

- (i) Government Notice No R.921 published in the Government Gazette No 21552 dated 15 September 2000, Regulations regarding fees to be paid to the South African Nursing Council made in terms of the Nursing Act, 1978.
- (j) Government Notice No R.925 published in the Government Gazette No 21552 dated 15 September 2000, Regulations defining scope of profession of emergency care made in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974.
- (k) Government Notice No R.943 published in the Government Gazette No 21569 dated 22 September 2000, Regulations made in terms of the Medical Schemes Act, 1998.
- (l) Government Notice No 942 published in the Government Gazette No 21569 dated 22 September 2000, Explanatory summary of the Mental Health Care Bill, 2001 published for comment.
- (m) Government Notice No 876 published in the Government Gazette No 21535 dated 4 September 2000, Publication of the Chiropractors, Homeopaths and Allied Health Service Professions Amendment Act, 2000 (Act No 6 of 2000).

(7) **The following paper is referred to the Portfolio Committee on Trade and Industry and to the Select Committee on Economic Affairs:**

Report and Financial Statements of the Support Programme for Industrial Innovation for 1999-2000.

ANNOUNCEMENTS:

National Council of Provinces:

The Chairperson:

1. The following members have been appointed to serve on the Committee mentioned, viz:

Ad hoc Committee on General Intelligence Law Amendment Bill:

Bhengu, M J	IFP	KwaZulu-Natal
Dlulane, B N	ANC	Eastern Cape
Kolweni, Z S	ANC	North West
Lubidla, E N	ANC	Northern Cape
Mahlangu, J L	ANC	Mpumalanga
Matthee, P A	New NP	KwaZulu-Natal
Nkuna, C	ANC	Northern Province
Setona, T	ANC	Free State
Theron, J L	DP	Gauteng

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Education:
 - (1) Government Notice No 777 published in the Government Gazette No 21444 dated 11 August 2000, The date on which TEFSA ceases its functions made in terms of the National Student Financial Aid Scheme Act, 1999 (Act No 56 of 1999).

- (2) Government Notice No 789 published in the Government Gazette No 21438 dated 11 August 2000, Approval that the pilot project Travel and Tourism Standard Grade, Grade 10-12 becomes a fully fledged instructional offering, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).
- (3) Government Notice No R.848 published in the Government Gazette No 21501 dated 1 September 2000, Correction notice to Government Gazette No 21192 dated 18 May 2000, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).
- (4) Government Notice No 3102 published in the Government Gazette No 21539 dated 6 September 2000, Call for public comment on draft document—The National Policy Framework on Whole-school Evaluation, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).

National Assembly:

Bills:

1. The Minister for Provincial and Local Government:

- (1) *Wetsonwerp op Plaaslike Regering: Munisipale Stelsels* [W 27—2000].

The *Local Government: Municipal Systems Bill* [B 27—2000] (National Assembly—sec 75) was introduced by the Minister for Provincial and Local Government on 4 May 2000 and referred to the Portfolio Committee on Provincial and Local Government.

COMMITTEE REPORTS:

National Assembly:

1. Eleventh Report of the Standing Committee on Public Accounts, dated 6 September 2000:

The Standing Committee on Public Accounts, having considered and examined the Report of the Auditor-General on the Financial Statements of Vote 4: Agriculture for the year ended 31 March 1999 [RP 129—99], as well as certain papers referred to it, and having heard evidence, reports as follows:

1. *Unauthorised expenditure*
(Par 2.2.1(a), page 2)

The Committee heard evidence on the exceeding of delegated authority, by a director in the Department when he approved expenditure of approximately R150 000, which was R136 303 more than the delegated approval level. Although the Committee welcomes the Director-General being accompanied to the hearing by the official concerned, for that official to personally clarify the circumstances, the Committee is disappointed that the Accounting Officer had not conducted a formal enquiry, as required by the applicable Public Service Regulations. It is the Committee's view that when heads of department appear before the Committee, all the appropriate internal and, if necessary, external disciplinary and other administrative and human resource practices should have been completed within the responsibility sphere of heads of department. The Committee wishes to

be presented with a clear indication of the extent of possible negligence, culpability or *mala fides*, and whether the State suffered any loss. As set out in section 38(1)(h) of the Public Finance Management Act, it is the responsibility of the accounting officer to—

“take effective and appropriate disciplinary steps against any official in the service of the department ... who—

- (ii) commits an act which undermines the financial management and internal control system of the department, ... or
- (iii) makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure;”.

The flouting of limits in terms of delegated authority is totally unacceptable to the Committee, and the Committee was not convinced that the official concerned did not have better options in terms of which to have managed the extension of the contract.

Without wishing to delay progress in this matter unnecessarily, but in view of the abovementioned, the Committee recommends that the Director-General provide at least the following further information to the Committee before it can make a recommendation to Parliament on the unauthorised expenditure in question:

The Accounting Officer must provide assurance that—

- (1) no form of favouritism was evident during the awarding of the contract to the service provider in question, or that anyone unduly benefitted;
- (2) in future a system exists whereby appropriate enquiry and disciplinary procedures are initiated in all cases where regulations are breached; and
- (3) appropriate processes exist within the Department to prevent unauthorised staff committing the Department to contracts of an extended nature.

2. *Onderstepoort Biological Products (OBP)* (Part C of Report, page 35)

The Committee heard further evidence on the corporatisation of Onderstepoort, with the aim of establishing a company so that it can negotiate the terms of a shareholder arrangement or a partnership arrangement in order to attract additional capital. The Committee took note of the procedural weaknesses regarding the appointment of the Board and the Chief Executive Officer; it was also not clear what impact the corporatisation process would have on the OBP Board's relationship with the State as the primary shareholder. The Committee also took note that the OBP has not yet been listed as a public entity, as was requested by the Department.

The Committee recommends that the Director-General provide the following information on the corporatisation process to Parliament:

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- (1) Details on the chairperson and members of the Board, and which of the members bring financial expertise to the Board.
- (2) Whether a Chief Executive Officer has been appointed and, if not, when this will take place.
- (3) How the possible external shareholder interests will be balanced against the interests of the State as shareholder.
- (4) Whether the financial management system is fully functional and producing appropriate and reliable monthly management information by the third week of the following month, and whether this information is used by management.
- (5) Whether a shareholder agreement has been entered into with the Board, and what the salient features of the agreement are.

In addition, the National Treasury must immediately indicate by which date the OBP will be listed as a public entity.

3. *Financial management*

The Committee wishes to commend the Department on the progress made with the establishment of a reliable internal audit function. The Committee recommends that the chairperson of the Audit Committee provide the Committee with a brief report on the following:

- (1) The risk profile of the Department, based on a proper risk analysis by the internal auditors of the Department's operations.
- (2) A brief report on the current effectiveness of the internal audit section, including the appropriateness of the scope of its audit planning.
- (3) An indication of whether the internal auditors' work complies with the standards of the Institute of Internal Auditors (IIA), as required by new Treasury Regulation 3.2.5, and if not, which standards are applied in the meantime and by when they will be able to comply with the IIA standards; and
- (4) an indication of the responsiveness of the Department's management to the findings of the internal auditors.

4. *Budgeting and planning*

The Committee is encouraged by the Accounting Officer's intentions of ensuring that departmental programmes have "clearly targeted programmes" that will be measured in terms of their impact, and that many of the programmes will be targeted at the poor.

In this regard, the Committee recommends that the Accounting Officer ensure that the Department timeously prepare itself to apply proper principles of performance budgeting, as required in terms of the strategic plan, to be submitted to the relevant Executive Authority as well as the National Treasury by 30 June 2001 for the MTEF period commencing 1 April 2002.

5. *Production Loan Scheme*
(Par 3.1, page 2)

Four cases have been referred to the State Attorney for recovery of outstanding debts. In two cases, agreements have been entered into to repay amounts on a monthly basis. The Committee has been assured by the Director-General that she is exerting pressure on the State Attorney to enter into acceptable pay-back arrangements regarding Bakgaga Bakopa and CPAC.

The Committee has been informed that it is likely that the outstanding debts will be recovered in all four cases.

6. *Loan securities*

The Committee took note of the decrease of 1 769 accounts, compared with previous years. A total of 130 accounts have been written off, and their value, as well as the value of accounts that have been repaid, must be supplied to the Committee by the Director-General.

Of concern to the Committee is the number of reported losses to the State through write-offs. The National Treasury must monitor this to ensure that the Department's risk management is adequate, and that the conditions in terms of which these are written off, are not too lenient.

7. *Loans to farmers*

The Committee has been assured that the reported shortcomings in this regard have been addressed.

8. *Agricultural Credit Account*
Financing of agricultural equipment: Belarus tractors
(Par 3.1, Part C of Report, page 24)

With respect to this matter, the Department must provide the Committee with clarity on the legal position, and must ensure that support in terms of spares and a local agent will be sustained.

Report to be considered.

2. Twelfth Report of the Standing Committee on Public Accounts, dated 20 September 2000:

The Standing Committee on Public Accounts, having considered and examined the Report of the Auditor-General on the Financial Statements of Vote 34: Trade and Industry for the year ended 31 March 1999 [RP 158—99], as well as certain papers referred to it, and having heard evidence, reports as follows:

1. *Internal control*
[Par 3.7.2, page 7]

The Committee heard evidence relating to the reported shortcomings in the internal controls of the Department. It is encouraging to note the corrective steps taken by the Department to prevent a recurrence of the reported shortcomings. However, the Director-General is reminded that internal control forms one of the main pillars of effective financial management in any organisation, and therefore the Committee cannot over-emphasise its importance.

It was evident that the Department had a significant problem regarding the integration of management information systems. The Committee therefore recommends that the Accounting Officer consult with the National Treasury on how to urgently address the deficiencies, including the interface between BAS and LOGIS, and report to the Committee on how the matter will be resolved. Thereafter, the Accounting Officer must report to the Committee quarterly on the progress made.

2. *Provisioning Administration System*
[Paragraph 2.2.1, page 2]

The Committee notes the evidence by the Department and the former Department of State Expenditure relating to the transfer to LOGIS. However, the Committee is concerned about the process followed to establish absolute certainty that the State did not suffer any loss. The Committee has doubts about the "red-lining" process that was used in this case.

The Committee wishes to recommend that in future "red-lining" should always be regarded as a last resort, only after full consultation with the National Treasury.

3. *Unauthorised expenditure*
[Paragraph 2.2.2, page 3]

The Committee commends the Department for having identified and acted on the matter of unauthorised expenditure. The Committee also welcomes the establishment of the financial control committee, aimed at, *inter alia*, preventing such incidents in future.

- (1) The Committee heard evidence on the payment of an amount of approximately R108 970 to a consultancy group, cost which should have been borne by the National Lotteries Board. The Committee recommends that the Accounting Officer confirm the exact amount in question and whether value had been received for the services provided by the firm in question, before considering a recommendation on the authorisation thereof.
- (2) The Committee notes that an amount of R4 384 922,09 was reported by the Auditor-General as unauthorised expenditure incurred over a period of three financial years. The expenditure is reported as expenditure of a "technical nature", in respect of which the State had not suffered any loss and where no *mala fides* were at stake. The Committee therefore recommends that the amount be authorised by Parliament.
- (3) In its Nineteenth Report for 1999, the Committee recommended that an amount of R1 199 022,19 in respect of the hosting of the Second National Conference on Small Business not be authorised. Having received further information in this regard, the Committee feels it is in a position to now recommend authorisation of the amount in question.

4. *Debtors*

[Par 3.1, page 4; par 3.3, page 6]

The Committee notes that debtors relating to the now terminated General Export Incentive Scheme (GEIS) have escalated owing to new disputable claims identified during the verification process that the Department had embarked upon, as well as the interest charged on the amounts owing. The Committee also notes that the Department was dependent on the assistance of the State Attorney for legal action in respect of disputed claims. Having noted the list of companies that the State Attorney is dealing with, it is obvious that a substantial amount of time will be required to clear up all the cases. The danger of companies going into liquidation is a matter of concern to the Committee.

The Committee therefore recommends that the Accounting Officer—

- (1) consider separating the debtors under GEIS from the normal debtors; and
- (2) provide a brief progress report on—
 - (a) the verification process;
 - (b) the various cases being dealt with by the State Attorney; and
 - (c) whether any debts have prescribed.

5. *Phase VI—Local Content Programme*

[Par 3.2, page 5]

The Committee noted a number of cases of suspected irregularities in respect of the ceding of export credits to motor vehicle manufacturers and the accompanying rebates against excise duty. The Committee awaits the Accounting Officer's progress report in this regard.

6. *Unspent Funds*

[Paragraph 3.5, page 6]

The Committee recommends that the Department submit a plan on how they intend overseeing the funds allocated and voted by Parliament before the end of February 2001.

7. *Backlog [Trade Mark Applications]*

The lengthy delay in processing Trade Mark Applications is totally unacceptable, and the Committee requests a report on the current position and a quarterly report in future. The Committee notes the appointment of 12 additional staff members, and trusts that the extra resources will speed up the issuing of Trade Marks to applicants.

Report to be considered.

3. *Thirteenth Report of the Standing Committee on Public Accounts, dated 20 September 2000:*

The Standing Committee on Public Accounts, having considered the

Report of the Auditor-General on the Financial Statements of Vote 15: Foreign Affairs for the year ended 31 March 1999 [RP 138—99], as well as certain papers referred to it, and having heard evidence, reports as follows:

1. *Financial management*

Compared with the previous Report of the Auditor-General, the current Report generally points to an improvement in financial management. The Committee also recognises the difficulty faced by the Accounting Officer and financial managers in trying to remain within budgetary limits, owing to the volatility of the exchange rate.

The Committee wishes to report on the following matters dealt with during the hearing, which the Accounting Officer should attend to:

(1) *Audit Committee and internal audit*

The Committee was informed that by 1 April 2000 the Audit Committee will be constituted in terms of the requirements of section 77 of the Public Finance Management Act.

The Committee recommends that it be furnished with a report from the chairperson of the newly constituted Audit Committee, containing the following information:

- (a) Details of the members of the Audit Committee.
- (b) A copy of the Audit Committee's own charter and date of adoption, as well as a copy of the internal audit section's charter, as ratified by the new Audit Committee.
- (c) A brief report on the internal control systems within the Department.
- (d) Whether the internal auditors have conducted a risk analysis of the Department's operations, and if so, whether the Audit Committee is satisfied with such analysis.
- (e) A brief report on the effectiveness of the internal audit section, including their audit planning.
- (f) An indication of whether the internal auditors' work complies with the standards of the Institute of Internal Auditors (IIA), as required by new Treasury Regulation 3.2.5, and if not, which standards are applied in the meantime and by when they will be able to comply with the IIA standards.
- (g) An indication of the responsiveness of the Department's management to the findings of the internal auditors.

(2) *Public Finance Management Act implementation*

The Committee is seriously concerned about the problems reported by the Department on its information technology capacity and the resultant effect on financial management practices. As a consequence, the Department has expressed

doubt about its ability to deal with certain requirements of the Public Finance Management Act, claiming that, for example, it will not be able to close its books and submit financial statements for auditing within two months after the end of the financial year. Attempts at rationalising its IT systems and rolling out appropriate new software are being delayed by the National Treasury's requirement that such software must be able to interface with its own software, but that the specifications of that software have not been finalised yet. The Department is also faced with financial constraints with regard to new software to be purchased, estimated at between R9 million and R12 million.

The Department also reported experiencing problems with the appointment of financial management staff with appropriate expertise, especially with respect to budgeting.

The Committee recommends as follows:

- (a) That the National Treasury indicate by when final specifications will be available to all departments regarding interface requirements, and to what extent departments may proceed with the purchase of financial management software.
- (b) That the Accounting Officer of the Department indicate whether progress has been made since the hearing on obtaining the necessary funding for the purchase of financial management software once the Department has received the necessary information, enabling it to proceed. In this respect, the Committee wishes to point out to the Accounting Officer that in terms of section 38(1)(a) of the Public Finance Management Act, he "must ensure that the Department has and maintains effective, efficient and transparent systems of financial and risk management and internal control".

(3) *Overspending of budget (unauthorised expenditure)*

The Committee notes the explanation that the excess of R8 378 896,51 in respect of the allocation to Programme 2: Foreign Relations was due to foreign exchange losses incurred during a year of considerable foreign exchange volatility, which the Department did not succeed in managing down completely before the end of the financial year, despite various bold steps taken by it to do so in a short period of five months. The Committee commends the Accounting Officer and staff on managing to bring the deficit down to the level it had, thereby limiting the eventual excess on the Budget Vote. The Committee has also taken note of steps taken by the Department and the National Treasury, subsequent to the hearing, to better plan through the budget process for the possible effect of foreign exchange losses on the budget.

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(a) In view of the circumstances, the Committee recommends that Parliament authorise the amount in question.

(b) In addition, the Committee recommends that—

- (i) in general, effective monitoring of the Department's expenditure continue throughout the year in respect of all its programmes and subprogrammes and that, where necessary, corrective action be taken immediately;
- (ii) the Department and the National Treasury ensure continued effective communication in order to prevent a recurrence of such a situation in future MTEF budgets;
- (iii) with regard to the Programme: Foreign Relations, the Department immediately inform the Committee if circumstances develop that may again result in excess expenditure; and
- (iv) the Department timeously prepare itself to apply proper principles of performance budgeting, as required in terms of the strategic plan to be submitted to the relevant Executive Authority as well as the National Treasury by 30 June 2001 for the MTEF period commencing on 1 April 2002.

(4) *Suspense accounts (notes 2 and 4.1 on pages 14 & 15)*

The Committee accepts that some of the suspense accounts relate to amounts still to be cleared once the next Finance Bill is adopted by Parliament. However, the Committee recommends that the Accounting Officer permit the use of other suspense accounts only in cases where it is absolutely necessary and that they be considered for clearance on a monthly basis. The chief financial officer should furnish the Accounting Officer on a monthly basis with explanations regarding the bigger suspense accounts that had not been cleared.

2. *Management of office and residential accommodation in foreign countries*

The Committee heard evidence that the function pertaining to the procurement of, disposal of and major works in respect of foreign properties had been transferred to the Department with effect from 1 May 1999. The estimated value of the foreign properties owned by the State is R2.5 billion. It is estimated that an amount of R2 million will be needed for this project. However, the first meeting between officials from the Department and the Department of Public Works to discuss the processes according to which the transfer of the function should take place, only took place on 6 July 1999. The first documentation was handed over to the Department during August 1999. However, by May 2000 not all relevant documentation, such as building files and plans in respect of the function, had been received from the Department of Public Works.

In correspondence subsequent to the hearing, the Department indicated that a formal evaluation process will have to be initiated in order to determine the proper value of the properties, as this has never been done before. The Department assured the Committee that it has the capacity to properly manage the assets.

The Committee recommends that the Accounting Officer—

- (1) expedite the compilation of a proper asset register and ensure a proper asset management regime in terms of the Public Finance Management Act and Chapter 10 of the new Treasury Regulations, as well as provide a progress report, together with the estimated time of completion, within 60 days of the adoption by Parliament of this Report;
- (2) ensure that, in respect of all capital projects, a system as required by section 38(1)(a)(iv) of the Public Finance Management Act exists for properly evaluating all major capital projects prior to a final decision being taken on them; and
- (3) ensure that all relevant records still in the possession of the Department of Public Works immediately be obtained, and that the Committee be informed once this has been completed, as well as whether the documents were complete and in acceptable condition.

3. *Case of misconduct against official at Dakar*

The Committee was informed that the services of the official concerned has since been terminated on grounds of abscondment, and that by absconding he was deemed to be guilty of the misconduct charges. On 29 October 1999, the State Attorney was approached to recover the debt to the State.

The Committee recommends that the Accounting Officer, in consultation with the State Attorney, report on progress made in this regard, specifically indicating by when the matter is expected to be finalised and what the nature of the former official's debt to the State is.

4. *Amalgamation-related costs*

The Department made payments of R6,8 million to certain provinces in respect of personnel expenditure without supporting documentation. This related to salaries for staff from former TBVC states still to be absorbed into the Department. The provinces therefore acted as agents for the Department in terms of own accounting practices. Vouchers submitted by the provinces were of such a nature that it could be ascertained that the necessary payments had been made, but it did not contain the necessary detailed information required for audit purposes. The Department was of the view that "with the information and vouchers at the disposal of the Department ... it does not appear that the State suffered any loss".

In an earlier Treasury Reply to the Committee, the Treasury indicated that "...amounts not classified as debts of the past would be carried by the departments on whose books these balances were. Full details regarding the absence or unavailability of records regarding debt/suspense accounts should be

provided with the financial statements for 1997/98 when they are presented for auditing. Thereafter, as previously stated, uncleared accounts and unauthorised expenditure, as indicated in the qualified audit report, should be presented to SCOPA for authorisation to finalise matters as a formality to complete the process”.

In a letter from the Deputy Director-General of the former Department of State Expenditure, Mr Gulston indicated that the National Treasury did not regard the information provided by the Department as sufficient for the Treasury to “make an order dispensing with the production of a voucher or such other proof as may appear just in the circumstances”, in terms of section 34 of the Exchequer Act. He suggested that the Department consider establishing an audit trail, to the satisfaction of the Auditor-General, to prove that the amount was spent correctly, even though not all of the documentation required under normal circumstances will be produced.

Although the Committee is eager for this matter to be resolved, it recommends that it be carried over until the transversal issue of expenditure related to the TBVC amalgamation is addressed and finalised by it and all the relevant stakeholders.

Report to be considered.

National Council of Provinces:

1. Report of the Select Committee on Local Government and Administration on the *Local Government: Municipal Structures Amendment Bill* [B 51B—2000] (National Assembly—sec 75), dated 2 October 2000:

The Select Committee on Local Government and Administration, having considered the subject of the *Local Government: Municipal Structures Amendment Bill* [B 51B—2000] (National Assembly—sec 75), referred to it, reports the Bill with proposed amendments, as follows:

CLAUSE 11

1. On page 12, after line 15, to add the following subsection:

(6) A district municipality or a metropolitan municipality may levy and claim a regional services levy and a regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990.

CLAUSE 15

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Transitional application of section 14 of Act 117 of 1998

15. For purposes of the transition—

(a) section 14(2)(b) of the Structures Act must be regarded as permitting the regulation of any legal, practical and other consequences of the disestablishment of an existing municipality, to be effected by way of an amendment to the section 12 notice disestablishing the existing municipality, provided the notice is amended before the date on which the disestablishment of the existing municipality takes effect; and

(b) section 14(5) of the Structures Act must be regarded to read as follows:

“(5)(a) The MEC for local government in a province, by notice in the *Provincial Gazette*, may make provision for transitional measures to facilitate the disestablishment of an existing municipality and the establishment of a new municipality.

(b) The measures contemplated in paragraph (a) may include measures—

(i) establishing a committee to advise the MEC on any matter affecting the transition; or

(ii) in relation to the existing municipality, restricting or regulating the—

(aa) alterations to the staff establishment;

(bb) appointment of staff or the filling of vacancies;

(cc) upgrading of posts or promotions;

(dd) increases in salaries or wages;

(ee) disposal or acquisition of assets;

(ff) conclusion of contracts with a duration longer than one year or the renewal of such contracts; or

(gg) use of reserve capital.

(c) The MEC must consult the existing municipality before publishing the notice contemplated in paragraph (a).”

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

TUESDAY, 3 OCTOBER 2000

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. [14:16] The Chief Whip of the Majority Party moved without notice: That the House—
 - (1) notes that a team of men and women of South Africa represented our country at the 2000 Olympic Games in Sydney;
 - (2) congratulates the five athletes who won medals and those athletes who achieved career-best performances; and
 - (3) calls on Nocsa to hold an inquiry into the performance of our team and to work out a detailed plan to send the strongest possible team to the 2004 Olympic Games in Athens.

Agreed to.

5. Mr T Abrahams moved without notice: That the House—
 - (1) notes with sadness the passing away of Mrs N T Majokweni, a UDM member of the provincial legislature of the Eastern Cape;
 - (2) notes that her efforts towards having transformation expedited will remain on record; and
 - (3) conveys its condolences to her family and wishes them strength in their bereavement.

Agreed to.

6. [14:17] The House, at the request of Gen C L Viljoen, discussed the following subject: The recognition, enhancement and protection of the rights of the different communities of South Africa.

Debate concluded.

7. FIRST ORDER [15:28]

First Reading debate—*Council for Medical Schemes Levies Bill* [B 61—2000] (National Assembly—sec 77).

There was no debate.

Bill read a first time.

8. SECOND ORDER [15:29]

Second Reading debate—*Council for Medical Schemes Levies Bill* [B 61—2000] (National Assembly—sec 77).

There was no debate.

Bill read a second time.

9. THIRD ORDER [15:29]

Second Reading debate—*Higher Education Amendment Bill* [B 55B—2000] (National Assembly—sec 75).

Debate concluded.

Question put: That the Bill be read a second time.

Division demanded.

The House divided:

AYES—206: Abrahams, T; Abram, S; Arendse, J D; Asmal, A K; Balfour, B M N; Baloi, G E; Baloyi, M R; Belot, S T; Benjamin, J; Bhengu, F; Bhengu, N R; Bogopane, H I; Booie, M S; Botha, N G W; Buthelezi, M N; Capa, R Z N; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Cindi, N V; Coetzee-Kasper, M P; Davies, R H; De Beer, S J; De Lange, J H; Diale, L N; Didiza, A T; Dlamini, B O; Doidge, G Q M; Douglas, B M; Duma, N M; Fankomo, F C; Fazzie, M H; Feinstein, A J; Ferreira, E T; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Gcina, C I; George, M E; Gerber, P-J A; Gininda, M S; Gomomo, P J; Goosen, A D; Govender, P; Gumede, D M; Gxowa, N B; Hajaig, F; Hangan, N E; Hendrickse, P A C; Hlangwana, N L; Hlengwa, M W; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasiennyane, O R; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Koornhof, G W; Kota, Z A; Landers, L T; Leeuw, S J; Lekgoro, M K; Lekgoro, M M S; Lobe, M C; Locky, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Maduna, P M; Magashule, E S; Magazi, M N; Mahlangu, G L; Mahlangu, M J; Maimane, D S; Maine, M S; Makasi, X C; Makunyane, T L; Maloney, L; Maluleke-Hlaneki, C J; Malumise, M M; Mangena, M A; Maphalala, M A; Maphoto, L I; Mars, I; Mashimbye, J N; Masithela, N H; Mathebe, P M; Maunye, M M; Mayatula, S M; Maziya, A M; Mbadi, L M; Mbombo, N D; Mbongo, P F; Mbuyazi, L R; Mfundisi, I S; Mgidi, J S; Mkhathshwa, S; Mlangeni, A; Mnandi, P N; Mngomezulu, G P; Mofokeng, T R; Mogale, E P; Mogoba, M S; Mohai, S J; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloto, K A; Momberg, J H; Mongwaketse, S J; Moonsamy, K; Morobi, D M; Moropa, R M; Morwamoche, K W; Mothoagae, P K; Mpaka, H M; Mpehle, M; Mshudulu, S A; Msomi, M D; Mtsweni, N S; Mutsila, I; Mzizi, M A; Nair, B; Nash, J H; Ncinane, I Z; Ncube, N Z; Ndabandaba, L B G; Nel, A C; Nene, N M; Ngcengwane, N D; Ngculu, L V; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkomo, A S; Nkosi, D M; Nqodi, S B; Ntshangase, I B; Ntuli, B M; Ntuli, S B; Nzimande, L P M; Oliphant, G G; Pahad, A G H; Phala, M J; Phantsi, E; Pieterse, R D; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramodike, M N; Ramotsamai, C M P; Rasmeni, S M; Ripinga, S S; Schneemann, G D; Seaton, S A;

Sekgobela, P S; September, C C; September, R K; Serote, M W; Shilubana, T P; Shope, N R; Sibiya, M S M; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Sithole, D J; Skhosana, W M; Skweyiya, Z S T; Slabbert, J H; Smith, V G; Solo, B M; Solomon, G; Sonjica, B P; Sosibo, J E; Sotyu, M M; Thabethe, E; Tinto, B; Tolo, L J; Tsheole, N M; Tshivhase, T J; Turok, B; Twala, N M; Vadi, I; Van der Merwe, J H; Van Wyk, A (Annelize); Van Wyk, J F; Verwoerd, M; Vilakazi, B H; Vos, S C; Woods, G; Xingwana, L M T; Yengeni, T S; Zita, L; Zondo, R P.

NOES—47: Andrew, K M; Aucamp, C; Bell, B G; Beukman, F; Blaas, A; Bruce, N S; Clelland, N J; Da Camara, M L; Davidson, I O; Dowry, J J; Durand, J; Ellis, M J; Gaum, A H; Gibson, D H M; Gore, V C; Gous, S J; Greyling, C H F; Grobler, G A J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lee, T D; Leon, A J; Le Roux, J W; Maluleke, D K; McIntosh, G B D; Moorcroft, E K; Morkel, C M; Nel, A H; Niemann, J J; Ntuli, R S; Opperman, S E; Pretorius, I J; Rabie, P J; Schalkwyk, P J; Schippers, J; Schmidt, H C; Seremane, W J; Simmons, S; Singh, A; Smit, H A; Swart, P S; Taljaard, R; Van Jaarsveld, A Z A; Van Niekerk, A I; Van Wyk, A (Anna); Viljoen, C L.

Question agreed to.

Bill accordingly read a second time.

10. The House adjourned at 17:17.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 3 OCTOBER 2000

ANNOUNCEMENTS:

National Council of Provinces:

1. The Chairperson:

Message from National Assembly to National Council of Provinces:

Bills passed by National Assembly on 3 October 2000 and transmitted for concurrence:

- (1) *Council for Medical Schemes Levies Bill* [B 61—2000] (National Assembly—sec 77) (Select Committee on Social Services, the Committee to confer with the Select Committee on Finance—National Council of Provinces).
- (2) *Higher Education Amendment Bill* [B 55B—2000] (National Assembly—sec 75) (Select Committee on Education and Recreation—National Council of Provinces).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

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

- (1) Convention for the Protection of Cultural Property in the event of Armed Conflict (the Hague Convention) with regulations for the execution and the coverage resolutions, 14 May 1954, tabled in terms of section 231(2) of the Constitution, 1996.
- (2) Explanatory Memorandum to the Convention.

2. The Minister for Welfare and Population Development:

National Report on Social Development for 1995-2000.

3. The Minister for Justice and Constitutional Development:

- (1) Rome Statutes of the International Court of Justice, tabled in terms of section 231(2) of the Constitution, 1996.
- (2) Explanatory Memorandum to the Rome Statutes.
- (3) Optional Protocol to the International Covenant on Civil and Political Rights, tabled in terms of section 231(2) of the Constitution, 1996.
- (4) Second Optional Protocol to the International Covenant on Civil and Political Rights, tabled in terms of section 231(2) of the Constitution, 1996.
- (5) Explanatory Memorandum to the protocols.
- (6) Extradition Treaty between the Government of the Republic of South Africa and the Government of the United States of America, tabled in terms of section 231(2) of the Constitution, 1996.
- (7) Treaty between the Government of the Republic of South Africa and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters, tabled in terms of section 231(2) of the Constitution, 1996.
- (8) Explanatory Memorandum to the treaties.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Finance on the *RSA/Nigeria Double Taxation Agreement*, dated 29 September 2000:

The Portfolio Committee on Finance, having considered the request for approval by Parliament of the *Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains*, referred to it, recommends that the House, in terms of section 231(2) of the Constitution, approve the said Agreement.

Report to be considered.

2. Report of the Portfolio Committee on Finance on the *RSA/China Double Taxation Agreement*, dated 29 September 2000:

The Portfolio Committee on Finance, having considered the request for approval by Parliament of the *Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, referred to it, recommends that the House, in terms of section 231(2) of the Constitution, approve the said Agreement.

Report to be considered.

National Council of Provinces:

1. Report of the Select Committee on Finance on the *Finance Bill* [B 40—2000] (National Assembly—sec 75), dated 3 October 2000:

The Select Committee on Finance, having considered the subject of the *Finance Bill* [B 40—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

2. Report of the Select Committee on Finance on the *Banks Amendment Bill* [B 56B—2000] (National Assembly—sec 75), dated 3 October 2000:

The Select Committee on Finance, having considered the subject of the *Banks Amendment Bill* [B 56B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

The Committee notes with concern that the principle Act (the Banks Act, 1990) and the *Banks Amendment Bill* [B 56B—2000] are gender-insensitive, and recommends that the National Treasury correct this within 12 months of the adoption of this Report by the Council.

3. Report of the Select Committee on Finance on the *RSA/Nigeria Double Taxation Agreement*, dated 3 October 2000:

The Select Committee on Finance, having considered the request for approval by Parliament of the *Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Nigeria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains*, referred to it, recommends that the Council, in terms of section 231(2) of the Constitution, approve the said Agreement.

Report to be considered.

4. Report of the Select Committee on Finance on the *RSA/China Double Taxation Agreement*, dated 3 October 2000:

The Select Committee on Finance, having considered the request for approval by Parliament of the *Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income*, referred to it, recommends that the Council, in terms of section 231(2) of the Constitution, approve the said Agreement.

Report to be considered.

1. The first part of the report deals with the general situation of the country and the progress of the work during the year.

2. The second part of the report deals with the results of the work during the year.

3. The third part of the report deals with the financial statement of the year.

4. The fourth part of the report deals with the general remarks of the year.

5. The fifth part of the report deals with the general remarks of the year.

6. The sixth part of the report deals with the general remarks of the year.

7. The seventh part of the report deals with the general remarks of the year.

8. The eighth part of the report deals with the general remarks of the year.

9. The ninth part of the report deals with the general remarks of the year.

10. The tenth part of the report deals with the general remarks of the year.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL COUNCIL OF PROVINCES

TUESDAY, 3 OCTOBER 2000

1. The Council met at 14:10.
2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. The Chairperson gave two rulings regarding questions posed to Ministers.
4. [14:21] Questions.
5. [15:03] Notices of motion.
6. [15:05] Mr B Willem moved without notice: That the Council—
 - (1) notes with shock and horror, the incident which occurred at the Mtentu cuttings on the road between Umtata and Idutywa in the Eastern Cape yesterday;
 - (2) further notes that five people, travelling in a taxi, were killed and seven injured when people in a car, overtaking the taxi, opened fire on the taxi, causing it to leave the road and overturn;
 - (3) also notes that countless motions have been moved in the Council lamenting the frequent and tragic taxi-related violence in South Africa;
 - (4) urges the community to support and cooperate with the Department of Safety and Security in the investigation in order to bring the perpetrators to justice;
 - (5) expresses its deep sympathy with the victims and their families; and
 - (6) expresses the hope that the perpetrators of this and other violent crimes will speedily be arrested and made to realise that those who do the crime must do the time.

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

7. [15:08] Ms J N Vilakazi moved without notice: That the Council—

- (1) notes the recent outbreak of foot-and-mouth disease in the district of Camperdown in KwaZulu-Natal;
- (2) acknowledges the serious economic consequences of this disease for the South African economy and, in particular, for the farming community of KwaZulu-Natal and certain areas of Mpumalanga;
- (3) further acknowledges efforts by the Department of Agriculture to combat this dreadful disease, involving the putting down of thousands of animals; and
- (4) calls on the Government to quickly take necessary steps to compensate the affected farmers for the loss of livestock and the suspension of farming activities.

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

8. [15:09] Rev M Chabaku moved without notice: That the Council—

- (1) notes with great dismay the flooding of our country with objects of art from other countries purporting to be South African handicrafts thus hoodwinking tourists from within the country and beyond the borders;
- (2) further notes that the mass-produced artefacts and handicrafts eclipse and thwart the production and sale of South African products; and
- (3) expresses the opinion that efforts should be made to support and display truly indigenous and innovative products made by us, owned by us and for ourselves.

Mr M V Moosa moved as an amendment: That the following paragraph be added after paragraph (3):

“(4) calls on the Minister of Arts, Culture, Science and Technology to intensify a ‘Buy South Africa’ campaign.”

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 with great dismay the flooding of our country with objects of art from other countries purporting to be South African handicrafts thus hoodwinking tourists from within the country and beyond the borders;
- (2) further notes that the mass-produced artefacts and handicrafts eclipse and thwart the production and sale of South African products;
- (3) expresses the opinion that efforts should be made to support and display truly indigenous and innovative products made by us, owned by us and for ourselves; and
- (4) calls on the Minister of Arts, Culture, Science and Technology to intensify a “Buy South Africa” campaign.

9. [15:11] Mr A E van Niekerk moved without notice: That the Council—

- (1) takes note of the death threat received by the Premier of the Northern Cape;

- (2) acknowledges the risk public figures run while conducting their daily tasks; and
- (3) condemns the ever increasing wave of crime in the country.

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

10. [15:12] Mr L Saka moved without notice: That the Council—

- (1) notes the catastrophic floods that hit Bangladesh, killing hundreds of people and leaving millions more homeless;
- (2) further notes that Bangladesh is a developing country with limited resources;
- (3) expresses its deep concern over the impact of the floods on further economic and social development in the country;
- (4) wishes to extend its deepest sympathy to the people and government of Bangladesh in these trying times; and
- (5) calls on the international community to rush to the assistance of Bangladesh and to provide assistance in efforts to alleviate the human tragedy that has unfolded in that country.

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

11. [15:13] The Chief Whip of the Council moved without notice: That precedence be given to Orders No 3 and 4.

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

12. [15:14] The Chief Whip of the Council moved: That the Council, on the recommendation of the Rules Committee of the National Council of Provinces, resolves that the procedure to be followed in respect of Questions to the President and the Deputy President be as follows:

- (1) No questions should be put to the President.
- (2) The Deputy President should on every alternate occasion when Questions are scheduled for plenary be available to answer questions put to him.

Declarations of vote made on behalf of Gauteng and the Western Cape.

Motion agreed to in accordance with section 65 of the Constitution (Western Cape dissenting and Kwazulu-Natal abstaining).

13. THIRD ORDER [15:21]

Consideration of *Local Government: Municipal Systems Bill* [B 27B—2000] (National Assembly—sec 75) and of Report of Select Committee on Local Government and Administration thereon (Announcements, Tablings and Committee Reports, p 781).

Debate concluded.

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

14. FOURTH ORDER [16:23]

Consideration of *Local Government: Municipal Structures Amendment Bill* [B 51B—2000] (National Assembly—sec 75) and of Report of Select Committee on Local Government and Administration thereon (Announcements, Tablings and Committee Reports, p 796).

Debate concluded.

Declarations of vote made on behalf of the African National Congress, Democratic Party, Inkatha Freedom Party and New National Party.

Bill, subject to proposed amendments, agreed to in accordance with section 75 of the Constitution (Inkatha Freedom Party dissenting).

15. BUSINESS SUSPENDED AT 16:40 AND RESUMED AT 16:43.

16. FIRST ORDER [16:44]

Consideration of *Tourism Amendment Bill* [B 50D—99] (National Assembly—sec 76) and of Report of Select Committee on Land and Environmental Affairs thereon (Announcements, Tablings and Committee Reports, p 773).

Debate concluded.

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

17. SECOND ORDER [17:58]

Consideration of *Meat Safety Bill* [B 29D—2000] (National Assembly—sec 76) and of Report of Select Committee on Land and Environmental Affairs thereon (Announcements, Tablings and Committee Reports, p 772).

Debate concluded.

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

18. FIFTH ORDER [18:52]

Consideration of Report of Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons (Announcements, Tablings and Committee Reports, p 628—*National Youth Commission*).

Order disposed of without debate.

Report adopted in accordance with section 65 of the Constitution.

19. SIXTH ORDER [19:20]

Consideration of Second Report of the Rules Committee of the National Council of Provinces (Announcements, Tablings and Committee Reports, p 766).

Order disposed of without debate.

Report adopted in accordance with section 65 of the Constitution.

20. The Council adjourned at 19:36.

S MFENYANA,

Secretary to Parliament.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

WEDNESDAY, 4 OCTOBER 2000

1. The House met at 15:01.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [15:02] Questions.
4. [17:31] Notices of motion.
5. [17:46] The Chief Whip of the Majority Party moved: That, notwithstanding Rule 253, the debates on the following Bills be conducted on Thursday, 5 October 2000, and Friday, 6 October 2000:
 - (a) *Local Government: Municipal Structures Amendment Bill* [B 51B—2000] (National Assembly—sec 75);
 - (b) *Home Loan and Mortgage Disclosure Bill* [B 53—2000] (National Assembly—sec 75); and
 - (c) *African Renaissance and International Co-operation Fund Bill* [B 65—2000] (National Assembly—sec 75).

Agreed to.

6. FIRST ORDER [17:47]

First Reading debate—*Adjustments Appropriation Bill* [B 60—2000] (National Assembly—sec 77).

There was no debate.

Bill read a first time.

Votes and Schedule agreed to.

7. SECOND ORDER [17:49]

Second Reading debate—*Adjustments Appropriation Bill* [B 60—2000] (National Assembly—sec 77).

Debate concluded.

Bill read a second time.

8. The House adjourned at 18:12.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 4 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

(1) The Joint Tagging Mechanism (JTM) on 4 October 2000 in terms of Joint Rule 160(3), classified the following Bills as section 75 Bills:

- (i) *South African Reserve Bank Amendment Bill* [B 62—2000] (National Assembly—sec 75)—(Portfolio Committee on Finance—National Assembly).
- (ii) *Judicial Matters Amendment Bill* [B 63—2000] (National Assembly—sec 75)—(Portfolio Committee on Justice and Constitutional Development—National Assembly).
- (iii) *South African Rail Commuter Corporation Limited Financial Arrangements Bill* [B 64—2000] (National Assembly—sec 75)—(Portfolio Committee on Transport—National Assembly).
- (iv) *African Renaissance and International Co-operation Fund Bill* [B 65—2000] (National Assembly—sec 75)—(Portfolio Committee on Foreign Affairs—National Assembly).

(2) The Joint Tagging Mechanism (JTM) on 4 October 2000 in terms of Joint Rule 160(4), classified the following Bill as a section 76 Bill:

- (i) *Chiropractors, Homeopaths and Allied Health Service Professions Second Amendment Bill* [B 66—2000] (National Council of Provinces—sec 76)—(Select Committee on Social Services—National Council of Provinces).

2. The Speaker and the Chairperson:
The following papers were tabled on 2 October 2000 and are now referred to the Portfolio Committee on Education:
- (1) Government Notice No 777 published in the Government Gazette No 21444 dated 11 August 2000, The date on which TEFSA ceases its functions made in terms of the National Student Financial Aid Scheme Act, 1999 (Act No 56 of 1999).
 - (2) Government Notice No 789 published in the Government Gazette No 21438 dated 11 August 2000, Approval that the pilot project Travel and Tourism Standard Grade, Grade 10-12 becomes a fully fledged instructional offering, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).
 - (3) Government Notice No R.848 published in the Government Gazette No 21501 dated 1 September 2000, Correction notice to Government Gazette No 21192 dated 18 May 2000, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).
 - (4) Government Notice No 3102 published in the Government Gazette No 21539 dated 6 September 2000, Call for public comment on draft document—The National Policy Framework on Whole-school Evaluation, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).

National Assembly:

1. The Speaker:

The following correspondence has been submitted to the Speaker of the National Assembly by the Ministry of Provincial and Local Government:

Dear Dr FN Ginwala
National Assembly
P O Box 15
CAPE TOWN
8000

(021) 461 9462

**GOVERNMENT'S RESPONSE TO THE SUBMISSIONS BY
TRADITIONAL LEADERS ON THEIR ROLE, POWERS AND
FUNCTIONS**

By direction of the Minister for Provincial and Local Government, I forward herewith a copy of a letter signed by the President relating to this matter for your information.

Yours sincerely

HEAD: MINISTERIAL SERVICES

PRESIDENT REPUBLIC OF SOUTH AFRICA

28 August 2000

**GOVERNMENT'S RESPONSE TO THE SUBMISSIONS BY
TRADITIONAL LEADERS ON THEIR ROLE, POWERS AND
FUNCTIONS**

1. Your memorandum presented to me and dated 16 May 2000, your response to the Discussion Document towards a White

Paper on Traditional Leadership and Institutions dated 29 June 2000, and our discussion on 23 August 2000, have reference.

You will recall that we met on 23 August 2000 so that I could present to you the Government's response to your submissions. You then requested that Government's response be presented in writing.

At the conclusion of the meeting we then agreed as follows:

- That I would transmit the written response to you early this week;
- A copy of the letter would also be given to the other stakeholders who have provided us with comments on the Discussion Document; and
- That nothing will be said publicly about what was discussed in our meeting of the 23rd of August until this letter has been dispatched.

I now hereby respond formally in line with the decision taken on 23 August 2000. In formulating this response, Government had recourse to the memoranda of 16 May and 29 June 2000 referred to above.

2. Proposals by Government

- 2.1 Traditional leaders will, in line with the Constitution and the relevant law, continue to discharge the authority currently vested in them.
- 2.2 Government will process an amendment to the Municipal Structures Act during the September 2000 session of Parliament and increase the representation of traditional leaders in the municipal councils from 10% to 20%. The increased representation relates not only to local municipalities, but also to the relevant metropolitan and district councils.
- 2.3 Government will review the role of traditional leaders in matters of governance and ensure that they are accorded an appropriate role within the intergovernmental relations structures. This review will occur simultaneously with the current review of our intergovernmental system. The principles of co-operative governance will continue to guide us in this process.
- 2.4 Government will take steps to ensure that Provincial Houses of Traditional Leaders and the National House are properly resourced so that they may carry out their functions more effectively.
- 2.5 Where traditional authority areas have been subdivided as a result of the demarcation process, the Municipal Demarcation Board will reassess the situation. It must also be said that, ultimately, the Board will have the final say on the matter, as it is an independent body. The Chairperson of the Demarcation Board has already been approached in this regard and will hold meetings with the various Houses of Traditional Leaders and the respective Premiers within the next ten days.
- 2.6 The national and provincial spheres of government administer laws having a bearing on traditional leadership. With a view to identifying which additional responsibilities may be assigned to

traditional leaders, various national departments and the affected provinces have been asked to identify areas which may be so assigned. The work relating to this has started already, and the list of additional responsibilities produced thus far indicates clearly that traditional leadership does indeed have a place in matters of governance in our country.

2.7 The National departments involved in this process are:

- Agriculture;
- Arts, Culture, Science and Technology;
- Environmental Affairs and Tourism;
- Health;
- Home Affairs;
- Justice and Constitutional Development;
- Land Affairs;
- Minerals and Energy;
- Safety and Security;
- Water Affairs and Forestry; and
- Welfare, Population and Development.

2.8 The White Paper on Traditional Leadership, which will be finalised in March 2001, will lead to the enactment of national framework legislation in July 2001. This legislation will effectively rationalise approximately 1500 pieces of existing laws relating to traditional leadership.

2.9 The role of the various Houses will be reviewed with a view to strengthening their participation in the national and provincial legislative processes.

2.10 MEC's for Local Government will be advised to consider applying Section 81(4)(b) of the Municipal Structures Act in their respective provinces. This section empowers an MEC for local government in a province, after consulting the relevant House of Traditional Leaders, by notice in the Provincial Gazette, to prescribe a role for traditional leaders in the affairs of a municipality. Such a role will be consistent with the Constitution and will bring traditional leaders and municipalities closer together.

2.11 We will continue to conduct discussions with yourselves on all outstanding issues. We will also continue to update you on progress being made with the work that is currently underway.

3. Rural Local Government Model

3.1 It is clear from the memoranda dated 16 May and 29 June 2000 that a new model of local government in rural areas is being proposed. I am familiar with the arguments being put forward in favour of the proposed model, as these have been under consideration for a number of years. It must be recorded that the existing model, as provided for in the Constitution, was approved by the Constitutional Assembly after an extensive and inclusive consultation process.

- 3.2 It must be pointed out that during the colonial and apartheid eras, the institution of traditional leadership was distorted in a number of ways. These distortions included allocating to traditional leaders functions that traditionally did not belong to them. As a result of these distortions, this country has ended up with a system that is not in line with the basic framework of our Constitution. Most of these functions will now be performed by local government structures, in terms of the Constitution.
- 3.3 The existing constitutional framework provides for a dual system which provides for the retention of traditional leadership, while at the same time allowing local communities to elect their public representatives. This system was ushered in, in a phased manner through amendments made to the Local Government Transition Act—hence the election of rural councillors in 1995/1996.
- 3.4 In addition to your submissions, government has also analysed many other submissions by other organisations and South Africans on the Discussion Document towards a White Paper on Traditional Leadership and Institutions. I am given to understand that the general tenor of these submissions is known to you as these were referred to constantly at the rounding up conference on the Discussion Document which you attended on the 17-18 August 2000. It is clear from these submissions that many South Africans support the rural local government model provided for in the Constitution.
- 3.5 The Government does not support the alteration of the existing local government model. The proposal to disenfranchise a section of our people negates the aspirations of millions, including some traditional leaders, who fought for democracy.

4. **Conclusion**

- 4.1 The challenge we are faced with at this moment in time is to find a way of stabilizing our system of governance in the rural areas by creating a climate within which the institution of traditional leadership and elected institutions of government can co-exist. This is a challenging task, but it is achievable.
- 4.2 In tackling the enormous challenges facing us, Government, traditional leaders and other stakeholders must jointly promote the common ideal of nation building in our country. Government is committed to promoting development throughout South Africa. We will, together with you, continue to work out mechanisms, which will ensure the attainment of these ideals.

Regards

T M MBEKI

Khosi F P Kutama
Northern Province House of Traditional Leaders
Private Bag X9503
Pietersburg, 0700

2. **The Speaker:**

The following correspondence between the President of the Republic and the Leader of the Official Opposition relating to the use of AZT in rape cases and to other matters has been submitted to the Speaker of the National Assembly by the Parliamentary Counsellor of the President at the request of the President:

13 September 2000

Dear Madam Speaker

You may remember that on June 13 this year, the National Assembly discussed the budget vote of the Presidency.

During the debate, an exchange took place between the President and the Hon Mr Tony Leon relating to the use of the drug AZT in rape cases.

Subsequent to this debate, Mr Leon wrote to the President further to clarify his position on this matter. This led to an exchange of letters discussing this and other matters.

The President and Mr Leon then agreed that this correspondence should be made available to Members of Parliament, given both the nature of the issues discussed and the fact that the discussion began in Parliament.

Accordingly, I would, hereby, like to submit the relevant documents with a request that they should be made available to all Members of Parliament.

These documents are:

1. A transcript of the relevant exchange between Mr Leon and President Mbeki in the National Assembly on 13 June 2000. (Annexure A)*
2. A letter from Mr Leon to the President dated 19 June 2000. (Annexure B)
3. A letter from Mr Leon to the President dated 27 June 2000. (Annexure C)
4. A letter from Mr John P Kearney, CEO of Glaxo Wellcome South Africa to Mr Leon dated 21 June 2000. (Annexure D)
5. A letter from President Mbeki to Mr Leon dated 1 July 2000. (Annexure E)
6. A letter from Mr Ryan Coetzee to Mr Parks Mankahlana dated 7 July 2000. (Annexure F)
7. A letter from Mr Leon to President Mbeki dated 7 July 2000. (Annexure G)
8. A letter to the Editor written by Mr Kearney of Glaxo Wellcome published in the Sunday Times edition of 16 July 2000. (Annexure H)
9. A letter from President Mbeki to Mr Leon dated 17 July 2000. (Annexure I)
10. A letter from Mr Leon to President Mbeki dated 28 July 2000. (Annexure J)
11. A letter from President Mbeki to Mr Leon dated 5 August 2000. (Annexure K)
12. A letter from Mr Leon to President Mbeki dated 24 August 2000. (Annexure L)
13. A letter from President Mbeki to Mr Leon dated 1 September 2000. (Annexure M)

I stand ready to meet the Hon Speaker at your convenience, to discuss any matters you may wish to raise in connection with the request contained in this letter.

Your sincerely

Charles Nqakula
Parliamentary Counsellor of the President

cc The Hon Chairperson of the NCOP
ANC Chief Whip
Cape Town

* This information can be obtained from the Official Report of Debates in the National Assembly (Hansard).

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ANNEXURE B

19 June 2000

Mr T M Mbeki
President
Republic of South Africa
Private Bag X1000
PRETORIA
0001

Dear President Mbeki

I enjoyed participating in the debate on your Budget Vote and look forward to future encounters of this or a similar kind. Perhaps we could take the discussion further in a less adversarial forum.

I would, however, like to answer your challenge on the issue of HIV/Aids and the proposals concerning AZT and your response thereto. My statement to Parliament was along the following lines:

"I think the AIDS issue is an acute case. To quote the words uttered on the 10th May this year by Charlene Smith who, herself, survived a horrific rape ordeal, she said of the President and this government's stance:

'if instead of spending vast amounts of money recreating the wheel - President Mbeki had taken up the Glaxo Wellcome offer - the lowest in the world at R200 for 28 days' supply of AZT and made it available to rape survivors to prevent HIV - 10 000 rape survivors in South Africa would have got the drug . . . 80% of them would not have sero-converted and become HIV positive if raped by an HIV positive person.' "

Obviously What I said is generally the view of rape and anti-AIDS victim Charlene Smith. Of necessity my remarks were somewhat elliptical because of the wide number of topics I had to cover in the very limited time available to me in your debate.

However, with respect to your response, I believe that my central contention is valid. You, of course, are correct to indicate that AZT is not a vaccine, which I did not suggest it was. It is however an anti-retroviral medication which will prevent sero-conversion in rape victims who are raped by an HIV positive person.

I accept the accuracy of your statement that AZT is not registered with the relevant authority. But surely this is irrelevant? After all, Misoprostal, used in clinics by the government's own Department of Health to induce abortions, is also not registered by the MCC for that specific purpose. . As I understand it, a 28 day course of AZT will boost the immunity of a woman raped by an HIV positive person, thereby allowing her to fight the virus and increase her chances of not converting positive.

Kindest regards

Yours sincerely

A J LEON MP
Leader of the Opposition

ANNEXURE C

27 June 2000

Mr T M Mbeki
President
Republic of South Africa
Private Bag X1000
PRETORIA
0001

Fax: 012 342 1938

Dear President Mbeki

Further to my letter to you of 19 June 2000 on the issue you raised in Parliament in response to my remarks about the so-called Aids vaccine, may I draw to your attention the enclosed response I received from the Chief Executive of Glaxo Wellcome.

Kindest regards

Yours sincerely

AJ LEON MP
Leader of the Opposition

cc Dr M E Tshabalala-Msimang, Minister of Health

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ANNEXURE D

GlaxoWellcome

J.P. Kearney
Chief Executive

21 June 2000

Mr A Leon MP
Parliament of the Republic of South Africa
P.O. Box 15
Cape Town
8000

Dear Mr Leon

Thank you for your letter of 20 June 2000 and the copy of your written response to President Mbeki regarding the AZT drug issue raised in Parliament on 13 June 2000.

It is very kind of you to keep us informed of these developments and I am pleased to confirm that your reply to the President is essentially accurate on the scientific aspects of using AZT as post-exposure prophylaxis in individuals who have been raped.

Together with you and your Party, we look forward to the day when all individuals who have been subjected to the horrific crime of rape will have the opportunity to access anti-retroviral prophylaxis.

Glaxo Wellcome is committed to working together with the South African Department of Health and all relevant role players to improve access to drugs for HIV-positive individuals.

Kind regards

John P Kearney
Chief Executive

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

ANNEXURE E

July 1, 2000

Dear Tony

Thank you for your letters of June 19 and 27, 2000 relating to the AIDS issue. Thank you also for the copy of the letter of the South African CEO of GlaxoWellcome, Mr J.P. Kearney.

As you are aware, during the last few months, I have tried to familiarise myself with all elements relating to the HIV-AIDS matter.

Necessarily, this has also meant studying as much literature as possible on the question of anti-HIV retroviral drugs.

What I said in Parliament was based on the information I had managed to garner on the issue you raised. As you correctly indicate, this related to the efficacy of AZT in stopping HIV infection in cases of rape.

Your statement, that 80% of women raped by HIV-positive men would not become HIV-positive if they are given AZT, has no scientific basis whatsoever.

In this regard, I suggest that, among others, you obtain a copy of the publication of the US CDC, *MMWR September 25, 1998/47 (RR17)*.

Among other things, the CDC says:

"no data exist regarding the efficacy of (anti-retroviral drugs) for persons with nonoccupational HIV exposure . . ." (As you must be aware, 'nonoccupational exposure' includes rape.)

"Some physicians believe that anti-retroviral agents are indicated for persons with possible sexual, injecting-drug-use, or other nonoccupational HIV exposure. However PHS (the US Public Health Service) cannot definitely recommend for or against anti-retroviral agents in these situations because of the lack of efficacy data on the use of anti-retroviral agents in preventing HIV transmission after possible nonoccupational exposure. Efficacy and effectiveness data and additional epidemiologic information is needed . . ." and,

"Research is needed to establish if and under what circumstances anti-retroviral therapy following nonoccupational HIV exposure is effective."

The CDC makes this equally important statement:

"Postexposure anti-retroviral therapy should never be administered routinely or solely at the request of a patient. It is a complicated medical therapy, not a form of primary HIV prevention. It is not a 'morning after pill' . . ." (My emphasis).

In the same report, the CDC says that:

"The risk for HIV transmission . . . per episode of receptive vaginal exposure is estimated at 0.1%–0.2%."

In this regard, you might care to consider what it is that distinguishes Africa from the United States, as a consequence of which millions in sub-Saharan Africa allegedly become HIV positive as a result of heterosexual sexual intercourse, while, to all intents and purposes, there is a zero possibility of this happening in the US.

In your letter to me of June 19, you make the extraordinary statement that AZT boosts the immune system.

Not even the manufacturer of this drug makes this profoundly unscientific claim. The reality is the precise opposite of what you say, this being that AZT is immuno-suppressive.

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Contrary to the claims you make in promotion of AZT, all responsible medical authorities repeatedly issue serious warnings about the toxicity of anti-retroviral drugs, which include AZT.

For example, in its Report, *MMWR May 15, 1998/Vol. 47/No. RR-7*, the CDC says:

"The selection of a drug regimen for HIV PEP (post-exposure prophylaxis) must strive to balance the risk for infection against the potential toxicity of the agent(s) used. Because PEP is potentially toxic, its use is not justified for exposures that pose a negligible risk of transmission."

In this context, please bear in mind the 0.1%-0.2% risk of transmission indicated by the CDC with regard to receptive vaginal exposure.

The matter is not in dispute between us that AZT is not licensed by the South African MCC for use in rape cases. Further to this, GlaxoWellcome has not applied to the MCC for such a licence.

Indeed, the approved package insert for AZT makes no claim about the efficacy of AZT with regard to rape cases.

I would presume that the reason that GlaxoWellcome has not applied for a licence is precisely because it knows that there is no scientific evidence it could produce to justify this application.

It is very strange that you have proven scientific information which GlaxoWellcome, the CDC, the MCC and every responsible medical-authority does not have, that 80% of rape victims in our country would not have become HIV positive if they had been given AZT.

It may be that I underestimate the scientific expertise of which your Party disposes.

Accordingly, I am ready to change my views on this matter, to pay due tribute to such expertise, if it is demonstrated that you do, indeed, have such expertise.

If it is necessary, I can present the argument about the obvious logical absurdity of the claim that viral infection can be stopped by the use of drugs provided that the virus was communicated in circumstances of forced heterosexual sexual intercourse.

It is in this context, apart from extant scientific information, that the issue I raised in the National Assembly about AZT not being a vaccine assumes its relevance. The PEP argument about AZT (and other anti-retrovirals) cannot be sustained unless vaccine-like efficacy is attributed to these anti-retroviral drugs.

Accordingly, the statement you make in your 19 June letter that I am "correct to indicate that AZT is not a vaccine, which I (you) did not suggest it was", is inconsistent with your argument that AZT should be used as though it were a vaccine.

I am very disturbed at Mr Kearney's statement that your incorrect statements about AZT and rape are "essentially accurate on the scientific aspects of using AZT as post-exposure prophylaxis in individuals who have been raped."

I imagine that all manufacturers of anti-retroviral drugs pay great attention to the very false figures about the incidence of rape in our country, that are regularly peddled by those who seem so determined to project a negative image of our country.

What makes this matter especially problematic is that there is a considerable number of people in our country who believe and are convinced that most black (African) men carry the HI virus.

In addition to this, reflecting a view among these about rape in our country, Charlene Smith was sufficiently brave, or blinded by racist rage, publicly to make the deeply offensive statement that rape is an endemic feature of African society.

This is what she wrote recently in the US *Washington Post*:

“Here, (in South Africa), HIV is spread primarily by heterosexual sex — spurred by men’s attitude towards women. We won’t end this epidemic until we understand the role of tradition and religion — and of a culture in which rape is endemic and has become a prime means of transmitting the disease, to young women as well as children.”

The hysterical **estimates** of the incidence of HIV in our country and sub-Saharan Africa made by some international organisations, coupled with the earlier wild and insulting claims about the African and Haitian origins of HIV, powerfully reinforce these dangerous and firmly-entrenched prejudices.

None of this bodes well for a rational discussion of HIV-AIDS and an effective response to this matter, including the use of anti-retroviral drugs.

Whatever his obligations as the Chief Executive of the company that manufactures AZT, I think it is grossly unethical that Mr Kearney should seek to increase the sales of AZT, and therefore GlaxoWellcome’s profits, by exploiting the justified health concerns of our people.

I consider it deeply offensive and contemptuous of our people, our country and its laws that, as you and Charlene Smith say, GlaxoWellcome should promote the sales of AZT by selling ‘cut-price’ AZT in our country for use by rape victims, knowing very well that this is in violation of the law and that no scientific evidence exists proving the efficacy of this drug in cases of rape.

I have noted the fact that Mr Kearney seeks to achieve his commercial purposes “together with you and your Party.”

It is amazing and completely unacceptable that you, the Leader of the Official Opposition, should consider all of this, including blatant disrespect for the rule of law, as “irrelevant”, the word you use in your letter to me.

You will remember that during the debate around the legislation we introduced enabling the parallel import of drugs and medicines, to make these affordable for our population that is deeply mired in poverty, your party was correctly and needlessly very vocal about the necessity to ensure that all pharmaceutical products available to our people should be subject to approval by the MCC.

Why is a double standard now being applied with regard to AZT, making the need for the certification of drugs by the MCC “irrelevant”?

Only recently, your party has been very strident in demanding respect for the rule of law in Zimbabwe.

Why is a double standard now being applied with regard to AZT, making the requirement for observance of the rule of law “irrelevant”?

In his letter to you, Mr Kearney says his company is committed “to improve access to drugs for HIV-positive individuals.”

In more direct and plain language, this means that, consistent with its normal and understandable commercial objectives, GlaxoWellcome is committed to increase the sales of AZT in our country, in competition with anti-retroviral drugs manufactured by other companies.

If Mr Kearney did not pursue this objective as vigorously as possible, his company would be entitled to terminate his contract.

You and I, as public representatives of our people, pursue, or should pursue, a different objective. With regard to the matter under discussion, our objective must surely be to improve the health of all our people.

I think that it is dangerous that any of our public representatives and political parties should allow themselves to be used as marketing agents of particular products and companies, including drugs, medicines and pharmaceutical companies.

I accept that it is perfectly within their right for private individuals, such as Charlene Smith, to play this role, as it would be for you, in your private capacity.

In the controversy that has attended the questions our government has raised about various matters relating to HIV-AIDS, much has been said about us, in a sustained effort to force us uncritically to accept a so-called orthodox view.

We have resisted this pressure and will continue to do so, because of the decisive importance of an accurate understanding of AIDS and its specifics in our own country.

I trust that our discussion about AZT and rape will convince you that despite the fervent reiteration of various assertions, supported by many scientists, medical people and NGO's, about the existence of some unchallengeable and immutable truths about HIV-AIDS, as public representatives we have no right to be proponents and blind defenders of dogma.

Whatever the intensity of the campaign to oblige us to think and act differently on the HIV-AIDS issue, the instinctive human desire in the face of such a barrage, to obtain social approval by succumbing to massive and orchestrated pressure, will not lead us to become proponents and blind defenders of dogma.

The cost of AIDS in human lives is too high to allow that we become blind defenders of the faith.

Unless you have evidence to demonstrate that what I have said about AZT and rape is wrong, I would expect that you make a public statement distancing yourself from the false claims so regularly propagated in this country, concerning the efficacy of AZT as post-exposure prophylaxis in cases of rape, propaganda in which you joined.

Not only is this the only honourable thing to do, but, as a high-level public representative, I believe you have an obligation to correct the misleading impression on the matter we are discussing that you and your Party have conveyed on more than one occasion, in Parliament and elsewhere.

Needless to say, to uphold the rule of law and to fulfil the government's obligations with regard to the health of our people, we will follow up on the matters you have brought to our attention, concerning the disturbing behaviour of Glaxo Wellcome.

Given that the matters about which you have written to me were discussed openly in the National Assembly, during which debate I suggested that you convey my views to Glaxo Wellcome, I believe that it would be correct that we make the correspondence between us available both to the National Assembly and the general public.

Once again, I would like to suggest that you inform yourself as extensively as possible about the AIDS epidemic. Again, for this purpose, I would like to recommend that you access the Internet.

On the various websites, you will find an enormous volume of literature, including CDC, WHO and UNAIDS documents, editions of various highly respected science journals as well as "dissident" articles.

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ANNEXURE F

7 July 2000

Mr Parks Mankahlana
Spokesperson for the Presidency
Per fax: 012 342 1938

Dear Mr Mankahlana

In his letter of July 1 to Mr Leon on the subject of making AZT available to rape survivors, President Mbeki said that he believed it correct to "make the correspondence between us available both to the National Assembly and the general public."

In his response this morning, Mr Leon agreed.

Consequently, I have made the correspondence available to Ray Hartley of the *Sunday Times*.

Please feel free to contact me in this regard. My cell number is 083 448 2693.

Yours sincerely

Ryan Coetzee
DP Executive Director for Political Management

ANNEXURE G

7 July 2000

Mr T M Mbeki
President
Republic of South Africa
Private Bag X1000
Pretoria
0001

Fax: 012 342 1938

Dear President Mbeki

Thank you for your letter of the 1st of July. I appreciate the great time and effort that you have obviously put into your response, although I find much of the tone and content unhelpful in promoting rational debate on this important matter.

If I understand your letter correctly, you argue against the provision of AZT to rape victims on two grounds:

Firstly, you argue that there is "no scientific evidence" to support the argument that the provision of AZT could prevent the transmission of the HIV virus to rape victims.

Secondly, you claim that the risks of potential transmission are so low that they do not warrant the use of AZT, which as you correctly point out can have severe side effects.

You base your argument on numerous quotes from the publication of the Centre for Disease Control in *America, Morbidity and Mortality Weekly Report*, September 25, 1998/ Vol 47/ No. RR-17. I do not believe that when read as a whole, the document supports your arguments. I will deal with each argument in turn.

The evidence from the CDC report which you provide to support your first argument is a quote from the CDC which says "no data exist regarding the efficacy of (anti-retroviral drugs) for persons with nonoccupational HIV exposure . . ."; the fact that the US Public Health Service "cannot definitely recommend for or against anti-retroviral agents in these situations because of the lack of efficacy data"; and that further research is needed "to establish if and under what circumstances" such therapy would be effective.

The CDC report is extremely even-handed. It scrupulously weighs up the evidence both for and against the provision of anti-retroviral drugs following non-occupational HIV exposure. You have unfortunately only quoted the arguments against. A point that must be made at the beginning is that the CDC does *allow* the provision of anti-retroviral drugs by physicians to rape victims. The document is an attempt to highlight the "potential benefits and risks" and so provide a guide to physicians on whether or not to pursue such a course of treatment. The CDC has published formal guidelines for physicians should they choose to use AZT.¹

The reason for the lack of "efficacy data" is that there have been no prospective trials conducted to measure the effectiveness of AZT for non-occupational exposure. It is simply impossible to conduct such trials because one would need to establish beyond doubt the HIV status of both the rape suspect and the rape survivor before and after the rape. While this in itself is almost impossible, the

1. CDC, "Guidelines for treatment in cases of sexually transmitted diseases", MMRW 1998; 47:109-110.

fact that it is illegal to test for HIV against a person's will makes such research harder still. The best that can be done is to conduct a retrospective case control study. One is currently being conducted by the CDC.

It is for this reason that the CDC is unable to recommend either for or against anti-retroviral drugs for rape victims. This does not mean that there is "no scientific basis whatsoever" for my statement that the provision of AZT would reduce HIV transmission to rape survivors.

In fact, the CDC report evaluates data from various trials, which could have a bearing on the potential efficacy of anti-retroviral PEPs. It makes reference to various trials conducted on animals, but I will deal only with its references to studies on humans. Two are of significance: Firstly, the CDC quotes the study (which I referred to in my letter) from a 1995 survey where investigators used "case control surveillance data from health care workers" in Europe and America to document that AZT use "was associated with an 81% decrease in the risk for HIV infection after percutaneous exposure to HIV-infected blood". According to the CDC this study "demonstrated anti-retroviral effectiveness" following needle stick injuries.

The CDC also refers to the study where there was a 67% reduction in transmission of HIV from mother to child when AZT was administered during pregnancy, labour, and for six weeks after birth. The CDC states that there was evidence that a "prophylactic effect" on the foetus before, during or after birth "could account for some reduction in perinatal transmission".

Although the CDC report acknowledges that these studies "might not be directly relevant to non-occupational exposure" they do "suggest that anti-retroviral agents are potentially valuable for treating HIV exposures in these settings".

These trials are obviously not conclusive for they have to be extrapolated to non-occupational settings. However, they do suggest that anti-retroviral agents can act as a postexposure prophylaxis and reduce a person's risk of acquiring HIV infection after exposure. The CDC report states "it can take several days for infection to become established in the lymphoid and other tissues. During this time, interventions to interrupt viral replication could represent an opportunity to prevent an exposure from becoming an established infection."

Thus, if providing AZT to rape victims can prevent an exposure to HIV from becoming an established infection (and there is substantial evidence to suggest it can) the benefit is massive, if not priceless. The victim is literally saved from a death sentence.

Which brings me to your second argument, which is that the chances of HIV transmission from rape are so small, and the side-effects of AZT are so large, that providing such treatment to rape victims is not really worth the candle.

You quote the CDC as saying that in selecting a drug regime for post-exposure prophylaxis the physician should "balance the risk for infection against the potential toxicity of the agent(s) used. Because PEP is potentially toxic, its use is not justified for exposures that pose a negligible risk of transmission." You then state, "in this context, please bear in mind the 0.1% - 0.2% risk of transmission indicated by the CDC with regard to receptive vaginal exposure." You seem to be implying that "receptive vaginal exposure" constitutes a "negligible risk of transmission" and that consequently it is not worth providing rape survivors with AZT with potentially toxic side effects.

This is disingenuous for two reasons: Firstly, the risk of HIV transmission following rape (particularly in South Africa) is not "negligible" at all. Rape does not constitute "receptive" sex and as such is likely to lead to trauma and consequently a far greater risk of HIV transmission. The risk is compounded in

South Africa by the high levels of HIV in the population as well as the prevalence of Sexually Transmitted Diseases, which greatly increase the possibility of HIV transmission.² Secondly, the CDC is not referring to rape or consensual sex when it states that PEPs are not "justified for exposures that pose a negligible risk of transmission". Rather, it is referring to contact between infected body fluid and intact skin. This would be clear had you quoted the whole sentence from the CDC report, which reads, "Because PEP is potentially toxic, its use is not justified for exposures that pose a negligible risk of transmission (e.g. potentially infected body fluid on **intact skin**)."

(My emphasis.) This is just one example of where you have pruned quotes to make them fit your argument. Elsewhere you quote the CDC report as saying "Postexposure anti-retroviral therapy should never be administered routinely or solely at the request of a patient. It is a complicated medical therapy, **not a form of primary HIV prevention. It is not a 'morning-after pill . . .**" (your emphasis)". Yet you omit to mention that the report continues (from precisely the point where you left off) "but, **if proven effective, can constitute a last effort to prevent HIV infection in patients for whom primary prevention has failed to protect them from possible exposure.**" (My emphasis.)

Reading through your letter I had the strong feeling that you have reached your conclusions already. You then selectively choose quotes to support your argument, and ignored others that didn't. If the quotes do not quite fit your purposes you lop off the awkward parts.

What is most disturbing about your letter is the way you impute sinister motivations on the *bona fide* actions of others. You seem to believe that the request by my Party, Charlene Smith and others for the government to provide AZT to rape victims, and the offer by Glaxo Wellcome to provide it at greatly reduced prices, is all part of a giant conspiracy. You imply that this conspiracy is the result of some unholy alliance between a civil society motivated by racism and an international pharmaceutical industry driven by greed.

It seems that underlying your letter is a belief that civil society is once again being driven by an overriding desire to reaffirm "its belief that its racist stereotype of Africans [is] correct." (*ANC statement to HRC on racism in media*)

Out of a "determination" to project a "negative image" of South Africa unnamed forces peddle what you describe as "very false figures"³ on the

2. The 1999 Health Systems Trust Report reports that over half of all antenatal clinic attendees have at least one STD. More specifically, it was estimated that up to 15% of family planning and antenatal clinic attendees were seropositive for syphilis, 16% harbour chlamydial infections, 8% have gonorrhoea and as many as 20-50% have other vaginal infections. Further, Medical Research Council research suggests that one quarter of the country's sexually active population have at least one STD.

The South African Institute for Medical Research has some alarming figures on the implications of the STD epidemic for Aids infection. The likelihood of infection increases to 5% if one partner has a discharge associated with gonorrhoea, chlamydia or trichomoniasis. If both partners have such a discharge the risk increases to 25%.

In the case of genital ulcer, as associated with syphilis, herpes or chancroid, the AIDS transmission rate increases to about 7% with one infected partner and 49% if both are infected. With multiple STD infections, the transmission rate can be well over 50%.

3. You have on previous occasions expressed doubt about the extent of the rape crisis in South Africa. But two facts are probably undisputable. The first is that South Africa has extremely high figures of *reported* rapes. The second, is that it is extremely difficult to determine the precise extent of rape due to underreporting.

The number of rapes is also increasing alarmingly. Police statistics show that the number of reported rapes in the country increased from 109.8 per 100 000 people in 1994 to 119.1 in 1996. According to the SAPS, between 1994 and 1998 the number of *reported* incidents of rape increased by 16%. While there may be different views about the extent of under-reporting, there is no doubt that reported cases represent only the tip of the iceberg. A 1998 victims survey by Statistics South Africa found that there was a 47% underreporting of sexual offences. However, the report suggested that even this figure was debatable, as

incidence of rape in this country. You claim that the AIDS debate in South Africa is being driven (and distorted) by people "who are convinced that most black (African) men carry the HIV virus". Among their number you name Charlene Smith who you claim was "blinded by racist rage" when she wrote that rape was endemic in South African society.

You proceed to complain that by publishing "hysterical estimates" (your emphasis) and by making "wild and insulting claims" about the African origins of HIV, the international community is (whether out of accident or design) acting to "reinforce these dangerous and firmly-entrenched prejudices".

You then claim that the international pharmaceutical companies are driven by even more sinister motivations. You suggest that the sole and overriding desire of the pharmaceutical companies is to maximise their profits by exploiting every available opportunity to flog their drugs to South Africa, regardless of their efficacy or toxicity thereof. You claim that having had their interest pricked by the high incidence of rape in this country, Glaxo Wellcome set out to cynically exploit the "justified health concerns of our people" in order to (once again) "increase the sales of AZT". To top this giant-racial-capitalist-conspiracy off you accuse Charlene Smith and I of being "marketing agents" of the pharmaceutical companies.

(For the record: Neither I nor the Democratic Party have received any financial assistance of any nature from Glaxo Wellcome.)

What concerns me about your letter is the tendency to turn questions of fact into questions of motive. This method of propaganda may be useful means of silencing (or isolating) your critics without responding to their arguments, but is not particularly conducive to rational debate.

It is somewhat hypocritical to accuse overseas opinion of intolerance and then to try to shut down dissent domestically by labelling people "racists" or "pawns of the pharmaceutical industry". Your statement that the government will take steps against the "disturbing behaviour of GlaxoWellcome" is frankly sinister.

Your determination to resist the imposition of what you call the "dogma" of scientific opinion seems to be matched only by a desire to impose your own.

Yet what is most worrying for South Africa is that it seems your party has actually started to believe its own propaganda. Instead of identifying, confronting, and then dealing with the immense problems facing our country, the ANC is perpetually chasing shadows. You seem more concerned with the possibility that high rape and AIDS figures might confirm the prejudices of some, than with the massive human tragedy in our country which those figures are merely an indication of. In consequence, your obsession with the motives of others has begun to harm the interests of the very people you claim to represent.

As the earlier part of my letter has indicated, there are strong scientific grounds for providing post-exposure prophylaxis to victims of rape. I cannot see how the offer by GlaxoWellcome to provide AZT to rape survivors at *reduced* prices can be described as "grossly unethical".

Similarly, I cannot see how you can equate the provision of AZT to rape survivors with the state sponsored campaign of terror and intimidation in Zimbabwe. It is a nonsensical comparison.

people who had reported sexual assault to the police would be more likely to acknowledge such an assault to the survey.

I also refer you to a survey carried out over three years by the Johannesburg Southern Metropolitan Council and CIET Africa, the results of which were published in June of this year and which you have no doubt seen. The survey found that one out of every four men questioned said that they had committed rape before the age of 18, while eight in ten said they believed women were responsible for sexual violence. Alarming, one in ten thought that gang rape was "cool".

I, like you, are a layman on these matters. You are entitled to your personal opinion on whether AZT is effective in reducing HIV transmission; and indeed, whether HIV even causes AIDS. However, it is wrong for you to use your current position (which was gained on the basis of political rather than medical talent) to block the provision by your government of such treatment.

It is perfectly consistent with the CDC report (which you quote!) for our government to make available AZT for prescription to rape victims. Obviously, our doctors must weigh up the risks and benefits of prescribing such treatment. They must act both with the informed consent of the patient, and according to proper guidelines such as the CDC provides. The point is that the physician and the patient must be left to make that decision. By denying rape victims AZT you are denying them the choice. With all due respect, you lack both the moral right and the medical expertise to make such a life and death decision.

I agree that this correspondence should be made available to the National Assembly and the general public.

Yours sincerely

A J LEON MP

Leader of the Opposition

(Signed in Mr Leon's absence.)

ANNEXURE H

Putting the AZT record straight

(Sunday Times: 16/07/2000)

GLAXO Wellcome is concerned that it has become a subject of last week's correspondence between President Thabo Mbeki and the Leader of the Opposition, Tony Leon, as reported in "AIDS: Mbeki versus Leon" (July 9), when South Africa and the world battle with a serious AIDS crisis.

This should be a time for stakeholders to come together to find common ground rather than a time to polarise the debate.

There were a number of misconceptions and errors contained in the two letters printed in your newspaper, and thus, to correct the misunderstanding and make a meaningful contribution to the discussion, Glaxo Wellcome wishes to put on record the following points:

- Glaxo Wellcome first offered preferential pricing of its two anti-retroviral products, AZT and 3TC, to the South African government for use in the public sector in 1997, and this pricing has since been put into practice through the State Tendering Authority.

The exchange between the President and Mr Leon implied that this pricing was also offered for use following rape — causing concern at Glaxo Wellcome because AZT is not registered for this purpose. All our offers of preferential pricing in South Africa have been for the use of AZT in prevention of mother-to-child transmission of HIV.

The company has not engaged in any price or supply negotiations to provide AZT for use in rape survivors, nor does the company promote the product, for that indication. Mr Leon has therefore misinterpreted the company's offer.

- President Mbeki is correct in pointing out that Glaxo Wellcome's package insert for AZT does not mention the medicine's use in rape situations. For the reasons spelled out in Mr Leon's letter, it has not thus far been possible to carry out clinical studies relating to the use of anti-retrovirals in rape survivors.

However, the medical profession's discretion to administer AZT to rape survivors is supported by the recommendation of the Centres for Disease Control in Atlanta, US, the worldwide authority on communicable diseases. Furthermore, the CDC and other researchers are analysing the issues surrounding rape and anti-retrovirals in an attempt to devise appropriate clinical studies to test the effectiveness of medication in preventing transmission in such circumstances.

- Glaxo Wellcome is proud of the highest ethical standards of its operation in South Africa and worldwide. Glaxo Wellcome SA does not engage in any direct or indirect support for political parties, as it believes that healthcare needs to transcend political discussion — although the company does provide information and assistance on its products when these are requested by a legitimate source.

Glaxo Wellcome's excellent track record was this year once again confirmed when 151 general practitioners and 35 managed healthcare leaders in South Africa voted Glaxo Wellcome as South Africa's most ethical pharmaceutical company.

We trust this clarifies the issue. — John Kearney, CEO, Glaxo Wellcome South Africa, Johannesburg.

ANNEXURE I

July 17, 2000

Dear Tony,

Thank you for your letter of 7 July 2000 which discusses various matters related to HIV-Aids. Unfortunately because of pressing engagements inside and outside the country, I could not reply to your letter earlier.

As you will remember, there was the exchange between us in the National Assembly related to the issue of the provision of AZT to rape victims. Accordingly, your own letters to me dated June 19 and 27 also discuss this particular matter.

Your latest letter goes beyond this. For instance, you refer to such matters as needle-stick injuries and mother-to-child transmission, neither of which was under discussion between us.

Let me therefore return to the matter of AZT and rape and the matter of statements made by representatives of Glaxo Wellcome.

As you know, in his letter to you, the CEO of Glaxo Wellcome South Africa, Mr Kearney, said that your incorrect statements about AZT and rape were "essentially accurate on the scientific aspects of using AZT as post-exposure prophylaxis in individuals who have been raped".

Yet, Dr Peter Moore, Medical Director of Glaxo Wellcome South Africa, had said on the television programme, *Carte Blanche*, on 7 November 1999:

I have to state **emphatically** that AZT is not registered and we **do not** recommend it for use after rape." (My emphases.)

A rule of simple logic states that two diametrically opposed statements about the same thing cannot both be correct.

It was not possible that both Mr Kearney and Dr Moore, both of Glaxo Wellcome South Africa, could both be correct.

I am pleased to see that the CEO of Glaxo Wellcome has now repudiated what he said about your comments being "essentially accurate on the scientific aspects ... etc".

As you will have seen in the *Sunday Times* edition of July 16, 2000, this is what Mr Kearney now says:

"The company has not engaged in any price or supply negotiations to provide AZT for use in rape survivors, nor does the company promote the product for that indication. Mr Leon has therefore misinterpreted the company's offer.

"President Mbeki is correct in pointing out that Glaxo Wellcome's package insert for AZT does not mention the medicine's use in rape situations. For the reasons spelled out in Mr Leon's letter, it has not thus far been possible to carry out clinical studies relating to the use of anti-retrovirals in rape survivors."

I trust you will also note that whereas Mr Kearney says his company does not promote AZT for use by rape survivors, Dr Moore says they do not recommend it for use after rape.

Given the gravity of the matter under discussion, this is not simply a matter of semantics. Perhaps Glaxo Wellcome will have an opportunity to clarify this matter in future.

As I said to you and the rest of the National Assembly, AZT is not registered in

this country for use by rape victims. Neither has its efficacy for such situations been demonstrated scientifically.

Obviously, you did not believe what I said then and continued to communicate things I am convinced were clearly wrong.

You sought to convince us that there was proven efficacy of AZT in cases of rape and that Glaxo Wellcome had offered this drug at reduced prices for use in such circumstances.

You even went so far as to suggest that the fact that AZT was not registered or suggested for this indication was "irrelevant".

I remain firmly of the view that had AZT been promoted and offered at reduced prices for rape cases, this would have constituted very disturbing behaviour on the part of Glaxo Wellcome, driven by nothing else except profit, with no regard for ethics and the health of our people.

It would require that the government take the necessary action to stop what would have been illegal behaviour.

I find it very interesting indeed that you consider the enforcement of the law in this regard as you say in your letter as "frankly sinister".

In the National Assembly and subsequently, you communicated wrong things as fact. Glaxo Wellcome has now also stated that what you conveyed was incorrect.

This may come as a surprise to you, but given this reality, all normal human beings will naturally ask what your motives are in doing this.

Throughout our communication on the matter under discussion I have not resorted to any "propaganda" as you allege. Neither have I sought to silence you.

What we are about is gaining as accurate and factual an understanding as possible with regard to the matter under discussion. As I am doing in this letter, I am quite ready to respond to all your arguments and hope that you are as ready to respond to mine without rancour.

You and Mr Kearney argue, as you say in your letter, that "the CDC *does allow* the provision of anti-retroviral drugs by physicians to rape victims."

I can only interpret this as being nothing more, or less, than a determined attempt to ensure that rape victims use AZT and other anti-retroviral drugs.

Let me go back to the CDC documents I cited in my letter to you.

The CDC document MMWR September 25, 1998 / 47(RR17) - hereafter RR17-says:

"Because no data exist regarding the efficacy of this therapy for persons with non-occupational HIV exposure, it should be considered **an unproven clinical intervention.**" (My emphasis.)

"Although healthcare providers and others have proposed offering anti-retroviral drugs to persons with unanticipated sexual or injecting-drug-use HIV exposures, **no data exist regarding the effectiveness of such therapy for these types of exposures.**" (RR17). (My emphasis.)

"Many insurers will not cover the cost of this unproven therapy, so any possible benefit will be limited, based on the patient's ability to pay." (RR17).

"The risk for HIV transmission per episode of receptive penile-anal sexual exposure is estimated at 0.1%–3%; the risk per episode of receptive vaginal

exposure is estimated at 0.1%–0.2%. No published estimates of the risk for transmission from receptive oral exposure exist, but instances of transmission have been reported.” (RR17).

Commenting on studies of anti-retroviral agents used to prevent HIV infection in animals, the same document says:

“Treatment initiated within 24 hours of exposure and continued for 28 days appeared to have a greater effect than treatment initiated 72 hours after exposure. However, ZDV (AZT) might not be the optimal agent to demonstrate proof-of-concept because **it has not demonstrated potent inhibitory activity against SIV infection in macaques even when treatment is initiated before viral exposure.**” (RR17). (My emphasis.)

Presumably this is where you and Ms Smith found your figures about the need to dispense AZT within 24 hours of rape and to sustain this for 28 days.

Yet the same document concludes:

“Extrapolating these results to humans is problematic because of several factors ... Animal studies offer proof-of-concept and demonstrate the challenges to understanding the requirements for effective use of anti-retrovirals to prevent HIV transmission in humans.” (RR17).

In your letter you draw attention to comments made in this document to the entirely different issues categorised in the document as:—

- “percutaneous exposure to HIV-infected blood” among health workers; and,
- “perinatal transmission” of HIV to their child by HIV-infected mothers.

The CDC goes on to say:

“Despite the apparent usefulness of anti-retroviral agents in perinatal and occupational settings, it is unclear whether these findings can be extrapolated to other settings. Further studies are needed before one can conclude whether using anti-retroviral agents to prevent HIV infection after non-occupational exposures is effective.” (RR17).

Whereas the CDC warns against the extrapolation of these findings to other, and specifically non-occupational, settings, **you proceed to do precisely this.**

You write:

“Thus, if providing AZT to rape victims can prevent an exposure to HIV from becoming an established infection (and there is substantial evidence to suggest it can) the benefit is massive ...”

Nowhere is it suggested in the CDC documents that *thus the provision of AZT to rape victims can prevent exposure to HIV!*

Where is the substantial evidence to which you refer, when in your own letter you also say: “The reason for the lack of ‘efficacy data’ is that there have been no prospective trials conducted to measure the effectiveness of AZT for non-occupational exposure”!

The allowance you assert the CDC gives for the provision of anti-retroviral drugs to rape victims is nothing more than a statement that the US Government has not banned the use of these drugs in cases of rape.

Any open-minded reading of its documents can only lead to one conclusion.

As stated by the CDC, that conclusion is that:

“Because of the lack of efficacy data for the use of anti-retroviral agents to reduce HIV transmission after a possible non-occupational exposure, PHS is unable to recommend for or against therapeutic approach ... Research is needed to establish if and under what circumstances anti-retroviral therapy following non-occupational HIV exposure is effective.” (RR17).

I therefore find it extremely puzzling and very strange indeed that you describe this CDC document merely as "an attempt to highlight the 'potential benefits and risks' and so provide a guide to physicians on whether or not to pursue such a course of treatment."

Repeatedly, the CDC says no data exist to demonstrate or disprove such benefit. Yet you say that the document, among other things, seeks to highlight potential benefits!

What the document does highlight are the risks of toxicity associated with the use of anti-retroviral drugs. Balanced against this, it gives the estimate for the risk of HIV transmission in the case of one episode of receptive vaginal intercourse as being almost zero.

What the CDC says is that if any physician should nevertheless decide to prescribe anti-retroviral drugs, despite everything it says, then such a physician should do a whole range of things, spelt out under 9 bullet points, including obtaining the **informed consent** of the patient.

So serious is this matter that the CDC says that such informed consent should be "recorded in the medical charts of all persons prescribed anti-retroviral agents following non-occupational exposure."

The CDC says: "The patient should be told that physicians have diverse opinion about the use of anti-retroviral medications to treat possible non-occupational HIV exposure and that PHS cannot make definitive recommendations because of limited knowledge."

Beyond all this, because of the problems of toxicity, the CDC says any physician who decides to use these medications should do so "**in consultation with an expert in the use of anti-retroviral agents.**" and "**If physicians decide to use anti-retroviral agents, they should consult with an HIV-care provider experienced with their use.**" (My emphases.)

Your letter contains this extraordinary sentence:

"Rape does not constitute 'receptive' sex and as such is likely to lead to trauma and consequently a far greater risk of HIV transmission."

In all the literature I have seen, the words "receptive" and "insertive" are used to distinguish the passive from the active partner, as during male homosexual intercourse.

Where the CDC referred to receptive vaginal exposure, this is to differentiate this exposure from receptive anal exposure and receptive oral exposure for women.

Clearly, in the event that no receptive exposure would have occurred, then no rape would have occurred. It therefore makes no sense to say, as you do, that "rape does not constitute 'receptive' sex..."

You also make the extraordinary statement that:

"The CDC is not referring to rape or consensual sex when it states PEPs are not 'justified for exposures that pose a negligible risk of transmission'."

In this letter and, to some extent, the previous one I wrote to you, I quoted estimates the CDC made about the risk of HIV transmission in situations of homosexual and heterosexual sexual intercourse.

I trust that the planets you and I inhabit are not so foreign to each other, as seems to be the case, that we fail to agree that the receptive vaginal exposure to which the CDC refers, constitutes "sex" in the colloquial meaning of this word.

I also trust that we will also agree that by any standard a 0.1%-0.2% risk of transmission in instances of receptive vaginal exposure, constitutes a negligible risk of transmission.

Indeed, the particular paragraph of the CDC document in which these figures are mentioned is headed — **Probability of Transmission From One HIV Exposure!**

The only conclusion 'a reasonable man' can reach from the CDC document is that the CDC is saying that the Probability of Transmission From One HIV Exposure in the event of receptive vaginal exposure is negligible, whatever the national levels of HIV infection, which you describe in our country as high.

Any other conclusion would obviously be illogical or constitute a wilful attempt to disregard facts, for whatever reasons.

I do not understand how you came to the conclusion that 'negligible risk of transmission' refers only to "contact between infected body fluid and intact skin." Nowhere does the CDC say this.

It says that "an estimated 95% of recipients become infected from transfusion of a single unit of infected whole blood."

Obviously, this represents an almost certain risk of transmission.

In the same paragraph, the CDC says "the risk for HIV transmission per episode of intravenous needle or syringe exposure is estimated at 0.67%. The risk per episode of percutaneous exposure (e.g. a needlestick) to HIV-infected blood is estimated at 0.4% . . ."

The figures relating to anal, vaginal and oral sexual exposure are, again, cited in this same paragraph which, as we have said, is headed Probability of Transmission From One HIV Exposure.

You say that, deliberately to mislead, I did not quote the words that appear in the CDC report, viz, "e.g. potentially infected body fluid on intact skin."

The Oxford English Dictionary explains the expression e.g. as follows:

"Exempli gratia — for the sake of example."

Because of the strange twists of logic that litter your letter, you have transformed what was stated by the CDC for the sake of example into the totality of what the CDC sought to convey.

I am puzzled about why you find it necessary to do this.

You also complain that I omitted to mention certain CDC words that occur after its statement that anti-retroviral therapy "is not a morning-after pill . . ." I note that, of course, you make no comment about this very firm CDC statement, given that you seem so keen that AZT should be given to rape survivors, despite the absence of any data to justify this, and despite the comments of Glaxo Wellcome.

Again, I do not understand why you think the particular fragment I did not quote helps your argument.

This fragment starts, "**If proven effective . . .**" (My emphasis.) Here, the CDC is making the same point it makes throughout the document from which we have quoted, that the efficacy of anti-retroviral drugs with regard to non-occupational exposure has not been proved.

Accordingly, it says that **if** such efficacy is proved in future, "post-exposure anti-retroviral therapy (which is not a form of primary HIV prevention) can constitute a last effort to prevent HIV infection in patients for whom primary prevention has failed to protect them from possible exposure."

I fail to see why you think this fragment which I "pruned" from what I quoted, to use your word, helps your very curious determined defence of the scientifically indefensible.

In your letter, you also state that sexually transmitted diseases "greatly increase the possibility of HIV transmission".

On this matter, the CDC says:

"Sexual activities associated with a risk of HIV transmission also are associated with risk for unintended pregnancy and STDs (e.g. syphilis, gonorrhea, chlamydia or hepatitis B virus)." (RR17.)

As you will notice, this is very different from what you say about greatly increased possibilities of HIV transmission.

You may have noticed that in my speech at the Opening Session of the 13th International Aids Conference earlier this month, I mentioned the incidence of STDs as one of the conditions that contribute to Africa's health crisis and referred to teenage pregnancies.

I believe that STDs are very relevant to the collapse of immune systems among many Africans, including our own people, and therefore the acquired immune deficiency syndrome.

There are many scientists who have been conducting research into this matter for some time.

One of these, John B. Scythes of Canada has written to the WHO as follows:

"Latent syphilis is chronic active syphilis from the immunological standpoint, and is both more dangerous for immune system genetics and harder to treat than exanthematous late syphilis. Judging from the work of Poland's Jadwiga Podwinska and the late Tom Fitzgerald from Minnesota, a Th2 cytokine pattern begins to predominate in most persons with latent syphilis, and standard treatment does not reverse this phenomenon.

Subsequent re-exposure without Th1-driven immunologic anamnesis would lead to the silent re-dissemination of treponemes."

I hope that the international scientific panel on AIDS that we have convened will address the important issue of STDs.

However, whatever the impact of STDs on the immune system, the correct medical response to infection with these is to treat them using established therapies. None of these include the use of AZT or any of the other anti-retrovirals.

The suggestion that because STDs impact negatively on the immune system, as does TB, they should therefore be treated with AZT, would constitute very serious medical malpractice.

I hope this is not what you are suggesting.

I also note that you make no comment whatsoever against the gravely insulting statement made by Charlene Smith about rape being "endemic" in African culture.

Rather, you attach footnotes to your letter which, by trying to talk the rape figures upwards, seek to imply that she may, after all, be right.

My attention has also been drawn to Ms Smith's denial, in a recent publication, of ever having written the passage I quoted in my letter to you.

In the event that you did not understand its true import, let me cite it once again.

"Here, (in South Africa), (AIDS) is spread primarily by heterosexual sex — spurred by men's attitude towards women. We won't end this epidemic until we understand the role of tradition and religion — and of a culture in which rape is endemic and has become a prime means of transmitting the disease, to young women as well as children."

The article in which this appears is subtitled — “Their Deaths, His Doubts, My Fears”.

It appears in the *Washington Post* edition of June 4, 2000. Dated Johannesburg, the newspaper says it is “By Charlene Smith”, described by the newspaper as “a South African journalist who writes about HIV, (who) will speak at the International AIDS Conference in Durban in July.”

Since she denies having made this nakedly racist statement, which you seek to justify in your footnotes, time will tell who between her and the *Washington Post* is prone to the shameless propagation of unembellished untruths.

The racist stereotype of Africans that many South Africans carry in their heads has nothing to do with “civil society”. The subterfuge of seeking to hide behind the skirts of “civil society” will not pass.

Your comments suggest that you are not aware of the fact that the figures published about the incidence of HIV in our country and the rest of our Continent are estimates.

Mathematicians and statisticians have questioned the reliability of these estimates and the correctness of making extrapolations, in our country, from information gathered among pregnant black (African) women at antenatal clinics, using highly questionable mathematical models. To understand the extraordinary distortion this creates, please try to get figures about the incidence of HIV-AIDS among the white population of our country!

I am certain you will find the search very frustrating and the result very illuminating! But, of course, I am likely to be quite wrong in assuming that a person as well informed as you are about HIV-AIDS does not already have this information.

You may also be unaware of the desperate attempt made by some scientists in the past to blame HIV-AIDS on Africans, even at the time when the USA was the epicentre of reported deaths from AIDS.

To me as an African, it is both interesting and disturbing that the signatories of the so-called “Durban Declaration” return to the thesis about the alleged original transmission of HIV “from (African) animals to humans”, given what science has said about AIDS during the last two decades.

I accept that it may be that you do not understand the significance of this and the message it communicates to Africans, hence your queer observation that I seek to silence our critics, without responding to their arguments.

In my letter of July 1, 2000 I took issue with you about the matter of double standards. In one instance this related to the matter of the rule of law, about which you campaigned with regard to the land question in Zimbabwe.

In this regard, you accuse me of making “a nonsensical comparison.”

Since the issue of the rule of law is a matter of principle, I believe that it is fundamentally incorrect to argue, as you did, that AZT should be prescribed for rape, despite the fact that the existing legal procedures had not been followed enabling this drug to be registered and legally dispensed for this purpose.

Strangely, you, the Leader of the Official Opposition, argue that my insistence on the observance of the rule of law is nonsensical.

Whereas you would not accept what I said in the National Assembly about the fact that Glaxo Wellcome neither asserted the anti-HIV efficacy of AZT in cases of rape and had not applied for its licensing for such a situation, I trust you now accept the truthfulness of these statements, since they have been confirmed by representatives of the company.

After all, relative to them, you do not occupy the position of "an effective opposition".

Whatever your personal views, I trust that, as Leader of the Official Opposition, you will understand and accept the proposition that it is incorrect to argue for the observance of the rule of law in Zimbabwe and to categorise its observance as "irrelevant" and "nonsensical" in South Africa when AZT is affected.

What I have said in this and the previous letter about the efficacy of AZT in rape cases does not constitute a "personal opinion", as you assert.

Unless they indicate otherwise, I would also assume that the manufacturers of AZT, Glaxo Wellcome, do not consider what I have said about what the CDC says about AZT and AIDS as constituting a "personal opinion".

If there were any dispute about this, I would be very willing to ask the CDC whether it has changed its mind since 1998.

On this matter, our government will therefore continue to act in a manner that is consistent with available scientific evidence. I have a political obligation to ensure that this happens, regardless of your own personal opinions.

I am certain that, as government, we are perfectly aware of the interests of the people we represent. We will continue to do everything we can to ensure that these interests are addressed, naturally within the context of the constraints imposed on us by the stubborn legacy of colonialism and apartheid.

That legacy includes the persistence of racist ideas in the minds and the psychology of many of our people and others elsewhere in the world.

I spend the amount of time and effort I do on the issue of AIDS because as a government we have to do everything necessary to deal with this syndrome and the destructive health crisis in our country and the rest of Africa.

None of this constitutes "shadows", as you allege, which allegation might be informed by the fact that throughout their lives the majority of those you represent have had the "good fortune" of being perhaps unwilling beneficiaries of racist practice and recipients of supremacist racist prejudice, and ideology.

I must also make the point that the formulation of correct policies and programmes makes it imperative that, as government, we proceed from the most accurate information we can access.

We will therefore always seek to obtain the accurate figures about such matters as rape and AIDS so that we adopt correct policies with regard to these important challenges.

We do not have the luxury to play political games with information, merely to advance party-political objectives.

As a government, we will not abdicate our responsibility to work for the health of all our people, leaving this matter exclusively to "the physician and the patients", as you suggest.

I may have no medical expertise, but I have grave doubts that the fact of being the largest opposition party means that you are best placed to advise our government about the medical decisions it should take.

All of us have a moral obligation not to do anything we believe to be fundamentally wrong. This applies as much to Presidents as it does to Ministers who might feel that decisions of the President or the Cabinet are wrong.

No amount of pressure, however virulent, strident and sustained, will persuade me to betray this principle.

If nothing else, this is what many of us have learnt from a very long history of struggle by our people from liberation from oppression, contempt and lies.

I believe that common courtesy required that you inform me that you intended to release our correspondence to the media, as I would if I were handing this letter to the media.

The only thing we had agreed was the principle that the National Assembly and the general public should have access to the communications between us.

But, again, possibly we do originate from different planets with radically different value systems.

Yours sincerely

THABO MBEKI

The Hon A. J. Leon, MP
Leader of the Official Opposition
National Assembly
CAPE TOWN

ANNEXURE J

28 July 2000

His Excellency
Mr T M Mbeki
President of the Republic of South Africa
Private Bag X1000
PRETORIA
0001

Dear Thabo

Thank you for your letter of 17 July 2000.

Let me begin my response by stating something which I should have made more strongly in my previous letter: I do not think it appropriate that politicians should decide upon technical and scientific issues. South Africa has world-class scientists, and they should be allowed to render judgment on such matters. Nonetheless, in your previous letter you chose to debate this issue on the technical and scientific merits of prescribing AZT, obliging me to respond to your arguments as best I could.

In your letter of 17 July you claim that John Kearney of Glaxo Wellcome has repudiated "*what he said about your comments being 'essentially accurate on the scientific aspects' . . . etc*". The basis of this assertion is Mr Kearney's letter in the *Sunday Times* where he states that "you are correct *"in pointing out that Glaxo Wellcome's package insert does not mention the medicine's use in rape cases"*."

You appear to be making two assumptions: The first is that if a drug is not registered for a particular indication then there is "*no scientific evidence*" to support its prescription for that particular indication; and, secondly, if it was prescribed for an unlisted indication this would be a violation of the law.

I have been advised that in order for a drug to be registered for a particular indication, a double-blind prospective trial needs to be conducted. In cases like AZT for rape victims (as I pointed out in my previous letter) it is simply impossible to conduct such a trial. There are also various other (non-scientific) reasons why a pharmaceutical company may not seek approval for a particular indication. Thus because a (registered) drug is not registered for one or other specific indication does not mean there is "*no scientific evidence*" to support its prescription for that indication.

I have been advised, further, that your assumption that providing AZT to rape survivors would constitute a violation of the law is equally invalid.

In your letter you state that if Glaxo Wellcome had offered AZT for rape victims this "*would have constituted very disturbing behaviour*" and the government would have to "*take the necessary action to stop what would have been illegal behaviour.*"

Further on in your letter you state:

"Since the issue of the rule of law is a matter of principle, I believe that it is fundamentally incorrect to argue, as you did, that AZT should be the prescribed for rape, despite the fact that the existing legal procedures had not been followed enabling this drug to be registered and legally dispensed for this purpose.

You argue that it is illegal to provide a (registered) drug for a specific indication if the Drug Regulatory Authority has not registered it for that indication. This is simply not the case. There appears to be a confusion on two issues:

As the law stands no one may prescribe an unregistered medicine (such as Virodene) for any indication. But AZT is registered with the MCC and (as the law stands) doctors are free to use registered drugs for non-indicated purposes if, in their better judgment, they believe the scientific evidence supports it.

My research indicates that in the United States the law is similar. The fact that a drug is not listed for a particular indication, does not mean that it would be either illegal or medically inappropriate to do so.

For example, the American Food and Drug Administration (FDA) states that:

The Food, Drug and Cosmetic Act does not limit the manner in which a physician may use an approved drug. Once a product has been approved for marketing, a physician may prescribe it for uses or in treatment regimens or patient populations that are not included in approval labelling. Such "unapproved" or, more precisely, "unlabeled" uses may be appropriate and rational in certain circumstances, and may, in fact, reflect approaches to drug therapy that have been extensively reported in medical literature. (Source: American Medical Association — correspondence — Chicago, Ill. 21.700).

This view is supported by the American Medical Association (AMA) which states:

The AMA reaffirms its policy that a physician may lawfully use an FDA-approved drug product or medical device for an unlabeled indication when such use is based upon sound scientific evidence and sound medical opinion; and affirms the position that, when the prescription of a drug or use of a device represents safe and effective therapy, third party payors should consider the intervention as reasonable and necessary medical care, irrespective of labeling, and should fulfil their obligation to their beneficiaries by covering such therapy. (AMA policy number H-120.988)

AMA policy definitively supports the unlabeled use of drugs as long as such use is based upon sound scientific evidence and sound medical opinion.

Thus, your claim that prescribing a registered drug for a non-indicated purpose would constitute a violation of the rule of law is, with respect, baseless.

The question then is, would the provision of anti-retrovirals to rape victims be based upon sound scientific evidence? A related question is: Do politicians have the right to decide what constitutes "*sound scientific evidence*" and "*sound medical opinion*" or should this be left to medical professionals?

In your letter you restate your arguments that there is no scientific evidence to support the provision of AZT to rape survivors and, further, that the CDC regards the risk of transmission through heterosexual sex (as well as rape) as "*negligible*".

You claim that my description of the CDC document as "*an attempt to highlight the 'potential benefits and risks' and so provide a guide to physicians on whether or not to pursue such a course of treatment*" is "*extremely puzzling and very strange indeed*."

I do not quite understand your reasoning here, for the document itself says:

"Health-care providers and their patients may opt to consider using anti-retroviral drugs after non-occupational HIV exposures that carry a high risk for infection, but only after careful consideration of the potential risks and benefits and with a full awareness of the gaps in current knowledge." (Summary.)

The document then proceeds to discuss these potential benefits and risks, as well as the gaps in the current knowledge.

As the CDC study points out (and you repeatedly highlight) there is no direct data on the efficacy of anti-retrovirals as PEPs following non-occupational exposure. For this reason the CDC has had to resort to evaluating indirect evidence from animal trials; as well as from studies of the efficacy of AZT in reducing transmission of HIV both from mother to child, and in occupational settings.

You chastise me for mentioning these aspects of the CDC report (which you assert is an unacceptable widening of the scope of our correspondence) and claim that these are "*entirely different issues*" not relevant to the matter under discussion. In fact, these studies are directly relevant for they show the efficacy of anti-retrovirals in preventing sero-conversion following HIV exposure.

In May 1998 the CDC released fairly prescriptive guidelines on the management of occupational exposures to HIV (MMWR 47 (RR-7) 15 May 1998). The decision to make these recommendations was based on the French case control, which associated the provision of anti-retrovirals with an 80% decrease in the risk of HIV sero-conversion following needle-stick injuries, "*along with data on ZDV efficacy in preventing perinatal transmission*" and "*evidence that post-exposure prophylaxis prevented or ameliorated retroviral infection in some studies of animals.*" (My emphases.)

Thus, just as animal data and perinatal data were relevant in drawing up recommendations for occupational exposure, so is such data relevant (although not conclusive) in evaluating the efficacy of PEPs for rape survivors.

What these various studies, cited by the CDC, show is that anti-retroviral drugs can prevent sero-conversion following HIV exposure. As the CDC states, "Information about primary HIV infection indicates that systemic infection does not occur immediately, leaving a brief 'window of opportunity' during which post-exposure anti-retroviral intervention may modify viral replication." (RR-7)

In your letter you state that the CDC document "*gives the estimate for the risk of HIV transmission in the case of one episode of receptive vaginal intercourse as being almost zero*". You then proceed to repeat your argument that when the CDC states "*anti-retroviral agents should not be used for persons with HIV exposures that have a low risk of transmission*" they are referring to heterosexual intercourse. You state:

"The only conclusion 'a reasonable man' can reach from the CDC document is that the CDC is saying that the Probability of Transmission From One HIV Exposure in the event of receptive vaginal exposure is negligible, whatever the national levels of HIV infection, which you describe in our country as high."

It is simply not true to assert that the CDC regards rape (or consensual sex for that matter) as constituting a "*negligible risk of transmission.*" When the CDC use the term "*negligible*", they are referring to risks *in the order of* potentially infected body fluid on intact skin. (Shaking hands and blowing kisses across a park would also constitute "*negligible*" risks of transmission.) Quite obviously, there is a far greater risk of acquiring AIDS from receptive vaginal exposure than from body fluid on intact skin.

The CDC does regard risks in the order of 0.1% to 0.2% as constituting a sufficient risk of transmission to justify the provision of anti-retroviral drugs. This can be seen by referring back to the CDC report on the management of occupational exposure to HIV (RR-7). That document estimates that the "*average risk for HIV transmission after a percutaneous exposure to HIV-infected blood is approximately 0.3% and after a mucous membrane exposure is 0.09%.*" The CDC regards such levels of exposure as constituting sufficient risk to warrant a "*basic 4-week regimen of two (anti-retroviral) drugs for most HIV exposures.*"

Furthermore, forced sexual intercourse is likely to constitute a far higher risk of transmission than consensual sex (which is what the 0.1% to 0.2% figure is referring to.) Forced sexual intercourse can lead to trauma, which (as I said before) will lead to an increase in the risk of transmission. In the case of child or gang rape the risk of transmission (for obvious reasons) is even higher still.

In my previous letter I stated that the risks of transmission were increased by the high levels of STDs in South Africa. You then proceed down a side track, which ends up at this particular dead end:

"Whatever the impact of STDs on the immune system, the correct medical response to infection with these is to treat them using established therapies. None of these include the use of AZT or any of the other anti-retrovirals.

The suggestion that because STDs impact negatively on the immune system, as does TB, they should therefore be treated with AZT, would constitute very serious malpractice.

I hope this is not what you are suggesting."

I was not suggesting that AZT should be prescribed for STDs. My point was that if one person has an STD there is a substantial increase in the chance of HIV transmission. The CDC states that an STD increases the chance of transmission of HIV three to five times. In a case of heterosexual sex this could increase the risk of transmission from 2 in a 1 000 to 1 in a 100. The CDC report (RR17) states that vaginal tears or bleeding, visible genital ulcers or other evidence of an active STD would all increase the risks of HIV transmission.

Although the CDC does not make a binding recommendation for or against the provision of anti-retrovirals following non-occupational exposure, it does regard such treatment as a perfectly acceptable clinical intervention by individual doctors. However, the lack of direct clinical data was not the only reason for the lack of a firm recommendation; there were two other considerations:

Firstly, the CDC document was not concerned solely (or even primarily) with possible HIV exposure caused by sexual assault. A major concern of the CDC was that if the general public thought that anti-retrovirals could be used as a "morning-after pill" there would be an increase in risky behaviour and a decrease in adherence to preventative measures. Since no woman chooses to be raped this consideration is not applicable in cases of sexual assault.

Secondly, America has a far lower rate of both HIV infection and sexual assault than South Africa. This means both that in America rape is not a major means of HIV transmission, and that in a case of sexual assault there is far less likelihood that the rapist would be HIV positive. There is consequently a far lower risk of HIV transmission following sexual assault in America than in South Africa. Thus, it is not the important concern of public health policy in America that it is (or should be) in South Africa.

What I argued in my previous letter was that anti-retrovirals should be made available in the public health system for doctors to prescribe (according to proper guidelines) to rape victims. Such a course of action would be both legal and medically acceptable.

Indeed, as Mr Kearney notes in his letter to the *Sunday Times* "the medical profession's discretion to administer AZT to rape survivors is supported by the recommendation of the Centre for Disease Control in Atlanta, US, the worldwide authority on communicable diseases."

By refusing to make AZT or other anti-retrovirals available within the public health system you are preventing doctors from exercising that discretion.

This brings me to the issue I raised earlier: Do politicians, whatever their enthusiasm for scientific research, have the right to decide what constitutes "sound scientific evidence"?

In your various statements on the many aspects of the AIDS debate (Virodene, anti-retrovirals, the provision of AZT to pregnant mothers and rape victims, etc.) you have chosen to act as effective final arbiter on technical scientific questions.

I have tried to answer your assertions as completely as possible. But I do not believe there should be a "*Mbeki theory of AIDS*" or a "*Leon AIDS theory*" for that matter. All of us have a simple duty, as public figures, to consult the most scientifically informed — and best supported — medical view and to go on that. It seems clear — and it was made clear again at the AIDS Conference in Durban — that the overwhelming weight of world scientific opinion is on the crisis before us. I think we must all have the humility to accept that, and not to second-guess the experts.

But I do not think that politicians are under any "*moral obligation*" (in fact quite the opposite) to claim the right to deliver final judgment on questions of scientific fact. It is a totalitarian principle that political leadership is somehow on a higher plane to technical expertise, and is thus entitled to override the autonomy of all institutions in society.

There are, however, one or two other issues I must raise. First, I have no brief to defend or attack Charlene Smith. She is her own person.

But I think it is a fundamental mistake and profoundly misguided to associate matters of race with the AIDS crisis. This matter is just too serious for any of us to play politics, racial or otherwise, with the figures, since in our society allegations, or repeated assertions of racism, are appropriately very serious matters. Therefore, in my view, there needs to be a very clear basis in fact before one pronounces persons guilty of racism. There does not, with respect, appear to be such a basis in your gratuitous assault on Charlene Smith.

In your letter you dismiss Charlene Smith's defence of herself in the *Mail and Guardian* and once again re-quote her as saying in the *Washington Post* (4 June):

"Here, (in South Africa), (AIDS) is spread primarily by heterosexual sex — spurred by men's attitudes towards women. We won't end this epidemic until we understand the role of tradition and religion — and of a culture in which rape is endemic and has become a prime means of transmitting the disease to young women as well as children."

You claim that this is a "*nakedly racist statement*". Yet nowhere in this quote does Charlene Smith make a racial distinction between Black, Coloured, Indian or White South Africans. You are reading into the statement a racial intention that is by no means evident.

In fact what she actually wrote was this:

"In Africa, even if we develop a vaccine or distribute billions of condoms, and the continent is already awash in latex, unless we begin working on male attitudes toward women — and that requires looking at the role of culture, tradition and religion; we will get nowhere. In doing this there is a need to reflect on how modernisation has warped cultural attitudes. (Mail & Guardian 14 July 2000).

As you can see, in the article Charlene Smith sent to the *Washington Post*, she did not say (or imply) that rape was endemic in South African culture. What happened was that the *Washington Post* sub-editors cut down the article (by about a third); the question is, was there a dark and sinister racial motivation behind their action, or were they just trying to fit the article onto the page?

I actually think of Ms Smith as a rape victim and that she has been publicly brave

about her awful experience. She deserves your understanding, not your vilification.

The ANC's Statement to the *HRC Inquiry on Racism in the Media* made the claim that *all* whites carry around a racist stereotype in their heads *all* the time. This claim was made on the basis of no factual evidence whatsoever and paid no regard to the deep changes this country has experienced over the last twenty years. Nonetheless it seems to be a belief shared by your* spokesman, and it is implicit in your statement that "Many South Africans carry in their heads" a "racist stereotype of Africans."

I would suggest that you take a moment to consider how deeply racist (in the true sense of the word) and offensive is this assertion. Just because a group of racially prejudiced ANC members sit around a table and agree with each other on how morally reprehensible a particular minority is, does not transform those prejudices into fact.

By labelling your critics (even those who mildly disagree with government policy) as "racist", you cut your party off from new ideas. Since, you could so easily dismiss your critics (both publicly and to yourself) you did not test your ideas against those of your opponents in reasoned and rational debate. It was far easier to dismiss a person as "racist" than to argue issues on the merits, or even acknowledge that your opponents might just be right every now and then. As a result the thinking of your party has stiffened into orthodoxy.

You will find that on the AIDS issue, South African and international opinion will simply not be bludgeoned into silence by tactics of moral blackmail or demonisation. I can understand your deep sense of frustration at this turn of events.

Lastly, you state that "*I believe that common courtesy required that you informed me that you intended to release our correspondence to the media.*"

As a matter of fact I observed all the courtesies which you suggest I did not. Although I dictated the letter from overseas our Executive Director, Ryan Coetzee, informed your Mr Mankahlana by telefax of our intention to publish (as we understood with your concurrence) the correspondence. Since we received no response from either fax number, we assumed that our proposal met with no disagreement from your Office. In fact it was you, not I, who specifically suggested we publish the correspondence in the first place.

But since you raise the issue of "*common courtesy*" in our dealings perhaps you will allow me to comment on this issue more broadly. I have always treated you and your Office with the courtesy and the decorum your position and you personally are entitled to expect. However, I believe that as elected Head of State you have treated me, as elected Leader of the Opposition, with basic discourtesy since June 1999. I think you will find if you consult your opposite numbers in other constitutional democracies that the relationship between head of government and the leadership of the opposition in other countries, ranging from Botswana to Britain, is somewhat different from how you have chosen to conduct this relationship. Your immediate predecessor chose the path of consultation and will confirm that not once, or ever, was any confidential briefing in which he engaged the opposition, breached by the opposition.

Be that as it may, you are obviously entitled to adopt any style of behaviour that you deem appropriate. But you might wish to reflect on the fact that you have never once issued an invitation to the opposition to discuss matters of common concern to the country. It is only when the opposition has sought a meeting with government that same has been acceded to. In respect of projects which should unify the country, whether they be the Presidential Inauguration, the Millennium celebrations, the new Coat of Arms and national symbols, or even the latest

"South Africa Unlimited" project, such were either never discussed with the opposition, or we were slighted at the event concerned, or our participation in them was never sought.

The Constitution obviously requires of us robust debate and in this regard I have always accepted your original commitment in Parliament on 23 September 1994 when you stated:

"With regard to the matters that the Hon member Mr Tony Leon raised, I would like to agree with him about the role of the opposition and the need for openness and candour, the need for good and robust debate, and the need for us to accept the bona fides of our interlocutors."

In the event, you appear to have changed your mind, fairly fundamentally, since then.

In conclusion, let me revert to the AIDS pandemic: I would far rather, Mr President, that you and I should work together on this supreme crisis facing our country. I agree entirely, for example, with what you say about other sexually transmitted diseases. I would be only too happy to stand on the same platform with you to back a campaign for the eradication of STDs whose prevalence does so much to help spread HIV/AIDS. I am not interested in whether my supporters or yours suffer more from STDs: this is not a matter of, as you put it, "*political obligation*" or of whom one represents. You and I are both patriotic South Africans. We both want the best for our country and for all our countrymen and women. I will be only too happy to meet you at your earliest convenience to discuss how we may work together to dramatise that this is a crisis for all of us, that death and disease know no distinction of politics, creed or race. I believe that the sight of the President and the Leader of the Opposition working together in such a way would have a very great public impact and would show just how serious we are and how great the crisis is. This in itself could save lives. I beg you, let us make that our sole priority.

Kind regards

Yours sincerely

TONY LEON

ANNEXURE K

August 5, 2000

Dear Mr Leon

Thank you for your letter dated 28 July 2000.

The positions you have taken with regard to the matter we have been discussing, the use of AZT in cases of rape, have been consistently wrong from the day this matter came up in the National Assembly in June.

The problem is that you seem to find it extremely difficult to admit this obvious fact.

The result of this is that the harder you try to advance indefensible propositions, the greater the difficulties you get yourself into.

It seems clear that you are determined that neither established fact, nor anything else whatsoever, will deter you from pursuing your set goal of ensuring that rape victims use AZT.

In your letter of June 19, you claimed that AZT "*will prevent sero-conversion in rape victims who are raped by an HIV positive person.*"

As you must surely know by now, this statement has no substance in fact, since no trials have been carried out anywhere that would enable anybody to come to such a conclusion.

In the same letter you said, "*a 28 day course of AZT will boost the immunity of a woman raped by an HIV positive person.*"

Again, as you must surely know by now, this statement has no substance in fact, since no trials have been carried out anywhere that would enable anybody to come to such a conclusion.

You will also remember that in his 21 June letter to you, the CEO of Glaxo Wellcome South Africa, Mr Kearney, said "your reply to the President is essentially accurate on the scientific aspects of using AZT as post-exposure prophylaxis in individuals who have been raped."

In my letter to you of July 17, I quoted Mr Kearney and Dr Moore, Medical Director of Glaxo Wellcome South Africa, as essentially repudiating this statement.

As you will remember Mr Kearney said his company does not "promote (AZT) for (rape survivors)." Dr Moore said that "*emphatically, (the company does not recommend AZT) for use after rape.*"

In your response of 28 July, you carefully avoid any reference to these straightforward statements by the manufacturers of AZT, which address the very heart of the matter we have been discussing.

Despite this evasive action, you must surely know by now that not even the manufacturers of AZT support you in your campaign to sell AZT to rape victims.

In your letter of 19 June you said that it was "*irrelevant*" that AZT was not licensed in this country for use by rape survivors. To prove your point, you cited the use of a particular drug to induce abortions, even though it was not licensed for these purposes.

Again, you advanced these arguments to promote the use of AZT by rape victims.

To assist you in your campaign and as you correctly point out, once more, Mr Kearney of Glaxo Wellcome came to your aid.

Indeed, he wrote in his *Sunday Times* letter that "*the medical profession's discretion to administer AZT to rape survivors is supported by the recommendation of the Centres for Disease Control . . .*"

In your letter of 28 July you expend a lot of effort to defend this position, to promote the administration of AZT to rape survivors.

The FDA and AMA statements you cite in this letter make the points that the use of approved drugs for indications for which they are not registered would be permissible "*in certain circumstances*". (FDA).

In the text you have cited, the FDA says such use "*may, in fact, reflect approaches to drug therapy that have been extensively reported in medical literature.*"

In the text you have cited, the AMA says such use should be "*based upon sound scientific evidence and sound medical opinion . . .*"

Surely, you must know by now that the use of AZT in cases of rape meets neither of these FDA and AMA conditions.

Apart from anything else, you restate the point that "*in cases like AZT for rape victims . . . it is simply impossible to conduct such a trial*", (that would provide sound scientific evidence proving the efficacy of AZT in cases of rape.)

In my letter of July 1, I told you that "*if it is necessary, I can present the argument about the obvious logical absurdity of the claim that viral infection can be stopped by the use of drugs, provided that the virus was communicated in circumstances of forced heterosexual sexual intercourse.*"

Immanent within this logical absurdity, is the equally absurd notion that drug trials can be conducted to test the efficacy of AZT in cases of rape.

I am glad that you have now understood that "*it is simply impossible to conduct such a trial*".

I am still puzzled about where you and Ms Charlene Smith found the evidence you presented to the National Assembly that, if given AZT, "*80% of (women) would not have sero-converted and become HIV positive if raped by an HIV positive person.*"

Given what you, yourself, quote from the FDA and AMA, I am deeply concerned that Mr Kearney of Glaxo Wellcome still finds it possible publicly to state, in support of your campaign, that "*the medical profession's discretion to administer AZT to rape survivors is supported . . .*"

Glaxo Wellcome is a major and long-established pharmaceutical company. I do not believe that its representatives are not familiar with the rules and guidelines laid down by such bodies as the FDA and the AMA.

Neither do I believe that its senior representatives would not know that there is no basis whatsoever for the claim that "*the medical profession's discretion to administer AZT to rape victims is supported . . .*"

Taking the totality of Mr Kearney's public comments together, I find it difficult to avoid the conclusion that he is determined to say things here that no Glaxo Wellcome representative would say, for instance, in the US or the UK.

When I have said that we should act to enforce the spirit and the letter of the law with regard to the use of medicaments, you have sought to express your horror at this idea.

Nevertheless, I must remind you that our oath of office enjoins us to defend the laws and the Constitution of the Republic.

In your letter of July 28, you say that you have been advised that my *"assumption that providing AZT to rape survivors would constitute a violation of the law is equally invalid."*

I trust that you now understand that you have no basis of any kind to substantiate the argument that the positions I have taken are invalid on scientific/medical grounds.

However passionate your commitment to AZT, I also hope that now you understand that your FDA and AMA quotations provide you no basis to assert the legal invalidity of my arguments.

You are a lawyer and I am not. Nevertheless, I must disagree with your interpretation of South African law, as it applies to the matter we are discussing.

In your June 19 letter you refer specifically to a medicament used to induce abortions, despite the fact that it is not licensed for this purpose. You identify this product as *"Misoprostal"*.

In a legal opinion to the Director General of Health dated 1997-02-04, relating to this specific matter of what they call *"misoprostol"*, the State Law Advisers say:

"With regard to the Department's view that medical practitioners can use a medicine for an unapproved indication in a professional situation where it is deemed in the interest of the patient, Steyn Die Uitleg van Wette, (5th ed.) on page 228-229, remarks that where the authorised person or body uses his statutory powers in the public interest but for an unauthorised purpose, the act will be ultra vires."

Further, the State Law Advisers say:

"We are . . . of the opinion that the Council (MCC) cannot in terms of section 21 of the (Medicines and Related Substances Control) Act, authorise the use of the medicine (misoprostol) for a purpose not previously provided for . . ."

On this same matter, Professor S.A. Strauss, Professor Emeritus of Law of the University of South Africa has written:

"Off-label use can legally take place only if the conditions of registration have been duly amended. Application may in terms of section 15A of the Act be made for amendment of entries in the medicine register. But the section makes provision for such amendment only 'on application by the holder of the certificate of registration', which will normally be the manufacturer or its authorised distributor of the medicine involved."

Later, Professor Strauss says:

"A practitioner who uses a medicine for the treatment of an indication not approved of by the MCC when registering a medicine, may expose himself to a civil action under common law for damages if the patient were to suffer harm in consequence of off-label use . . . The mere fact that off-label use might constitute a "technical" criminal offence in terms of the Act, would not lead to an inference of negligence. But in the event of a criminal conviction, the Medical Council might take disciplinary action against the practitioner for unethical conduct. Unjustified and potentially harmful off-label use would in any event decidedly be regarded as unethical."

I accept that the above are, merely, 'legal opinions'.

You write that you have been advised that the view of government, that it is illegal for medical practitioners to use drugs for purposes other than those for which they have been licensed, is invalid.

That, too, is merely, a legal opinion.

I hope that any medical practitioner who acts on your advice, and dispenses AZT to rape victims, will do so knowing the possible legal consequences indicated in the medical opinions I have cited.

Relying on these opinions, our Department of Health is of the view that medicines should be used for the specific indications for which they are registered, in compliance with the requirements of the Medicines and Related Substances Control Act of 1965.

I do not agree that "*providing AZT to rape survivors*" would not "*constitute a violation of the law.*"

Accordingly, I will continue to insist that respect for the rule of law requires that all of us must demand that AZT should not be used for a purpose for which it is not registered, for which no registration application has been made and for which no efficacy data exist.

I still find it completely unacceptable that the Leader of the Official Opposition should, in a democracy, blatantly urge defiance of the law.

Given that you seem to agree with Glaxo Wellcome on a number of issues, it might help that you talk to them to overcome their reticence and try to have AZT registered for use in cases of rape.

If, for some reason, the MCC agreed to this, that would end the prospect of possible civil and criminal action against medical practitioners who prescribe AZT in rape cases, which you fervently urge.

Such an MCC decision would be taken despite the fact that the manufacturer does not approve of this and despite the fact that no scientific evidence exists to justify such use.

Given the extant literature on non-occupational PEP, some of which I have cited in the previous letters, I do not believe that there is any need for me to comment on the outlandish remarks you make in your last (28 July) letter.

In this letter you say: "*if one person has an STD there is a substantial increase in the chance of HIV transmission.*" (My emphasis.)

There is no evidence anywhere to support this bold assertion.

The 'orthodox' position, as I understand it, would be stated thus: any person suffering from an STD stands a greater possibility of **HIV infection**.

According to this proposition, whatever its merit, the **transmitter** of the HIV may very well be free of any STD. If, however, the 'receptive' person suffers from an STD, his or her risk of being **infected** by HIV increases.

Your bold and wrong assertion is based on the assumption that there is a strong relationship between affliction with an STD and being an HIV carrier.

To clarify this matter, in my last letter I drew your attention to the association between STD's and acquired immune deficiency.

It is most odd that, even as the CDC is working to improve its focus on STD's precisely because of this, you consider my comments "*a side track*" and a "*dead end*".

With regard to the issue of comments that appeared under Ms Charlene Smith's name in the *Washington Post* of June 4, 2000, clearly, in terms of your July 28 letter, you have access to the sub-editors of this newspaper that I do not have.

Because of this, you even know by how much her article was cut down by these sub-editors.

You must also maintain particular relations with her to state so unequivocally, (in

your July 28 letter), *that "in fact what she actually wrote was ..."* (My emphasis.)

For our present purposes, let us accept that in her unedited article (and her convictions) Ms Smith was referring to Africa, rather than South Africa specifically.

Perhaps wrongly, I wonder what Ms Smith knows about Africa.

I would be very interested to hear from you how, in her view, "*modernisation has warped cultural attitudes*" in Egypt and Morocco, Mali and Nigeria, Cameroon and Rwanda, Ethiopia and Tanzania, Namibia and Mozambique, Cap Verde, Madagascar and Reunion.

I would be very interested to hear from you what she says about "*the role of culture, religion and tradition*" in these countries, which leads her to conclude that vaccines or condoms will prove useless in the fight against AIDS in these countries.

For example, how have the Hausa-Fulani, Yoruba and Ibo traditions and cultures of Nigeria been warped by modernisation, such that the accepted anti-AIDS interventions will not work?

How do the African, Moslem and Christian religions of Nigeria relate to this matter, such that they make it impossible for these interventions to achieve results?

In what ways do the traditions, cultures and religions of Nigeria make Nigerian women and Nigerian society as a whole, prone to HIV/AIDS, unless warped Nigerian cultural attitudes are 'reflected' upon, by whosoever?

You say that what I read in the *Washington Post* was not what Ms Smith intended to say.

Clearly, you are best placed to pose the question to the *Washington Post*, whether its sub-editors were promoting a racial objective, or were merely trying "*to fit the article onto the page*", when they reduced (and rewrote?) Ms Smith's article.

Unlike you, like the normal readers of the *Washington Post*, I had to proceed from what I read, and not what had been written originally, which, allegedly, was subsequently edited in a particular way.

The article I read, attributed to a South African journalist, has a paragraph I quoted, which begins with the word "*here*". Accordingly, I read "*here*" to mean South Africa.

In my letter to you, I said the statement I read was racist, a view I have not abandoned, but which you contest.

In the main, white South Africans are, in their religions, Christian and Jewish. They have cultures and traditions that are somewhat different from those in your letter you describe as "*Black*".

I would be most interested to see the evidence you and Ms Smith have that demonstrates that, as a consequence of tradition, religion and culture among these white South Africans, "*rape is endemic*" and is "*a prime means of transmitting (AIDS) to young women as well as children.*"

Could you also produce similar evidence with regard to the groups you identify as "*Black, coloured (and Indian)*?"

The valuable information you will supply on this matter will help us to settle the issue whether I was right or wrong to interpret Ms Smith's **published** comment as racist.

Wednesday, 4 October 2000]

All rape is reprehensible. I was as distressed when I heard about Ms Smith's rape as happens whenever I hear of any incidence of rape. Accordingly and unreservedly, I sympathise with her.

In Ms Smith's case, I immediately spoke to the then Minister of Safety and Security to take all necessary measures to ensure that the culprit was apprehended and charged.

The Minister kept me informed about this matter constantly, relating even to the means the SAPS used to identify the culprit.

I know that none of this could ever undo the grave harm and damage done to Ms Smith. Over this specific incident, I have no influence. I, like other people, did what I had the power to do.

I have not sought to vilify Ms Smith.

But, neither do I accept that her terrible and unacceptable ordeal gives her licence to propagate racism, as I am convinced her published *Washington Post* comments do.

I also do not accept that her terrible and unacceptable ordeal entitles her to say wrong and absurd things about AZT and rape.

Comment by anybody on such matters as the efficacy of drugs and the roles of tradition, religion and culture have to be dealt with on their merits.

We have fought against racism throughout our lives. We have made enormous sacrifices to achieve the goal of a non-racial South Africa, which is yet to be realised. We have occupied and continue to occupy the frontline in the struggle to avoid a racial explosion in our country.

We do not need anybody to educate us about the imperatives to fight against racism and to transform South Africa into a country that belongs to all who live in it.

You would do well to listen to those who have been and continue to be victims of the most virulent racism.

Difficult as it may be, the least you might try to do is to fight against the tendency to hold in contempt those whom white South Africa has held in and treated with contempt for many centuries, even if you do not quite understand everything they mean when they speak.

I do not understand how you can be a fighter against racism in our country, if you do not understand the simple, obvious and unhidden reality that "*many South Africans carry in their heads a racist stereotype of Africans.*"

That you contest this tells me that you would not understand the racism in the classic white statement — *some of my best friends are black* — and its equivalent black statement — *some of my best friends are white*.

As a result of your determined effort to promote AZT, you make the meaningless statement in your 28 July letter that it is not "*appropriate the politicians should decide upon technical and scientific matters.*"

The National Assembly, in which you sit as Leader of the Official Opposition, has to take decisions about many "*technical and scientific matters*", when it considers many of the draft statutes it has to pass into law.

In its normal work, the executive has to take many decisions on "*technical and scientific matters*".

For example, our legislature and executive have taken the decision to spend public funds to build a new and powerful telescope, located in the Northern Cape.

You argue that neither the legislature nor the executive should have taken this decision, as it was a *"technical and scientific matter."*

The US government has been discussing the highly *"technical and scientific matter"* of the possible development, deployment and use of anti-ballistic missiles, seemingly a version of the *"star wars"* of the Reagan years.

This is one of the issues on which the presidential candidates in the US are campaigning.

The development etc., of ABM's is highly *"technical and scientific"*. You argue that, because of this, politicians should play no role with regard to the development etc of ABM's.

You need to know this that US politicians will be involved, in a decision-making capacity, at all stages of the evolution of this issue, however *"technical and scientific"* it may be.

They are morally obliged thus to be involved. There is absolutely nothing totalitarian about this. Neither does it constitute *"overriding the autonomy of all institutions of society."*

I would like you to understand this that it is deeply offensive for you to present yourself as the great defender of democracy in contrast to us, whom you are determined to project as a present and imminent threat to democracy.

You take exception to the statement I make in my letter of July 17 that *"all of us have a moral obligation not to do anything we believe to be fundamentally wrong."*

The position you have taken, that there is no moral obligation that attaches to our actions if we are acting on the advice of technicians and scientists, tells me that I was correct when I said, in my July 17 letter to you, that perhaps we inhabit different planets.

Let me assure you that as long as I have to occupy a decision-making position within our politics, so long will I take such decisions as may be necessary and morally defensible, whatever institution makes recommendations according to its mandate and possibilities.

The idea that, as the executive, we should not take decisions we can defend, simply because views have been expressed by scientist-economists, scientist-agriculturists, scientist-environmentalists, scientist-pedagogues, scientist-soldiers, scientist-health workers, scientist-communicators, etc, is absurd in the extreme.

It is sad that you feel compelled to sink to such absurdity, simply to promote the sale of AZT.

Parks Mankahlana did not know that we were writing to each other on the matter we have been discussing.

When you took the unilateral decision to give our letters to the *Sunday Times*, you should have consulted me on the issue, rather than refer it to Parks Mankahlana.

My "office" did not write to you. I did.

Common courtesy required that you tell me, not Parks Mankahlana or my "office", that you intended to hand our correspondence to the *Sunday Times*.

The broader issue you raised about how the President of the Republic and the Leader of the Official Opposition should relate to each other is completely irrelevant to the matter we have been discussing.

Wednesday, 4 October 2000]

We have to develop our own South African conventions in this regard. References to such countries as Botswana and Great Britain will not necessarily help.

It has seemed to me that you set great store by your being a vigorous and uncompromising opposition to the government.

You have argued that unless you played this role, democracy in our country would be threatened.

I am told that your party has put up posters suggesting that if you were not the vigorous opposition you pride yourselves to be, South Africa would degenerate into a "Zimbabwe".

I have also heard and seen comments made that our efforts to encourage the development of a consensus around a jointly determined national agenda, amounts to an attempt at cooption and the silencing of alternative, critical points of view.

This has given cause to some to reject the call Nelson Mandela made for the development of an adherence to a new patriotism.

So vital to the survival of democracy is the existence of this consistently opposition view, that, so it has been said, various actions of the President cause concern.

Among these actions was our failure to appoint certain people as Ministers, who were thought by some to be precisely the people who, within Cabinet, would differ with the President.

It was these, so it was said, who would guarantee the health of our democracy, rather than, again it has been said, the time serving "yes-men" who dare not speak their minds and criticise the President, if they think he is wrong.

Your Party and its supporters have been very active in promoting this overall view.

I am quite happy to restate that I will not oppose this approach *"about the role of the opposition and the need for openness and candour, the need for good and robust debate, and the need for us to accept the bona fides of our interlocutors"*.

Contrary to what you write, I can think of nothing that would indicate that we have changed from this position.

In addition, I have said this is in the National Assembly, that in any case, the DP and the ANC differ so radically in their philosophy and politics that they are, truly, objectively and effortlessly, opposed to each other.

Given all this, it seems to me that your remarks in your letter of 28 July, prompted by my comments about 'common courtesy', represent an attempt to have your cake and eat it.

Accordingly, you want to present yourself as an uncompromising opposition force, naturally, in the interest of democracy.

Simultaneously, you want to be seen as being of such importance that you are given the space to help determine the decisions of the executive, and therefore the evolution of our country.

In your letter, you argue that the President should assist you to evolve and present this Janus-face, in your interest. Frankly, I do not see why, in the interests of a better South Africa, I should.

I am certain that, in time, conventions will develop, governing the relations between the President and the Leader of the Official Opposition.

You have not listened to the suggestions I have made in this regard, deeming them to be inimical to democracy.

I respect your views on this matter and accept your bona fides. The future will decide the matter of what stable conventional balance our country arrives at, relative to our respective views.

In the meantime, I will continue to respect and defend your right to be a vigorous opposition, without seeking to find conventions from anywhere in the world, that seek to give the possibility to the executive to circumscribe this legal and constitutional right.

The ruling party, which constitutes the first point of the origin of the mandate the President exercises as head of government, must also discharge its popularly mandated obligation to rule.

I trust that, as the opposition, you will respect and defend the legal and constitutional right of the ruling party to govern, without seeking to circumscribe this by invoking supposed conventions in Botswana, the UK and other countries.

I would like to encourage you that, indeed, you must campaign for the elimination of STD's, as well as all the other obstacles that obstruct our people's effort to rebuild their lives.

There is no need, whatsoever, that you wait for the moment when the President and the Leader of the Official Opposition can do this together, sharing the same platform.

You state that the appearance of the President and the Leader of the Official Opposition on the same stage, campaigning on the same health issue, would make "*a very great public impact*".

You may very well be correct.

But I can also imagine how many people there would be, at home and abroad, who would ask a particular question.

That question would be — why does the elected President not have sufficient courage to discharge his responsibilities about the health challenge we face, without requiring that the Leader of the Official Opposition should hold his hand!

Surely, you must admit that the executive role you seek is somewhat strange in any normal democracy. It is also inconsistent with everything you say and do everyday to convince all and sundry how rotten our government and its policies are.

I do not believe that we should encourage the convention whereby the opposition is both an effective opposition and an effective player with regard to the decisions of the executive.

The most difficult problem we face as a country and people is the wiping out of the deeply entrenched and pervasive racist legacy of colonialism and apartheid. It is about this that we should share a common patriotism.

It would be obscene to reduce this to an HIV/AIDS issue, as you do. It would be a fundamental error to reduce the challenge we face to the incidence of disease in our country, as you do.

You are entirely wrong to claim, as in your 28 July letter, that "*death and disease know no distinction of politics, creed or race*".

Perhaps, this illustrates graphically the point that we do, indeed, occupy different planets.

Contrary to what you say, even a child, from among the black communities, knows that our own 'burden of disease' coincides with the racial divisions in our country.

I think you made your point about your importance when, in the National Assembly, to depart from the physical position occupied by F.W. de Klerk, the first democratically elected Leader of the Official Opposition, you moved from the bench opposite the Deputy President's, to the bench opposite the President's bench.

As for the rest, I wish you successes as the Leader of the Official Opposition.

In keeping with what I proposed to you in my letter of July 1, to which you agreed, I will ask my Parliamentary Counsellor, the Hon Charles Nqakula, to submit the entirety of our correspondence, to date, to the Speaker of the National Assembly and the Chairperson of the NCOP.

I do not believe that the dialogue in which we have been engaged is of any help in helping the people of our country to understand the truth about what we have been discussing.

The presentation of the truth is somewhat different from what you and I might consider to be an effective representation of whatever "macho" image we might have of ourselves.

The first common stage we have the possibility to occupy is surely this, which requires that we treat the truth as primary, above the impulse to play to the gallery.

Please consider carefully whether you have responded correctly and adequately to this requirement.

Please consider also whether, from this limited experience, you are ready to fight together with us, for the realisation of the objectives of an agenda targeted at genuine social transformation.

Necessarily, these advisory strictures apply as much to you as they apply to us.

Yours sincerely

Thabo Mbeki

The Hon Mr Tony Leon
Leader of the Official Opposition
National Assembly
CAPE TOWN

ANNEXURE L

24 August 2000

By hand and by telephone

His Excellency Mr T M Mbeki
President of the Republic of South Africa
Private Bag X1000
PRETORIA
0001

Dear President Mbeki

Thank you for your letter of the 5th of August.

I will deal first with some outstanding issues concerning the provision of anti-retrovirals to rape victims. I will then raise some of my concerns about this correspondence. I will try to be as brief as I can.

In my letter I quoted from AMA and FDA guidelines which showed that, in America at least, the use of registered drugs for off-label indications is perfectly acceptable. This use should be based upon "sound scientific evidence and sound medical opinion" and may "reflect approaches to drug therapy that have been extensively reported in medical literature".

In your letter you claim that the "use of AZT in cases of rape meets neither of these FDA and AMA conditions". According to your argument it would be illegal and unethical to prescribe anti-retrovirals to a rape victim in the United States. This is not the case.

Such treatment has been extensively reported in medical literature (see for example *American Journal of Medicine* March 1999 Vol. 106). And while the CDC has not made a binding recommendation as a matter of *public health policy*, it does regard the provision of anti-retrovirals for rape victims as a perfectly acceptable *clinical intervention* by individual doctors. Mr Kearney is absolutely right in this regard. If the provision of anti-retrovirals to rape victims was really illegal in America then why do the CDC not say so, instead of providing long guidelines for such treatment?

You write that in this country the view of the government is that "*it is illegal for medical practitioners to use drugs for purposes other than those for which they have been licensed*", that the Department of Health "*is of the view that medicines should be used for the specific indications for which they are registered*"; and that if doctors prescribe registered medicines for unlisted indications they are liable for "*possible civil and criminal action*". On this basis you continue to accuse me of "*blatantly*" urging "*defiance of the law*".

You use two legal opinions to support these claims: that of the State Law Advisors on Misoprostol and that of Professor S.A. Strauss. Unfortunately, if read carefully and in context, neither opinion actually supports your case.

What both the State Law Advisors and Professor Strauss are discussing are the statutory powers of the MCC. In terms of the law, it is only the manufacturer or authorised distributor of a particular drug, who can apply for that drug to be registered for a particular indication. Neither the Health Department, nor a doctor, nor the MCC is allowed to apply for a drug to be registered for a particular indication. This is the sole prerogative of the pharmaceutical company concerned.

What the State Law Advisors are saying is that the MCC would be acting outside its powers if it tried to register a drug for an indication not applied for by the pharmaceutical company. When they state "*where the authorised person or body*

uses his statutory powers in the public interest but for an unauthorised purpose, the act will be *ultra vires*" they are referring to the MCC not individual doctors.

Thus, the advice of the State Law Advisors dealt with the authority of the MCC and its exercise of statutory powers. It was not concerned with the obligations and responsibilities of individual doctors.

Indeed, Misoprostol continues to be used for abortions within the public health system, even though it has not been listed for that indication and a current Health Department document states the following:—

"The current registration of Nevirapine could possibly enable any physician to prescribe Nevirapine for a mother-to-child transmission indication as "off-label" usage. Until the MTCT has been registered as a specific indication, there should be some reluctance by government to promote a policy of Nevirapine use. There are, however, several examples of such "off label" use of other drugs where failure to use them would be considered bad practice, or in some circumstances malpractice. These include the use of Misoprostol for termination of pregnancy and the use of corticosteroids for preterm labour."

As far as Professor Strauss is concerned, you are guilty of extremely selective quotation. You quote Professor Strauss as saying:

"A practitioner who uses a medicine for the treatment of an indication not approved of by the MCC when registering a medicine, may expose himself to a civil action under common law for damages if the patient were to suffer harm in consequence of off-label use."

You then omit the following:

"A patient may successfully sue the practitioner if he or she can prove that off-label use in the circumstances was negligent, i.e. harm was reasonably foreseeable.

South African law does not yet recognise 'product liability' in the sense of no-fault liability for harm caused by the mere use of the product.

Accordingly, if off-label use by practitioners has taken place regularly and 'openly' — colleagues knowing of it and possibly doing the same — over a considerable period of time with a reasonable degree of success in the treatment of patients and without harm being caused by patients, a prospective patient would have an almost impossible burden to establish a case of reasonable foreseeability of harm. The position of the defendant-doctor would obviously be strengthened by scientific evidence to the effect that off-label use for a specific condition is quite acceptable, harmless and possibly effective."

Professor Strauss then says (and you quote) "The mere fact that off-label use might constitute a "technical" criminal offence in terms of the Act, would not lead to an inference of negligence." (SA Practice Management 1998 (1) pp 12–15).

Thus, according to Professor Strauss, a doctor will be liable for off-label use only if they have acted negligently in prescribing that drug. They are not guilty of a criminal offence and liable for civil action merely for prescribing a drug for a non-listed indication. As the law stand in South Africa, doctors are free to exercise their independent judgement in prescribing drugs for off-label purposes as long as this is done in good faith.

To deny doctors this discretion would represent a gross intrusion by the state into the autonomy of the medical profession. It would also lead to the health profession being strictly constrained within boundaries set by the pharmaceuti-

cal industry — since it is only the pharmaceutical company who can apply for their drug to be listed for a particular indication. As I noted in my previous letter, a drug company may not choose to register a drug for a specific indication for a variety of (non-medical) reasons: They may not want to pay for the necessary clinical trials; or they may not want to offend a powerful political lobby in that (or another) country.

To restate my case: Although there is a lack of direct clinical data on the efficacy of anti-retrovirals as post-exposure prophylaxis, there is sound medical evidence supporting the provision of such treatment. Furthermore, it would not be against the law to make anti-retrovirals available within the public health service for the treatment of rape victims. Currently, such treatment is available to those who use private health care and can afford it. Recently I heard an SABC report on how a Norwegian tourist had been raped but was immediately treated with AZT. The effect of your government policy is merely to deny such treatment to those dependent on the public health care system.

You have asked for a “*rational discussion of HIV/AIDS*” (July 1). You have also stated that we must “*treat the truth as primary*” (5 August). I would like to raise a couple of concerns in this regard.

During the course of this correspondence, you have made it clear that you wish to confine this debate to the issue of PEPs for rape survivors. This is a fair request and I have respected it. However, there are certain inconsistencies between the arguments you have used in this correspondence and those you have used in other public statements particularly on Virodene and the provision of anti-retrovirals to pregnant women.

In debating the provision of anti-retrovirals for rape victims you argued that there was a lack of direct clinical data; you cited (incorrectly) the recommendations of the CDC; and you claimed that it would be a contravention of the rule of law to provide a registered drug for off-label use.

On the question of providing anti-retrovirals for pregnant women you ignored the copious amounts of clinical data, the unambiguous recommendations of the CDC, and the fact that AZT is registered for that indication. Instead you refused to make AZT available in the public health service on the basis that “**the toxicity of this drug is such that it is in fact a danger to health**”.

I find it even more difficult to reconcile the arguments in our correspondence with your statements of Virodene, which your party so aggressively promoted as a cure for AIDS.

On 8 March 1998 you defended the Virodene researchers by saying that “*those who seek the good for all humanity have become the villains of our time!*”

You then proceeded to attack the MCC for refusing to allow the testing of this industrial solvent on AIDS patients. You stated:

“Alas, ‘the local review board’, the MCC, still refuses to accept the application, despite its knowledge of these ‘learned and highly qualified professionals’ [whom you had quoted], and whose credentials it is perfectly aware of. To confirm its determined stance against Virodene, and contrary to previous practice, the MCC has, with powers to decide who shall live or die, also denied dying AIDS sufferers the possibility of ‘mercy treatment’ to which they are morally entitled. I and many others will not rest until the efficacy or otherwise of Virodene is established scientifically. If nothing else, all those infected by HIV/Aids need to know as a matter of urgency. The cruel games of those who do not care should not be allowed to set the national agenda.” (Sunday Tribune 8 March 1998)

Thus, on AZT and Virodene you have taken the following contradictory

positions: AZT is a "toxic danger to the public health" but Virodene is a "mercy treatment"; AIDS sufferers are "morally entitled" to Virodene but doctors should not be allowed to prescribe AZT to rape survivors; Glaxo Wellcome is driven solely by a concern "to increase the sales of AZT" but the owners of Virodene were seeking "good for all humanity"; and arguing for off-label use of AZT is a "violation of the law", but the refusal by the MCC to allow Virodene to be tested on AIDS sufferers are the "cruel games of those who do not care".

My second concern is with the way you have attempted to play the race-card in this debate. You have misrepresented your opponents, twisted their words and tried to impose your own meaning on what they said, all in an attempt to blindside your critics. I cannot judge whether this is merely a cynical attempt to silence debate, or whether you really believe that anyone who criticises you or your government is (by definition) a "racist".

You write again and at length about Charlene Smith. I will leave her to speak for herself. I can't but agree with her that we suffer from a virtual epidemic of rape in this country. The racial characterisation of this problem must be, surely, irrelevant. All rape is equally wrong, it is not the colour of the rapist which is at issue but the criminal violence of the act.

I am perfectly willing to enter into a separate correspondence on your eccentric definitions of "racism" and "non-racialism". However, I think it is important for us to debate the issues around HIV/Aids on their merits.

South Africa is facing a massive human tragedy. HIV/AIDS will kill more South Africans than any war has. It is already leading to enormous human suffering. There is an urgent need to put in place a preventative campaign with a clear and consistent message. As politicians we have an obligation to provide political support for such a campaign and not to muddy the waters by squabbling with international opinion.

The government has a moral obligation to urgently take steps to make anti-retrovirals available to pregnant women and rape survivors within the public health system. And where we lack the systems to provide such treatment, to put those in place.

There is an urgent need to reform and extend the welfare system so that the state assists those looking after the sick, the dying and the orphaned.

To fight the war against HIV/AIDS successfully our whole country needs to pull together. This is not the time (or the issue) to indulge in racial politics — to try and turn black against white.

We now have a non-racial constitution and franchise. We have no segregation of public facilities or services. We should now be free to confront the real problems facing our country. It would be disastrous to respond to this crisis by trying — like the old general — to fight the last war.

We live in the same country, face the same problems and share a common concern for our people. We must, on the HIV/AIDS issue at least, set aside personal differences and personal pride and work together for the good of the country.

I believe that you and I ought to follow the conventions of reasonable, regular and frank discussion that were established during the Constitutional negotiations and continued by your predecessor during the ANC's first term in office.

These are conventions that have been painfully built up. They were based upon a recognition of shared concerns, common challenges, and the acknowledgment of equal legitimacy. It is important that we should meet on occasion to discuss major problems or crises facing our country. This would not end the proper and

robust debate between ruling party and opposition which is fundamental to democracy, nor would it be an intrusion on the functions of the Executive. But it would follow a path bequeathed to us by our predecessors, one which led our country away from a civil war. It would also send a message to the voters that we contest issues as opponents not enemies. We should not turn our back on that tradition now.

I agree that this correspondence should be published when Parliament reconvenes.

Kind regards

Yours sincerely

TONY LEON

ANNEXURE M

September 1, 2000

Dear Tony

Thank you for your letter dated 24 August 2000.

As I indicated in my last letter, it is perhaps best that we close this written exchange of views.

You will therefore understand why I will not respond to your latest letter of August 24th though I would contest many of the points you make.

I would like to assure you that the government will continue to do everything it can to respond to the health challenges facing our people.

Yours sincerely

Thabo Mbeki

The Hon Mr Tony Leon, MP
Leader of the Official Opposition
National Assembly
Cape Town

National Council of Provinces:

1. The Chairperson:

Message from National Assembly to National Council of Provinces:

Bill passed by National Assembly on 4 October 2000 and transmitted for concurrence:

- (1) *Adjustments Appropriation Bill* [B 60—2000] (National Assembly—sec 77)—(Select Committee on Finance—National Council of Provinces).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Trade and Industry:

Report and Financial Statements of the South African Bureau of Standards for 1999-2000, including the Report of the Auditor-General on the Financial Statements.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Provincial and Local Government on the *Local Government: Municipal Structures Amendment Bill* [B 51B—2000] (National Assembly—sec 75), dated 4 October 2000:

The Portfolio Committee on Provincial and Local Government, having considered the *Local Government: Municipal Structures*

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF JOINT SITTING

THURSDAY, 5 OCTOBER 2000

1. Members of the National Council of Provinces and the National Assembly assembled in the Chamber of the National Assembly at 14:00.
2. The Chairperson of the National Council of Provinces took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. FIRST ORDER [14:02]
Debate to honour the peacekeeping and humanitarian role of the South African National Defence Force.
Debate concluded.
4. The Joint Sitting rose at 15:08.

S MFENYANA,

Secretary to Parliament.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

THURSDAY, 5 OCTOBER 2000

1. The House met at 15:23.
2. The Speaker took the Chair.
3. [15:24] Notices of motion.
4. [15:39] The Chief Whip of the Majority Party moved without notice: That paragraph (5) of the resolution adopted by the House on 14 September 2000 whereby the Ad hoc Committee on General Intelligence Law Amendment Bill was established, be amended by extending the date by when the committee has to complete its task from 5 October 2000 to 30 October 2000.

Agreed to.

5. The Chief Whip of the Majority Party moved without notice: That, notwithstanding the provisions of Rule 106, the following times be allocated to parties for comment on the statement by the Minister of Education today on World Teachers' Day:

Minister: 10 minutes; African National Congress: 4 minutes; Democratic Party: 3 minutes; Inkatha Freedom Party, New National Party and United Democratic Movement: 2 minutes each; all other parties: 1 minute each.

Agreed to.

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

- (1) notes that Mrs Wilma Newhoudt-Druchen, member of Parliament, has given birth to Nicole, a healthy baby girl;
- (2) notes that our Parliament has led the way for most countries in ensuring a proper gender balance, promoting the equal status of women and improving the quality of life of women in South Africa; and
- (3) congratulates Mrs Newhoudt-Druchen on the birth of her new baby and wishes them a happy life together.

Agreed to.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL COUNCIL OF PROVINCES

THURSDAY, 5 OCTOBER 2000

1. The Council met at 15:31.
2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [15:32] Notices of motion.
4. [15:33] Mr J L Mahlangu moved without notice: That the Council—
 - (1) notes the tragic and untimely death of Mpumalanga's Deputy Area Commissioner for the Lowveld, Mandla Mahlangu, who was gunned down when he went to the aid of what he perceived to be an accident, but which in fact was a cash-in-transit-heist;
 - (2) further notes that Mandla Mahlangu was appointed Deputy Police Commissioner in Mpumalanga's key Lowveld area last week after a string of successes he achieved while heading the region's crime prevention unit;
 - (3) offers its heartfelt condolences to the family and friends of Mr Mahlangu;
 - (4) pleads with communities to co-operate with the SAPS in their investigations so as to arrest the perpetrators of this heinous act; and
 - (5) expresses the hope that the perpetrators of this and other violent crimes will be speedily arrested and made to realise that crime does not pay.

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

5. [15:34] Mr K D S Durr moved without notice: That the Council notes that—
 - (1) today the NCOP joined with their colleagues in the other place to pay fitting tribute to the SANDF in order to honour its peace-keeping and humanitarian role in our country and our region; and

- (2) the important step in the ongoing reconciliation of its people with one another and with our vital institution was yet another important foundation stone in the process of nation-building.

We salute the SANDF!

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

6. [15:35] Mr A E van Niekerk moved without notice: That the Council—

- (1) recognises that members of the Council participated in the Joint Sitting of the Council and the National Assembly in a debate honouring the SANDF for its peace-keeping role;
- (2) thanks the Chairperson and the speakers for their positive and constructive contributions during this occasion; and
- (3) notes that it is thus emphasised that members of this Council have a major contribution to make not only in Parliament but also in South Africa and that we must do it because we can!

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

7. [15:36] Dr E A Conroy moved without notice: That the Council congratulates a South African hotel which has contributed greatly to the placing of our country on the international tourist map, namely, the Cape Grace Hotel of Cape Town, which has been elected as the best hotel in the world for 1999.

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

8. [15:37] Dr P J C Nel moved without notice: That the Council notes—

- (1) that the New NP has noted with satisfaction the announcement by the Chairperson of the Medical Research Council, Dr Makgoba, that an important milestone has been reached in the fight against HIV/Aids in that a vaccine against the C-base of the HI virus has been developed by researchers in South Africa and that testing will begin in South Africa early next year;
- (2) that after a long period of confusion and uncertainty about, *inter alia*, the cause of Aids in South Africa, this is truly a welcome ray of light which could dramatically improve South Africa's image with regard to this matter and show the world that South Africa's people indeed believe that Aids is caused by the virus; and
- (3) that the New NP expresses the hope that after the estimated period of three to five years which it will take to develop this technically complex vaccine it will develop into a powerful weapon to eventually win the war against the pandemic.

The Chief Whip of the Council moved as an amendment: That the following paragraph be added after paragraph (3):

- “(4) the support and resources made available by Government to promote this initiative by the Medical Research Council.”

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 notes—

- (1) that the New NP has noted with satisfaction the announcement by the Chairperson of the Medical Research Council, Dr Makgoba, that an important milestone has been reached in the fight against HIV/Aids in that a vaccine against the C-base of the HI virus has been developed by researchers in South Africa and that testing will begin in South Africa early next year already;
- (2) that after a long, period of confusion and uncertainty about, *inter alia*, the cause of Aids in South Africa, this is truly a welcome ray of light which could dramatically improve South Africa's image with regard to this matter and show the world that South Africa's people indeed believe that Aids is caused by the virus;
- (3) that the New NP expresses the hope that after the estimated period of three to five years which it will take to develop this technically complex vaccine it will develop into a powerful weapon to eventually win the war against the pandemic; and
- (4) the support and resources made available by Government to promote this initiative by the Medical Research Council.

9. FIRST ORDER [15:39]

Consideration of *Competition Second Amendment Bill* [B 41B—2000] (National Assembly—sec 75) and of Report of Select Committee on Economic Affairs thereon (Announcements, Tablings and Committee Reports, p 749).

Debate concluded.

Bill, subject to proposed amendments, agreed to in accordance with section 75 of the Constitution.

10. SECOND ORDER [15:42]

Consideration of *Construction Industry Development Board Bill* [B 59B—2000] (National Council of Provinces—sec 76) and of Report of Select Committee on Public Services thereon (Announcements, Tablings and Committee Reports, p 863)

Debate concluded.

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

11. THIRD ORDER [16:55]

Consideration of *National Health Laboratory Service Bill* [B 52B—2000] (National Council of Provinces—sec 76) and of Report of Select Committee on Social Services thereon (Announcements, Tablings and Committee Reports, p 863).

Debate concluded.

Bill agreed to in accordance with section 65 of the Constitution (Western Cape dissenting).

12. The Council adjourned at 18:07.

S MFENYANA,

Secretary to Parliament.

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 200 million to 400 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

THURSDAY, 5 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly:

The Speaker:

1. The following changes have been made to the membership of Committees, viz:

Ad hoc Committee on Pan-African Parliament:

Appointed: Benjamin, J; De Lange, J H (Alt); Hanekom, D A; Hangana, N E (Alt); Lobe, M C; Lockey, D; Mahlangu, G L; Mapisa-Nqakula, N N; Mokaba, P R; Sithole, D J (Alt); Verwoerd, M; Vilakazi, B H; Yengeni, T S.

Discharged: Doidge, G Q; Ebrahim, E I; Kalako, M V; Lekgoro, M K; Magazi, N M; Maphalala, M A; Marshoff, F B; Martins, B A D; Masithela, N H; Ncube, B N Z; Ntuli, B M; Ramotsamai, C M P.

2. Ms N N Mapisa-Nqakula has been appointed as chairperson of the *Ad hoc* Committee on General Intelligence Law Amendment Bill with effect from 5 October 2000.
3. Ms G L Mahlangu has been appointed as chairperson of the *Ad hoc* Committee on Pan-African Parliament with effect from 5 October 2000.

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Trade and Industry:
 - (1) Amendment Protocol on Trade in the Southern African Development Community (SADC), tabled in terms of section 231(2) of the Constitution, 1996.
 - (2) Explanatory Memorandum to the Amendment Protocol.
2. The Minister of Water Affairs and Forestry:

Report and Financial Statements of the Trans-Caledon Tunnel Authority for 1999-2000.

3. The Minister of Minerals and Energy:

Report and Financial Statements of the National Electricity Regulator for 1999-2000, including the Report of the Auditor-General on the Financial Statements for 1999-2000.

4. The Minister of Health:

Report of the Medical Bureau for Occupational Diseases for 1999-2000.

COMMITTEE REPORTS:

National Council of Provinces:

1. Report of the Select Committee on Finance on the *Adjustments Appropriation Bill* [B 60—2000] (National Assembly—sec 77), dated 5 October 2000:

The Select Committee on Finance, having considered the *Adjustments Appropriation Bill* [B 60—2000] (National Assembly—sec 77), referred to it, reports that it has concluded its deliberations thereon.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

FRIDAY, 6 OCTOBER 2000

1. The House met at 09:00.
2. The Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [09:01] The attention of the Chairperson of Committees having been drawn to the absence of a quorum, the bells were rung.

There still being no quorum,

BUSINESS SUSPENDED AT 09:04.

A quorum being present,

BUSINESS RESUMED AT 09:24.

4. [09:24] Notices of motion.
5. [09:39] Miss S Rajbally moved without notice: That the House—
 - (1) notes that—
 - (a) on 26 October 2000 Hindus throughout the world will celebrate the auspicious occasion of Diwali;
 - (b) this universal spiritual event symbolises the triumph of good over evil and is derived from the holy Ramayana which teaches us that social justice is imperative for peace;
 - (c) through purity of thought, word and deed, leaders, society and individuals must execute their share of the responsibility to protect the welfare of the country;
 - (d) this holy event is celebrated with fireworks and the lighting of clay lamps, which symbolises hope, harmony, peace and God in the hearts of the people; and
 - (e) the celebration of Diwali encourages us to practise the religion of love and live as the caste of humanity; and

- (2) wishes all Hindus a happy Diwali and invites the rest of South Africa to participate in the celebration.

May the symbol of light shine on all of us.

Agreed to.

6. [09:41] The Chief Whip of the Majority Party moved: That paragraph (4) of the resolution adopted by the House on 14 September 2000 whereby the Ad hoc Committee on Pan-African Parliament was established, be amended by extending the date by when the committee has to complete its task from 6 October 2000 to 30 October 2000.

Agreed to.

7. FIRST ORDER [09:42]

Second Reading debate—*Home Loan and Mortgage Disclosure Bill* [B 53B—2000] (National Assembly—sec 75).

Debate concluded.

Bill read a second time (Democratic Party and New National Party dissenting).

8. SECOND ORDER [10:38]

Second Reading debate—*African Renaissance and International Co-operation Fund Bill* [B 65B—2000] (National Assembly—sec 75).

Debate concluded.

Bill read a second time (African Christian Democratic Party dissenting).

9. THIRD ORDER [11:24]

Consideration of Report of Portfolio Committee on Finance (Announcements, Tablings and Committee Reports, p 802—*RSA/Nigeria Double Taxation Agreement*).

Report adopted without debate.

10. FOURTH ORDER [11:24]

Consideration of Report of Portfolio Committee on Finance (Announcements, Tablings and Committee Reports, p 802—*RSA/China Double Taxation Agreement*).

Report adopted without debate.

11. FIFTH ORDER [11:25]

Consideration of Tenth Report of Standing Committee on Public Accounts (Announcements, Tablings and Committee Reports, p 778).

Report adopted without debate.

12. SIXTH ORDER [11:25]

Consideration of Eleventh Report of Standing Committee on Public Accounts (Announcements, Tablings and Committee Reports, p 786).

Report adopted without debate.

13. SEVENTH ORDER [11:25]

Consideration of Twelfth Report of Standing Committee on Public Accounts (Announcements, Tablings and Committee Reports, p 789).

Report adopted without debate.

14. EIGHTH ORDER [11:25]

Consideration of Thirteenth Report of Standing Committee on Public Accounts (Announcements, Tablings and Committee Reports, p 791).

Report adopted without debate.

15. NINTH ORDER [11:25]

Consideration of Report of Portfolio Committee on Trade and Industry (Announcements, Tablings and Committee Reports, p 759—*Abuja Treaty*).

Report adopted without debate.

16. TENTH ORDER [11:25]

Consideration of Report of Portfolio Committee on Foreign Affairs (Announcements, Tablings and Committee Reports, p 759—*Abuja Treaty*).

Report adopted without debate.

17. ELEVENTH ORDER [11:25]

Consideration of Eighth Report of Standing Committee on Public Accounts (Announcements, Tablings and Committee Reports, p 768).

Report adopted without debate.

18. TWELFTH ORDER [11:25]

Consideration of Ninth Report of Standing Committee on Public Accounts (Announcements, Tablings and Committee Reports, p 770).

Report adopted without debate.

19. The House adjourned at 11:26.

S MFENYANA,

Secretary to Parliament.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL COUNCIL OF PROVINCES

FRIDAY, 6 OCTOBER 2000

1. The Council met at 10:00.
2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [10:02] Rev M Chabaku moved without notice: That the Council—
 - (1) expresses its hurt and anger at what has again been shown by the television media, namely that another farmworker discovered that the graves of his late parents had been desecrated and levelled and the tombstones had been piled up somewhere else by the new farmowner with callous concern for the people of God who spent their whole lives for over five decades working on that land on which they died and were buried;
 - (2) notes that—
 - (a) their offspring who are much older than 50 years themselves must now live with this ungodly action; and
 - (b) these actions are illegal and they are intentionally meted out in an outrageous disregard for the laws of the country by hateful, racist persons who often claim to be close to God and to be civilised; and
 - (3) urges the Government to exercise its powers and exert its influence so that swift action can be seen to be taken to restore respect for human rights and the laws of our beloved country.

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

4. [10:03] The Chief Whip of the Council moved: That paragraph (5) of the resolution adopted by the Council on 14 September 2000 whereby the Ad hoc Committee on General Intelligence Law Amendment Bill was established, be amended by extending the date by when the committee has to complete its task from 12 October 2000 to 7 November 2000.

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

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

FRIDAY, 6 OCTOBER 2000

ANNOUNCEMENTS:

National Council of Provinces:

1. The Chairperson:

Message from National Assembly to National Council of Provinces:

Bills passed by National Assembly on 6 October 2000 and transmitted for concurrence:

- (1) *Home Loan and Mortgage Disclosure Bill* [B 53B—2000] (National Assembly—sec 75) (Select Committee on Public Services—National Council of Provinces).
- (2) *African Renaissance and International Co-operation Fund Bill* [B 65B—2000] (National Assembly—sec 75) (Select Committee on Economic Affairs—National Council of Provinces).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Speaker and the Chairperson:

- (1) Report of the Auditor-General on the Financial Statements of Vote 1—President for the period 1 April to 31 May 1999 [RP 110-2000].
- (2) Report of the Auditor-General on the Financial Statements of the South African Wool Board for 1996-97 [RP 150-2000].

2. The Minister for Public Enterprises:

Report and Financial Statements of Denel (Pty) Ltd for 1998-99.

COMMITTEE REPORTS:***National Assembly:***

1. Report of the Portfolio Committee on Finance on the *South African Reserve Bank Amendment Bill* [B 62—2000] (National Assembly—sec 75), dated 3 October 2000:

The Portfolio Committee on Finance, having considered the subject of the *South African Reserve Bank Amendment Bill* [B 62—2000] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill without amendment.

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

MONDAY, 9 OCTOBER 2000

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Correctional Services:

(1) Proclamation No 819 published in the Government Gazette No 21482 dated 25 August 2000, Establishment of the prison at Kokstad, KwaZulu-Natal Province, to be known as the Ebongweni Correctional Centre, made in terms of section 5(1) of the Correctional Services Act, 1998 (Act No 111 of 1998).

(2) Proclamation No 820 published in the Government Gazette No 21482 dated 25 August 2000, Establishment of a new prison at Empangeni, KwaZulu-Natal Province, to be known as Empangeni Qalakabusha Prison, made in terms of section 5(1) of the Correctional Services Act, 1998 (Act No 111 of 1998).

2. The Minister of Water Affairs and Forestry:

Report and Financial Statements of the Department of Water Affairs and Forestry for 1999-2000 [RP 101—2000].

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Finance on the *Bills of Exchange Amendment Bill* [B 47—2000] (National Assembly—sec 75), dated 3 October 2000:

The Portfolio Committee on Finance, having considered the subject of the *Bills of Exchange Amendment Bill* [B 47—2000] (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 47A—2000].

2. Report of the Portfolio Committee on Transport on the *South African Rail Commuter Corporation Limited Financial Arrangements Bill* [B 64—2000] (National Assembly—sec 75), dated 4 October 2000:

The Portfolio Committee on Transport, having considered the subject of the *South African Rail Commuter Corporation Limited Financial Arrangements Bill* [B 64—2000] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill without amendment.

The Committee further reports that it has rejected the following amendment:

On page 2, after line 22, to insert:

“(e) any such debt to be repaid by the Corporation and not deferred for repayment by the State;”

The Committee also wishes to point out that, in the objects memorandum attached to the Bill, the word “million”, wherever it appears, needs to be replaced by the word “billion”.

3. Report of the Portfolio Committee on Education on *Visits to Northern Province schools*, dated 3 October 2000:

A. Introduction

The Portfolio Committee on Education, having sent two delegations to Northern Province schools from 2 to 5 May 2000, reports as follows:

1. Objectives

In a meeting which was held on 13 October 1999, the Committee decided that two delegations visit the Northern Province during a constituency week in March 2000. As the province is one of the largest provinces, the Committee agreed that the delegation of eight members would divide itself into two groups (four members each) to visit as many schools as possible in all areas, primarily the most disadvantaged rural communities, with a mandate to—

- (1) co-operatively examine, along with the provincial education standing committee, the capacity of the province to deal with the demands set by national Acts, regulations and policies, and other challenges spelled out in the first priority of the Minister of Education’s Tirisano (“Call for Action”) document, which intends to make our provincial systems work by making co-operative government work;
- (2) examine conditions of physical degradation in schools in areas listed by, and according to, the objectives of the President’s rural strategy programme;

- (3) investigate the implementation of funding norms and standards emanating from the South African Schools Act;
- (4) examine ways of effecting greater synergy between education at provincial and national levels;
- (5) construct a co-operative relationship between the Committee and the provincial committee to deal co-operatively with challenges constraining the effective development of our education system;
- (6) develop a rural development strategy in respect of the building and renovations of schools and the provision of resources like textbooks and teaching aids in rural schools; and
- (7) address the challenges of the allocation and management of provincial budgets in respect of education.

In view of the fact that the Committee plays a vital role in promoting co-operative governance between the provinces and the government and in improving the quality of life of every citizen on the ground, the delegations focused on all educational infrastructure affected, damaged and destroyed, also assessing the need for repairs and renovations and for the building of new schools in areas visited.

2. *Tirisano*

The delegations based their visits on Tirisano. A document outlining the objectives thereof was distributed by the Department of Education (the Department) to MPLs, education directors, school principals and the media.

The delegations emphasised that since Tirisano was based on extensive consultation by the Minister with a large variety of stakeholders, there was no need to reinvent the wheel by searching for other criteria on which to base their visits.

In particular, the first priority identified in Tirisano—"to make our provincial system work by making co-operative government work"—was clearly in line with the purpose of the visits. The Minister pointed out in Tirisano that three of the largest provinces, KwaZulu-Natal, the Eastern Cape and the Northern Province, were also the poorest, with the largest backlogs in respect of school buildings, infrastructure and services. For this reason those three provinces were identified for visits. Similar visits have been already undertaken to schools in KwaZulu-Natal and the Eastern

improve the situation. Traditional leaders, councillors, parents and political party leaders were seen as interfering in the management of rural schools. Such schools were generally vandalised, most windows were broken and there were poor attendance of teachers and learners.

The management capacity of principals has to be urgently investigated at rural schools.

4. *Delegations*

As the group was divided into two delegations, Group A was under the leadership of Prof S M Mayatula, while Group B was led by Ms P K Mothoagae. Both groups were accompanied by members of the provincial education standing committee and departmental officials. The groups were constituted as follows:

Group A:

Prof S M Mayatula (leader of the delegation); Ms I Mutsila; Mr S B Ntuli; Mr S J de Beer; Ms N C Manjezi (Committee Secretary); Mr A Nevhutanda; Mrs S Mangena; Mr R Mashaba; and Ms I X Chauke (Provincial Committee Secretary).

Mr M M Motshekga left the delegation at an early stage due to prior commitments and engagements.

Group B:

Ms P K Mothoagae (leader of the delegation); Mr B G Molewa; Mr M A Mangena; Rev M S Mogoba; Ms A T Tatana (Committee Secretary); Ms T J Ndimande (Chairperson: Provincial education committee); Mr M S Burgers; and Mrs Matlala (Provincial Committee Secretary).

An attempt was made to obtain a balanced view, with input from departmental sources, principals, teachers and school-governing bodies (SGBs).

B. Start of visit

On arrival in the province on 2 May, the delegation was warmly welcomed by the provincial education committee, led by the chairperson. Constructive and open discussions were held at the Pietersburg Holiday Inn. Prof S M Mayatula gave a brief overview and objectives of the visit.

1. Department of Education—Pietersburg

The Northern Province is one of the three provinces identified by Pres Mbeki as the poorest, in need of extra financial assistance. On 3 May, the delegation was welcomed by the MEC for Education, Mr E Mushwana, and discussions with top management were held. The following were some of the areas covered:

There are 2 250 000 pupils and 66 000 civil servants in the province. The department serves 5 000 schools, of which almost 65% are rural and farm schools.

(1) *Grade 1 admission*

In terms of the new age requirement admission was done in accordance with the new admission policy for 2000. The process started in September 1999 and was finalised in the first week of January 2000.

The general trend was that there were fewer learners in Grade 1 this year because of the age requirement of seven. District managers control this process and the department is satisfied that Grade 1 learners meet the requirements of the admission policy.

(2) *Delivery of textbooks and stationery*

Orders for textbooks were issued from October to mid-November 1999. Delivery started in mid-November, and is still continuing. There are two categories of textbooks to be supplied—those already printed and those to be printed.

Stationery orders were issued in November 1999. Delivery started in the last week of November. By 30 January 2000, 90% of the suppliers had completed delivery. Supplementary orders were issued and delivery was completed on 15 January.

(3) *Attendance by learners and educators*

This exercise was conducted on the first day of school by the whole range of officials, from the Premier and MEC to first education specialist. Most secondary schools registering learners, with no plans of working that day. Few secondary schools had an attendance rate above 70%, with even fewer schools engaged in actual teaching.

Educators' attendance was not good, with most schools not adhering to the directives of maintaining time books. There was literally no sense of business in respect of most educators. Primary schools were disciplined and the majority of them were running well.

Monitoring teams in the districts were immediately constituted to conduct operations on a daily basis. The situation gradually improved from day two, and it is pleasing to report that most secondary schools are running well. Principals are beginning to be firm.

(4) *Implementation of outcomes-based education (OBE)*

There is an indication that facilitators do not have the necessary skills to effectively transfer knowledge to the consumer. The cascade model also has limitations, particularly when the department is dealing with a sophisticated model like the current one.

Workshops will not be effective if they are conducted a few months before implementation or when implementation is in progress. A review is thus necessary to look at the best strategies to convey curriculum changes to consumers.

(5) *Success schools and success factors*

Most successful schools were those located in urban or semi-urban areas. They had a planning meeting and enjoyed support of trainer facilitators. Success factors included the following:

- (a) Good management of schools—positive behavior by both educators and learners.
- (b) Commitment on the part of the educator.
- (c) Regular cluster meetings after school.
- (d) Regular support by facilitators from districts and regions.
- (e) Quality training.
- (f) Availability of transport for facilitators to visit schools.

(6) *Struggling schools and inhibiting factors*

Struggling schools are mostly those in the rural areas. Educators share common transport from home to schools, which makes it difficult for them to meet regularly in the afternoon. The inhibiting factors are:

- (a) Poor school management.
- (b) Inadequate training of managers and educators in OBE.
- (c) A lack of success in respect of supporting materials.
- (d) A lack of planning in school clusters.
- (e) Resistance to change.
- (f) The cascade model as mode of delivery.

The department has some improvement plans for struggling schools:

- (i) Retrain principals, SGBs, district managers and circuit managers.
- (ii) Encourage clusters to work together on OBE.
- (iii) Recommend school-based inputs on approaches.
- (iv) Demonstrate facilitation and other skills.
- (v) Provide teaching and learning materials.

- (vi) Develop a practical guide for educators.
- (vii) Develop districts monitoring plans.

(7) *State of preparedness for administration of Grade 12 exams in 2000*

The departmental management plan has been developed and entries have been received on 17 March 2000. Capturing commenced on 21 May 2000 via a private agency. The October/November timetable will be available by August 2000.

(8) *Analysis of successful schools in 1999 and success factors*

The majority of schools with a pass percentage of between 95% to 100% were found to be historically advantaged. This was an indication of the commitment and dedication of those involved in educational change. Although the former model C schools still reflected the largest number of distinctions, they reflected a decline in terms of quality of results. The success factors included:

- (a) Availability of action plans geared to the attainment of set targets.
- (b) Availability of work programmes which interpret the syllabi.
- (c) Guidance and counselling support for learners.
- (d) Evaluation reports for learners and educators.
- (e) Strong management teams.
- (f) Quality and quantity of written work.
- (g) Control systems for administrative and professional matters.
- (h) Commitment of educators, learners and parent bodies to achieve excellence.
- (i) Good discipline at all top schools.
- (j) Extra classes offered for enrichment.

(9) *Analysis of struggling schools in 1999, and inhibiting factors*

Struggling schools are found all over and are not restricted to a particular geographical area. They operate without plans, and communities do not take ownership of them. Work ethic is very low, and there is no sense of responsibility and accountability. The inhibiting factors are:

- (a) The principal and some educators are not at school most of the time.

- (b) Principals do not carry out their responsibilities, as agreed in the Education Labour Relations Council (ELRC).
- (c) SGBs do not contribute towards management.
- (d) Lack of discipline.
- (e) Educators do not finish the syllabi, and go to class unprepared, reading lessons from a textbook.
- (f) The quality and quantity of written work is very poor.
- (g) Absence of control systems and action plans.
- (h) The seven-hour school day is not fully utilised.
- (i) There is no management at all and no benchmarks are set to realise targets.

(10) *Improvement plans for senior certificate examination in 2000*

Improvement plans should address all aspects of school development, rather than be confined to a particular grade. Grade 12 is seen as an exit point, where efforts accumulated through the system can be objectively assessed. A plan and strategies have been developed to improve on the 1999 performance:

(a) *Analysis of school performance*

Schools have been categorised according to performances, so as to systematise the support relevant to the critical areas. The categories range from between 0% and 20%, which the department views as critical, to 21% to 30% and finally to 31% to 39%. An analysis was done on the weakness of these school categories.

Regional and district offices have developed intervention strategies, ranging from management support to general planning of schools affected. Clustering, or twinning, of weaker schools with schools performing well in each circuit has been done, so planning of tests and other curricular issues are done jointly.

(b) *Support to teachers*

Special funds were made available for school support programmes. The following activities took place:

- (i) Subject committees were resuscitated to provide the necessary support.
- (ii) School visits, focusing on developed checklists, must be conducted as a supporting strategy rather than as routine work.
- (iii) Each region has a continuous professional development centre (rationalised college of education) to primarily target the improvement of Grade 12 results. Curriculum support services (subject advisers) are located there to run courses at the centres and provide classroom support to educators.
- (iv) Class visits by principals are restored to the system, and preparation is a prerequisite to effective lesson delivery.
- (v) Deployment of head office officials to support poorly managed schools on administrative and professional matters.

(c) *Textbooks*

Textbooks, except commercial stationery, were delivered in almost all schools. Some areas were inaccessible due to recent rains and bad roads.

Approximately 98% of textbooks were delivered to schools by the end of the first quarter. Fraud also occurred with delivery of books, which caused delays in some areas.

(d) *Farm schools*

There are challenges facing them, like status and ownership, rental and their existence on certain farms.

The department still has difficulty in staffing them. They are seen to be equal to black schools, not meant to admit the farmer's children, but black children.

(e) *Rationalisation and transformation*

Racism still exists in schools, primarily with parents. Some schools still experience racial grouping—one section for blacks and another for whites. Although racism exists in some of the schools, learners are motivated to learn, share and live together, and as a result in some schools black pupils share dormitories with white pupils.

(f) *Poverty alleviation*

The Department of Social Welfare is providing a feeding scheme in numerous schools, and it is progressing well in most.

(g) *Pre-schools*

There are 3 400 primary schools and 690 pre-schools. Looking at the statistics, not all children will start in Grade 1, hence Grade R was introduced. It is envisaged that all primary schools should have Grade R to accommodate children from pre-schools.

Pre-schools are perceived as a luxury for the rich, and are most organised in the urban areas and townships, not in rural communities. The government does not subsidise the building of pre-schools.

(h) *State of tertiary institutions*

Big problems are still experienced, as tertiary institutions are the competency of the national Department—the provincial department spends more time on schools. Even though there have been constructive and open discussions with the management of tertiary institutions in solving problems, there is still need for a debate on this.

A perception exists that students who attend black tertiary institutions are those who cannot afford. The University of Venda has undergone transformation and the University of the North is following suit.

(i) *Staff provisioning and staffing*

There are enough good teachers and they produce good quality teaching in many schools.

C. *Group A visits*

1. *Haneartsburg Combined School*

The school is a former model C school and has an enrolment figure of 181 learners (Grade R to Grade 9) and 11 educators. About 120 learners stay in the hostel, and most of them are black. English and Afrikaans are the main mediums of instruction. It is a multilingual school, and they intend to bring African languages into the system. The history of the school started as early as 1887.

The school is a brick structure, partly prefabricated. The school is well-managed, controlled and disciplined, with good grounds which are well-kept.

They have already adopted OBE, and are operating very well. They also have programmes with other schools in the region, and working relationships seem very good. The SGBs are always represented in these programmes.

As this is a government school, any child can be enrolled, but learners are selected according to language, as English is the main medium of instruction. The hostel determines and limits the number of pupils to be admitted to the school.

At present there are 40 white learners; many were removed by their parents and admitted to other schools in Tzaneen.

There is one black teacher, 10 white teachers and 12 general assistants, including the gardener. The government subsidises five educators, while the SGB contributes to the salaries of six other educators. Every pupil has to pay a school fee of R300 per month.

There is good co-operation between and participation of the SGB and parents; they are happy about the quality of education. They do a lot of fundraising to keep the school's standard high. Three parent meetings are held per year to constructively discuss school matters.

Even though there are five farm schools in the district, they have many pupils, in relation to the population in the area, and thus there is a need to incorporate these farm schools into other schools.

Mr Smith has been acting principal since 1 March 2000. The post has been advertised, and 47 applications were received. The shortlisting process were to have commenced by not later than June 2000. No redeployment of teachers has been considered by the department.

There are still finance and staffing problems. A submission has been made to the department for more teachers. Urgent assistance and additional teachers are needed to overcome problems.

2. *Seboni Primary School, Ga-Mokgoloboto*

The school has an enrolment figure of 813 learners (Grades R to 7) and 10 educators (81:1). There is no proper building or infrastructure; schooling takes place under the trees. Part of the structure is made of wood and is badly damaged, delapidated, in a state of collapse, and may cause injury to learners and educators. Nevertheless, it is still in use.

There are three classrooms, five classes being held under a tree. On rainy days there is no formal schooling. The weather controls the school, not the principal.

The informal settlement in the area gave birth to the school on 15 January 1996. It started in 1997 with six teachers voluntarily giving service, with no salary and no assistance from the government.

At present there is one permanent teacher and nine temporary teachers. The nine temporary teachers are paid by the department and will soon be replaced as a result of redeployment. The department has utilised the temporary teachers to fill vacancies.

There is no electricity, no sanitation, no fencing, no furniture and no learning materials (like writing boards). Funds are urgently needed to improve the quality of the damaged infrastructure and to build a new, decent school.

Although the school is on the priority list of the department, one cannot predict when the new school will be built. A new school has been budgeted for by the provincial department. The government needs to intervene to alleviate the problems and build a new, decent school.

3. *Zivuko Senior Secondary School, Nkowankowane*

The school has an enrolment figure of 680 learners (Grades 8 to 12) and 21 educators (32:1). The school building is a brick structure, with no broken windows.

The school was started in 1993, and between then and 2000 it managed to change the mindset of teachers, realising the need for maximum effort, winning the support of teachers when it comes to the good of learners.

Learners at this school are relatively orderly and disciplined, and most of them come from the township and commute to school on a daily basis. The school management has made great strides in getting the community to own the school and to change attitudes. Parents, teachers, learners and SGBs are striving for excellence. As a result, there is team work. The school is well managed and well controlled.

There is a shortage of classrooms. Three classes (Geography, Agriculture and Physical Science) are held under a tree, and this creates difficulty on rainy days and during cold weather. This shortage has had a disastrous effect, causing a low understanding of learners. This could cause problems—a lack of individual attention from teacher to learner.

Due to the classroom shortage, 90 learners in certain grades are cramped in one classroom, which results in difficulty for the educator when endeavouring to attend to each individual learner. Some learners are accommodated in the nearby church hall, one km away from the school.

Several letters have been forwarded to the department to request additional classrooms, but until now no response has been received. The school has no desks and chairs.

Learners are taught while they are standing on their feet, because of the absence of furniture. Textbooks were received, but delivery was very late.

There is a great need for science laboratories and an administration block. A request was put to the department, but was "withdrawn", and they were told that the focus was on primary schools.

The school needs teaching aids such as videos and computers, which will store and keep school management information and serve other purposes. There is no proper sanitation, toilets, electricity and fencing.

Grade 12 results are: 1997—27%; 1998—39%; 1999—56%. This improvement clearly shows dedication and commitment from educators, learners and parents.

4. *Matimu High School, Tabina district*

The school has an enrolment figure of 800 learners (Grades 8 to 12) and 24 educators (33:1). The school is a brick structure with louvre windows. Approximately 90% of the windows are broken. There are 13 classrooms, of which one has been converted into a store room. Roofs and ceilings of two classrooms are extensively damaged and need urgent repairs and maintenance.

There is no fence. Funding for building proper clean and working toilets was donated by the European Union. Many successes could be focused:

(1) *Professional area*

Professionalism has turned the corner, towards a better deal for all, like the fully-fledged plan, and clear and directive policy on professional procedure—an instrument that imbues management and the general staff with what is expected in terms of performance measuring. This therefore makes it easy to evaluate the work of an individual input.

(2) *Professional administrative jurisdiction*

There is demarcation of the school curriculum into streams: Languages, social science and natural sciences, with a departmental head in each case co-ordinating the activities of all educators. This approach provides an individual head with autonomy, development, expansion, and dynamism. Ultimately, the work of these various streams are synchronised and approved by the principal.

(3) *Professional discipline*

This has been introduced and entrenched into school policy, and finds expression through the establishment of sectional heads of grades levels (i.e. Grades 8 to

12). Their duties will include controlling grades on discipline, for both educators and learners of that grade; collecting mark sheets from educators; controlling score records by educators in respect of learners; and compiling a monthly report of the grade, to be tabled for consumption by management council in its monthly meetings. A unit whose duties will include assessment, teaching strategies, approaches on preparations and quality and standard of tests and compiling reports on the above, for presentation to management council on its monthly meetings.

(4) *Discipline in general*

There is a delegate from the chief of discipline of the school in general, whose duties include punctuality. This person is an educator that facilitates decisions in the absence of the principal in conjunction with the professional head, and who co-ordinates all professional matters, from subject allocation to practical teaching. This educator has the same status as the chief of discipline.

(5) *Staff development*

There is unity regarding staff development in respect of education and training.

(6) *School buildings*

The structure on site comes from a donor, who has already spent R16 000 for materials and R5 000 for labour. The donor could not continue due to a lack of cash-flow. The assessment of a layperson estimated an amount of R100 000 to complete the unfinished job. The administration block has been renovated.

(7) *Parental support*

Parents have begun to assume responsibility and ownership of the school. Meetings held with them, as well as their parental support, are encouraging.

There is no proper office for the principal and a staff room. Important documentation are taken home by management members due to inadequate storage facilities at the school. The need exists to build an administration block.

The school was established in 1982, and since then it has been exposed to vandalism and theft on a daily basis. The entire premises is extensively damaged and needs urgent repairs. Nevertheless, teaching is continuing.

The provision of well-trained and professional securities are required to reduce vandalism and safeguard the building and its property, as most classrooms have broken windows and no doors. The department

promised to renovate the school, but up to now it has not been fulfilled; the process is still in the pipeline.

As this school is on the priority list of the department, three classrooms have been built and six additional classrooms will be erected to overcome the problems of shortage and overcrowding. Textbooks were never delivered; they only received stationery.

Political conflicts within the community affected the schooling process. There were a number of strikes, the sources coming from the community, as learners and community members are influenced by teachers to contribute to conflict. These conflicts have affected the Grade 12 pass rate, which dropped drastically, due to absence of learners during normal school hours.

Reports were sent to the Director, explaining the problems and nature of conflict. The delegation was informed that the MEC for Education, Mr E Mushwana, was aware of the conflict in these communities and that he was still arranging a meeting to try and solve the conflict problems.

Since the establishment of SGBs in 1998, there has been a great change in attitude; the parents are involving themselves in all school affairs.

5. *Thubisang Primary School, Sekororo*

The school has an enrolment figure of 285 learners (Grades R to 7) and eight educators (36:1). It is a brick structure with six classrooms, including a shack built to overcome overcrowding due to the shortage of classrooms. One classroom is held under a tree. The school is well-managed, well-controlled and well-maintained.

There is proper fencing and toilets. There is no water and electricity in the village—water is pumped from the mountain and is not hygienically clean.

The shortage of classrooms remains. Three more classrooms and a staff room need to be built. The school has received a donation of R14 000 from the King, which were used to repair leaking roofs.

Due to bad roads and time constraints, the delegation could not visit Tjaltjala Primary School, Timamogolo Primary School, Lepono Secondary School, Malebolong Primary School and Diputi Secondary School. The Committee wishes to apologise to these schools and their communities.

6. *Seagutla Secondary School*

The school has an enrolment figure of 550 learners (Grades

8 to 12) and 27 educators (20:1). It is a brick structure of good quality.

In previous years, the school was a finishing school, but in the past three years it was changed to a normal school. There are 16 classrooms, including damaged classrooms hit by a storm in 1999. Most of the damaged classrooms' roofs are leaking. The Department of Public Works has already started repairing the damaged classrooms.

The school has proper fencing and electricity, and pit toilets, which are a health hazard. Although the school is situated away from the village, vandalism and theft is not common, as there is full-time security on the premises.

Grade 12 started in 1998, and the pass rate in 1999 was 28%.

7. *Madondo Secondary School, Belfast*

The school has an enrolment figure of 561 learners and 14 educators (40:1). It is a brick structure with no broken windows. This community-driven school started in 1989. There are nine classrooms, of which one is a staff room and another one has been converted into a storeroom.

As this is a well managed and controlled school, funding is needed to effect some community-driven initiatives aimed at maintaining it in a proper environment conducive to learning and teaching.

There is a serious shortage of classrooms. Due to this shortage, a tuck shop has been converted into a science class. There is no privacy between teachers and the principal, due to the unavailability of offices and an administration block. There is not enough furniture—beer boxes are used as chairs.

In 2000, through its efforts, the school received a donation of R36 000 from the RDP committee, which was utilised to erect a fence around the building in order to safeguard the school and its property. The damaged roofs have been repaired by Public Works.

Previously, the school experienced problems with delivery of textbooks. They had to borrow textbooks from neighbouring schools. Some learners had to continue with the learning process without any textbooks. However, in 2000, textbooks were received on time.

Learners at this school are well-disciplined and well-mannered. There is good working relationship between teachers, learners and SGBs. Parents still maintain that learners should be punished, even though corporal punishment has been outlawed by the government.

School fees amount to R50,00 per child per annum, and parents are co-operating by paying these fees. The Grade 12 pass rate in 1998 was 37%, while in 1999 it was 48%.

with eight exemptions. The school is committed to work hard in trying to improve its standard. There is no proper sanitation and toilets.

8. *Malavutela Secondary School, Marite*

The school has an enrolment figure of 413 learners (Grades 8 to 12) and 10 educators, including the principal (41:1). It is a brick structure, and almost all the windows are broken.

There is no fencing around the school premises to safeguard school property. There is a serious shortage of classrooms—at present there are only three classrooms, with two offices which serve as staff room and principal's office, respectively.

The school officially started in 1991 (in the neighbouring school) with one classroom. Firstly, the Grade 10 class was established in one classroom, but in 1994 the classroom was burnt down. Due to a shortage of classrooms, there was no initiative to start Grades 11 and 12.

No problems have been experienced in terms of delivery of textbooks and stationery. Pupils are well-controlled and well-disciplined. The school has a history of being incorporated from the Lebowa government. An automatic promotion was not good for the pupils because it did not test their abilities.

The school also managed to obtain third position in Grade 12 pass rates in the region, which was as follows: 1996—38%; 1997—8%; 1998—4%; 1999—21% (improvement of 16,7% over 1998).

The principal emphasised that accommodation and overcrowding may be the cause of poor results. This was evident during our visit there: The Grades 8 and 9 classes were held under trees, due to the shortage of classrooms.

Schools with the lowest pass rates are timeously visited by district managers, regional managers and circuit managers, to monitor progress and to ascertain problem areas. There is great co-operation of staff to improve pass rates and academic records by upgrading standards. Teachers and learners are co-operatively committed to improve standards by doing the following:

- (1) Conducting after-school studies until 16:00.
- (2) Grade 12s will have morning classes every weekday.
- (3) Monthly tests, where the best students will be rewarded with gifts like pens and stationery. This is seen by the school management as a form of motivation for learners.
- (4) During June holidays, winter classes are held.

Parents are timeously informed about learners' performances. Teachers are committed and dedicated to achieve a 100% pass rate in 2000.

There are five toilets with no roofs. The school urgently needs two additional staff members (one HOD and one educator). The request was forwarded to the department, and one educator was promised.

There is a serious shortage of English, Zulu and Mathematics educators.

Regular meetings are held on a monthly basis with community structures to give feedback on all school developments. The community does not want to take ownership of the school, and the high rate of vandalism underlines this, which is committed by people from the community.

9. *L L M Mokwena Secondary School*

The school has an enrolment figure of 89 learners (Grades 8 to 12) and 24 educators (29:1), two of whom are awaiting redeployment. Another two are temporary.

The building is a brick structure, with almost 90% of windows broken. The other part of the brick structure, which has been extensively damaged by fire and with rusted window panes with no roofs, needs urgent repairs and renovations.

The school was initiated as the result of the need of the two communities (Tsakane and Jim Brown), it is situated at the Marite settlement and has proper fencing. The poor pit toilets are a health hazard, but are still in use by both teachers and learners.

The school started in 1985 with two educators and very few learners. Enrolment and staff complement increases yearly.

There are 12 classrooms, nine of which are standard, and three which were meant to be laboratory and home economics centres, but with no equipment they ended up being converted into regular classrooms.

Vandalism, burglary and theft are rife, and it is believed that it is committed by learners and by the local community, as this school is situated at the lower end of the two villages. The community does not want to take ownership of the school. The delegation was informed that the crimes are reported to the police, but that nothing is being done to prevent vandals from entering the school premises.

The relationship between teacher and learner is good. The learners wear their school uniform at all times and are well-disciplined. Corporal punishment, according to the acting principal, is still regarded a good corrective measure to discipline and punish learners.

(1) *Poor pass rate and Grade 12 results*

The reasons for poor and low pass rate were presented as follows:

- (a) The shifting of good and excellent educators to other schools is seen to be the cause of the low pass rate. This is also evident by a decline in the Grade 12 results: 1997—34,7%; 1998—26,2% 1999—16,9%.
- (b) The school does not receive good pupil material from primary schools, worthy of being in Grade 8. They are promoted to secondary school without good performance.

The school has been run without a principal since July 1999. According to the circuit manager, the previous principal alleged that he had received death threats, mainly from educators, learners and the community. The principal on one instance was nearly killed by learners on his way to school. The matter was referred to the region, in fear of his life.

He was refused a VSP (Voluntary Severance Package), as principals do not qualify for VSPs.

10. *Bushbuckridge Secondary School*

The enrolment figure is 247 learners and seven educators (35:1). At present Grade 11 is the highest Grade; they hope to present their first Grade 12 batch in 2001. The school building is a brick structure, which is well-maintained and has a fence around the school premises. None of the windows are broken. Almost all classroom doors and windows are burglar-barred.

The school is well-managed and well-controlled. The school was established in January 1996, through the concerted efforts of the great sons and daughters of Maviljan Township, College View in Bushbuckridge Midland. It was started with the special purpose of providing quality education in science and commercial subjects, with only 42 learners; now it has 247 learners.

A four-classroom block was built by the provincial education department, and in January 1997 they moved to the permanent site. One of the classrooms is still being used as the office and the staff room.

In 1998 the parents supported the school to erect one additional classroom. The school has two Grade 8 streams, while other grades have one stream each.

In 1999 a fence was erected around the school with the help and support of parents. The school also has electric connections, tap water, telephones and toilets facilities. It is about to finish a hall, to be used as a classroom.

School starts at 07:50, with morning devotion for 10 minutes, and ends at 14:50, with a short break and a long break in between. Apart from languages, only science and commercial subjects are offered. Mathematics is a compulsory subject for all grades. Guidance is taught as a non-examination subject in all grades.

Extra-curricular activities are equally important. They have training in and/or facilities in respect of sports, the School Christian Movement (SCM), interclass debates, quiz shows, music and symposiums. Learners have won several prizes in interschool competitions. In 1999, three learners participated in the provincial mathematics olympiad competitions. They also received an area trophy for cultural activities. Educational tours are conducted every year. In 1997, learners participated in the provincial science expo, and also won two trophies in the circuit for COLTS and Masakhane.

There is high level of co-operation between educators and learners. The learners are well-disciplined and well-mannered, and are participating in all activities. There is no vandalism. Parents as well as learners are engaged to take ownership of the school.

As a growing school, they are also faced with lot of constraints:

- (1) Textbooks and prescribed books were never received, except for a few prescribed books for Grades 8 and 9 in 1997. Not every learner can afford to buy textbooks. The books were never delivered due to departmental financial constraints, as the focus was on Grades 1, 2, 7 and 12.
- (2) There is great shortage of furniture in the school. The Grade 8 learners are sharing seats in classrooms. The Rector of Mapulaneng College of Education has lent the school 40 chairs and 40 tables to alleviate the furniture problem.
- (3) To be a fully-fledged science and commerce school, there is need for a laboratory, a computer laboratory, an administration block, a library, a decent sports field, and electronic equipment like a television, a video, a fax machine, an overhead projector and screen, typewriters and a photocopier to boost teaching and learning. The mission of the school is also to get learners acquainted with all modern equipment so that they do not feel inferior or disadvantaged when they encounter advanced job requirements anywhere in the country.
- (4) At the end of 1998 it was regrettably decided that learners passing Grade 10 had to look for admission in Grade 11 in other schools, due to a lack of accommodation.

The school started with a difference—"Just another mushroom school". It was not what the initiators had in mind. Rapid advancement of qualitative education in the right direction was the motto when the elite of the place embarked on an effort to establish this school. The school needs firm commitment and funds to assist it to attain its goals.

II. Nkothasi Primary School, Bushbuckridge

The school has an enrolment figure of 570 learners (Grades

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worse in the rain season and on windy days. Additional classrooms are needed.

- (2) There is no laboratory, which makes it difficult, if not impossible, to do experiments.
- (3) There is no library where learners can develop study skills and do independent research.
- (4) There is no staff room and office to accommodate staff, making it difficult to discuss important issues, and even to reprimand delinquents or counsel learners with learning problems. As a result, one classroom has been converted into a staffroom.
- (5) There are no sanitation facilities. The traditional pit toilets have collapsed as a result of the heavy rains in February this year. The one still in existence is extremely delapidated and can collapse any moment, causing injury to learners and educators.
- (6) The community does not have electricity, which makes it difficult for learners to study in the evening, be it at home or at school.
- (7) There is lack of seating facilities such as chairs and tables, resulting in some learners receiving lessons while standing and some sharing chairs and tables. Furniture had to be borrowed from the neighbouring school to alleviate the serious shortage. Some learners moved to neighbouring schools with proper facilities, which have a 65% to 70% pass rate in Grade 12.

According to the principal, Mr P G Mkhombo, the problem of accommodation infrastructure has long been known to the provincial education department, evidenced by an extract from a speech delivered by the former MEC for Education, the Hon Dr J Phaahla, when handing over Mkhweyantaba School from the local government and traditional affairs department to the education department on 5 December 1997 at Orinocco, Bushbuckridge.

It became apparent that the need for appropriate accommodation infrastructure was long overdue. An appeal was therefore made to the Committee to assist in this regard.

Parental support for educators is maximal, compared to the situation in the past. Parents avail themselves any time when the management office needs them to discuss critical matters regarding the school. There is strong ownership of the school by the community, and there is no sign of vandalism to school property. The community is in control of the premises and buildings.

The SGB is incapacitated, as it does not seem to know the constraints within which it should operate as a functional structure and as part of the school, representing parents. They sometimes do not know their rights, constraints and limits. This could be attributed to the fact that about 98% of the parent component of the SGB is illiterate or semi-literate, which makes reading and understanding the material on their functions at school level difficult. Not much has been done in respect of capacity building.

The educators are working very hard to improve results, especially for 2000. They have moved from 18% (1998) to 35,2 (1999). This year the school is dedicated towards moving beyond 50% in respect of the Grade 12 pass rate. Textbooks and stationery were delivered on time.

13. *Bombani Secondary School*

The school has an enrolment figure of 421 learners (Grades 8 to 12) and 13 educators (32:1). It is a brick structure, of which one classroom has been burnt down and extremely damaged (virtually destroyed) in 1995. Until now, no repair work has been done.

Almost all the windows are broken (though burglar-barred), destroyed by children who used to play in the premises during and after hours.

The school has a fence and is electrified. There are toilets, but they are not in a proper condition and are a health hazard. Nevertheless, they are still in use, by both learners and educators. There is an extreme shortage of furniture, textbooks and classrooms. Due to the shortage of classrooms, the school has resorted to use the burnt and damaged classroom to accommodate some learners, while other classes are conducted under a tree. In cold weather and during the rainy season, there is no schooling for those who receive lessons under the tree. The school managed to receive its stationery on time. There is no library and no laboratory.

Grade 12 results were as follows: 1997—15,1%; 1998—31,1%; 1999—48,1%.

Although the learning process is continuing at this school, the slow progress has led to some learners leaving even before they reach Grade 12. As a result, the school has been regarded as a feeder to surrounding high schools, thereby further affecting Grade 12 results.

Although the teacher/pupil ratio is only 32:1, the two HODs have to do all the administrative work and teach as well. Limited teaching resources make things difficult for teachers as well as learners. A burnt-down classroom, which was converted into a staff room, also contributes to the poor working conditions. The classroom situation is rendering the annual intake of Grade 8 learners unacceptable.

Despite there being no record of vandalism, an urgent need exists to permanently appoint the night-watchman, a principal (as at present there is an acting principal) and a school clerk. There is need to have additional teachers, as two educators have recently left the school in fear of their personal safety.

The school now needs a library and laboratory. Funds need to be available for construction of an administration block and at least three additional classrooms. Implementation of these will definitely bring about a significant improvement in respect of learners' progress in all grades.

14. *Shobiyana High School*

The school was established in 1985, and has an enrolment figure of 776 learners (Grades 8 to 12), 30 educators (26:1) and 16 classrooms. The school has an electrified fence, and consists of a brick structure, part of which is extremely delapidated and in need of urgent repair and renovation.

Almost all the classroom roofs have been blown away or destroyed, and ceilings have been damaged and need to be replaced or renovated. Despite all this, the schooling and learning process is continuing.

Grade 12 pass rate: 1997—17,4%; 1998—44%; 1999—55,3%.

The administration block was burnt down in 1990 during an uprising, but up to now nothing has been done by the department to repair, renovate and rebuild it. There is also a serious shortage of accommodation, and it is difficult to continue with the learning process in winter.

There is a serious need for financial assistance in order to renovate the damaged and destroyed classrooms and administration block. Requests have been made to all local businesses to assist so as to rebuild and renovate the school, but no funding has been received. The leaking roofs and wall cracks may cause the building to collapse, which could mean injury to both learners and educators.

Previously there was no support from the community, but after the arrival of some teachers, there was a drastic change in attitude.

Co-operation from teachers is superb. As the community started to realise that the school was prosperous and constantly striving for excellence, it began to give good support.

There are no proper toilet facilities; they still use pit toilets, which are not in good condition and are a health hazard. Urgent attention is needed to repair and renovate the school.

there is proper fencing to prevent vandals from entering the premises.

Recent storms have damaged a number of classrooms and thus there are many cracks in the walls, which leak when it is raining, so learners cannot attend school and educators cannot teach.

Grade 12 pass rate: 1994—71,4%; 1995—47,3%; 1996—36,2%; 1997—29,3%; 1998—49,1%; 1999—35,1%. The rate is declining. Problems and conflict within the community are seen as the main reason for this. Disagreement among educators on the management plan is also seen as a reason for the decline, as it has affected the teaching process.

For many years, the community was not supportive in improving the quality standards of the school. Community members tended to change classrooms into toilets. However, over the last two years, the community/school relationship has been improving.

In 1999 the school was exposed to vandalism and theft, but this year nothing has been reported. In 1997 there was a break-in and a school generator was stolen. Subsequently it was found, but the culprits were not apprehended.

The school did receive stationery, but no textbooks. Due to poor roads, suppliers cannot always reach the school to deliver textbooks.

17. *Tshembani Primary School*

The delegation received an overwhelming welcome from both learners and educators at the entrance of the school.

The school has an enrolment figure of 925 learners and 28 educators (33:1), of which eight are awaiting redeployment. The building is a brick structure, which needs urgent renovation and maintainance. Few classroom windows are broken.

The school was started in 1964, under unqualified teachers earning about R3,00 a month or nothing at all. It was a one-teacher school with 275 learners. The principal, Mr Chivambu, joined the school in 1965. In 1966 there were two teachers (one unqualified). In 1970 they managed to convince the tribal authority to build three classrooms, and it was then that Grade 8 classes were started.

In 1980 enrolment increased, with a considerable number of educators and learners. From 1982 to 1986 the school excelled in producing the best Grade 7 results in the Giyani Circuit, and received a floating trophy for that. In 1984 the school convinced the former Gazankulu government to build further five more classrooms. In 1991, with the help of the "World Vision Project", they managed to build four

more classrooms. In 1997 the government also assisted in building four more classrooms. Nevertheless, there is still a shortage of classrooms.

In December 1999, they also managed to erect a fence to protect the building and windows from damage and destruction.

The school falls under various pilot projects in the province, like "READ" (the foundation phase) and the Kgatelopele Technology Project. The educators are trained by means of the Readathon and also in respect of technology.

They are now implementing OBE in respect of the foundation phase in Grade 7, and are working hard to promote the quality of education, but lacks sufficient equipment and materials to realise this. Stationery was received in good time last year, and this year they did receive textbooks.

The school at present needs electricity for technology and science, six additional classrooms, an administration block, furniture (chairs and tables), a library, a laboratory, hygienic running water or water boreholes (no water in the school and in the community), toilets facilities, fencing for the school yard, a typewriter, audio-visual material (like computers), television, an overhead projector and a photocopying machine.

Due to floods during February and March this year, damage was done to school property: Leaking roofs; damage to floors, doors and walls; two toilets collapsed; and roads were damaged. The principal informed the delegation that six educators residing in Thohoyandou and two from Malamulele could not get to school, as bridges they needed to cross had been washed away. The school is now used as shelter to accommodate families whose houses were damaged by the heavy rains.

As this school is well-managed and well-controlled, and given its history of excellence, the government should make funding available to further improve the standard.

18. *Tlharihani Primary School*

The school has an enrolment figure of 1 164 learners and 35 educators (33:1), with an excess of eight educators. It is a brick structure with semi-dilapidated classrooms in urgent need of repair. In 1998, through negotiations involving the RDP, the provincial department and the community, a new block of eight classrooms was built. Unfortunately, it did not have electricity. The government of Norway has assisted the school to electrify some classrooms.

The school is fenced to prevent vandals and goats from entering the premises. They were also supplied with chalkboards. The management congratulates the government for the developments.

There is no furniture, and learners bring their own chairs. There is need for a new administration block. The roof of the old structure could collapse at any moment, which may cause injury to learners. Assistance is needed repair the roof, build the block and buy furniture.

There is a serious problem of overcrowding, which makes the school ungovernable. At present, there are 18 classrooms available to accommodate learners- a shortage of six. The pit toilets are very dirty and not in good usable condition. The toilet holes are quite big and are kept locked, as they are deemed dangerous. These toilets are a health hazard. There being no water at the school, attempts have been made to get Public Works to attend to the problem.

Both Grades 3 and 7 received all learning materials, except that classes have not started with OBE. There is great co-operation and parental support on all school activities.

A feeding scheme which had helped some learners, was stopped. It was seen as very important for learners, because some community members are unemployed and very poor. There are also refugee learners from Mozambique. The principal has again applied for a feeding scheme to the Department of Welfare, but no response has been received.

19. *Risinga High School*

The school has an enrolment figure of 854 learners and 35 educators (24:1), an excess of 10 educators. It is a brick structure with no broken windows. The roof and ceilings were damaged by 1999 floods. The leaking roof in the administration block is causing further damage to furniture and interior walls.

They have an excellent Grade 12 pass rate; in 1998, they obtained 62%, and in 1999 72%. The learners are highly disciplined and see education as their key to success.

20. *Nhlalala Primary School*

The school was started in the early 1980s and has an enrolment figure of 560 learners and 15 educators (37:1). It is a brick structure with no broken windows and has big school grounds which are well-maintained. There are 16 classrooms.

The foyer ceiling is leaking and causing further damage to offices and other classrooms. Most of the classrooms have no electricity, and water has damaged light bulbs in classrooms. Urgent repairs are needed.

There are not enough funds to keep the school at a proper standard. They receive R30 000 per year in school fees, which is not sufficient. Most learners live in squatter camps and most of the parents are unemployed.

There is feeding scheme, provided by the Department of Welfare, and parents are assisting with it. The school is properly fenced and all the toilets are in good working condition.

21. *Holopondo Secondary School*

The school has an enrolment figure of 416 learners and 17 educators (25:1), an excess of three educators. A new block, built with bricks, has been erected by the community. About 65% of classroom windows are broken. Some classrooms have burglar bars, others have leaking roofs. The community is aware of the damages, but at present there are no funds to repair the broken windows. They rely on school fees to replace or repair broken windows.

Although the school is operational, there are problems with the entire school management. Recently, the female principal was evicted, so they have been operating without a manager. There are 16 classrooms, but they do not have enough furniture; some classrooms have no ceilings. Most Grades do not have any textbooks; they use photocopies. There are no proper toilet facilities for learners; educators use separate toilets, which are in good condition.

The new block built by the community still needs windows, doors and ceilings, and they need money to put in place all these before the winter.

There used to be a lot of stealing of furniture, so the community ensured that it took ownership of the school. There is no vandalism now.

In 1998, the Grade 12 pass rate was 64%, but in 1999 it dropped to 35,1% because parents were forcing them to enrol failing learners from other schools. The management needs to be investigated.

D. *Group B visits*

1. *Mamabudusha High School*

The school has an enrolment figure of 704 learners and 32 educators (22:1), some of whom are awaiting redeployment; they still need to be declared as excessive. There is an acting principal. They still need four HODs for language, mathematics and physical science.

Teachers' performance is effectively monitored by the principal. In previous years, they had a good Grade 12 pass rate, but over the past two years it has dropped—the 1999 rate was only 12%. When the then principal was asked to

account for this, he decided to go on early retirement. They are at present striving for excellence, hoping to achieve a rate of above 40%.

There are 17 classrooms, two fixed public telephones and a water tap. The entire infrastructure is dilapidated, with almost all windows broken and damaged floors, roofs and ceilings. They need urgent repairs and renovations.

There is no proper sanitation, no laboratory, no library, no sporting facilities and no administration block. One of the classrooms has been converted into a staff room. Educators and learners continue to use pit toilets, which are a health hazard. The road they use to get to school is bad and partly ruined. The only room which has electricity is the office of the acting principal.

The previous administration block, which had a library and a home economics facility, was burnt down by learners during a demand for a change in school fees. All the computers donated by Telkom and solar panels supplied and installed by Eskom were stolen.

Money raised to build toilets and install electricity supply was never used for that purpose, which has created many problems between learners and the management.

Reasons for low performance are the following:

- (1) No proper management, and divisions among staff.
- (2) Furniture is stolen by the community.
- (3) The administration block was burnt down.
- (4) Interference by the community in management.

They have made great strides in trying to resolve their problems. Teachers' morale has been directly affected by the above problems. Afternoon classes are conducted to eliminate the huge backlogs. There is good attendance and co-operation among learners.

Regular meetings are held with the SGB to discuss ways of building the administration block. They have agreed to raise funds and to assist with the rebuilding, and learners are also co-operating.

The district manager also pay regular visits and try to assist and advise them on the curriculum.

2. *Mabotja High School*

The school has an enrolment figure of 775 learners and 26 educators (30:1). It was started in 1989 with 22 educators for Grades 8 to 10. In 1990 the school very proudly introduced Grade 11, and in 1992 Grade 12 was introduced, due to a student increase.

This created problems in terms of classroom accommodation. Some classes had to be conducted in a shack. The

school is generally in good condition, although there is no library, no laboratory and no sporting facilities.

There are 12 classrooms, one of which burnt down in 1997. In 1999, it was renovated.

The Grade 12 pass rate in 1999 dropped from 23% to 16%; learners pass languages more than other subjects.

Vandalism and theft of property are rife. All the equipment, furniture, typewriters and doors were stolen by members of the community. The book storeroom was also burnt down.

They never received textbooks for new commercial subjects. Few parents can afford to buy textbooks, as most of them are unemployed. The school has to borrow some textbooks from neighbouring schools to continue with the process of learning and teaching.

Drug addiction and alcohol abuse by learners during school hours on the school premises is very common.

According to the principal, the weak performance is to be attributed to the following:

- (1) No textbooks for the new commercial syllabus.
- (2) The library was burnt down.
- (3) A lack of commitment and dedication from pupils and educators.

In trying to solve these problems, meetings were held with Grade 12 educators to discuss problem areas and motivation strategies.

3. *Setotolwane School for the Blind and Kuschke Agricultural school*

The delegation could not meet with the educators, as they arrived very late at the school. The Committee apologises to the school and the community.

4. *Siloe School for the Partially Blind and the Blind*

The school has an enrolment figure of 238 learners and 38 educators (6:1), three of which have been redeployed to other schools. The school is a brick structure, and the grounds are very neat and well-maintained.

One blind educator has recently resigned. 110 learners are blind, while 128 are partially blind; most of them are albinos.

This was the first school for the blind in South Africa, established by a Father from Belgium in the late 1950s. It is a public school, situated on a private property and funded by overseas Catholic missionaries who believe in christian values. Adv Malatji is the first blind advocate in South Africa who studied here. At present there are two vacant posts, one for the post of deputy principal and one for the post of HOD.

For the past 10 years, the school has a 100% pass rate. One learner who obtained a 100% pass rate in mathematics is at

present studying physiotherapy at UWC. The learners are highly committed and dedicated to strive for excellence, and they see education as the key to their success.

The school caters for three languages, history, business economics, typing, biblical studies, and in 1999, mathematics was introduced. It also caters for vocational training—learners are taught in handcraft, leather belts, weaving mats and wall pictures, which are sold to the public to raise money. Learners are also trained in sport, and most of them are good traditional dancers.

In 1996 some SADTU teachers refused to supervise learners during afternoon classes; even now they still refuse to do that.

The delegation arrived at the school very late, which made it impossible to meet learners.

5. *Mogolo Secondary School*

The school has an enrolment figure of 626 learners (Grades 8 to 12) and seven educators (89:1). There is one block with four classrooms, and most of the windows are broken.

There is a serious problem of overcrowding and a shortage of classrooms and educators. Due to the lack of classrooms, four shacks with no windows and doors have been converted into classrooms, while one classroom is used as a staff room, storeroom and library.

In some Grades 8 and 9 classes, more than 143 learners are either cramped together in one class or placed under the tree, which makes it impossible for the educator to attend to each individual learner. As there is a shortage of educators, some learners are left unattended, which makes control and discipline impossible.

As two educators have just resigned and another redeployed, the principal was hoping to get four more educators by the beginning of June 2000.

None of the toilets can flush; they have been out of use for long. Learners and educators have to use the toilets at a neighbouring primary school, which may create another health hazard. There are no sporting facilities and the school grounds are not well-maintained. There is a problem of leaking taps, which need urgent repairs.

Since establishment, they have never received any furniture. As no textbooks were received, they were supplied with the surplus of textbooks from the neighbouring school.

6. *Batau Secondary School*

The school has an enrolment figure of 707 learners (Grades 1 to 12) and 14 educators (51:1). It is a brick structure, in need of urgent repair and renovation. All the windows are broken, and the fence, toilet doors and the gate have been

stolen by people from the community. There is a serious shortage of educators. Some learners are taught outside under the tree, and on rainy days and during cold weather, schooling does not take place.

There is no furniture; some chairs and desks have been borrowed from neighbouring schools. There is also a shortage of classrooms; two shacks that were built are used as classrooms. One classroom has been converted into an office, staff room, storeroom and library, as there is no administration block. There are no sporting and recreational facilities.

Although farmers in the area have made concerted efforts to donate temporary structures, like shacks, the community continues to vandalise and destroy them. Vandalism to school property are reported to the police station 10 km away. None of the reported cases have been solved.

There is lack of parental support. Only 5% of parents attend school meetings. The majority have migrated to cities to find work, which makes them unable to attend to meetings to discuss matters and problems regarding the school. The Kgosi of the village does support the school, but the community does not want to take ownership of the school.

7. *Kabishi Primary School*

The school has an enrolment figure of 1 462 learners and 13 educators (113:1). It is a brick structure with no broken windows, and two shacks are also used as classrooms. The grounds are well-maintained and clean. The learners are well-mannered and disciplined.

Enrolment figures are: 1995—350; 1996—631; 1997—986; 1998—1 268; 1999—1 315; 2000—1 462. Grade figures are: Grade 1—240; Grade 2—243; Grade 3—193; Grade 4—235; Grade 5—192; Grade 6—174; Grade 7—185.

There is serious overcrowding and a shortage of educators and classrooms; as enrolment increases annually. 19 posts still need to be filled to overcome the shortage.

There is a great parental support. Parents contribute and raise money to pay for fencing to safeguard school property.

At present there is no furniture and no administration block. Teaching aids and textbooks were never delivered. There are also no sporting facilities.

As clean tap water is not available on the grounds, learners have to bring water from home. Aids programmes have not yet been introduced as part of the school programme.

8. *Phutinare Secondary School*

The school has an enrolment figure of 768 learners and 31 educators (25:1), including the principal, and offers education from Grades 8 to 12. It was established in 1976 and enrolls learners from six villages. It is a brick structure, and

almost all the windows have been damaged by learners who failed and who demanded to be passed. It took three weeks to solve these problems.

Learners have to travel six km every day to get to school. The subjects offered are commercial, natural and human sciences.

Grade 12 pass rate: 1995—36%; 1996—2,1%; 1997—15,6%; 1998—6,8%; 1999—40,2% (a great improvement).

The education department has constantly pressurised the school to move learners to higher grades, which has resulted in a decline in the Grade 12 pass rate.

Learners are abusing drugs. They smoke dagga which they get from the mountain near the school, where there is a big dagga plantation. This results in learners lacking discipline and progressing slowly at school. There is also a water shortage, and the toilets are not in good working condition.

At present there is no administration block and teaching materials for mathematics and science for Grade 11. Stationery was received very late, and only one Economics 2000 textbook was delivered. There is no parental support and lack of respect amongst learners, as most of them do not live with their parents. There is also a lot of absenteeism—learners as well as educators. The management should be investigated.

9. *Belabela High School*

The school has an enrolment figure of 674 learners and 40 educators (17:1), with an excess of 11 educators, and with no deputy principal and HODs. It is a double-storey brick structure with electricity, a fence, toilets and water, and no broken windows.

Theft is rife: They were forced by the education department to buy their own stationery and to pay for electricity. The community constantly refuse to co-operate to solve the problem. As 70% of the learners live in squatter camps, parental support is minimal. Learners refuse to attend afternoon classes to improve the poor pass rate.

10. *Mahlasedi Primary School*

The school has an enrolment figure of 1 000 learners and 24 educators (42:1). It uses an empty hostel—four blocks with 18 classrooms.

There is a serious overcrowding, caused by the transfer of learners from a delapidated farm school to this school. Although they had a 76% pass rate in 1999 under these bad conditions, the process of teaching and learning needs to be continued. Interior and exterior walls must be repaired.

There is no administration block, no sporting facilities, no furniture and a shortage of learning materials. They need materials like computers, fax machines and photocopiers.

The structure is not conducive to learning and teaching. The community deserves a new brick structure and a decent school.

11. *Mohlakamotala Secondary School*

This public school on private property has an enrolment figure of 470 learners and 17 educators (28:1), three of whom are temporary. The contract for the property has not been signed due to disagreement on the regulations.

Since its establishment in 1993, it has had a top matric pass rate. In 1999, the Grade 12 pass rate was 93,6%, compared to the 1998 rate of 1,4% less. It offers various vocational subjects like science, mathematics, technology, travel and tourism, technical drawing, hotel catering, business economics and various languages. With the efforts of the educators, a new administration block was built.

Textbooks and stationery were not delivered on time. There is a lack of communication between the department and the school, the circuit office is not well-equipped with materials to facilitate effective communication between school and department. There is also a shortage of classrooms—three additional classrooms are needed by the school.

12. *Noisebosch Secondary School*

This farm school has an enrolment figure of 86 learners and four educators (22:1), from Grades 1 to 11. It is situated on private property and consists of one classroom block, which is not conducive for learning and teaching. At present there is no principal, as he was evicted by the landowner. The acting principal has been functioning in that position for three years without any remuneration.

There is no electricity and the toilets are not in good working condition. They did not even receive enough learning material for OBE. Most rural schools have been excluded from the OBE process.

On 10 January 2000, the landowner farmer locked learners out of the classrooms, and the educators had to seek a court order to re-open them. He also intend to evict three educators and does not want to allow children of farmworkers to attend the school.

There is lack of co-operation from the community and the SGB. Most parents feel that they have to be remunerated for support to the school. There are no proper channels of communication with the circuit office to relay problems.

The school has a serious shortage of classrooms, textbooks, stationery and educators, no furniture, no administration block, no sanitation and water.

The management is ineffective. Vandalism is rife, committed by the community themselves. The community does not want to take ownership of the school. All the problem areas are solved by the school management alone, without the support of the provincial department of education and communities. Parental support is minimal.

Some schools are forced to pay for electricity and water supply themselves, whilst white schools do not have to pay for such services.

E. Solutions to problem

Schools, communities, educators and learners should be actively involved in taking the initiative to change the schools, and communities and SGBs are always encouraged to co-operate and participate in the process. There is also a need to implement effective school management, and this management should be trained to mobilise the community to assist in school matters and to attend meetings.

The evaluation of educators' performance should be conducted to identify the potential of those who can be promoted to HOD or principal.

The education department should provide enough classrooms, furniture, proper sanitation, clean running water, electricity, educators, textbooks and stationery to all schools in need. Parliament should address the problem of non-existence of sport and recreational facilities in schools.

There should also be compulsory education enforcers in communities to ensure that children attend classes, and legal structures should bind parents to ensure that their children are educated.

All corrupt educators should be brought to book by enforcing disciplinary measures.

F. Comments and recommendations

Areas that need urgent attention, are the following:

- (a) Major repairs and renovations are required in most schools.
- (b) A need to improve and upgrade existing libraries and develop mobile libraries.
- (c) A need to implement effective management in most schools.
- (d) Capacity-building of SGBs in financial management and school governance is needed in most schools.
- (e) A need for electricity, sanitation and clean running water.

- (f) Provincial departments of education should monitor adherence to national legislation, for example adherence to the prohibition of corporal punishment.
- (g) A need to inculcate a sense of ownership of schools by communities.
- (h) A need to encourage co-operation between previously advantaged and disadvantaged schools.
- (i) A need to develop a rural strategy educational plan based on the visit and in accordance with the President's integrated rural strategy programme.
- (j) Special budgetary provisions must be made to attend to backlogs as well as the present needs and inadequacies. Furthermore, provision has to be made to needs caused by natural disasters.
- (k) This Report should be assessed within the broader context of the national schools' survey of needs.
- (l) There is an urgent need to involve public representatives in the monitoring of educational issues in their constituencies.
- (m) The role of district officials in giving support to schools needs to be evaluated.
- (n) The Committee should on an ongoing basis monitor the implementation of these recommendations and determine the necessary time-frames for report-back on progress made.

G. Conclusion

The Committee is satisfied that it had attained most of the objectives identified for the study tour.

The delegations managed to lay the basis for a very constructive relationship with provincial governance structures. In the Northern Province, open and constructive discussions took place between the MEC for Education, Mr E Mushwana, the top management of the provincial education department and the delegation from Parliament.

The visit also succeeded in highlighting the principles of "Tirisano", the Minister's Call to Action to provincial structures. The delegations examined severe conditions of physical degradation in the poorest rural areas, according to the objective of the tour. They found conditions of immense poverty, dilapidated schools and a lack of basic facilities at educational institutions. However, even under the worst conditions, the delegations found that dedication, discipline and hard work of teachers in the classroom had a greater influence on examination results than what physical conditions in schools could bring about. In most schools, the management needs to be seriously investigated.

H. List of participants

1. MEC for Education and Culture: Mr E Mushwana.
2. Provincial Department of Education.
3. Mr R Matsana, PRO to MEC's office.
4. Chairperson (Ms J Ndimande) and provincial standing committee on education.
5. All principals and management of schools visited.
6. Various communities, including school governing bodies.
7. Regional, district and circuit managers.
8. All communities visited, as well as those not visited for various reasons.

Report to be considered.

Jan 1st 1900. The first of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 2nd 1900. The second of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 3rd 1900. The third of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 4th 1900. The fourth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 5th 1900. The fifth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 6th 1900. The sixth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 7th 1900. The seventh of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 8th 1900. The eighth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 9th 1900. The ninth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 10th 1900. The tenth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 11th 1900. The eleventh of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 12th 1900. The twelfth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 13th 1900. The thirteenth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

Jan 14th 1900. The fourteenth of the year.
The weather was very cold.
The wind was very strong.
The snow was very deep.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

TUESDAY, 10 OCTOBER 2000

1. The House met at 14:03.
2. The Deputy Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:04] Notices of motion.
4. [14:19] The House, at the request of Mr M J Ellis, discussed the following subject as a matter of public importance in terms of Rule 103: The origin of Aids and its implications for treatment in South Africa.
Debate concluded.
5. FIRST ORDER [16:00]
Second Reading debate—*South African Rail Commuter Corporation Limited Financial Arrangements Bill* [B 64B—2000] (National Assembly—sec 75).
Debate concluded.
Bill read a second time.
6. The House adjourned at 16:28.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

TUESDAY, 10 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly:

1. The Speaker:

Letter from the Minister for the Public Service and Administration to the Speaker of the National Assembly advising members of the Public Service Wage Settlement for 2000-2001.

The letter has been distributed to members of Parliament.

National Council of Provinces:

1. The Chairperson:

Message from National Assembly to National Council of Provinces:

Bill passed by National Assembly on 10 October 2000 and transmitted for concurrence:

- (1) *South African Rail Commuter Corporation Limited Financial Arrangements Bill* [B 64—2000] (National Assembly—sec 75) (Select Committee on Public Services—National Council of Provinces)

2. The Chairperson:

- (1) Mr J L Mahlangu has been appointed as chairperson of the *Ad hoc* Select Committee on General Intelligence Law Amendment Bill with effect from 10 October 2000.

- (2) Ms S N Ntlabati has been appointed as chairperson of the *Ad hoc* Select Committee on Pan-African Parliament with effect from 10 October 2000.

TABLINGS:***National Assembly and National Council of Provinces:******Papers:***

1. The Minister of Finance:
Resolutions of the Standing Committee on Public Accounts for 2000 and replies thereto obtained by the National Treasury—Fifth, Sixth and Seventh Report, 2000.
2. The Minister of Labour:
Report and Financial Statements of the National Productivity Institute for 1999-2000.

National Assembly:***Papers:***

1. The Speaker:
The Minister for Justice and Constitutional Development submitted the following letter, dated 26 September 2000, to the Speaker of the National Assembly:

Dear Ms Ginwala

PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT, 2000

With further reference to your letter dated 22 May 2000 in the above-mentioned regard, I wish to inform you that under section 35 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000), the President has fixed 1 September 2000 as the date on which sections 1, 2, 3, 4(2), 5, 6, 29 [with the exception of subsection (2)], 32, 33 and 34(1) of the said Act, came into operation, in order to facilitate the appointment of the Equality Review Committee.

I also wish to inform you that I have, under section 32 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No 4 of 2000), established the Equality Review Committee and appointed the following persons as members thereof:

- (a) In terms of section 32(a) of the Act, the Honourable Madam Justice T M Masipa, a senior judicial officer.
- (b) In terms of section 32(b) of the Act, Dr N B Pityana, in his capacity as Chairperson of the Human Rights Commission.
- (c) In terms of section 32(c) of the Act, Ms J Piliso-Seroke, in her capacity as Chairperson of the Commission of Gender Equality.
- (d) In terms of section 32(d) of the Act, Mr V Saldanha, an attorney from Cape Town, as representative of civil society.
- (e) In terms of section 32(e) of the Act, Prof S Gutto of the Centre of Applied Legal Studies of the University of the Witwatersrand, an expert in the field of human rights, especially the right to equality.
- (f) In terms of section 32(f) of the Act, the Honourable Ms N Botha, a member of the National Assembly.
- (g) In terms of section 32(g) of the Act, the Honourable Mr P D N Maloyi, a member of the National Council of Provinces.

I have also appointed Dr Pityana as Chairperson of the Equality Review Committee.

The Committee's office will be established soon, which will handle all queries. In the meantime, queries can be directed to:

- (a) Dr N B Pityana
The Chairperson: Equality Review Committee
Private Bag 2700
HOUGHTON
2041
Telephone number: (011) 484 8300
Facsimile number: (011) 484 7146
- (b) Ms T N Madonsela
Chief Director: Transformation and Equity
Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001
Telephone number: (012) 315 1024
Facsimile number: (012) 326 0991

Thank you for your interest in this matter.

Kind regards

DR P M MADUNA, MP
MINISTER FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Health on the *National Health Laboratory Service Bill* [B 52B—2000] (National Council of Provinces—sec 76), dated 10 October 2000:

The Portfolio Committee on Health, having considered the subject of the *National Health Laboratory Service Bill* [B 52B—2000] (National Council of Provinces—sec 76), referred to it and classified by the Joint Tagging Mechanism as a section 76 Bill, reports the Bill without amendment.

2. Report of the Portfolio Committee on Trade and Industry on the *Competition Second Amendment Bill* [B 41B—2000] (National Assembly—sec 75), dated 10 October 2000:

The Portfolio Committee on Trade and Industry, having considered the *Competition Second Amendment Bill* [B 41B—2000] (National Assembly—sec 75) and proposed amendments of the National Council of Provinces (Announcements, Tablings and Committee Reports, p 749), referred to the Committee, reports the Bill with amendments [B 41C—2000].

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

WEDNESDAY, 11 OCTOBER 2000

1. The House met at 15:05.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [15:06] Questions.
4. [16:57] Notices of motion.
5. [17:18] The Deputy Chief Whip of the Majority Party moved without notice: That the House—
 - (1) notes that today is the birthday of the hon Mr Tony Yengeni, Chief Whip of the Majority Party;
 - (2) recognises that Mr Yengeni, with dignity and leadership, plays a sterling role in the functioning of the House; and
 - (3) wishes Mr Yengeni many happy returns of the day and the very best from all who serve in the National Assembly.

Agreed to.

6. The Chief Whip of the Majority Party moved: That, notwithstanding Rule 253, the Second Reading debate on the *Firearms Control Bill* [B 34—2000] (National Assembly—sec 75), the Second Reading debate on the *National Health Laboratory Services Bill* [B 52B—2000] (National Council of Provinces—sec 76) and the Second Reading debate on the *Construction Industry Development Board Bill* [B 59B—2000] (National Council of Provinces—sec 76) be conducted on Thursday, 12 October 2000, and Friday, 13 October 2000.

Agreed to.

7. The House adjourned at 17:20.

S MFENYANA,

Secretary to Parliament.

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PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 11 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

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

(1) The following papers are referred to the Portfolio Committee on Justice and Constitutional Development and to the Select Committee on Security and Constitutional Affairs for consideration and report:

- (a) Rome Statutes of the International Court of Justice, tabled in terms of section 231(2) of the Constitution, 1996.
- (b) Explanatory Memorandum to the Rome Statutes.
- (c) Optional Protocol to the International Covenant on Civil and Political Rights, tabled in terms of section 231(2) of the Constitution, 1996.
- (d) Second Optional Protocol to the International Covenant on Civil and Political Rights, tabled in terms of section 231(2) of the Constitution, 1996.
- (e) Explanatory Memorandum to the protocols.
- (f) Extradition Treaty between the Government of the Republic of South Africa and the Government of the United States of America, tabled in terms of section 231(2) of the Constitution, 1996.
- (g) Treaty between the Government of the Republic of South Africa and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters, tabled in terms of section 231(2) of the Constitution, 1996.
- (h) Explanatory Memorandum to the treaties.

- (2) The following paper is referred to the Portfolio Committee on Arts, Culture, Science and Technology and to the Select Committee on Education and Recreation for consideration and report:

Convention for the Protection of Cultural Property in the event of Armed Conflict (the Hague Convention) with regulations for the execution and the coverage resolutions, 14 May 1954, tabled in terms of section 231(2) of the Constitution, 1996.

- (3) The following paper is referred to the Portfolio Committee on Trade and Industry, the Portfolio Committee on Labour, the Portfolio Committee on Justice and Constitutional Development, the Portfolio Committee on Agriculture and Land Affairs, the Portfolio Committee on Health, the Portfolio Committee on Welfare and Population Development, the Portfolio Committee on Housing, the Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons and the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women. It is also referred to the Select Committee on Economic Affairs, the Select Committee on Labour and Public Enterprises, the Select Committee on Security and Constitutional Affairs, the Select Committee on Land and Environmental Affairs, the Select Committee on Social Services and the Select Committee Public Services:

National Report on Social Development for 1995-2000.

- (4) The following paper is referred to the Portfolio Committee on Trade and Industry and to the Select Committee on Economic Affairs. It is also referred to the Standing Committee on Public Accounts for consideration and report:

Report and Financial Statements of the South African Bureau of Standards for 1999-2000, including the Report of the Auditor-General on the Financial Statements.

- (5) The following papers are referred to the Standing Committee on Public Accounts for consideration and report:

(a) Report of the Auditor-General on the Financial Statements of Vote 1—President for the period 1 April to 31 May 1999 [RP 110-2000].

(b) Report of the Auditor-General on the Financial Statements of the South African Wool Board for 1996-97 [RP 150-2000].

- (6) The following paper is referred to the Portfolio Committee on Public Enterprises, the Portfolio Committee on Defence, the Select Committee on Labour and Public Enterprises and the Select Committee on Security and Constitutional Affairs:

Report and Financial Statements of Denel (Pty) Ltd for 1998-99.

Wednesday, 11 October 2000]

National Council of Provinces:

1. The Chairperson:

The following papers were tabled and are now referred to the Select Committee on Education and Recreation:

(1) Government Notice No 777 published in the Government Gazette No 21444 dated 11 August 2000, The date on which TEFSA ceases its functions, made in terms of the National Student Financial Aid Scheme Act, 1999 (Act No 56 of 1999).

(2) Government Notice No 789 published in the Government Gazette No 21438 dated 11 August 2000, Approval that the pilot project Travel and Tourism Standard Grade, Grade 10—12 becomes a fully fledged instructional offering, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).

(3) Government Notice No R.848 published in the Government Gazette No 21501 dated 1 September 2000, Correction notice to Government Gazette No 21192 dated 18 May 2000, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).

(4) Government Notice No 3102 published in the Government Gazette No 21539 dated 6 September 2000, Call for public comment on draft document—The National Policy Framework on Whole-school Evaluation, made in terms of the National Education Policy Act, 1996 (Act No 27 of 1996).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Public Enterprises:

Report and Financial Statements of Denel (Pty) Limited for 1999-2000.

2. The Minister of Communications:

Report and Financial Statements of the South African Broadcasting Corporation for 1999-2000.

Referred to the Portfolio Committee on Communications and to the Select Committee on Labour and Public Enterprises.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Safety and Security on the Firearms Control Bill [B 34—2000] (National Assembly—sec 75), dated 10 October 2000:

The Portfolio Committee on Safety and Security, having considered the subject of the *Firearms Control Bill* [B 34—2000] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, presents a redraft of the Bill [B 34B—2000] (National Assembly—sec 75).

2. Report of the Portfolio Committee on Arts, Culture, Science and Technology on the *National Council for Library and Information Services Bill* [B 44—2000] (National Assembly—sec 75), dated 3 October 2000:

The Portfolio Committee on Arts, Culture, Science and Technology, having considered the subject of the *National Council for Library and Information Services Bill* [B 44—2000] (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 44A—2000].

3. Report of the Portfolio Committee on Agriculture and Land Affairs on the *Meat Safety Bill* [B 29D—2000] (National Assembly—sec 76), dated 11 October 2000:

The Portfolio Committee on Agriculture and Land Affairs, having considered the *Meat Safety Bill* [B 29D—2000] (National Assembly—sec 76), amended by the National Council of Provinces and referred to the Committee, reports that it has agreed to the Bill.

4. Report of the Portfolio Committee on Public Works on the *Construction Industry Development Board Bill* [B 59B—2000] (National Council of Provinces—sec 76), dated 11 October 2000:

The Portfolio Committee on Public Works, having considered the subject of the *Construction Industry Development Board Bill* [B 59B—2000] (National Council of Provinces—sec 76), referred to it and classified by the Joint Tagging Mechanism as a section 76 Bill, reports the Bill without amendment.

5. Report of the Portfolio Committee on Environmental Affairs and Tourism on the *Tourism Amendment Bill* [B 50D—99] (National Assembly—sec 76), dated 10 October 2000:

The Portfolio Committee on Environmental Affairs and Tourism, having considered the *Tourism Amendment Bill* [B 50D—99] (National Assembly—sec 76), amended by the National Council of Provinces and referred to the Committee, reports that it accepts the amendments to the Bill, with the exception of five amendments to Clauses 3, 4 and 5.

The Committee therefore recommends that the House reject this amended version of the Bill, in terms of Joint Rule 186(1)(b).

Report to be considered.

National Council of Provinces:

1. Report of the Select Committee on Public Services on the *Sea Transport Documents Bill* [B 28B—2000] (National Assembly—sec 75), dated 10 October 2000:

The Select Committee on Public Services, having considered the subject of the *Sea Transport Documents Bill* [B 28B—2000]

(National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

2. Report of the Select Committee on Education and Recreation on the *Adult Basic Education and Training Bill* [B 42B—2000] (National Assembly—sec 76), dated 10 October 2000:

The Select Committee on Education and Recreation, having considered the subject of the *Adult Basic Education and Training Bill* [B 42B—2000] (National Assembly—sec 76), referred to it, reports the Bill with an amendment [B 42C—2000].

3. Report of the Select Committee on Education and Recreation on the *Education Laws Amendment Bill* [B 48B—2000] (National Assembly—sec 76), dated 10 October 2000:

The Select Committee on Education and Recreation, having considered the subject of the *Education Laws Amendment Bill* [B 48B—2000] (National Assembly—sec 76), referred to it, reports the Bill without amendment.

4. Report of the Select Committee on Education and Recreation on the *Higher Education Amendment Bill* [B 55B—2000] (National Assembly—sec 75), dated 10 October 2000:

The Select Committee on Education and Recreation, having considered the subject of the *Higher Education Amendment Bill* [B 55B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

5. Report of the Select Committee on Economic Affairs on the *Abuja Treaty*, dated 11 October 2000:

The Select Committee on Economic Affairs, having considered the request for approval by Parliament of the *Treaty establishing the African Economic Community (Abuja Treaty)*, referred to it, recommends that the Council, in terms of section 231(2) of the Constitution, approve the said Treaty.

Report to be considered.

6. Report of the Select Committee on Economic Affairs on the *African Renaissance and International Co-operation Fund Bill* [B 65B—2000] (National Assembly—sec 75), dated 11 October 2000:

The Select Committee on Economic Affairs, having considered the subject of the *African Renaissance and International Co-operation Fund Bill* [B 65B—2000] (National Assembly—sec 75), referred to it, reports the Bill with proposed amendments, as follows:

CLAUSE 5

1. On page 3, in line 15, after “available” to insert “or disbursed”.
2. On page 3, from line 17, to omit subsection (4) and to substitute:

- (4) Loans or other financial assistance must be granted or rendered in accordance with an agreement entered into between the relevant parties, excluding assistance for the promotion of democracy and good governance or the prevention or resolution of conflict.

CLAUSE 6

1. On page 3, in line 32, after "Fund" to insert:
in terms of the Public Finance Management Act, 1999
(Act No.1 of 1999)

7. Report of the Select Committee on Labour and Public Enterprises on the *Transnet Pension Fund Amendment Bill* [B 57B—2000] (National Assembly—sec 75), dated 11 October 2000:

The Select Committee on Labour and Public Enterprises, having considered the subject of the *Transnet Pension Fund Amendment Bill* [B 57B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

8. Report of the Select Committee on Social Services on the *Chiropractors, Homeopaths and Allied Health Service Professions Second Amendment Bill* [B 66—2000] (National Council of Provinces—sec 76), dated 11 October 2000:

The Select Committee on Social Services, having considered the subject of the *Chiropractors, Homeopaths and Allied Health Service Professions Second Amendment Bill* [B 66—2000] (National Council of Provinces—sec 76), referred to it, reports the Bill with amendments [B 66A—2000].

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

THURSDAY, 12 OCTOBER 2000

1. The House met at 14:02.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:03] Notices of motion.
4. FIRST ORDER [14:20]

Introduction—*Second Adjustments Appropriation Bill* [B 67—2000] (National Assembly—sec 77).

The Minister of Finance introduced the Bill and tabled papers.

Bill, together with introductory speech and papers tabled, referred to the Portfolio Committee on Finance for consideration and report.

5. SECOND ORDER [14:35]

Second Reading debate—*Firearms Control Bill* [B 34B—2000] (National Assembly—sec 75).

Debate concluded.

Amendment to the Bill put, as printed on the Order Paper (p 740), namely:

That, in subclause (2)(a) of clause 120, the words “or who ought reasonably to be aware” be omitted.

Amendment agreed to.

The Chairperson of Committees, in response to information provided by the Minister of Safety and Security, drew the attention of the House to the correction of a typographical error in clause 9(3)(a) on p 12, line 35, by inserting the word “not” between the words “is” and “unfit”.

Question put: That the Bill, including the approved amendment and the correction of the said typographical error, be read a second time.

Division demanded.

The House divided:

AYES—217: Abram, S; Ainslie, A R; Arendse, J D; Asmal, A K; Balfour, B M N; Baloyi, M R; Baloyi, S F; Belot, S T; Benjamin, J; Bhengu, F; Bhengu, N R; Bloem, D V; Bogopane, H I; Booie, M S; Botha, N G W; Buthelezi, M N; Carrim, Y I; Cassim, M F; Chalmers, J; Chauke, H P; Chiba, L; Chohan, F I; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; De Lange, J H; Dhlamini, B W; Diale, L N; Didiza, A T; Dlamini, B O; Doidge, G Q M; Duma, N M; Ebrahim, E I; Fankomo, F C; Fazzie, M H; Feinstein, A J; Ferreira, E T; Frolick, C T; Gcina, C I; George, M E; Gerber, P-J A; Gillwald, C E; Gininda, M S; Gogotya, N J; Goniwe, T M; Goosen, A D; Govender, P; Hajaig, F; Hanekom, D A; Hangana, N E; Hendrickse, P A C; Hlangwana, N L; Hlengwa, M W; Hogan, B A; Jana, D P S; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasiennyane, O R; Kasrils, R; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Kota, Z A; Kotwal, Z; Landers, L T; Leeuw, S J; Lekgoro, M K; Leshika, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Magazi, M N; Mahomed, F; Maimane, D S; Makasi, X C; Makunyane, T L; Makwetla, S P; Malebane, H F; Maloney, L; Maluleke-Hlaneki, C J; Malumise, M M; Mangena, M A; Manie, M S; Maphalala, M A; Mars, I; Marshoff, F B; Martins, B A D; Masala, M M; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathebe, P M; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbombo, N D; Mbongo, P F; Mdladlana, M M S; Mfundisi, I S; Middleton, N S; Mlangeni, A; Mnandi, P N; Mndende, O N; Mngomezulu, G P; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mogale, E P; Mokaba, P R; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloto, K A; Momberg, J H; Montsitsi, S D; Moonsamy, K; Moosa, M V; Morobi, D M; Moropa, R M; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpaka, H M; Mpontshane, A M; Mshudulu, S A; Msomi, M D; Mthembu, B; Mtsweni, N S; Mutsila, I; Mzizi, M A; Naidoo, S; Nair, B; Nash, J H; Ncinane, I Z; Ncube, N Z; Ndabandaba, L B G; Ndlovu, V B; Nel, A C; Nene, N M; Ngcengwane, N D; Ngubeni, J M; Ngwenya, M L; Nhlengethwa, D G; Nkomo, A S; Nkosi, D M; Nqakula, C; Nqodi, S B; Ntuli, B M; Ntuli, S B; Olifant, D A A; Oliphant, G G; Phala, M J; Pheko, S E M; Pieterse, R D; Rabinowitz, R; Radebe, B A; Radebe, J T; Ramakaba-Lesiea, M M; Ramgobin, M; Ramodike, M N; Ramotsamai, C M P; Rasmeni, S M; Ripinga, S S; Routledge, N C; Saloojee, E C; Schneemann, G D; Scott, M I; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Sibiya, M S M; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Sithole, D J; Skhosana, W M; Skosana, M B; Skweyiya, Z S T; Slabbert, J H; Smith, V G; Solo, B M; Solomon, G; Sonjica, B P; Sosibo, J E; Soty, M M; Thabethe, E; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tshivhase, T J; Tshwete, S V; Turok, B; Vadi, I; Van den Heever, R P Z; Van der Merwe, S C; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Woods, G; Xingwana, L M T; Yengeni, T S; Zita, L; Zondo, R P; Zulu, N E.

NOES—59: Andrew, K M; Aucamp, C; Bakker, D M; Bell, B G; Beukman, F; Blaas, A; Borman, G M; Botha, A J; Bruce, N S; Camerer, S M; Clelland, N J; Cupido, P W; Delport, J T; Dudley, C; Durand, J; Eglin, C W; Ellis, M J; Gaum, A H; Geldenhuys, B L; Gibson, D H M; Gous, S J; Green, L M; Greyling, C H F; Grobler, G A J; Jankielsohn, R; Kalyan, S V; Lee, T D; Le Roux, J W; Madasa, Z L; McIntosh, G B D; Meshoe, K R J; Moorcroft, E K; Morkel, C M; Mulder, C P; Nel, A H; Ntuli, R S; Odendaal, W A; Olckers, M E; Opperman, S E; Pillay, S; Pretorius, I J; Schippers, J; Schoeman, R S; Selfe, J; Seremane, W J; Simmons, S; Singh, A; Smit, H A; Smuts, M; Sono, B N; Southgate, R M; Swart, S N; Van der Merwe, A S; Van Deventer, F J; Van Jaarsveld, A Z A; Van Niekerk, A I; Van Schalkwyk, M C J; Van Wyk, A (Anna); Viljoen, C L.

Question agreed to.

Bill accordingly read a second time.

6. THIRD ORDER [16:47]

Second Reading debate—*National Health Laboratory Service Bill* [B 52B—2000] (National Council of Provinces—sec 76).

Debate concluded.

Bill read a second time (Democratic Party, New National Party and African Christian Democratic Party dissenting).

7. The House adjourned at 17:27.

S MFENYANA,

Secretary to Parliament.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL COUNCIL OF PROVINCES

THURSDAY, 12 OCTOBER 2000

1. The Council met at 14:00.
2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:01] Notices of motion.
4. [14:07] Kgoshi M L Mokoena moved without notice: That the Council—
 - (1) notes with shock and outrage the barbaric behaviour of a group of whites who allegedly painted the face of a 17-year old person with faeces and forced him to eat his own excrement;
 - (2) further notes that this overtly racist incident follows shortly after a number of racially motivated attacks on blacks over the past year;
 - (3) believes that deeds such as this show a blatant disregard for the integrity and dignity of fellow human beings and for the laws of our country;
 - (4) further believes that this deed debunks the notion that racism disappeared with the demise of apartheid;
 - (5) urges our courts to take cognisance of the serious nature of such crimes when they impose sentences; and
 - (6) calls on all South Africans to join forces in ridding our society of this scourge once and for all.

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

5. [14:08] Ms J Witbooi moved without notice: That the Council—
 - (1) with a view to the commencement of the final examinations, wishes all the learners, educators and parents involved everything of the best;
 - (2) extends its best wishes to our matriculants in particular in this important time during which they will have to account; and

- (d) this festival creates job opportunities and is unique with 36 donkey carts to transport festivalgoers—our own taxis;
- (2) is of the opinion that this prestigious occasion should be an example to other rural towns and language communities to provide the cement to unite our communities through cultural activities and the use of our indigenous languages and to focus on their own uniqueness, but also to fill them with respect for and sensitivity to our differences—in this way all our people are served; and
- (3) further notes that—
 - (a) a gift is today being handed to the President of South Africa and that he does not need to declare it; and
 - (b) it is a packet of raisins from our part of the world and a packet of Kalahari sand which he can sprinkle in his shoes and which, according to tribal legend, will then lead him back to the Kalahari where he can enjoy the hospitality of the people.

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

9. [14:13] Mr J L Theron moved without notice: That the Council—
- (1) congratulates the Proteas on their excellent victory over England in the International Cricket Council's knock-out cup;
 - (2) notes with great satisfaction that we have beaten a traditionally strong cricketing nation like England; and
 - (3) expresses its pleasure about the fact that young players like Boeta Dippenaar are improving so quickly and performing excellently.

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

10. [14:14] The President of the Republic addressed the Council.

Debate concluded.

11. The Council adjourned at 18:00.

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, 12 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

- (1) The Subcommittee of the Joint Programme Committee on 12 October 2000 took a decision, in accordance with Joint Rule 216, that the *Marine Living Resources Amendment Bill* [B 68—2000] (National Assembly—sec 76(1)) 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 both Houses of Parliament before adjournment in November 2000.

In terms of Joint Rule 216(4) this decision must be tabled in both Houses for ratification.

- (2) The following Bill was introduced in the National Assembly on 12 October 2000 and referred to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160:

- (i) *Marine Living Resources Amendment Bill* [B 68—2000] (National Assembly—sec 76)—(Portfolio Committee on Environmental Affairs and Tourism—National Assembly).

- (3) Assent by the President of the Republic in respect of the following Bill:

- (i) *Local Government: Municipal Structures Amendment Bill* [B 51D—2000]—Act No 33 of 2000 (assented to and signed by President on 11 October 2000).

National Council of Provinces:

1. The Chairperson:

Message from National Assembly to National Council of Provinces:

Bill passed by National Assembly on 12 October 2000 and transmitted for concurrence:

- (1) *Firearms Control Bill* [B 34B—2000] (National Assembly—sec 75)—(Select Committee on Security and Constitutional Affairs—National Council of Provinces).

TABLINGS:**National Assembly and National Council of Provinces:****Papers:**

1. The President of the Republic:

Memorandum on Vote No 1—"Presidency", Adjustments Estimate, 2000-2001.

2. The Speaker of the National Assembly and the Chairperson of the National Council of Provinces:

Memorandum on Vote No 2—"Parliament", Adjustments Estimate, 2000-2001.

3. The Minister of Home Affairs:

Memorandum on Vote No 14—"Home Affairs", Adjustments Estimate, 2000-2001.

4. The Minister of Education:

Memorandum on Vote No 8—"Education", Adjustments Estimate, 2000-2001.

5. The Minister of Foreign Affairs:

Memorandum on Vote No 11—"Foreign Affairs", Adjustments Estimate, 2000-2001.

6. The Minister of Defence:

Memorandum on Vote No 7—"Defence", Adjustments Estimate, 2000-2001.

7. The Minister of Finance:

- (1) Memorandum on Vote No 31—"Statistics South Africa", Adjustments Estimate, 2000-2001.

- (2) Memorandum on Vote No 36—"National Treasury", Adjustments Estimate, 2000-2001.

- (3) Memorandum on Adjustments Estimate for 2000-2001.

- (4) Adjustments Estimate of Expenditure to be defrayed from the National Revenue Fund during the financial year ending 31 March 2001 [RP 1—2000].

8. The Minister for Provincial and Local Government:
Memorandum on Vote No 22—"Provincial and Local Government",
Adjustments Estimate, 2000-2001.
9. The Minister of Arts, Culture, Science and Technology:
Memorandum on Vote No 4—"Arts, Culture, Science and Technol-
ogy", Adjustments Estimate, 2000-2001.
10. The Minister of Transport:
Memorandum on Vote No 33—"Transport", Adjustments Estimate,
2000-2001.
11. The Minister of Public Enterprises:
Memorandum on Vote No 23—"Public Enterprises", Adjustments
Estimate, 2000-2001.
12. The Minister of Public Works:
Memorandum on Vote No 26—"Public Works", Adjustments Esti-
mate, 2000-2001.
13. The Minister of Social Development:
Memorandum on Vote No 35—"Social Development", Adjustments
Estimate, 2000-2001.
14. The Minister of Safety and Security:
Memorandums on—
 - (1) Vote No 17—"Independent Complaints Directorate", Adjust-
ments Estimate, 2000-2001.
 - (2) Vote No 28—"South African Police Service", Adjustments
Estimate, 2000-2001.
15. The Minister of Housing:
Memorandum on Vote No 15—"Housing", Adjustments Estimate,
2000-2001.
16. The Minister of Trade and Industry:
Memorandum on Vote No 32—"Trade and Industry", Adjustments
Estimate, 2000-2001.
17. The Minister for Justice and Constitutional Development:
Memorandum on Vote No 18—"Justice and Constitutional Develop-
ment", Adjustments Estimate, 2000-2001.
18. The Minister of Environmental Affairs and Tourism:
Memorandum on Vote No 9—"Environmental Affairs and Tourism",
Adjustments Estimate, 2000-2001.
19. The Minister for the Public Service and Administration:
Memorandums on—
 - (1) Vote No 24—"Public Service and Administration", Adjustments
Estimate, 2000-2001.

Rape, as defined in South African law, is a crime which can only be perpetrated against women. Yet, the police present their crime figures routinely per 100 000 of the total population (ie men and women), instead of presenting those figures per 100 000 women. Since women make up approximately half the population, the burden of rape faced by women is essentially twice that faced by the total population. Presenting figures per total population diminishes the seriousness of the problem, especially in the calculation of the rate of rape.

The editor of "The World's Women 1995: Trends and Statistics" has reported that most countries define rape in relation to the female population and therefore present data only for the female population, per 100 000 women.

The Joint Monitoring Committee on Improvement of Quality of Life and Status of Women therefore calls on the SAPS and Statistics SA, during the review of crime statistics that is currently under way, to ensure that—

- 1) rape statistics are disaggregated by sex; and
- 2) all crime statistics are routinely presented in a manner which is sex-disaggregated.

The above will bring South Africa in line with the commitments made by Government in respect of the Beijing Platform for Action and CEDAW.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

FRIDAY, 13 OCTOBER 2000

1. The House met at 09:03.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [09:04] The Speaker announced that a vacancy had occurred in the Judicial Services Commission owing to the resignation of Dr L Luyt, who had been designated as a member of the commission by the House in terms of section 178(1)(h) of the Constitution.

The Speaker informed the House that she had received two nominations, namely:

Mr D H M Gibson (Democratic Party); and
Adv Z L Madasa (African Christian Democratic Party).

A point of order having been raised to the effect that the announcement of the vacancy and the ensuing procedure for nomination of a replacement did not appear on the Order Paper, the Speaker announced that business would be suspended to enable her to consider how to proceed in terms of the Rules.

BUSINESS SUSPENDED AT 09:11 AND RESUMED AT 09:50.

The Speaker addressed members on options available to the House. Having heard the views expressed by members, the Speaker made a ruling in accordance with Rule 2(1) that the House would proceed with the designation of a member of the opposition to the Judicial Services Commission.

Mr D H M Gibson (Democratic Party) and Adv Z L Madasa (African Christian Democratic Party) having been nominated, the Speaker announced that in terms of Rule 77(1) she had established a procedure for designation whereby members would use the electronic voting system to vote for the candidates of their choice.

The bells were rung.

Members proceeded to cast their votes, as follows:

D H M GIBSON—50: Andrew, K M; Aucamp, C; Bakker, D M; Baloi, G E; Bell, B G; Blaas, A; Borman, G M; Botha, A J; Bruce, N S; Camerer, S M; Clelland, N J; Cupido, P W; Delpört, J T; Durand, J; Eglin, C W; Ellis, M J; Geldenhuys, B L; Gibson, D H M; Gous, S J; Greyling, C H F; Grobler, G A J; Jankielsohn, R; Kalyan, S V; Le Roux, J W; Lee, T D; McIntosh, G B D; Mogoba, M S; Moorcroft, E K; Morkel, C M; Nel, A H; Ntuli, R S; Odendaal, W A; Olckers, M E; Opperman, S E; Pillay, S; Schalkwyk, P J; Schippers, J; Schmidt, H C; Schoeman, R S; Selfe, J; Seremane, W J; Simmons, S; Singh, A; Smit, H A; Sono, B N; Van der Merwe, A S; Van Deventer, F J; Van Jaarsveld, A Z A; Van Niekerk, A I; Viljoen, C L.

Z L MADASA—190: Abram, S; Ainslie, A R; Arendse, J D; Balfour, B M N; Baloyi, M R; Baloyi, S F; Belot, S T; Benjamin, J; Bhengu, F; Bhengu, N R; Bloem, D V; Bogopane, H I; Booie, M S; Botha, N G W; Buthelezi, M N; Carrim, Y I; Cassim, M F; Chalmers, J; Chauke, H P; Chiba, L; Chohan, F I; Coetzee-Kasper, M P; Cronin, J P; De Lange, J H; Dhlamini, B W; Diale, L N; Dlamini, B O; Doidge, G Q M; Dudley, C; Duma, N M; Ebrahim, E I; Fankomo, F C; Fazzie, M H; Feinstein, A J; Gcina, C I; Gerber, P-J A; Gillwald, C E; Gininda, M S; Gogotya, N J; Goniwe, T M; Goosen, A D; Govender, P; Green, L M; Hajaig, F; Hanekom, D A; Hangana, N E; Hendrickse, P A C; Hlangwana, N L; Hlengwa, M W; Hogan, B A; Holomisa, S P; Jana, D P S; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasiennyane, O R; Kgarimetsa, J J; Kgwele, L M; Kota, Z A; Kotwal, Z; Landers, L T; Leeuw, S J; Lekgoro, M K; Leshika, T E; Lobe, M C; Lockey, D; Louw, S K; Lucas, E J; Lyle, A G; Madasa, Z L; Magashule, E S; Magazi, M N; Magubane, N E; Mahomed, F; Maimane, D S; Makasi, X C; Makunyane, T L; Makwetla, S P; Malebane, H F; Maluleke-Hlaneki, C J; Malumise, M M; Manie, M S; Maphalala, M A; Marshoff, F B; Martins, B A D; Masala, M M; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathebe, P M; Maunye, M M; Mayatula, S M; Mbombo, N D; Mbongo, P F; Meshoe, K R J; Middleton, N S; Mlangeni, A; Mnandi, P N; Mngomezulu, G P; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mogale, E P; Mohlala, R J B; Mokaba, P R; Mokoena, D A; Molebatsi, M A; Moloto, K A; Momberg, J H; Montsitsi, S D; Moonsamy, K; Morobi, D M; Moropa, R M; Morwamoche, K W; Moss, M I; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Mshudulu, S A; Msomi, M D; Mthembu, B; Mtsweni, N S; Mzizi, M A; Naidoo, S; Nair, B; Nash, J H; Ncinane, I Z; Ncube, N Z; Ndlovu, V B; Nel, A C; Nene, N M; Ngcengwane, N D; Ngubeni, J M; Ngwenya, M L; Nhlengethwa, D G; Nkomo, A S; Nkosi, D M; Nqodi, S B; Ntuli, B M; Ntuli, S B; Olifant, D A A; Oliphant, G G; Phala, M J; Pheko, S E M; Pieterse, R D; Rabinowitz, R; Radebe, B A; Ramakaba-Lesiea, M M; Ramgobin, M; Rasmeni, S M; Ripinga, S S; Saloojee, E C; Schneemann, G D; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Sibiya, M S M; Sigcawu, A N; Sikakane, M R; Sithole, D J; Skhosana, W M; Slabbert, J H; Smith, V G; Solomon, G; Sonjica, B P; Southgate, R M; Swart, S N; Thabethe, E; Tinto, B; Tolo, L J; Tshivhase, T J; Turok, B; Vadi, I; Van den Heever, R P Z; Van der Merwe, S C; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Woods, G; Xingwana, L M T; Yengeni, T S; Zulu, N E; Zuma, J G.

The Speaker thereupon declared Adv Z L Madasa properly designated for appointment to the Judicial Services Commission.

4. [10:40] Notices of motion.

5. [10:55] Mr A C Nel, on behalf of the Chief Whip of the Majority Party, moved: That, notwithstanding the resolution adopted by the House on 21 June 2000, the period for the trial run of questions for oral reply be extended until 1 November 2000.

Agreed to.

6. Mr A C Nel, on behalf of the Chief Whip of the Majority Party, moved: That the House ratifies the decision the Joint Programme Subcommittee took on 12 October 2000 in accordance with Joint Rule 216(2), namely that the *Marine Living Resources Amendment Bill*, 2000, 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 both Houses of Parliament before adjournment in November 2000 (*see* Announcements, Tablings and Committee Reports, p 935).

Agreed to.

7. FIRST ORDER [10:58]

Second Reading debate—*Bills of Exchange Amendment Bill* [B 47B—2000] (National Assembly—sec 75).

Debate concluded.

Bill read a second time.

8. SECOND ORDER [11:27]

Second Reading debate—*South African Reserve Bank Amendment Bill* [B 62—2000] (National Assembly—sec 75).

Debate concluded.

Bill read a second time.

9. THIRD ORDER [11:52]

Second Reading debate—*Construction Industry Development Board Bill* [B 59B—2000] (National Council of Provinces—sec 76).

Debate concluded.

Bill read a second time.

10. FOURTH ORDER [12:36]

Consideration of *Competition Second Amendment Bill* [B 41B and B 41C—2000] (National Assembly—sec 75) and of Report of Portfolio Committee on Trade and Industry thereon (Announcements, Tablings and Committee Reports, p 921).

Report adopted without debate and Bill, as amended, agreed to.

11. FIFTH ORDER [12:36]

Consideration of *Meat Safety Bill* [B 29D—2000] (National Assembly—sec 76), as amended by the National Council of Provinces, and of Report of Portfolio Committee on Agriculture and Land Affairs thereon (Announcements, Tablings and Committee Reports, p 926).

Report adopted without debate and Bill, as amended, agreed to.

12. SIXTH ORDER [12:36]

Consideration of Report of Portfolio Committee on Education (Announcements, Tablings and Committee Reports, p 880—*Visits to Northern Province schools*).

Report adopted without debate.

13. SEVENTH ORDER [12:37]

Consideration of *Tourism Amendment Bill* [B 50D—99] (National Assembly—sec 76), as amended by National Council of Provinces, and of Report of Portfolio Committee on Environmental Affairs and Tourism thereon (Announcements, Tablings and Committee Reports, p 926).

Report adopted without debate.

Bill accordingly rejected.

The Deputy Chairperson of Committees announced that the Bill would be referred to the Mediation Committee.

14. The House adjourned at 12:38.

S MFENYANA,

Secretary to Parliament.

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL COUNCIL OF PROVINCES

FRIDAY, 13 OCTOBER 2000

1. The Council met at 09:38.
2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [09:39] Notices of motion.
4. [09:41] The Chief Whip of the Council moved without notice: That the Council—
 - (1) congratulates the former President of South Africa, Dr Nelson Mandela, who has been honoured as the Leader of the Century by the International Women of the Year Association in London;
 - (2) notes that this year was the 45th annual gathering of the association, and for the first time the association decided to honour a man and to choose laureates for their contribution to the previous century;
 - (3) is of the opinion that Mr Mandela, by his own example, has taught humanity that hatred and revenge can be transformed into forgiveness, acceptance and positive action; and
 - (4) congratulates the former President once more for his dedication to the fight against the violation of human rights and for his compassion and understanding.

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

5. [09:42] The Chief Whip of the Council moved: That the Council ratifies the decision the Joint Programme Subcommittee took on 12 October 2000 in accordance with Joint Rule 216(2), namely that the *Marine Living Resources Amendment Bill, 2000*, 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 both Houses of Parliament before adjournment in November 2000 (*see Announcements, Tablings and Committee Reports, p 935*).

Declaration of vote made on behalf of the Western Cape.

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

6. FIRST ORDER [09:45]

Consideration of *Transnet Pension Fund Amendment Bill* [B 57B—2000] (National Assembly—sec 75) and of Report of Select Committee on Labour and Public Enterprises thereon (Announcements, Tablings and Committee Reports, p 928).

Debate concluded.

Declaration of vote made on behalf of the Democratic Party.

Bill agreed to in accordance with section 75 of the Constitution.

7. SECOND ORDER [09:56]

Consideration of *Chiropractors, Homeopaths and Allied Health Service Professions Second Amendment Bill* [B 66B—2000] (National Council of Provinces—sec 76) and of Report of Select Committee on Social Services thereon (Announcements, Tablings and Committee Reports, p 928).

Debate concluded.

Declaration of vote made on behalf of the Western Cape.

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

8. THIRD ORDER [10:55]

Consideration of *African Renaissance and International Co-operation Fund Bill* [B 65B—2000] (National Assembly—sec 75) and of Report of Select Committee on Economic Affairs thereon (Announcements, Tablings and Committee Reports, p 927).

Debate concluded.

Declaration of vote made on behalf of the African Christian Democratic Party.

Bill, subject to proposed amendments, agreed to in accordance with section 75 of the Constitution (African Christian Democratic Party dissenting).

9. The Council adjourned at 11:09.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 13 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

- (1) Bill, as amended by National Council of Provinces, and rejected by National Assembly on 13 October 2000, referred to Mediation Committee in terms of Joint Rule 186(1)(b):

Tourism Amendment Bill [B 50D—99] (National Assembly—sec 76(1))—(Mediation Committee).

2. The Speaker and the Chairperson:

- (1) The Minister for Provincial and Local Government on 13 October 2000 submitted a draft of the *Redetermination of the Boundaries of Cross-Boundary Municipalities Bill*, 2000, as well as the memorandum explaining the objects of the proposed legislation, to the Speaker and the Chairperson in terms of Joint Rule 159. The draft has been referred to the Portfolio Committee on Provincial and Local Government and the Select Committee on Local Government and Administration by the Speaker and the Chairperson, respectively, in accordance with Joint Rule 159(2).

- (2) The following Bill was introduced in the National Assembly on 13 October 2000 and referred to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160:

- (i) *Redetermination of the Boundaries of Cross-Boundary Municipalities Bill* [B 69—2000] (National Assembly—sec 75)—(Portfolio Committee on Provincial and Local Government—National Assembly) [Explanatory summary of Bill and prior notice of its introduction published in Government Gazette No 21635 of 5 October 2000.]

3. The Speaker and the Chairperson:

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

- (1) The following paper is referred to the Portfolio Committee on Health and to the Select Committee on Social Services:

Report of the Medical Bureau for Occupational Diseases for 1999-2000.

- (2) The following papers are referred to the Portfolio Committee on Trade and Industry, the Portfolio Committee on Foreign Affairs, the Portfolio Committee on Agriculture and Land Affairs and to the Select Committee on Economic Affairs for consideration and report. The committees must confer and the Portfolio Committee on Trade and Industry must report:

- (a) Amendment Protocol on Trade in the Southern African Development Community (SADC), tabled in terms of section 231(2) of the Constitution, 1996.

- (b) Explanatory Memorandum to the Amendment Protocol.

- (3) The following paper is referred to the Portfolio Committee on Water Affairs and Forestry and to the Select Committee on Land and Environmental Affairs:

Report and Financial Statements of the Trans-Caledon Tunnel Authority for 1999-2000.

- (4) The following paper is referred to the Portfolio Committee on Minerals and Energy and to the Select Committee on Economic Affairs. The Report of the Auditor-General contained in the paper is referred to the Standing Committee on Public Accounts for consideration and report:

Report and Financial Statements of the National Electricity Regulator for 1999-2000, including the Report of the Auditor-General on the Financial Statements for 1999-2000.

- (5) The following paper is referred to the Standing Committee on Public Accounts:

Resolutions of the Standing Committee on Public Accounts for 2000 and replies thereto obtained by the National Treasury—Fifth, Sixth and Seventh Report, 2000.

- (6) The following paper is referred to the Portfolio Committee on Labour and to the Select Committee on Labour and Public Enterprises:

Report and Financial Statements of the National Productivity Institute for 1999-2000.

- (7) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Trade and Industry. It is also referred to the Select Committee on Finance and to the Select Committee on Economic Affairs:

Memorandum on Vote No 32—"Trade and Industry", Adjustments Estimate, 2000-2001.

- (8) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Housing. It is also referred to the Select Committee on Finance and to the Select Committee on Public Services:

Memorandum on Vote No 15—"Housing", Adjustments Estimate, 2000-2001.

- (9) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Education. It is also referred to the Select Committee on Finance and to the Select Committee on Education and Recreation:

Memorandum on Vote No 8—"Education", Adjustments Estimate, 2000-2001.

- (10) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Minerals and Energy. It is also referred to the Select Committee on Finance and to the Select Committee on Economic Affairs:

Memorandum on Vote No 21—"Minerals and Energy", Adjustments Estimate, 2000-2001.

- (11) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Home Affairs. It is also referred to the Select Committee on Finance and to the Select Committee on Social Services:

Memorandum on Vote No 14—"Home Affairs", Adjustments Estimate, 2000-2001.

- (12) The following papers are referred to the Portfolio Committee on Finance and to the Select Committee on Finance:

(a) Memorandum on Vote No 1—"The Presidency", Adjustments Estimate, 2000-2001.

(b) Memorandum on Vote No 2—"Parliament", Adjustments Estimate, 2000-2001.

(c) Memorandum on Vote No 31—"Statistics South Africa", Adjustments Estimate, 2000-2001.

(d) Memorandum on Vote No 36—"National Treasury", Adjustments Estimate, 2000-2001.

(e) Memorandum on Adjustments Estimate for 2000-2001.

(f) Adjustments Estimate of Expenditure to be defrayed from the National Revenue Fund during the financial year ending 31 March 2001 [RP 1-2000].

- (13) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Justice and Constitutional Development. It is also referred to the Select Committee on Finance and to the Select Committee on Security and Constitutional Affairs:

Memorandum on Vote No 18—"Justice and Constitutional Development", Adjustments Estimate, 2000-2001.

- (14) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Public Enterprises. It is also referred to the Select Committee on Finance and to the Select Committee on Labour and Public Enterprises:

Memorandum on Vote No 23—"Public Enterprises", Adjustments Estimate, 2000-2001.

- (15) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Sport and Recreation. It is also referred to the Select Committee on Finance and to the Select Committee on Education and Recreation:

Memorandum on Vote No 29—"Sport and Recreation", Adjustments Estimate, 2000-2001.

- (16) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Public Works. It is also referred to the Select Committee on Finance and to the Select Committee on Public Services:

Memorandum on Vote No 26—"Public Works", Adjustments Estimate, 2000-2001.

- (17) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Transport. It is also referred to the Select Committee on Finance and to the Select Committee on Public Services:

Memorandum on Vote No 33—"Transport", Adjustments Estimate, 2000-2001.

- (18) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Arts, Culture, Science and Technology. It is also referred to the Select Committee on Finance and to the Select Committee on Education and Recreation:

Memorandum on Vote No 4—"Arts, Culture, Science and Technology", Adjustments Estimate, 2000-2001.

- (19) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Communications. It is also referred to the Select Committee on Finance and to the Select Committee on Labour and Public Enterprises:

Memorandum on Vote No 5—"Communications", Adjustments Estimate, 2000-2001.

- (20) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Health. It is also referred to the Select Committee on Finance and to the Select Committee on Social Services:

Memorandum on Vote No 13—"Health", Adjustments Estimate, 2000-2001.

- (21) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Water Affairs and Forestry. It is also referred to the Select Committee on

Finance and to the Select Committee on Land and Environmental Affairs:

Memorandum on Vote No 34—"Water Affairs and Forestry", Adjustments Estimate, 2000-2001.

- (22) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Labour. It is also referred to the Select Committee on Finance and to the Select Committee on Labour and Public Enterprises:

Memorandum on Vote No 19—"Labour", Adjustments Estimate, 2000-2001.

- (23) The following papers are referred to the Portfolio Committee on Finance and to the Portfolio Committee on Agriculture and Land Affairs. It is also referred to the Select Committee on Finance and to the Select Committee on Land and Environmental Affairs:

Memorandums on—

(a) Vote No 3—"Agriculture", Adjustments Estimate, 2000-2001.

(b) Vote No 20—"Land Affairs", Adjustments Estimate, 2000-2001.

- (24) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Correctional Services. It is also referred to the Select Committee on Finance and to the Select Committee on Security and Constitutional Affairs:

Memorandum on Vote No 6—"Correctional Services", Adjustments Estimate, 2000-2001.

- (25) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Provincial and Local Government. It is also referred to the Select Committee on Finance and to the Select Committee on Local Government and Administration:

Memorandum on Vote No 22—"Provincial and Local Government", Adjustments Estimate, 2000-2001.

- (26) The following papers are referred to the Portfolio Committee on Finance and to the Portfolio Committee on Public Service and Administration. It is also referred to the Select Committee on Finance and to the Select Committee on Local Government and Administration:

Memorandums on—

(a) Vote No 24—"Public Service and Administration", Adjustments Estimate, 2000-2001.

(b) Vote No 25—"Public Service Commission", Adjustments Estimate, 2000-2001.

(c) Vote No 27—"South African Management Development Institute", Adjustments Estimate, 2000-2001.

- (27) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Welfare and Population Development. It is also referred to the Select Committee on Finance and to the Select Committee on Social Services:

Memorandum on Vote No 35—"Social Development", Adjustments Estimate, 2000-2001.

- (28) The following papers are referred to the Portfolio Committee on Finance and to the Portfolio Committee on Safety and Security. It is also referred to the Select Committee on Finance and to the Select Committee on Security and Constitutional Affairs:

Memorandums on—

- (a) Vote No 17—"Independent Complaints Directorate", Adjustments Estimate, 2000-2001.
- (b) Vote No 28—"South African Police Service", Adjustments Estimate, 2000-2001.

- (29) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Foreign Affairs. It is also referred to the Select Committee on Finance and to the Select Committee on Economic Affairs:

Memorandum on Vote No 11—"Foreign Affairs", Adjustments Estimate, 2000-2001.

- (30) The following paper is referred to the Portfolio Committee on Finance and to the Portfolio Committee on Defence. It is also referred to the Select Committee on Finance and to the Select Committee on Security and Constitutional Affairs:

Memorandum on Vote No 7—"Defence", Adjustments Estimate, 2000-2001.

National Council of Provinces:

1. The Chairperson:

Message from National Assembly to National Council of Provinces:

Bills passed by National Assembly on 13 October 2000 and transmitted for concurrence:

- (1) *Bills of Exchange Amendment Bill* [B 47B—2000] (National Assembly—sec 75)—(Select Committee on Finance—National Council of Provinces).
- (2) *South African Reserve Bank Amendment Bill* [B 62—2000] (National Assembly—sec 75)—(Select Committee on Finance—National Council of Provinces).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister for Justice and Constitutional Development:

Friday, 13 October 2000]

Government Notice No R.849 published in Government Gazette No 21499 dated 25 August 2000, Amendment of the Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa, made in terms of the Rules Board for Courts of Law, 1985.

2. The Minister of Water Affairs and Forestry:

- (1) Government Notice No 683 published in Government Gazette No 21357 dated 14 July 2000, Release of a part of the Berlin State Forest which is no longer required for forestry, made in terms of section 50(4) of the National Forests Act, 1998.
- (2) Government Notice No 759 published in Government Gazette No 21422 dated 28 July 2000, Prohibition on the making of fires in the open air, the destruction by burning ground cover, including slash and the execution of blockburns in the district of Letaba and Pietersburg, made in terms of the Forests Act, 1984.
- (3) Government Notice No 843 published in Government Gazette No 21483 dated 25 August 2000, Change of service area by the Amatola Water Board, made in terms of the Water Services Act, 1997.
- (4) Government Notice No 869 published in Government Gazette No 21520 dated 8 September 2000, Change of name of the Goudveld Water, made in terms of the Water Services Act, 1997.
- (5) Government Notice No R.55 published in Government Gazette No 21523 dated 8 September 2000, Commencement of section 7 of the National Forests Act, 1998.
- (6) Government Notice No 894 published in Government Gazette No 21544 dated 8 September 2000, Extension of the period for registration of water use in the Crocodile West and Marico Water Management Area, made in terms of the National Water Act, 1998.
- (7) Government Notice No 895 published in Government Gazette No 21544 dated 8 September 2000, Extension of the period for registration of water use in the Mvoti to Mzimkulu Water Management Area, made in terms of the National Water Act, 1998.
- (8) Government Notice No 902 published in Government Gazette No 21549 dated 15 September 2000, The transfer or disposal of water services works, made in terms of section 73(2)(a) of the Water Services Act, 1997.
- (9) Government Notice No 905 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Breede River Water Conservation Board, the Angora Irrigation Board, the Le Chasseurs and Goree Irrigation Board and the Robertson Irrigation Board—Division of Swellendam, Province of the Western Cape, into the Central Breede River Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
- (10) Government Notice No 906 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Goree Irrigation Board, division of Robertson, Province of the Western Cape, into the Goree Water User Association—Water

Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.

- (11) Government Notice No 907 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Marthinusvlei Irrigation Board, division of Robertson, Province of the Western Cape, into the Marthinusvlei Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
- (12) Government Notice No 908 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Agterkliphoogte Irrigation Board, division of Robertson, Province of the Western Cape, into the Agterkliphoogte Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
- (13) Government Notice No 909 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Uitnood Irrigation Board, division of Robertson, Province of the Western Cape, into the Uitnood Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
- (14) Government Notice No 910 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Willemnells Irrigation Board, division of Robertson, Province of the Western Cape, into the Willemnells Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
- (15) Government Notice No 911 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Lower Riet River, the Richie and the Scholtzburg Irrigation Boards into the Orange-Riet Water User Association, division of Jacobsdal, Koffiefontein and Fauresmith, Province of the Free State and divisions of Herbert and Kimberley, Province of the Northern Cape—Water Management Areas Nos 13 and 14, made in terms of the National Water Act, 1998.
- (16) Government Notice No 916 published in Government Gazette No 21549 dated 15 September 2000, Release of portions of Injaka Plantation which are no longer required for forestry, made in terms of section 50(4) of the National Forests Act, 1998.
- (17) Government Notice No 3272 published in Government Gazette No 21566 dated 22 September 2000, Code of Conduct for council members of the National Forests Advisory Council, made in terms of the National Forests Act, 1998.

National Assembly:

Bills:

1. The Minister of Public Enterprises:

- (1) *Wysigingswetsontwerp op die Transnet-pensioenfonds* [W 57—2000].

The *Transnet Pension Fund Amendment Bill* [B 57—2000] (National Assembly—sec 75) was introduced by the Minister of Public Enterprises on 25 August 2000 and referred to the Portfolio Committee on Public Enterprises.

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

TUESDAY, 17 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

(1) Assent by the President of the Republic in respect of the following Bills:

- (i) *Adjustments Appropriation Bill* [B 60—2000]—Act No 34 of 2000 (assented to and signed by President on 14 October 2000); and
- (ii) *Banks Amendment Bill* [B 56B—2000]—Act No 36 of 2000 (assented to and signed by President on 14 October 2000).

National Assembly:

1. The Speaker:

(1) The following private member's legislative proposal was submitted to the Speaker on 9 October 2000, in accordance with Rule 234:

- (i) *Special Investigating Units and Special Tribunals Amendment Bill* (Adv H C Schmidt).

The legislative proposal has been referred to the Standing Committee on Private Members' Legislative Proposals and Special Petitions by the Speaker, in accordance with Rule 235.

National Council of Provinces:

1. The Chairperson:

(1) The following changes have been made to the membership of Committees, viz:

Constitutional Review Committee:

Appointed: Botha, C S (Alt).

Joint Committee on Ethics and Member's Interests:

Appointed: Lever, L G (Alt).

Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons:

Appointed: Gouws, E C (Alt).

Joint Programme Committee:

Appointed: Botha, C S (Alt).

Joint Standing Committee on Defence:

Appointed: Lever, L G (Alt).

Joint Subcommittee on Parliamentary Symbols:

Appointed: Gouws, E C (Alt).

Select Committee on Land and Environmental Affairs:

Appointed: Chabaku, M.

Discharged: Motshabi, C H.

- (2) The following members have been appointed, on 10 October 2000, to serve on the Committee mentioned, viz:

Ad Hoc Select Committee on Pan-African Parliament:**ANC**

Dlulane, B N
 Kgware, D M
 Makoela, M I
 Maloyi, P D N (Alt)
 Mkhalihi, B J
 Mokoena, M L (Alt)
 Ndzanga, R A
 Ntlabati, S N

Eastern Cape
 Northern Cape
 Northern Province
 North West
 Mpumalanga
 Northern Province
 Gauteng
 Free State

DP

Lever, L G

North West

New NP

Ackermann, C

Western Cape

IFP

Vilakazi, J N

KwaZulu-Natal

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

WEDNESDAY, 18 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

- (1) The Minister of Health on 17 October 2000 submitted a draft of the *Mental Health Care Bill*, 2000, as well as the memorandum explaining the objects of the proposed legislation, to the Speaker and the Chairperson in terms of Joint Rule 159. The draft has been referred to the Portfolio Committee on Health and the Select Committee on Social Services by the Speaker and the Chairperson, respectively, in accordance with Joint Rule 159(2).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister for Justice and Constitutional Development:

Documents, in terms of section 9(1) of the Promotion of National Unity and Reconciliation Act, 1995, regarding remuneration, allowances and other employment benefits of the staff of the Truth and Reconciliation Commission.

2. The Minister of Transport:

Report and Financial Statements of the South African Civil Aviation Authority for 1999-2000.

National Assembly:

Bills:

1. The Minister of Trade and Industry:

- (1) *Tweede Wysigingswetsontwerp op Mededinging* [W 41—2000].

The *Competition Second Amendment Bill* [B 41—2000] (National Assembly—sec 75) was introduced by the Minister of Trade and Industry on 15 August 2000 and referred to the Portfolio Committee on Trade and Industry.

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 25 OCTOBER 2000

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Speaker and the Chairperson:

Report of the Auditor-General on the Financial Statements of the South African Maritime Safety Authority (incorporating the Maritime Fund) for 1998-99 [RP 107-2000].

National Assembly:

Bills:

1. The Minister of Finance:

- (1) *Weisortwerp op Heffings deur Raad vir Mediese Skemas* [W 61—2000].

The *Council for Medical Schemes Levies Bill* [B 61—2000] (National Assembly—sec 77) was introduced by the Minister of Finance on 14 September 2000 and referred to the Portfolio Committee on Health.

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

THURSDAY, 26 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

(1) The Joint Tagging Mechanism (JTM) on 26 October 2000 in terms of Joint Rule 160(3), classified the following Bills as section 75 Bills:

- (i) *Marine Living Resources Amendment Bill* [B 68—2000] (National Assembly—sec 75)—(Portfolio Committee on Environmental Affairs and Tourism—National Assembly). (NOTE: This Bill was introduced as a section 76 Bill.)
- (ii) *Redetermination of the Boundaries of Cross-boundary Municipalities Bill* [B 69—2000] (National Assembly—sec 75)—(Portfolio Committee on Provincial and Local Government—National Assembly).

National Assembly and National Council of Provinces:

Papers:

1. The Speaker and the Chairperson:

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

(1) The following papers are referred to the Portfolio Committee on Correctional Services and to the Select Committee on Security and Constitutional Affairs:

- (a) Proclamation No S19 published in Government Gazette No 21482 dated 25 August 2000, Establishment of the prison at Kokstad, KwaZulu-Natal Province, to be known as the Ebongweni Correctional Centre, made in terms of section 5(1) of the Correctional Services Act, 1998 (Act No 111 of 1998).

- (b) Proclamation No 820 published in Government Gazette No 21482 dated 25 August 2000, Establishment of a new prison at Empangeni, KwaZulu-Natal Province, to be known as Empangeni Qalakabusha Prison, made in terms of section 5(1) of the Correctional Services Act, 1998 (Act No 111 of 1998).

(2) The following papers are referred to the Portfolio Committee on Water Affairs and Forestry and to the Select Committee on Land and Environmental Affairs:

- (a) Government Notice No 683 published in Government Gazette No 21357 dated 14 July 2000, Release of a part of the Berlin State Forest which is no longer required for forestry, made in terms of section 50(4) of the National Forests Act, 1998.
- (b) Government Notice No 759 published in Government Gazette No 21422 dated 28 July 2000, Prohibition on the making of fires in the open air, the destruction by burning ground cover, including slash and the execution of blockburns in the district of Letaba and Pietersburg, made in terms of the Forests Act, 1984.
- (c) Government Notice No 843 published in Government Gazette No 21483 dated 25 August 2000, Change of service area by the Amatola Water Board, made in terms of the Water Services Act, 1997.
- (d) Government Notice No 869 published in Government Gazette No 21520 dated 8 September 2000, Change of name of the Goudveld Water, made in terms of the Water Services Act, 1997.
- (e) Government Notice No R.55 published in Government Gazette No 21523 dated 8 September 2000, Commencement of section 7 of the National Forests Act, 1998.
- (f) Government Notice No 894 published in Government Gazette No 21544 dated 8 September 2000, Extension of the period for registration of water use in the Crocodile West and Marico Water Management Area, made in terms of the National Water Act, 1998.
- (g) Government Notice No 895 published in Government Gazette No 21544 dated 8 September 2000, Extension of the period for registration of water use in the Mvoti to Mzimkulu Water Management Area, made in terms of the National Water Act, 1998.
- (h) Government Notice No 902 published in Government Gazette No 21549 dated 15 September 2000, The transfer or disposal of water services works, made in terms of section 73(2)(a) of the Water Services Act, 1997.
- (i) Government Notice No 905 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Breede River Water Conservation Board, the Angora Irrigation Board, the Le Chasseurs and Goree Irrigation Board and the Robertson Irrigation Board—Division of Swellendam, Province of the Western Cape, into the Central Breede River Water User Association—

- Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
- (j) Government Notice No 906 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Goree Irrigation Board, division of Robertson, Province of the Western Cape, into the Goree Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
 - (k) Government Notice No 907 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Marthinusvlei Irrigation Board, division of Robertson, Province of the Western Cape, into the Marthinusvlei Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
 - (l) Government Notice No 908 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Agterkliphoogte Irrigation Board, division of Robertson, Province of the Western Cape, into the Agterkliphoogte Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
 - (m) Government Notice No 909 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Uitnood Irrigation Board, division of Robertson, Province of the Western Cape, into the Uitnood Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
 - (n) Government Notice No 910 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Willemnells Irrigation Board, division of Robertson, Province of the Western Cape, into the Willemnells Water User Association—Water Management Area No 18, Province of the Western Cape, made in terms of the National Water Act, 1998.
 - (o) Government Notice No 911 published in Government Gazette No 21549 dated 15 September 2000, Transformation of the Lower Riet River, the Richie and the Scholtzburg Irrigation Boards into the Orange-Riet Water User Association, division of Jacobsdal, Koffiefontein and Fauresmith, Province of the Free State and divisions of Herbert and Kimberley, Province of the Northern Cape—Water Management Areas Nos 13 and 14, made in terms of the National Water Act, 1998.
 - (p) Government Notice No 916 published in Government Gazette No 21549 dated 15 September 2000, Release of portions of Injaka Plantation which are no longer required for forestry, made in terms of section 50(4) of the National Forests Act, 1998.
 - (q) Government Notice No 3272 published in Government Gazette No 21566 dated 22 September 2000, Code of

Conduct for council members of the National Forests Advisory Council, made in terms of the National Forests Act, 1998.

(r) Report and Financial Statements of the Department of Water Affairs and Forestry for 1999-2000 [RP 101-2000].

- (3) The following paper is referred to the Portfolio Committee on Public Enterprises and the Portfolio Committee on Defence. It is also referred to the Select Committee on Labour and Public Enterprises and the Select Committee on Security and Constitutional Affairs:

Report and Financial Statements of Denel (Pty) Limited for 1999-2000.

- (4) The following paper is referred to the Portfolio Committee on Justice and Constitutional Development and to the Select Committee on Security and Constitutional Affairs:

Government Notice No R.849 published in Government Gazette No 21499 dated 25 August 2000, Amendment of the Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa, made in terms of the Rules Board for Courts of Law, 1985.

National Assembly:

The Speaker:

1. The following changes have been made to the membership of Portfolio Committees, viz:

Agriculture and Land Affairs:

Appointed: Farrow, S B (Alt); Moorcroft, E K (Alt).

Discharged: McIntosh, G B D; Seremane, W J.

Arts, Culture, Science and Technology:

Appointed: Seremane, W J (Alt); Smuts, M (Alt).

Discharged: Bell, B G; Singh, A; Van Niekerk, A I.

Communications:

Appointed: Bruce, N S (Alt); Gore, V C; Waters, M (Alt).

Discharged: Sono, B N.

Defence:

Appointed: Jankielsohn, R; Selfe, J (Alt).

Discharged: Botha, A J.

Education:

Appointed: Jankielsohn, R (Alt); Kalyan, S V.

Discharged: Ellis, M J; Seremane, W J.

Environmental Affairs and Tourism:

Appointed: Le Roux, J W; Olckers, M E (Alt).

Discharged: Van Wyk, A.

Foreign Affairs:

Appointed: Eglin, C W.

Discharged: Selfe, J; Van Niekerk, A I.

Thursday, 26 October 2000]

Health:

Appointed: Ellis, M J; Singh, A (Alt).
Discharged: Farrow, S B.

Home Affairs:

Appointed: Davidson, I O (Alt); Opperman, S E; Sono, B N (Alt).
Discharged: Farrow, S B; Grobler, G A J; Lee, T D.

Housing:

Appointed: Da Camara, M L (Alt).
Discharged: Semple, J A.

Minerals and Energy:

Appointed: Sono, B N (Alt).
Discharged: Bruce, N S; Van Niekerk, A L.

Public Enterprises:

Appointed: Andrew, K M (Alt); Jankielsohn, R.
Discharged: Clelland, N J.

Provincial and Local Government:

Appointed: Grobler, G A J; Selfe, J (Alt).
Discharged: Clelland, N J.

Public Service and Administration:

Appointed: Ntuli, R S (Alt); Singh, A.
Discharged: Da Camara, M L.

Public Works:

Appointed: Lee, T D (Alt).
Discharged: Singh, A.

Safety and Security:

Appointed: Botha, A J; Delpont, J T (Alt); Schmidt, H C (Alt).
Discharged: Clelland, N J; Gibson, D H M.

Sport and Recreation:

Appointed: Semple, J A (Alt).
Discharged: Da Camara, M L.

Trade and Industry:

Appointed: Davidson, I O (Alt); Heine, R J.
Discharged: Andrew, K M; Grobler, G A J.

Water Affairs and Forestry:

Appointed: Botha, A J (Alt); Da Camara, M L; Maluleke, D K (Alt).
Discharged: Moorcroft, E K; Opperman, S E; Van Niekerk, A L.

Welfare and Population Development:

Appointed: Cupido, P W; Gere, V C (Alt); Kalyan, S V (Alt); Singh, A.
Discharged: Da Camara, M L.

2. The following changes have been made to the membership of Standing Committees, viz:

Public Accounts:

Appointed: Da Camara, M L (Alt); Heine, R J (Alt); McIntosh, G B D.
 Discharged: Davidson, I O.

3. The following changes have been made to the membership of *Ad hoc* Committees, viz:

Report 13 of Public Protector:

Appointed: Delpert, J T (Alt).

4. The following changes have been made to the membership of Joint Committees, viz:

Constitutional Review:

Appointed: Delpert, J T; Schmidt, H C (Alt); Swart, P S (Alt).
 Discharged: Moorcroft, E K.

Defence:

Appointed: Jankielsohn, R; McIntosh, G B D (Alt); Selfe, J.
 Discharged: Botha, A J.

Improvement of Quality of Life and Status of Women:

Appointed: Gibson, D H M (Alt); Kalyan, S V (Alt); Smuts, M (Alt).

Improvement of Quality of Life and Status of Children, Youth and Disabled Persons:

Appointed: Sono, B N (Alt); Waters, M (Alt).

5. The following changes have been made to the membership of Committees and Subcommittees, viz:

Delegated Legislation:

Appointed: Delpert, J T (Alt); Schmidt, H C.

Ethics and Members' Interests:

Appointed: Maluleke, D K (Alt).

Internal Arrangements:

Appointed: Lee, T D (Alt).

International Relations:

Appointed: Taljaard, R (Alt).

Joint Programme:

Appointed: Lee, T D (Alt); Maluleke, D K (Alt).

Joint Rules:

Appointed: Maluleke, D K (Alt); Seremane, W J (Alt).

Parliamentary Budget:

Appointed: Bruce, N S (Alt).

Parliamentary Oversight and Accountability:

Appointed: Swart, P S (Alt).

Parliamentary Symbols:

Appointed: Moorcroft, E K; Smuts, M (Alt).

Powers and Privileges of Parliament:

Appointed: Smuts, M (Alt).

Review of Rules:

Appointed: Gibson, D H M (Alt); Schmidt, H C.

Support for Members:

Appointed: Semple, J A (Alt).

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Finance:

- (1) Economic Report of the South African Reserve Bank for 2000.
- (2) Report and Financial Statements of the South African Reserve Bank for 1999-2000 [RP 32-2000].
- (3) The South African Reserve Bank Governor's Address on 29 August 2000.
- (4) Exchange of Letters between the Government of the Republic of South Africa and the Government of the People's Republic of China concerning the Provision of Water Supply Materials, tabled in terms of section 231(3) of the Constitution, 1996.
- (5) Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Denmark on Financial Assistance to the Regional Training and Technology Transfer Centre for Implementation of the Basel Convention in English Speaking Countries, tabled in terms of section 231(3) of the Constitution, 1996.
- (6) Framework Agreement for Financial Co-operation between the Government of the Republic of South Africa and the European Investment Bank, tabled in terms of section 231(3) of the Constitution, 1996.
- (7) Rider Number Three to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning Technical Assistance Consultancy Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (8) Memorandum of Understanding between the Government of the Republic of South Africa and the Commonwealth Secretariat with respect to Technical Co-operation Activities, tabled in terms of section 231(3) of the Constitution, 1996.
- (9) Arrangements between the Government of the Republic of South Africa and the Minister for Development Co-operation of the Netherlands concerning Sectoral Budget Support (2000-2003), tabled in terms of section 231(3) of the Constitution, 1996.
- (10) Rider Number One to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the participation in the SADC Regional Food Security Training Programme, tabled in terms of section 231(3) of the Constitution, 1996.

- (11) Rider Number Three to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the Land Reform Pilot Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (12) Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the SADC Regional Drug Control Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (13) Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning Capacity Building and Institutional Development for the South African Police Service (SAPS) and the Department of Safety and Security, tabled in terms of section 231(3) of the Constitution, 1996.
- (14) Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the support to the Social Housing Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (15) Agreement between the Government of the Republic of South Africa and the Government of Switzerland concerning support to the Greater Tjoksville Upgrading Project in Port Elizabeth, tabled in terms of section 231(3) of the Constitution, 1996.
- (16) Rider Number Three to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the Non-grid Electrification Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (17) Rider Number Three to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the Rural Water Supply and Sanitation in the Eastern Cape, tabled in terms of section 231(3) of the Constitution, 1996.
- (18) Rider Number One to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the Conference, Workshop and Cultural Initiatives (CWCI) Fund, tabled in terms of section 231(3) of the Constitution, 1996.
- (19) Multi-Annual Indicative Programme: A Framework for Co-operation between South Africa and the European Community, tabled in terms of section 231(3) of the Constitution, 1996.
- (20) Agreement between the Government of the Republic of South Africa and the Government of the Republic of Finland on Finnish Assistance to the Education Sector, tabled in terms of section 231(3) of the Constitution, 1996.
- (21) Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Germany concerning Financial Co-operation for the Study and Expert Fund Project, tabled in terms of section 231(3) of the Constitution, 1996.
- (22) Agreement between the Government of the Republic of South Africa and the Government of Spain on Grant Assistance for the

Establishment of a South African Tourism Institute, tabled in terms of section 231(3) of the Constitution, 1996.

- (23) Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Germany concerning Financial Co-operation for Municipal Infrastructure, tabled in terms of section 231(3) of the Constitution, 1996.
- (24) Specific Agreement between the Government of the Republic of South Africa and the Government of Sweden on support for a project on a Partnership between the Municipalities of Port Elizabeth and Goteborg, tabled in terms of section 231(3) of the Constitution, 1996.
- (25) Agreement between the Government of the Republic of South Africa and the Government of Spain on Grant Assistance for Protocol Training in the Office of the President and the Department of Foreign Affairs, tabled in terms of section 231(3) of the Constitution, 1996.
- (26) Co-operation Accord between the Government of the Republic of South Africa and the Government of the United States of America, tabled in terms of section 231(3) of the Constitution, 1996.
- (27) Rider Number One to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the European Programme for Reconstruction and Development (EPRD) Information and Communication Programme Fund, tabled in terms of section 231(3) of the Constitution, 1996.

COMMITTEE REPORTS:

National Assembly:

1. Report of the *Ad Hoc* Committee on General Intelligence Law Amendment Bill on the *General Intelligence Law Amendment Bill* [B 36—2000] (National Assembly—sec 75), dated 18 October 2000:

The *Ad Hoc* Committee on General Intelligence Law Amendment Bill, having considered the subject of the *General Intelligence Law Amendment Bill* [B 36—2000] (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 36A—2000].

2. Report of the Portfolio Committee on Justice and Constitutional Development on the *Directorate of Special Operations Bill* [B 39—2000] (National Assembly—sec 75), dated 18 October 2000:

The Portfolio Committee on Justice and Constitutional Development, having considered the subject of the *Directorate of Special Operations Bill* [B 39—2000] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a

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The Committee has taken cognisance of, and confirms, the views expressed by the *Ad Hoc Joint Committee on Open Democracy Bill*, in paragraph 6 of its Report dated 24 January 2000 (Announcements, Tablings and Committee Reports, 2000, see p 15), namely:

"The Committee has once again become acutely aware of the various shortcomings of the Interpretation Act, 1957 (Act No. 33 of 1957), during its deliberations on the Bill. This Act was drafted during an era when we had a system of unfettered parliamentary sovereignty and regulated matters of interpretation during the height of the Apartheid era. This Act is highly anachronistic and in no way is it in line with the principles of constitutional democracy. The Committee therefore urges the Minister to consider the amendment of the Interpretation Act, 1957, to bring it in line with the principles and ethos of constitutionalism and the new principles and practices of interpretation which Parliament and the courts have used since 1994."

It has been brought to the Committee's attention that the Minister for Justice and Constitutional Development has already approached the Chairperson of the South African Law Commission regarding the possible inclusion of an investigation relating to the review of the Interpretation Act, 1957, in the Law Commission's programme.

The Committee expresses the view that an investigation into the effects which the amendment envisaged by Clause 3 of the Bill could have on other existing laws would require such a comprehensive research that the South African Law Commission is probably best suited to conduct such an investigation. In the light thereof, the Committee urges the Minister for Justice and Constitutional Development to request the Chairperson of the Law Commission to consider the inclusion of an investigation into the amendment envisaged by Clause 3 of the Bill, as well as the effect which such an amendment could have on other existing laws, either as part of the investigation relating to the review of the Interpretation Act, 1957, if such an investigation is to be included in the Law Commission's programme and, if not, to include such an investigation as a separate project in the Law Commission's programme.

Although the Committee has no objection in principle to the amendment envisaged by Clause 3 of the Bill, it deems it appropriate not to proceed with that amendment at this stage, but to delete it from the Bill and to keep the promotion thereof in abeyance until the Law Commission has conducted the above-mentioned investigation and made recommendations in that regard.

The Committee requests the Department of Justice and Constitutional Development to submit a report on its progress regarding the above-mentioned investigation to the Committee within six months after the adoption of this Report.

2. The Committee is aware of the fact that 53 of the Criminal Law Amendment Bill (No. 25 of 1997),

provides that sections 51 and 52 of that Act, which, respectively, provide for the imposition of minimum sentences for certain offences and the committal of an accused for sentence by a High Court, will cease to have effect after the expiry of two years from the commencement of that Act. However, provision is made for that period to be extended by the President, with the concurrence of Parliament, by proclamation in the *Gazette* for one year at a time. The Committee has been informed that—

- (a) the National Assembly, on 16 March 2000, consented to the extension of the operation of sections 51 and 52 for a further period of one year with effect from 1 May 2000 (Minutes of Proceedings of National Assembly, p 220); and
- (b) the President by Proclamation No. R. 23, published in *Gazette* No. 21122 of 28 April 2000, extended the period of operation of sections 51 and 52 for a period of one year with effect from 1 May 2000.

The Committee, having inserted new sections 52A and 52B in the Criminal Law Amendment Act, 1997, requests the Minister for Justice and Constitutional Development to timeously make the necessary arrangements to enable the President to publish, on the date of commencement of the Bill, a Proclamation in the *Gazette*, providing for the extension of the operation of the new sections 52A and 52B to the same date to which the operation of sections 51 and 52 of the above-mentioned Act has been extended.

Report to be considered.

4. Report of the Portfolio Committee on Trade and Industry on the *SADC Trade Protocol*, dated 13 October 2000:

The Portfolio Committee on Trade and Industry, having considered the request for approval by Parliament of the *Amendment Protocol on Trade in the Southern African Development Community*, referred to it, recommends that the House, in terms of section 231(2) of the Constitution, approve the said Protocol.

Report to be considered.

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

FRIDAY, 27 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

Papers:

1. The Speaker and the Chairperson:

The following paper was tabled on 25 October 2000 and it is now referred to the Standing Committee on Public Accounts for consideration and report. It is also referred to the Portfolio Committee on Transport and to the Select Committee on Public Services:

Report of the Auditor-General on the Financial Statements of the South African Maritime Safety Authority (incorporating the Maritime Fund) for 1998-99 [RP 107-2000].

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Finance:

The Intergovernmental Fiscal Review for 2000 [RP 170-2000].

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Environmental Affairs and Tourism on the *Marine Living Resources Amendment Bill* [B 68—2000] (National Assembly—sec 75), dated 13 October 2000:

The Portfolio Committee on Environmental Affairs and Tourism, having considered the subject of the *Marine Living Resources Amendment Bill* [B 68—2000] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill with an amendment [B 68A—2000].



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

MONDAY, 30 OCTOBER 2000

1. The House met at 14:02.
2. The Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:05] Notices of motion.
4. [14:18] The Chief Whip of the Majority Party moved without notice: That notwithstanding the provisions of Rule 105, the following times be allocated to parties for comment on the statement by the Minister of Health today on the rating of South Africa by the World Health Organisation:

Minister: 10 minutes; African National Congress: 5 minutes; Democratic Party: 4 minutes; Inkatha Freedom Party and New National Party: 3 minutes each; United Democratic Movement: 2 minutes; all other parties: 1 minute each.

Agreed to.

5. The Chief Whip of the Majority Party moved without notice: That the House—
 - (1) notes the untimely death of Mr Parks Mankahlana, spokesperson of former President Nelson Mandela, Chief Director of Communications of The Presidency and spokesperson of President Thabo Mbeki;
 - (2) recognises his role in building our new democracy and serving two democratically elected Presidents;
 - (3) believes that his death is a loss to The Presidency and the people of South Africa;
 - (4) joins the Mankahlana family and his friends and colleagues in mourning the death of Mr Phakamile Mankahlana; and
 - (5) expresses its heartfelt condolences to his wife, children, family, colleagues and friends.

Agreed to.

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

- (1) notes the sterling performance by members of our 2000 Paralympic team, Amakrokokroko, in the Paralympic Games in Sydney, Australia;
- (2) recognises the gold-medal-winning performances by Christelle Bosker, Ebert Kleynhans, Fanie Lombaard, Michael Louwrens, Gert van der Merwe, Nathan Meyer, Malcolm Pringle and Zanele Situ as commendable and phenomenal sporting achievements; and
- (3) congratulates Amakrokokroko on their haul of 13 gold, 12 silver and 13 bronze medals at the Games.

Agreed to.

7. [14:20] The Minister of Finance made a statement on, and tabled, the *Medium-Term Budget Policy Statement 2000*.
8. [14:42] The Minister of Health made a statement on the rating of South Africa by the World Health Organisation.

Debate concluded.

9. FIRST ORDER [15:15]

Election of members of Mediation Committee [*Tourism Amendment Bill* [B 50D—99] (National Assembly—sec 76(1))].

The Chairperson of Committees announced that the *Tourism Amendment Bill* had been referred to the Mediation Committee on 13 October 2000.

In terms of section 78 of the Constitution, read with National Assembly Rules 225 and 226, nine members of the National Assembly had to be elected by the House to serve in the Mediation Committee. According to the formula contained in the Rules, six members had to be from the African National Congress and the remaining three from the Democratic Party, Inkatha Freedom Party and New National Party respectively.

The Chairperson of Committees accordingly called for nominations from the respective parties.

On the nomination of Mr J H Momberg (on behalf of the Chief Whip of the Majority Party), the following members of the African National Congress were elected: Mr T M Goniwe; Mr M U Kalako; Mr M T Masutha; Ms S B Nqodi; Mr R K September; Ms M Verwoerd.

On the nomination of Mr D H M Gibson, Ms J A Semple and Mr M L da Camara (alternate) of the Democratic Party were elected.

On the nomination of Mr E J Lucas, Mrs L R Mbuyazi of the Inkatha Freedom Party was elected.

On the nomination of Mr D M Bakker, Mrs M E Olckers and Mr J W le Roux (alternate) of the New National Party were elected.

10. SECOND ORDER [15:20]

Consideration of Report of *Ad Hoc* Committee on Pan-African Parliament (Announcements, Tablings and Committee Reports, p 975).

Debate concluded.

Report adopted (African Christian Democratic Party dissenting).

11. THIRD ORDER [16:42]

Second Reading debate—*Marine Living Resources Amendment Bill* [B 68B—2000] (National Assembly—sec 75).

There was no debate.

Bill read a second time.

12. The House adjourned at 16:43.

S MFENYANA,

Secretary to Parliament.

No 136—2000] SECOND SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

MONDAY, 30 OCTOBER 2000

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Foreign Affairs:

- (1) The Constitutive Act of the African Union, tabled in terms of section 231(2) of the Constitution, 1996.
- (2) Explanatory Memorandum on the Constitutive Act of the African Union.

2. The Minister of Finance:

Medium Term Budget Policy Statement—2000 [RP 171-2000].

3. The Minister for Agriculture and Land Affairs:

- (1) Statements in terms of section 65(2) of the Land Bank Act, 1944, of the Assets and Liabilities and the Profit and Loss Account of the Land and Agricultural Bank of South Africa as at 31 December 1999.
- (2) Statements of the Assets and Liabilities and the Profit and Loss Account of the South African Mortgage Insurance Company Limited of which the Land and Agricultural Bank of South Africa is the sole shareholder.

COMMITTEE REPORTS:

National Assembly:

1. Report of the *Ad Hoc* Committee on Pan-African Parliament, dated 30 October 2000:

1. The *Ad Hoc* Committee on Pan African Parliament was established by resolution of the National Assembly on 19 September 2000, to consider the proposed formation of a Pan-African Parliament. The Committee was formally constituted on 28 September 2000.

2. The Committee considered a draft Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament, limited its discussions to issues of principle, and agreed on the following guidelines:
 - (1) The Pan-African Parliament should be a deliberative body, without any law-making powers.
 - (2) The Pan-African Parliament should be composed of eight members from each Member State, appointed by each national Parliament from its ranks, on the basis of broad representivity, with a minimum of three women members.
 - (3) Members of the Pan-African Parliament should represent the views of their respective Parliaments.
 - (4) The term of each Pan-African parliamentarian should run with his or her term in the national Parliament concerned.
 - (5) Some general objectives of the Pan-African Parliament should be inserted in the draft Protocol.
 - (6) The seat of the Pan-African Parliament should be determined by the Assembly of the Heads of State of the African Union.
 - (7) Direct elections of members of the Pan-African Parliament would not be appropriate.
 - (8) The procedure for the election of the President and the Vice-Presidents should be specifically stated in the Protocol.
 - (9) The Protocol should be reviewed at intervals of not less than five years.

Report to be considered.

2. Report of the Portfolio Committee on Arts, Culture, Science and Technology on *Indigenous Knowledge Systems*, dated 19 September 2000:

The Portfolio Committee on Arts, Culture, Science and Technology, having held public hearings on Indigenous Knowledge Systems (IKS), reports as follows:

A. Introduction

1. The Committee held public hearings on a Bill on the protection and promotion of IKS (the Bill) from May to July 2000. The Bill, which emanated from the IKS Programme in 1998, under the Committee, is a private members' legislative proposal on the protection and promotion of IKS.
2. Since 1998 the Committee has received many comments on the Bill, indicating that it was unsuitable for introduction in Parliament in its present form. Further research and review

was necessary to address some of the concerns raised by the commentators. The purpose of the public hearings then was to obtain comments, submissions and recommendations from various stakeholders on contentious issues raised in respect of the Bill.

3. This Report contains findings and recommendations, to be considered by the Committee for further consideration and comment. The findings and recommendations are based on comments and submissions received in response to the questions posed at the hearings. Paragraph B provides a summary of the Bill and the main concerns raised thereon. Paragraph C discusses the questions asked and paragraph D the answers thereto. Paragraph E deals with a proposed legislative framework for the protection of IKS, emergent issues arising from the hearings, and a conclusion.

B. Summary of Bill

1. The Bill defines IKS as “productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community in the country or by individuals reflecting the traditional artistic expectations of such a community” (clause 1(xv)).
2. The Bill seeks to protect indigenous knowledge against “illicit use and exploitation” and other “prejudicial acts” (clause 3(1)).
3. Indigenous knowledge has been protected through the extension and application of the Intellectual Property Amendment Act, 1997. Section 1(xiii) defines “Intellectual Property Right” as referring to Trade Marks, Copyright and Merchandise Marks. In order to give effect to this provision, the Minister of Trade and Industry is required, after the promulgation of the Bill into law, to review and amend all intellectual property laws to include indigenous knowledge.
4. The Bill makes provision for the establishment of the following bodies:
 - (1) A Regulatory Authority.
 - (2) Collective Community Administration Agencies.
 - (3) A Directorate of IKS.
5. The Regulatory Authority is a national juristic body entrusted with the following functions:
 - (1) Providing strategic policy direction on IKS, and the implementation thereof.
 - (2) Creating and promoting public awareness campaigns and mass participation on IKS.

- (3) Implementation of the law on IKS and promotion of the IKS programme.
- (4) Advising and co-ordinating all IKS activities, including the activities of the Registrar of Patents, Designs, Trade Marks and Copyright.
- (5) Conducting and co-ordinating research on the protection and promotion of IKS.
- (6) Developing a directory of inventors.
- (7) Establishing a tariff of the fees payable for the use of IKS technologies.

6. The Bill makes provision for the creation of Centres of Excellence, whose main function is to act as Collective Community Administration Agencies. The Centres of Excellence—

- (1) are meant to defend the economic rights of community members and mandators (clause 22(1));
- (2) require State authorisation to exercise all its activities;
- (3) facilitate the process of licensing, collection and distribution of fees payable for use of indigenous knowledge entrusted to them; and
- (4) are accountable to traditional leaders, community members and mandators.

7. The Bill also makes provision for the creation of a Directorate of Indigenous Knowledge, which is to be headed by a Registrar. Its main functions are to—

- (1) ensure compliance with the Bill and the regulations issued thereunder;
- (2) maintain registry of IKS, supervise, deposit and inspect all indigenous knowledge held by the Directorate; and
- (3) manage the information centres and publish periodic bulletins on IKS.

8. Ownership disputes relating to indigenous knowledge are determined in accordance with traditional communities' own customs, laws and practices. The Bill lists a category of persons who may hold indigenous knowledge in custodianship:

- (1) The whole community.
- (2) A particular clan or family.

- (3) An association or society.
- (4) Specially taught or initiated individuals.
9. Chapter III provides for the referral of disputes at the election of the regulatory authority to conciliation and subsequently to arbitration.
10. Clause 25 sets out the instances where the use of indigenous knowledge must be subject to authorisation:
 - (1) Publication.
 - (2) Reproduction.
 - (3) Broadcasting.
 - (4) Transmission in a diffusion service outside a lawful TV broadcast and by a non-original broadcaster.
 - (5) Adaptation for profitable purposes and outside its traditional or customary context.
11. Failure to comply with the above is punishable on the first conviction with a fine equal to three times the value of the gain derived from use of the indigenous knowledge or to imprisonment not exceeding 20 years or to both such fine and imprisonment. A magistrate has the power to impose an additional penalty, which may exceed the jurisdiction of the Magistrate's Court. Any object made or receipts accruing to any person in contravention of the Bill are subject to seizure by an inspector appointed by the Authority.
12. *Summary of main comments on Bill: Definition of IKS*
 - (1) The definition of IKS is set out in clause 1(xv). IKS is defined as "social capital in the form of living skills consisting of productions containing characteristic elements of the traditional artistic heritage developed and maintained by a community of South Africa or individuals therein reflecting the traditional artistic expectations of such a community, in particular". This definition is partly derived from the definition of "expression of folklore contained in section two of the Model Provisions for the National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions (the Model Provisions)". Section 2 of the Model Provisions defines "expressions of folklore" as "productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a

- (7) Further, Mrs Erica Irene Daes, UN Special Rapporteur, on her study on the protection of the cultural and intellectual property of indigenous people, suggested that any attempt “to try and subdivide the heritage of indigenous people into separate legal categories such as “cultural”, “artistic” or intellectual elements such as songs, stories, science or sacred sites would be artificial”. She believes that all elements of heritage should be managed and protected as a single interrelated and integrated whole. She furthermore states that “heritage includes all expressions of the relationship between the people, their land and other living beings and spirits which share the land, and is the basis for maintaining social, economic and diplomatic relationships through sharing with other peoples. All of the aspects of heritage are interrelated from the traditional territory of the people concerned. What tangible and intangible items constitute the heritage of a particular indigenous people must be decided by the people themselves”.

13. *Exclusion of biodiversity from ambit of Bill*

- (1) Commentators have raised concerns on the exclusion of indigenous knowledge about biodiversity from the ambit of the Bill. The exclusion of biodiversity could have been an oversight, given the fact that the Bill in defining indigenous knowledge includes “the production of traditional medicine from herbs and other sources” (clause 1(xv)(ee). Elsewhere, the Bill obliges the Regulatory Authority to protect communities by requiring researchers and scholarly institutions to obtain consent prior to engaging in study of previously undescribed species or cultivated varieties of plants, animals or microbes or naturally occurring pharmaceuticals (clause 44).
- (2) Commentators believe that the Bill has not considered the debates and contradictions that have arisen from the Convention on Biological Diversity, to which South Africa is a party. Briefly, the debate in the Convention forum has two extreme positions. The first position advocates the extension of intellectual property rights to indigenous knowledge. The proponents of this position argue that—
- (a) protecting indigenous knowledge through intellectual property rights would promote technological innovation and would facilitate the devel-

opment and dissemination of that knowledge in the modern economic space; and

(b) knowledge could generate incentives for indigenous people to conserve the environment and manage biodiversity.

(3) The second position advocates the retention of the status quo, where such knowledge is treated as a public good. The proponents of this position argue that—

(a) the extension of intellectual property rights to indigenous knowledge would destroy the social basis for generating and managing such knowledge; and

(b) intellectual property extension to indigenous knowledge would lead to the privatisation of such knowledge, which may deny future generations and industry access to such knowledge.

(4) The Convention has been seen by developing countries as “opening up opportunities for benefits to be derived from their natural resources and providing a supportive framework for protecting indigenous knowledge”.

(5) The primary objectives of the Convention are to ensure—

(a) the equitable sharing of benefits derived from the use of genetic resources with the parties providing them;

(b) that prior informed consent of indigenous people is obtained before granting access to their knowledge and natural resources;

(c) that indigenous people receive recognition and acknowledgement for their contribution to universal knowledge and welfare;

(d) that indigenous people develop their own economic uses of their indigenous knowledge and associated biological resources, which are consistent with traditions of sustainable use; and

(e) that the knowledge, innovations and practices of indigenous people are respected and preserved through the necessary legislation.

(6) The Committee established from previous conferences and meetings on IKS that there are five broad categories of IKS, which should inform its definition. These broad five categories, which have not been completely reflected in the Bill’s definition, are the following:

- (a) Technology.
- (b) Social issues and IKS.
- (c) Biodiversity.
- (d) Social institutions.
- (e) Liberatory processes.

(7) *Terminology employed in Bill*

- (a) The Bill uses the terms “indigenous knowledge”, “traditional knowledge” and “cultural property” interchangeably. The usage of these terms is often subject to confusion, as there has been no unanimous effort to develop a universally accepted definition of IKS, traditional knowledge, indigenous people and traditional people. Some commentators have asserted that the diversity of the phrase “indigenous people” renders problematic an all-embracing definition and that attempts to develop an all-embracing definition are a diversion of energies. However, we would endorse the view expressed by Dr John Mugabe, (in his “Intellectual Property Protection and Traditional Knowledge” paper, delivered at a Conference on the Trade-related Aspects of Intellectual Property Rights and the Convention of Biological Diversity, Kenya, February, 1999, p 98), that “whilst one may run into conceptual difficulties in any attempt to define indigenous knowledge and traditional knowledge, the use of the two concepts as synonymous must be eschewed”.

- (b) The International Labour Organization (ILO) defines indigenous people as “People who have descended from populations who inhabited a country or geographical region thereof at the time of conquest, or colonization or establishment of state boundaries and who irrespective of their legal status retain some or all of their own social economic cultural and political institutions”.

(8) *Definition has four vital factors*

- (a) Priority in time with respect to occupation of a territory.
- (b) Voluntary perpetuation of cultural distinctiveness.
- (c) Self-identification and self-recognition by other groups.
- (d) An experience of subjugation, marginalisation, dispossession, exclusion or discrimination, irrespective of whether or not these conditions persist (Dr Erica-Martin Daes, “Rights of Indigenous People”, paper presented at Pacific Work-

shop on the UN Draft declaration on the Rights of Indigenous Peoples, Suva, Fiji, September 1996).

- (9) At this stage, we can therefore state that indigenous knowledge is that continuous knowledge regarding all aspects of indigenous cultural knowledge that is acquired, nurtured, evolved and transmitted from generation to generation by indigenous people, whether collectively or as individuals, and which sustains the lives of and regulates the relationships of indigenous people amongst themselves and with the environment in which they live.

14. *Traditional people*

- (1) Members of a distinct culture, who hold an unwritten body of long-standing customs, beliefs, rituals and practices handed down from previous generations.
- (2) No claim of prior territorial occupancy to the current habitat—they could be recent immigrants.
- (3) Indigenous people are traditional, but traditional people are not necessarily indigenous (“Intellectual Property Protection and Traditional Knowledge” paper, delivered at a Conference on the Trade-related Aspects of Intellectual Property Rights and the Convention of Biological Diversity, Kenya, February 1999, p 98).

15. *Acts against which IKS would be protected*

- (1) This aspect is dealt with by clauses 1(xvi), 3(1), 20 and 25.
- (2) Clause 3(1) states that “indigenous knowledge shall be protected against illicit use and exploitation and other prejudicial actions as defined in this Act”. It is not entirely clear what would constitute “illicit use and exploitation” or “prejudicial action”. Clause 1(xvi) defines illicit use as “any utilization in violation of the provisions (unless it is within the scope of the exceptions mentioned would be illicit exploitation). Similarly, non-compliance with the provisions and commissions of the acts described would constitute other prejudicial actions, which are illicit, even if they occur in connection with an authorized utilization that does not require authorization”. Most commentators have suggested that this definition requires further clarification. The notions of “illicit exploitations” and “prejudicial actions” have been derived from section 1 of the Model Provisions. In terms of the commentary to the model provisions, any utilisation of folklore for gainful intent outside its traditional or customary context and without authorisation from a competent authority or the community itself constitutes illicit exploitation. This means, amongst other things, that use, even with gainful intent within the traditional or customary context, would not be subject to authorisation. Con-

work, use by members of the community where the indigenous knowledge has been developed and maintained, would require authorisation if it were made outside that context and with harmful intent.

(3) One can thus deduce that what was intended in the Bill is that any use of indigenous knowledge in violation of clause 25 would constitute illicit exploitation. Similarly, the violation of clause 20 and the commission of an offence in terms of clause 37 would constitute prejudicial actions.

(4) Clause 37 only makes the violation of clause 20 an offence. It does not seem that the violation of clause 25 would constitute an offence. It would seem that this might not have been the intention of the legislature.

16. Beneficiaries of protection

(1) Clause 24 identifies beneficiaries of IKS as—

- (a) a whole community;
- (b) a particular family or clan;
- (c) an association or society; and
- (d) individuals who have been specially taught or initiated to be its custodians.

(2) This clause further provides that the owners of indigenous knowledge will be determined in accordance with the communities' own customary law practices. By implication, the Bill proposes that ownership disputes should be determined in accordance with the communities' own customary law and practices.

(3) Clause 22 makes provision for the establishment of Collective Administration Organisations through Centres of Excellence. The latter, although not defined as such, are the nine historically black universities. Generally, Collective Administration Organisations are normally established in terms of copyright laws of a country. In as much as there are well established in European countries, the South African Copyright Act has no equivalent provision for their establishment. The main function of such an organisation is to license the use of copyright works for an agreed fee and to collect and distribute the fees to composers and authors.

(4) Under a Collective Administration System, owners of indigenous works would authorise such an organisation to administer its works by, *inter alia*—

- (a) processing applications for use of indigenous works;

- (c) registered designs for new shapes or appearance of an article;
- (d) trade marks and geographical indications for distinctive goods or services;
- (e) plant breeders' rights for propagation of new plant varieties;
- (f) unlawful competition for prevention of gaining an advantage over a competitor in an unfair or unlawful manner; and
- (g) trade secrets.

(2) Intellectual property, therefore, covers all forms of proprietary rights whereby a person or company can prevent third parties from conduct which would give them an unfair advantage.

(3) Clause 1(xiii) defines intellectual property rights only with reference to the—

- (a) Trade Marks Act, 1993;
- (b) Copyright Act, 1978; and
- (c) Merchandise Act, 1941,

and not with reference to other forms of intellectual property rights (IPR) specifically referred to in paragraph 15(2) above.

(4) The exclusion of the other forms of IPRs means that indigenous knowledge in the medicinal, agricultural and technological fields might not be protected. The definition of IPRs has been derived from section 1(1)(xi) of the Counterfeit Goods Act, 1997. The latter does not protect other registered forms of IPRs, such as patents or designs, nor does it protect unfair competition rights. Some commentators have indicated that the reference to trade marks, copyright and merchandise marks means that the Bill only covers "artistic" indigenous knowledge. This might not have been the intention, given the fact that the definition of indigenous knowledge covers other aspects of IKS, such as—

- (a) manners and customs relating to food;
- (b) clothing and housing;
- (c) traditional medicine; and
- (d) fermentation techniques and technology,

and the fact that clause 3(2) provides that "this Act shall apply to every intellectual property right incorporated under the Intellectual Property Laws Act, save as otherwise provided herein, to every intellectual property right".

18. The clauses dealing with IPRs have received great attention from commentators. Most have indicated that because South Africa is a party to international instruments regulating IPRs, her intellectual property (IP) laws must reflect international minimum norms contained in such instruments. Indigenous knowledge, therefore, cannot be protected in terms of the existing IP laws unless the latter are amended to provide for its protection. Other commentators have gone so far as to indicate that if indigenous knowledge is protected by marrying it in any way at all with existing IPRs, this would have international negative repercussions for South Africa's international trade, and hence the economy. These commentators argue that the Bill in its present form violates the provisions of the World Trade Organization's (WTO) agreement on Trade-related Aspects of Intellectual Property (TRIPS). The following provision is quoted in particular: The equality of treatment principle set out in article 3 of TRIPS, which provides that "each member shall accord to the nationals of other members treatment no less favourable than it accords its own nationals". This means that people within the RSA have to be treated in IPRs in the same manner as people outside the RSA who are applying for such rights or who have rights in the RSA to be protected.

(1) The question of extending IPRs to indigenous knowledge is a complex one and often fraught with controversy. The international community has recognised the need to devise new regimes or expand existing ones to accommodate IKS. However, no coherent and inclusive international efforts are made to address these concerns. Some commentators believe that the existing IPR systems are inadequate to protect IKS because—

- (a) IPRs are oriented around the concept of private ownership and individual invention, whereas IKS emphasise collective creation and ownership of knowledge; and
- (b) IPRs violate indigenous cultural principles by encouraging the commodification of such knowledge.

These commentators advocate the enactment of *sui generis* regimes for the protection of IKS.

(2) Other commentators argue that the above concerns show a lack of understanding of the specifics of IP law and the specifics of concrete uses of indigenous knowledge. Whilst many indigenous cultures develop and transmit knowledge from generation to generation within a communal system, individuals in indigenous communities can distinguish themselves as informal creators or inventors separate from the community (Prof Gupta, 1992). These commentators argue that geographical indications, trade marks and trade secrets can be used to protect indigenous knowledge. Studies have shown that indigenous people have used, and continue to use, trade secrets to protect their knowledge. Geographical indications and trade marks are intended not to reward innovation, but goodwill and reputation created or built up by a group of producers for many years. Geographical indications can create economical rewards for producers who use indigenous methods in the region where the product is produced.

(3) From the above it seems that "the present IP system presents both opportunities and obstacles for protecting indigenous knowledge. The relationship between measures to protect indigenous knowledge and the IP system requires further consideration....., the co-existence between the IP system and the protection of indigenous knowledge is a profound and complex question" (WIPO).

19. Retroactivity

(1) Clause 43 provides for some form of retroactivity. It provides that "any utilization (of indigenous knowledge) which became subject to the law (IKS) but were commenced without authorization before the date of commencement of this Act should within six months after that date and subject to the rules of the Regulatory Authority relating to the issue of the authorization, apply for such authorization".

(2) Commentators have questioned whether this provision is legal, given the fact that some indigenous knowledge-based innovation and creation are protected in terms of the existing IP legislation. They have argued that the effect of this provision is

intended to invalidate prior registered patents based on indigenous knowledge and genetic resources. The other concerns are:

- (a) How far back would the retroactivity apply.
 - (b) Who will perform the identification process of utilisation, which would in terms of the IKS law require authorisation, and how long would such a process take place.
- (3) WIPO has suggested that the effect of this provision on existing IP rights in respect of indigenous knowledge-based innovations and creation requires further consideration.

20. *Implementing structures*

As previously mentioned, the Bill makes provision for the establishment of a Regulatory Authority and a Directorate. Most commentators felt that the functions of these two bodies could be combined to avoid unnecessarily increasing the number of people to administer the act. Other commentators remarked that "far from recognizing indigenous community rights, the state seems to be eager to get full control over their knowledge, information and natural resources" (Grace Noguiera, Brazilian lawyer). This brings into question the level of involvement of holders of indigenous knowledge in the implementation of the Bill. However, commentators acknowledge that the identification of holders of indigenous knowledge is a difficult task.

21. Various other comments relating to the format of the Bill were raised, but we believe the above comments represent the essence of the main comments. In the light of the comments raised, the Committee called for public hearings in all nine provinces. In preparation for these hearings, questions were prepared and circulated. The purpose of these was to assist the Committee to address the concerns/comments raised and to obtain the views of indigenous people/practitioners on how to deal with the contentious issues.

C. *Questions*

1. *Understanding of IKS*

- (1) What is your understanding of IKS?
- (2) Does the definition of IKS adequately reflect our understanding thereof?
- (3) Do you believe that our understanding of IKS is adequately reflected by the five broad categories of IKS, namely Technology, Social issues and IKS,

Biodiversity, Social institutions and Liberatory processes?

2. *Protection, preservation and promotion of IKS*

- (1) Should Parliament pass legislation for the protection, preservation and promotion of IKS?
- (2) How should the legislation deal with the secrecy and sacredness aspect of IKS?
- (3) What are our concerns on IKS and how do we want these concerns addressed in IKS legislation?
- (4) What rights of indigenous people do we want MOST protected in IKS legislation?
- (5) How should IPRs be extended to IKS?

3. *Control and ownership of IKS*

- (1) How should we organise ourselves as indigenous people to take control and ownership of IKS and to maximise benefit-sharing on the use of IKS?
- (2) Should a register of IKS be created, if so, by whom, and how must it be designed?
- (3) How should ownership disputes on IKS be settled?

4. *Traditional leaders and IKS*

What should be the nature of the relationship between traditional leadership, indigenous communities and Parliament?

5. *Establishing fact-finding mission on IKS*

- (1) Do you believe that the government should constitute a fact-finding mission on IKS, whose functions would, *inter alia*, be to—
 - (a) investigate work done by all role-players on IKS to date;
 - (b) investigate the appropriate structure for use by practitioners on IKS to eliminate their marginalisation;
 - (c) evaluate IKS priorities, legislation, policy development, international linkages and implications;

(d) make the necessary recommendations on IKS issues?

(2) If so, how should this fact-finding mission be constituted, and what other issues should it cover?

D. Answers

1. Understanding of IKS

(1) IKS was seen as a way of life which has social consciousness implications and has sustained indigenous people from generation to generation.

(2) Participants considered and debated the efficacy of the five broad categories of IKS. The general feeling was that IKS is very broad and covers all aspects of the lives of indigenous people, including interaction amongst themselves and with the environment in which they live. Others felt that a further category of economic issues could be introduced but for purposes of drafting a definition of IKS, these five categories were sufficient.

(3) The participants were also of the view that the definition of IKS was too narrow and couched in folklore terms. The definition must be amended to reflect all aspects of cultural heritage, including the indigenous knowledge of plants and animals as food and in medical treatment.

2. Language

In all nine provinces, participants were of the view that language is an important manifestation of indigenous knowledge. It conveys cultural heritage and philosophical tenets of indigenous people (for example, the saying that "umuntu ngumuntu ngabantu" conveys the philosophy of "ubuntu", which other countries are now researching for implementation in organisational design). Through this saying, children were taught the importance of being part of a collective/team and of sacrificing personal needs in the interest of the common good of the collective. This in turn fostered respect for other people in the collective and assisted in conflict management resolution within the collective. Participants raised the concern that indigenous languages are often researched by non-indigenous people, who then produce books and sell them to indigenous people. In most instances, these books incorrectly reflect indigenous languages. Traditional leaders in the Northern Cape were of the view that the Khoisan languages are inextricably linked to the land and the people.

3. Cultural heritage/social issues

Indigenous knowledge includes culture, spiritual knowledge, histories, oral tradition, teaching and learning sys-

tems, indigenous ceremonies, literary, performing and artistic works, which includes music, dance, songs and praise poetry.

4. *Institutions*

Participants regarded indigenous institutions, such as initiation ceremonies, traditional leadership, traditional healing, lobola and lekgotla, important in any definition of IKS.

5. *Indigenous technologies*

(1) Food management and preservation systems.

(2) Seeds preservation and management systems.

(3) Indigenous farming and agricultural techniques. The general feeling was that an effort must be made at government level to support indigenous farmers in this regard, especially in view of the controversy which has arisen with respect to genetically modified food.

(4) Indigenous mining techniques.

6. *Biodiversity*

(1) Knowledge of and sustainable use of flora and fauna as food and for medical treatment.

(2) General ecological knowledge.

(3) Indigenous human genetic material, including DNA and tissues.

7. *Liberatory processes*

(1) This category was debated at length, and the general feeling was that further research should be conducted thereon. It was acknowledged that conflict resolution methods adopted in institutions such as "lekgotla" represent indigenous wisdom. The talks at Codesa on the freedom of this country were structured on the principles of "lekgotla". The basic premise of "lekgotla" is that parties to a dispute must seek to obtain co-operation and consensus on the end result. This is in stark contrast with the western adversarial system applied in our courts, which is characterised by antagonism and conflict between parties. It was noted that the invitation extended to Mr Cyril Ramaphosa to mediate in the Ireland dispute was recognition of the strength of "lekgotla" principles in conflict resolution and management.

(2) The concept of "ubuntu" was also discussed at length. It was recommended that further research be done thereon, particularly in view of the fact that institutions such as Harvard had begun to conduct research in this regard.

8. *Suggested definition of indigenous knowledge*

- (1) The following is a suggested draft definition of indigenous knowledge, based on the findings and consultations at the hearings:

Indigenous knowledge is that continuous living knowledge that is acquired, nurtured, evolved and transmitted from generation to generation by indigenous people, whether collectively or as individuals, as part of expressing all aspects of their indigenous cultural heritage and concerning without limitation:

- (a) Indigenous cultural identity—spiritual knowledge, histories, oral tradition, teaching and learning systems, indigenous ceremonies, literary, performing and artistic works, which includes music, dance, songs and praise poetry.
- (b) Indigenous institutions—initiation ceremonies, traditional leadership, traditional healing and “lekgotla”.
- (c) Indigenous technologies—food management and preservation systems, etc.
- (d) Biodiversity—knowledge of and sustainable use of flora and fauna as food and for medical treatment, etc.
- (e) Indigenous conflict resolution and management systems—“lekgotla”, which regulates the relationships of indigenous peoples amongst themselves and with the environment in which they live.

9. *Definition of indigenous people*

It was suggested that the Bill should contain a definition of indigenous people. The current draft does not have this definition.

10. *Protection, preservation and promotion*

Should Parliament pass legislation for the protection, preservation and promotion of IKS?

- (1) This was asked in view of the two extreme positions on protection of IKS within the Convention forum, referred to in paragraph B.12(4) above.
- (2) Participants acknowledged that the purpose of IPR is to turn knowledge into a marketable commodity. This means that knowledge must be separated and isolated into identifiable pieces, which can be protected by law. IKS, on the other hand, is integrative, holistic and synergistic. However, the reality of the situation is that indigenous knowledge is being misappropriated without reward or recognition of its holders. Overall, a significant aspect of the global economy is based on

the appropriation and use of indigenous knowledge to the extent that trade in medicinal plants from developing countries runs into billions of rands. The participants felt that, in view of these developments, indigenous knowledge must be protected and just compensation for the use of such knowledge must be guaranteed.

- (3) Participants felt that the constitutional guarantees extended to customary law should likewise be extended to IKS.

11. *How should legislation deal with secrecy and sacredness aspect of IKS?*

- (1) The participants felt that secret and sacred matter must be dealt with in accordance with the customary rules of indigenous people. A concern was raised, however, about the unauthorised use and reproduction of secret and sacred material for commercial purposes. This has led to the disclosure of secret and sacred material to parties who are not entitled to know or view such material. It is now common course to watch male initiation ceremonies on television. The fact that this institution was experiencing problems and challenges, did not justify the violation of its secrecy and sacredness. These challenges and problems must be solved within an indigenous context.

- (2) Other participants felt that, with the exception of traditional healing and spiritual matters, indigenous people should evaluate whether it would still be necessary to retain secrecy and sacredness after legislation on IKS has been passed. These participants argued that the reason why indigenous people originally introduced secrecy and sacredness, was to protect indigenous knowledge from misappropriation and scrutiny by missionaries. They further argued that if secret and sacred material is maintained as such in perpetuity, it might deprive indigenous communities from evaluating the efficacy and relevance of such material. The only requirement is that indigenous people must do the evaluation themselves in accordance with customary practices within an indigenous context.

- (3) The participants also felt that secret and sacred material of traditional healers or material relating to spiritual matters must be maintained as such and in accordance with the customary practices of indigenous people. The only requirement is that the

retention of secrecy and sacredness for traditional healing must be coupled with responsibility and accountability.

12. *What are our concerns on IKS and how do we want these concerns addressed in legislation on IKS?*

The participants raised the following concerns:

- (1) The legal status of IKS. The feeling was that the process of enacting legislation for the protection and promotion of IKS must be expedited.
- (2) Unauthorised use of secret and sacred material.
- (3) Unauthorised use of indigenous knowledge without benefit sharing or recognition of holders/creators of that knowledge.
- (4) The patenting by pharmaceuticals of plants which have been identified by indigenous people as having healing properties. Pharmaceuticals thereafter isolate the active ingredient of the plants and patent inventions on those plants even though their healing properties have been known to indigenous people for years.
- (5) The retention by universities and museums of art, stone implements and carvings without prior informed consent.
- (6) Misinformation in research. A lot of research has been conducted on indigenous people, their languages and institutions. Indigenous people have not been consulted on how the material is to be represented and disseminated.
- (7) Exclusion of indigenous knowledge from schools' and universities' curricula.
- (8) A lack of cohesive organisation, representing the interests of indigenous people and the difficulty of accessing indigenous people.
- (9) No educational campaign or awareness programmes on IKS.
- (10) The above concerns must be addressed by—
 - (a) finalising legislation on IKS;
 - (b) legislation protecting the rights of ownership and control of indigenous knowledge by indigenous people; and
 - (c) legislation making provision for a structure through which indigenous people can organise themselves and form local and international networks.

13. What rights of indigenous people do we want most protected in IKS legislation?

The participants listed the following rights:

- (1) The right of ownership and control of indigenous knowledge.
- (2) The right to benefit commercially from the authorised exploitation of indigenous knowledge.
- (3) The right to ensure that any means of protecting IKS is premised on the principle of self-determination, which includes the right of indigenous people to maintain and develop their own culture and knowledge systems and forms of social organisation.
- (4) The right to authorise or refuse to authorise the commercial use of IKS in accordance with indigenous customary law.
- (5) The right to maintain the secrecy and sacredness of IKS.
- (6) The right to prevent distortions and mutilations of IKS.
- (7) The right to legal assistance and support on IKS contracts and any unauthorised use of indigenous knowledge.

14. How should IPRs be extended to IKS?

- (1) Participants acknowledged that this topic was complex, and required further debate and investigation, given the fact that there was absence of consensus on whether and how to extend IP protection to IKS. The debate at international level has shown that the extension of IP protection to IKS is complex and controversial. Some participants felt the manner in which the Bill had extended IPR to indigenous knowledge might be in contravention of the provisions of TRIPS. It was suggested that this aspect should be investigated further.
- (2) The question here is whether legal protection of IKS can be achieved within the existing IP system or whether *sui generis* regimes should be enacted to offer legal protection to IKS. Most participants were of the view that although the existing IP system does not offer protection to most of the indigenous-based innovations and technologies, certain aspects of IP can be used to protect IKS:

(a) Certification and Collective Marks.

(b) Trade Secrets.

(c) Geographical indications.

15. Participants felt that the debate on IP protection of indigenous knowledge has tended to focus on the restrictive nature of patents' and plant breeders' rights, which have the following requirement for inventions to be patentable:

(1) It must be new.

(2) It must involve an inventive step.

(3) It must be capable of industrial and agricultural application.

16. Participants stated that indigenous people have used and continue to use trade secrets to protect indigenous knowledge. The advantage of trade secrets is that they can be used to protect subject matter which is unpatentable or because the holder thereof does not wish to disclose publicly for fear that a business competitor will use the information to the holder's disadvantage. Once the information is publicly disclosed, the holder can no longer claim the information secret. Certain aspects of indigenous knowledge relating to traditional healing and medicinal knowledge can be protected through trade secrets. The Bill should provide for the protection of indigenous knowledge through trade secrets.

(1) Geographical indications and collective marks were seen as useful tools for indigenous people seeking to obtain economic benefits from their indigenous knowledge or prevent its objectionable commercial use by third parties. Geographical indications are defined under TRIPS as indications which identify goods as originating in the territory of a (WTO) member or region or locality in that territory where a given quality, reputation or characteristic is attributable to its geographic origin.

(2) In South Africa, geographical indications, certification and collective marks are governed by sections 42 and 43, respectively, of the Trade Marks Act. A certification mark is defined as a mark capable of distinguishing in the course of trade, goods or services certified by any person in respect of quality, kind, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, as the case may be, from goods not so certified. A collective trade mark is a mark capable of distinguishing in the course of trade goods or services of persons who are members of any association from goods or services of persons who are not members thereof. The main difference between collective and certification marks

is that the former can only be used by the association which owns the mark, while the latter may be used by anybody who complies with the defined standards as to quality, value, etc. An important requirement is that the person or entity applying for the certification mark is competent to certify the goods or services concerned. With reference to IKS, indigenous associations or persons could certify products as being of a particular quality, mode or character and emanating from a certain region.

(3) Geographical indications and collective and certification marks have the following advantages for indigenous knowledge:

- (a) They are based on collective traditions and a collective decision-making process, a producer being qualified to use a geographical indication according to her location and methods of production. It is irrelevant whether the producer is an individual, family member, in partnership or in association. For example, Ndebele beads manufacturers and craftspersons could register a collective association and distinguish themselves in the market place.
- (b) They confer monopoly rights over the use of certain information, but simply limit the class of people who can use a certain symbol.
- (c) They protect and reward traditions while allowing evolution.
- (d) They emphasise the relationships between human cultures and their local land and environment.
- (e) They are not freely transferable from one owner to another.
- (f) They can be maintained in perpetuity (CIEL discussion paper for Convention workshop, November 1997).

17. A submission was made to the effect that the Registrar of Patents, Designs and Trade Marks should investigate the possibility of creating a register of well-known marks of IKS. A mark is well known in the Republic if it is known to a substantial number of persons interested in the goods or services to which the mark relates (e.g. McDonald's). The effect of this register would grant the right to indigenous persons to exclude others from using these marks.

18. Finally, it was suggested that it is important to establish mechanisms to ensure that, once the IKS legislation has been enacted, inventions based on IKS and genetic

knowledge to disclose their knowledge without safety mechanisms being put in place. It was still necessary to control access to knowledge.

- (2) It was recommended that an interim measure would be to register all holders of IKS, including their speciality area, without disclosing the details of knowledge. The interim register would simply provide contact details of indigenous knowledge holders. The disclosure of knowledge would only be done on enactment of legislation on IKS and subject to the condition that—

- (a) the register should not stifle the development of IKS;
- (b) inclusion of knowledge in the register should be voluntary; and
- (c) new material and secret and sacred knowledge would require further protection.

22. How should ownership disputes on IKS be settled?

- (1) The participants saw the issue here as how to identify rightful owners of IKS and how to deal with competing claims of ownership and how to deal with IKS that is similar across boundaries and populations.

- (2) The participants supported the dispute resolution mechanisms set out in the Bill:

- (a) Through customary law and practice.
- (b) Conciliation and arbitration.
- (c) The importance of having an informal dispute resolution system was stressed, as it would then be accessible to indigenous people. The Bill does not provide for a court of competent jurisdiction on IKS matters. It was also felt that courts should be used as a last resort.
- (d) With reference to IKS that cuts across boundaries, it was felt that ownership rights of all concerned must be respected, subject to joint benefit-sharing. Collecting agencies would assist in this regard.

23. Traditional leaders and IKS

- (1) Do we believe traditional leaders have a role to play in IKS? If so, what is the nature and extent of this role?

24. They also felt that the use of the term "traditional doctor" could confuse members of the public into believing that they were in some way linked to "witchdoctors".

(1) Other practitioners felt that the appropriate term to be used in describing their office should be "traditional health care practitioners".

(2) Traditional healing was recognised as permeating all aspects of indigenous life. Traditional healers play a very important role in health care, counselling, spiritual healing and African traditional religion. The term "witchdoctor" was coined by the previous legislature, which did not appreciate the nature of the social role played by traditional healers. The Suppression of Witchcraft Act regulates matters connected with witchcraft. This Act insufficiently distinguishes between witchdoctors, witch finders and traditional healers. In fact, the Act does not define the terms "witchdoctors" and "witch finders". This Act also makes the consultation of a witchdoctor (traditional healer) to establish that a third party is a witch, an offence. Practitioners raised the concern that this provision does not appreciate the holistic nature of their practice. Often, their patients consult them for health reasons, and during the consultation and diagnosis, it transpires that there is involvement of evil forces. It is then their duty to protect their patient in this regard. The manner applied for protection purposes then distinguishes witches from healers. Witches intentionally harm and kill people or cause harm or death to people. Healers heal by protecting people from harm and death through the spirit and ancestors.

(3) It was agreed that the concept of witchcraft must be debated and clarified further, as historically it has been defined and understood in western terms. Traditional leaders in particular stressed the importance of protecting, preserving and promoting the institution of traditional healing.

25. Should traditional doctors be obliged to explain diagnostic findings to their clients and society when the need arises?

Practitioners were concerned that western doctors are never required to explain their diagnostic findings in respect of their patients to society. Would they be required, for example, to disclose diagnostic findings in respect of sexually transmitted diseases? The disclosure would certainly violate healer-and-patient confidentiality and trust. The only duty is and will always be to their patients. The only exception would be in the case of unexplained death. In this instance, the disclosure would be made to members

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- (3) evaluate IKS priorities, legislation, policy development, international linkages and implications; and
- (4) make the necessary recommendations on IKS issues?

If so, how should this fact-finding mission be constituted and what other issues should it cover?

28. Traditional leaders submitted that the establishment of the fact-finding mission was a key issue, for the following reasons:

- (1) A multiplicity of parties are involved in IKS work without the necessary co-ordination.
- (2) It is impossible to establish the identity of and the nature of IKS work being done by the various parties.
- (3) There was therefore a real risk of losing valuable IKS work, given the current method of operation.
- (4) It would be difficult to formulate or establish a register without knowledge or access of IKS work.
- (5) It would make recommendations and clarify some issues which were not dealt with sufficiently or at all during the public hearings, in particular the issue of resources to be allocated to IKS.

29. Other participants felt the establishment of this fact-finding mission would create awareness on IKS and greater involvement of practitioners and indigenous people. A concern had been raised during the hearings on the difficulty of ensuring greater involvement of indigenous people in IKS. The fact-finding mission would make recommendations on—

- (1) education and awareness strategies that need to be developed to encourage debate on IKS;
- (2) short-term protection strategies, which can be implemented without the need for the enactment of the IKS legislation;
- (3) the format of a pre-legislation body, which would be responsible for co-ordinating IKS-related work;
- (4) the formation of national and international networks for indigenous people, which would share knowledge and experience;
- (5) innovation and sustainability of current research methodologies in IKS, and the development of code of ethics in consultation with indigenous people for researchers and third parties on IKS research;

- (6) the nature of Collective Administrative Agencies and the structure to which such agencies must be attached;
 - (7) creating conditions for the establishment of an atmosphere of trust; and
 - (8) finalisation and passing of IKS legislation.
30. The fact-finding mission should also make recommendations on long-term strategies:
- (1) Inclusion of IKS in school curricula.
 - (2) Access to indigenous land of Khoisan traditional leaders who have been dispossessed without the provision of alternative land on which they would continue to practice indigenous cultural heritage.
 - (3) Promotion of IKS after legislation.
31. There was no agreement on the nature of the fact-finding mission. Some participants felt that it could be in the nature of a commission headed by a judge who had expert knowledge on indigenous law. Others felt that the commission must be chaired jointly by a judge and an indigenous intellectual, whilst another group felt that a commission could be based on existing local government structures, with the proviso that indigenous people should play a key role there.

E. Conclusion

1. The purpose of the public hearings was to—

- (1) assess whether the Bill adequately addresses the needs and concerns of indigenous people, and if not, to establish the extent and nature of needs and concerns which require further consideration; and
- (2) have further consultation and debate on such issues, and from such discourse attempt to develop a basic framework for the improvement of protection, recognition and promotion of indigenous knowledge.

2. The basic principles emanating from the discourse at these hearings can be summarised as follows:

- (1) The Bill requires revision and amendment to construct a broader definition of IKS. Indigenous health care practitioners regarded the indigenous knowledge of plants and animals as an important manifestation of their indigenous knowledge, which is exploited without recognition and benefit-sharing. Most health care practitioners are at loss as to how to protect their knowledge and organise themselves to prevent further exploitation.

(2) The categories of cultural heritage ("ubuntu") and liberatory processes ("lekgotla/inkundla") require further consideration and debate so that they can be properly articulated in legislation. In the present period of violence and break-down of family values, these categories could play an essential role. We have seen that indigenous methods of conflict resolution and management have been regarded as relevant and useful elsewhere.

(3) The legislative framework for the protection of IKS has to be revisited. What has come out of these hearings, is that the current legislative framework needs further consideration. It has been suggested that the following must be used to protect IKS:

- (a) Geographical indications.
- (b) Certifications and Collective Marks.
- (c) Trade secrets.

In fact, a recommendation was made to institutionalise trade secrets for the protection of other manifestations of IKS. Participants argued that trade secrets have been, and continue to be, used by indigenous people to protect their knowledge.

(4) The concern raised by other commentators that (unless SA IP laws are amended to provide for the protection of IKS) the manner in which IPR has been extended to IKS, violates international agreements such as TRIPS and the Paris Convention for the Protection of Industrial Property), requires further consideration. Other commentators argue that certain aspects of IPR which are group-oriented (geographical indications; Certifications and Collective Marks) could be used to protect IKS without violating any international agreements.

(5) WIPO has indicated that the issues of IPR and the protection of IKS are complex. They have indicated that they would be prepared, if so requested, to comment further in this regard. The Registrar of Patents, Designs and Trade Marks, Mr Netshitenzhe, has also indicated that he would be happy to assist in this regard. He has been working closely with the OAU on the Model Law for the protection of indigenous knowledge in the African Region.

(6) The question of establishing appropriate structures for the administration and promotion of IKS was exten-

4. Report of the Select Committee on Public Services on the *Engineering Profession Bill* [B 19B—2000] (National Assembly—sec 75), dated 30 October 2000:

The Select Committee on Public Services, having considered the subject of the *Engineering Profession Bill* [B 19B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

5. Report of the Select Committee on Public Services on the *Property Valuers Profession Bill* [B 20B—2000] (National Assembly—sec 75), dated 30 October 2000:

The Select Committee on Public Services, having considered the subject of the *Property Valuers Profession Bill* [B 20B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

6. Report of the Select Committee on Public Services on the *Project and Construction Management Professions Bill* [B 21B—2000] (National Assembly—sec 75), dated 30 October 2000:

The Select Committee on Public Services, having considered the subject of the *Project and Construction Management Professions Bill* [B 21B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

7. Report of the Select Committee on Public Services on the *Quantity Surveying Profession Bill* [B 22B—2000] (National Assembly—sec 75), dated 30 October 2000:

The Select Committee on Public Services, having considered the subject of the *Quantity Surveying Profession Bill* [B 22B—2000] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

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REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS OF NATIONAL ASSEMBLY

TUESDAY, 31 OCTOBER 2000

1. The House met at 14:03.
2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:04] Notices of motion.
4. [14:20] The Chief Whip of the Majority Party moved without notice: That the House—
 - (1) notes that the Springbok winger Breyton Paulse was named Player of the Year at the Sandton Convention Centre last night;
 - (2) concurs with commentators that Breyton is a gifted sportsperson with great speed, vision and anticipation; and
 - (3) joins his family, friends, colleagues and all South Africans in commending and congratulating Breyton on this celebrated award, which will serve to inspire more and more black players to emulate him.

Agreed to.

5. The Chief Whip of the Majority Party moved: That, notwithstanding Rule 253, the Second Reading debate on the *Redetermination of the Boundaries of Cross-boundary Municipalities Bill* [B 69—2000] (National Assembly—sec 75), the Second Reading debate on the *Abolition of Lebowa Mineral Trust Bill* [B 49—2000] (National Assembly—sec 75) and the Second Reading debate on the *Chiropractors, Homeopaths and Allied Health Service Professions Second Amendment Bill* [B 66B—2000] (National Council of Provinces—sec 76) be conducted on Wednesday, 1 November 2000, and Friday, 3 November 2000.

Agreed to.

6. [14:21] The Speaker announced that two senior parliamentary officials, Ms NM Somdaka, Division Manager: Institutional Support, and Mr D C Cook, Superintendent: Property Services, had been summarily dismissed following disciplinary procedures.

7. [14:23] The Speaker made an announcement concerning the irregular use of travel facilities by Mr I Z Ncinane, MP.

The member standing, the Speaker administered a severe reprimand to him in the following terms:

Mr Ncinane, the disciplinary committee found that between May and August this year you, on 10 occasions, travelled using warrants issued to your children. In respect of a further seven journeys this year, Parliament paid the full costs although the journeys were undertaken on the travel warrants of minors under the age of 12.

You acknowledged to the committee that you had made mistakes and that on at least one occasion you knowingly misused travel warrants issued to your dependants.

Travel benefits are made available to members at public expense to facilitate members carrying out their duties and responsibilities as public representatives.

Mr Ncinane, I view your deliberate abuse of your travel facilities in a very serious light. Your conduct is reprehensible in the extreme. You have abused the public's trust and in the process brought Parliament into disrepute.

In this public forum, I issue a severe reprimand to you for your inexcusable and reckless conduct.

As there is *prima facie* evidence of fraud in respect of the identified 10 trips you undertook on your children's travel vouchers, I am referring the information and documentation to the Director of Public Prosecutions for further investigation.

You will repay the costs to Parliament for the 10 journeys for which you used the travel warrants of your children. You will also repay to Parliament the difference between the costs to Parliament for the seven journeys ostensibly by adults and the costs of a journey for a child under 12 years. The moneys involved are to be paid by 31 December 2000.

Furthermore, you will forfeit 10 tickets from your allocation between now and the end of 2001, and the travel warrants for your dependants are immediately withdrawn for the remainder of the current year.

Mr I Z Ncinane thereupon apologised to the House for his conduct and expressed his regret.

8. [14:29] The House, at the request of the Deputy President, discussed the following subject: Steps to be taken to restore the moral fibre of South African society.

Debate concluded.

9. FIRST ORDER [16:16]

Introduction—*Revenue Laws Amendment Bill* [B 70—2000] (National Assembly—sec 77).

Bill, together with the introductory speech, referred to the Portfolio Committee on Finance for consideration and report.

10. SECOND ORDER [16:25]

Consideration of Report of Portfolio Committee on Justice and Constitutional Development on *Directorate of Special Operations Bill* [B 39—

2000] (National Assembly—sec 75) (Announcements, Tablings and Committee Reports, p 967).

Report adopted without debate.

11. THIRD ORDER [16:26]

Second Reading debate—*National Prosecuting Authority Amendment Bill* [B 39B—2000] (National Assembly—sec 75) (introduced as *Directorate of Special Operations Bill* [B 39—2000] (National Assembly—sec 75).

Debate concluded.

Bill read a second time.

12. FOURTH ORDER [18:02]

Consideration of Report of Portfolio Committee on Justice and Constitutional Development on *Judicial Matters Amendment Bill* [B 63 and B 63A—2000] (National Assembly—sec 75) (Announcements, Tablings and Committee Reports, p 968).

Report adopted without debate.

13. FIFTH ORDER [18:03]

Second Reading debate—*Judicial Matters Amendment Bill* [B 63B—2000] (National Assembly—sec 75).

There was no debate.

Bill read a second time.

14. The House adjourned at 18:04.

S MFENYANA,

Secretary to Parliament.



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 31 OCTOBER 2000

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

(1) The Joint Tagging Mechanism (JTM) on 31 October 2000 in terms of Joint Rule 160(6), classified the following Bills as money Bills:

- (i) *Second Adjustments Appropriation Bill* [B 67—2000] (National Assembly—sec 77)—(Portfolio Committee on Finance—National Assembly).
- (ii) *Revenue Laws Amendment Bill* [B 70—2000] (National Assembly—sec 77)—(Portfolio Committee on Finance—National Assembly).

2. The Speaker and 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 Portfolio Committee on Finance and to the Select Committee on Finance:

- (a) Economic Report of the South African Reserve Bank for 2000.
- (b) Report and Financial Statements of the South African Reserve Bank for 1999-2000 [RP 32-2000].
- (c) The South African Reserve Bank Governor's Address on 29 August 2000.
- (d) Framework Agreement for Financial Co-operation between the Government of the Republic of South Africa and the European Investment Bank, tabled in terms of section 231(3) of the Constitution, 1996.

- (e) Rider Number Three to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning Technical Assistance Consultancy Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (f) Memorandum of Understanding between the Government of the Republic of South Africa and the Commonwealth Secretariat with respect to Technical Co-operation Activities, tabled in terms of section 231(3) of the Constitution, 1996.
- (g) Arrangements between the Government of the Republic of South Africa and the Minister for Development Co-operation of the Netherlands concerning Sectoral Budget Support (2000-2003), tabled in terms of section 231(3) of the Constitution, 1996.
- (h) Rider Number One to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the European Programme for Reconstruction and Development (EPRD) Information and Communication Programme Fund, tabled in terms of section 231(3) of the Constitution, 1996.
- (i) The Intergovernmental Fiscal Review for 2000 [RP 170-2000].
- (j) Medium Term Budget Policy Statement—2000 [RP 171-2000].

(2) The following paper is referred to the Portfolio Committee on Water Affairs and Forestry and to the Select Committee on Land and Environmental Affairs:

Exchange of Letters between the Government of the Republic of South Africa and the Government of the People's Republic of China concerning the Provision of Water Supply Materials, tabled in terms of section 231(3) of the Constitution, 1996.

(3) The following papers are referred to the Portfolio Committee on Environmental Affairs and Tourism and to the Select Committee on Land and Environmental Affairs:

- (a) Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Denmark on Financial Assistance to the Regional Training and Technology Transfer Centre for Implementation of the Basel Convention in English Speaking Countries, tabled in terms of section 231(3) of the Constitution, 1996.
- (b) Agreement between the Government of the Republic of South Africa and the Government of the Federal Republic of Germany concerning Financial Co-operation for the Study and Expert Fund Project, tabled in terms of section 231(3) of the Constitution, 1996.
- (c) Agreement between the Government of the Republic of South Africa and the Government of Spain on Grant Assistance for the Establishment of a South African Tourism Institute, tabled in terms of section 231(3) of the Constitution, 1996.

(4) The following papers are referred to the Portfolio Committee on Agriculture and Land Affairs and to the Select Committee on Land and Environmental Affairs:

- (a) Rider Number One to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the participation in the SADC Regional Food Security Training Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (b) Rider Number Three to the Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the Land Reform Pilot Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (c) Statements in terms of section 65(2) of the Land Bank Act, 1944, of the Assets and Liabilities and the Profit and Loss Account of the Land and Agricultural Bank of South Africa as at 31 December 1999.
- (d) Statements of the Assets and Liabilities and the Profit and Loss Account of the South African Mortgage Insurance Company Limited of which the Land and Agricultural Bank of South Africa is the sole shareholder.

(5) The following papers are referred to the Portfolio Committee on Safety and Security and to the Select Committee on Security and Constitutional Affairs:

- (a) Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the SADC Regional Drug Control Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (b) Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning Capacity Building and Institutional Development for the South African Police Service (SAPS) and the Department of Safety and Security, tabled in terms of section 231(3) of the Constitution, 1996.

(6) The following papers are referred to the Portfolio Committee on Housing and to the Select Committee on Public Services:

- (a) Financing Agreement between the Government of the Republic of South Africa and the European Commission concerning the support to the Social Housing Programme, tabled in terms of section 231(3) of the Constitution, 1996.
- (b) Agreement between the Government of the Republic of South Africa and the Government of Switzerland concerning support to the Greater Tjoksville Upgrading Project in Port Elizabeth, tabled in terms of section 231(3) of the Constitution, 1996.

(7) The following paper is referred to the Portfolio Committee on Education and to the Portfolio Committee on Public Enterprises. It is also referred to the Select Committee on