

## Responses to Parliamentary Questions in the National Assembly

14 March 2001

NATIONAL ASSEMBLY

QUESTION NO. 2

The Leader of the Opposition (DA) to ask the President of the Republic:

Whether he will consider proclaiming HIV/AIDS a national emergency in terms of Section 1 of the State of Emergency Act, 1997 (Act No. 64 of 1997), to allow South Africa to act in terms of article 31 of the World Trade Organisation's Trips Accord to gain access to generic drugs used in the treatment of HIV/AIDS; if not; why not; if so; when?

REPLY

Madam Speaker ...

Declaring a State of Emergency is not necessary as I shall explain.

The issue of countries declaring national emergencies in the event of an epidemic derives largely from the debate on how to effectively use the provisions of the World Health Organisation's TRIPS Accord to facilitate the issuing of compulsory licences for drugs that still enjoy patent protection (Article 31 of TRIPS).

As far as we know, no country has declared a national emergency on these grounds. There were reports last week of a discussion in Kenya on this.

Last year during the 50th Session of the WHO Regional Committee for Africa, the Health Ministers discussed this matter and concluded that it was not necessary.

The government's policy on AIDS is set out in the Strategic Plan on HIV/AIDS and sexually transmitted diseases released by the Minister of Health in May 2000.

The reasons that I believe we should not declare a state of Emergency are:

- the incidence of diseases including AIDS, which present such public health challenges, are persuasive in themselves. Accordingly, we do not need to declare a national emergency to underscore the point.
- Declaring a national emergency for the simple reason of accessing any drugs, sends a signal that tends to narrow the response to AIDS to the issue of one particular drug.

In terms of Section 37 of the Constitution and the State of Emergency Act 64 of 1997, a state of emergency can be called "only when the life of a nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency"; and, only when "the declaration is necessary to restore peace and order". The way that the law reads, both conditions must be fulfilled before a state of emergency can be called.

A state of emergency may be effective for no more than 21 days from the date of declaration, unless the National Assembly resolves to extend the declaration. The National Assembly may extend the declaration for no more than three months at a time. There are also other conditions that would apply.

The declaration of a state of emergency in terms of the Constitution is a drastic a measure which entails the curtailment of the provisions of the Bill of Rights. It has other complex consequences for the country which are undesirable, especially when there are other ways to achieve the same objective, that is, obtaining affordable access to all medicines.

The Medicines and Related Substances Control Act, currently being contested in our courts has a wider application than the TRIPS provision and includes the outcome intended by this provision. The legislation refers to access to all medicines as well as looks at a variety of strategies to ensure affordable access such as:

- Promoting generic substitution
- Parallel importation
- Outlawing some of the perverse practices promoted by pharmaceutical companies to influence the prescribing patterns of doctors such as Bonusing and Sampling

We therefore see no reason why we should not rely on the more comprehensive legislation already approved by this parliament.

This is also why our Medicines will await the decision of the High Court, as well as the report of the Presidential Advisory Team, before evaluating its current policy on AIDS should there be any need to do so.

NATIONAL ASSEMBLY

Question for Oral Reply

Question no.3

Prince N E Zulu (IFP) to ask the President of the Republic:

Whether any recommendation contained in ministerial reports to Cabinet have led to new presidential initiatives and projects on (a) poverty, (b) disease, (c) unemployment and (d) crime; if not, why not; if so, what presidential initiatives and projects?

REPLY

In the first year of democratic rule in this country, departmental and national budgets were not structured in terms of the RDP priorities of the new government. It was necessary at this time to create the RDP Fund and to initiate Presidential Lead projects to direct the work of government and its resources to key areas in the reconstruction of the country.

Since then, the government has refocused its entire budget to address the needs of the people. The total budget of each department is focused on addressing such issues that the Honourable Prince Zulu raises in his question. What were Presidential lead projects and initiatives have now become the programmes of government.

The Government has developed and implemented a number of programmes and projects with the aim of addressing poverty and disease at both departmental and sectoral level. The challenge now is to fast tract implementation of integrated service delivery to utilise resources effectively and efficiently in order to improve the lives of all South Africans especially the most vulnerable groups in the society, namely rural women, the disabled and elderly people. Government has taken an integrated approach towards addressing issues raised by the honourable Prince Zulu. The broad themes among others include the

Integrated and Sustainable Rural Development Programme, Urban Renewal, Water and Sanitation, Comprehensive Social Security and Food Security and Nutrition.

The Integrated Poverty Relief Programme is funded from the Poverty Relief, Infrastructure and Job Creation Fund. The Poverty Relief and Infrastructure Allocation are intended for projects which are not already on budget and which could alleviate poverty. Further, each department is expected to ensure that programmes it undertakes also correspond with priorities of the rural development and urban renewal strategies. This is in addition to the continuing work to intensify implementation of all the programmes aimed at improving the quality of life of all the people, especially the poor, in the areas of housing, electricity, water provision and so on.

Criteria for assessment of the allocation of the Poverty Relief Fund are:

- Target the poorest areas in provinces, particularly rural areas;
- Promote human development and build capacity among the poor and unemployed;
- Provide jobs and community participation;
- Impact on households in which single women are the main breadwinners;
- Seek to make projects sustainable in the long term.

The purpose of the Integrated and Sustainable Rural Development Programme is to facilitate the provision of a basket of services such as water, sanitation, rural roads, integrated health system, maintenance and refurbishment of schools, electrification, sports facilities and other essential services in identified nodal points. These programmes will, among other things, entail investment in the economic and social infrastructure, human resource development, enterprise development, and the enhancement of the development capacity of local government, poverty alleviation and the strengthening of the criminal justice system. Government's central aim is to conduct a sustained campaign against rural poverty and underdevelopment, bringing in the resources of all three spheres of government in a co-ordinated manner.

We announced the phased approach to the implementation of this programme at the opening of Parliament.

Government is in the process of broadening the Urban Renewal Programme to include issues of settlement patterns, transport, inner city redevelopment and local economic development.

A comprehensive social security system is central to government's poverty alleviation strategy. To this end a Committee of Enquiry has been established to review the current system and to provide government with recommendations on other options of social security services and particularly how the services will be targeted and delivered. An important part of the enquiry will be to seek ways in which to integrate the services that government provides most effectively.

With regard to the combating of disease, the Government is implementing an integrated response to health issues as an effective mechanism to address the major determinants of health, which lie outside the formal health sector; for example the provision of water and sanitation to address cholera affected areas, schools, clinics and rural nodes. Secondly, the Government is developing an integrated household food security and nutrition strategy, to align the household food security programmes with nodal points and integrate nutrition programmes with other development initiatives.

Each of the projects and programmes already outlined has a strong job creating thrust. A range of programmes such as the Municipal Infrastructure Programme, the Working for Water programme and others has short-term job creating impact.

In the longer term job creation is addressed in the budget through a range of measures. These include:

- wage incentives for employers, to encourage job creation by reducing the cost of hiring new workers;
- incentives targeted at strategic industrial projects which meet agreed criteria, one of which is job creation;
- the reduced tax rates introduced last year for small and medium businesses and extended this year, and;
- the infrastructural investment and maintenance programme.

All these measures are geared towards stimulating the economy and investment and the creation of jobs.

The total government budget has been refocused on the sort of issues raised in this question, and I am pleased to note, particularly, that the 2001/2002 budget is a landmark in this cause. It indicates the extent to which we have succeeded in building better capacity in government towards achieving our common goal of a better life for all our people.

NATIONAL ASSEMBLY

FOR ORAL REPLY

QUESTION NO.5

Mr M C J van Schalkwyk (New NP) asked the President of the Republic:

Whether he intends exercising his power in terms of section 174(3) of the Constitution, 1996 (Act No. 108 of 1996), to appoint a suitably qualified person to the position of Chief Justice in the near future; if not, what are the reasons for the delay; if so, (a) when and (b) why has the post of Chief Justice remained vacant for so many months

REPLY:

(a) and (b)

On 19 and 20 October 2000 the Ministry for Justice and Constitutional Development hosted a Colloquium for the purpose of enabling a wide range of interested parties to discuss the issues pertaining to the rationalisation and better functioning of the courts and the judicial system.

The Colloquium was attended by judges, magistrates, representatives of the major sectors of the legal profession, members of Parliament, etc. It is of the utmost importance that the question regarding the highest judicial office in our country should be settled once and for all. In the previous political dispensation the Appellate Division of the Supreme Court, as it then was, was the highest court in the country and as such the Chief Justice was heading that Court.

When the new constitutional order was introduced in 1994, the Constitutional Court headed by the President of the Constitutional Court was established as a separate Court. There were many arguments at the time that the Supreme Court of Appeal and the Constitutional Court should be an integrated court consisting of two separate chambers - an appeal and constitutional chamber - headed by a Chief Justice. However, under the circumstances at the time, we opted for two separate courts, the Supreme Court of Appeal being the highest court of appeal in the country and the Constitutional Court as the highest court in all constitutional matters, the former headed by the Chief Justice and the latter by the President of the Constitutional Court.

The system of two separate courts works well although the question as to which of these two courts should be regarded as the highest court in the country remains. Except for the functional difficulties

experienced in this regard, the question as to which of the two Judicial Offices (the Chief Justice or the President of the Constitutional Court) should be regarded as the highest judicial office in the country, creates a number of questions, and in certain circumstances even embarrassment to the incumbents, not to speak of the confusion it creates for members of foreign judiciaries visiting our country. To add to the confusion, the anomaly exists that although the Supreme Court of Appeal may make an order concerning the validity of an act of Parliament, a provincial act or any conduct of the President, such an order has, in terms of section 172(2)(a) of the Constitution, no force unless it is confirmed by the Constitutional Court. This principle was confirmed by the President of the Constitutional Court in the judgement of Pharmaceutical Manufacturers Association of SA; in Re: Ex Parte Application of the President of the RSA and Others 2000(3)BCLR 241(CC). This in effect means that a judgement of the highest judicial office in the country needs to be confirmed by another court. It signifies some kind of inferiority on the side of the Supreme Court of Appeal. This kind of phenomenon should not be allowed to happen. It does not make sense and is, to say the least, confusing.

At the Colloquium referred to above the overwhelming opinion was in favour of an Apex Court headed by the Chief Justice. The general view at the Colloquium was that the Constitutional Court should be the Apex Court and, in that capacity, house the Chief Justice. To give effect to these views, certain constitutional amendments will have to be effected. Proposals in this regard have already been forwarded to the Constitutional Review Committee of Parliament for consideration.

The Minister of Justice and Constitutional Development will be meeting with the Heads of Court on 2nd April to discuss inter alia the rationalisation of the courts. Issues regarding the establishment of an apex court, the appointment of a Chief Justice as the Head of that Court, the amendment of the Constitution and related matters are some of the items that will be discussed.

I fully realise that the Constitution requires the appointment of a Chief Justice and that the position should not be left open indefinitely. We however need to resolve the issue to which I have referred. While the office of Chief Justice is vacant, it is probably the opportune time to address the issue. In the meantime however, there is no impediment against the appointment of an acting Chief Justice. As a matter of fact, an acting Chief Justice has been appointed pending the clarification of the issue.

#### Question No 6

Mrs R M Southgate (ACPD) to ask the President of the Republic:

(1) Whether the purpose of his proposed visit to Zimbabwe will be a further exercise in quiet diplomacy: if not, what is the position in this regard; if so, (a) why and (b) what are the further relevant details;

(2) Whether any results are expected from this meeting; if not, why not; if so, what results?

#### Answers

(1) The matter of Zimbabwe has been dealt with exhaustively both by myself and honourable members of this House and needs no detailed elaboration at this stage.

Suffice it to say that the proposed meeting between the President of Zimbabwe and myself is part of an ongoing process between us and some of our neighbours to work through targeted Task Teams of Ministers on specific matters of mutual interest for the development and growth of our economies. The other neighbour countries with which we have similar interactions are Mozambique and Namibia.

Regarding Zimbabwe, our immediate common objective is to see what contribution we can make to address the economic challenges facing Zimbabwe. We have a common objective to resolve the land question in Zimbabwe so as to stabilize the situation politically and thereby create an environment

conducive to economic recovery and development. This we do not only for the people of Zimbabwe but for the rest of the Southern African region.

Accordingly, President Mugabe and I have agreed that our Ministers of Finance, Trade and Industry, Agriculture and Land and Minerals and Energy must meet urgently to deal with the details of all the economic matters, including the challenges of land reform. The Ministers are expected to find practical solutions and report progress to us at the meeting we have agreed to convene soon.

In this regard, the Minister of Finance confirmed this morning that a meeting at a ministerial level has been arranged for this coming weekend to deal with these issues as a matter of urgency.

The Honourable members of this House would also know that an agreement was reached last year with the United Nations that the UNDP would be directly involved to assist with the process of land reform in Zimbabwe.

Madam Speaker, as this House would know, big business in the country, does not only support our approach to this matter but they have further committed themselves to work with their counterparts in Zimbabwe to assist in resolving some of the problems.

(2) Madam Speaker, we are convinced that our approach will assist in finding solutions to the problems faced by our neighbour. We dare not shed our responsibility as a good neighbour to Zimbabwe and her people. In fact, we have no choice but to respond constructively to create conditions conducive to a better life for all the people of our region.