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| MEMORANDUM FROM THE PARLIAMENTARY OFFICE |

**NATIONAL ASSEMBLY**

**FOR WRITTEN REPLY**

**QUESTION 109**

**DATE OF PUBLICATION OF INTERNAL QUESTION PAPER: 21/02/2020**

**INTERNAL QUESTION PAPER NO 02 OF 2020**

**Mr M G E Hendricks (Al Jama-ah) to ask the Minister of Higher Education, Science and Technology:**

(1) With reference to the two High Court cases (details furnished) which ruled against certain lawbreakers on the Council of the University of the Western Cape (UWC) (details furnished), what steps does he intend taking to activate the law enforcement agencies that arise from the Constitution of the Republic of South Africa, 1996, to investigate and hold the specified lawbreakers individually and collectively accountable;

(2) Whether he will take the necessary steps to ensure that the specified lawbreakers personally pay back the money diverted from the UWC to fund unlawful conduct; if not, why not; if so, what are the relevant details?

**NW28E**

**REPLY:**

1. In terms of section 20(4) of the Higher Education Act No.101 of 1997, public universities are established as autonomous institutions governed by a Council appointed in terms of the Act.
   1. In the case number 24537/2015, the court’s ruling was with regard to the conduct of certain Council members. This is a matter that must be regulated in terms of the Code of Conduct of a Council, which has been adopted by a Council. The Minister is not authorized by the Act to interfere in the matters within the jurisdiction of Council, as this would be ultra vires and invalid. The circumstances under which the Minister may issue a directive to a university Council or intervene in the affairs of a public higher education institution are articulated under section 42 of the Act.
   2. In the context of case numbers 1153/02/2019 and 23182/17, the matters are currently pending. Council as the employer has the authority to take action upon the finalisation of the matters in court, if any. The South African Constitution contains an important democratic principle of the separation of powers, which means that the power of the state is divided between three different but interdependent components or arms, i.e. the executive, legislature and judiciary. The Minister cannot interfere with the court proceedings.
2. The University, under the authority of its Council, has a duty to ensure that appropriate action is taken where there is a legal transgression.