institute of Criminology's Gender, Law and Development Project presented a submission on research undertaken in rural areas in the Southern Cape[92], which found that the statistics and dynamics

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[91] The research report points out that, when interpreting these statistics, one should bear in mind that the sample only represents reported rapes.

[92] "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

of rape are similar in rural areas to those in urban centres, but significant differences are identified in access to justice & support after the attack. Participating women estimated that 80% of women, on average, are victims of ongoing domestic violence.

- Rural women experienced and witnessed injuries ranging from burns from boiling water to severe head injuries, resulting in loss of hearing and sight. Steel pipes, sticks, knives, furniture, boiling water, fists, pieces of timber and kitchen utensils were all used on women in their communities. Participants stated that, in their community, men were "professionals" in domestic violence, hitting a woman on her body and not on her face, so that the injuries are not too identifiable, but when she has been accused of infidelity, women sustain head and facial injuries "to make her ugly to other men".

- One participant described the domestic sexual abuse of a family member as follows:

> "*What can she do if he comes home, drunk, kicking the door, the children and everything has gone mad? When she is sleeping, he turns up the music loud and come to her and makes her sleep with him. And she only wants to please her husband but she does not like it. He is very aggressive in their bed with . She does not believe it's really rape when it is her husband. Neither does he. He says 'you're my wife, I can do what I want to do'.*
>
> "*Even if she says no, her husband gets cross and hits her and keeps doing what he wants to do. It is very painful, but she cannot scream because her children are there. That is why he turns on the music. But, she says her children know what is happening. She can hear them crying.*
>
> "*She reports him to his family. His family says 'what's wrong with you that you don't want to please your husband' or 'what are we supposed to do... you must have sex with your husband'.*
>
> "*Sometimes husbands listen but they mostly say it is nonsense and if the women do not like it, they must leave the house. What must we do? Go to the police? Even if you are raped by a stranger they don't believe you and now you must tell them your husband is raping you? They are just as bad as the husbands. They ridicule you too and tell you that you are full of shit and you are wasting their time. You can have scars on your face... bleeding... and the*

police will send you home to 'sort it out with him'. Rape by your husband is only real in the law."

- Participants listed domestic violence, alcoholism, under- and unemployment, the rape of women and property crime as major problems in their communities. Participants reported a link quantified at 75% to 100% between alcohol and violence in their communities: Women reported that the highest levels of crime against women and children, particularly sexual assault and rape, occurred in close proximity to shebeens. It also appeared that age restrictions for buying alcohol were almost non-existent.

- Rape and the sexual molestation of children were seen as the biggest threats to women and girl children in the communities, not only due to the violation of women's physical and sexual integrity, but also due to other consequences of rape, such as death, injury, impregnation and STD's.

- Economic abuse was a notable feature of the research, and included withholding money, stealing money earned by her, throwing the victim and her children out of the home (or threatening to do so) or the practice of giving money to the eldest son (no matter how old he is). But most commonly, men gave money irregularly to the women to provide for their families, and women were subsequently beaten if the husband found meals or the home unsatisfactory.

- Women listed the following causes of domestic violence: Lack of respect for women, problems with children (misbehaviour or neglect), unemployment and alcohol abuse, suspicion or jealousy, and culture (with special reference to lobola).

- The report lists the following reasons for the limited access to justice for rural women:

  - Economic disempowerment (as a result of lack of education and unemployment) was mentioned as being the single factor, which prevent women from removing themselves from the domestic violence. Most women who participated in the research had no credit rating or no cash to draw on in an emergency. These financial restrictions resulted in isolation and domestic "confinement", and dictated their physical mobility, access to education, recreation, where they could shop, what they could buy and also access to each other.

- Women in rural areas lack nearby services and the cost of transport decreases a woman's ability to leave violent situations or even seek information or assistance to deal with the problem. Distances to basic public services are great and child care is a problem if travel is necessary. There are no or limited taxi and bus services and if they do exist they are expensive.

- Limited access to state and private health, welfare and justice services results in systemic discrimination by the state in almost every area of rural women's lives.

- Women in rural areas have little option but to remain in the home with the offender because there are no accessible safe houses or shelters. Rural women remain in abusive relationships because they have little access to economic resources.

- Women in small rural communities articulate fears of community gossip or alienation from their communities if they seek assistance.

- Women remain powerless over alcoholism within their communities.

- Very few development services exist in rural communities.

- The combined effects of poverty and violence for rural women in the Southern Cape create formidable barriers to women's equality, mental and physical health, and their full participation in civil society. Current law contains systemic inequalities, state legal structures are inherently discriminatory against women and, more specifically, do not meet the needs of rural women.[93]

- The Medical Research Council's Centre for Epidemiological Research in SA ("CERSA") presented three research reports at the hearings, which will be dealt with in turn below.

- CERSA presented a research report on domestic violence based on the first major community-based prevalence study conducted among women in Eastern Cape, Mpumalanga & the Northern Province.[94] Its main findings were the following:-

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[93] During the course of the hearings, the Committee's Chairperson suggested that future hearings of the Committee be held in rural areas such as Transkei.

[94] "He must give me money, he mustn't beat me" – Violence against women in three South African provinces

- emotional, financial and physical abuse are common features of relationships and that many women have been raped;
- physical violence often continues during pregnancy and constitutes an important cause of reproductive morbidity;
- many women are injured by their partners and considerable health sector resources are expended providing treatment for these injuries;
- injuries result in costs being incurred in other sectors, notable to the family and the women's community and to employers in the national economy.

o The report's findings on the prevalence of violence against women is demonstrated in the following table:-

	Eastern-Cape	Mpumalanga	Northern Cape
Abuse by a current or ex-partner in the past	26,8%	28,4%	19,1%
Abuse by a current or ex-partner in the last year	10,9%	11,9%	4,5%
Rape	4,5%	7,2%	4,8%
Physical abuse during pregnancy	9,1%	6,7%	4,7%

o The study shows that considerable mental distress is associated with abuse. Of the women who reported being abused in the past year, 27,9% (Eastern Cape), 24% (Mpumalanga) and 14,3% (Northern Province) indicated that they have suicidal thoughts.

o When asked about women's perceptions of culturally accepted gender relations, there was considerable agreement with patriarchal gender relations (including subservience of women to her husband, punishment of her by him in some situations, male ownership of women and the interpretation of beating as a sign of love), but women also indicated that the prevailing gender attitudes in their culture was much more patriarchal than their personal

views, and a considerable number of women disagreed with notions they conceded to be "culturally accepted", such as "if a man pays lobola for his wife she must have sex when he wants it". Only 57% (Eastern Cape), 40,4% (Mpumalanga) and 40,9% (Northern Cape) of women believed that a woman can refuse to have sex with her husband. 80,1% (Eastern Cape), 91,4% (Mpumalanga) and 86,8% (Northern Cape) of women indicated that a man hitting his wife or girlfriend was never acceptable.

- The report also mentions that there was considerable disagreement amongst the women about the meaning attached by their culture to customs like lobola, indicating the possibility of popular discussion and examination of these traditions.

- Research conducted amongst pregnant Xhosa-speaking adolescents in Khayelitsha[95], initially intended to focus on contraception, bodily knowledge and pregnancy, found that male violence dominated the sexual relationship of these women. Conditions and timing of sex were entirely defined by their male partners through the use of violence and through the circulation of certain constructions of love, intercourse and entitlement to which the women were expected to submit. The research report also states that violence against young women within their sexual relationship has been particularly neglected in the spheres of health and education. Some of the findings are the following:

    - First sexual encounters were mostly reported to have occurred at a young age, often 12 years, with a male partner about 5 years older.

    - Many participants indicated that sex was a strategy to avoid peer ostracism, and the mystifying of sex and its mechanics emerged repeatedly through a lack of input by sexually experienced female peers.

    - Women were therefore initiated into the sexual matters by men, who repeatedly refused to explain what was about to take place. Most participants reported that they had been deceived or coerced into sex, and that attempted resistance was met with violence or threats of violence.

    - 22 of the 24 participants reported having been beaten by their partners on multiple occasions, and the remaining two had been threatened with assault. The assault occurred primarily when women attempted to refuse sexual

[95] "Sex, violence and construction of love among Xhosa adolescents: putting violence on the sexuality education agenda"

intercourse, which the women stated signified, in men's eyes, that the women had other sexual partners. Assault was perceived to be male strategy for "getting you to love him".

- Women said that the forced intercourse they experienced with their partners could never be termed rape.

- Many women continued intercourse and did not attempt to end the relationship because they feared more violence. Despite the violence, the men demonstrated material generosity in the form of clothes, food and money. One participant said "it is alright as long as he doesn't beat me every day."

- Most participants stated that they felt unable to discuss sexual matters and contraception with their male partners, and for some contraception appeared to be completely non-negotiable in view of angry responses by their male partners when the issue was raised.

- Out of 24 adolescent women, only two mentioned that they ever actively wanted to have sex now, but emphasises that women were not allowed to demonstrate desire or initiate sex. Many women stated a desire to be in a non-sexual relationship characterised by co-operation until they were older.

- CERSA also reported on research conducted among young people in Umtata[96]. Some of their key findings were the following:-

- Many participants reported physical assault and rape or coercive sex. Out of the thirty 16-26 year olds who participated, 16 out of 22 girls reported assault by at least one male partner, and 6 out of 8 boys admitted to having beaten their girlfriends on more than one occasion.

- Violence was used by boys as a way of imposing the rules of a relationship and was particularly associated with girls' rejections of "proposals of love", attempts to end relationships, refusals of sex and their actual or suspected infidelity. Relationships were characterised by extreme suspicion around partners' activities with others, and it appeared to be a common assumption that a refusal to have sex implied that the girl had another sexual partner.

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[96] "'Love is a dangerous thing': micro-dynamics of violence in sexual relationships of young people in Umtata" (Submission N)

- Physical violence was a way of life for not only the teenagers, but in all community relationships.
- The gender identities of the participants were substantially constructed in terms of their success in sexual relationships, and pursuits of gaining and keeping boy- and girlfriends were overwhelming preoccupations for these young people.
- Neither teachers nor parents made any effort to promote safe dating or to interfere in the violent activities. Sexual relationships between girls and male teachers were commonly reported, and often involved coercion and even violence on the part of the teachers.

o A research report amongst male municipal workers in Cape Town aimed at establishing the prevalence of abuse as reported by men, as well as risk factors associated with woman abuse. Some of the findings were the following:-

- 44% of men reported having physically or sexually abused a partner within the last 10 years – 8% reported physically abusing a partner in the last year.
- One third of the 44% said they had raped (more often) or attempted to rape their partner.
- Men who reported physical and sexual abuse was five times more likely to use psychological abuse, four times more likely to use verbal abuse and twice as likely to use economic abuse.
- 75% of the abusers said it was "OK" to hit a woman, and another 25% of those who didn't report abuse also agreed. The circumstances given by the men when it is "OK" to hit a woman were "when she neglects her responsibilities", "when there are no clean clothes", "when she come home late", "when she don't listen" and "when she is cheeky".
- The sample consisted of 64,7% Coloured men, 25.2% African, 8,6% white and 1,5% Asian men. From this sample, abusers were more likely to be young and Coloured men, likely to have been in jail, to have been arrested, to have belonged to a gang; non-abusers were likely to have had education beyond standard 8 and likely to be active in religion.
- Abusers acknowledged that their use of alcohol and marijuana was a problem.

- Witnessing abuse of their mothers by their fathers as a child was associated with being an abuser. 34,2% of men who reported abuse reported witnessing their mothers' abuse by their father or a boyfriend, while only 15,9% of men who did not report abuse witnessed such behaviour. 38,5% of men who reported abuse also reported witnessing their sisters' abuse by her husband or a boyfriend, while 21,2% of men who did not report abuse witnessed such behaviour. An average of 86,1% of the entire sample reported receiving physical punishment as a child – men related stories of severe discipline and bizarre punishment in which their fathers had a central role.

- The report mentions that, during their interviews, many of the men became emotional when talking about their childhood and the abuse of their mothers, and many said they had never had the opportunity to talk about it before.

- It is apparent from the study that men's attitudes towards women and their perceived roles influenced the reasons for conflict with partners in abusive relationships. In relationships where there was less expectation that a woman should obey her partner, less of belief in male sexual entitlement, less fear of infidelity, much less conflict was experienced. Men reported "she sits on his head" or "she answered him back" or "talking to other men" as reasons for conflict.

- Many men reported being frustrated at work where they have to "accept the shit of the bosses". One explained his frustration of not being able to provide adequately for his family as "it is one of the things to be a man".

    - Most of the men did not think shouting and swearing at or humiliating a woman was a form of violence.

- The Centre for Rural Legal Studies furnished the Committee with a research report on the plight of women farm workers in the Western Cape. The report recounts attitudes of violence and abuse among male farmworkers, reinforced by extreme financial dependence of women:

    - 67% of all employers stated that domestic violence occurs on their farms.

    - 50,9% of employers agreed that they tacitly include a male worker's female partner in his employment agreement, while

60% of employers insist that a male worker's partner must be available to work on the farm.

- 52,4% of women report that the house is linked to their male partner's contract. 48,6% of employers stated that, should a male worker leave or die, his female partner would have to leave the farm.

- Only 21,1% of women stated that they had access to legal aid, and more than half of women said it was extremely difficult to access these services during working hours.

- The 1998 South Africa Demographic and Health Survey[97] reported statistics on violence against women that were significantly lower than those reported by other studies:-

  - 13% of women reported having been beaten by a partners, of which half reported abuse in the last year.

  - 43% of those who reported abuse in the last year reported needing medical attention as a result of such beatings.

  - Only 4% of women who had ever been pregnant reported physical abuse during pregnancy.

  - Only 4% of all women reported ever having been raped.

- The Survey mentions that the under-reporting of gender violence is well-recognised and should be taken into account in interpreting its results, especially in view of other research by the MRC:

  "*The usual explanations for under-reporting are concern about recrimination, fear of identifying oneself as an abused woman due to a socialisation that encourages women to accept chastisement as a male prerogative, feelings of shame about the assault and having provoked it, perceptions that it is a private matter and loyalty to the abuser.*"

- The Survey also records that one in five currently married women reported economic maltreatment, indicated by the regular non-provision of money for food, rent or bills whilst having money for other things.

▪ PUBLIC AWARENESS AND EDUCATION

[97] Compiled by, *inter alia* ,the Medical Research Council and the Department of Health

- It emerged strongly from the hearings that rape, sexual assault and domestic violence are more prevalent in South African society than ever recognised[98], and that fear and expectation of violence is a way of life for many South African women.

> *"It's always present. You never know when it is coming. There are times when you do and you have to just wait until he gets home and just does it. Then it is over and you are relieved. The waiting is the worst part."*[99]

> *"We know the cycle well. No one has to explain it to us. You see his mood rising ... he is anxious or angry or drunk or just showing his manliness to his friends ...it can be anything. You are never prepared for it and you are always prepared for it. You never believe it when it happens even if it happens everyday. He says he is sorry and will not do it again and you feel relief, but you know the calm before another storm."*[100]

- The hearings also shattered the common myth that the rapist is a stranger who lurks in dark alleys. Research reports presented to the committee clearly showed that most violence against women is perpetrated by a person with whom the victim or survivor is acquainted in some or other way. Especially younger victims are much more likely to know their attackers, with 57,4% of offenders known to victims between ages 1 to 12, and 53,8% if victims between ages 13 to 19.[101]

- Submissions repeatedly mentioned our history of oppression and disregard for human rights as the context in which violence against women flourished, and emphasised the importance of addressing violence against women by placing it both within a historical and political perspective and to recognise the influence of apartheid in

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[98] The MRC's CERSA found in research conducted amongst women in the Eastern-Cape, Mpumalanga and the Northern Cape that between 19% and 28% of women had experienced abuse by a current or ex-partner.

[99] "Access to Justice for Rural Women" - Research Report by the Gender, Law and Development Project, Institute of Criminology, University of Cape Town, page 22.

[100] "Access to Justice for Rural Women" - Research Report by the Gender, Law and Development Project, Institute of Criminology, University of Cape Town, page 22.

[101] Finding of a research report conducted by the University of South Africa's Institute for Social and Health Sciences on rape surveillance at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics. This report also found that, in cases of multiple attackers, the attack was more likely to be perpetrated by strangers to the victim, and in open spaces; single perpetrators were more likely to attack victims they knew and 48,2% of such attacks occurred in homes. These findings are echoed in the research findings among rural women in the Southern Cape by UCT's Institute of Criminology's Gender, Law and Development Project, which records that, in 55% of the rapes reported in their study, victims knew the offender by name or by sight.

the present mindset of individuals, communities and society as a whole. There is a need to acknowledge the pain of the past and the influence this has on the entire nation. The fragmentation existing within communities is indicative of the fragmentation of identity of individuals; violence against women is just one of the effects of such fragmentation.

> "*We believe that one of the reasons why we are not seeing a change in attitude of the judiciary or why rape and domestic violence is almost condoned at community level, is because we have not created adequate space in the transformation process for the acknowledgment of our past traumas and a lack of adequate and appropriate mechanisms for healing the pain which every single citizen in this country has been subjected to.*"[102]

It was also argued that the division of the people of this country according to race contributed to the prevalence of violence against women: notions of racial superiority and separation led to forced removals, states of emergency and the artificial creation of "homelands", thereby breaking up traditional family structures.[103]

- In her submission[104] to the Committee, Lisa Vetten explored the following factors contributing to violence against women in South Africa:-

  - <u>Imbedded patriarchy</u>:

    - Vetten describes this ideology of granting men power and privilege over women as the one factor unifying South Africa's various cultural and ethnic groups. Culturally imbedded patriarchal gender identities of women as receptive, caring, emotional, passive and submissive and men as self-assertive, competitive, rational and aggressive have resulted in the treatment of women of all colours as second class citizens, and women's confinement to the private sphere of the home while men are engaged in the public sphere of work, community affairs and politics.

    - These patriarchally determined gender identities manifests itself in contemporary understandings of lobola. Since cash payments can now be made to the

[102] Submission by the Masimanyane Women's Support Centre
[103] Lisa Vetten in submission 1G, page 7
[104] Submission 1G

family, some men regard marriage as a financial transaction of "buying" a wife.

- Patriarchy has severe economic consequences for women, who are much more likely to be unemployed and without access to any income of their own, while men control the allocation of household finances and even hamper women's efforts to obtain and keep employment, leaving women totally financially dependent. Women's financial dependence on men was repeatedly cited in submissions as the main reason for women's inability to remove herself and her children from a violent domestic situation.

- Submissions also mentioned deepening levels of poverty and inequality in post-apartheid South Africa, which most closely affects women as the major component of the unemployed in South Africa. Masimanyane said in their submission to the Committee that economic deprivation and other political factors have destroyed people's identities and eroded their self-esteem and self-worth.[105] Poverty also directly affects women's access to health care, the police and the criminal justice system.

- CERSA also reported deep-rooted patriarchy and a concomitant lack of respect for women, who are often seen as the property of their husbands or fathers or communities, as a factor in the scourge of violence against women. Authors have also argued that violent practices are deployed by men against women in attempts to maintain particular self-images and social evaluation in the face of real or imagined threats, i.e. to prove that they are "real men" and their women are under their control. In particular situations, the use of certain forms of violence by men to control and punish women is perceived as socially acceptable to both men and women of all ages.[106]

- Gendered constructions of male and female sexuality have created the idea that men should be sexually active and women passive and without sexual desire, which cultural prohibition implies to some men that women need to be forced to have sex in a context

[105] Submission Z
[106] This submission is contained, inter alia, in the introduction to CERSA's submission O.

where it is not acceptable for women to indicate her consent. It is this cultural belief, which leads to the dangerous practice of dry sex, where women go to great lengths to avoid the natural vaginal lubrication of sexual arousal (believed to be a sign of promiscuity), a practice that pose serious risks for women's health by increasing her susceptibility to STD's and HIV/AIDS.

- Research has shown a vast discrepancy in attitudes to the fidelity required from men and women: where it is acceptable for a man to have many sexual partners, a woman is required to be faithful to one partner. This practice obviously as dire consequences for women's health.

- <u>The intersection of race and gender oppression</u>:

  - Examples of the double burden of oppression borne by black women are slavery and indentured servitude. Women slaves and their bodies were considered the property of their owners, and in 180 years of slavery in the Cape not one man was convicted of raping a woman slave.

  - The discriminatory construction of sexuality for men and women has been compounded on a racial level in South Africa, where black women's bodies have been violated throughout its history. Where perpetrator of violence against a black woman was a white man, his acts were often ignored, while black men who assaulted or raped white women were often given the death penalty.[107]

- <u>Militarisation</u>:

  - The apartheid era militarisation of South Africa and the use of violent repression together with anti-apartheid movement decisions about education and armed reaction have resulted in entire generations of "lost" and violent young men and a general culture of violence – where violence is seen as a legitimate means of conflict resolution.

  - In addition, a culture was cultivated in which qualities regarded as "feminine" is treated with contempt as "weakness" and a tough, aggressive, brutal and competitive masculinity is promoted. This culture, combined with the general psychological consequences of violence and war, has had a destructive effect on the lives of many South African men.

  - Professor Jacklyn Cock[108] similarly blamed the legacy of militarisation, which involves "a proliferation of weaponry and ideas which link violence to masculinity. This militarised masculinity puts women and children at risk. This risk is amplified in situations of poverty, unemployment and inequality were the

[107] Rob Turrell, in submission V, gave the Committee an historical overview of the circumstances in which the death penalty was handed down for rape in South Africa.
[108] Submission 11

human needs for identity and security are not met. These two factors combine to make women and children the shock absorbers of violence and frustration."[109]

- Changes in the social order

  - Research has shown that an increase in violence against women, and especially sexual violence, often occurs in response to changes in the social order. Very obvious examples hereof can be found in the Ma Rashea gans formed by Basotho men after the Second World War to "control" and punish women who were becoming increasingly independent, as a result of, inter alia, migration by men to South Africa in search of work, and in "jackrolling", a practice prevalent in the late 1980s whereby young men too old to return to school and unable to find jobs abducted and raped schoolgirls in the hope of impregnating them and ending their education.

  - Violence against women is often also intended to communicate messages of victory over other men, which manifests itself in the phenomenon of raping women in the presence of men perceived to be the rapists' enemies.

  - Rape is also used as a means of punishing sexually active women, and girls suspected of or known to have other partners are sometimes gang-raped by their male partner's acquaintances as a form of punishment.[110]

- Legitimising violence against women: Vetten points out the difficulties created by African traditional and customary law, and mentions, by way of example, the following customs oppressive to women:

  - the levirate: the continuation of the deceased husband's marriage through a brother or other male relative;

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[109] Submission by Professor Jacklyn Cock, Department of Sociology, University of the Witwatersrand, page 1.
[110] This phenomenon was raised at the hearings in various submissions.

- the sororate: requiring the younger sister of an apparently barren wife to take her place and produce children on her behalf;
- polygamy: taking more than one wife;
- child betrothal and forced marriages;
- inheritance laws, by which the family's property and wealth is passed down from father to son, which may leave women destitute on the death of their husbands;
- women's minor status;
- lobola (or bohali or bogadi): the practice of consolidating marriage through the exchange of women and cattle (or cash) by the father of the bride and the prospective husband.

- Nisaa made the submission that government inaction is a factor, which contributes to the high level of gender violence in societies. Despite the legal system's role as an institution for censure of socially unacceptable acts, it often appears to tolerate acts of violence against women, particularly so when the violence occurs in the home. The failure of the legal system to prosecute alleged rapists and batterers and to secure convictions with hefty sentences sends a powerful message to men that their violence is acceptable, and women internalise the message that their lives and safety are not worthy of protection. The law also does not name violence against women, and it has been left to the women's movement to coin terms such as "domestic violence", "sexual harassment", "date rape", "femicide", "forced prostitution", "sex-selective abortions" and "genital mutilation". Many abuses women suffer have remained invisible in mainstream legal culture.

- Submissions also complained that, despite its wide-ranging powers to educate the public, the media was irresponsible in its reporting of violence against women, perpetuating stereotypes and relying on sensationalism. The Commission on Gender Equality (CGE) made the following submissions in this regard to the Committee:

  - Reporting on rape is characterised by sensationalism in reporting on extreme and sadistic violence; stereotypes about the myth of rape by a deranged stranger (while in reality the rapist is much more likely to be the man next

door)[111], and the "blameworthiness" of sexually experienced victims; media reports differ substantially when the accused exhibits other criminal behaviour (like being a gang member) than when the accused is businessman or a sport celebrity (such as in the case of Makhaya Ntini); CGE is concerned that the recent voluntary disclosure of the identities of rape victims may lead to the violation of the survivor's right to privacy where she does not choose to do so.

- The reporting of femicide is often done in a manner, which obscures the nature of the crime, such as "Woman dies after row" or "Policeman among 3 killed as lovers' tiff ends in tragedy."

- Domestic violence has received very little attention from the media, and tends only to do so in the cases of celebrities. The nuclear family is often depicted as the norm in South Africa's media, despite the reality that more South Africans belong to extended family units, blended households or female-only households.

- The attitudes of radio presenters can serve to reinforce prejudices, especially in a country where illiteracy levels are so high and more people have access to radio than to television.

- The importance of regulatory bodies such as the IBA, ASA and Press Ombudsman was emphasised, as well as the need for clear guidelines and disciplinary procedures.

  - The destructive potential of inaccurate media reporting was illustrated in the reporting of the Committee's attempts to engage members of the judiciary in constructive discussions about issues relating to violence against women. Such attempts were irresponsibly and inaccurately portrayed as a "summons" by the Committee to Judge John Foxcroft, thereby creating imaginary conflict between the Committee and the judiciary.[112]

  - The Commission for Gender Equality also mentioned that the media has played an important role in putting issues such as rape on the national agenda.

  - Both government submissions and those of NGO's reported an enormous lack of understanding of violence against women by the

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[111] Also reported by Nisaa

[112] This statement was supported in a submission by Judith Smith of Women's Media Watch (B), Beauty Ntuli, WACA Advice Centre (D)

public. Both men and women are ignorant of women's rights to be free of violence, especially domestic violence. For example, many men and women still do not recognise marital rape as a crime.

- It was also apparent from the submissions that both men and women are uninformed about sex and sexual health, and women are therefore unable to act to protect themselves, and to provide information and support to other young women.[113]

- Various submissions stressed the importance of involving men in programmes on eradicating violence against women. It was suggested that all people involved in men's programmes should attend a national forum to discuss violence against women. Men must develop a partnership with women's groups in addressing the problems which men and women face; it is necessary to acknowledge that men too suffer from the traumas of the past.[114]

- Although they did not participate in the hearings, the Committee Chair has addressed shopstewards in the COSATU campaign against violence against women in conjunction with their campaign against HIV/AIDS. COSATU has produced a guide for shopstewards on these issues, and is also in the process of holding training workshops for its shop stewards. The campaign encourages the shopstewards to do the following:

  - Educate their members about violence against women;

  - Take up sexual harassment cases on behalf of their members;

  - Ensure that there are sexual harassment grievance procedures in the terms and conditions of employment at their workplace;

  - Develop a code of conduct on sexual harassment together with the employer;

  - Talk to known abusers among their members about their abuse;

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[113] In its submission, UCT's Institute of Criminology's Gender Law and Development Project reported that women who were victims of violence received little or no support from family or the community; women were often too scared of retaliation to help other women, and the survivor feared public humiliation and ostracism by family and friends should she speak out.
[114] Submission by the Masimanyane Women's Support Centre

- Assist any woman member who is being abused and ensure that she is given time off to go to court or to move her children and belongings to a safe place;
- Help abused women to negotiate a transfer to a different town to escape the violence;
- Ensure that women are able to reach their transport safely after work;
- Invite women leaders to speak at the workplace so that workers will understand and stop violence against women;
- Ensure that the Employment Equity Act is implemented;
- Negotiate with their employer to provide childcare.

- The South African education system, which ought to be the main channel of promoting awareness of gendered violence among the youth, has been and remains in a state of transition. Not only is the Department of Education burdened with the task of reconstructing an education system ravaged by apartheid, but also our schools are staffed by teachers who are products of an apartheid education system themselves.

- CEDAW requires government to "adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women."[115]

- In its Gender Equity Task Team report (the GETT report), the Department of Education identified the following issues to be considered and addressed relating to gender-sensitive education and violence against women:-

  - identifying means of correcting gender imbalances in enrolment, dropout rates, subject choice, career paths and performance;
  - the advantages and disadvantages single sex schools;
  - sexism in curricula, textbooks, teaching and guidance;

[115] Article 4(j) of Annex F to CEDAW

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- the poor representation of women in management positions; and
- sexism, sexual harassment and violence throughout the education system.

- The GETT report also lists the following recommendations[116]:-
  - That new legislation should be developed to make explicit the legal responsibilities of education authorities to uphold the rights of students to be free from discrimination and harassment. Such legislation should also define gendered and sex based harassment and should be made unlawful in all contexts in educational settings.
  - That the National Department of Education should develop an interim policy on sex and gender based harassment and violence.
  - That the National Department of Education should develop a training package for educational managers on their responsibility to prevent discrimination, violence and harassment, as well as curriculum packages which incorporate learning about gender and violence at all levels of education.
- The Department of Education participated in the hearings and the Minister of Education delivered an oral submission to the Committee regarding the Minister and the Department's efforts to address violence against women.
- The Department of Education's 1997 report on Gender Equity in Education dealt with sex based violence in schools, and states *inter alia* that "the sheer dimension of sex or gender based violence and harassment in education in SA subverts the right of women and girls, and many boys, to participate in education on the same basis as most men and boys."
- The Director-General of Education reported to the Committee that, in their attempts to include sex and gender education in the curriculum, they had initially experienced some resistance from sections of the communities who did not want to expose small children to issues of sexuality. This problem had abated somewhat, and it was hoped that the issue could be more appropriately addressed under the auspices of Curriculum 2005.

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[116] As reported in the Committee's November 1998 report on Government's implementation of CEDAW and the BPA.

- The Minister of Education reported to the Committee that a Gender Equity Directorate had been established in April 1999, which liases with Gender Focal Persons in Provincial Departments through the National Gender Coordination Committee. An Interim Gender Coordinating Committee from the four branches of the Department had also been established.

- The Department of Education was also preparing gender-training programmes for all officials, both national and provincial, as well as a Mainstreaming Handbook for use by gender officers.

- A school-based project on sex-based & gender-based violence & harassment (McGill University in Canada) was being developed, and a successful and well-attended seminar on sexual harassment in schools was held in May 1999.

- The Committee would like to receive a formal response from the Department of Education on the following issues[117]:-

  - the Department's efforts to ensure that gender issues are not isolated to the Gender Equity Unit;

  - what programmes the Department is planning to raise awareness in both educational institutions and the general public to raise awareness of sexism and violence against women, and in particular the pre-service and in-service training of teachers regarding these issues;

  - the provision of extended day care facilities for younger children and the infants born to school girls;

  - the Department's investigation into the desirability of single sex government schools and the possibility of teaching certain subjects separately to boys and girls;

  - the development of gender sensitive textbooks and curricula,[118] as well as the development of comprehensive age-sensitive sex and sexual health education;

  - the Department's efforts to improve the education and Matric pass rates and to decrease the dropout rate of girls, especially rural African and coloured girls.

THE BUDGET AND ALLOCATION OF RESOURCES

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[117] These issues were raised by the Committee with the Parliamentary Education Committee during August 1997

[118] In accordance with government's obligations in terms of Article 10(c) of CEDAW

- CEDAW stipulates that government should include in its budgets adequate resources for its activities relating to the elimination of violence against women.[119]

- At a cabinet meeting in 1996, the Department of Finance committed itself to considering the reallocation of military expenditure to support women's economic advancement. In 1992/1993, the Department reduced expenditure on Defence from 9,1 % of total government spending to 5,7% in 1997/1998. Spending on social services increased from 43,8% in 1992/1993 to 46,9% in 1997/1998.[120]

- In its Second Annual Report (January 1998 - March 1999), the Committee recorded its formal questions to the Minister of Finance on, *inter alia*, progress on the Ministry's 1996 Cabinet commitment to reduce military expenditure and to utilise the savings towards women's empowerment. The report further records that, in a briefing on 16 March 1998, the Minister indicated that military spending had decreased from 4,5% of GDP in 1993-1994 to 1,5% in 1999-2000, and that the main beneficiaries of this decrease had been the Departments of Health, Education and Welfare.[121]

- Yet in the 1999 Medium Term Budget Policy Statement, the average annual growth in present and projected proportional expenditure for Defence and Intelligence was 14,9%, more than double the figure for any of the other services, including Education, Health and Welfare. "Strong growth in protection services over the medium term largely reflects additional defence spending of R2,8 billion in 2000/01 and R3,8 billion in 2001/02 on the strategic procurement package."

- The Department of Finance was invited by the Committee to present a submission at the hearings. Although Deputy Minister attended the hearings, he advised the Committee that the Department had not been able to prepare a submission to the Committee. To date, the Committee also has not received a response to questions posed to Deputy Minister at the hearings.

- The Committee requires an urgent response from the Department of Finance on, amongst others:-

    - the Department's efforts to redress the unemployment of women formerly employed in the clothing and textile

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[119] Article 4(h) of Annex F to CEDAW
[120] The Committee's November 1998 report on Government's Implementation of CEDAW and the Beijing Platform for Action, page 13
[121] At pages 44 and 45.

industries caused by the liberalisation of trade policy as a means of increasing international competitiveness in the manufacturing sector

- Various projects in the NCPS Victim Empowerment Programme (VEP) were intended to focus on issues relating to violence against women and children. As will appear below, very few of these projects have sustainable funding, and many of the projects were only intended to operate for one year:-

  - "Multi-disciplinary Management of Child Abuse and Neglect": Donor funding of R2 million paid for the 1998/1999 year of operation; for the 1999-2001 years, "alternate sources of funding" would be sought during 1998.[122]

  - "Primary Health Care Model to Reduce the Risk of Inter-personal Violence": This was only intended to be a one-year project, to be implemented during 1998/1999, with funding of R400 000 sourced from the VEP.[123]

  - "Violence Referral Centres" - a pilot programme to establish "Violence Referral Management centres in four provinces, receiving referrals from frontline staff": This project was similarly only intended to be a one-year project, to be implemented during 1998/1999 at a cost of R510 000, funded by the VEP.[124]

  - "Outreach Centres to Counter-act Domestic Violence" - a programme designed to give support for the establishment of outreach centres in provinces to expand services to victims of domestic violence: Donor funding of R1,2 million paid for the implementation of this project in Mpumalanga and the Eastern Cape, whilst the VEP paid R1,2 million for its implementation in North-West Province and the Free State. The VEP would pay R3 million for its implementation in the remaining five provinces in 2000/2001. "Alternate funding" would be sought during 1998 for the continued operation of these programmes.[125]

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[122] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.1, page 16.
[123] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.2, page 17.
[124] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.3, page 17.
[125] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.4, page 18

- R65 000 was budgeted from the VEP for "Access to Legal Provisions to Counter-act Domestic Violence in Rural Communities", a project only intended to be operational during 1998/1999.[126]

- "Violence Prevention in Schools", a project implemented by the Department of Health (in conjunction with the US Centre for Disease Control) for the 1998/1999 year at a cost of R65 000, funded by the VEP.[127]

- "National Policy Guidelines on Victims of Sexual Offences" - a project encompassing nine provincial workshops to train service providers on the basis of the national policy guidelines on sexual offences: this project was funded by the VEP at a cost of R150 000 during 1998/1999.[128]

- "Victim Empowerment in Schools - Life Skills Curriculum": this project was funded by the VEP at a cost of R150 000, and intended to be a one-year project during 1998/1999.[129]

- The VEP paid for a training course for the SAPS entitled "Victims of Violence: Domestic Violence and Sexual Offences Case Handling Training" at a cost of R100 000 for 1998/1999; funding for 1999/2000 and 2000/2001 "to be secured in order to extend to these two years".[130]

- An information and public awareness project hosted by the Department of Welfare, funded until 2001 by the VEP.[131]

  - In its Second Annual Report (January 1998 - March 1999), the Committee reported that no specific budgetary allocations had been made for violence against women, unlike other crimes declared priority crimes in terms of the NCPS, such as hijacking. Similarly, departments such as Safety and Security did not have specific, separate budgetary allocations for violence against women.

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[126] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.5, page 18
[127] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.6, page 19
[128] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 4.1, page 22
[129] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 4.9, page 26
[130] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 4.12, page 27
[131] Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 5.2, page 29

- The exclusion of victims of domestic violence from the Fund for Victims of Violent Crime Bill[132].

- The Commission for Gender Equality also raised the issue of involving the private sector in programmes addressing violence against women. An example of such involvement, which is accessible and effective, the private sector could assist in establishing shelters and safe houses for victims of violence.

- Various submissions[133] to the Committee mentioned that the cost of violence against women in South Africa, and especially domestic violence, has never been calculated due to ineffective documentation of these incidents by the health and criminal justice sectors. Yet even with loose indicators of the frequency and extent of violence against women, it is apparent that it has a staggering economic impact on our health, welfare, policing and justice resources. A 1994 study undertaken by the Health Maintenance Organisation found that women who have been raped or beaten had medical costs two and a half times higher than those who were not victimised.

- By way of example, CERSA reported that the number of treatment episodes in one year as a result of abuse by partner or ex-partner was 121 000 in the Eastern Cape, 74 294 in Mpumalanga and 93 868 in the Northern Province.[134]

- These costs are both public and private, paid for by women and their families (medical care, accommodation, travel, direct income, child care, serious injury, loss of property and non-monetary costs). Health costs carried by the state include doctors, nurses, emergency wards, clinics, mental health services, justice costs include police, courts and correctional services; in the social services sector, welfare, housing and child care. Employers also pay for violence against women in the form of high absenteeism and lower productivity.

- Calculating the real economic costs may be hampered by the fact that violence against women is under-reported, prenatal damage caused by the abuse of pregnant women if difficult to quantify, long-term consequences such as intergenerational transfers of violence

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[132] This issue was raised by the Committee at the Justice Committee Hearings
[133] Including Nisaa and ADAPT
[134] Submission O

behaviour cannot be accurately estimated and private costs to women cannot be captured.[135]

▪ INTER-MINISTERIAL CO-OPERATION AND CO-OPERATIVE GOVERNANCE

- The National Crime Prevention Strategy (NCPS), adopted by the Cabinet in May 1996, is the government's flagship inter-departmental programme in its efforts to combat crime. One of the NCPS programme which affects issues of violence against women is the Victim Empowerment Programme, hosted by the core NCPS departments, namely Justice, Welfare, the SAPS, Safety & Security and Correctional Services, but also involves the departments of Health and Education, and provincial departments.[136]

- R1,5 million of the OSW's funding of R2,5 million for 1998/1999 was donor funding, which terminated in August 1999. The budget for 1999/2000 only covers salaries and administration.[137]

- During 1999, the OSW advised the Committee that it was developing a green paper on a national gender policy to be passed by Cabinet in 1998. This policy document was not finalised by the OSW during 1998. On 15 March 1999, Deputy Minister Essop Pahad and the director of the OSW, Dr Ellen Kornegay, advised the Committee that a draft national gender document had been completed and was undergoing internal review, to be realised as a green paper.

- On 15 March 1999, the OSW also advised the Committee that it was conducting a gender audit on internal transformation and external service delivery of all government departments and all the provinces, with a view to developing a national action plan.

- The Committee requires a response from the Department of Health regarding the procedures in place to ensure that under-resourced provinces and local governments receive more money for the implementation of both primary health care, as well as free health

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[135] Statements from a 1999 research report by UCT's Institute for Criminology's Gender, Law & Development Project, "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"
[136] Statements from the Department of Welfare's NCPS Victim Empowerment Programme paper dated May 1998
[137] Reported in the Committee's Second Annual Report (January 1998 - March 1999), page 53.

care for pregnant women and children under the age of six, than stronger resourced provinces and local governments.[138]

- Although the Department of Foreign Affairs were not requested by the Committee to participate in the November 1999 hearings, the Committee would like to know whether and when a gender desk will be established in the Department. The Committee also requires information regarding the Department's efforts to set up international links relating to international trafficking in women and prostitution.

- In view of various submissions relating to women's difficulties in escaping situations of especially domestic violence due to no access to alternative housing, the Committee also requires a response from the Departments of Housing and Agriculture and Land Affairs (both of whom were also not requested to participate in the hearings) on their efforts to ensure that women are not discriminated against in the granting of housing subsidies, access to rural housing and rural land allocation. The Committee is particularly interested in the progress and achievements of the Women for Housing Group in the Department of Housing with reference to their April 1998 draft document entitled "Guiding Principles and Practices Relating to Women's Housing Issues".[139]

▪ CO-OPERATION BETWEEN GOVERNMENT AND CIVIL SOCIETY

- CEDAW requires government to recognise the importance of NGO's, to facilitate and enhance their work and to co-operate with them on all levels.[140]

- Numerous submissions mentioned the importance of an inter-sectoral approach, involving both government and civil society, in addressing violence against women.

- It appears that the National Network on Violence Against Women has been most successful in bringing together government and civil society on issues relating to violence against women. The Department of Welfare has formed a partnership with the National Network on Violence Against Women since inception of the Network, and the Network has received financial and administrative

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[138] This issue was raised by the Committee with the Parliamentary Health Committee in August 1997.
[139] As reported in the Committee's November 1998 report on Government's implementation of CEDAW and the BPA, page 44
[140] Articles 4(e), 4(o) and 4(p) of Annex F to CEDAW

support from the Department.[141] The Department of Health also participates in the National Network on Violence Against Women.[142]

- The Committee was also told of the involvement of organisations like People Opposed to Women Abuse in programmes of the Department of Correctional Services.

- At the same time, many of the NGO's mentioned their prime difficulty of lack of funding, and that most of their time was spent on fund-raising instead of addressing their substantive goals.

▪ THE NEED FOR A STATISTICAL DATABASE

- CEDAW stipulates that the state should "*promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public*"[143]

- In South Africa, there has been a notable lack of community-based data and reliable statistics on violence against women and children, its prevalence and epidemiological studies of risk factors. Most of the research undertaken on violence against women in South Africa has been relatively small scale, localised or has focused on particular sub-groups, e.g. health service users.[144]

- By way of example, Masimanyane reported that their research on the prosecution of sexual offences cases were made extremely difficult through the absence of any recordal system whatsoever by court officials, and police dockets and court files which were incomplete. Nisaa also reported that there is no official methodology which records how many women phone police stations when they are in a crisis or when their lives are endangered. When women report abuse, domestic violence is recorded as common assault or assault with the intent to do grievous bodily harm. This difficulty creates a further obstacle in cases of femicide, where a long history of abuse is commonly found.

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[141] Statement from a letter addressed to the Committee chairperson by the Minister for Welfare and Population Development in June 1998.
[142] Statement in the Department of Health's 1998 progress report to the Committee
[143] Article 4(k) of Annex F to CEDAW
[144] Submission by the MRC's CERSA in its report on research on violence against women in three South African provinces

- Nisaa further reported that the disaggregation of data and the devising of protocols around domestic violence may yield better data collection, and that the Department of Safety and Security is best positioned to do this.

- In its 1998 White Paper, the Department of Safety and Security stated that it aims to improve the reliability of crime statistics in general[145]. The Committee will request the Department to furnish it with a progress report in this regard.

▪ RECOMMENDATIONS AND QUERIES TO GOVERNMENT DEPARTMENTS

o Criminal justice

The Committee recommends:

- that the availability of and access to legal aid to women who are victims of violence be given urgent consideration by the Legal Aid Board and the Department of Justice;[146]

- that urgent attention be given to the appointment of more prosecutors, intermediaries, interpreters and magistrates[147], and that the Department of Justice allocate resources for this purpose;

- that the training of magistrates and prosecutors in gender-sensitivity, issues relating to gender violence and dealing with traumatised witnesses, especially children, be given priority;[148]

- that clerks of the court, who will be the point of entry for complainants in terms of the new Domestic Violence Act, be given mandatory training in gender sensitivity and the effects and nature of domestic violence;[149]

- that consideration be given to a more accessible court system for women in rural areas;[150]

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[145] White Paper on Safety and Security of 1998
[146] Recommendations of the Commission on Gender Equality and the Centre for Rural Legal Studies
[147] Recommendation by the President of the Regional Court for the Western Cape
[148] GAP also recommended that Magistrates be provided with clear guidelines on what constitutes "undue harm" for the purpose of the Domestic Violence Act.
[149] Recommendation by GAP
[150] Recommendation by GAP

- that the establishment of more Sexual Offence and Family Courts receive priority;

- that rape and sexual offence cases and cases of crimes against children be dealt with on a separate and continuous roll by both the High Court and Magistrate's Courts;[151]

- that attention be given by the Judicial Service Commission to sensitivity to gender issues in the appointment of High Court judges[152], and that judges receive training in the international law requirements of CEDAW and other international human rights instruments[153], the nature and effect of violence against women, dealing with traumatised victims and gender sensitivity in general[154]; and

- that gun control laws be enforced more strictly.[155]

o Law enforcement

The Committee recommends:

- that the Department of Safety and Security allocate resources to engage the services of experienced trainers from reputable NGO's to train members of the police in:

  - the devastating effect of violence against women, including domestic violence, which is often treated by police officers as "unimportant";

  - sensitive treatment of traumatised survivors of rape, sexual assault and violence against women in general;[156]

  - the various legal remedies available to survivors of violence. It appeared from various submissions that

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[151] Recommendation by the President of the Regional Court for the Western Cape

[152] The Commission on Gender Equality reported to the Committee that it was investigating the possibility of incorporating the CGE into the JSC to ensure the appointment of a more gender-sensitive judiciary.

[153] The Committee was addressed in this regard by Constitutional Court Judge Kate O'Regan, who had attended a judicial colloquium on the application of international human rights law at the domestic level.

[154] Recommendations by the Commission on Gender Equality, ADAPT, the Minister of Justice and the Chair of the Parliamentary Justice Committee

[155] UNISA's Institute for Social and Health Sciences reported that, in their research conducted on rape surveillance at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics from 1996 to 1998. Weapons were used in 54,9% of attacks. In 35,3% of cases, such weapons were firearms.

[156] Recommendation by the MRC's CERSA