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PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at 14:02

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

Question 13:

The DEPUTY PRESIDENT: Hon Speaker ... [Interjections.]

The CHIEF WHIP OF THE OPPOSITION: Madam Speaker!

The SPEAKER: You are not the Deputy President, hon Steenhuisen.

I have just called the Deputy President ... [Interjections.]

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The CHIEF WHIP OF THE OPPOSITION: Madam Speaker, may I address you in terms of Rule 63, the Rule of anticipation. [Laughter.]

The SPEAKER: Hon Steenhuisen, just take your seat. Deputy President, please proceed.

The DEPUTY PRESIDENT: Hon Speaker, the proposed National Skills Development Strategy, NSDS, which is referred to here, is currently being discussed at Nedlac. The implementation is scheduled to happen on 1 April 2020, once the consultation process has been concluded and the relevant legislative framework has been finalised.

The proposed new NSDS focuses on occupations that support growth, encourage employment creation and enable social development. This would allow for the delivery of a range of programmes and will not be restricted to scarce skills to ensure that they reach a large number of people, which in the end will enable them to have access to employment and be able to embark on self-employment opportunities.

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This proposed plan is aligned with many others; the National Development Plan, NDP, White Paper for Post-School Education and Training and other key documents of government, which have set out important strategies and priorities for development with an emphasis on inclusive growth as well as employment creation.

One of most critical mandates of the Department of Higher Education is to ensure that the skills development systems and all supporting institutions are properly aligned to respond not only to national priorities but to a wide range of needs inherent in the developmental state project that we want to see happening in our country.

The proposed NSDP specifically emphasises the need to address all these challenges that have emerged from the current strategy, including, but not limited to the production of artisans as envisaged in the NDP and the placement of learners and graduates in the workplace.

The role of the National Skills Authority will be restructured according to this plan and refocus with its functions

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concentrated specifically on the monitoring and evaluation of our skills development system. Lessons that have been learned from the current strategy include the need to strengthen governance. The proposed plan seeks to establish credible systems for skills planning as well.

Finally, the success of this strategy and all other programmes aimed at building our human capital will be judged by the extent to which our young people, who are the key beneficiaries of this, will be able to gain the skills necessary to participate meaningfully in the labour market of our country. Thank you, Madam Speaker.

Ms C C SEPTEMBER: Madam Speaker, having listened to the response the Deputy Speaker gave to the question, should our resolve then also not be to ensure that we have a skilled and capable workforce that shares and contributes to the benefits of economic expansion whilst negotiations are continuing at Nedlac and also very importantly, inclusive growth? More importantly, Deputy President, can we ensure that we would know that the success of the plan depends of course on co-operation of all

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role-players for the benefits of women, youth, unemployed and learners? What is government doing to realise this and how would government ensure that all of this can happen? Thank you, Madam Speaker.

The DEPUTY PRESIDENT: Madam Speaker, it is quite clear that the issue of skills development in our country and probably the most important project our nation should be embarking on is through a skilled workforce that will be able to restructure the economy of our country and to ensure that we do indeed create meaningful jobs that our people can get into.

Right now, the Human Resource Development Council, HRDC, which I chair is focusing on that but more importantly, the Department of Higher Education and Training also focuses on all these. With negotiations and discussions that are taking place at the Nedlac level, we are certain that those social partners within Nedlac are the appropriate partners who should come up with innovative ideas and plans on how we can put our skills development process into a higher gear.

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Our young people are hungry for skills acquisition and all we need do is open up all the doors and give them opportunities to acquire those skills. We are seeking to do this through focus programmes through our Technical and Vocational Education and Training, TVET, colleges and indeed our universities as well. TVET colleges are meant to be the focal areas where we want to absorb as many young people as we possibly can and skill them with real skills that are useful in the economy.

To this end, we are roping in as many companies as possible to co-operate with us at the TVET college level both through adoption processes and also to curriculum development so that as we develop the skills, the skills are well attuned to the world of work and to what the industry and companies also require.

So, I couldn't agree more with the hon member and say that, indeed, skills development is a key area that we need to focus on as a nation and get all social partners in our country to participate in. Thank you very much.

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Mr A M SHAIK EMAM: Hon Deputy President, skills, as we have agreed is a very important aspect of transformation in the country. One of the problems we seem to be experiencing is that there is no link between the skills needs of the country and the curriculum of the different tertiary institutions.

Now, government provides NFSAS funding and bursaries. What is government willing to do to ensure that the funding provided through NFSAS or bursaries is in line with the skills development needs of this country? Very important, the challenges that we face in the TVET colleges, which are supposed to be providing the artisans and skills needed, their success rate is very limited. Could you please advice as to what additional measures will government take to resolve this matter? Thank you.

The DEPUTY PRESIDENT: Hon Shaik is absolutely right. There is a need for us to align what our institutions of higher learning are teaching with what the needs of the country are and specifically what the needs of our economy are. It is in this regard that we are encouraging these institutions to co-operate

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more at close range with industry players. We are encouraging industry players to interface with these institutions so that the curricula that are offered at institutions of higher learning are well aligned with what the industry needs. This is beginning to take place in a number of cases.

This also touches on the second question that the hon Shaik has raised about TVET colleges. As I said earlier in my answer that we are encouraging TVET colleges to partner with industry players either close to where their institutions are located or to industry players that may well be located elsewhere to bring them closer and to have a system of co-operation and collaboration, which will lead realignment of the curricula and go beyond that by getting young people to be placed in learnerships and jobs in those companies may be operating in particular industries.

Madam Speaker, we have found that when this happens, we do get a number of young people being offered not only learnerships but real jobs when this type of co-operation happens. We have seen that happening in the Gauteng area, as well as in other areas

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like KwaZulu-Natal. We want to encourage this more because it is a way to go, to have a very good symbiotic relationship between industry and our institutions of higher learning so that our education is not just theoretical but practical and be able to respond to the needs of the economy and the country. Thank you very much.

Mr M L W FILTANE: Hon Speaker, a developing country needs six skills in order for it to move forward. I will enumerate a few: Infrastructure needs skills; knowledge development and use needs skills; funds needs skills to be developed and managed and naturally occurring infrastructure. Skills are just one of those capitals but this is very central.

Now, schools are full, especially in the Eastern Cape where scholars reach up to matric without being able to read or write. This puts them on the back foot already. Now, my question to you is: How do you propose to circumvent the resultant inability of them not being able to learn or even to learn to unlearn those habits that are not productive and therefore are not able to contribute towards the economic development of the country? Just

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on the back foot of that is the fact that over the medium-term that we are looking at, the funding of TVET colleges is going to grow at a very slow pace as compared to the other forms of education that the country is offering.

Now, this is a matter of concern. It means that for these people to be able to learn they would depend on scholarships and as government how do you intend circumventing the fact we need more skilled people when the education system is not being all that helpful, and especially from the funding perspective. Thank you.

The DEPUTY PRESIDENT: Madam Speaker, with regard to the challenges that our country continues to face at the school level, I am pleased to say that the Department OF Basic Education is well aware and alive to these challenges and continues to take concerted efforts to address these problems.

The Minister of Basic Education continues to say that the important task in the end is to revamp our education system to a point where we get young children at school level to be able to

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read and write. They have a number of projects and programmes that are aimed at enhancing precisely that.

Clearly, the legacy of our past tends to catch up with us as we move ahead. It holds us back but notwithstanding all that, there are a number of initiatives, which the Department of Basic Education or the Ministry of Basic Education is embarking on improving the whole process of learning the whole process of learning and teaching. Where it's making traction, we are seeing phenomenal results. We are seeing how young people have taken up the task of learning and reading in an enthusiastic way.

Clearly, the issue of funding is going to continue to be a problem, particularly now that the economy of our country is not growing as fast as we want it to. Our commitment to funding and supporting higher education, particularly at the TVET colleges is something that is firm and something we are determined to go ahead with. We will continue to fund those TVET colleges.

Obviously we would like to open as many as possible but that may not be possible. This is where the partnership between private sector and the public sector becomes important because through

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this type of relationship we will be able to unlock resources and reservoirs of assistance that we can rely on to ensure that our education system produces the type of skills that we want it to produce. Thank you, Madam Speaker.

Rev K R J MESHOE: Speaker, the ACDP welcomes the proposed new NSDS, which we hope will help address some of the many challenges facing poor and unemployed South Africans, such as accessing information about opportunities and available skills development programmes.

If I may, I would like to suggest that the Deputy President considers using his influence to ensure that when implementing agents of these programmes disseminate information that municipalities and constituency offices of Members of Parliament also become hubs where such information could be made available for community members. What I want to know from the Deputy President is whether or not the NSDS includes mentorship programmes for the various skills being developed? Thank you.

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The DEPUTY PRESIDENT: Hon Speaker, the suggestion that we should utilise implementing agents as they go about implementing this strategy, they should also utilise various offices including Members of Parliament, I find it refreshing and welcome proposal, which we would like to take up with the ministry or better still with those who are going to be implementing the strategy. So, I would like to thank Rev Meshoe for coming up with that idea. I am sure it is implementable.

With regard to the issue of mentorship, it clearly has to be part and parcel of this strategy. We already see how mentorship pays dividends through the TVET college process that I spoke about. Once we strike a partnership between industry players and our TVET colleges according to the various disciplines that are inherent in the TVET colleges, we often find that companies that participate are able to deploy people. Some of them almost deploy on permanent basis and they are able to young people young people in the various skills that they have chosen.

Mentorship, particularly as we are dealing with a very terrible past of a system that tended to dehumanise our people, we find

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it that mentorship can help a great deal and many who are participating in this type of process are finding it very worthwhile. In that regard, I would like to thank Rev Meshoe again for raising this matter. Thank you.

Question 14:

The DEPUTY PRESIDENT: Speaker, as I indicated in a previous reply in this very House. There is a section called section 92 (2) of the Constitution that says that Members of Cabinet - that is members of the executive, are accountable collectively as well as individually to this very Parliament for the exercise of their powers and the performance of their functions. Now, the Constitution goes further and says that members of the national executive must provide Parliament, which includes this National Assembly, with full and regular reports concerning matters under their control.

The executive remains committed to ensuring that it accounts regularly and effectively to Parliament; that I can say without any equivocation. Cabinet receives regular report from the leader of government business, particularly when it comes

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whether Members of Parliament are executing their functions or not when it comes to answering parliamentary questions. Each time the executive meets, the leader of government business presents a report on how each member of the executive is performing and where we find that they are flagging in their performance. We raised it with them and encourage them to perform as it is expected. So I have dealt with this matter quite extensively in this National Assembly. If there is a lack of clarity on this matter, the Constitution is a document that should be studied closely, if it's not, it's a document that members can have for bedtime reading. [Interjections.] Read it very carefully and understand exactly what it says. Thank you, Madam Speaker.

The LEADER OF THE OPPOSITION: Deputy President, I mean in the interest of the President having bedtime reading around the Constitution, I wanted to get some clarity from you because it is correct that it is in the interest of accountability that members must come to this House to account. Now, Deputy President we note that Nkosazana Dlamini Zuma, an ordinary

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citizen in South Africa is receiving state protection on the basis of a security threat assessment.

Now, part of the culture that's developing is that even the President used a report which you mentioned, an intelligence report to remove a former Finance Minister. [Interjections.] And worse, he is asking us to give him that report. [Laughter.] Now, in the interest of accountability I don't want the Minister of Police to come here and ask us to give him a security assessment for Nkosazana Dlamini Zuma. What I am more interested in asking, Deputy President, is how are you going to ensure that, in fact, the Minister of Police comes to account here about fragrant state abuse, and ultimately how does he ensure that state money is not being spent on protecting the friends or family of the President when it comes to this VIP security? Thank you very much.

Mr B A RADEBE: On a point of order.

The SPEAKER: What's the point of order, hon Radebe?

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Mr B A RADEBE: Hon Speaker, with due respect, the follow-up question is radically different from the original question. [Interjections.] It's unfair to the Deputy President. Thank you.

The SPEAKER: Hon Deputy President, would you like to forego this question on the basis of the point of order that has been raised or would you like to entertain it, anyway?

Mr M L W FILTANE: Point of order, Chair.

The SPEAKER: Hon Deputy President, I see, you have been on your feet already.

Mr M L W FILTANE: Point of Order, Chair.

The SPEAKER: No, hon member. There was a point of order just now. I am dealing with the Deputy President. Hon Filtane, can you just take your seat, please! Let's proceed.

Mr M L W FILTANE: Sorry, will you give me an opportunity?

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The SPEAKER: If you are on the list for the follow-up question, I will give you.

Mr M L W FILTANE: No, no, I am talking about the point of order.

The SPEAKER: No, hon member, you don't raise a point of order on top of a point of order. Please, take your seat hon Filtane.

The DEPUTY PRESIDENT: Hon Speaker, in the light of the point of order that has been raised, all I wanted to add or say was that in the interest of enhancing accountability and all that, I would advise the hon member, the Leader of the Opposition to have these matters addressed at the relevant committee of this Assembly. [Interjections.] Thereafter, it can also be raised here. That is where the Minister of Police would be able to entertain and answer these questions, and I am sure the Minister would not be saying that he should come up with an assessment report himself. Thank you, Madam Speaker.

The SPEAKER: Now hon Filtane, I will give you a chance to raise your point of order. However, in actual fact, please, hon

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members can we allow a question session to stay that way. However, go ahead and raise your point of order.

Mr M L W FILTANE: Thank you for the opportunity, Chair. It has fallen off. Thank you.

The SPEAKER: Thank you very much.

Mr N PAULSEN: Speaker, hon Deputy President in February this year, the Head of Independent Police Investigative Directorate, Ipid, Robert McBride reported to Parliament that members of the Hawks and SA police Service, the SAPS, were fighting over drugs, at times killing each other at OR Tambo Airport. He further said that the then Police Minister Nathi Nhleko was protecting these rogue police. What have you done as a leader of government business to investigate those allegations and make the Minister account for his role in the deterioration in the quality of the work of the police?

The DEPUTY PRESIDENT: Hon Speaker that is a matter that clearly has to be investigated by the relevant entities of the police

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and indeed also Ipid itself. These are matters that when properly and fully investigated, a report is then prepared and handed over to the relevant body. In this case, if it's a matter as serious as this it could end up with the Minister or with the President himself. So, it's not a matter that a leader of government business would get involved in and conduct investigations, because the leader of government business doesn't even have the facilities to conduct such investigations. Thank you, Madam Speaker.

IsiZulu:

Mn Z N MBHELE: Ngiyabonga Somlomo, Sekela Mongameli ...

English:

... towards the end of his tenure as former Police Minister, Minister Nhleko precipitated a complete breakdown of his relationship with the Ipid directorate Robert McBride refusing to meet with him and telling him to report to the Speaker instead of to him as the Minister. Now, we observed in the Portfolio Committee on Police that Minister Nhleko would attend committee meetings with the Acting Police Commissioner Phahlane,

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but not with Mr McBride as part of the complete freeze-out he imposed on these crucial departments in his former portfolio. My question is: What measures are in place and what can you do as the leader of government business to resolve conflicts like these between Ministers and their senior officials in order to ensure the smooth running of government?

The DEPUTY PRESIDENT: I am able to say that this matter, indeed, did arise and we had to deal with it. As the leader of government business, we tried to get the various parties together and sought to ensure that there is peace between them so that they can continue executing their tasks. It was rather a difficult matter to deal with. Many efforts were made to address this matter. This is the type of a matter where we intervened without trying to put it on the front pages of newspapers. It is an ongoing process that we get involved in at the leader of government business level to try to smooth ways and paths of working together amongst colleagues. So, this matter was addressed as it has turned out, there has been a change of guard and we are hoping that these types of matters will not arise on an ongoing basis. Thank you.

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Mr A M SHAIK EMAM: Madam Speaker, to the hon Deputy President now that we know that the Minister of Police has been replaced with a new Minister of Police. Is there a process that you have undertaken to ensure that there is some form of continuity from the former Minister Nhleko to the new Minister Mbalula in order to fight crime in South Africa? Thanks.

The DEPUTY PRESIDENT: Madam Speaker, we have in the execution of our tasks wanted to ensure that there is indeed continuity in the work that is done between the changes of leadership in any government entity, be it at Ministerial level, director-general level and a whole number of others. In this case, yes, there has been ... we are encouraged by the enthusiasm that is being demonstrated by the new Minister in as far as fighting crime is concerned. I would like to invite all of us to encourage him and to wish him well in the execution of his very difficult task. Thank you, Madam Speaker.

Question 15:

The DEPUTY PRESIDENT: Madam Speaker, over the last 30 months, this programme that we call Back to Basics in local government

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has become well known and has also become a well-accepted, transformative intervention. It was introduced by the former Minister of Co-operative Governance and Traditional Affairs, Pravin Gordhan, and has had an effect on all municipalities, having gained traction in the largest metros to the smallest municipality in our country. It is pleasing to note that, even in the most remote areas of our country, this programme has gained so much traction and is being talked about as the one programme that is being used to revamp our municipalities.

Even where there was a change of leadership, particularly after the August 2016 elections, we find that the parties that have come in have embraced this programme and are implementing it. Multidisciplinary interdepartmental Back to Basics task teams have done a lot of work in most municipalities to develop municipal action plans. That is very pleasing.

An example of some of the indicators of success in the implementation of the first phase of this plan is that 92% of reporting municipalities had compliant management systems in place by the end of 2015-16. This must be seen against the

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backdrop of very little previous compliance with or adherence to municipal reporting systems. It shows that there is a great improvement.

The number of water service interruptions nationally decreased by more than half. That is also a good indicator of how well this Back to Basics programme is working.

However, there are still some challenges in a number of municipalities. Although there are fewer water disruptions, there are still problems in the state of water infrastructure in many municipalities, to the extent that around 10% of municipal water schemes can right now be described as being dysfunctional. These problems include poor management, lack of effective maintenance, and also unfortunately include things like vandalism and theft.

Some municipalities have had difficulty in paying their Eskom bills, and the provision of ... in areas of refuse removal has remained a challenge.

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The first phase of the Back to Basics programme focused on laying the foundation for a developmental local government by doing just basic things.

Building on this foundation and all the lessons that we will have learnt, the second phase will focus on ways in which municipal programmes can become instruments of social and economic transformation to build more inclusive local community economies.

There will be greater focus on issues such as spatial planning, local economic development and opportunities to improve the financial health of municipalities.

Al in all, this has been one of the more successful programmes that government has implemented, particularly at the level where our people live. As this plan is implemented going forward, I am sure that we are going to see a totally transformed municipal government system in our country, the type that we have always hoped we would have. Thank you.

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Mr E M MTHETHWA: Thank you, Deputy President, for the answer. At your summit, did you also discuss the issue of those provinces that are still lagging behind in terms of the implementation of this programme?

The DEPUTY PRESIDENT: Yes, at the summit that was held recently, I would say that the majority of municipalities were represented. Indeed, all provinces participated. We discussed areas of our country in which there is still a lack of proper implementation of the Back to Basics programme. We also came up with plans and strategies to support those municipalities that still experience challenges.

So, that issue was discussed.

After that summit, we are expecting there to be greater and increased adherence to the Back to Basics programme and for our municipal system to be a lot better than it was a few years ago.

Indeed, the signs are already there. People who participate in the municipal system are truly enthusiastic and they need to be

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encouraged to continue with the good work that they are doing.
Thank you.

Mr N M KHUBISA: Hon Deputy President, in the spirit of nation-building, we must admit that the masses of our people do not have access to water, roads, sanitation, houses, etc... The reason most of them are very apathetic is because they don't receive these services or receive them as speedily as it was announced. Hopefully, 23 years into democracy, we should move away from saying, no, we are still laying the foundations, and should try to hasten service delivery.

Now, as we move into its third phase, there are issues that undermine the Back to Basics programme. One is the question of non-compliance. There is no consequence management in place. No punishment or punitive measures are taken against those who are involved in corruption and who undermine our legal prescripts. You find that nothing is done.

Secondly, the whole question of cadre deployment is still really plaguing our municipalities. I must say, Deputy President, that

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we do have a sizeable pool of skills, although we still need some scarce skills, especially within municipalities. Let me cite one example. Just before we went to oversight, just on the side of our Parliament, at the gate, there were about 50 young people with degrees – Bachelors degrees, Honours degrees, Masters degrees – and, when one moved nearer to them, one discovered that some of them had some scarce skills. Some of them had engineering degrees but they would tell you about being unemployed for five years. This is the issue that we are facing. What can be done to address these matters that I have referred to, hon Deputy President? Thank you.

The SPEAKER: Before I call on the Deputy President to respond, can I discourage the making of examples because, while you are making an example, you tell a story instead of asking a question. [Interjections.] Hon Deputy President.

The DEPUTY PRESIDENT: Madam Speaker, I wanted to tell a story as well.

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The SPEAKER: You have the right to tell a story because you are answering. [Laughter.]

The DEPUTY PRESIDENT: Okay. [Laughter.]

The SPEAKER: I would like Members of Parliament to ask questions.

The DEPUTY PRESIDENT: Madam Speaker, in answering hon Khubisa's question ... because he started outlining some of the challenges that are faced by our municipalities ... issues such as water, roads, and sanitation. I happen to be in the Makana municipality a few days ago, and I was able to fully realise the type of challenges that some of these municipalities face. Makana municipality, particular in Grahamstown, has to deal with a 200-year old infrastructure in terms of maintaining and revamping it to make sure that the 82 000 people who live in that municipality have the best service delivery. Those are the challenges that they face and they have to address them, particularly when it comes to a very, very small budget or revenue stream that they get from the residents of the town.

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They have to find ways of repairing their infrastructure and maintaining it.

In relation to the skills, particularly the young people who have skills ... A number of these municipalities need highly skilled people. And hon Khubisa is correct: those highly skilled people can be found in our country. Many of our young people have qualified extremely well in some of those scarce skills. Our task is to go out there and find them. We are encouraging our municipalities to go out and find these young people and not just to deploy the usual people that they often have around them. Those skills are there throughout the length and breadth of our country. They are there in the form of highly trained financial people and highly trained engineers. We are encouraging them to advertise widely and to go and find and employ these young people so that they can make a contribution in the municipalities that they run. Thank you.

The SPEAKER: Hon Filtane ... [Interjections.] Hon Filtane is very energetic today!

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Mr M L W FILTANE: Thank you, Speaker. I will not give an example; I will lead evidence! [Laughter.]

In the context of corruption, in my own municipality, Mquma Local Municipality in Butterworth, refuse bags are being sold for R182 a piece. That's evidence, not just an example. So, one of the fundamentals is obviously not in place. In other words, of the six municipal capital expenditure budgets, there are funds going into the wrong pockets. I am aware of the fact that the Hawks are on it. That's why I said it is evidence.

Now, the other fundamental which is not in place and which is therefore an inhibiting factor in the whole programme of going back to basics is the absence of land. In 2013, the Spatial Planning and Land Use Management Act, Act 16 of 2013 was passed, but it is currently not being implemented effectively, for two reasons. The traditional leaderships – so many of them – are up in arms against it and, to make matters worse, this has now been handed over to the Presidency. How do municipalities perform any functions if they have no land for which they can plan the use of? Your answer will be highly appreciated by South Africa.

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The DEPUTY PRESIDENT: Hon Speaker, the issue of land, particularly land for municipalities where people can have houses built for them or where they may well want to build houses themselves, is a highly contentious issue because, as our towns and cities grow, scarcity of land becomes a huge challenge. The issue of the Spatial Planning and Land Use Management Act that the hon member has raised is a matter that is being discussed currently. Yes, there are a number of sometimes differing views but I am confident that we are going to find answers even around this very contentious issue of the implementation of the Spatial Planning and Land Use Management Act and the issue of land as a whole. The process of discussions to try and find solutions to precisely this question is underway. I would like to ask that we give it time. Thank you.

Nkosi R N CEBEKHULU: Hon Deputy President, in some way, the continued slide of the South African economy and the pressure of local government can be attributed to persistent and significant infrastructure constraints, which not only affects business, but also the wellbeing of thousands of people who migrate to urban

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areas every month for a better life and basic services. How will the Back to Basics programme assist in bringing an end to disparities between rural and urban populations and ensure infrastructure development in rural areas? Thank you.

The DEPUTY PRESIDENT: The Back to Basics programme is precisely focussing on and prioritising the revamping of our municipalities as one of its key pillars. Government is committed to ensuring that the disparities between rural and urban are addressed as a matter of policy and government action. We want as much as possible to continue promoting development in rural areas because a number of our people live in those areas. Communities live there and they were hugely neglected under apartheid rule. Not that much else was done in the urban areas...

So, government is addressing both. We are also focussing on finding ways of attracting investors to get closer to rural areas so that we generate economic activity and economic growth in those areas.

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This can clearly be done through a variety of ways such as agro-processing which we are focussing on, and a whole number of other activities like the agri-parks that we have embarked upon. Through this, we are hoping to create a community of progress and success, particularly at the economic level.

So this is a matter that we are very keen to continue focussing on. Thank you.

Question 16:

The DEPUTY PRESIDENT: South Africa is much as we may be going through number of challenges and where many people believe that we've got serious challenges and problems, particularly at the economic level, it could also be at the political level; but what remains and what needs to be said is that our country is far more stable and far more prosperous and in many important respects it has become relatively more equal society than it has been for the past decades.

We emerged from a divided to adopt a Constitution that is admired all over the world and this Constitution has formed the

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bedrock of a new and better society for South Africa. We have established democratic institutions that are stable and robust; and we should be proud that we've got so many democratic institutions, some of which are independent; and these are democratic institutions that we should defend, promote and make sure they continue existing and have integrity.

In addition to the Chapter 9 Institutions established to support constitutional democracy, there are thriving civil society organizations that work to advance the values of our Constitution, that are made up of a wide variety of our people in their diverse nature. We have regular elections for all spheres of government, which have consistently seen higher voter turnout and have resulted in several instances in the smooth transfer of power at all levels.

We have achieved and maintained macro-economics' stability and have managed our public resources prudently, continuously, sustainably and progressively.

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We have a stable, effectively regulated and adequately capitalised financial sector and a diversified economy.

South Africans are very active in challenging the state; and indeed, challenging the private sector to give effect to the socio-economic rights that are enshrined and embodied in our Constitution.

The South African economy has expanded significantly since 1994, it is now around 85% bigger in real terms than it was in 1994. Real per-capita Gross Domestic Product, GDP, is about a third higher than it was in 1994. About 8 million more South Africans are in employment, more than we had in 1994. In other words, we have created, since 1994, 8 million and more jobs.

The number Africans and women participating in the labour market have more than doubled. The growth of the black middle-class has been accompanied by a significant drop in both absolute and relative poverty.

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You may think that I'm just rattling statistics. I will invite you to go and read the publication that was put out by the South African Institute of Race Relations, who, for decades and decades have been analysing and monitoring the progress of our country and nation economically, socially and politically. And they came out with a report that confirms all this; where they said, truth be told, we have made progress in the past 23 years, whether people like it or not that is the reality of our situation.

Some people may not like the fact that we have made this progress, some people may feel that it is not sufficient progress. Let me hasten to add, we will all agree in saying that it is not sufficient and our people also agree that much as we have made progress, it isn't sufficient, we want more progress because as South Africans we expect the best, we expect nothing but the best and I would agree with that. Even the government acknowledges that despite the various challenges that we have, we've made progress but we still need to do much more.

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South Africa is a more prosperous society. The benefits of economic growth have reached some but have not reached all. We have not grown enough and created sufficient jobs, that we must admit and our task now is to create more jobs to grow the economy more to ensure that new the new entrants in the labour market, particularly young people, do find space in the economy. There has been progress in making the economy more representative, but that too is not enough.

What we really at is that the glass is half full, it's not half empty and our job is to make sure we fill this glass and make it more full so that all our people can benefit; one can put it in a different way, can reap the economic dividends of the democracy that we won in 1994. So, we have made progress. Much more still needs to be done and this government is determined to make sure that we do indeed make progress in a variety of ways so that we can continue building this nation to deliver the best of what South Africa can give to all its citizens. Thank you, Madam Speaker.

Sesotho:

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Mme S P TSOLELI: E re ke lebohe Motsamaisi wa dipuisano ka motsotso oo ke o fumaneng. Ke lebohe le tlhakisetsa eo Motlatsamoporesidente a re nehang yona e totobetseng mmoho le diphephetso kaofela tseo Afrika Borwa e nang le tsona moruong wa naha.

English:

Deputy President, the majority of our people – yes, they do – agree that we have travelled a remarkable journey as the nation during the past 23 years from an apartheid state to a constitutional democracy. This includes the fact that a general consensus has been reached on an economic vision of our country with the adoption, implementation and funding of the National Developmental Plan.

Deputy President, what do government envisage will be the impact of the recent downgrade by the rating agencies on the implementation of our economic strategy going forward? I thank you.

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The DEPUTY PRESIDENT: Downgrading by two rating agencies is obviously going to have a negative impact on our country and on our economy. This, clearly is a matter that should not take lightly because once you're downgraded you're basically having to dig your way out of a hole; you're in a situation where debt is going to be more expensive; where you're going to start struggling raise debt; where debt providers are not going to be too enthusiastic to give you or provide you with debt easily and when they do they will be asking you for an arm and a leg. So, your interest payment is going to go up.

This becomes even more so of a challenge for us because our economy is not growing at the levels that are going to make it a lot easier for us to get out of the situation. But notwithstanding all that, the government and - may I add - together with our private sector partners and our labour partners are determined to continue cooperating, to make sure that the downgrading is not a long-ended type of process that we should find ways of immediately out of this downgrading scenario that we are in now. And in doing so, we should begin doing things correctly; we should address some of the issues that the

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debt providers have raised; in doing so we should therefore cooperate more vigorously and this is already underway, the business community as well as labour and communities are already meeting, we've setup a task team that is going to look at the implications of the downgrading and the Minister of Finance actively involved in his discussions and collaboration with them. Indeed the economic cluster, departments or ministries are also going to continue doing that.

We're basically saying that all of us must look at this as a common problem; it's not a problem of the Minister of Finance alone or problem of one person alone in government. It is a common problem which all of us must address. What is also requires is that all South Africans, through their various formations must realize that we're facing a real challenge and real problem; and we need to have the level o decorum of talking positively about our country so that we can get out of this hole. What matters now is that we should dig our way out of the hole, come back onto ground and make sure we never get into a downgraded hole once again. [Applause.]

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Mr N F SHIVAMBU: Despite the self praises, Deputy President, South Africa is struggling to achieve a stable, equal and prosperous society. And part of the vivid reflections of such was the ANC government's killing of workers in Marikana. We heard that you have apologised somewhere at Rhodes University. What are you apologising on and who are you apologising to? And why are you not going to apologise in Marikana so that the people that have been affected are the ones who receive the apology? Maybe we can look at it as well.

Ms L A MNGANGA-GCABASHE: On a point of order Speaker. Hon member is referring to the ANC killing Marikana people, it's out of order Speaker and he should withdraw that.

The SPEAKER: Hon Shivambu!

Mr N F SHIVAMBU: Not yet resolved by the court.

The SPEAKER: Hon Shivambu, in fact, the issue of you saying it the way you're saying it is unparliamentary, the issue of Marikana, that's the first one.

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Secondly, it's a second totally different matter from the question that has been posed, on the basis on which you must ask a supplementary question.

The CHIEF WHIP OF THE OPPOSITION: Madam Speaker, on a point of order.

The SPEAKER: No, hon Steenhuisen.

The CHIEF WHIP OF THE OPPOSITION: Madam Speaker, I would like to take a point of order in terms of the rules of the NA if I may?

The SPEAKER: Hon Steenhuisen, I'd like to finish with hon Shivambu.

The CHIEF WHIP OF THE OPPOSITION: But Madam Speaker you've given a ruling, I'd like to take a point of order if I may?

The SPEAKER: I'd like to finish with hon Shivambu, hon Steenhuisen.

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The CHIEF WHIP OF THE OPPOSITION: But Madam Speaker it's [inaudible] to the question that you just raised.

The SPEAKER: Hon Steenhuisen, please give me a chance to finish with hon Shivambu.

The CHIEF WHIP OF THE OPPOSITION: Would you recognise me when you finish with hon Shivambu?

The SPEAKER: Let me finish with hon Shivambu.

Hon Shivambu, I want to go back, actually, myself, to relook at what you said. I would like to go back.

Mr N F SHIVAMBU: Okay. But just as a quick reminder Speaker, the Western Cape High Court has actually legitimated a phrase that says that the ANC government killed workers in Marikana. It was a long court case which Parliament ultimately lost and it's now judgement, which you have not yet appealed.

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The question is within context because we're speaking about South Africa's prosperity, stability; which might undermine development if it is not properly addressed. And we're pointing to an issue that is relevant now, that the Deputy President has apologised on the Marikana-ANC government's killing of workers. What is he apologising for and why is he not apologising to the relevant people in Marikana? It's linked to that, at least allow him to answer question and we'll take it from there.

The DEPUTY PRESIDENT: Let me say, when I addressed the students at Rhodes University. One of the young people who asked that question later came to me and said, Deputy President I asked you that question because I wanted to understand precisely what your conscience was telling you. And he said - before I come to the question you've raised hon Shivambu - thank you very much, you've Clearfield this matter to me because I am the one who ask this, I now know precisely what you did and how it all evolved; after I answered him. And I thanked him. And he said, I'm sorry if you found it embarrassing and I said no, I didn't find it embarrassing because as a public person or as a leader I know I have to be accountable for what I do and what I say and you as a

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student, citizen of this country was asking me to account for what I said and what I did.

What did I apologise for? I apologised, hon Shivambu, for the language I used. I did say I did use inappropriate or unfortunate language as expressed, yes in the emails, but I also said what I was dealing with, the intervention I was seeking to make was to try and stop further killings from happening. And for me this was sparked off [Applause.] thank you

The SPEAKER: Order hon members; let's allow hon Deputy President to finish.

The DEPUTY PRESIDENT: And this for me was sparked off by the killing of the 10 people who had died earlier; and the killing of those people had happened in the most gruesome manner; and some of those people were police, the majority of them were mineworkers. I explained at that meeting that I had served mineworkers for nine years. The better part of my growing up years I had committed to working for mineworkers; I had never

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been a mineworker myself, I was asked to go and form a union together with other people; and I threw myself at this task.

I said it could never be that I would want to have mineworkers killed or anybody for that matter, in the way that it all happened. So, hon Shivambu that is what I apologised for. Beyond that, I also said as a leader I take counsel from what other leaders' advice; and Mam'Winnie Mandela did raise the matter with me and she raised it publicly. She said I want to take you to Marikana and that was her initiative and I said I am willing to take counsel from Mam'Winnie and yes, accompanying her and she will lead me in this process, she will advice, she will give guidance and she will lead me.

Yes, I am prepared to go and meet the widows of those workers who were killed and the widows of the 44 people who were killed. Hon Shivambu, as soon as I made that statement, in the eastern Cape, a number of Reverends approached me for a private meeting and they said, hon Deputy President, some of us come from the areas where many of those workers come from, we want to go with you, yes to Marikana, with prayer, understanding and all that.

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And we will want to walk this journey with because we want you to do this right. [Applause.]

Hon Shivambu, it's a matter of just saying when it is going to happen? As a leader I'm prepared to be accountable and prepared to confront any situation where accountability is required.

[Applause.]

MS D CARTER: Speaker, following the irrational decision of Mr Zuma to remove the then Minister Nene as Minister of Finance, considerable progress was made by government, business and labour with Minister Gordhan to limit the damage caused. Subsequently, Mr Zuma acted irrationally once again by severely firing Minister Gordhan in bizarre and seemingly nefarious circumstances, plunging us once again into a manufactured socio-economic and political crisis.

You, Deputy President, have been quoted as stating that Mr Zuma fired Minister Gordhan "based on an intelligence report which I believe had unsubstantiated allegations." My question is, does this so-called intelligence report actually exist? Did Mr Zuma

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perfidious report as part of the reasoning for Minister Gordhan's removal and are you aware from where this report originated and do you have a copy?

The DEPUTY PRESIDENT: Hon Speaker, I always try not to seem like I'm avoiding answering questions or ducking and diving. This question is already a matter of legal challenge and legal processes and I would like, Madam Speaker, not to answer this question at this stage because there are legal that are been filed and this matter is under consideration right now. At a later stage I'll be quite happy to deal with this matter, but right now there's a legal case on this matter and I prefer that I should leave it at that.

The SPEAKER: I think it's quite reasonable.

Mr N SINGH: Hon deputy President, yes we agree with that there's been considerable progress in the last 23 years or so. But, however, one area where the significant progress is the field of corruption, the Centre for Violence and Reconciliation conducted some studies where they found that people in underdeveloped

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areas are angered by corruption. A case in point is what happened in Ladybrand, R131 million. The research further showed that the ruling party and the government are protective of comrades involved in corruption. I would like to know what is your assertion on this research view, that government is not doing enough to prevent corruption in our country and it's becoming a cancer in our society?

The DEPUTY PRESIDENT: I think all of us know and are aware of the fact that corruption is a major challenge in our country. [Interjections.] We are all aware that corruption is a major challenge and our people abhor corruption, they hate corruption because corruption robs them of the service delivery that they deserve and all the good things government should be doing for them.

One time I was talking about the houses that we have built. Someone who is in the building industry said to me, Deputy President you say we have built 4.3 million houses, we could have built double that if it was not for rife corruption. It is a reality, whether we want to talk about it or not, it is the

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reality that we confront and face; and ordinary people on the ground talk about and even if we may not want to talk about it. But the good thing in our country is that it is ventilated publicly by the free press that we have and we should pay heed to our people who continue to raise this matter because it is when that happens that we will be able to address the issue of corruption.

Clearly, corruption is so rife and it's all over, it needs to be rooted out. It needs to be rooted out, roots and all, and we need to be focused on rooting out corruption. At government level, I happen to know that, various level of government, a lot is been done to root out corruption. A number of people who are found with their hand sin the cookie jar are being dealt with, either dismissed or arrested; and clearly this is the task must continue. With corruption you can never really say you've solved it all, you need to continue on and on-going basis.

But, it is our determination, focus on rooting out corruption that is going to be something that our people will give recognition to. If they think we're doing nothing to root out

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corruption, there complaints will continue. Ours is to redouble our resolve to make sure that we do, indeed, not only talk about it but we should be seen to be rooting out corruption; and that is the only thing that will satisfy the millions of our people.

Question 17:

The DEPUTY PRESIDENT: Madam Speaker, the government has no plans currently to introduce electoral reform to include a constituency basis. As I indicated in my reply to this House on 02 November 2016, the current electoral system has played an important role in ensuring that Parliament is not only representative ... [Interjections.]

THE DEPUTY SPEAKER: Go ahead.

The DEPUTY PRESIDENT: Deputy Speaker, as I indicated in November, I said that the current electoral system has played an important role to make sure that our Parliament is not only representative but it is inclusive and also does something that is very important, that is, to promote social cohesion. It ensures that all votes are equal, that every vote counts and

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that the allocation of seats in the National Assembly reflects the diversity and wishes of the South African people as a whole. It is good and correct that as Parliament and as a country, we reflect on the relative strengths and shortcomings of various electoral systems.

I think that we should not dismiss this debate, it is an important debate, we should have this debate and debate it fully and thoroughly and then if we agree that this is the way to go, then we should do so. In doing so we should not just rely on clichés and think that a constituency based system necessarily in itself guarantees greater accountability of public representatives to the public. We should not be beguiled to think that is the only way in which you can have accountability to our people. Much depends on the design of the electoral system whether it is purely constituency based or whether it is a combination of a PR and a constituency system. I think this is what the late Dr Van Zyl Slabbert proposed that we have a measure of both. Much depends on the size of constituencies; on the design of the electoral system and on the balance between individual and collective accountability.

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Most importantly in engaging in this discussion we need to ensure that we do not abandon what I would regard as an electoral system that has served our country very well. The current system has served this country very well and it has promoted inclusivity, even political formations of parties that would never have been represented in this Parliament if we had used a constituency base system, are represented and enhancing the voices of our people to be heard in this Parliament.

We need to remember that we had five national and provincial elections and five local government elections in which South Africans have held their public representatives to account and that in itself is a form of accountability. The success of these elections should not however, prevent us from continuing to look at the system that could best serve the purposes we have in mind. We should not just dismiss the system we have now. Let us come up with compelling views and ideas of why we should change the current system that we have. Thank you Madam Chair.

The DEPUTY SPEAKER: Deputy President, it's me. [Laughter.]

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The LEADER OF THE OPPOSITION: Deputy Speaker and Deputy President, I want to agree with you, the current system we have in the moment has had its advantages and there is no debate about the fact that it has also had its own shortcomings. I support your view on the Van Zyl Slabbert report because I think that a mixed system would be helpful. The big advantage we must get to is to have a discussion about how do we effect accountability because in the current system we have seen time and time again members come to the House and when asked to do the right thing about holding someone accountable and in fact voting with their conscience, members come here and they vote according to party lines. [Interjections.]

We have seen this in the report around Nkandla, we have seen this in other motions of no confidence. The question I want to put before you is that considering the fact that the Constitutional Court ruled that the President has violated his oath of office, would it not be incumbent on this Parliament to in fact vote with their conscience and the represent the constituency they represent in South Africa? [Interjections.]

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Deputy President, I want to understand, would you agree with me that in the interest of the current electoral system and noting the Constitutional Court's ruling and the process there, can we encourage members to come on the motion of no confidence and vote with their conscience and protect South Africans from corruption which you spoke about earlier? Will you join in voting with your conscience so that we rid this issue of corruption by starting at the top?

The DEPUTY PRESIDENT: Deputy Speaker, with a matter like this it is quite easy to play to the gallery. I think that we should enter this debate in a very sober manner because we are all here on the basis of political party mandates. That is what brought all of us here. Every single person who came here starting from the President right down to the last Member of Parliament came here on the basis of a constituency based system. In fact it gets worse because this party system plays itself in a particular way, some parties even have it in their constitutions that you may not violate your party position and I think that the Democratic Party has such a constitution where it is said

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that once a party line is determined then you may not differ from that party line. [Applause.]

That is why I say let us be very careful and not play to the gallery because right now we have objectively and subjectively a particular parliamentary or electoral system that has brought all of us here. It is all very easy to say no, vote your conscience or maybe what they mean is vote your party conscience because that is precisely what some parties have in their constitutions. [Applause.]

When you combine individual conscience and party conscience I do not know which one is best but the reality of the matter is that let us leave the issue that is on the table now, the vote of no confidence and not try and make it toxic by talking about the electoral system in a wishy-washy manner. What I think we should do is to say that we have a particular electoral system which has given rise to this and that problem and therefore let us have a discussion and a debate and resolve that. Once we have resolved that, we will then be able to say do we amend the Constitution or the electoral law so that we are clear as we

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move forward. Then at that stage, hon leader of the Opposition, you will then be able to pontificate and stand on a platform and play to the gallery and say this is what should be done, this consciousness that and so forth. That is what I believe will be most helpful otherwise we are just talking to the gallery. Thank you very much. [Applause.]

Ms H O HLOPHE: Deputy Speaker, Deputy President, in the spirit of the Constitution and the Bill of Rights are you saying that the ANC Members of Parliament have forfeited their rights as public representatives? Also, the former Deputy President which is Motlhante and Mbeki have also made a call to the Members of Parliament to vote on behalf of the people of South Africa to protect this country because this country is going down to the drain. Are you going to support that view in the vote of no confidence in Zuma or you are just going to close your eyes and ears and allow this country to go down to the drain through the corrupt route.

The DEPUTY PRESIDENT: I think that the hon member and I will agree on one thing that we do not want this country to go down

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the drain. Once the country goes down the drain you will not even find it because it will be flushed away through the sanitation system, the sewer system and I do not think that is where we want to find our country. So, obviously, we are facing great challenges, we are facing enormous challenges as a country but we need to have cool heads. We need to be sober and address these problems in a rational way and a rational way is not thinking that our country should go down the drain.

Yes, you referred to former Presidents of this country who have taken certain positions. I haven't had a discussion with them regarding those positions. Those positions are obviously motivated by the thoughts and views they have and I think that here we are also motivated by the thoughts and views we have. My answer goes back to the first answer I gave to the hon Maimane. This is not trying to run away from any problem or challenge, we have a party system. The party system dictates that we should exercise our responsibilities in particular ways and it gets worse, as I said, our parties in a very dictatorial way in their constitutions tell their members what to do and what not to do. Thank you very much. [Applause.]

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Ms S J NKOMO: Deputy Speaker, Deputy President, when one takes note of Dr Van Zyl Slabbert's Commission, this commission was instituted by the then Minister of Home Affairs Prince Mangosuthu Buthelezi, it had high components of social cohesion. It also needed to look into: The electoral system with a view to recommend some of the reforms that would include a PR system and a constituency based electoral model that would enhance democracy; ensuring greater accountability of public representatives to the electorate; minimise the power of political parties over their public representatives. I would like to find out from our Deputy President, at which point is the current electoral system addressing the ABC areas and has there been any other commission apart from Dr Van Zyl Slabbert's Commission which one can benchmark where we would be going as a country? Thank you.

The DEPUTY PRESIDENT: There has been another entity that looked at more or less the same thing that the late Dr Van Zyl Slabbert looked at. It just escapes my mind at the moment. Let me say that there has been quite a number of iterations whereas South Africans in whatever form or shape we are beginning to look at

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and debate the issue of our electoral system. That in itself is a good thing; we need to continue doing so. The ABC provisions or conditions that Dr Van Zyl Slabbert looked at I believe that they are currently addressed. They may not be addressed as directly as he would have envisaged through a constituency basis but in the end the issue of C minimising the political power, I think that it is.

We are a multi-party Parliament that is composed of various political parties. Through practice we have been able to demonstrate that even a majority party can have its own wishes and intents tempered by the participation of other parties, either through discussions, taking on board the suggestions they make and recognizing that all of us as leaders here we have new ideas and nobody has a monopoly on intelligence or truth. That in itself putting all of us here in this House begins to minimize the domineering power of one party over all other parties because we exchange views and we interact at a close range.

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The other issue of course is accountability. I think that through this House, what has happened in this House and maybe at the end of the year we should do an assessment of how we have made this House much more accountable or better still the executive much more accountable. I believe that as a member of the executive I am accountable to this Parliament. Indeed as the executive we are accountable to this Parliament. Accountability is enhanced and representivity is to be found here in this Parliament. I think that what the late Dr Van Zyl Slabbert envisaged can be found in the current system but clearly there could be room for enhancement, we could add bells and whistles to the system we have to make it much more robust, credible and legitimate but I believe that we have a very legitimate Parliament as it is now that is accountable to our people. Thank you, sir.

Mr B T BONGO: Hon Deputy Speaker, ...

IsiZulu:

... ngibonga kakhulu Sekela Mongameli ngokuphendula kahle kangaka lo mbuzo lo esibhekene nawo.

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English:

Hon Deputy President, this issue of voting with your conscious I do not know why it is only applying to members of the ANC and I also do not know why members of the opposition think that voting using your conscious means you must vote with the DA. I think that it is highly a misnomer. Arising from the Van Zyl Slabbert Commission there is a narrative that presupposes that the current electoral system aggregates the political influence over the influence of the people of this country. I want you to share, with the experience that we have, having drafted the Constitution yourself, to share with the people of this country some of the successes of the electoral system itself but also from where I am sitting that this system ... [Time expired.]

The DEPUTY SPEAKER: Deputy President, you were asked to share, the question is clear.

The DEPUTY PRESIDENT: [Laughter.] Okay, hon Deputy Speaker, I think that the current system that we have as I have been saying is a functioning system, it enhances democracy. In here we see democracy at work and we see accountability at work as well. If

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people were hankering for a more constituency based system, that in itself is not a bad idea to have, it should be discussed and debated. Maybe we also need to look at how various parties deal with the architecture of how they function in their own parties, because from the ANC side where I come from, all these members who are here are linked to constituencies, each one of us has a constituency that we are linked to and that we work in and Parliament also funds the work we do in those constituencies. That in itself enhances democracy and in many ways, this is what we have envisaged that much as we have a party based system, we are only as good in what we do as we represent the aspirations of our people. Representing the aspirations of our people means and must mean that we must be continuously linked to our people, we must remain connected to our people so that there is no political or social distance between us and the people that we represent because we are here to represent them.

If we don't our people will in five years time declare their own wishes, they will, as we go back to an election process, demonstrate whether they appreciate what we have been doing or what we have not been doing. So, there are good checks and

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balances for the current system but we must debate this matter and see what system, either a combination of one and the other could best work for South Africa but right now this system is not broken, it works. Thank you.

Question 18:

The DEPUTY PRESIDENT: Deputy Speaker, as the SA national Aids Council, Sanac, we launched the National Sex Work Sector Plan last year, in March. Amongst other things, this plan is aimed at reducing the spread of HIV amongst sex workers. This was largely in response to the challenge that our country faces in relation to the sex workers being the most vulnerable - the highest vulnerable in the country in that it was found that 70% of them continue to contract HIV.

The plan provides a standardised minimum package of services that we would like to see provided by all implementing partners within and outside of government. This co-package of services has been designed to encompass the multifaceted lives of sex workers. It calls for national co-ordination of a range of interventions that are meant to respond to this challenge and

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these are biomedical, their behavioural and social as well as structural barriers that continue to confront sex workers on a daily basis.

Now, evidence indicates that effective HIV prevention, the care and treatment packages for sex workers, their clients, those who use those sex services and their children should be tailored to local context and that such interventions should be led and implemented by the sex workers themselves.

Therefore, the sex work sector plan seeks to support sex workers not only with health care services but also support them in as far as ensuring that their human rights are protected and advanced, their psychosocial and economic rights are also advanced; the empowerment of sex workers in a variety of ways economically and otherwise is also advanced.

Many of us may know that the South African law commission was given a task to look at law reform in as far as the possible decriminalisation of sex work. The law commission has completed its work and the cabinet has decided that the report on the work

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that they have done should be released for public comments as part of a broader consultation process. Once comments have been received from the public government will finalise a position on the various options that are proposed by the law commission.

As this work continues I encourage all sectors of society to support the national sex work sector plan understanding that reduce infection rates amongst sex workers where in the end impact on infection rates in the general population while ensuring that their constitutional rights of sex workers are protected.

This is an important task that all of us need to embark on because sex workers are just as great and good citizens as all of us. They need their rights to be protected and we need to join them in ensuring that all the rights and services that they should have are advanced, protected and enhanced. So, it's a call on all of us to join in this task of making sure that this plan is implemented and implemented effectively.

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When will the law commissions report be issued; it will be issued soon. It is going to happen. How soon is going to be very soon and it is going to give us all an opportunity to discuss the various - if I am protected from those who are hauling about the plan, this ... [Interjections.]

The DEPUTY SPEAKER: Hon members, please be quiet. You can't be throwing words like this around.

The DEPUTY PRESIDENT: Now, this is going to be released very soon and we invite ... [Interjections.]

The DEPUTY SPEAKER: Hon member! You are out of order! What is wrong with you? Hey!

The DEPUTY PRESIDENT: We invite all South Africans to participate in the sharp issue that is going to arise. The decriminalisation of sex work or not decriminalising it, that is going to be an important discussion that all of us as South Africans should have. Thank you, Deputy Speaker.

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Ms N V MENTE: Thank you, Deputy Speaker. Please allow me by starting with recognising our Sex Worker Education and Advocacy Task, Sweat, organisation up there in the gallery, from the Western Cape. [Applause.] When the Deputy President answers the next question he must know that they are sitting there and are listening to you. Those are the courageous members that protect sex workers.

Deputy President with the answer that you have provided acknowledging that we have a vulnerable group and you are sitting with the law reform findings in the cabinet, we just want the day as to when and where are you releasing it? Now, the current law in South Africa allows men to buy sex but it criminalises women for selling sex who are at work! How is that allowed in a democratic country? When are we decriminalising sex work. We are talking about women who are at job. They are at work and they are not doing anything wrong. So, we must protect women in South Africa. We want to know when are you decriminalising the whole system. Don't allow men to buy sex when you cannot allow women to sell sex. Thank you.

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The DEPUTY PRESIDENT: Deputy Speaker, clearly this topic evokes a lot of interest.

The DEPUTY SPEAKER: I notice that, hon Deputy President, and I wish hon members could be quiet because your noise is not improving your arguments at all.

The DEPUTY PRESIDENT: For a minute, I thought I was being booed but it is quite clear that people are talking about this in an excited way, because this evokes a lot of interest and excitement amongst people. So, Deputy Speaker, the hon Mente has raised an issue and it is quite a serious issue. It is a matter that the SA Law Commission has dealt with and in their report they obviously go deep into this matter and they are going to put out a number of options.

The reason that the Cabinet felt that this matter should be released for public discussions and debates is precisely that, that there are different views amongst South Africans on this matter; whether to decriminalise or to retain the criminalisation.

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Now, when it comes to criminalisation it is quite buzzer in the sense that sex workers themselves say that this is so contradictory because on the one hand the government hands out condoms to sex workers and everyone. So, sex workers participate in getting these condoms but as soon as they have them - and these are tools of their trade and once they have these tools of their trade - police are waiting for them around the corner. They arrest them and confiscate the tools of their trade. And that is why they say how can a government act in such a contradictory manner? The one hand gives us condoms the other hand takes the condoms away from us while we are conducting our business and our work.

Now, these are matters that need to be discussed properly amongst all of us as South Africans. And it is quite a serious matter because a number of other people have religious views on this matter others have moral views, and others have ethical and a whole number of other views; cultural views and some party views, and you name it. Some parties have views on this matter and others have gender views, and what have you.

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So, what we need to do, once the report is released, and it's going to be released soon, hon Members, and it is going to be released soon. Thereafter, the debate must rage and out of the debate that will rage the government will then be able to arrive at a conclusion which in the end will finally be brought here in Parliament to be debated. And thereafter, we may have to amend the law into one shape or form or another. So, that is the invitation to all South Africans to participate in this very important matter. Thank you, Deputy Speaker.

Ms A M DREYER: Mr Deputy Speaker, what the Deputy President has said sounds all very good and well, but you have got actually put your money where your mouth is. The problem is with this plan whilst it's a great plan, is that it's not being implemented and the reason for the lack of implementation is that your government is not committed one cent to any of the components of this plan.

Let me tell you exactly which departments are involved: The office of the Deputy President, Social development, justice, women, small business development, trade and industry and the

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SAPS have not committed one cent to this programme. They are relying on unreliable donor funds for those parts of that programme that have been implemented; so my question is, when will the Deputy President ensure that funds are committed to this programme by all the relevant departments and by what date? [Applause.]

The DEPUTY PRESIDENT: Deputy Speaker, well I am glad that you have done your homework and have outlined all the departments that are involved. The office of the Deputy President is not an implementing department. I just want you to know.

[Interjections.] Listen first. That office does not even have money to implement anything. Just be aware of that. However, I am quite happy that you are saying from your knowledge, your either research or evidence the plan is not being implemented. I find that hard to believe, but I am going to follow this one up and then when I come here next you can ask me the question again to see the extent to which this matter is being implemented. Because I launched it and in launching it, it was backed by funding; funding was available.

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When I launched it the active participants were the sex workers themselves who were very pleased that finally government is coming to their aid and assistance. So, I will follow this one up and I will not agree or deny what you are saying but I will find out and comeback to you.

Mr A M SHAIK-EMAM: Deputy Speaker, Deputy President, let me once again thank you for your intervention in Johannesburg where the police had confiscated the condoms of the sex workers and your intervention helped and had them returned.

Yes, I agree with you, Deputy President, that a lot of work has been done by the SA Law Commission and one such intervention was where South Africa had proposed even in the SADC region, where countries were calling for criminalisation, a law on HIV specific, and South Africa actually successfully opposed that which was on the interest of all the sex workers who were mainly the target. Thank you very much for that.

Deputy President, it is quite obvious that sex workers at the moment are being harassed and intimidated, especially by the

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police officers. Now, while this entire process is unfolding, do you think there is something that government can do to protect the sex workers until this matter is resolved, from any further harassment and intimidation?

The DEPUTY SPEAKER: Deputy Speaker, clearly the harassment of sex workers in my view should stop because they are people just like all of us and if they are transgressing various laws then they need to be dealt with. But, as far as the work that they do, one would like to see a situation where, yes we go through this matter and finalise it. And thereafter, their situation should be addressed once again. So, it is a suggestion from the hon Shaik Emam. It is something that I think in a number of other areas is sort of being observed but the law is the law. Currently the law in our country prohibits that type of economic activity. Hence I spoke the two hands of the law that do not talk to each other. On the one hand we assist and on the other hand we arrest. That should not be a matter that we easily get involved in. Thank you.

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Ms C DUDLEY: Deputy Speaker, according to the 19th tradition of the SA health review South Africa has over 150 000 adult sex workers and over 30 000 child prostitutes. The Deputy President has spoken of programmes for sex workers to promote safe sex yet studies shows that programmes to promote safe sex practises are notorious for failing, for many reasons, including poor mental health, low self-esteem, and the drug habits that undermine motivation and the ability to adopt safer sex behaviours.

Deputy President, France is one of several countries now criminalising prostitution and has made the buying of sex illegal as opposed to the selling. Decriminalising creates a buyers market, of course, making sellers even more vulnerable. Have you considered that criminalising prostitution and making the buying of sex illegal would result in greater protection for women and children, both boys and girls?

To me it feels like we are presently capitulating to the well-funded campaigns pushing the interest of the multibillion dollar industries run by organised crime syndicates. We have to be more creative than we are being now and we cont just sell women and

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children down the drain into even worse predicament than they already are. Thank you.

The DEPUTY PRESIDENT: Deputy Speaker, the issue that the hon member is raising is precisely the debate that we should have. Other countries and she sighted one, have decriminalised sex work in part. They criminalise the buying and decriminalise the selling. Other countries do it the other way round. Now, those are the options that are open.

Other countries continue to criminalise the selling as well as the buying. If you are both found in the act you are both arrested and charged. In other cases they only look at the buyer and charge the buyer and let the seller scot-free. So those are the debates that we should have as a country. And if you like the Northern hemisphere countries have opted for one form or another. And the doing is still out on how effective criminalising the buying rather than selling is most effective and works better. In the end, I would say let the debate be entered into. Let us debate this matter, discuss it and see how

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best we come out as South Africans. In the end it is going to be a South African solution to a global challenge and problem.

The issue of the number of sex workers in our country is more-or-less agreed as well as children who are brought into prostitution or sex work, so once we have had this debate we will be able to give maximum protection to those vulnerable communities who require the protection of the law and the Constitution. Thank you, Deputy Speaker.

The DEPUTY SPEAKER: Thank you, Deputy President. That concludes questions to the Deputy President. [Applause] The next item on the Order Paper is motion in the name ... [Interjections.] Yes hon member, what are you rising on?

Ms D CARTER: Deputy Speaker, just before we continue with the rest of the programme, I notice something today in the House which is quite disturbing. And I think that there is actually two points; and we should put it on record that your talk button - the speaker's list has been reset during the actual question time by the speaker. I pushed the button and the light went on

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and she looked at me and switched it off. She cleared it and we pushed the button again.

I, please, want to make a request that if it is not available that for today's sitting that from question 13 to question 15 the speakers list are made available and also for any reset that was done in between. And that it should be a standing order that the speakers list must be made available for all political parties. Thank you. [Interjections.]

The DEPUTY SPEAKER: Okay, it's done. Hon members, can I make a ruling on this. [Interjections.] Hon member, you to take that matter formerly to the rules because I think you are making an appeal, and so on. However, I will say that as Presiding Officers we ensure that we have an inclusive list in all the lists of political parties that ask questions. So, that is the decision that we make from here. But you can present that to the rules for us to look at it, and so on. We will give you an additional answer there.

SUSPENSION OF RULE 290(2) (a)

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(Draft Resolution)

BORDER MANAGEMENT AUTHORITY BILL

(Consideration of Report thereon)

[TAKE IN FROM THE MINUTES]

BORDER MANAGEMENT AUTHORITY BILL

(Second Reading debate)

The MINISTER OF HOME AFFAIRS: The Deputy Speaker, hon Ministers and Deputy Ministers, hon members of the National Assembly, the introduction of Border Management Authority Bill of 2016 represents a radical shift from colonial and apartheid systems that were informed by a desire and mission to create and sustain racism, hostilities and hatred rather than dignified migration. The mission and vision of the Border Management Authority are embedded within democratic values and deep respect for a culture of human rights.

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The Freedom Charter correctly asserts that no government can justify clean authority unless it is based on the will of the people and the people must share in the country's wealth; and also ensures that peace and friendship prevail and South Africa is a fully independent state. The NDP Vision 2030 reminds us that today South Africa looks completely different from the South Africa before 1994.

The NDP states that in the next few decades the world will experience unprecedented changes. These include an explosion of urbanisation which will create wealth and sharpen strains on the ecosystem; revolutionary developments in science and technology that will transform opportunities, introduce new risks, and drive wider social integration and the rebalancing of economic power from the developed to developing countries that will potentially lift another billion people out of poverty.

We firmly believe that the Border Management Authority's vision is in line with Africa's development vision, Agenda 2063. Agenda 2063 asserts that Africa shall be a continent where the free movement of people, capital goods and services will result in

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significant increases in trade and investment amongst African countries, rising to unprecedented levels and strengthening Africa's place in global trade.

The Border Management Authority will play an important role in supporting the creation of an inclusive and growing economy at the frontline of our country's borders by facilitating the legitimate movement of people and goods. It will also facilitate the skilling of our border guards and ensure that we work in line with new technologies which ensure security and reliability of information.

The Border Management Authority will fully embrace the digital revolution, as I have said hon members. Today, over 40 million people enter and leave our country on an annual basis. People come to South Africa for different reasons. Some come as asylum seekers, economic migrants, others seeking education and training opportunities and, of course, some come to enjoy the leisure and tourism in our country. However, border management poses formidable challenges not only for South Africa, but also for receiving countries worldwide.

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The Border Management Authority Bill before the House today is underpinned by a number of imperatives including - I'll just mention two - a new policy paradigm of integrated border management and a determination to facilitate the legal and secure movement of people and goods across the border. Our imperatives are further driven by our own national interests which include the establishment of a secure and reliable national identity system for all people who reside in South Africa.

We must be frank about some of the key problems characterising the border environment in our country. Our fundamental challenge is that of our 72 ports of entry. In those, there are still challenges of government departments and state agencies operating in a fragmented and incoherent manner with conflicting policy positions, nonaligned implementation, and varied interpretation of border management regulatory regime.

This inefficient and ineffective border often leads to poor service being rendered to traders and travelers at ports of

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entry. This impacts negatively on travelers and traders, and also creates an environment conducive for corruption.

Hon Deputy Speaker, government has undergone an extensive consultative process with affected government departments seeking consensus on creating a single command and control Border Management Authority under the Department of Home Affairs. His Excellency, ubaba uMsholozzi, President Jacob Zuma made a commitment in 2009 that we would establish a border management agency. Cabinet resolved formally to establish the Border Management Authority in 2013 and consequently, endorsed a vision for the Border Management Authority in 2014. This vision constitutes the guiding framework which informs the architecture and substance of the Bill before the House today. Thank you.

[Time expired.] [Applause.]

Mr B L MASHILE: Hon members and the guests, it has been a long road that we have traversed in processing this Bill since it was introduced in Parliament, almost one year of sweating. Much of the time was used to ensure that we produce a high quality of a piece of legislation.

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However, it should be noted that, due to the complexity of the Bill, it took time to be clear in our minds on the nature and the character of the animal we seek to establish. These entailed the Cabinet process, the Nedlac process as well as this parliamentary process.

Deputy Speaker, I can now attest that there is clarity in our minds and the affected departments were given clarity on the intent and the expected process, moving forward. Hence, today we have a radical Bill that establishes a Border Management Authority in front of us for consideration.

Hon members, the department introduced the Bill on 25 May 2016 in Parliament. I should indicate that in June 2016 we wrote to all the departments involved in our land, air and sea ports of entry for comment on the Bill. The Bill was then published on 14 August 2016 for public comment with a closing date set for 08 September 2016. Of course, only the Department of Justice and Correctional Services made a written response.

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The Department of Police and National Treasury were engaged by the committee during the public hearings. On 16 August members of the Security Cluster committees and the Standing Committee on Finance attended our first public hearing. This was a briefing to the committee by the Department of Home Affairs, SAPS and National Treasury. It was at this stage that the lack of co-ordination and co-operation surfaced among the Department of Home Affairs, SAPS and National Treasury. We then urged the three departments to resolve their disputes by 13 September 2016.

On 13 and 14 September 2016, we held further public hearings on the Bill. Invitations were extended to Cosatu, Nehawu, and Business Unity SA, Busa. However, Busa could not attend but sent a written submission only. The hearing was informed by the Minister of Home Affairs that the Director-General of Home Affairs and the Acting National Commissioner of SAPS have a signed agreement on their dispute. There was however, no progress in relation to the dispute relating to National Treasury.

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On 20 September 2016, the Department of Home Affairs responded to the submissions and verbal presentations made during the public hearings. On the lack of progress with National Treasury, the committee further persuaded the Department of Home Affairs and National Treasury to reach some agreement by 28 September 2016. This was based on the fact that the Department of Home Affairs sent a proposal to National Treasury on 12 September 2016 for consideration. Of course, National Treasury did not respond by 20 September 2016, hence the directive to agree by 28 September 2016. These requests drew a blank.

This House should be informed that during October 2016, the Deputy President was called upon to intervene, as the Leader of Government Business, between the Department of Home Affairs and National Treasury. Two meetings were held, the first in November 2016 and the second in February 2017. Both meetings did not assist us that much. We must indicate that it was a painful experience which affected our legislative process.

Deputy Speaker, the contention has been a consequential inclusion of customs officials in the Border Management

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Authority and a possible collection of revenue at the ports of entry. This issue has now been resolved by the progressive proposal made by the Department of Home Affairs to accommodate the perceived fears of National Treasury.

It should now be pointed out that only the frontline officials of customs at ports of entry are expected to be transferred and revenue collection still rests with Sars. Also, such revenue should not form part of Border Management Authority funds. The goal pursued here was to establish a single integrated border management command which will take full responsibility and accountability of all activities at our ports of entry.

Deputy Speaker, in the committee we had continuous fruitful participation of the opposition parties and valuable inputs were made on the Bill. The most inputs related to, but were not limited to improving the management core of the authority, standards and qualifications, vetting of officials, accountability issues, co-operation and co-ordination of stakeholders, implementation, protocols and oversight tools.

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I am happy that we have produced a piece of legislation that addresses all aspects which may affect the functioning of the Border Management Authority. I however, do regret the non-support of the EFF after their valuable contribution. I hope that the DA issue has also been removed.

The question to be asked is: What kind of animal is created here? How is it structured and how will it function? One may briefly describe it without going into details. This Border Management Authority is expected to facilitate the legitimate flow of humans and goods in an efficient manner while militating against illegal activities across our borders.

The Border Management Authority will be headed by a commissioner with two deputies, with clearly spelt-out requirements on skills and qualifications in relation to their responsibilities. We expect one to deputise for administrative services and the other for border guard services.

It is expected that the public servants doing duty at our ports of entry from different departments will be transferred to the

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BMA. Additional personnel will be recruited as required. Infrastructure and equipments which were used for border management activities will be expected to be transferred to the BMA.

We do expect that budgetary allocations will follow these personnel and functions to the BMA. This is integration to Border Management Authority as envisaged. Indeed, a radical shift in border control.

The commissioner will be the accounting officer reporting to the Minister of Home Affairs. The Minister will chair an oversight committee of Ministers affected by the activities at our ports of entry.

There will also be a border technical committee populated by directors-general or their representatives at senior level. This is an advisory body to the inter-ministerial committee. The Minister is empowered to establish an advisory committee to deal with any specific matter concerning border management. The reports of the BMA will be tabled in Parliament.

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Deputy Speaker, we should indicate that this BMA is not going to mushroom overnight after the signing of this Bill by the President. No, we expect a phased-in process which may take months or even years for a complete establishment to be realised.

There is a lot of work on policy development for the BMA; consultations and negotiations of the quantum of persons; and equipment and infrastructure to be transferred to the BMA. We therefore call upon all organs of state involved and affected by the establishment of the Border Management Authority to co-operate fully. We need this entity as of yesterday to deal with the porousness of our borders.

Our people have been making a call to the ANC to attend to border control over a decade now without visible response. We are now saying, "Your ANC has heard you and it is taking a bold step today." This House, led by the ANC, is then persuaded to support this Border Management Authority Bill of 2016. The ANC leads and the ANC lives. Amandla!

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Mr M H HOUSEN: Hon Deputy Speaker, if you ask most South Africans, they will tell the ANC is dying and is not living. [Interjections.] The objective of this piece of legislation... hey, shush now - is aimed at addressing the fragmentation of operations at our ports of entry in the country. The intended outcome is to bring the various departments that operate at our ports of entry under a single command and control unit. At first glance, it all seems like a great idea. But when one looks at the detail and considers the real consequences and implications of the Bill, one will soon realise that this is probably one of the worst pieces of legislation that has come before this House. But before I do that it would be unfair of me not to acknowledge and appreciate the co-operation we received from the chairperson and members of the committee, as well as the officials who worked with us on this Bill. I recognise that there have been a number of areas of concerns which we expressed, that were eventually acceded to and several changes have been effected since the first draft of this Bill was laid on the table. We are very grateful for the co-operation.

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However, there still remain many areas of the Bill, which the ANC have been very stubborn about, leading us to believe that there are other ulterior motives behind this Bill. In time, these motives will emerge. I suspect that this is yet another attempt to create another state entity, which will soon be captured by the greedy politicians who operate in this government department.

Firstly, hon Deputy Speaker, this is a framework legislation designed to provide for the establishment of a massive Border Management Authority, BMA, that will control our borders and ports of entry, but not a single person and not even the Minister herself, or even Gigaba, whose pet project this is, can even tell you with any form of certainty what this BMA is going to cost the country.

Estimates are in a region of about R22 billion, yet the impact assessment recommends that the same exercise could be conducted by the SA National Defence Force, SANDF, for about only R3 billion, if only they could get their act together and protect our borders more efficiently.

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The chairperson asked what would this animal look like? Well, actually it is probably going to look more like a monster that we are creating. The former Finance Minister, who got shafted for having the courage to act in the country's best interest, expressed reservations about the costs of this exercise and warned about the spiralling expenditure. But Gigaba was having none of it. His usual stubbornness and arrogance stood in the way of acting with any sense of reason. [Interjections.]

The DEPUTY SPEAKER: Hon member Hoosen, hon member, you know how to refer to members. Please do it that way and do not just call him by his name, I mean like you know that.

Mr M H HOOSEN: The hon Gigaba was having none of it. The hon Gigaba's usual stubbornness and arrogance, stood in the way of acting with any sense of reason.

This Bill was hanging in the air for a while, because Treasury would not support the financial implications in it. An acrimonious exchange of words through ministerial correspondences between the two departments is evident that not

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everyone in the ANC Cabinet is on the same page with regards to this Bill. But given the recent developments in the ANC, this does not come as a surprise to anyone.

Just days before the ANC forced the Bill through the committee; hon Pravin Gordhan was fired and guess who gets to replace him? One of the other concerns that the former Finance Minister expressed, is that this Bill aims to capture the customs and excise operations of SA Revenue Service, Sars. That operation of Sars brings in about 30% of our country's revenue amounting to billions of rands.

Minister Gordhan supported the views of the Davis Tax Commission which made very strong recommendations that the revenue streams of Sars must not be fragmented. However, the new Minister will tell you that only the customs frontline operations will be taken over and not the revenue collection.

Well, if this is true, then where will the money come from to operate the BMA? If the argument is that it will simply be transferred from the other departments who operate at the

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border, well they were under-resourced in the first place, which is why these operations at the borders are so ineffective.

Simply transferring the money from one department to another is not going to give you any different outcomes.

Now that hon Gigaba has managed to elbow hon Gordhan out of the way, he must tell the country and the world, whether he will be respecting the recommendations of the Davis Tax Commission or will he be dismissing its recommendations as he has done in this case.

Hon Deputy Speaker, the other area of concern is the constitutionality of this Bill. The Border Management Authority is being established as an armed force. Its intended roles and functions are reserved only for the SANDF or SA Police Service, SAPS, as far as our Constitution is concerned. This is why the SA National Defence Force has been removed from this Bill initially. Our view is that the same should apply in the case of SAPS and such policing functions can only be provided by the SA Police in terms of our Constitution. Section 13 of the SA Police

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Service Act for example, grants powers only to the police service to search vessels in our waters.

Then, another problematic part in this Bill is that it grants officers of the BMA search and seizure powers within a 10 kilometers radius within the border port of entry. In theory, this appears fine, but in practice it infringes on the rights of ordinary citizens and is in conflict with a recent Constitutional Court ruling.

At the OR Tambo International Airport for example, there are scores of private businesses, courier companies and commercial enterprises that operate within this precinct.

Whilst we agree that the current border management functions are far too fragmented, we do not believe that the establishment of a Border Management Agency is the solution to the problem. What is simply required is better management of the current systems, holding officials accountable for their failures, firing the lazy comrades that you have appointed and implementing better co-ordination of operations between various departments. If our

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Ministers were doing their jobs in the first place, we would have not been in this situation and it would have not been costing us billions of rands to fix the problems that they created in the first place. [Applause.]

There is no reason why the same outcomes cannot be achieved at a senior management level through proper transversal co-ordination of operations.

And finally hon Deputy Speaker, this Bill, although its main intention is to address the fragmentation of border management, it offers absolutely no solutions to the problem what so ever. All it does is create another level of government bureaucracy which will add massive strain to an already burdened fiscus, but provide no tangible solutions to the current problems. For these reasons hon Deputy Speaker, the DA will not be supporting this Bill. I thank you. [Applause.]

Mr N F SHIVAMBU: Hon Deputy Speaker, hon Deputy President, the Chair of the Portfolio Committee on Home Affairs said here that they asked you to mediate between the Ministries of Finance and

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Home affairs, to find common ground on some of the issues that are contentious in this Border Management Authority Bill. We are now going to illustrate what those are. In the border law enforcement area, have got a variety of entities and government departments that operate there: The home affairs, SA Police Service, SAPS, agriculture, the Department of Trade and Industry, DTI, through the national regulatory of compulsory specifications, SA Receiver of Revenue, Sars, and a variety of other agencies that exist there in terms of regulating the entry of people and goods into South Africa and their exit, but also the collection of customs and excise duties.

Now, customs and excise duties, in South Africa constitute 30% of the National Revenue Fund. More that R300 billion of the R1,3 billion that is collected by Sars, is collected as customs and the excise duties. Now, this Border Management Authority Bill is proposing that it should enforce laws in the border enforcement law area and that enforcement must include customs.

That is the issue that we are standing to say, it cannot be that you are going to through proclamation of section 97 of the

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Constitution, shift the powers of revenue collection from the Ministry of Finance to the Minister of Home Affairs, because that begins to balkanise. It fragments revenue collection. And I can tell you today that you will not be able through a new agency to collect the levels of revenue that are being collected currently within a Sars component which has a capacity and a skill to deal with that.

We do not have a problem as the EFF with the Border Management Authority or Agency, BMA, but we can have that without the customs collection principle and processes that you were supposed to have dealt with. So, those are some of the issues that you must deal with in case you succeed in removing the Guptas from the ANC, because, it is them who have been saying that customs collections should be stratified and balkanised, so that they can have entry into the BMA and give it the direction that they would be looking into.

There are lots of other issues that we can look into in terms of how the BMA is constituted, particularly in terms of how government entities are constituted. It is just going to be the

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commissioner and then who reports to the Minister. They should necessarily in terms of governance principles be a board that manages a Border Management Agency and then a commissioner reports to that board.

If you check into entities that do not have boards, majority of the times, the commissioners or the chief executive officers, CEOs, of those agencies do not have proper governance mechanisms and principles. They increase their salaries as on they wish. They give themselves bonuses, because the only relationships they have is with a Minister and without any board that has committees to look into the functions of that particular entity.

The BMA that is being rushed now, does not have proper governance mechanisms and it will not solve the problem. They do not provide any solution. But the most important thing that you must never do, whether you are ANC, or DA, or EFF is to balkanise or fragment revenue collection in South Africa, particularly at the time when we are beginning to gain some stability.

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I think that we had tried to knock some sense on Mr Gigaba, when he came to the first meeting of the Standing Committee on Finance and he admitted that there must not be balkanisation, but the current legislation, if we adopt it as it is, gives the powers to the Minister of Home Affairs, through the BMA, to collect revenue which our customs and excise duties and that is not acceptable. We must not agree on a Bill that proposes such, because it is going to undermine the integrity of the revenue collection in South Africa. Thank you, very much. [Applause.]

Ms S J NKOMO: Deputy Speaker, as the IFP, we would like to congratulate Minister Mkhize on her appointment as the Minister of Home Affairs and the IFP President, Prince Mangosuthu Buthelezi, would definitely like to send our congratulations to her.

Effective and efficient border law enforcement at our various ports of entry and along our borders is mandatory. We are a state and as such bear the onus and obligation of securing our sovereign borders, of this there can be no dispute. The effectiveness of the manner in which we choose to do this

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however, as well as the entities and final authority we utilize to carry out this mandate are through this Bill, becoming a cause for concern.

The establishment of a Border Management Authority, BMA, as a national public entity under a commissioner appointed by the President, and one which would include elements of the SA Police Service, SAPS, South African National Defence Force, SANDF, Customs and Excise and Agriculture, overseeing by the Department of Home Affairs appears on the face of it, to be a perfect recipe for potential corrupt activity.

Issues ranging from collection of customs of excise revenue, which I might add is a sizable annual amount, should remain within the specialist charge of the SA Revenue Services, of this there can be no compromise.

There are also the legal issues over the creation of another policing service, which must be carefully thought through as they carry with them a wide array of possible negatives that would have to be mitigated against.

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However, this Bill was delayed last term from coming to the House over the concerns which were raised by the Department of Finance and the Department of Home Affairs, to whom we would have handled the collection of revenue at our ports of entry. This remains a contentious issue although the departments are talking about signing a memorandum of understanding and I think they are finalising now and the IFP supports this completely.

A purpose of this Bill, which seeks to achieve a lot of areas, is long overdue and absolutely necessary. The manner through that it seeks to achieve then is subject to question. Checks and balances must be implemented but still be nimble enough not to stifle its operation through unnecessary bureaucracy. The IFP supports this Bill subject to the reservations as mentioned above. Thank you.

Prof N S KHUBISA: Deputy Speaker, and hon members, the Border Management Authority Bill tabled here today has been in the legislative domain and pipeline for some time now, and have generated a fair share of interest, controversy and objections along the way. We understand as the NFP that there has been a

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tussle with regard to the BMA. There has been a disagreement between the Treasury and the Department of Home Affairs on the revenue collection of the new proposed BMA

The NFP understands the value of a consolidated BMA, and in principle we support the creation of such. Our country has had several incidents of xenophobia in the past, largely attributed to competition for scarce social economic resources between the poorest of the poor and the foreign nationals who do not have legal right to be in South Africa. These ugly incidents of xenophobia has opened up a deep wound of shame in our collective consciousness, and if the proposed BMA could function efficiently as intended, then it would go some way in addressing the underlying root causes of xenophobia in our country.

The NFP is also concerned about having a consolidated BMA, which might look good on paper, but is then entrusted to a state department which has a chequered track record in the management of asylumseekers, refugees and immigrants.

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In many quarters, the blame for the influx of undocumented foreign nationals to South Africa is laid at the feet of the Department of Home Affairs. Rife corruption and unclear immigration, asylum and refugee policies have all contributed to the current status quo, and the root endemic cause of these has been failure to adopt clear policies. The proposed BMA will be facing enormous challenges to root out endemic corruption and to deliver to South Africa a system of border control that is efficient, lawful and in accordance with our Constitution.

In conclusion, we have our reservations as the NFP with regard to the BMA and of course we will give a chance to the Department of Home Affairs to ensure that the Bill is enacted. We believe that the creation of such a consolidated entity could succeed, but the initiative now has to filter through policy level.

As an entity, the BMA will do more than merely control border access, it will be the frontline of implementing policy on migration, asylum and refugees, and for it to succeed, the BMA will need to be empowered by clear policy guidelines and plenty

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of political will and determination at executive level. Thank you very much.

Mr N L S NKWANKWA: Deputy Speaker, I sympathise with you for not knowing what the Minister's name is. There has been far too many Cabinet reshuffle and we have now lost track of who serves in the Cabinet. [Laughter.]

IsiXhosa:

USEKELA SOMLOMO: Uyithatha phi le nto uyitshoyo?

Mnu KWANKWA: Awumazanga nawe, ebelapha tata.

USEKELA SOMLOMO: Hayi, hayi musa ukuthatha inyoba apha.

English:

Mr N L S KWANKWA: Without a doubt, there is a need for a sustainable and integrated border management system and authority that effectively co-ordinates and facilitates secured travel and legitimate trade in line with the Constitution and other relevant laws of the country.

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Therefore the creation of the BMA as envisaged in the bill under discussion is significant in that it seeks to address the fragmentation that characterises the current system of border management.

The current system of border management is not helping us in our efforts to discharge our Constitutional obligations to secure our sovereignty. We must however note that when you look at section 5(c) of the Border Management Authority Bill it doesn't spell out clearly the extent to which the BMA or the functions of the authority are in so far as revenue collection is concerned.

We also need to be clear about the budgetary requirements and the source of funding for this BMA given the spread of responsibilities over many departments like the SAPS, SANDF, and others.

It is important that Customs is allowed to play a central role in collecting excise duties and excise tax without being integrated into the BMA. With all its challenges, Sars remains

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one of the most efficient tax collectors in the world and it does so in a manner that is consistent with our Constitution. Therefore, collection of monies must remain a function of the Sars and we are not happy with assurances and memorandums to address this very important matter.

Certainly, South Africa is not in need of heavily armed quasi-military parastatals, run at of the Department of Home Affairs, which goes around collecting revenue which might be used in a manner that is in inconsistent with objectives of the Bill and the Constitution of the Republic of South Africa.

The Department of Home Affairs must with this context of the spill remain with its functions in the customs and revenue service do their jobs as determined by the laws of this country. For this reasons and reservations that we have expressed here, the UDM doesn't support this Bill. Much obliged to you, Deputy Speaker, I thank you.

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Ms D D RAPHUTI: Hon Deputy Speaker, hon members and distinguished guests, the ANC supports this Bill and happy Africa day.

We want to say to all South Africans and our African brothers and sisters, happy Africa month. However, if you say that you love your country and Africa, you will abide by the laws that govern it.

South Africans, you have spoken. You are still speaking to our government that our borders are porous. The BMA presented here today in Parliament, seeks to address your plight. The porousness of the borders has resulted in many challenges, which are human trafficking and undocumented people here in South Africa.

As you will recall a week ago, the so-called man of the cloth, a preacher from a foreign country was molesting our young girls here in South Africa. Now, being arrested and charged, the question that we should pose to ourselves is, how did he land here in South Africa?

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People shouldn't be allowed to come to South Africa and commit gruesome crimes as we have reputable parish leaders here in South Africa; some of them are our mentors, brothers and sisters that we respect and depend upon for spiritual guidance.

The preacher here arrived as a wolf in a sheep skin. Therefore, the Border Management Authority Bill, when enacted will be able to distinguish between the wolf and the sheep and in a township language we say, "Fong Kong Counterfeit people".

Presently, the manner in which the BMA is being run is very fragmented. To rectify these challenges, the BMA will be a solution. It will be managed as a single command and it will be well co-ordinated. The BMA will perform the border law enforcement function within the borderline and ports of entry for accountability purpose.

South Africans, your security is more valuable than any silver and gold. Citing monetary issues as my DA leader has said is not an issue; an issue here is well co-ordinated borders. Proper co-

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ordination is a prerequisite, because some around here never see any good in any problem.

Citing the issue of revenue being collected at the border is not true, so the ANC support this Bill. I thank you.

Ms D CARTER: Deputy Speaker, on the condition that revenue collection remains with Treasury, there is logic in the proposed establishment of a fully-fledged border management agency with the purpose of integrating and co-ordinating the management of securing the borders of the Republic and protecting national interests. Every sovereign state has the inherent right, obligation and responsibility to secure its borders, monitor and police those who wish to enter, prevent the smuggling and trafficking of human beings and goods, and ensure the protection of its social and economic development.

Most would agree that our current border management structures, systems and processes are messy, incoherent and dysfunctional. However, Cope is hesitant to support this Bill and the establishment of this mega-agency, given the maladministration

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in the corrupt and irrational presidency of Mr Zuma, the growing and continued grand capture and corruption of organs and agencies of our state, and the inability of this government to develop and maintain capable and functional organs of state. I would like to provide an example. In 2004, this House adopted the South African Social Security Agency Act. The purpose of this was to provide for the establishment of a South African Social Security Agency, Sassa, as an agent for the administration and payment of social assistance. We know that Sassa had to outsource the primary reason for which it was established - the paying of social grants. The Sassa was essentially captured and abused by the executive. It has been marred by gross corruption and ineptitude. According to the discredited Minister Dlamini, it will take tens of millions of rand and another five years to be in a position to do what it was supposed to do.

Let us return to what is on the table. Like the South African Social Security Agency Act, this Bill seeks to establish a mega-national public entity, basically a parastatal that will operate outside of the Public Service. The authority is also proposed to

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have broad powers vested in it, including border law enforcement functions being established as an armed service responsible for the facilitation and management of the legitimate movement of persons and goods within the border law enforcement area and at ports of entry. It will also be responsible for the facilitation of the collection of revenue. Further, it is the President who solely appoints the commissioner of the authority, and it is the President who is empowered to remove and suspend the commissioner and the deputy commissioner.

Under this corrupt ANC-led government and under the current discredited, corrupted and irrational President who disregarded national interests and who is a prime player in the capture of our state and sovereignty of our nation, are we not empowering further corruption, state capture on a grand scale, and setting up another agency for abject failure? Under a different government and President and under a new Parliament committed to carrying out its duties and oversight, Cope will support the Bill - but not as matters stand. Thank you.

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The DEPUTY SPEAKER: Hon Carter, before you leave the podium, would you like to tell the House about the clarification you received from the Table about your earlier comment?

Ms D CARTER: Deputy Speaker, do you refer to the resetting of buttons? Are you talking about the comment or question I raised ...

The DEPUTY SPEAKER: About the Speaker.

Ms D CARTER: Well, according to the Table, it resets the buttons, not the Speaker. [Interjections.] I still ... yes, I tend to agree ... [Interjections.] ... but then it should not be reset - the buttons should not be reset when it suits the Table. It should be reset at the end of a question, and the record should be made available to everyone. [Interjections.]

The DEPUTY SPEAKER: Hon Carter ... No, I just wanted hon Carter to do the right thing. She chooses to add fire to the stack. [Interjections.] Go ahead, hon member. Proceed, hon Dudley.

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Mrs C DUDLEY: Deputy Speaker, border management is exercised by multiple organs of state, and so those promoting this Bill say there is a need for integrated and co-ordinated border management of our porous borders, especially in view of instances of terror and trafficking emerging. Detractors, on the other hand, accuse Home Affairs of having had a total disregard for the consultative process by doing the complete opposite to what everyone said. The Green Paper, a collation of hundreds of expert submissions - they say - appears to have been largely set aside in the official White Paper.

A former chief executive officer of a Cape Town migrant welfare association has estimated that over R2,5 billion will be required for infrastructure and operational detainment centres over a seven-year period, resources that, of course, will place significant additional strain on the country's budget. Because processing of asylum claims is severely backlogged, with some people waiting 14 years for a document that should by law take 180 days, those dealing with migrant welfare would prefer to see the hiring more staff at Home Affairs to manage migration. They are convinced that the hiring of capable staff to resolve

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backlogs and resolve complex issues would be a better deterrent for illegal migrants and less costly than building detention centres or buying guns for border guards.

The ACDP would like to have seen a greater emphasis in the Bill on checks and balances to prevent corruption. We also note with concern that the issue of customs and excise collection has been cause for tension between Home Affairs and Treasury, with the Finance Ministry wanting the function to remain under the SA Revenue Service. The ACDP is not satisfied that accountability, both from an operational and a financial standpoint, has been properly considered, leaving the whole concept vulnerable.

Whilst uncertainty regarding the legislation exists, the ACDP is in favour of the Bill being sent back to the committee for these concerns to be clarified and dealt with. The Border Management Authority Bill is meant to ensure effective law enforcement at ports of entry and on our borders, contributing to the facilitation of trade and travel to prevent smuggling and

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trafficking of human beings and goods and to prevent illegal cross-border movement.

The ACDP would like us to be sure, however, that adequate legislation is in place if we are to embark on this very expensive experiment in terms of border control. It is a global concern, with no clear guidelines or indication that these measures can or will be successful. We would like to be sure - rather safe than sorry. Thank you.

Mr D M GUMEDE: Hon Deputy Speaker and hon Members of Parliament, firstly let me congratulate Prof Mkhize who has been appointed as Minister of Home Affairs. [Applause.] The ANC welcomes you hon Minister.

Furthermore, let me thank our government for demonstrating that it listens to concerns of all its people, black and white, that is that our borders are porous and they need better control and more effective safeguarding. Here we are talking of a land border of 4 471km which it shares with six neighbouring countries, that is Mozambique, Zimbabwe, Botswana, Namibia,

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Lesotho and Swaziland. These land borders have to be controlled and safeguarded in a variety of environments ranging from mountainous terrains to semi-desert areas day and night, hour after hour, rain or shine. Added to that is a coastline that is approximately 3 924km bordering South Africa on three sides with 72 ports of entry. As South Africa we have 72 ports of entry.

Everyday our immigration officers, our police, our navy, our air force, our army, our agricultural officers, our health officials, our environmental officers and our intelligence, among others, have to sweat to ensure that they facilitate a legitimate flow of humans as well as goods in an efficient and effective manner while at the same time mitigating against illegal activities.

We know that together as one they can do more and better. That is why our caring government – and the ANC government is caring – is introducing this legal instrument as a radical shift in order to, firstly, contribute to socioeconomic development; secondly, effective and efficient border law enforcement under a single command and control; thirdly, to facilitate legitimate

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trade and secure travel; fourthly, contribute to the prevention of smuggling and trafficking of human beings and goods; fifthly, prevent illegal cross-border movement of terrorists, drug smugglers and human trafficking; sixthly, contribute to the prevention of the Republic's environmental and natural resources; and lastly, protect people of our country from harmful and infectious diseases like Ebola and other terrible diseases, as well as pests and substances.

In an increasingly globalising world, governments have to increasingly maintain security while encouraging trade. Our government needs to strike a balance between adhering to its security obligations and facilitation of trade ... and presently employs 9 000 state officials from at least five organs of state that are working at the 72 ports of entry with different conditions of service, competing priorities, dissimilar tools of trade and equipment, often not sharing information and without a single command. That is clearly not efficient. It is not effective and therefore needs improvement.

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The government's response to that is the Border Management Authority, BMA, which is an integrated model that will be efficient, economical and effective. The BMA will be intelligence driven and risk based in its integrated approach.

Some concerns, which I think were genuine concerns, have been raised about customs and excise. This involves about one per cent of customs of an estimated R300 billion; that is one per cent of customs. We are satisfied that this matter has been discussed and handled, and as a result we have a memorandum of understanding between the Department of Home Affairs and the Minister of Finance. However, let me assure you there is no customs and excise money that will be handled by the BMA. All the customs and excise revenue will be handled by the SA Revenue Service, Sars, because it has the resources and capacity to do that competently. Let me repeat that it will be handled by Sars because it has the necessary capacity and resources to do that job competently. So why are you afraid that it is going to be handled by the BMA when we didn't even attempt to put in place resources and capacities that would be necessary for that? So,

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fears that customs and excise will be handled by the BMA are misleading and untrue.

IsiZulu:

Akulona iqiniso ukuthi kuzoba khona imali ezophathwa abantu abasemngceleni. Imali yonke izophathwa ngabantu abekade bevele beyiphatha, abantu abaqondene nentela ngoba yibona abakwaziyo ukuyiphatha. Sesibonile iminyaka ngeminyaka beyiphatha ngendlela efanele nangendlela enemphumelelo.

The DEPUTY SPEAKER: Hon Gumede, take your seat. Yes hon member, what are you rising on?

IsiZulu:

Nk H O HLOPHE: Ngicabanga ukuthi ilungu elihloniphekile esihlala nalo ekomidini likhulume iphutha, liyazi ukuthi Isigatshana [Clause] 5 walo Mthethosivivinyo [of this Bill] awusho njalo.

English:

The DEPUTY SPEAKER: Hon member, that's not a point of order. Go ahead hon member.

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IsiZulu:

Mnu D M GUMEDE: Kusho ukuthi kungamanga aluhlaza ukuthi kuzobakhona imali ezohamba iphathwe yi-BMA. Imali izophathwa abantu abavele bekade beyiphatha.

English:

Ms H O HLOPHE: Deputy Speaker, order. It's unparliamentary to say amanga [lies] in this Parliament. Please rule on that.
[Interjections.]

IsiZulu:

ISEKELA SOMLOMO: Akekho umuntu okushilo lokho? Mhlonishwa uGumede [Hon Gumede], utheni baba?

Mnu D M GUMEDE: Ngithe ukusho ukuthi imali izophathwa yi-BMA kungamanga aluhlaza. Akekho umuntu engithe unamanga.

English:

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The DEPUTY SPEAKER: Hon members, it's a saying. It's not unparliamentary. Unless he specifically said any one person said so, that would be unparliamentary. Proceed hon member.

Mr D M GUMEDE: Other members of the committee raised the issue of allowing every person from Africa into South Africa without a passport. What we know is that that is not the mandate of the ANC government. It is not in line with our Constitution and it is not in line with our laws. That is why the ANC rejected that.

IsiZulu:

Okusho ukuthi kukhona abekade bethi abantu abangene baphume eNingizimu Afrika ngokuthanda yize bengenazo izincwadi. Sase sithi thina asilnikezwanga abantu abasivotela igunya lokuthi sivumele noma ubani ukuthi angene eNingizimu Afrika aphume ngokuthanda kwakhe kunendlela ekwavunyelwana ngayo ngokoMthethosisekelo nangokomthetho.

English:

We know that South Africa is a sovereign state. We know that our neighbours are sovereign states and we are happy with that.

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Matters of African travel cross-border travel ... Let me repeat. Matters of African cross-border travel are discussed at the AU and we believe that it is the appropriate structure for such discussions.

The BMA is an innovation. It is progress and surely will promote a better life for all. If perhaps there are any concerns, which I believe are not there, then they can be handled through the process of the NCOP. The ANC supports this Bill.

IsiZulu:

Uma kukhona abasenesikhalo sebe ngakufaka laphayana ...

[Kwaphela isikhathi] Ngiyabonga.

The MINISTER OF HOME AFFAIRS: Hon members and Deputy Speaker, firstly I would like to thank all the members who participated. I just want to emphasize one or two things and to assure members that most members who debated based on the original, having not looked at the amended Bill, seem to still confuse issues that have already been addressed. I think in all the discussions within the amended Bill it is clear that with regard to the

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proposed BMA there is no way that it can confuse functions of different departments. For instance, the police will remain responsible for the functions of the police as in their Act. The same applies to Defence and the same applies to Sars.

As the ANC has clarified, the amended Bill is very clear that the BMA will not collect revenue and even the one per cent that will be paid at the ports of entry will be deposited into the Sars bank account or directly into the National Revenue Fund. All that I can say is that this is critical for the country. We are on an unprecedented growth path, not only here. The issue of international migration cannot be postponed forever. If we want to remain committed to our national identity security, it is important to take the protection of our borders seriously.

With regard to the budget, the thinking that has developed through consultation is that functions will be transferred under the commissioner and that is estimated at 3,8 billion. It is estimated that over a 10-year-period the BMA will need an additional six billion.

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As a section 75 Bill it will also need to be submitted to the National Council of Provinces for their consideration before it is returned. I therefore thank the committee on Home Affairs for diligently discharging its constitutional mandate. Thank you.

Debate concluded.

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

Division demanded.

The House divided.

Mr N S MATIASE: Deputy Speaker, it's like you are prolonging the time for ... [Interjections.] ... too long. It can't be five minutes. We are now far beyond 10 minutes. Can you please close the doors?

(VOTING: TAKE IN FROM MINUTES)

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The DEPUTY SPEAKER: Hon members, the results are as follows. There are no abstentions. There are seven noes and there are 189 ... and we needed a quorum of 201. We don't have it. Hon members, before you do anything else, according to Rule 115 it states that:

Every member present in the Chamber when the question is put with the doors barred must vote or record an abstention; provided that in terms of section 53(2) of the Constitution the presiding officer has no deliberative vote, but –

(a) must cast a deciding vote when there is an equal number of votes on each side of a question; and

(b) may cast a deliberative vote when a question ...

and so on. I'm reading this so that every one of you ... I hope you have voted. If you haven't then there is a violation of the rule present here. I just wanted to make that point.

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However, otherwise ... So we can't read the Bill a second time because we don't have a quorum. We will proceed to the next item.

Mr N F SHIVAMBU: We are happy that it has been rejected because you don't think ... [Inaudible.] ... before you do things.

As the result of the division showed that there was not a majority of the members of the National Assembly present for a vote to be taken on a Bill as required by Rule 96(a), decision of question postponed.

CRIMINAL PROCEDURE AMENDMENT BILL

(Consideration of Report of Portfolio Committee on Justice and
Correctional Services)

There was no debate.

The CHIEF WHIP OF THE MAJORITY PARTY: I move that the Report be adopted.

Motion agreed to.

Report accordingly adopted.

**CONSIDERATION OF REPORT OF PORTFOLIO COMMITTEE ON JUSTICE AND
CORRECTIONAL SERVICES - CRIMINAL AMENDMENT BILL**

Mr N SINGH: Hon Deputy Speaker!

The DEPUTY SPEAKER: Yes, sir.

Mr N SINGH: Just on a point of order. I just like clarity. Is it a debate or declarations? We were informed that it is going to be declarations. Debate would have a speakers list and we don't have a speakers list. So, it's declarations.

Ms M C C PILANE- MAJAKE: Hon Deputy Speaker!

The DEPUTY SPEAKER: Hon member, let's do this, hon Singh, the procedure is that the report is introduced. If you wish to declare, you will request and we will grant you that. When you,

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after she has introduced the report, you will request if you so wish to make a declaration.

Ms M C C PILANE- MAJAKE: Hon Deputy Speaker, I will be introducing the Bill on behalf of the Chairperson of the Portfolio Committee on Justice and Correctional Services, hon Mathole Motshekga. My name is Chana Pilane-Majake. The Bill seeks to amend section 77, 78 and 79 of the Criminal Procedure Act 51, 1977. The Bill emanates amongst others, from the judgement of the Constitutional Court in the De Vos and others versus Minister of Justice and Constitutional Development and others also known as De Vos judgement.

The Bill also seeks to clarify the composition of panels provided for in section 79 of the Criminal Procedure Act of 1977 following the Western Cape High Court judgement of S versus Petro. In the De Vos case, the Constitutional Court declared 77(6) (a) (i) (ii) of the Criminal Procedure Act 51, 1977 to be inconsistent with the Constitution and invalid to the extent that it provides for the compulsory imprisonment of an adult accused person and compulsory hospitalisation or imprisonment of

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children. In the case of section 77(6)(i) of the Criminal Procedure Act, 1977, the court suspended the declaration of invalidity for a period of 24 months to allow Parliament to correct the defects in the light of the judgement which was delivered on June 2015, therefore, making the deadline for corrections to be 25 June 2017.

Regarding section 77(6)(a) to the Constitutional Court provided for a read in provision, the Bill therefore, largely seeks to ensure that the Constitutional Court judgement is complied with by amending the applicable provisions of the Criminal Procedure Act 51, 1977 to remedy the current position of constitutional invalidity. The proposed amendments therefore seek to provide the courts with a wider range of options in respect of orders to be issued where the court finds that an accused person is not able to understand the proceedings so as to make a proper defence by reason of mental illness or intellectual disability or is found to be not criminally responsible for the act by reason of mentally illness or intellectual ability.

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The purpose of the Bill is therefore to amend the Criminal Procedure Act 51, 1977 so as to provide the court with a wide range of options in respect of orders to be issued in cases of findings that the accused persons are not capable of understanding criminal proceedings so as to make proper defence or that accused persons are by reason of mental illness or mental defect or for any other reason not criminally responsible for the offences they are charged with, to clarify the composition of the panel provided for in section 79, to conduct enquiries into the mental conditions of the accused persons and to provide for matters connected therewith. Therefore, the Bill provides for a provision that deals with unconstitutionality of arbitrary incarceration of accused persons and further also provides for discretion on the part of the judiciary in matters of this nature.

The debate in the committee were concerned about the human element of discretionary powers conferred to the judiciary, but the committee was also conscious that it is imperative to comply with the order of the court to continue to endorse

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constitutional democracy of South Africa or constitutional democracy South Africa is enjoying.

Nothing in the committee was actually said about the Bill and its relevance whether there is corruption or whether there is capture in South Africa. I am actually saying this in the sense that whenever we actually enter into debates, to some extent then we start deviating instead of talking about the Bill then we keep on misleading South Africans by always bringing into the fore issues that are not important like what I have just mentioned about frankly talking about corruption, talking about capture when in actual facts here what we are actually doing is just to come up with a provision that actually allows us to be in the position to treat accused persons in a humane manner regardless of their mental ability. I thank you, Deputy Speaker. The ANC supports the Bill. [Applause.]

Declarations of vote:

Mr W HORN: Deputy Speaker, we are rising in support of this report and the Amendment Bill. However, the manner in which this Bill was handled by the Minister and his department must be

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questioned. As it has become a norm now where the Constitutional Court holds parts of legislation to be unconstitutional and affords Parliament the opportunity to amend this legislation within certain period, in this instance, 24 months. Such Amendment Bills typically is tabled less than six months before the cut off date. This not only exposes Parliament to be in contempt of court, but ultimately will always read to a situation, like in this instance, that while the Bill meets the very essentials of the Constitutional Court order any chance of producing the best possible legislation is lost.

To add insult to injury, the processing of this Bill aimed at fixing unconstitutional legislation now routinely are made by monotonous eliminations by ANC members about what they believe to be audacity of the judiciary to question Parliament and the executive. One must assume that the ANC members on the portfolio committee are obviously in support of the call by one, supra Zuma, the Secretary of the ANC in KwaZulu-Natal, who called for a day of mass action against what he calls frivolous judicial average.

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Whenever Bills aimed at fixing unconstitutional legislation serves before the portfolio committee, an atmosphere thick with the smell of disdain for constitutional supremacy prevails and calls for the return of parliamentary supremacy. Yes, that system that enabled and prompts up apartheid is often made by ANC committee members. It is clear South Africans who support our Constitution can no longer support the ANC. I thank you. [Applause.]

Mr M L W FILTANE: Deputy Speaker, the UDM does support the report and the Bill. But let's look at the root causes of this situation that has arisen. The Zuma administration provides only 4% of the national fiscus for mentally ill persons. As a result of this, these class of citizens suffered unnecessarily and that calls for the need to amend the law. Government needs to show more concern about their plight, which in all probability is not self-inflicted. For typical intern crimes like murder and fraud, a large number of such influences may go free if the clerks indicate that they lack intellectual ability as opposed to mental illness.

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Poverty levels in our country are so high that it is a luxury for some of the people to even begin to talk about brain performance enhancing nutrition. We are talking about millions of people here. As a result, these people's brains operate below par, but they are not ill. We therefore, can understand that the current government seeks to offer judicial protection to those persons by removing the term, 'mental defects' and replacing it with intellectual disability. Such persons are a direct product of poverty that is ravaging the poor and the unemployed.

Question is whether such people can be criminal responsible in the technical sense of the world. Consequently, we now have to bring the concept of balance of probabilities when dealing with typical criminal cases not just civil matters.

The economic cluster has failed together with the social cluster of government to make sure that people enjoy nutrition enriched diet, which will enable the minds of the consumers of that food to be able to reason properly. Consequently, they fall into this unfortunate class. The end result of all the above-mentioned

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factors is that this department has to dispense social justice as opposed to criminal justice.

Although the proposed amendments look at technical issues only, yet they have great impacts on the social issues of the people. So, we support the amendments if only they will protect the socially disadvantage citizens of our country. However, cautions need to be made that we need not as this House have to wait until it is the juries that tell us that we should amend the law. Why was this law allowed to go the way it is when there is 400 Members of Parliament, MPs, here? Is it favouritism again? Now, let us not blame the judiciary when it keeps on correcting us. They have done a good job. That's why we support the Bill because we are for the social good of the people. Thank you, Chair [Applause.]

Mr N S MATIASE: Deputy Speaker and the Deputy President of the EFF, commissar, Floyd Shivambu, the Bill before the House is as a result of Constitutional Court judgement, which found that section 77 of the Criminal Procedure Act is inconsistent and invalid when it deals with imprisonment of adults and children,

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particularly, the court found that section 77 applies particularly harshly in respect of children.

A judgement was made in 2015 that Parliament was given 24 months from the date of the judgement to finalise this Bill to avoid Parliament being in contempt of court. The Bill seeks to amend a Criminal Procedure Act in cases of finding that accused persons who are mentally ill, mentally defect of any other reason not to be criminally responsible for offences they are charged with, an administrative matter related to appointment of a panel to conduct enquiries into the mental conditions of accused persons.

The EFF agrees with this amendment because this is a directive from the Constitutional Court. Whilst the EFF support the Bill, it is important to reflect on the conduct of government, who continue to neglect people with mental illness. The majority of people with mental illnesses end up in criminal justice system because society and the ANC government in particular have abandoned them. Most mentally ill persons do not have access to medical services. Most of them do not have access to proper care and guidance, particularly the majority of our people.

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We have allowed the new liberal government with its inhumane policies to commercialise the taking care of people with mental illness.

In Gauteng province, it is a well-known fact that the ANC government killed at least 100 mental ill patients - death which could have been prevented. But we know that the ANC government killed our people. It does not matter how vulnerable our people are, the ANC doesn't care. It continues to kill them. The ANC government has failed to provide them with soft skills for them to be functional members of society and contribute positively.

Mentally ill people continued to be victims of most violent crimes, particularly women and children. Mentally ill people must not end up in criminal justice system. When it happens, it must be a carrying nation and should also do our outmost best to ensure that our criminal justice system is humane and act sincerely, especially when an offender cannot appreciate the wrongfulness of his or her actions. It is for this reason that the EFF support the Criminal Procedure Amendment Bill. We want to call upon all our people to look after our people with mental

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illnesses. We must protect them, integrate them into society and not discriminate against them. We must love them and in doing that ... [Time expired.] ... we will prevent the ending up of these people in criminal justice system. [Applause.]

Mr N SINGH: Hon Deputy Speaker, as we have heard the amendments that we are considering today are as a direct result the injunction of the Constitutional Court. Halala Constitutional Court halala! [Interjections.] I know that the Rules prevent us as Members of Parliament or Parliament from influencing decisions of the Constitutional Court, but we hope that on Monday, they would rule in favour of strengthening democracy in our country.

Hon Deputy Speaker, it has long been the accepted practice that individuals declared to be of unsound mental disposition may in certain circumstances be detained involuntarily. The justification for such detention has been considered necessary not only for the treatment of the individual, but also for the protection of society at large.

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The problem that we currently have and the one that this Bill seeks to rectify is the fact that there are varying degrees of mental illnesses and that it can never be a one-case-fits-all approach in respect of classifying the degree of mental illness or the danger posed to society by a person declared to be of mental unsound mind. Up and until this legislative Amendment Bill and in particular in respect of section 77(6) of the Criminal Procedure Act, it was never required or even permitted for a court to enquire into the potential threat or danger to society posed by a mentally ill accused as to what kind of treatment or hospitalisation would be necessary.

Expert medical witnesses were not permitted to express any medical view as to the potential threat the accused posed either to society or to themselves or the kind of treatment that should be undertaken.

Hon Deputy Speaker, it is clear that section 76(a)(i)(ii), because of the mandatory and predetermination not only deprived the presiding judicial officer of all judicial discretion in cases such as this, but also deprive the accused of the right to

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a fair and individualise justice. This not only compromises the administration of justice, but also severely impinges upon the constitutional rights of the accused to a fair trial.

In respect of a minor accused, there is currently a clear infringement of constitutional right 28(1)(g), read together with the overarching provision of 28(2), which unequivocally states that and I quote: "A child's best interests are of paramount importance in all matters concerning the child".

Therefore, Deputy Speaker, in full accord with the reasoning and judgement handed down by Grisly J, in our nation's apex court in this matter; the IFP supports this Criminal Procedure Amendment Bill. I thank you.

Declarations of vote (contd).

Mr S C MNCWABE: Deputy Speaker, hon members of the House, to all our mothers in the House, including my own leader: Happy Mothers Day in advance. [Applause.] The NFP welcomes the amendment contained in the report of the portfolio committee. As it had been noted, the amendments contained in this report are necessary in terms of the ruling of the Constitutional Court in

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2015, in a case of *De Vos N.O. and Others v Minister of Justice and Constitutional Development and Others* [2015] ZACC 21, the NFP believes that the amendment to the Criminal Procedure Amendment Bill contained in the report must not be read in isolation but in conjunction with existing amendments contained in the Bill.

The net effect of these amendments is to soften the often harsh face of our criminal procedure and safeguard the basic fundamental human rights to dignity and liberty. It is patently clear that it is unjust to deprive a person who is intellectually unsound and incapable of understanding our criminal procedure of their liberty under penile conditions.

The issue is not about the deprivation of personal liberty, which is often necessary to protect people from harm, but the penile conditions under which such deprivation of liberty takes place is an issue. We believe that the amendments proposed here today satisfy the requirements of the Constitutional Court and also satisfy the need to balance the interest of the individual with the interest of the society.

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Furthermore, we are of the opinion that the amendments give full effect to the values contained in our Bill of Rights.

Accordingly, the NFP supports the recommendations in the report.

I thank you.

Mr S N SWART: Chairperson, the ACDP supports this Bill. We know it is a fundamental principle of our criminal justice system that an accused must be able to understand the court proceedings as well as give proper instructions to his/her legal representatives in order to conduct a proper defence.

The impugned provisions did not allow presiding officers the necessary discretion to look into the mental illness or intellectual disability of the accused persons. This is found to be unconstitutional and resulted in a reading-in provision by the Constitutional Court.

The reading-in provision is interesting because obviously, we as Parliament can say: But, that is our job. We pass laws. Why are you as the judiciary changing the law and giving us Parliament

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24 months to later change it. So, it is interesting what the Constitutional Court judge said. He said:

I heed the caution made in an earlier decision that where there are a number of options available to cure a constitutional defect, the courts should defer to the legislature.

But, he said in this case, a reading-in accords with the purposes of the legislation, and we agree with that. The challenge is of course the principles that were set out in an earlier judgement are that a range of possibilities exist where a court is able to afford interim relief to affected persons. That is what the court did. They awarded interim relief by reading-in provisions.

The challenge is the delay from when a court order is given to when we sit as Parliament. We are now as the Justice committee under massive pressure to finalise this Bill and somewhere we need to find a mechanism that when a court brings out an order

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against or finding legislation unconstitutional, Parliament and the executive should be alerted to that.

It was almost 18 months before this was tabled before the committee. I don't know what the reason for the delay was, but we from the ACDP have raised this with the Office of the Chief Justice that surely we as Parliament or the Office of the Chief Justice alert Parliament when a Bill is found unconstitutional.

Remember, the order is against the Minister, but Parliament has to rectify the defect. So, that is a concern of ours: The delay that is taken place; and often we find the departments then have to approach the Constitutional Court for an extension of that clause. Surely, we can do this quicker to make sure that there is enough time.

Take note that this cut-off date is next month and this process still has to go through the NCOP. So, from the ACDP side, we accept the amendment, we support it and we thank the court for looking into this issue. However, we believe that we can expedite the process in the future. Thank you very much.

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Mr B T BONGO: Deputy Speaker, hon Ministers and Deputy Minister, hon members, section 2 of the Constitution of the Republic of South Africa says that the Constitution is the supreme law of the Republic. Any law or conduct that is inconsistent with the Constitution itself is invalid. This Bill arises out of an Act which was passed in 1977. It is Act 51 of 1977.

When I stood here last time to debate, we had committed that as the ANC we will change all older legislations that are not consistent with the Constitution. We are today standing here to fulfil exactly what we had promised the people of this country around changing all old order legislations. The Bill before us seeks to amend sections 77, 78 and 79 of the Criminal Procedure Act 51 of 1977.

It gives effect to three very import things. One such is the arbitrary incarceration of mentally ill offenders in terms of section 77(6) (a) (i) and (ii). Then section 79 deals with the panel of assessors that must assess mentally ill people at large. Secondly, the Bill deals with giving discretion giving a wider range of options to judicial officers, magistrates and

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judges in terms of accessing the mental illness of a particular offender that is before the magistrate or a judge. It arises out of a popular judgement which is called De Vos judgement, where the court declared that certain sections were just unconstitutional.

I need to correct hon Mathys in saying that the ANC has killed people at Esidimeni Centre. It is not true that the ANC has killed people at Esidimeni. As the ANC, we view that matter as an unfortunate incident. We, in the ANC, support this Bill and we understand the role of the judiciary, the executive and legislatures very clearly. We are not confused about all this roles. We support this Bill hon Deputy Speaker. Thank you very much.

Question put (that the Bill be read the second time).

No objections.

Agreed to.

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Bill read a second time.

Debate Concluded.

The House adjourned at 17: 41

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