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***PROCEEDINGS OF THE NATIONAL ASSEMBLY***

\_\_\_\_

The House met at 14:00.

House Chairperson Ms M G Boroto took the Chair and requested

members to observAe a moment of silence for prayer or

meditation.

**ANNOUNCEMENT**

The HOUSE CHAIRPERSON (Ms M G Boroto): The sound that was

playing took me aback, I thought we are in a different

country. Hon members, in the interest of safety for all, we

all know that we adhere to by keeping our masks on.

Mr B A RADEBE: I hereby move on behalf of the Chief Whip of

the Majority Party:

That the House, with the concurrence of the National Council

of Provinces –



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(1) recognises that climate change and global warming have

become priorities for South Africa and the global

community;

(2) notes that South Africa has made a number of

commitments to combat climate change in the context of

a just transition and sustainable development;

(3) further notes that Parliament requires a coordinated,

consultative approach to ensure that it can oversee and

contribute to South Africa’s climate’s strategy;

(4) therefore, resolves, in accordance with Joint Rule 142,

to establish a Joint Steering Committee on Climate

Change for the duration of the Sixth Parliament; the

Committee to;

(a) facilitate the co-ordination of parliamentary

activities related to climate change;

(b) facilitate a joint parliamentary programme of

action to prioritise climate issues and

commitments;



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(c) be co-chaired by a House Chairperson from each

House;

(d) exercise those powers provided for in Joint Rules

32 and 33 and may consult any other committee or

forum;

(e) have the power to establish sub-committees to

assist with the fulfilment of its mandate;

(f) consist of;

(i) one member designated from each of the

portfolio committees on Agriculture, Land

Reform and Rural Development; Higher

Education, Science and Technology; Human

Settlements, Water and Sanitation;

International Relations and Cooperation;

Public Enterprises; Minerals and Energy;

Trade and Industry; and Transport;

(ii) one member designated from each of the

select committees on Education and

Technology, Sport, Arts and Culture; Trade



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and Industry, Economic Development, Small

Business Development, Tourism, Employment

and Labour; Cooperative Governance and

Traditional Affairs, Water and Sanitation

and Human Settlements; Land Reform,

Environment, Mineral Resources and Energy;

Public Enterprises and Communications; and

Transport, Public Service and

Administration, Public Works and

Infrastructure;

(iii) one member designated from each of the

standing and select committees on finance

and appropriations;

(iv) 11 other members from the National

Assembly (ANC 6, DA 2, EFF 1 and other

parties 2); and

(v) 9 other members from the National Council

of Provinces; and

(5) report to the Houses at least annually.

Question Put



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Motion agreed to.

**CONSIDERATION OF REPORT OF PORTFOLIO COMMITTEE ON HEALTH ON**

**NATIONAL HEALTH AMENDMENT BILL [B 29 – 2018]**

Dr K L JACOBS: Thank you Chairperson. The National Health

Amendment Bill B29 of 2018 was a Private Members Bill tabled

and referred to the committee on 3 September 2018.

The Bill had lapsed in accordance with NA rules which are Rule

3332 at the end of Fifth Parliament and was revived during the

Sixth Parliament.

The Bill sought to amend section 4 of the National Health Act

61 of 2003 to provide clinics in the public sector to open and

operate for 24 hours and seven days a week.

The committee met with the sponsor of the Bill Dr Suzan

Thembekwayo on 7 October 2020 to receive a briefing relating

to the Bills contents and provisions. The committee

subsequently received input on the Bill from the national

Department of Health on the 21st of October 2020.



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Following extensive committee deliberations and input from the

Department of Health, the committee concluded that the

National Health Amendment Bill in its current form would have

massive financial implications on the Department of Health and

the quantification of course had not been done.

Moreover, it was of concern to the committee that the country

was currently under financial stress and the Department of

Health would have great difficulty in adjusting its current

budget against the health requirements resulting from the

Covid-19 pandemic.

The committee understood that the Department of Health has

committed to ensure that ultimately all primary health care

facilities operated for 24 hours a day and this goal would be

achieved through progressive means when and as resources will

become available.

The committee was of the opinion that there is a need for

comprehensive data on the factors informing the operation of

24 hour facilities such as human and financial resources

needed for expanded service delivery.



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Further noting that the Bill would require urgent investment

and health infrastructure which is not tuneable given current

limited resources.

In its deliberations, the committee noted that the Bill was

not subjected to a socio economic impacted assessment system

to determine whether the Bill was the correct vehicle to

achieve the intended objective.

The committee was and continues to process the National Health

Insurance Bill which will likely have an impact on the

proposed legislation as well as provide for consequential

amendments of the National Health Act.

Based on the aforementioned reasons, the committee adopted a

motion that the Bill was not desirable at the stage. The

committee thanks Dr Suzan Thembekwayo for sponsoring the Bill

and in so doing giving the committee the opportunity to engage

in a continuous debate on improving the health system of our

country.

We are reminded that the government’s goal is to address the

access to quality and affordable health care to all South

Africans. This is in line with Alma-Ata declaration of 1978 of



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the World Health Organisation. I will only call the section on

primary health care;

“Primary health care is essential health based on

practical scientifically sound and socially acceptable

methods and technology made universally accessible to

individuals and families in the community through the

full participation at a cost that the community and

country can afford to maintain at every stage of their

development in the spirit of self-reliance and self-

determination. It forms an integral part of both the

county’s health system of which it is the central

function and main focus and of this overall social and

economic development of the community. It is the first

level of contact of individuals, the family and community

with the National Health System bringing health care as

close as possible to where people live and work and

constitutes the first element of continuing health care

process.”

Chairperson, we are in the final stages of the processes of

the NHI Bill in the Portfolio Committee on Health.



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The EFF jumped the gun with this Bill. Yet, incomprehensively

the EFF says they do not support the NHI Bill yet they were

seeking to have our clinics at this point in time as early as

2018 on a 24hour seven days a week basis.

A Bill that seeks as its intention to achieve its universal

access to quality health care services in the republic, in

accordance with the section 27 of the Constitution is sounding

that they said they would not agree with and this was done

just yesterday as we were deliberating further on the Bill.

This Bill runs the opportunity to all the political parties to

show that they do care about the poor and the marginalised,

change of perspective on the NHI Bill, please consider

supporting the NHI Bill as we proceed further with

deliberations. Thank you once again Chairperson.

*Declarations of Vote*:

Ms M O CLARKE: Hon House Chairperson, with reference to the

proposed Private Member’s Bill, by the hon Dr Thembekwayo, the

DA supports a noble objective of extending access to medical

care. This Bill will realise bringing health care to the poor

and vulnerable in particularly within rural areas. The

objectives in the Bill with regards to improving access to



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health care services having it been realised particularly

within the City of Johannesburg under the DA-led governance.

The concerns that the DA have revolves around the practical

implementation of such an amendment. Prior to considering a

legislative amendment, the first need to properly capacitate

these clinics. Currently this amendment will not solve the

current problem of the access of health care services.

Its implementation will place an enormous financial burden on

the state that will inevitably hamstring other health

programmes. Not to mention the impact that it will have on the

National Health Insurance, NHI, once implementing this Bill.

The national department and most provincial departments will

not have the resources, staff, equipment to implement this

Bill as legislation. Expanding on current capacity may prove a

breach too far.

Currently, South Africa has 0,31% of doctors per 1 000

patients. It is unclear where the necessary human resources

will come from to meet the needs of clinics to operate 24

hours. Doctors and nurses are already working extremely long



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hours and the PMB does not take into consideration such

shortages.

Additionally, the financial resources needed would have to

double. Considering the current economic context, COVID-19

pandemic and its implications on the health care environment,

the financial sustainability of such an amendment is

questionable.

Another concern I would like to raise around the state of

compliance, norms and standards that is provided around our

clinics. Should they be mandated and operated within 24 hours?

I do not think our clinics would cope with that kind of stress

as many of our clinics do not comply with the norms and

standards.

There are a total of 3 473 public health care, PHC,

facilities, of which only 2 200 facilities qualify as ideal

clinics. This means that 63% of facilities comply with the

norms and standards of which only 1 050 PHCs, facilities have

adequate space to accommodate 24 hour services. The concerns

raised is that the clinics that do not meet the criteria of

ideal clinics pose a risk to the quality health care provided



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and could result in an increase of legal cases against the

state.

As long as the Bill cannot be adequately implemented, it has

no real value as legislation.

The following caveat must be put in place to realise the

outcome of this Bill. A proper evaluation must be undertaken

and at the hand of social requirements and the ability of the

department. The undertaking of the Socio Economic Impact

Assessment System, SEIAS, is therefore recommended to ensure

that an informed decision is made in this regard. Expand,

update and maintain health infrastructure to be able to

accommodate the 24-hour service mandate. Expand and increase

the number of health care workers in the sector, have an

adequate financing to sustain and meet financial demands of

such a provision.

The Portfolio Committee on Health must ensure that oversight

is exercised in terms of these clinics.

In conclusion, indeed, the Constitution does highlight the

right to access health services. However, the provision of the

resources provides for a limitation in this regard. We must



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therefore aim in accordance with the resource availability to

extend the operational times of the clinics in order to meet

the rights enshrined in section 27(1) of the Constitution.

However, I do not believe that this PMB will effectively

result in increased and improved access to health care

services as it does not consider the human and financial

resources. This should be done in a faced approach in order to

realise the outcomes of the Private Member Bill.

Additionally, overworking doctors by stretching the 0,31

available to provide services for 24 hours, will have a

negative impact on staff morale and mental health which will

ultimately in lower quality of health provisions.

It is important to address any issue that hinders universal

health care within the public sector. If all these

shortcomings are realised in the public health system, the DA

will support this Private Member’s Bill. Just to note the DA

does not support the NHI. Thank you. [Applause.]

The HOUSE CHAIRPERSON (Ms M G Boroto): Hon members, I am not

sure. Information and Communication Technology, ICT, I did not

want to disturb the member on the podium, but the echo or the



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sound that comes from – something is not right. The sound is

disturbed when the member is on the podium. So, please check.

Sometimes you find that the TV sets are not fully off or

whatever monitor. “Ja.”

Alright. We now proceed now and call on the EFF, hon Chirwa.

Ms N N CHIRWA: Hon House Chairperson, what brings us today is

yet another affirmation that the ANC-led government and its

agents masquerading as political parties in this House who

never care about the people of this country. Today, is a firm

reminder that when the legislators of this House found an

opportunity to legislate the universal health care coverage in

the form of supporting an EFF Private Member’s Bill that was

to see hospital and clinics opening 24 hours and seven days a

week, they chose to rather reject this opportunity, because of

political jealousy and a deep disdain for our people who

continue to stand in queues at 4:00 am in the morning, just to

collect medication and vaccination for their infants and

grandparents.

It is a lie that this Bill is not financially feasible. The

ANC-led government would rather spend health care money on

doing programmes set for them by Bill Gates, than programmes



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than programmes that will result in quality and accessible

health care for our people.

The ANC-led government is committed to buying salons for

Minister’s girlfriends with money meant to save lives of our

people like we saw with the Digital Vibes cash heist during a

global pandemic.

Unfortunately for the country, this Bill was not going to

benefit ANC thugs with handouts. It was not going to create

opening for an increase executive personnel. This Bill was

going to ensure that more nurses and doctors are employed.

More community health care workers are permanently absorbed.

More Emergency Medical Services, EMSs, are available and put

an end to our people being turned back at 4:00 pm, because a

clinic, a place meant for health care and our wellbeing has

office hours’ like is an accounting firm in Sandton is closed.

In Limpopo, in Madimbo Clinic just last year, a woman gave

birth on a pavement outside of a clinic in full view of

passers-by because it was closed and nurses were sleeping.

This is a clinic that was initially meant to be opened for 24

hours, but was not because a commitment to have a clinic to



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function for 24 hours and seven days a week is not the same as

the legislative responsibility for the same purpose!

Elina Maseko had a same catastrophic event outside Stanza

Bopape Clinic in Mamelodi East. Another woman gave birth in

Mapela Clinic outside Mokopane, just last year while waiting

for the clinic to open. Hundreds of other women and their

children die at the gates of health care facilities because of

ANC promises and commitments that never manifest in this House

doing their legislative duties to usher access to our most

destitute communities and especially the women of this country

who utilise health care services the most.

Today, the ANC-led government want to tell us about committing

to opening clinics for 24/7 and yet the very same people

rejects legislating the very same commitment.

Our people will not be assisted by mere commitment that cannot

be reflected on paper as the law. In 1994 the ANC committed to

ushering free education and almost 30 years later, it is still

not a reality. Our people need laws that will protect their

rights, no slating promises and commitments that never become

a reality.



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The rejection of this Bill is indeed a form of gender-based

violence and ignoring our rights to health care. It is

precarious that in the year 2022 the EFF has to teach a

supposedly liberation party that our people need health care

facilities that open for 24/7. Rejection of this Bill,

subsequently means and accepting the status quo.

The poor are once again left out entirely accepting Bills such

as the National Health Insurance, NHI, while a meaningful Bill

like a National Health Amendment Bill surprisingly reminds

people in this room that the country has money issues.

They do not remember that we have money issues when they steal

our money. They do not remember that we have money issues when

SA Health Products Regulatory Authority, Sahpra, donates to

America for health products that are not recognised for. They

do not remember that we have money issues when they discard

expired vaccines bought with our money because they fail to

educate our people of the importance of vaccination. They do

not remember that we have money issues when they outsource our

health care to the private sector through the NHI. They

remember that we have money issues when we want our people to

be able to go to the clinic at 2:00 am because they got sick

at 2:00 am.



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Prevention, primary health care and education will forever

remain a myth in this country so long as the poor person has

to wait for the weekend to pass in order to be assisted in our

clinics.

This Bill seeks to ensure medical intervention at the point of

need for our people. [Time expired.]

Mr A H M PAPO: Hon House Chairperson, on a point of order

The HOUSE CHAIRPERSON (Ms M G Boroto): The IFP. Mama Hlengwa

just before you proceed: Why are you rising hon Papo?

Mr A H M PAPO: Hon House Chairperson, my point of order is: I

wanted to check whether is it parliamentary for the hon member

to start her speech without greeting the president of her

organisation?

The HOUSE CHAIRPERSON (Ms M G Boroto): Hon Member, that is not

the point of order.

*IsiZulu*:

Nk H O MKHALIPI: Hhayi wena. Yazi amakhehla ePhalamende adina

kanjena ke.



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Nk N P SONTI: Ayifuni wena! Ayifuni wena leyo!

*English*:

The HOUSE CHAIRPERSON (Ms M G Boroto): Order hon members!

Order!

*IsiZulu*:

Nk H O MKHALIPI: Uyaphapha! Uyaphapha!

Nk N P SONTI: Uyaphapha!

*English*:

The HOUSE CHAIRPERSON (Ms M G Boroto): The hon Sonti, please!

I will deal with everything that is being raised! Please,

stop!

*IsiZulu*:

Mama Hlengwa, ithuba ngelakho.

*English*:

Ms M D HLENGWA: Hon House Chairperson, the COVID-19 pandemic

without doubt brought the global society in the stand still.

It forever changes the ways we view and access the health



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care. The pandemic also tragically had a much greater impact

on the poorest of the society.

According to the World Bank extreme poverty increased in all

countries in 2020. It is expected that COVID-19 induced

extreme poverty is set to increase by 1,3 percentage point in

the Sub-Saharan countries alone.

It is against the backdrop that we should renew and review the

National Health Amendment Bill which proposes to amend the

National Health Act to provide that public health care clinics

must operate and provide health service for 24 hours a day and

seven days a week.

The reality is that the direction in which the economic state

of our country must inform the deliberation of this Bill. The

fact that no costing model was provided makes this proposal as

noble as it is not feasible.

With an expected gross domestic product, GDP, growth rate of

only 1,8% over the next three years and a government debt

burden of over R4,3 trillion. This proposal will have grave

financial implications.



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However, this reality should not mask urgent need of

government to ensure our public health facilities do need to

serve the people.

Corruption and fraud within this sector must be attended with

extreme urgency. The deliberations on the National Health

Insurance Bill should also not be used to mask the urgent need

to attend to maintenance of the public health care facilities.

The IFP has always been vocal about the alarming delays in the

repair work of the Charlotte Maxeke Hospital and it seems that

this delay has been further escalated by reports of

corruption. Access to health care must be ... Thank you, hon

House Chairperson. The IFP accepts this report.

*Afrikaans*:

Mnr P A VAN STADEN: Agb Voorsitter, dit is een ding om ’n

bestaande wetgewing te verander, al is dit net met ’n klein

sin of ’n woord, maar die uitvoering daarvan kan, soos in die

huidige geval van Suid-Afrika se openbare gesondheidsorg, ’n

baie, baie groot uitdaging raak.

Dit is baie maklik om die woorde tot die Nasionale

Gesondheidswet te voeg wat opdrag gee dat klinieke wat deur



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die staat befonds word dienste moet lewer 24-uur per dag sewe

dae per week. Dit is baie maklik, maar dit gaan nie gebeur

nie.

Die Minister het reeds in ’n geskrewe antwoord aan my in die

afgelope tyd aangedui dat Suid-Afrika tans met 10 831 vakante

poste vir verpleegsters en 1 339 vakante poste vir dokters

sit. Met die portefeuljekomitee se besoeke gedurende die

Nasionale Gesondheidsversekering, NGV, verhore aan landelike

gebiede die afgelope tyd, waar klinieke ’n uiters belangrike

rol in hierdie verafgeleë gebiede speel, het dit tog deurgekom

en was dit duidelik gewees dat die tekorte aan dokters,

verpleegsters, medisyne, toerusting en die daaglikse

infrastruktuur soos krag en water ver tekort skiet, en dat

pasiënte vir dae aaneen van hul huise af moet loop om by

hierdie klinieke uit te kom, net om daar te kom en om nie

gehelp te kan word nie weens al die tekorte wat ek so pas

genoem het.

Daarom kan die wetgewing verander word maar die vraag is, hoe

gaan die spesifieke wetgewing dan tot uitvoering gebring word?

Dit kan nie, dit gaan nie en dit gaan glad nie gebeur nie, en

onder die huidige omstandighede gaan dit bloot net ’n

onbegonne taak wees om uit te voer.



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Intusssen mors hierdie regering sy tyd en ons

belastingbetalers se geld met die Nasionale

Gesondheidsversekering en gee nie aandag aan kritiese

infrastruktuur wat reeds in duie gestort het nie. Die

R8 miljard wat uit vanjaar se Gesondheidsbegroting aan die NGV

spandeer word kon eerder spandeer gewees het om die openbare

gesondheidsinfrastruktuur op te gradeer, om kundiges aan te

stel, die vakante poste van dokters en verpleegsters te vul en

vir die uitwissing van wanbestuur, wanadministrasie en van

korrupsie.

Alhoewel die VF Plus hierdie verslag ondersteun, kan ons nie

hierdie wysiging aan die Nasionale Gesondheidswet ondersteun

nie. Ek dank u.

Ms M E SUKERS: Hon Chairperson, we firstly wish to recognise

the work of Dr Thembekwayo to bring this Bill before the

committee. We however support the report by the committee.

The ACDP notes the important issue of access to health care

and the expansion of healthcare services at a primary care

level that the Bill seeks to address. Primary health care

facilities, such as day hospitals or clinics are at the

forefront of health care and disease management. The quality



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of health care is greatly impacted by the long waiting hours

at these facilities, the shortage of staff, the lack of

security and the lack of appropriate infrastructure to ensure

the comfort and safety of patients - especially the elderly

and those suffering from illness.

To change this, there are two critical elements that must be

addressed: The ability of the state, to perform and execute

what is needed and the environmental readiness to facilitate

the change of extending service hours. It is evident that the

biggest hurdle to transformative, and quality health care is

the deficiencies of the state.

This is not primarily a lack of funding or even on-the-ground

capacity, but that the state insists on controlling the sector

and dictating to communities concerning their health care. The

key reason we do not turn the money invested into healthcare

by the taxpayer into health outcomes is the state’s desire to

control health care. We cannot constantly be saying we don’t

have money to open clinics when communities need them or

pretend that funding doesn’t matter. The state needs to

devolve power to communities to determine how their needs are

best served, and when they want their clinics to be open.



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We want to see a model, especially in rural communities or

areas, with a high population that reduces pressure on the

system. What is needed to make this shift possible, and

thereby improve services and access to quality health care, is

a further deep-think and consultation before legislation that

extends service hours can be developed and implemented. This

legislation needs to form part of a fundamental reform of the

healthcare system, and no hon Jacobs we do not support the

National Health Insurance, NHI.

As long as the states dictates health care centrally, it will

demonstrate its inability to create a conducive environment to

pursue improvement and transformative health care services

that will improve our people’s experiences at health care

facilities.

We thus conclude with the committee that the Bill is not

implementable or desirable in the current circumstances. We

would welcome working with Dr Thembekwayo and the whole

committee to create community-led healthcare. Thank you,

Chair.

The HOUSE CHAIRPESON (MS MG BOROTO): The UDM?



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Mr N L S KWANKWA: No declaration, Chair.

Mr A M SHAIK-EMAM: Thank you very much, House Chairperson. The

NFP notes the report that is tabled here today. And allow us

to express our concern about a whole lot of matters pertaining

to this particularly.

I think it is common knowledge that people in this country and

all over the world get ill at any time of the day or night.

And that as human beings, we ought to have services available

to them when they do take ill.

I want to give an example of Mohammed Khan from Durban who got

ill on a very wet and rainy Saturday could not get an

ambulance, the facilities were not available. In two days

later, he died in hospitals, all because there was a delay in

not having facilities available.

Chairperson, is it okay or acceptable that when somebody takes

ill on a weekend or after hours, they must then wait for a

Monday to receive medical attention? Is it not the

responsibility of the state to provide quality healthcare, 24-

hours a day seven days a week? Yes, indeed, we will raise

concern about whether we have the financial resources and the



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capacity to deal with it, but 28-years later House

Chairperson, we think that something ought to have been done

in order to address the challenges many of our people face.

Let me give you the case of the Lambert’s Bay. There’s not

even a day-care hospital, the Chairperson and people have to

rely on going 10,20 or 30 kilometres away. No ambulance

services available and many people are dying as a result of

this.

An initiative of this must be welcome, while we understand

that we may not have the necessary resources. Currently, the

first thing we need to ask how will we be able to introduce

universal health care in South Africa if the issue of

financial resources and the capacity is always going to be the

one in question? I think the time has come when we need to

take more seriously the lives of all people whether they are

rich or poor, black or white, and provide a more quality

healthcare service in the country. Thank you.

Mr S M JAFTA: Thank you, hon Chair. The progressive

realisation of the right of access to primary health care in

our view, constitutionally be achieved in a phased manner,



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subject to available resource. The Constitution itself

delineates this.

This Bill was effectively going to have huge implications for

the balance sheets of the Department of Health. We must remind

members, hon Chair that private Bills bearing financial and

policy implications must be carefully studied. Such Bills must

consider existing policy framework and the strategic objective

of government departments.

While the issue of opening clinics 24-hours is not

unimportant, it must be aligned to other ancillary

considerations in place. In this regard, it is common

knowledge that the National Health Insurance, NHI, is on the

pilot phase and will likely cover these aspects.

We therefore do not share the sentiment that the rejection of

this Bill is inconsistent with primary health care. We know

that it may be tempting to sponsor private Bills with the view

to achieve in certain political gains, but this must be

informed by empirical evidence. We support this report, hon

Chair.



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Dr K L JACOBS: Thank you, Chairperson. I will say amen and

more. Thank you very much from the DA. Chairperson, we thank

the members of the political parties who came to give their

views and we also want to thank those who are supporting this

report.

We do understand that there is an urgency for our people to be

able to receive healthcare whenever it is needed. But we also

need to understand that there are different tiers of

healthcare, just to talk to what hon Shaik-Emam was speaking

about.

There is a situation where somebody needs emergency medical

care, then we have facilities for their type of care. It is

not a primary healthcare challenge for you then having to

access a clinic at that point in time. You go to the relevant

hospital which could either be a district hospital, a regional

hospital or a tertiary hospital for that matter, as you are

then referred up the chain according to the challenge health

challenge which you are experiencing.

We must also be reminded that this Bill at this point in time,

the report by the ANC says that it is not a desirable and by

the committee and we had intense deliberations and it was a



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decision of the committee that it is not desirable at this

time. Notwithstanding the fact that we know that our people do

need access to the health care as put by the hon member of the

EFF wanting to portray the ANC as being an organization that

does not want people to have access to the healthcare.

It is through the systems which we have in place where our

people know where they are able to access healthcare that we

want people to understand that due to the nature of the

illness which you present with at that point in time you are

to access the health care that is provided for you. Thank you

very much chairperson, the ANC stands to that report.

Mr B A RADEBE moved: That the Report be adopted.

Motion agreed to.

Report accordingly adopted.

**NATIONAL HEALTH AMENDMENT BILL**

(Second Reading debate)

Question put.



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There was no debate.

Bill not read a second time (Economic Freedom Fighters

dissenting).

**CONSIDERATION OF REPORT OF PORTFOLIO COMMITTEE ON CO-OPERATIVE**

**GOVERNANCE AND TRADITIONAL AFFAIRS ON DISASTER MANAGEMENT**

**AMENDMENT BILL**

Mr F D XASA: Thank you, hon Chairperson, hon members, the Co-

operative Governance and Traditional Affairs has convened

several meetings to receive briefings and deliberate on a

proposed Disaster Management Amendment Bill. This was a

private members’ Bill sponsored by Dr P J Groenewald of the

FFPlus. The Bill aimed to constrain the perceived power of the

executive in relation to the duration of a state of disaster

by means of affording Parliament, provincial legislatures and

municipal councils. The explosive power to extend the duration

of national, provincial and local state of disaster

respectively as well as allow for the legislatures to exercise

greater oversight in respect of the management of disasters.

The portfolio committee resolved to invite public comment on

the proposed Bill before deciding on its motion of



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desirability. A call for submissions was open from 19 July to

26 of August 2021 to afford entrusted persons and institutions

a period of at least three weeks to comment on the proposed

legislation. Virtual public hearings were also convened to

receive oral inputs on the written submissions as some

stakeholders had explicitly indicated a preference to meet

with the committee and discuss their proposal with the view to

ensuring a proper understanding of an objective and the intend

of these proposals.

The committee duly complied with this consideration while the

majority of the stakeholders and the minority of the committee

members saw a need for the proposed amendments to the Disaster

Management Act. The majority of committee members did not

agree with the desirability of the proposed Bill. This

disagreement was based mainly on the view that the current

accountability and oversight mechanisms provided in the

Constitution are adequate to address the gaps identified in

the Bill.

Furthermore, allowing the legislatures to encroach on the

executive functions, including the declaration and the

extension of the state of disaster and the making of

regulations pursuant to such declaration would amount to a



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violation of the principle of separation of powers between the

arms of state. As a matter of fact, Parliament has delegated

regulation making powers to the executive. However, the

portfolio committee wishes to thank Dr Groenewald for the

extensive work involved in drafting and introducing the

private members’ Bill and assure him that his efforts were not

fruitless and that the inputs of stakeholders were not in vain

as they contribute meaningfully and generate more debate

around the declaration of state of disaster and the regulation

made under ...[Inaudible.] such debate is encouraged as it may

promote reasonableness and rationality in the management of

disaster. Thank you very much, Chairperson.

Mr C BRINK: There we go, it’s my first time here. Chairperson,

the report before us is not just about the COVID-19 pandemic,

it’s about the abuse of power under the guise of necessity,

and what Parliament can do to stop it. The majority of public

submissions received by the portfolio committee were in favour

of subjecting of government power to a state of disaster, to

more constraints in amending the Act. The excuses offered by

the Minister and officials as to why this cannot happen, don’t

make sense. The ANC has clearly not learnt the lessons of

COVID-19.



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They are still in denial about harm done to the people of

South Africa by the COVID-19 lockdown. Many of the jobs that

were lost, the businesses that were never reopened, the

setbacks in teaching and learning, weren’t the matter of

necessity, that’s because of incompetence of the decision

makers, because the people in power didn’t want to listen or

learn, and because they didn’t care to explain themselves to

the public. Just how government used the Disaster Management

Act to override Parliament’s law-making function and oversight

function, was not foreseen by Parliament when the Act was

passed 20 years ago.

The Disaster Management Amendment Bill is a sincere attempt to

fix this defect in our law, and it accords with the DA’s case

in a Supreme Court of Appeal against section 27 of the Act.

Consider the anomaly in our law, Chairperson, between

disasters and emergencies. Both the State of Emergency Act and

the Disaster Management Act grants the government

extraordinary power, but only the State of Emergency Act put

parliamentary breaks on the abuse of that extraordinary power.

Had an emergency been declared in response to COVID-19, then

the power of government would have been subject to three

important steps.



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First, the declaration would’ve been tabled in Parliament.

This would’ve allowed elected representatives of the people,

in full glare of the public and media to debate the merits of

the COVID-19 lockdown, but by the time that this House debated

it for the first time, all the decisions had already been

made, one of the hardest lockdown in the world. Second, in a

state of emergency, Parliament would’ve had the power to amend

and vote down regulations.

So, instead of having to go to court, to determine that the

cigarette ban was based on faulty scientific evidence, we

could’ve determined that in Parliament, here in Parliament,

that there was more scrutiny than it was applied behind the

closed doors of the so-called, Coronavirus Command Council.

That also applies to many other irrational and unreasonable

decisions. Finally, an extension of a state of emergency

would’ve been subject to the concurrence of Parliament if were

to pass this Private Members’ Amendment Bill, then these

procedural constraints would also apply to a disaster, and

that is a good thing, we need that.

The argument that such restrictions will constrain

government’s ability to manage a disaster, is simply not

accurate. Think of the measures that government could have



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taken that don’t require emergency powers. Procuring the Covid

vaccine, keeping drunk drivers off the roads by policing and

out of the emergency rooms, using PR agencies to convince the

public about the efficacy of the vaccine instead of lining the

pockets of the Health Minister, these don’t require

extraordinary powers.

Also, think of those measures that you require, the

extraordinary powers such as mask mandates. That could’ve been

debated in this Parliament in a matter of weeks, and then

reviewed on a monthly basis. Chairperson, the truth is that

government’s handling of COVID-19 was worse, because they had

too much power, and the same is going to be true of the next

disaster. So, by quashing this Amendment Bill to the Disaster

Management Act as this report review, the ANC confirm that

they’ve learnt nothing, and that they see nothing beyond their

own command and control.

It will now be up to the court to do what Parliament has

failed to do, and to bring the law in line with the

Constitution. The DA does not support this Bill. I thank you.

Mr K CEZA: Chairperson, our Constitution and the laws that

spring from it, imperfect as they are, must be changed when



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there is a view, based on empirical evidence, that these laws

have failed society. What we cannot afford to do is to change

laws on the basis of the incompetence of those currently in

power, because those in power today may not be in power

tomorrow. The frustration by the member of the FF Plus, which

led to him initiating this Private Member’s Bill, emanates

from the gross incompetence of this present government in

dealing with the Coronavirus.

The member alleges that the powers that the Disaster

Management Act granted to the Cabinet member responsible for

the administration of that Act were draconian, and left

Parliament with little room to influence the response. While

we may disagree that the handling of the pandemic by the

Ruling Party was abysmal, we do not agree that this is because

of the powers the laws given to the Cabinet member. It is the

incompetence of the government, and not the undesirability of

the law that led us to the mess we are in today as a result of

the Corona pandemic.

The Act allowed the Minister to take a number of decisions,

and these decisions are reviewable in court. It is not the Act

that forced the Cabinet to ban the sale of hot foods, for

instance, when they first published their disaster management



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regulations, it is the foolishness of those who published

these regulations that made them link the spread of the virus

to the sale of hot foods, or of particular pieces of clothing.

It is not the Act that forced the government to close off many

industries while not taking measures to shield these

industries from the negative effects of these closures, it is

the foolishness and the shortsightedness of those who lead.

We cannot over-legislate the conduct of the Executive, we can

review the decisions they make. We cannot legislate out

foolishness and legislate in wisdom, it is impossible to do

so. Lastly, Chair, the architecture of our constitutional

democracy makes distinction between the functions of the

Executive and those of the legislature. The legislature must

initiate legislation and hold the executive to account, but we

cannot be responsible for taking Executive decisions as

Parliament, as the Bill would have asked us to do so.

This remains the territory of the Executive, ours is to hold

them to account, call out their foolishness, and if needs be,

review unlawfulness of decisions in court. We therefore. are

in full support of the committee recommendation not to go

ahead with this Bill. Thank you very much, Chair.



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Ms S A BUTHELEZI: Hon Chairperson, it is undisputed that the

COVID-19 pandemic had a devastating impact on our economy and

our daily lives. Facing the third year of this pandemic, we

must ask ourselves whether our laws, which were not

necessarily drafted to provide checks and balances for such an

unprecedented event, are aligned with our constitutional

democracy? From the outset, the IFP wishes to state that it

supported the objectives of the Disaster Management Amendment

Bill, which proposes to amend the Disaster Management Act.

The Bill, aimed to amend the duration of a state of disaster

and provide that only the National Assembly, a provincial

legislature or municipal council may resolve to extend the

declaration of a national, provincial or local state of

disaster. We strongly submit that although it is critical that

the Executive be placed in a position to act swiftly in such

unprecedented events, Parliament must be placed in a position

to adequately provide oversight in terms of the Act. This is

not currently the case. Currently, the Minister may, in terms

of section 27 of the Act, extend the national state of

disaster one month at a time, after the initial three months.

This power can be exercised indefinitely by the Minister,

without any input from Parliament. This is not aligned with

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our constitutional democracy, which requires adequate checks

and balances on the Executive. We do not believe that the Bill

would have encroached on the Minister’s role at all. The Bill

provided a necessary draft, which could have been reworked by

the committee to strengthen the Act. Not all provisions of the

Bill had to be accepted as is. For instance, the percentage of

supporting votes required for further extensions, could have

been further deliberated on and reworked.

However, the rejection of the Bill in its entirety, is not

justified. The committee was given a unique opportunity to

strengthen the Act and provide adequate checks and balances on

Executive power. The IFP also shares the sentiment that the

Act was never envisioned to regulate an event of this scale

and nature. Our laws are not set in stone and must reflect the

reality of our circumstances. If we do not grab this

opportunity and strengthen our laws, we may risk abuse of

power at the expense of the people of South Africa. The IFP

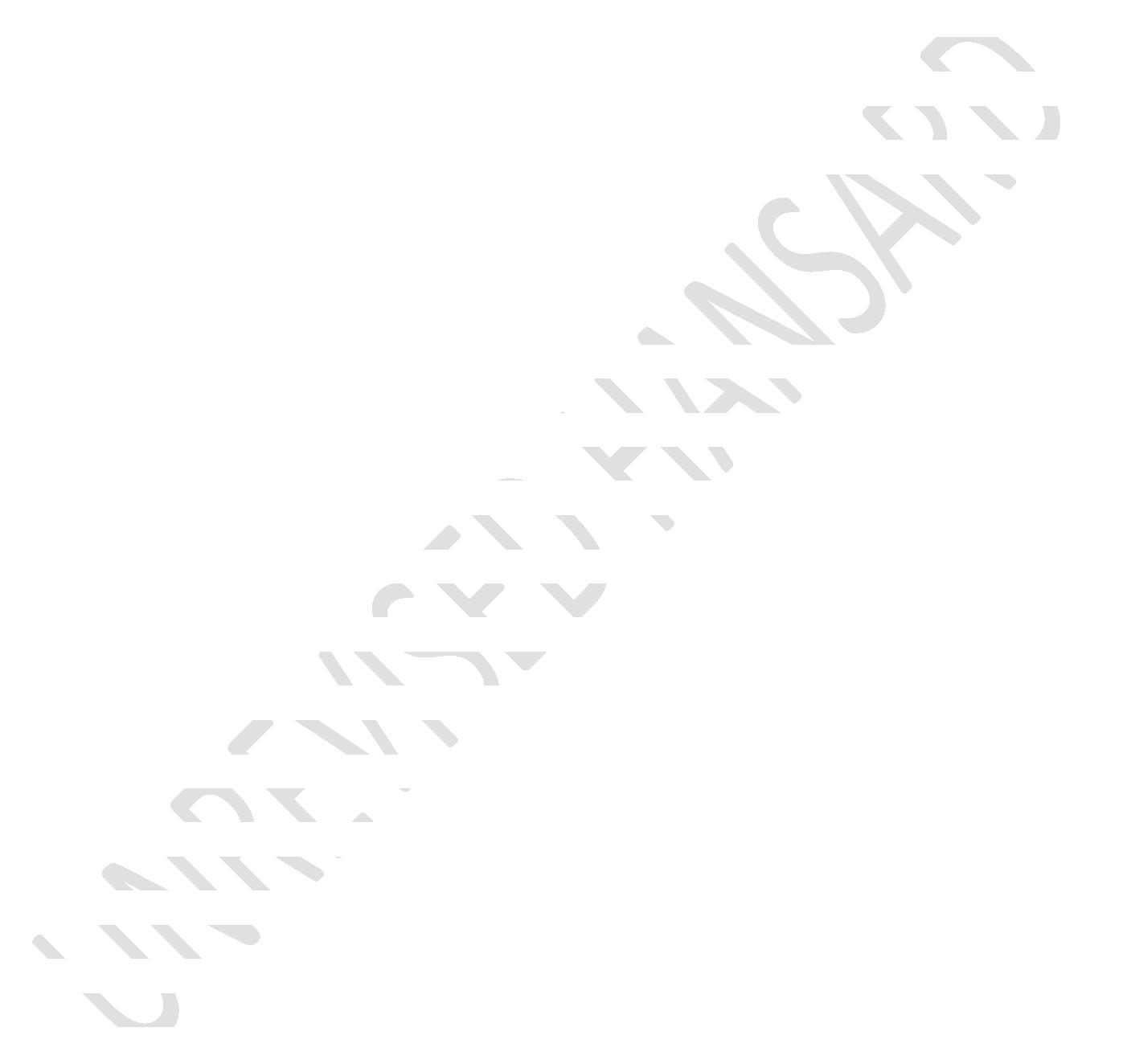
does not accept the Portfolio Committee’s Report and rejection

of the Bill. Thank you, Chairperson.

Dr P J GROENEWALD: Hon House Chair, section 92(2) of the

Constitution determines that the Cabinet members are

individually and collectively accountable to Parliament. It’s

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a constitutional obligation, but that doesn’t mean that

Parliament can sit back and wait for the executive to be

accountable. No, the constitutional obligation is on this

House to ensure that the executive is accountable to

Parliament.

The former Speaker, the hon Thandi Modise, at the Zondo

Commission with regard to state capture, apologised to the

people of South Africa for the fact that Parliament did not

hold the executive accountable.

When it comes to the Disaster Management Bill, which I

proposed in this House, at the committee we had a procedure

where we had to vote as far as the desirability is concerned.

The committee majority being the ANC decided to say no, there

is no desirability for such a Bill. It means that the ANC says

that we don’t have the desire to hold the executive

accountable. You didn’t even read the Bill. This Bill proposes

that when it comes to the disaster that the Minister is

accountable to Parliament in the same way as you would have a

state of emergency. Go and do your homework. Don’t come and

sit here and not know what is it all about. [Interjections.]

The HOUSE CHAIRPERSON (Ms M G Boroto): Order.



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Dr P J GROENEWALD: Go and do your homework and you’ll find

that worldwide, other countries don’t have an Act as far as

disasters are concerned. They only have an emergency Act.

That’s the way ... [Inaudible.]

I want to put it clearly that the FFPlus and those who

supported this Bill wanted to fulfil their constitutional

obligation. The ANC is failing the people of South Africa

again. I thank you.

Mr S N SWART: Thank you, House Chairperson, the ACDP, like all

parties, initially supported the hard COVID-19 lockdown

regulations for the reasons given, namely to flatten the curve

and enable public health care facilities to prepare for the

expected COVID-19 pandemic. We all thought it would be short-

lived, understanding the delicate balance that was struck

between saving lives and livelihoods. However, it soon became

apparent that many irrational regulations were having a

devastating impact on the economy, resulting in tens of

thousands of businesses closing, with millions losing their

jobs.

Besides the many irrational lockdown regulations such as that

relating to whether roast chicken could be sold, what type of



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clothes and shoes could be bought, where you could exercise,

worship and pray, there was also the flagrant disregard for

the rights of citizens.

The worst possible abuse occurred early in the lockdown with

the tragic death of Mr Collins Khoza at the hands of security

officials. It is sad that High Court Judge Fabricius had to

restate what should have been obvious, that every citizen is

protected by the Bill of Rights. But he went further to find

that there was a complete lack of trust between the government

on the one hand and society on the other during the lockdown.

This is deeply disturbing, yet Parliament as the elected

representatives had no say over the contents of draconian

disaster management regulations, or the monthly extensions of

the state of disaster for more than two years.

Dr Groenewald’s proposed amendment sought to restrict the

Minister’s powers and to make her more accountable to

Parliament. This is eminently reasonable and supported by the

ACDP.

The argument about the separation of powers is deeply flawed.

In a section 37 state of emergency, which is very similar to



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what was practically experienced under the state of disaster,

Parliament’s permission must be sought for an extension. There

is no reason why Parliament should not similarly have a say on

the extension of the state of disaster.

A court may also decide on the declaration, extension, or any

legislation enacted, or any other action taken, in consequence

of a state of emergency. Yet, astonishingly, government

lawyers in the Collins Khoza case had the audacity to argue

that a court had no function in that matter and ought not to

even hear a case under a state of disaster. Thankfully, this

argument was given short shrift by the judge, but it does

illustrate an arrogant attitude that prevailed at that time.

In many cases, traumatized citizens were even told even by

municipal and traffic police that they had no rights under

lockdown regulations. More than 350 000 citizens were arrested

for minor breaches, and where they paid admission of guilt

fines, now they have criminal records.

The ACDP commends Dr Groenewald in his Bill, and hence we will

not support this report. I thank you.



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Mr B N HERRON: Thank you, House Chair, disasters by nature are

unpredictable and pose existential and unforeseen challenges,

whether they are induced by a pandemic, climate change or

civil unrest, mitigating human suffering and loss requires

agility from those in charge of managing the response.

Across the world from Australia to Canada, the COVID-19

pandemic has seen legislatures tailoring disaster regulations

with the view to better managing future calamities.

South Africa is no exception. Here, as in many other

territories the impacted unprecedented lockdowns were

economically disastrous. Here, as elsewhere, many citizens

held strong views about the appropriateness of some of the

regulations. Not least, due to the manner in which we are

curtailing most of our civil and economic liberties, they seem

to enable the corrupt to flourish.

We don’t all need to agree on everything but it is best not to

have to conduct our disagreements on the manner our response

and recovery while on the teeth of a disaster. We therefore do

our best to lay down some robust frameworks in advance

suitable to managing a broad’s worth of eventualities because

who can tell what the nature of the next disaster will be.



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What we do know is that we don’t want government red tape and

excessive consultation to slow down the ability of the state

at all its levels to respond in a co-ordinated fashion. We

don’t want jurisdictional protocol to inhibit emergency

operations. We don’t want to add another layer of misfortune

to disasters by creating conducive conditions for crooks.

The three most South African disasters; COVID-19, last year’s

attempted insurrection, and the recent flooding in KwaZulu-

Natal demonstrated that there is ample room for improvement in

the Disaster Management Act. We may disagree as politicians

what steps to take when faced with a tsunami, a new virus or

more social unrest, what we should all agree in advance is

that our response is unlikely to be perfect, because disaster

have a way of confounding order and usual logic. We should

agree that our response must evolve as we learn. We have just

learned from COVID-19.

In this context, GOOD accepts how disaster management

legislation needs to be re-examined frequently so that we can

always be as responsive as we can achieve and act informed by

contemporary experience and knowledge by putting better

strategic contingencies, plans in place, we can limit negative

impacts of the next disaster we face. We cannot support knee-



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jerk populist reactions to the implementation of a national

response to unprecedented event.

In the context of the world’s response to COVID-19, South

Africa’s response was neither excessive nor unusual. Errors

were made here and abroad, but these cannot be the basis for

the amendment proposed. The amendments do not enhance our

response to disasters, they intend to inhibit our response.

Thank you.

Mr S M JAFTA: Thank you, House Chairperson, the Disaster

Management Bill that was introduced by hon Groenewald will not

be supported by the AIC. Our opposition is not grounded on the

argument of separation of powers, which the committee raised

in its report. We don’t agree that the doctrine of separation

of powers is implicated.

Still, Parliament’s oversight function is not necessary at

least not on the terms articulated in the Bill. We argue that

executive conduct which goes beyond the scriptures of the

Disaster Management Act, can be challenged on the basis of

rationality. In other words, the courts will have to determine

whether there is a rational connection between the decision to

extend the duration of a state of disaster and a legitimate



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government purpose. That choice does not involve separation of

powers analysis.

On the merits, we don’t believe that the role of Parliament

will be necessary to check executive actions as there are

sufficient guarantees that already exists to foolproof this

process, for instance, Parliament has section 156 powers to

summon anyone before it.

The Minister of Cogta equally accounts to the Portfolio

Committee on Co-operative Governance and the President may,

from time to time, be called upon to respond to questions in

Parliament. Therefore, the rationality ... [Inaudible.] ...

the duration of the state of disaster. We therefore support

report but on different grounds. I thank you.

*IsiXhosa*:

Mnu G G MPUMZA: Masibulele Sihlalo weNdlu yoWiso-mthetho

yeSizwe.

*English*:

The ANC reaffirms its support for the National Management

Disaster Act, Act 57 of 2002, which provides for an integrated

and co-ordinated disaster management policy that focuses on



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prevention, reduction of disaster and mitigation of the

severity of the disasters, emergency preparedness, rapid and

effective response to disasters, as well as postdisaster

recovery.

The Act in its current form does invoke the necessary agility

from the state in order to act promptly to disasters. We

locate the importance and the relevance of this Act in the

context of the principles of co-operative governance and

intergovernmental relations outlined by section 41(1) of the

Constitution, wherein provision is made that all spheres of

government and organs of state within each sphere must

preserve peace, national unity and indivisibility of the

Republic, as well as secure the wellbeing of the people of the

Republic.

These fundamental principles outlined in the Constitution

serve as a technical and a moral compass against which to

measure the Disaster Management Act.

During the COVID-19 global pandemic, the Disaster Management

Act provided a framework for government’s well co-ordinate,

streamlined and cogent response to the challenges and

realities presented by the virus, which was spreading rapidly



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and having a negative socioeconomic impact on the rest of

society.

Through the mechanisms provided by the Disaster Management

Act, the state was able to control the spread of the virus and

saved millions of lives and softened the economic blows on the

most vulnerable sections of society.

The state in all its spheres, through the disaster management

centres, was able to streamline resources, eliminate silos,

and worked in a co-ordinated approach in the true spirit of

co-operative governance.

During the pandemic, the challenges of poverty, unemployment

and equality that we have committed to eradicate through the

National Development Plan, NDP, were even more pronounced. One

of the lessons we have drawn from the COVID-19 pandemic is

that in situations of disaster and crisis, the poor and the

vulnerable section of society need protection from the

excesses of the market.

The global trend which can also be observed in society is that

during pandemics, while the poor and the working class



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sections of society lose their jobs and fell into poverty, the

wealthy classes amassed more wealth.

The developmental state has the responsibility to protect the

vulnerable sections of society and this must inform its

approach during the disaster management. The approach to

disaster management intended in the Constitution and

subsequent to the Act is that all sections of society, whether

market or nonmarket stakeholders towards addressing the plight

of those negatively affected. For this to succeed, the state

must ensure a wider consultation.

The Act, in its current form provides for the establishment of

advisory forums at national, provincial and municipal levels,

which may be drawn from the different stakeholders of society,

including organized business, labour, agriculture, traditional

leaders, insurance industry, religious and welfare

organizations. We call upon these forums to broaden their work

on stakeholder consultation to ensure that all critical

sectors are engaged and taken on board during the disaster

management.

Parliament must adopt a heightened oversight approach to

ensure that our intervention during disasters to produce the



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desirable outcomes and further ensure that there is

accountability in the utilization of public funds. We ensure

that government responds to audit opinions and that funds are

recovered wherever they have been mismanaged.

Lastly, the ANC sends its heartfelt condolences to those who

have lost their families, friends and loved ones in the recent

floods in KwaZulu-Natal. We are however encouraged by the fact

that the state has been able to mobilise different sectors of

society to ensure that all hands are on deck in rebuilding the

lives of those communities. Our understanding is that

practical competency begins at the polls and at the execution

level.

As the ANC, we support the report and its recommendations. I

thank you.

Mr B A RADEBE: House Chairperson, on behalf of the Chief Whip

of the Majority Party moved: That the Report be adopted.

Question put.

Motion agreed to (Democratic Alliance, Freedom Front Plus and

African Christian Democratic Party dissenting).



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Report accordingly adopted.

**DISASTER MANAGEMENT AMENDMENT BILL**

(Second Reading)

There was no debate.

Question put: That the Bill not be read a second time.

Division demanded.

The House divided.

The HOUSE CHAIRPERSON (Ms M G Boroto): Hon members, order! The

Speaker has determined that, in accordance with the Rules, a

manual voting procedure will be used for this division.

Firstly, in establishing the quorum, I just want our

secretariat to make sure that the numbers that they have,

which we get from all the parties that will be voting, are the

same numbers that are confirmed by the information and

communications technology, ICT ... I would request the Table

to confirm that we have a requisite number. Do we? Yes, we



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have a requisite number in the Chamber and also on the virtual

platform to take this decision.

Party Whips will then be given an opportunity to confirm the

number of their members present and indicate if they vote for

or against the question. A member who wishes to abstain or

vote against the party vote may do so by informing the Chair.

Hon members, having confirmed that we have the requisite

quorum, I will now proceed. The question before the House is

that the Disaster Management Amendment Bill not be read a

second time. Voting will now commence. The doors of the

Chamber are locked and those on the virtual platform who are

not in yet will not be allowed to enter the virtual platform

until we have concluded with the voting. Whips can confirm the

number of their members present in the Chamber and on the

virtual platform, and indicate if they vote for or against the

question. I will start with the ANC.

Mr B A RADEBE: Thank you, hon Chairperson of the House. The

ANC has 137 on the virtual platform and 18 in the Good Hope

Chamber. So, it’s a total of 155. The ANC is in support of the

Bill not being read a second time. So, we are ... [Inaudible.]



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The HOUSE CHAIRPERSON (Ms M G Boroto): So you are voting yes.

Mr B A RADEBE: Yes, we are. [Laughter.]

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. The DA?

An HON MEMBER: Thank you, House Chair. The DA has 46 members

online and 16 members present in the House, totalling 60. The

DA objects. In other words, it is against the second reading

not being read. To be very clear, we are in favour of the ...

[Inaudible.]

The HOUSE CHAIRPERSON (Ms M G Boroto): Don’t confuse me.

[Laughter.] Don’t try to confuse me. You are voting no. Thank

you. The EFF?

Ms Y N YAKO: Thank you, House Chair. The EFF is in support of

the Bill not being read a second time.

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. Did I get

the number from the EFF?

Ms Y N YAKO: We are 24 on the virtual platform.



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The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you very much.

The IFP?

Mr M HLENGWA: Hon House Chairperson, the IFP has four on the

virtual platform and one in the House, and we are voting no.

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. The FF Plus?

Mr W W WESSELS: Thank you, Chairperson. We are six on the

virtual platform and one in the House, which is a total of

seven, and we are voting against.

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. The ACDP?

Mr S N SWART: Thank you, House Chair. The ACDP has three on

the virtual platform and we are voting against the question.

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. The UDM? The

ATM? Good?

Mr B N HERRON: House Chair, there is one of us on the platform

and we vote yes to the question.



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The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. The NFP?

Okay. The AIC? Hon Jafta, you have been here. Are you gone?

Okay. Cope? The PAC? Al jama-ah? All these other parties.

Okay. I waited to hear for any party saying we are here, and

nobody is saying we are here. So, hon members, is there any

member who wishes to abstain or vote differently to their

party? Thank you very much. The voting session is now closed.

Hon members, you ... pardon us. You know the manual way of

working and the issue of abstentions. Remember, we take all

those who did not respond as abstentions, neither yes or no.

So, that was what delayed ... Thank you.

Hon members, we have six abstentions ... those parties. We

have 60 who voted no and then we have 196 who voted yes. The

question is accordingly agreed to and the Bill will not be

read a second time.

An HON MEMBER: Malibongwe!

Mr M HLENGWA: Hon House Chairperson, on a point of order.

The CHIEF WHIP OF THE OPPOSITION: House Chairperson, sorry ...

[Inaudible.]



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The HOUSE CHAIRPERSON (Ms M G Boroto): Okay, I will come to

you, hon Hlengwa. Let me listen to this one.

The CHIEF WHIP OF THE OPPOSITION: On a point of clarity, Madam

Chairperson. We were voting against the ... [Inaudible.] ...

Bill, right? Correct?

The HOUSE CHAIRPERSON (Ms M G Boroto): Yes, that’s the 60.

The CHIEF WHIP OF THE OPPOSITION: We were not the only ones

and we were 60 in total.

The HOUSE CHAIRPERSON (Ms M G Boroto): No, you said 48.

The CHIEF WHIP OF THE OPPOSITION: [Inaudible.] ... so we were

60 on our own, and the FF Plus and other people voted against

it. So 60 must be an incorrect number. The ACDP voted against

it.

The HOUSE CHAIRPERSON (Ms M G Boroto): I know. I thought it

was 48. However, I hear what you are saying and I will allow

them to check. If it’s possible, we will redo it.

The CHIEF WHIP OF THE OPPOSITION: Okay.



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The HOUSE CHAIRPERSON (Ms M G Boroto): If it’s possible. Hon

Hlengwa?

Mr M HLENGWA: Thank you very much, hon Chairperson. If I may

beg your indulgence. When you put the question on the previous

Order in so far as the report of the Portfolio Committee on

Co-operative Governance and Traditional Affairs ... due to

these technical glitches ... as you may have heard ... hon S A

Buthelezi’s declaration, could you kindly record the objection

of the IFP to that Order please? It was a technical glitch

with the member who was meant to be on the platform. We

apologise in that regard.

The HOUSE CHAIRPERSON (Ms M G Boroto): What is your request,

clearly?

Mr M HLENGWA: That you record the objection of the IFP to that

Order.

The HOUSE CHAIRPERSON (Ms M G Boroto): Which Order? The Order

before this one?

Mr M HLENGWA: Yes, ma’am, if you could please ...



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The HOUSE CHAIRPERSON (Ms M G Boroto): Unfortunately, when we

have passed the Order we don’t go back. If it was something

else, I would agree.

*IsiZulu*:

Mnu HLENGWA: Ubukhaxakhaxa Sihlalo lobu obusihluphayo.

*English*:

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you, I am aware.

I am aware. Maybe the issue of a hybrid ... should be highly

considered by you. We do have a member of the IFP in the

House. Maybe that should’ve assisted if the message was sent.

Hon members, you are correct. I can see what they have written

here. The DA was 46 plus 16 which totals 60. Then we also have

another party that also ... yes. So something went wrong with

the calculations there and I’m not going to allow it to go

that way. I believe that we are still logged into the voting

... No, wait please. Don’t disturb me. We are still in the

voting ... and I will really wish to urge that we redo it. All

members ... all parties. Please, let’s redo it because this is

an obvious mistake that was made here. We cannot overlook it.



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Hon members, I will also try to write from my side. Table

Staff, you should write the members in the House and check

whether they vote no of yes. If you can assist me, let’s

forget ... The question is that the Bill not be read a second

time. If you agree with that you simply say yes. If you want

it to be read a second time, like the proposer of this ...

Maybe to put it clearly, the FF Plus will obviously say no,

because that is the recommendation of the committee. I just

want to clarify that, so that we go smoothly. Thank you.

Hon members, I’m going to start again with all of the parties.

Maybe ... and I don’t believe that those that had abstained

will be here. That will show that we are inconsistent.

Mr T M LANGA: Chairperson, I’m just checking on the number of

the participants here. It looks like they are increasing,

meaning that we will have more numbers than before when we

initially voted.

The HOUSE CHAIRPERSON (Ms M G Boroto): No, we have not opened

the voting ... as yet.

Mr T M LANGA: But the numbers ... [Inaudible.]



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The HOUSE CHAIRPERSON (Ms M G Boroto): If ICT has done that,

it is very wrong.

Mr T M LANGA: Yes, the numbers are increasing now.

The HOUSE CHAIRPERSON (Ms M G Boroto): They are?

Mr T M LANGA: Yes.

The HOUSE CHAIRPERSON (Ms M G Boroto): Can ... Okay, maybe

they thought the meeting was over. Let us look into this now

and say that this is the beginning of the voting session, to

cut matters. Please don’t open anymore, ICT. Please don’t do

that. We know how the Rules work. We don’t want to fight each

other for the mistakes that you have made. Let’s agree that we

are starting the voting session now. I will go straight to ...

Don’t worry. I will go straight to the parties to record now.

The ANC, please record and tell us how many members are in and

outside. We will verify with ICT whether you are voting yes or

no. Don’t come with another language please. Let’s speak the

language that we all understand.



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In terms of Rule 117(1) the presiding officer, House

Chairperson Ms M G Boroto, directed that the initial division

be disregarded and that the division be repeated.

Mr B A RADEBE: Thank you, House Chair. The ANC has 137 on the

virtual platform and 18 in the House. The total is 155 and we

vote in favour of the question. It’s yes!

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. [Inaudible.]

... hon member. Please, let’s do ... Let’s be ... Yes?

The CHIEF WHIP OF THE OPPOSITION: Ma Boroto, the DA has

46 members online and 16 in the House, which gives us a total

of 60 members who vote no.

The HOUSE CHAIRPERSON (Ms M G Boroto): Understood. We now

proceed to the EFF.

Ms Y N YAKO: Thank you, House Chair. The EFF has 25 members on

the virtual platform and we vote yes for the Bill not to be

read a second time.

The HOUSE CHAIRPERSON (Ms M G Boroto): Okay, thank you. The

IFP?



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Mr M HLENGWA: Hon House Chairperson, the IFP has five on the

virtual platform and one in the House, and we vote no.

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. Members,

please be quiet. We must not get this wrong again. The

secretariat here must be able to hear what is being said.

Thank you, IFP. FF Plus?

Mr W W WESSELS: Thank you, Chairperson. We are six on the

virtual platform and one in the House, which makes seven and

we vote no.

The HOUSE CHAIRPERSON (Ms M G Boroto): Thank you. The ACDP?

Mr S N SWART: House Chair, we indicated earlier three on the

virtual platform voting no. We have a fourth member who has

now joined so we have four members. So, we are not sure how we

should vote. However, I have given an indication that we are

now four on the virtual platform voting no.

The HOUSE CHAIRPERSON (Ms M G Boroto): No, it’s fine. We will

record that four. The UDM did not participate and the ATM did

not participate. Good?



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Mr B N HERRON: House Chairperson, there are now two of us on

the virtual platform and we vote yes. Thank you.

The HOUSE CHAIRPERSON (Ms M G Boroto): Yes. No, we agreed to

that. The NFP? No, they did not, hey? The AIC? Baba Jafta was

also not here.

The CHIEF WHIP OF THE OPPOSITION: House Chair, I’m terribly

sorry but I’ve just been informed by my Whip sitting closest

to the back that I gave you the incorrect number. The number

of members in the House is actually 18 members ...

The HOUSE CHAIRPERSON (Ms M G Boroto): You said 16.

The CHIEF WHIP OF THE OPPOSITION: ... so it will be ... I said

16 ... [Inaudible.]

The HOUSE CHAIRPERSON (Ms M G Boroto): That can be corrected

because we can count. No problem.

The CHIEF WHIP OF THE OPPOSITION: I’m terribly sorry about

that. So, we are 62 voting no. I’m terribly sorry.



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The HOUSE CHAIRPERSON (Ms M G Boroto): No problem. That can be

done. The AIC? No. Cope? No. The PAC? No. Al Jama-ah? No. So

those numbers ... Hon members ... Please do not open for

anybody else, ICT. We are waiting now for the results as the

calculations are done.

An HON MEMBER: Sorry ...

*Afrikaans*:

Die HUISVOORSITTER (Me M G Boroto): Huh-uh, ek gaan nie terug

nie. Sit!

*English*:

These are the final corrected numbers ... checked with ICT.

There is correspondence with the members on the platform. We

will proceed now with the abstentions. We have seven. There

are 78 who voted no and 182 who voted yes.

[VOTING TAKE IN FROM MINUTES}

Question agreed to.

Bill accordingly not read a second time.



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**CONSIDERATION OF REQUEST FOR APPROVAL BY PARLIAMENT OF**

**AMENDMENT TO THE CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR**

**MATERIAL**

Mr S LUZIPO: Hon House Chair, hon members and interested

parties in the proceedings of Parliament, on behalf of the

Portfolio Committee on Mineral Resources and Energy, I hereby

table to this House the report on the amendment to the

Convention on Physical Protection of Nuclear Material. The

report in the main seeks to introduce before this House a

careful assessment that has been made with regard to

international terrorism, especially where there has been a

loss of innocent lives, and the threat of terrorism has not

declined but rather increased over the past years. Therefore,

this necessitated the call to expand the scope of the

Convention on Physical Protection of Nuclear Material, in

short, the CPPNM.

A shortcoming of the original Convention that was adopted in

1979 and came into effect in 1987 is that its scope of

application was limited to three aspects which are the

physical protection of nuclear material which is used for

peaceful purposes, the criminalisation of offences, these

includes amongst others the theft or robbery of nuclear



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material, it is based on international co-operation, in the

case of theft, robbery or any other unlawful taking of nuclear

material or credible threat thereof.

The amendment of the Convention seeks to fill the existing gap

in the original Convention by measuring sources of new

emerging threats, and therefore map out a possible solution in

the context of the threats in an internationalised or

globalised world. This also being impacted or affected mostly

by the new threat of democratic processes, which amongst

others, is the matter of freedom of movement, the

microeconomic policies which promote trade as well as the

unlimited consequences as a result of large-scale terrorism

nuclear facilities. In other words, the use of nuclear

material for energy generation and medical purposes dominate

the international landscape. The concern therefore is that

nuclear material used for peaceful purposes could, at some

point, fall into the hands of the non-state actors or

terrorist groups who could do harm in society.

The reason why the Convention has to be amended is that it

greatly strengthens the original Convention by adding the

following non-existing new obligations. It broadens the scope

of the CPPNM to also include physical protection requirement



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for nuclear facilities and nuclear material in domestic use,

storage and transport. It seeks to expand the co-operation

between and among states regarding rapid measures to locate

and recover stolen or smuggled nuclear material, mitigate any

radiological consequences of sabotage, prevent and combat

related offenses. It also seeks to provide for the sharing of

information on potential and actual attacks on nuclear

material and facilities and the provision for assistance if

attacks should occur.

Lastly, the amendment recognises the rights of all states to

develop and apply nuclear energy for peaceful purposes in

their legitimate interests in the potential benefit to be

derived from the peaceful application of nuclear. In addition

to these new obligations, the amendment expands the list of

offences that member states are obligated to criminalise as

well as specific provisions to bring to justice those who

commit acts of nuclear theft or smuggling or even sabotage.

This is very important in the context of South Africa where

there is a growing concern in particular with regards to

illegal mining activities, fuel theft and infrastructure

vandalism in strategic centres of our economy.



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There have been wide consultations in terms of the report

received with other departments of interests ... [Time

expired.] Thank you, House Chair.

*Declarations of Vote:*

Mr K J MILEHAM: House Chairperson, the development and

utilisation of nuclear energy is one of the greatest

achievements of the twentieth century. It has greatly enhanced

the ability of humanity to understand and shape the world, and

it has had a significant impact on the development of

technology and civilisation.

Since its initial exploitation about 80 years ago, nuclear

energy has always promised a brighter future, but it is a

future that it hasn’t always delivered on. Nonetheless, we use

nuclear technology every single day in ways many of us don’t

even realise ... [Interjections.]

The HOUSE CHAIRPERSON (Ms M G Boroto): Hon Chabangu, please

let’s mute. Just mute, hon Makosini Chabangu, please.

Mr K J MILEHAM: Can I proceed, House Chair?

The HOUSE CHAIRPERSON (Ms M G Boroto): Proceed. I see that

your minutes were not stopped there ... [Interjections.]



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Mr K J MILEHAM: House Chairperson, as I was saying,

nonetheless, we use nuclear technology every single day in

ways that many of us do not even realise. From microwave ovens

to x-rays. From radiation treatments for cancer to nuclear

power generation. The downside, however, are the threats of

the nuclear mishap, incidents such as Chernobyl, Three Mile

Island and Fukushima, issues of nuclear security, and then

obviously, environmental contamination.

In 1979 the Convention on the Physical Protection of Nuclear

Material was developed under the auspices of the International

Atomic Energy Association aimed at strengthening the security

of nuclear materials during international transport. It is, to

this day, the only legally binding international undertaking

pertaining to the physical ... [Inaudible.]

Article seven of the original Convention obligates member

states to ensure that offenses such the possession, use or

disposal of nuclear material without authorisation becomes

punishable under member states national law. South Africa

signed that agreement in 1981, but they only ratified in

Parliament in 2007. Following concerns from the 911 attacks in

2001, that nuclear facilities might be targeted and that

threats of nuclear terrorism were on the rise, there was a



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move to address the lacunas in the Convention. So, in 2005 the

Convention was amended by consensus amongst member states, and

various aspects were strengthened, including the requirement

for increased security at nuclear facilities and the expansion

of the scope of the Convention to cover domestic use, storage

and transportation of nuclear materials, all of which had

previously been excluded.

Although South Africa signed that amended Convention in 2016,

it was only presented to Cabinet in September last year. And

now, more than six years later, it is being tabled in

Parliament. Some 17 years after all the member states,

including South Africa, agreed on what was contained in that

amended Convention. This is far too long. Both the various

government departments and the Cabinet need to move more

swiftly in bringing international treaties and conventions to

this House for ratification. Our failure to do so in this case

could have had severe ramifications in a purchase of nuclear

materials from other countries, including such items as fuel

for our various nuclear reactors.

South Africa must uphold and actively promote the ideal of a

safe future for nuclear technology. We need to review our own

legislation to ensure that we adhere to international



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obligations, and that the full force of the law is brought

against those who contravene the provisions of this

Convention. We must be responsible members of the global

community by ensuring that nuclear technology is developed

safely and in a manner that leaves no doubt of our commitment

to securing nuclear facilities, nuclear transport

infrastructure and any nuclear material that arrives on our

shores or are stored or transported within our borders. The

Democratic Alliance supports the ratification of this

Convention. [Applause.]

Mr T M LANGA: Hon Chairperson, the Convention on Physical

Protection of Nuclear Material was adopted in 1979 and seeks

to provide protection against the inappropriate handling of

nuclear material, in order to prevent injuries and loss of

lives that may resulted from poor handling of nuclear

material. South Africa ratified this amendment in 2007,

ensuring that the handling of our own nuclear material is on

par with global standards.

The amendment to the convention seeks to strengthen these

measures on handling and transportation of nuclear material to

prevent waste leakages and ensure safe storage. The reality

however is that South Africa is unable to implement any of



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these conventions. Let us take the example of the Koeberg

Nuclear Power Station, as colleagues report, that Koeberg

generates approximately 500 drums of low-level waste, 150

drums of intermediate-level waste and 32 tonnes of high-level

waste per year. Both low and intermediate-levels waste is

transported from Koeberg to a waste disposal site in Vaalputs

in the Northern Cape, where this waster is buried in shallow

eight-meter deep trenches.

The site was opened without any consultation in 1986 by the

apartheid government, which made sure it was located as far

away as possible from where white people lived. The National

Nuclear Regulator only consulted people who were living close

to the site in 2003. In 1997, the drums were found to have

been leaking for several years, while radioactive dose limits

were exceeded in 2012. The dangers posed by low- and

intermediate-level waste are relatively small compared to the

extreme dangers posed by high-level waste. We cite this

example to demonstrate that South Africa is either incompetent

in terms of handling its nuclear material or there is no

political and technical willingness to ensure that this is

properly handled.



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Our approval of this convention is not going to change our

need for internal capacity, to manage nuclear material. We

further note that the convention, as the only legally binding

treaty on nuclear security should be supported and

strengthened. It should furthermore clearly outline specific

standards for nuclear security, which is not the case

currently. Despite this, we approve the amendments to the

convention. Thank you.

Prof C T MSIMANG: Hon Chair, the purpose of the amendment to

the Convention on Physical Protection of Nuclear Material is,

and I quote, “to achieve and maintain worldwide effective

physical protection of nuclear material and of nuclear

facilities used for peaceful purposes, to prevent and combat

offences relating to such material and facilities worldwide,

as well as to facilitate co-operation among state parties to

those ends”.

When it comes to nuclear, South Africa is glowingly described

by the Nobel Peace Prize Winning organisation, the

international campaign to abolish nuclear weapons, as a

“champion for a world without nuclear weapons”. We cannot

therefore rest on our laurels when it comes the use of nuclear

material for peaceful purposes, such as energy generation.



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As the IFP, we share the committee’s concerns over the fact

that this amendment came into force in May 2016, yet, here we

are six years later and South Africa has not ratified it. We

have made gains in international fora and are considered world

leaders, we should be working to maintain such reputation.

Further, it is widely known that nuclear materials and

facilities, if not managed correctly, can be manipulated, so

as to inflict grievous harm upon the population. Therefore,

this amendment is not only necessary, but welcomed.

We note, and I quote: “The department has authorised 274

companies to trade nuclear material in this country and

abroad.” Further, it committed to provide inspectors to visit

these companies on a quarterly basis. These measures were

instituted, and I quote, “to ensure that companies met the

International Atomic Energy Agency, IAEA’s, standards for the

physical protection of nuclear material”. The department

stated that it, “would compile a report that illustrated the

state of compliance of each nuclear company with ... [Time

expired.] I thank you.

*Afrikaans*:



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Dr W J BOSHOFF: Agb Huisvoorsitter, kernkrag is sedert die

ontstaan daarvan omstrede. Die meeste mense het vir die eerste

keer daarvan gehoor toe twee atoombomme die Japanese stede,

Hiroshima en Nagasaki, vernietig het en daarmee ook die Tweede

Wêreld Oorlog beëindig het.

Behalwe dat oorloë skielik gevaarliker was, het die vreedsame

moontlikhede verbeeldings aangegryp. As al daardie energie op

’n beheerde wys vrygestel kon word, dalk kon elektrisiteit te

goedkoop word om te meet. In Suid-Afrika het ons voor in

hierdie ry gestaan.

Terwyl die kernmoonthede die land nie met die nodige inligting

vertrou het nie, is oorspronklike werk by Pelindaba en

Valindaba buite Pretoria gedoen.

Vreedsame en nie-vreedsame gebruike van kernkrag is nooit te

ver van mekaar nie. Suid-Afrika kon bewys dat Iran verryk is

en kernkrag vreedsaam gebruik is, maar met die oorgang van

1994 is uiteindelik erken dat die land ook oor atoombomme

beskik het, wat dit self ontwikkel en gebou het.

Oud-president De Klerk het wel kans gesien om eerloos oor te

gee, maar nie om sulke wapens in die hande van sy opvolgers te



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laat nie, of dalk was hy bang vir ’n guiselaarsituasie van

teenstaanders vanuit eie geledere.

Intussen is Koeberg, Suid-Afrika se enigste kernkragsentrale,

voor voltooiing in 1982 suksesvol deur die ANC se militêre

vleuel aangeval, terwyl Greenpeace in 2002 daarin geslaag het

om baniere aan die gebou te hang. In 2005 was daar die berugte

moer in die reaktor voorval, wat Kaapstad in die duister

gelaat het.

*English*:

Nuclear facilities are clearly not invincible. At Koeberg, the

high-grade nuclear waste is stored on site, the same site

violated in 1981 and 2002. The fact that spent nuclear waste

remains hazardous for centuries is widely known.

Maybe, fewer people know that spent nuclear waste leaving an

electricity generating reactor, is more useful for building an

atomic bomb than when it entered. What it means is that people

with the requisite knowledge and skills who want to ...

[Inaudible.] ... for a number of centuries, do not need to

manufacture nuclear material, they will only have to steal

what has been manufactured before.



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This is particularly relevant when people who had been trained

in this field become alienated from the state or its

government. It is therefore clear that this convention, which

South Africa had already signed in 1981 for the first time, is

essential.

The amendments considered today extend protection to not only

the material, as it is transported within and between

countries but also the facilities itself. International co-

operation in combating theft and misuse of nuclear material is

also strengthened by the amendments.

*Afrikaans*:

Die VF Plus ondersteun dus hierdie verslag. Baie dankie.

Mr S N SWART: House Chair, the ACDP supports the approval of

the amendment on the Convention on Physical Protection of

Nuclear Material and we support this report.

Mr N L S KWANKWA: House Chairperson, we support the amendment.

Thank you very much.

Mr M G MAHLAULE: Hon House Chairperson, the report on the

Amendment to the Convention on Physical Protection and Nuclear



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Material that the ANC fully supports, seeks to dispel two

dominant myths. The first myth is that the end of the Cold War

between the USSR and the West marks the beginning of a

peaceful international environment, thereby suggesting that

fear as well as enmity have dissipated, and that the United

Nations Security Council deserves enormous credit for having

recovered all the technical nuclear weapons across the world.

The second myth is that the repeat of the 9/11 attack is

impossible because the current international system promotes

the peace dividend where there is less international tensions

and nations are thus encouraged to reduce their spending on

the military intended to protect their borders against lawless

neighbours.

The reality is that the persistent notion that nations should

reduce their military spending due specifically to the easing

of international tensions is misplaced, as the case of the

conflict between Russia and the neighbour Ukraine proves.

Moreover, there is a growing concern that in the acquisition

of nuclear material, to make nuclear weapons by nations that

have agreed not to do so, or by nonstate actors or even by

terrorist groups and that such nations, nonstate actors and

terrorists groups have undoubted capacities to reach the South



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African border with long-range missiles, carrying nuclear

weapons suggests that effective measures against these threats

should be implemented by all means necessary.

This presupposes that South Africa’s international security is

not guaranteed. In order to facilitate further successes, in

guaranteeing South Africa’s international security, the

amendment to the Convention on Physical Protection of Nuclear

Material should be adopted and subsequently ratified, as it

seeks to ensure physical protection of nuclear weapons during

the international transport, enhancement of co-operation in

protection and recovery of stolen nuclear material, as well as

the criminalisation of offences such as theft or robbery of

nuclear material.

This is particularly important for a number reasons. Firstly,

the adoption and ratification of the convention will

compliment Priority seven of the Midterm Strategic Framework

2019-24 of the ANC-led government, aimed at establishing a

better Africa for all, in the hope of promoting regional,

global integration and improved peace, security and stability

on the African continent.



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Moreover, by adhering to the convention, South African

reaffirms its commitment to maintaining peace in the SADC

region, as well as fulfilling its transformation objective of

turning the region into a deep nuclearized zone for all. For

instance, the insurgence attacks linked to the Islamic states

in Mozambique’s northernmost province of Cabo Delgado since

October 2017, pose a threat to nuclear material and

radioactive sources, as the insurgents may get access to these

sources and utilise them to accelerate the attacks.

The co-operation between the Republics of South Africa and

Mozambique, in line with the convention, will greatly be

valued, as enabling the implementation of safety measures, to

mitigate the catastrophic consequences that could result from

insurgents gaining access to nuclear material and radioactive

resources.

Most importantly, such co-operation will enable the Republic

of South Africa to guard its interest in the ... [Inaudible.]

... pipeline that we have just required 75% state. Secondly,

the adoption and the ratification of the convention contribute

to Priority Two of the midterm strategic framework 2019-24 of

the ANC-led government, aimed at achieving economic

transformation and job creation ,as well as securing supply of



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energy, in particular the Koeberg Nuclear Power Station

Nuclear technology project and the Safari-1 rely on important

nuclear raw materials and equipment, including nuclear fuel

and thus, may not have access to such for operations, should

South Africa fail to adopt and ratify the amendment.

Furthermore, the ANC-led government’s goal of replacing

Safari-1 with the multipurpose reactor, which will create 5

000 direct and 26 000 indirect jobs during its construction,

the building of the central interim storage facility to store

nuclear waste material and the procurement of 2 500 megawatts

of nuclear nubuild may not see the light of day, should the

Republic not accede and amend the convention.

Thirdly, South Africa has some of the busiest ports on the

African continent and beyond like the Port of Durban. This is

the reason why the convention is important, since it

guarantees that nuclear material and radioactive resources

enter and leave the country safely and for the peaceful

purposes.

Perhaps important to this report, the convention will likely

improve the import and export and transit of nuclear material



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and related customs procedures in relation to those

circulating domestically within the country.

It is important to have thorough oversight of the circulation

of nuclear materials in the country’s points of entry and

exit, particularly the railway network and ports, considering

the infrastructure vandalism and theft that are frequent in a

fright transport sector.

What is worrying is that the syndicates responsible for

stealing fuel and vandalising infrastructure are equally

capable of stealing nuclear material for nefarious reasons

that could put the lives of citizens at risk and endanger the

supply of energy to the economy. [Time expired.] Thank you.

Question put.

Amendment to the Convention on Physical Protection of Nuclear

Material accordingly approved.

**CONSIDERATION OF REPORT OF PORTFOLIO COMMITTEE ON JUSTICE AND**

**CORRECTIONAL SERVICES ON AMENDMENTS TO REGULATIONS FOR**

**APPROVAL IN TERMS OF SECTION 97(2) OF THE CHILD JUSTICE ACT,**

**2008 (ACT 75 OF 2008)**



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Mr G MAGWANISHE: Thank you very much, hon House Chairperson.

Hon Ministers and Deputy Ministers and hon members, Amendments

to the Regulations to the Child Justice Act were tabled for

approval on 15 February 2022, and referred to the committee

for consideration and report. It is necessary to amend the

regulations to align them with the changes brought about by

the Child Justice Amendment Act 28 of 2019. The intention is

to promulgate the Amendments Act and the amended regulations

on the same date.

The proposed amendments to the regulations are largely

consequential addressing one, the increase of the minimum age

of criminal capacity from 10 years to 12 years; two, the

retention of the rebuttable presumption for children who are

older than 12 years, but younger than 14; three, the manner of

dealing with a child depending on the age of a child from the

time of arrest to assessment preliminary inquiry and until

that child at the Child Justice Court; four, the removal of

requirements that prosecutors must consider the cognitive

ability of children when determining whether to prosecute a

child; five, that the criminal capacity of the child will only

be addressed during a plea and trial in the Child Justice

Court; and six, prohibiting magistrates from dispensing with a

pre-sentence report where a sentence can be given that



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involves a compulsory residents in a child and youth care

centre or imprisonment.

The committee recommends that the National Assembly approves

the amendments to the regulations in terms of section 97(2) of

the Child Justice Act of 2008. I thank you, House Chairperson.

Declarations of vote made on behalf of the Democratic

Alliance, Economic Freedom Fighters, Inkatha Freedom Party,

Freedom Front Plus, African Christian Democratic Party, United

Democratic Movement, Good, Pan Africanist Congress and African

National Congress.

*Declarations of Vote*:

Adv G BREYTENBACH: Thank you, hon House Chair. The proposed

amendments to the regulations for Child Justice Act are

largely consequential and were dealt with in details by the

previous speaker. The Child Justice Act 75 of 2008, came into

effect on 1 April 2010. It creates a special mechanisms

processes and procedures for children in conflict with the

law. It introduces a nonprimitive model premise on African

nation’s justice that embrace restorative approaches and

principles of ubuntu in a criminal justice process with the

aim of breaking the cycle of crime. It promotes co-operation



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between government departments, the Department of Justice,

Police, the National Prosecuting Authority, NPA, Legal Aid,

Correctional Services, Social Development, Health and

Education, and civil society.

What it does not deal with any particular details is what

precisely should happen to children younger than 12 years.

Therefore, this is matter that needs to be attended to. The

2021 Interdepartmental and report on implementation of the

Child Justice Act is the eighth annual report submitted in

terms of the Act. In the 2019-20 annual report the report

indicated that the National Intersectoral Committee for child

justice was in the process of developing a five-year

Intersectoral strategic plan for child justice that includes

the implementation plan for the National Policy Framework, and

the recommendations from the research report on the impact of

the Child Justice Act. However, no further international

privacy reported in the 2020-21 annual report, and again this

is major of some concern.

Also deeply concerning how the types of Child Justice

preferred against children awaiting trials. Rape pose the top

charge against children awaiting trial at 22% or 1 024

charges. Rape is a top charge against children age 10 to 16



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years awaiting trial. It is concerning that charges of rape

involved 116 children, age between 10 to 13. A 168 children

aged 14, 213 children aged 15 and 250 children aged 16.

Charges of assault with the intention to grievous bodily harm

contributed to 16% of 751 charges of the total number of

charges against children awaiting trial and murder charges

register 8% or 356. The top charge against children at 17

years was assaulted with intention to grievous bodily harm.

Charges of rape and assault with intention to grievous bodily

harm contributed to 24% of the total charges against children

awaiting trial. No information has given on case backlogs in

respect of Child Justice matters.

Despite the fact that rape was the top charge against children

awaiting trial in the Child Justice Courts that 1 024 charges

of rape, only ... [Inaudible.] ... children were convicted of

this crime. There is low conviction rape may be linked to the

challenges experienced by SA Police Service laboratories

regarding the delay release of the deoxyribonucleic acid, DNA,

reports. The ongoing impact of the delays in the DNA reports

across the criminal justice system is a measure of grave

concern. Considering that the purpose of a Child Justice Act

was to steer children away from the formal criminal justice



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system and the directive in the Constitution that children

should only be detained as measure last resort.

It is concerning that children were sentenced to direct

imprisonment most of the housebreaking with intent to steal

and theft, is a nonviolent economic crime. The

underutilisation of ... [Inaudible.] ... child justice option

may be an indication that the Child Justice Act implementation

is not fully embraced by magistrates. The key challenges in

the management of data and statistics with tracking ...

[Inaudible.] ... leave the criminal justice systems and no

timeframes are provided for the completion of this process. It

will assist greatly if it was a collective approach to risk

management, and if all identified risks and challenges and

responses were listed by stakeholders. It is critical to

remedy any ongoing issues around the effective implementation

of the Act. The regulations, unfortunately, do not and cannot

address this serious concerns and shortcomings. Nevertheless,

the DA supports the report. I thank you.

Ms Y N YAKO: Yes, it is. Thank you, House Chairperson. The EFF

rejected the Child Justice Amendment Bill back in 2019.

Therefore, the regulations we are adopting today emanate

directly from that Amendment Act. As you warn then it is



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important that we take cognisance of a particular context with

which influence and continue to influences the conduct of most

South Africans. This is particularly important when we make

laws that affect children. Many of whom grow up into

dysfunctional families and communities because of the ...

[Inaudible.] ... systems and structures that apartheid and

colonialism designed for African people. It has been reported,

for instance, that there is a racket escalation of a number of

child-headed households in the country. These children are

then more vulnerable to be drawn into criminal activity, drug

abuse and dropping out of school at an early age.

The Child Justice Amendment Bill directly diagnoses the

problem of assigning criminal capacity to children and

increases the age of criminal capacity from 10 to 12 years

old. Well this is welcome is still not sufficient, taking into

account the context with which most South African children are

raised. Reliance on international standards may not find

resonant in the South African context. Criminal capacity means

an appreciation for the wrongfulness of an Act and reconciling

one-self with two that wrongfulness. Therefore, in the

presence of all social ills facing the development of children

in this country can we for certain reconcile ourselves with

the 12-year-old having criminal capacity. Why should we seek



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to criminalise children for failures of the state and society

to provide a good enough foundation for the proper development

these children? This age limit is even below what the United

Nations Committee on the rights of a child are recommended,

even for countries without the burden that we have, that the

United Nations, UN, committee recommended that state should

set at age of criminal capacity at 14 or 16 years of age.

While we support other provisions of the regulations we do

implore on the state to take responsibility for its own

complicity in sustaining criminal activity in society,

particularly that of relation to children. On this basis we

reject these regulations, not ... [Inaudible.] ... should be

judged to have criminal capacity in this country. Thank you.

Mr SINGH: House Chairperson, Prof Msimang, was supposed to

contribute to this report. On consideration of the Report of

the Portfolio Committee on the Amendments to Regulations in

terms of the Child Justice Act of 2008, the IFP supports the

committee’s observations and recommendations.

Regulations by their very nature provide for the technical,

practical detail of provisions of an Act, and it is therefore



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critical that regulations do not delay the operation of an

Act.

Unfortunately, we often see a delay in the publication of

regulations or the failure of a Minister to publish

regulations as the discretionary power is not exercised, which

really hinders the operation of the Act. It is therefore

critical that these regulations must be carefully drafted with

clarity, and should ideally come into operation simultaneously

with the empowering provision in the Act.

As we understand, hon House Chairperson, the Child Justice

Amendment Act of 2019 intends to amend the Child Justice Act

of 2008, to regulate the minimum age of criminal capacity of a

child, the decision to prosecute a child, and to further

regulate the proof of criminal capacity of a child.

The Child Justice Amendment Act of 2019, although assented to,

has not yet come into operation and a date of operation is to

be fixed by the President. It is necessary to accordingly

amend the Regulations published in terms of Section 97(2) of

the Child Justice Act of 2008, to align with the changes

brought by the Child Justice Amendment Act.



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Amendments to the regulations were accordingly tabled in

February 2022, and referred to the portfolio committee. And

the Amendment Act will come into play now with the

regulations. And the IFP agrees with the portfolio committee’s

recommendation, that the National Assembly approves the

amendments to the regulations to the Child Justice Act.

In conclusion, it is vital that these amendments to the

regulations be passed urgently, so as not to delay the

operation of the Amendment Act, which provides critical

amendments to the Child Justice Act. The IFP accepts the

Report. Thank you.

Mr F J MULDER: House Chairperson, criminal justice system for

children who are in conflict with the law and who are accused

from committing offences, is unfortunate they are a given

reality. Children should be treated with special care,

considering the background or upbringing and individual needs

or circumstances. The FF Plus welcomes the consequential

amendment to the regulations.

House Chair, the question however remains, whether the

amendment will be sufficient? The FF Plus will however support

the Bill. Thank you, hon House Chair.



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Mr S N SWART: House Chairperson, the ACDP played a key role in

the drafting of the Child Justice Act which was and is a

ground breaking piece of legislation. And it aims to keep

children out of detention and away from the form of criminal

justice system. Mainly through historical justice measures,

such diversion, where such children do not present a danger to

society.

And it allows that child’s background or upbringing to ne

taken into consideration and ensures that the individual needs

and circumstances of children in conflict with the law are

assessed before a decision is made on how courts dealing with

that child.

It basically gives children a second chance without committed

crimes to prevent their being expose to imprisonment. Where

many cases there that can a rape and abuse into a lifetime of

crime.

Now over the years the provisions of the Act have been applied

with the degree of success. Lessons have been learnt however,

resulting in various amendments, including those passed in

2019, to increase the minimum age of criminal capacity and to



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obtain our rebuttable presumption for children who are old

than 12 years but younger than 14 years.

The regulations that being considered today are largely of

tactical nature which have been dealt with by previous

speakers. But, the Amendment Act has not come into operation

and it is envisaged that the draft regulations will come into

operation on the same day.

Therefore, once Parliament has approved the amendments to the

regulations that commence in that date for the Amendment Act

to be determined. We are also in conclusion to say that

Parliament required approval of these regulations in respect

that it is totally acceptable and in no way that no

infringement of the executive power as well argued earlier in

the rejection of the Disaster Amendment Bill.

In all depends on what the experts regarding the regulations,

but in this case, the Act requires regulations to be tabled

and passed by Parliament before they come into operation. The

ACDP supports this report. I thank you.

Ms W S NEWHOUDT-BRUCHEN: Hon House Chairperson, Members of the

Executive and the legislature, comrades and friends and



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various platforms watching today, good afternoon. The ANC

rises in support of the Child Justice Act of 2008 Amendment of

Regulations.

As we commemorate Youth Month, we remember the sacrifices of

the youth of 1976. The 76 generation led the militant struggle

against the brutal apartheid regime, in a manner and bravery

which remains unparalleled. The young lion’s generation, made

South Africa ungovernable. And, incubated energy to the

struggle for liberation, leaving the apartheid regime with no

option but to negotiate. We salute their bravery and courage.

House Chairperson, the Child Justice Act 75 of 2008, seeks to

establish a criminal justice system for children who are in

conflict with the law and are accused of committing offences

in accordance with the values underpinning the Constitution

and the international obligations of the Republic.

Among others, this Act seeks to provide a mechanism for

dealing with children who lack criminal capacity outside the

criminal justice system. The changes to the regulations are

intended to ... [Inaudible.] ... in line with the Child

Justice Amendment Act of 2019, which amended the Child Justice

Act of 2008.



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The most important provision of the Amendment Act, is to raise

the minimum age of criminal capacity from 10 to 12 years of

age. The amendments also provide for assessing criminal

capacity at the latest stage. Instead of it being done by the

... [Inaudible.] ... magistrate it would now be done by the

Child Justice Court.

But the director general of health must compile and keep an

annual list of psychiatrists and psychologists who are

prepared to conduct criminal capacity assessment.

The amendment includes the increase of the minimum age of

criminal capacity from the age of 10 to 12. The rebuttal

presumption is retained for children who are older than 12

years but younger than 14.

And then, there are some technical amendments. The manner of

dealing with a child, depending on the age of the child from

the time of arrest to assessment, preliminary inquiry and

until Child Justice Court. The removal of the requirements,

that prosecutors must consider the conflict of ability of the

children, when determining whether or not to prosecute a

child, since they are not to put to do so.



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But, the criminal capacity of a child will only be addressed

during a key and trail in Child Justice Court and not during

the preliminary inquiry and for the diversion purposes. And,

to prohibit a magistrate to dispense with a presentence

report, where the court may impose a sentence involving

compulsory resonance in a child and youth care centre or

imprisonment.

House Chairperson,

Our children are the rock on which our future will be

built, our greatest asset as a nation. They will be

leaders of our country, the creators of our national

wealth, who care for and protect our people.

and this a quote from President Mandela on 3 June 1995. I

thank you House Chairperson. [Applause.]

Mr B A RADEBE: Hon House Chairperson, I move that the Report

be adopted.

Motion agreed to



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**CONSIDERATION OF REQUEST FOR APPROVAL OF AFRICAN CHARTER ON**

**STATISTICS IN TERMS OF SECTION 231(2) OF CONSTITUTION, 1996**

**REPORT OF PORTFOLIO COMMITTEE ON PUBLIC SERVICE AND**

**ADMINISTRATION**

Mr T H JAMES: House Chair, hon members, the African Charter on

Statistics was adopted at the 11th Ordinary Session of the

Assembly of Heads of State and Government of the African Union

in Addis Ababa, Ethiopia on 03 February 2009. The purpose of

this ground-breaking and elaborative work by the Executive

Council of the African Union to request the development of the

common Charter was to address the huge policy gaps regarding

reliable statistics. There are still glaring policy gaps that

exist between the supply and demand for reliable statistical

information to integrate the African agenda for common

challenges and solutions and address them. As a consequence,

of this challenge, the need to endorse the Charter was

addressed which led to the adoption of the Strategy for the

Harmonisation of Statistics in Africa.

The intention of the parties to this Charter’s statistical

methodologies and processes used to gather such statistics

should be congruent to the member states’ statistical

legislation or any legislation of that particular state. It



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does not mean that methodologies and processes should at all

costs be similar in all the states. We are aware that

statistical methodologies processes should conform to the

benchmarked standards of collective reliability and authentic

statistics. This serves to ensure that statistics play a

crucial role for governments in Africa to understand the

performance of the economy and the gross domestic product’s

growth and or stagnancy.

Statistics help governments to determine whether or not the

labour market caters for the demands of the economy as well as

whether or not all elements of the planning system are helping

towards addressing the demands of populations and societies.

Reliable statistics help governments to fully understand the

extent to which the planning and allocated budgets cater for

the needs of their people. Hence statistics cannot be

engineered but they must be real so that real, not imagined,

challenges are addressed. For Africa to solicit and receive

real financial aid where required, her statistical gathering

methods and processes must be internationally benchmarked and

must conform to international standards.

The process to adopt the African Charter on Statistics was

approved by Cabinet on 09 September 2015 and the memo



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initiating the finalisation of this process was approved on 03

May 2019. Statistics South Africa obtained an opinion of the

state law advisors on the Charter’s consistency with the

domestic law. The Department of International Relations and

Co-operation supported the signing and ratification of this

Charter. Therefore, the request for the tabling of the African

Charter on Statistics, its signing and deposing with the

African Union must be done in terms of section 231(4) of the

South African Constitution, so as to conform with

international law provisions.

It is this light of this due consideration of these

benchmarked principles of international law and provision of

our Constitution that the National Assembly considers signing

and ratifying the African Charter on Statistics, which is,

therefore, my subsequent submission to this national esteemed

House to duly do so on behalf of South Africa as a country and

nation. May this House ratify and sign the African Charter on

Statistics. I so submit, House Chair. Thank you very much.

*Declarations of Vote*:

Mr Z N MBHELE: The African Charter on Statistics was adopted

by the African Union for the purpose of having a framework for

addressing the huge gaps that still exist on the continent



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between the supply and demand for statistical information that

is needed for socioeconomic developments and the African

integration agenda. As I stated during the Statistics SA

Budget Vote debate three weeks ago, ongoing changes in our

economic and social realities continually exert pressing

demand for useful statistical information that helps

policymakers, businesses and civil society to keep a finger on

the pulse of evolving trends.

In particular, more detailed statistics are needed and they

are required more frequently if policies are to be responsive

and effective. Meeting this increased demand for high-quality

statistics will thus require more innovation, partnership-

building and adequate funding so that we avoid the shambles

that happened with the 2022 Census with its poor planning,

operational delays, glitches with online functionality, under

resourcing and undercounting, especially in the Western Cape.

It is timely and resonant that this Charter should be tabled

before this House a week after we commemorated Africa Day

because it highlights the importance of the link between

statistical research and the aspirations and objectives of the

African Union and its member states to make ours a continent

of peace and prosperity for all. As my colleague, the hon



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Masango said during her Africa Day debate speech on this

podium, we wish to see the problems of hunger, conflicts, and

corruption on the continent be replaced by abundance, peace,

and justice. The key to that transformation is how those

information products promoted by this Charter will shape

government policy decision-making and programmatic action.

As mentioned just now by the hon James, statistics play a

crucial role for governments to understand the performance of

their economies, to help governments determine whether or not

the labour market caters for the needs of the economy, as well

as if all planning elements or addressing the needs of the

poor, the unemployed and the economically excluded. On that

score, the ANC national government is failing dismally,

judging by worsening employment, investments and other

socioeconomic figures. And the latest Quarterly Labour Force

Survey issued this week shows that this governing party has

run out of ideas on growth and jobs.

We are confronted with a pandemic of joblessness, represented

by the millions of chronically unemployed people in these

recent statistics, which urgently propels the need for fresh

economic thinking. Why are these ongoing findings of stubborn

and growing unemployment in South Africa, especially among



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young people, not leading to radical and fundamental reform,

such as scrapping the automatic extension of collective

bargaining council agreements to small and medium enterprises

who do not sign them in the first place, and certainly cannot

afford them? And when will our heart-sinking statistics

finally persuade the government to repeal investment

deterring, growth strangling and job-killing legislation, like

the disastrous and draconian Employment Equity Amendment Bill

currently sitting on the President’s desk.

Because these figures cannot be announced by our statisticians

and then simply ignored to suffer a quiet death suffocating in

cabinet file 13. In simple terms, counting should lead to

caring. I repeat. Counting should lead to a caring response

from the state and the work of crunching the numbers should

result in crushing all obstacles to opportunity, growth and

development. We support this ratification, but Parliament must

now ensure that our accession to this treaty will lead to

action on policy and reform that brings flourishing

employment, entrepreneurship and excellence. I thank you.

[Applause.]

The ACTING CHAIRPERSON (Ms R M M Lesoma): Hon member of the

DA, next to hon ... the second row from the back, I am not too



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sure you are aware that you are the only one with no mask. May

you kindly do the better one. Thank you very much.

Ms R N KOMANE: Chairperson, the African Charter on Statistics

was adopted by the African Union, AU, in 2009 already, and it

entered into force in 2015.

The intentions of the charter are to improve the quality of

the official statistical information available to public

administrations and other activity areas.

It recognizes that this largely depends to a large extend on

effective collaboration between statistical data providers,

producers and users.

The charter also enjoins African governments to efforts

undertaken to enhance the independence and status of

statistics institutes and to secure appropriate stable

financing for statistical activities.

The EFF is in support of the charter. If this were to be taken

seriously by African governments, it would make the work of

integrating African economies much more streamlined and

easier.



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We also urge all African governments to conduct a thorough

audit of the natural resources they have and who has vested

interests in all these resources.

There must be a proper population statistics reflecting levels

of development of income, of poverty and of growth indicators.

We, therefore, support the establishment of the African

Statistical Systems, which, according to the charter, is a

partnership composed of national statistical systems, data

providers, producers and users, statistics research and

training institutes, and statistic coordination bodies, etc.

Statistics units in the regional economical economic

communities, regional statistics organization, regional

training centres, statistics units of continental

organizations and coordination bodies at continental level.

South Africa’s ... [Inaudible] ... must play a pivotal role in

assisting the development of credible statistical data for the

rest of the continent, and that this data must be

scientifically rigorous, free of political manipulation and

paint the true picture of African development across all the

sectors.



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We are, therefore, in support of the charter, Chairperson, and

thank you very much.

Mr N SINGH: Hon Chairperson, the African Charter on Statistics

is an important agreement for charting the development of

Africa in general and South Africa in particular.

Africa’s role and integration in the world has long been

diminished through the poor attention paid to understanding

the people of the continent.

Africa provides the rest of the world with the most precious

and expensive resources. On the other hand, Africa remains one

of the poorest continents in the world. In fact, a study

undertaken in 2017 indicated that a US$134 billion entered the

continent, mainly in the form of loans, foreign investment and

aid. However, some US$193 billion was taken out, mainly in

profits made by foreign companies who are tax dodging and the

cost of adapting to climate change.

Africa was found to suffer a nip deficit of US$58 billion a

year. This, hon Chairperson, presents a problem for us, when

Africa as a continent has been robbed of its wealth, which is

needed for the beneficiation of its people.



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Whilst we share common challenges of development, we also

share the common ills of weak governance, poverty, inequality,

lack of political will and corruption.

Therefore, the importance of statistics in this regard are to

quantify the development needs of each community residing in

Africa. We need to understand what is available to the

continent in terms of resources and how these resources can be

extracted and refined for the development of Gross Domestic

Product, GDP, per country against the needs of their

inhabitants.

In conclusion, in South Africa, for example, our diamonds and

platinum and gold are extracted then sent overseas for

refining and then sold back to us. Why is this still the case?

Government invests billions of rands into education and skill

development, yet we rely on other countries to sell our

refined products back to us. This must be addressed with the

use of statistical data in order to benefit the development of

South Africa and Africa.

The IFP supports the request for this approval. Thank you,

Chair.



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Mr W M THRING: Hon House Chairperson, the ACDP acknowledges

that statistical knowledge helps governments use the proper

methods to collect data, employ the correct analysis and

effectively present the results.

Statistics is a crucial process behind how we make discoveries

in science, making decisions based on data and enables us to

make predictions.

Furthermore, the ACDP is aware that the African Charter on

Statistics is guided by Member States’ unambiguous and shared

vision on the Treaty Establishing the African Economic

Community adopted in Abuja, Nigeria, in 1991, with the aim of

promoting economic, social, cultural and self-sustained

development, as well as integration of African economies.

Jean Ping, the former president of the United Nations General

Assembly said:

The use of harmonized and reliable statistics in all fields

of political, social, economic and cultural activity is

recommended for the monitoring of the implementation of the

ongoing integration process in the continent on which

African States embarked several years back.



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Although there has been significant progress in Africa’s

statistical system over the last few years with the advent of

several initiatives, it should be pointed out that there is an

immense gap between the supply and demand for statistical

information needed for development and for the African

integration process. For the moment, quality statistical data

produced by the African statistical system is virtually

inexistent.

Mr Ping further stated: It is to remedy this shortfall, which

is a setback to Africa’s integration and development

processes, that the decision-making organs of the African

Union took the historic step to call for the elaboration of an

African Charter on Statistics, which will serve not only as a

legal instrument to regulate statistical activity but also as

a tool for advocacy and the development of statistics in

Africa.

Hon House Chairperson, in supporting the recommendation in

this report, the ACDP asserts that of all the challenges

Africa faces, the number 1 challenge is a challenge of poor

leadership. Like South Africa, Africa is not without moral,

ethical, upright and intelligent servant leaders. The African

electorate must learn to choose these leaders, rather than the



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corrupt, immoral, self-serving leaders of political parties.

The African Charter or Statistics has the potential to assist

the electorate in making these wise and informed choices. I

thank you.

Ms T MGWEBA: Hon House Chair, hon members, as government and a

member state of the African Union we are aware of the

decisions and new policy guidelines of the African Union for

accelerating Africa’s integration process and the commitments

to implement development programmes and combat poverty should

be based on clear evidence and, therefore, require a robust

statistical data system which provide reliable, comprehensive

and harmonised statistical information on the continent.

We recognize that statistical information is vital for

decision-making by all components of the society, particularly

policy makers as well as economic and social players, and is,

therefore, essential for the continent’s integration and

sustainable development.

In agreeing with this charter, as the ANC, we are adamant in

bringing about societal transformation in the country and we

also support the development of the African continent.



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We are thus aware of the need to enhance coordination and

statistical activities in the continent.

As the ANC we acknowledge that statistical information informs

policy and many organizations such private and public

institution, research institutions, civil society and tertiary

institutions largely rely on the credibility of statistics

produced by the Stats SA.

We also note and recognize that quality official statistics

demands professional and adequate technical skills and

capacity and respect for the fundamental principles of

official statistics, professional ethics and good practices.

The ANC aligns itself with the objectives of the charter,

which is to address gaps between the supply and demand of

statistical information needed for the development and

attainment of the African integration agenda.

It is important that statistics should be based on empirical

evidence and that part of the charter’s objective to serve as

policy framework for statistics development in Africa,

especially the production, the management and dissemination of

statistical data, and information at national, regional and



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continental levels to promote adherence to fundamental

principles of production, storage, management dissemination

and use of statistical information in the African continent.

Through the provision of credible statistics in Africa, we are

adamant that this ratification will assist Africa in driving

our African agenda towards 2063 of an inclusive sustainable

development and a contrict manifestation of the Pan-African

drive for unity, self-determination, freedom, progress and

collective prosperity pursued under Pan-Africanism and African

renaissance.

We hope that this charter will also assist in attaining

inclusive and sustainable economic growth and development of

the African heads of state and governments at large.

At home we acknowledge Statistics SA as a critical

organization in the work of building a developmental state

through the collection of data and interpreting it so that it

becomes useful information that guides policy formulation and

implementation.

The ANC, unlike many political parties here and governments,

is committed to driving social transformation through policies



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aimed at eradicating poverty, reducing unemployment and

inequality.

We, therefore, agree to the ratification of the charter and we

adamant that it will drive transformation for Africa to become

more developed.

We hope that the ratification of the charter will help assist

c=the challenges affecting the continent such as poverty,

gender equality, intrastate conflicts, the vast impact of

climate change in the continent and economic development by

taking Africa for =ward in various sectors of economy.

We are pleased to note that Stats SA has undergone the

ratification process and that during the process it has

obtained all relevant legal opinions.

We are adamant that this charter will also assist the nation

in advancing the National Development Plan, NDP, of 2030 as

the ANC moves in support of the African Charter on Statistics

report. I thank you, House Chair. [Applause.]



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**CONSIDERATION OF ANNUAL REPORT OF JOINT STANDING COMMITTEE ON**

**INTELLIGENCE FOR FINACIAL YEAR ENDING 31 MARCH 2020, INCLUDING**

**PERIOD UP TO DECEMBER 2020**

Mr J J MAAKE: Hon House Chairperson, maybe next time you must

start with me because there is load shedding here and I am

using a candle to read my speech. I am introducing the annual

report of the Joint Standing Committee on Intelligence for the

year ending 31 March 2020, including the period up to December

2020. It is only a week ago that we had Budget Vote debate on

the services that we conduct oversight on. I stated in my

speech that we seem to be repeating whatever we said in the

previous years, which means that even if there is some

improvement in the service delivery of departments, the

progress is however very slow. It is always very important to

state the purpose of the Joint Standing Committee on

Intelligence.

The Joint Standing Committee of Intelligence is established in

terms of section 2 of the Intelligence Services Oversight Act

40 of 1994. The purpose of the committee is to perform an

oversight function over the intelligence and

counterintelligence functions of the services, which include

the State Security Agency, the Intelligence Division of the SA



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National Defence Force, that is Defence Intelligence and the

Intelligence Division of the SA Police Service which is known

as Crime Intelligence. The committee hereby presents its

report to the Parliament of the Republic of South Africa in

accordance with section 6 of the aforementioned Acts.

During the year under review, for the start of the Sixth

Parliament, the committee was constituted on 30 October 2019

after a process of undergoing vetting for Top Secret Security

Clearance, which is a statutory requirement. Prior to the

establishment of the committee, an ad hoc committee was

established to process strategic plans, annual performance

plans and budgets of the intelligence services. The five

months’ report was published on 11 November 2020 due to the

impact of COVID-19.

Similarly, the annual report was also impacted by COVID-19.

Maybe it is necessary to explain the process of preparing the

report we are presenting here today. After the committee has

prepared the report, taking into consideration all of its

activities for the reporting year, legislation prescribed that

the report must then be taken to all services and the

President of the country, for them to double-check and add or

delete what they might deem to be threatening the security of



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the state, after which we then submit it for publication by

Parliament.

The committee also deals with, amongst others, the Auditor-

General’s reports of all services, the certificates of all

services prepared by the Office of the Inspector-General of

Intelligence, the Financial Intelligence Centre, the Office

for Interception Centre, OIC, and the interception judge. The

committee will admit that all is not well in the services,

maybe with the exception of the Defence Intelligence.

In their report our predecessor wrote and I quote: “The

committee made a case for the reconstruction of the State

Security Agency, given the many weaknesses within the entity

which the Joint Standing Committee on Intelligence became

aware of. The President in his response indicated that he had

also received a full briefing on those matters and had already

taken a position that it was necessary to rebuild the State

Security Agency. He will therefore sooner, rather than later

appoint a panel of experts to do an exhaustive assessment of

the entity and make recommendations on how the reconstruction

could be designed.”



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It is now public knowledge that this has been done and we are

now on the implementation stage with the committee seriously

worried about its slowness. Our report therefore focusses on

making sure that all the recommendations are speedily

implemented, including those that must be implemented by

Parliament. The report concludes with specific recommendations

for all the services, amongst others, is for the SA Airways,

SAA, that the high level review panel report be implemented

without delay. Those who are implicated in financial

irregularities be reported to the law enforcement agency and

that consequence management be effected. In relation to crime

intelligence, the committee recommended that the vetting

backlog of the ... [Time expired.]

*Declarations of vote*:

Ms D KOHLER: This is a report for the year before us and that

still leaves the committee activities for the whole of 2021 to

March 2022 as yet unaccounted for before this House. If you

had the opportunity to listen to last week’s budget speeches

you will know that our primary mandate as the Joint Committee

on Statutory Instruments, JCSI, is to perform oversight over

the intelligence and counterintelligence functions of the

three services, the State Security Agency, Defence

Intelligence, DI, and Crime Intelligence, CI.



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We have also ... [Inaudible.] ... amongst others, the Auditor-

General, the Audit and Risk Committee and the Inspector-

General of Intelligence, whose term is now expired with no

replacement in sight. The meetings are closed and no laptops

or phones are allowed into the meeting. So, any handwritten

notes are removed from the meeting room. They have to

acknowledge there will never be leaks from the JSCI, unlike

the veritable torrent of information which hits the headlines

from the SAA, CI and even DI, from either those desperate to

spill the beans or alternatively to bury someone who is about

to spill the beans. Yet the high level review panel report

said that this committee suffered from excessive secrecy,

virtually nothing is released to the media, there are no

updates, total radio is silenced on work done by people who

are paid to do it. Inevitably in gender, especially in

relation to our activities.

Since the start of this five-year term this committee after a

very long wait for our vetting to be completed. I finally

found it fit to announce it sometimes three or four times a

week, unlike previous terms where we had a single chairperson

although bizarrely any illness on his part means everything

just stops. The legislation doesn’t allow for a deputy and

indeed besides that, it’s totally out of date in terms of



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various entities being realigned from the Zuma year

deformities. But all efforts to update the legislation have

seemingly been stonewalled.

One of the major frustrations is that it is extremely

difficult to reach a quorum added to which the actual issues

raised and reported are really dealt with by the departments

and the recommendations detailed in this report seem to be

considered to be of interest rather than instructions from

Parliament. This committee is known mostly for delays and

meetings cancelled without notice, Ministers who have more

things to do than come before the committee, departments that

arrive unprepared and without having sent us documentation,

that is not reflected in this report. I am quite convinced

that this unprofessional behaviour rises from the fact that

there is no media coverage.

We are forced to stay silent about our shabby treatment we so

often receive. This is a situation all committee members spoke

about openly during our budget debates. Some of the long

vacant positions have been filled. Today, a whole

investigation is ongoing into that, especially considering

that some were brought back from suspension and promoted. Once

again it seems that the Minister has overstepped but he has



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gone on to pass his new to so ever we will see zero

consequences. As you can see, the SAA had a key role to play

in cyberspace protection, yet even President’s information has

been compromised, so that hardly fills one with confidence.

The SAA also claims that they will be capacitation of the

economic intelligence unit to be able to play a key role in

economic development. What a success that has been.

There is a shopping list of combating organised crime on how

many kingpins have been jailed. What you will see is that the

SAA was found to be involved in matters outside its mandate.

For example, its involvement in the matter of the Public

Protector pertaining to the Reserve Bank. Again, there were

zero consequences. While we may not appear on the committee

with our Top Secret Security Clearance, there are people

dealing with the most sensitive information in the country,

the thing is that they don’t even come before the committee

with no clearance at all.

This report covers a period before the apocalyptic Russian

invasion of Ukraine but it does touch on the ongoing war in

Mozambique and our role there. We were briefed on Project Veza

in 2020 and criminal action and asset recovery were listed as

priorities. We have yet to see any progress in this regard,



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which, considering the Zondo Commission revelations has one

asking if we will ever see any criminal action or asset

recovery at all.

Ten years on Richard Mdluli has yet to appear in court for a

Crime Intelligence looting. Since the top structure of Crime

Intelligence was unilaterally removed during this time when

head general Jacob was suspended along with five senior

colleagues, not a single criminal charge has been laid. This

entity was guttered pretty much just in time for last year’s

riots. Perhaps the new National Bargaining Council, NBC, can

resurrect something from this conflagration. As for the

mysterious and much suspended and much vindicated Robert

McBride - anyone knows what happened to him? I certainly

don’t. As a surface skimming exercise, this report is what it

is. Thank you.

Dr M Q NDLOZI: House Chairperson, the annual report for the

year under review shows the general inability of the Joint

Standing Committee on Intelligence, JSCI to develop teeth that

truly bites. One must ask two ... [Inaudible.] ... questions;

why would intelligence agencies take the JSCI seriously?

Precisely because it meets in secret. Many who are engaged in

corruption and irregularities within the agencies survive



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without being exposed in full view of citizens and voters. How

much – that’s the second question – has the JSCI done to

subject information they receive about corruption, crime and

irregularities to criminal investigations?

Officials are exposed by the Auditor-General and information

of criminality and corruption is given to this committee. Yet,

a single person has been taken to either the NPA or

investigated by this committee. So the annual report is about

what has committee has done on its duties of oversight? Has it

really developed teeth to the extent that the Constitution

requires Parliament to exercise oversight of the executive.

The committee during lockdown, ... [Inaudible.] ... was

refused basic information trust that must be afforded to

anyone who has been high security clearance and vetting, and

also sworn in front of a High Court Judge. Accordingly, the

country must not accept the explanation by the committee in

the annual report that they could not do its job because of

the lockdown or because of high levels of COVID-19 infections.

That we could not meet virtually on a secure line is totally

false and a serious reflection of backwardness. That we

accepted that explanation to begin with, is a serious

condemnation. It must be condemned by all of us that a



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committee engaged in intelligence could not meet virtually.

Its serious backward reasoning.

However, the report pointed a gloomy picture of our

intelligence agencies. Key amongst which, for example, in the

State Security Agency, SSA the Auditor-General indicates that

no evidence for programme achievements were submitted. Meaning

the State Security Agency makes claims about having achieved

certain programmes without bringing any shred of evidence for

their claims. Annual financial statements were not prepared in

accordance with Public Finance Management Act, PFMA. No steps

were taken to prevent wasteful and fruitless expenditure. They

claim that there is consequence management but they provide no

single shred of evidence for any of these claims.

Above all, no approved standards to guide collections storage

and verification of performance information. The Auditor-

General also points, in relation to crime intelligence which

also received a qualified audit that its goods and services

are understated, compensation of employees is understated,

operation leases are overstated by tens of millions of rands.

Office of the Inspector Judge, for instance, indicates that

State Security Agency only applied for only 61 communication

interceptions compared to 622 by crime intelligence. This tell



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you that SSA is a bunch of incompetent liars who could not

even be honest by their interception activities.

In this financial year that is under review, without any of

these challenges being fixed, the JCSI approved APPs and have

allocated more funds to the SSA and crime intelligence. These

intelligence agencies are no more that catch cow for corrupt

officials and politicians without the actual job of

intelligence being done for the protection of the country in

terms of national security or to combat crime with regards to

organised gangs. The JSCI remains generally toothless. They

make no brave moves and there are no steps to civilised

services. The report also does not detail how, even steps to

hold SSA and crime intelligence officials and defence

intelligence officials who deliberately misled the committee.

The ACTING CHAIRPERSON (Ms R M M Lesoma): Thank you, hon

member. Hon member your time is up.

Dr M Q NDLOZI: We are ... [Inaudible.] ... by this committee

and the Chairperson stopping any form of investigation. We

reject this report because the JSCI is incompetent.



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The ACTING CHAIRPERSON (Ms R M M Lesoma): Can we switch off

hon Ndlozi’s mic because his time up.

Dr M Q NDLOZI: The JSCI is not doing any of its duties. So we

must reject this report as the EFF. Thank you.

The ACTING CHAIRPERSON (Ms R M M Lesoma): Hon Ndlozi, I am

sure you know what is right. Don’t repeat it again in any near

future, please.

Dr M Q NDLOZI: Hai! You can’t tell me what to repeat and not

to repeat. I will repeat it again.

Mr N SINGH: House Chairperson, I think if there is any

department that has ghost employees, this department will

qualify. It will be number one there, because a number of them

are paid but you don’t see them – you don’t hear them. And

they all hide under the guise of being intelligence officers

and you don’t know who they are and we don’t even get

appropriate reports from intelligence. I am saying this from

my own practical experience of people having been paid and

doing nothing within the department of intelligence but it’s

not supposed to be that way. Taxpayers money must be accounted

for.



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Our intelligence services are barely functional in terms of

their mandate, which is to provide the government with

intelligence on domestic and foreign threats or potential

threats to national stability, the constitutional order and

the safety and wellbeing of our people. In fact, in some

instances it can be said that they actively work against their

mandate and this is because state security has become

politicised and weaponised against those who oppose the rule

of law and constitutional democracy in our country.

Chairperson, we have terror threats looming on our borders. We

hear allegations of terrorist organisations in neighbouring

countries and elsewhere in the continent being funded from

within South Africa. These are real threats to the rule of law

and constitutional order in this country. And, this is one of

the key areas of focus where state security should be

deploying resources and not settling political scores. Given

the highly sensitive nature of the mandate and information

dealt by the SSA, it is almost impossible for absolute

oversight of the intelligent services.

I don’t serve in this committee because I am not intelligent

enough, I suppose, but from what I hear from those who serve

in this committee, they tell us that. This is precisely why it



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is necessary to have an Inspector General of Intelligence who

reports to the JSCI and the President as required in the

Constitution in terms of the Intelligence Service Oversight

Act. The JSCI will only be as strong as the Inspector General

that reports to it. This position must be filled as a matter

of priority.

It is further imperative that the office of the Inspector

General of Intelligence be capacitated in terms of what human

and financial resources, as well as being independent from the

SSA, which currently supplies it with IT equipment. The SAPS

Crime Intelligence is still faced with inadequate budget which

directly translates to operational hindrances. This includes

the maintenance of CI capability that includes their

recruitment infiltration, handling and support of informal

police agents, co-workers and contacts. Greater budget must be

... [Inaudible.] ... In conclusion, we support the report, its

findings and recommendations. Thank you.

Mr S N SWART: Hon House Chairperson, the ACDP will support

this report. Just to say that the High Level Panel on July’s

rioting make a really severe indictment about the failure of

the reliable intelligence and made the recommendations that

the urgent need to implement the recommendations of the High



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Level Review Panel on State Security Agency and those

recommendations being implemented possibly the unrest and the

tragic loss of life could have been avoided. However, clearly

this report deals with the prior period in 31 March 2020 and

we appreciate concerns that have been expressed by other

parties in this regard. However, we will support this report.

I thank you.

Mr B M HADEBE: Hon House Chairperson, section 199 of the

Constitution provides that security services must be

structured and regulated by the national legislation. The

above section further stipulates that to give effect to the

principles of transparency and accountability, multiparty

parliamentary committee must have oversight of all security

services in the manner determined by the national legislation

or rules on order of Parliament. In this regard, the

Intelligence Services Act was promulgated to give effect to

the constitutional imperatives contained under this section.

Section 2(1) therefore creates a Joint Standing Committee on

Intelligence whose mandate is to oversee and perform oversight

function set out in this Act in relation to the intelligence

and counter-intelligence function of the services which

includes administration, financial management and expenditure



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of services. Hon House Chair, by services we refer to State

Security Agency, crime intelligence and defence intelligence.

In terms of section 2(1b) of the committee, we must report to

Parliament on administrative, financial management and

expenditure of services. This must be read in conjunction with

section 3(a) which empowers the committee to obtain the

following types of report and report to Parliament: an audit

report compiled by the Auditor-General in terms of section 22

of the Public Audit Act, any public report issued by the

financial statement of the services and any report issued by

the Auditor-General on the affairs of the service.

Hon Chair, following its establishment on October in 2019, the

committee was ceased with activities relating to the reform

and services to ensure good governance, accountability and

transparency. Therefore, the context of the work done in

2019/2020 for the State Security Agency was informed by the

findings of the High Level Review Panel. The newly constituted

committee had found itself needing to oversee the

recommendations made in this panel report.

This included but not limited to the legislation and policy

review. The committee had raised serious concern about the

lack of the review of the White Paper on Intelligence since



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1995 on instability, vacancies and vetting of senior

management. The committee discovered that senior positions at

the State Security Agency were occupied by acting

appointments. Since 2018, there was no permanent director-

general. Vetting backlog was a challenge. At the time, no

timeframe was provided on the process relating to the

President’s instruction on the separation of the State

Security Agency. Similarly, the committee was concerned with

the audited financial statement on crime intelligence,

specifically, the lack of sufficient evidence provided for the

achieved targets in relation to the annual performance plan,

APP.

The crime intelligence did not ensure that irregular

expenditure on sensitive projects were avoided. Some of the

deviations were not approved by the Treasury. Hon House Chair,

in the case of the defence intelligence the committee found

out that Rica Judgement was impacting negatively on the

defence intelligence regarding to bulk surveillance and human

resource challenges were identified there.

In an attempt to play our meaningful oversight and effective

role, the committee recommended the following to the services:

that the Rica terms of Judgement and participation on bulk



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surveillance, the Joint Standing Committee on Intelligence

should liaise with the Portfolio Committee on Justice and

Correctional Services in this regard. Subsequently, the

committee also recommended that, and I want you to listen

carefully on this one, all implicated officials when it comes

to irregularities must be reported to law enforcement agency.

Consequence management must be instituted across all three

services. The head of services of intelligent must report all

failures of intelligence to the Office of the Inspector-

General on intelligence. In return, the Inspector-General on

intelligence will monitor progress and report to the committee

on quarterly basis.

Furthermore, we recommended that the High Level Review Panel

recommendations must be implemented without delay. In this

regard, the committee will be briefed on quarterly basis. We

further recommended that all vetting backlogs must be

eradicated as soon as yesterday. The relocation of the State

Security Agency to the Presidency is also another step towards

the right direction in an attempt to strengthen civilian

intelligence environment. This, in our view, will provide the

critical strategic leadership where needed.



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Similarly, in dealing with instabilities, the appointment of

the Ambassador Thembisile Majola as the new director-general

indicates that things are slowly but surely turning towards

better. Now, let us give credit where it is due. If you have

an ability and appetite to criticise and those critics are

conceded and corrected, you must find it within yourself to

give credit where it is due. The fact that you are called an

opposition, it does not mean that your only role is to oppose.

*IsiXhosa*:

Andazi nyani ukuba kufuneka ndide ndinixelele kangaphi.

*English*:

Hon Chair, in conclusion, as we enter into the youth month, it

will be a serious injustice on my part if I were to fail to

take this opportunity to salute our fallen martyrs. The young

lions of yesteryears, who took upon themselves and vowed to

make the apartheid regime ungovernable. The generation that

was committed to the attainment of the political freedom in

their lifetime. When they were faced and confronted with

death, they stood firm and remain resolute.

Hon Chair, how can we forget one of our own, when he said

that:



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Tell my people that I love them and that they must continue

the fight, my blood will nourish the tree that will bear

the fruits of freedom, A luta continua.

I speak of Kalushi Mahlangu, Anton Lembede, Mxolisi Majombozi,

A B Mda, Adelaide Tambo, Oliver Tambo, Nelson Rholihlahla

Mandela, the list is endless. Lest we forget their sacrifices

shall remain forever indelible in our hearts. A luta continua!

I thank you. [Applause.]

Mr B A RADEBE: Hon House Chairperson, I move that the report

be adopted.

Question put

Agreed to.

The House adjourned at 17:38

